

Exhibit 3D

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC. 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

**DECLARATION OF AARON BRODY
IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS’ FEES
AND REIMBURSEMENT OF LITIGATION EXPENSES FILED
ON BEHALF OF STULL, STULL & BRODY**

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I, Aaron Brody, declare as follows:

1. I am an attorney with the law firm of Stull, Stull & Brody (“SS&B” or the “Firm”).

I submit this Declaration in support of our firm’s application for an award of attorneys’ fees in connection with services rendered in the Action, as well as for reimbursement of expenses incurred in connection with the Action. I have personal knowledge of the matters set forth in this Declaration and, if called upon, I could and would testify competently thereto.

Overview¹

2. The Firm has been actively involved in the prosecution of this Action since before the filing of the First Amended Complaint on November 20, 2003 (the “FAC”), in *Pringle v. Merck & Co.*, Case No. 2:03-cv-03125-KDE-JCW (E.D. La.).² As detailed in part below, for more than twelve years, SS&B attorneys zealously prosecuted this Action with co-counsel. SS&B attorneys regularly attended and participated in Court³ hearings and conferences, including status conferences, discovery and settlement conferences, hearings related to dispositive motions, class certification motions, and appeals. SS&B played a significant role in the briefing of all oppositions and responses to Defendants’ numerous motions, including potentially dispositive motions that were decided by the Court. SS&B also played a significant role in the briefing of Plaintiffs’ motions and replies in support thereof. SS&B attorneys, among other things, also engaged in discovery efforts, regularly participated in case strategy meetings and conferences,

¹ The following description of SS&B’s prosecution of this Action is not intended to be comprehensive; it is only intended as a partial summary of SS&B’s extensive efforts in the Action during the past twelve plus years.

² Jules Brody and I were the first attorneys among Co-Lead Counsel to prosecute this Action.

³ Capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated February 8, 2016 (the “Stipulation”), or in the Joint Declaration in Support of: (A) Lead Plaintiffs’ Motion for Final Approval of Settlement and Approval of Plan of Allocation; and (B) Co-Lead Counsel’s motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, dated April 29, 2016.

participated in the drafting of Court filings and correspondence, and participated in discussions, negotiations and meet and confers with Defendants' counsel.

3. SS&B's zealous prosecution, along with Co-Lead Counsel, of Plaintiffs' and the Class's claims resulted in an excellent aggregate proposed Settlement of \$1,062,000,000.

4. A breakdown of the hours spent by Firm personnel, their hourly rate, and the lodestar per professional for the time for which the Firm seeks attorneys' fees is attached hereto as Exhibit 1. The total amount of time devoted to this litigation by the Firm, as reflected by its books and records, exceeds the Firm's 99,714.36 hours and lodestar of \$47,457,094.60 as of February 15, 2016, submitted herewith. Time expended in preparing this fee application and in connection with the Special Master process is excluded from the Firm's fee application.

5. In addition, the Firm incurred expenses in excess of \$1,400,229.35 as of February 15, 2016, in connection with the prosecution of the Action, as reflected by the Firm's books and records, for which it seeks reimbursement.⁴ A chart listing SS&B's expenses by category is attached hereto as Exhibit 2. SS&B's expenses include contributions of \$1,252,861.38 to a litigation fund maintained by Co-Lead Counsel (the "Litigation Fund").

Commencement of the Action

6. SS&B represented the Plaintiff in the FAC,⁵ which was filed on November 20, 2003, in the *Pringle* Action.⁶ The FAC alleged violations of the Exchange Act, Sections 10(b) and

⁴ Expenses incurred for services contracted by SS&B, such as LexisNexis and Bloomberg Law, are charged based upon the relative portion of the Firm's actual usage of those services for this case, prorated against SS&B's contract amount. This effectively provides a substantial discount to what would be the market rates charged for non-contract use of such services absent such a monthly contract.

⁵ The FAC added defendant ABC Insurance Corporation as Merck's Directors' and Officers' liability insurer, pursuant to Louisiana's "Direct Action" statute La.R.S. 22:655. The FAC was filed along with an affidavit of Plaintiff Frank Pringle, which included a list of Merck securities bought and sold on his behalf.

20(a), 15 U.S.C. §§ 78j(b) and 78t(a), on behalf of purchasers of common stock of Merck between May 22, 1999 and October 22, 2003, inclusive. SS&B was the first of the Co-Lead Counsel firms to file a securities class action against Merck alleging that Merck made materially false and misleading public statements regarding Vioxx.⁷

7. On November 25, 2003, SS&B timely issued the required notice of the Action for public dissemination over *Business Wire* pursuant to 15 U.S.C. § 78u-4(a)(3)(A)(i) (requiring notice within 20 days of filing a complaint),⁸ informing members of the proposed class of the pendency of the Action, the claims asserted in the Action, the alleged class period, and notifying the public that not later than 60 days from the date of the notice any member of the putative class may move the Court to serve as lead plaintiff in the Action. SS&B also published a copy of the notice on November 28, 2003 in *Investor's Business Daily*. SS&B received and responded to numerous inquiries from potential class members in response to the notices.

SS&B's Leadership Appointment

8. On January 27, 2004, SS&B and co-counsel filed a motion (*Pringle* ECF No. 5) seeking consolidation of related actions, appointment of Dr. Jerome Haber ("Dr. Haber"), Marc Nathanson, *et al.*, as lead plaintiffs and approval of movants' selection of SS&B as a lead counsel

⁶ SS&B previously achieved successful litigation results in Louisiana in other cases, including *Lasky v. Brown (United Companies Financial Corporation) Securities Litig.*, C.A. No. 99-1035-B-M2 (M.D. La.) (recovery of \$20.5 million), and *Feinberg v. Hibernia Corp.*, C.A. No. 90-4245 (E.D. La.) (recovery of \$20 million).

⁷ Milberg Weiss Bershad Hynes & Lerach LLP filed the action *Ravnitsky v. Merck*, Case No. 2:04-cv-00147 (E.D. La.), on January 16, 2004.

⁸ The first complaint in the *Pringle* Action was filed on November 6, 2003. The PSLRA requires that "[n]ot later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—(I) of the pendency of the action, the claims asserted therein, and the purported class period; and (II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as Lead Plaintiff of the purported class." 15 U.S.C. § 78u-4(a)(3)(A)(i).

for Plaintiffs. On January 26, 2004, Milberg Weiss Bershad Hynes & Lerach LLP and its co-counsel moved (*Pringle* ECF No. 4) on behalf of Richard Reynolds, Steven LeVan, *et al.*, for consolidation of related actions, appointment as lead plaintiff and approval of movants' selection of Milberg Weiss Bershad Hynes & Lerach LLP as co-lead counsel for Plaintiffs.

9. By Order dated February 26, 2004 (*Pringle* ECF No. 13), the U.S. District Court for the Eastern District of Louisiana appointed, upon stipulation, Dr. Haber, Marc Nathanson, Richard Reynolds and Steven LeVan as lead plaintiffs and approved lead plaintiffs' selection of SS&B and Milberg Weiss Bershad Hynes & Lerach LLP as Plaintiffs' co-lead counsel.⁹

**SS&B's Role in the Filing of the Second and
Third Amended Complaints and a Class Certification Motion**

10. Subsequent to SS&B's appointment as co-lead counsel, SS&B and co-counsel drafted the 70-page, 235-paragraph Consolidated and Second Amended Complaint (the "SAC"),¹⁰ which was filed on August 9, 2004. *Pringle* ECF No. 41. The SAC alleged violations of the Exchange Act on behalf of purchasers of the securities of Merck between May 21, 1999 and

⁹ "Co-Lead Counsel" is capitalized herein when referring to the current structure of Co-Lead Counsel, and lowercase when referring to prior Court-appointed co-lead counsel.

¹⁰ The allegations of the SAC were based upon the investigation conducted by and under the supervision of co-lead counsel, which included, among other things: (i) interviews of former employees of Merck, including interviews with seven confidential witnesses; (ii) review and analysis of the public filings of Defendants, including their filings with the Securities and Exchange Commission (the "SEC"); (iii) review and analysis of press releases and reports to shareholders issued by Merck; (iv) review and analysis of news articles and analysts' reports relating to Merck; (v) review and analysis of securities analyst conference call transcripts; (vi) review and analysis of documents obtained by Plaintiffs from the Department of Health and Human Services ("HHS") pursuant to the Freedom of Information Act ("FOIA"); (vii) review and analysis of pertinent scientific and medical literature; (viii) review and analysis of pertinent documents prepared by the Food and Drug Administration (the "FDA"); and (ix) consultations with experts, including Daniel Q. Posin, a former law professor at Tulane University Law School regarding issues of loss causation, and Michael Marek, a financial expert, regarding Defendants' stock trades.

October 22, 2003,¹¹ inclusive. In addition to consolidating the claims alleged in the related actions, the SAC included additional statements concerning Vioxx alleged to be materially false and misleading, and alleged further details concerning insider selling activity. Importantly, it alleged that Merck misrepresented that the negative cardiovascular outcome in Merck's Vioxx Gastrointestinal Outcomes Research study ("VIGOR") (patients that took Vioxx had more heart attacks than patients that took Naproxen) was not due to risks posed by Vioxx, but was due to Naproxen purportedly being cardioprotective. Merck's explanation for the adverse cardiovascular results in VIGOR would become known as the "Naproxen Hypothesis." The SAC also added as a defendant Merck's chief research scientist Edward Scolnick, who Plaintiffs allege made materially false and misleading public statements about Vioxx, allegedly sold Merck stock on adverse inside information, who is one of two remaining individual defendants in the case and who is one of the settling Defendants.

11. On September 30, 2004, Merck announced the worldwide withdrawal of Vioxx because of questions raised by data from its Adenomatous Polyp Prevention on Vioxx study ("APPROVe") that showed increased risk of cardiovascular events in patients taking Vioxx, beginning after 18 months of continuous therapy. The announcement led to a drop in the price of Merck common stock from the prior day's closing price of \$45.07 to close at \$33.00 per share on September 30, 2004, erasing \$27 billion of market capitalization. Prior to and after Merck's withdrawal of Vioxx, a great deal of new information about Vioxx became available to the public. In addition to news and securities analyst reports, lawsuits alleging personal injuries caused by

¹¹ On October 22, 2003, *Reuters* published an article reporting that Vioxx "is suffering from clinical trial data suggesting it might slightly raise the risks of heart attacks, and the growing perception that its pain-fighting capabilities are no better than traditional painkillers." On October 22, 2003, Merck common stock fell to \$45.72 from the previous day's closing price of \$48.91. On October 30, 2003, *The Wall Street Journal* reported that a study sponsored by Merck "found an increased risk of heart attacks" in patients taking Vioxx and that within the first thirty days of use, Vioxx was linked to a 39% increased heart attack risk compared with Celebrex.

heart attacks and other adverse cardiovascular events after taking Vioxx were advancing toward trial, Congressional hearings were conducted regarding the safety of Vioxx, and FDA hearings were conducted regarding the safety of Vioxx and other NSAIDs. SS&B attorneys continually monitored, pursued and analyzed such new information. On November 1, 2004, *The Wall Street Journal* published an article that contained excerpts from internal Merck emails suggesting Merck was aware that Vioxx posed cardiovascular risks as early as 1996, and prior to May 20, 1999, when the FDA first approved Vioxx for marketing in the United States.

12. SS&B and co-counsel drafted the 102-page, 297-paragraph Consolidated and Third Amended Complaint, which was filed on November 8, 2004 (the “TAC”).¹² The TAC, among other things, extended the proposed class period to include purchasers of Merck securities from May 21, 1999 through October 29, 2004, the last trading day prior to publication of the November 1, 2004 article in *The Wall Street Journal*. The TAC added allegations concerning the APPROVE study, the alleged concealment of information in internal emails that *The Wall Street Journal* revealed, the impact that withdrawal of Vioxx had on the price of Merck securities, and the alleged concealment of financial exposure Vioxx litigation posed to Merck. The TAC alleged that in immediate response to *The Wall Street Journal* article Merck stock fell another \$3.03 per share, or approximately 9.7% from the previous trading day’s close of \$31.31, to close at \$28.28 per share on November 1, 2004.

¹² The allegations of the TAC were based upon the investigation conducted by and under the supervision of co-lead counsel, which included, among other things: (i) interviews of former employees of Merck, including interviews with eight confidential witnesses; (ii) review and analysis of the public filings of Defendants, including their filings with the SEC; (iii) review and analysis of press releases and reports to shareholders issued by Merck; (iv) review and analysis of news articles and analysts’ reports relating to Merck; (v) review and analysis of securities analyst conference call transcripts; (vi) review and analysis of documents obtained by Plaintiffs from the HHS pursuant to FOIA; (vii) review and analysis of pertinent scientific and medical literature; (viii) review and analysis of pertinent documents prepared by the FDA; and (ix) consultations with experts.

13. With the filing of the TAC, the allegations on behalf of the lead plaintiffs and the then-putative class were well developed and comprised a substantial majority of the allegedly materially false statements and theories of liability that remained in the case at the time the parties agreed to the proposed Settlement in December 2015 that is currently before the Court.

14. SS&B and its co-counsel drafted, and on November 24, 2004 filed, a motion (*Pringle* ECF No. 77) seeking certification of a class consisting of “all persons and entities who purchased [Merck] securities between May 21, 1999 and October 29, 2004, inclusive” pursuant to Federal Rule of Civil Procedure 23, and certification of Dr. Haber, Richard Reynolds, Steven LeVan, Marc Nathanson and Union Asset Management Holding AG as Class representatives, and appointment of SS&B and Milberg Weiss Bershad Hynes & Lerach LLP as co-lead counsel for the class.

**SS&B’s and Co-Lead Counsel’s Leadership Appointment Is
Challenged in Louisiana and New Jersey**

The MDL Proceedings

15. Following Merck’s September 30, 2004 announcement of the withdrawal of Vioxx, various plaintiffs filed securities fraud lawsuits in Louisiana, Illinois, New Jersey and Pennsylvania, alleging, as in the *Pringle* Action, that Merck and the individual defendants concealed and downplayed the safety risks of Vioxx. On November 10, 2004, Merck moved the Judicial Panel on Multidistrict Litigation (the “JPML”) (MDL ECF No. 12)¹³ for coordinated pre-trial proceedings pursuant to 28 U.S.C. § 1407, requesting transfer and coordination of all related lawsuits to the United States District Court for the Eastern District of Louisiana, stating:

[T]he cases in the Eastern District of Louisiana are the furthest advanced. The Court has established a Master Docket for management of the cases, and has entered separate briefing schedules for the motions to dismiss in the consolidated securities

¹³ References to “MDL ECF” are to the docket of the JPML in MDL 1658.

cases and the consolidated shareholder derivative cases. Plaintiffs in the securities case served their [TAC] on November 6, 2004. (Defendants' motion to dismiss is due January 11, 2005.) Thus, a judge of the Eastern District of Louisiana already has some familiarity and experience with this litigation that other districts do not have.

16. SS&B and co-counsel drafted and filed lead plaintiffs' response (MDL ECF No. 25) to Merck's motion for coordinated pre-trial proceedings on December 1, 2004, arguing for, and agreeing with, Merck's position that the appropriate transferee forum was the Eastern District of Louisiana.

17. On December 20, 2004, Merck filed a reply memorandum (MDL ECF No. 30) informing the Panel of a change to its position as to venue, in favor of transfer of the related actions to the District of New Jersey, citing, among other factors, *Hevesi v. Merck*, No. 04-cv-5866 (D.N.J. filed Nov. 30, 2004) (*Hevesi* ECF No. 1),¹⁴ and Alan G. Hevesi's, then Comptroller of the State of New York ("Hevesi"), representation of the largest institutional investor and its presumptive entitlement to appointment as lead plaintiff, various MDL responses requesting transfer to the District of New Jersey, the location of most witnesses and counsel in the New Jersey area, and accessibility of New Jersey as a venue.

18. On January 27, 2005, Jules Brody attended a JPML hearing in Fort Myers, Florida, for purposes of addressing motions seeking centralization of related actions pursuant to 28 U.S.C. § 1407. On February 23, 2005, the JPML transferred the related actions, including *Pringle*, to this Court pursuant to 28 U.S.C. § 1407.

The Hevesi Motion to Intervene

19. On November 30, 2004, Hevesi moved to intervene in the *Pringle* action, to vacate the February 26, 2004 lead plaintiff Order, and to appoint the New York State Common

¹⁴ References to "*Hevesi* ECF" are to the docket of the action *Hevesi v. Merck & Co., Inc.*, No. 04-cv-5866 (D.N.J.).

Retirement Fund (“NYSCRF”) as lead plaintiff and appoint its counsel as lead counsel. *Pringle* ECF No. 64. SS&B and co-counsel opposed NYSCRF’s motion. *Pringle* ECF No. 76.

20. Also on November 30, 2004, Hevesi moved in the *Hevesi* action to appoint the NYSCRF as lead plaintiff and for appointment of its counsel as lead counsel. *Hevesi* ECF No. 3. SS&B and co-counsel researched and drafted, and on December 10, 2004 filed, a motion (*Hevesi* ECF No. 12) to intervene in the *Hevesi* action and to strike the NYSCRF’s motion, or alternatively, to stay all proceedings in that action.

21. On December 13, 2004, SS&B attorneys Jules Brody and Mark Levine appeared at a hearing conducted by Judge Chesler regarding the pending motions in the *Hevesi* action.

22. On December 14, 2004, SEB Fonder moved to intervene in the *Pringle* action and for appointment as lead plaintiff and for approval of its selection of lead counsel. *Pringle* ECF No. 70. SS&B and co-counsel conducted researched, drafted, and on January 12, 2005, filed lead plaintiffs’ opposition (*Pringle* ECF No. 111) to SEB Fonder’s motion.

Judge Chesler Confirms Appointment of SS&B as Co-Lead Counsel

23. On March 21, 2005, Jules Brody and Mark Levine participated in a hearing before Judge Chesler during which (a) the *Pringle* lead plaintiffs, (b) Hevesi (NYSCRF), (c) Park East, Inc., and (d) Rhonda Kanter presented arguments about who should be lead plaintiff. By Order dated April 6, 2005, Judge Chesler confirmed the appointment of Dr. Haber, Richard Reynolds, Steven LeVan and Marc Nathanson as lead plaintiffs, and confirmed lead plaintiffs’ selection of SS&B and Milberg Weiss Bershad & Schulman LLP as co-lead counsel, based “upon careful review and consideration of the arguments presented[.]”

The Prosecution of the Class’s Claims

24. On January 3, 2005, SS&B contributed \$15,000 to the Litigation Fund, which was 50% of the Litigation Fund’s contributions as of that date. On April 11, 2005, SS&B contributed

an additional \$25,000 to the Litigation Fund. SS&B had contributed 50% of the Litigation Fund as of that date.

25. On May 5, 2005, Jules Brody and Mark Levine appeared at a Court conference before Judge Chesler regarding scheduling of pre-trial proceedings for the coordinated securities, derivative and ERISA actions against Merck.

26. On May 9, 2005, SS&B and Milberg Weiss Bershad & Schulman LLP moved to modify the PSLRA's automatic discovery stay. While the automatic discovery stay would otherwise have remained in effect until Plaintiffs survived a motion to dismiss, Plaintiffs sought documents related to Vioxx which had been produced in other civil actions and governmental proceedings. SS&B and Milberg Weiss Bershad & Schulman LLP drafted and filed a reply memorandum on May 21, 2005. A hearing on Plaintiffs' motion was held on May 26, 2005, which was attended by Mark Levine. On July 8, 2005, the Court granted, in part, Plaintiffs' motion to partially lift the PSLRA discovery stay, holding that "to the extent Defendants have reached agreements with Derivative Plaintiffs and ERISA Plaintiffs regarding discovery, Defendants shall produce all discovery produced to Derivative Plaintiffs and ERISA Plaintiffs to Securities Plaintiffs."

27. SS&B and Milberg Weiss Bershad & Schulman LLP drafted, and June 14, 2005, SS&B and Milberg Weiss Bershad & Schulman LLP filed a 178-page, 453-paragraph Corrected Consolidated and Fourth Amended Class Action Complaint (the "4AC"),¹⁵ further refining

¹⁵ The allegations of the 4AC were based upon the investigation conducted by and under the supervision of co-lead counsel, which included, among other things: (i) interviews of former employees of Merck and other persons with knowledge and information with respect to the matters alleged therein, including eight confidential sources; (ii) review and analysis of the public filings of Merck and the other Defendants, including their filings with the SEC; (iii) review and analysis of press releases, reports to shareholders, and other public statements issued by Defendants; (iv) review and analysis of news articles and media reports relating to the matters alleged therein; (v) review and analysis of analyst reports relating to Merck; (vi) review and

Plaintiffs' allegations. The class period alleged in the 4AC was from May 21, 1999 to October 29, 2004, inclusive. The 4AC, among other things, added as an individual defendant Executive Director of Clinical Research at Merck Research Laboratories Alise Reicin, and alleged that several public statements made by her were materially false and misleading. Reicin, along with Scolnick, were the individual defendants remaining in the Action at the time of settlement and were both settling defendants.

28. On August 8, 2005, SS&B contributed \$25,000 to the Litigation Fund. SS&B had contributed 50% of the Litigation Fund as of that date. On December 8, 2005, SS&B contributed \$40,000 to the Litigation Fund. SS&B had contributed 61.76% of the Litigation Fund as of that date. On September 13, 2006, SS&B contributed \$7,500 to the Litigation Fund. SS&B had contributed 51.72% of the Litigation Fund as of that date.

29. On August 12, 2005, Defendants moved to dismiss Plaintiffs' 4AC. SS&B and Milberg Weiss Bershad & Schulman LLP drafted, and on September 22, 2005 filed, a motion to strike, or, alternatively, convert Defendants' motions to dismiss to motions for summary judgment, permitting Plaintiffs to conduct discovery (the "September 22, 2005 motion"). SS&B and Milberg Weiss Bershad & Schulman LLP also drafted, and on October 18, 2005 filed, their reply brief in further support of the September 22, 2005 motion. On January 20, 2006, the Court entered an Order denying the September 22, 2005 motion.

analysis of securities analyst conference call transcripts; (vii) review and analysis of documents and information obtained by Plaintiffs from the HHS pursuant to FOIA; (viii) review and analysis of pertinent scientific and medical literature; (ix) review and analysis of pertinent documents issued by the FDA, including official communications between the FDA and Merck; (x) consultations with experts; (xi) review and analysis of Congressional testimony and materials issued by the United States Congress; (xii) review and analysis of internal Merck documents that are in the public domain; (xiii) review and analysis of advertising and promotional materials that Defendants disseminated during the Class Period concerning Vioxx; (xiv) review and analysis of Vioxx label leaflets; and, (xv) review and analysis of pleadings in other actions filed against Merck that arise out of the same core issues and facts alleged therein concerning Vioxx.

30. SS&B and Milberg Weiss Bershad & Schulman LLP drafted, and on March 16, 2006 filed, a 90-page opposition to Defendants' August 12, 2005 motions to dismiss the 4AC based upon statute of limitations issues, and other issues, including loss causation and materiality.

Co-Lead Counsel Are Added

31. On May 18, 2006, Milberg Weiss Bershad & Schulman LLP, and two of its named partners, were indicted.

32. On September 6, 2006, David Brower, formerly of Milberg Weiss Bershad & Schulman LLP, and then of Brower Piven, A Professional Corporation ("Brower Piven"), filed a notice of appearance on behalf of Lead Plaintiff Steven Levan. On September 7, 2006, Bruce D. Bernstein, formerly of Milberg Weiss Bershad & Schulman LLP, and then of Dreier LLP, filed a notice of appearance on behalf of Lead Plaintiff Richard Reynolds. As a result of those two notices of appearance, Milberg Weiss Bershad & Schulman LLP represented no lead plaintiff.

33. On October 26, 2006, Public Employees' Retirement System of Mississippi ("MPERS") moved to intervene and to require the lead plaintiffs to appear at a hearing concerning their adequacy under the PSLRA because of the May 18, 2006 indictments. MPERS and Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), seeking to re-open applications for lead plaintiff, recognized that based upon the prosecution of the Action to date, "[t]his is perhaps the largest securities class action pending nationally, involving victims numbering in the hundreds of thousands, if not millions, and damages of tens of billions of dollars."

34. On November 14, 2006, SS&B and Milberg Weiss Bershad & Schulman LLP, as co-lead counsel, filed lead plaintiffs' opposition to MPERS' motion to intervene and in support of lead plaintiffs' cross-motion for an order approving lead plaintiffs' selection of Brower Piven as an additional co-lead counsel. David Brower of Brower Piven and Bruce D. Bernstein of Dreier were on the brief.

35. On November 27, 2006 and January 8, 2007, hearings were conducted regarding MPERS' motion to intervene. Jules Brody and Mark Levine participated.

36. On January 12, 2007, lead plaintiffs, including Dr. Haber, filed declarations attesting to their dedication to continue acting as lead plaintiffs in response to MPERS' motion to intervene and in support of a proposed change in the structure of the plaintiff and counsel leadership, whereby Dr. Haber, Richard Reynolds and Steven LeVan would continue to serve as lead plaintiffs and MPERS would be added as a lead plaintiff, and whereby SS&B and Milberg Weiss & Bershad LLP would continue to serve as co-lead counsel and Brower Piven and BLB&G would be added as additional co-lead counsel.

37. On January 25, 2007, Mark Levine appeared at a hearing regarding the proposed leadership structure. SS&B and co-counsel submitted a stipulation, ordered by the Court on January 25, 2007, finding that the lead plaintiffs, Dr. Haber, Richard Reynolds, Steven LeVan, have determined that it is in the best interests of the Class to add MPERS as a co-lead plaintiff, and BLB&G and Brower Piven as co-lead counsel, together with SS&B and Milberg Weiss & Bershad LLP.

Motion to Dismiss and Subsequent Appeals

38. On March 26, 2007, Jules Brody and Mark Levine appeared at a hearing for oral argument on Defendants' motions to dismiss, after having helped prepare co-counsel who presented Plaintiffs' arguments, meeting with co-counsel, and revising argument outlines.

39. On April 12, 2007, the Court granted Defendants' motion to dismiss on statute of limitations grounds.

40. On May 9, 2007, Plaintiffs filed their notice of appeal to the Third Circuit. SS&B played an active role in litigating Plaintiffs' appeal of the dismissal of the Action. SS&B performed substantial work with respect to the drafting, editing and researching the August 3,

2007 Appellants' Brief in the Third Circuit and the October 26, 2007 Appellants' Reply Brief. On June 24, 2008, Mark Levine appeared at the Third Circuit oral argument after SS&B helped prepare co-counsel who presented Plaintiffs' arguments. On September 9, 2008, the Third Circuit reversed the District Court's dismissal of the Action. *See In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litig.*, 543 F.3d 150, 172 (3d Cir. 2008).

41. On January 15, 2009, after the Third Circuit denied a petition for rehearing *en banc*, Defendants filed a petition for a *writ of certiorari*. Co-Lead Counsel retained a Supreme Court specialist, David Fredrick of Kellog, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., to help respond to the petition. David Frederick assisted SS&B and Co-Lead Counsel with the March 23, 2009, opposition to Defendants' petition for a *writ of certiorari*.

42. On May 6, 2009, SS&B contributed \$26,923.88 to the Litigation Fund. SS&B had contributed 41.15% of the Litigation Fund as of that date.

43. SS&B and co-counsel drafted, and on May 13, 2009, Lead Plaintiffs filed with the Supreme Court a Supplemental Brief to address certain of Defendants' arguments, and argued that the petition for a *writ of certiorari* should be denied.

44. On May 26, 2009, the Supreme Court granted Defendants' petition for a *writ of certiorari*. Defendants' opening brief with the Supreme Court was filed on August 10, 2009. On October 19, 2009, Plaintiffs filed their brief in opposition to Defendants' appeal. SS&B assisted in the drafting of Plaintiffs' opposition brief. SS&B participated in meetings of Co-Lead Counsel with David Frederick, who argued before the Supreme Court, discussing the strategy for the Supreme Court appeal and ways to frame the arguments in the Supreme Court briefing. SS&B also participated in an all-day moot court type session in which various Plaintiffs' counsel asked David Frederick a barrage of questions on all conceivable points of contention to assist him in

preparing for oral argument. On November 30, 2009, Mark Levine attended the oral argument before the Supreme Court.

45. On December 2, 2009, SS&B contributed \$25,000 to the Litigation Fund. SS&B had contributed 32% of the Litigation Fund as of December 22, 2009. On January 5, 2010, SS&B contributed \$75,000 to the Litigation Fund. SS&B had contributed 36.07% of the Litigation Fund as of that date.

46. On April 27, 2010, the United States Supreme Court unanimously held:

Regardless of which, if any, of the events following November 6, 2001, constituted “discovery,” we need only conclude that prior to November 6, 2001, the plaintiffs did not discover, and Merck has not shown that a reasonably diligent plaintiff would have discovered, “the facts constituting the violation.” In light of our interpretation of the statute, our holdings in respect to scienter, and our application of those holdings to the circumstances of this case, we must, and we do, reach that conclusion. Thus, the plaintiffs’ suit is timely. We need not--and do not--pass upon the Court of Appeals’ suggestion that the November 2003 Brigham and Women’s study might have triggered the statute of limitations. The judgment of the Court of Appeals is affirmed.

Merck & Co. v. Reynolds, 559 U.S. 633, 654 (2010).

47. On May 24, 2010, SS&B contributed \$100,000 to the Litigation Fund. SS&B had contributed 32.67% of the Litigation Fund as of that date.

The Fifth Consolidated and Amended Complaint

48. SS&B and Co-Lead Counsel drafted, and on March 10, 2009 filed a 216-page, 488-paragraph Corrected Consolidated Fifth Amended Class Action Complaint (the “5AC”), further refining Plaintiffs’ allegations on behalf of persons and entities who purchased or acquired Merck securities between May 21, 1999 and October 29, 2004, inclusive. The 5AC, among other things, added factual allegations concerning Merck’s “rush to market” with Vioxx and the Merck-funded

Vioxx study known as Protocol 023, that provided the basis for the so-called “Fitzgerald Hypothesis.”

49. On June 18, 2010, Defendants moved to dismiss the 5AC. During the weeks prior to the filing of Defendants’ motions to dismiss, SS&B was engaged in conducting legal and factual research anticipating Defendants’ arguments. SS&B again was active in drafting, editing and researching Plaintiffs’ oppositions to those motions, which oppositions were filed on August 6 and 9, 2010. On June 29, 2010, Mark Levine appeared at a status conference before Judge Chesler. On October 5, 2010, March 23, 2011, March 31, 2011, and July 7, 2011, SS&B and Co-Counsel filed letters with the Court regarding supplemental authority with respect to Defendants’ motions to dismiss. On July 12, 2011, the Court held oral argument on Defendants’ motions to dismiss. SS&B helped prepare the attorneys who would present Lead Plaintiffs’ arguments during in-person meetings and conference calls held prior to the hearing. Mark Levine and Patrick Slyne attended the argument. On August 8, 2011, the Court granted in part and denied in part Defendants’ motions to dismiss.

SS&B’s Intensive Discovery Efforts

Discovery Related to Lead Plaintiffs’ Case in Chief

50. SS&B’s intensive efforts related to formal and informal discovery, among other things, included: searching news, securities analyst reports, medical journals and publications, SEC filings, Congressional records, and other available information; issuing third party subpoenas and FOIA requests; reviewing documents produced in the litigation; and, taking and participating in depositions. Throughout the litigation, SS&B attorneys monitored numerous ongoing legal and governmental proceedings related to Vioxx such as the U.S. Department of Justice (the “DOJ”) investigation; the U.S. Congressional investigation; the litigation between Merck and its insurance carriers; FDA hearings; and personal injury lawsuits.

51. SS&B attorneys reviewed and summarized transcripts of deposition and trial testimony relating to 62 witnesses in previous Vioxx-related lawsuits, comprising more than 230 separate transcripts.¹⁶

52. SS&B attorneys issued ten FOIA requests seeking information related to Vioxx to various state and federal governmental agencies including: (1) the California Attorney General; (2) HHS; (3) the DOJ, Criminal Division; (4) the Executive Office for U.S. Attorneys (re: Massachusetts); (5) the FDA; (6) the New Jersey Attorney General; (7) the New York Attorney General; (8) the Oregon Attorney General; (9) the SEC; and, (10) the Texas Attorney General. SS&B attorneys then pursued those FOIA requests, corresponding and negotiating with those governmental entities, which resulted in obtaining significant productions of discovery. SS&B also undertook efforts to identify and obtain materials relating to Congressional hearings and investigations regarding Vioxx.

53. SS&B served 18 third party subpoenas addressed to stock analysts and public relations firms related to their publications, communications and work related to Vioxx, including: (1) AllianceBernstein LP; (2) Barclays Capital Inc.; (3) Cathay Financial LLC; (4) Credit Suisse Group AG; (5) Crowell, Weedon & Co.; (6) First Eagle Investment Management LLC; (7)

¹⁶ The transcripts reviewed were: David Abrahamson (1 transcript), Donna Arnett (2), Janet Arrowsmith-Lowe (6), Jerome Avorn (11), Raymond Bain (1), Gregory Bell (1), Bruce Binkowitz (1), Colin Bloor (1), Tomas Bold (3), Jeffrey Brent (1), Donald Catalano (1), Jerome Cohen (2), Gregory Curfman (10), Donald David (3), William Ross Davis (1), Thomas DeBauche (1), Donald Dembo (1), Richard DeShazo (2), David Egilman (8), Stephen Epstein (1), David Eskin (1), Nicholas Flavahan (5), Richard Friedman (2), James Fries (1), Mark Furman (3), John Michael Graziano (8), David Wayne Hayes (1), Linda Hostelley (4), Dale Isaeff (3), Terry Jacklin (4), John Keaney (6), Kyunhmann Kim (1), Richard Kronmal (4), Harlan Krumholz (8), Frank Leo Lanza (11), Benedict Lucchesi (8), Joseph Lynch (1), John Markis (2), Ronald Marks (1), Jeffrey Miller (1), Malachi Mixon (1), Lemuel Moye (11), Donald Nicholson (1), Susan Parisian (2), Jeffrey Popma (1), Craig Pratt (16), Lisa Rarick (12), Wayne Ray (3), Paul Roach (5), Gary Sander (2), Nancy Santanello (20), David Silver (4), Leonard Sliverstein (1), Thomas Simon (2), James Smith (1), George Taylor (2), Eric Topol (9), Theodore Tyberg (8), Alan Wasserman (2), Douglas Watson (2), Paul Waymack (2), and Isaac Weiner (1).

Goldman Sachs Group Inc.; (8) JP Morgan Securities Inc. (relating to Bear Stearns); (9) Bank of America Corp. (relating to Merrill Lynch & Co., Inc.); (10) Morgan Stanley & Co., Inc.; (11) Prudential Financial, Inc.; (12) RBC Dain Rauscher Corp.; (13) Stifel Financial Corp.; (14) UBS Financial Services, Inc.; (15) UBS Securities, LLC; (16) Walnut Asset Management LLC; (17) Coram & Associates, Inc.; and, (18) DWJ Television. SS&B then corresponded, negotiated and met and conferred with various of those third parties to obtain discovery and reviewed and analyzed the resultant production materials.

54. SS&B assembled a large group of attorneys to review and analyze the millions of pages of documents produced in this Action. Those attorneys also undertook numerous special assignments at the direction of Co-Lead Counsel. SS&B identified and selected those individuals based on their legal education and experience in scientific, technical, medical or pharmaceutical disciplines. Attorneys retained by SS&B included a licensed medical doctor, a Ph.D. recipient, several patent attorneys, computer specialists and other individuals with scientific or technical backgrounds. In total, these individuals devoted more than 71,000 hours to the Action, performing a variety of functions including, among other things: reviewing, analyzing and summarizing large volumes of documents; identifying and compiling evidence relating to specific issues and for use with specific witnesses at deposition, including preparation of deposition “kits” for various witnesses and potential witnesses; identifying key “hot” documents; preparing custodian-specific research memoranda on key Merck employees; reviewing and summarizing thousands of pages of deposition and trial testimony; and, identifying and organizing documents relating to specific issues and assignments.

55. The following are descriptions of certain of these attorneys’ educational background and highlights of their contributions to the prosecution of the Action.

- **Dr. Randall Hirsch** obtained a B.A. from the University of Michigan in 1997, an M.D. from Tufts University School of Medicine in 2001, and a J.D. from Northwestern University School of Law in 2008. He is also a licensed medical doctor and a registered patent agent. Prior to his work in this Action, Dr. Hirsch was an associate at Fried, Frank, Harris, Shriver & Jacobson LLP. In addition to reviewing and coding documents, he had responsibility for preparing memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses, including Loren Laine, Alise Reicin, Briggs Morrison, David DiBattiste, Thomas Cannell, Raymond Bain, David Anstice, Douglas Watson, James Neaton, David Sales and David Graham. He also had responsibility for assignments relating to Plaintiffs' opposition to Defendants' summary judgment motions, and for preparing memoranda on discreet issues including how Edward Scolnick's and Alise Reicin's impressions of the VIGOR results, and their impressions of the naproxen hypothesis, changed in March 2000. He conducted research regarding cardiovascular event definitions, Merck's Management Committee, the VIGOR Data Analysis Plan, the Intent-to-Treat study, expert reports by Douglas Zipes and David Graham, and worked on assignments relating to contention interrogatories, requests for admissions and opposition to motions for summary judgment. Dr. Hirsch also explained complex medical concepts, pertinent medical issues and their potential legal consequences for formulation of strategy for this Action and managed teams of other attorneys to assure the quality and efficiency of their substantive projects.

- **Melissa Marcial**, in addition to reviewing and coding documents, had responsibility for preparing memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses including Beth Seidenberg, Garrett FitzGerald, Scott Reines, Mary Elizabeth Blake, Dena Rosen Ramey, James Bolognese, Peter Kim, Robert Silverman, Carlo Patrono and David Tabak. She had responsibility for assignments relating to contention interrogatory responses, memoranda regarding Briggs Morrison and David Anstice, and assignments relating to expert rebuttal reports by David Madigan and Douglas Zipes.

- **Daniel Gruttadoro**, in addition to reviewing and coding documents, had responsibility for preparing memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses including Christine Fannelle, Carlo Patrono, Mary Elizabeth Blake, Alan Nies, Edward Scolnick, Garrett FitzGerald, Peter Kim, David Madigan and Alise Reicin. He also had responsibilities relating to researching Merck's sales expectations for Vioxx and risks to those expectations, and for research regarding responses to contention interrogatories. Subsequent to his work for SS&B, he was retained by BLB&G in this Action.

- **Steven Gerber** obtained a B.S. in Computer Science Engineering from Columbia University in 1990. In addition to reviewing and coding documents, he had responsibility for assignments relating to responses to contention interrogatories, preparation of a timeline of Merck's supplemental applications to the FDA for Vioxx. He had responsibility for preparing memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses, including Barry Gertz, Wendy Dixon, Beth Seidenberg, Scott Reines and Raymond Bain. He assisted with opposition to motions for summary judgment and exhibits for Plaintiffs' Rule 56.1 statement.

- **Jim Briggs** obtained a B.S. in Biology from Cornell University in 2007 and a J.D. from Fordham University School of Law in 2010. In addition to reviewing and coding documents, he

was responsible for preparing memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses, including Eliav Barr, Joshua Chen, Gilbert Block, Jan Weiner, Marvin Konstam and James Neaton. He also worked on researching and assembling materials relating to experts, including David Tabak, Harry Boghigian, Chris James, Lawrence Brent, Mark Woodward and David Madigan. Subsequent to his work for SS&B, he was retained by BLB&G in this Action.

- **Mark Santi**, in addition to reviewing and coding documents, assisted with assignments including researching Third Circuit law, preparing case summaries, researching the Merck Clinical & Regulatory Review Committee, assisting with drafting memoranda regarding Alise Reicin, Briggs Morrison and David Anstice, searching statisticians' documents, and conducting research regarding loss causation. Mr. Santi is currently a partner at Thompson Hall Santi Cerny & Katkov in Minneapolis.

- **Erika Connolly** obtained a B.A. from Boston University in 2007 and a J.D. from Fordham University School of Law in 2011. In addition to reviewing and coding documents, she had responsibility for assignments relating to contention interrogatories, and for preparing memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses including Lawrence Hirsch, Paul Gompers, Scott Reines, Christopher Lines, Lawrence Hirsch, Wendy Dixon, Michael Nessley, Edward Scolnick, James Bolognese, Briggs Morrison, Kenneth Frazier and James Neaton. Subsequent to her work for SS&B, she was retained by BLB&G in this Action.

- **Kevin Zeman** obtained a B.S. in Physics and Mathematics from Vanderbilt University in 2003 and earned an LL.M. in Taxation at Northwestern University School of Law in 2006. In addition to reviewing and coding documents, he had responsibilities relating to identifying Merck statisticians and the particular studies that they worked on, and researching FDA Advisory Committee meetings. He assisted in preparing memoranda regarding David Anstice and Alise Reicin, worked on a motion to compel and requests for admissions and performed research regarding the ITT vs. On Drug issue. He was also responsible for preparing a deposition kit for potential witnesses including Raymond Bain.

- **Adrienne Lester-Fitje** obtained a B.A. in Biology from Pomona College in 2005. In addition to reviewing and coding documents, she had responsibility for assignments relating to the so-called "truth-on-the-market" defense and financial projections and forecasts of Merck. She had responsibility for preparing memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses including Adam Schechter, Michael Graham, Mark Stejbach, John Oates, Peter Kim and Thomas Cannell. She had responsibilities relating to contention interrogatories and for research relating to Merck's Long Range Operating Plans. Subsequent to her work for SS&B, she was retained by BLB&G in this Action.

- **Nicholas Singhal** obtained a B.A. in Biology from Washington University in St. Louis in 2005, studied medicine at the University of Texas Southwestern Medical School from 2005 to 2007, and obtained a J.D. from New York University School of Law in 2011. He is a registered patent agent, licensed to practice before the United States Patent and Trademark Office (the "PTO"). In addition to reviewing and coding documents, he had responsibility for preparing

memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses, including Michael Gresser, David Bjorkman, Mark Stejbach, Eve Slater, Rory Collins, Barry Gertz and Sharyn Bearse. He researched, reviewed and summarized Merck's obligations regarding FDA regulations and guidelines, and conducted research regarding Merck's Alzheimer's Data Management Team.

- **Bridget Osetinsky** obtained a B.S. in Physics from the University of Notre Dame in 2007. Ms. Osetinsky founded a software startup and invented a data curating research tool for the pharmaceutical and other data intensive industries. In addition to reviewing and coding documents, she was responsible for preparing memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses, including Nancy Daigler and Jan Weiner. She also had responsibilities relating to research connecting senior management to Merck's public press releases.
- **Mary Nicholes** obtained a B.S. in Chemical Engineering from the University of Washington in 1999. She is a registered patent agent, licensed to practice before the PTO. She has prosecuted numerous domestic and foreign patent applications for chemical, pharmaceutical and biotechnology applications. In addition to reviewing and coding documents, she had responsibility for preparing memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses, including Garrett FitzGerald and Christopher Lines. She also had responsibilities relating to issues surrounding Merck payments or compensation to Merck-affiliated study authors and for research regarding Merck's public relations and Alzheimer's studies.
- **Stephan Robertson** obtained a LL.M. in Taxation from Northwestern University School of Law in 2011. In addition to reviewing and coding documents, assisted in preparations for the deposition of Jan Weiner, and conducted research relating to Merck's Human Health Product Advisory Committee (HHPAC), Merck's reserves for payment in liability cases, and research regarding Prudential analyst reports.
- **Jason Kreps** obtained a B.S. in Neuroscience from Allegheny College in 2008. In addition to reviewing and coding documents, he had responsibility for preparing memoranda describing and evaluating deposition witnesses or potential witnesses and/or assisting with deposition preparations for witnesses, including Adam Schechter, Scott Reines, Linda Diselrath and Wendy Dixon and Guanghan (Frank) Liu, and for preparing memoranda relating to Merck's Vioxx project teams and Merck's public affairs department.
- **Brian Loftin** obtained a B.S. in Microbiology from the University of Georgia in 2004, with coursework in pharmacology and medical microbiology, and obtained a J.D. from Fordham University School of Law in 2009. In addition to reviewing and coding documents, he had responsibilities relating to preparation for the deposition of Mark Stejbach, and special assignments relating to Merck's Human Health Product Advisory Committee (HHPAC) and research relating to forecasts of Vioxx sales.
- **Amy Sfara** obtained a B.S. in Civil & Environmental Engineering from Villanova University in 2004. In addition to reviewing and coding documents, she had responsibilities relating to preparations for the deposition of Mark Stejbach.

- **Delaine Duncan** obtained a B.S. in Biological Engineering from Louisiana State University in 2008 and is a registered patent agent, licensed to practice before the PTO, and was a patent examiner at the PTO after she left SS&B.
- **Dr. Jingyung Hur** obtained a B.S. in Biology from Sogang University in Seoul, Republic of Korea in 1991, an M.S. in Plant Biology from Ohio State University in 1998, a Ph.D. in Plant Biology from Ohio State University in 2000.¹⁷ Dr. Hur was a Junior Faculty Instructor in Medicine and Postdoctoral Research Fellow at Harvard Medical School's MGH Cancer Center.
- **Joseph Zihal** obtained a B.S. in Operations Research & Industrial Engineering from Cornell University in 2004 and a J.D. from the University of Virginia School of Law in 2007.

56. SS&B attorneys regularly participated in conference calls with the attorneys who reviewed documents to discuss "hot" documents and any issues with the review process and procedures.

57. On November 15, 2010, SS&B contributed \$50,000 to the Litigation Fund. SS&B had contributed 34.19% of the Litigation Fund as of that date.

58. This Action required substantial commitments of attorney time during the massive discovery undertaking described above in order for Plaintiffs' counsel to be able to effectively depose fact witnesses. SS&B's commitment to this Action, and the benefits provided to the Class therefrom, are clearly reflected in SS&B's vast discovery efforts. For example, during 2010, 2011, 2012, and 2013, SS&B dedicated over 6,989 hours, 18,629 hours,¹⁸ 39,966 hours, and 23,162 hours, respectively, to the prosecution of the Class's claims.

Depositions of Fact Witnesses

59. SS&B attorneys were also actively involved in a multi-stage process of selecting witnesses to be deposed by Co-Lead Counsel for their case in chief. SS&B attorneys attended meetings with Co-Lead counsel throughout the discovery period. SS&B attorneys reviewed and

¹⁷ Dr. Hur has co-authored numerous articles in scientific journals. *See, e.g.*, www.ncbi.nlm.nih.gov/pubmed?term=Jingyung%20Hur%5BAuthor%5D (listing 7 such articles).

¹⁸ SS&B dedicated more hours during 2011 than any other firm prosecuting Plaintiffs' claims.

compiled evidence and presented summaries and evaluations of potential deposition witnesses at meetings among Co-Lead Counsel evaluating the testimony that could potentially be obtained, assessing suitability given the objectives of the case and prioritizing witnesses on a variety of topics. Representatives of Co-Lead Counsel would then collectively determine whether to take a witness's deposition.

60. SS&B and Co-Lead Counsel drafted and served Lead Plaintiffs' First Set of Requests for Production of Documents on January 13, 2012. SS&B and Co-Lead Counsel also drafted initial disclosures which were exchanged that same day.

61. On March 9 and 15, 2012, Mark Levine participated in meet and confers at Cravath, Swaine & Moore LLP ("Cravath"), counsel for Defendants Merck and Reicin, regarding discovery issues.

62. On May 18, 2012, SS&B contributed \$100,000 to the Litigation Fund. SS&B had contributed 28.98% of the Litigation Fund as of May 25, 2012.

63. On May 25 and 31, 2012, SS&B together with Co-Lead Counsel wrote letters to Magistrate Judge Shipp regarding discovery disputes. On July 25, 2012 SS&B attorneys participated in a meet and confer to discuss discovery issues, including the number of depositions that Co-Lead Counsel would be permitted to take. SS&B and Co-Lead Counsel submitted a letter on August 8, 2012, informing the Court of a dispute about the number of depositions Plaintiffs would be permitted to take.

64. On August 20, 2012, Mark Levine attended a Court conference regarding discovery disputes before Judge Chesler. SS&B also participated in the drafting of Lead Plaintiffs' November 5, 2012 opposition to Defendants' appeal of Magistrate Judge Waldor's October 5, 2012 rulings regarding the production of documents. On January 28, 2013, Mark Levine participated in a hearing before Magistrate Judge Waldor to address discovery issues.

65. In February and March of 2013, SS&B attorneys prepared and circulated Plaintiffs' Fourth Set of Interrogatories seeking the identities of individuals at Merck who participated in drafting, editing, reviewing and approving certain of Merck's public statements quoted in Plaintiffs' forthcoming Sixth Amended Complaint (the "6AC").

66. Patrick Slyne took the deposition of Mark Stejbach, in Boston, on January 9, 2013. During the Class Period, Mr. Stejbach served as director of market development for Arcoxia and Vioxx, and later served as director of investor relations. Mr. Stejbach testified about the process of preparing annual profit plans at Merck and how perceptions in the market about the CV safety of Vioxx could influence financial forecasts. Mr. Stejbach also testified about Merck's public statements concerning an announced and later canceled cardiovascular outcomes safety study of Vioxx. Lead Plaintiffs contended the cancellation of the cardiovascular outcomes study was alleged to have not been timely disclosed.

67. Patrick Slyne took the deposition of Jan Wiener, in Philadelphia, on February 14, 2013. Ms. Wiener was Merck's Executive Director of Human Health Public Affairs, and Merck's contact person on the March 27, 2000 press release, which contained statements regarding the VIGOR results and introduced the Naproxen Hypothesis, which are focal points of the litigation. At the Wiener deposition, Patrick Slyne traced the origin of the March 27 public statements. This line of testimony regarding the evolution of the press release helps tell the story of how Merck tried to downplay the concern among senior Merck personnel when they learned of the significantly higher heart attack rates for Vioxx users in the VIGOR study, and to instead tell a story that blunted the negative implication of the VIGOR results, *i.e.*, that taking Vioxx resulted in an increased risk of heart attack.

68. On February 19, 2013, SS&B contributed \$200,000 to the Litigation Fund. SS&B had contributed 33% of the Litigation Fund as of that date.

69. Patrick Slyne also prepared for and participated in the deposition of:

(a) Mary Elizabeth Blake, which took place on February 27, 2013. Ms. Blake reported to Jan Weiner in Merck's U.S. Human Health Public Affairs organization and was involved in the drafting and/or making of several public statements regarding Vioxx during the Class Period, including drafting the March 27, 2000 press release;

(b) Edward Scolnick, President of Merck Research Laboratories ("MRL") (1985-2002) and President *Emeritus* of MRL (2002-2004), which took place in Boston on May 31, 2013;

(c) Alise Reicin, Merck's Executive Director and Therapeutic Area Head, and subsequently Vice President of Clinical Immunology & Analgesia, which took place on June 7, 2013. As leading Merck scientists, Scolnick and Reicin were each allegedly involved in formulating and making materially false statements regarding the cardiovascular safety of Vioxx;

(d) David Anstice, Merck's President of Human Health, which took place in Philadelphia on June 6, 2013; and,

(e) Raymond Gilmartin, Chairman, President, and CEO of Merck, which took place on June 12, 2013, providing materials and analysis related to the expirations of patents on Merck drugs and the shrinking number of drugs Merck's financial prospects were dependent upon, including Vioxx and Arcoxia.

70. Patrick Slyne also assisted in the preparation for the deposition of Wendy Dixon, Merck's Vice President of Marketing, which took place on May 3, 2013, identifying documents for use at the Dixon deposition.

71. Patrick Slyne also undertook preparations to take the depositions of Credit Suisse analysts that covered Merck, Ken Kulju and Chris Schott, to further develop Plaintiffs' claim that Merck's October 22, 2003 share price decline was attributable to a Credit Suisse report that

warned of the release of Brigham Study data at an American College of Rheumatology meeting, which, Credit Suisse reported, “Could Put Incremental Pressure on [Vioxx] Franchise.” After negotiating to receive supplemental productions of documents from Credit Suisse of Kulju’s and Schott’s files, a review of those materials showed little that would add to Co-Lead Counsel’s understanding of the facts, and Patrick Slyne persuaded Co-Lead Counsel that the Credit Suisse depositions should be adjourned without date.

72. Patrick Slyne also prepared for the deposition of Douglas Christopher, a senior equity analyst at Crowell Weedon & Co. Crowell Weedon issued an analyst report by Mr. Christopher on November 1, 2004, revising its recommendation on Merck stock from “buy” to “sell” in response to new information contained in an article published in *The Wall Street Journal* on November 1, 2004. The Christopher deposition did not go forward because on May 29, 2013, in its partial denial of Lead Plaintiffs’ motion for leave to amend, the Court did not grant Lead Plaintiffs’ request to extend the Class Period to include the period of September 30, 2004 through October 29, 2004, which eliminated Lead Plaintiffs’ need for the Christopher deposition.

73. Patrick Slyne also prepared to take the deposition of Christopher Lines, a Merck employee involved in, among other things, writing, editing and planning the rollout of scientific publications by Merck related to Vioxx. The Lines deposition was adjourned because of a dispute between the parties regarding the total number of depositions Lead Counsel would be permitted to take absent leave of the Court. After significant meet and confer efforts, a deposition limit was agreed upon and the Lines deposition was eliminated from Co-Lead Counsel’s deposition witness list.

Expert Discovery

74. SS&B participated in the vetting and selection of experts, assisted in the development of Plaintiffs’ expert reports and rebuttal reports, and participated in the development

of Plaintiffs' responses to Defendants' expert reports. After discovery was well underway, various proposed experts in a variety of fields, such as statistics, cardiology, loss causation and pharmaceutical marketing, made presentations to Co-Lead Counsel about how their expertise could help advance Plaintiffs' case. Attorneys from SS&B participated in those presentations which educated Co-Lead Counsel on key technical issues and enabled them to assess whether the expert candidates would be appropriate for the case, and also provided opportunities for SS&B attorneys to ask questions to help in making those assessments.

75. On February 26, 2013, SS&B participated in a meeting at BLB&G with Plaintiffs' damages expert David Tabak regarding damages analyses under several damages scenarios involving various stock price declines and potential confounding factors. SS&B attorneys also participated in a February 26, 2013 telephonic conference with Plaintiffs' cardiology expert Dr. Douglas P. Zipes regarding his preparation of his expert report.

76. On February 28, 2013, SS&B attorneys participated in a meeting with Harry C. Boghigian, Plaintiffs' expert in pharmaceutical marketing and sales, and participated in a telephonic conference with Dr. Mark Woodward, Plaintiffs' expert in biostatistics and epidemiology.

77. On March 4 and 8, 2013, SS&B attorneys attended meetings at BLB&G regarding case strategy and upcoming agenda items, including discussions concerning fact witnesses, expert witnesses, pleading amendments and document discovery.

78. On May 1, 2013, SS&B attorneys participated in a meeting at BLB&G regarding damages reports and Plaintiffs' expert David Tabak. A variety of damage issues were discussed including loss causation and artificial inflation. Also, on May 2, 2013, Mark Levine participated in a meeting at BLB&G regarding Douglas Zipes. Dr. Zipes provided significant information

regarding how Vioxx affects the coagulation of blood in the body and thus increases the risk of cardiovascular events.

79. On June 10, 2013, SS&B contributed \$150,000 to the Litigation Fund. SS&B had contributed 27.18% of the Litigation Fund as of June 21, 2013.

80. On June 17, 2013, SS&B attorneys participated in meetings at BLB&G with Plaintiffs' damages expert David Tabak, and potential pharmacology expert Dr. Benedict Lucchesi regarding emergence of pharmacological evidence within the medical community. Also, on June 28, 2013, SS&B attorneys participated at a meeting at BLB&G with Plaintiffs' pharmaceutical marketing expert Harry Boghigian regarding marketing and marketability of Vioxx.

81. On July 12, 2013, Lead Plaintiffs served expert reports by Dr. Tabak, Dr. Zipes, Dean Madigan, Dr. Woodward, Dr. Kessler, and Mr. Boghigian. SS&B provided substantial input into these expert reports, which were, in part, the culmination of the work described above.

82. On July 30, 2013, SS&B attorneys met at BLB&G regarding rebuttal expert Dr. David Graham, who is an expert in gastroenterology. On July 31, 2013, SS&B attorneys participated in a meeting at BLB&G with potential rebuttal expert Clifford Siporin.

83. On August 13, 2013, Defendants served seven expert reports. SS&B attorneys analyzed, commented and formulated counter arguments to Defendants' expert reports. Lead Plaintiffs served their experts' rebuttal reports on September 4 and 11, 2013.

84. On August 19, 2013, SS&B contributed \$200,000 to the Litigation Fund. SS&B had contributed 26.73% of the Litigation Fund as of that date.

85. On October 9, 2013, Mark Levine participated in defending the deposition of Dr. David Madigan. Defendants examined Dr. Madigan on a variety of issues outlined in his reports, including his criticism of some of Merck's trials as lacking statistical power to detect even substantial differences between Vioxx and comparators.

86. Patrick Slyne attended and assisted in defending the deposition of Plaintiffs' expert in epidemiology and statistics, Mark Woodward, Ph.D., which took place on October 11, 2013. Dr. Woodward was examined regarding, among other things, his opinions on the plausibility of Merck's Naproxen Hypothesis as an explanation for the difference in the number of heart attacks observed in the Vioxx and Naproxen patient groups in the VIGOR trial or thereafter, based upon his statistical analysis of available medical studies.

87. On October 16, 2013, Mark Levine participated in defending the deposition of Dr. Douglas Zipes, who testified about the science explaining the link between the use of Vioxx and increased risk of adverse cardiovascular events.

88. On October 23, 2013, SS&B contributed \$200,000 to the Litigation Fund. SS&B had contributed 25.88% of the Litigation Fund as of that date.

89. Patrick Slyne participated in defending the deposition of Plaintiffs' marketing expert, Harry C. Boghigian, which took place on October 23, 2013, and attended a preparation meeting for Mr. Boghigian's deposition, among other things, on October 22, 2013. Mr. Boghigian was questioned regarding his assumptions and methods for opining on the commercial viability of Vioxx if it were to be marketed with a black box warning for cardiovascular risk during the Class Period.

90. On October 24, 2013, Mark Levine participated in a meeting with Dr. David Tabak to prepare Dr. Tabak for his upcoming deposition. Among the issues discussed were the array of information regarding Vioxx and risk of adverse cardiovascular events that was available to the investing public during the Class Period and the how the market understood that information.

91. Patrick Slyne prepared a deposition outline and deposition materials for the deposition of Defendants' rheumatology expert Dr. Lawrence Brent. On November 4, 2013,

SS&B attorneys participated in a meeting regarding the upcoming deposition of Dr. Brent. Patrick Slyne also participated in the deposition of Dr. Brent on November 15, 2013 in Philadelphia.

92. On November 6, 2013, Jason D'Agnew appeared at Defendants' deposition of Plaintiffs' rebuttal expert Dr. David Graham, who testified as to issues relating to Vioxx and gastroenterology.

93. On November 7, 2013, Mark Levine attended a meeting in preparation for the deposition of Dr. David Tabak, and participated in defending the November 8, 2013 deposition of David Tabak. There was considerable discussion at the November 7, 2013 meeting concerning topics in Dr. Tabak's report and rebuttal report, particularly regarding the impact of information about Vioxx on the market, about which Dr. Tabak was questioned at his deposition.

94. Mark Levine assisted with preparations for, and appeared at, Plaintiffs' deposition of Defendants' damages and loss causation expert Christopher M. James, Ph.D., which took place on November 22, 2013. The deposition focused on confronting Dr. James about his opinions regarding an efficient market and truth on the market.

Contention Interrogatories

95. SS&B attorneys participated in preparing Plaintiffs' December 13, 2013 objections and responses to Defendants' June 13, 2013 contention interrogatories requesting, *inter alia*, each and every basis for the alleged falsity of each alleged false and misleading public statement. SS&B attorneys prepared and circulated interrogatory response templates, general objections, narrative responses supporting Plaintiffs' Section 20(a) claims, responses to interrogatories relating to Class representative Dr. Haber, and an index of Merck's alleged false and misleading statements and the alleged reasons why those statements were false. Plaintiffs' final responses, prepared by Co-Lead Counsel, spanned over 540 single-spaced pages and cited over 1,350

documents. SS&B attorneys participated in a meeting at BLB&G on July 25, 2013, regarding planning and strategy concerning Plaintiffs' responses.

Class Certification Briefing and Class Notice

96. SS&B attorneys worked on discovery related to Class certification. Mark Levine primarily coordinated Dr. Haber's responses to Defendants' discovery requests, and worked with Dr. Haber regarding answers to interrogatories and responses to document requests and to ensure that Dr. Haber understood the scope of discovery productions required, and provided guidance to ensure that Dr. Haber would make an appropriate search for documents and turn over all responsive documents to counsel who would review them and, if appropriate, arrange to produce them to Defendants. Mark Levine was also the attorney in charge of Dr. Haber's preparation for his deposition, and for defending him at the deposition and reviewing the transcript of Dr. Haber's deposition.

97. SS&B attorneys worked on responses to Defendants' December 21, 2011 First Set of Requests for the Production of Documents on the Lead Plaintiffs, which responses were served on February 6, 2012. SS&B attorneys also worked with Dr. Haber to draft responses to Defendants' January 27, 2012 First Set of Interrogatories that related to him, and served the responses on March 6, 2012, when each Lead Plaintiff submitted its own set of responses. Attorneys at SS&B assisted in drafting the class certification motion and accompanying filings, which were filed on April 10, 2012.

98. A third document request was served on the Lead Plaintiffs on April 24, 2012, and attorneys at SS&B provided significant input into the responses and objections, which were served on May 24, 2012. SS&B handled the issues concerning discovery relating to Lead Plaintiff Dr. Haber, including responses to document requests, responses to interrogatories, and preparation for his deposition. SS&B represented Dr. Haber at his June 27, 2012 deposition and also represented

Dr. Haber's interests when Defendants, in an apparent attempt to defeat Plaintiffs' use of the fraud on the market presumption, deposed representatives of the brokerage houses through which Dr. Haber bought and sold Merck stock, including the deposition of Leonard Diamond of Oppenheimer on July 12, 2012, and the deposition of Frank Stolba of Ingalls & Snyder on July 18, 2012.

99. On June 8, 2012, Mark Levine participated in a meeting with David Tabak, Plaintiffs' expert on loss causation and damages, to discuss the principal issues in his report and prepare him for his deposition, and on July 12, 2012, Mark Levine attended the deposition of David Tabak.

100. SS&B attorneys also assisted in drafting the Reply Memorandum in Further Support of the Motion for Class Certification, filed on November 8, 2012, which focused primarily on efforts to establish that Merck stock traded on an efficient market, and that Lead Plaintiffs were entitled to a presumption that they relied on the market.

101. By Order dated January 30, 2013, the Court granted Plaintiffs' motion for class certification, appointed Dr. Haber as a representative of the Class, and appointed SS&B as one of four Class Counsel firms.

102. After the Class was certified, on August 6, 2013, the Court ordered that the notice of pendency be mailed to the Class, and on September 4, 2013 the notice was mailed. SS&B attorneys participated in preparing the Class notice of pendency and responded to numerous inquiries from potential Class members.

**SS&B Continues Prosecuting the Class's Claims and
a Sixth Amended Complaint Is Filed**

103. SS&B attorneys drafted portions of Plaintiffs' opposition to Defendants' May 3, 2012 motion for judgment on the pleadings, which Plaintiffs filed on June 4, 2012.

104. On March 15, 2013, Plaintiffs moved for leave to file their 6AC. Attorneys at SS&B contributed to the drafting of Plaintiffs' 6AC and the motion for leave to file the same. The proposed 6AC sought, among other things, to add additional alleged materially false statements by Defendants related to the safety of Vioxx and to add facts concerning the impact information disclosed in the November 1, 2004 article in *The Wall Street Journal* had on the market value of Merck securities due to new and increased estimates of Merck's exposure to liabilities from personal injury lawsuits reflected in reports issued by numerous securities analysts. Defendants opposed the filing, and SS&B worked on the reply brief which was filed on May 6, 2013. The motion was granted in part (most of the additional statements were allowed) and denied in part (extending the class period to cover the November 1, 2004 disclosure was not allowed). A corrected 6AC was filed on June 20, 2013.

105. On March 22, 2013, SS&B attorneys participated in a meeting at BLB&G regarding potential fact witnesses, expert witnesses, loss causation, interrogatories and Class notice.

106. When Defendants sought to stay the Action pending the outcome of the *Haliburton* case before the Supreme Court, SS&B provided input into correspondence to the Court on November 25, 2013, and November 27, 2013, in opposition to a stay. There was a risk that the Supreme Court's *Haliburton* decision could have made it much more difficult, if not impossible, to proceed with this Action as a class action, which would have had a devastating effect on Plaintiffs' chances of obtaining any significant recovery. Magistrate Judge Waldor denied Defendants' stay request on December 19, 2013.

Summary Judgment

107. On January 17, 2014, Defendants filed motions for summary judgment. SS&B worked on the Plaintiffs' memorandum and Rule 56.1 statement in opposition to Defendants'

motions for summary judgment, including draft revisions and edits, identification of factual evidence, and legal research regarding case law on materiality, collateral estoppel, determinations of falsity based on contemporaneous circumstances, scienter based on insider trades, loss causation and liability for materialization of a risk of liability. On March 14, 2014, Plaintiffs filed their opposition to Defendants' motions for summary judgment. Plaintiffs submitted supplemental authorities supporting their positions on March 25, 2015 and April 2, 2015. On May 13, 2015, the Court entered an Order granting in part and denying in part Defendants' motions for summary judgment. The Court dismissed a portion of Lead Plaintiffs' Section 10(b) claims to the extent they were based on pre-VIGOR statements, and otherwise denied Defendants' motions for summary judgment.

Preparation for Trial

108. During June and July of 2014 SS&B attorneys compiled and drafted a complete set of jury instructions in preparation for trial, which would have been available for submission to the Court if the case had not been settled prior to trial.

109. On July 16, 2014, Mark Levine and Patrick Slyne attended a meeting at BLB&G regarding preparation for a mock trial exercise. At the end of July 2014, after discovery was virtually complete, Mark Levine and Patrick Slyne participated in a mock jury exercise in Secaucus, New Jersey, which better enabled Co-Lead Counsel to assess the strengths and weakness of the Class's claims through direct observation of mock jurors' reactions and deliberations in response to specific evidence and arguments likely to be presented by Lead Plaintiffs and Defendants at trial. Thereafter, videos of the mock trial proceedings and jury deliberations were reviewed. On August 12, 2014, Mark Levine and Patrick Slyne attended a meeting at BLB&G to discuss the takeaways from the mock jury exercise and the outcomes of juror polling on numerous specific questions on an array of issues related to the case.

110. On October 31, 2014, Mark Levine and Patrick Slyne attended a meeting at BLB&G for purposes of Co-Lead Counsel's trial preparation.

111. During January of 2015, SS&B attorneys prepared and circulated a motion to sequester trial witnesses and a supporting memorandum.

112. In March of 2015, SS&B attorneys provided revisions to Plaintiffs' motion to bifurcate trial of the Action.

113. On July 13, 2015, Mark Levine and Patrick Slyne appeared at a pretrial conference before Magistrate Judge Waldor at which the Parties were informed that the Court was setting a final pretrial hearing date of September 25, 2015 and suggested that the parties be ready for trial in early October 2015. The Court set a tentative trial date to commence October 6, 2015.

114. On July 17, 2015, SS&B attorneys participated in a telephonic meet and confer with Defendants' counsel regarding scheduling of the parties' pretrial exchanges and submissions and the final pretrial conference.

115. On July 21, 2015, SS&B attorneys participated at a meeting at BLB&G regarding trial strategy and planning, which included discussions concerning selection and sequencing of trial witnesses for maximum impact and presentation of themes for Plaintiffs' case to be presented at trial.

116. In preparation for trial of this Action, Plaintiffs' counsel prepared 30 draft motions *in limine* which were ready for filing at the time the parties reached an agreement to settle the case. SS&B drafted approximately seven of those motions and provided significant input on the other motions drafted in the first instance by other firms. Initial drafts of motions *in limine*, prepared by SS&B attorneys included a motion: to exclude expert testimony by lay witnesses; to exclude reference to any purported litigation crisis; to exclude evidence of verdicts in other Vioxx-related lawsuits; to exclude findings made by foreign agencies and tribunals; to exclude evidence

of potential impacts of a verdict adverse to Merck; to exclude evidence of any effect of a Merck-averse judgment on patients' ability to obtain medications; and, to exclude evidence of Plaintiffs' individual investment decisions not related to investments in Merck securities.

117. On August 11, 2015, Mark Levine and Patrick Slyne appeared at a status conference before Judge Chesler at which the Court reconsidered the October 2015 trial date and ordered that *Daubert* motions be served by August 28, 2015, the final pretrial order be filed November 20, 2015 and motions *in limine* be filed on December 18, 2015. The trial was reset to commence on March 1, 2016.

118. SS&B played a role with respect to the *Daubert* briefing, which included briefs seeking to disqualify two of Defendants' witnesses and six briefs in support of experts retained by Plaintiffs. On August 28, 2015, Plaintiffs filed a motion *in limine* to limit the testimony of Defendants' damages expert Dr. Christopher M. James, and a motion *in limine* to limit the testimony of Defendants' FDA expert Dr. Lisa D. Rarick. Lawyers from SS&B assisted with drafting those motions.

119. On September 18, 2015, Plaintiffs filed oppositions to Defendants' motions *in limine* to limit or exclude the testimony of Harry Boghigian, Gregory Curfman, James Fries, Eric Topol, David Graham, David Kessler, David Madigan, David Tabak and Douglas Zipes. Lawyers from SS&B assisted with drafting those oppositions. SS&B, among other things, conducted legal research regarding, among other things, Third Circuit standards for admissibility of expert opinions including non-scientific opinions.

120. On September 28, 2015, Plaintiffs filed reply briefs in further support of their motions *in limine*. Lawyers from SS&B assisted with drafting those reply briefs.

121. On November 10, 2015, SS&B attorneys attended a telephonic Court conference before Magistrate Judge Waldor regarding consolidation of direct actions filed by opt-out

plaintiffs, and regarding motions to file pretrial materials under seal, and disagreement among the parties regarding pretrial submissions.

122. On November 12, 2015, Mark Levine and Patrick Slyne attended at BLB&G a meet and confer with Defendants' counsel regarding pretrial exchanges and submissions. There was substantial disagreement regarding the approach to the Court's form of pretrial order and the amount of information contained therein including the number of witnesses, amount of deposition testimony designated and number of trial exhibits. The Parties also discussed numerous objections to testimony and trial exhibits. On November 16, 2015, SS&B attorneys and Co-Lead Counsel attended a meet and confer with Defendants' counsel regarding objections and stipulations concerning pretrial exchange materials and the parties' efforts to resolve their disagreements concerning their pretrial exchange materials.

123. On November 17, 2015, SS&B attorneys attended a telephonic Court conference before Magistrate Judge Waldor concerning the parties' efforts to resolve their disagreements as to pretrial exchange materials.

124. On November 20, 2015, the final joint pretrial order was filed under seal, which contained, among other items, the parties' deposition testimony designations and counter-designations and objections. SS&B assisted in drafting the pretrial order including by reviewing and designating deposition testimony, reviewing counter-designations, objections to testimony and trial exhibits, and participated in meet and confers with Defendants' counsel regarding scheduling of pretrial exchanges and submissions. On November 24, 2015, Patrick Slyne participated in a Court conference to discuss progress on resolving differences regarding the joint pretrial order and the parties' disputes. The parties continued their meet and confer discussions on December 9, 2015, in which SS&B attorneys participated, concerning objections, stipulations and efforts to resolve areas of disagreement concerning pretrial exchanges and submissions.

Settlement Efforts

125. SS&B participated in the development of settlement positions and strategies, including at mediations and Court settlement conferences. Throughout the course of the litigation, Co-Lead Counsel did not always share the same views on issues, but through the process of discussion, consensus was always reached as to how to proceed in the best interests of the Class.

126. On October 27, 2011, March 23, 2012, and September 30, 2013, Mark Levine attended settlement conferences before Judge Chesler.

127. On October 8, 2014, SS&B attorneys met with former U.S. District Judge Layn Phillips in advance of an anticipated October 13, 2014 mediation session. On October 13, 2014, Mark Levine and Patrick Slyne participated in a mediation session at Cravath.

128. On September 11, 2015, SS&B attorneys attended another mediation session at Cravath.

129. On December 13, 2015,¹⁹ former U.S. District Judge Phillips outlined the structure of a mediator's proposal to resolve the Class's claims against Merck. SS&B and Co-Lead Counsel then extensively discussed the mediator's proposal before ultimately agreeing to accept it on December 17, 2015.

130. On December 22, 2015, SS&B attorneys attended a telephonic Court conference before Judge Chesler regarding the status of mediation, and reporting that an agreement in principle regarding settlement had been reached.

131. SS&B attorneys participated in the process of reviewing the many proposed versions of the settlement term sheet and the stipulation of settlement and related exhibits, such as the preliminary approval order, final approval order and notice to the Class.

¹⁹ As of December 7, 2015, SS&B had contributed 20.94% of the Litigation Fund. SS&B was not asked to contribute to the Litigation Fund after December 7, 2015.

132. On February 10, 2016, the Court issued an Order granting Lead Plaintiffs' motion to preliminarily approve the proposed settlement and provide for Class notice, which Order, in part, certified a Settlement Class, appointed Dr. Haber as a representative of the Settlement Class, and appointed SS&B and its Co-Lead Counsel as Class Counsel for the Settlement Class. Attorneys at SS&B conducted research and engaged in discussions with Co-Lead Counsel regarding case law interpreting the PSLRA's provision for awards of expenses and lost wages to Class representatives.

Summary of Time and Expenses

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

134. Time expended on the Action after February 15, 2016, has not been included in this request. In addition, any time related to the application for fees and reimbursement of expenses been excluded.

135. The hourly rates for the attorneys and professional support staff in my 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.

136. The total number of hours reflected in Exhibit 1 from inception through and including February 15, 2016, is 99,714.36. The total lodestar reflected in Exhibit 1 for that period

is \$47,457,094.60, consisting of \$46,283,824.65 for attorneys' time and \$1,173,269.95 for professional support staff time.

137. My 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 my firm's billing rates.

138. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$1,400,229.35 in expenses incurred in connection with the prosecution of this Action.

139. The expenses incurred in this Action are reflected on the books and records of my 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.

140. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on April 20, 2016.



Aaron Brody

Exhibit 1

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]

STULL, STULL & BRODY

TIME REPORT

Inception through February 15, 2016

NAME	HOURS	HOURLY RATE	LODESTAR
Attorneys			
Brody, Jules	2,076.30	\$975.00	\$2,024,392.50
Levine, Mark	2,733.25	\$925.00	\$2,528,256.25
Slyne, Patrick	5,284.50	\$895.00	\$4,729,627.50
Brody, Aaron	1,526.45	\$825.00	\$1,259,321.25
Bishop, Patrice	461.70	\$825.00	\$380,902.50
Emert, Melissa	2,196.50	\$775.00	\$1,702,287.50
Burke, Timothy	9.50	\$775.00	\$7,362.50
Klein, Michael	82.28	\$765.00	\$62,944.20
Brody, Tzivia	170.80	\$765.00	\$130,662.00
D'Agneica, Jason	7,581.70	\$705.00	\$5,345,098.50
Lahm, James	738.38	\$625.00	\$461,487.50
Glavin, Henry	1,268.75	\$625.00	\$792,968.75
Zihal, Joseph	932.00	\$395.00	\$368,140.00
Zeman, Kevin	3,541.65	\$395.00	\$1,398,951.75
Santi, Mark	4,085.00	\$395.00	\$1,613,575.00
Robertson, Stephen	1,711.00	\$395.00	\$675,845.00
Philip, Maria	1,156.75	\$395.00	\$456,916.25
Nicholes, Mary	2,075.17	\$395.00	\$819,692.15
Marcial, Melissa	8,633.75	\$395.00	\$3,410,331.25
Loftin, Brian	1,452.24	\$395.00	\$573,634.80
Hur, Jingyung Ph.D	1,067.50	\$395.00	\$421,662.50
Hirsch, Dr. Randall	9,488.25	\$395.00	\$3,747,858.75
Gerber, Steven	5,766.17	\$395.00	\$2,277,637.15
Singhal, Nicholas	3,019.00	\$375.00	\$1,132,125.00
Sfara, Amy	1,276.50	\$375.00	\$478,687.50
Osetinsky, Bridget	2,676.25	\$375.00	\$1,003,593.75
Kreps, Jason	1,490.50	\$375.00	\$558,937.50
Duncan, Delaine	1,070.74	\$375.00	\$401,527.50

NAME	HOURS	HOURLY RATE	LODESTAR
Dyer, Bradley	130.25	\$350.00	\$45,587.50
Paik, James	349.00	\$340.00	\$118,660.00
Page, Talia	26.50	\$340.00	\$9,010.00
Lester-Fitje, Adrienne	3,362.25	\$340.00	\$1,143,165.00
Kong, Chingfei	195.50	\$340.00	\$66,470.00
Gruttadaro, Daniel	8,372.83	\$340.00	\$2,846,762.20
Furukawa, Michelle	115.00	\$340.00	\$39,100.00
Danford, Lauren	14.75	\$340.00	\$5,015.00
Connolly, Erika	3,621.25	\$340.00	\$1,231,225.00
Briggs, James	5,135.42	\$340.00	\$1,746,042.80
Berent, Sarah	578.58	\$340.00	\$196,717.20
Fuchs, Maksim	222.99	\$310.00	\$69,126.90
DiFabbio, Gabrielle	8.25	\$305.00	\$2,516.25
Paralegals			
Sheets, David	2,218.75	\$295.00	\$654,531.25
Morgan, Michael	1,144.50	\$295.00	\$337,627.50
Jacobs, Melanie	224.80	\$295.00	\$66,316.00
Mucerino, Cathy	369.00	\$280.00	\$103,320.00
Schiff, Norman	26.00	\$220.00	\$5,720.00
Honig, Shmuel	26.16	\$220.00	\$5,755.20
TOTALS	99,714.36		\$47,457,094.60

Exhibit 2

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]

STULL, STULL & BRODY

EXPENSE REPORT

CATEGORY	AMOUNT
Court Fees	\$1,657.00
PSLRA Notice Costs	\$2,900.00
Lexis Online Legal & Factual Research, Bloomberg Online Legal & Factual Research	\$35,721.04
Courtlink, Online Court Document Retrieval Service, Pacer Online Court Document Retrieval	\$12,614.43
Special Publications	\$49.41
Document Management/Litigation Support	\$8,073.50
Telephone/Faxes	\$495.04
Postage, Express Mail, Overnight Delivery, Postage Supplies	\$27,696.80
Hand Delivery Charges	\$304.05
Local Transportation	\$3,547.31
Internal Copying (at 10 cents per page)	\$9,666.60
Outside Copying	\$26,413.72
Out of Town Travel	\$9,770.69
Working Meals	\$1,257.43
Experts	\$5,000.00
Court Reporters, Transcripts, Court Certified Copies	\$2,200.95
Contributions to Plaintiffs' Litigation Fund	\$1,252,861.38
TOTAL EXPENSES:	\$1,400,229.35

Exhibit 3

STULL, STULL & BRODY
ATTORNEYS AT LAW

6 EAST 45TH STREET
SUITE 500
NEW YORK, NY 10017
TELEPHONE: (212) 687-7230
FACSIMILE: (212) 490-2022

9430 W. Olympic Boulevard
Suite 400
Beverly Hills, California 90212
TELEPHONE: (310) 209-2468
FACSIMILE: (310) 209-2087

BRIEF BIOGRAPHY OF STULL, STULL & BRODY

For more than forty years, Stull, Stull & Brody's ("SS&B") high-quality legal representation has been recognized by the courts. For example, in *Stull v. Baker*, the court wrote:

All the firms involved in this litigation are highly experienced and well respected, particularly in the field of securities law litigation. The Stull . . . firm[] [is one] of this area's, if not the nation's, most active and successful, law firms specializing in securities litigation. The Stull firm is presently engaged in stockholders' actions in federal courts in Georgia, Florida, Maryland and Massachusetts, as well as in several cases pending in the Southern and Eastern Districts of New York.

410 F. Supp. 1326, 1332 (S.D.N.Y. 1976).

SS&B's efforts were recognized by a late member of the United States Congress, the Representative Paul E. Gillmor, Rep. Ohio 5th District. As The Honorable Congressman Gillmor wrote in connection with *In re Merck & Co., Inc. Securities, Shareholder Derivative and ERISA Litig.*, Case No 3:05-CV-01151 (MDL 1658):

I was one of the court appointed lead plaintiffs in *In re Safety-Kleen Rollins Shareholders Litigation*, Civil Action No. 3:00-CV1343-17, which was pending before Judge Joseph Anderson in the District of South Carolina. In that case, which alleged, among other things, violation of the Securities Exchange Act of 1934, I and the other court appointed lead plaintiffs selected Stull, Stull & Brody to be one of the lead counsel for the plaintiffs. That case resulted in a settlement recovery for the class of a very substantial portion of the money that could have been recovered if the case had gone to trial net of attorneys fees, expenses and administration fees.

During the course of that litigation, which lasted for about five years, Stull, Stull & Brody kept me apprised of all significant developments in the action such as class certification, settlement negotiations, litigation strategy, pending motions, court rulings and trial preparation. I would

regularly speak to counsel by telephone at which time the foregoing topics would typically be discussed and I would have the opportunity to ask questions and provide input.

(Letter from Rep. Paul E. Gillmor of January 2, 2007, annexed hereto)

Based upon SS&B's results, the "Top 100 Settlements Semi-Annual Report" for the second half of 2012, which "identifies the largest securities class action settlements filed after the passage of the Private Securities Litigation Reform Act of 1995, ranked by the total value of the settlement fund[,]" shows that SS&B ranked in the top ten in a section that lists the law firms that served as lead or co-lead counsel for each litigation in the Top 100 settlements and identifies the most frequent lead or co-lead counsel appearing in the Top 100 settlements.

Indeed, SS&B has earned a national reputation for the zealous representation of plaintiffs in complex litigations, including securities class actions, ERISA actions and consumer class actions. SS&B has litigated hundreds of cases achieving an aggregate of more than two billion dollars in recoveries for aggrieved class members. SS&B's skill and expertise are demonstrated by its results, recovering at least \$100 million for aggrieved investors while serving in a leadership role in each of the following class actions:

- ◆ *In re Initial Public Offerings Securities Litig.*, 21 MC 92 (S.D.N.Y. 2009) (recovery of \$586 million; SS&B served on plaintiffs' six-member executive committee)
- ◆ *In re BankAmerica Corp. Securities Litig.*, MDL No. 1264 (E.D. Mo. 2002) (recovery of \$490 million, which at that time was the highest ever securities settlement in a case without an institutional lead plaintiff)
- ◆ *In re Geodyne Resources, Inc. Securities Litig.* (S.D.N.Y and Harris County Tex.) (recovery of \$125 million cash plus an additional \$75 million of contingent benefits)
- ◆ *In re Computer Associates Sec. Litig.*, Master File No. 98-CV-4839 (TCP) (E.D.N.Y. 2003) (recovery of 5.7 million shares valued at \$133.5 million)
- ◆ *Spahn v. Edward D. Jones & Co., L.P.*, 04-CV-00086 (E.D. Mo. 2007) (recovery of \$72.5 million in credits for current Edward Jones customers and \$55 million in cash for former Edward Jones customers. In addition, defendants paid class notice and settlement administration costs)
- ◆ *In re Peregrine Systems, Inc. Sec. Litig.*, Civil Action No. 02-CV-870 J (RBB) (S.D. Ca. 2006, S.D. Ca. 2009) (recovery of \$117.5 million)
- ◆ *In re American Express Financial Advisors Sec. Litig.*, 04-CV-1773 (S.D.N.Y.) (recovery of \$100 million in cash and implementation of significant remedial measures. In addition, defendants paid an estimated \$15 to \$18 million for class notice and settlement administration costs)

- ◆ *In re Ikon Office Solutions, Inc. Sec. Litig.*, MDL No. 1318 (E.D. Pa. May 9, 2000) (recovery of \$111 million, the then-largest ever securities settlement in the Eastern District of Pennsylvania)
- ◆ *In re AOL Time Warner ERISA Litig.*, Civil Action No. 02 CV 8853 (SWK) (S.D.N.Y.) (recovery of \$100 million in cash to the company's 401(k) plan in what the court noted was "one of the largest ERISA settlements to date")
- ◆ *In re Salomon Brothers Treasury Litig.*, Consolidated Action No. 91 Civ. 5471 (RPP) (S.D.N.Y. 1994) (recovery of \$100 million)

SS&B maintains offices in Manhattan and Beverly Hills, enabling the firm to efficiently handle litigations on a nationwide basis. Due to the consistency and seniority of its attorneys, including nine attorneys who have been with the firm for more than twenty years and an additional two attorneys who have been with the firm for more than ten years, SS&B is able to leverage its vast experience efficiently and effectively to achieve favorable results on behalf of class members in many cases. SS&B's lawyers possess outstanding credentials and the firm has received numerous acknowledgements for its achievements.

SS&B's excellent results are also reflected in the field of ERISA litigation, where SS&B has been court appointed as lead counsel (six times) or liaison counsel (twice) for plaintiffs in eight of the approximately twenty largest recoveries, including:

- ◆ *In re AOL Time Warner ERISA Litig.*, Civil Action No. 02 CV 8853 (SWK) (S.D.N.Y.) (recovery of \$100 million in cash to the company's 401(k) plan in what the court noted was "one of the largest ERISA settlements to date")
- ◆ *In re Global Crossing Ltd. ERISA Litig.*, Master File No. 02-cv-7453 (GEL) (S.D.N.Y.) (SS&B served as liaison counsel; recovery of \$79 million in cash to the company's 401(k) plan)
- ◆ *Overby v. Tyco International, Ltd.*, Case No. 02-CV-1357-B (D.N.H.) (recovery of \$70.525 million in cash to the company's 401(k) plan; over 80 million pages of discovery were produced to counsel and over 250 days of deposition were taken)
- ◆ *In re Lucent Technologies, Inc. ERISA Litig.*, Civil Action No. 01-cv-3491 (JAP) (D.N.J.) (recovery of \$69 million in cash and stock to the company's 401(k) plan)
- ◆ *In re WorldCom, Inc. ERISA Litig.*, Master File No. 02-4816 (DLC) (S.D.N.Y.) (SS&B served as local counsel; recovery of \$47.15 million in cash to the company's 401(k) plan)
- ◆ *Harrington v. Household International, Inc.*, Civil Action No. 02 C 8257 (SY) (N.D. Ill.) (recovery of \$46.5 million in cash to the company's 401(k) plan)
- ◆ *National City Corp. Sec., Derivative & ERISA Litig.*, 1:08-cv-07000-PAG (N.D. Ohio) (recovery of \$43 million in cash to the company's 401(k) plan)

- ◆ *In re Cardinal Health, Inc. ERISA Litig.*, No. C2-04-643 (ALM) (S.D. Ohio) (recovery of \$40 million in cash to the company's 401(k) plan)

Court opinions recognizing SS&B's high-quality legal representation include:

The complexity of this ERISA litigation cannot be questioned, nor can the skill and expertise of counsel who are known nationally for their successful representation of ERISA clients in class action matters.

Griffin v. Flagstar Bancorp, Inc., 2:10-cv-10610, 2013 U.S. Dist. LEXIS 173702, *24-25 (E.D. Mich. Dec. 12, 2013).

The firms involved, I think we heard from several of them today, the papers that have been submitted, it is clear of the dedication, devotion, professionalism, and in the court's view efficiency of these firms, so there is no question in the court's mind of the quality of the representation.

In re American Express Fin'l Advisors Sec. Litig., 04 Civ. 1773 (DAB) (S.D.N.Y. July 13, 2007).

Class counsel are qualified attorneys with considerable ERISA experience. Their prosecution of this lawsuit has secured the substantial Settlement now under consideration. Throughout this litigation, they have shown themselves to be capable and qualified to represent the Class.

In re AOL Time Warner ERISA Litig., 02 Civ. 8853 (SWK), 2006 U.S. Dist. LEXIS 70474, at *10 (S.D.N.Y. 2006).

In sum, counsel litigated this case during its early phases aggressively and in a manner that demonstrated legal expertise in this area of the law....

...

...The high quality of plaintiffs' counsel's work culminated in the successful resolution of this complex case. This was demonstrated by their successful and commendable prosecution of this case through the motion to dismiss stage and the ultimate settlement of this case under favorable terms.

In re Sprint Corp. ERISA Litig., 443 F. Supp. 2d 1249, 1260, 1270 (D. Kan. 2006).

the Court finds that [co-lead counsel and] Stull, Stull & Brody have a high level of ERISA expertise and are willing to commit each firm's resources to this case such that they fairly and adequately represent all parties on their side.

In re Cardinal Health, Inc. ERISA Litig., 225 F.R.D. 552, 556 (S.D. Ohio 2005).

In fact, this is one of the largest, if not the largest, securities fraud settlement in this district. The settlement size is particularly noteworthy as class counsel did not have the benefit of an SEC or other regulatory agency investigation and so prosecuted the case without assistance. The management of the case was also of extremely high quality. As detailed in the affidavit requesting attorneys' fees, class counsel organized the discovery and accompanying document review in an efficient and non-duplicative manner...

[C]lass counsel is of high caliber and has extensive experience in similar class action litigation. Each of the co-lead counsel firms has a national reputation for advocacy in securities class actions, and there is no doubt that this standing enhanced their ability both to prosecute the case effectively and to negotiate credibly....

...The submissions were of consistently high quality, and class counsel has been notably diligent in preparing filings in a timely manner even when under tight deadlines.

In re Ikon Office Solutions, Inc. Sec. Litig., 194 F.R.D. 166, 194-95 (E.D. Pa. 2000).

The court takes note of the competence of both plaintiffs' counsel and defendants' counsel and their extensive experience in litigating securities class actions. The competence of plaintiffs' counsel resulted in this case being vigorously and efficiently prosecuted against very able opponents over a twenty month period and was a factor in bringing about settlement.

Schaffer v. Timberland Co., 94-634-JD (D.N.H. 1997).

This case is a "model for how commercial litigation should be conducted and can be resolved."

Bash v. Diagnostek, CV 94-794 M (D.N.M.).

Indeed, I indicate to . . . counsel for plaintiff that they have done an admirable job in this case in bringing it to finality and in bringing back to the shareholders of this corporation some moneys as a result of certain things which occurred during the course of the operation of this corporation which perhaps should not have occurred.

Finkel v. O'Brien, Civ. No. 85-2539 (D.N.J. March 27, 1990).

I am satisfied that counsel in this case are highly competent, very skilled in this very specialized area and were at all times during the course of the litigation . . . well prepared, well spoken, []knew their stuff and []were a credit to their profession. They are the top of the line.

In Re Electro-Catheter Corp. Sec. Litig., Civ. No. 87-41 (D.N.J. September 7, 1989).

SS&B's expertise has also been recognized by the following courts: *In re Frontier Group Insurance, Inc. Sec. Litig.*, 172 F.R.D. 31 (E.D.N.Y. 1997); *In re Allegheny International Inc. S'holder Litig.*, 86-835 (W.D. Pa.) (Order, December 10, 1987, Diamond J.); *Zucker v. United States Steel*, C-1-79-588 (S.D. Ohio) (Order, October 14, 1981, Rubin, C.J.); *Friedman v. Colgate Palmolive*, 80 Civ. 2340 (CPS) (E.D. N.Y.) (Order, June 16, 1981, Sifton, J.); *Zuckerman v. Sparton*, G79-457-C.A. (W.D. Mich.) (Opinion and Order, April 14, 1981, Fox, J.); *Mottoros v. Abrams*, 524 F. Supp. 254 (N.D. Ill. 1981); *Koenig v. Smith*, 79 C 452 (ERN) (E.D.N.Y.) (Memorandum Opinion and Order, December 3, 1980, Neaher, J.); *Koenig v. Kenneally*, 79 Civ. 0487 (LBS) (S.D.N.Y.) (Opinion No. 49289, November 5, 1979, Sand, J.); *In Re Commonwealth Oil-Tesoro Petroleum Sec. Litig.*, MDL No. 347 (Order, July 24, 1979, Higginbotham, J.); *Wietschner v. McCulloch*, CV 78-4036-RMT (C.D. Ca.) (Order, June 29, 1979, Takasugi, J.); *Fruchthandler v. LTV Corp.*, 77C 1879 (E.D.N.Y.) (Order, May 10, 1978, Nickerson, J.); *Lewis v. Adikes*, 76 F.R.D. 68 (E.D.N.Y. 1977); *Lewis v. Black*, [1976-77 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,738 (E.D.N.Y. 1976) (Mishler, C.J.); and *Fruchthandler v. Blakely*, 73 F.R.D. 318 (S.D.N.Y. 1976).

SEMINAL CASES

Throughout its 40 year history, SS&B has been involved with a number of seminal cases that have significantly affected the landscape of securities litigation.

- ◆ In *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633 (2010), in a case brought on behalf of investors in Merck securities alleging that they were defrauded due to misrepresentations made by Merck, the United States Supreme Court issued a ruling making it easier for defrauded investors to file actions claiming violation of the Securities Exchange Act of 1934 by holding that the statute of limitations does not begin to run until the investor should have known that a materially false statement was knowingly or recklessly made.
- ◆ In *Rand v. Monsanto Company*, 926 F.2d 596 (7th Cir. 1991), the firm appeared on behalf of the plaintiff in a landmark decision establishing the principle that a class representative plaintiff need not be willing to bear all of the class' costs in an action to satisfy the adequacy of representation requirement of Federal Rule of Civil Procedure 23.
- ◆ In *In re Lucent Technologies, Inc. ERISA Litig.*, Civil Action No. 01-cv-3491 (JAP) (D.N.J. 2005), the firm was largely responsible for a frequently-cited district court decision that denied defendants' motion to stay the ERISA litigation until a

related securities class action was resolved. SS&B's briefing in opposition to the stay motion highlighted the significant differences between ERISA and securities class actions, even when those actions involve the same factual issues. The court ruled that "resolution of the securities class action . . . will not necessarily resolve all issues in this matter" and "[t]he legal issues here will still have to be determined, and a stay or continuance shall not change that fact."

- ◆ In *Small v. Fritz Companies Inc.*, 30 Cal. 4th 167 (2003), the firm successfully argued before the California Supreme Court that a non-trading shareholder has the right to sue a corporation for damages where the shareholder relies on false financial statements issued by the corporation. The decision represented a significant change in legal doctrine and was widely heralded as a potent new weapon for investors.
- ◆ In *Howard v. Everex*, 228 F.3d 1057 (9th Cir. 2000), SS&B successfully advocated that a corporate officer can be liable in a private anti-fraud action for signing a document filed with the SEC that he knows (or is reckless in not knowing) contains misrepresentations, even if the officer was not involved in preparing the document. The Ninth Circuit decision was a precursor to Section 302(a) of the Sarbanes-Oxley Act of 2002 which now requires corporate officers that sign documents filed with the SEC to certify the accuracy of information therein.
- ◆ In *Lewis v. Black*, 74 F.R.D. 1 (E.D.N.Y. 1975), the firm established that neither the personality nor the motive of a proposed class representative was determinative of whether he would provide vigorous advocacy on behalf of the class, thereby preventing defendants from compelling representatives to respond to questions regarding motives and actions in past cases.
- ◆ In *In re Cabletron Systems, Inc. Sec. Litig.*, 311 F.3d 11 (1st Cir. 2002), the firm was instrumental in obtaining a reversal of a district court order dismissing a complaint under the pleading requirements of the Private Securities Litigation Reform Act. This case established in the First Circuit that plaintiffs are not required to name confidential sources in a complaint.
- ◆ In *In re Frontier Group Insurance Litig.*, Master File No. 94 Civ. 5213 (E.D.N.Y. 2002), the firm was instrumental in defeating a *Daubert* challenge, thereby enabling the expert to testify as to aggregate damages based on the use of a trading model.
- ◆ In *Harman v. Lyphomed, Inc.*, 122 F.R.D. 522 (N.D. Ill. 1988), the firm established the applicability of the fraud-on-the-market theory of reliance for stocks trading on the NASDAQ.
- ◆ The firm was instrumental in establishing new law on fraud-on-the-market theory in *Finkel v. Docutel/Olivetti Corp.*, 817 F.2d 356 (5th Cir. 1987), *cert. denied*, 485 U.S. 959 (1988), and *Mottoros v. Abrams*, 524 F. Supp. 254 (N.D. Ill. 1981).

- ◆ In *In re Wilmington Trust Corp. ERISA Litig.*, 2013 U.S. Dist. LEXIS 125891 (D. Del. Sept. 4, 2013), among the first reported decisions of its kind, the court granted plaintiffs' motion to proceed without class certification, allowing plaintiffs to represent all participants in an ERISA plan because of the derivative nature of ERISA's fiduciary duties.

Serving in a leadership role, SS&B has obtained more than two billion dollars on behalf of class members. A sampling of such cases includes:

Settled Securities Class Action Cases

- ◆ *In re Initial Public Offerings Sec. Litig.*, 21 MC 92 (S.D.N.Y.) (recovery of \$586 million, SS&B served as one of six members of Plaintiffs' Executive Committee)
- ◆ *In re BankAmerica Corp. Sec. Litig.*, MDL No. 1264 (E.D. Mo.) (recovery of \$490 million)
- ◆ *In re Geodyne Resources, Inc. Sec. Litig.* (S.D.N.Y and Harris County Tex.) (recovery of \$125 million cash settlement plus contingent benefits of additional \$75 million)
- ◆ *In re Computer Associates Sec. Litig.*, Master File No. 98-CV-4839 (TCP) (E.D.N.Y.) (recovery of 5.7 million shares valued at \$133.551 million)
- ◆ *Spahn v. Edward D. Jones & Co., L.P.*, 04-CV-00086 (E.D. Mo.) (recovery of \$72.5 million in credits for current Edward Jones customers and \$55 million in cash for former Edward Jones customers. In addition, defendants paid an estimated \$15 to \$18 million for class notice and settlement administration costs)
- ◆ *In re Peregrine Systems, Inc. Sec. Litig.*, Civil Action No. 02-CV-870 J (RBB) (S.D. Ca.) (recovery of \$117,567,922)
- ◆ *In re American Express Financial Advisors Sec. Litig.*, 04-CV-1773 (S.D.N.Y.) (recovery of \$100 million in cash and implementation of significant remedial measures. In addition, defendants paid all class notice and settlement administration costs, which is estimated to be \$15 to 18 million)
- ◆ *In re Ikon Office Solutions, Inc. Sec. Litig.*, MDL No. 1318 (E.D. Pa.) (recovery of \$111 million)
- ◆ *In re Priceline.com, Inc. Sec. Litig.*, Master File No. 3:00CV01884 (AVC) (D. Conn.) (recovery of \$80 million)
- ◆ *In re Westinghouse Sec. Litig.*, Civil Action No. 91-354 (W.D. Pa.) (recovery of \$67.25 million)
- ◆ *Bachman v. AG Edwards, Inc.*, Cause No. 22052-01266-02 (Mo. Cir. Ct.) (recovery of \$60 million)

- ◆ *In re Thomas & Betts Sec. Litig.*, Case No. 00-2127 (W.D. Tenn.) - related case: *Pifko v. KPMG LLP*, Civ. Action No. 01-CV-2553 (W.D. Tenn.) (recovery of \$51.15 million)
- ◆ *In re Tenneco Inc. Sec. Litig.*, Civ. Action No. H-91-2010 (S.D. Tex.) (recovery of \$50 million)
- ◆ *In re Apria Healthcare Group Sec. Litig.*, Master File No. 797060 (Cal. Super. Ct, Orange Cty) (recovery of \$42 million)
- ◆ *Levitan v. McCoy, Jr.*, Case No. 00 C 5096 (N.D. Ill.) (recovery of \$39.9 million)
- ◆ *In re Cannon Group Sec. Litig.*, 86-5559-WMB (JRx) (C.D. Ca.) (recovery of \$33 million)
- ◆ *Teichler v. DSC Communications Corp.*, CA 3-85-2005-T (N.D. Tex.) (recovery of \$30 million)
- ◆ *Berger v. Compaq Computer Corp.*, Civ. Action No. 98-1148 (S.D. Tex.) (recovery of \$28.65 million)
- ◆ *In re: Northeast Utilities Sec. Litig.*, Civil Action No. 397 CV 00189 AVC (D. Ct.) (recovery of \$25 million)
- ◆ *Lasky v. Brown (United Companies Financial Corp.) Sec. Litig.*, Civil Action No. 99-1035-B-M2 (M.D. La.) (recovery of \$20.5 million)
- ◆ *Lasker v. Kanas* (North Fork Bancorporation), Index No. 103557/06 (NY Sup. Ct.) (recovery of \$20 million and other consideration)
- ◆ *Feinberg v. Hibernia Corp.*, Civil Action No. 90-4245 (E.D. La.) (recovery of \$20 million)
- ◆ *In re Dreyfus Aggressive Growth Mutual Fund Litig.*, Master File No. 98 Civ. 4318 (HB) (S.D.N.Y.) (recovery of \$18.5 million)
- ◆ *In re Rambus, Inc. Sec. Litig.*, Master File No. C-06-4346-JF (N.D. Cal.) (recovery of \$18.33 million)
- ◆ *In re C.R. Bard, Inc. Sec. Litig.*, Master File No. 90-948 (AMW) (D.N.J.) (recovery of \$17.9 million)
- ◆ *Spring v. Continental Illinois Corp.*, 84 C 4648 (N.D. Ill. 1987) (recovery of \$17.5 million)
- ◆ *In re Rhythms Sec. Litig.*, Civil Action No. 02-K-35 (GCL) (D. Co.) (recovery of \$17.5 million)

- ◆ *Morse v. Abbott Laboratories*, C.A. No. 90 C 1982 (N.D. Ill.) (recovery of approximately \$14 million on a claims-made basis. SS&B served as co-lead trial counsel in representing a class of purchasers of common stock of Abbott Laboratories. On March 15, 1994, the jury returned a verdict in favor of the plaintiff class in the amount of \$15,279,219. The case was settled during the pendency of post-trial motions.)
- ◆ *In re Green Tree Financial Corp. Stock Litig.*, Master File No. 97-2666 (JRT/RLE) (D. Minn.) (recovery of \$12.45 million)
- ◆ *In re Elscint Sec. Litig.*, Civ. Action No. 85-2662-K (D. Mass.) (recovery of \$12 million)
- ◆ *In re National Medical Enterprises Sec. Litig. II*, Case No. CV 93-5224 TJH (Bx) (C.D. Ca.) (recovery of \$11.65 million)
- ◆ *Bash v. Diagnostic, Inc.*, Civil Action No. 94-784 (D.N.M.) (recovery of \$10.7 million)
- ◆ *In re Cybermedia, Inc. Sec. Litig.*, Master File No. 98-1811CBM (Ex) (C.D. Ca.) (recovery of \$10.5 million)
- ◆ *In re Cabletron Systems, Inc. Sec. Litig.*, C 97-542 (D.R.I.) (recovery of \$10.5 million)
- ◆ *In re Physicians Corp. of America Sec. Litig.*, Case No. 97-3678-CIV (S.D. Fla.) (recovery of \$10.2 million)
- ◆ *In re Complete Management Inc. Sec. Litig.*, Master File No. 99 Civ. 1454 (NRB) (S.D.N.Y.) (recovery of \$10.15 million)
- ◆ *In re U.S.A. Detergent Sec. Litig.*, 97-CV-2459 (D.N.J.) (recovery of \$10 million)
- ◆ *In Re: Biopure Corp. Sec. Litig.*, Docket No. 03-CV-12628 (NG) (D. Mass.) (cash recovery of \$10 million)
- ◆ *In re Nice Systems, Ltd. Sec. Litig.*, Master File No. 2:01 CV 737 (Judge Greenaway) (D.N.J.) (recovery of \$10 million)
- ◆ *Harman v. Lyphomed*, 88 C 476 (N.D. Ill.) (recovery of \$9.99 million)
- ◆ *In re Beverly Enterprises, Inc. Sec. Litig.*, Master File No. CV 88-01189-RSWL (Tx) (C.D. Ca.) (recovery of \$9.975 million)
- ◆ *Bharucha v. Reuters Holdings PLC*, Case. No. 90-cv-03838 (E.D.N.Y.) (recovery of \$9.5 million)

- ◆ *Greenfield v. Compuserve Corp.*, Case No. 96-CV-06-4810 (Franklin County, Ohio) (recovery of \$9.5 million)
- ◆ *In re Stratosphere Sec. Litig.*, Master File No. CV-S-96-00708-PMP (RLH) (D. Nev.) (recovery of \$9 million)
- ◆ *In re Steven Madden Ltd. Sec. Litig.*, No. 00-CV-3676 (JG) (E.D.N.Y.) (recovery of \$9 million)
- ◆ *In re Gibraltar Financial Corp. Sec. Litig.*, CV 87-07876 MRP (Gx) (C.D. Ca.) (recovery of \$8.5 million)
- ◆ *In re FHP Sec. Litig.*, Master File No. SACV 91-580-GLT (RWRx) (C.D. Ca.) (recovery of \$8.25 million)
- ◆ *Zucker v. Maxicare Health Plans, Inc.*, Case No. 88-02499-LEW (Tx) (C.D. Ca.) (recovery of \$8.1 million)
- ◆ *In re Orion Pictures Corp. Sec. Litig.*, Master File No. 91 CV 1903 (CBA) (E.D.N.Y.) (recovery of \$8 million)
- ◆ *Berlinsky v. Alcatel*, 94-CIV-9084 CBM (S.D.N.Y.) (recovery of \$8 million)
- ◆ *In re Triton Energy Corp. Sec. Litig.*, Master File No. 3:92-CV-1069-H (N.D. Tex.) (recovery of \$8 million)
- ◆ *Ganesh v. Computer Learning Center*, Civil Action No. 98-CV-00859 (E.D. Va.) (recovery of \$7.5 million)
- ◆ *In re Metris Companies, Inc. Sec. Litig.*, Civil Action No. 02-CV-3677 JMR/FLN (D. Minn.) (recovery of \$7.5 million)
- ◆ *In re Cityscape*, CV 97 5668 (E.D.N.Y.) (recovery of \$7 million)
- ◆ *In re Dime Savings Bank of New York Sec. Litig.*, MDL Docket No. 846 (E.D.N.Y.) (recovery of \$6.8 million)
- ◆ *In re Western Digital Sec. Litig.*, SACV 91-375(A) GLT (RWRx) (C.D. Ca.) (recovery of \$6.75 million)
- ◆ *In re Bank of New England Corp. Class Action and S'holder Litig.*, C.A. Nos. 89-2582-S, 89-2811-S (D. Mass.) (recovery of \$6.5 million)
- ◆ *Bobbitt v. Andrew J. Filipowski*, No. 06-11072-PBS (D. Mass.) (recovery of \$6.3 million)
- ◆ *In re Berkshire Realty Company, Inc. S'holder Litig.*, C.A. No. 17242 (Del. Ch.) (recovery of \$6.25 million)

- ◆ *Gerstein v. Micron Technology, Inc.*, Civil No. 89-1262 (D. Id.) (recovery of \$6 million)
- ◆ *In re Ziff-Davis, Inc. Sec. Litig.*, Master File No. 98-CIV-7158 (SWK) (S.D.N.Y.) (recovery of \$6 million)
- ◆ *Dynegy Inc. v. Bernard V. Shapiro*, No. 2002-00080 (129th Judicial District, Harris Cty, TX) (recovery of \$6 million)
- ◆ *In re FleetBoston Financial Corp. Sec. Litig.*, Civ. No. 02-4561 (WGB) (D.N.J.) (recovery of \$5.5 million)
- ◆ *In re Ascend Communications Sec. Litig.*, Case No. 97-9376 MRP (AN) (C.D. Ca.) (recovery of \$5.45 million)
- ◆ *In re Brightpoint, Inc. Sec. Litig.*, Case No. IP 01 1796 C-T/K (recovery of \$5.25 million)
- ◆ *Kushner v. Wang Laboratories*, Civil Action No. 89-1963-Y (D. Mass.) (recovery of \$5 million)
- ◆ *In re SouthEast Banking Corp. Sec. Litig.*, Master File No. 90-0760-CIV-MOORE (S.D. Fla.) (recovery of \$5 million)
- ◆ *Wells v. Southmark Corp.*, CA3-85-1518-G (N.D. Tex.) (recovery of \$5 million)
- ◆ *In Re: Interlink Electronics Inc. Sec. Litig.*, 05-CV 08133 (AG) (SH) (C.D. Cal.) (recovery of \$5 million)
- ◆ *In re Regeneron Pharma., Inc. Sec. Litig.*, Civil Action No. 03 CV 311 (RWS) (S.D.N.Y.) (recovery of \$4.7 million)
- ◆ *In re Sunglass Hut Intl., Inc. Sec. Litig.*, Case No. 97-0191-CIV-MOORE (S.D. Fl.) (recovery of \$4.5 million)
- ◆ *Clive T. Miller v. Apropos Technology, Inc.*, No. 01 C 8406 (N.D. Ill.) (recovery of \$4.5 million)
- ◆ *In re Fidelity Holdings Sec. Litig.*, Case No. CV 00 5078 (CPS) (VVP) (E.D.N.Y.) (recovery of \$4.45 million)
- ◆ *Adam Burstyn v. Worldwide Xceed Group, Inc.*, Case No. 01 CV 1125 (GEL) (S.D.N.Y.) (recovery of \$4.4 million)
- ◆ *In re NetEase.com Sec. Litig.*, Civil Action No. 01-CV-9405 (RO) (S.D.N.Y.) (recovery of \$4.35 million)
- ◆ *In re Flextronics, Inc. Sec. Litig.*, No. C-03-2102 PJH (N.D. Ca.) (recovery of \$4.25 million)

- ◆ *Schaffer v. Timberland Co.*, 94-634-JD (D.N.H.) (recovery of \$4.2 million)
- ◆ *In re HMO America Sec. Litig.*, Civ. No. 92 C 3305 (CPK) (N.D. Ill.) (recovery of \$4 million)
- ◆ *In re Nanophase Technologies Corp. Sec. Litig.*, Case No. 98 C 3450 (N.D. Ill.) (recovery of \$4 million)
- ◆ *In re Quintex Sec. Litig.*, Master File No. CV-89-6182-R (C.D. Ca.) (recovery of \$4 million)
- ◆ *Walsingham v. Biocontrol Tech. Inc.*, Civil Action No. 96-809 (W.D. Pa.) (recovery of \$3.7 million)
- ◆ *In re Irvine Sensors Corp. Sec. Litig.*, Master File No. SA 02-00159 GLT (MLGx) (C.D. Ca.) (recovery of \$3.5 million)
- ◆ *Miller v. Material Sciences Corp.*, Civil Action No. 97-CV-2450 (N.D. Ill.) (recovery of \$3.25 million)
- ◆ *In re iTurf Inc. S'holder Litig.*, Consolidated Civil Action No. 18242 NC (Del. Ch.) (recovery of \$3.25 million)
- ◆ *In re Safety Kleen Rollins S'holder Litig.*, Case No. 3:00-1343-17 (D.S.C.) (recovery of \$3.15 million)
- ◆ *In re Kay Jewelers Sec. Litig.*, Civil Action No. 90-1663A (E.D. Va.) (recovery of \$3 million)
- ◆ *Clarkson v. Greyhound Lines, Inc.*, 96-11329-C (Dist. Ct., Dallas Cty, Tex.) (recovery of \$3 million)
- ◆ *In re TwinLab Corp. Sec. Litig.*, Master File No. 00-CV-6975 (DRH) (E.D.N.Y.) (recovery of \$3 million)
- ◆ *In re Spectrian Corp. Sec. Litig.*, Master File No. C-97-4672-CW (N.D. Ca.) (recovery of \$2.975 million)
- ◆ *In re Arotech Corp. Sec. Litig.*, Master File No. 07-CV-1838 (E.D.N.Y.) (RJD) (VVP) (recovery of \$2.9 million)
- ◆ *In re Mutual Funds Investment Litig.*, MDL 1586, Case No. 04-MD-15863 (JFM) (D. Md.); *Parthasarathy v. RS Investment Management, L.P.*, Case No. 04-cv-3798-JFM (D. Md.) (recovery of \$2.83 million)
- ◆ *Moriarty v. Molina*, Case No. 99-0255-CIV-MORENO (S.D. Fla. 2003) (recovery of \$2.8 million)

- ◆ *In re Peritus Software Services, Inc. Sec. Litig.*, Civ. Action No. 98CV10955 WGY (D. Mass.) (recovery of \$2.8 million)
- ◆ *In re 2TheMart.com, Inc. Sec. Litig.*, Case No. 99-1127 DOC (ANx) (C.D. Ca.) (recovery of \$2.7 million)
- ◆ *McBride v. Vision Twenty-One, Inc.*, Case No. 99-138-CIV-T-25F (M.D. Fl.) (recovery of \$2.5 million)
- ◆ *In re Pharmaprint Inc. Sec. Litig.*, Civ. No. 00-61 (AJL) (D.N.J.) (recovery of \$2.3 million)
- ◆ *In Re: Columbia Entities Litig.*, 04-CV-11704 (D. Mass.) (settled for a reduction in the overall rate charged as advisory fees (i.e., “breakpoints”) when a mutual funds advised by the advisers reach certain levels of assets under management, enhanced shareholder communications, and a \$100,000 contribution to research expenses for the benefit of the settling funds)

Settled ERISA Cases

- ◆ *In re AOL Time Warner ERISA Litig.*, Civil Action No. 02 CV 8853 (SWK) (S.D.N.Y.) (recovery of \$100 million in cash to the company’s 401(k) plan in what the court noted was “one of the largest ERISA settlements to date”)
- ◆ *In re Global Crossing Ltd. ERISA Litig.*, Master File No. 02-cv-7453 (GEL) (S.D.N.Y.) (recovery of \$79 million in cash to the company’s 401(k) plan; SS&B served as liaison counsel))
- ◆ *Overby v. Tyco International, Ltd.*, Case No. 02-CV-1357-B (D.N.H.) (recovery of \$70.525 million in cash to the company’s 401(k) plan; over 80 million pages of discovery were produced to counsel and over 250 days of deposition were taken)
- ◆ *In re Lucent Technologies, Inc. ERISA Litig.*, Civil Action No. 01-cv-3491 (JAP) (D.N.J.) (recovery of \$69 million in cash and stock to the company’s 401(k) plan)
- ◆ *In re WorldCom, Inc. ERISA Litig.*, Master File No. 02-4816 (DLC) (S.D.N.Y.) (recovery of \$47.15 million in cash to the company’s 401(k) plan; SS&B served as local counsel)
- ◆ *Harrington v. Household International, Inc.*, Civil Action No. 02 C 8257 (SY) (N.D. Ill.) (recovery of \$46.5 million in cash to the company’s 401(k) plan)
- ◆ *National City Corp. Sec., Derivative & ERISA Litig.*, 1:08-cv-07000-PAG (N.D. Ohio) (recovery of \$43 million in cash to the company’s 401(k) plan)

- ◆ *In re Cardinal Health, Inc. ERISA Litig.*, No. C2-04-643 (ALM) (S.D. Ohio) (recovery of \$40 million in cash to the company's 401(k) plan)
- ◆ *Zilhaver v. UnitedHealth Group, Inc.*, Case No. 06-cv-2237 (JMR) (D. Minn.) (recovery of \$17 million in cash to the company's 401(k) plan)
- ◆ *In re Sears, Roebuck & Co. ERISA Litig.*, No. 02 C 8324 (JWD) (N.D. Ill.) (recovery of \$14.5 million in cash to the company's 401(k) plan)
- ◆ *Kenney v. State Street Corp*, No. 09-10750-PBS (D. Mass.) (recovery of \$10 million in cash to the company's 401(k) plan)
- ◆ *Russell v. Consec Services, LLC* 1:02-cv-1639-LJM (S. D. Ind.) (recovery of \$9.975 million in cash to the company's 401(k) plan)
- ◆ *In re 2014 Avon Products, Inc. ERISA Litig.*, 1:14-cv-10083-LGS (S.D.N.Y) (proposed settlement which would result in a recovery of \$6.25 million in cash to the company's 401(k) plan is pending preliminary approval)
- ◆ *In re: Diebold ERISA Litig.*, Case No. 06-cv-00170 (SEL) (N.D. Ohio) (recovery of \$4.5 million in cash to the company's 401(k) plan)
- ◆ *In re Sprint Corp. ERISA Litig.*, Master File No. 2:03-CV-02202-JWL (D. Kan.) (recovery of \$4 million in cash to the company's 401(k) plan, and increased benefits to participants in the company's 401(k) plans including: increased vesting of employee accounts; increased company matching of employer contributions; participant-friendly plan amendments; and improved participant communications)
- ◆ *Walter v. Level 3 Communications, Inc.*, 1:09-cv-00658-REB (D. Colo.) (recovery of \$3.2 million in cash to the company's 401(k) plan)
- ◆ *In Re: Wilmington Trust Corp. ERISA Litig.*, 1:11-cv-00101-SD (D. Del.) (recovery of \$3 million in cash to the company's 401(k) plan and recognizing that "SS&B's ERISA litigation experience, particularly litigation appearing similar to the issue at bar, indicates extensive experience and knowledge of applicable law.")
- ◆ *Griffin v. Flagstar Bancorp, Inc.*, 2:10-cv-10610-PDB-MKM (E.D. Mich) (recovery of \$3 million in cash to the company's 401(k) plan, representing 85% of likely recoverable damages, was recognized as "excellent" by the court)
- ◆ *Lipman v. Terex Corp.*, 3:10-cv-00006-RNC (D. Conn.) (recovery of \$2.5 million in cash to the company's 401(k) plan)

SS&B's advocacy in these and other ERISA actions, which have been brought on behalf of 401(k) retirement plan participants and beneficiaries, has also yielded new

law in the ERISA field, including the *Lucent* and *Wilmington Trust* opinions cited in the Seminal Cases section above.

Settled Antitrust Case

- ◆ *In re Salomon Brothers Treasury Litig.*, Consolidated Action No. 91 Civ. 5471 (RPP) (S.D.N.Y. 1994) (recovery of \$100 million)

Settled Derivative Cases

- ◆ *Esther Sadowsky Testamentary Trust v. Brendsel (Federal Home Loan Mortgage Corp.)*, 05-cv-2596 (S.D.N.Y.) (recovery of approximately \$100 million for the company as well as significant corporate governance measures)
- ◆ *In re Bank of New York Corporate Derivative Litig.*, Index No. 604465/99 (Sup. Ct. NY) (recovery of \$26.5 million for the company and the adoption of significant corporate governance measures)
- ◆ *In re FirstEnergy S'holder Derivative Litig.*, 03-CV-1826 (N.D. Oh.) (recovery of approximately \$25 million for the company and the adoption of significant corporate governance measures)
- ◆ *In re Hewlett-Packard Company Derivative Litig.*, 1:06-cv-071186 (Cal. Super. Ct., Santa Clara County), 2426-VCN (Del. Ch.) (resulted in numerous widespread and substantial corporate governance changes directed toward HP's code of business ethics and guidelines were implemented as a result of a derivative action stemming from the board of directors' alleged leak of an investigation that ultimately led to the firing/resignation of various high level officers and directors of HP.)
- ◆ *In re Trump Hotels S'holder Derivative Litig.*, 98-Civ-7820 (GEL) (S.D.N.Y.) (recovery of assets for corporation valued at approximately \$10 million)
- ◆ *Gallic v. Appelbaum*, 3:06-cv-5523-FLW-TJB (D.N.J.) (recovery for the company of \$1,387,471 as a repayment for backdated stock options received; repricing of stock options worth potentially \$8,113,847; and significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *Hirt v. United States Timberlands Serv. Co., LLC*, C.A. No. 19575 (Del. Ch.) (recovery for the company of \$3.1 million in the form of an offer increase of about 9%, from \$2.75 per partnership unit to \$3.00 per partnership unit)
- ◆ *In re Foundry Networks, Inc. Deriv. Litig.*, 1:06-cv-068878 (Cal. Super. Ct., Santa Clara Cty) (recovery for the company of \$2.1 million, repricing of certain allegedly backdated stock options, and significant corporate governance reforms)

- ◆ *Lasker v. Massengill (In re State Court Western Digital Corp. Deriv. Litig.)*, 06-CC-00159 (Cal. Super. Ct., Orange Cty) (recovery of \$522,680 for the company and significant corporate governance changes designed to strengthen its granting of, and accounting for, stock options)
- ◆ *In re Titan Corp. Derivative Litig.*, GIC 832018 (Cal. Super. Ct., San Diego Cty) (recovery of increased merger consideration from \$22.76 to \$23.10 per share of Titan common stock, a reduction in the termination fee; and, additional disclosures relating to the merger)
- ◆ *Ekas v. Burris (Citrix Systems, Inc.)*, 07-016114-11 (Fla. Cir. Ct., Broward Cty) (resulted in significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *In Re Jabil Circuit Options Backdating Litig.*, 06-CV-01257 (M.D. Fla.) (resulted in significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *Edelstein v. Brodie*, Case No. 3:07-cv-00596-FLW-JJH (D.N.J.) (resulted in significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *Soojian v. Jacobs f/b/o Royal Dutch Petroleum Company*, No. 04- cv-4160 (D.N.J.) (resulted in the adoption of significant corporate governance changes)

Settled Consumer Class Action Cases

- ◆ *Sheris v. Nissan North America, Inc.*, 07-cv-2516 (WHW) (D.N.J.) (recovery of nearly 100% of out of pocket costs, including costs for labor and parts, of class member car owners who prematurely replaced pads and rotors on braking system of certain Nissan Infiniti models)
- ◆ *Szymczak v. Nissan North America Inc.*, 10-cv-07493-VB (S.D.N.Y.) (recovery including cash and direct monetary benefits of over \$14 million on behalf of multi-state nationwide class of car owners of certain Nissan vehicles for damage to vehicles' transmissions caused by leaking radiator fluid)
- ◆ *Lubitz, et al. v. DaimlerChrysler Corp.*, BER-L-4883-04 (NJ Super, Bergen Cty) (recovery valued at \$14.5 million to owners of Jeep Grand Cherokees, model years 1999 through 2004 for defective brake assemblies on behalf of a nationwide settlement class).

SS&B is presently serving as plaintiffs' lead or co-lead counsel in a number of pending actions in various district courts, including:

Pending Securities Class Action Cases

- ◆ *In re Merck & Co., Inc., Sec., Derivative & "ERISA" Litig.*, MDL No. 1658 (SRC), Case No. 2:05-CV-01151-SRC-MF (D.N.J.); Case No. 2:05-CV-02367-SRC-MF (D.N.J.)
- ◆ *Chilton v. Smith Barney Fund Management LLC*, 1:05-cv-07583-WHP (S.D.N.Y.)

Pending ERISA Actions

- ◆ *In Re SunTrust Banks, Inc. ERISA Litig.*, 1:08-cv-03384-RWS (N.D. Ga.)
- ◆ *In re 2014 RadioShack ERISA Litig.*, 4:14-cv-00959-O (N.D. Tex.) (one of two interim lead class counsel committee members, partial settlement is pending before the court)
- ◆ *In re 2014 Avon Products, Inc. ERISA Litig.*, 1:14-cv-10083-LGS (S.D.N.Y.) (settlement submitted to the court for preliminary approval provides for a cash payment of \$6.25 million)
- ◆ *Gernandt, Jr. v. SandRidge Energy, Inc.*, CIV-15-834-D (W.D. Ok.)
- ◆ *Roe v. Arch Coal, Inc., et al.*, 4:15-cv-00910 (E.D. Mo.) (stayed as a result of the company's bankruptcy)

SS&B is also prosecuting the following cases:

Pending Consumer Cases

- ◆ *In re: The Home Depot, Inc. Data Security Breach Litig.*, Case No.: 1:14-md-02583-TWT (N.D. Ga) (SS&B is serving as a member of the court appointed Consumer Plaintiffs' Steering Committee in an action alleging data breach)
- ◆ *In Re Anthem, Inc. Data Breach Litig.*, Case No. 15-MD-02617-LHK (N.D. Ca.) (SS&B developed unique claims on behalf of current and former federal employees in a massive data breach of health insurer Anthem, Inc. and its multiple state subsidiaries involving theft of Anthem insureds' PHI and PII, including social security numbers and medical records)
- ◆ *Chiarelli v. Nissan North America, Inc. et al*, 14-cv-04327-NGG-VVP (E.D.N.Y.) (counsel for proposed class of owners and lessees of certain Nissan vehicles, model years 2004 through 2010, who have experienced damages as a result of defective timing chains-awaiting decision on motion to dismiss)
- ◆ *Spillman v. Hiko Energy, LLC*, Docket No. 651798/2015 (N.Y. Sup Ct. May 21, 2015) (counsel for proposed class of persons alleging claims for misrepresentation against third party energy provider, settlement preliminarily approved)

- ◆ *In Re: Pacquiao-Mayweather Boxing Match Pay-Per-View Litig.*, MDL No. 2:15-ml-02639-RGK (PLAx) (C.D.Cal.) (SS&B is serving as co-chair of the Law Committee for a proposed class of persons who purchased the pay-per-view broadcast of the Pacquiao-Mayweather boxing match)
- ◆ *In re: Daily Fantasy Sports Litig.*, MDL No. 16-02677-GAO (D. Mass.) (co-lead counsel for proposed class of persons who have paid and/or deposited funds into FanDuel and DraftKings' websites to play in their daily and weekly fantasy sports contests)

Pending Derivative Cases

- ◆ *In Re Caterpillar, Inc. S'holder Derivative Litig.*, Master Docket No. 1:13-cv-01104-SLD-JEH (C.D. Ill.)
- ◆ *Zucker v. Hassell*, C.A. No. 11625-VCL (Del. Ch.)

Attorneys

SS&B maintains offices in New York and Beverly Hills. The following sections set forth basic educational information and select legal experience for each of SS&B's attorneys.

New York Office

Jules Brody was named by *Super Lawyers* magazine as a Super Lawyer in 2010, 2013, and 2014. Mr. Brody is a graduate of Brooklyn College, magna cum laude, and received his LL.B. from the New York University School of Law in 1964. Mr. Brody was named to the Dean's List and was an editor of the Law Review. Mr. Brody was the author of "The Equitable Power to Assess Counsel Fees" which was published in the New York University Intramural Law Review in May 1964. At NYU, Mr. Brody was a John Norton Pomeroy Scholar and received the American Jurisprudence Prize in Commercial Law and graduated in the top 10% of his class. He was admitted to the New York State Bar in 1964. Mr. Brody received his LL.M. in taxation from the graduate division of the NYU School of Law in 1967. Mr. Brody is also admitted to practice before the United States District Court for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second, Fourth and Fifth Circuits, and has been specially admitted to practice before various U.S. District Courts throughout the United States.

Edwin J. Mills is Of Counsel to SS&B. He is a graduate of Fordham University and received his J.D. from Brooklyn Law School in 1977. Mr. Mills was admitted to practice in the State of New York and in the Eastern District of New York in 1978. He has represented classes of purchasers of securities and shareholders for over 20 years in federal and state courts throughout the United States. Mr. Mills has extensive experience in all aspects of securities and ERISA litigation, including settlement negotiation and trial, including four class actions tried to verdict. Mr. Mills

oversees all of the firm's ERISA Actions, including several large ERISA actions brought on behalf of 401(k) retirement plan participants and beneficiaries, including cases involving National City Corporation, Diebold, and Home Depot. Favorable outcomes of cases litigated by Mr. Mills include the 401(k) class actions involving AOL Time Warner (\$100,000,000); Tyco International (\$70.525 million); Lucent Technologies (\$69,000,000) and Cardinal Health (\$40,000,000).

Mark Levine is a graduate of the University of Maryland and received his J.D. from Brooklyn Law School in 1981. He was admitted to the New York State Bar in 1982 and is admitted to practice before the United States District Courts for the Southern, Western and Eastern Districts of New York and the Northern District of Illinois, the United States Court of Appeals for the Second, Fourth, Sixth, Ninth, Tenth and Eleventh Circuits, and has been specially admitted to practice before various other state and federal courts. He has participated in the litigation of securities class actions throughout the United States. Notable cases for which Mr. Levine had substantial responsibility include: *In re American Express Financial Advisors Litig.* (S.D.N.Y. 2007) (settlement of \$100 million for misrepresentations to mutual fund purchasers and misleading practices with respect to sale of American Express financial plans); *Lasker v. Kanas* (Sup. Ct. N. Y. Co. 2007) (settlement of \$20 million plus interest on behalf of shareholders of North Fork Bancorporation in connection with its merger with CapitalOne); *In re Computer Associates Sec. Litig* (E.D.N.Y. 2003) (settlement valued at \$133.551 million in securities for corporate misrepresentation of financial results and prospects); *Spahn v. Edward Jones Company* (E.D. Mo. 2007) (settlement valued at over \$110 million in cash and credits for misrepresentations in connection with the sale of mutual funds); *In re Northeast Utilities Sec. Litig.* (D. Conn. 2001) (settlement of \$25 million for misrepresentations to investors regarding safety of nuclear power plant); *In Re Steven Madden Ltd. Sec. Litig.* (E.D.N.Y. 2002) (settlement of \$9.0 million for misrepresentation to investors by shoe retailer); *In Re: Regeneron Pharma., Sec. Litig.* (S.D.N.Y. 2005) (settlement of \$4.5 million for misrepresentations to investors regarding pharmaceuticals); *Greenfield v. CompuServe Corp.* (Court of Common Pleas, Franklin County, Ohio 2000) (settlement of \$9.5 million for misrepresentations in registration statement of internet company); *In re Thomas & Betts Sec. Litig.* (W.D. Tenn. 2002) (settlement of over \$50 million for investors for alleged misrepresentations by technology company and its auditors); *Lasky v. Brown* (M.D. La. 2002) (settlement of \$20 million for investors for misrepresentations by finance company); *In re Ziff Davis Sec. Litig.* (S.D.N.Y. 2001) (settlement of \$6 million for alleged misrepresentations to investors in an initial public offering); *In re Trump Hotels S'holder Litig.* (S.D.N.Y. 2001) (derivative settlement resulting in contribution to the company by its largest shareholder of an asset valued up to \$10 million as well as the institution of corporate therapeutics); *In re Cityscape Financial Sec. Litig.* (E.D.N.Y. 2001) (settlement of \$7 million for alleged misrepresentations to investors by finance company); *In Re Cabletron Systems Sec. Litig.* (D.N.H. 2006) (settlement of \$10.5 million for alleged misrepresentations to investors by high tech company); *Ganesh v. Computer Learning Center* (E.D. Va. 1999) (settlement of \$7.5 million for alleged misrepresentations to investors by trade school operator); *Moriarity v. Molina* (S.D. Fla. 2003) (settlement of \$2.8 million for misrepresentations to investors by cell phone retailer); *In re NetEase.com, Inc. Sec.*

Litig. (S.D.N.Y. 2004) (settlement of \$4.35 million for alleged misrepresentation to investors by internet company).

Howard T. Longman was named by Super Lawyers magazine as a Super Lawyer 2014-2015. Mr. Longman who grew up in Virginia, received his undergraduate degree from the University of Virginia and his J.D. from New York Law School in 1982. Mr. Longman is a member of the New York State Bar and has also been admitted to practice before the United States District Court for the Southern and Eastern Districts of New York and other courts around the country on a *pro hac vice* basis. Some of the notable cases which Mr. Longman developed from inception and acted in a lead role through conclusion include: *In Re Peregrine Sec. Litig.*, Southern District of California (recovery of \$117,567,922); *In Re Rambus Sec. Class Action Litig.*, Northern District of California (\$18 million settlement); *In Re Biopure Sec. Litig.*, District of Massachusetts (\$10 million settlement); *In re Geodyne Sec. Litig.*, Harris County Texas and Southern District of New York (\$125 million cash settlement plus contingent benefits of additional \$75 million); *In Re Dreyfus Aggressive Growth Mutual Fund Litig.*, Southern District of New York (\$18.5 million settlement resulting in a recovery to class members of over 80% of class members' losses) and *Szymczak v. Nissan North America Inc.*, 10-cv-07493-VB (S.D.N.Y.) (co-lead counsel in case which resulted in cash recovery and direct monetary benefits valued at over \$14 million obtained on behalf of a multi-state nationwide class of owners of certain Nissan vehicles with damage to transmissions as the result of radiator fluid leakage).

Patrick Slyne received his J.D. from the University of Wyoming in 1988. He is a member of the Colorado, Connecticut and Wyoming state bars, and is admitted to practice before the United States District Courts for Wyoming, Connecticut, Eastern District of New York, and Southern District of New York, and the United States Court of Appeals for the First Circuit and Ninth Circuit. Notable cases for which Mr. Slyne had substantial responsibility include: *In re Hewlett-Packard Co. Deriv. Litig.* (Del. 2008) (conferred substantial benefit on HP through corporate governance changes to improve the functioning, interaction and working relationships among senior HP officers and outside members of the HP board of directors); *Esther Sadowsky Testamentary Trust v. Brendsel (Federal Home Loan Mortgage Corporation)* (S.D.N.Y. 2006) (assisted Freddie Mac in securing \$100 million cash from D&O carriers and \$9 million cash from certain counter parties for alleged breaches of fiduciary duties in accounting for and reporting of complex multi-billion dollar derivatives transactions); *In re Computer Associates Sec. Litig.* (E.D.N.Y. 2003) (recovered 5.7 million CA shares worth \$133.551 million for alleged improper revenue recognition on multi-year enterprise software license contracts); *In re IKON Office Solutions, Inc. Sec. Litig.* (E.D. Pa. 2000) (recovered \$111 million cash for alleged misrepresentation of earnings and prospects in office equipment leasing and services business); *In re Westinghouse Sec. Litig.* (W.D. Pa. 1999) (recovered \$67.25 million cash for alleged overstatement of financial position due to unrecognized losses in real estate portfolios); *In re Salomon Brothers Treasury Litig.* (S.D.N.Y. 1994) (recovered \$100 million cash for alleged manipulation of public market prices of U.S. Treasury securities); *In re Tenneco Inc., Sec. Litig.* (S.D. Tex. 1992) (recovered \$50 million cash for alleged overstatement of financial results for failure to mark-to-market dealer inventories of heavy machinery and equipment).

Melissa R. Emert received her undergraduate degree from the State University of New York at Stony Brook and her J.D. from Brooklyn Law School in 1988. Ms. Emert is a member of the New York State Bar and has also been admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York. On March 31, 2016, in appointing Ms. Emert as co-lead counsel in *In re: Daily Fantasy Sports Litigation*, MDL No. 16-02677-GAO, Judge O’Toole found that she and the other appointed counsel “are able litigators who bring ample experience, knowledge, and resources to this complex litigation.” Cases in which Ms. Emert had substantial responsibility include: *Overby v. Tyco International, Ltd.*, Case No. 02-CV-1357-B (D.N.H.) (settlement of \$70.525 million in cash); *In re Westinghouse Sec. Litig.* (W.D. Pa. 1999) (recovered \$67.25 million cash for alleged overstatement of financial position due to unrecognized losses in real estate portfolios) and *In re Sunglass Hut Intl., Inc. Sec. Litig.*, Case No. 97-0191-CIV-Moore (S.D. Fl. 2001) (recovery of \$4.5 million); *Szymczak v. Nissan North America Inc.*, 10-cv-07493-VB (S.D.N.Y.) (resulting in a cash recovery and direct monetary benefits valued at over \$14 million obtained on behalf of a multi-state nationwide class of owners of certain Nissan vehicles with damage to transmissions as the result of radiator fluid leakage).

Aaron L. Brody received his undergraduate degree, *summa cum laude*, in 1990, and his J.D. from New York University School of Law in 1995. At NYU, Aaron Brody concentrated on securities law and was a staff editor on the *Review of Law and Social Change*. Aaron Brody is a member of the New York State Bar and is admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York. Cases in which Aaron Brody had substantial responsibility include: *In re Initial Public Offerings Sec. Litig.* (recovery of \$586 million); *In re BankAmerica Corp. Sec. Litig.*, MDL No. 1264 (recovery of \$490 million); *Spahn v. Edward D. Jones & Co. L.P.*, 04-CV-00086 (recovery of \$127.5 million); and *In re American Express Financial Advisors Sec. Litig.*, Civil Action No. 04-CV-1773 (S.D.N.Y.) (recovery of \$118 million).

Tzivia Brody received her undergraduate degree, *magna cum laude*, in 1992, and her J.D. from the Benjamin M. Cardozo School of Law in 1995. Ms. Brody is a member of the New York State Bar and is admitted to practice before the United States District Court for the Southern and Eastern Districts of New York. Cases in which Ms. Brody had substantial responsibility include *In re Computer Associates Sec. Litig.*, (recovery estimated at \$133.551 million) and *In re Ikon Office Solutions, Inc. Sec. Litig.* (recovery of \$111 million).

Jason D’Agnenica received his undergraduate degree from Providence College in 1995, B.A., *cum laude*, and his J.D. from St. John’s University School of Law in 1998. While at St. John’s, Mr. D’Agnenica participated in the Moot Court Honor Society advocacy competition, represented clients in consumer protection matters through St. John’s Elder Law Clinic, and interned for Magistrate Judge Timothy M. Boudewyns of the United States District Court for the District of Rhode Island. Mr. D’Agnenica is a member of the New Jersey State Bar and is admitted to practice before the United States District Court for the District of New Jersey, the Southern District of New York and the Eastern District of New York.

Michael J. Klein received his undergraduate degree in 2001 from Emory University and his J.D., with honors, from the University of Connecticut School of Law in 2004. While at the University of Connecticut, Mr. Klein served as an executive editor of the Connecticut Law Review. Mr. Klein is a member of the New York and Connecticut State Bars and is admitted to practice before the Supreme Court of the United States, the United States Courts of Appeals for the Second, Sixth, Ninth and Eleventh Circuits and the United States District Courts for the Southern and Eastern Districts of New York, the Northern District of Illinois, the Eastern District of Wisconsin, the Eastern District of Michigan, the District of Connecticut, and the District of Colorado. Settled cases in which Mr. Klein had substantial responsibility include: *Overby v. Tyco International, Ltd.*, Case No. 02-CV-1357-B (D.N.H.) (settlement of \$70.525 million in cash; Mr. Klein participated in over eighty days of deposition); *National City Corporation Sec., Derivative & ERISA Litig.*, 1:08-cv-07000-PAG (N.D. Ohio) (settlement of \$43 million in cash); *Zilhaver v. UnitedHealth Group, Inc.*, Case No. 06-cv-2237 (JMR) (D. Minn.) (a settlement of \$17 million cash to the company's 401(k) plan approved in August of 2009); *In re: Diebold ERISA Litig.*, Case No. 06-cv-00170 (SEL) (N.D. Ohio) (recovery of \$4.5 million in cash to the company's 401(k) plan); *Jones v. NovaStar Financial, Inc.*, 4:08-cv-00490-NKL (W.D. Mo.) (recovery of \$925,000 in cash for the company's 401(k) plan) and *In Re Affiliated Computer Services ERISA Litig.*, Master File No. 06-CV-1592 (CBA) (N.D. Tex. 2008) (recovery of \$1.5 million in cash, plus plan enhancements).

Beverly Hills Office

Patrice L. Bishop received her undergraduate degree from New York University and her J.D. from Loyola Law School - Los Angeles in 1994. Ms. Bishop is a member of the California State Bar and is admitted to practice before the Supreme Court of the United States, United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the District of Colorado, the Northern and Central Districts of Illinois, and the United States Court of Appeals for the Second, Eighth and Ninth Circuits. Ms. Bishop has been with the firm for over 17 years. During that time, among other cases, Ms. Bishop worked closely with Mr. Longman on *In Re Peregrine Sec. Litig.*, Southern District of California (recovery of \$117,567,922). She was also the lead attorney in *In re Metris Companies, Inc. Sec. Litig., District of Minnesota* (recovery of \$7.5 million), taking nearly every percipient and expert witness deposition for plaintiffs and making nearly every argument in court. Her work in *Kimeldorf, et al. v. First Union Real Estate Equity and Mortg. Inv., et al.* resulted in a temporary restraining order and preliminary injunction restraining a proposed merger, and significantly enhanced terms for preferred shareholders. She has also participated, including examining and cross-examining witnesses, in two separate trials, each over six weeks long, in cases brought under the federal securities laws.

PAUL E. GILLMOR
5TH DISTRICT, OHIO

COUNTIES: ASHLAND (PART), CRAWFORD,
DEFIANCE, FULTON, HENRY, HURON, LUCAS (PART),
MERCER (PART), PAULDING, PUTNAM, SANDUSKY, SENECA,
VAN WERT, WILLIAMS, WOOD, WYANDOT (PART)

DEPUTY MAJORITY WHIP



Congress of the United States
House of Representatives

Washington, DC 20515-3505

January 2, 2007

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEES:
ENVIRONMENT AND HAZARDOUS MATERIALS
CHAIRMAN
TELECOMMUNICATIONS AND THE INTERNET
HEALTH
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEES:
CAPITAL MARKETS, INSURANCE AND
GOVERNMENT SPONSORED ENTERPRISES
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

Via Federal Express and ECF

The Honorable Stanley R. Chesler
United States District Judge
Martin Luther King, Jr. Federal Building
and United States Courthouse
50 Walnut Street
Newark, NJ 08608

Re: In re Merck & Co, Inc., Securities, Shareholder Derivative and ERISA Litig.
(MDL 1658); Case No. 3:05-cv-01151 SRC-MF

Dear Judge Chesler:

I was one of the court appointed lead plaintiffs in *In re Safety-Kleen Rollins Shareholders Litigation*, Civil Action No. 3:00-CV1343-17, which was pending before Judge Joseph Anderson in the District of South Carolina. In that case, which alleged, among other things, violation of the Securities Exchange Act of 1934, I and the other court appointed lead plaintiffs selected Stull, Stull & Brody to be one of the lead counsel for the plaintiffs. That case resulted in a settlement recovery for the class of a very substantial portion of the money that could have been recovered if the case had gone to trial, net of attorneys fees, expenses and administrative fees.

During the course of that litigation, which lasted for about five years, Stull, Stull & Brody kept me apprised of all significant developments in the action such as class certification, settlement negotiations, litigation strategy, pending motions, court rulings and trial preparation. I would regularly speak to counsel by telephone at which time the foregoing topics would typically be discussed and I would have the opportunity to ask questions and provide input.

Respectfully submitted,

Paul E. Gillmor

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