

Exhibit 3C

3. The descriptions below are divided into two phases: first, work performed by my firm from December 2003 through January 2007, during which period Milberg served as Plaintiffs' Co-Lead Counsel with the firm Stull, Stull & Brody ("SSB"); and second, work performed by my firm from January 2007 (when the Plaintiffs' leadership structure was expanded to four Co-Lead Counsel firms) through the present. I personally began working on this litigation in November 2008; accordingly, the descriptions below of work performed prior to November 2008 are based on the records of my firm, court records, and discussions with other attorneys who worked on the litigation at Milberg prior to 2008 (David A.P. Brower and Richard H. Weiss), and the descriptions of work performed from November 2008 through the present are based on my personal knowledge.

PHASE I – CASE INCEPTION THROUGH 2006

4. During the period between the initiation of the litigation and the expansion of the Plaintiffs' leadership structure in January 2007, Milberg played the leading role in the prosecution of the litigation (along with co-lead firm SSB). During this period, my firm carried the laboring oar and devoted a significant amount of time, and incurred substantial unreimbursed expenses, toward the prosecution of this litigation. At the time my firm started working on this litigation, and throughout most of Phase I, four Milberg partners (who are no longer employed at Milberg) led my firm's work on this litigation: Melvyn I. Weiss, David A.P. Brower, Richard H. Weiss and Bruce D. Bernstein.

5. Initiation of the Action. Milberg's work on this litigation began in December 2003, with significant pre-filing investigation, drafting and analysis that resulted in the filing of a class action complaint on January 16, 2004 in the action titled *Ravnitsky v. Merck & Co., Inc., et al.*, Case No. 04-0147, in the United States District Court for the Eastern District of Louisiana.

The *Ravnitsky* complaint asserted claims for violations of the Securities Exchange Act of 1934 against Merck & Co., Inc. (“Merck”) and certain of Merck’s senior officers.

6. On January 26, 2004, my firm moved (on behalf of Ruth Ravnitsky, Richard Reynolds, Steven LeVan, and others) for the consolidation of the *Ravnitsky* action with a previously filed action (*Pringle v. Merck & Co., Inc.*, Case No. 03-3125 (E.D. La.)) and for appointment as lead counsel for the consolidated actions. On January 29, 2004, the district court issued an order consolidating the *Ravnitsky* and *Pringle* actions under the *Pringle* master docket. Other actions filed in Louisiana were subsequently consolidated with the *Pringle* action. By order dated February 26, 2004, Milberg was appointed co-lead counsel along with the Stull, Stull & Brody firm (“SSB”), and Richard Reynolds, Steven LeVan, Marc Nathenson and Jerome Haber were appointed co-lead plaintiffs; the district court also appointed the firms of Kahn Gautier and The Whitehead Law Firm as co-liaison counsel.

7. Second and Third Amended Complaints. My firm participated in drafting Plaintiffs’ Second Amended Class Action Complaint in the *Pringle* action, filed on August 9, 2004, in which Merck Executive Vice President Edward Scolnick was added as a defendant. My firm also drafted the Third Amended Class Action Complaint in *Pringle*, filed on November 8, 2004, which extended the end of the proposed class period to October 29, 2004 to reflect Merck’s withdrawal of Vioxx from the market on September 30, 2004 and subsequent public revelations concerning Vioxx on November 1, 2004. The Third Amended Complaint also asserted a claim against Merck’s directors’ and officers’ liability insurer (named as “ABC Insurance Company”), under La. R. S. 22:655, Louisiana’s “direct action” statute. Throughout 2004 and beyond, my firm conducted significant amounts of pre- and post-filing investigation in order to uncover evidence to support and expand Plaintiffs’ claims against Merck and its

officers; that investigation included the review of news articles, analyst reports, SEC filings, medical journals, and other publicly available documents, as well as interviews with physicians, researchers, former Merck employees and other individuals in the pharmaceutical industry.

8. Milberg successfully fought off vigorous challenges by other movants who sought to intervene in the consolidated action, to vacate the previously entered lead plaintiff order, and to be appointed as lead plaintiffs and as lead counsel. Milberg opposed these challenges both in Louisiana and in New Jersey, as the competing movants brought their challenges simultaneously in both jurisdictions.

9. Transfer of the Action to New Jersey. Milberg led the briefing of motions filed by Merck and others with the Judicial Panel for Multidistrict Litigation seeking the transfer of the consolidated *Pringle* action, as well as other actions filed in Louisiana and New Jersey, to a single district for centralized proceedings. *See* MDL Docket No. 1658. Milberg also attended and presented oral argument at a hearing before the MDL panel on January 27, 2005. Pursuant to the MDL panel's order dated February 23, 2005, the consolidated *Pringle* actions and other related actions were transferred to the United States District Court for the District of New Jersey for coordinated pretrial proceedings with the related actions already pending in New Jersey.

10. Upon the transfer of the consolidated *Pringle* action to the District of New Jersey, my firm participated in a status conference on March 21, 2005 to discuss the potential consolidation of the cases pending before the Court and the entry of a case management order that would govern the coordinated proceedings. *See* Dkt. No. 14. On April 8, 2005, the Court entered an order confirming the appointment of Milberg and SSB as co-lead counsel, confirming the appointment of Mssrs. Reynolds, LeVan, Nathanson and Haber as co-lead plaintiffs, and

denying as moot the motions filed by the competing lead plaintiff movants. *See* Dkt. No. 33.

My firm also conferred with counsel for Merck and the other defendants, as well as counsel in the related ERISA and derivative actions, on a proposed pretrial order governing the proceedings in the coordinated actions. *See* Dkt. No. 60. The Court entered that proposed order, which consolidated all related actions then pending before the Court, established a schedule for Plaintiffs' filing of a Fourth Amended Complaint and the briefing of Defendants' response thereto, and established the responsibilities of Co-Lead Counsel for the conduct of the litigation *See* Dkt. No. 61 [Pretrial Order #1].

11. Motion to Modify the PSLRA Discovery Stay. My firm took the lead on the research and drafting of a motion to modify the discovery stay established pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), which was filed on May 9, 2005. *See* Dkt. No. 67. That motion sought to allow the plaintiffs in the consolidated securities actions to obtain relevant documents that had previously been produced by Merck and other defendants in personal injury, products liability, and third-party payor cases concerning Vioxx, as well as documents that Merck had provided to various governmental agencies. My firm also attended a hearing on that motion on May 26, 2005 before Magistrate Judge Tonianne J. Bongiovanni. *See* Dkt. No. 92. By order dated July 8, 2005, the Court granted in part Plaintiffs' motion, and ordered Defendants to produce to the Securities Plaintiffs all documents provided by Defendants to the ERISA Plaintiffs and Derivative Plaintiffs. *See* Dkt. No. 116.

12. Fourth Amended Complaint. My firm participated in the investigation, research and drafting of Plaintiffs' Corrected Consolidated Fourth Amended Class Action Complaint, dated June 15, 2005. The Fourth Amended Complaint asserted claims brought under the Securities Act of 1933 on behalf of participants in the Merck Stock Investment Plan ("MSIP"),

as well as previously asserted claims under the Securities Exchange Act of 1934. The Fourth Amended Complaint also asserted claims against additional Merck officers and directors, including Defendant Alise Reicin, Executive Director of Clinical Research at Merck Research Laboratories. The Fourth Amended Complaint also identified Merck's directors' and officers' liability insurers, who had previously been identified as "ABC Insurance Company", as defendants pursuant to Louisiana's direct action statute; following litigation in London, England concerning a foreign arbitration clause in one of Merck's insurance policies, and following the filing of motions to dismiss by Merck's insurers based, generally, on arguments regarding standing and the extra-territorial application of the Louisiana direct action statute, the claims against Merck's insurers were voluntarily dismissed in August 2006. As with each of the previous complaints filed in this case, the Fourth Amended Complaint added significant new allegations supporting Plaintiffs' claims, based on my firm's continued factual investigation and review and analysis of relevant documents.

PHASE II –2007 THROUGH THE PRESENT

13. As is well-known, Milberg was indicted by the federal government in 2006. Shortly thereafter, Milberg attorneys David Brower (who had been the lead partner working on this litigation) and Bruce Bernstein left the firm. As a result of these departures and the general reduction in size of my firm caused by the indictment, it was appropriate to adjust my firm's role in the case.

14. Expansion of Plaintiffs' Leadership Structure. Shortly thereafter, in late 2006, the Public Employees' Retirement System of Mississippi ("MPERS"), through their counsel Bernstein Litowitz Berger & Grossmann LLP ("BLBG"), moved to intervene in the litigation, seeking appointment as Lead Plaintiff. Milberg participated in the negotiation of a stipulation

which resolved MPERS' motion to intervene and which modified the leadership structure for the litigation. Pursuant to a stipulation and order dated January 26, 2007, BLBG and Brower Piven P.C. were appointed as additional Co-Lead Counsel (along with Milberg and SSB), and MPERS was appointed as additional Co-Lead Plaintiff (in place of Marc Nathanson, who voluntarily withdrew as Co-Lead Plaintiff). *See* Dkt. No. 187.

15. Thereafter, my firm's role in the prosecution of the litigation was reduced, and the BLBG firm took on the leading role on the Plaintiffs' leadership team. However, Milberg continued to be a key participant in all aspects of the litigation going forward, and contributed equally to the prosecution of the case with the other two co-lead firms (SSB and Brower Piven), with all four co-lead firms working cooperatively to advance Plaintiffs' claims.

16. Motions to Dismiss the Fourth Amended Complaint and Related Appeals. My firm participated in opposing Defendants' motions to dismiss the Fourth Amended Complaint, which were filed in August 2005. Defendants' voluminous motions argued, *inter alia*, that the statute of limitations for securities fraud claims barred Plaintiffs' claims in the litigation. My firm was heavily involved in the research and briefing in opposition to Defendants' motions to dismiss, as well as in the oral argument on Defendants' motions. By opinion and order dated April 12, 2007, the Court granted Defendants' motions to dismiss on the grounds that the Plaintiffs' claims were time-barred; the Court did not rule at that time on the other grounds for dismissal raised by Defendants. *See In re Merck & Co., Inc. Sec. Litig.*, 483 F. Supp. 2d 407 (D.N.J. 2007).

17. Milberg made substantial contributions to Plaintiffs' successful appeal of the Court's July 11, 2007 order dismissing the Fourth Amended Complaint. Between May 2007 and

July 2008, my firm, along with the other co-lead firms, was involved in the analysis, research and drafting of Plaintiffs' appeal of the Court's dismissal order to the Third Circuit Court of Appeals. See *In re Merck & Co., Inc. Sec. Litig.*, Case No. 07-2431 (3d Cir.). The work performed by my firm contributed to the Third Circuit's issuance of a precedential opinion on September 9, 2008, in which the Third Circuit held that the District Court erred in finding as a matter of law that there was sufficient public information over two years before the initiation of the litigation to trigger Plaintiffs' duty to investigate the alleged fraud. See *In re Merck & Co., Inc. Sec. Litig.*, 543 F.3d 150 (3d Cir. 2008). My firm also worked to oppose Defendants' petition for a rehearing before the original circuit court panel and a rehearing *en banc*, which the Third Circuit denied by order dated October 17, 2008.

18. My firm was also heavily involved in opposing Defendants' appeal of the Third Circuit's ruling to the United States Supreme Court. Milberg contributed to Plaintiffs' opposition to Defendants' petition for a writ of *certiorari*, which was filed in January 2009 and granted on May 26, 2009. My firm was also involved in the process for hiring an experienced Supreme Court litigator, former Assistant to the Solicitor General David Frederick (of Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.), to assist in opposing Defendants' appeal to the Supreme Court. Along with Mr. Frederick and the other co-lead firms, my firm worked on all aspects of the appeal before the Supreme Court, including the formulation of strategy, legal research, drafting and editing of the appeal opposition brief, contacts with *amici* who supported Plaintiffs' arguments in the appeal, and preparation for oral argument before the Supreme Court. These efforts resulted in a ruling by the Supreme Court, issued on April 27, 2010, which affirmed the decision by the Third Circuit and clarified the issue of when the statute of

limitations may begin to run on federal securities fraud claims. *See Merck & Co., Inc. v. Reynolds*, Case No. 08-905, 559 U.S. 633 (2010).

19. Fifth Amended Complaint. My firm actively participated in advancing the litigation while the appeals to the Third Circuit and the Supreme Court were pending. Milberg was involved in the drafting and editing of Plaintiffs' Corrected Consolidated Fifth Amended Class Action Complaint, which was filed on March 10, 2009. See Dkt. No. 230. The Fifth Amended Complaint added substantial detail to Plaintiffs' claims. Merck and the other Defendants moved to dismiss the Fifth Amended Complaint on various grounds other than the statute of limitations, and Milberg played a significant role in analyzing Defendants' arguments, researching the applicable case law, and drafting and editing Plaintiffs' opposition briefs. On August 8, 2011, the Court issued an opinion granting in part and denying in part Defendants' motions to dismiss the Fifth Amended Complaint. *See In re Merck & Co., Inc. Sec. Litig.*, 2011 U.S. Dist. LEXIS 87578 (D.N.J. Aug. 8, 2011). In that decision, the Court dismissed all claims under Section 10(b) of the Exchange Act against defendants other than defendants Merck, Scolnick and Reicin, dismissed the claims under Section 20A of the Exchange Act against certain defendants, and dismissed claims based upon certain alleged false statements against defendant Scolnick; the Court denied Defendants' motions to dismiss in all other respects.

20. Discovery. Milberg played an important role in the discovery process throughout this litigation. My firm spent thousands of hours reviewing documents relevant to the parties' claims and defenses, including news articles, analyst reports, SEC filings, and other publicly available documents concerning Vioxx and the FDA approval of that drug; articles in medical journals concerning studies performed on Vioxx, naproxen and other drugs; documents produced by Merck to government regulators; internal company documents produced by Merck in other

Vioxx-related litigations; internal company documents produced by Defendants in response to Co-Lead Counsel's document requests; and documents produced by non-parties in response to subpoenas issued by Co-Lead Counsel. My firm also spent significant time reviewing and analyzing the testimony of experts and Merck employees in personal injury trials and other Vioxx-related litigation, in order to identify testimony relevant to Plaintiffs' claims in this action.

21. My firm played a significant role in drafting and editing Rule 26 initial disclosures, document requests, interrogatories, and requests for admissions served on the Defendants. My firm also participated in the service of subpoenas on non-parties and in discussions with such non-parties concerning their production of relevant documents. Milberg also participated in extensive efforts to meet-and-confer with Defendants and non-parties concerning their discovery responses, and where necessary, in the briefing of discovery-related disputes with Defendants and non-parties.

22. As part of the discovery process, my firm (like the other co-lead firms) retained a large group of attorneys, on a temporary basis, to assist in the monumental task of reviewing and analyzing the millions of pages of documents produced by Defendants and others in this action. My firm helped to educate and oversee those document review attorneys, to guide and assist them in the document review process, and to read and analyze the important evidence that was uncovered in the document review process. In total, the document review attorneys retained by my firm spent over 44,000 hours reviewing and analyzing documents, identifying and organizing documents relating to specific issues, and identifying documents for potential use with specific deponents.

23. Milberg played a significant role in the depositions of fact witnesses in this action. First, my firm participated in extensive efforts by Co-Lead Counsel to identify potential deponents among the hundreds of current and former Merck employees and other relevant witnesses, and in the strategic decisions over which of those witnesses should be examined before trial. With the assistance of other Milberg attorneys and staff, I prepared for and took the depositions of three former Merck employees. My firm also assisted in the preparation for, and attended, numerous other fact depositions in this action, and my firm read and analyzed the testimony given by every fact witness in this action.

24. Milberg was involved in responding to Defendants' discovery efforts in this action. For example, my firm was involved, along with the other co-lead firms, in drafting and editing Plaintiffs' comprehensive and detailed responses to Defendants' extensive "contention interrogatories" in which they asked Plaintiffs to identify every piece of written and testimonial evidence that supported Plaintiffs' claims.

25. Motion for Judgment on the Pleadings. Milberg contributed to Plaintiffs' opposition to Defendants' Motion for Judgment on the Pleadings, filed on May 3, 2012. In that motion, Defendants argued that certain allegedly false and misleading statements identified in the Fifth Amended Complaint were not actionable because they were forward-looking statements or they concerned past or future earnings growth, and Defendants further argued that the Section 20(a) "control person" claims against certain Defendants should be dismissed because Plaintiffs did not adequately allege that those defendants were culpable participants in the alleged fraud. My firm was involved in the research, drafting and editing of Plaintiffs' opposition briefing, along with the other co-lead firms. On August 29, 2012, the Court issued an opinion granting in part and denying in part Defendants' motion; the Court held that many (but not all) of the

challenged statements were inactionable puffery, forward-looking statements within the safe harbor of the PSLRA, or accurate statements of historical fact; the Court also dismissed the Section 20(a) claims against those defendants for whom the complaint did not adequately allege their culpable participation in the alleged fraud. *See In re Merck & Co., Inc. Sec. Litig.*, 2012 U.S. Dist. LEXIS 123800 (D.N.J. Aug. 29, 2012).

26. Class Certification. Milberg also played a large role in Plaintiffs' efforts to obtain certification of this Action as a class action under Rule 23 of the Federal Rules of Civil Procedure. My firm was heavily involved in the strategy, research and drafting of Plaintiffs' Motion for Class Certification, filed on April 10, 2012. *See* Dkt. No. 301. My firm was also involved in the retention of an expert on economics and statistics, Dr. David Tabak of NERA, to analyze the efficiency of the markets for Merck's common stock and options during the proposed Class Period, and worked with Dr. Tabak on his expert report concerning market efficiency. My firm also worked along with the other Co-Lead Counsel firms to respond to Defendants' vigorous opposition to Plaintiffs' motion for class certification. During the briefing of this motion, Plaintiffs determined that they would not seek certification of their claims under the Securities Act; those claims were later voluntarily dismissed. In an opinion dated January 30, 2013, the Court granted Plaintiffs' motion and certified a class consisting of "All persons and entities who, from May 21, 1999 to September 29, 2004, inclusive (the 'Class Period'), purchased or otherwise acquired Merck & Co., Inc. common stock or call options, or sold Merck put options"; the Court also certified the Co-Lead Counsel firms as Class counsel and appointed the four Co-Lead Plaintiffs as Class representatives. *See In re Merck & Co., Inc. Sec. Litig.*, 2013 U.S. Dist. LEXIS 13511 (D.N.J. Jan. 30, 2013). Following the Court's granting of class certification, my firm worked with the other Co-Lead firms to hire a notice administrator, and to

draft a notice to potential Class members informing them of the pendency of the action as a class action and of their rights as potential Class members. My firm also responded to telephone calls and written correspondence from potential Class members who had questions concerning the litigation.

27. Sixth Amended Complaint. My firm was also involved in the drafting of Plaintiffs' Corrected Consolidated Sixth Amended Class Action Complaint, and in the efforts to obtain the Court's permission to file that amended pleading. In March 2013, Plaintiffs filed a motion seeking leave of court to file the Sixth Amended Complaint. In that proposed amendment, Plaintiffs sought (a) to add new allegations concerning the November 1, 2004 publication by *The Wall Street Journal* of an exposé of leaked internal Merck documents showing that Merck knew of VIOXX's cardiovascular risks years before its withdrawal from the market; (b) to add allegations concerning additional false and misleading statements in which Merck attributed the negative cardiovascular results of the VIGOR trial to a small subgroup of high-risk patients who had been indicated for aspirin prophylaxis (the "4% subgroup hypothesis"); and (c) to conform their claims to the Court's prior rulings. *See* Dkt. No. 403. My firm was involved in drafting and editing that motion, and in responding to the arguments raised in opposition by Defendants. On May 29, 2013, the Court granted in part and denied in part Plaintiffs' motion for leave to amend; the Court granted Plaintiffs leave to amend their claims to add allegations concerning the 4% subgroup hypothesis and to conform their claims to the Court's prior rulings in the case, but denied Plaintiffs' motion with regard to information revealed on November 1, 2004. *See In re Merck & Co., Inc. Sec. Litig.*, 2013 U.S. Dist. LEXIS 77097 (D.N.J. May 29, 2013). Plaintiffs filed the Sixth Amended Complaint on June 20, 2013. *See* Dkt. No. 433.

28. Expert Disclosures. My firm was also significantly involved in the expert disclosure phase of this litigation. Milberg participated in many meetings and discussions with Co-Lead Counsel concerning the identification and selection of expert witnesses who could offer testimony on the areas of the cardiovascular safety of Vioxx, statistical analyses of studies performed on the cardiovascular safety of Vioxx, naproxen and other drugs, the gastrointestinal safety of Vioxx and other painkillers, the marketing and commercial viability of Vioxx, the FDA's review of drug safety and the adequacy of Merck's disclosures to the FDA, and causation and damages. My firm participated in interviews of potential experts, met frequently with Plaintiffs' retained experts to discuss their potential opinions, and was involved in reviewing draft reports by those experts. Attorneys at my firm also read and analyzed the expert reports submitted by Defendants' experts, as well as the evidence on which those experts relied. With the assistance of other firm employees, I prepared for and took the deposition of Defendants' expert on gastrointestinal safety issues, Dr. David Sales, and I defended Plaintiffs' expert on that same topic, Dr. David Graham, at his deposition. My firm also assisted the other Co-Lead Counsel firms in connection with the depositions of other expert witnesses.

29. Motions for Summary Judgment. Milberg was heavily involved in opposing Defendants' Motions for Summary Judgment. On January 17, 2014, Defendants filed motions for summary judgment, along with voluminous exhibits and statements of fact, in which they argued that they were entitled to judgment as a matter of law on Plaintiffs' claims. *See* Dkt. Nos. 453, 458. Responding to Defendants' motions was a monumental task, and my firm, along with the other co-lead firms, participated in researching, formulating, drafting and editing the factual and legal arguments in opposition to Defendants' motions; this work culminated in Plaintiffs' March 14, 2014 filing of a 91-page opposition brief, as well as lengthy counter-statements of

material undisputed and disputed facts. *See* Dkt. No. 499. My firm continued to monitor emerging case law that might be relevant to Plaintiffs' arguments in opposition to Defendants' motions, and participated in the drafting and editing of letters informing the Court of such new, relevant decisions. *See* Dkt. Nos. 5712, 574. On May 13, 2015, the Court issued an opinion granting in part and denying in part Defendants' motions; the Court granted the motions and entered judgment in favor of Defendants to the extent that Plaintiffs' claims were based on pre-VIGOR statements or on allegedly false statements made by defendant Scolnick in a December 2001 *Bloomberg News* article, but the Court denied Defendants' motions in all other respects. *See In re Merck & Co., Inc. Sec. Litig.*, 2015 U.S. Dist. LEXIS 62983 (D.N.J. May 13, 2015).

30. Pretrial Tasks and Preparation. My firm also made significant contributions to the work done in preparation for trial of this action. Milberg attorneys drafted numerous motions in limine; researched, drafted and edited *Daubert* motions seeking to exclude Defendants' expert witnesses; and researched and edited briefs in opposition to Defendants' *Daubert* motions. My firm also assisted in drafting and editing Plaintiffs' trial witness list, exhibit list, stipulated and contested facts, deposition designations, the joint pretrial order, and other pretrial submissions. My firm was involved in meetings with the other Co-Lead Counsel firms to formulate Plaintiffs' strategy for trial, and did extensive work to review the evidence in the case in preparation for trial.

31. Settlement. My firm was significantly involved in the efforts to negotiate the proposed settlement of this action. Although Milberg was not the Plaintiffs' chief negotiator, Milberg attorneys were involved in every step of the settlement negotiation process, attended every settlement conference and mediation session, and provided valuable input with regard to negotiation strategy and settlement dynamics. My firm also contributed to the editing of the

stipulation of settlement and the exhibits thereto. Additionally, Milberg professionals continue to respond to written and telephonic correspondence from potential Class members concerning the proposed settlement.

32. The paragraphs above identify the principal areas of the case in which Milberg made substantial contributions. However, my firm also performed countless additional tasks in the day-to-day management of this complex litigation beyond those listed in this declaration. In summary, Milberg made a substantial contribution to every aspect of this litigation, from inception in 2004 through the present.

33. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent (during the period from case inception through February 15, 2016) by the partners, other attorneys and professional support staff of my firm who were involved in this litigation, and the lodestar calculation based on my firm's current 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 (despite the fact that some former Milberg attorneys continued to work on this litigation at other firms, and are now seeking compensation for their time at higher billing rates). The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available at the request of the Court and which have previously been provided to the Court-appointed Special Master, the Honorable Layn R. Phillips, for his *in camera* review.¹ Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request. Although I believe that Milberg personnel spent substantial time

¹ These records may include information concerning privileged and/or confidential attorney-client communications or work product.

working on this action that was not contemporaneously recorded in my firm's time records, I did not include any such non-recorded time in this submission.

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

35. The total number of hours expended on this litigation by my firm is 71,483.80 hours. The total lodestar for my firm is \$29,301,018.75, consisting of \$27,026,812.50 for attorneys' time and \$2,274,206.25 for professional support staff time.

36. 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.

37. As detailed in Exhibit 2, my firm has incurred a total of \$2,284,275.85 in unreimbursed expenses in connection with the prosecution of this litigation.

38. The expenses incurred in this action are reflected on the books and records of my firm. These books and records represent an accurate recordation of the expenses incurred, and are prepared from expense vouchers, check records and other source materials, which are available at the request of the Court and which have previously been provided to Judge Phillips for his *in camera* review. Third-party expenses are not marked up. In the exercise of billing judgment, the amounts of certain expenses incurred by Milberg in the prosecution of this litigation have been reduced.

39. In 2004, a number of Milberg attorneys left the firm and formed a new law firm, which is now known as Robbins Geller Rudman & Dowd L.L.P. ("RGRD"). Pursuant to an agreement between Milberg and RGRD effective May 1, 2004, Milberg will share with RGRD a portion of any attorneys' fees awarded in this litigation to Milberg. Other attorneys have asserted or may assert claims to portions of any attorneys' fees awarded to Milberg in this litigation; however, these may be subject to disputes.

40. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys currently employed at my firm who were principally involved in this litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of April 2016:



MATTHEW A. KUPILLAS

EXHIBIT 1

In re Merck & Co., Inc. Securities Litigation,
MDL No. 1658, Case No. 2:05-CV-1151-SRC-CLW, Case No. 2:05-CV-02367-SLC-CLW

MILBERG LLP

TIME REPORT -- Inception through February 15, 2016

	<u>Timekeeper Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Partner				
	Bauer, George A.	8.50	\$750	\$6,375.00
	Bernstein, Bruce D.	2,600.75	\$390	\$1,014,292.50
	Bershad, David J.	1.25	\$795	\$993.75
	Brower, David	1,299.00	\$660	\$857,340.00
	Friedman, Brad N.	6.50	\$875	\$5,687.50
	Gluck, Matthew	45.00	\$975	\$43,875.00
	Kartalopoulos, Anita B.	29.25	\$750	\$21,937.50
	Kupillas, Matthew A.	2,916.75	\$700	\$2,041,725.00
	Landers, Jonathan M.	0.50	\$950	\$475.00
	Messinger, Jeffrey R.	1,133.50	\$775	\$878,462.50
	Rado, Andrei	2.25	\$625	\$1,406.25
	Riggs, Roland	1,014.50	\$575	\$583,337.50
	Schulman, Steven G.	8.00	\$725	\$5,800.00
	Seidman, Peter E.	22.50	\$600	\$13,500.00
	Vinik, Joshua H.	2.00	\$750	\$1,500.00
	Wallner, Robert A.	252.00	\$875	\$220,500.00
	Wedgworth, Peggy	477.75	\$750	\$358,312.50
	Weiss, Melvyn I.	182.10	\$925	\$168,442.50
	Weiss, Richard H.	3,207.75	\$750	\$2,405,812.50
Associate				
	Adler, Robert R.	291.25	\$380	\$110,675.00
	Eisenkraft, Michael	433.85	\$300	\$130,155.00
	Foglietta, Scott	116.80	\$350	\$40,880.00
	Friedman, Michael	6.50	\$285	\$1,852.50
	Hirsh, Jennifer K.	545.25	\$315	\$171,753.75
	Hoffman, Douglas	156.50	\$385	\$60,252.50
	Keller, Joshua	854.50	\$500	\$427,250.00
	Lee, Sharon	66.25	\$375	\$24,843.75

	<u>Timekeeper Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
	Miarmi, Michael	436.25	\$290	\$126,512.50
	Minerva, Domenico	1,553.25	\$400	\$621,300.00
	Parr, Mary E.	1.00	\$300	\$300.00
	Pepper, David	473.25	\$350	\$165,637.50
	Quinn, M.J.	28.75	\$375	\$10,781.25
	Weiss, Adam D.	10.00	\$300	\$3,000.00
Counsel				
	Andrejkovics, Paul J.	19.75	\$675	\$13,331.25
	Miller, Arthur R.	3.75	\$995	\$3,731.25
	Scoville, William	137.75	\$550	\$75,762.50
	Spencer, Michael C.	2.00	\$875	\$1,750.00
	Sturman, Deborah M.	86.00	\$440	\$37,840.00
Temporary Attorney				
	Abramson, Gerda	3,510.00	\$340	\$1,193,400.00
	Barbaccia, Daniel	1,341.75	\$320	\$429,360.00
	Claxton, Monique	5,038.50	\$365	\$1,839,052.50
	DeMuth, Bradley	1,263.50	\$400	\$505,400.00
	Dynowicz, Bradley	2,061.00	\$320	\$659,520.00
	Edgecomb, Sarah	1,228.25	\$300	\$368,475.00
	Feinsot, Ellen	1,121.50	\$435	\$487,852.50
	Gallagher, Timothy	276.80	\$300	\$83,040.00
	Golaszewski, John	107.00	\$385	\$41,195.00
	Greenberg, Sarah	1,351.50	\$280	\$378,420.00
	Gutierrez, James	676.25	\$340	\$229,925.00
	Harris, Bradley	1,428.00	\$250	\$357,000.00
	Holman, Lisa	911.50	\$400	\$364,600.00
	Martin, Christopher	102.75	\$365	\$37,503.75
	Miske, Michael	1,472.75	\$395	\$581,736.25
	Myslinska, Dagmar	526.00	\$340	\$178,840.00
	Orakwusi, Ada	1,271.75	\$260	\$330,655.00
	Pizza, Mary Jean	1,204.00	\$430	\$517,720.00
	Pollard, Melinda	1,442.25	\$475	\$685,068.75
	Restieaux-Louis, Danielle	346.25	\$385	\$133,306.25
	Rossi, Elissa	1,082.00	\$385	\$416,570.00
	Schaefer, Jill	1,127.50	\$340	\$383,350.00
	Smith, Ashley	1,419.00	\$320	\$454,080.00

	<u>Timekeeper Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
	Spilka, Matthew	7,483.75	\$460	\$3,442,525.00
	Vitayanon, Jack	713.75	\$395	\$281,931.25
	Westfield, Edward	1,495.00	\$395	\$590,525.00
	Zulandt, Michael	4,258.00	\$320	\$1,362,560.00
	Paralegal/Temporary Paralegal			
	Ahn, Annika	3.25	\$275	\$893.75
	Auer, Jeffrey	3.75	\$205	\$768.75
	Barrett, Meredith	3.00	\$325	\$975.00
	Baum, Jeff	1.00	\$325	\$325.00
	Benitez, Nicole	4.00	\$225	\$900.00
	Bettinelli, Lauren	53.50	\$235	\$12,572.50
	Boria, Cheryl	18.00	\$225	\$4,050.00
	Brogan, James P.	56.00	\$185	\$10,360.00
	Bruijneel, Melissa	9.00	\$255	\$2,295.00
	Burzin, Beth	20.50	\$225	\$4,612.50
	Caspelich, Stephanie	8.00	\$185	\$1,480.00
	Chaffins, Cecille	1.75	\$325	\$568.75
	Chang, Emily	17.00	\$185	\$3,145.00
	Chistyakov, Viktor	13.00	\$240	\$3,120.00
	Chua, Angela	13.75	\$325	\$4,468.75
	Diponio, Livia	55.00	\$275	\$15,125.00
	Dube, Newman	643.25	\$300	\$192,975.00
	Engel, Matthew	1.25	\$220	\$275.00
	Grabowski, Lauren	24.75	\$220	\$5,445.00
	Hart, Jai (Tammy)	10.25	\$205	\$2,101.25
	Hayden, Brian	3.50	\$215	\$752.50
	Henry, Clarence	57.00	\$275	\$15,675.00
	Hutchison, Evan	13.25	\$215	\$2,848.75
	Joseph, Jason A.	51.25	\$325	\$16,656.25
	Joshi, Sangeeta	3.00	\$235	\$705.00
	Kelley, Jamuna	43.50	\$225	\$9,787.50
	Klempner, Seth	0.50	\$225	\$112.50
	Kornhiser, Deirdre	28.50	\$325	\$9,262.50
	Laird, Corrinne	1.75	\$225	\$393.75
	Lei, Ji	68.75	\$205	\$14,093.75
	Leifer, David	6.50	\$325	\$2,112.50
	Leon, Lucy	3.00	\$205	\$615.00

	<u>Timekeeper Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
	Lewis, Gregory	51.50	\$225	\$11,587.50
	Liston, Lesa	127.00	\$205	\$26,035.00
	Maher, Meghan	6.00	\$270	\$1,620.00
	Malonzo, Francisco R.	35.00	\$240	\$8,400.00
	McCook, Austin	2.50	\$225	\$562.50
	Michael, Stephanie	289.00	\$275	\$79,475.00
	Nikolova, Ekaterina	2.50	\$235	\$587.50
	Peskin, Zachary	93.50	\$275	\$25,712.50
	Pollydore, Anwar	21.25	\$215	\$4,568.75
	Purcell, Matt	5.00	\$255	\$1,275.00
	Rogers, Jason	31.25	\$215	\$6,718.75
	Rossi, Milana L.	35.00	\$255	\$8,925.00
	Rubenstein, Julie	29.75	\$225	\$6,693.75
	Sclafani, David	4.50	\$325	\$1,462.50
	Sczesnik, Julie	1,527.50	\$215	\$328,412.50
	Sheetz, Audrey	5.75	\$255	\$1,466.25
	Shepherd, Joseph J.	0.50	\$235	\$117.50
	Sikri, Rohan	615.00	\$235	\$144,525.00
	Simkovic, Michael	2.50	\$185	\$462.50
	Sosa, Maria	26.50	\$215	\$5,697.50
	Stadelmann, Kelly Ann	2.50	\$185	\$462.50
	Subramanian, Lila	2.50	\$205	\$512.50
	Takhteyev, Andrei	35.75	\$225	\$8,043.75
	Tashjian, Gary	1,679.05	\$225	\$377,786.25
	Welo, Aaron	18.00	\$225	\$4,050.00
	Wertzer, Rebecca	475.00	\$225	\$106,875.00
	Willeford, James	9.50	\$235	\$2,232.50
	Yi, Katherine	19.00	\$285	\$5,415.00
	Yunis, Bernardita	6.00	\$220	\$1,320.00
	Zaid, Abdullah	2.00	\$215	\$430.00
	Investigator			
	Brash, Jason	29.00	\$335	\$9,715.00
	Buda, Jacqueline	1.00	\$360	\$360.00
	Burse, W. S.	49.00	\$550	\$26,950.00
	Buzga, Kara	62.50	\$355	\$22,187.50
	Colby, Patrick T.	1.00	\$360	\$360.00
	Hart, Cathy	799.00	\$360	\$287,640.00

	<u>Timekeeper Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
	Petrick, Michelle A.	19.00	\$475	\$9,025.00
	Weintraub, Jeffrey	265.50	\$475	\$126,112.50
Financial Analyst				
	Stone, Gregory	26.00	\$385	\$10,010.00
	Weinschel, Adam J.	72.00	\$240	\$17,280.00
	Yesilevich, Allen	3.00	\$350	\$1,050.00
Economic Analyst				
	Wankel, William	15.00	\$287	\$4,302.50
Litigation Support/Temp. Litigation Support				
	Bass, Najmah	26.00	\$225	\$5,850.00
	Davydov, Tim	4.00	\$260	\$1,040.00
	DeJesus, Ricardo	10.50	\$250	\$2,625.00
	Fung, Kurt	1.00	\$205	\$205.00
	Kim, James	1.00	\$240	\$240.00
	Lief, Stephen	1.25	\$300	\$375.00
	McVoy, Paul	20.50	\$360	\$7,380.00
	Meisel, John	4.00	\$225	\$900.00
	Naumov, Eugene	71.00	\$300	\$21,300.00
	Porras, Christine	0.80	\$300	\$240.00
	Posternak, Janet	15.50	\$260	\$4,030.00
	Rosengarten, Harold	1.00	\$260	\$260.00
	Weng, Stephanie	6.25	\$225	\$1,406.25
Investigator Analyst and Class Communication				
	Costello, Janet L.	11.00	\$190	\$2,090.00
	Feerick, Sheila	38.00	\$350	\$13,300.00
	Moy, Edward	1.00	\$240	\$240.00
	Swihart, Jamie	10.00	\$235	\$2,350.00
	Thompson, Chris	27.00	\$325	\$8,775.00
Summer Associate/Summer Law Clerk/Summer Intern				
	Berns, David	113.00	\$260	\$29,380.00
	Conn, Robert Alan	25.75	\$250	\$6,437.50
	DeMatteis, Jared	0.50	\$175	\$87.50

	<u>Timekeeper Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
	Eisenthal, Andrew	18.00	\$175	\$3,150.00
	Kaftal, Max	5.50	\$185	\$1,017.50
	Levy, Rebekka C.	19.50	\$175	\$3,412.50
	Liharska, Lora	6.50	\$255	\$1,657.50
	Louis, Ashley	0.50	\$185	\$92.50
Intern/Law Clerk				
	McCown, James E.	8.50	\$230	\$1,955.00
	Stemerman, George	3.00	\$225	\$675.00
Document Clerk				
	Cox, Lindbergh	10.25	\$300	\$3,075.00
	Gonzalez, Hector	0.25	\$240	\$60.00
	Lopez, Milagros	1.50	\$240	\$360.00
	McGourty, Matthew	1.50	\$300	\$450.00
	Michaud, Frantz	19.75	\$240	\$4,740.00
	Ortiz, Jessica	63.40	\$300	\$19,020.00
	Velazquez, Ray	104.50	\$300	\$31,350.00
Library Service				
	Davila, Ed	92.00	\$200	\$18,400.00
	Goetz, Charles	271.75	\$300	\$81,525.00
	Morales, Tessa	32.25	\$145	\$4,676.25
Totals		71,483.80		\$29,301,018.75

EXHIBIT 2

In re Merck & Co., Inc. Securities Litigation,
 MDL No. 1658, Case No. 2:05-CV-1151-SRC-CLW, Case No. 2:05-CV-02367-SLC-CLW

MILBERG LLP

EXPENSE REPORT -- Inception through February 15, 2016

CATEGORY	AMOUNT
Court Fees	\$2,565.80
PSLRA Notice Costs	\$540.00
On-Line Legal Research	\$348,055.94
On-Line Factual Research	\$0.00
Special Publications	\$2,164.26
Document Management/Litigation Support	\$36,890.78
Telephone/Faxes	\$1,159.83
Postage & Express Mail	\$4,498.70
Hand Delivery Charges	\$7,311.33
Local Transportation	\$16,251.59
Internal Copying	\$70,033.45
Outside Copying	\$2,331.54
Out of Town Travel	\$21,314.67
Working Meals	\$31,410.62
Depositions/Meetings Hosting	\$0.00
Experts	\$230,809.43
Specialized & Local Counsel	\$0.00
Mediation Fees	\$0.00
Court Reporters and Transcripts	\$1,079.04
Contributions to Plaintiffs' Litigation Fund	\$1,507,858.87
TOTAL EXPENSES:	\$2,284,275.85



EXHIBIT 3

MILBERG LLP

THE FIRM'S PRACTICE AND ACHIEVEMENTS

Milberg LLP, founded in 1965, was one of the first law firms to prosecute class actions in federal courts on behalf of investors and consumers. The Firm pioneered this type of litigation and is widely recognized as a leader in defending the rights of victims of corporate and other large-scale wrongdoing. The Firm's practice focuses on the prosecution of class and complex actions in many fields, including securities, corporate fiduciary, ERISA, consumer, False Claims Act, antitrust, bankruptcy, mass tort, and human rights litigation. The Firm has offices in New York City, Los Angeles, and Detroit.

In its early years, the Firm built a new area of legal practice in representing shareholder interests under the then recently amended Rule 23 of the Federal Rules of Civil Procedure, which allowed securities fraud cases, among others, to proceed as class actions. In the following decades, the Firm obtained decisions establishing important legal precedents in many of its areas of practice and prosecuted cases that set benchmarks in terms of case theories, organization, discovery, trial results, methods of settlement, and amounts recovered and distributed to clients and class members.

Important milestones in the Firm's early years include the Firm's involvement in the *U.S. Financial* litigation in the early 1970s, one of the earliest large class actions, which resulted in a \$50 million recovery for purchasers of the securities of a failed real estate development company; the Ninth Circuit decision in *Blackie v. Barrack* in 1975, which established the fraud-on-the-market doctrine for securities fraud actions; the Firm's co-lead counsel position in the *In re Washington Public Power Supply System Securities Litigation*, a seminal securities fraud action in the 1980s in terms of complexity and amounts recovered; the representation of the Federal Deposit Insurance Corporation in a year-long trial to recover banking losses from a major accounting firm, leading to a precedent-setting global settlement; attacking the Drexel-Milken "daisy chain" of illicit junk-bond financing arrangements with numerous cases that resulted in substantial recoveries for investors; representing life insurance policyholders defrauded by "vanishing premium" and other improper sales tactics and obtaining large recoveries from industry participants; and ground-breaking roles in the multi-front attack on deception and other improper activities in the tobacco industry.

Milberg remains at the forefront in its areas of practice. Significant litigation results include: *In re Vivendi Universal, S.A. Securities Litigation* (post-verdict proceedings pending with claims valued at over \$1 billion); *In re Tyco International, Ltd. Securities Litigation* (\$3.2 billion settlement); *In re Nortel Networks Corp. Securities Litigation* (settlement for cash and stock valued at \$1.142 billion); *In re Lucent Technologies, Inc. Securities Litigation* (\$600 million recovery); *In re Raytheon Co. Securities Litigation* (\$460 million recovery); *In re Managed Care Litigation* (recoveries over \$1 billion and major changes in HMO practices); the *In re Washington Public Power Supply System Securities Litigation* (settlements totaling \$775 million), and the *In re NASDAQ Market-Makers Antitrust Litigation* (\$1 billion in recoveries). Milberg has been responsible for recoveries valued at approximately \$55 billion during the life of the Firm.

The Firm's lawyers come from many different professional backgrounds. They include prosecutors, private defense attorneys, and government lawyers. The Firm's ability to pursue claims



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against defendants is augmented by its team of investigators, headed by a 27-year veteran of the Federal Bureau of Investigation, as well as in-house staff with expertise in forensic accounting and financial analysis. In addition, Milberg is unique among its peers with its in-house E-Discovery Practice Group. The Firm is regularly recognized as one of the nation's leading plaintiffs' law firms by the *National Law Journal*, *Legal 500*, *Chambers USA*, and *Super Lawyers*, among others.

For more information, please visit www.milberg.com.



JUDICIAL COMMENDATIONS

Milberg has been commended by countless judges throughout the country for the quality of its representation.

Milberg partners played leading roles in representing class plaintiffs in a nearly four-month jury trial in *In re Vivendi Universal, S.A. Securities Litigation*, No. 02-5571 (S.D.N.Y.), which in January 2010 resulted in a jury verdict for an international class of defrauded investors (with claims valued at over \$1 billion; claims procedure pending). At the close of the trial, Judge Richard Holwell commented:

I can only say that this is by far the best tried case that I have had in my time on the bench. I don't think either side could have tried the case better than these counsel have.

In approving a \$3.2 billion securities fraud settlement, one of the largest in history, in *In re Tyco International, Ltd. Securities Litigation*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007), Judge Barbadoro lauded Milberg's efforts as co-lead counsel:

This was an extraordinarily complex and hard-fought case. Co-Lead Counsel put massive resources and effort into the case for five long years, accumulating [millions of dollars in expenses] and expending [hundreds of thousands of hours] on a wholly contingent basis. But for Co-Lead Counsel's enormous expenditure of time, money, and effort, they would not have been able to negotiate an end result so favorable for the class. . . . Lead Counsel's continued, dogged effort over the past five years is a major reason for the magnitude of the recovery. . . .

In *Simon v. KPMG LLP*, No. 05-3189, 2006 U.S. Dist. LEXIS 35943, at *18, 30-31 (D.N.J. June 2, 2006), a case in which Milberg served as class counsel, Judge Cavanaugh, in approving the \$153 million settlement, found that "Plaintiffs . . . retained highly competent and qualified attorneys" and that "[t]he Initial Complaint . . . demonstrates that [Milberg] expended considerable time and effort with the underlying factual and legal issues in this case before even filing this lawsuit. . . . Settlement discussions were conducted over a period of some fourteen months with the supervision and guidance of Judges Politan and Weinstein, and are evidence of [Milberg's] appreciation of the merits and complexity of this litigation."

In *In re Lucent Technologies, Inc. Securities Litigation*, 307 F. Supp. 2d 633, 641-47 (D.N.J. 2004), Judge Pisano issued an opinion approving the \$600 million settlement and complimenting Milberg's work as co-lead counsel for the class as follows:

[T]he attorneys representing the Plaintiffs are highly experienced in securities class action litigation and have successfully prosecuted numerous class actions throughout the United States. They are more than competent to conduct this action. Co-Lead Counsel diligently and aggressively represented the Plaintiffs before this Court and in the negotiations that resulted in the Settlement. . . . [T]he efforts and ingenuity of Lead Plaintiffs and Lead Counsel resulted in an extremely valuable Settlement for the Benefit of the Class.

In *In re Rite Aid Corp. Securities Litigation*, 269 F. Supp. 2d 603, 611 (E.D. Pa. 2003), Judge Dalzell commented on the skill and efficiency of the Milberg attorneys litigating this complex case:

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At the risk of belaboring the obvious, we pause to say a specific word about . . . the skill and efficiency of the attorneys involved. [Milberg was] extraordinarily deft and efficient in handling this most complex matter. [T]hey were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write-down of over \$1.6 billion in previously reported Rite Aid earnings. . . . In short, it would be hard to equal the skill class counsel demonstrated here.

In *In re IKON Office Solutions, Inc. Securities Litigation*, 194 F.R.D. 166, 195 (E.D. Pa. 2000), Judge Katz commented on Milberg's skill and professionalism as one of plaintiffs' co-lead counsel:

First, class 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. . . .

Of particular note in assessing the quality of representation is the professionalism with which all parties comported themselves. 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. This professionalism was also displayed in class counsel's willingness to cooperate with other counsel when appropriate. . . . This cooperation enabled the parties to focus their disputes on the issues that mattered most and to avoid pointless bickering over more minor matters.

In *In re NASDAQ Market-Makers Antitrust Litigation*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998), in an opinion approving settlements totaling over \$1.027 billion, Judge Sweet commented:

Counsel for the Plaintiffs are preeminent in the field of class action litigation, and the roster of counsel for Defendants includes some of the largest, most successful and well regarded law firms in the country. It is difficult to conceive of better representation than the parties to this action achieved.

Judicial recognition of Milberg's excellence is not limited to courts within the United States. In *In re Flag Telecom Holdings, Ltd. Securities Litigation*, No. 02-3400 (S.D.N.Y. 2009), Milberg litigated a discovery dispute before the English Royal High Court of Justice, Queens Bench Division, which recognized the Milberg attorney handling the matter as a "Grade A" lawyer and a "vital cog in the machine." Likewise, in *Sharma v. Timminco Ltd.*, 09-378701 (Can. Ont. Sup. Ct. 2009), Canada's Ontario Superior Court of Justice recognized Milberg's "fine reputation and excellent credentials" in connection with Milberg's representation in a securities case pending in Canada.

Milberg has also been recognized for its commitment to public service. In lauding Milberg's work representing victims of the September 11th attack on the World Trade Center in connection with the September 11 Victims Compensation Fund, Special Master Kenneth R. Feinberg stated the following:

Once again, as I have learned over the years here in New York, the [Milberg] firm steps up to the



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plate in the public interest time and time again. The social conscience of the [Milberg] firm, acting through its excellent associates and partners, help deal with crises that confront the American people and others, and I am personally in the debt of Milberg . . . for the work that it is doing [T]hey are second among none in terms of the public interest, and I'm very, very grateful, not only to you guys for doing this, but . . . for the firm's willingness to help out. I wanted to let everybody know that.

In re September 11 Victim Compensation Fund, Preliminary Hearing, Claim No. 212-003658 (Dec. 9, 2003).



NOTEWORTHY RESULTS

The quality of Milberg's representation is further evidenced by the Firm's numerous significant recoveries, some of which are described below.

- ***In re Chase Bank USA, N.A. "Check Loan" Contract Litig.***, No. 09-2032 (N.D. Cal.). Milberg served on the Executive Committee representing the class in this action against JP Morgan Chase & Co. The complaint alleged that Chase improperly increased by 150% the minimum monthly payment requirement for customers who entered into balance transfer loans with "fixed" interest rates that were guaranteed to remain so for the "life of the loan." Milberg and its co-counsel, achieved a \$100 million settlement for the class.
- ***In re Vivendi Universal, S.A. Securities Litigation***, No. 02-5571 (S.D.N.Y.), Milberg lawyers were instrumental in obtaining a jury verdict for an international class of defrauded investors after a trial lasting nearly four months. The jury found Vivendi liable for 57 false or misleading class period statements. The case is now in post-verdict proceedings. Even with claimants who made foreign purchases removed from the class after the Supreme Court's *Morrison* decision, total damage claims exceed \$1 billion.
- ***Mason v. Medline***, No. 07-05615 (N.D. Ill.). Milberg successfully represented a healthcare worker in a False Claims Act case against his former employer, Medline Industries, Inc., one of the nation's largest suppliers of medical and surgical products, along with its charitable arm, The Medline Foundation. The suit alleged that Medline engaged in a widespread illegal kickback scheme targeting hospitals and other healthcare providers that purchase medical products paid for by federal healthcare programs. Although a party to the settlement agreement, the U.S. Department of Justice chose not to intervene in the lawsuit. Milberg pursued the case on a non-intervened basis and recovered \$85 million on behalf of the federal government -- one of the largest settlements of a False Claims Act case in which the government declined to intervene. The whistleblower was awarded 27.5% of the proceeds.
- ***Blessing v. Sirius XM Radio, Inc.***, No. 09-10035 (S.D.N.Y.). This antitrust case stemmed from the 2008 merger of Sirius Satellite Radio, Inc. and XM Satellite Holdings, Inc. that created Sirius XM, the nation's only satellite radio company. The plaintiffs alleged that the merger of the only two U.S. satellite radio providers was an illegal move to eliminate competition and monopolize the satellite radio market. Before the merger, Sirius CEO Mel Karmazin convinced regulators not to block the deal by promising that "the combined company will not raise prices" and that the merger would actually result in "lower prices and more choice for the consumer." After the merger, Sirius quickly reversed course, raised prices by 15-40%, and eliminated multiple radio stations. Milberg achieved a settlement for the class valued at \$180 million.
- ***In re Initial Public Offering Securities Litigation***, No. 21-92 (S.D.N.Y.). Milberg represented investors in 310 consolidated securities actions arising from an alleged market manipulation scheme. Plaintiffs alleged, among other things, that approximately 55 defendant investment banks, in dealing with certain of their clients, conditioned certain allocations of shares in initial public offerings on the subsequent purchase of more shares in the aftermarket, thus artificially boosting the prices of the subject securities. This fraudulent scheme, plaintiffs alleged, was a major contributing factor in the now infamous technology "bubble" of the late 1990s and early 2000s. As a member of the court-appointed Plaintiffs' Executive Committee, and with certain partners



appointed by the court as liaison counsel, Milberg oversaw the efforts of approximately 60 plaintiffs' firms in combating some of the most well-respected defense firms in the nation. In granting final approval to a \$586 million settlement on October 5, 2009, the court described the law firms comprising the Plaintiffs' Executive Committee as the "cream of the crop."

- ***Carlson v. Xerox***, No. 00-1621 (D. Conn). Milberg served as co-lead counsel in this lawsuit, which consolidated 21 related cases alleging violations of the federal securities laws. Plaintiffs alleged that Xerox and several of its top officers reported false financial results during the class period and failed to adhere to the standard accounting practices the company claimed to have followed. In the course of litigating plaintiffs' claims, Milberg engaged in arduous and exhaustive factual discovery, including review and analysis of more than four million pages of complex accounting and auditing documents and thousands of pages of SEC deposition transcripts. Plaintiffs' claims survived three motions to dismiss and a motion for summary judgment, ultimately resulting in a \$750 million settlement, which received final approval on January 14, 2009.
- ***In re Tyco International Ltd., Securities Litigation***, MDL 1335 (D.N.H.). Milberg served as co-lead counsel in this litigation, which involved claims under the Securities Act of 1933 and the Securities Exchange Act of 1934 against Tyco and its former CEO, CFO, general counsel, and certain former directors arising out of allegations of Tyco's \$5.8 billion overstatement of income and \$900 million in insider trading, plus hundreds of millions of dollars looted by insiders motivated to commit the fraud. Plaintiffs also asserted claims under the 1933 and 1934 Acts against PricewaterhouseCoopers LLP for allegedly publishing false audit opinions on Tyco's financial statements during the class period and failing to audit Tyco properly, despite knowledge of the fraud. On December 19, 2007, the court approved a \$3.2 billion settlement of the plaintiffs' claims and praised the work of co-lead counsel.
- ***In re Sears, Roebuck & Co. Securities Litigation***, No. 02-7527 (N.D. Ill.). This case involved allegations that Sears concealed material adverse information concerning the financial condition, performance, and prospects of Sears' credit card operations, resulting in an artificially inflated stock price. The approved settlement provided \$215 million to compensate class members.
- ***In re General Electric Co. ERISA Litigation***, No. 04-1398 (N.D.N.Y.). This ERISA class action was brought on behalf of current and former participants and beneficiaries of the General Electric ("G.E.") 401(k) Plan. Milberg, serving as co-lead counsel, achieved a \$40 million settlement on behalf of current and former G.E. employees who claimed that the company's 401(k) Plan fiduciaries imprudently invested more than two-thirds of the Plan's assets in company stock. The settlement included important structural changes to G.E.'s 401(k) plan valued at more than \$100 million.
- ***In re Biovail Corp. Securities Litigation***, No. 03-8917 (S.D.N.Y.). Milberg, representing Local 282 Welfare Trust Fund and serving as co-lead counsel, litigated this complex securities class action brought on behalf of a class of defrauded investors, alleging that defendants made a series of materially false and misleading statements concerning Canadian company Biovail's publicly reported financial results and the company's then new hypertension/blood pressure drug, Cardizem LA. This was a highly complex case in which counsel took numerous depositions across the U.S. and Canada and obtained documents from defendants and several third-parties, including, among others, UBS, McKinsey & Co., and Merrill Lynch. Milberg obtained a \$138 million settlement for the class, and Biovail agreed to institute significant corporate governance changes.



- ***In re Nortel Networks Corp. Securities Litigation***, No. 01-1855 (S.D.N.Y.). In this federal securities fraud class action, Milberg served as lead counsel for the class and the court-appointed lead plaintiff, the Trustees of the Ontario Public Service Employees' Union Pension Plan Trust Fund. In certifying the class, the court specifically rejected the defendants' argument that those who traded in Nortel securities on the Toronto Stock Exchange (and not the New York Stock Exchange) should be excluded from the class. The Second Circuit denied the defendants' attempted appeal. On January 29, 2007, the court approved a settlement valued at \$1.142 billion.
- ***In re American Express Financial Advisors Securities Litigation***, No. 04-1773 (S.D.N.Y.). This case involved allegations that American Express Financial Advisors violated securities laws by representing to class members that the company would provide tailored financial advice, when the company actually provided "canned" financial plans and advice designed to steer clients into American Express and certain nonproprietary mutual funds. The case settled for \$100 million, with the settlement agreement requiring that the company institute remedial measures.
- ***In re Lucent Technologies, Inc. Securities Litigation***, No. 00-621 (D.N.J.). In this federal securities fraud action in which Milberg served as co-lead counsel, plaintiffs alleged, *inter alia*, that Lucent and its senior officers misrepresented the demand for Lucent's optical networking products and improperly recognized hundreds of millions of dollars in revenues. The settlement provided compensation of \$600 million to aggrieved shareholders who purchased Lucent stock between October 1999 and December 2000.
- ***In re Raytheon Co. Securities Litigation***, No. 99-12142 (D. Mass.). This case, in which Milberg served as lead counsel, concerned claims that a major defense contractor failed to write down assets adequately on long term construction contracts. In May 2004, Raytheon and its auditor, PricewaterhouseCoopers LLP, settled for a total of \$460 million.
- ***In re Rite Aid Corp. Securities Litigation***, No. 99-1349 (E.D. Pa.), in which Milberg served as co-lead counsel, the plaintiffs asserted federal securities fraud claims arising out of allegations that Rite Aid failed to disclose material problems with its store expansion and modernization program, resulting in artificially inflated earnings. Judge Dalzell approved class action settlements totaling \$334 million against Rite Aid (\$207 million), KPMG (\$125 million), and certain former executives of Rite Aid (\$1.6 million).
- ***In re CMS Energy Corp. Securities Litigation***, No. 02-72004 (E.D. Mich.), a federal securities fraud case arising out of alleged round-trip trading practices by CMS Energy Corporation, Judge Steeh approved a cash settlement of more than \$200 million. Milberg served as co-lead counsel in this litigation.
- ***In re Deutsche Telekom AG Securities Litigation***, No. 00-9475 (S.D.N.Y.). Milberg served as co-lead counsel in this securities class action alleging that Deutsche Telekom issued a false and misleading registration statement, which improperly failed to disclose its plans to acquire VoiceStream Wireless Corporation and materially overstated the value of the company's real estate assets. On June 14, 2005, Judge Buchwald approved a \$120 million cash settlement.
- ***In re CVS Corp. Securities Litigation***, No. 01-11464 (D. Mass.). Milberg served as co-lead counsel in this class action alleging that defendants engaged in a series of accounting improprieties and issued false and misleading statements which artificially inflated the price of CVS stock. On September 7, 2005, Judge Tauro approved a \$110 million cash settlement for shareholders who acquired CVS stock between February 6, 2001, and October 30, 2001.
- ***Scheiner v. i2 Technologies, Inc.***, No. 01-418 (N.D. Tex.). Milberg served as lead



counsel in this securities fraud case, filed on behalf of certain purchasers of i2 common stock. The plaintiffs alleged that certain of the company's senior executives made materially false and misleading statements and omissions in i2's public statements and other public documents regarding i2's software, thereby artificially inflating the price of i2's common stock. In May 2004, Milberg recovered a settlement of \$84.85 million.

- ***In re Royal Dutch/Shell Transport ERISA Litigation***, No. 04-1398 (D.N.J.). This was an ERISA breach of fiduciary duty class action against the Royal Dutch/Shell Oil Group of Companies on behalf of certain of the companies' U.S. employee investment plan participants. Notably, the \$90 million settlement included important provisions regarding the monitoring and training of individuals appointed to be ERISA fiduciaries.
- Milberg served as co-lead counsel in ***Irvine v. ImClone Systems, Inc.***, No. 02-0109 (S.D.N.Y.), in which a \$75 million cash settlement was approved by the court in July 2005. Plaintiffs alleged that ImClone issued a number of misrepresentations and fraudulent statements to the market regarding the likelihood of approval of the drug Erbitux, thereby artificially inflating the price of ImClone stock.
- In ***In re W.R. Grace & Co. (Official Committee of Asbestos Personal Injury Claimants v. Sealed Air Corp. and Official Committee of Asbestos Personal Injury Claimants v. Fresenius Medical Care Holdings, Inc.)***, Nos. 02-2210 and 02-2211 (D. Del.), Milberg acted as lead counsel for the asbestos personal injury and property damage committees in two separate fraudulent conveyance actions within the W.R. Grace bankruptcy. The actions sought to return the assets of Sealed Air Corporation and Fresenius Medical Care Holdings (each of which had been Grace subsidiaries pre-bankruptcy) to the W.R. Grace bankruptcy estate. Complaints in both cases were filed in mid-March 2002, and agreements in principle in both cases

were reached on November 27, 2002, the last business day before trial was set to begin in the Sealed Air matter. The two settlements, which consisted of both cash and stock, were valued at approximately \$1 billion.

- ***Nelson v. Pacific Life Insurance Co.***, No. 03-131 (S.D. Ga.). Milberg served as lead counsel in this securities fraud class action arising from allegations of deceptive sales of deferred annuity tax shelters to investors for placement in retirement plans that are already tax-qualified. The court approved a \$60 million settlement of claims arising from such deception.
- The Firm was lead counsel in ***In re Prudential Insurance Co. Sales Practice Litigation***, No. 95-4704 (D.N.J.), a landmark case challenging Prudential's sales practices that resulted in a recovery exceeding \$4 billion for certain policyholders. The settlement was approved in a comprehensive Third Circuit decision.
- In ***In re NASDAQ Market-Makers Antitrust Litigation***, MDL 1023 (S.D.N.Y.), Milberg served as co-lead counsel for a class of investors. The class alleged that the NASDAQ market-makers set and maintained wide spreads pursuant to an industry-wide conspiracy in one of the largest and most important antitrust cases in recent history. After more than three years of intense litigation, the case settled for a total of \$1.027 billion, one of the largest antitrust settlements at that time.
- ***In re Washington Public Power Supply System Securities Litigation***, MDL 551 (D. Ariz.) was a massive securities fraud litigation in which Milberg served as co-lead counsel for a class that obtained settlements totaling \$775 million, the largest-ever securities fraud settlement at that time, after several months of trial.
- ***In re Exxon Valdez***, No. 89-095 (D. Alaska) and ***In re Exxon Valdez Oil Spill Litigation***, 3 AN-89-2533 (Alaska Sup. Ct. 3d Jud. Dist.). Milberg was a member of the Plaintiffs' Coordinating Committee and co-



chair of the Plaintiffs' Law Committee in the massive litigation resulting from the Exxon Valdez oil spill in Alaska in March 1989. Plaintiffs obtained a jury verdict of \$5 billion, which, after years of appeals by Exxon, was reduced to approximately \$500 million by the United States Supreme Court. Recently the United States Court of Appeals for the Ninth Circuit held that plaintiffs are entitled to post judgment interest on the award in the amount of approximately \$470 million.

- In *In re Managed Care Litigation*, MDL 1334 (S.D. Fla.). Final approval of a settlement between a nationwide class of physicians and defendant CIGNA Healthcare, valued in excess of \$500 million, was granted on April 22, 2004. A similar settlement valued in excess of \$400 million involving a nationwide class of physicians and Aetna was approved by the court on November 6, 2003. The settlements stem from a series of lawsuits filed in both state and federal courts by physicians and medical associations against many of the nation's largest health insurers arising from allegations that the insurers engaged in a fraudulent scheme to systematically obstruct, reduce, delay, and deny payments and reimbursements to health care providers. These settlements brought sweeping changes to the health care industry and significant improvements to physician-related business practices.
- In *In re Sunbeam Securities Litigation*, No. 98-8258 (S.D. Fla.). Milberg acted as co-lead counsel for the class. Plaintiffs alleged that Sunbeam, its auditor, and its management engaged in a massive accounting fraud which led to a restatement of over three years of previously reported financial results. The court approved a combined settlement of more than \$140 million, including a \$110 million settlement with Arthur Andersen LLP, Sunbeam's auditor. At that time, the Andersen settlement was one of the largest amounts ever paid by a public accounting firm to settle federal securities claims. The settlement with the individuals was achieved on the eve of trial, and ended almost four years of litigation against Andersen and Sunbeam's insiders, including Albert Dunlap, Sunbeam's former Chairman and CEO. The settlement included a personal contribution from Dunlap of \$15 million.
- In *In re Triton Energy Limited Securities Litigation*, No. 98-256 (E.D. Tex.). Plaintiffs alleged that defendants misrepresented, among other things, the nature, quality, classification, and quantity of Triton's Southeast Asia oil and gas reserves during the period March 30, 1998 through July 17, 1998. The case settled for \$42 million.
- In *In re Thomas & Betts Securities Litigation*, No. 00-2127 (W.D. Tenn.), the plaintiffs, represented by Milberg as co-lead counsel, alleged that Thomas & Betts engaged in a series of accounting improprieties while publicly representing that its financial statements were in compliance with GAAP, and failed to disclose known trends and uncertainties regarding its internal control system and computer and information systems. The case settled for \$46.5 million dollars in cash from the company and \$4.65 in cash from its outside auditor, KPMG.
- In *In re MTC Electronic Technologies Shareholder Litigation*, No. 93-0876 (E.D.N.Y.). Plaintiffs alleged that defendants issued false and misleading statements concerning, among other things, purported joint venture agreements to establish telecommunications systems and manufacture telecommunications equipment in China. The court approved a settlement of \$70 million, including \$65 million in cash and \$5 million worth of MTC Class A shares with "put" rights.
- In *In re PaineWebber Limited Partnerships Litigation*, No. 94-8547 (S.D.N.Y.). Milberg represented investors alleging that PaineWebber developed, marketed, and operated numerous investment partnerships as part of an ongoing conspiracy to defraud investors and



enrich itself through excessive fees and commissions over a twelve-year period. On March 20, 1997, Judge Sidney Stein approved a \$200 million settlement, consisting of \$125 million in cash and \$75 million worth of guarantees and fee waivers.

- In *Andrews v. AT&T*, No. 91-175 (S.D. Ga.) the Firm represented a class of persons who paid for premium-billed “900-number” calls that involved allegedly deceptive games of chance, starting in 1993. Defendants included major long-distance companies, which approved the call programs and billed for the calls. Defendant MCI settled for \$60 million in benefits. The class against AT&T was decertified on appeal and the Firm prosecuted the individual plaintiffs’ claims, obtaining a jury verdict in 2003 for compensatory and punitive damages.

In the context of shareholder derivative actions, Milberg has protected shareholder investments by effectuating important changes in corporate governance as part of the global settlement of such cases. Cases in which such changes were made include:

- *In re Comverse Technology, Inc. Derivative Litigation*, No. 601272/2006 (N.Y. Sup. Ct. N.Y. Cnty.). On December 28, 2009, Milberg announced a \$62 million settlement for the derivative plaintiffs, which was approved by the Court on June 23, 2010. The settlement also resulted in significant corporate governance reforms, including the replacement of the offending directors and officers with new independent directors and officers; the amendment of the company’s bylaws to permit certain long-term substantial shareholders to propose, in the Company’s own proxy materials, nominees for election as directors (proxy access); and the requirement that all equity

grants be approved by both the Compensation Committee and a majority of the non-employee members of the Board.

- *In re Topps Co., Inc. Shareholder Litig.*, No. 600715/2007 (N.Y. Sup. Ct. N.Y. Cnty. Apr. 17, 2007). Milberg served as co-lead counsel in this transactional case, which led to a 2007 decision vindicating the rights of shareholders under the rules of comity and the doctrine of *forum non conveniens* to pursue claims in the most relevant forum, notwithstanding the fact that jurisdiction might also exist in the state of incorporation. This case was settled in late 2007 in exchange for a number of valuable disclosures for the class.
- *In re Marketspan Corporate Shareholder Litigation*, No. 15884/98 (N.Y. Sup. Ct. Nassau Cnty.). The settlement agreement in this derivative case required modifications of corporate governance structure, changes to the audit committee, and changes in compensation awards and to the nominating committee.
- *In re Trump Hotels Shareholder Derivative Litigation*, No. 96-7820 (S.D.N.Y.). In this case, the plaintiff shareholders asserted various derivative claims on behalf of the company against certain Trump entities and senior Trump executives in connection with the self-serving sale of a failing casino to the company in which the plaintiffs held stock. Milberg negotiated a settlement on behalf of the plaintiffs that required Donald Trump to contribute a substantial portion of his personal interest in a pageant he co-owned. In addition, the settlement required the company to increase the number of directors on its board, and certain future transactions had to be reviewed by a special committee.



PRECEDENT-SETTING DECISIONS

Milberg has consistently been a leader in developing the federal securities, antitrust, and consumer protection laws for the benefit of investors and consumers. The Firm has represented individual and institutional plaintiffs in hundreds of class action litigations in federal and state courts throughout the country. In most of those cases, Milberg has served as lead or co-lead counsel. The Firm has also been responsible for establishing many important precedents, including the following:

- ***Platinum Partners v. Chicago Board Options Exchange, Inc.***, No. 1-11-2903 (Ill. App. Ct. 2012). Milberg represented an investment management group in a case against the Chicago Board Options Exchange, Inc. (“CBOE”) and Options Clearing Corp. (“OCC”). The plaintiff investment management group alleged that it was injured when the CBOE and OCC privately disclosed strike price information to certain insiders prior to the information being made public. In the interim between the private disclosure and the public announcements, the plaintiff purchased tens of thousands of affected options. The lower court dismissed the complaint on the grounds that the CBOE and OCC, as self-regulatory organizations, were immune from suit. However, the Appellate Court reversed, holding that a private disclosure to insiders served no regulatory purpose and should not be protected from suit. The Illinois Supreme Court declined the defendants’ petition for leave to appeal.
- ***In re Lord Abbett Mutual Funds Fee Litigation***, 553 F.3d 248 (3d Cir. 2009). This important decision set significant precedent regarding the scope of preemption under the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”). In reversing the District Court’s dismissal of the plaintiffs’ claims, the Third Circuit held that “SLUSA does not mandate dismissal of an action in its entirety where the action includes only some pre-empted claims.” In so holding, the court explained that “nothing in the language, legislative history, or relevant case law mandates the dismissal of an entire action that includes both claims that do not offend SLUSA’s prohibition on state law securities class actions and claims that do”
- ***Abdullahi v. Pfizer, Inc.***, 562 F.3d 163, 170 (2d Cir. 2009). In this matter, the plaintiffs, Nigerian children and their families, asserted claims under the Alien Tort Statute (“ATS”) in connection with Pfizer’s clinical trial of the drug, Trovan, without their knowledge. In January 2009, the Second Circuit reversed the District Court’s dismissal for lack of jurisdiction. The court held that the plaintiffs pled facts sufficient to state a cause of action under the ATS for a violation of international law prohibiting medical experimentation on human subjects without their consent.
- ***In re Comverse Technology, Inc. Derivative Litigation***, 866 N.Y.S.2d 10 (App. Div. 1st Dep’t 2008). In this derivative case in which Milberg serves as co-lead counsel, plaintiff shareholders sued certain of the company’s officers and directors based on allegations of illegal options backdating. The lower court dismissed the plaintiffs’ claims, holding that the plaintiffs failed to make a pre-suit demand on the company’s board, and that in any event, the board had already formed a special committee to investigate the misconduct. In this significant opinion reversing the lower court’s dismissal, the Appellate Division clarified the standards of demand futility and held that a board of directors loses the protection of the business judgment rule where there is evidence of the directors’ self-dealing and poor judgment. The court noted that the mere creation of a special committee did not justify a stay of the action and did not demonstrate that the board took appropriate steps. Rather, “the



picture presented in the complaint is that of a special committee taking a tepid rather than a vigorous approach to the misconduct and the resultant harm. Under such circumstances, the board should not be provided with any special protection.”

- *South Ferry LP #2 v. Killinger*, 542 F.3d 776 (9th Cir. 2008). The important opinion issued by the Ninth Circuit in this securities fraud class action clarified, in the post-*Tellabs* environment, whether a theory of scienter based on the “core operations” inference satisfies the PSLRA’s heightened pleading standard. In siding with the plaintiffs, represented by Milberg, the Ninth Circuit held that “[a]llegations that rely on the core operations inference are among the allegations that may be considered in the complete PSLRA analysis.” The court explained that under the “holistic” approach required by *Tellabs*, all allegations must be “read as a whole” in considering whether plaintiffs adequately plead scienter. After remand, the District Court found that the plaintiffs sufficiently alleged scienter under the Ninth Circuit’s analysis.
- *In re Gilead Sciences Securities Litigation*, 536 F.3d 1049 (9th Cir. 2008). In this securities fraud class action in which Milberg represents the plaintiffs, the Ninth Circuit reversed the District Court’s dismissal of the complaint in this opinion clarifying loss causation pleading requirements. In ruling that the plaintiffs adequately pled loss causation, the Ninth Circuit held that the plaintiffs’ complaint identified a “specific economic loss” following the issuance of a specific press release, along with allegations of misrepresentations that were described in “abundant detail.” The opinion established that plaintiffs in a securities fraud action adequately plead loss causation where they provide sufficient detail of their loss causation theory and some assurance that the theory has a basis in fact. Based on this analysis, the dismissal was reversed, and the case was remanded to the District Court for further proceedings.
- In *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007), in which Milberg is lead counsel for the class, the United States Supreme Court announced a uniform standard for evaluating the sufficiency of a complaint under the PSLRA. The court held that on a motion to dismiss, a court “must consider the complaint in its entirety,” accepting “all factual allegations in the complaint as true,” as well as “tak[ing] into account plausible opposing inferences.” On remand, the Seventh Circuit concluded that “the plaintiffs have succeeded, with regard to the statements identified in our previous opinion as having been adequately alleged to be false and material, in pleading scienter in conformity with the requirements of the PSLRA. We therefore adhere to our decision to reverse the judgment of the district court dismissing the suit.” The unanimous decision was written by Judge Richard A. Posner.
- *Asher v. Baxter International, Inc.*, 377 F.3d 727 (7th Cir. 2004). In reversing and remanding the District Court’s dismissal, the Seventh Circuit resolved in plaintiffs’ favor an important issue involving the PSLRA’s “safe harbor” for forward-looking statements. The court held that whether a cautionary statement is meaningful is an issue of fact, because whether a statement is meaningful or not depends in part on what the defendant knew when the statement was made as well as other issues of fact. Thus, this issue is not appropriately resolved on a motion to dismiss.
- *Gebhardt v. ConAgra Foods, Inc.*, 335 F.3d 824 (8th Cir. 2003). This important decision strongly reaffirmed the principle that whether an undisclosed fact would have been material to investors cannot ordinarily be decided on a motion to dismiss. The Eighth Circuit, stressing that “[t]he question of materiality hinges on the particular circumstances of the company in question,” observed that even relatively small errors in financial statements might be material if they concern areas of particular importance to investors and raise questions about management integrity.



- *In re Cabletron Systems, Inc.*, 311 F.3d 11 (1st Cir. 2002). In this opinion, the First Circuit joined the Second Circuit in allowing a complaint to be based on confidential sources. The court also accepted the argument made by plaintiffs, represented by Milberg, that courts should consider the amount of discovery taken place prior to deciding a motion to dismiss, with a lack of discovery resulting in a correspondingly less stringent standard for pleading securities fraud claims with particularity.
- In *Puckett v. Sony Music Entertainment*, No. 108802/98 (N.Y. Sup. Ct. N.Y. Cnty. 2002), a class action was certified against Sony Music Entertainment on behalf of a class of recording artists who were parties to standard Sony recording or production agreements entered into during the class period. The complaint alleged that Sony had a policy of treating the value added tax on foreign sales of recordings improperly thereby impermissibly reducing the royalties paid or credited to the class members. Justice DeGrasse of the New York State Supreme Court determined that class certification was appropriate and that Gary Puckett (of Gary Puckett & the Union Gap) and jazz musician and composer Robert Watson were appropriate class representatives to represent the class of artists and producers to whom Sony accounts for foreign record royalties.
- *Novak v. Kasaks*, 216 F.3d 300 (2d Cir. 2000). The Firm was lead counsel in this seminal securities fraud case in which the Second Circuit undertook an extensive analysis of the statutory text and the legislative history of the PSLRA and pre-existing Second Circuit case law. Among other things, the Second Circuit held that the PSLRA's pleading standard for scienter was largely equivalent to the pre-existing Second Circuit standard and vacated the District Court's dismissal which sought to impose a higher standard for pleading scienter under the PSLRA. The Second Circuit also rejected any general requirement that plaintiffs' confidential sources must be disclosed to satisfy the PSLRA's newly-enacted particularity requirements.
- *In re Advanta Corp. Securities Litigation*, 180 F.3d 525 (3d Cir. 1999). Here, the plaintiffs, represented by Milberg, successfully argued that under the PSLRA, scienter is sufficiently pled by making an adequate showing that the defendants acted knowingly or with reckless disregard for the consequences of their actions. The Third Circuit specifically adopted the Second Circuit's scienter pleading standard for pleading fraud under the PSLRA.
- In *Hunt v. Alliance North American Government Income Trust, Inc.*, 159 F.3d 723 (2d Cir. 1998), the Second Circuit reversed the District Court's ruling, which denied plaintiffs leave to amend to assert a cause of action against defendants for failing to disclose that the defendant Trust was unable to utilize proper "hedging" techniques to insure against risk of loss. In the court's view, taken together and in context, the Trust's representations would have misled a reasonable investor.
- In *Shaw v. Digital Equipment Corp.*, 82 F.3d 1194 (1st Cir. 1996), the First Circuit remanded plaintiffs' action after affirming, in part, Milbergs' position that in association with the filing of a prospectus related to the issuance of securities, a corporate-issuer must disclose intra-quarter, materially adverse changes in its business, if such adverse changes constitute "material changes" the disclosure of which is required pursuant to the Securities Act of 1933.
- *In re Salomon, Inc. Shareholders Derivative Litigation*, 68 F.3d 554 (2d Cir. 1995). The Second Circuit affirmed the District Court's holding that derivative federal securities claims against defendants would not be referred to arbitration pursuant to the arbitration provisions of the Rules of the New York Stock Exchange, but would be tried in District Court. Shortly thereafter, the case settled for \$40 million.
- *Kamen v. Kemper Financial Services, Inc.*, 500 U.S. 90 (1991). The Supreme Court



upheld the right of a stockholder of a mutual fund to bring a derivative suit without first making a pre-suit demand. Specifically, the Court held that “where a gap in the federal securities laws must be bridged by a rule that bears on the allocation of governing powers within the corporation, federal courts should incorporate state law into federal common law unless the particular state law in question is inconsistent with the policies underlying the federal statute. . . . Because a futility exception to demand does not impede the regulatory objectives of the [Investment Company Act], a court that is entertaining a derivative action under that statute must apply the demand futility exception as it is defined by the law of the State of incorporation.”

- ***Mosesian v. Peat, Marwick, Mitchell & Co.***, 727 F.2d 873 (9th Cir. 1984), *cert. denied*, 469 U.S. 932 (1984). The Ninth Circuit upheld an investor’s right to pursue a class action against an accounting firm, adopting statute of limitation rules for Section 10(b) suits that are favorable to investors.
- ***Hasan v. CleveTrust Realty Investors***, 729 F.2d 372 (6th Cir. 1984). The Sixth Circuit very strictly construed, and thus narrowed, the ability of a “special litigation committee” of the board of a public company to terminate a derivative action brought by a shareholder.
- ***Fox v. Reich & Tang, Inc.***, 692 F.2d 250 (2d Cir. 1982), *aff’d sub nom. Daily Income Fund, Inc. v. Fox*, 464 U.S. 523 (1984). The court held that a Rule 23.1 demand is not required in a shareholder suit brought pursuant to Section 36(b) of the Investment Company Act.
- ***Rifkin v. Crow***, 574 F.2d 256 (5th Cir. 1978). The Fifth Circuit reversed an order granting summary judgment for defendants in a Section 10(b) case, paving the way for future acceptance of the “fraud-on-the-market” rationale in the Fifth Circuit.
- ***Blackie v. Barrack***, 524 F.2d 891 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976). This is the seminal appellate decision on the

use of the “fraud-on-the-market” theory of reliance, allowing investors who purchase stock at artificially inflated prices to recover even if they were personally unaware of the false and misleading statements reflected in the stock’s price. In so holding, the court noted that class actions are necessary to protect the rights of defrauded purchasers of securities.

- ***Bershad v. McDonough***, 300 F. Supp. 1051 (N.D. Ill. 1969), *aff’d*, 428 F.2d 693 (7th Cir. 1970). In this case, the plaintiff, represented by Milberg, obtained summary judgment on a claim for violation of Section 16(b) of the Securities Exchange Act, where the transaction at issue was structured by the defendants to look like a lawful option. The decision has been cited frequently in discussions as to the scope and purpose of Section 16(b).
- ***Heit v. Weitzen***, 402 F.2d 909 (2d Cir. 1968). The court held that liability under Section 10(b) of the Securities Exchange Act extends to defendants, such as auditors, who were not in privity with the named plaintiffs or the class represented by the named plaintiffs.



PARTNERS

ROBERT A. WALLNER received his B.A. degree from the University of Pennsylvania in 1976 graduating *magna cum laude*. He attended New York University School of Law, earning his J.D. degree in 1979. He was elected to the law school's Order of the Coif and served as an editor of the *New York University Law Review*.

Mr. Wallner has litigated complex securities, consumer and antitrust class actions throughout the country. He currently represents plaintiffs in lawsuits arising out of the Madoff Ponzi scheme. He has also represented investors in *In re Initial Public Offering Securities Litigation* (S.D.N.Y.), *In re CMS Energy Corporation Securities Litigation* (E.D. Mich.), and *In re Deutsche Telekom AG Securities Litigation* (S.D.N.Y.), and consumers in *In re Synthroid Marketing Litigation* (N.D. Ill.) and the *Mercedes-Benz Tire Litigation* (D.N.J.).

Mr. Wallner is a frequent lecturer on securities and complex litigation issues. He has served on the editorial board of *Securities Litigation Report*, as a faculty member of the American Bar Association's First Annual National Institute on Securities Litigation and Arbitration, and as a member of the Federal Courts Committee of the Association of the Bar of the City of New York. He was recently recognized in Lawdragon's "100 Lawyers You Need to Know in Securities Litigation."

BRAD N. FRIEDMAN focuses his practice on various complex commercial matters, including securities, qui tam, SEC whistleblower, bankruptcy, consumer, and life insurance class actions.

Mr. Friedman has recovered billions of dollars on behalf of injured plaintiffs, including as lead counsel in numerous "vanishing premium" and "churning" life insurance sales practice class actions (including cases against Prudential and Metropolitan Life).

In 2009, after eight years of arduous litigation, Mr. Friedman recovered \$750 million for shareholders in *Carlson v. Xerox*, one of the 10 largest securities class-action settlements in U.S. history. Judge Thompson noted the complexity of the international accounting case and complimented Milberg's legal work, saying, "The class received high-quality legal representation and obtained a very large settlement in the face of vigorous opposition by highly experienced and skilled defense counsel."

In 2002, Mr. Friedman acted as lead counsel on behalf of various asbestos committees in the *W.R. Grace* bankruptcy and successfully recovered approximately \$1 billion through a fraudulent conveyance litigation that settled on the eve of trial.

Mr. Friedman is currently representing numerous whistleblowers in a variety of qui tam and SEC-related matters.

Mr. Friedman began his legal career as a clerk to the Honorable Max Rosenn, United States Court of Appeals for the Third Circuit. Following his clerkship, Mr. Friedman was associated with Simpson Thacher & Bartlett LLP, where he worked until 1994. Mr. Friedman became a Milberg partner in 1996.



He is a member of the American Constitution Society, the Federal Bar Council, the American Bar Association, the American Association for Justice, the New York State Bar Association, and the New York City Bar Association.

Mr. Friedman graduated from Cornell University in 1982 with a B.A. degree. He received his J.D., *cum laude*, from New York University School of Law in 1986.

MATTHEW GLUCK was a litigation partner for over 30 years at Fried, Frank, Harris, Shriver & Jacobson LLP prior to joining Milberg. He frequently represented U.S. and foreign businesses and individuals in major litigation and other complex matters. He has also assisted clients in both formal bankruptcies and out-of-court restructurings of financially troubled companies.

Mr. Gluck twice served as adviser to the court in the restructuring of the Manville Trust in *In re Johns-Manville Corp.*, No. 85-8922 (S.D.N.Y.) and was the legal representative for future claimants in the Chapter 11 filing of Keene Corporation in *In re Keene Corp.*, No. 93-46090 (Bankr. S.D.N.Y.). He also serves as a local judge in Muttontown, New York. He was one of the lead attorneys for the plaintiffs in the trial against Vivendi which resulted in what may be the largest jury verdict for plaintiffs in a securities class action. He conducted the examination of Vivendi's former CEO, CFO, and their accounting expert.

Mr. Gluck is admitted to the bar of the State of New York.

MATTHEW A. KUPILLAS graduated from the State University of New York at Albany in 1990 with a B.A. degree in philosophy. In 1994, Mr. Kupillas received his J.D. degree from New York University School of Law. Mr. Kupillas focuses his practice primarily on class actions on behalf of defrauded investors and consumers, as well as complex commercial litigation. He is a member of the bar of the State of New York and is admitted to practice before the United States District Court for the Southern and Eastern Districts of New York, the District of Colorado, the Eastern District of Wisconsin, and the United States Court of Appeals for the Tenth Circuit.

PAUL J. ANDREJKOVICS graduated from Union College, Schenectady, NY, in 1992, *Phi Beta Kappa*, *magna cum laude*, with a B.A. degree in political science. In 1995, Mr. Andrejkovics received his J.D. degree from Albany Law School.

Mr. Andrejkovics's practice concentrates on class action settlements and settlement administration. He was admitted as a member of the New York bar in 1996 and is admitted to practice before the United States District Court for the Northern, Southern, and Eastern Districts of New York.

PEGGY J. WEDGWORTH received a B.A. degree, in 1982 from Auburn University, and her J.D. degree from University of Alabama Law School in 1986. Ms. Wedgworth was an Assistant District Attorney in Brooklyn, New York from 1986 to 1989. Since leaving the public sector in 1989, she has handled various securities, commodities, and antitrust matters. She has litigated antitrust and commodities class actions on behalf of plaintiffs including extensive experience in all aspects of pre-trial and discovery in, among other cases, *In re Brand Name Prescription Drugs Antitrust Litigation*, No. 94-0897, 1996 WL 351180 (N.D. Ill. June 24, 1996) (approving \$351 million settlement); *In re NASDAQ Market-Makers Antitrust Litigation*, 187 F.R.D. 465 (S.D.N.Y. 1998) (\$1,027,000,000 settlement); *In re Microsoft Corp.*



Litigation, MDL 1332 (D. Md.) (consolidated class actions alleging long term unlawful maintenance of a monopoly and other anticompetitive conduct by Microsoft resulting favorable partial settlements); *In re Soybean Futures Litigation*, No. 89-7009 (N.D. Ill.) (\$21,500,000 class settlement providing claiming class members/soybean futures traders a full recovery under plaintiffs' expert's formula); *In re Sumitomo Copper Litigation*, 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) ("The recovery is the largest class action recovery in the 75 plus year history of the Commodity Exchange Act."); *Kohen v. Pacific Investment Management Company, LLC*, No. 05-4681 (N.D. Ill.) (certified class of treasury bond futures purchasers alleging manipulation of the futures market); *Leider v. Ralfe*, No. 01-3137 (D.N.J.) (alleging price-fixing and monopolization in the diamond market by DeBeers resulting in a settlement of \$250,000,000 and extensive injunctive relief), and *In re Natural Gas Commodities Litigation*, 03-6186 (S.D.N.Y.) (\$101 million settlement). While a partner at her previous firm, she was involved in numerous antitrust cases including, *Air Cargo Shipping Services Antitrust Litigation*, *In re Digital Music Antitrust Litigation*, *In Re Chocolate Confectionary Antitrust Litigation*, *In re Aftermarket Filters Antitrust Litigation*, *In Re Rambus Antitrust Litigation*, and *In re Flash Memory Antitrust Litigation*. Ms. Wedgworth speaks on topics relating to antitrust litigation, most recently speaking to the New York State Bar, Antitrust Division in January 2008. She also has extensive experience in securities litigation including most recently *In re Initial Public Offering Securities Litigation*, which recently settled for \$586 million.

While in law school, Ms. Wedgworth was a member of the Moot Court Board and served as Manager of the National Moot Court Team.

ROLAND RIGGS focuses his practice on representing whistleblowers under the False Claims Act and the Dodd-Frank Act. He has represented whistleblowers in a number of industries, including the health care, banking, pharmaceutical, finance, construction, and defense industries. Mr. Riggs also represents defrauded investors and consumers. Among other cases, he currently represents investors in *In re Merck & Co. Securities Litigation*, and *In re Oppenheimer Rochester Funds Group Securities Litigation*, and consumers in *The NVIDIA GPU Litigation*. Prior to joining Milberg LLP, Mr. Riggs worked at a boutique firm in New York practicing securities litigation. During law school, Mr. Riggs served as a clerk for one summer for the Honorable Alfred V. Covello of the United States District Court for the District of Connecticut. He later worked at McLaughlin & McCaffrey, LLP in Cleveland, Ohio in the areas of commercial litigation and white collar criminal defense, and did pro bono corporate work representing charities at the Milton A. Kramer Law Clinic.

ASSOCIATES

JOSHUA KELLER focuses his practice on securities and consumer fraud litigation, as well as derivative actions, litigating class actions in both federal and state courts.

Mr. Keller was part of teams that successfully represented investors in *In re Biovail Corp. Securities Litigation* (S.D.N.Y.) (settling for \$138 million and certain corporate governance modifications) and in *In re Sears, Roebuck & Co. Securities Litigation* (N.D. Ill.) (settling for \$215 million). Additionally, Mr. Keller was part of teams that successfully represented consumers in recent settlements in *In re Reebok EasyTone Litigation* (D. Mass.) (\$28.5 million settlement) and *In re Skechers Toning Shoes*



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Product Liability Litigation (Grabowski) (W.D. Ky.) (\$45 million settlement), class actions alleging material misrepresentations relating to the purported benefits of toning shoes.

Mr. Keller's practice also involves bankruptcy, as he represents numerous victims of the Bernard L. Madoff Ponzi scheme in connection with the Securities Investor Protection Act liquidation proceeding pending in the bankruptcy court for the Southern District of New York.

Mr. Keller has also provided pro bono legal assistance, providing successful representation of a family in connection with an adoption proceeding in family court.

Mr. Keller graduated from the University of North Carolina in 1998 and from Albany Law School of Union University in 2004.

Mr. Keller is admitted to practice in the courts of the States of New York and Colorado.

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