

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

NORTHUMBERLAND COUNTY )  
 RETIREMENT SYSTEM and OKLAHOMA )  
 LAW ENFORCEMENT RETIREMENT SYSTEM, )  
 Individually and On Behalf of All Others Similarly )  
 Situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 GMX RESOURCES INC., et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. CIV-11-520-D

**DECLARATION OF BRADLEY E. BECKWORTH AND  
MICHAEL K. YARNOFF ON BEHALF OF CLASS COUNSEL**

Bradley E. Beckworth of Nix, Patterson & Roach (“NPR”) and Michael K. Yarnoff of Kessler Topaz Meltzer & Check, LLP (“KTMC”), on behalf of Class Counsel, declare under penalty of perjury as follows:

1. We, Bradley E. Beckworth, a partner at NPR, and Michael K. Yarnoff, a partner at KTMC, respectfully submit this Declaration in support of Class Representatives’ Unopposed Motion for Final Approval of Settlement (“Final Approval Motion”) and Unopposed Motion for Approval of Attorneys’ Fees and Litigation Expenses (“Fees and Expenses Motion”) (collectively, the “Motions”), which are filed contemporaneously herewith.

2. The purpose of this Declaration is to (a) submit and identify for the Court true and correct copies of certain documents and evidence referenced in the Motions and

the memoranda submitted in support of the Motions (the “Memoranda”) and (b) describe in detail the history of the substantial litigation efforts in this case, as referenced in the Memoranda.

3. Attached as Exhibit 1 to Lead Plaintiffs’ Memorandum of Law in Support of their Unopposed Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice and Set Date for Final Approval Hearing (Dkt. No. 137), is a true and correct copy of the Stipulation and Agreement of Settlement dated March 25, 2014 (“Stipulation”), which contains numerous sub-parts, such as the proposed form of the Notice sent to the Settlement Class (Exhibit A-1 to the Stipulation). All capitalized terms not otherwise defined in this Declaration shall have the same meanings as those ascribed to them in the Stipulation.

4. The statements made herein are based upon our personal knowledge and information available to us to the best of our recollection. To the extent there are any errors or omissions contained herein, they are unintentional.

**Introduction—Summary of Benefits Provided to the Settlement Class**

5. As a result of their efforts, Class Representatives and Class Counsel have obtained a Settlement with a value of \$2.7 million (“Settlement Amount”) for the benefit of the Settlement Class. As explained in detail below, Class Counsel believe the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class and in their best interest.

### Summary of the Litigation

6. On March 10, 2011, Class Representatives filed a putative class action in the District Court of Oklahoma County, State of Oklahoma, asserting claims for alleged violation of federal securities laws against GMX Resources Inc. (“GMX”) and the Settling Defendants, among others.<sup>1</sup> Class Representatives asserted claims in connection with secondary offerings of common stock commenced by GMX on or about July 18, 2008 (the “July 2008 Offering”), May 13, 2009 (the “May 2009 Offering”), and October 22, 2009 (the “October 2009 Offering”).

7. On May 12, 2011, Defendants removed the lawsuit to this Court. On June 10, 2011, Class Representatives moved to remand the litigation to state court. Dkt. No. 54. While the motion to remand was pending, Defendants filed three separate motions to dismiss. Dkt. Nos. 57-59. However, the parties moved to stay briefing on the motions to dismiss until after the Court ruled on the motion to remand. Dkt. No. 64. In granting the agreed stay, the Court adopted a potential schedule that accounted for the PSLRA’s lead plaintiff procedure, which would likely result in mooted the motions to dismiss. Dkt. No. 66. On November 16, 2011, the Court denied Class Representatives’ motion to remand. Dkt. No. 69.

8. On February 3, 2012, in accordance with the above-mentioned schedule, Class Representatives filed their Motion for Appointment as Lead Plaintiff and Approval

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<sup>1</sup> The Settling Defendants are: Ken Kenworthy, Jr., James Merrill, BBVA Securities Inc., Capital One Southcoast, Inc., Credit Suisse Securities (USA) LLC, Fortis Securities LLC, Howard Weil Incorporated (n/k/a Scotia Capital USA Inc.), Jefferies & Company, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Pritchard Capital Partners, LLC, Wedbush Morgan Securities Inc., and Smith Carney & Co.

of Lead Plaintiff's Selection of Counsel. Dkt. No. 78. On July 3, 2012, the Court appointed Northumberland County Retirement System ("Northumberland") and Oklahoma Law Enforcement Retirement System ("OLERS") as Lead Plaintiffs. Dkt. No. 94. The Court further appointed NPR and KTMC as co-lead counsel and Nelson, Roselius, Terry & Morton (n/k/a Nelson, Terry, Morton, DeWitt, Paruolo & Wood) ("NTMD") as liaison counsel. *Id.*

9. On August 17, 2012, Class Representatives filed their Amended Class Action Complaint (the "Complaint"). The Complaint asserted claims against GMX and the Settling Defendants on behalf of purchasers or acquirers of GMX common stock pursuant or traceable to the May 2009 Offering and the October 2009 Offering.<sup>2</sup> In particular, the Complaint asserted claims for violations of Sections 11, 12, and 15 of the Securities Act of 1933 (15 U.S.C. §§ 77k, 77l, and 77o) based on allegations that GMX and the Settling Defendants made untrue statements, material misrepresentations and/or omissions in the offering materials for the May 2009 Offering and October 2009 Offering, including without limitation, the prospectus GMX filed with the U.S. Securities and Exchange Commission (the "SEC") on June 25, 2008, the prospectus supplements GMX filed with the SEC on May 14, 2009 and October 26, 2009, and the GMX financial statements and SEC filings incorporated by reference into the prospectus and prospectus supplements. As anticipated, the Complaint rendered moot the previously filed motions to dismiss.

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<sup>2</sup> Class Representatives did not assert any claims based on the July 2008 Offering in the Complaint.

10. On October 1, 2012, GMX and the Settling Defendants filed new motions to dismiss. Dkt. Nos. 115-17. The motions to dismiss were hard-fought and fully briefed by the parties. Class Representatives filed their response briefs on November 15, 2012. Dkt. Nos. 120-21. GMX and certain of the Settling Defendants filed reply briefs on December 7, 2012 and December 11, 2012. Dkt. Nos. 127, 130. During the pendency of the motions to dismiss, on April 1, 2013, GMX filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Western District of Oklahoma. Dkt. No. 131. As a result of GMX's bankruptcy filing, the parties filed a stipulation dismissing Class Representatives' claims against GMX with prejudice on July 17, 2013. Dkt. No. 132.

11. On September 16, 2013, the Court entered an order denying the Settling Defendants' motions to dismiss. Dkt. No. 133.

12. After the Court entered its order denying the Settling Defendants' motions to dismiss, Class Representatives and the Settling Defendants agreed to begin discussing a potential settlement of the Litigation. On September 27, 2013, the Court granted the Settling Parties' Joint Motion to Stay Case Pending Mediation. Dkt. Nos. 134-35. On November 4, 2013, the Settling Parties engaged in mediation with the Honorable Layn R. Phillips, United States District Judge for the Western District of Oklahoma (Ret.). In anticipation of the mediation and at Judge Phillips' request, the Settling Parties prepared and exchanged detailed mediation statements outlining the strengths and weaknesses of their respective cases and discussing the proper calculation of damages. However, the Settling Parties were unable to reach a compromise at the November 4th mediation.

13. Following the mediation, with ongoing assistance from Judge Phillips, the Settling Parties continued to engage in negotiations, which culminated in the Settling Parties reaching an agreement-in-principle to settle the Litigation on November 25, 2013. Following their agreement-in-principle, the Settling Parties spent additional months negotiating the specific terms of the settlement and drafting the supporting settlement documents, executing the Stipulation on March 25, 2014.

14. On March 25, 2014, Class Representatives filed their Unopposed Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice and Set Date for Final Approval Hearing (“Preliminary Approval Motion”) (Dkt. No. 136), and accompanying memorandum supporting the Preliminary Approval Motion. Dkt. No. 137. On April 21, 2014, the Court granted the Preliminary Approval Motion and, among other things, preliminarily certified the Settlement Class for settlement purposes and preliminarily approved the Settlement. *See* Dkt. No. 138 (“Preliminary Approval Order”). By the same Order, the Court approved the form and manner of notice to the Settlement Class.

**What the Settlement Provides—\$2.7 Million in Cash**

15. In accordance with the Stipulation, on or about May 19, 2014, the Settling Defendants paid \$2.7 million into the Escrow Account, which is currently on deposit and earning interest for the benefit of the Settlement Class. In exchange, upon the Effective Date, Class Representatives and the Settlement Class will dismiss their Complaint and all related claims in the Litigation. *See generally* Stipulation at Section IV.

### The Notice Campaign

16. On or before May 11, 2014, in accordance with the Preliminary Approval Order, and in order to provide notice of the Settlement to those persons and entities who purchased or otherwise acquired GMX common stock pursuant or traceable to the Company's common stock offerings on or about May 13, 2009 or October 22, 2009, the Court-approved Claims Administrator, Strategic Claims Services ("SCS"), began to disseminate the Notice and Proof of Claim form approved by the Court (together, the "Notice Claim Form"). *See* Declaration of Josephine Bravata Concerning (A) Mailing of CAFA Notice; (B) Mailing of the Notice and Claim Form; (C) Publication of the Summary Notice; and (D) Requests for Exclusion Received to Date (the "SCS Declaration") at ¶7. A true and correct copy of the SCS Declaration is attached hereto as Exhibit 1. In addition to its initial outreach to brokers and other nominees (*see* SCS Declaration at ¶6),<sup>3</sup> as of June 25, 2014, SCS has mailed a total of 15,182 copies of the Notice Claim Form to potential members of the Settlement Class and nominees. SCS Declaration at ¶11. Specifically, of the 15,182 Notice Claim Forms mailed: (i) 129 Notice Claim Forms were mailed to the individuals and organizations contained on the

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<sup>3</sup> As set forth in the SCS Declaration, SCS also mailed or e-mailed 1,713 Notices, along with a letter, to all brokerage companies, banks, trust companies and other nominees contained on SCS' master mailing list (the "Broker Letter"), on or before May 11, 2014. *Id.* at ¶¶6, 11. As in most securities class actions, the large majority of shareholders are beneficial owners whose securities are held in "street name" (*i.e.*, the securities are purchased by brokerage firms, banks, institutions and other third-party nominees on behalf of the beneficial owners). Pursuant to the Broker Letter, the nominees were instructed, within ten (10) days of receiving the Broker Letter, either to mail a copy of the Notice Claim Form to their beneficial purchasers/owners directly, or provide SCS with a list of the names and addresses of such beneficial purchasers/owners so that SCS could mail Notice Claim Forms directly to them. *Id.* at ¶6.

shareholder list provided by GMX's transfer agent, Compushare;<sup>4</sup> and (ii) an additional 15,182 Notice Claim Forms were mailed in response to requests by nominees, for forwarding, and by other individuals. *Id.* at ¶11.

17. Further, pursuant to the Court's Preliminary Approval Order, SCS caused the Summary Notice approved by the Court to be published in the national edition of *Investor's Business Daily* and over the *Business Newswire* on May 16, 2014. *Id.* at ¶9.

18. Moreover, the Notice Claim Form, Summary Notice, Stipulation, Preliminary Approval Order, and Scheduling Order/Final Approval Hearing were posted and are available for review on SCS' website, [www.strategicclaims.net](http://www.strategicclaims.net). *Id.* at ¶8. A toll-free number, as set forth in the Notice, is also available to potential Settlement Class Members so they can contact SCS for more information regarding the Settlement. *Id.*

#### **The Overwhelming Positive Reaction of the Settlement Class to Date**

19. Along with providing information about the Settlement, the Notice advises recipients that Settlement Class Members who do not wish to participate in the Settlement may exclude themselves from the Settlement Class. The Notice also advises recipients that Settlement Class Members have the right to object to any aspect of the Settlement, Plan of Allocation or Class Counsel's request for attorneys' fees and expenses. As of the filing of this Declaration, not one objection to any aspect of the

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<sup>4</sup> In accordance with the Stipulation, this shareholder list contained names and addresses for shareholders of GMX common stock during the period May 13, 2009 through March 10, 2011. *See* Stipulation at ¶7.2.

Settlement has been filed, and not a single request for exclusion from the Settlement Class has been received. *See* SCS Declaration at ¶12.<sup>5</sup>

20. Class Representatives, Northumberland and OLERS – two sophisticated institutional investors – also support the Settlement. Class Representatives were involved in this Litigation and participated in the negotiations and mediation that led to the Settlement. *See, e.g.*, Declaration of Ginger Poplin on Behalf of Oklahoma Law Enforcement Retirement System (the “OLERS Declaration”) at ¶¶6-8. A true and correct copy of the OLERS Declaration is attached hereto as Exhibit 2. Thus, both Class Representatives support the Settlement and believe it should be finally approved.

**Additional Support for the Settlement**

21. Judge Phillips, an experienced and highly respected mediator, endorses the Settlement and has filed a Declaration with the Court. *See* Declaration of Layn R. Phillips (“Phillips Declaration”), Dkt. No. 140. Judge Phillips previously served as a District Judge in the Western District Oklahoma, where he presided over more than 140 federal trials. *Id.* at ¶4. For the past twenty years, Judge Phillips has successfully mediated large class actions, such as this one, and other high-stakes litigation, including numerous civil disputes involving Fortune 500 companies throughout the nation. *Id.* at ¶5.

22. Having presided over the entire mediation process and communicated

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<sup>5</sup> The deadline for submitting objections or requests for exclusion from the Settlement Class is July 10, 2014. If any objections or requests for exclusion are received after the date of this submission, Class Representatives and Class Counsel will address them in a separate submission to be filed with the Court on or before July 24, 2014.

extensively with the Settling Parties, Judge Phillips developed a complete understanding of this case. He is familiar with the strengths and weaknesses of the Settling Parties' respective positions, the risks and rewards of continued litigation and inevitable appeal, and the costs and benefits of settlement. *Id.* at ¶12. Thus, Judge Phillips' opinion regarding the Settlement should be given considerable weight.

23. In his declaration, Judge Phillips states:

Based on my knowledge of the issues in dispute, my review of the substantial factual and legal materials presented before and during the mediation, the rigor of the negotiations, the relative strengths and weaknesses of the parties' positions, and the benefits achieved by the Settlement, I believe that the terms of the \$2.7 million settlement represent a well-reasoned and sound resolution of highly uncertain litigation and that the result is fair, adequate, reasonable and in the best interests of the Class.

*Id.* at ¶13.

#### **Class Counsel Endorses the Settlement**

24. An important factor in approving a proposed settlement is the opinion of experienced counsel. Here, Class Counsel fully support and endorse the Settlement. Class Counsel believe the Settlement is fair, reasonable, and adequate and should be approved. More than anyone, Class Counsel are aware of the risks and uncertainties that accompany proceeding to trial in this Litigation. The Settlement also avoids the risk of recovering less than the Settlement Amount, or no recovery, after more than three years of intense, expensive litigation and provides the Settlement Class with an excellent recovery. Here, the possibility of either no recovery at all or a limited recovery was very real. Therefore, Class Counsel submit that the Settlement should be finally approved.

**Class Counsel also Endorse the Proposed Plan of Allocation**

25. Upon final approval of the Settlement and once all Proofs of Claim are fully processed, Class Counsel will distribute the Net Settlement Fund in accordance with a Court-approved plan of allocation. The proposed Plan of Allocation of the Net Settlement Fund (the “Plan”) - prepared by Class Counsel after careful consideration and analysis - is attached to the Notice as Appendix A. *See* Exhibit D to the SCS Declaration.

26. Pursuant to the Plan, in order to be eligible to receive a distribution from the Net Settlement Fund, a claimant must have purchased or otherwise acquired GMX common stock pursuant or traceable to the Company’s May 13, 2009 and/or October 22, 2009 offerings. Authorized Claimants will be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Authorized Claimants.

27. In sum, Class Counsel believe the proposed Plan of Allocation is fair, reasonable, adequate, and in the best interests of the Settlement Class, and warrants the Court’s approval.

**Attorneys’ Fees**

28. Class Counsel are seeking an award of attorneys’ fees in the amount of twenty-five percent (25%) of the \$2.7 million Settlement Amount, plus interest (the “Fee Request”). Given the recovery Class Counsel achieved on behalf of the Settlement Class and the extensive efforts Class Counsel dedicated to this Litigation, this Fee Request is fair and reasonable.

29. Class Counsel agreed to pursue this case purely on a contingent fee basis. Each Class Representative agreed to a contingent fee of twenty-five percent (25%) of any judgment or settlement amount obtained in this Litigation. If Class Representatives and Class Counsel had not been successful, Class Counsel would have received zero compensation for the efforts they expended on behalf of the Settlement Class (not to mention reimbursement for expenses). The prospect of long, expensive litigation was clear from the beginning, and the risk of no recovery that comes with contingent fee representation only added to the case's undesirability. Additionally, Class Counsel could not have known what jurisdiction this case would have been removed or transferred to, if any, or what future decisions in the Tenth Circuit would affect the outcome of the case. Nonetheless, Class Counsel agreed to assume the risks associated with pursuing this case and have zealously represented the Settlement Class to obtain a recovery.

30. Moreover, ample precedent exists in this Circuit for granting fees to plaintiff's counsel in a case like this one that are equal to or greater than the present Fee Request. Indeed, in our experience, the typical range in similar class actions is more than the Fee Request here.

31. Class Counsel have dedicated substantial time, labor, and resources to successfully litigating and resolving this Litigation. The Settling Parties have litigated this matter for nearly three years, including engaging in motion practice, consulting with experts, and participating in a thorough mediation process before reaching a settlement. And, during this time, Class Counsel have represented the Settlement Class on a wholly contingent basis, advancing considerable expenses in the process.

32. When Class Counsel agreed to take on this Litigation, there were many legal disagreements between plaintiffs and defendants that affected the Settlement Class' claims. These issues go to the heart of the Settlement Class' claims, and the Settling Parties maintain differing views. Even if the Court ruled in favor of the Settlement Class on these legal issues, the Settling Parties would have inevitably disputed damages.

33. Class Counsel are comprised of highly skilled and dedicated attorneys with substantial experience prosecuting large class actions such as this one. This Litigation required investigation and mastery of complex factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses.

34. NPR and KTMC regularly represent plaintiffs in securities class actions, and other complex commercial and consumer class action litigation. True and correct copies of firm resumes for NPR and KTMC are attached hereto as Exhibits 3 and 4, respectively. Class Counsel's skill and experience were required in this Litigation, especially considering the quality of lawyers representing the Settling Defendants.

35. Based upon a good-faith estimate, Class Counsel and Liaison Counsel (together, "Plaintiffs' Counsel") estimate they have collectively expended over 2,000 hours of attorney and professional support staff time on the prosecution and resolution of this matter.

36. With this expertise and background, Class Counsel believe the Fee Request is fair and reasonable and should be approved.

### **Litigation Expenses**

37. In prosecuting and resolving this Litigation, Plaintiffs' Counsel have advanced \$85,577.29 in expenses to date (the "Expense Request"). Further, Plaintiffs' Counsel litigated this case on a wholly contingent basis, without recovering any of the expenses advanced in connection with this case thus far. The costs and expenses that Plaintiffs' Counsel advanced on behalf of the Settlement Class were reasonable and necessary and include routine expenses - *e.g.*, copying, court fees, postage and shipping, phone charges, legal research, and travel and transportation, as well as expenses for experts and mediation, which, in Class Counsel's experience, are typical of large, complex class actions such as this one. All of these costs and expenses were reasonable and necessary and were critical to the prosecution and resolution of this Litigation.<sup>6</sup>

38. In the Notice mailed to potential Settlement Class Members, Class Counsel stated they would seek reimbursement of expenses in an amount not to exceed \$125,000 plus interest earned thereon at the same rate as the Settlement Fund. Plaintiffs' Counsel's out-of-pocket expenses to date are \$85,577.29.<sup>7</sup>

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<sup>6</sup> Class Counsel established a litigation fund for this case (the "Litigation Fund") from which many of Class Counsel's expenses were paid. As noted in the charts below, Class Counsel contributed a total of \$56,000 to the Litigation Fund. Class Counsel paid expert expenses along with the costs of mediation with Judge Phillips from the Litigation Fund. Currently, a balance of \$86.35 remains in the Litigation Fund. This amount has been credited to KTMC and removed from the Expense Request so as to avoid any double counting of expenditures. *See* Expense Report for KTMC set forth below at ¶40.

<sup>7</sup> Class Counsel have elected not to seek full reimbursement for travel-related expenses. For example, NPR utilized private aircraft for certain trips related to this case. Due to the rural location of NPR's primary offices in Daingerfield, Texas, the use of private aircraft allows counsel to save significant time and expenses that otherwise would be incurred by driving multiple hours to a major airport and taking a series of

39. In addition to the expenses Plaintiffs' Counsel already have advanced, Plaintiffs' Counsel may incur additional expenses between now and the Final Approval Hearing on July 31, 2014. As such, at the July 31, 2014 hearing, Class Counsel may seek reimbursement for expenses incurred after the filing of this Declaration. In addition, Class Counsel reserve their right to make addition expense requests following the Final Approval Hearing; however, in no event will Plaintiffs' Counsel's cumulative expense requests exceed the \$125,000 stated in the Notice.

40. Charts demonstrating the costs and expenses for which Class Counsel seek reimbursement from the Settlement Fund are set forth below. Class Counsel will provide the Court with updated expense charts at the Final Approval Hearing, to the extent additional expenses are incurred after the filing of this Declaration.

**NIX, PATTERSON & ROACH, LLP**  
**Expense Report**

<b>Expense Description</b>	<b>Total Category Expense</b>
Administrative Expenses (FedEx & AT Conference Calls)	\$138.82
Internal Reproduction Costs	\$125.00
Litigation Fund Contribution	\$17,500.00
Research (Lexis Nexis)	\$8,870.72
Meals, Hotels & Transportation	\$10,262.88

commercial flights. Although the use of private aircraft provides a significant benefit to NPR's clients and the Settlement Class, the actual costs of such trips are not being submitted here. Instead, for trips when a private aircraft was utilized and there was a commercial flight available, NPR has compared the cost of a refundable economy full fare ticket for each passenger to the cost of using private aircraft and have submitted the lesser of the two. Thus, if it would have cost less to take a commercial flight, the cost of such a commercial ticket has been submitted for reimbursement and the additional actual cost has been written off.

<b>TOTAL:</b>	<b>\$36,897.42</b>
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**KESSLER TOPAZ MELTZER & CHECK, LLP**  
**Expense Report**

Expense Description	Total Category Expense
Filing Fees	\$1,665.00
Litigation Fund Contributions	\$38,500.00
Messenger, Courier & Overnight Mail	\$193.21
Postage	\$2.90
Meals, Hotels & Transportation	\$2,072.68
Research	\$3,599.08
Press Releases & Notices	\$200.00
Teleconferences	\$5.03
Expert	\$707.50
Internal Reproduction Costs	\$974.00
Less Balance Remaining in the Litigation Fund	(\$86.35)
<b>TOTAL:</b>	<b>\$47,833.05</b>

41. Liaison Counsel has incurred an additional \$846.82 in expenses for, *inter alia*, filing fees, copying costs, on-line research and travel.

Dated: June 26, 2014

Handwritten signature of Bradley E. Beckworth in black ink.

Bradley E. Beckworth  
Nix, Patterson & Roach, LLP

Handwritten signature of Michael K. Yarnoff in black ink.

Michael K. Yarnoff  
Kessler Topaz Meltzer & Check, LLP

# EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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NORTHUMBERLAND COUNTY )  
RETIREMENT SYSTEM and OKLAHOMA )  
LAW ENFORCEMENT RETIREMENT SYSTEM, )  
Individually and On Behalf of All Others Similarly )  
Situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
GMX RESOURCES INC., et al., )  
 )  
Defendants. )  
\_\_\_\_\_

Case No. CIV-11-520-D

**DECLARATION OF JOSEPHINE BRAVATA CONCERNING  
(A) MAILING OF CAFA NOTICE; (B) MAILING OF THE NOTICE AND  
CLAIM FORM; (C) PUBLICATION OF THE SUMMARY NOTICE; AND  
(D) REQUESTS FOR EXCLUSION RECEIVED TO DATE**

I, Josephine Bravata, declare:

1. I am the Quality Assurance Manager of Strategic Claims Services (“SCS”), a nationally recognized class action administration firm. I have over twelve years of experience specializing in the administration of class action cases. SCS was established in April 1999 and has administered over three hundred (300) class action cases since its inception. Pursuant to the Court’s Order dated April 21, 2014 (the “Preliminary Approval Order”), the Court approved the retention of SCS to act as the claims administrator for the settlement reached in the above-captioned litigation (the “Litigation”). I am over 21 years of age and am not a party to this Litigation. I have personal knowledge of the facts set forth herein.

2. I respectfully submit this declaration in order to provide the Court and the parties to the Litigation with information regarding: (i) the mailing of notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”); (ii) the mailing of the Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Expenses and Final Approval Hearing (the “Notice”) and the Proof of Claim and Release form (the “Claim Form” and, together with the Notice, the “Notice Claim Form”); (iii) the publication of the Summary Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Expenses and Final Approval Hearing (the “Summary Notice”); and (iv) the requests for exclusion from the Settlement Class received to date.

**MAILING OF CAFA NOTICE**

3. At the request of Defendants' Counsel, on April 3, 2014, SCS mailed notice of the proposed Settlement, pursuant to CAFA, to the appropriate federal and state officials, by certified return receipt through the United States Postal Service. The mailing consisted of: (i) a letter regarding the proposed Settlement provided to SCS by Defendants' Counsel describing the mailing (the "CAFA Letter"); and (ii) a CD-ROM containing copies of all documents filed with Lead Plaintiff's Unopposed Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice and Set Date for Final Approval Hearing, including the Stipulation and Agreement of Settlement dated March 25, 2014 (the "Stipulation") and other supporting papers containing the terms of the proposed Settlement. Attached hereto as **Exhibit A** is a copy of the CAFA Letter and attached hereto as **Exhibit B** is a list of the federal and state officials to whom the CAFA Letter and accompanying CD-ROM were mailed.

**MAILING OF THE NOTICE AND CLAIM FORM AND  
PUBLICATION OF THE SUMMARY NOTICE**

4. In connection with the Settlement, SCS has performed or will perform the following services, among others: (i) printing the Notice Claim Forms; (ii) distributing the Notice Claim Forms to the Settlement Class; (iii) arranging the publication of the Summary Notice; (iv) notifying and corresponding with brokerage firms and other nominee accounts in order to effectuate appropriate notice to Settlement Class Members; (v) answering inquiries by Settlement Class Members; (vi) accepting and processing submitted Claim Forms; (vii) developing a program for the implementation of the plan

of allocation and claims processing; (viii) reviewing submitted Claim Forms for accuracy and completeness and to ensure they are supported by sufficient documentary evidence; (ix) providing notices to those claimants whose Claim Forms are deficient or rejected, when appropriate; (x) calculating recognized losses of the Settlement Class, on both an individual and class-wide basis; and (xi) performing all other services necessary to administer this class action settlement.

5. In order to provide notice to those persons and entities who purchased or otherwise acquired GMX Resources Inc. (“GMX”) common stock pursuant or traceable to the Company’s common stock offerings on or about May 13, 2009 or October 22, 2009 and pursuant to the Court’s Preliminary Approval Order, SCS mailed, by first class mail, the Notice Claim Form approved by the Court to all individuals and organizations identified on the shareholder list provided by GMX’s transfer agent, Compushare. In accordance with the Stipulation, this shareholder list contained names and addresses for shareholders of GMX common stock during the period May 13, 2009 through March 10, 2011.

6. In addition, SCS mailed or e-mailed the Notice, along with a letter to all brokerage companies, banks, trust companies and other nominees contained on SCS’s master mailing list (the “Broker Letter”). The master mailing list consists of the 958 largest banks and brokerage companies (the “Nominee Account Holders”), as well as 755 mutual funds, insurance companies, pension funds, and money managers (the “Institutional Groups”) who may have traded GMX common stock in their accounts or their clients’ accounts. Pursuant to the Broker Letter, the Nominee Account Holders and

Institutional Groups were instructed, within ten (10) days of receiving the Broker Letter, either to mail a copy of the Notice Claim Form to their beneficial purchasers/owners directly, or provide SCS with a list of the names and addresses of such beneficial purchasers/owners so that SCS could mail Notice Claim Forms directly to them. A copy of the Broker Letter is attached hereto as **Exhibit C**.

7. The Notice Claim Forms were mailed or e-mailed on or before May 11, 2014, as required by the Court's Preliminary Approval Order. A copy of the Notice Claim Form is attached hereto as **Exhibit D**.

8. Moreover, the Notice Claim Form, Summary Notice, Stipulation, Preliminary Approval Order, and Scheduling Order/Final Approval Hearing were posted and are available for review on SCS's website, [www.strategicclaims.net](http://www.strategicclaims.net). A toll-free number, as set forth in the Notice, is also available to potential Settlement Class Members so they can contact SCS for more information regarding the Settlement.

9. As required by the Court's Preliminary Approval Order, the Summary Notice was published once in the national edition of *Investor's Business Daily* and over the *Business Newswire* on May 16, 2014. Attached as **Exhibit E** hereto are the confirmations of publication and transmission.

10. The notice procedures described above are consistent with the procedures I have used in each of the securities class action settlements in which I have been involved over the past twelve years.

11. In addition to the 1,713 Notices (along with the Broker Letter attached as Exhibit C) that were mailed or e-mailed to the Nominee Account Holders and

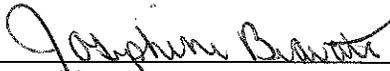
Institutional Groups, SCS has mailed a total of 15,182 Notice Claim Forms to potential Settlement Class Members or nominees. Specifically, of the 15,182 Notice Claim Forms mailed: (i) 129 Notice Claim Forms were mailed to the individuals and organizations contained on the shareholder list provided by GMX's transfer agent; and (ii) an additional 15,053 Notice Claim Forms were mailed in response to requests by Nominee Account Holders and Institutional Groups, for forwarding, and by other individuals.

**REQUESTS FOR EXCLUSION RECEIVED TO DATE**

12. Paragraph 38 of the Notice informs potential Settlement Class Members that written requests for exclusion must be received no later than July 10, 2014, addressed to: *Northumberland County Retirement System, et al. v. GMX Resources Inc., et al.*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 3, Media, PA 19063. The Notice also sets forth the information that must be included in each request for exclusion. To date, SCS has received no requests for exclusion. SCS will submit a supplemental declaration after the July 10, 2014 deadline to provide the Court with an update on the requests for exclusion received, if any.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signed this 25<sup>th</sup> day of June 2014, in Media, Pennsylvania.

  
Josephine Bravata

**SCHIFFER ODOM HICKS & JOHNSON PLLC**

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**KENNETH P. HELD**

Email: kheld@sohjlaw.com

March 28, 2014

**By U.S. Mail**

Hon. Eric H. Holder, Jr.  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

And Those On The Attached Distribution List

**Class Action Fairness Act of 2005 Notification**

*Northumberland County Retirement System and Oklahoma Law Enforcement Retirement System, Individually and On Behalf of All Other Similarly Situated, vs. GMX Resources Inc., et al.*

**Case No. CIV-11-520-D United States District Court for the Western District of Oklahoma**

Dear Attorney General Holder:

We represent defendants Ken L. Kenworthy, Jr. and James A. Merrill (the "Individual Defendants") in the above-referenced action (the "Action"), which is a class action brought on behalf of all purchasers or acquirers of the common stock of GMX Resources, Inc. ("GMX") pursuant or traceable to the secondary offerings of common stock commenced by GMX on or about May 13, 2009 (the "May 2009 Offering") and October 22, 2009 (the "October 2009 Offering") (collectively, with certain exceptions, the "Settlement Class").

The purpose of this letter is to provide the required notice (the "CAFA Notice"), pursuant to the notice provision of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, that an application for preliminary approval of the Stipulation and Agreement of Settlement (the "Settlement") between the lead plaintiffs and the Individual Defendants, BBVA Securities Inc., Capital One Southcoast, Inc., Credit Suisse Securities (USA) LLC, Fortis Securities LLC, Howard Weil Incorporated (n/k/a Scotia Capital USA Inc.), Jefferies & Company, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Pritchard Capital Partners, LLC, and Wedbush Morgan Securities Inc. (the "Underwriter Defendants"), and

Smith Carney & Co. (“Smith Carney” and, together with the Individual Defendants and the Underwriter Defendants, the “Settling Defendants”)<sup>1</sup> was filed with the United States District Court for the Western District of Oklahoma on March 25, 2014. The Settlement provides for cash consideration of \$2,700,000.

As of the date of this CAFA Notice, no judicial opinion regarding the Settlement has been issued.

The following documents associated with the Settlement are provided in the enclosed disk:

1. A copy of the original petition and amended complaint filed in the Action;
2. A copy of the Stipulation and Agreement of Settlement and the following exhibits thereto:
  - a. The [Proposed] Order Preliminarily Approving Settlement and Providing for Notice;
  - b. The Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Expenses and Final Approval Hearing;
  - c. The Proof of Claim and Release Form;
  - d. The Summary Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Expenses, and Final Approval Hearing;
  - e. The [Proposed] Order and Final Judgment.

Please note that the parties to the Settlement signed a confidential Supplemental Agreement, which is referenced in paragraph 9.3 of the Stipulation and Agreement of Settlement and which was not filed with the Court. *See* 28 U.S.C. § 1715(b)(5). As described in the Stipulation and Agreement of Settlement, and as is customary in securities class action settlements, the purpose of the confidential Supplemental Agreement is to provide the Settling Defendants with the option to terminate the Settlement if timely requests for exclusion from the Settlement Class are submitted by eligible Settlement Class Members who, in the aggregate, purchased in excess of a certain amount of the total amount of GMX’s common stock issued in the May 2009 and October 2009 Offerings. It is typical for agreements of this nature to remain confidential because, as explained by a leading treatise dealing with complex litigation, “[k]nowledge of the specific number of opt outs that will vitiate a settlement might encourage third parties to solicit class members to opt out.” David F. Herr, *MANUAL FOR COMPLEX LITIGATION* § 21.631 (4th ed.).

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<sup>1</sup> This Notice is submitted on behalf of all Settling Defendants with the consent of their counsel (copied hereon).

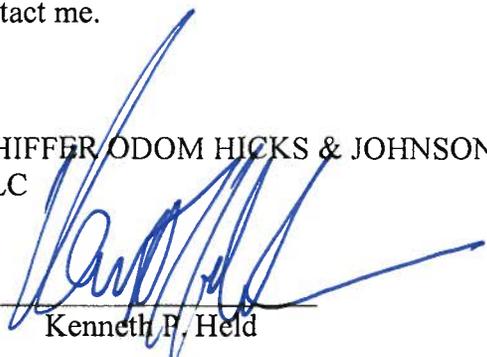
Given the nature of the claims in the Action, it is not feasible at this time to ascertain the names of all the members of the Settlement Class who reside in each state or the estimated proportionate share of the claims of such members to the Settlement proceeds. *See* 28 U.S.C. § 1715(a)(7)(A). It also is not feasible to provide an estimate of the number of members of the Settlement Class residing in each state and the estimated proportionate share of the claims of such members to the entire Settlement. *See* 28 U.S.C. § 1715(a)(7)(B). However, assuming the Settlement is approved by the Court after conducting a fairness hearing, members of the Settlement Class who properly submit Proof of Claim and Release forms as well as supporting documentation shall receive a *pro rata* share of the net settlement fund and, upon the conclusion of the claims process, we anticipate that the claims administrator will provide, upon request, the names of members of the Settlement Class who reside in each state and the estimated proportionate share of the claims of such members to the entire Settlement.

On March 25, 2014, plaintiffs filed a motion for entry of an order preliminarily approving the Settlement and establishing notice procedures to notify members of the Settlement Class. Assuming that the Court enters the proposed order preliminarily approving the settlement and establishing notice procedures, the Court will schedule a hearing to determine whether the Settlement is fair, reasonable and adequate, and to consider the proposed plan of allocation for Settlement proceeds and the application of plaintiffs' counsel for attorneys' fees and reimbursement of expenses under Rule 23 of the Federal Rules of Civil Procedure. As of the date of this CAFA Notice, that hearing has not been scheduled.

If you have any questions, please feel free to contact me.

Respectfully submitted,

SCHIFFER ODOM HICKS & JOHNSON,  
PLLC

By: 

Kenneth P. Held

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Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**REQUEST FOR NAMES AND ADDRESSES OF CLASS MEMBERS**

STRATEGIC CLAIMS SERVICES  
600 N. JACKSON STREET, SUITE 3  
MEDIA, PA 19063

PHONE: (610) 565-9202

EMAIL: [info@strategicclaims.net](mailto:info@strategicclaims.net) FAX: (610) 565-7985

**May 7, 2014**

Enclosed is a copy of the "NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION, MOTION FOR ATTORNEYS' FEES AND EXPENSES AND FINAL APPROVAL HEARING". This letter is being sent to all entities whose names have been made available to us, or which we believe may know of potential class members.

**We request that you assist us in identifying any individuals who fit the following description:**

**ALL PERSONS OR ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED GMX RESOURCES INC. COMMON STOCK PURSUANT OR TRACEABLE TO THE COMPANY'S COMMON STOCK OFFERINGS ON OR ABOUT MAY 13, 2009 AT \$12.50 PER SHARE OR OCTOBER 22, 2009 AT \$15.00 PER SHARE.**

Excluded from the Class are the Settling Defendants; GMX; members of the immediate family of such Settling Defendant, any parent or subsidiary of any such Settling Defendant; any person, firm, trust, corporation, officer, director, or other individual or entity in which any Settling Defendant or GMX has or had a controlling interest; the partners, officers and directors of any Settling Defendant or GMX; and the legal representatives, agents, executors, heirs, successors, or assigns of any such excluded Person.

**The information below may assist you in finding the above requested information.**

<p><u>GMX RESOURCES INC. SECURITIES LITIGATION</u> <b>Case No. CIV-11-520-D</b> Exclusion Deadline: July 10, 2014 Objection Deadline: July 10, 2014 Fairness Hearing: July 31, 2014 Claims Filing Deadline: September 8, 2014</p>	<p>Cusip No.:</p> <p>Common Stock # 38011M108</p>
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**PER COURT ORDER PLEASE RESPOND WITHIN 10 CALENDAR DAYS FROM THE DATE OF THIS NOTICE.**

Please comply in one of the following ways:

1. If you have no beneficial purchasers/owners, please so advise us in writing; or
2. Supply us with the names and addresses of your beneficial purchasers/owners and we will do the mailing of the Notice and Claim Form. Please provide us this information electronically. If you are not able to do this, labels will be accepted but it is important that a hardcopy list also be submitted of the names of your clients; or
3. Advise us of how many beneficial purchasers/owners you have and we will supply you with ample forms to do the mailing.

**You are able to bill us for any reasonable cost not to exceed \$0.10 per name and address plus postage expenses, if applicable. If you believe your invoice will be more than the allowed amount, please contact our office.**

You are on record as having been notified of this legal matter. A copy of the Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys' Fees and Expenses and Final Approval Hearing and Proof of Claim and Release Form is available on our website at [www.strategicclaims.net](http://www.strategicclaims.net). You can also request a copy via email at [info@strategicclaims.net](mailto:info@strategicclaims.net).

Thank you for your prompt response.

Sincerely,

Claims Administrator  
GMX Resources Inc. Securities Litigation

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

NORTHUMBERLAND COUNTY	)	
RETIREMENT SYSTEM and OKLAHOMA	)	
LAW ENFORCEMENT RETIREMENT SYSTEM,	)	
Individually and On Behalf of All Others Similarly Situated,	)	
<i>Plaintiffs,</i>	)	Case No. CIV-11-520-D
v.	)	
GMX RESOURCES INC., et al.,	)	
<i>Defendants.</i>	)	
	)	

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION,  
MOTION FOR ATTORNEYS' FEES AND EXPENSES AND FINAL APPROVAL HEARING**

***A Federal Court authorized this Notice. This is not a solicitation from a lawyer.***

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by a class action lawsuit (the "Litigation") pending in the United States District Court for the Western District of Oklahoma (the "Court") if you purchased or otherwise acquired GMX Resources Inc. ("GMX" or the "Company") common stock pursuant or traceable to the Company's common stock offerings on or about May 13, 2009 (the "May 2009 Offering") or October 22, 2009 (the "October 2009 Offering") (together, the "Offerings").

**NOTICE OF PENDENCY OF SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiffs, Northumberland County Retirement System and Oklahoma Law Enforcement Retirement System ("Lead Plaintiffs"), on behalf of themselves and the proposed Settlement Class (as defined in ¶ 1 below), have reached a proposed settlement of the Litigation for a total of \$2.7 million in cash that, if approved, will resolve all claims in the Litigation.<sup>1</sup>

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a Settlement Class Member, your legal rights will be affected whether or not you act.**

**1. Description of the Litigation and Settlement Class:** This Notice relates to a proposed Settlement of claims in a pending class action lawsuit brought by investors alleging that the price of GMX common stock issued in the Company's May 2009 and October 2009 Offerings was artificially inflated as a result of materially untrue statements contained in the offering materials for each of the Offerings concerning the accuracy and integrity of GMX's financial statements, as well as the adequacy of the Company's internal controls over financial reporting. The proposed Settlement, if approved by the Court, will settle claims of all persons and entities who purchased or otherwise acquired GMX common stock pursuant or traceable to the May 2009 Offering or October 2009 Offering (the "Settlement Class"), except for certain persons and entities who are excluded from the Settlement Class by definition (*see* ¶ 21 below) or who validly elect to exclude themselves from the Settlement Class (*see* ¶¶ 38-40 below).

**2. Statement of the Settlement Class's Recovery:** Subject to Court approval, and as described more fully below, Lead Plaintiffs, on behalf of themselves and the Settlement Class, have agreed to settle all claims based on the purchase or acquisition of GMX common stock pursuant or traceable to the Offerings that were or could have been asserted against Defendants in the Litigation in exchange for a payment of \$2.7 million in cash (the "Settlement Amount") to be deposited into an escrow account (the "Settlement Fund"). The Net Settlement Fund (*i.e.*, the Settlement Fund less Taxes, Notice and Administration Expenses, and any attorneys' fees and expenses (including costs and expenses to Lead Plaintiffs) awarded by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court. The proposed plan of allocation (the "Plan of Allocation") is attached hereto as Appendix A. The proposed Plan of Allocation may be modified by the Court without further notice.

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<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement dated as of March 25, 2014 (the "Stipulation"), which is available on the website [www.strategicclaims.net](http://www.strategicclaims.net).

**3. Statement of Average Amount of Recovery Per Share:** Lead Plaintiffs' damages consultant estimates that approximately 8.6 million shares of GMX common stock purchased or otherwise acquired pursuant or traceable to the May 2009 Offering or October 2009 Offering may have been damaged by the conduct alleged in the Litigation. If all Settlement Class Members elect to participate in the Settlement, the estimated average recovery per damaged share of GMX common stock would be approximately \$0.31 before deduction of Court-awarded attorneys' fees and expenses (including costs and expenses to Lead Plaintiffs) and the costs of providing notice and administering the Settlement. **Settlement Class Members should note, however, that this is only an estimate based on the overall number of potentially damaged shares.** Some Settlement Class Members may recover more or less than the estimated amount per share. A Settlement Class Member's actual recovery will depend on: (i) the number of claims submitted; (ii) whether the Settlement Class Member sold his, her or its shares of eligible GMX common stock and, if so, when; (iii) administrative costs, including the costs of notice; (iv) the amount awarded by the Court to Lead Counsel for attorneys' fees and expenses; and (v) the amount awarded by the Court to Lead Plaintiffs as reimbursement for costs and expenses directly related to their representation of the Settlement Class.

**4. Statement of Settling Parties' Position on Damages:** The Settling Defendants deny all claims of wrongdoing that they are liable to Lead Plaintiffs and/or the Settlement Class or that Lead Plaintiffs or other members of the Settlement Class suffered any injury. Moreover, the Settling Parties do not agree on the amount of recoverable damages or on the average amount of damages per share of GMX common stock that would be recoverable if Lead Plaintiffs were to prevail on each of their claims. The issues on which the Settling Parties disagree include, but are not limited to: (1) whether Defendants omitted and/or made untrue statements of material fact; (2) whether the offering materials for the Offerings omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (3) whether the Securities Act of 1933 (the "Securities Act") was violated by Defendants.

**5. Statement of Attorneys' Fees and Expenses Sought:** Court-appointed Lead Counsel, Kessler Topaz Meltzer & Check, LLP and Nix Patterson & Roach, LLP, have litigated this case on a wholly contingent basis since its inception and have conducted this case and advanced the expenses of litigation with the expectation that if they were successful in recovering money for the Settlement Class, they would receive fees and be reimbursed for their expenses from the Settlement Fund, as is customary in this type of litigation. Lead Counsel, on behalf of Plaintiffs' Counsel, will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 30% of the Settlement Fund. In addition, Lead Counsel also will apply for reimbursement of expenses paid or incurred by Plaintiffs' Counsel in connection with the prosecution and resolution of the Litigation, in an amount not to exceed \$125,000 plus interest earned thereon at the same rate as the Settlement Fund. In addition, Lead Plaintiffs may seek reimbursement from the Settlement Fund in an amount not to exceed \$7,500 for reasonable costs and expenses (including lost wages) incurred by Lead Plaintiffs in connection with their representation of the Settlement Class. If the Court approves Lead Counsel's application for attorneys' fees and expenses (including reimbursement of costs and expenses to Lead Plaintiffs), Lead Counsel estimate that the average cost will be approximately \$0.11 per damaged share of GMX common stock.

**6. Identification of Attorneys' Representatives:** Lead Plaintiffs and the Settlement Class are represented by: Michael K. Yarnoff, Esq., Kessler Topaz Meltzer & Check, LLP, 280 King of Prussia Road, Radnor, PA 19087, (610) 667-7706, [www.ktmc.com](http://www.ktmc.com), and Bradley E. Beckworth, Esq., Nix Patterson & Roach, LLP, 205 Linda Drive, Daingerfield, TX 75638, (903) 645-7333, [www.nixlawfirm.com](http://www.nixlawfirm.com).

**7. Reasons for the Settlement:** Lead Plaintiffs' principal reason for entering into the Settlement is the immediate cash benefit to the Settlement Class, without further risk or the delays inherent in continued litigation. The cash benefit under the Settlement must be considered against the significant risk that a smaller recovery—or, indeed, no recovery at all—might be achieved after contested motions, trial and likely appeals, a process that could last several years into the future. Furthermore, the alleged corporate wrongdoer, GMX, filed for Chapter 11 bankruptcy in April 2013 and is no longer a defendant in this Litigation and thus, not a viable source of recovery for the Settlement Class. Therefore, Lead Counsel have recommended the Settlement to Lead Plaintiffs. For the Settling Defendants, who deny all allegations of wrongdoing or liability whatsoever, the principal reason for entering into the Settlement is to eliminate the expense, risks, and uncertainty of further litigation.

**YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:**

<p><b>SUBMIT A PROOF OF CLAIM POSTMARKED NO LATER THAN SEPTEMBER 8, 2014.</b></p>	<p>This is the only way to be eligible to receive a payment from the Settlement. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Claims (as defined in ¶ 30 below) that you have against the Settling Defendants and the other Defendants’ Released Persons (as defined in ¶ 31 below). If you remain in the Settlement Class, it is in your interest to submit a Proof of Claim.</p>
<p><b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN JULY 10, 2014.</b></p>	<p>If you exclude yourself from the Settlement Class, you will not be eligible to get any payment from the Settlement Fund. This is the only option that <i>potentially</i> allows you to ever be part of any other proceeding against any of the Settling Defendants or the other Defendants’ Released Persons concerning the Released Claims.</p>
<p><b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN JULY 10, 2014.</b></p>	<p>If you do not like the proposed Settlement, the proposed Plan of Allocation, the request for an award of attorneys’ fees and expenses to Lead Counsel and/or the request for reimbursement to Lead Plaintiffs, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation or the fee and expense requests unless you are a Settlement Class Member and do not exclude yourself.</p>
<p><b>GO TO THE HEARING ON JULY 31, 2014 AT 9:30 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN JULY 10, 2014.</b></p>	<p>Filing a written objection and notice of intention to appear allows you to speak in Court about the fairness of the proposed Settlement, the proposed Plan of Allocation, the request for an award of attorneys’ fees and expenses to Lead Counsel and/or the request for reimbursement to Lead Plaintiffs. If you submit a written objection, you may (but do not have to) attend the hearing and speak to the Court about your objection.</p>
<p><b>DO NOTHING</b></p>	<p>If you are a member of the Settlement Class and you do not submit a Proof of Claim, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue regarding the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Litigation.</p>

- These rights and options—and the deadlines to exercise them—are explained in this Notice. Please note: the date of the Final Approval Hearing—currently scheduled for July 31, 2014—is subject to change without further notice. If you plan to attend the hearing, you should check with Lead Counsel as set forth above, or with the Court, to be sure that no change to the date and time of the hearing has been made.
- The Court in charge of this Litigation still has to decide whether to finally approve the Settlement. Payments will be made to Settlement Class Members if the Court finally approves the Settlement and that approval is upheld after any appeals are filed. Please be patient.

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## WHY DID I GET THIS NOTICE?

8. This Notice is being sent to you pursuant to an order of the United States District Court for the Western District of Oklahoma because you or someone in your family or an investment account for which you serve as custodian may have purchased or otherwise acquired GMX common stock pursuant or traceable to the Company's May 2009 Offering or October 2009 Offering. The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court decides whether to finally approve the proposed Settlement of this Litigation. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the Court finally approves the Settlement, the claims administrator selected by Lead Plaintiffs and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. In a class action lawsuit, the Court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. In this Litigation, the Court has appointed Northumberland County Retirement System and Oklahoma Law Enforcement Retirement System to serve as "Lead Plaintiffs" under a federal law governing lawsuits such as this one, and has appointed the law firms of Kessler Topaz Meltzer & Check, LLP and Nix Patterson & Roach, LLP to serve as Lead Counsel in the Litigation and the law firm of Nelson, Terry, Morton, Dewitt, Paruolo & Wood to serve as liaison counsel. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Once the class is certified, the Court must resolve all issues on behalf of the class members, except for any persons or entities who choose to exclude themselves from the class. (For more information on excluding yourself from the Settlement Class, please read "What If I Do Not Want To Participate In The Settlement? How Do I Exclude Myself?," on page 8 below.)

10. The Court in charge of this case is the United States District Court for the Western District of Oklahoma, and the case is known as *Northumberland County Retirement System and Oklahoma Law Enforcement Retirement System v. GMX Resources Inc., et al.*, 11-cv-00520-D. The judge presiding over this case is the Honorable Timothy D. DeGiusti, United States District Judge. The people who are suing are called plaintiffs, and those who are being sued are called defendants. In this case, named plaintiffs are referred to as the Lead Plaintiffs and they are suing on behalf of themselves and the Settlement Class, and the Settling Defendants are: (i) defendants Ken L. Kenworthy, Jr. and James A. Merrill (collectively, the "Individual Defendants"); (ii) defendants BBVA Securities, Inc., Capital One Southcoast, Inc., Credit Suisse Securities (USA) LLC, Fortis Securities LLC, Howard Weil Incorporated (n/k/a Scotia Capital USA Inc.), Jefferies & Company, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Pritchard Capital Partners, LLC, and Wedbush Morgan Securities Inc. (collectively, the "Underwriter Defendants"); and (iii) defendant Smith Carney & Co. ("Smith Carney" and, together with the Individual Defendants, and the Underwriter Defendants, the "Settling Defendants"). If the Settlement is approved, it will resolve all claims asserted in the Litigation by Lead Plaintiffs on behalf of themselves and the Settlement Class Members against the Settling Defendants and will bring the Litigation to an end.

11. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It also is being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement, the proposed Plan of Allocation, the application by Lead Counsel for an award of attorneys' fees and expenses and the request by Lead Plaintiffs for reimbursement of costs and expenses directly related to their representation of the Settlement Class (the "Final Approval Hearing").

12. The Final Approval Hearing will be held on **July 31, 2014 at 9:30 a.m.**, before the Honorable Timothy D. DeGiusti, in the United States District Court for the Western District of Oklahoma, U.S. Courthouse, 200 N.W. Fourth St., Oklahoma City, OK 73102, to determine:

- (a) whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;
- (b) whether the Released Claims against the Settling Defendants and the other Defendants' Released Persons should be dismissed with prejudice as set forth in the Stipulation;
- (c) whether the Court should finally certify the Settlement Class for purposes of effectuating the Settlement only;
- (d) whether the proposed Plan of Allocation is fair and reasonable and should be approved by the Court;
- (e) whether Lead Counsel's request for an award of attorneys' fees and expenses should be approved by the Court; and
- (f) whether Lead Plaintiffs' request for reimbursement of costs and expenses directly related to their representation of the Settlement Class should be approved by the Court.

13. This Notice does not express any opinion by the Court concerning the merits of any claim in the Litigation, and the Court still has to decide whether to finally approve the Settlement. If the Court finally approves the Settlement, payments to eligible Settlement Class Members will be made after any appeals are resolved, and after the completion of all claims processing. Please be patient.

#### WHAT IS THIS CASE ABOUT?

14. The case concerns claims brought by investors alleging that the price of GMX common stock issued in the Company's May 2009 and October 2009 Offerings was artificially inflated as a result of materially untrue statements contained in the offering materials for each of the Offerings concerning the accuracy and integrity of GMX's financial statements, as well as the adequacy of the Company's internal controls over financial reporting.

15. On March 10, 2011 a putative class action was filed by Lead Plaintiffs in the District Court of Oklahoma County, State of Oklahoma, asserting claims for alleged violation of federal securities laws against GMX and the Settling Defendants, among others. Lead Plaintiffs asserted claims in connection with secondary offerings of common stock commenced by GMX on or about July 18, 2008, May 13, 2009, and October 22, 2009. On May 12, 2011, Defendants removed the lawsuit to the United States District Court for the Western District of Oklahoma. On June 10, 2011, Lead Plaintiffs moved to remand the litigation back to the District Court of Oklahoma County. On November 16, 2011, the Court denied Lead Plaintiffs' motion to remand. On July 3, 2012, the Court appointed Northumberland County Retirement System and Oklahoma Law Enforcement Retirement System as Lead Plaintiffs. The Court further appointed Kessler Topaz Meltzer & Check, LLP and Nix Patterson & Roach, LLP as Lead Counsel and Nelson, Roselius, Terry & Morton (n/k/a Nelson, Terry, Morton, DeWitt, Paruolo & Wood) as Liaison Counsel.

16. On August 17, 2012, Lead Plaintiffs filed the operative complaint, the Amended Class Action Complaint (the "Complaint"). The Complaint asserted claims against GMX and the Settling Defendants on behalf of purchasers or acquirers of GMX common stock pursuant or traceable to the May 2009 Offering or the October 2009 Offering.<sup>2</sup> In particular, the Complaint asserted claims for violations of Sections 11, 12, and 15 of the Securities Act of 1933 (15 U.S.C. §§ 77k, 77l, and 77o) based on allegations that GMX and the Settling Defendants made untrue statements, material misrepresentations and/or omissions in the offering materials for the May 2009 Offering and October 2009 Offering, including without limitation, the prospectus GMX filed with the U.S. Securities and Exchange Commission (the "SEC") on June 25, 2008, prospectus supplements GMX filed with the SEC on May 14, 2009 and October 26, 2009, and the GMX financial statements and SEC filings incorporated by reference into the prospectus and prospectus supplements.

17. On October 1, 2012, GMX and the Settling Defendants filed motions to dismiss. On April 1, 2013, GMX filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Western District of Oklahoma. On July 17, 2013, as a result of GMX's bankruptcy filing, the parties filed a stipulation dismissing Lead Plaintiffs' claims against GMX with prejudice. On September 16, 2013, the Court entered an order denying the Settling Defendants' motions to dismiss.

18 Thereafter, the Settling Parties agreed to begin discussing a potential settlement of the Litigation, and on November 4, 2013, the Settling Parties engaged in mediation with the Honorable Layn R. Phillips, United States District Judge for the Western District of Oklahoma (Ret.). Following the mediation, with the continued assistance of Judge Phillips, the Settling Parties continued to negotiate a resolution, which culminated in the Settling Parties reaching an agreement in principle to settle the Litigation on November 25, 2013.

19. Based upon their investigation of the facts underlying the Litigation and the negotiations leading to the Settlement, Lead Plaintiffs and Lead Counsel have concluded that the terms and conditions of the Stipulation are fair, reasonable and adequate to Lead Plaintiffs and the other members of the Settlement Class, and in their best interests. Lead Plaintiffs have agreed to settle the claims raised in the Litigation pursuant to the terms and provisions of the Stipulation, after considering: (a) the benefits that Lead Plaintiffs and the other members of the Settlement Class will receive from the resolution of the Litigation, (b) the attendant risks of litigation, and (c) the desirability of permitting the Settlement to be consummated pursuant to the terms of the Stipulation. The fact that Lead Plaintiffs have agreed to settle the Litigation shall not be construed or deemed to be a concession by Lead Plaintiffs of any infirmity in the claims asserted in the Litigation. Each of the Settling Defendants denies any wrongdoing, and the fact that the Settling Defendants have agreed to settle the Litigation shall not be construed as or deemed to be evidence of or an admission or concession on the part of any of the Settling Defendants with respect to any claim or of any fault or liability or wrongdoing or damages whatsoever, or any infirmity in the defenses that the Settling Defendants asserted, or could have asserted.

20. On April 21, 2014, the Court preliminarily approved the Settlement, authorized this Notice to be sent to potential Settlement Class Members, and scheduled the Final Approval Hearing to consider whether to grant final approval of the Settlement.

<sup>2</sup> Lead Plaintiffs did not assert any claims based on the offering commenced on or around July 18, 2008 in the Complaint.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?**

21. If you are a member of the Settlement Class, you are subject to the Settlement unless you timely request to be excluded from the Settlement Class. The Settlement Class consists of:

All Persons who purchased or otherwise acquired GMX common stock pursuant or traceable to the Company's May 2009 Offering or October 2009 Offering.

Excluded from the Settlement Class are: (a) any putative members of the Settlement Class who submit valid and timely requests for exclusion from the Settlement Class in accordance with the requirements set forth in the Notice and Rule 23 of the Federal Rules of Civil Procedure (*see* "What If I Do Not Want To Participate In The Settlement? How Do I Exclude Myself?," on page 8 below); and (b) the Settling Defendants; GMX; members of the immediate family of any such Settling Defendant; any parent or subsidiary of any such Settling Defendant; any person, firm, trust, corporation, officer, director, or other individual or entity in which any Settling Defendant or GMX has or had a controlling interest; the partners, officers and directors of any Settling Defendant or GMX; and the legal representatives, agents, executors, heirs, successors, or assigns of any such excluded Person. The Settling Defendants or any entity in which any of the Settling Defendants has or had a controlling interest (for purposes of this paragraph, together a "Defendant-Controlled Entity") are excluded from the Settlement Class only to the extent that such Defendant-Controlled Entity itself purchased a proprietary (*i.e.*, for its own account) interest in GMX's common stock. To the extent that a Defendant-Controlled Entity purchased any GMX common stock in a fiduciary capacity or otherwise on behalf of any third-party client, account, fund, trust, or employee benefit plan that otherwise falls within the Settlement Class, neither such Defendant-Controlled Entity nor the third-party client, account, fund, trust, or employee benefit plan shall be excluded from the Settlement Class with respect to such fiduciary purchases.

**PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE PROOF OF CLAIM AND RELEASE FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN SEPTEMBER 8, 2014.**

**WHAT ARE LEAD PLAINTIFFS' REASONS FOR THE SETTLEMENT?**

22. The principle reason for Lead Plaintiffs' consent to the Settlement is that it provides an immediate benefit to the Settlement Class. The benefit of the present Settlement must be compared to the risk that no recovery might be achieved after contested motions, a contested trial and likely appeals, possibly years into the future.

23. The claims advanced by the Settlement Class in this Litigation involve numerous complex legal and factual issues, which would require substantial merits and expert discovery, adding considerably to the expense and duration of the litigation. If the Litigation were to proceed, Lead Plaintiffs would have to overcome significant defenses. Among other things, the Settling Parties disagree about: (i) whether Lead Plaintiffs or the Settlement Class have suffered any damages, (ii) whether the price of GMX common stock issued in the Offerings was artificially inflated by reason of the alleged misrepresentations and omissions in the offering materials, or otherwise, and (iii) whether Lead Plaintiffs or the Settlement Class were harmed by the conduct alleged in the Litigation. Questions remain regarding the extent of the Settling Defendants' liability and the extent to which a jury might find them liable, if at all. This Settlement affords the Settlement Class a recovery without incurring any additional risk or costs.

24. The Settling Defendants have expressly denied and continue to deny all assertions of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. The Settling Defendants also continue to believe that the claims asserted against them in the Litigation are without merit. The Settling Defendants have agreed to enter into the Settlement, as embodied in the Stipulation, solely to avoid the expense, distraction, time and uncertainty associated with continuing the litigation.

25. In light of the risks associated with a trial of this Litigation, the amount of the Settlement and the immediacy of recovery to the Settlement Class, Lead Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Settlement Class. Lead Plaintiffs and Lead Counsel believe that the Settlement provides a substantial benefit to the Settlement Class, namely \$2.7 million in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Litigation would produce a smaller, or no, recovery after summary judgment, trial and appeals, possibly years in the future.

**WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

26. If there were no Settlement and Lead Plaintiffs failed to establish any essential legal or factual element of their claims, neither Lead Plaintiffs nor the other members of the Settlement Class would recover anything from the Settling Defendants. Also, if the Settling Defendants were successful in proving any of their defenses, the Settlement Class likely would recover substantially less than the amount provided in the Settlement, or nothing at all.

**HOW MUCH WILL MY PAYMENT BE?**

27. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement.

28. Appendix A to this Notice explains the plan for allocating the Net Settlement Fund among Authorized Claimants (the “Plan of Allocation”), as proposed by Lead Plaintiffs. The Court may modify the Plan of Allocation, or enter a different plan of allocation, without further notice to the Settlement Class.

**WHAT RIGHTS AM I GIVING UP BY REMAINING IN THE SETTLEMENT CLASS?**

29. If you remain in the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss with prejudice the claims against the Settling Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiffs and all other Settlement Class Members, will fully and finally release, to the fullest extent that the law permits their release in this Litigation, as against the Settling Defendants and the other Defendants’ Released Persons (as defined in ¶ 31 below) all Released Claims (as defined in ¶ 30 below).

30. “Released Claims” means any and all claims, demands, losses, rights, causes of action, liabilities, obligations, judgments, suits, matters and issues of any kind or nature whatsoever, whether known or Unknown Claims (as defined below), contingent or absolute, suspected or unsuspected, disclosed or undisclosed, that have been or could have been asserted against any and/or all Settling Defendants and any and/or all of Defendants’ Released Persons in the Litigation or in any court, tribunal, forum or proceeding (including, but not limited to, any claims arising under federal, state or foreign law, common law, statute, rule or regulation relating to alleged fraud, breach of any duty, negligence, violations of the federal securities laws, or otherwise), whether individual or class, which arise out of, are based on, or relate in any way, directly or indirectly to (1) the purchase or acquisition of GMX common stock pursuant or traceable to the May 2009 Offering or the October 2009 Offering and (2) the acts, facts, statements, or omissions that were or could have been alleged by Lead Plaintiffs in the Litigation. “Released Claims” excludes any claims asserted in any derivative action or ERISA action based on similar allegations or any claims to enforce the Settlement.

31. “Defendants’ Released Persons” means each and all of the Settling Defendants, each and all of their Related Persons and GMX. With respect to the Settling Defendants, “Related Persons” means each and all of their respective present and former parents, subsidiaries, divisions, joint ventures, and affiliates, and each of their respective present and former employees, members, general and limited partners and their partnerships, principals, officers, directors, attorneys, advisors, accountants, auditors, financial advisors, commercial bank lenders, insurers, underwriters, investment bankers, representatives, and insurers; and the predecessors, successors, spouses, estates, heirs, executors, trusts, trustees, administrators, agents, fiduciaries, consultants, representatives and assigns of each of them, in their capacity as such; and any trust of which any Person described in this subparagraph is the settlor or which is for the benefit of any Person described in this subparagraph and/or member(s) of his or her family; and any entity in which any Person described in this subparagraph has a controlling interest.

32. “Unknown Claims” means any Released Claims that Lead Plaintiffs or any Settlement Class Members do not know or suspect to exist—as well as any Released Defendants’ Claims that Settling Defendants or any of their Related Persons do not know or suspect to exist—in his, her, or its respective favor at the time of the release, regardless of whether such Released Claim or Released Defendants’ Claim, if known by him, her, or it, might have affected his, her, or its decision with respect to the Settlement and/or release of the claim. With respect to any and all Unknown Claims, the Settling Parties stipulate and agree that, upon the Effective Date, they shall expressly waive, and each of the Settlement Class Members and each of the Settling Defendants’ Related Persons shall be deemed to have waived (by operation of the Final Judgment), to the fullest extent permitted by law the provisions, rights, and benefits of California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties shall expressly waive, and each of the Settlement Class Members and each of the Settling Defendants’ Related Persons shall be deemed to have waived (by operation of the Final Judgment), any and all

provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542. The Settling Parties, Settlement Class Members and/or the Settling Defendants' Related Persons may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and Released Defendants' Claims, but the Settling Parties shall expressly, and each Settlement Class Member and Settling Defendants' Related Persons, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the Settlement Class Members and Settling Defendants' Related Persons shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING?  
HOW WILL THE LAWYERS BE PAID?**

33. Lead Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Settlement Class, nor have Lead Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel, on behalf of Plaintiffs' Counsel, will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 30% of the Settlement Fund. At the same time, Lead Counsel also intend to apply for reimbursement of expenses not to exceed \$125,000, plus interest earned thereon at the same rate as the Settlement Fund. Lead Plaintiffs may also make an application to the Court for reimbursement in an amount not to exceed \$7,500 for their reasonable costs and expenses (including lost wages) directly relating to their representation of the Settlement Class pursuant to 15 U.S.C. §77z-1(a)(4) of the Private Securities Litigation Reform Act of 1995. The Court will determine the amount of any award of attorneys' fees and expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

**HOW DO I PARTICIPATE IN THE SETTLEMENT?  
WHAT DO I NEED TO DO?**

34. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Proof of Claim with adequate supporting documentation **post-marked no later than September 8, 2014**. A Proof of Claim is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator, [www.strategicclaims.net](http://www.strategicclaims.net), or you may request that a Proof of Claim be mailed to you by calling the Claims Administrator toll free at (866) 274-4004. If you request exclusion from the Settlement Class or do not submit a timely and valid Proof of Claim, you will not be eligible to share in the Net Settlement Fund. Please retain all records of your ownership of and transactions in GMX common stock, as they may be needed to document your claim.

35. As a Settlement Class Member, you are represented by Lead Plaintiffs and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her notice of appearance on the attorneys listed in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement? Do I Have to Come to the Hearing? May I Speak at the Hearing If I Do Not Like the Settlement?," below.

36. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, "What If I Do Not Want To Participate in the Settlement? How Do I Exclude Myself?," below.

37. If you are a Settlement Class Member and you wish to object to the Settlement, the proposed Plan of Allocation, Lead Counsel's application for an award of attorneys' fees and expenses and/or Lead Plaintiffs' request for reimbursement of costs and expenses directly related to their representation of the Settlement Class, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement? Do I Have to Come to the Hearing? May I Speak at the Hearing If I Do Not Like the Settlement?," below.

**WHAT IF I DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT?  
HOW DO I EXCLUDE MYSELF?**

38. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, including those concerning the Settlement, whether favorable or unfavorable, unless such person or entity mails or delivers a written request for exclusion from the Settlement Class, addressed to: *Northumberland County Retirement System, et al.*

*v. GMX Resources Inc., et al.*, c/o Strategic Claims Services, Claims Administrator, P.O. Box 230, 600 N. Jackson Street, Suite 3, Media, PA 19063. The request for exclusion must be **received no later than July 10, 2014**. You will not be able to exclude yourself from the Settlement Class after that date. Each request for exclusion must: (i) state the name, address and telephone number of the person or entity requesting exclusion; (ii) expressly state that such person or entity “requests exclusion from the Settlement Class in *Northumberland County Retirement System, et al. v. GMX Resources Inc., et al.*, Case No. CIV-11-520-D”; (iii) state the person’s or entity’s purchases and/or acquisitions of GMX common stock pursuant or traceable to the May 2009 Offering or October 2009 Offering and any sales thereof, including the dates, the number of shares and price(s) paid and received for each such purchase, acquisition and sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

39. Even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Claim against any of the Defendants’ Released Persons, you must follow these instructions for exclusion if you do not want to be part of the Settlement Class. If you have a pending lawsuit, arbitration or other proceeding against any of the Settling Defendants or any of the other Defendants’ Released Persons, speak to your lawyer in that action immediately. **Please Note: Should you elect to exclude yourself from the Settlement Class, you should understand that the Settling Defendants will have the right to assert any and all defenses they may have to any claims that you may seek to assert, including without limitation the defense that any such claims are untimely under applicable statutes of limitations and statutes of repose. Although the Settling Defendants have decided to settle the Litigation in its entirety in order to eliminate the burden and expense of continued litigation, the Settling Defendants will retain and are not waiving in any way the right to assert that any subsequent claims asserted by any individual Settlement Class Members who exclude themselves from the Settlement Class are time-barred, are otherwise subject to dismissal, or otherwise lack merit.**

40. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment out of the Net Settlement Fund or any other benefit provided for in the Stipulation.

41. The Settling Defendants have the right to terminate the Settlement if valid requests for exclusion are received from Persons entitled to be members of the Settlement Class in an amount that exceeds an amount agreed to by Lead Plaintiffs and the Settling Defendants.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DO NOT LIKE THE SETTLEMENT?**

42. Settlement Class Members do not need to attend the Final Approval Hearing. The Court will consider any submission made in accordance with the provisions below, even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Final Approval Hearing.

43. The Final Approval Hearing will be held on **July 31, 2014 at 9:30 a.m.** before the Honorable Timothy D. DeGiusti, in the United States District Court for the Western District of Oklahoma, U.S. Courthouse, 200 N.W. Fourth St., Oklahoma City, OK 73102, Courtroom 503. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel’s request for an award of attorneys’ fees and expenses and/or Lead Plaintiffs’ request for reimbursement of costs and expenses at or after the Final Approval Hearing without further notice to the members of the Settlement Class.

44. Any Settlement Class Member who does not request exclusion from the Settlement Class may object to the proposed Settlement, the proposed Plan of Allocation, Lead Counsel’s request for an award of attorneys’ fees and expenses and/or Lead Plaintiffs’ request for reimbursement of costs and expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk’s Office at the United States District Court for the Western District of Oklahoma at the address set forth below **on or before July 10, 2014**. You must also serve the papers on Lead Counsel for the Settlement Class and designated counsel for the Settling Defendants at the addresses set forth below so that the papers are **received on or before July 10, 2014**.

<p><b><u>Clerk’s Office</u></b></p> <p>United States District Court for the Western District of Oklahoma Clerk of the Court 200 N.W. 4th Street Room 1210 Oklahoma City, OK 73102</p>	<p><b><u>Lead Counsel for the Settlement Class</u></b></p> <p>Michael K. Yarnoff, Esq. <b>KESSLER TOPAZ MELTZER &amp; CHECK, LLP</b> 280 King of Prussia Road Radnor, PA 19087</p> <p>Bradley E. Beckworth, Esq. <b>NIX PATTERSON &amp; ROACH, LLP</b> 205 Linda Drive Daingerfield, TX 75638</p>	<p><b><u>Designated Counsel for the Settling Defendants</u></b></p> <p>Kenneth P. Held, Esq. <b>SCHIFFER ODOM HICKS &amp; JOHNSON PLLC</b> 700 Louisiana, Suite 1200 Houston, TX 77002</p>
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45. Any objection to the Settlement must: (i) state the name, address and telephone number of the person or entity objecting and must be signed by the objector; (ii) contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (iii) must include documents sufficient to prove the person's or entity's membership in the Settlement Class, which proof shall include the person's or entity's purchases and/or acquisitions of GMX common stock pursuant or traceable to the May 2009 Offering or October 2009 Offering and any sales thereof, including the dates, the number of shares and price(s) paid and received for each such purchase, acquisition and sale. You may not object to the Settlement, the Plan of Allocation, Lead Counsel's request for attorneys' fees and expenses and/or Lead Plaintiffs' request for reimbursement of costs and expenses if you excluded yourself from the Settlement Class or if you are not a member of the Settlement Class.

46. You may file a written objection without having to appear at the Final Approval Hearing. You may not, however, appear at the Final Approval Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

47. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, Lead Counsel's request for an award of attorneys' fees and expenses, and/or Lead Plaintiffs' request for reimbursement of costs and expenses, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and designated counsel for the Settling Defendants at the addresses set forth above so that it is **received on or before July 10, 2014**. Persons who intend to object and desire to present evidence at the Final Approval Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify, a description of the subject matter on which each witness will testify, and any exhibits they intend to introduce into evidence at the hearing.

48. You are not required to hire an attorney to represent you in making written objections or in appearing at the Final Approval Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and designated counsel for the Settling Defendants so that the notice is **received on or before July 10, 2014**.

49. The Final Approval Hearing may be adjourned by the Court without further written notice to the Settlement Class. If you intend to appear at the Final Approval Hearing, you should confirm the date and time with Lead Counsel.

50. Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, Lead Counsel's request for an award of attorneys' fees and expenses or Lead Plaintiffs' request for reimbursement of costs and expenses. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

#### WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

51. If you purchased or otherwise acquired GMX common stock pursuant or traceable to the May 2009 Offering or October 2009 Offering for the beneficial interest of a person or entity other than yourself, you must either: (a) within ten (10) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Proof of Claim (the "Notice Packet") to forward to all such beneficial owners and within ten (10) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within ten (10) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to *Northumberland County Retirement System, et al. v. GMX Resources Inc., et al.*, c/o Strategic Claims Services, Claims Administrator, P.O. Box 230, 600 N. Jackson Street, Suite 3, Media, PA 19063. If you choose the second option, the Claims Administrator will send a copy of the Notice and Proof of Claim to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and Proof of Claim may also be obtained from the website maintained by the Claims Administrator, [www.strategicclaims.net](http://www.strategicclaims.net), or by calling the Claims Administrator toll-free at (866) 274-4004.

#### CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

52. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Litigation, you are referred to the papers on file in the Litigation, including the Stipulation, which may be inspected during regular office hours at the Clerk of the Court for the United States District Court for the Western District of Oklahoma, 200 N.W. 4th Street, Room 1210, Oklahoma City, OK 73102. Additionally,

copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, [www.strategicclaims.net](http://www.strategicclaims.net). All inquiries concerning this Notice or Proof of Claim should be directed to the Claims Administrator or Lead Counsel at:

*Northumberland County Retirement System,  
et al. v. GMX Resources Inc., et al.*  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 3  
Media, PA 19063  
(866) 274-4004  
[www.strategicclaims.net](http://www.strategicclaims.net)

Michael K. Yarnoff, Esq.  
**KESSLER TOPAZ  
MELTZER & CHECK, LLP**  
280 King of Prussia Road  
Radnor, PA 19087  
(610) 667-7706  
[www.ktmc.com](http://www.ktmc.com)

Jeffrey J. Angelovich, Esq.  
Bradley E. Beckworth, Esq.  
Susan Whatley, Esq.  
**NIX PATTERSON & ROACH, LLP**  
205 Linda Drive  
Daingerfield, TX 75638  
(903) 645-7333  
[www.nixlawfirm.com](http://www.nixlawfirm.com)

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF COURT REGARDING THIS NOTICE.**

Dated: April 21, 2014

By Order of the Court  
United States District Court  
for the Western District of Oklahoma

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**APPENDIX A****PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND**

The Plan of Allocation is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Court may approve the Plan of Allocation with or without modifications agreed to among the Settling Parties, or another plan of allocation, without further notice to Settlement Class Members. Any modifications to the Plan of Allocation will be posted to the Claims Administrator's website, [www.strategicclaims.net](http://www.strategicclaims.net).

The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim. **Please Note:** The Recognized Claim formula, set forth below, is not intended to be an estimate of the amount of what a Settlement Class Member might have been able to recover after a trial, nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Claim formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's Recognized Claim. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total Recognized Claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Claim bears to the total Recognized Claims of all Authorized Claimants (*i.e.*, "*pro rata* share"). Payment in this manner shall be deemed conclusive against all Authorized Claimants. No distribution will be made on a claim where the potential distribution amount is less than ten dollars (\$10.00) in cash.

If any funds remain in the Net Settlement Fund by reason of uncashed checks, or otherwise, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, then any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be used: (i) first, to pay any amounts mistakenly omitted from the initial distribution to Authorized Claimants or to pay any late, but otherwise valid and fully documented claims received after the cut-off date used to make the initial distribution, provided that such distributions to any late post-distribution claimants meet all of the other criteria for inclusion in the initial distribution, including the \$10.00 minimum check amount set forth in the Notice; (ii) second, to pay any additional Notice and Administration Costs incurred in administering the Settlement; and (iii) finally, to make a second distribution to Authorized Claimants who cashed their checks from the initial distribution and who would receive at least \$10.00 from such second distribution, after payment of the estimated costs or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. If six (6) months after such second distribution, if undertaken, or if such second distribution is not undertaken, any funds shall remain in the Net Settlement Fund after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in this Settlement cash their checks, any funds remaining in the Net Settlement Fund shall be donated to a non-profit charitable organization(s) selected by Lead Counsel.

**THE BASIS FOR CALCULATING YOUR RECOGNIZED CLAIM:**

Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Authorized Claimants. Recognized Claims will be calculated for those shares of GMX common stock purchased or otherwise acquired pursuant or traceable to the Company's May 13, 2009 and/or October 22, 2009 offerings (together, the "Offerings").

A claimant's Recognized Claim will be calculated as follows:

**I) GMX Common Stock Purchased or Otherwise Acquired Pursuant or Traceable to the May 13, 2009 Offering:**

- A. For each share retained at the close of trading on March 10, 2011, the Recognized Claim shall be \$7.44<sup>3</sup> per share; and
- B. For each share sold on or before March 10, 2011, the Recognized Claim shall be the difference between the \$12.50 offering price per share and the sales price per share.

**II) GMX Common Stock Purchased or Otherwise Acquired Pursuant or Traceable to the October 22, 2009 Offering:**

- A. For each share retained at the close of trading on March 10, 2011, the Recognized Claim shall be \$9.94<sup>4</sup> per share; and
- B. For each share sold on or before March 10, 2011, the Recognized Claim shall be the difference between the \$15.00 offering price per share and the sales price per share.

<sup>3</sup> \$7.44 represents the difference between the \$12.50 offering price per share of GMX common stock on May 13, 2009 and the \$5.06 closing price of GMX common stock on March 10, 2011—the date the initial suit was brought.

<sup>4</sup> \$9.94 represents the difference between the \$15.00 offering price per share of GMX common stock on October 22, 2009 and the \$5.06 closing price of GMX common stock on March 10, 2011—the date the initial suit was brought.

There were 12.7 million shares of GMX common stock sold pursuant to the Offerings. Lead Plaintiffs' damages consultant estimates that approximately 8.6 million of those shares of GMX common stock were damaged thereby. If claims are submitted with respect to all 8.6 million shares, Lead Plaintiffs estimate that the gross recovery per damaged share would be approximately \$0.31. This per damaged share calculation is on a gross basis, before deduction from the Settlement Fund of attorneys' fees and expenses, notice and claims processing costs and other amounts as may be allowed by the Court.

In order to be eligible to receive a distribution from the Net Settlement Fund, you must have purchased or otherwise acquired GMX common stock pursuant or traceable to at least one of the Offerings. For purposes of calculating your Recognized Claim, the date of purchase, acquisition or sale is the "contract" or "trade" date and not the "settlement" or "payment" date. The receipt or grant by gift, inheritance or operation of law of GMX common stock purchased or otherwise acquired pursuant or traceable to the Offerings shall not be deemed a purchase, acquisition or sale of GMX common stock for the calculation of an Authorized Claimant's Recognized Claim nor shall such receipt or grant be deemed an assignment of any claim relating to the purchase or acquisition of such GMX common stock unless: (i) the donor or decedent purchased or otherwise acquired GMX common stock pursuant or traceable to the Offerings; (ii) no Proof of Claim was submitted by or on behalf of the donor or decedent, or by anyone else with respect to such GMX common stock; and (iii) it is specifically so provided in the instrument of gift or assignment.

For purposes of calculating your Recognized Claim, all purchases, acquisitions and sales shall be matched on a First In First Out ("FIFO") basis. In the event that a claimant has more than one purchase or acquisition of GMX common stock pursuant or traceable to the Offerings, all purchases, acquisitions and sales will be matched, in chronological order. Therefore, on the Proof of Claim enclosed with this Notice, you must provide all of your purchases and acquisitions of GMX common during the time period May 13, 2009 through March 10, 2011, inclusive. Brokerage commissions and transfer taxes paid by you in connection with your purchases, acquisitions and sales of GMX common stock should be excluded from the "total purchase/acquisition price" and net of the "total proceeds."

Payment pursuant to the Plan of Allocation approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Defendants, Defendants' Counsel, Lead Plaintiffs, Plaintiffs' Counsel or the Claims Administrator or other agent designated by Plaintiffs' Counsel based on the distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's Proof of Claim. All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted in connection with the Settlement, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund shall be released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they are to receive payment from the Net Settlement Fund, will be barred from making any further claim against the Net Settlement Fund beyond the amount allocated to them as provided in any distribution orders entered by the Court.

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE WESTERN DISTRICT OF OKLAHOMA**

NORTHUMBERLAND COUNTY	)	
RETIREMENT SYSTEM and OKLAHOMA	)	
LAW ENFORCEMENT RETIREMENT SYSTEM,	)	
Individually and On Behalf of All Others Similarly Situated,	)	
<i>Plaintiffs,</i>	)	Case No. CIV-11-520-D
v.	)	
GMX RESOURCES INC., et al.,	)	
<i>Defendants.</i>	)	

**PROOF OF CLAIM AND RELEASE FORM**

**I. GENERAL INSTRUCTIONS**

A. To recover as a member of the Settlement Class based on your claim in the litigation entitled *Northumberland County Retirement System and Oklahoma Law Enforcement Retirement System v. GMX Resources Inc., et al.*, 11-cv-00520-D (the "Litigation"), you must complete this Proof of Claim and Release form ("Proof of Claim"). If you fail to submit a Proof of Claim by the deadline, your claim may be rejected and you may be precluded from any recovery from the Settlement Fund created in connection with the proposed settlement of the Litigation ("Settlement"), as set forth in the Stipulation and Agreement of Settlement ("Stipulation") dated as of March 25, 2014.

B. Submission of this Proof of Claim, however, does not ensure that you will share in the proceeds of the Settlement Fund created in this Litigation.

C. YOU MUST COMPLETE AND SUBMIT YOUR PROOF OF CLAIM VIA MAIL **POSTMARKED NO LATER THAN SEPTEMBER 8, 2014**, ADDRESSED TO THE CLAIMS ADMINISTRATOR AS FOLLOWS:

*Northumberland County Retirement System, et al. v. GMX Resources Inc., et al.*  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 3  
Media, PA 19063

If you are NOT a member of the Settlement Class, as defined in the Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys' Fees and Expenses and Final Approval Hearing (the "Notice"), then DO NOT submit a Proof of Claim.

D. If you are a member of the Settlement Class, you are bound by the terms of any judgment entered in the Litigation, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM.

**II. INSTRUCTIONS FOR CLAIMANT IDENTIFICATION SCHEDULE**

A. If you purchased or otherwise acquired GMX Resources Inc. ("GMX") common stock pursuant or traceable to the Company's common stock offerings on or about May 13, 2009 or October 22, 2009, and held the stock in your name, you are the beneficial purchaser/owner as well as the record purchaser/owner. If, however, the stock was registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser/owner and the third party is the record purchaser/owner.

B. Use "Part I" of this form (below) entitled "Claimant Identification" to identify each owner of record ("nominee"), if different from the beneficial owner of the GMX common stock, which forms the basis of this claim. **THIS CLAIM MUST BE SUBMITTED BY THE ACTUAL BENEFICIAL OWNER(S), OR THE LEGAL REPRESENTATIVE OF SUCH OWNER(S) OF THE GMX COMMON STOCK UPON WHICH THIS CLAIM IS BASED.**

C. All joint purchasers/owners must sign this claim. Executors, administrators, guardians, conservators, and trustees must complete and sign this claim on behalf of persons or entities represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial purchaser/owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in the rejection of your claim.

### III. INSTRUCTIONS FOR SCHEDULE OF TRANSACTIONS

A. In the space provided below, supply all required details of your transaction(s) in GMX common stock. If you need more space, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

B. Please provide all of the requested information with respect to ***all*** of your purchases and acquisitions of GMX common stock during the relevant period, regardless of whether such transactions resulted in a profit or a loss. **Failure to report all such transactions may result in the rejection of your claim. Please note:** only GMX common stock purchased or otherwise acquired pursuant or traceable to the Company's May 2009 Offering or October 2009 Offering (together, the "Offerings") are eligible to potentially recover under the Settlement. However, because information regarding your sales of GMX common stock during the period from May 13, 2009 through March 10, 2011, inclusive, will be used for purposes of calculating your Recognized Claim under the Plan of Allocation contained in the Notice, information with respect to all of your purchases and acquisitions of GMX common stock during that period is needed in order to balance your claim. While only purchases and acquisitions of GMX common stock made pursuant or traceable to the Offerings will be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation, information regarding your purchases and acquisitions during this entire period is necessary in order to process your claim.

C. List each transaction separately and in chronological order by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

D. Broker confirmations or other documentation of your transactions in GMX common stock should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in the rejection of your claim.

E. The requests are designed to provide the minimum amount of information necessary to process the most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your losses. In some cases where the Claims Administrator cannot perform the calculation accurately or at a reasonable cost to the Settlement Class with the information provided, the Claims Administrator may condition acceptance of the claim upon the production of additional information and/or the hiring of an accounting expert at the claimant's cost.

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

*Northumberland County Retirement System, et al. v. GMX Resources Inc., et al.*

Case No. CIV-11-520-D

PROOF OF CLAIM AND RELEASE

Must be Postmarked No Later Than: September 8, 2014

Please Type or Print

**PART I: CLAIMANT IDENTIFICATION**

Beneficial Owner's Name (First, Middle, Last)

--

Record Owner's Name (if different from beneficial owner listed above)

--

Street Address

--

--

City: 

--

 State: 

--

 Zip Code: 

--

 - 

--

Foreign Province and Postal Code: 

--

 Foreign Country: 

--

Social Security Number (for individuals)  

--

OR

Taxpayer Identification Number  
(for estates, trusts, corporations, etc.)  

--

Area Code Telephone No. (Day)  

--

Area Code Telephone No. (Night)  

--

Area Code Facsimile Number  

--

Email  

--

Check One:  Individual  Corporation  Joint Owners  IRA  Estate  
 Other (specify) \_\_\_\_\_

**PART II: SCHEDULE OF TRANSACTIONS IN GMX COMMON STOCK**

A. **BEGINNING HOLDINGS:** At the close of trading on May 12, 2009, I (we) owned \_\_\_\_\_ shares of GMX common stock. (If none, write 0).

B. **PURCHASES/ACQUISITIONS:** I (We) made the following PURCHASES/ACQUISITIONS of GMX common stock from May 13, 2009 through March 10, 2011, inclusive.<sup>1</sup> Check the box next to any purchase or acquisition that is the result of the Company's common stock offerings on or about May 13, 2009 and October 22, 2009. (*Must be documented*):

Check Box if result of May 2009 or October 2009 Offerings	Trade Date(s) of Purchase(s)/ Acquisition(s) (List Chronologically) Month/Day/Year	Number of Shares of GMX Common Stock Purchased and/or Acquired	Purchase/Acquisition Price Per Share of GMX Common Stock	Total Purchase/ Acquisition Price (excluding commissions, taxes and fees)				
<input type="checkbox"/>	<table border="1" style="width:100%; border-collapse: collapse;"><tr><td style="width:100%; height: 18px;"></td></tr></table>		<table border="1" style="width:100%; border-collapse: collapse;"><tr><td style="width:100%; height: 18px;"></td></tr></table>		<table border="1" style="width:100%; border-collapse: collapse;"><tr><td style="width:100%; height: 18px;"></td></tr></table>		<table border="1" style="width:100%; border-collapse: collapse;"><tr><td style="width:100%; height: 18px;"></td></tr></table>	
<input type="checkbox"/>	<table border="1" style="width:100%; border-collapse: collapse;"><tr><td style="width:100%; height: 18px;"></td></tr></table>		<table border="1" style="width:100%; border-collapse: collapse;"><tr><td style="width:100%; height: 18px;"></td></tr></table>		<table border="1" style="width:100%; border-collapse: collapse;"><tr><td style="width:100%; height: 18px;"></td></tr></table>		<table border="1" style="width:100%; border-collapse: collapse;"><tr><td style="width:100%; height: 18px;"></td></tr></table>	
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<sup>1</sup> **Please note:** As set forth above, information with respect to all of your purchases/acquisitions of GMX common stock from May 13, 2009 through March 10, 2011, inclusive, is needed in order to balance your claim; however, only purchases/acquisitions of GMX common stock made pursuant or traceable to the Offerings are eligible to participate in the Settlement and will be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

C. **SALES:** I (We) made the following SALES of GMX common stock from May 13, 2009 through March 10, 2011, inclusive. (*Must be documented*):

Trade Date(s) of Sale(s) (List Chronologically) Month/Day/Year	Number of Shares of GMX Common Stock Sold	Sale Price Per Share of GMX Common Stock	Total Proceeds (excluding commissions, taxes and fees)
/  /		\$  .	\$  .
/  /		\$  .	\$  .
/  /		\$  .	\$  .
/  /		\$  .	\$  .

D. **UNSOLD HOLDINGS:** At the close of trading on March 10, 2011, I (we) still owned \_\_\_\_\_ shares of GMX common stock. (If none, write 0).

YOU MUST READ AND SIGN THE RELEASE ON PAGE 19. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.

If you require additional space, attach extra schedules in the same format as above. Copies of broker’s confirmations or other documentation evidencing your transactions in GMX common stock should be attached.

**PART III: SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGEMENTS**

1. I (We) submit this Proof of Claim and Release under the terms of the Stipulation and Agreement of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Western District of Oklahoma with respect to my (our) claim as a Settlement Class Member and for purposes of enforcing the release set forth herein and any Judgment that may be entered in the Litigation. I (We) further acknowledge that I (we) am (are) bound by and subject to the terms of any Judgment that may be entered in the Litigation.

2. I (We) agree to furnish additional information to the Claims Administrator to support my (our) claim if required to do so.

**PART IV: DEFINITIONS AND RELEASE**

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, discharge and release all “Released Claims” against all “Defendants’ Released Persons,” including “Unknown Claims,” as defined below.

(a) “Released Claims” means any and all claims, demands, losses, rights, causes of action, liabilities, obligations, judgments, suits, matters and issues of any kind or nature whatsoever, whether known or Unknown Claims (as defined below), contingent or absolute, suspected or unsuspected, disclosed or undisclosed, that have been or could have been asserted against any and/or all Settling Defendants and any and/or all of Defendants’ Released Persons in the Litigation or in any court, tribunal, forum or proceeding (including, but not limited to, any claims arising under federal, state or foreign law, common law, statute, rule or regulation relating to alleged fraud, breach of any duty, negligence, violations of the federal securities laws, or otherwise), whether individual or class, which arise out of, are based on, or relate in any way, directly or indirectly to (1) the purchase or acquisition of GMX common stock pursuant or traceable to the May 2009 Offering or the October 2009 Offering and (2) the acts, facts, statements, or omissions that were or could have been alleged by Lead Plaintiffs in the Litigation. “Released Claims” excludes any claims asserted in any derivative action or ERISA action based on similar allegations or any claims to enforce the Settlement.

(b) “Defendants’ Released Persons” means each and all of the Settling Defendants, each and all of their Related Persons (*i.e.*, each and all of their respective present and former parents, subsidiaries, divisions, joint ventures, and affiliates, and each of their respective present and former employees, members, general and limited partners and their partnerships, principals, officers, directors, attorneys, advisors, accountants, auditors, financial advisors, commercial bank lenders, insurers, underwriters, investment bankers, representatives, and insurers; and the predecessors, successors, spouses, estates, heirs, executors, trusts, trustees, administrators, agents, fiduciaries, consultants, representatives and assigns of each of them, in their capacity as such; and any trust of which any Person described in this subparagraph is the settlor or which is for the benefit of any Person described in this subparagraph and/or member(s) of his or her family; and any entity in which any Person described in this subparagraph has a controlling interest) and GMX.

(c) “Unknown Claims” means any Released Claims that Lead Plaintiffs or any Settlement Class Members do not know or suspect to exist—as well as any Released Defendants’ Claims that Settling Defendants or any of their Related Persons do not know or suspect to exist—in his, her, or its respective favor at the time of the release, regardless of whether such Released Claim or Released Defendants’ Claim, if known by him, her, or it, might have affected his, her, or its decision with respect to the Settlement and/or release of the claim. With respect to any

and all Unknown Claims, the Settling Parties stipulate and agree that, upon the Effective Date, they shall expressly waive, and each of the Settlement Class Members and each of the Settling Defendants' Related Persons shall be deemed to have waived (by operation of the Final Judgment), to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties shall expressly waive, and each of the Settlement Class Members and each of the Settling Defendants' Related Persons shall be deemed to have waived (by operation of the Final Judgment), any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542. The Settling Parties, Settlement Class Members and/or the Settling Defendants' Related Persons may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and Released Defendants' Claims, but the Settling Parties shall expressly, and each Settlement Class Member and Settling Defendants' Related Persons, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the Settlement Class Members and Settling Defendants' Related Persons shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

2. This release shall be of no force or effect unless and until the Court gives final approval to the Settlement and the Effective Date occurs.

**PART V: REPRESENTATIONS**

1. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

2. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases, acquisitions and sales transactions in GMX common stock which occurred between May 13, 2009 and March 10, 2011, inclusive (and have indicated such shares that were purchased or acquired pursuant or traceable to the Offerings), as well as the number of shares of GMX common stock held by me (us) at the close of trading on May 12, 2009 and the close of trading on March 10, 2011.

3. I (We) hereby certify that I am (we are) not subject to backup withholding under the provisions of Section 3406(a)(1)(c) of the Internal Revenue Code.

NOTE: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

I (We) declare under penalty of perjury under the laws of the State of Oklahoma and the United States of America that the foregoing information supplied by the undersigned is true and correct and that this Proof of Claim and Release form was executed this \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_ .  
(month, year) (City, State, Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of persons signing,  
e.g., Beneficial Purchaser, Executor or Administrator)

\_\_\_\_\_  
(Capacity of persons signing,  
e.g., Beneficial Purchaser, Executor or Administrator)

*Northumberland County Retirement System, et al.*  
*v. GMX Resources Inc., et al.*  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 3  
Media, PA 19063

PRESORTED FIRST CLASS MAIL U.S. POSTAGE PAID PERMIT NO. 138 PHILADELPHIA, PA
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**PLEASE FORWARD**

## **FIRST CLASS MAIL**

**PLEASE FORWARD—IMPORTANT LEGAL NOTICE**

**ACCURATE CLAIMS PROCESSING TAKES A  
SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

### **Reminder Checklist**

1. Please sign the Certification section of the Proof of Claim and Release on Page 19.
2. If this claim is being made on behalf of joint claimants, both must sign.
3. Remember to attach supporting documentation.
4. Do not send original stock certificates.
5. Keep a copy of your Proof of Claim and Release form and all documents submitted for your records.
6. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
7. If you move, please send the Claims Administrator your new address.

**These forms and your supporting documentation must be postmarked  
no later than September 8, 2014.**

# INVESTOR'S BUSINESS DAILY®

## Affidavit of Publication

Name of Publication: Investor's Business Daily  
 Address: 12655 Beatrice Street  
 City, State, Zip: Los Angeles, CA 90066  
 Phone #: 310.448.6700  
 State of: California  
 County of: Los Angeles

I, **Stephan Johnson**, for the publisher of **Investor's Business Daily**, published in the city of Los Angeles, state of California, county of Los Angeles hereby certify that the attached notice for **Strategic Claims Services** was printed in said publication on the following date:

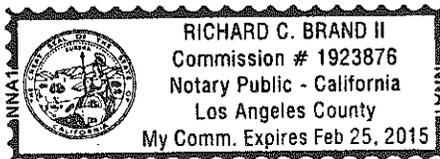
**May 16<sup>th</sup>, 2014: NORTHUMBERLAND COUNTY RETIREMENT SYSTEM, ET AL. V. GMX RESOURCES INC., ET AL.**

State of California  
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 19<sup>th</sup> day of May, 2014,

by *Stephan Johnson*, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature *Richard C. Brand II* (Seal)





**Josephine Bravata**

---

**From:** newsroom@businesswire.com  
**Sent:** Friday, May 16, 2014 8:00 AM  
**To:** jbravata@strategicclaims.net  
**Subject:** Release Issued for Business Wire Order #3166373c



## Business Wire Connect Order #3166373c Release Issued

**Josephine Bravata,**

Your news release was issued today at May 16, 2014 08:00 AM Eastern Daylight Time (U.S. and Canada).

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### Release Issued

[Kessler Topaz Meltzer & Check, LLP and Nix Patterson & Roach, LLP Announce Proposed Settlement on Behalf of Purchasers of GMX Resources Inc. Common Stock](#)

[▶▶ Reports & Order History for this release](#)

[▶▶ Business Wire Connect](#)

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### Contacts

Your local Business Wire Newsroom is Philadelphia. You can contact them at +1 610.617.9560.

**Your Business Wire Account Executive**  
Doug Cannon  
Doug.Cannon@Businesswire.com  
+1 610.617.9560  
Business Wire

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Thank you for using Business Wire.

Did you know if you add 1 piece of multimedia, your release is 10 times more likely to get read?

# EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

NORTHUMBERLAND COUNTY )  
 RETIREMENT SYSTEM and OKLAHOMA )  
 LAW ENFORCEMENT RETIREMENT SYSTEM, )  
 Individually and On Behalf of All Others Similarly )  
 Situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 GMX RESOURCES INC., et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. CIV-11-520-D

**DECLARATION OF GINGER POPLIN ON BEHALF OF OKLAHOMA LAW  
ENFORCEMENT RETIREMENT SYSTEM**

I, GINGER POPLIN, of lawful age, first being duly sworn upon oath, and upon personal knowledge, state as follows:

1. I currently serve as the Executive Director of Lead Plaintiff, Oklahoma Law Enforcement Retirement System (“OLERS”).

2. I am fully authorized to execute this affidavit on behalf of OLERS and to serve as OLERS’ representative in this matter.

3. OLERS is one of the Court-appointed Lead Plaintiffs in the above-referenced action (the “Action”). I have personal knowledge of the facts set forth in this Declaration based upon my personal involvement in this matter and/or based on information provided to me by Class Counsel.

4. I, on behalf of OLERS, respectfully submit this Declaration in support of

final approval of the Stipulation and Agreement of Settlement. I am also submitting this Declaration in support of Class Counsel's application for an award of attorney's fees and reimbursement of expenses.

5. By submitting this Declaration, neither I nor OLERS waives any protections available to us under the attorney client privilege, work product privilege, or any other privileges we may have.

6. I, on behalf of OLERS, have been informed, involved and active in the Action, from the decision to file the Petition, to producing documents, monitoring formal mediation sessions, and finally approving the terms of the Settlement. For example, I reviewed and approved all drafts of substantive pleadings prior to filing, and consistently received periodic status reports from Class Counsel. I also actively supervised and monitored Class Counsel's work in this case and participated in all significant decisions in the Action, including the decision to enter into the Settlement. I conferred with Class Counsel throughout the Action and was advised of all significant matters in the Action.

7. I understand that Class Counsel litigated this Action for over two years, including briefing motions to dismiss; consulting with expert witnesses; multiple mediation sessions over the course of several months; settlement negotiations; and damages modeling.

8. I was also involved in the formal mediation process. I, on behalf of OLERS, agreed to mediation before Judge Layn Phillips. Based on information provided to me, it is my understanding that the mediation process was extensive and ultimately encompassed months of negotiations, including a face-to-face mediation, numerous

telephone calls, and the submission of extensive mediation statements and damages calculations. Throughout the negotiation process, Class Counsel kept me apprised of each development that occurred and sought and obtained approval to negotiate on behalf of OLERS. Class Counsel acted at OLERS' direction and with my approval in all respects. After the parties reached an agreement in principle to settle this matter, Class Counsel reported back to me to obtain final approval, which was granted.

9. I believe the mediation process resulted in an excellent settlement, which provides \$2,700,000 in cash to the Class.

10. Through OLERS' involvement as one of the Lead Plaintiffs in this Action, as well as my frequent discussions with Class Counsel, I understand the strengths and weaknesses of the Class' claims against Defendants in the Action. I am aware of the hurdles the Class would be required to overcome to prove liability and damages, and to recover damages in the event a judgment were obtained.

11. My understanding of the facts as they pertain to this litigation, as well as my extensive interaction with Class Counsel, enables me to recommend approval of the Settlement. I believe the Settlement is a substantial recovery for the Class under circumstances where it was possible that no recovery at all would be obtained.

12. OLERS is very pleased with the efforts of Class Counsel who at all times conducted themselves with professionalism and diligence while effectively advocating the interests of Lead Plaintiffs and the Class. I believe that without the skill of Class Counsel, this resolution would not have been achieved.

13. Class Counsel is collectively applying for an award of attorneys' fees out of

the total Settlement Amount, as well as reimbursement of litigation costs and expenses reasonably and necessarily incurred in successfully prosecuting the claims in this Action. As a result of Class Counsel's extensive, efficient and excellent work, I have approved Class Counsel's application for a fee award equal to twenty-five (25%) of the total Settlement Amount of \$2.7 million, which is consistent with the contingency fee agreement OLERS entered into with Class Counsel before the lawsuit was filed. OLERS also approves Class Counsel's request for reimbursement of reasonable costs and expenses. In the Notice, Class Counsel stated they would request expenses of no more than \$125,000. I understand that if the award is granted, attorneys' fees plus interest and reimbursed expenses will be paid to Class Counsel out of the Gross Settlement Fund.

14. OLERS supports this request for attorneys' fees and expenses because OLERS has been pleased with the manner in which Class Counsel conducted the Action, and more importantly, with the results achieved. Based on the information provided to OLERS, and my experience working with Class Counsel to date, I believe Class Counsel has litigated this Action in an efficient manner in light of the complexities of the Action and has incurred reasonable and necessary expenses.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge based on my personal experience in this matter, and the information known to and/or made available to me.

FURTHER AFFIANT SAYETH NOT.

Dated this 16<sup>th</sup> day of June 2014.

Ginger Poplin  
Ginger Poplin  
Executive Director of OLEERS

Subscribed and sworn to me before this 16<sup>th</sup> day of June 2014.

{SEAL}



[Signature]  
Notary Public

Commission Number 08004890  
My Commission Expires 05/16/16

# EXHIBIT 3



205 Linda Drive, Daingerfield, Texas 75638•(903) 645-7333•Fax: (903) 645-4415  
3600 North Capital of Texas Hwy, Bldg. B, Suite 350, Austin, Texas 78746•(512) 328-5333•Fax: (512) 328-5335  
[www.nixlawfirm.com](http://www.nixlawfirm.com)

### SUMMARY RESUME

The Court may find detailed information regarding Nix, Patterson & Roach, L.L.P. on the firm’s website: [www.nixlawfirm.com](http://www.nixlawfirm.com). The firm’s website contains a wide variety of information, including the history of the firm, highlights of current and previous successes, photographs of facilities, and biographies of each attorney.

For the Court’s convenience, a *concise* overview of the firm is as follows:

Nix, Patterson & Roach, LLP (“NPR”) is a 26-lawyer firm based in Daingerfield, Texas, with offices in Texarkana, Texas; Dallas, Texas; Austin, Texas; and Santa Rosa Beach, Florida. NPR has a long history of successfully representing injured persons, consumers and businesses, specializing in complex business/commercial litigation, class action litigation, securities fraud litigation, antitrust litigation, intellectual property litigation, *qui tam* litigation, FCA litigation, medical device litigation and automobile products liability litigation. NPR also maintains an active securities fraud and corporate governance practice and represents public and private investors in securities fraud class actions and individual litigation across the country.

Importantly, NPR has a strong history of representing public pension funds, many of which are Oklahoma institutions. Further, many of the NPR attorneys who worked on this matter are licensed to practice in the State of Oklahoma.

Among the firm’s greatest accomplishments is its representation of the State of Texas in *The State of Texas v. The American Tobacco Company, et al.*, Civil Action No. 5:96-CV-0091 (E.D. Tex.). NPR, along with four other law firms, was selected by the State of Texas to prosecute the State’s claims against the tobacco industry, seeking to recoup State monies paid to treat smoking-related illnesses. A settlement of \$17.2 billion – the largest single civil litigation settlement in history – was obtained on behalf of the State of Texas. Over the years, NPR has recovered well over \$20 billion for its clients.

Below is a representative sample of some of the most recent results NPR has achieved for its clients in class actions:

*CompSource, et al. v. BNY Mellon, N.A. et al.*: NPR, along with Kessler Topaz Meltzer & Check, LLP (“KTMC”), filed suit in the Eastern District of Oklahoma on behalf of CompSource Oklahoma—a statutorily-created state workers compensation

insurance company—and other participants in BNY Mellon’s securities lending program, alleging that BNY Mellon breached its fiduciary duties (under both common law and ERISA), breached its securities lending agreements, and was negligent in connection with its investment of its clients’ funds in medium-term notes of Sigma Finance, Inc. After three and a half years of hard fought, intense litigation, the parties reached a settlement in this matter. On July 6, 2012, the United States District Court for the Eastern District of Oklahoma preliminarily approved a \$280,000,000 cash settlement.

All settlement efforts in this matter were presided over by former United States District Judge and U.S. Attorney Layn Phillips. The parties completed discovery prior to reaching a settlement agreement. Nearly five million pages of documents were produced and reviewed in this case. Plaintiffs’ Counsel took or defended a total of 59 depositions, 12 of which took place over multiple days. These depositions took place in seven different states across the country: New York, Texas, California, Maryland, Oklahoma, Pennsylvania, and Missouri. These depositions resulted in 16,483 pages of recorded testimony and the inclusion of 1,738 exhibits. The Court has granted final approval of this settlement.

*AFTRA v. JPMorgan*: NPR, along with KTMC, filed suit in the Southern District of New York on behalf of AFTRA and other participants in JPMorgan’s securities lending program alleging that JPMorgan violated its fiduciary duties (under both common law and ERISA) to AFTRA and the class in connection with the same investments in Sigma as those at issue in *CompSource*. On the eve of trial, and after the Court granted class certification, the parties reached a settlement in the amount of \$150,000,000. The Court has granted final approval of this settlement.

*Coffey, et al. v. Freeport-McMoRan Copper & Gold, Inc., et al.*: NPR filed suit in the District Court of Kay County, Oklahoma on behalf of a putative class alleging property damage arising out of defendants’ historic operation of a zinc smelter and subsequent refusal to properly remediate the community of Blackwell, Oklahoma of heavy metal contamination. After filing the case in April 2008, defendants immediately removed the action to federal court on numerous grounds, including the Class Action Fairness Act. NPR, on behalf of the class, successfully achieved remand of the case in the district court. Defendants appealed the remand order to the Tenth Circuit Court of Appeals. After extensive briefing and oral argument, the Tenth Circuit affirmed the district court’s remand order. Following remand, NPR moved to certify a class of property owners within certain geographic boundaries surrounding the zinc smelter. After lengthy briefing, the presiding judge certified the class proposed by NPR and appointed NPR lead counsel on behalf of the class. After certification, the case ultimately settled, providing a benefit to the class of over \$118,000,000, including both monetary compensation and remedial activity. The proposed settlement has received final approval from the Court.

*MoneyGram Securities Litigation*: NPR served as Lead Counsel for Lead Plaintiff, Oklahoma Teachers Retirement System, in this matter filed in the United States District Court for the District of Minnesota. This litigation involved alleged false and

misleading statements surrounding the quality and nature of asset-backed securities held in MoneyGram's investment portfolio. This case was unique in the fact that it is only one of a few "subprime" cases brought against an entity that is neither a bank, Wall Street investment bank, nor originator of asset backed securities. Indeed, this is one of the few cases brought—and we believe the first case successfully resolved—based upon a company's failure to properly disclose the quality and nature of the asset-backed securities it purchased. NPR reached an \$80 million settlement with MoneyGram and the individual defendants, which has been granted final approval by the Court. The settlement ranks as one of the top settlements in all "subprime" cases.

*Delphi Securities Litigation:* NPR served as Co-Lead Counsel for Lead Plaintiff, Oklahoma Teachers Retirement System, and named Plaintiff, Oklahoma Law Enforcement Retirement System, in this matter, filed in the United States District Court for the Eastern District of Michigan (Detroit). This litigation involved claims under the Securities Act of 1933 and Securities Exchange Act of 1934 arising out of Delphi's massive restatement dating back to its spin-off from General Motors. The United States Department of Justice, Securities and Exchange Commission, and United States Postal Inspector all conducted criminal and civil investigations into this matter. Delphi filed for bankruptcy protection, and this case proceeded against its officers and directors, outside auditors and certain third parties.

In July 2007, NPR reached a \$284,100,000 class settlement with Delphi and several of its former officers, directors and underwriters. The trial court granted final approval to this settlement on January 10, 2008. In its order, the court praised NPR not only for its sophistication and outstanding legal work, but also for our unwavering commitment to our clients:

The Court is able to add that it had extensive interaction, both on the record and in chambers, with all Co-Lead Counsel, and has been considerably impressed, not only by counsel's skill, knowledge of the substantive and procedural law, and sophistication—all of which were consistently evident to the Court—but also by their dedication and commitment to their clients' cause. In short, these lawyers have practiced at the highest levels of professional competency....

The settlement is believed to be one of the largest securities fraud settlements funded by a debtor outside of insurance. It also ranked as the 22nd largest securities fraud settlement in history at that time—a remarkable result given that the primary defendant was in bankruptcy.

NPR subsequently reached a \$38.25 million settlement with Delphi's former auditor, Deloitte & Touche. The Court granted final approval of that settlement on June 26, 2008.

*Brocade Securities Litigation:* NPR represented Arkansas Public Employees Retirement System ("APERS") and the Erie County (Pennsylvania) Employees

Retirement System (“Erie”) as Class Counsel in this matter, filed in the United States District Court for the Northern District of California (San Francisco). This was the first major case regarding “stock options backdating.” NPR settled this case for \$160.1 million. The settlement marks one of, if not the, largest settlements ever in terms of the percentage of the class’ damages recovered. Indeed, depending on which damage model was accepted by the court and/or jury, the settlement marks close to a 100% recovery for the class. Further, at the time of settlement, it was the second largest backdating settlement in history in terms of the total dollar amount of the settlement.

This case arose out of Brocade’s restatement of all of its financial statements over a five-year period. At the time we began prosecuting this case, the recent media headlines and outrage regarding options backdating had not yet begun. The complaint we filed against Brocade, and its officers and directors, set forth in precise, painstaking detail Brocade’s scheme to defraud investors by backdating option grants. It also formed the paradigm for subsequent backdating cases. This case has been featured in a Pulitzer Prize winning series by the *Wall Street Journal*, as well as in articles in *Bloomberg*, the *New York Times*, the *Washington Post* and *BusinessWeek*.

*In Re: Salomon Analyst Litigation (MFN)*: NPR was certified to serve as Class Counsel for the class of shareholders in this matter, filed in the Southern District of New York. This case involved false research reports issued by Salomon Smith Barney’s lead research analyst, Jack Grubman, for reports SSB and Citibank issued about their client, Metromedia Fibre Networks. In 2008, the case settled for \$35 million and was granted final approval by the court on February 27, 2009. The settlement is especially significant for two reasons. First, an earlier securities fraud class action against Metromedia Fibre Networks—led by a different firm, but involving largely the same facts—settled for \$8 million. NPR was able to obtain a result 4.5 times greater than the other settlement. Second, after the defendants lost the issue of class certification at the trial court, they appealed to the United States Court of Appeals for the Second Circuit. Although the Appellate Court reversed a part of the certification order on a procedural issue, the Court found in plaintiffs’ favor on several critical issues of first impression—a ruling that should help investors in the future.

*In Re: Triton Energy Limited Securities Litigation*: NPR served as class counsel in this matter, which was one of the first cases involving the fraudulent accounting of oil and gas reserves successfully brought to conclusion. NPR represented the class of shareholders as Co-Lead Counsel and obtained a settlement of \$49.5 million for shareholders of Triton Energy, a Dallas-based oil company. According to the *Texas Lawyer*, this was the third-largest commercial settlement of 2002 in Texas. Through this litigation, NPR gained specialized expertise in securities cases involving oil and gas reserves, and the appropriate classification and accounting of those reserves.

*In Re: Universal Access, Inc., Securities Litigation*: NPR served as class counsel in this securities fraud class action, which was settled and received final approval for \$11 million. The settlement represented in excess of forty percent (40%) of the class’ total damages.

*Marvell Technology Group, Ltd. Securities Litigation:* NPR served as Co-Counsel with KTMC for Lead Plaintiffs Monte Paschi Asset Management S.G.R. S.p.A. and Puerto Rico Government Employees Retirement System in this securities fraud case, which arose out of a six-year, pervasive fraudulent scheme to backdate stock options that resulted in the restatement of all of Marvell's financial statements from 2003 until the first quarter of fiscal year 2007. This case settled for \$72 million and was granted final approval by the United States District Court for the Northern District of California on November 13, 2009.

NPR also resolved a putative nationwide class action on behalf of clients of the "Big Four" accounting firms. Through that litigation, the class alleged that these accounting firms overcharged their clients for costs and expenses paid to travel vendors by billing their clients the full face amount of these costs while, at the same time, receiving back-end rebates, incentives, commissions, and other compensation. As a result of the litigation, NPR obtained settlements with the "Big Four" accounting firms in the total amount of \$108 million. These settlements further implemented significant corporate governance changes, which prohibit these accounting firms from engaging in this offensive conduct in the future and from coordinating their travel program with that of any other accounting firm. These settlements have received final approval, and also marked the largest class action settlement in the history of the State of Arkansas.

In addition to its active securities fraud and corporate governance practice, NPR has won numerous landmark verdicts and settlements in a diverse range of cases, from personal injury to intellectual property infringement actions. For example, NPR recently obtained outstanding settlements in three class actions brought on behalf of oil and gas royalty owners in Oklahoma:

*Chieftain Royalty Co. v. QEP Energy Co.:* NPR served as co-class counsel in this action alleging QEP, an energy company with oil and gas operations in Oklahoma, secretly and systematically made unlawful deductions from a class of royalty owners' monthly royalty payments. Specifically, the class alleged, among other things, that QEP ignored Oklahoma law and the class members' oil and gas leases by requiring class members to bear QEP's operating costs associated with turning raw gas into a marketable product—costs that ordinarily cannot be shared with royalty owners. After more than two years of litigation, which included defeating early dispositive motions, completing substantial fact and expert discovery, obtaining class certification in the face of very real obstacles, and creating intricate damage models, NPR and its co-counsel obtained a \$155 million settlement for the class. This settlement consisted of a \$115 million cash payment (which alone represents more than 100% of the class' principle claim for royalty underpayment) and contractually guaranteed future benefits that ensure QEP will not resume its previous practice of improper cost deductions. QEP itself estimated the present value of these future benefits to exceed \$40 million. However, in real dollars over the next 30 years—a conservative estimate of the lives of the existing oil and gas wells—the future benefits will likely provide more than \$200 million in additional royalty payments to the class members. To NPR's knowledge, this settlement—even

when reduced to its present value—is one of the largest oil and gas class action settlements in U.S. and Oklahoma history. On May 31, 2013, the United States District Court for the Western District of Oklahoma granted final approval of the settlement.

*Drummond, et al. v. Range Resources-Midcontinent, LLC, et al.*: NPR represented a different class of royalty owners in this action against Range Resources, an energy company with substantial interests in Oklahoma oil and gas wells. As in *Chieftain*, the class members in this case alleged Range unlawfully deducted certain pre-marketing costs from the class members' royalty payments. The class also claimed Range consistently sent false and/or misleading check stubs to the class members, which concealed the alleged improper deductions. As co-class counsel, NPR prosecuted this action for over two years, overcoming Range's initial dispositive motions, conducting comprehensive fact and expert discovery—such as analyzing the thousands of oil and gas leases involved—and obtaining class certification. As Range was preparing to appeal the court's class certification order, the parties began settlement negotiations and a mediation process with highly respected mediator and former federal judge, Layn Phillips. After multiple mediation sessions in Oklahoma City and New York City, NPR and its co-counsel achieved a \$87.5 million cash settlement for the class.

*Cecil v. Ward Petroleum Corp.*: NPR obtained a \$10 million settlement on behalf of a class of underpaid royalty owners, which represented the largest amount the defendant could pay without being forced to wind down its business.

In addition to the legal services provided to injured persons, consumers and businesses, NPR provides a significant amount of *pro bono* legal services. The firm provides a significant portion of the representation for Lone Star Legal Aid, which coordinates free family law services for those unable to pay for an attorney. In 1998, NPR was the recipient of the W. Frank Newton Award, which recognizes outstanding *pro bono* law firms in the State of Texas. Many of NPR's attorneys, including Jeffrey J. Angelovich and Bradley E. Beckworth, have been named to the Texas *Pro Bono* College in recognition of the substantial amount of time they dedicate each year to providing free legal services to poor and/or indigent persons.

The NPR attorneys primarily involved in the prosecution of the present matter are:

**Bradley E. Beckworth**

Bradley E. Beckworth, Partner, was graduated *magna cum laude* from Texas A&M University (B.A. 1994) and *cum laude* from Baylor Law School (J.D. 1997). Brad served as a judicial law clerk to Judge Richard Schell, Chief Judge for the United States District Court for the Eastern District of Texas. Brad focuses primarily on securities fraud litigation, but also has successfully tried lawsuits in a diverse range of cases, from commercial disputes to intellectual property infringement. Brad has given presentations to numerous boards of trustees of public funds and pension associations, and has been quoted in news articles by numerous national publications, including the *Wall Street Journal*, *New York Times*, *Reuters* and *Bloomberg*. In 2007, an article featuring one of

NPR's securities litigation cases and NPR's role in this case, was part of a feature series that received the Pulitzer Prize for Public Service Journalism. That article was entitled, Steve Stecklow, *Setting the Date: How One Tech Company Played With the Timing of Stock Options*, WALL ST. J, July 20, 2006, at A1. Brad is a sustaining member of the Council of Institutional Investors, a member of the Rules Committee of the United States District Court for the Eastern District of Texas, an adjunct professor for Baylor Law School, and a member of the Oklahoma Bar.

**Jeffrey J. Angelovich**

Jeffrey J. Angelovich, Partner, graduated *magna cum laude* from Baylor Law School (J.D. 1993). Jeff served as a judicial law clerk to Justice Hightower of the Texas Supreme Court. Jeff was a key team member for NPR in the Firm's representation of the State of Texas in its \$17.2 billion recovery in the Texas Tobacco Litigation. Mr. Angelovich has tried numerous cases to verdict, including a \$15.6 million antitrust verdict, which was featured in the *New York Times*, and a \$7 million verdict in a sexual molestation case. Jeff is a sustaining member of the Council of Institutional Investors, an adjunct professor for Baylor Law School, and a member of the Oklahoma Bar.

**Susan Whatley**

Susan Whatley, Senior Associate, graduated with academic distinction from Texas A&M University at Commerce (B.S. 2000). Susan graduated *cum laude* from Baylor Law School (J.D. 2004). While at Baylor, Susan was a member of the Baylor Law Review, serving as both an Associate Editor and an Editor of the Texas Practice and Procedure Edition. Susan also was a member of the winning team in the Bob and Karen Wortham Practice Court Competition. Susan has a broad range of experience representing the firm's public and private investor clients. She is admitted to practice in all state courts in the State of Texas, the State of Oklahoma, and the U.S. District Court for the Eastern District of Texas. She is a member of the Texas Trial Lawyers Association and the Honorable T. John Ward American Inn of Court.

**John C. Hull**

John C. Hull, Associate, is a graduate of Texas A&M University (B.S. 1998) and Baylor Law School (J.D. 2005). While at Baylor, John was a member of the Baylor Law Review, serving as both an Associate Editor and an Editor of the *Texas Practice and Procedure Edition*. He was also a member of the winning team in the Bob and Karen Wortham Mock Trial Competition. Before joining NPR, John served as law clerk to the Honorable William M. Steger, United States District Court for the Eastern District of Texas. John is licensed to practice in all Oklahoma and Texas state courts, as well as the U.S. District Courts for the Eastern and Western Districts of Oklahoma and the U.S. District Court for the Eastern District of Texas. He is a member of the Texas Trial Lawyers Association and the Honorable T. John Ward American Inn of Court.

**Lisa P. Baldwin**

Lisa P. Baldwin, Associate, graduated with distinction from the University of Michigan, Ann Arbor (B.A. 2004). Lisa graduated from the University of Texas School of Law (J.D. 2009). She is admitted to practice in all state courts in the State of Texas

and the State of New York, and is a member of the Austin Bar Association.

**Trey Duck**

Trey Duck, Associate, graduated from Baylor University (B.A. 2008), and from Baylor Law School (J.D. 2012). While at Baylor Law School, Trey was an active member in the school's trial and appellate advocacy programs, serving on winning teams in both moot court and mock trial competitions for Baylor. He is admitted to practice in all state courts in the State of Texas and is a member of the Texas Trial Lawyers Association.

# EXHIBIT 4



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## FIRM PROFILE

Since 1987, Kessler Topaz Meltzer & Check, LLP has specialized in the prosecution of securities class actions and has grown into one of the largest and most successful shareholder litigation firms in the field. With offices in Radnor, Pennsylvania and San Francisco, California, the Firm is comprised of 94 attorneys as well as an experienced support staff consisting of over 80 paralegals, in-house investigators, legal clerks and other personnel. With a large and sophisticated client base (numbering over 180 institutional investors from around the world -- including public and Taft-Hartley pension funds, mutual fund managers, investment advisors, insurance companies, hedge funds and other large investors), Kessler Topaz has developed an international reputation for excellence and has extensive experience prosecuting securities fraud actions. For the past several years, the National Law Journal has recognized Kessler Topaz as one of the top securities class action law firms in the country. In addition, the Legal Intelligencer recently awarded Kessler Topaz with its Class Action Litigation Firm of The Year award. Lastly, Kessler Topaz and several of its attorneys are regularly recognized by Legal500 and Benchmark: Plaintiffs as leaders in our field.

Kessler Topaz is serving or has served as lead or co-lead counsel in many of the largest and most significant securities class actions pending in the United States, including actions against: Bank of America, Duke Energy, Lehman Brothers, Hewlett Packard, Johnson & Johnson, JPMorgan Chase, Morgan Stanley and MGM Mirage, among others. As demonstrated by the magnitude of these high-profile cases, we take seriously our role in advising clients to seek lead plaintiff appointment in cases, paying special attention to the factual elements of the fraud, the size of losses and damages, and whether there are viable sources of recovery.

Kessler Topaz has recovered billions of dollars in the course of representing defrauded shareholders from around the world and takes pride in the reputation we have earned for our dedication to our clients. Kessler Topaz devotes significant time to developing relationships with its clients in a manner that enables the Firm to understand the types of cases they will be interested in pursuing and their expectations. Further, the Firm is committed to pursuing meaningful corporate governance reforms in cases where we suspect that systemic problems within a company could lead to recurring litigation and where such changes also have the possibility to increase the value of the underlying company. The Firm is poised to continue protecting rights worldwide.

## **NOTEWORTHY ACHIEVEMENTS**

*During the Firm's successful history, Kessler Topaz has recovered billions of dollars for defrauded stockholders and consumers. The following are among the Firm's notable achievements:*

### **Securities Fraud Litigation**

#### ***In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, Master File No. 09 MDL 2058:***

Kessler Topaz, as Co-Lead Counsel, brought an action on behalf of lead plaintiffs that asserted claims for violations of the federal securities laws against Bank of America Corp. ("BoA") and certain of BoA's officers and board members relating to BoA's merger with Merrill Lynch & Co. ("Merrill") and its failure to inform its shareholders of billions of dollars of losses which Merrill had suffered before the pivotal shareholder vote, as well as an undisclosed agreement allowing Merrill to pay up to \$5.8 billion in bonuses before the acquisition closed, despite these losses. On September 28, 2012, the Parties announced a \$2.425 billion case settlement with BoA to settle all claims asserted against all defendants in the action which has since received final approval from the Court. BoA also agreed to implement significant corporate governance improvements. The settlement, reached after almost four years of litigation with a trial set to begin on October 22, 2012, amounts to 1) the sixth largest securities class action lawsuit settlement ever; 2) the fourth largest securities class action settlement ever funded by a single corporate defendant; 3) the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; 4) the single largest securities class action settlement ever resolving a Section 14(a) claim (the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation); and 5) by far the largest securities class action settlement to come out of the subprime meltdown and credit crisis to date.

#### ***In re Tyco International, Ltd. Sec. Litig., No. 02-1335-B (D.N.H. 2002):***

Kessler Topaz, which served as Co-Lead Counsel in this highly publicized securities fraud class action on behalf of a group of institutional investors, achieved a record \$3.2 billion settlement with Tyco International, Ltd. ("Tyco") and their auditor PricewaterhouseCoopers ("PwC"). The \$2.975 billion settlement with Tyco represents the single-largest securities class action recovery from a single corporate defendant in history. In addition, the \$225 million settlement with PwC represents the largest payment PwC has ever paid to resolve a securities class action and is the second-largest auditor settlement in securities class action history.

The action asserted federal securities claims on behalf of all purchasers of Tyco securities between December 13, 1999 and June 7, 2002 ("Class Period") against Tyco, certain former officers and directors of Tyco and PwC. Tyco is alleged to have overstated its income during the Class Period by \$5.8 billion through a multitude of accounting manipulations and shenanigans. The case also involved allegations of looting and self-dealing by the officers and directors of the Company. In that regard, Defendants L. Dennis Kozlowski, the former CEO and Mark H. Swartz, the former CFO have been sentenced to up to 25 years in prison after being convicted of grand larceny, falsification of business records and conspiracy for their roles in the alleged scheme to defraud investors.

As presiding Judge Paul Barbadoro aptly stated in his Order approving the final settlement, "[i]t is difficult to overstate the complexity of [the litigation]." Judge Barbadoro noted the extraordinary effort required to pursue the litigation towards its successful conclusion, which included the review of more than 82.5 million pages of documents, more than 220 depositions and over 700 hundred discovery requests and responses. In addition to the complexity of the litigation, Judge Barbadoro also highlighted the great risk undertaken by Co-Lead Counsel in pursuit of the litigation, which he indicated was greater than in other multi-billion dollar securities cases and "put [Plaintiffs] at the cutting edge of a rapidly changing area of law."

In sum, the Tyco settlement is of historic proportions for the investors who suffered significant financial losses and it has sent a strong message to those who would try to engage in this type of misconduct in the future.

***In re Tenet Healthcare Corp. Sec. Litig., No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002):***

Kessler Topaz served as Co-Lead Counsel in this action. A partial settlement, approved on May 26, 2006, was comprised of three distinct elements: (i) a substantial monetary commitment of \$215 million by the company; (ii) personal contributions totaling \$1.5 million by two of the individual defendants; and (iii) the enactment and/or continuation of numerous changes to the company's corporate governance practices, which have led various institutional rating entities to rank Tenet among the best in the U.S. in regards to corporate governance. The significance of the partial settlement was heightened by Tenet's precarious financial condition. Faced with many financial pressures — including several pending civil actions and federal investigations, with total contingent liabilities in the hundreds of millions of dollars — there was real concern that Tenet would be unable to fund a settlement or satisfy a judgment of any greater amount in the near future. By reaching the partial settlement, we were able to avoid the risks associated with a long and costly litigation battle and provide a significant and immediate benefit to the class. Notably, this resolution represented a unique result in securities class action litigation — personal financial contributions from individual defendants. After taking the case through the summary judgment stage, we were able to secure an additional \$65 million recovery from KPMG – Tenet's outside auditor during the relevant period – for the class, bringing the total recovery to \$281.5 million.

***In re Wachovia Preferred Securities and Bond/Notes Litigation, Master File No. 09 Civ. 6351 (RJS) (S.D.N.Y.):***

Kessler Topaz, as court-appointed Co-Lead Counsel, asserted class action claims for violations of the Securities Act of 1933 on behalf of all persons who purchased Wachovia Corporation ("Wachovia") preferred securities issued in thirty separate offerings (the "Offerings") between July 31, 2006 and May 29, 2008 (the "Offering Period"). Defendants in the action included Wachovia, various Wachovia related trusts, Wells Fargo as successor-in-interest to Wachovia, certain of Wachovia's officer and board members, numerous underwriters that underwrote the Offerings, and KPMG LLP ("KPMG"), Wachovia's former outside auditor. Plaintiffs alleged that the registration statements and prospectuses and prospectus supplements used to market the Offerings to Plaintiffs and other members of the class during the Offerings Period contained materially false and misleading statements and omitted material information. Specifically, the Complaint alleged that in connection with the Offerings, Wachovia: (i) failed to reveal the full extent to which its mortgage portfolio was increasingly impaired due to dangerously lax underwriting practices; (ii) materially misstated the true value of its mortgage-related assets; (iii) failed to disclose that its loan loss reserves were grossly inadequate; and (iv) failed to record write-downs and impairments to those assets as required by Generally Accepted Accounting Principles ("GAAP"). Even as Wachovia faced insolvency, the Offering Materials assured investors that Wachovia's capital and liquidity positions were "strong," and that it was so "well capitalized" that it was actually a "provider of liquidity" to the market. On August 5, 2011, the Parties announced a \$590 million cash settlement with Wells Fargo (as successor-in-interest to Wachovia) and a \$37 million cash settlement with KPMG, to settle all claims asserted against all defendants in the action. This settlement was approved by the Hon. Judge Richard J. Sullivan by order issued on January 3, 2012.

***In re Initial Public Offering Sec. Litig., Master File No. 21 MC 92(SAS):***

This action settled for \$586 million on January 1, 2010, after years of litigation overseen by U.S. District Judge Shira Scheindlin. Kessler Topaz served on the plaintiffs' executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

***Operative Plasterers and Cement Masons International Association Local 262 Annuity Fund v. Lehman Brothers Holdings, Inc., No. 1:08-cv-05523-LAK (S.D.N.Y.):***

Kessler Topaz, on behalf of lead plaintiffs, asserted claims against certain individual defendants and underwriters of Lehman securities arising from misstatements and omissions regarding Lehman's financial condition, and its exposure to the residential and commercial real estate markets in the period leading to Lehman's unprecedented bankruptcy filing on September 14, 2008. In July 2011, the Court sustained the majority of the amended Complaint finding that Lehman's use of Repo 105, while technically complying with GAAP, still rendered numerous statements relating to Lehman's purported Net Leverage Ratio materially false and misleading. The Court also found that Defendants' statements related to Lehman's risk management policies were sufficient to state a claim. With respect to loss causation, the Court also failed to accept Defendants' contention that the financial condition of the economy led to the losses suffered by the Class. As the case was being prepared for trial, a \$517 million settlement was reached on behalf of shareholders --- \$426 million of which came from various underwriters of the Offerings, representing a significant recovery for investors in this now bankrupt entity. In addition, \$90 million

came from Lehman's former directors and officers, which is significant considering the diminishing assets available to pay any future judgment. Following these settlements, the litigation continued against Lehman's auditor, Ernst & Young LLP. A settlement for \$99 million was subsequently reached with Ernst & Young LLP and was approved by the Court.

***Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al. Case No. 0:08-cv-06324-PAM-AJB (D. Minn.):***

Kessler Topaz brought an action on behalf of lead plaintiffs that alleged that the company failed to disclose its reliance on illegal "off-label" marketing techniques to drive the sales of its INFUSE Bone Graft ("INFUSE") medical device. While physicians are allowed to prescribe a drug or medical device for any use they see fit, federal law prohibits medical device manufacturers from marketing devices for any uses not specifically approved by the United States Food and Drug Administration. The company's off-label marketing practices have resulted in the company becoming the target of a probe by the federal government which was revealed on November 18, 2008, when the company's CEO reported that Medtronic received a subpoena from the United States Department of Justice which is "looking into off-label use of INFUSE." After hearing oral argument on Defendants' Motions to Dismiss, on February 3, 2010, the Court issued an order granting in part and denying in part Defendants' motions, allowing a large portion of the action to move forward. The Court held that Plaintiff successfully stated a claim against each Defendant for a majority of the misstatements alleged in the Complaint and that each of the Defendants knew or recklessly disregarded the falsity of these statements and that Defendants' fraud caused the losses experienced by members of the Class when the market learned the truth behind Defendants' INFUSE marketing efforts. While the case was in discovery, on April 2, 2012, Medtronic agreed to pay shareholders an \$85 million settlement. The settlement was approved by the Court by order issued on November 8, 2012.

***In re Brocade Sec. Litig., Case No. 3:05-CV-02042 (N.D. Cal. 2005) (CRB):***

The complaint in this action alleges that Defendants engaged in repeated violations of federal securities laws by backdating options grants to top executives and falsified the date of stock option grants and other information regarding options grants to numerous employees from 2000 through 2004, which ultimately caused Brocade to restate all of its financial statements from 2000 through 2005. In addition, concurrent SEC civil and Department of Justice criminal actions against certain individual defendants were commenced. In August, 2007 the Court denied Defendant's motions to dismiss and in October, 2007 certified a class of Brocade investors who were damaged by the alleged fraud. Discovery is currently proceeding and the case is being prepared for trial. Furthermore, while litigating the securities class action Kessler Topaz and its co-counsel objected to a proposed settlement in the Brocade derivative action. On March 21, 2007, the parties in *In Re Brocade Communications Systems, Inc. Derivative Litigation*, No. C05-02233 (N.D. Cal. 2005) (CRB) gave notice that they had obtained preliminary approval of their settlement. According to the notice, which was buried on the back pages of the Wall Street Journal, Brocade shareholders were given less than three weeks to evaluate the settlement and file any objection with the Court. Kessler Topaz client Puerto Rico Government Employees' Retirement System ("PRGERS") had a large investment in Brocade and, because the settlement was woefully inadequate, filed an objection. PRGERS, joined by fellow institutional investor Arkansas Public Employees Retirement System, challenged the settlement on two fundamental grounds. First, PRGERS criticized the derivative plaintiffs for failing to conduct any discovery before settling their claims. PRGERS also argued that derivative plaintiff's abject failure to investigate its own claims before providing the defendants with broad releases from liability made it impossible to weigh the merits of the settlement. The Court agreed, and strongly admonished derivative plaintiffs for their failure to perform this most basic act of service to their fellow Brocade shareholders. The settlement was rejected and later withdrawn. Second, and more significantly, PRGERS claimed that the presence of the well-respected law firm Wilson, Sonsini Goodrich and Rosati, in this case, created an incurable conflict of interest that corrupted the entire settlement process. The conflict stemmed from WSGR's dual role as counsel to Brocade and the Individual Settling Defendants, including WSGR Chairman and former Brocade Board Member Larry Sonsini. On this point, the Court also agreed and advised WSGR to remove itself from the case entirely. On May 25, 2007, WSGR complied and withdrew as counsel to Brocade. The case settled for \$160 million and was approved by the Court.

***In re Satyam Computer Services, Ltd. Sec. Litig., No. 09 MD 02027 (BSJ) (S.D.N.Y.):***

Kessler Topaz served as Co-Lead Counsel in this securities fraud class action in the Southern District of New York. The action asserts claims by lead plaintiffs for violations of the federal securities laws against Satyam Computer Services Limited ("Satyam" or the "Company") and certain of Satyam's former officers and directors and its former auditor PricewaterhouseCoopers International Ltd. ("PwC") relating to the Company's January 7, 2009, disclosure admitting that B. Ramalinga Raju ("B. Raju"), the Company's former chairman, falsified Satyam's financial reports by, among other things, inflating its reported cash balances by more than \$1 billion. The news caused the price of

Satyam's common stock (traded on the National Stock Exchange of India and the Bombay Stock Exchange) and American Depository Shares ("ADSs") (traded on the New York Stock Exchange ("NYSE")) to collapse. From a closing price of \$3.67 per share on January 6, 2009, Satyam's common stock closed at \$0.82 per share on January 7, 2009. With respect to the ADSs, the news of B. Raju's letter was revealed overnight in the United States and, as a result, trading in Satyam ADSs was halted on the NYSE before the markets opened on January 7, 2009. When trading in Satyam ADSs resumed on January 12, 2009, Satyam ADSs opened at \$1.14 per ADS, down steeply from a closing price of \$9.35 on January 6, 2009. Lead Plaintiffs filed a consolidated complaint on July 17, 2009, on behalf of all persons or entities, who (a) purchased or otherwise acquired Satyam's ADSs in the United States; and (b) residents of the United States who purchased or otherwise acquired Satyam shares on the National Stock Exchange of India or the Bombay Stock Exchange between January 6, 2004 and January 6, 2009. Co-Lead Counsel secured a settlement for \$125 million from Satyam on February 16, 2011. Additionally, Co-Lead Counsel was able to secure a \$25.5 million settlement from PwC on April 29, 2011, who was alleged to have signed off on the misleading audit reports.

***In re BankAtlantic Bancorp, Inc. Sec. Litig., Case No. 07-CV-61542 (S.D. Fla. 2007):***

On November 18, 2010, a panel of nine Miami, Florida jurors returned the first securities fraud verdict to arise out of the financial crisis against BankAtlantic Bancorp. Inc., its chief executive officer and chief financial officer. This case was only the tenth securities class action to be tried to a verdict following the passage of the Private Securities Litigation Reform Act of 1995, which governs such suits. Following extensive post-trial motion practice, the District Court upheld all of the Jury's findings of fraud but vacated the damages award on a narrow legal issue and granted Defendant's motion for a judgment as a matter of law. Plaintiffs appealed to the U.S. Court of Appeals for the Eleventh Circuit. On July 23, 2012, a three-judge panel for the Appeals Court found the District Court erred in granting the Defendant's motion for a judgment as a matter of law based in part on the Jury's findings (perceived inconsistency of two of the Jury's answers to the special interrogatories) instead of focusing solely on the sufficiency of the evidence. However, upon its review of the record, the Appeals Court affirmed the District Court's decision as it determined the Plaintiffs did not introduce evidence sufficient to support a finding in its favor on the element of loss causation. The Appeals Court's decision in this case does not diminish the five years of hard work which Kessler Topaz expended to bring the matter to trial and secure an initial jury verdict in the Plaintiffs' favor. This case is an excellent example of the Firm's dedication to our clients and the lengths it will go to try to achieve the best possible results for institutional investors in shareholder litigation.

***In re AremisSoft Corp. Sec. Litig., C.A. No. 01-CV-2486 (D.N.J. 2002):***

Kessler Topaz is particularly proud of the results achieved in this case before the Honorable Joel A. Pisano. This case was exceedingly complicated, as it involved the embezzlement of hundreds of millions of dollars by former officers of the Company, one of whom remains a fugitive. In settling the action, Kessler Topaz, as sole Lead Counsel, assisted in reorganizing AremisSoft as a new company to allow for it to continue operations, while successfully separating out the securities fraud claims and the bankrupt Company's claims into a litigation trust. The approved Settlement enabled the class to receive the majority of the equity in the new Company, as well as their pro rata share of any amounts recovered by the litigation trust. During this litigation, actions have been initiated in the Isle of Man, Cyprus, as well as in the United States as we continue our efforts to recover assets stolen by corporate insiders and related entities.

***In re CVS Corporation Sec. Litig., C.A. No. 01-11464 JLT (D.Mass. 2001):***

Kessler Topaz, serving as Co-Lead Counsel on behalf of a group of institutional investors, secured a cash recovery of \$110 million for the class, a figure which represents the third-largest payout for a securities action in Boston federal court. Kessler Topaz successfully litigated the case through summary judgment before ultimately achieving this outstanding result for the class following several mediation sessions, and just prior to the commencement of trial.

***In re Marvell Technology, Group, Ltd. Sec. Lit., Master File No. 06-06286 RWM:***

Kessler Topaz served as Co-Lead Counsel in this securities class action brought against Marvell Technology Group Ltd. ("Marvell") and three of Marvell's executive officers. This case centered around an alleged options backdating scheme carried out by Defendants from June 2000 through June 2006, which enabled Marvell's executives and employees to receive options with favorable option exercise prices chosen with the benefit of hindsight, in direct violation of Marvell's stock option plan, as well as to avoid recording hundreds of millions of dollars in compensation expenses on the Marvell's books. In total, the restatement conceded that Marvell had understated the cumulative effect of its compensation expense by \$327.3 million, and overstated net income by \$309.4 million, for

the period covered by the restatement. Following nearly three years of investigation and prosecution of the Class' claims as well as a protracted and contentious mediation process, Co-Lead Counsel secured a settlement for \$72 million from defendants on June 9, 2009. This Settlement represents a substantial portion of the Class' maximum provable damages, and is among the largest settlements, in total dollar amount, reached in an option backdating securities class action.

***In re Delphi Corp. Sec. Litig., Master File No. 1:05-MD-1725 (E.D. Mich. 2005):***

In early 2005, various securities class actions were filed against auto-parts manufacturer Delphi Corporation in the Southern District of New York. Kessler Topaz its client, Austria-based mutual fund manager Raiffeisen Kapitalanlage-Gesellschaft m.b.H. ("Raiffeisen"), were appointed as Co-Lead Counsel and Co-Lead Plaintiff, respectively. The Lead Plaintiffs alleged that (i) Delphi improperly treated financing transactions involving inventory as sales and disposition of inventory; (ii) improperly treated financing transactions involving "indirect materials" as sales of these materials; and (iii) improperly accounted for payments made to and credits received from General Motors as warranty settlements and obligations. As a result, Delphi's reported revenue, net income and financial results were materially overstated, prompting Delphi to restate its earnings for the five previous years. Complex litigation involving difficult bankruptcy issues has potentially resulted in an excellent recovery for the class. In addition, Co-Lead Plaintiffs also reached a settlement of claims against Delphi's outside auditor, Deloitte & Touche, LLP, for \$38.25 million on behalf of Delphi investors.

***In re Royal Dutch Shell European Shareholder Litigation, No. 106.010.887, Gerechtshof Te Amsterdam (Amsterdam Court of Appeal):***

Kessler Topaz was instrumental in achieving a landmark \$352 million settlement on behalf non-US investors with Royal Dutch Shell plc relating to Shell's 2004 restatement of oil reserves. This settlement of securities fraud claims on a class-wide basis under Dutch law was the first of its kind, and sought to resolve claims exclusively on behalf of European and other non-United States investors. Uncertainty over whether jurisdiction for non-United States investors existed in a 2004 class action filed in federal court in New Jersey prompted a significant number of prominent European institutional investors from nine countries, representing more than one billion shares of Shell, to actively pursue a potential resolution of their claims outside the United States. Among the European investors which actively sought and supported this settlement were Alecta pensionsförsäkring, ömsesidigt, PKA Pension Funds Administration Ltd., Swedbank Robur Fonder AB, AP7 and AFA Insurance, all of which were represented by Kessler Topaz.

***In re Computer Associates Sec. Litig., No. 02-CV-1226 (E.D.N.Y. 2002):***

Kessler Topaz served as Co-Lead Counsel on behalf of plaintiffs, alleging that Computer Associates and certain of its officers misrepresented the health of the company's business, materially overstated the company's revenues, and engaged in illegal insider selling. After nearly two years of litigation, Kessler Topaz helped obtain a settlement of \$150 million in cash and stock from the company.

***In re The Interpublic Group of Companies Sec. Litig., No. 02 Civ. 6527 (S.D.N.Y. 2002):***

Kessler Topaz served as sole Lead Counsel in this action on behalf of an institutional investor and received final approval of a settlement consisting of \$20 million in cash and 6,551,725 shares of IPG common stock. As of the final hearing in the case, the stock had an approximate value of \$87 million, resulting in a total settlement value of approximately \$107 million. In granting its approval, the Court praised Kessler Topaz for acting responsibly and noted the Firm's professionalism, competence and contribution to achieving such a favorable result.

***In re Digital Lightwave, Inc. Sec. Litig., Consolidated Case No. 98-152-CIV-T-24E (M.D. Fla. 1999):***

The firm served as Co-Lead Counsel in one of the nation's most successful securities class actions in history measured by the percentage of damages recovered. After extensive litigation and negotiations, a settlement consisting primarily of stock was worth over \$170 million at the time when it was distributed to the Class. Kessler Topaz took on the primary role in negotiating the terms of the equity component, insisting that the class have the right to share in any upward appreciation in the value of the stock after the settlement was reached. This recovery represented an astounding approximately two hundred percent (200%) of class members' losses.

***In re Transkaryotic Therapies, Inc. Sec. Litig., Civil Action No.: 03-10165-RWZ (D. Mass. 2003):***

After five years of hard-fought, contentious litigation, Kessler Topaz as Lead Counsel on behalf of the Class, entered into one of largest settlements ever against a biotech company with regard to non-approval of one of its drugs by the U.S. Food and Drug Administration (“FDA”). Specifically, the Plaintiffs alleged that Transkaryotic Therapies, Inc. (“TKT”) and its CEO, Richard Selden, engaged in a fraudulent scheme to artificially inflate the price of TKT common stock and to deceive Class Members by making misrepresentations and nondisclosures of material facts concerning TKT’s prospects for FDA approval of Replagal, TKT’s experimental enzyme replacement therapy for Fabry disease. With the assistance of the Honorable Daniel Weinstein, a retired state court judge from California, Kessler Topaz secured a \$50 million settlement from the Defendants during a complex and arduous mediation.

***In re PNC Financial Services Group, Inc. Sec. Litig., Case No. 02-CV-271 (W.D. Pa. 2002):***

Kessler Topaz served as Co-Lead Counsel in a securities class action case brought against PNC bank, certain of its officers and directors, and its outside auditor, Ernst & Young, LLP (“E&Y”), relating to the conduct of Defendants in establishing, accounting for and making disclosures concerning three special purpose entities (“SPEs”) in the second, third and fourth quarters of PNC’s 2001 fiscal year. Plaintiffs alleged that these entities were created by Defendants for the sole purpose of allowing PNC to secretly transfer hundreds of millions of dollars worth of non-performing assets from its own books to the books of the SPEs without disclosing the transfers or consolidating the results and then making positive announcements to the public concerning the bank’s performance with respect to its non-performing assets. Complex issues were presented with respect to all defendants, but particularly E&Y. Throughout the litigation E&Y contended that because it did not make any false and misleading statements itself, the Supreme Court’s opinion in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1993) foreclosed securities liability for “aiding or abetting” securities fraud for purposes of Section 10(b) liability. Plaintiffs, in addition to contending that E&Y did make false statements, argued that Rule 10b-5’s deceptive conduct prong stood on its own as an independent means of committing fraud and that so long as E&Y itself committed a deceptive act, it could be found liable under the securities laws for fraud. After several years of litigation and negotiations, PNC paid \$30 million to settle the action, while also assigning any claims it may have had against E&Y and certain other entities that were involved in establishing and/or reporting on the SPEs. Armed with these claims, class counsel was able to secure an additional \$6.6 million in settlement funds for the class from two law firms and a third party insurance company and \$9.075 million from E&Y. Class counsel was also able to negotiate with the U.S. government, which had previously obtained a disgorgement fund of \$90 million from PNC and \$46 million from the third party insurance carrier, to combine all funds into a single settlement fund that exceeded \$180 million and is currently in the process of being distributed to the entire class, with PNC paying all costs of notifying the Class of the settlement.

***In re SemGroup Energy Partners, L.P., Sec. Litig., No. 08-md-1989 (DC) (N.D. Okla.)***

Kessler Topaz, which was appointed by the Court as sole Lead Counsel, litigated this matter, which ultimately settled for \$28 million. The defense was led by 17 of the largest and best capitalized defense law firms in the world. On April 20, 2010, in a fifty-page published opinion, the United States District Court for the Northern District of Oklahoma largely denied defendants’ ten separate motions to dismiss Lead Plaintiff’s Consolidated Amended Complaint. The Complaint alleged that: (i) defendants concealed SemGroup’s risky trading operations that eventually caused SemGroup to declare bankruptcy; and (ii) defendants made numerous false statements concerning SemGroup’s ability to provide its publicly-traded Master Limited Partnership stable cash-flows. The case was aggressively litigated out of the Firm’s San Francisco and Radnor offices and the significant recovery was obtained, not only from the Company’s principals, but also from its underwriters and outside directors.

***In re Liberate Technologies Sec. Litig., No. C-02-5017 (MJJ) (N.D. Cal. 2005):***

Kessler Topaz represented plaintiffs which alleged that Liberate engaged in fraudulent revenue recognition practices to artificially inflate the price of its stock, ultimately forcing it to restate its earnings. As sole Lead Counsel, Kessler Topaz successfully negotiated a \$13.8 million settlement, which represents almost 40% of the damages suffered by the class. In approving the settlement, the district court complimented Lead Counsel for its “extremely credible and competent job.”

***In re Riverstone Networks, Inc. Sec. Litig., Case No. CV-02-3581 (N.D. Cal. 2002):***

Kessler Topaz served as Lead Counsel on behalf of plaintiffs alleging that Riverstone and certain of its officers and directors sought to create the impression that the Company, despite the industry-wide downturn in the telecom sector, had the ability to prosper and succeed and was actually prospering. In that regard, plaintiffs alleged that

defendants issued a series of false and misleading statements concerning the Company's financial condition, sales and prospects, and used inside information to personally profit. After extensive litigation, the parties entered into formal mediation with the Honorable Charles Lege (Ret.). Following five months of extensive mediation, the parties reached a settlement of \$18.5 million.

## **Shareholder Derivative Actions**

### ***In re Southern Peru Copper Corp. Derivative Litigation, Consol. CA No. 961-CS (Del. Ch.):***

On October 14, 2011, Kessler Topaz and its Delaware co-counsel secured the largest damage award in Delaware Chancery Court history, a \$1.3 billion derivative judgment against copper mining company Southern Peru's majority shareholder Grupo Mexico. The litigation stemmed from Southern Peru's 2005 acquisition of Minera Mexico, a private mining company owned by Grupo Mexico, for more than \$3 billion in Southern Peru stock. Plaintiff alleged that the private company was worth more than a billion dollars less, but that Southern Peru's board had approved this conflicted transaction in deference to its majority shareholder's interests. In his trial opinion, Chancellor Leo Strine agreed, writing that Grupo Mexico "extracted a deal that was far better than market, and got real, market-tested value of over \$3 billion for something that no member of the special committee, none of its advisors, and no trial expert was willing to say was worth that amount of actual cash." He concluded that Southern Peru's "non-adroit act of commercial charity toward the controller resulted in a manifestly unfair transaction." Discovery in the case spanned years and continents, with depositions in Peru and Mexico. Defendants appealed the historic verdict to the Delaware Supreme Court, which affirmed the Court of Chancery's judgment on August 27, 2012. The final judgment, with interest, amounted to \$2.1 billion.

### ***In re Converse Technology, Inc. Derivative Litigation, 601272/2006 (Supreme Court, NY 2006):***

Kessler Topaz attorneys negotiated a settlement that required the Company's founder/Chairman/CEO and other executives to disgorge more than \$62 million in ill-gotten gains from backdated stock options back to the Company and overhauled the Company's corporate governance and internal controls, including replacing a number of members on the board of directors and corporate executives, splitting the Chairman and CEO positions, and instituting majority voting for directors.

### ***Wanstrath v. Doctor R. Crants, et. al. Shareholders Litigation, No. 99-1719-111 (Tenn. Chan. Ct., 20th Judicial District, 1999):***

Kessler Topaz served as Lead Counsel in a derivative action filed against the officers and directors of Prison Realty Trust, Inc., challenging the transfer of assets from the Company to a private entity owned by several of the Company's top insiders. Numerous federal securities class actions were pending against the Company at this time. Through the derivative litigation, the Company's top management was ousted, the composition of the Board of Directors was significantly improved, and important corporate governance provisions were put in place to prevent future abuse. Kessler Topaz, in addition to achieving these desirable results, was able to effectuate a global settlement of all pending litigation against the backdrop of an almost certain bankruptcy. The case was resolved in conjunction with the federal securities cases for the payment of approximately \$50 million by the Company's insurers and the issuance of over 46 million shares to the class members.

### ***In re Viacom, Inc. Shareholder Derivative Litig., Index No. 602527/05 (New York County, NY 2005):***

Kessler Topaz represented the Public Employees' Retirement System of Mississippi and served as Lead Counsel in a derivative action alleging that the members of the Board of Directors of Viacom, Inc. paid excessive and unwarranted compensation to Viacom's Executive Chairman and CEO, Sumner M. Redstone, and co-COOs Thomas E. Freston and Leslie Moonves, in breach of their fiduciary duties. Specifically, we alleged that in fiscal year 2004, when Viacom reported a record net loss of \$17.46 billion, the board improperly approved compensation payments to Redstone, Freston, and Moonves of approximately \$56 million, \$52 million, and \$52 million, respectively. Judge Ramos of the New York Supreme Court denied Defendants' motion to dismiss the action as we overcame several complex arguments related to the failure to make a demand on Viacom's Board; Defendants then appealed that decision to the Appellate Division of the Supreme Court of New York. Prior to a decision by the appellate court, a settlement was reached in early 2007. Pursuant to the settlement, Sumner Redstone, the company's Executive Chairman and controlling shareholder, agreed to a new compensation package that, among other things, substantially reduces his annual salary and cash bonus, and ties the majority of his incentive compensation directly to shareholder returns.

***In re Family Dollar Stores, Inc. Derivative Litig., Master File No. 06-CVS-16796 (Mecklenburg County, NC 2006):***

Kessler Topaz served as Lead Counsel, derivatively on behalf of Family Dollar Stores, Inc., and against certain of Family Dollar's current and former officers and directors. The actions were pending in Mecklenburg County Superior Court, Charlotte, North Carolina, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of these shareholder derivative actions, Kessler Topaz was able to achieve substantial relief for Family Dollar and its shareholders. Through Kessler Topaz's litigation of this action, Family Dollar agreed to cancel hundreds of thousands of stock options granted to certain current and former officers, resulting in a seven-figure net financial benefit for the company. In addition, Family Dollar has agreed to, among other things: implement internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; appoint two new independent directors to the board of directors; maintain a board composition of at least 75 percent independent directors; and adopt stringent officer stock-ownership policies to further align the interests of officers with those of Family Dollar shareholders. The settlement was approved by Order of the Court on August 13, 2007.

***In re Barnes & Noble, Inc. Derivative Litig., Index No. 06602389 (New York County, NY 2006):***

Kessler Topaz served as Lead Counsel, derivatively on behalf of Barnes & Noble, Inc., and against certain of Barnes & Noble's current and former officers and directors. This action was pending in the Supreme Court of New York, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of this shareholder derivative action, Kessler Topaz was able to achieve substantial relief for Barnes & Noble and its shareholders. Through Kessler Topaz's litigation of this action, Barnes & Noble agreed to re-price approximately \$2.64 million unexercised stock options that were alleged improperly granted, and certain defendants agreed to voluntarily repay approximately \$1.98 million to the Company for the proceeds they received through exercise of allegedly improperly priced stock options. Furthermore, Barnes & Noble has agreed to, among other things: adopt internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; at least once per calendar year, preset a schedule of dates on which stock options will be granted to new employees or to groups of twenty (20) or more employees; make final determinations regarding stock options at duly-convened committee meetings; and designate one or more specific officer(s) within the Company who will be responsible for, among other things, compliance with the Company's stock option plans. The settlement was approved by Order of the Court on November 14, 2007.

***In re Sepracor, Inc. Derivative Litig., C.A. NO.: SUCV2006-04057-BLS:***

Kessler Topaz served as Lead Counsel, derivatively on behalf of Sepracor Inc., and against certain of Sepracor's current and former officers and directors. This action was pending in the Superior Court of Suffolk County, Massachusetts, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of this shareholder derivative action, Kessler Topaz was able to achieve substantial relief for Sepracor and its shareholders. Through Kessler Topaz's litigation of this action, Sepracor agreed to cancel or reprice more than 2.7 million unexercised stock options that were alleged to have been improperly granted. Furthermore, Sepracor has agreed to, among other things: adopt internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; not alter the exercise prices of stock options without shareholder approval; hire an employee responsible for ensuring that the Company's complies with its stock option plans; and appoint a director of internal auditing. The settlement was approved by Order of the Court on January 4, 2008.

***In re Monster Worldwide, Inc. Stock Option Derivative Litigation, Index No. 1:06-CV-04622 (New York Supreme Court, New York County):***

Kessler Topaz represented Allegheny County in this shareholder derivative action brought on behalf of Monster Worldwide, Inc. ("Monster") against certain of its officers and directors. The action alleged that insiders had breached their fiduciary duties to the company and its shareholders by "backdating" stock options, that is, by granting stock options at artificially low prices by pretending that the options had been granted on earlier, fictitious dates. Kessler Topaz attorneys negotiated a settlement which required the recipients of backdated stock options to disgorge more than \$32 million in unlawful gains back to the company, plus agreeing to significant corporate governance measures. These measures included (a) requiring Monster's founder Andrew McKelvey to reduce his voting control over Monster from 31% to 7%, by exchanging super-voting stock for common stock; and (b)

implementing new equity granting practices that require greater accountability and transparency in the granting of stock options moving forward. In approving the settlement, the court noted “the good results, mainly the amount of money for the shareholders and also the change in governance of the company itself, and really the hard work that had to go into that to achieve the results....”

***Denbury Resources, Inc. Shareholder Litigation, 2008-CP-23-8395 (Greenville County, SC 2008):***

This derivative litigation challenged the Board’s decision to award excessive compensation to the Company’s outgoing President and CEO, Gareth Roberts. Kessler Topaz negotiated a settlement that included both the disgorgement of ill-gotten compensation by Mr. Roberts as well as numerous corporate governance improvements. In approving the settlement, the Court acknowledged that the litigation was a “hard-fought battle all the way through,” and commented, “I know you guys have very vigorous and able counsel on the other side, and you had to basically try to knock your way through the wall at every stage.”

***Carbon County Employees Retirement System, et al., Derivatively on Behalf of Nominal Defendant Southwest Airlines Co. v. Gary C. Kelly, et al. Cause No. 08-08692 (District Court of Dallas County, Texas)***

Kessler Topaz served as Lead Counsel against certain officers and directors of Southwest Airlines Co. alleging breaches of fiduciary duties in connection with Southwest’s violations of Federal Aviation Administration safety and maintenance regulations. Plaintiffs alleged that from June 2006 to March 2007, Southwest flew 46 Boeing 737 airplanes on nearly 60,000 flights without complying with a 2004 FAA Airworthiness Directive that required the Company to inspect the planes for fuselage fatigue cracks. As a result, Southwest was forced to temporarily ground 44 planes, and the FAA levied on the Company a record \$7.5 million civil penalty. Plaintiffs successfully negotiated numerous reforms targeted not only at ensuring that Southwest’s Board is adequately apprised of any issues concerning Southwest’s safety and operations, but also at implementing significant measures to strengthen Southwest’s safety and maintenance processes and procedures, which will yield positive changes in many areas of Southwest’s operations and will have long-lasting effects on Southwest that go far beyond its Board-level practices.

***The South Financial Group, Inc. Shareholder Litigation, 09-09061 (Dallas County, TX 2009):***

This derivative litigation challenged the Board’s decision to accelerate “golden parachute” payments to the Company’s CEO Mack Whittle as the Company applied for emergency assistance in 2008 under the Troubled Asset Recovery Plan (“TARP”). Kessler Topaz attorneys sought injunctive relief to block the payments and protect the Company’s ability to receive the TARP funds. The litigation was settled, with Whittle giving up a portion of his severance package and agreeing to leave the board, as well as the implementation of important corporate governance changes which were described by one commentator as “unprecedented.”

## **Mergers & Acquisitions Litigation**

***In re Genentech, Inc. Shareholders Lit., Cons. Civ. Action No. 3991-VCS (Del. Chancery Court):***

Kessler Topaz served as Co-Lead Counsel in this shareholder class action brought against the directors of Genentech and Genentech’s former majority owner, Roche Holdings, Inc., in response to Roche’s July 21, 2008 attempt to acquire Genentech for \$89 per share. We sought to enforce provisions of an Affiliation Agreement between Roche and Genentech and to ensure that Roche fulfilled its fiduciary obligations to Genentech’s shareholders through any buyout effort by Roche. After moving to enjoin the tender offer, Kessler Topaz negotiated with Roche and Genentech to amend the Affiliation Agreement to allow a negotiated transaction between Roche and Genentech, which enabled Roche to acquire Genentech for \$95 per share, approximately \$3.9 billion more than Roche offered in its hostile tender offer. In approving the settlement, Vice Chancellor Leo Strine complimented plaintiffs’ counsel, noting that this benefit was only achieved through “real hard-fought litigation in a complicated setting.”

***In re GSI Commerce, Inc. Shareholder Litigation, Consolidated C.A. No. 6346-VCN (Del. Ch. Ct.):***

Kessler Topaz represented Lead Plaintiff Erie County Employees Retirement System (“Erie County”) in this consolidated class action matter involving the acquisition of GSI Commerce, Inc. (“GSI”) by eBay, Inc., litigated in the Delaware Court of Chancery. Erie County’s complaint alleged, among other things, that GSI’s founder, chairman of the board and chief executive officer Michael Rubin breached his fiduciary duties to GSI and its stockholders by secretly negotiating with eBay to acquire several of GSI’s businesses as a part of a merger with eBay, before the GSI board considered a possible merger with eBay, thereby reducing the price that eBay would pay to GSI’s stockholders in the merger. The complaint also alleged that GSI’s board breached its fiduciary duties to stockholders by allowing Rubin to acquire the GSI-owned businesses and by failing to make full material disclosure

to stockholders in advance of a stockholder vote on the merger. Following expedited discovery and GSI's release of additional factual disclosures less than a week before a scheduled hearing on Erie County's motion to enjoin the transaction, Erie County agreed to settle the action in exchange for a payment of approximately \$23.7 million to GSI stockholders, as well as an agreement to pay attorneys' fees and expenses on top of that sum, without reducing the payment to stockholders. GSI stockholders received the settlement payment in June 2011, upon the closing of the eBay merger.

***In re Amicas, Inc. Shareholder Litigation, 10-0174-BLS2 (Suffolk County, MA 2010):***

Kessler Topaz served as lead counsel in class action litigation challenging a proposed private equity buy out of Amicas that would have paid Amicas shareholders \$5.35 per share in cash while certain Amicas executives retained an equity stake in the surviving entity moving forward. Kessler Topaz prevailed in securing a preliminary injunction against the deal, which then allowed a superior bidder to purchase the Company for an additional \$0.70 per share. The court complimented Kessler Topaz attorneys for causing an "exceptionally favorable result for Amicas' shareholders" after "expend[ing] substantial resources."

***In re American Italian Pasta Company Shareholder Litigation, CA 5610-VCN (Del. Ch 2010):***

This expedited merger litigation challenged certain provisions of a merger agreement, whereby the board had granted the acquiring company a "Top-Up Option" to purchase additional shares in the event that less than 90% of the shares were tendered. Kessler Topaz attorneys asserted that the Top-Up Option was granted in violation of Delaware law and threatened the rights of shareholders to seek appraisal post-closing. In settling the litigation, the parties agreed to substantially rewrite provisions of the merger agreement and issue substantial additional disclosures prior to the closing of the transaction. The Delaware Chancery Court approved the settlement, noting that "the issues were novel and difficult," and that the "litigation was brought under severe time constraints."

## **Consumer Protection and ERISA Litigation**

***CompSource Oklahoma v. BNY Mellon Bank, N.A., No. CIV 08-469-KEW (E.D. Okla. October 25, 2012):***

Kessler Topaz served as Interim Class Counsel in this matter alleging that BNY Mellon Bank, N.A. and the Bank of New York Mellon (collectively, "BNYM") breached their statutory, common law and contractual duties in connection with the administration of their securities lending program. The Second Amended Complaint alleged, among other things, that BNYM imprudently invested cash collateral obtained under its securities lending program in medium term notes issued by Sigma Finance, Inc. -- a foreign structured investment vehicle ("SIV") that is now in receivership -- and that such conduct constituted a breach of BNYM's fiduciary obligations under the Employee Retirement Income Security Act of 1974, a breach of its fiduciary duties under common law, and a breach of its contractual obligations under the securities lending agreements. The Complaint also asserted claims for negligence, gross negligence and willful misconduct. The case recently settled for \$280 million.

***Transatlantic Holdings, Inc., et al. v. American International Group, Inc., et al., American Arbitration Association Case No. 50 148 T 00376 10:***

Kessler Topaz served as counsel for Transatlantic Holdings, Inc., and its subsidiaries ("TRH"), alleging that American International Group, Inc. and its subsidiaries ("AIG") breached their fiduciary duties, contractual duties, and committed fraud in connection with the administration of its securities lending program. Until June 2009, AIG was TRH's majority shareholder and, at the same time, administered TRH's securities lending program. TRH's Statement of Claim alleged that, among other things, AIG breached its fiduciary obligations as investment advisor and majority shareholder by imprudently investing the majority of the cash collateral obtained under its securities lending program in mortgage backed securities, including Alt-A and subprime investments. The Statement of Claim further alleged that AIG concealed the extent of TRH's subprime exposure and that when the collateral pools began experiencing liquidity problems in 2007, AIG unilaterally carved TRH out of the pools so that it could provide funding to its wholly owned subsidiaries to the exclusion of TRH. The matter was litigated through a binding arbitration and TRH was awarded \$75 million.

***Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, N.A. – Consolidated Action No. 09-cv-00686 (SAS) (S.D.N.Y.):***

On January 23, 2009, the firm filed a class action complaint on behalf of all entities that were participants in JPMorgan's securities lending program and that incurred losses on investments that JPMorgan, acting in its capacity

as a discretionary investment manager, made in medium-term notes issue by Sigma Finance, Inc. – a now defunct structured investment vehicle. The losses of the Class exceeded \$500 million. The complaint asserted claims for breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA), as well as common law breach of fiduciary duty, breach of contract and negligence. Over the course of discovery, the parties produced and reviewed over 500,000 pages of documents, took 40 depositions (domestic and foreign) and exchanged 21 expert reports. The case settled for \$150 million. Trial was scheduled to commence on February 6, 2012.

***In re Global Crossing, Ltd. ERISA Litigation, No. 02 Civ. 7453 (S.D.N.Y. 2004):***

Kessler Topaz served as Co-Lead Counsel in this novel, complex and high-profile action which alleged that certain directors and officers of Global Crossing, a former high-flier of the late 1990's tech stock boom, breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") to certain company-provided 401(k) plans and their participants. These breaches arose from the plans' alleged imprudent investment in Global Crossing stock during a time when defendants knew, or should have known, that the company was facing imminent bankruptcy. A settlement of plaintiffs' claims restoring \$79 million to the plans and their participants was approved in November 2004. At the time, this represented the largest recovery received in a company stock ERISA class action.

***In re AOL Time Warner ERISA Litigation, No. 02-CV-8853 (S.D.N.Y. 2006):***

Kessler Topaz, which served as Co-Lead Counsel in this highly-publicized ERISA fiduciary breach class action brought on behalf of the Company's 401(k) plans and their participants, achieved a record \$100 million settlement with defendants. The \$100 million restorative cash payment to the plans (and, concomitantly, their participants) represents the largest recovery from a single defendant in a breach of fiduciary action relating to mismanagement of plan assets held in the form of employer securities. The action asserted claims for breach of fiduciary duties pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA") on behalf of the participants in the AOL Time Warner Savings Plan, the AOL Time Warner Thrift Plan, and the Time Warner Cable Savings Plan (collectively, the "Plans") whose accounts purchased and/or held interests in the AOLTW Stock Fund at any time between January 27, 1999 and July 3, 2003. Named as defendants in the case were Time Warner (and its corporate predecessor, AOL Time Warner), several of the Plans' committees, as well as certain current and former officers and directors of the company. In March 2005, the Court largely denied defendants' motion to dismiss and the parties began the discovery phase of the case. In January 2006, Plaintiffs filed a motion for class certification, while at the same time defendants moved for partial summary judgment. These motions were pending before the Court when the settlement in principle was reached. Notably, an Independent Fiduciary retained by the Plans to review the settlement in accordance with Department of Labor regulations approved the settlement and filed a report with Court noting that the settlement, in addition to being "more than a reasonable recovery" for the Plans, is "one of the largest ERISA employer stock action settlements in history."

***In re Honeywell International ERISA Litigation, No. 03-1214 (DRD) (D.N.J. 2004):***

Kessler Topaz served as Lead Counsel in a breach of fiduciary duty case under ERISA against Honeywell International, Inc. and certain fiduciaries of Honeywell defined contribution pension plans. The suit alleged that Honeywell and the individual fiduciary defendants, allowed Honeywell's 401(k) plans and their participants to imprudently invest significant assets in company stock, despite that defendants knew, or should have known, that Honeywell's stock was an imprudent investment due to undisclosed, wide-ranging problems stemming from a consummated merger with Allied Signal and a failed merger with General Electric. The settlement of plaintiffs' claims included a \$14 million payment to the plans and their affected participants, and significant structural relief affording participants much greater leeway in diversifying their retirement savings portfolios.

***Henry v. Sears, et. al., Case No. 98 C 4110 (N.D. Ill. 1999):***

The Firm served as Co-Lead Counsel for one of the largest consumer class actions in history, consisting of approximately 11 million Sears credit card holders whose interest rates were improperly increased in connection with the transfer of the credit card accounts to a national bank. Kessler Topaz successfully negotiated a settlement representing approximately 66% of all class members' damages, thereby providing a total benefit exceeding \$156 million. All \$156 million was distributed automatically to the Class members, without the filing of a single proof of claim form. In approving the settlement, the District Court stated: ". . . I am pleased to approve the settlement. I think it does the best that could be done under the circumstances on behalf of the class. . . . The litigation was complex in both liability and damages and required both professional skill and standing which class counsel demonstrated in abundance."

## Antitrust Litigation

### ***In re Remeron Antitrust Litigation, No. 02-CV-2007 (D.N.J. 2004):***

Kessler Topaz was Co-Lead Counsel in an action which challenged Organon, Inc.'s filing of certain patents and patent infringement lawsuits as an abuse of the Hatch-Waxman Act, and an effort to unlawfully extend their monopoly in the market for Remeron. Specifically, the lawsuit alleged that defendants violated state and federal antitrust laws in their efforts to keep competing products from entering the market, and sought damages sustained by consumers and third-party payors. After lengthy litigation, including numerous motions and over 50 depositions, the matter settled for \$36 million.

## OUR PROFESSIONALS

### **PARTNERS**

**NAUMON A. AMJED**, a partner of the Firm, has significant experience conducting complex litigation in state and federal courts including federal securities class actions, shareholder derivative actions, suits by third-party insurers and other actions concerning corporate and alternative business entity disputes. Mr. Amjed has litigated in numerous state and federal courts across the country, including the Delaware Court of Chancery, and has represented shareholders in several high profile lawsuits, including: *LAMPERS v. CBOT Holdings, Inc. et al.*, C.A. No. 2803-VCN (Del. Ch.); *In re Alstom SA Sec. Litig.*, 454 F. Supp. 2d 187 (S.D.N.Y. 2006); *In re Global Crossing Sec. Litig.*, 02— Civ. — 910 (S.D.N.Y.); *In re Enron Corp. Sec. Litig.*, 465 F. Supp. 2d 687 (S.D. Tex. 2006); and *In re Marsh McLennan Cos., Inc. Sec. Litig.* 501 F. Supp. 2d 452 (S.D.N.Y. 2006).

Prior to joining the Firm, Mr. Amjed was associated with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A. Mr. Amjed is a graduate of the Villanova University School of Law, *cum laude*, and holds an undergraduate degree in business administration from Temple University, *cum laude*. Mr. Amjed is a member of the Delaware State Bar, the Bar of the Commonwealth of Pennsylvania and is admitted to practice before the United States Court for the District of Delaware.

**STUART L. BERMAN**, a partner of the Firm, concentrates his practice on securities class action litigation in federal courts throughout the country, with a particular emphasis on representing institutional investors active in litigation. Mr. Berman regularly counsels and educates institutional investors located around the world on emerging legal trends, new case ideas and the rights and obligations of institutional investors as they relate to securities fraud class actions and individual actions. In this respect, Mr. Berman has been instrumental in courts appointing the Firm's institutional clients as lead plaintiffs in class actions as well as in representing institutions individually in direct actions. Mr. Berman is currently representing institutional investors in direct actions against Vivendi and Merck, and took a very active role in the precedent setting Shell settlement on behalf of many of the Firm's European institutional clients.

In connection with these responsibilities, Mr. Berman is a frequent speaker on securities issues, especially as they relate to institutional investors, at events such as The European Pension Symposium in Florence, Italy; the Public Funds Symposium in Washington, D.C.; the Pennsylvania Public Employees Retirement (PAPERS) Summit in Harrisburg, Pennsylvania; the New England Pension Summit in Newport, Rhode Island; the Rights and Responsibilities for Institutional Investors in Amsterdam, Netherlands; and the European Investment Roundtable in Barcelona, Spain.

Mr. Berman is an honors graduate from Brandeis University and received his law degree from George Washington University National Law Center.

**DAVID A. BOCIAN**, a partner of the Firm, focuses his practice on whistleblower representation and False Claims Act litigation. Mr. Bocian spent more than ten years as a federal prosecutor in the U.S. Attorney's Office for the District of New Jersey, where he was appointed Senior Litigation Counsel and managed the Trenton U.S. Attorney's office. During his tenure, Mr. Bocian oversaw multifaceted investigations and prosecutions pertaining to government corruption and federal program fraud, commercial and public sector kickbacks, tax fraud, and other white collar and financial crimes. He tried numerous cases before federal juries, and was a recipient of the Justice Department's Director's Award for superior performance by an Assistant U.S. Attorney, as well as commendations from federal law enforcement agencies including the FBI and IRS.

Mr. Bocian has extensive experience in the health care field. As an adjunct professor of law, he teaches Healthcare Fraud and Abuse at Rutgers School of Law – Camden, and previously was employed in the health care industry, where he was responsible for implementing and overseeing a system-wide compliance program for a complex health system.

Mr. Bocian graduated *cum laude* from Princeton University and received his law degree from the University of Virginia School of Law. He is licensed to practice law in the Commonwealth of Pennsylvania, New Jersey, New York and the District of Columbia. Mr. Bocian began his legal career in Washington, D.C., as a litigation associate at Patton Boggs LLP, where his practice included internal corporate investigations, government contracts litigation and securities fraud matters.

**GREGORY M. CASTALDO**, a partner of the Firm, received his law degree from Loyola Law School, where he received the American Jurisprudence award in legal writing. He received his undergraduate degree from the Wharton School of Business at the University of Pennsylvania. He is licensed to practice law in Pennsylvania and New Jersey.

Mr. Castaldo served as one of Kessler Topaz's lead litigation partners in *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, Master File No. 09 MDL 2058, recovering \$2.425 billion settlement for the class. Mr. Castaldo also served as the lead litigation partner in *In re Tenet Healthcare Corp.*, No. 02-CV-8462 (C.D. Cal. 2002), securing an aggregate recovery of \$281.5 million for the class, including \$65 million from Tenet's auditor. Mr. Castaldo also played a primary litigation role in the following cases: *In re Liberate Technologies Sec. Litig.*, No. C-02-5017 (MJJ) (N.D. Cal. 2005) (settled — \$13.8 million); *In re Sodexo Marriott Shareholders Litig.*, Consol. C.A. No. 18640-NC (Del. Ch. 1999) (settled — \$166 million benefit); *In re Motive, Inc. Sec. Litig.*, 05-CV-923 (W.D. Tex. 2005) (settled — \$7 million cash, 2.5 million shares); and *In re Wireless Facilities, Inc., Sec. Litig.*, 04-CV-1589 (S.D. Cal. 2004) (settled — \$16.5 million).

**DARREN J. CHECK**, a partner of the Firm, concentrates his practice in the area of shareholder litigation and client relations. Mr. Check manages the Firm's Portfolio Monitoring Department and works closely with the Firm's Case Evaluation Department. Mr. Check is a graduate of Franklin & Marshall College and received his law degree from Temple University School of Law. Mr. Check is licensed to practice in Pennsylvania and New Jersey.

Currently, Mr. Check consults with institutional investors from around the world with regard to their investment rights and responsibilities. He currently works with clients in the United States, Canada, the Netherlands, Sweden, Denmark, Norway, Finland, United Kingdom, Italy, Germany, Austria, Switzerland, France, and Australia.

Mr. Check assists Firm clients in evaluating and analyzing opportunities to take an active role in shareholder litigation, arbitration, and other loss recovery methods. This includes U.S. based litigation and arbitration, as well as an increasing number of cases from jurisdictions around the globe. With an increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional class actions, direct actions, non-U.S. opt-in actions, fiduciary actions, and arbitrations to name a few.

Mr. Check is frequently called upon by his clients to help ensure they are taking an active role when their involvement can make a difference, and that they are not leaving money on the table.

Mr. Check regularly speaks on the subjects of shareholder litigation, corporate governance, investor activism, and recovery of investment losses at conferences around the world.

Mr. Check has also been actively involved in the precedent setting Shell settlement in the Netherlands, direct actions against BP, Vivendi, and Merck, and securities class actions against Bank of America, Lehman Brothers, Royal Bank of Scotland (U.K.), and Hewlett-Packard. Currently Mr. Check represents investors in numerous high profile actions in the United States, the Netherlands, Canada, France, Japan, and the United Kingdom.

**EDWARD W. CIOLKO**, a partner of the Firm, received his law degree from Georgetown University Law Center, and an MBA from the Yale School of Management. He is licensed to practice law in the State of New Jersey, and has been admitted to practice before the Supreme Court of the United States, the United States District Court for the District of New Jersey and the United States Courts of Appeals for the First, Fourth, Ninth and Eleventh Circuits. Mr. Ciolko concentrates his practice in the areas of ERISA, Antitrust, RESPA and Consumer Protection.

Mr. Ciolko is counsel in several pending nationwide ERISA breach of fiduciary duty class actions, brought on behalf of retirement plans and their participants alleging, inter alia, imprudent investment of plan assets which caused significant losses to the retirement savings of tens of thousands of workers. These cases include: *In re Beazer Homes USA, Inc. ERISA Litig.*, 07-CV-00952-RWS (N.D. Ga. 2007); *Nowak v. Ford Motor Co.*, 240 F.R.D. 355 (E.D. Mich. 2006); *Gee v. UnumProvident Corp.*, 03-1552(E.D. Tenn. 2003); *Pettit v. JDS Uniphase Corp. et al.*, C.A. No. 03-4743 (N.D. Ca. 2003); *Hargrave v. TXU, et al.*, C.A. No. 02-2573 (N.D. Tex. 2002); *Evans v. Akers*, C.A. No. 04-11380 (D. Mass. 2004); *Lewis v. El Paso Corp.* No. 02-CV-4860 (S.D. Tex. 2002); and *In re Schering-Plough Corp. ERISA Litig.* No. 03-CV-1204 (D.N.J. 2003).

Mr. Ciolko's efforts have also helped achieve a number of large recoveries for affected retirement plan participants: *In re Sears Roebuck & Co. ERISA Litig.*, C.A. No. 02-8324 (N.D. Ill. 2002) (settled — \$14.5 million recovery); and *In re Honeywell Intern'l ERISA Litig.*, No. 03-CV-1214 (DRD) (D.N.J. 2003) (settled — \$14 million recovery, as well as significant structural relief regarding the plan's administration and investment of its assets).

Mr. Ciolko has also concentrated part of his practice to the investigation and prosecution of pharmaceutical antitrust actions, medical device litigation, and related anticompetitive and unfair business practices including *In re Wellbutrin SR Antitrust Litigation*, 04-CV-5898 (E.D. Pa. Dec. 17, 2004); *In re Remeron End-Payor Antitrust Litigation*, Master File No. 02-CV-2007 (D.N.J. Apr. 25, 2002); *In re Modafinil Antitrust Litigation*, 06-2020 (E.D. Pa. May 12, 2006); *In re Medtronic, Inc. Implantable Defibrillator Litigation*, 05-CV-2700 (D. Minn. 2005); and *In re Guidant Corp. Implantable Defibrillator Litigation*, 05-CV-2883 (D. Minn. 2005).

Before coming to Kessler Topaz, Mr. Ciolko worked for two and one-half years as a Law Clerk and Attorney Advisor to Commissioner Sheila F. Anthony of the Federal Trade Commission ("FTC"). While at the FTC, Mr. Ciolko reviewed commission actions/investigations and counseled the Commissioner on a wide range of antitrust and consumer protection topics including, in pertinent part: the confluence of antitrust and intellectual property law; research and production of "Generic Drug Entry Prior to Patent Expiration: An FTC Study," and an administrative complaint against, among others, Schering-Plough Corporation regarding allegedly unlawful settlements of patent litigation which delayed entry of a generic alternative to a profitable potassium supplement (K-Dur).

**ELI R. GREENSTEIN** is a partner in the Firm's San Francisco office and a member of the Firm's federal securities litigation practice group. Mr. Greenstein received his B.A. in Business Administration from the University of San Diego in 1997 where he was awarded the Presidential Scholarship. Mr. Greenstein received his J.D. from Santa Clara University School of Law in 2001, and his M.B.A. from Santa Clara's Leavey School of Business in 2002. Mr. Greenstein also was a judicial extern for the Honorable James Ware, Chief Judge of the United States District Court for the Northern District of California.

Mr. Greenstein's notable federal securities actions and recoveries include:

*In re VeriFone Holdings, Inc. Sec. Litig.*, 2012 U.S. App. LEXIS 26133 (9th Cir. 2012); *Dobina v. Weatherford Int'l*, 2012 U.S. Dist. LEXIS 160663 (S.D.N.Y. 2012); *Minneapolis Firefighters Relief Ass'n v. Medtronic, Inc.*, 278 F.R.D. 454 (D. Minn.) (\$85 million recovery); *In re Sunpower Secs. Litig.*, 2011 U.S. Dist. LEXIS 152920 (N.D. Cal. 2011); *AOL Time Warner state securities opt-out actions* (including *Regents of the Univ. of Cal. v. Parsons* (Cal. Super. Ct.) and *Ohio Pub. Emps. Ret. Sys. v. Parsons* (Franklin County Ct. of Common Pleas) (\$618 million in total recoveries); *In re Am. Apparel, Inc. S'holder Litig.*, 2013 U.S. Dist. LEXIS 6977 (C.D. Cal. 2013); *In re Am. Serv. Group, Inc.*, 2009 U.S. Dist. LEXIS 28237 (M.D. Tenn. 2009) (\$15.1 million recovery); *In re Nuvelo, Inc. Sec. Litig.*, 668 F. Supp. 2d 1217 (N.D. Cal. 2009) (\$8.9 million recovery); *Greater Pa. Carpenters Pension Fund v. Whitehall Jewellers, Inc.*, 2005 U.S. Dist. LEXIS 12971 (N.D. Ill. 2005) (\$7.5 million recovery); *In re Endocare, Inc. Sec. Litig.*, No. CV02-8429 DT (CTX) (C.D. Cal. 2004) (\$8.95 million recovery); *In re Terayon Communs. Sys. Sec. Litig.*, 2002 U.S. Dist. LEXIS 5502 (N.D. Cal. 2002) (\$15 million recovery); *Parnes v. Harris (In re Purus)*, No. C-98-20449-JF(RS) (\$9.95 million recovery).

Prior to joining the Firm, Mr. Greenstein was a partner at Robbins Geller Rudman & Dowd LLP in its federal securities litigation practice group. His relevant background also includes consulting for PricewaterhouseCoopers LLP's International Tax and Legal Services division, and work on the trading floor of the Chicago Mercantile Exchange, S&P 500 futures and options division.

**SEAN M. HANDLER**, a partner of the Firm and member of Kessler Topaz's Management Committee, currently concentrates his practice on all aspects of new matter development for the Firm including securities, consumer and intellectual property.

As part of these responsibilities, Mr. Handler also oversees the lead plaintiff appointment process in securities class actions for the Firm's clients. In this role, Mr. Handler has achieved numerous noteworthy appointments for clients in reported decisions including *Foley v. Transocean*, 272 F.R.D. 126 (S.D.N.Y. 2011); *In re Bank of America Corp. Sec., Derivative & Employment Ret. Income Sec. Act (ERISA) Litig.*, 258 F.R.D. 260 (S.D.N.Y. 2009) and *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659 (C.D. Cal. 2005) and has argued before federal courts throughout the country, including the United States Court of Appeals for the Ninth Circuit.

Mr. Handler was also one of the principal attorneys in *In re Brocade Securities Litigation* (N.D. Cal. 2008), where the team achieved a \$160 million settlement on behalf of the class and two public pension fund class representatives. This settlement is believed to be one of the largest settlements in a securities fraud case in terms of the ratio of settlement amount to actual investor damages.

Mr. Handler received his Bachelor of Arts degree from Colby College, graduating *with distinction* in American Studies. Mr. Handler then earned his Juris Doctor, *cum laude*, from Temple University School of Law.

Mr. Handler also lectures and serves on discussion panels concerning securities litigation matters, most recently appearing at American Conference Institute's National Summit on the Future of Fiduciary Responsibility and Institutional Investor's The Rights & Responsibilities of Institutional Investors.

**KIMBERLY A. JUSTICE**, a partner of the Firm, graduated *magna cum laude* from Temple University School of Law, where she was Articles/Symposium Editor of the Temple Law Review and received the Jacob Kossman Award in Criminal Law. Ms. Justice earned her undergraduate degree, *cum laude* and Phi Beta Kappa, from Kalamazoo College. Upon graduating from law school, Ms. Justice served as a judicial clerk to the Honorable William H. Yohn, Jr. of the United States District Court for the Eastern District of Pennsylvania. Ms. Justice is licensed to practice law in Pennsylvania and admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Ms. Justice joined the Firm after several years serving as a trial attorney and prosecutor in the Antitrust Division of the U.S. Department of Justice where she led teams of trial attorneys and law enforcement agents who investigated and prosecuted domestic and international cartel cases and related violations, and where her success at trial was recognized with the *Antitrust Division Assistant Attorney General Award of Distinction* for outstanding contribution to the protection of American consumers and competition. Since joining Kessler Topaz, Ms. Justice concentrates her practice in the area of securities litigation.

Ms. Justice began her practice as an associate at Dechert LLP where she defended a broad range of complex commercial cases, including antitrust and product liability class actions, and where she advised clients concerning mergers and acquisitions and general corporate matters.

**DAVID KESSLER**, a partner of the Firm, graduated with distinction from the Emory School of Law, after receiving his undergraduate B.S.B.A. degree from American University. Mr. Kessler is licensed to practice law in Pennsylvania, New Jersey and New York, and has been admitted to practice before numerous United States District Courts. Prior to practicing law, Mr. Kessler was a Certified Public Accountant in Pennsylvania.

Mr. Kessler manages the Firm's internationally recognized securities department and in this capacity, has achieved or assisted in obtaining Court approval for the following outstanding results in federal securities class action cases:

*In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, Master File No. 09 MDL 2058: A \$2.425 billion settlement, the sixth largest securities class action lawsuit settlement ever, received final approval from the Court in April 2013.

*In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002): This landmark \$3.2 billion settlement on behalf of investors included the largest securities class action recovery from a single corporate defendant in history as well as the second largest auditor settlement in securities class action history at the time.

*In re Wachovia Preferred Securities and Bond/Notes Litigation*, Master File No. 09 Civ. 6351 (RJS): This recovery of \$627 million is one of the most significant recoveries from litigation arising out of the financial crisis and is believed to be the single largest pure Section 11 recovery in securities class action history. The settlement included a \$37 million recovery from Wachovia Corporation's outside auditor.

*In re: Lehman Brothers Securities and ERISA Litigation*, Master File No. 09 MD 2017 (LAK): A \$516,218,000 settlement was reached on behalf of purchasers of Lehman securities — \$426,218,000 of which came from various underwriters of corporate offerings. In addition, \$90 million came from Lehman's former directors and officers, which is significant considering Lehman's bankruptcy meant diminishing assets available to pay any future judgment. The case was subsequently resolved against the auditor Ernst & Young LLP for \$99 million.

*In re Satyam Computer Services Ltd. Sec. Litig.*, Master File No. 09 MD 02027 (BSJ): This \$150.5 million settlement on behalf of investors resulted from allegations that the Company had harmed

investors by falsifying numerous financial indicators including company profits, cash flows, cash position, bank balances and related balance sheet data. The settlement included a \$25.5 million recovery from the Company's outside auditor and the case is continuing against the Company's officers and directors.

*In re Tenet Healthcare Corp. Sec. Litig.*, No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002): This recovery of over \$280 million on behalf of investors included a substantial monetary commitment by the company, personal contributions from individual defendants, the enactment of numerous corporate governance changes, as well as a substantial recovery from the Company's outside auditor.

*In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92(SAS): This action settled for \$586 million after years of litigation overseen by U.S. District Judge Shira Scheindlin. Mr. Kessler served on the plaintiffs' executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

Mr. Kessler is also currently serving as one of the Firm's primary litigation partners in the Citigroup, JPMorgan, Hewlett Packard, Pfizer and Morgan Stanley securities litigation matters.

In addition, Mr. Kessler often lectures and writes on securities litigation related topics and has been recognized as "Litigator of the Week" by the American Lawyer magazine for his work in connection with the Lehman Brothers securities litigation matter in December of 2011 and was honored by Benchmark as one of the preeminent plaintiffs practitioners in securities litigation throughout the country. Most recently Mr. Kessler co-authored *The FindWhat.com Case: Acknowledging Policy Considerations When Deciding Issues of Causation in Securities Class Actions* published in Securities Litigation Report.

**JOSEPH H. MELTZER**, a partner of the Firm, concentrates his practice in the areas of ERISA, fiduciary and antitrust complex litigation.

Mr. Meltzer leads the Firm's Fiduciary Litigation Group which has excelled in the highly specialized area of prosecuting cases involving breach of fiduciary duty claims. Mr. Meltzer has served as lead or co-lead counsel in numerous nationwide class actions brought under ERISA, including cases against El Paso Corp., Global Crossing, AOL Time Warner, and National City Corp. Since founding the Fiduciary Litigation Group, Mr. Meltzer has helped recover well over \$300 million for clients and class members including some of the largest settlements in ERISA fiduciary breach actions.

As part of his fiduciary litigation practice, Mr. Meltzer has been actively involved in actions related to losses sustained in securities lending programs including *Bd. of Trustees of the AFTRA Ret. Fund v. JPMorgan Chase Bank* and *CompSource Okla. v. BNY Mellon*; in addition, Mr. Meltzer is representing a publicly traded company in a large arbitration pending against AIG, Inc. related to securities lending losses. Mr. Meltzer also represents an institutional client in a fiduciary breach action against Wells Fargo for large losses sustained while Wachovia Bank and its subsidiaries, including Evergreen Investments, were managing the client's investment portfolio.

A frequent lecturer on ERISA litigation and employee benefits issues, Mr. Meltzer is a member of the ABA's Section Committee on Employee Benefits and has been recognized by numerous courts for his ability and expertise in this complex area of the law.

Mr. Meltzer also manages the Firm's Antitrust and Pharmaceutical Pricing Groups. Here, Mr. Meltzer focuses on helping clients that have been injured by anticompetitive and unlawful business practices, including with respect to overcharges related to prescription drug and other health care expenditures. Mr. Meltzer currently serves as co-lead counsel for direct purchasers in the *Flonase Antitrust Litigation*

pending in the Eastern District of Pennsylvania and has served as lead or co-lead counsel in numerous nationwide actions, representing such clients as the Pennsylvania Turnpike Commission, the Southeastern Pennsylvania Transportation Authority (SEPTA) and the Sidney Hillman Health Center of Rochester. Mr. Meltzer also serves as a special assistant attorney general for the states of Montana, Utah and Alaska.

Mr. Meltzer lectures on issues related to antitrust litigation and is a member of the ABA's Section Committee on Antitrust Law.

Mr. Meltzer is an honors graduate of the University of Maryland and received his law degree with honors from Temple University School of Law. Honors include being named a Pennsylvania Super Lawyer.

**PETER A. MUHIC**, a partner of the Firm, is a graduate of Syracuse University and an honors graduate of the Temple University School of Law, where he was Managing Editor of the Temple Law Review and a member of the Moot Court Board.

Mr. Muhic has substantial trial and other courtroom experience involving complex actions in federal and state courts throughout the country. In addition to his trial recoveries, he has obtained significant monetary awards and settlements through arbitrations and mediations. In 2009, Mr. Muhic was co-lead trial counsel in one of the few class action ERISA cases ever to be tried, which involved claims against the fiduciaries of the 401k plan of an S&P 500 company for imprudent investment in company stock and misrepresentations to plan participants. Mr. Muhic primarily prosecutes class actions and/or collective actions concerning ERISA, FLSA, FHA, ECOA and numerous state consumer protection statutes and laws. He has served as lead counsel in numerous nationwide actions. He is licensed to practice law in Pennsylvania and New Jersey and also is admitted to the United States Courts of Appeals for the Third, Fifth, Seventh, Ninth and Eleventh Circuits, the United States District Courts for the Eastern and Middle Districts of Pennsylvania, the District of New Jersey and the District of Colorado.

Mr. Muhic serves as a Judge Pro Tem for the Court of Common Pleas of Philadelphia County, is a former Board Member of the SeniorLAW Center in Philadelphia and a past recipient of the White Hat Award for outstanding pro bono contributions to the Legal Clinic for the Disabled, a nonprofit organization in Philadelphia.

**MATTHEW L. MUSTOKOFF**, a partner of the Firm, is an experienced securities and corporate governance litigator. He has represented clients at the trial and appellate level in numerous high-profile shareholder class actions and other litigations involving a wide array of matters, including financial fraud, market manipulation, mergers and acquisitions, fiduciary mismanagement of investment portfolios, and patent infringement.

Mr. Mustokoff is currently prosecuting several nationwide securities cases, including *In re JPMorgan Chase Securities Litigation* (S.D.N.Y.) arising out of the "London Whale" derivatives trading scandal, and *In re Pfizer Inc. Securities Litigation* (S.D.N.Y.) involving the alleged non-disclosure of adverse clinical results surrounding the pain drugs Celebrex and Bextra. He also serves as lead counsel for six public pension funds in the multi-district securities litigation against BP in Texas federal court stemming from the 2010 *Deepwater Horizon* disaster in the Gulf of Mexico. Mr. Mustokoff played a major role in prosecuting *In re Citigroup Bond Litigation* (S.D.N.Y.), involving allegations that Citigroup concealed \$42 billion in exposure to subprime mortgage debt on the eve of the 2008 financial crisis. The \$730 million settlement marks the second largest recovery under Section 11 of the Securities Act in the history of the statute. His experience also includes serving as one of the lead trial lawyers for shareholders in the only securities fraud class action arising out of the credit market crisis to be tried to jury verdict.

Prior to joining the Firm, Mr. Mustokoff practiced at Weil, Gotshal & Manges LLP in New York, where he represented public companies and financial institutions in SEC enforcement and white collar criminal matters, shareholder litigation and contested bankruptcy proceedings.

Mr. Mustokoff currently serves as Co-Chair of the American Bar Association's Subcommittee on Securities Class Actions and Derivative Litigation. He was a featured panelist at the ABA Section of Litigation's 2010 Annual Conference on the subject of internal investigations and has lectured on corporate governance issues at the Cardozo School of Law. His publications include: "Proving Securities Fraud Damages at Trial," *Review of Securities & Commodities Regulation* (June 2013); "Is Item 303 Liability Under the Securities Act Becoming a 'Trend'?", *ABA Securities Litigation Journal* (Summer 2012); "The Maintenance Theory of Inflation in Fraud-on-the-Market Cases," *Securities Regulation Law Journal* (Spring 2012); "Delaware and Insider Trading: The Chancery Court Rejects Federal Preemption Arguments of Corporate Directors," *Securities Regulation Law Journal* (Summer 2010); "The Pitfalls of Waiver in Corporate Prosecutions: Sharing Work Product with the Government," *Securities Regulation Law Journal* (Fall 2009); "Scheme Liability Under Rule 10b-5: The New Battleground in Securities Fraud Litigation," *The Federal Lawyer* (June 2006); and "Sovereign Immunity and the Crisis of Constitutional Absolutism: Interpreting the Eleventh Amendment After *Alden v. Maine*," *Maine Law Review* (2001).

Mr. Mustokoff is a Phi Beta Kappa honors graduate of Wesleyan University. He received his law degree from the Temple University School of Law, where he was the articles and commentary editor of the *Temple Political and Civil Rights Law Review* and the recipient of the Raynes, McCarty, Binder, Ross and Mundy Graduation Prize for scholarly achievement in the law. He is admitted to practice before the state courts of New York and Pennsylvania, the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Pennsylvania and the District of Colorado, and the United States Courts of Appeals for the Eleventh and Federal Circuits.

**SHARAN NIRMUL**, a partner of the Firm, concentrates his practice in the area of securities, consumer and fiduciary class litigation, principally representing the interests of plaintiffs in class action and complex commercial litigation. Mr. Nirmul has represented clients in federal and state courts and in alternative dispute resolution forums.

Mr. Nirmul has represented institutional investors in a number of notable securities class action cases. These include *In re Bank of America Securities Litigation*, a case which represents the sixth largest recovery for shareholders under the federal securities laws (\$2.43 billion) and which included significant corporate governance enhancements at Bank of America; *In re Global Crossing Securities Litigation* (recovery of over \$450 million for class of Global Crossing and Asia Global Crossing investors); *In re Delphi Securities Litigation* (a \$284 million settlement with Delphi, its former officers and directors and underwriters, and a separate \$38.25 million settlement with the auditors); and *Satyam Computer Services Securities Litigation*, which represents the largest recovery ever against an India-based issuer and its India and U.S. based auditors for securities fraud (\$150.5 million settlement).

Mr. Nirmul has also been at the forefront of litigation on behalf of investors who suffered losses through fraud, breach of fiduciary and breach of contract by their custodians and investment fiduciaries. In a matter before the American Arbitration Association, Mr. Nirmul represented a publicly traded reinsurance company in a breach of contract and breach of fiduciary suit against its former controlling shareholder and fiduciary investment manager, arising out of its participation and losses through a securities lending program and securing a \$70 million recovery. Mr. Nirmul is also presently litigating breach of contract and Trust Indenture Act claims against the trustees of mortgage backed securities issued by Washington Mutual (*Washington State Investments Board et al v. Bank of America National Association et al*) on behalf of several state public pension funds. In connection with a scheme to manipulate foreign exchange rates assigned to its custodial clients, Mr. Nirmul is a member of the team litigating a consumer class action asserting contractual and fiduciary duty claims against BNY Mellon in the Southern District of New York (*In re BNY Mellon Forex Litigation*).

Mr. Nirmul regularly speaks on matters affecting institutional investors at conferences and symposiums. He has been a speaker and/or panelist at the annual Rights and Responsibilities of Institutional Investors in Amsterdam, The Netherlands and annual Evolving Fiduciary Obligations of Pension Plans in Washington, D.C.

Sharan Nirmul received his law degree from The George Washington University Law School (J.D. 2001) where he served as an articles editor for the *Environmental Lawyer Journal* and was a member of the Moot Court Board. He was awarded the school's Lewis Memorial Award for excellence in clinical practice. He received his undergraduate degree from Cornell University (B.S. 1996).

Mr. Nirmul is admitted to practice law in the state courts of New York, New Jersey, Pennsylvania and Delaware and in the U.S. District Courts for the Southern District of New York, District of New Jersey, District of Delaware, and District of Colorado.

**LEE D. RUDY**, a partner of the Firm, manages the Firm's mergers and acquisition and shareholder derivative litigation. Representing both institutional and individual shareholders in these actions, he has helped cause significant monetary and corporate governance improvements for those companies and their shareholders. Most recently, Mr. Rudy served as co-lead trial counsel in the *In re Southern Peru* (Del. Ch. 2011) derivative litigation filed against Southern Peru's majority shareholder, which resulted in a landmark \$1.3 billion plaintiff's verdict. Previously, Mr. Rudy served as lead counsel in dozens of high profile derivative actions relating to the "backdating" of stock options, including litigation against the directors and officers of Comverse, Affiliated Computer Services, and Monster Worldwide. Prior to civil practice, Mr. Rudy served for several years as an Assistant District Attorney in the Manhattan (NY) District Attorney's Office, and as an Assistant United States Attorney in the US Attorney's Office (DNJ). He received his law degree from Fordham University, and his undergraduate degree, cum laude, from the University of Pennsylvania.

**MARC A. TOPAZ**, a partner of the Firm, received his law degree from Temple University School of Law, where he was an editor of the *Temple Law Review* and a member of the Moot Court Honor Society. He also received his Master of Law (L.L.M.) in taxation from the New York University School of Law, where he served as an editor of the *New York University Tax Law Review*. He is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania. Mr. Topaz oversees the Firm's derivative, transactional and case development departments. In this regard, Mr. Topaz has been heavily involved in all of the Firm's cases related to the subprime mortgage crisis, including cases seeking recovery on behalf of shareholders in companies affected by the subprime crisis, as well as cases seeking recovery for 401K plan participants that have suffered losses in their retirement plans. Mr. Topaz has also played an instrumental role in the Firm's option backdating litigation. These cases, which are pled mainly as derivative claims or as securities law violations, have served as an important vehicle both for re-pricing erroneously issued options and providing for meaningful corporate governance changes. In his capacity as the Firm's department leader of case initiation and development, Mr. Topaz has been involved in many of the Firm's most prominent cases, including *In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92(SAS) (S.D.N.Y. Dec. 12, 2002); *Wanstrath v. Doctor R. Crants, et al.*, No. 99-1719-111 (Tenn. Chan. Ct., 20th Judicial District, 1999); *In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002) (settled — \$3.2 billion); and virtually all of the 80 options backdating cases in which the Firm is serving as Lead or Co-Lead Counsel. Mr. Topaz has played an important role in the Firm's focus on remedying breaches of fiduciary duties by corporate officers and directors and improving corporate governance practices of corporate defendants.

**MICHAEL C. WAGNER**, a partner of the Firm, handles class-action merger litigation and shareholder derivative litigation for the Firm's individual and institutional clients.

A graduate of Franklin and Marshall College and the University of Pittsburgh School of Law, Mr. Wagner has clerked for two appellate court judges and began his career at a Philadelphia-based commercial litigation firm, representing clients in business and corporate disputes across the United States. Mr. Wagner has also represented Fortune 500 companies in employment matters. He has extensive nationwide litigation experience and is admitted to practice in the courts of Pennsylvania, the United States Court of Appeals for the Third Circuit, and the United States District Courts for the Eastern and Western Districts of Pennsylvania, the Eastern District of Michigan, and the District of Colorado.

Frequently appearing in the Delaware Court of Chancery since joining Kessler Topaz, Mr. Wagner has helped to achieve substantial monetary recoveries for stockholders of public companies in cases arising from corporate mergers and acquisitions, including: *In re Genentech, Inc. Shareholders Litigation*, Consolidated C.A. No. 3911-VCS (Del. Ch.) (litigation caused Genentech's stockholders to receive \$3.9 billion in additional merger consideration from Roche); *In re Anheuser Busch Companies, Inc. Shareholders Litigation*, C.A. No. 3851-VCP (Del. Ch.) (settlement required enhanced disclosures to stockholders and resulted in a \$5 per share increase in the price paid by InBev in its acquisition of Anheuser-Busch); *In re GSI Commerce, Inc. Shareholders Litigation*, C.A. No. 6346-VCN (Del. Ch.) (settlement required additional \$23.9 million to be paid to public stockholders as a part of the company's merger with eBay, Inc.); and *In re AMICAS, Inc. Shareholder Litigation*, 10-0412-BLS2 (Mass. Super.) (litigation resulted in a third-party acquisition of the company, with stockholders receiving an additional \$26 million in merger consideration). Mr. Wagner was also a part of the team that prosecuted *In re Southern Peru Copper Corp. Shareholder Derivative Litigation*, C.A. No. 961-CS, which resulted in a \$1.9 billion post-trial judgment.

Mr. Wagner has also had a lead role in litigation that resulted in enhanced shareholder rights and corporate reforms in merger contexts, including: *In re Emulex Shareholder Litigation*, Consolidated C.A. No. 4536-VCS (Del. Ch.) (litigation caused company to redeem "poison pill" stock plan and rescind supermajority bylaw); *Solomon v. Take-Two Interactive Software, Inc.*, C.A. No. 3064-VCL (Del. Ch.) (settlement required substantial enhanced disclosures to stockholders regarding executive compensation matters in advance of director elections, and litigation caused company to redeem "poison pill" stock plan); and *Olson v. ev3, Inc.*, C.A. No. 5583-VCL (Del. Ch.) (settlement required a merger's "top-up option" feature to be revised to as to comply with Delaware law).

In shareholder derivative cases involving executive compensation matters, Mr. Wagner has also had a lead role in cases that achieved substantial financial recoveries and reforms for publicly traded companies, such as *In re KV Pharmaceutical Co., Inc. Derivative Litigation*, Case No. 4:07-cv-00384-HEA (E.D. Mo.) (litigation caused executives to make financial remediation of approximately \$3 million and resulted in enhanced internal controls at the company concerning financial reporting); *In re Medarex, Inc. Derivative Litigation*, Case No. MER-C-26-08 (N.J. Super.) (settlement resulted in approximately \$9 million in financial remediation and substantial corporate governance reforms related to executive compensation); *Harbor Police Retirement System v. Roberts*, Cause No. 09-09061 (95<sup>th</sup> District Court, Dallas County, Texas) (settlement required substantial modifications to corporate policies, designed to heighten the independence of outside directors in awarding executive compensation); and *In re Comverse Technologies, Inc. Derivative Litigation* (Index No. 601272/06, N.Y. Supreme Ct.) (settlement required disgorgement of more than \$60 million from the company's executive officers for their receipt of backdated stock options).

**JOHNSTON de F. WHITMAN, JR.**, a partner of the Firm, focuses his practice on securities litigation. Mr. Whitman graduated cum laude from Colgate University. He received his law degree from Fordham University School of Law, where he was a member of the Fordham International Law Journal. He is licensed to practice in Pennsylvania and New York as well as before the United States Courts of Appeals for the Second and Fourth Circuits. Prior to joining the Firm, Mr. Whitman was a partner of Entwistle & Cappucci LLP in New York, where he also concentrated his practice on securities litigation.

Mr. Whitman has represented institutional investors in obtaining substantial recoveries in numerous securities fraud class actions, including *In re Royal Ahold Sec. Litig.*, No. 03-md-01539 (D. Md. 2003) (settled -- \$1.1 billion); *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (D. Del. 2000) (settled -- \$300 million); and *In re Dollar General, Inc. Sec. Litig.*, No. 01-cv-0388 (M.D. Tenn. 2001) (settled \$162 million). Mr. Whitman has also obtained favorable recoveries for institutional investors pursuing direct securities fraud claims, including cases against Qwest Communications International, Inc. and Merrill Lynch & Co., Inc.

**ROBIN WINCHESTER**, a partner of the Firm, received her Bachelor of Science degree in Finance from St. Joseph's University. Ms. Winchester then earned her Juris Doctor degree from Villanova University School of Law, and is licensed to practice law in Pennsylvania and New Jersey. After law school, Ms. Winchester served as a law clerk to the Honorable Robert F. Kelly in the United States District Court for the Eastern District of Pennsylvania.

After joining KTMC, Ms. Winchester concentrated her practice in the areas of securities litigation and lead plaintiff litigation. Presently, Ms. Winchester concentrates her practice in the area of shareholder derivative actions, and, most recently, has served as lead counsel in numerous high-profile derivative actions relating to the backdating of stock options, including *In re Eclipsys Corp. Derivative Litigation*, Case No. 07-80611-Civ-MIDDLEBROOKS (S.D. Fla.); *In re Juniper Derivative Actions*, Case No. 5:06-cv-3396-JW (N.D. Cal.); *In re McAfee Derivative Litigation*, Master File No. 5:06-cv-03484-JF (N.D. Cal.); *In re Quest Software, Inc. Derivative Litigation*, Consolidated Case No. 06CC00115 (Cal. Super. Ct., Orange County); and *In re Sigma Designs, Inc. Derivative Litigation*, Master File No. C-06-4460-RMW (N.D. Cal.). Settlements of these, and similar, actions have resulted in significant monetary returns and corporate governance improvements for those companies, which, in turn, greatly benefits their public shareholders.

**MICHAEL K. YARNOFF**, a partner of the Firm, received his law degree from Widener University School of Law. Mr. Yarnoff is licensed to practice law in Pennsylvania, New Jersey, and Delaware and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. In addition to actively litigating and assisting in achieving the historic Tyco settlement, Mr. Yarnoff served as the primary litigating partner on behalf of Kessler Topaz in the following cases: *In re CVS Corporation Sec. Litig.*, C.A. No. 01-11464 JLT (D.Mass. 2001) (settled — \$110 million); *In re Transkaryotic Therapies, Inc. Sec. Litig.*, Civil Action No. 03-10165-RWZ (D.Mass. 2003) (settled — \$50 million); *In re Riverstone Networks, Inc. Sec. Litig.*, Case No. CV-02-3581 (N.D. Cal. 2002) (settled — \$18.5 million); *In re Zale Corporation Sec. Litig.*, 06-CV-1470 (N.D. Tex. 2006) (settled — \$5.9 million); *Gebhard v. ConAgra Foods Inc., et al.*, 04-CV-427 (D. Neb. 2004) (settled — \$14 million); *Reynolds v. Repsol YPF, S.A., et al.*, 06-CV-733 (S.D.N.Y. 2006) (settled — \$8 million); and *In re InfoSpace, Inc. Sec. Litig.*, 01-CV-913 (W.D. Wash. 2001) (settled — \$34.3 million).

**ERIC L. ZAGAR**, a partner of the Firm, received his law degree from the University of Michigan Law School, cum laude, where he was an Associate Editor of the *Michigan Law Review*. He has practiced law in Pennsylvania since 1995, and previously served as a law clerk to Justice Sandra Schultz Newman of the Pennsylvania Supreme Court. He is admitted to practice in Pennsylvania, California, and New York.

In addition to his extensive options backdating practice, Mr. Zagar concentrates his practice in the area of shareholder derivative litigation. In this capacity, Mr. Zagar has served as Lead or Co-Lead counsel in numerous derivative actions in courts throughout the nation, including *David v. Wolfen*, Case No. 01-CC-03930 (Orange County, CA 2001) (Broadcom Corp. Derivative Action); and *In re Viacom, Inc. Shareholder Derivative Litig.*, Index No. 602527/05 (New York County, NY 2005). Mr. Zagar has successfully achieved significant monetary and corporate governance relief for the benefit of shareholders, and has extensive experience litigating matters involving Special Litigation Committees. Mr. Zagar is also a featured speaker at Kessler Topaz's annual symposium on corporate governance.

**TERENCE S. ZIEGLER**, a partner of the Firm, received his law degree from the Tulane University School of Law and received his undergraduate degree from Loyola University. He has concentrated a significant percentage of his practice to the investigation and prosecution of pharmaceutical antitrust actions, medical device litigation, and related anticompetitive and unfair business practice claims. Specific examples include: *In re Flonase Antitrust Litigation*; *In re Wellbutrin SR Antitrust Litigation*; *In re Modafinil Antitrust Litigation*; *In re Guidant Corp. Implantable Defibrillators Products Liability Litigation* (against manufacturers of defective medical devices — pacemakers/implantable defibrillators — seeking costs of removal and replacement); and *In re Actiq Sales and Marketing Practices Litigation* (regarding drug manufacturer’s unlawful marketing, sales and promotional activities for non-indicated and unapproved uses).

Mr. Ziegler is licensed to practice law in the State of Louisiana, and has been admitted to practice before several courts including the United States Court of Appeals for the Third Circuit.

**ANDREW L. ZIVITZ**, a partner of the Firm, received his law degree from Duke University School of Law, and received a Bachelor of Arts degree, with distinction, from the University of Michigan, Ann Arbor.

Mr. Zivitz concentrates his practice in the area of securities litigation and is currently litigating several of the largest federal securities fraud actions in the U.S. including matters against Pfizer, Inc., JPMorgan Chase & Co., UBS AG, Morgan Stanley and Countrywide Financial Corporation. Mr. Zivitz has helped the firm achieve extraordinary results in numerous securities fraud matters in which Kessler Topaz was Lead or Co-Lead Counsel, including *In re Tenet Healthcare Corp.*, 02-CV-8462 (C.D. Cal. 2002) (settled — \$281.5 million); *In re Computer Associates Sec. Litig.*, No. 02-CV-122 6 (E.D.N.Y. 2002) (settled — \$150 million); *In re Medtronic Inc. Sec. Litig.*, 08-cv-0624 (D. Minn. 2008) (settlement pending - \$ 85 million); *In re McLeod USA Inc. Sec. Litig.*, No. C02-0001-MWB (N.D. Iowa 2002) (settled — \$30 million); and *In re Barrick Gold Sec. Litig.*, 03-cv-04302 (S.D.N.Y.2003) (settled — \$24 million).

Mr. Zivitz has litigated cases in federal district and appellate courts throughout the country, including two successful appeals before the United States Court of Appeals for the Ninth Circuit in *In re Merix Sec. Litig.*, 04-cv-00826 (D.Or. 2004) and *In re Leadis Sec. Litig.*, 05-cv-00882 (N.D.Ca. 2005). His experience also includes serving as one of the lead trial attorneys for shareholders in the only securities fraud class action arising out of the credit market crisis to be tried to a jury verdict.

Mr. Zivitz also lectures and serves on discussion panels concerning securities litigation matters. Mr. Zivitz recently was a faculty member at the Pennsylvania Bar Institute’s workshop entitled, “Securities Liability in Turbulent Times: Practical Responses to a Changing Landscape.”

## **ASSOCIATES AND OTHER PROFESSIONALS**

**ASHER S. ALAVI**, an associate of the Firm, concentrates his practice in the area of qui tam litigation. Mr. Alavi received his law degree, cum laude, from Boston College Law School in 2011 where he served as Note Editor for the Boston College Journal of Law & Social Justice. He received his undergraduate degree in Communication Studies and Political Science Northwestern University in 2007.

Prior to joining Kessler Topaz, Mr. Alavi was an associate with Pietragallo Gordon Alfano Bosick & Raspanti LLP in Philadelphia, where he worked on a variety of whistleblower and healthcare matters. Mr. Alavi is licensed to practice law in Pennsylvania and Maryland.

**JULES D. ALBERT**, an associate of the Firm, concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation. Mr. Albert is licensed to practice law in Pennsylvania, and

has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Mr. Albert has litigated in state and federal courts across the country, and has represented stockholders in numerous actions that have resulted in significant monetary recoveries and corporate governance improvements, including: *In re Sunrise Senior Living, Inc. Deriv. Litig.*, No. 07-00143 (D.D.C.); *Mercier v. Whittle, et al.*, No. 2008-CP-23-8395 (S.C. Ct. Com. Pl., 13th Jud. Cir.); *In re K-V Pharmaceutical Co. Deriv. Litig.*, No. 06-00384 (E.D. Mo.); *In re Progress Software Corp. Deriv. Litig.*, No. SUCV2007-01937-BLS2 (Mass. Super. Ct., Suffolk Cty.); *In re Quest Software, Inc. Deriv. Litig.* No 06CC00115 (Cal. Super. Ct., Orange Cty.); and *Quaco v. Balakrishnan, et al.*, No. 06-2811 (N.D. Cal.).

Mr. Albert received his law degree from the University of Pennsylvania Law School, where he was a Senior Editor of the *University of Pennsylvania Journal of Labor and Employment Law* and recipient of the James Wilson Fellowship. Mr. Albert also received a Certificate of Study in Business and Public Policy from The Wharton School at the University of Pennsylvania. Mr. Albert graduated magna cum laude with a Bachelor of Arts in Political Science from Emory University.

**ADRIENNE BELL**, an associate of the Firm, received her law degree from Brooklyn Law School and her undergraduate degree in Music Theory and Composition from New York University, where she graduated *magna cum laude*. Prior to joining the Firm, Ms. Bell practiced in the areas of mass tort, commercial and general liability litigation. Ms. Bell is licensed to practice in Pennsylvania and Nevada, and works in the Firm's case development department.

**MATTHEW BENEDICT**, a staff attorney of the Firm, concentrates his practice in the area of mergers and acquisitions litigation and shareholder derivative litigation. Prior to joining the firm, he worked as a staff attorney in the White Collar / Securities Litigation department at Dechert LLP. Mr. Benedict earned his law degree from Villanova University School of Law and his undergraduate degree from Haverford College. He is licensed to practice law in Pennsylvania and New Jersey.

**PAUL BREUCOP**, an associate in the Firm's San Francisco office, received his Bachelor of Arts from Santa Clara University with majors in Classical Studies and Religious Studies. He received his law degree from the University of California, Hastings College of the Law. While in law school, Mr. Breucop interned for the Securities and Exchange Commission Enforcement Division and the California Teachers Association. He also taught constitutional law to high school students in Oakland as part of the Marshall-Brennan Program. Mr. Breucop concentrates his practice on prosecuting securities class actions. He is admitted to the California Bar.

**ELIZABETH WATSON CALHOUN**, a staff attorney of the Firm, focuses on securities litigation. She has represented investors in major securities fraud and has also represented shareholders in derivative and direct shareholder litigation. Prior to joining the Firm, Ms. Calhoun was employed with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A.

Ms. Calhoun received her law degree from Georgetown University Law Center (*cum laude*), where she served as Executive Editor of the Georgetown Journal of Gender and the Law. She received her undergraduate degree in Political Science from the University of Maine, Orono (*with high distinction*).

Ms. Calhoun is admitted to practice before the state court of Pennsylvania and the U.S. District Court for the Eastern District of Pennsylvania.

**SEKOU CAMPBELL**, an associate of the Firm, concentrates his practice in the area of securities litigation. Prior to joining the Firm, Mr. Campbell served as an associate in the entertainment and litigation departments at Fox Rothschild LLP. He also interned for the Honorable Kiyo A. Matsumoto of the United States District Court for the Eastern District of New York. In 2012, The Network Journal

honored Mr. Campbell with a “Forty under 40” Award. In 2013, the Lawyers of Color LLC placed him on their inaugural “Hot List” of attorneys.

Mr. Campbell received his Juris Doctor from Benjamin N. Cardozo Law School, where he served as an associate articles editor for the Cardozo Arts & Entertainment Law Journal and received the Cardozo Service & Achievement Award. He also possesses a Masters of Fine Arts in Theater from Columbia University, where he represented the student body on the Faculty Senate. He obtained a Bachelor’s degree from Vanderbilt University, where he was a Dean’s scholar.

Currently, Mr. Campbell serves as the Barristers’ Association of Philadelphia’s Treasurer and as an ex officio member of the Public Interest Law Center of Philadelphia’s Board of Directors.

Mr. Campbell is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey as well as the United States District Court for the Eastern District of Pennsylvania.

**QUIANA CHAPMAN-SMITH**, a staff attorney at the Firm, received her law degree from Temple University Beasley School of Law in Pennsylvania and her Bachelor of Science in Management and Organizations from The Pennsylvania State University. Prior to joining Kessler Topaz, she worked in pharmaceutical litigation. She is licensed to practice law in the Commonwealth of Pennsylvania. Ms. Chapman-Smith concentrates her practice in the area of securities litigation.

**EMILY N. CHRISTIANSEN**, an associate of the Firm, focuses her practice in securities litigation and international actions in particular. Ms. Christiansen received her Juris Doctor and Global Law certificate, cum laude, from Lewis and Clark Law School in 2012. Ms. Christiansen is a graduate of the University of Portland, where she received her Bachelor of Arts, cum laude, in Political Science and German Studies. While in law school, Ms. Christiansen worked as an intern in Trial Chambers III at the International Criminal Tribunal for the Former Yugoslavia. Ms. Christiansen also spent two months in India as foreign legal trainee with the corporate law firm of Fox Mandal. Ms. Christiansen is a 2007 recipient of a Fulbright Fellowship and is fluent in German.

Ms. Christiansen is currently licensed to practice law in New York and Pennsylvania.

**SARA A. CLOSIC**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Closic earned her Juris Doctor degree from Widener University School of Law in Wilmington, Delaware, and her undergraduate degree from Pennsylvania State University.

During law school, Mrs. Closic interned at the U.S. Food and Drug Administration and the Delaware Department of Justice in the Consumer Protection & Fraud Division where she was heavily involved in protecting consumers within a wide variety of subject areas.

Prior to joining the Firm, Mrs. Closic practiced in the areas of pharmaceutical & health law litigation, and was an Associate at a general practice firm in Bensalem, Pennsylvania. Ms. Closic is admitted to practice in Pennsylvania and New Jersey.

**JOSHUA E. D’ANCONA**, an associate of the Firm, received his J.D., magna cum laude, from the Temple University Beasley School of Law in 2007, where he served on the Temple Law Review and as president of the Moot Court Honors Society. Before joining the Firm in 2009, he served as a law clerk to the Honorable Cynthia M. Rufe of the United States District Court for the Eastern District of Pennsylvania. Mr. D’Ancona graduated with honors from Wesleyan University. He is licensed to practice in Pennsylvania and New Jersey, and practices in the securities litigation and lead plaintiff departments of the firm.

**JONATHAN R. DAVIDSON**, an associate of the Firm, concentrates his practice in the area of shareholder litigation. He consults with Firm clients regarding their rights and responsibilities with respect to their investments and taking an active role in shareholder litigation. Mr. Davidson also assists clients in evaluating what systems they have in place to identify and monitor shareholder litigation that has an impact on their funds, and also assists them in evaluating the strength of such cases and to what extent they may be affected by the conduct that has been alleged. Mr. Davidson currently works with numerous U.S. institutional investors, including public pension plans at the state, county and municipal level, as well as Taft-Hartley funds across all trades. Mr. Davidson has spoken on the subjects of shareholder litigation, corporate governance, investor activism and recovery of investment losses at conferences around the world, including the National Conference on Public Employee Retirement Systems' Annual Conference & Exhibition, the International Foundation of Employee Benefit Plans Annual Conference, the California Association of Public Retirement Systems Administrators Roundtable, the Florida Public Pension Trustees Association Trustee Schools and Wall Street Program, the Pennsylvania Association of Public Employees Retirement Systems Spring Forum; the Fiduciary Investors Symposium, numerous U.S. Markets' Institutional Investor Forums, and The Evolving Fiduciary Obligations of Pension Plans. Mr. Davidson is also a member of numerous professional and educational organizations, including the National Association of Public Pension Attorneys.

Mr. Davidson is a graduate of The George Washington University where he received his Bachelor of Arts, *summa cum laude*, in Political Communication. Mr. Davidson received his Juris Doctor and Dispute Resolution Certificate from Pepperdine University School of Law and is licensed to practice law in the State of California.

**RYAN T. DEGNAN**, an associate of the Firm, concentrates his practice on new matter development with a specific focus on analyzing securities class action lawsuits, antitrust actions, and complex consumer actions. Mr. Degnan is also a member of the Firm's lead plaintiff litigation practice group and, in this role, has helped secure the Firm's clients' appointments as lead plaintiffs in: *In re HP Sec. Litig.*, No. 12-cv-5090, 2013 WL 792642 (N.D. Cal. Mar. 4, 2013); *In re JPMorgan Chase & Co. Sec. Litig.*, No. 12-cv-03852 (S.D.N.Y.); *Freedman v. St. Jude Medical, Inc., et al.*, No. 12-cv-3070 (D. Minn.); *Louisiana Municipal Police Employees' Ret. Sys. v. Green Mountain Coffee Roasters, Inc., et al.*, No. 11-cv-289, 2012 U.S. Dist. LEXIS 89192 (D. Vt. Apr. 27, 2012); and *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 11-cv-3658, 2011 U.S. Dist. LEXIS 112970 (S.D.N.Y. Oct. 4, 2011). Additionally, Mr. Degnan is currently litigating claims in *Woods v. Google Inc.*, No. 11-cv-1263 (N.D. Cal.).

Mr. Degnan received his law degree from Temple University Beasley School of Law in 2010, where he was a Notes and Comments Editor for the Temple Journal of Science, Technology & Environmental Law. Mr. Degnan earned his undergraduate degree in Biology from The Johns Hopkins University in 2004. While a law student, Mr. Degnan served as a Judicial Intern to the Honorable Gene E.K. Pratter of the United States District Court for the Eastern District of Pennsylvania. Mr. Degnan is licensed to practice in Pennsylvania and New Jersey, as well as before the United States District Court for the Eastern District of Pennsylvania.

**BENJAMIN J. DE GROOT**, an associate of the Firm, received his law degree from Columbia Law School where he was a Stone Scholar. He earned his B.A., with honors, in Philosophy and German Studies from the University of Arizona. Mr. de Groot is licensed to practice law in Pennsylvania and New York.

Following a clerkship with Judge Robert W. Sweet of the Southern District of New York, Mr. de Groot practiced litigation as an associate at Cleary Gottlieb Steen and Hamilton, LLP in New York. Prior to joining Kessler Topaz, he helped found A.I.S.G., a startup security integration firm in New York. Mr. de Groot's practice is currently focused in the case development department and he assists with the Firm's litigation discovery.

**ANDREW DODEMAIDE**, an associate of the Firm, concentrates his practice on new matter development with a specific focus on analyzing securities class action lawsuits, antitrust actions, and complex consumer actions. Mr. Dodemaide is also a member of the Firm's lead plaintiff litigation practice group.

Mr. Dodemaide earned his Juris Doctor degree from Rutgers School of Law – Camden, *summa cum laude*, and his B.A. from Rutgers University, Rutgers College, *summa cum laude*. Mr. Dodemaide is licensed to practice in New Jersey and Pennsylvania.

**DONNA EAGLESON**, a staff attorney of the Firm, received her law degree from the University of Dayton School of Law in Dayton, Ohio. Prior to joining Kessler Topaz, Ms. Eagleson worked as an attorney in the law enforcement field, and practiced insurance defense law with the Philadelphia firm Margolis Edelstein. Ms. Eagleson is licensed to practice law in Pennsylvania and concentrates in the area of securities litigation discovery matters.

**JENNIFER P. ELWELL**, a staff attorney at the Firm, concentrates her practice in the areas of ERISA and consumer protection litigation.

Ms. Elwell earned her Law degree from Temple University School of Law where she was a member of the Temple Law Review, and her Undergraduate degree from Villanova University. Before joining Kessler Topaz, Ms. Elwell was an associate at Pepper Hamilton LLP and a senior staff attorney at Dechert LLP where she practiced in the area of pharmaceutical litigation. Ms. Elwell is licensed to practice in Pennsylvania and New Jersey.

**JENNIFER L. ENCK**, an associate of the Firm, received her law degree, cum laude, from Syracuse University College of Law in 2003 and her undergraduate degree in International Politics from The Pennsylvania State University in 1999. Ms. Enck also received a Masters degree in International Relations from Syracuse University's Maxwell School of Citizenship and Public Affairs.

Prior to joining Kessler Topaz, Ms. Enck was an associate with Spector, Roseman & Kodroff, P.C. in Philadelphia, where she worked on a number of complex antitrust, securities and consumer protection cases. Ms. Enck is licensed to practice law in Pennsylvania. She concentrates her practice in the areas of securities litigation and settlement matters.

**MONIQUE MYATT GALLOWAY**, an associate with the Firm, concentrates her practice in the areas of ERISA, antitrust, and consumer protection litigation.

Ms. Galloway brings to the Firm ten years of complex defense litigation experience. Prior to joining the Firm, Ms. Galloway was a senior trial attorney for the Department of the Navy, Office of General Counsel in Washington, D.C., and later, an associate at DLA Piper LLP (US) in Philadelphia, Pennsylvania. Ms. Galloway has substantial government and private sector experience in the areas of government contracts, construction, product liability, toxic tort, and antitrust litigation in federal and state courts nationwide. She has extensive successful motion practice on claims involving alleged mass torts, wrongful death, warranties, fraud, unfair business practices and anti-competition violations. Ms. Galloway also has successful first and second chair non-jury trial experience.

In 2012 and 2013, Ms. Galloway was selected as a Pennsylvania Super Lawyers® Rising Star.

Ms. Galloway is a former federal judicial law clerk for the Honorable Cynthia M. Rufe of the United States District Court for the Eastern District of Pennsylvania. In 2003, Ms. Galloway received her juris doctorate from Thurgood Marshall School of Law, with *cum laude* honors, where she was Managing Editor of the Thurgood Marshall Law Review. In 2008, she received her LL.M. in Trial Advocacy from

Temple University, and received her Bachelor of Business Administration in Accounting from Texas Southern University in 2000.

Ms. Galloway is licensed to practice law in Pennsylvania and Texas. She is also admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the Third Circuit Court, the Eastern District of Pennsylvania, and the United States Court of Federal Claims.

Ms. Galloway currently serves as the Vice-President of Administration for the Barristers' Association of Philadelphia, Inc. and is a member of the Board of Directors for the Public Interest Law Center of Philadelphia. In addition to her service to clients and the legal community, she is a member of Alpha Kappa Alpha Sorority, Incorporated, Omega Omega Chapter.

**KIMBERLY V. GAMBLE**, a staff attorney at the Firm, received her law degree from Widener University, School of Law in Wilmington, DE. While in law school she was a CASA/Youth Advocates volunteer and had internships with the Delaware County Public Defender's Office as well as The Honorable Judge Ann Osborne in Media, Pennsylvania. She received her Bachelor of Arts degree in Sociology from The Pennsylvania State University.

Prior to joining Kessler Topaz, she worked in pharmaceutical litigation and now concentrates her practice in the area of securities litigation. Ms. Gamble is licensed to practice law in the Commonwealth of Pennsylvania.

**TAMARA GAVRILOVA**, an associate of the Firm, concentrates her practice on mergers and acquisition litigation and shareholder derivative litigation. Ms. Gavrilova previously served as a full-time extern for the Division of Enforcement of the United States Securities & Exchange Commission. She also served as an intern to the Honorable Allan L. Gropper of the United States Bankruptcy Court for the Southern District of New York.

Ms. Gavrilova earned her Juris Doctor degree from Cornell Law School where she served as Article Editor of the *Cornell Journal of Law & Public Policy*, and her undergraduate degree from Baruch College - City University of New York, *magna cum laude*. Ms. Gavrilova is licensed to practice in New York, New Jersey and Pennsylvania.

**ABIGAIL J. GERTNER**, a staff attorney of the Firm, concentrates her practice in consumer and ERISA litigation. Ms. Gertner has experience in a wide range of litigation including securities, consumer, pharmaceutical, and toxic tort matters. Prior to joining the Firm, Ms. Gertner was an associate with the Wilmington, Delaware law firm of Maron, Marvel, Bradley & Anderson. Before that, she was employed by the Wilmington office of Grant & Eisenhofer, P.A.

Ms. Gertner earned her Juris Doctor degree from Santa Clara University School of Law, and her undergraduate degree from Tulane University, *cum laude*. Ms. Gertner is licensed to practice in Pennsylvania and New Jersey.

**MATTHEW A. GOLDSTEIN**, an associate of the Firm, received his law degree from Rutgers School of Law – Camden and his Bachelor of Arts degree, *magna cum laude*, from The George Washington University. While in law school, Mr. Goldstein served as Associate Editor of Business and Marketing for the Rutgers Journal of Law and Religion. Mr. Goldstein also participated in the Children's Justice Clinic, representing indigent minors in criminal matters.

Prior to joining Kessler Topaz, Mr. Goldstein was an associate in the commercial litigation department of Zarwin Baum DeVito Kaplan Schaer & Toddy, P.C. in the Philadelphia office. There, Mr. Goldstein concentrated his practice in commercial, corporate and real estate litigation.

Mr. Goldstein is licensed to practice law in Pennsylvania and New Jersey and concentrates his practice in mergers and acquisitions litigation and shareholder derivative litigation.

**TYLER S. GRADEN**, an associate of the Firm, received undergraduate degrees in Economics and International Relations from American University, and his Juris Doctor degree from Temple Law School. Mr. Graden is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before numerous United States District Courts. Mr. Graden concentrates his practice in the areas of ERISA, employment law and consumer protection litigation.

Mr. Graden currently represents plaintiffs in a number of putative class actions brought nationwide alleging that certain mortgage servicers engaged in improper and unlawful kickback schemes with force-placed insurance providers.

Prior to joining Kessler Topaz, Mr. Graden practiced with a Philadelphia law firm where he litigated various complex commercial matters and served as an investigator with the Chicago District Office of the Equal Employment Opportunity Commission.

**JOHN DEREK GUYNN**, a staff attorney at the Firm. Mr. Guynn concentrates his practice on mergers and acquisitions litigation and shareholder derivative litigation. Prior to joining the Firm, Mr. Guynn practiced as an Assistant Public Defender in Bucks County, Pennsylvania, followed by a solo criminal defense practice and work in pharmaceutical and securities litigation.

Mr. Guynn earned his Juris Doctor degree from Widener University School of Law, during which time he was a judicial extern for the Honorable Joseph D. O’Keefe at the Philadelphia Court of Common Pleas Complex Litigation Center, and his B.A. from Roanoke College, where he was the Charles Wise Poet. Mr. Guynn is licensed to practice in Pennsylvania.

**MARK K. GYANDOH**, an associate of the Firm, concentrates his practice in the area of ERISA and consumer protection litigation. Mr. Gyandoh litigates ERISA fiduciary breach class actions across the country and was part of one of the few trial teams that have ever tried a “company stock” imprudent investment case to verdict in *Brieger et al. v. Tellabs, Inc.*, No. 06-CV-01882 (N.D. Ill.).

Mr. Gyandoh received his undergraduate degree from Haverford College (B.A. 1996) and his J.D. (2001) and LLM in trial advocacy (2011) from Temple University School of Law. While attending law school, Mr. Gyandoh served as the research editor for the *Temple International and Comparative Law Journal*. He also interned as a judicial clerk for the Honorable Dolores K. Sloviter of the U.S. Court of Appeals for the Third Circuit and the Honorable Jerome B. Simandle of the U.S. District Court for New Jersey.

After graduating from law school Mr. Gyandoh was employed as a judicial clerk for the Honorable Dennis Braithwaite of the Superior Court of New Jersey Appellate Division. Mr. Gyandoh is the author of “Foreign Evidence Gathering: What Obstacles Stand in the Way of Justice?” 15 *Temp. Int’l & Comp. L.J.* (2001) and “Incorporating the Principle of Co-Equal Branches into the European Constitution: Lessons to Be Learned from the United States” found in *Redefining Europe* (2005).

Mr. Gyandoh is licensed to practice in New Jersey and Pennsylvania.

**LEAH HEIFETZ**, an associate of the Firm, concentrates her practice on mergers and acquisition litigation and stockholder derivative litigation.

Prior to joining the firm, Ms. Heifetz was an associate at Mulholland & Knapp, LLP, where she concentrated her practice in commercial litigation. Before that, she served as a law clerk to the Hon. Cynthia S. Kern of the New York State Supreme Court, New York County.

Ms. Heifetz received her law degree from Columbia Law School, and her undergraduate degree from the University of Pennsylvania with a major in Philosophy, Politics, and Economics.

Ms. Heifetz is licensed to practice law in New York and Pennsylvania, and has been admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York.

**SUFEI HU**, a staff attorney of the Firm, received her J.D. from Villanova University School of Law, where she was a member of the Moot Court Board. Prior to joining the Firm, Ms. Hu worked in pharmaceutical, anti-trust, and securities law. Ms. Hu received her undergraduate degree from Haverford College in Political Science, with honors. She is licensed to practice law in Pennsylvania and New Jersey, and is admitted to the United States District Court of the Eastern District of Pennsylvania. She concentrates her practice in the area of securities litigation.

**SAMANTHA E. JONES**, an associate of the Firm, received her Juris Doctor from Temple University Beasley School of Law in 2011. While at Temple, Ms. Jones was the president of the Moot Court Honor Society and a member of Temple's Trial Team. Upon graduating from Temple, Ms. Jones was awarded the Philadelphia Trial Lawyers Association James A. Manderino Award. Ms. Jones received her undergraduate degrees in Political Science and Spanish from The Pennsylvania State University in 2007.

Ms. Jones is licensed to practice in Pennsylvania and New Jersey. She concentrates her practice in the ERISA department of the Firm.

**JENNIFER L. JOOST**, an associate in the Firm's San Francisco office, received her law degree, cum laude, from Temple University Beasley School of Law, where she was the Special Projects Editor for the *Temple International and Comparative Law Journal*. Ms. Joost earned her undergraduate degree in History, with honors, from Washington University in St. Louis in 2003. She is licensed to practice in Pennsylvania and New Jersey and admitted to practice before the United States Courts of Appeals for the Second, Fourth, Ninth, and Eleventh Circuits, and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. She concentrates her practice at Kessler Topaz in the area of securities litigation.

Ms. Joost has served as an associate on the following matters: *In re Wireless Facilities, Inc.*, No. 04-CV-1589-JAH (NLS) (S.D. Cal.) and *In re ProQuest Inc. Securities Litigation*, No. 2:06-cv-10619 (E.D. Mich.). Additionally, she is currently serving as an associate on the following matters: *In re UBS AG Securities Litigation*, No. 1:07-cv-11225-RJS, currently pending in the United States District Court for the Southern District of New York; *Luther, et al. v. Countrywide Financial Corp.*, No. BC 380698, currently pending in the Superior Court of the State of California, County of Los Angeles; and *In re Citigroup, Inc. Bond Litig.*, No. 08 Civ. 9522 (SHS), currently pending in the United States District Court for the Southern District of New York.

**STACEY KAPLAN**, an associate in the Firm's San Francisco office, received her Bachelor of Business Administration from the University of Notre Dame in 2002, with majors in Finance and Philosophy. Ms. Kaplan received her J.D. from the University of California at Los Angeles School of Law in 2005.

During law school, Ms. Kaplan served as a Judicial Extern to the Honorable Terry J. Hatter, Jr., United States District Court, Central District of California. Prior to joining the firm, Ms. Kaplan was an associate with Robbins Geller Rudman & Dowd LLP in San Diego, California.

Ms. Kaplan concentrates her practice on prosecuting securities class actions. She is admitted to the California Bar and is licensed to practice in all California state courts, as well as the United States District Courts for the Northern and Central Districts of California.

**D. SEAMUS KASKELA**, an associate of the Firm, received his B.S. in Sociology from Saint Joseph's University, his M.B.A. from The Pennsylvania State University, and his law degree from Rutgers School of Law – Camden. Mr. Kaskela is licensed to practice law in Pennsylvania and New Jersey, and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey. Mr. Kaskela works in the Firm's case development department.

**JOHN Q. KERRIGAN**, an associate of the Firm, received his J.D. in 2007 from the Temple University Beasley School of Law. Before joining the firm in 2009, he was an associate in the litigation department of Curtin and Heefner LLP in Morrisville, Pennsylvania. Mr. Kerrigan graduated Phi Beta Kappa from Johns Hopkins University and received an MA in English from Georgetown University. He is licensed to practice law in Pennsylvania and New Jersey and concentrates his practice in the areas of mergers and acquisitions and shareholder derivative actions.

**MEREDITH LAMBERT**, an associate of the Firm, received her law degree in 2010 from Temple University Beasley School of Law, where she was an Associate Editor for the Temple International and Comparative Law Journal. Ms. Lambert earned a Bachelors of Arts degree in History and a Certificate of Proficiency in Spanish Language and Culture from Princeton University in 2006. While a law student, Ms. Lambert served as Judicial Extern to the Honorable Judge Leonard P. Stark of the U.S. District Court for the District of Delaware. Ms. Lambert is licensed to practice in Pennsylvania and concentrates her practice in the area of securities litigation.

**JOSHUA A. LEVIN**, a staff attorney at the Firm, and concentrates his practice in the area of securities litigation. Prior to joining Kessler Topaz, he worked in pharmaceutical litigation.

Mr. Levin received his law degree from Widener University School of Law, and earned his undergraduate degree from The Pennsylvania State University. Mr. Levin is licensed to practice in Pennsylvania and New Jersey.

**JAMES A. MARO, JR.**, an associate of the Firm, received his law degree from the Villanova University School of Law. He received a B.A. in Political Science from the Johns Hopkins University. Mr. Maro is licensed to practice law in Commonwealth of Pennsylvania and New Jersey. He is admitted to practice in the United States Court of Appeals for the Third Circuit and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

Mr. Maro concentrates his practice in the Firm's case development department. He also has experience in the areas of consumer protection, ERISA, mergers and acquisitions, and shareholder derivative actions.

**MEGAN MARTINO**, a staff attorney at the Firm, concentrates her practice in the area of securities litigation. Ms. Martino earned her Juris Doctor degree from the University of the District of Columbia David A. Clarke School of Law, and her undergraduate degree from West Virginia University. Ms. Martino is licensed to practice in the District of Columbia and Maryland.

**JOSHUA A. MATERESE**, an associate of the Firm, received his Juris Doctor from Temple University Beasley School of Law in 2012, graduating with honors. He received his undergraduate degree from the Syracuse University Newhouse School of Communications. Mr. Materese is licensed to practice in Pennsylvania and admitted to practice before the United States Courts of Appeals for the Second and Third Circuits, and the United States District Courts for the Eastern District of Pennsylvania and the District of Colorado. He concentrates his practice at Kessler Topaz in the areas of securities and consumer protection litigation.

**KATRICE TAYLOR MATHURIN**, a staff attorney of the Firm, received her law degree from the University of Richmond School of Law. She received her undergraduate degree from The Johns Hopkins

University. During law school, Ms. Mathurin practiced as an intern in the office of the United States Attorney for the Eastern District of Virginia, where she represented the United States in matters before the District Court. She also practiced in the University of Richmond Children's Law Center Disability Clinic. Prior to joining Kessler Topaz, Ms. Mathurin practiced in the areas of real estate and construction litigation. Ms. Mathurin is licensed to practice law in Pennsylvania and concentrates in the area of securities litigation.

**JOHN J. McCULLOUGH**, a staff attorney at the Firm, concentrates his practice in the area of securities litigation. In 2012, Mr. McCullough passed the CPA Exam.

Mr. McCullough earned his Juris Doctor degree from Temple University School of Law, and his undergraduate degree from Temple University. Mr. McCullough is licensed to practice in Pennsylvania.

**PATRICK J. MATTUCCI**, a staff attorney at the Firm, received his law degree from the University of Pennsylvania Law School, and his undergraduate degree in History from Yale University. Mr. Mattucci is licensed to practice law in Pennsylvania, and concentrates his practice in the area of securities litigation.

**JAMES H. MILLER**, an associate of the Firm, received his J.D. in 2005 from Villanova University School of Law, where he was enrolled in Villanova University's JD/MBA program. Mr. Miller received his Master of Business Administration from Villanova University in 2005, and received his Bachelor of Chemical Engineering from Villanova University in 2002. Mr. Miller is licensed to practice law in Pennsylvania and concentrates his practice in the areas of mergers and acquisitions and shareholder derivative actions.

**KRYSTN E. MUNDY**, a staff attorney of the Firm, received her law degree from the University of Miami School of Law and her undergraduate degree in Political Science and Spanish, cum laude, from Mount Saint Mary's University.

Prior to joining Kessler Topaz, Ms. Mundy practiced employment law and was in-house counsel at Philadelphia Corporation for Aging. Ms. Mundy is licensed to practice law in Pennsylvania and Nevada and is admitted to practice in the United States District Court for the Eastern District of Pennsylvania. She now concentrates her practice in the area of securities litigation.

**CASANDRA A. MURPHY**, an associate of the Firm, received her law degree from Widener University School of Law and her undergraduate from Gettysburg College. Prior to joining Kessler Topaz, Ms. Murphy was an associate at Post & Schell, P.C. where she practiced general casualty litigation. Ms. Murphy is licensed to practice in Pennsylvania and New Jersey, and has been admitted to practice before the United State District Court for the Eastern District of Pennsylvania. Ms. Murphy has lectured for the Pennsylvania Bar Institute and the Philadelphia Judicial Conference. She concentrates her practice in the areas of consumer protection, ERISA, pharmaceutical pricing and antitrust litigation.

**JONATHAN F. NEUMANN**, an associate with the Firm, concentrates his practice in the area of securities litigation. Prior to joining the Firm, Mr. Neumann served as a law clerk to the Honorable Douglas E. Arpert of the United States District Court for the District of New Jersey.

Mr. Neumann earned his Juris Doctor degree from Temple University Beasley School of Law, and his undergraduate degree from the University of Delaware. Mr. Neumann is licensed to practice in New Jersey.

**MICHELLE M. NEWCOMER**, an associate of the Firm, received her law degree from Villanova University School of Law in 2005. Ms. Newcomer received her undergraduate degrees in Finance and Art History from Loyola College in Maryland in 2002. Throughout her legal career, Ms. Newcomer has concentrated her practice in the area of securities litigation, representing individual and institutional

investors and helping them to recover millions against corporate and executive defendants for violations of the federal securities laws. In this respect, Ms. Newcomer helped secure the following recoveries for investors: *In re Tenet Healthcare Corp. Sec. Litig.*, No. 02-8462 (C.D. Cal.) (settled – \$281.5 million); *In re Acclaim Entertainment, Inc. Sec. Litig.*, No. 2:03-CV-1270 (JS) (ETB) (E.D.N.Y.) (settled – \$13.65 million); *In re Zale Corp. Sec. Litig.*, No. 3:06-CV-01470-N (settled – \$5.9 million); and *In re Leadis Tech., Inc. Sec. Litig.*, No. C-05-0882-CRB (N.D. Cal.) (settled – \$4.2 million). Ms. Newcomer is also currently involved in several high profile securities fraud suits, including: *In re Lehman Brothers Sec. & ERISA Litig.*, No. 09 MD 2017 (LAK) (S.D.N.Y.) and *In re SemGroup Energy Partners, L.P. Sec. Litig.*, No. 08-MD-1989-GFK-FHM (N.D. Olka.).

Ms. Newcomer is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey and has been admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the Ninth and Tenth Circuits, and the United States District Court for the District of New Jersey.

**MARGARET E. ONASCH**, an associate of the Firm, received her law degree, cum laude, from Temple University Beasley School of Law. While at Temple, Ms. Onasch was a Beasley Scholar and a staff editor for the Temple Journal of Science, Technology, and Environmental Law. Ms. Onasch earned her undergraduate degree with honors in Sociology and Spanish from Franklin and Marshall College in 2007. During law school, Ms. Onasch served as a judicial intern to the Honorable Glynnis D. Hill of the Philadelphia Court of Common Pleas. Ms. Onasch is licensed to practice in Pennsylvania and New Jersey. She concentrates her practice in the area of securities litigation.

**JUSTIN O. RELIFORD**, an associate of the Firm, concentrates his practice on mergers and acquisition litigation and shareholder derivative litigation. Mr. Reliford graduated from the University of Pennsylvania Law School in 2007. While earning his J.D., Mr. Reliford was a member of the University of Pennsylvania Mock Trial Team and a member of the Keedy Cup Moot Court Board. Mr. Reliford received his B.A. from Williams College in 2003, majoring in Psychology with a concentration in Leadership Studies. Prior to joining the firm, Mr. Reliford was an associate in the labor and employment practice group of Morgan Lewis & Bockius, LLP. There, Mr. Reliford concentrated his practice on employee benefits, fiduciary, and workplace discrimination litigation. Mr. Reliford has extensive experience representing clients in connection with nationwide class and collective actions.

Mr. Reliford is a member of the Pennsylvania and New Jersey bars, and he is admitted to practice in the Third Circuit Court of Appeals, the Eastern District of Pennsylvania, and the District of New Jersey.

**KRISTEN L. ROSS**, an associate of the Firm, concentrates her practice in shareholder derivative actions. Ms. Ross received her J.D., with honors, from the George Washington University Law School, and B.A., *magna cum laude*, from Saint Joseph's University, with a major in Economics and minors in International Relations and Business.

Ms. Ross is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Courts for the District of New Jersey and the Eastern District of Pennsylvania. Prior to joining Kessler Topaz, Ms. Ross was an associate at Ballard Spahr LLP, where she focused her practice in commercial litigation, particularly foreclosure and bankruptcy proceedings. She also has experience in commercial real estate transactions. During law school, Ms. Ross served as an intern with the United States Attorney's Office for the Eastern District of Pennsylvania.

**ALLYSON M. ROSSEEL**, a staff attorney of the Firm, received her law degree from Widener University School of Law. She earned her B.A. in Political Science from Widener University and is licensed to practice law in Pennsylvania and New Jersey.

Prior to joining the Firm, Ms. Rosseel was employed as general counsel for a boutique insurance consultancy/brokerage focused on life insurance sales, premium finance and structured settlements. She concentrates her practice at Kessler Topaz in the area of securities litigation.

**RICHARD A. RUSSO, JR.**, an associate of the Firm, received his law degree, cum laude, from the Temple University Beasley School of Law, where he was a member of the Temple Law Review. Mr. Russo received his Bachelor of Science in Business Administration, cum laude, from Villanova University. He is licensed to practice law in Pennsylvania and New Jersey, and is admitted to practice before the United States Courts of Appeals for the First and Tenth Circuits. He concentrates his practice at Kessler Topaz in the area of securities litigation.

Mr. Russo recently helped secure a \$516 million recovery for investors in *In re Lehman Brothers Sec. & ERISA Litig.*, No. 09 MD 2017 (LAK), and is currently pursuing claims against Lehman Brothers' auditor in the United States District Court for the Southern District of New York. In addition, Mr. Russo currently serves as an associate on the following matters: *In re Bank of America Corp. Sec., Deriv. & ERISA Litig.*, No. 09 MD 2058 (PKC), pending in the United States District Court for the Southern District of New York; *In re Citigroup, Inc. Bond Litig.*, No. 08 Civ. 9522 (SHS), pending in the United States District Court for the Southern District of New York; *In re Heckmann Corp. Sec. Litig.*, No. 10 Civ. 00378-LPS-MPT, pending in the United States District Court for the District of Delaware; *Stratte-McClure v. Morgan Stanley*, No. 09 Civ. 2017 (DAB), pending in the United States District Court for the Southern District of New York; and *In re UBS AG Sec. Litig.*, No. 07 Civ.11225-RJS, pending in the United States District Court for the Southern District of New York.

**JULIE SIEBERT-JOHNSON**, an associate of the Firm, received her law degree from Villanova University School of Law in 2008. She graduated cum laude from the University of Pennsylvania in 2003. Ms. Siebert-Johnson is licensed to practice law in Pennsylvania and New Jersey. She concentrates her practice in the area of ERISA and consumer protection litigation.

**MELISSA J. STARKS**, a staff attorney at the Firm, concentrates her practice in the area of securities litigation. Ms. Starks earned her Juris Doctor degree from Temple University- Beasley School of Law, her LLM from Temple University -Beasley School of Law, and her undergraduate degree from Lincoln University. Ms. Starks is licensed to practice in Pennsylvania.

**MICHAEL P. STEINBRECHER**, a staff attorney at the Firm, concentrates his practice in the area of securities litigation. Prior to joining Kessler Topaz he worked in pharmaceutical litigation. Mr. Steinbrecher earned his Juris Doctor from Temple University James E. Beasley School of Law, and received his Bachelors of Arts in Marketing from Temple University. Ms. Steinbrecher is licensed to practice in Pennsylvania and New Jersey.

**JULIE SWERDLOFF**, a staff attorney of the Firm, received her undergraduate degree in Real Estate and Business Law from The Pennsylvania State University and received her law degree from Widener University School of Law. While attending law school, she interned as a judicial clerk for the Honorable James R. Melinson of the United States District Court for the Eastern District of Pennsylvania. She is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

Prior to joining Kessler Topaz, Ms. Swerdloff managed environmental claims litigation for a Philadelphia-based insurance company and prior to that was an associate at a general practice firm in Montgomery County, PA. At Kessler Topaz, she has been involved in the Firm's derivative and securities class action cases, including the historic Tyco case (*In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002) (settled -- \$3.2 billion)) and many options backdating cases. Currently she concentrates her practice in federal and state wage and hour litigation.

**BRIAN W. THOMER**, a staff attorney at the Firm, concentrates his practice in the area of securities litigation. Mr. Thomer received his Juris Doctor degree from Temple University Beasley School of Law, and his undergraduate degree from Widener University. Mr. Thomer is licensed to practice in Pennsylvania.

**ALEXANDRA H. TOMICH**, a staff attorney of the Firm, received her law degree from Temple Law School and her undergraduate degree, from Columbia University, with a B.A. in English. She is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, she worked as an associate at Trujillo, Rodriguez, and Richards, LLC in Philadelphia. Ms. Tomich volunteers as an advocate for children through the Support Center for Child Advocates in Philadelphia and at Philadelphia VIP. She concentrates her practice in the area of securities litigation.

**AMANDA R. TRASK**, an associate of the Firm, received her law degree from Harvard Law School and her undergraduate degree, cum laude, from Bryn Mawr College, with honors in Anthropology. She is licensed to practice law in Pennsylvania and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Prior to joining Kessler Topaz, she worked as an associate at a Philadelphia law firm where she represented defendants in consumer product litigation. Ms. Trask has served as an advocate for children with disabilities and their parents and taught special education law. She currently serves on the Board of the Bryn Mawr College Club of Philadelphia. She concentrates her practice in the areas of ERISA, consumer protection and stockholder derivative actions.

**DAVE W. URIS**, a staff attorney with the Firm, received his law degree from Santa Clara University School of Law, where he was the Technical Editor of the Santa Clara Law Review. Mr. Uris received his undergraduate degree from the University of California at Santa Barbara, with a B.A. in Law and Society.

Mr. Uris is licensed to practice law in the Commonwealth of Pennsylvania, the State of California, and the District of Columbia, and concentrates his practice in mergers and acquisitions litigation and stockholder derivative litigation.

**JASON M. WARE**, a staff attorney at the Firm, received his law degree from Villanova University School of Law. He received his Bachelor of Arts in English from Millersville University. Mr. Ware is licensed to practice law in the Commonwealth of Pennsylvania.

Prior to joining the Firm, Mr. Ware was a Legal Coordinator in the Jackson Cross Partners Advisory Services Group. He was responsible for the legal and title review of commercial real estate portfolios and abstraction of commercial leases. With the Firm, Mr. Ware concentrates his practice in the area of securities litigation.

**STACEY WAXMAN**, a staff attorney at the Firm, received her undergraduate degree in Business Administration from George Washington University and received her law degree from Widener University School of Law. While in law school, she was a law clerk for a general practice firm in Bucks County. Prior to joining Kessler Topaz, she worked as an associate for a Bucks County law firm. Ms. Waxman is licensed to practice in Pennsylvania, and she concentrates her practice in the area of securities litigation.

**KURT WEILER**, a staff attorney of the Firm, received his law degree from Duquesne University School of Law, where he was a member of the Moot Court Board and McArdle Wall Honoree. He received his undergraduate degree from the University of Pennsylvania.

Prior to joining Kessler Topaz, Mr. Weiler was associate corporate counsel for a Philadelphia-based mortgage company, where he specialized in the area of foreclosures and bankruptcy. Mr. Weiler is licensed to practice law in Pennsylvania and currently concentrates his practice in the area of securities litigation.

**DIANA J. ZINSER**, a staff attorney of the Firm, received her J.D. from Temple University Beasley School of Law in 2006. She received her B.A., *cum laude*, in political science with a minor in economics from Saint Joseph's University in 2003 and was a member of the Phi Beta Kappa honor society.

Prior to joining the firm, Ms. Zinser was a project attorney at Pepper Hamilton LLP in Philadelphia, where she worked in the health effects litigation practice group. Ms. Zinser is licensed to practice law in Pennsylvania, and concentrates her practice in the area of consumer protection, ERISA, pharmaceutical pricing and antitrust litigation.

## COUNSEL

**IOANA A. BROOKS**, Counsel in the Firm's San Francisco office, received her law degree from the University of San Francisco School of Law. She received her Bachelor of Science in Economics from Duke University. Ms. Brooks is licensed to practice law in California and concentrates her practice in the area of securities litigation.

**SCOTT M. LEMPert**, Counsel to the Firm, concentrates his practice in the areas of ERISA, consumer protection and antitrust complex class action litigation. Mr. Lempert received his law degree from the University of Pennsylvania and his Bachelor of Arts degree from the University of Delaware, graduating magna cum laude.

Prior to joining Kessler Topaz, Mr. Lempert was an attorney at Sandals & Associates, P.C. in Philadelphia, where he represented employees and retirees in retiree benefits and employment discrimination complex class actions against some of the largest corporations in America, including Unisys, Amtrak, 3M, Sprint, Verizon, American Express, and Alcatel-Lucent.

Mr. Lempert has been designated a Pennsylvania Super Lawyer, a distinction awarded to only five percent of the attorneys in the state, and is AV Peer Review Rated, representing the highest rating for professional excellence.

Mr. Lempert serves as a Board Member of the Support Center for Child Advocates, the country's oldest and largest pro bono legal and social services agency for children. He also provides pro bono representation to the agency's children, providing legal advocacy for victims of child abuse and neglect.

Mr. Lempert is licensed to practice in Pennsylvania and New Jersey and is admitted to practice before several courts including the United States Court of Appeals for the Third Circuit.

**DONNA SIEGEL MOFFA**, Counsel to the Firm, received her law degree, with honors, from Georgetown University Law Center in May 1982. She received her undergraduate degree, cum laude, from Mount Holyoke College in Massachusetts. Ms. Siegel Moffa is admitted to practice before the Third Circuit Court of Appeals, the United States Courts for the District of New Jersey and the District of Columbia, as well as the Supreme Court of New Jersey and the District of Columbia Court of Appeals. Prior to joining the firm, Ms. Siegel Moffa was a member of the law firm of Trujillo, Rodriguez & Richards, LLC, where she litigated, and served as co-lead counsel, in complex class actions arising under federal and state consumer protection statutes, lending laws and laws governing contracts and employee compensation. Prior to entering private practice, Ms. Siegel Moffa worked at both the Federal Energy

Regulatory Commission (FERC) and the Federal Trade Commission (FTC). At the FTC, she prosecuted cases involving allegations of deceptive and unsubstantiated advertising. In addition, both at FERC and the FTC, Ms. Siegel Moffa was involved in a wide range of administrative and regulatory issues including labeling and marketing claims, compliance, FOIA and disclosure obligations, employment matters, licensing and rulemaking proceedings.

Ms. Siegel Moffa continues to concentrate her practice in the area of consumer protection litigation. She served as co-lead counsel for the class in *Robinson v. Thorn Americas, Inc.*, L-03697-94 (Law Div. 1995), a case that resulted in a significant monetary recovery for consumers and changes to rent-to-own contracts in New Jersey. Ms. Siegel Moffa was also counsel in *Muhammad v. County Bank of Rehoboth Beach, Delaware*, 189 N.J. 1 (2006), U.S. Sup. Ct. cert. denied, 127 S. Ct. 2032(2007), in which the New Jersey Supreme Court struck a class action ban in a consumer arbitration contract. She has served as class counsel representing consumers pressing TILA claims, e.g. *Cannon v. Cherry Hill Toyota, Inc.*, 184 F.R.D. 540 (D.N.J. 1999), and *Dal Ponte v. Am. Mortg. Express Corp.*, CV- 04-2152 (D.N.J. 2006), and has pursued a wide variety of claims that impact consumers and individuals including those involving predatory and sub-prime lending, mandatory arbitration clauses, price fixing, improper medical billing practices, the marketing of light cigarettes and employee compensation. Ms. Siegel Moffa's practice has involved significant appellate work representing individuals, classes, and non-profit organizations participating as amicus curiae, such as the National Consumer Law Center and the AARP. In addition, Ms. Siegel Moffa has regularly addressed consumer protection and litigation issues in presentations to organizations and professional associations. Ms. Siegel Moffa is a member of the Pennsylvania Bar Association, the New Jersey State Bar Association, the Camden County Bar Association, the District of Columbia Bar Association, the National Association of Consumer Advocates and the Public Justice Foundation.

**DANIEL C. MULVENY**, Counsel to the Firm, concentrates his practice in the area of securities, consumer and fiduciary class litigation, principally representing the interests of plaintiffs in class action and complex commercial litigation. Mr. Mulveny received his law degree, with honors, from the Dickinson School of Law of the Pennsylvania State University. He received his bachelor of science degree in Chemical Engineering from the University of Delaware.

Mr. Mulveny brings to the Firm over 10 years of patent litigation experience in a variety of technologies including generic pharmaceutical litigation under the Hatch-Waxman Act, semiconductor manufacturing, magnetic recording media, catalysts, and automotive coatings. Prior to joining the Firm, Mr. Mulveny was a member of the law firm of Novak Druce Connolly Bove + Quigg, LLP in their Wilmington, Delaware office where he was a lead attorney in defending Pfizer's blockbuster cholesterol drug Lipitor® from multiple generic challenges.

Mr. Mulveny is a former federal judicial clerk for the Honorable Thomas J. Rueter of the United States District Court for the Eastern District of Pennsylvania in Philadelphia, PA.

Mr. Mulveny is licensed to practice in Delaware, Pennsylvania, and the United States Patent and Trademark Office. He is also admitted to practice before the United States District Courts for the District of Delaware, the Eastern District of Pennsylvania, and the District of Colorado and the United States Court of Appeals for the Federal Circuit.

## CONSULTANTS

**DAVID RABBINER** serves as Kessler Topaz's Director of Investigative Services and leads investigations necessary to further and strengthen the Firm's class action litigation efforts. Although his investigative services are primarily devoted to securities matters, Mr. Rabbiner routinely provides litigation support, conducts due diligence, and lends general investigative expertise and assistance to the Firm's other class action practice areas. Mr. Rabbiner plays an integral role on the Firm's legal team,

providing critical investigative services to obtain evidence and information to help ensure a successful litigation outcome. Before joining Kessler Topaz, Mr. Rabbiner enjoyed a broad based, successful career as an FBI Special Agent, including service as an Assistant Special Agent in Charge, overseeing multiple criminal programs, in one of the Bureau's largest field offices. He holds an A.B. in English Language and Literature from the University of Michigan and a Juris Doctor from the University of Miami School of Law.