



Report of the Independent Fiduciary
for the Settlement in
Boley, et al. v. Universal Health Services, Inc., et al.

February 27, 2023

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Executive Summary of Conclusions	1
III.	Procedure.....	1
IV.	Background	2
V.	Settlement	4
VI.	PTE 2003-39 Determination.....	9

I. Introduction

Fiduciary Counselors has been appointed as an independent fiduciary for the Universal Health Services, Inc. Retirement Savings Plan (the “Plan”) in connection with the settlement (the “Settlement”) reached in *Boley, et al. v. Universal Health Services, Inc., et al.*, Case No: 2:20-cv-02644, (the “Litigation” or “Action”), in the United States District Court for the Eastern District of Pennsylvania (the “Court”). Fiduciary Counselors has reviewed over 100 previous settlements involving ERISA plans.

II. Executive Summary of Conclusions

After a review of key pleadings, decisions and orders, selected other materials and interviews with counsel for the parties, Fiduciary Counselors has determined that:

- The Court certified the Litigation as a class action, and in any event, there is a genuine controversy involving the Plan.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan and the amount of any attorneys’ fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan’s likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.
- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm’s-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption (“PTE”) 76-1.
- All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.
- The Plan is receiving no assets other than cash in the Settlement.

Based on these determinations about the Settlement, Fiduciary Counselors hereby approves and authorizes the Settlement on behalf of the Plan in accordance with PTE 2003-39.

III. Procedure

Fiduciary Counselors reviewed key documents, including the Second Amended Complaint, the Motion for Partial Dismissal, the Court’s Memorandum Order Denying Motion for Partial Dismissal, the Notice of Voluntary Dismissal of Universal Inc., the Court’s Order Dismissing Defendant Universal Inc., Plaintiffs’ Motion for Class Certification, the Court’s Order Granting Class Certification, the filings regarding Defendants’ interlocutory appeal of the Court’s Order

Granting Class Certification, the opinion of the United States Court of Appeals for the Third Circuit affirming class certification, the Settlement Agreement, the parties' Mediation Statements, the Motion for Preliminary Approval and related papers, the Court's Order Preliminarily Approving Settlement, the Revised Notice, the Revised Plan of Allocation, the Motion for an Award of Attorneys' Fees and Expenses, and Case Contribution Awards and related papers, and the Motion for Final Approval of Class Action Settlement and related papers. In order to help assess the strengths and weaknesses of the claims and defenses in the Litigation, as well as the process leading to the Settlement, the members of the Fiduciary Counselors Litigation Committee conducted separate telephone interviews with counsel for both the Defendants and Plaintiffs.

IV. Background

A. Procedural History of Case

Litigation.

Plaintiffs Mary K. Boley, Kandie Sutter, and Phyllis Johnson (collectively, "Plaintiffs") filed the initial complaint in this Action on June 5, 2020 and an amended complaint ("Amended Complaint") on July 6, 2020 against Defendants Universal Health Services, Inc. ("Universal") and the UHS Retirement Plans Investment Committee ("Committee," with Universal, "Defendants," and collectively, the "Parties"). Defendants denied and vigorously defended against Plaintiffs' allegations. Defendants moved to dismiss the Amended Complaint on September 4, 2020. Prior to the resolution of Defendants' motion to dismiss the Amended Complaint, Plaintiffs filed the Second Amended Complaint ("Complaint") on September 25, 2020. Plaintiffs principally alleged that Defendants were fiduciaries of the Plan and breached duties they owed to the Plan and its participants and beneficiaries under ERISA by: (1) allowing unreasonable recordkeeping and administrative ("RK&A") fees to be charged to participants; and (2) selecting, retaining, and otherwise ratifying high-cost and poorly performing investments instead of offering prudent, readily available alternative investments. Defendants filed their Motion for Partial Dismissal of Plaintiffs' claims pursuant to Federal Rules of Civil Procedure 12(b)(1) on October 9, 2020. Pursuant to Rule 12(b)(1), Defendants argued that Plaintiffs lack Article III standing to challenge investments in which they did not personally invest. On October 30, 2020, the Court issued its Memorandum and Order denying Defendants' Motion to Dismiss. In denying the partial dismissal motion, the Court held that Plaintiffs have standing to bring each of their claims based on the Defendants' process applicable to all funds offered to them. On November 13, 2020, Defendants filed their answer to Plaintiffs' Complaint.

On February 8, 2021, Plaintiffs filed a Motion for Class Certification. On March 8, 2021, the Court certified a class of participants and beneficiaries ("Class"). *See generally Boley v. Universal Health Servs., Inc. ("Boley I")*, 337 F.R.D. 626 (E.D. Pa. 2021), *aff'd*, 36 F.4th 124 (3d Cir. 2022). Defendants appealed the ruling to the United States Court of Appeals for the Third Circuit, which granted their petition on May 18, 2021. Oral argument was heard in the Court of Appeals on February 11, 2022. The Court of appeals

affirmed the District Court's decision to certify the Class in an opinion published on June 23, 2022. *See generally Boley v. Universal Health Servs., Inc.* (“*Boley II*”), 36 F.4th 124 (3d Cir. 2022).

Following the Court's order on Defendants' partial motion to dismiss, the Parties commenced fact discovery, which included the exchange of written discovery requests and productions of documents totaling over 90,000 pages, including productions by the Parties and third parties. Defendants' productions consisted of the Committee's deliberative materials related to Plan administration, as well as communications between Committee members and others involved in the management and administration of the Plan. Plaintiffs deposed members of the Committee, a corporate representative of Universal, and representatives of Centurion Group, LLC (now known as Centurion, a Marsh & McLennan Agency LLC), the Plan's investment advisor during the Class Period. During the pendency of Defendants' appeal of the Court's certification of the Class, the Parties completed fact discovery and Plaintiffs disclosed reports by three experts to Defendants. Defendants disclosed two expert reports to Plaintiffs, which responded to each of Plaintiffs' expert reports and set forth certain affirmative opinions. The Parties took depositions of each expert and completed all discovery. On September 7, 2022, Defendants moved to exclude the expert opinions of two of Plaintiffs' experts, Kelly Driscoll and Michael Geist, which motions Plaintiffs opposed on September 23, 2022. On September 28, 2022, the Parties reported the Settlement to the Court and jointly moved the Court to stay these proceedings pending its review of Plaintiffs' motion for preliminary approval. The Court denied the joint motion to stay as stated, denying the pending motion to preclude expert testimony without prejudice to renewal if the Settlement is not approved and granting leave to move for preliminary approval by October 20, 2022.

Settlement and Preliminary Approval.

During fact discovery and while Defendants' petition for appellate review of the Court's class certification order was pending, the Parties participated in a settlement conference with the late Honorable Marilyn Heffley. While the dynamics of the action at that time were such that the Parties did not reach agreement on a negotiated resolution, Judge Heffley skillfully assisted the Parties in understanding each other's settlement position and the circumstances that might enable more fruitful negotiations. Later in the course of the action, the Parties negotiated the Settlement under the auspices of Robert A. Meyer, Esquire, of JAMS, one of the most experienced mediators in the country in ERISA disputes of this type. The Parties' negotiations occurred by way of a full-day mediation session with Mr. Meyer and several weeks of follow-up negotiations, including additional exchanges of information.

Plaintiffs filed a motion seeking preliminary approval of the Settlement on October 20, 2022. The Court granted Plaintiffs' motion on October 31, 2022. The Court's Order: (1) approved the form and method of a revised class notice to be filed no later than November 10, 2022; (2) set March 30, 2023 as the date for a Final Approval Hearing; (3)

set March 9, 2023 as the deadline for objections; and (4) approved Strategic Claims Services as the Settlement Administrator.

Objections.

March 9, 2023 is the deadline for Class Members to file objections to the Settlement. As of the date of this report, two Class Members have filed objections. Of those purported objectors, one simply requested more information as to the nature of the lawsuit, claiming that the “Notice states only that the claim is that the ‘administration of the Plan violated ERISA,’” but does not state exactly “*how* ERISA was allegedly violated.” (Whitesell Objection). We note that the website established by the Settlement Administrator includes the Complaint and other litigation documents that detail the claims that would be resolved by virtue of the Settlement. In addition, Class Counsel have responded to any inquiries from members of the Settlement Class seeking more information about the claims and Settlement. Moreover, Class Counsel has specifically communicated with this objecting Class Member and confirmed that, once the Class member and her spouse, reviewed the information contained on the settlement website, the questions they had regarding the nature of the case and the claims at issue were answered.

The other objector indicated that she does not have any complaints about the administration of her retirement account and would not be interested in the Settlement. (Wolfram Objection). Although Class Counsel has not been successful in contacting this Class member, that objection does not contest the merits of the Settlement but, rather, essentially amounts to disagreement with the merits of the underlying litigation.

As there are only two objectors whose objections are not based on substantive grounds, we do not believe these objections provide substantial grounds to the Court to find against final approval of the Settlement or of the attorneys’ fees, expenses or Case Contribution Awards for the three Class Representatives.

V. Settlement

A. Settlement Consideration

The Settlement provides for a Settlement Amount of \$12,500,000. After deducting (a) all attorneys’ fees and costs paid to Class Counsel as authorized by the Court; (b) all case contribution awards as authorized by the Court; (c) all administrative expenses; and (d) a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties that is set aside by the Settlement Administrator for (1) administrative expenses incurred before the Settlement Effective Date but not yet paid, (2) administrative expenses estimated to be incurred after the Settlement Effective Date, and (3) an amount estimated for adjustments of data or calculation errors, the remainder, (known as the “Net Settlement Amount”) will be distributed to the Class Members in accordance with the Plan of Allocation.

Class

The Settlement defines the Settlement Class as follows:

all persons who participated in the Plan at any time during the Class Period, including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Defendants and their Beneficiaries.

The Settlement defines the Class Period as “the period from June 5, 2014 through the date the Preliminary Approval Order is entered by the Court [October 31, 2022].”

B. The Release

The Settlement defines Released Claims as follows:

any and all actual or potential claims (including claims for any and all losses, damages, unjust enrichment, attorneys’ fees, disgorgement, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), actions, demands, rights, obligations, liabilities, expenses, costs, and causes of action, accrued or not, whether arising under federal, state, or local law, whether by statute, contract, or equity, whether brought in an individual or representative capacity, whether accrued or not, whether known or unknown, suspected or unsuspected, foreseen or unforeseen based in whole or in part on acts or failures to act during the Class Period:

1. That were asserted in the Class Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the operative Complaint or in any complaint previously filed in the Class Action; or
2. That arise out of, relate in any way to, are based on, or have any connection with (a) the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan’s investment options or service providers; (b) recordkeeping and other administrative fees associated with the Plan; (c) disclosures or failures to disclose information regarding the Plan’s investment options, fees, or service providers; (d) the management, oversight or administration of the Plan or its fiduciaries; or (e) alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions under ERISA; or
3. That would be barred by *res judicata* based on entry of the Final Approval Order; or

4. That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any Class Member in accordance with the Plan of Allocation; or
5. That relate to the approval by the Independent Fiduciary of the Settlement, unless brought against the Independent Fiduciary alone.

The Class Representatives, Class Members and the Plan expressly waive and relinquish, to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which provides that a “general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor,” and any similar state, federal or other law, rule or regulation or principle of common law of any domestic governmental entity.

Released Claims do not include any claims that the Class Representatives or the Settlement Class have to the value of their respective vested account balances under the terms of the Plan and according to the Plan’s records as of the date the Settlement becomes Final.¹

The terms of the release, including the provision for the Independent Fiduciary to provide a release of claims by the Plan, are reasonable.

C. The Plan of Allocation

Payments to Current Participants, Former Participants, Beneficiaries, or Alternate Payees will be calculated by the Settlement Administrator pursuant to the Plan of Allocation as follows:

1. The Settlement Administrator will determine a “Settlement Allocation Score” for each Current Participant, Former Participant, Beneficiary, or Alternate Payee by: (i) determining the year-end account balances of each Current Participant and Former Participant during the Class Period, or, if a Beneficiary or Alternate Payee had a separate account in the Plan during the Class Period, by determining the year-end balance of each such Beneficiary or Alternate Payee; and (ii) dividing the sum of each Current Participant’s or Former Participant’s, or, to the extent applicable, each Beneficiary’s or Alternate Payee’s, year-end account balances during the Class Period by the total sum of year-end asset amounts in the Plan during the Class Period. The Settlement

¹ Counsel for Defendants has confirmed that this language is not intended to preclude a participant from arguing that the vested account balance on the date the Settlement becomes final is incorrect. We have relied on this understanding in determining that the scope of the release is reasonable.

Allocation Score shall be used to calculate the *pro rata* settlement payment to each Current Participant, Former Participant, Beneficiary, or Alternate Payee.

2. If the dollar amount of the settlement payment to a Former Participant, or a Beneficiary or Alternate Payee who does not have an Active Account, is initially calculated by the Settlement Administrator to be \$10.00 or less, then that person's payment shall be \$10.00.

Current Participants, and Beneficiaries or Alternate Payees who have Active Accounts, will not be required to submit a Former Participant Claim Form to receive a settlement payment. The settlement payment for each Current Participant who is an active participant in the Plan (i.e., has the right to make contributions to the Plan), will be invested in accordance with and proportionate to such participant's investment elections then on file for new contributions. If the Current Participant is no longer an active participant in the Plan, or does not have an investment election on file, then such participant shall be deemed to have directed such payment to be invested in the Plan's default investment option. Likewise, the settlement payment to each Beneficiary or Alternate Payee who has an Active Account will be invested in accordance with and proportionate to such person's investment elections then on file, or if such a person does not have investment elections on file, then such persons will be deemed to have directed such payments to be invested in the Plan's default investment option. If, as of the date when payments pursuant to this Settlement Agreement are made, a Current Participant, or Beneficiary or Alternate Payee who had an Active Account no longer has an Active Account, he, she, or they will be treated as a Former Participant for purposes of the settlement distribution only and will receive his, her, or their payment from the Settlement Administrator in the form of a check or rollover. A Current Participant, or Beneficiary or Alternate Payee who had an Active Account who no longer has an Active Account on the date of his, her, or their settlement distribution need not complete a Former Participant Claim Form.

Each Former Participant and Beneficiary or Alternate Payee who does not have an Active Account will have the opportunity to elect a rollover of his, her, or their settlement payment to an individual retirement account or other eligible employer plan, which he, she, or they have identified on the Former Participant Claim Form, provided that such a person supplies adequate information to the Settlement Administrator to effect the rollover. Otherwise, the Former Participant, or Beneficiary or Alternate Payee without an Active Account, will receive his, her, or their settlement payment directly by check.

All checks issued pursuant to the Plan of Allocation shall expire one hundred eighty (180) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall return to the Settlement Fund. No sooner than three hundred ninety-five (395) calendar days following the Settlement Effective Date, any Net Settlement Amount remaining in the Settlement Fund after payments, including costs and taxes, shall be paid to the Plan for the benefit of the Plan's participants, and not to be used to defray any expenses that would otherwise be paid by Defendants or to defray Defendants' fees and costs in connection with the Class Action.

We find the Plan of Allocation to be reasonable, including:

- (1) the *pro rata* distribution of funds based on average year-end account balances during the Class Period;
- (2) the \$10 minimum payment to Former Participants, Beneficiaries or Alternate Payees who do not have Active Accounts; and
- (3) the provisions for payments into Plan accounts for Class Members with Active Accounts when possible and by rollover or by check for Former Participants without Active Accounts.

The provisions are cost-effective and fair to Class Members in terms of both calculation and distribution.

D. Attorneys' Fees, Litigation Expenses and Case Contribution Awards

Class Counsel seek an award of attorneys' fees in the amount of \$4,166,666.67, which represents one-third of the Settlement Amount of \$12,500,000. Class Counsel's lodestar was \$2,851,593.50 (\$2,701,593.50 + \$150,000 anticipated additional hours to be expended on the Litigation), which would produce a lodestar multiplier of 1.46 if the requested \$4,166,666.67 were awarded.

In our experience, the percentage requested and the lodestar multiplier are within the range of attorney fee awards for similar ERISA cases. In light of the work performed, the result achieved, the litigation risk assumed by Class Counsel, and the combination of the percentage and the lodestar multiplier, Fiduciary Counselors finds the requested attorneys' fees to be reasonable.

Class Counsel also request reimbursement of \$300,000 in expenses related to the Litigation (although they incurred litigation costs of \$504,290.22)², including experts (\$460,087.25), court reporters/transcripts (\$30,917.05), mediation (\$8,975), and research costs (\$1,320.21). Fiduciary Counselors finds the request for expenses to be reasonable.

Class Counsel also seek a case contribution award of Plaintiffs Boley, Sutter, and Johnson in the amount of \$15,000 each for a total of \$45,000. Plaintiffs in this case assisted in Class Counsel's investigation of their potential claims, responded to written discovery requests and produced documents, reviewed pleadings and other court documents, prepared for and sat for depositions, participated in regular conference calls with Class Counsel to keep apprised of the litigation, and were engaged throughout the mediation process. In light of Plaintiffs' extensive participation in the case and

² In their fee papers, Class Counsel noted that the reason that expenses were significantly higher than the amount for which reimbursement was sought was that, after preliminary approval was granted, Class Counsel discovered that, as a result of a bookkeeping error, certain case expenses had been inadvertently characterized as "time" as opposed to "expenses," and, therefore, were not captured as expenses incurred by Class Counsel, even though they had been paid. Class Counsel do not believe it would be fair or appropriate under the circumstances to seek separate reimbursement of that amount.

contribution to a successful settlement, Fiduciary Counselors finds the requested case contribution awards to be reasonable.

In sum, although the Court ultimately will decide what fees and case contribution awards to approve, we find that the requested amounts are reasonable under ERISA.

VI. PTE 2003-39 Determination

As required by PTE 2003-39, Fiduciary Counselors has determined that:

- The Court certified the Litigation as a class action.** Thus, the requirement of a determination by counsel regarding the existence of a genuine controversy does not apply. Nevertheless, we have determined that there is a genuine controversy involving the Plan. Based on the documents we reviewed and our calls with counsel, we find that there is a genuine controversy involving the Plan within the meaning of the Department of Labor Class Exemption, which the Settlement will resolve.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.** In this Action, Plaintiffs principally alleged that Defendants were fiduciaries of the Plan and breached duties they owed to the Plan and its participants and beneficiaries under ERISA by: (1) allowing unreasonable RK&A fees to be charged to participants; and (2) selecting, retaining, and otherwise ratifying high-cost and poorly performing investments instead of offering prudent, readily available alternative investments. Defendants have denied and vigorously defended against Plaintiffs' allegations. Defendants asserted that they utilized a prudent process for administering the Plan and selecting investment options, that the Plan's investment menu included only objectively prudent investment options, and that the Plan's participants paid objectively reasonable RK&A fees. The primary source of potential damages is the inclusion of the Fidelity Freedom Funds as investment options. Defendants' position is that the process of selecting and continuing to offer these funds was prudent, the funds were objectively prudent investments, and the comparator funds selected by Plaintiffs to establish objective imprudence and damages are inappropriate and were selected based on hindsight. Defendants noted that the Fidelity Freedom Funds were among the funds most widely included as investment options in 401(k) plans throughout the country during the Class Period, and that at least one court has held that such widespread adoption by plan fiduciaries demonstrates objective prudence.

In the absence of a settlement, Plaintiffs would have faced substantial potential risks. The Parties agreed to the Settlement less than three months before the trial scheduled for December 13, 2022. Accordingly, with all discovery complete, the Parties had substantially developed their cases for and against liability and damages. The opinions of the Parties' experts as to issues going to liability and damages were at loggerheads and a trial presented risks to both Parties including that the opinions of their adversary's experts

would be given more credence. Although Plaintiffs were confident that the evidentiary record, including expert opinions and testimony, was more than sufficient to prove their claims, there was a risk that the Court might embrace Defendants' arguments against liability or very different damage estimates.

Continued litigation would have likely resulted in appeals, causing more expense and further delaying resolution. Instead of a drawn-out period of costly litigation, with a risk of no recovery, class members will receive a certain benefit now whether they are current participants in the Plan or former participants.

Class Counsel have represented that realistically recoverable damages ranged from an average of \$9,331,087 to \$23,903,153, with a midpoint of \$16,617,120. The Settlement recovery amounts to over 75% of the midpoint of the average of these estimated realistically recoverable damages, an excellent percentage recovery. In addition, the Settlement would represent the largest dollar recovery in any action involving the Fidelity Freedom Funds to date. The Settlement amount is a fair and reasonable recovery, and also would be fair and reasonable if the maximum realistically recoverable damages were higher, given the results in numerous similar cases in the last several years, the defenses the Defendants would have asserted, the risks involved in proceeding to trial, and the possibility of reversal on appeal of any favorable judgment.

Given the substantial expense and risk involved in further litigation, the difficulty in prevailing on the merits and establishing damages, and the delay that would have resulted in providing any relief to the Class if the matter had been prolonged through trial and appeal, the amount of the Settlement is reasonable.

Fiduciary Counselors also finds the other terms of the Settlement to be reasonable, including the scope of the release, attorneys' fees, the requested Case Contribution Awards to the Class Representatives, and the Plan of Allocation.

- **The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.** As indicated in the finding above, Fiduciary Counselors determined that Class Counsel obtained a favorable agreement from the Defendant in light of the challenges in proving the underlying claims. The agreement also was reached after arm's-length negotiations supervised by mediator Robert Meyer of JAMS.
- **The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.** Fiduciary Counselors found no indication the Settlement is part of any broader agreement between the Defendants and the Plan.
- **The transaction is not described in PTE 76-1.** The Settlement did not relate to delinquent employer contributions to multiple employer plans and multiple employer collectively bargained plans, the subject of PTE 76-1.

- **All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.**
- **The Plan is receiving no assets other than cash in the Settlement.** Therefore, conditions in PTE 2003-39 relating to non-cash consideration and extensions of credit do not apply.
- **Acknowledgement of fiduciary status.** Fiduciary Counselors has acknowledged in its engagement that it is a fiduciary with respect to the settlement of the Litigation on behalf of the Plan.
- **Recordkeeping.** Fiduciary Counselors will keep records related to this decision and make them available for inspection by the Plan's participants and beneficiaries as required by PTE 2003-39.
- **Fiduciary Counselors' independence.** Fiduciary Counselors has no relationship to, or interest in, any of the parties involved in the litigation, other than the Plan, that might affect the exercise of our best judgment as a fiduciary.

Based on these determinations about the Settlement, Fiduciary Counselors (i) authorizes the Settlement in accordance with PTE 2003-39; and (ii) gives a release in its capacity as a fiduciary of the Plan, for and on behalf of the Plan. Fiduciary Counselors also has determined not to object to any aspect of the Settlement.

Sincerely,



Stephen Caflisch
Senior Vice President & General Counsel