Report of the Independent Fiduciary for the Settlement in *Garthwait, et al. v. Eversource Energy Service Company, et al.*

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I. Introduction

Fiduciary Counselors has been appointed as an independent fiduciary for the Eversource 401(k) Plan (the "Plan") in connection with the settlement (the "Settlement") reached in *Garthwait, et al. v. Eversource Energy Service Company, et al.*, Case 3:20-cv-00902-JCH, (the "Litigation" or "Action"), which was brought in the United States District Court for the District of Connecticut (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 has certified the Litigation as a class action both during the litigation and for settlement purposes, 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 consideration 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 ("SAC"), the Motion to Dismiss, the Court's Order Denying Motion to Dismiss for Recordkeeping Claim and Granting Motion to Dismiss for Lack of Standing for Investment Claims, the Motion to Certify the Class, the Court's Order Approving the Certification of Proposed Class, the Motion for Summary Judgment, the Court's Order Denying the Motion for Summary Judgment, the Settlement Agreement, the parties' mediation statements, the Motion for Preliminary Approval and related papers, the Court's Order Preliminarily Approving Settlement, the Notice, the Plan of Allocation, and the Motion for Final Approval of Class Action Settlement and Awards of Attorneys' Fees, Litigation Expenses, and Case Contribution Awards 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 Defendants and Plaintiffs.

IV. Background

A. Procedural History of Case

***Litigation*.**

Plaintiffs Kimberly Garthwait, Cumal T. Gray, Kristine T. Torrance, and Michael J. Hushion (collectively, "Plaintiffs") filed the initial Complaint on June 30, 2020, and amended the Complaint on September 22, 2020. Plaintiffs filed the SAC on October 18, 2021. Plaintiffs principally claimed Defendants Eversource Energy Service Company ("Eversource"), the Board of Directors of Eversource Energy Service Company, the Eversource Plan Administration Committee ("Administrative Committee"), and the Eversource Investment Management Committee ("Investment Oversight Committee" and together with the Administrative Committee, "Committees," and collectively, "Defendants," and together with Plaintiffs, the "Parties") breached fiduciary duties owed to the Plan and its participants and beneficiaries under ERISA § 404(a)(1)(A), (B) and (D), 29 U.S.C. § 1104(a)(1)(A), (B) and (D), by failing to discharge their duties with respect to the Plan: (a) solely in the interest of the Plan's participants and beneficiaries; (b) for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan; and (c) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, Plaintiffs claim Defendants violated their respective obligations to monitor other fiduciaries of the Plan in the performance of their duties. The Court denied Defendants' motion to dismiss Plaintiffs' recordkeeping and administrative ("RK&A") fees claim, and granted, without prejudice, Defendants' motion to dismiss Plaintiffs' claims concerning the imprudent mismanagement of the Active Suite, the MSI Emerging Markets Fund, the MSI Inception Fund, and the FR Small Cap CIT for lack of Article III standing. Plaintiffs addressed these standing issues in the SAC and each of their claims proceeded. On May 25, 2022, the Court issued its Ruling on Motion to Certify Class. The Court granted Plaintiffs' Motion to Certify the Proposed Class. The Court also granted Plaintiffs' motion to appoint the named plaintiffs as representatives of the Class and their counsel as counsel for the Class. The Court limited the class certification to claims for retrospective relief, subject to inclusion of claims for prospective relief if, within 30 days, a named plaintiff was added who is an active participant, which did not occur. Defendants moved for summary judgment on each of Plaintiffs' claims and, on July 29, 2022, the Court issued its Ruling on Defendants' Motion for Summary Judgment and the Parties' respective *Daubert* motions. The Court denied Defendants' Motion for Summary Judgment in full, finding genuine issues of material fact as to all of Plaintiffs' claims regarding the reasonableness of the Committees' monitoring process, the Plan's challenged investments, and the Plan's RK&A fees. The Court also denied the Parties' respective *Daubert* motions.

The SAC demanded a jury as to each of Plaintiffs' claims. Defendants moved to strike Plaintiffs' jury demand, which motion Plaintiffs opposed. On December 7, 2022, the Court

denied Defendants' motion to strike Plaintiffs' jury demand as to Counts I and II of the SAC, which sought monetary relief. Defendants moved to certify the Court's jury right determination for appeal, which Plaintiffs opposed and the Court also denied. The Parties were scheduled to proceed to trial beginning on April 3, 2023. Prior to reaching agreement about the Settlement, the Parties prepared several pretrial submissions, including factual stipulations, jury instructions, and verdict forms. The Parties each filed motions *in limine* concerning the anticipated trial presentations. Defendants dispute Plaintiffs' claims and deny that they breached any fiduciary duties.

The Parties engaged in significant discovery efforts in this action, including, *inter alia*, the exchange of document requests and interrogatories and the production of documents and communications exceeding 25,000 pages, which relate to the administration of the Plan, relationships between and among fiduciaries, and the Plan's investment and recordkeeping monitoring processes. Plaintiffs deposed a corporate representative of Eversource and numerous members of the Committees and others charged with aspects of Plan management and administration, and Defendants deposed Plaintiffs. The Parties also disclosed expert reports and anticipated testimony at trial by experts bearing on issues of fiduciary process standards, the retirement plan recordkeeping marketplace and recordkeeping fee rates, fiduciary investment principles, and damages. The Parties deposed the experts anticipated to testify at trial on behalf of the adverse party. In addition to formal discovery taken in the course of the Litigation, the Parties exchanged additional information concerning Plaintiffs' claims and Defendants' defenses within the context of the mediation and follow-up sessions. These additional exchanges enabled the Parties to further evaluate the strengths and weaknesses of their respective positions.

Settlement and Preliminary Approval.

The Parties agreed to and held a mediation on November 14, 2022 with Jed D. Melnick, Esquire, of JAMS, and exchanged mediation briefs regarding their respective positions prior to the mediation. Mr. Melnick also retained an independent expert to assist the Parties in assessing issues related to liability and damages. Although the Parties were unable to reach a resolution at the mediation, counsel for the Parties continued to engage in follow-up exchanges of information and sessions with the mediator, as well as informal communications, for several months following the mediation. During the pendency of these negotiations, the Parties communicated their positions regarding the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses, and the Plan's alleged losses. As part of this process, Plaintiffs and Class Counsel continued to confer with experts to analyze their claims and the Plan's losses. The Parties were ultimately able to reach an agreement in principle at the end of January 2023. The Parties worked over the ensuing months to memorialize their agreement in writing, concluding those efforts with the execution of the Settlement Agreement on April 14, 2023.

Plaintiffs filed a motion seeking preliminary approval of the Settlement on April 14, 2023. The Court granted Plaintiffs' motion on April 27, 2023. The Court's Order: (1) preliminarily certified the class for settlement purposes[1]; (2) approved the form and method of class notice; (3) set September 26, 2023 as the date for a Fairness Hearing; (4) set September 11, 2023 as

[1] As discussed above, the Court had previously certified the Litigation as a class action.

the deadline for objections; and (5) approved Strategic Claims Services as the Settlement Administrator.

Objections.

September 11, 2023 is the deadline for Class Members to file objections to the Settlement. As of the date of this report, no Class Members have filed any objections.

V. Settlement

A. Settlement Consideration

The Settlement provides for a Settlement Amount of $15,000,000. 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 and Class Period

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.

The Settlement defines Class Period as the period from June 30, 2014, through the date the Preliminary Approval Order is entered by the Court [April 27, 2023].

The Settlement excludes Defendants and their Beneficiaries from the Settlement Class.

The Court has certified the Settlement Class.

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 handling or safeguarding of data regarding Class Members by the Settlement Administrator and/or Class Counsel; or

6. 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party" and any similar state, federal or other law, rule or regulation or principle of common law of any domestic governmental entity.

"Released Claims" does 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.[2]

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

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

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 (an individual investment account in the Plan with a balance greater than $0) 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. 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 the 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

[2] Counsel for Defendants has confirmed that this language is not intended to preclude a participant from arguing that the vested account balance reflected in the Plan's records 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.

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. The Settlement Administrator will either effect from the Settlement Fund the rollover the Former Participant or Beneficiary or Alternate Payee without an Active Account elected in the Former Participant Claim Form (if the conditions for such rollover are satisfied) and any associated paperwork necessary to effect the settlement distribution by rollover, or issue a check from the Settlement Fund to the Former Participant or Beneficiary or Alternate Payee without an Active Account and mail the check to the address of such person listed in his, her, or their Former Participant Claim Form, or, in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means

All checks issued pursuant to this 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 application of a De Minimis Amount of $10 to Former Participants without Active Accounts; and

3. the provisions for payments into Plan accounts for Class Members with active accounts when possible and by check for former participants.

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 $5,000,000, which represents one-third of the Settlement Amount of $15,000,000. Class Counsel's lodestar is $5,286,358.00 to date, which would produce a lodestar multiplier of multiplier of 0.95 if the requested $5,000,000 were awarded. Class Counsel estimate that they will accrue

approximately $50,000 of additional lodestar related to settlement administration, which would reduce the lodestar multiplier to 0.94 if the requested $5,000,000 were awarded.

Class Counsel are experienced and highly qualified ERISA litigators who have achieved a favorable settlement for Class Members. In our experience, the percentage requested and the lodestar multiplier are within the range of attorney fee awards for similar ERISA cases, with the most common award in similar cases equaling one-third of the settlement amount. 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 $477,833.31 in litigation costs, including expert fees ($364,846.84), mediation fees ($52,279.10), transcripts/Court reporting ($37,497.42), copying ($12,124.40) and computer research ($6,237.58). Class Counsel also expects to incur approximately $5,000 in additional expenses related to settlement administration. Fiduciary Counselors finds the request for expenses to be reasonable.

Class Counsel also seek case contribution awards of $15,000 each for Class Representatives Kimberly Garthwait, Cumal T. Gray, Kristine T. Torrance, and Michael J. Hushion for a total of $60,000. Plaintiffs actively participated in the litigation from the outset and assisted Class Counsel in drafting the pleadings and other papers filed in the Class Action, consulted with Class Counsel as needed, answered discovery requests, prepared for and sat for depositions, provided additional information, participated in strategy and settlement discussions with Class Counsel, undertook preparation for trial and otherwise assisted in representing the interests of the Plan and the Class in the Action. Plaintiffs were prepared to attend the trial originally scheduled for April 2023 and testify if called as witnesses. Plaintiffs also participated in regular conference calls with Class Counsel to ensure they remained fully apprised of all developments in the Action. Fiduciary Counselors finds the requested case contribution award to be reasonable.

In sum, although the Court ultimately will decide what fees, expenses 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 has certified the Litigation as a class action both during the Litigation and for settlement purposes.** 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.**

On June 30, 2020, Plaintiffs filed an action against Defendants, alleging that their administration of the Plan violated ERISA. For nearly three years, the Parties vigorously engaged in the Action. The Parties agreed to the Settlement only after extensive briefing of substantive and procedural motions, fact and expert discovery, substantial trial preparation (including the preparation of factual stipulations, proposed jury instructions, and verdict forms, among other pretrial submissions), and arm's-length negotiations by experienced counsel under the auspices of an experienced neutral mediator, including at a day-long private mediation and numerous follow up sessions over the course of several months with the mediator as well as an independent expert retained by the mediator to assist the Parties in assessing issues related to liability and damages. The Plaintiffs faced risks continuing the Action to trial. The record in the Litigation confirm the risks of establishing liability and damages. In order to succeed on the merits, Plaintiffs would need to establish not only that Defendants' investment and recordkeeping monitoring processes were deficient, but Defendants would certainly assert affirmative defenses. Such defenses would have included, *inter alia*, arguments based upon the substantive and procedural prudence of Defendants' monitoring processes. The trial stage was set to feature additional motion practice, including *motions in limine*, and significant competing expert testimony, all of which pose risks to Plaintiffs' ability to establish liability. Even if Plaintiffs were successful in establishing liability at trial, there was a substantial risk that a jury could accept Defendants' damages arguments and award far less than the funds secured by the Settlement, or nothing at all. In addition to the risks of establishing liability and damages, Plaintiffs faced a risk of maintaining this Action as a class action through trial. Consistent with ERISA §§ 409 and 502(a)(2), Plaintiffs bring their claims on behalf of the Plan and plead the same as class claims. *See* 29 U.S.C. §§ 1109, 1132(a)(2). While Plaintiffs were confident this Action would satisfy Rule 23, there was an extant risk that circumstances or the law could change, and the Court could find a reason to decertify the class at a later stage.

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.

Plaintiffs estimated the Plan's losses attributable to excessive RK&A fees by comparing the Plan's actual fees to the periodic reasonable market rate throughout the Class Period determined by Plaintiffs' experts based on a benchmark group of comparable plans. In addition, Plaintiffs estimated the Plan's losses attributable to the challenged investments by calculating the difference in terminal aggregate wealth actually achieved by the Plan with the terminal aggregate that would have been achieved assuming replacement with suitable alternative investments. The damages awarded to Plaintiffs in the event they proved liability would be subject to the factfinder's determinations with respect to several significant variables. First, the factfinder must determine the alternative investments against which the Plan's losses should be measured, as well as the reasonable market rate for the Plan's RK&A fees. Defendants would argue for the lower end, and may offer an alternative peer group that further reduces the damages calculation. Second, the factfinder must determine the appropriate interest rate to apply, ranging from the conservative 1-year Treasury rate to the more aggressive S&P 500-return rate. Plaintiffs and their experts estimated realistically achievable damages as ranging from $14,895,443.34 to $26,842,926.28, based upon the comparator used and interest rate applied, and offsetting any potentially duplicative losses

suffered by the Plan. The $15,000,000 settlement recovery represents approximately 72% of the midpoint of the reasonable damages calculations of Plaintiffs and their experts.

The $15,000,000 Settlement Amount is a fair and reasonable recovery 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, including the possible reversal of the Court's denial of Defendants' motion to strike Plaintiffs' jury demand as to Counts I and II of the SAC.

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 Defendants in light of the challenges in proving the underlying claims. The agreement also was reached after arm's-length negotiations supervised by mediator Jed D. Melnick, Esquire, of JAMS, assisted by an independent expert retained by the mediator.

- **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 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 consideration 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

Stephen Caflisch
Senior Vice President & General Counsel