

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Jennifer L. Miller,	)	CASE NO. 5:20CV1743
	)	
Plaintiff,	)	JUDGE JOHN R. ADAMS
	)	
-vs-	)	
	)	
Michael J. Anderson, et al.,	)	<u>ORDER</u>
	)	
	)	
Defendants.	)	

Pursuant to the Court's prior notice, the Court received letters of interest from five different law firms. The Court has attached those letters to this Order. A separate notice of hearing will issue for the Court to proceed further in this matter.

IT IS SO ORDERED.

Dated: July 26, 2022

/s/ John R. Adams  
JOHN R. ADAMS  
UNITED STATES DISTRICT JUDGE



July 23, 2022

**VIA FEDEX**

Judge John R. Adams  
2 South Main Street, Suite 510  
Akron, Ohio 44308

Re: *Miller v. Anderson, et al.*, Case No. 20-CV-1743 (N.D. Ohio)

Dear Judge Adams,

I write on behalf of my client John Donovan, a former employee and a current shareholder of FirstEnergy Corp. ("FirstEnergy"), in connection with the Court's July 13, 2022, order in the above-referenced action, inviting counsel to notify the Court of their interest in representing the interests of FirstEnergy.

In view of the Court's order, I respectfully apply to serve as Mr. Donovan's counsel in this action and to pursue derivative relief on behalf of FirstEnergy. I am the Chairman of Boies Schiller Flexner LLP and have over 50 years of experience litigating complex cases, including having served as co-lead counsel in several of the largest cases in history.<sup>1</sup>

I and my firm have substantial experience as lead or co-lead counsel in several multidistrict and nationwide representative actions, including class and derivative actions. I am just completing service, for example, as one of two co-lead counsel in *In re Blue Cross Blue Shield Antitrust Litigation* (N.D. Ala.), which resulted in a settlement of \$2.7 billion on behalf of consumers nationwide, as well as injunctive relief that Judge Proctor, who is presiding over the case, described as "historic." For this representation, my firm and our co-lead counsel were awarded the Outstanding Antitrust Achievement in Private Law Practice award by the American Antitrust Institute. I also recently served on the Plaintiffs' Steering Committee in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal.), where we achieved a recovery of \$15 billion, including up to \$10 billion of direct consumer relief, in less than a year. I also served on the Plaintiffs' Executive Committee of the *In re General Motors LLC Ignition Switch*

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<sup>1</sup> I have been selected as one of the 100 Most Influential People in the World by *Time Magazine*, Global International Litigator of the Year by *Who's Who Legal* (seven times), Litigator of the Year by the *American Lawyer*, Lawyer of the Year by the *National Law Journal* (twice), runner-up Person of the Year by *Time Magazine*, and Best Lawyers in America for more than 25 years.

BSF

*Litigation* (S.D.N.Y.), which resulted in a \$121.1 million settlement that received final approval on December 18, 2020. In addition, I am currently serving as co-lead counsel of the economic damages track in *In re Takata Airbag Product Liability Litigation* (S.D. Fla.), where we have so far recovered \$1.5 billion in settlements for class members. I also served as lead counsel in *Erica P. John Fund Inc., et al. v. Halliburton Company, et al.*, C.A. 02-CV-01152 (N.D. Tex.), where we achieved a settlement of \$100 million on behalf of shareholders, after prior class counsel had recommended a settlement of \$6 million.

My firm also has a strong white collar investigations practice, led by former federal prosecutors and Department of Justice trial lawyers who have deep experience with high-stakes, high-profile white collar civil and criminal actions, both on the prosecution and defense side. On the prosecution side, for example, my partner Matthew Schwartz led the government's investigation and prosecution of Bernard L. Madoff Investment Securities, and my partner John Kucera led the government's multibillion dollar forfeiture proceedings related to IMDB, the Malaysian Sovereign Wealth Fund. On the defense side, our team has represented a variety of entities and individuals in connection with high-profile investigations or actions brought by the DOJ, FinCEN, the FTC, the UN Security Council, other governmental entities, and shareholders.

In each of these contexts, my firm and I have a proven track record of dedicating the time and resources necessary to litigate large-scale cases effectively. For example, in the *Blue Cross Blue Shield* case, I personally attended more than 30 hearings and status conferences in person in Birmingham, Alabama, my firm committed more than 50,000 hours of attorney time (including more than 5,000 hours of my time) on behalf of the consumers we represented, and my firm alone has invested more than \$7.5 million in out-of-pocket expert and other expenses.

I pledge my best effort to this Court to manage this litigation in a professional and effective manner. This includes a pledge to devote and maintain the appropriate financial resources necessary to fund the litigation and to ensure that FirstEnergy's interests are appropriately protected and pursued, notwithstanding the existence of parallel proceedings.

I have attached a brief profile of my firm as Exhibit A. If the Court would like, we would be pleased to submit a formal motion to appoint Mr. Donovan as lead plaintiff and my firm as lead counsel to seek derivative relief on behalf of FirstEnergy. We look forward to participating in the anticipated hearing on these matters at the Court's convenience.

Respectfully submitted,

/s/ David Boies  
David Boies

**BSF**

**BOIES SCHILLER FLEXNER LLP**

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Armonk, New York 10504  
Phone: (914) 749-8200  
Fax: (914) 749-8300  
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*Counsel for John Donovan*

# EXHIBIT A



## BOIES SCHILLER FLEXNER

Boies Schiller Flexner LLP ("BSF") is one of the nation's preeminent litigation firms. BSF is selected by major corporations, institutions, and individuals who have a choice of any attorney in the world for their most important matters. Since its founding in 1997, BSF has handled a number of prominent and high-stakes litigation matters, of which the following is a representative sample:

- Achieving a **\$4.1 billion recovery** for American Express in its antitrust case against VISA and Mastercard relating to exclusionary practices governing bank partnerships – the largest recovery ever for a private plaintiff in an antitrust case
- Secured preliminary approval (final approval pending) of a **\$2.7 billion settlement** with Blue Cross Blue Shield over antitrust allegations that BCBS health plans divided insurance markets throughout the country and agreed not to compete with one another across those markets
- Serving as co-lead counsel for the class of vitamins purchasers and achieving a **settlement of over \$1 billion** in *In re Vitamins Antitrust Litigation*, as well as a jury verdict of over \$50 million (pre-trebling) against the defendants that did not settle
- Winning a jury verdict against SAP that awarded a **\$1.3 billion judgment** to Oracle, which was the largest ever verdict in a copyright infringement case
- Representing Al Gore in his litigation before the **United States Supreme Court** and the courts of Florida in connection with the recount litigation associated with the 2000 U.S. Presidential election
- Representing the **US Government** as lead counsel in its successful antitrust trial against Microsoft
- Representing the victims of **Jeffrey Epstein and Ghislaine Maxwell** in bringing the underage sex trafficking to public light and in generating prosecutions in New York after years of prosecutors and the press largely ignoring the misconduct
- Representing Barclays in the longest bankruptcy trial in American history and appeals to the SDNY and Second Circuit; **defeated a \$13 billion claim** and recovered approximately \$8.3 billion of additional assets on its contractual claims against the Lehman Bankruptcy Estate and the SIPC Trustee

### WHAT OTHERS SAY

Boies Schiller Flexner has earned a world-class reputation for our highly successful practice. As early as 2001, BSF was described by The National Law Journal as a firm of "casual brilliance." The American Lawyer has characterized BSF as "A Galaxy of Bright Lights," and Lawdragon called the firm "the most powerful litigation turbine in America." We strive every day, in every matter, to build upon that reputation, to achieve exceptional results for our clients, and to remain the firm that our clients will always want to entrust with their most significant matters.

THE NATIONAL  
LAW JOURNAL

"The firm from its inception has focused on preparing cases for trial from the first day of the case."

The Washington Post

"...known as the go-to law firm for high-stakes, high-profile litigation—what executives and corporate lawyers call 'bet the company' cases"

THE  
AMERICAN LAWYER

"One of America's most successful and sought-after law firms for cases that matter."



## CLASS AND OTHER REPRESENTATIVE ACTIONS

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BSF has served as lead or co-lead plaintiff's counsel in numerous complex representative actions, involving a variety of claims. Since its inception, BSF has negotiated record settlements and won substantial verdicts on behalf of plaintiffs in several prominent cases.

The firm handles a multitude of representative actions. Our unique experience of representing both defendants and plaintiffs allows for a particular advantage, resulting in favorable outcomes for our clients. The firm's work includes a broad range of representing classes in consumer cases, antitrust, corporate governance, securities fraud, and employment cases. Our lawyers work efficiently and strategically at all stages of litigation to obtain meaningful recoveries. When trial threatens, our track record of success in the courtroom serves as an effective spur to negotiation.

- **Takata Airbags:** Obtained \$1.5 billion in settlements with auto manufacturers in multidistrict litigation over defective airbags supplied by Takata
- **Volkswagen:** Represented a nationwide class of consumers suing Volkswagen for knowingly installing software designed to cheat emissions tests in order to deceive federal and state regulators, resulting in a nearly \$15 billion settlement
- **Fresh Del Monte Produce:** Won summary judgment for Fresh Del Monte Produce, affirmed by the Fourth Circuit, in a class action alleging that our client monopolized the market for extra sweet pineapples; class sought \$1 billion in damages for alleged patent misuse
- **O'Bannon v. NCAA:** Served as co-lead trial counsel for O'Bannon and a class of other former college athletes resulting in a federal judge issuing an injunction against the NCAA's rules that prevent athletes from earning money from the use of their names and images in television broadcasts and video games
- **NBA Players:** Represented the NBA players in their historic class action lawsuit against the NBA, accusing the league of conspiring to deny them their right to offer their services in the pro basketball market through an unlawful group boycott and price fixing arrangement; resulted in a settlement that allowed the players to return to work and saved the 2011-2012 NBA season
- **In re Auction Houses Litigation:** Served as lead counsel on behalf of the plaintiff class of auction house sellers and buyers against Christie's and Sotheby's and negotiated a \$512 million settlement
- **In re: Polyurethane Foam Antitrust Litigation:** Acted as co-lead counsel for the class in the federal court in Ohio, the firm secured over \$440 million in settlements with manufacturers of flexible polyurethane foam who faced allegations of coordinating price increases to fix prices
- **Anwar v. Fairfield:** Acted as co-lead counsel in the most successful shareholder recovery for investors in the Bernard Madoff Ponzi scheme resulting in more than \$235 million in recovery for investors
- **Au Pair Class Action:** Represented plaintiffs in a nationwide class action alleging violations of state and federal employment laws, as well as antitrust and state unfair competition laws; obtained a \$65.5 million settlement on behalf of the class, the largest employment law settlement of the year
- **In re Municipal Derivatives Antitrust Litigation:** Served as co-lead counsel for plaintiffs in an antitrust case concerning price-fixing of municipal derivatives; the firm recovered \$223 million in settlements; our work on this case received the award for the Outstanding Antitrust Litigation Achievement in Private Law Practice from the American Antitrust Institute





## CLASS AND OTHER REPRESENTATIVE ACTIONS

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- The firm has served as co-lead counsel in *In re Cardizem CD Antitrust Litigation*, MDL No. 1278, Civil Action No. 99-cv-732589 and 99-cv-73870 (E.D. Mich. 2002) (**\$110 million recovery**), in *In re Buspirone Antitrust Litigation*, MDL No. 1413, Civil Action No. 01-CV- 7951 (JAK) (S.D.N.Y. 2002) (**\$220 million recovery**), and *In re Terazosin Hydrochloride Antitrust Litigation*, MDL No. 1317, Civil Action No. 99- 7143-Civ-Seitz (S.D. Fla.) (**\$75 million recovery**)
- **Erica P. John Fund v. Halliburton:** Represented plaintiffs in securities action which took 14 years, repeat visits to the Fifth Circuit Court of Appeals, and produced two major wins for plaintiffs in the United States Supreme Court, the firm obtained a \$100 million settlement for the plaintiffs
- **Florida Children on Medicaid:** Led a 10-year pro bono case brought on behalf of the more than 2 million Florida children that, after a 93-day federal trial, resulted in a sweeping favorable decision, and led to improved medical and dental care for the children on Medicaid
- **LCD Price-Fixing Litigation:** Represented 12 corporate opt-out plaintiffs in antitrust litigation against the world's largest LCD manufacturers, and obtained favorable resolutions through settlement for all 12 clients, achieving total settlements of more than \$500 million, an amount in excess of 150% of the plaintiffs' damage claims and more than 5 times what they would have recovered from the class action
- **CRT Price-Fixing Litigation:** Represented 9 corporate opt-out plaintiffs in antitrust litigation against the world's largest cathode ray tube (CRT) manufacturers, and obtained favorable resolutions through settlement for all 9 clients with settlements over \$250 million, more than 6-10 times what they would have recovered from the class action
- **In re Generic Pharmaceuticals Pricing and Antitrust Litigation:** Representing a large health insurer as an opt-out plaintiff in a price-fixing case against generic drug makers described as potentially "the largest cartel case in the history of the U.S."
- **Broiler Chicken Antitrust Litigation:** Representing multiple major poultry purchasers in one of the largest antitrust cases in the country; the lawsuit alleges that 20 chicken producers inflated the price of broiler chickens through a long-running conspiracy to restrain production, manipulate price indices, fix prices, and rig bids
- **United HealthCare Services v. Cephalon:** Represented a large health insurer as an opt-out plaintiff in affirmative litigation against pharmaceutical manufacturers regarding the drug Provigil, which resulted in resolution of all claims via settlement approaching the brink of the jury trial
- **In re Capacitors Antitrust Litigation:** Representing Arrow Electronics as an opt-out plaintiff in a multidistrict litigation cartel case, involving a worldwide price-fixing conspiracy of capacitors with a total claim for recovery in excess of \$200 million

"They're fantastic. They are absolutely trial lawyers, and they're extremely responsive and intelligent."

-Client feedback from  
Chambers & Partners





## GLOBAL INVESTIGATIONS & WHITE COLLAR DEFENSE

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When cases involve sensitive, complex, and high-profile regulatory or criminal investigations, our lawyers draw on their deep experience and established track record to successfully manage every aspect of the dispute.

Because we are, first and foremost, trial lawyers, we consider how each engagement would play out in a courtroom. This approach enables us to negotiate favorable outcomes on behalf of our clients.

Lawyers in the Global Investigations and White Collar Defense group include former federal prosecutors and DOJ trial lawyers, former federal regulators, state and local prosecutors, and former in-house counsel in leadership positions. We use our experience running investigations and prosecuting matters globally to strategize on behalf of our clients. We also leverage this experience when called upon to work with federal prosecutors and regulators, including DOJ, SEC, CFTC, IRS, FTC, FinCEN, and OFAC, state Attorneys General, Congress, and many other global regulatory agencies.

## REPRESENTATIVE MATTERS

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- **Dragon Global Management LLC:** Secured a complete victory against the FTC for private equity firm Dragon Global Management LLC and its founder, Robert Zangrillo, in connection with allegations that they were complicit in running a series of websites, such as DMV.com, that deceptively advertised to consumers that the websites offered government services
- **Bridgeporth (UK):** Lead counsel in a UN Security Council investigation into alleged violations of Libya sanctions; no action has been taken against our client
- **Amazon CEO Jeff Bezos:** Lead counsel in a US government investigation into the National Enquirer's parent company, AMI, which had threatened to publish nude selfies of Bezos; a report determined that individuals linked to Saudi Arabia had compromised his phone
- **Major Financial Institution:** Advised a major financial institution in connection with an FCPA investigation into bribery in Western Europe
- **Former Malaysian Prime Minister:** Represent former Prime Minister Najib Razak and his step-son Riza Aziz in connection with allegations of embezzlement, foreign corruption; obtained dismissal of criminal charges against Mr. Aziz in Malaysia; settled all civil forfeiture claims against property owned by Mr. Aziz in the US
- **BTA Bank:** Represent client in international investigations of fraud and money laundering resulting from the theft of billions of dollars from a Kazakhstani bank by its former Chairman; interface with regulators and law enforcement in multiple jurisdictions; litigate victim claims to recover stolen assets.
- **Group of Institutional Investors:** Acting as lead counsel for a group of institutional investors in respect of a £1 billion-plus claim being brought against a major natural resources company, under Section 90 of the Financial Services & Markets Act 2000 (FSMA)
- **Jefferies Financial Group:** Conducted a six-month internal investigation on behalf of a special committee of the board of directors after a shareholder accused the top three executives at Jefferies of misusing corporate aircraft for their personal benefit
- **Ripple Labs:** Represented Silicon Valley-based Ripple Labs in the first ever DOJ and FinCEN enforcement action against a digital currency company for AML violations
- **Aviron Pictures CEO William Sadleir:** Serving as lead trial counsel for Sadleir, who has been charged criminally in both the Southern District of New York and the Central District of California in separate cases, as well as civilly by the Security and Exchange Commission in New York. Both cases involve allegations of fraud



## ABOUT US

BSF is a firm of internationally recognized trial lawyers, crisis managers, and strategic advisors known for its creative, aggressive, and efficient pursuit of success for our clients.

Our attorneys have an established track record of taking on and winning complex, groundbreaking, and crossborder matters in diverse circumstances and industries. From the thorniest, most high-stakes matters to straightforward business disputes, we have a knack for identifying the strongest arguments, understanding the benefits of each, and determining when and how to deploy them in a case. We use the law as a tool to drive value and mitigate risk. We treat every case from its inception as though it is headed to trial, relentlessly and methodically developing the factual record in a way that positions us for success.

We build deep relationships with clients, allowing us to advise them in any matter and any forum, and we regularly represent them as both plaintiffs and defendants. Everything we do for our clients is intended to advance their interests while helping them evaluate the costs, benefits, and risks of litigation. Clients benefit from our experience on more than 450 trials before juries and judges in federal and state courts throughout the United States and more than 200 international arbitration proceedings around the world.

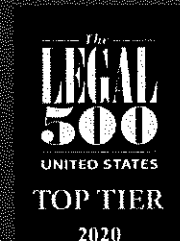
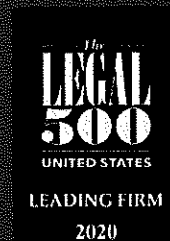
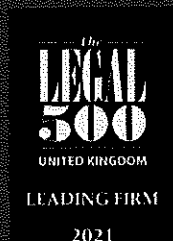
## DIVERSITY, EQUITY & INCLUSION

Our firm is dedicated to fostering a diverse and inclusive work environment that supports the recruitment, retention, and advancement of women and men of all backgrounds, at all levels of the firm. We believe that teams with diverse viewpoints and perspectives are critical to providing creative solutions to the unique challenges of our global client base.

We have a proven commitment at the firm, in the legal profession, and in society as a whole.

- Certified under Mansfield 5.0 for our commitment to diversity
- High-potential BSF attorneys participate in Pathfinder and Fellow Programs
- Recognized with DFA's "Tipping the Scale" award for having a partner class of 50% or more women
- Scored 100 percent on Human Rights Campaign's Corporate Equality Index for the sixth year
- The only law firm recognized in Seramount's first Global Inclusion Index

## RECOGNIZED FOR EXCELLENCE



**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JENNIFER MILLER,	)	Case No. 5:20-cv-01743-JRA
	)	
Plaintiff,	)	Judge John R. Adams
	)	
vs.	)	
	)	
MICHAEL J. ANDERSON, et al.,	)	
	)	
Defendants.	)	

**APPLICATION FOR APPOINTMENT OF WILLIAM B. FEDERMAN,  
MARC E. DANN, AND THOMAS A. ZIMMERMAN, JR.  
AS PLAINTIFFS' INTERIM CO-LEAD COUNSEL**

COMES NOW William B. Federman (“Mr. Federman”) of Federman & Sherwood, Marc E. Dann (“Mr. Dann”) of DannLaw, and Thomas A. Zimmerman, Jr. (“Mr. Zimmerman”) of Zimmerman Law Offices, P.C. (collectively, “Proposed Plaintiffs’ Interim Co-Lead Counsel”), and, pursuant to the Court’s Order dated July 13, 2022 (ECF No. 332) submit this application seeking appointment as Plaintiffs’ interim co-lead counsel. In addition to these firms having jointly prosecuted cases together in this District,<sup>1</sup> and as demonstrated in the attached exhibits, Proposed Plaintiffs’ Interim Co-Lead Counsel have substantial experience prosecuting complex class actions.

In the July 13, 2022 Order, the Court opined, “the Court will appoint counsel that will be willing to diligently prosecute this matter and seek approval from this Court of any potential resolution, if one is reached, as required by rule.” *Id.* Proposed Plaintiffs’ Interim Co-Lead Counsel will do precisely that.

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<sup>1</sup> See *In re Sonic Corp. Customer Data Sec. Litig.*, Case No. 1:17-MD-2807-JSG (N.D. Ohio).

In support of their application, Proposed Plaintiffs' Interim Co-Lead Counsel state as follows:

## **I. INTRODUCTION**

“Absent persuasive evidence to the contrary, the court assumes that nominations and votes for lead counsel are made in good faith for reasons that benefit the client.” *In re Aluminum Phosphide Antitrust Litig.*, 1994 WL 481847, at \*7 (D. Kan. May 17, 1994); *see also In re Wendy's Co. S'holder Derivative Litig.*, No. 1:16-cv-1153, 2018 WL 6605394, at \*2 (S.D. Ohio Dec. 17, 2018) (quoting *Kubiak v. Barbas*, No. 3:11-cv-141, 2011 WL 2443715, at \*2 (S.D. Ohio June 14, 2011) (“[C]ounsel’s ability to make inclusive efforts on behalf of all plaintiffs is an ‘essential attribute’ for lead counsel.”)); *Manual for Complex Litigation* §§ 10.22 (noting desirability of “the attorneys coordinat[ing] their activities without the court’s assistance”), 10.272 (describing “private ordering” approach).

## **II. PROPOSED PLAINTIFFS' INTERIM CO-LEAD COUNSEL ARE COMPETENT AND QUALIFIED**

Proposed Plaintiffs' Interim Co-Lead Counsel will work diligently to prosecute this action in the best interest of the shareholders. As described more fully, *infra*, Proposed Plaintiffs' Interim Co-Lead Counsel all have ample experience in large scale complex litigation, including shareholder derivative actions. Here, “[t]here is no dispute that these firms have adequate experience in class actions and complex litigation, adequate knowledge of the applicable law, and abundant resources.” *Dorn v. Mueller*, 2010 WL 2232418, at \*2 (D. Colo. May 28, 2010).

### **A. William B. Federman**

Mr. Federman has experience in shareholder derivative litigation, as well as leadership experience in this District.

Mr. Federman, the founder of Federman & Sherwood, has more than forty (40) years of diverse, hands-on, trial, appellate, shareholder derivative, data breach, complex financial fraud, commercial, consumer, and class action litigation experience, representing both plaintiffs and defendants in federal and state courts as well as arbitration forums across the United States, with extensive experience in complex e-discovery matters. Mr. Federman has litigated claims similar to those asserted here in other shareholder derivative cases at the top management levels, as well as extensive experience as lead counsel in other consumer class actions and MDLs. Additional information regarding Mr. Federman, including a select list of cases where Mr. Federman has served or is serving as lead or co-lead counsel, is set forth in Mr. Federman's Firm Bio, attached hereto **Exhibit 1**. The attached Firm Bio also includes biographies of the other attorneys and staff employed by Federman & Sherwood. Mr. Federman will be assisted by attorneys Sara E. Collier and Molly E. Brantley from Federman & Sherwood who each have experience in prosecuting complex cases and shareholder derivative actions.

Federman & Sherwood maintains offices in Oklahoma City and Dallas, Texas, and is one of the leading AV-rated plaintiff law firms in the country. This firm has been retained by all classes of plaintiffs, from large closely held corporations to individual citizens. Because of its success, Federman & Sherwood has assisted in numerous cases to fund litigation expenses in excess of \$1 million. Mr. Federman will not use outside funding or borrow money to pursue this case.

Federman & Sherwood has been appointed as lead counsel in this District by Judge James Gwin (*see In re Sonic Corp. Customer Data Sec. Litig.*, Case No. 1:17-MD-2807, N.D. Ohio). Mr. Federman was appointed as interim lead counsel following a unanimous and unopposed application. Mr. Dann served as liaison counsel in *Sonic*, and Mr. Zimmerman was a member of the Plaintiffs' Steering Committee.

Federman & Sherwood recently settled a complex shareholder derivative suit against the Southern Company in the Superior Court of Gwinnett County, Georgia (*Martin J. Kobuck, et al. v. the Southern Company, et al.*, Case No. 17-A-04758-10). There, Federman & Sherwood worked cooperatively with a number of other law firms representing shareholders in a parallel federal court consolidated action, as well as defense counsel.

Likewise, Federman & Sherwood is currently prosecuting a shareholder derivative action against Altria Group, Inc. (*Merritts v. Altria Group, Inc.*, Case No. CL21-1093, Circuit Court for Albermarle County, Virginia) where Federman & Sherwood is again working cooperatively with a large group of diverse plaintiffs' counsel in parallel state court and federal court shareholder derivative actions.

**B. Marc E. Dann**

Mr. Dann is the managing partner of DannLaw firm. He is also a partner of Advocate Attorneys LLP in Washington, DC. These practices focus on representing clients who have been harmed by banks, debt buyers, debt collectors and other financial predators, and providing access to legal services for traditionally underserved working-class and middle-class Americans. Mr. Dann has fought for the rights of tens of thousands of consumers, and brought class action lawsuits on behalf of clients in both private practice and as Ohio's Attorney General.

As Ohio Attorney General, Mr. Dann initiated securities fraud claims against the creators of mortgage-backed securities on behalf of Ohio's public pension funds. He assembled Ohio's Organized Crime Commission to mobilize Mortgage Fraud Task Forces in Ohio's major cities to prosecute those engaged in mortgage fraud and predatory lending. Mr. Dann's office challenged the standing of mortgage servicers to foreclose in cases where the State of Ohio was a party. Mr. Dann also worked with former Ohio Supreme Court Chief Justice Thomas Moyer to organize over 1,200 volunteer lawyers to represent homeowners in foreclosure.



After leaving the Attorney General's Office, Mr. Dann began representing Ohio homeowners facing foreclosure *pro bono*. During this time, he recognized that the issues faced by individual homeowners represented patterns of practice throughout the mortgage servicing industry. In response, he mobilized a team and created DannLaw in order to fight for the rights of Ohioans.

Since DannLaw was founded, it has grown to represent clients facing a range of consumers' rights issues including in class action litigation. While the mortgage servicing litigation practice is the foundation of DannLaw, Mr. Dann has developed a comprehensive collection of tools designed to help clients stay in their homes, including prosecuting more than twenty-five (25) class action cases. He is a recognized national leader in the use of federal mortgage servicing regulations to hold servicers accountable for their actions. Utilizing these tools, Mr. Dann hosts seminars explaining these techniques to other attorneys. These working groups help to elevate the defense of clients across the nation while allowing attorneys to recognize patterns of practice that affect all citizens.

Mr. Dann is currently acting as appointed lead counsel in two pending matters—*Madyda v. Ohio Department of Public Safety*, Ohio Court of Claims Case No. 2019-00426JD, and *Miles Black, et al. v. City of Girard, Ohio, et al.*, Trumbull County Court of Common Pleas Case No. 2018 CV 1256. Mr. Dann is currently serving as liaison counsel in *Migliaccio, et al. v. Parker-Hannifin Corporation*, N.D. OH Case No. 1:22-cv-00835, and liaison counsel for the Guardians of NAS Children in *In re: National Prescription Opiate Litigation*, N.D. OH Case No. 17-md-02804. Mr. Dann has previously been appointed and served as lead (or co-lead) counsel in other class action lawsuits, including *Lieber, et al. v. Wells Fargo Bank, N.A.*, N.D. OH Case No. 1:16-cv-02868, *Miller, et al. v. Intelelos, Inc.*, N.D. OH Case No. 1:17-cv-00763, *Koustis, et al. v. Select*



*Portfolio Servicing*, N.D. OH Case No. 1:20-cv-02425, and *Ryder, et al v. Wells Fargo Bank, N.A.*, S.D. OH Case No. 1:19-cv-00638. Mr. Dann is currently acting as putative co-class counsel in at least sixteen (16) other class actions pending in courts across the country.

A copy of DannLaw's Firm Bio is attached hereto as **Exhibit 2**. The attached Firm Bio also includes biographies of the other attorneys and staff employed by DannLaw. Mr. Dann will be assisted by attorneys Brian D. Flick and Andrew Wolf from DannLaw who each have experience in prosecuting complex cases.

Of note, Mr. Dann and the attorneys at DannLaw represented the whistleblower, Michael Pircio, who was sued by FirstEnergy Corp. and Clearsulting LLC for retaliation after Mr. Pircio submitted FirstEnergy financial records to the Securities and Exchange Commission ("SEC") so the SEC could investigate FirstEnergy's wrongdoing. Mr. Pircio worked for Clearsulting, a company that provided outside audit services to FirstEnergy. Mr. Dann successfully obtained a dismissal of the lawsuit against Mr. Pircio under the Defend Trade Secrets Act, which affords Mr. Pircio immunity against civil liability as he submitted the documents to the SEC to report FirstEnergy's violations of federal laws that give rise to this shareholder derivative suit. *See* Order entered March 8, 2021 by Judge Calabrese in *FirstEnergy Corp., et al. v. Michael Pircio*, Case No. 1:20-cv-1966 (N.D. OH) (ECF No. 30).

**C. Thomas A. Zimmerman, Jr.**

Mr. Zimmerman is the founder and owner of Zimmerman Law Offices, P.C. With over 25 years of experience, Mr. Zimmerman practices extensively and has obtained multi-million dollar jury verdicts and settlements in class action, corporate, commercial, consumer fraud, constitutional due process, general civil, product liability, toxic tort, and other complex litigation. He represents both plaintiffs and defendants nationwide in state and federal trial and appellate courts. He also represents individuals and corporations in transactional matters, and before state and federal

administrative and regulatory agencies.

In 2017, 2018, 2019, 2020, 2021, and 2022, Mr. Zimmerman was selected as a *Super Lawyer* in the area of class action and mass torts.

Mr. Zimmerman has been appointed class counsel or on the Plaintiffs' Steering Committee in dozens of national and state-wide class action lawsuits, and has handled other multi-party litigation involving such companies as MCI/Worldcom, United Airlines, Peoples Gas, AT&T, Warner-Lambert, Pfizer, Liberty Mutual Insurance Co., DaimlerChrysler, ADT, Ford Motor Co., Mead Johnson, KCBX, Inland Bank, Commonwealth Edison, Ameritech, Wells Fargo, and Bridgestone/Firestone. Several of these cases involved allegations of corporate misconduct, misleading statements, and fraud, including a \$62 million recovery in *Joseph v. Beiersdorf North America, Inc.*, No. 11 CH 20147 (Cook Cnty, IL), a \$31 million recovery in *In re Chicago Sun-Times Circulation Litigation*, No. 04 CH 9757 (Cook Cnty, IL), a \$14 million recovery in *Bergman, et al. v. DAP Products, Inc., et al.*, No. 14 cv 3205 (D. MD), and an \$11.2 million recovery in *In re Ashley Madison Customer Data Security Breach Litigation*, MDL No. 2669 (E.D. MO).

Judges in the Northern District of Ohio appointed Mr. Zimmerman as class counsel in *Lieber, et al. v. Wells Fargo Bank, N.A.*, N.D. OH Case No. 1:16-cv-02868, *Miller, et al. v. Intelelos, Inc.*, N.D. OH Case No. 1:17-cv-00763, and *Koustis, et al. v. Select Portfolio Servicing*, N.D. OH Case No. 1:20-cv-02425, and to the Plaintiff's Steering Committee in *In re Sonic Corp. Customer Data Sec. Litig.*, N.D. OH Case No. 1:17-MD-2807.

Mr. Zimmerman has also litigated shareholder derivative suits, including a recent settlement in *Dorvit, et al. v. Winemaster, et al.*, No. 17 cv 1097 (N.D. IL), that was affirmed on appeal. The Seventh Circuit Court of Appeals held that the settlement was in the best interest of

the corporation and all its shareholders, and that counsel for the shareholders fairly represented the interests of the shareholders in enforcing the rights of the corporation. 950 F.3d 984 (7th Cir. 2020).

Throughout Mr. Zimmerman's extensive litigation experience, he maintains a focus on professionalism and ethics. In 2003, the Illinois Supreme Court appointed Mr. Zimmerman to the Review Board of the Attorney Registration and Disciplinary Commission ("ARDC"). He served in that capacity until 2011, wherein he presided over appeals by attorneys who have been found to have committed misconduct, and recommended discipline for their ethical violations. In 2013, the ARDC appointed Mr. Zimmerman as Special Counsel, wherein he conducts independent investigations in matters involving allegations of misconduct against attorneys associated with the ARDC. Additionally, the Illinois Governor appointed Mr. Zimmerman to the Illinois Courts Commission in 2003. A Commission member presides over proceedings wherein judges are charged with committing ethical violations, and imposes discipline on judges who are found to have engaged in misconduct. Mr. Zimmerman has served as a Commission member continuously since his appointment. Mr. Zimmerman brings that dedication to professionalism in his interactions with clients, opposing counsel, and the court.

A copy of Zimmerman Law Offices, P.C.'s Firm Bio is attached hereto as **Exhibit 3**. The attached Firm Bio includes a select list of cases in which Mr. Zimmerman obtained class recoveries, and pending class action cases, as well as biographies of other attorneys at the firm. Mr. Zimmerman will be assisted by attorneys Sharon Harris and Matt De Re, who each have extensive experience in prosecuting complex commercial and class action cases.

### **III. CONCLUSION**

For the reasons stated herein, William B. Federman, Marc E. Dann, and Thomas A. Zimmerman, Jr. seek appointment as Plaintiffs' interim co-lead counsel, and for any other relief the Court deems just under the circumstances.

Dated: July 22, 2022

Respectfully submitted,

/s/ Marc E. Dann

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Brian D. Flick (0081605)

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*Proposed Plaintiffs' Interim Co-Lead  
Counsel*

*\*pro hac vice applications forthcoming*

# EXHIBIT 1

# FEDERMAN & SHERWOOD

(An Association of Attorneys and Professional Corporations)

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## FIRM RESUME

**WILLIAM B. FEDERMAN.** Education: Boston University (B.A., cum laude, 1979); University of Tulsa (J.D., 1982); Phi Alpha Delta (Treasurer, 1980-1982). Admitted to practice: United States District Courts for the following Districts: Western, Northern and Eastern, Oklahoma; Eastern and Southern, New York; Southern, Northern, Eastern and Western, Texas; Eastern and Western, Arkansas; District of Columbia; District of Colorado; Northern, Ohio; United States Court of Appeals for the following Circuits: First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh and Federal; and United States Supreme Court. Lectures/Publications: “Class Actions, New Rules and Data Breach Cases,” 40<sup>th</sup> Annual OCBA Winter Seminar 2019; “A Case Study of Ethical Issues in Complex Litigation and Trends in Class Certification,” 39<sup>th</sup> Annual OCBA Winter Seminar, 2018; “Talkin’ About Insurance Coverage and Complex Litigation: What Every Lawyer and Client Should Know,” 38<sup>th</sup> Annual OCBA Winter Seminar, 2017; “Securities Litigation: Using Data to Make the Case,” by Bloomberg BNA, 2016; “The Changing Landscape for Prosecution of Financial Claims Involving Insolvent Companies” 37<sup>th</sup> Annual OCBA Winter Seminar, 2016; “Current Status of Securities Class Actions: Where are the Courts Taking Us?” Houston Bar Association, 2014. “Class & Derivative Actions and Securities Litigation,” 2013 Annual Meeting of the American Bar Association; “Litigation and Employment Law Update,” Securities Industry Association Compliance and Legal Division; “Inside a Disclosure Crisis”, 30<sup>th</sup> Annual Northwest Securities Institute Annual Meeting and sponsored by the Washington Bar Association; “Managing Directors’ Liability,” 3<sup>rd</sup> Annual Energy Industry Directors Conference and sponsored by Rice University; “Executive Liability - 2009 D & O Market Trends,” Chartis Insurance; “Derivative Actions and Protecting the Corporation – Critical Issues in Today’s Banking,” Oklahoma Bar Association and the Oklahoma Bankers Association; “Arbitration - What Is It? Why Should a Lawyer Suggest or Use It?,” Oklahoma Bar Association; “The Attorney and Accountant as Targets in Failed Financial Institution Litigation,” American Bar Association Trial Practice Committee; “Effective Arbitration in the 1990’s - Adapting to Build a Successful Practice,” Oklahoma County Bar Association; “Current Issues in Direct Investments and Limited Partnerships: The Litigation Scene From All Perspectives,” American Bar Association Litigation Section; “Stockbroker Litigation and Arbitration,” Securities Arbitration Institute. Author: “Who’s Minding the Store: The Corporate Attorney-Client Privilege,” 52 O.B.J. 1244, 1981; “Potential Liability From Indirect Remuneration in Private Oil and Gas Offerings,” 11 Sec. Reg. L.J. 135, 1983; “Capitalism and Reality Meet in the Courts. . . Finally,” 59 O.B.J. 3537, 1987; “Class Actions, New Rules & Data Breach Cases,” Annual OCBA Winter Seminar, 2019. Membership: Arbitration Panel, New York Stock Exchange; Federal Bar Association; Oklahoma County Bar Association (Committee on Professionalism, 1987-1990); Oklahoma Bar Association (Civil Procedure/Evidence Code, Lawyers Helping Lawyers Assistance Program and Rules of Professional Conduct Committees, 2017-2020); American Bar Association (Committee on Securities Litigation and Corporate Counsel); American Inns of Court (Barrister 1990-1993 and Master 2002-2004); inducted into the Outstanding Lawyers of America, 2003; received the Martindale-Hubbell peer review rating of AV Preeminent in both ethical standards and legal ability; recognized as one of the “Top Lawyers of 2013” for excellence and achievements in the legal community; Litigation Counsel of America (Trial Lawyer & Appellate Lawyer Honorary Society). Awards/Honors: Securities Litigation and Arbitration Law Firm of the Year in Oklahoma – 2018 (Global Law Experts Annual Awards); Securities Litigation and Arbitration Law Firm of the Year in Oklahoma – 2019, 2020 (Corporate INTL Magazine); Oklahoma Super Lawyers list by Thomson Reuters – 2019; Recognized for Exceptional Service and Outstanding Performance on behalf

of the Federal Bar Association (Oklahoma City Chapter) Pro Bono Program – 2018-2019, 2020, Oklahoma Super Lawyer for 2022.

**STUART W. EMMONS. (In Memoriam)** Education: University of Oklahoma (J.D., 1987, with distinction); University of Oklahoma (B.B.A., Accounting, 1984, with distinction). Admitted to practice: 1987, Oklahoma; 1987, U.S. District Court for the Western District of Oklahoma; 1990, U.S. District Court for the Northern District of Oklahoma; 1992, U.S. Court of Appeals, Tenth Circuit; 1994, U.S. Court of Appeals, Eighth Circuit; U.S. Patent and Trademark Office; 2002, U.S. District Court for the District of Colorado; U.S. District Court for the Southern District of Texas; 2003, U.S. Court of Appeals, Second Circuit; 2004, U.S. District Court for the Northern District of Texas; U.S. Court of Appeals, Fifth Circuit; 2005, United States Supreme Court; 2005 U.S. Court of Appeals, Fourth Circuit; 2015, U.S. Court of Appeals, First Circuit; 2016, U.S. Court of Appeals, Ninth Circuit and U.S. Court of Appeals for the First Circuit. 1988-1989, Law Clerk to the Hon. Layn R. Phillips, U.S. District Court for the Western District of Oklahoma. Published Decisions: *American Fidelity Assurance Company v. The Bank of New York Mellon*, 810 F.3d 1234 (10<sup>th</sup> Cir. 2016); *Paul Spitzberg v. Houston American Energy Corporation, et al.*, 758 F.3d 676 (5<sup>th</sup> Cir. 2014); *Patipan Nakkhumpun v. Daniel J. Taylor, et al.*, 782 F.3d 1142 (10<sup>th</sup> Cir. 2015); Membership: Oklahoma County and Oklahoma Bar Associations.

**SARA E. COLLIER.** Education: Oklahoma Christian University (B.S. 2000); Oklahoma City University School of Law (J.D. 2004). Admitted to practice: 2005, Oklahoma; 2005, U.S. District Courts for the Western, Eastern and Northern Districts of Oklahoma; 2007, U.S. District Court for the Southern District of Texas; and 2007, United States Court of Appeals for Veterans Claims in Washington, DC. Membership: Oklahoma Bar Association, American Bar Association.

**MOLLY E. BRANTLEY.** Education: University of Oklahoma (B.A., 2013); Oklahoma City University School of Law (J.D., 2017; Merit Scholar 2014-2017). Admitted to practice: Oklahoma, 2017; United States District Court for the Northern District of Oklahoma; United States District Court for the Western District of Oklahoma, 2020. Membership: Oklahoma Bar Association; Federal Bar Association.

**D. COLBY ADDISON.** Education: University of Oklahoma (B.S., 2013); University of Oklahoma (J.D., 2016). Admitted to practice: Oklahoma, U.S. District Courts for the Western, Eastern and Northern Districts of Oklahoma, 2016. Membership: Oklahoma Bar Association; Federal Bar Association, Oklahoma Employment Lawyers Association, National Employment Lawyers Association. Mr. Addison is experienced in all aspects of complex litigation and has successfully litigated numerous class actions from inception through discovery and court approved settlement. Prior to joining Federman & Sherwood, Mr. Addison was a co-founder of a firm that specialized in wage and hour collective action and discrimination cases. Mr. Addison has earned the distinction of SuperLawyers for 2019, 2020, and 2021. He has been a featured speaker and lecturer on labor and employment law topics, including as a CLE educator. Mr. Addison has served as Lead or Co-Lead for Plaintiffs in multiple complex litigation cases.

#### **OF COUNSEL:**

**JOHN CHARLES SHERWOOD.** Education: Texas Christian University, (BBA, magna cum laude, 1981); Baylor School of Law (J.D., 1984). Areas of Practice: Litigation. Board Certified: Civil Trial Law, Personal Injury Trial Law, Texas Board of Legal Specialization. Organizations: Texas Trial Lawyers, Association of Trial Lawyers of America, Dallas Trial Lawyers Association, Dallas Bar Association, Former Chairperson of the Solo and Small Firm Section of the Dallas Bar Association (1999), Member of the College of the State Bar of Texas, and founding President of Citizens For a Fair Judiciary (Political



Action Committee). Licenses and Courts of Practice: Member of the State Bar of Texas, National Board of Trial Advocacy, Licensed as a Certified Public Accountant by the Texas State Board of Public Accountancy, admitted to practice before the United States Tax Court, United States District Court, Northern District of Texas, United States Fifth Circuit Court of Appeals, and the United States Supreme Court. Papers Presented: *Other People's Money*, Presented to the Dallas Bar Association, Solo and Small Firm Section; Recognition: "Top Attorneys in Texas, Business Litigation," (2012).

**JOSHUA D. WELLS.** Education: Oklahoma Baptist University (B.A. 2004); Oklahoma City University College of Law (J.D. 2008) (Dean's List, Faculty Honor Roll, OCU American Trial Lawyers Association Moot Court Team, 2008; Staff Member, Law Review, 2006-07; Executive Editor, Law Review, 2007-08). Admitted to practice: 2008, Oklahoma; Federal Bar Association; American Bar Association; U. S. District Court for the Western District of Oklahoma; 2009, U.S. District Court for the Eastern District of Oklahoma; 2011, U.S. District Court for the Northern District of Oklahoma; 2012, U.S. Court of Appeals for the Tenth Circuit; 2016, U.S. Court of Appeals, Fourth Circuit. Member: Oklahoma Bar Association. Publication: *Stuck in the Mire: The Incomprehensible Labor Law*, 34 Okla. City U.L. Rev. 131 (2009). Experience: Research Assistant to J. William Conger, General Counsel and Distinguished Lecturer of Law, Oklahoma City University and President of the Oklahoma Bar Association (2007-08). General Counsel for Reaching Souls International (2013-2016). Mr. Wells has significant experience in complex and class action litigation in various state and federal courts, with more than a decade of experience protecting consumer and shareholder rights. Mr. Wells knows how to efficiently prosecute complex cases to conclusion and practices in areas of estate planning, probate, and guardianships for both children and adults. He is the recipient of the Federal Bar Association Pro Bono Exceptional Service Award (2019) and is a leader in his church.

**A. BROOKE MURPHY.** Education: Oklahoma City University (B.A. summa cum laude, 2005; Robert L. Jones Outstanding Senior Paper Award; Women's Leadership Award); University of Oklahoma College of Law (J.D. 2010, with honors; Dean's List; First Amendment Moot Court Team; Assistant Articles Editor of Oklahoma Law Review). Admitted to practice: Oklahoma, 2010; U.S. District Court for the Western District of Oklahoma, 2010; U.S. District Court for the Northern District of Texas, 2010; Tenth Circuit Court of Appeals, 2014; First Circuit Court of Appeals and Ninth Circuit Court of Appeals, 2016; Second Circuit Court of Appeals, 2021. Published Decisions: *Paul Spitzberg v. Houston American Energy Corporation, et al.*, 758 F.3d 676 (5th Cir. 2014); *Patipan Nakkhumpun v. Daniel J. Taylor, et al.*, 782 F.3d 1142 (10th Cir. 2015); *Angley v. UTi Worldwide Inc.*, 311 F. Supp. 3d 1117 (C.D. Cal. 2018); *Mulderrig v. Amyris, Inc.*, 492 F. Supp. 3d 999 (N.D. Cal. 2020); *McFarlane v. Altice USA, Inc.*, 524 F. Supp. 3d 264 (S.D.N.Y. 2021). Publication: *Credit Rating Immunity? How the Hands-Off Approach Toward Credit Rating Agencies Led to the Subprime Credit Crisis and the Need for Greater Accountability*, 62 Okla. L. Rev. 735 (2010). Membership: Oklahoma Bar Association. Recognition: *Oklahoma Super Lawyers*, "Rising Star," 2020, 2021, 2022.

#### **PARALEGALS:**

**NANCY G. BEATTY.** Mrs. Beatty has over thirty-five years of legal experience. She primarily works on coordinating and administering of class actions and other complex litigation. Ms. Beatty has served on several professional advisory boards in Oklahoma and Tennessee.

**SHARON J. KING.** Ms. King has worked in the legal community for over twenty years, after having worked in the securities and insurance industry for over fifteen years. She primarily works on insurance and civil litigation.

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Page 4

**JANE E. ADAMS.** Mrs. Adams has over 25 years of Administrative and Finance experience focusing her career on Human Resources. Additionally, she has first-hand experience with FEMA response as well as government contractual administration.

**TIFFANY R. PEINTNER.** Mrs. Peintner has worked in the legal community for over ten years. Before joining Federman & Sherwood, Mrs. Peintner worked in patent law, oil and gas, probate, banking and real estate, family law, personal injury and insurance defense. She works in securities and civil litigation for the firm.

**FRANDELIND V. TRAYLOR.** Mrs. Traylor has worked in the legal community for over fifteen years. She provides class action, securities and derivative litigation, and product liability support for the firm.

**LACRISTA A. BAGLEY.** Ms. Bagley has been in the legal field for twenty-one years. Before joining Federman & Sherwood, Ms. Bagley worked primarily in bankruptcy law that focused on Chapter 11's and corporate liquidations, as well as estate planning, family law, civil defense, personal injury and medical malpractice.

## SELECT CASES WHERE FEDERMAN &amp; SHERWOOD HAS SERVED AS LEAD OR CO-LEAD COUNSEL

<b><u>SHAREHOLDER DERIVATIVE CASES</u></b>	<b><u>COURT</u></b>
Abercrombie & Fitch Company	USDC Southern District of Ohio
American Superconductor Corporation	Superior Court, Commonwealth of Massachusetts
Antares Pharma, Inc.	USDC District of New Jersey
Arrowhead Research Corporation	Superior Court, State of California, County of Los Angeles
Carrier Access Corporation	USDC District of Colorado
Catalina Marketing Corporation	Chancery Court of the State of Delaware
Cell Therapeutics, Inc.	USDC Western District of Washington
Computer Associates	USDC Eastern District of New York
Delcath Systems, Inc.	USDC Southern District of New York
Dendreon Corporation	USDC Western District of Washington
Doral Financial Corporation	USDC Southern District of New York
Dynavax Technologies Corporation	Superior Court of the State of California; county of Alameda
First BanCorp.	USDC District of Puerto Rico
Flowers Foods, Inc.	USDC Middle District of Georgia
Genta, Inc.	USDC District of New Jersey
GMX Resources, Inc.	District Court of Oklahoma County, Oklahoma
Great Lakes Dredge & Dock Corporation	Circuit Court of Illinois, Dupage County Chancery Division
Host America Corporation	USDC District of Connecticut
Motricity Inc.	USDC Western District of Washington
NutraCea	Superior Court of Maricopa County, Arizona
Nuverra Environmental Solutions, Inc.	Superior Court of Maricopa County, Arizona
Nyfix, Inc.	USDC District of Connecticut
OCA, Inc.	USDC Eastern District of Louisiana
ONEOK, Inc.	District Court of Tulsa County, Oklahoma
PainCareHoldings, Inc.	USDC Middle District of Florida
Seitel, Inc.	USDC Southern District of Texas
Spectrum Pharmaceuticals, Inc.	USDC District of Nevada
The Spectranetics Corporation	USDC District of Colorado
ValueClick, Inc.	USDC Central District of California
Zix Corporation	USDC Northern District of Texas
<b><u>SECURITIES CLASS ACTIONS</u></b>	
Amyris, Inc.	USDC, Northern District of California
Bellicum Pharmaceuticals, Inc.	USDC Southern District of Texas
Broadwind Energy, Inc.	USDC Northern District of Illinois
China Valves Technology, Inc.	USDC Southern District of New York
Cryo-Cell International, Inc.	USDC Middle District of Florida
Delta Petroleum, Inc.	USDC District of Colorado
Direxion Shares ETF Trust	USDC Southern District of New York
Ener1, Inc.	USDC Southern District of New York
Exide Technologies	USDC Central District of California
Galena Biopharma, Inc.	USDC, District of New Jersey
Houston American Energy Corp.	USDC Southern District of Texas
Image Innovations Holdings, Inc.	USDC Southern District of New York
IZEA, Inc.	USDC Central District of California
Motive, Inc.	USDC Western District of Texas
Quest Energy Partners LP	USDC Western District of Oklahoma
Secure Computing Corporation	USDC Northern District of California
Superconductor Technologies, Inc.	USDC Central District of California
UTi Worldwide, Inc.	USDC Central District of California
Unistar Financial Service Corp.	USDC Northern District of Texas
<b><u>MDL PROCEEDINGS</u></b>	
In re: Anthem, Inc. (Data Breach–Participating Counsel)	USDC, Northern District of California
In re: Equifax, Inc. (Data Breach–Participating Counsel)	USDC Northern District of Georgia
In re: Farmers Insurance Co.	USDC Western District of Oklahoma
In re: Home Depot, Inc. (Executive Committee)	USDC Northern District of Georgia
In re: Mednax Services Inc. (Data Breach – Co-Lead Counsel)	USDC Southern District of Florida
In re: Premera Blue Cross (Data Breach–Participating Counsel)	USC, District of Oregon
In re: Samsung Electronics America, Inc.	USDC Western District of Oklahoma
In re: Sonic Corp.	USDC Northern District of Ohio
<b><u>DEAL CASES (MERGERS)</u></b>	
Easylink Services International Corp.	Superior Court of Gwinnett County, Georgia
Genon Energy, Inc.	Chancery Court of the State of Delaware
Lawson Software, Inc.	Chancery Court of the State of Delaware
Network Engines, Inc.	Chancery Court of the State of Delaware
Paetec Holding Corp. Shareholder Litig.	Chancery Court of the State of Delaware
Williams Pipeline Partners, L.P.	District Court of Tulsa County, Oklahoma
Xeta Technologies, Inc.	District Court of Tulsa County, Oklahoma
<b><u>ERISA LITIGATION</u></b>	
Winn-Dixie Stores	USDC Middle District of Florida

<b>CONSUMER CLASS ACTIONS</b>	
Altice USA, Inc. (Data Breach)	USDC Southern District of New York
Artech, LLC (Data Breach)	USDC Northern District of California
Brinker International, Inc. (Chili's) (Data Breach)	USDC Middle District of Florida
Burgerville, LLC (Data Breach)	Circuit Court, State of Oregon, Multnomah County
CentralSquare Technologies, LLC (Data Breach)	USDC Southern District of Florida
Dakota Growers Pasta Company, Inc. (Food Mislabeling)	USDC District of Minnesota/District of New Jersey
Filters Fast, LLC (Data Breach)	USDC Western District of Wisconsin
Hy-Vee, Inc. (Data Breach)	USDC Central District of Illinois
LeafFilterNorth, LLC/LeafFilter North of Texas, LLC (Data Breach)	USDC Western District of Texas
Lime Crime, Inc. (Data Breach)	USDC Central District of California
Mednax Services, Inc. (Data Breach)	USDC Southern District of Florida
Solara Medical Supplies, LLC (Data Breach)	USDC Southern District of California
Wichita State University (Data Breach)	USDC District of Kansas
Smile Brands (Data Breach)	USDC Central District of California

# EXHIBIT 2

## **DannLaw**

Since 2008, DannLaw has represented individuals and businesses in a wide array of legal matters. The attorneys of DannLaw are established and respected trial lawyers who represent clients in simple litigation, complex litigation, appellate litigation, and class action lawsuits. DannLaw has recovered millions of dollars on behalf of thousands of individuals and businesses across the country including the states of Ohio, Illinois, Oregon, Florida, Kentucky, New Jersey and Tennessee.

### **Marc E. Dann**

Marc Dann is the Managing Partner of DannLaw. He is also a Partner of Advocate Attorneys LLP in Washington DC. These practices focus on representing clients who have been harmed by banks, debt buyers, debt collectors and other financial predators and providing access legal services for traditionally underserved working class and middle class Americans. Dann has fought for the rights of tens of thousands of consumers and brought class actions lawsuits on behalf of clients in both private practice and as Ohio's Attorney General.

As Ohio Attorney General, Marc Dann initiated securities fraud claims against the creators of mortgage- backed securities on behalf of Ohio's public pension funds. He assembled Ohio's Organized Crime Commission to mobilize Mortgage Fraud Task Forces in Ohio's major cities to prosecute those engaged in mortgage fraud and predatory lending, Dann's office challenged the standing of mortgage servicers to foreclose in cases where the State of Ohio was a party. Dann also worked with former Ohio Supreme Court Chief Justice Thomas Moyer to organize over 1,200 volunteer lawyers to represent homeowners in foreclosure.

After leaving the Attorney General's Office, Marc Dann began representing Ohio homeowners facing foreclosure pro bono. During this time, he recognized that the issues faced by individual homeowners represented patterns of practice throughout the mortgage servicing industry. In response, he mobilized a team and created DannLaw in order to fight for the rights of Ohioans.

Since DannLaw was founded, it has grown to represent clients facing a range of consumers' rights issues including in class action. While mortgage servicing litigation practice the foundation of DannLaw, Marc Dann has developed a comprehensive collection of tools designed to help clients stay in their homes including prosecuting more than 25 Class Action cases. . He is a recognized national leader in the use of federal mortgage servicing regulations to hold servicers accountable for their actions.

Utilizing these tools has led Marc Dann to host seminars explaining these techniques to other attorneys. These working groups help to elevate the defense of clients across the nation while

allowing attorneys to recognize patterns of practice that affect all citizens.

This collaborative spirit also applies to the communities of which DannLaw is a part. Marc Dann serves on the Lakewood Ohio Tree Advisory Committee. Marc Dann and DannLaw also support the Cleveland International Film Festival each year.

Dann prioritizes professional organizations as well as being a member of the American Bar Association, the Federal Bar Association, the Cleveland Metropolitan Bar Association, the National Association of Consumer Advocates and the National Association of Consumer Bankruptcy Attorneys. He is a member of the Society of Attorneys General Emeritus and the Democratic Attorneys General Association.

Marc Dann is a regular contributor to *Attorney at Law Magazine* and the *Cleveland Metropolitan Bar Association Magazine*. His work has also been featured in *NACBA's Consumer Bankruptcy Journal* and *Legal Ink Magazine* and *Working Class Perspectives compiled by Georgetown University*.

Dann is currently acting as appointed lead counsel in two pending matters - *Madyda v. Ohio Department of Public Safety*, Ohio Court of Claims Case No. 2019-00426JD and *Miles Black, et al. v. City of Girard, Ohio, et al.*, Trumbull County Court of Common Pleas Case No. 2018 CV 1256. Dann is currently serving as Liaison Counsel in *Migliaccio, et al. v. Parker-Hannifin Corporation*, NDOH Case No. 1:22-cv-00835 as well as Liaison Counsel for the Guardians of NAS Children in *In re: National Prescription Opiate Litigation*, NDOH 17-md-02804. Dann has previously been appointed and served as lead (or co-lead) counsel in other matters including *Lieber, et al. v. Wells Fargo Bank, N.A.*, NDOH Case No. 1:16-cv-02868, *Miller, et al. v. Intelelos, Inc.*, NDOH Case No. 1:17-cv-00763, *George Koustis, et al. v. Select Portfolio Servicing*, NDOH Case No. 1:20-cv-02425 and *Ethan Ryder, et al v. Wells Fargo Bank, N.A.*, SDOH Case No. 1:2019-cv-00638. Dann is acting as putative co-counsel in other matters listed in the pending cases summary below.

Dann is admitted to practice in Ohio, the District of Columbia, the United States Court of Appeals for the Sixth Circuit, the United States Court of Appeals for the Seventh Circuit the United States Court of Appeals for the Ninth Circuit, United States District Court for the Southern District of Ohio, United States District Court for the Northern District of Ohio, United States District Court for the Northern District of Illinois, The Northern District of Indiana, The Western District of Tennessee, the United States District Court for the Western District of New York and the United States District Court for the Northern District of New York. He has pro hac vice admission in Cook County, Illinois, Washoe County Nevada, United States District Court for the Southern District of Florida, United States District Court for the Middle District of Florida, United States District Court for the Northern District of Georgia, United States District



Court in Nevada, United States District Court for the Western District of New York, United States District Court for the Southern District of New York, United States District Court for the Eastern District of New York, United States District Court for the District of New Jersey, United States District Court for the Eastern District of Pennsylvania, United States District Court for the Western District of Washington, the United States District Court for the Western District of North Carolina, and the United States District Court for the Central District of California

A native of Cleveland, Ohio, Marc Dann is a 1984 graduate of the University of Michigan, where he earned a bachelor's degree in history. He graduated from the Case Western Reserve University School of Law in 1987.

### **Andrew Wolf (Of Counsel)**

Since opening his law practice in September 1997, Andrew Wolf, who joined DannLaw in October 2021, has become one of the most prominent, prolific, and respected consumer protection attorneys and Class Action in the United States.

Along with resolving hundreds of cases on behalf of individuals, Mr. Wolf has been certified as Class Counsel in 138 action case involving New Jersey's Consumer Fraud and Truth-in-Consumer Contract Warranty and Notice Acts, the federal Fair Debt Collection Practices Act, and other statutes. In addition to aggressively and successfully representing his clients, Andrew has generously shared his knowledge, expertise, and experience with the legal community. He taught consumer protection law to New Jersey's legal services attorneys in 2002, 2003, and from 2007 to 2013, was a featured panelist at the 2003 New Jersey State Bar Convention, the 2004 Consumer Law Day, and the 2005 New Jersey Judicial College. He has provided continuing legal instruction in the areas of consumer and class action law, served as a panelist on programs conducted by Rutgers Law School's Eric R. Neisser Public Interest Program, and was an adjunct professor at his alma mater, Rutgers University School of Law at Newark from 2013-2016 and 2018-2019.

Mr. Wolf has earned numerous honors and awards for his work on behalf of consumers. He has been designated as a SuperLawyer annually since 2014, received the Debevoise-Eakeley Award from New Jersey Legal Services in 2010 in recognition of his unparalleled support for the organization, and was the recipient of the 2018 Robert J. Cirafesi Chancery Practice Award from the Middlesex County Bar Association.

Mr. Wolf earned a bachelor's degree at Queens College (CUNY) in 1980, a Masters in Business Administration from St. John's University in 1987, and his Juris Doctorate at Rutgers University School of Law in 1995. He was admitted to practice in the state of New Jersey in 1995, the Federal District Court of New Jersey in 1996, the Third Circuit Court of Appeals in 1999, and

the United States Supreme Court in 2010.

He is a member of the National Association of Consumer Advocates (NACA), a Board Member of the Consumers League of New Jersey, the New Jersey State Bar Association, the Middlesex County Bar Association, and was appointed by the New Jersey Supreme Court to serve on the Special Civil Part Practice Committee for five terms.

He is also heavily involved in alternative dispute resolution as both a mediator and arbitrator. He is approved as a Mediator by the State of New Jersey, Department of Law and Public Safety, the State of New Jersey Judiciary, and as a Trainer in Mediation and Conciliation Skills for New Jersey's Administrative Office of the Courts.

### **Brian D. Flick**

Mr. Flick advocates for plaintiffs and defendants nationwide in state and federal trial and appellate courts. His practice areas include Consumer Bankruptcy debtor representation in the areas of Chapter 7, 12, and 13, consumer fraud, real estate litigation, foreclosure defense, student loan debt defense, Bankruptcy Litigation, and Mortgage Servicing Litigation under the Real Estate Settlement Procedures Act and the Truth in Lending Act.

He has experience in all phases of litigation including extensive discovery, substantive motion practice, trial practice, and appellate practice. Mr. Flick has worked vigorously for over 14 years to protect the rights of consumers and to pursue recovery for plaintiffs and defendants in numerous civil matters including class actions.

Mr. Flick graduated from Adrian College with a B.A. In Political Science. He earned his law degree from the Ohio Northern University Pettit College of Law. While in law school, he received several academic awards and appeared on the Dean's List multiple times.

Since beginning the practice of law, he has been very active in local and national attorney associations. He is active with the Cincinnati Bar Association's Bankruptcy Committee. Brian also sits on the Volunteer Lawyers Committee for the Cincinnati Bar Association. He is the current Sixth Circuit Listserv Moderator for the National Association of Consumer Bankruptcy Attorneys, a position he has held since May 2017. He is the current Ohio State Chair for the National Association of Consumer Advocates, a position he has held since May 2017. He was also appointed by the Board of Trustees as a member of the Unauthorized Practice of Law Committee of the Cincinnati Bar Association, a position he has held since June 2017. Mr. Flick has been a frequent speaker at Cincinnati Bar Association, NACBA, and NACA events since 2014 as well as assisting with DannLaw's Regulation X and Z Seminars that have taken place

since 2016.

Mr. Flick is currently co-lead counsel on *In re: Southern Ohio Health Systems Data Breach*, Hamilton County Court of Common Pleas Case No. A 2101886. Mr. Flick is also working a putative co-lead counsel on several other pending matters including *Lajuan Fleetwood v. NewRez LLC*, Hamilton County Court of Common Pleas Case No. A2201533, *Patrick D. Trivison, et al. v. Federal National Mortgage Association, et al.*, NDOH 1:20-cv-00711, *Jackson, et al. v. Velocity Investments, LLC*, EDPA Case No. 20-cv-02524, and *Crews, et al. v. Titlemax of Delaware, et al.*, MDPA 1:22-cv-168. Mr. Flick was appointed co-lead counsel on *Ethan Ryder, et al v. Wells Fargo Bank, N.A.*, SDOH Case No. 1:2019-cv-00638 and worked as associate on multiple class actions that DannLaw has handled including *Ifeoma Ebo, et al. v. Wells Fargo Bank, et al.*, NDCA Case No. 3:22-cv-02535, *Lieber, et al. v. Wells Fargo Bank, N.A.*, NDOH Case No. 1:16-cv-02868, *Madyda v. Ohio Department of Public Safety*, Ohio Court of Claims Case No. 2019-00426JD and *Miles Black, et al. v. City of Girard, Ohio, et al.*, Trumbull County Court of Common Pleas Case No. 2018 CV 1256. Mr. Flick was appointed to the Interim Executive Committee in *Angus, et al. v. Flagstar Bank, FSB*, EDM Case No. 2:21-cv-1067.

Mr. Flick is admitted to the practice of law in the State of Ohio, State of Kentucky and the Federal District Courts and Bankruptcy Courts in the following jurisdictions: Southern District of Ohio; Northern District of Ohio; District of Colorado; Northern District of Illinois; Northern District of Indiana; Southern District of Indiana; Eastern District of Kentucky; Western District of Kentucky; Eastern District of Tennessee; Western District of Tennessee; Eastern District of Michigan and the Western District of Michigan. He has also been admitted *pro hac vice* in civil litigation in the following United States District Courts for either resolved or pending matters: District of Oregon, District of Nevada, Western District of North Carolina, Southern District of New York, Eastern District of Pennsylvania, Central District of California, Middle District of Florida and Southern District of Florida. He is also admitted in the United States Court of Appeals for the Sixth Circuit.

### **Javier Merino**

Attorney Javier Merino is the managing partner of the New Jersey and New York offices of DannLaw. Mr. Merino advocates for plaintiffs and defendants nationwide in state and federal trial and appellate courts. His practice areas include Consumer Bankruptcy debtor representation in the areas of Chapter 7 and 13, consumer fraud, real estate litigation, foreclosure defense, Bankruptcy Litigation, and Mortgage Servicing Litigation under the Real Estate Settlement Procedures Act and the Truth in Lending Act.

He has experience in all phases of litigation including extensive discovery, substantive motion

practice, trial practice, and appellate practice. A licensed attorney since 2013, Mr. Merino has worked vigorously for almost nine (9) years to protect the rights of consumers and to pursue recovery for plaintiffs and defendants in numerous civil matters including class actions.

Mr. Merino graduated from Rutgers University with a B.A. In Economics in 2010. He earned his law degree from St. John's University School of Law in 2013. While in law school, he received several academic awards and appeared on the Dean's List.

Since beginning the practice of law, he has been very active in local and national attorney associations. He is active with the National Association of Consumer Advocates and the National Association of Consumer Bankruptcy Attorneys. Mr. Merino has been a frequent speaker at New Jersey State Bar Association, NACBA, and NACA events since 2017 as well as assisting with DannLaw's Regulation X and Z Seminars that have taken place since 2016. Mr. Merino most recently litigated a successful reversal of summary judgment at the United States Court of Appeals for the Second Circuit in the matter of *Kim Naimoli v. Ocwen Loan Servicing, LLC*, CA2 case number 2020-01683, a case of first impression at the Circuit Level on Regulation X of the Real Estate Settlement Procedures Act.

Mr. Merino is admitted to the practice of law in the State of New Jersey, State of New York and the Federal District Courts and Bankruptcy Courts in the following jurisdictions: District of New Jersey; Southern District of New York; Eastern District of New York; Northern District of New York; and the Western District of New York. He has also been admitted in the United States Court of Appeals for the Second Circuit and the United States Court of Appeals for the Third Circuit.

#### **Michael A. Smith, Jr.**

Michael Smith is a graduate of the Ohio State University and the University of Georgia School of Law. Mr. Smith is admitted to practice in the State of Ohio, State of New Jersey, United States District Court for the Northern and Southern Districts of Ohio, and United States District Court for the District of New Jersey.

Mr. Smith represents consumers in class actions involving unfair and deceptive trade practices, privacy violations, antitrust matters, and defective products. Smith has been active in federal litigation, including class action litigation in the state and federal courts of Ohio and New Jersey.

Mr. Smith has worked as associate counsel in many class actions the firm has handled including *Lieber, et al. v. Wells Fargo Bank, N.A.*, NDOH Case No. 1:16-cv-02868, *Koustis, et al. v. Select Portfolio Servicing, Inc.*, NDOH Case No. 1:20-cv-02425-DAP, *In re: Sonic Corp. Customer*

*Data Security Breach*, NDOH Case No. 17-md-2807, *In re: National Prescription Opiate Litigation*, NDOH Case No. 17-md-02804, *Madyda v. Ohio Department of Public Safety*, Ohio Court of Claims Case No. 2019-00426JD, and *Miles Black, et al. v. City of Girard, Ohio, et al.*, Trumbull County Court of Common Pleas Case No. 2018 CV 125.

### **Emily White**

After spending nearly a decade as a public interest attorney, Emily White joined DannLaw. She is the Managing Partner of the firm's Columbus, Ohio office where she practices student loan debt, disability rights, Class Action and consumer law.

Emily received her law degree from the City University of New York School of Law, where she served on the editorial board of the New York City Law Review. Following law school, she served for two years as a judicial law clerk to the Honorable Sylvia H. Rambo, U.S. District Court Judge for the Middle District of Pennsylvania.

In 2009 she joined the Legal Aid Society of Cleveland, where she represented low-income consumers during the historic recession and foreclosure crisis. While at Legal Aid she authored a chapter of Ohio Consumer Law focused on student loans and helped student loan borrowers resolve defaults and apply for student loan discharges.

In 2013 she joined Disability Rights Ohio as a staff attorney. In that role Emily represented individuals with disabilities in employment and higher education matters and offered advice about issues related to student loans and vocational rehabilitation services.

Emily received an undergraduate degree in Philosophy from the University of Illinois at Urbana-Champaign. Before attending law school she served as an AmeriCorps volunteer with Habitat for Humanity NYC.

### **Dan Solar**

Attorney Dan Solar has brought consumer cases against loan modification mills and financial institutions, won motions to vacate older foreclosure judgments on behalf of DannLaw clients, and unearthed significant evidence of fraud and robo-signing via the legal discovery process.

A licensed attorney since 2009, Dan earned a B.A. in Political Science from Denison University in 2006 and a J.D. from the University of Akron School of Law in 2009. He served an internship at the Cuyahoga County Public Defender's Office and during his years in law school worked as a law clerk for a firm in Akron, Ohio where he focused on a variety of tort matters and insurance

litigation.

In addition to his extensive legal training, Attorney Solar's experience in the origination of mortgage loans gives him a specialized, in-depth and invaluable knowledge of every facet of the mortgage lending process.

Attorney Solar is admitted to practice in the State of Ohio, the United States District Courts for the Northern and Southern Districts of Ohio, and the Eleventh Circuit Court of Appeals.

## **REPRESENTATIVE CLASS ACTIONS CASES**

### **Completed Cases:**

*Ryder et al v. Wells Fargo* United States District Court for the Southern District of Ohio Case No. 19-cv-00638. \$ 12 Million recovery for borrowers who were denied loan modifications as a result of a data breach.

*Koustis, et al. v. Select Portfolio Servicing, Inc.*, 1:20-cv-02425-DAP NDOH (Final Approval Order and Judgment entered 12/08/2021) - \$184,000.00 recovery for a nationwide class of borrowers whose lender failed to properly respond to qualified written requests, requests for information, and/or notices of error because of an improper active litigation, active mediation, or active bankruptcy exception.

*In re Sonic Corp. Customer Data Security Breach*, 1:17-md-2807 NDOH (Order granting Plaintiffs' Unanimous and Unopposed Motion to Appoint Attorney William B. Federman as Interim Lead Counsel, Attorney Marc Dann as Interim Liaison Counsel, and Attorneys Thomas A. Zimmerman, Jr., Michael R. Fuller, Melissa R. Emert and Miles Clark as Plaintiffs' Steering Committee signed 01/03/2018) - Class action for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by a retailer.

*Miller et al. v. Inteleos, Inc.*, Case No. 1:17-cv-00763-DAP NDOH - \$570,000 recovery for a nationwide class of sonographers who took and passed a certification examination but the testing agency improperly scored their results and falsely reported that they failed the examination.

*Lieber v. Wells Fargo Bank, N.A.*, Case No. 1:16-cv-02868-PAG NDOH - \$425,000 recovery for a nationwide class of borrowers whose lender failed to properly respond to qualified written requests, requests for information, and/or notices of error because of an improper active litigation, active mediation, or active bankruptcy exception.

*Clark, et al. v. Lender Processing Services, Inc, et al.*, Case No. 2:12-cv-02187 NDOH

*Hlavasa, et al. v. Bank of America, et al.*, Case No. 2:2011-cv-00530 NDOH

*Turner, et al. v. Lerner, Sampson & Rothfuss*, Case No. 1:11-cv-00056 NDOH

Andrew R. Wolf, of Counsel to DannLaw has been certified as class counsel individually in the following cases as of January 2022:

1. Mathis v. Hillside Auto Mall, Inc., et al.  
Docket No. UNN-L-5674-01 (Superior Court of New Jersey, Union County)
2. United Consumer Financial Services Co. v. Carbo  
Docket No. HUD-L-3438-02 (Superior Court of New Jersey, Hudson County)
3. Wilson v. Burt, et al.  
Docket No. MER-L-1947-03 (Superior Court of New Jersey, Mercer County)
4. Wilson v. AutoNation, et al.  
Docket No. MID- L-1319-04 (Superior Court of New Jersey, Middlesex County)
5. Galatis v. Psak, Graziano, Piasecki & Whitelaw, et al.  
Docket No. MID-L-5900-04 (Superior Court of New Jersey, Middlesex County)
6. Moreno v. Lawrence Lincoln-Mercury, Inc.  
Docket No. MID-L-2869-02 (Superior Court of New Jersey, Middlesex County)
7. Muller-Moreno, et. al. v. Malouf, et. al.  
Docket No. MID-L-4464-02 (Superior Court of New Jersey, Middlesex County)
8. Romano and Smerling v. Dayton Auto Center, et al.  
Docket No. MID-L-5176-02 (Superior Court of New Jersey, Middlesex County)
9. Losgar v. Freehold Chevrolet, Inc.  
Docket No. MON-L-3145-02 (Superior Court of New Jersey, Monmouth County)
10. Davis v. Liccardi, et al.  
Docket No. UNN-L-001546-03 (Superior Court of New Jersey, Union County)
11. Wenger, John v. East Brunswick Buick Pontiac GMC etc.  
Docket No. MID-L-5617-03 (Superior Court of New Jersey, Middlesex County)
12. Arteaga v. Moda Furniture, et al.  
Docket No. MRS-L000980-05 (Superior Court of New Jersey, Morris County)
13. Barrood v. IBM  
Docket No. MER-L-0843-98 (Superior Court of New Jersey, Mercer County)
14. Robilotti v. Garden Irrigation et al.



Docket No. MON-L-002147-03 (Superior Court of New Jersey, Monmouth County)

15. Valley National Bank v. Jeffery Cahn

Docket No. MER-L-0504-04 (Superior Court of New Jersey, Mercer County)

16. Grandberry and Deloatch v. Pressler & Pressler

Docket No. MID-L-001356-06 (Superior Court of New Jersey, Middlesex County)

17. Hudson United Bank v. Wendy D. Chase

Docket No. HNT-L-37-04 (Superior Court of New Jersey, Hunterdon County)

18. DeBenedetto vs. Del Monte Corporation, et al.

Docket No. MID-L-003163-06 (Superior Court of New Jersey, Middlesex County)

19. Nthenge, et al. v. Pessler and Pressler, et al.

Docket No. MID-L-001363-06 (Superior Court of New Jersey, Middlesex County)

20. Estep v. Smythe Volvo, Inc., et al.

Docket No. UNN- L-004184-03 (Superior Court of New Jersey, Union County)

21. Miller, Jennifer, et al v. CVS Corporation

Docket No. MID-L-003855-06 (Superior Court of New Jersey, Middlesex County)

22. Fisher, Samuel v. Walgreen Co. et al.

Docket No. MID-L-004090-06 (Superior Court of New Jersey, Middlesex County)

23. Picket v. Triad, et al.

Docket No. MID- L-007727-05 (Superior Court of New Jersey, Middlesex County)

24. Clemons & Jordan vs. Donna Thompson, Esq.

Docket No. MON-L-001980-07 (Superior Court of New Jersey, Monmouth County)

25. Fisher v. Hallmark Marketing Corporation et al.

Docket No. MID-L-6465-06 (Superior Court of New Jersey, Middlesex County)

26. Wells v. DTD Enterprises, Inc.

Docket No. MID-L-9012-07 (Superior Court of New Jersey, Middlesex County)

27. Bessie Brown v. Hayt, Hayt & Landau, LLC

Docket No. ESX-L-7042-07 (Superior Court of New Jersey, Essex County)

28. Miller v. Weltman, Weinberg & Reis, Co., L.P.A.

Docket No. MID-L-6248-07 (Superior Court of New Jersey, Middlesex County)

29. Santos & Velez v. Samuel Silver, Esq. et al

Docket No. MID-L-08188-07 (Superior Court of New Jersey, Middlesex County)

30. Cruz, Romeo R. v. Condor Capital Corp.  
Docket No. MID-L-2108-06 (Superior Court of New Jersey, Middlesex County)
31. Walker, Michael v. Hill Wallack LLP  
Docket No. MID-L-003480-08 (Superior Court of New Jersey, Middlesex County)
32. Portfolio Recovery Associates, LLC v. Patricia M. Barnes, et al  
Docket No. MID-L-009791-06 (Superior Court of New Jersey, Middlesex County)
33. Debra Smerling & Sheila Smerling v. Harrah's Entertainment Inc.  
Docket No. MID-L-008733-04 (Superior Court of New Jersey, Middlesex County)
34. Moore, William v. NCO Financial Systems Inc. consolidated with  
Meekins, Elizabeth v. NCO Financial Systems Inc.  
Case # 2:08-CV-01936-JAG-MCA (Federal District Court of New Jersey)
35. Wenger, Christopher & Jennifer. vs. Cardo Windows, Inc. et al  
Docket No.: MID-L-4924-07 (Superior Court of New Jersey, Middlesex County)
36. The Provident Bank v. Patricia Deprospo  
Docket No.: UNN-L-1393-09 (Superior Court of New Jersey, Union County)
37. Parkin, Nicole v. Bank of America, N.A.  
Docket No. MID-L-8170-07 (Superior Court of New Jersey, Middlesex County)
38. Mohrle, Dawn v. Timco, Inc. d/b/a Planet Honda  
Docket No. UNN-L- 000953-08 (Superior Court of New Jersey, Union County)
39. Quinonnes-Malone, Carmen v. Pellegrino & Feldstein, L.L.C., et al  
Case # 2:08-cv-03295-JAG-MCA (Federal District Court of New Jersey)
40. Kho, Ernesto vs. Nationwide Home Relief, LLC  
Docket No. MID-L-4245-09(Superior Court of New Jersey, Middlesex County)
41. Peabody, Gail v. Legal Loan Modifications, Inc., et al  
Docket No. MID-L-6981-09 (Superior Court of New Jersey, Middlesex County)
42. Coleman, Lori and Henry, Jahod v. Edison Auto Sales, Inc. et al  
Docket No. MID-L-8168-09 (Superior Court of New Jersey, Middlesex County)
43. Wenger, Christopher vs. Freehold Subaru, LLC et al.  
Docket No. MON-L-4003-10 (Superior Court of New Jersey, Monmouth County)

44. Richardson vs. Allied Interstate, Inc., et al.  
Case No. 09-2265-MLC-DEA (Federal District Court of New Jersey)
45. Kim Robinson and Jacob Robinson v. Donna L. Thompson  
Case No. 3:10-cv-04143-JAP-TJB (Federal District Court of New Jersey)
46. Mark Epstein & Mira Epstein v. Sears Roebuck & Co., Inc.  
Docket No. UNN-L-1732-09 (Superior Court of New Jersey, Union County)
47. Elaine Drake v. Wells Fargo Bank, N.A.  
Docket No. MID-L-4177-09 (Superior Court of New Jersey, Middlesex County)
48. Dipopolo & Kawajian v. Ramsey Nissan, Inc.  
Docket No. BER-L-10319-09 (Superior Court of New Jersey, Bergen County)
49. John Tortora v. Guardian Protective Services, et al.  
Docket No. MID-L-1041-10 (Superior Court of New Jersey, Middlesex County)
50. Te, Montesclaro, & Te v. Thrift Investment Corporation, et al.  
Docket No. MID-L-2061-10 (Superior Court of New Jersey, Middlesex County)
51. Berger, Garrett and Kelter, Bonny vs. PCUSA Corporation  
Docket No. MID-L-3211-11 (Superior Court of New Jersey, Middlesex County)
52. Pollitt vs. DRS Towing, LLC  
Case No. 3:10-cv-01285 (Federal District Court of New Jersey)
53. Sheikh/Sheikh vs. Maxon Hyundai, et al  
Docket No. UNN- L-000476-09 (Superior Court of New Jersey, Union County)
54. Bosland, Rhonda v. Warnock Dodge, Inc. et al  
Docket No. MRS- L-844-06 (Superior Court of New Jersey, Morris County)
55. Martell, Rhonda v. Warnock Dodge, Inc. et al  
Docket No. MRS- L-1085-09 (Superior Court of New Jersey, Morris County)
56. Alper, Todd v. Warnock Motor Sales, Inc. d/b/a/ Warnock Ford, et al  
Docket No. MRS- L-1640-10 (Superior Court of New Jersey, Morris County)
57. Richard R. Froumy and Victoria M. Carr v. Stark & Stark, et al  
Case No. 3:09-CV-4890-LHG (Federal District Court of New Jersey)
58. Pollitt v. Wachovia Dealer Services, Inc., et al  
Case No. 3:10-cv-01285-DEA (Federal District Court of New Jersey)

59. Chulsky v. Hudson Law Offices, P.C., et al  
Case No. 3:10-CV-03058-LHG (Federal District Court of New Jersey)
60. Williams v. The CBE Group, et al  
Case No. 2:11-cv-3680-PS (Federal District Court of New Jersey)
61. Petersen, Daniel vs. Central Jersey Pool & Supply Co., Inc., et al.  
Docket No. MON-L-4044-11 (Superior Court of New Jersey, Monmouth County)
62. Eisenberger, Ruth vs. Boston Service Co., Inc. d/b/a Hann Financial Svc. Corp.  
Docket No. MID-L-10366-09 (Superior Court of New Jersey, Middlesex County)
63. Lileikyte, Asta vs. Bergen Auto Eenterprises, LLC d/b/a Wayne Mazda  
Docket No. MID-L-6222-10 (Superior Court of New Jersey, Middlesex County)
64. Lippert, Tammy vs. Edison Motor Cars, Inc. d/b/a Brad Benson Mitsubishi/Hyundai  
Docket No. MID-L-6599-10 (Superior Court of New Jersey, Middlesex County)
65. Diop, Aissatou vs. I.C. Systems, Inc.  
Docket No. MID-L-1062-11 (Superior Court of New Jersey, Middlesex County)
66. Bush, Tanya vs. Renovo Services, LLC, et als.  
Docket No. MID-L-5132-10 (Superior Court of New Jersey, Middlesex County)
67. Avalishvili, Zhanetta vs. Reussille Law Firm, LLC, et al  
Case No. 3:12-cv-02772-TJB (Federal District Court of New Jersey)
68. Martina, Sophia vs. LA Fitness International, LLC  
Case No. 2:12-cv-02063-WHW (Federal District Court of New Jersey)
69. Korow, Margaret vs. Aaron's, Inc., et al.  
Case No. 3:10-cv-6317-MAS (Federal District Court of New Jersey)
70. Hernandez, Rodolfo vs. Enhanced Recovery Company, LLC, et al.  
Docket No. MID-L-2640-12 (Superior Court of New Jersey, Middlesex County)
71. Walker, Michael vs. Cutolo Law Firm, LLC, et al.  
Docket No. MID-L-7498-11 (Superior Court of New Jersey, Middlesex County)
72. Mukoma, Stephen vs. Fleet Lease Network, Inc.  
Docket No. HUD-L-2707-12 (Superior Court of New Jersey, Hudson County)
73. Wenger, Christopher D. vs. South Brunswick Furniture, Inc., etc., et al  
Docket No. MID-L-000479-12 (Superior Court of New Jersey, Middlesex County)

74. Katz, et al. vs. Live Nation, Inc., et al.  
Case No. 09-cv-03740-DEA (Federal District Court of New Jersey)
75. Blaine, Joanne vs. Pressler & Pressler, LLP  
Docket No. MID-L-583-11 (Superior Court of New Jersey, Middlesex County)
76. Davis, Ollie vs. First Financial Federal Credit Union, et al.  
Docket No. MON-L-4493-11 (Superior Court of New Jersey, Monmouth County)
77. Khweye, Uz C./Rivera, Pura vs. Leaders Financial Company, et al.  
Docket No. ESX-L-5584-10 (Superior Court of New Jersey, Essex County)
78. Khweye, Uz C. vs. Mullooly, Jeffrey, Rooney & Flynn, LLP  
Docket No. ESX-L-5585-10 (Superior Court of New Jersey, Essex County)
79. Gordon, Ella and Martha vs. Feinstein, Raiss, Kelin & Booker, LLC  
Case No. 3:13-cv-00089-MAS (Federal District Court of New Jersey)
80. Robinson, Shaquanna vs. J & C Auto Outlet, LLC  
Docket No. MID-L-1961-13 (Superior Court of New Jersey, Middlesex County)
81. Allen, Stacy vs. National Auto Outlet  
Docket No. MID-L-004905-13 (Superior Court of New Jersey, Middlesex County)
82. Willis, Laura vs. Galleria Route One Corporation, et al.  
Docket No. MID-L-001315-12 (Superior Court of New Jersey, Middlesex County)
83. Fonville, Shanique vs. Clover Commercial Corporation, et al.  
Docket No. UNN-L-000563-13 (Superior Court of New Jersey, Union County)
84. Caruso, Jerry/Brady, Sandra v. WOW, et als.  
Docket No. MID-L-3112-13 (Superior Court of New Jersey, Middlesex County)
85. Fonville, Shanique and Nekisha vs. Schwartz Barkin & Mitchell, et al.  
Docket No. UNN-L-001097-13 (Superior Court of New Jersey, Union County)
86. Malangone, Dolores v. Izzy's Inc. etc., et al.  
Docket No. OCN-L-515-13 (Superior Court of New Jersey, Ocean County)
87. Ortiz-Rodriguez, Norma vs. Pressler & Pressler, LLP  
Docket No. MID-L-007253-13 (Superior Court of New Jersey, Middlesex County)
88. Norris, Michael/Tatem, Christopher vs. Bill Me Later, Inc. & Eichenbaum and Stylianou, LLC

Docket No. MID-L-002364-15 (Superior Court of New Jersey, Middlesex County)

89. Gambrell, Eugene & Doris and Patel, Falguni vs. Hess Corporation, Inc.

Docket No. MID-L-7761-12 (Superior Court of New Jersey, Middlesex County)

90. Lechtrecker, Joshua vs. Pressler & Pressler, LLP

Docket No. MID-L-001933-15 (Superior Court of New Jersey, Middlesex County)

91. The Estate of Theresa Torsiello by Vincent Torsiello Executor vs. McGovern Legal Services, LLC

Case No. 3:14-cv-03814-DEA (Federal District Court of New Jersey)

92. Tirado, Ricardo vs. Deluxe Auto Group, LLC, et al.

Docket No. HUD-L-1069-14 (Superior Court of New Jersey, Hudson County)

93. Bowman, Lethrop vs. Lyons, Doughty & Veldhuis, P.C.

Docket No. MID-L-4474-14 (Superior Court of New Jersey, Middlesex County)

94. Celario, Michael vs. Route 22 Nissan, Inc.

Docket No. MID-L-000260-14 (Superior Court of New Jersey, Middlesex County)

95. McKenzie, Yusef vs. New City Funding Corp.

Docket No. MID-L-1952-14 (Superior Court of New Jersey, Middlesex County)

96. Thorne, Kimberly vs. Live Nation, Entertainment Inc.

Case No. 3:09-cv-03740-DEA (Federal District Court of New Jersey)

97. Pabon/Alvarado vs. Metro Auto Exchange

Docket No. UNN-L-1426-14 (Superior Court of New Jersey, Union County)

98. Rufo, Melissa vs. Alpha Recovery Corp.

Case No. 2:15-cv-0865-SRC (Federal District Court of New Jersey)

99. Politi, Andrew v. Pressler & Pressler, LLP, etc.

Docket No. MID-L-7273-15 (Superior Court of New Jersey, Middlesex County)

100. Nunez, Angel and Eve vs. Donna L. Thompson, Esq.

Docket No. MID-L-00949-15 (Superior Court of New Jersey, Middlesex County)

101. Nepomuceno, Luzvimid vs. Midland Management, Inc.

Case No. 2:14-cv-5719-SDW-SCM (Federal District Court of New Jersey)

102. Stepien, Lisa vs. PNC Financial Services Group, Inc.

Docket No. MID-L-2837-13 (Superior Court of New Jersey, Middlesex County)

103. Politi, Alexa vs. Gil Vigneault, et al.  
Case No. 3:15-cv-04425-DEA (Federal District Court of New Jersey)
104. Javan, John vs. LVNV Funding, LLC, et al.  
Docket No. MID-L-001866-16 (Superior Court of New Jersey, Middlesex County)
105. Vizthum, Tracy vs. Maguire East Windsor, LLC d/b/a Windsor Nissan  
Docket No. MID-L-284-15 (Superior Court of New Jersey, Middlesex County)
106. Qureshi v. OPS 9, LLC  
Case No. 2:14-cv-01806 (Federal District Court of New Jersey)
107. Mohammed v. Faloni Association  
Docket No. MID-L-7880-13 (Superior Court of New Jersey, Middlesex County)
108. Shumaker v. Vengroff  
Docket No. MID-L-5367-15 (Superior Court of New Jersey, Middlesex County)
109. Gomes v. Extra Space Storage, Inc.  
Case No. 2:13-cv-929-KSH (Federal District Court of New Jersey)
110. Sefarian v. Carmadella et al.  
Docket No. MID-L-005333-15 (Superior Court of New Jersey, Middlesex County)
111. Chung v. Northland Group Inc  
Case No. 2:15-cv-06246 (Federal District Court of New Jersey)
112. Chung v. AllianceOne Capital  
Case No. 2:15-cv-02905 (Federal District Court of New Jersey)
113. Raff v. Safavieh Livingston LLC  
Docket No. ESX-L-2017-15 (Superior Court of New Jersey, Essex County)
114. Guillen v. AAA Limo and Luxury Car Services of East Brunswick  
Docket No. MID-L-002661-16 (Superior Court of New Jersey, Middlesex County)
115. Kendall v. Cubesmart L.P., et al.  
Case No. 3:15-cv-06098 (Federal District Court of New Jersey)
116. Santiago v. Northland Group Inc.  
Case No. 2:15-cv-03608-CLW (Federal District Court of New Jersey)
117. Giulanelli v. Fredco Landscaping LLC  
Docket No. ESX-L-004202-16 (Superior Court of New Jersey, Essex County)



118. Seigelstein v. Shrewsbury Motor, Inc. et al.  
Docket No. MON-L-4072-15 (Superior Court of New Jersey, Monmouth County)
119. Park v. United Collection Bureau, Inc.  
Case No. 2:15-cv-01306 (Federal Court of New Jersey)
120. Watkins v. Pressler & Pressler, LLC  
Case No. 2:16-cv-00119-MCA-LDW (Federal District Court of New Jersey)
121. Harris v. General Motors Financial Co. Inc.  
Docket No. MID-L-3170-15 (Superior Court of New Jersey, Middlesex County)
122. Shirey v. Project One Autosports LLC  
Docket No. ESX-L-006233-16 (Superior Court of New Jersey, Essex County)
123. Sparks v. Service Finance Co., LLC  
Docket No. MID-L-2441-17 (Superior Court of New Jersey, Middlesex County)
124. Labidou v. Fleet Lease Network, Inc.  
Docket No. HUD-L-5191-15 (Superior Court of New Jersey, Hudson County)
125. Best v. Twin, Inc.  
Docket No. ESX-L-8062-16 (Superior Court of New Jersey, Essex County)
126. Patterson v. Volkswagen Credit  
Docket No. MID-L-6498-16 (Superior Court of New Jersey, Middlesex County)
127. Bonilla v. Pike Run II LLC  
Docket No. MID-L-3986-17 (Superior Court of New Jersey, Middlesex County)
128. Martins v. Signature Pre-Owned LLC et al.  
Docket No. HUD-L-3596-17 (Superior Court of New Jersey, Hudson County)
129. Thomas v. Hudson Valley Federal Credit Union  
Docket No. ESX-L-8205-18 (Superior Court of New Jersey, Essex County)
130. Gonzalez v. New Century Financial Services Inc.  
Docket No. ESX-L-00765-17 (Superior Court of New Jersey, Essex County)
131. McMillin v. The Traf Group Inc.  
Case No. 3:18-cv-01734-DEA (Federal District Court of New Jersey)
132. Santiago v. Apothaker Scian P.C. et al.  
Case No. 2:16-cv-01432-CCC-SMC (Federal District Court of New Jersey)

133. Pierre-Charles v. Consumer Portfolio Services, Inc.  
Case No. 3:17-cv-10025-DEA (Federal District Court of New Jersey)
134. Deltoro v. City Select Auto Sales, Inc.  
Docket BUR-L-00709-19 (Superior Court of New Jersey, Burlington County)
135. Mills v. Camping World RV et al.  
Case No. 3:18-cv-02283-MAS-TJB (Federal District Court of New Jersey)
136. Browne v. Capital One Bank USA et al.  
Docket No MID-L-05583-15 (Superior Court of New Jersey, Middlesex County)
137. Wares v. Guaranteed Motor Towing Service Inc. et al.  
Docket No. MID-L-002088-16 (Superior Court of New Jersey, Middlesex County)
138. Roach v. BM Motoring LLC  
Docket No. MID-L-001333-13 (Superior Court of New Jersey, Middlesex County)
139. Davis v. Omnisure  
Docket No. CAM-L-3742-15 (Superior Court of New Jersey, Camden County)

#### **Pending Cases:**

##### *RESPA and Mortgage Servicing Class Action*

- DannLaw is putative class co-counsel in *Trivison, et al. v. Federal National Mortgage Association*, United States District Court for the Northern District of Ohio Case No. 20-cv-00711.
- DannLaw is putative class co-counsel in *Lajuan Fleetwood v. NewRez LLC*, Hamilton County Court of Common Pleas Case No. A2201533.
- DannLaw is putative class co-counsel in *Kathryn Forest, et al. v. PHH Mortgage Corporation, et al.*, United States District Court for the District of Rhode Island, Case No. 1:20-cv-00323.
- DannLaw is putative class counsel in *Elaine M. Johnson, et al. v. loanDepot.com LLC*, United States District Court for the Northern District of Ohio Case No. 5:22-cv-00641.
- DannLaw is putative class co-counsel in *Schmitt v. Security National Servicing Corporation*, United States District Court for the Northern District of Ohio Case No. 1:21-cv-01188.

##### *Constitutional Violations*

- DannLaw is putative co-counsel in *The State of Ohio, ex rel James Parker, et al. v. The*

*Ohio Department of Job and Family Services, et al.*, Franklin County Court of Common Pleas 21 CV 00524.

- DannLaw is putative class co-counsel in *Tarrify Properties, LLC, et al. v. Cuyahoga County, Ohio, et al.*, United States District Court for the Northern District of Ohio Case No. 19-cv-02293.
- DannLaw is putative class co-counsel in *Alana Harrison, et al. v. Montgomery County, Ohio, et al.*, United States District Court for the Southern District of Ohio Case No. 3:19-cv-00288.
- DannLaw is putative class co-counsel in *Madyda v. Ohio Department of Public Safety*, Ohio Court of Claims Case No. 2019-00426JD.
- DannLaw is putative class co-counsel in *Miles Black, et al. v. City of Girard, Ohio, et al.*, Trumbull County Court of Common Pleas Case No. 2018 CV 1256.

*Data Breach/Misuse of Consumer Information -*

- DannLaw has been appointed as co-lead in *Desiree Schmitt, et al. v. SN Servicing Corporation*, United States District Court for the Northern District of California, Case No. 21-cv-03355.
- DannLaw has been appointed on the Plaintiff's Executive Committee in *Angus, et al. v. Flagstar Bank, FSB*, United States District Court for the Eastern District of Michigan Case No. 21-cv-10657.
- DannLaw has been appointed as Interim Class Co-Counsel in *Acker, et al. v. ProTech Solutions Inc.*, United States District Court for the Eastern District of Arkansas Case No. 20-cv-00852.
- DannLaw is co-counseling a Class Action for a nationwide class and statewide classes of consumers who were subject to unauthorized automatic payment drafts. DannLaw brought two of the eight lawsuits related to this incident - *Dwayne Friday, et al. v. Nationstar Mortgage, LLC*, United States District Court of the Western District of North Carolina Case No. 1:21-cv-165 and *LaTreece Jones, et al. v. Nationstar Mortgage, LLC*, United States District Court for the Northern District of Illinois Case No. 1:21-cv-3217. All cases are pending settlement and consolidation.
- DannLaw has been appointed Interim Liaison Counsel for a nationwide class and statewide classes of employees and unknown third parties who were victims of a data breach in *Migliaccio, et al. v. Parker-Hannifin Corporation*, United States District Court for the Northern District of Ohio Case No. 1:22-cv-00835.
- DannLaw is co-counseling a Class Action for a nationwide class and statewide classes of employees and patients who were victims of a data breach in *In re: Southern Ohio Health Systems Data Breach*, Hamilton County Court of Common Pleas Case No. A 2101886.
- DannLaw is co-counseling a Class Action for a nationwide class and statewide classes of

consumers who were subject to a data breach involving their mortgage servicer in *Morrill v. Lakeview Loan Servicing, LLC, et al.*, United States District Court for the Southern District of Florida Case No. 1:22-cv-20955-DPG.

- DannLaw is local counsel in *Finesse Express, LLC, et al. v. Total Quality Logistics, LLC*, United States District Court for the Southern District of Ohio, Case No. 1:20-cv-00235.

#### *Consumer Class Actions*

- DannLaw is putative class co-counsel in *Jackson, et al. v. Velocity Investments, LLC*, United States District Court for the Eastern District of Pennsylvania Case No. 5:20-cv-02524.
- DannLaw is putative class co-counsel in *Crews, et al. v. Titlemax of Delaware, et al.*, United States District Court for the Middle District of Pennsylvania Case No. 1:22-cv-168.

#### *Products Liability*

- DannLaw is co-counseling as Local Counsel *Erica Parks, et al. v. The Proctor & Gamble Company*, United States District Court for the Southern District of Ohio Case No. 1:21-cv-00258.
- DannLaw is putative co-counsel in *Tyneshia Ferguson, et al. v. The J.M. Smucker Company*, United States District Court for the Eastern District of Kentucky Case No. 5:22-cv-00173.
- DannLaw is putative co-counsel in *Pisciotti, et al. v. The J.M. Smucker Company*, United States District Court for the Northern District of Ohio Case No. 5:22-cv-01151.

#### *Shareholder Derivative Suit*

- DannLaw is co-counseling as Local Counsel a Shareholder Derivative Complaint against a multi-state Managed Care facility. The matter has not proceeded to Class Certification.

# EXHIBIT 3

**ZIMMERMAN LAW OFFICES, P.C.**

Since 1996, Zimmerman Law Offices has represented individuals and businesses in a wide array of legal matters. Its attorneys are established and respected trial lawyers who represent clients in complex litigation and class action lawsuits nationwide. The firm has an extensive and varied litigation-based practice, with a focus on class action litigation. Zimmerman Law Offices has recovered over \$300 million on behalf of millions of individuals and businesses nationwide.

The attorneys at Zimmerman Law Offices are experienced in Multidistrict Litigation (MDL), having served as lead counsel in MDL cases throughout the country. These MDL cases included claims for fraud, improper pricing, misleading product claims, and privacy violations including data breaches.

**ATTORNEYS**

**Thomas A. Zimmerman, Jr.**

A seasoned litigator for over 25 years, Mr. Zimmerman practices extensively and has obtained multi-million dollar jury verdicts in class action, corporate, commercial, medical malpractice, consumer fraud, constitutional due process, general civil, product liability, toxic tort, and other complex litigation. He represents both plaintiffs and defendants nationwide in state and federal trial and appellate courts. He also represents individuals and corporations in transactional matters, and before state and federal administrative and regulatory agencies.

Mr. Zimmerman has been lead counsel in national and state-wide class action litigation, and has handled other multi-party litigation involving such companies as MCI/Worldcom, United Airlines, Peoples Gas, AT&T, Warner-Lambert, Pfizer, Liberty Mutual Insurance Co., DaimlerChrysler, ADT, Ford Motor Co., Mead Johnson, KCBX, Inland Bank, Commonwealth Edison, Ameritech, Wells Fargo, and Bridgestone/Firestone. He is well respected for his representation of physicians, dentists, nurses, psychologists, veterinarians, and many other licensed professionals before state and federal agencies including the Illinois Department of Financial and Professional Regulation, and the U.S. Department of Health and Human Services.

In 2017, 2018, 2019, 2020, 2021, and 2022, he was selected as a *Super Lawyer* in the area of class action and mass torts.

In 2000, he was voted one of the Top 40 Illinois Attorneys Under the Age of 40. This is especially notable, as he was chosen out of 60,000 attorneys in Illinois under the age of forty.

In 2003, the Illinois Supreme Court appointed Mr. Zimmerman to the Review Board of the Attorney Registration and Disciplinary Commission (“ARDC”). He served in that capacity until 2011, wherein he presided over appeals by attorneys who have been found to have committed misconduct, and recommended discipline for their ethical violations. In 2013, the ARDC appointed

Mr. Zimmerman as Special Counsel, wherein he conducts independent investigations in matters involving allegations of misconduct against attorneys associated with the ARDC.

Additionally, the Illinois Governor appointed Mr. Zimmerman to the Illinois Courts Commission in 2003. A Commission member presides over proceedings wherein judges are charged with committing ethical violations, and imposes discipline on judges who are found to have engaged in misconduct. Mr. Zimmerman has served as a Commission member continuously since his appointment.

Prior to becoming an attorney, Mr. Zimmerman worked for AT&T where he negotiated partnerships with companies for domestic and international joint-venture and new product development activities. During this time, he was the featured speaker at 400 conferences, seminars, and presentations. Thereafter, he presented oral testimony at various Federal Senate and Congressional hearings. After obtaining his law license, Mr. Zimmerman has lectured at law schools and seminars, and is frequently interviewed by the news media concerning legal issues.

Mr. Zimmerman earned a B.S. in Computer Science-Mathematics from the University of Illinois, and an M.B.A. in Finance from DePaul University in the evenings while working for AT&T. After leaving AT&T, Mr. Zimmerman earned his law degree from the Chicago-Kent College of Law, where he was a Ramsey-Burke Scholarship recipient and earned the Academic Achievement Award.

He is admitted to practice law in Illinois, and other states on a case-by-case basis, and he is admitted to practice before the U.S. Supreme Court, and various federal courts of appeal and federal district courts. Based on his demonstrated experience and ability, he was appointed to the federal court trial bar.

Mr. Zimmerman is currently the chair of the Clerk of the Circuit Court of Cook County Attorney Advisory Committee, and was formerly co-chair of the Clerk of the Circuit Court Transition and Strategic Planning Public Policy Subcommittee.

Mr. Zimmerman is a member of the American, Illinois State, and Chicago Bar Associations, and the Illinois Trial Lawyers Association, where he serves on various committees. He is also a member of the American Association for Justice. In 2000, he was appointed to the Illinois Trial Lawyers Association Board of Advocates.

Involved in numerous community service activities, Mr. Zimmerman has been an Illinois State Board of Education surrogate parent of disabled children since 1988. In addition, he was a speaker on the rights of disabled people for the Illinois Planning Council on Developmental Disabilities, and a Family Shelter Service counselor to battered children for many years. He has been recognized by the federal court for his pro bono representation of indigent clients.



**Sharon A. Harris**

Ms. Harris has extensive experience litigating complex class action matters in state and federal trial and appellate courts nationwide. She has focused her practice on consumer protection, product liability, privacy, and antitrust matters. Ms. Harris has developed a particular expertise in state unfair and deceptive practice statutes, data breach laws, privacy laws, federal antitrust laws, the Fair Credit Reporting Act, the Racketeer Influenced and Corrupt Organizations Act (RICO), the Telephone Consumer Protection Act, and various other federal and state laws. She has been appointed class counsel in numerous cases. For example, she was appointed one of class counsel in *In re Pilot Flying J Fuel Rebate Contract Litigation*, which involved allegations that the defendants violated RICO and various state laws by withholding portions of fuel discounts and rebates to which class members were contractually entitled. A settlement was granted final approval. Ms. Harris was also appointed class counsel in a class action lawsuit, *Norton, et al. v. Niantic, Inc.*, No. 2017 CH 10281 (Cir. Ct. Cook Cty., Ill.), and helped negotiate a \$1.75 million settlement on behalf of attendees at the 2017 Pokémon GO Fest in Chicago that were unable to play the game during the fest due to technical and other issues. Additionally, Ms. Harris was appointed class counsel in a class action lawsuit, *Miller, et al. v. Inteleos, Inc.*, No. 1:17-cv-00763-DAP (N.D. Ohio), on behalf of individuals who took a Registered Vascular Technology (RVT) examination and passed the examination but received an incorrect failing score. The settlement she helped negotiate was granted final approval by the Court.

She received her Bachelor of Science degree from Michigan State University with a dual major in Political Science and Social Science. Ms. Harris received her law degree from DePaul University College of Law. She is a member of the American, Illinois State, and Chicago Bar Associations. She is admitted to practice in the State of Illinois, the United States District Court for the Northern District of Illinois, the United States District Court for the Northern District of Indiana, and the United States Courts of Appeals for the Seventh and Ninth Circuits.

**Matthew C. De Re**

Mr. De Re advocates for both plaintiffs and defendants nationwide in state and federal trial and appellate courts. His practice areas include class action, corporate, commercial, consumer fraud, general civil, product liability, personal injury, and other complex litigation. He also represents professionals, such as physicians, dentists, nurses, insurance producers, and real estate brokers, before state and federal agencies, including the Illinois Department of Financial and Professional Regulation and the Department of Insurance. In addition to his extensive litigation practice, Mr. De Re assists individuals and corporations in transactional matters.

He has experience in all phases of litigation, including extensive discovery and substantive motion practice. He has assisted in the defense of individuals and companies in cases involving personal injury, employment, and civil rights. Mr. De Re has also vigorously pursued recovery for plaintiffs in numerous civil matters. Prior to joining Zimmerman Law Offices, he served as a Law Clerk for the Circuit Court of Cook County.

Mr. De Re graduated from the University of Wisconsin-Madison with a B.S. in both Political Science and History. He earned his law degree from Washington University in St. Louis. While in

law school, he received academic awards and appeared on the Dean's List multiple times. He also served two years on the Executive Board of the Student Bar Association and was the Associate Managing Editor for the Washington University Journal of Law & Policy.

He is admitted to practice law in the State of Illinois and is a member of the Illinois State and Chicago Bar Associations.

**Jeffrey D. Blake**

Mr. Blake represents consumers in class actions involving unfair and deceptive trade practices, privacy violations, antitrust matters, and defective products. He has considerable experience prosecuting complex cases in state and federal courts throughout the nation, including appeals.

Mr. Blake received his J.D., *cum laude*, from the Chicago-Kent College of Law in 2012. While attending, Mr. Blake served as Executive Articles Editor for the *Chicago-Kent Law Review*, spent a semester as a judicial extern for the Honorable Samuel Der-Yeghiayan of the United States District Court for the Northern District of Illinois, and participated in the Intellectual Property Law Clinic and the Center for Open Government.

After graduating law school, Mr. Blake served as the judicial law clerk for the Honorable Patrick McKay, Superior Court Judge for the Third Judicial District in Anchorage, Alaska.

Mr. Blake received a Bachelor of Science from the University of Illinois at Chicago.

He is admitted to practice in the State of Illinois and the United States District Court for the Northern District of Illinois.

**Jordan M. Rudnick** (*of counsel*)

Mr. Rudnick represents individuals and large national and international companies in providing business advice, counsel and dispute resolution in a wide variety of contexts for almost 20 years. In particular, Mr. Rudnick represents plaintiffs and defendants nationwide in class action, corporate, commercial, consumer fraud, general civil, and other complex litigation in state and federal courts, arbitrations, and mediations. Mr. Rudnick has been involved in all phases of litigation, including extensive discovery, substantive motion practice, trials and appeals.

His experience as an attorney also includes representing parties in nationwide securities fraud class actions. Notably, Mr. Rudnick represented Canadian Imperial Bank of Commerce in the Enron class action securities litigation and related proceedings. He also has extensive experience representing commercial policyholders in recovering insurance proceeds from their insurers.

Mr. Rudnick serves as an arbitrator for FINRA (Financial Industry Regulatory Authority, formerly known as the NASD or National Association of Securities Dealers) where he and panels of two other arbitrators decide the outcome of disputes between investors and securities brokers and dealers.

He has provided extensive pro bono representation of improperly-expelled school children in conjunction with the Legal Assistance Foundation of Metropolitan Chicago, and with the Chicago Coalition for the Homeless. In addition, in his spare time, he is a volunteer at the Lincoln Park Community Homeless Shelter.

Mr. Rudnick served as a judicial law clerk to the Honorable Justice Joseph Gordon, Illinois Appellate Court, 1st District, where he drafted opinions in appeals arising from complex civil and criminal trial court decisions.

Mr. Rudnick earned his B.A. in Political Science from the University of Chicago, and he graduated *cum laude* from the John Marshall Law School with honors and on a full scholarship. In law school, he appeared on the Dean's List, and he was a member of the school's Moot Court Team. He also was a Staff Editor on the *John Marshall Law Review* for two years.

He is admitted to practice law in Illinois, New York, and Washington, D.C., and is a member of the Chicago Bar Association, NAACP, and ACLU.

### **REPRESENTATIVE CLASS ACTION CASES**

#### **Completed Cases**

Misleading Product Claims — \$62 million recovery for a nationwide class of customers who purchased products that were advertised to reduce cellulite in the human body, plus equitable relief to correct the misleading claims. *Joseph v. Beiersdorf North America, Inc.*, No. 11 CH 20147 (Cook Cnty, IL).

Improper Cellular Phone Fee — \$48 million recovery for a statewide class of businesses and individuals who paid an improper municipal infrastructure maintenance fee on their cellular phone bills. *PrimeCo Personal Communications, et al. v. Illinois Commerce Commission, et al.*, 98 CH 5500 (Cook Cnty, IL).

Defective Vehicles — \$35 million in monetary and injunctive relief for a nationwide class of individuals and businesses who purchased vehicles manufactured with a defective transmission. *Vargas, et al. v. Ford Motor Co.*, No. 12 cv 8388 (C.D. CA).

Fraud — \$31 million recovery for a nationwide class of businesses and individuals who placed advertisements in a newspaper based on fraudulent circulation figures. *In re Chicago Sun-Times Circulation Litigation*, No. 04 CH 9757 (Cook Cnty, IL).

Defective Products — \$16 million recovery for a nationwide class of individuals who purchased defective home security systems that could be easily hacked and disabled. *Edenborough v. ADT, LLC, et al.*, No. 16 cv 2233 (N.D. CA).

Misleading Product Claims — \$14 million recovery for a nationwide class of customers who purchased defective garden hoses with misleading claims, plus equitable relief to extend the product's warranty. *Bergman, et al. v. DAP Products, Inc., et al.*, No. 14 cv 3205 (D. MD).

Fraud / Data Breach — \$11.2 million recovery for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by an internet service provider, and who also paid money to that provider based on misrepresentations. *In re Ashley Madison Customer Data Security Breach Litigation*, MDL No. 2669 (E.D. MO).

Defective Products — \$9 million recovery for a nationwide class of individuals who sustained financial and personal injuries resulting from their purchase and use of baby wipes that were tainted with a dangerous bacteria. *Jones v. First Quality Enterprises, Inc., et al.*, No. 14 cv 6305 (E.D. NY).

Power Outages — \$7.75 million recovery for a statewide class of businesses and individuals who sustained financial damages due to widespread and prolonged power outages. *In re Commonwealth Edison 1999 Summer Power Outages*, No. 99 CH 11626 (Cook Cnty, IL).

Privacy Violation — \$7.3 million recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Aliano v. Airgas USA, LLC*, No. 14 CH 20024 (Cook Cnty, IL).

Improper Court Fee — \$5.2 million recovery for a nationwide class of individuals and businesses who were charged an improper fee by the Clerk of the Court. *Midwest Medical Records Assoc., et al. v. Dorothy Brown, et al.*, No. 15 CH 16986 (Cook Cnty, IL).

Data Breach — \$4.95 million recovery for a nationwide class of individuals who had their personal and financial data exposed due to insufficient protection of that information by state governments. *Culbertson, et al. v. Deloitte Consulting LLP*, No. 20 cv 3962 (S.D. NY).

Data Breach — \$4.3 million recovery for a nationwide class of individuals who had their personal, financial, and medical data stolen due to insufficient protection of that information by a company that rents caps and gowns for graduation ceremonies. *In re Herff Jones Data Breach Litigation*, No. 21 cv 1329 (S.D. IN).

Data Breach — \$4.3 million recovery for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by a retailer. *In re Sonic Corp. Customer Data Breach Litigation*, MDL No. 2807 (N.D. OH).

Unsolicited Faxes — \$4 million recovery for a nationwide class of businesses and individuals who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Derose Corp. v. Goyke Health Center*, 06 CH 6681 (Cook Cnty, IL).

Fraud — \$3.5 million recovery for a nationwide class of Spanish speaking purchasers of baby formula, arising out of misleading product labeling. *Cardenas v. Mead Johnson & Company*, No. 01 CH 11151 (Cook Cnty, IL).

Unsolicited Faxes — \$2.5 million recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *iMove Chicago, Inc. v. Inland Bancorp, Inc., et al.*, No. 16-cv-10106 (N.D. IL)

Misleading Product Labeling — \$2.5 million recovery for a nationwide class of businesses and individuals who purchased whiskey whose labeling misstated the characteristics of the product. *Due Fratelli, Inc. v. Templeton Rye Spirits, LLC*, No. 2014 CH 15667 (Cook Cnty, IL).

Misrepresentations in Book — \$2.35 million recovery for a nationwide class of customers who purchased a fictional book while under the impression that the book was a non-fiction memoir. *In re A Million Little Pieces Litigation*, No. 06-md-1771 (S.D. NY).

Misleading Product Claims — \$1.9 recovery for a nationwide class of individuals and businesses who purchased HDMI cables based on representations that more expensive higher speed cables were needed to operate certain audio visual equipment. *O'Brien, et al. v. Monster, Inc., et al.*, No. 2015 CH 13991 (Cook Cnty, IL).

Shareholder Derivative Suit — \$1.875 recovery, and corporate governance reforms, for a nationwide class of shareholders against a company and its officers and directors due to breaches of fiduciary duties and excess compensation to the officers and directors due to overstated financial results. *Dorvit, et al. v. Winemaster, et al.*, No. 17 cv 1097 (N.D. IL).

Consumer Fraud — \$1.6 million recovery for a nationwide class of individuals who paid for and traveled to an event that did not occur as advertised. *Norton v. Niantic, Inc.*, No. 2017 CH 10281 (Cook Cnty, IL).

Misleading Product Labeling — \$1.5 million recovery for a nationwide class of individuals who purchased a product whose packaging misstated the characteristics of the product. *In re Honest Company Sodium Lauryl Sulfate (SLS) Marketing and Sales Practices Litigation*, MDL No. 2719 (C.D. CA).

Improper Debiting of Bank Accounts — \$1.5 million recovery for a statewide class of individuals who were members of a health club that debited its members' bank accounts without adequate notice or authority. *Wendorf, et al. v. Landers, et al.*, No. 10 cv 1658 (N.D. IL).

Environmental Contamination — \$1.4 million recovery for a statewide class of individuals and businesses who suffered from an infiltration of coal and petroleum coke dust in the air and on their property. *Martin, et al. v. KCBX Terminals Company, et al.*, No. 13 cv 08376 (N.D. IL).

School Misrepresenting Accreditation — \$1.2 million recovery, representing nearly the full value of each class member's loss, for a statewide class of individuals who enrolled in a school based on the school's misrepresentations that it was accredited. *Allen v. Illinois School of Health Careers, Inc.*, No. 10 CH 25098 (Cook Cnty, IL).

Privacy Violation — \$1 million recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Radaviciute v. Christian Audigier, Inc.*, No. 10 cv 8090 (N.D. IL).

Breach of Contract — \$570,000 recovery for a nationwide class of sonographers who took and passed a certification examination but the testing agency improperly scored their results and falsely reported that they failed the examination. *Miller, et al. v. Inteleos, Inc.*, No. 17 cv 763 (N.D. OH).

Privacy Violation — \$500,000 recovery for a statewide class of consumers whose personal information was improperly disclosed. *Aliano v. Joe Caputo and Sons – Algonquin, Inc.*, et al., No. 09 cv 0910 (N.D. IL).

Contaminated Drinking Water — \$500,000 recovery for a statewide class of individuals who suffered damages as a result of a contaminated water well, plus equitable relief to close the well. *Joseph Marzano v. Village of Crestwood*, No. 09 CH 16096 (Cook Cnty, IL).

Fraud — \$425,000 recovery for a nationwide class of businesses and individuals who purchased spirits whose labeling misstated the characteristics of the product. *Due Fratelli, Inc. v. Proximo Spirits, Inc.*, No. 2014 CH 17429 (Cook Cnty, IL).

Foreclosure Fraud — \$425,000 recovery for a nationwide class of borrowers whose lender failed to properly respond to qualified written requests, requests for information, and/or notices of error because of an improper active litigation, active mediation, or active bankruptcy exception. *Lieber v. Wells Fargo Bank, N.A.*, No. 16 cv 2868 (N.D. OH).

Privacy Violation — \$295,000 recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Joseph v. Marbles, LLC*, No. 13 cv 4798 (N.D. IL).

Data Breach — \$285,000 recovery for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by a restaurant chain. *Ramsey v. 41 E. Chestnut Crab Partners, LLC, et al.*, No. 19 CH 2759 (Cook Cnty., IL).

Privacy Violation — \$250,000 recovery for a nationwide class of consumers whose personal information was improperly disclosed. *DiParvine v. A.P.S., Inc. d/b/a Car Quest Auto Parts*, No. 11 cv 6116 (N.D. IL).

Unsolicited Faxes — \$237,600 recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Phillips Randolph Enterprises, LLC v. Key Art Publishing Co.*, No. 07 CH 14018 (Cook Cnty, IL).

Constitutional Violation — \$175,000 recovery for a nationwide class of individuals who were wrongfully issued automated construction zone speed enforcement tickets on a highway that was not under construction. *Black, et al. v. City of Girard, Ohio, et al.*, No. 18 cv 1256 (Trumbull Cnty, OH).



Improper Health Club Memberships — Recovery for a statewide class of individuals whose health club membership agreements provided for improper membership terms. *Izak-Damiecki v. World Gym International, LLC*, No. 10 CH 18845 (Cook Cnty, IL).

Illegal Lending Practices — Recovery, representing the maximum amount of statutory damages, for a nationwide class of customers who obtained loans whose terms violated the Truth in Lending Act, plus equitable relief to modify the loan contract to conform with the law. *Papeck, et al. v. T.N. Donnelly & Co.*, No. 09 CH 31997 (Cook Cnty, IL).

Privacy Violation — Recovery for a nationwide class of over 36 million consumers whose personal information was improperly disclosed. *Dudzienski v. GMRI, Inc.*, No. 07 cv 3911 (N.D. IL).

Unsolicited Faxes — Recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Phillips Randolph Enterprises, LLC v. Home Run Inn, Inc.*, No. 08 CH 43273 (Cook Cnty, IL).

Privacy Violation — Recovery for a statewide class of over 60,000 consumers whose personal information was improperly disclosed. *O'Brien v. Paninos, Inc.*, No. 10 cv 2991 (N.D. IL).

Breach of Warranty — Recovery on behalf of a nationwide class of customers who had their warranty retroactively changed from a lifetime guarantee to a 90-day guarantee, plus equitable relief to reinstate the lifetime guarantee on the products. *Brady, et al. v. Learning Curve Int'l, Inc., et al.*, No. 06 CH 03056 (Cook Cnty, IL).

Privacy Violation — Recovery for a nationwide class of tens of thousands of consumers whose personal information was improperly disclosed. *In re Kathy Aliano v. Hancock Fabrics, Inc.*, No. 07-10353 (Del. BK).

Improper Debt Collection — Recovery on behalf of a nationwide class of individuals against whom attempts were made to collect a time-barred debt, in violation of the Fair Debt Collection Practices Act. *Ocasio v. First Financial Investment Fund V, LLC, et al.*, No. 15 cv 10167 (N.D. IL).

### **Pending Cases — Preliminary Approval of Settlement Granted**

Antitrust — \$20 million recovery for a nationwide class of individuals who purchased packaged seafood products from companies that conspired to fix prices in violation of the Sherman Act. *In re. Packaged Seafood Products Antitrust Litigation*, MDL No. 2670 (S.D. CA).

Data Breach — \$900,000 recovery for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by a mortgage servicer. *Schmitt v. SN Servicing Corp.*, No. 21 cv 3355 (N.D. CA).



### **Pending Cases — Appointed Class Counsel**

Improper Fee — Class action for a statewide class of individuals who were charged an improper fee by the state in connection with the issuance of a driver's license. *Madyda, et al. v. Ohio Dept. of Public Safety*, No. 19-426 (OH Ct. of Claims).

Invasion of Privacy — Class action for a nationwide class of individuals who were surreptitiously viewed and recorded using the toilets in holding cells. *Alicea, et al. v. County of Cook*, No. 18 cv 5381 (N.D. IL).

Environmental Contamination — Class action for a statewide class of individuals whose residential drinking water was contaminated with lead. *Henderson, et al. v. Aqua Illinois, Inc.*, No. 2019 CH 10191 (Will Cnty, IL).

Constitutional Violation — Class action for a statewide class of individuals who paid an unconstitutional firearms and ammunition tax. *Boch, et al. v. Cook County, Illinois, et al.*, No. 21 CH 5485 (Cook Cnty, IL).

### **Pending Cases — Appointed to Executive Committee**

Misleading Product Claims — Class action for a nationwide class of individuals who purchased defective cheese products based on misleading representations. *In re 100% Grated Parmesan Cheese Marketing and Sales Practices Litigation*, MDL No. 2707 (N.D. IL).

### **Pending Cases**

Fraud — Class action for a statewide class of individuals who were wrongfully issued automated red light tickets by red light cameras that were installed in violation of state law.

Unpaid Overtime — Class action for a nationwide class of individuals who were not paid all wages and premium overtime for hours worked in excess of forty hours per week.

Constitutional Violation — Class action for a statewide class of individuals who were improperly denied pandemic unemployment assistance benefits because the governor of their state refused to accept those federal benefits and distribute the money to the individuals.

Improper Debt Collection — Class action for a nationwide class of individuals who were sent misleading debt collection letters, in violation of the Fair Debt Collection Practices Act.

Data Breach — Class action for a statewide class of individuals who had their personal, financial, and medical data stolen due to insufficient protection of that information by a hospital.

Violation of RESPA Act — Class action for a nationwide class of borrowers who were denied the requisite loan modification options, as required by the Real Estate Settlement Procedures Act.

Constitutional Violation — Class action for a nationwide class of individuals who were wrongfully issued automated traffic speed enforcement tickets by a municipality that was denied authorization to issue the tickets.

Invasion of Privacy — Class action for a nationwide class of individuals who received unauthorized telemarketing calls to their phones.

Consumer Fraud — Class action for a nationwide class of individuals who were defrauded when their printers were disabled from using third party toner under the guise of a firmware update.

Breach of Contract — Class action for a statewide class of individuals who are members of athletic clubs that unilaterally terminated their rewards program without notice.

Antitrust — Class action for a nationwide class of individuals who purchased packaged seafood products from companies that conspired to fix prices in violation of the Sherman Act.

Environmental Contamination — Class action for a statewide class of individuals whose residential drinking water was contaminated with lead.

Constitutional Violation — Class action for a statewide class of individuals whose homes were wrongfully taken by the government without adequate compensation.

Fraud — Class action for a nationwide class of individuals who were deliberately targeted through marketing and sales of electronic cigarettes when they were minors.

Defective Product — Class action for a nationwide class of individuals who purchased a defective product that was contaminated with *Salmonella*.

Consumer Fraud — Class action for a statewide class of individuals who were denied loans due to improper banking practices.

Breach of Contract — Class action for a nationwide class of individuals who paid for continuous printer toner and ink, but the company failed to deliver it as promised.

Consumer Fraud — Class action for a nationwide class of individuals who paid inflated prices for a product.

Bankruptcy Violation — Class action for a nationwide class of individuals against a company that took their money in violation of the bankruptcy automatic stay.

Fraud — Class action for a statewide class of individuals who were charged and paid an excessive fee to obtain documents from their condominium associations.

Defective Product — Class action for a nationwide class of individuals who purchased a defective product that caused liver failure.

*Data Breach* — Class action for a nationwide class of individuals who had their personal, financial, and medical data stolen due to insufficient protection of that information by their employer.

*Fraud* — Class action for a nationwide class of individuals who were charged and paid for a greater quantity of a product than they received.

**NOTE:** This list of cases is a representative sample of some of the class action lawsuits. It is not an exhaustive list.



Melvyn E. Resnick  
Patrick J. Perotti\*\*\*  
Irving Rosner  
Gary S. Okin\*\*  
Howard S. Rabb  
Patrick T. Murphy  
Keith R. Kraus<sup>o</sup>  
Richard N. Selby II<sup>oo</sup>  
Kenneth J. Cahill  
Erik L. Walter<sup>ooo</sup>  
Kristen M. Kraus  
Jonathan T. Stender  
Anna M. Parise

Nicole T. Fiorelli  
Grant J. Keating  
Joshua J. Strickland  
Jim Timmerberg  
Shelley M. Fleming  
Frank A. Bartela  
Patrick J. Brickman  
Amanda Condon  
Stacy M. Stefanik  
Daniel J. Williams  
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Jerome Emoff  
Kim Alabasi

Howard W. Bernstein\*  
Marvin P. Dworken\*  
Alec Berezin\*

David M. Dworken  
(1932-2011)  
David J. Richards, Jr.  
(1947-2013)  
Jodi Litman Tomaszewski  
(1972-2021)

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Family Relations Law

\*\*\*Board Certified in  
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<sup>oo</sup>Also Admitted to  
Practice in Michigan

<sup>ooo</sup>Also Admitted to Practice in Montana

Writer's e-mail: pperotti@dworkenlaw.com

July 25, 2022

Via email submission

Judge John R. Adams

John F. Seiberling Federal Building and U.S. Courthouse  
Two South Main Street, Room 510  
Akron, Ohio 44308-1813

**In Re: Miller v. Anderson et al., Case No. 5:20-cv-01743-JRA**

Dear Judge Adams,

Pursuant to this Court's July 13 Order ("Order"), the undersigned counsel submit this request to become substitute plaintiffs' counsel in the captioned action. Each of the undersigned firms have significant experience investigating and prosecuting shareholder derivative actions and complex litigation. Moreover, each of the undersigned firms is based in and regularly practice in the State of Ohio and the Northern and Southern Districts of Ohio.

We understand this case to present an unusual situation where it appears that the parties (Plaintiff, Defendant and Intervenor) cooperated seeking to circumvent the Court's responsibilities under Fed.R. 23.1. This is unfortunately familiar to one of the undersigned attorneys who recently experienced nearly identical conduct: a team of Plaintiff's lawyers with full cooperation of Defendant who sought to evade the first-filed Court (Judge Nugent), to avoid the concerns raised about the manner the case was handled, and the propriety of a proposed settlement. The similarities with the present case are striking: non-existent depositions of any Defendant or witness; lack of sworn testimony from any defendant; on-record and repeated concerns by judges about the lack of discovery, investigation or verification to support a settlement; and, most important, response to the foregoing by the parties working to take the settlement (and evaluation of its sufficiency) from the judge longest presiding over the matter (Donald C. Nugent).

Like other matters in which the undersigned attorneys have been involved, this Court's invitation for substitute counsel requires counsel well-staffed and experienced with the type of work required in this matter: Obtain proper and complete discovery; insure all key materials are produced, with 'privilege' appropriately curtailed; conduct prompt, thorough depositions of material witnesses;

insure that the responsible Defendants are held accountable for their misconduct; and provide a sufficient record to support a finding that the settlement is fair, reasonable and adequate based.

The Complaint makes it clear that the purpose of the lawsuit was to hold the responsible Defendants accountable:

5. In this derivative action, Plaintiff, a shareholder of FirstEnergy stock since 1999, seeks to hold accountable the directors and officers whose actions caused and/or permitted the wrongdoing that the Company has engaged in.

That purpose was not based on speculation. The named Defendants engaged in their conduct for self-benefit which resulted in direct financial gain to each of them:

83. All Director Defendants are directors, and their self-dealing as alleged herein resulted in direct financial gains to Defendants from the challenged transactions and actions as alleged herein, making it a substantial likelihood that each of the Director Defendants named herein.

The Complaint clearly alleges how and to what extent Defendants enriched themselves through their improper conduct. A significant question therefore is the propriety of a resolution allowing no liability or disgorgement from any Defendant. A full investigation and review of Defendants' conduct is indispensable before any settlement is presented to or considered by the Court.

The task for substitute counsel has been articulated by the Court: establish the factual record showing the "allocation of damages amongst the defendants and the factual basis used to establish such allocation." This raises the following related questions identified by this Court: which defendants gave or received bribes, especially as detailed in the DPA; what claw-back requirements are being imposed on defendants (or a clear explanation why not); a record of the conclusions reached by the Special Litigation Committee, which have not been revealed to this Court; and quantification of the financial impact from this misconduct, without which the 'reasonableness' of any settlement is not possible.

Attached to this application are the resumes of the undersigned firms. These resumes reflect the substantial experience of counsel in prosecuting shareholder derivative and complex litigation. As reflected in the attached resumes, Dworken & Bernstein Co., L.P.A. is a Rule 23 class action specialist, particularly in cases involving extensive document production, and apex corporate depositions; Messrs. Kennedy and Goetz have undertaken some of the most significant complex litigation matters and are currently working directly in the massive discovery in the opioid MDL litigation before Judge Polster; and Messrs. Wayne and Sparks have represented shareholders for decades in shareholder derivative actions<sup>1</sup> throughout the country.

Finally, the attorneys seeking to evade this court are for the most part not practitioners in this district. They are from out-of-state. In comparison, the undersigned and all other attorneys and

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<sup>1</sup> Messrs. Wayne and Sparks were initially local counsel for Saxena White in the action pending in the Southern District of Ohio. However, they did not seek and were not included in that Court's appointment of Lead Counsel and were not counsel on the Consolidated Amended Complaint. Messrs. Wayne and Sparks had no involvement in the settlement proposed in the Southern District.

firms in the present application are resident in Ohio. Each of the applicants regularly practice in this district. We believe it is important for the Court to have the confidence that the conduct of the attorneys before it will not only be governed by law and court rules, but also by the knowledge that they will again appear before this same Court, and other judges in this district, and will be known for their actions.

The undersigned firms and attorneys respectfully submit this application pursuant to this Court's Order and are available to answer all questions of the Court.

Very Respectfully Submitted,

/s/ Patrick J. Perotti

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/s/ Robert R. Sparks

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## Weisman, Kennedy & Berris Co., L.P.A.

Weisman, Kennedy & Berris Co., L.P.A. ("Weisman Kennedy") has been exclusively devoted to litigation since its founding in 1963. The firm concentrates in litigation dealing with mass torts, insurance, commercial, product liability and personal injury as a result of automobile negligence and medical malpractice. For over twenty-five years, the firm has directed considerable resources to class action litigation.

Weisman Kennedy has represented over 25,000 individuals before Federal and State courts throughout the United States. In addition to its local representation of individual clients, in the 1990s the firm emerged as a leader in the class action and national mass tort arena.

Weisman Kennedy has had notable involvement, usually as lead counsel, co-lead counsel, or liaison counsel in over 50 class actions or mass tort cases. For example, Weisman Kennedy held a leadership role in the Breast Implant Litigation, MDL-926 where the firm was a member of the Settlement Advisory Committee, as well as the State Liaison Counsel for Ohio, and First Chair in the depositions of employees from Dow Corning, Koken and Porex. The firm devoted over twelve thousand (12,000) hours of lawyer, paralegal and nursing time to discovery efforts.

Weisman Kennedy acted as Class Co-Counsel and Liaison Counsel in the In re: Inter-op Hip Prosthesis Product Liability Litigation, MDL-1401 overseeing the Interests and rights of approximately 3,000 class members in the \$1 Billion Settlement. Weisman Kennedy was subclass counsel in the \$4.5 Billion Settlement in the In re: Diet Drug (Phentermine/Fenfluramine/ Dexfenfluramine) Products Liability Litigation, MDL-1203.



In the In re: Teletronics Pacing Systems litigation, Weisman Kennedy was one of the law firms appointed by the Federal District Court to provide a leadership role on behalf of thousands of consumers who had received faulty pacemakers. The pacemakers had a poorly designed lead wire that, if left implanted in the atrium of the heart, could fracture and lead to severe injury or even death. Weisman Kennedy took the lead role in a Summary Jury Trial before a jury in Federal Court in Cincinnati, Ohio. This Summary Jury Trial was used by Senior District Judge Spiegel in an attempt to resolve the case. The summary jury found in favor of the plaintiffs and awarded Two Hundred Sixty-eight million dollars (\$268,000,000.00) in damages. In his order written at the conclusion of the Summary Jury Trial, Judge Spiegel stated:

.... In litigating this case, Class and Plaintiffs' Counsel expended significant resources of both time and monies. Counsel employed expert witnesses and conducted extensive discovery . . . We believe that, without such a class action, small individual claimants would lack the resources to litigate a case of this magnitude. Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling such small claimants to pool their claims and resources.

....We find that the professional skill and standing of all Counsel involved on behalf of the class was highly commendable, professional and was prosecuted with a great deal of skill,

This case represents hard-fought litigation, and, in the beginning, a settlement of this magnitude appeared almost inconceivable. Class Counsel . . . demonstrated their professionalism and skill . . . aware of the strengths and weaknesses of their case...

Recognizing the extensive amount of time, services and skill . . . Plaintiffs' Counsel . . . expended in this case, the Court concludes that the reputations of all of the Counsel in this action are well earned and deserved.

Due to the success Weisman Kennedy experienced as counsel for Plaintiffs in numerous noteworthy proceedings, Weisman Kennedy has also served as defense counsel in multiple class

actions and served as co-lead counsel and trial counsel for the Defendant group in the In re: Welding Fume Litigation, (MDL 1535) which involved claims by over 10,000 welders against over fifty (50) defendants due to alleged injuries from welding rods.

Weisman Kennedy served in leadership in the In re: DePuy ASR Hip Implant Products Liability Litigation, (MDL 2197) and it did the majority of the important liability discovery in the MDL. Weisman Kennedy was also selected as lead trial counsel for the first Federal bellwether case and the global DePuy ASR settlement was achieved within only weeks before the start of the trial. Weisman Kennedy was heavily involved in negotiating the settlement and took the lead in drafting and helping to administering the orderly resolution of the thousands of claims. Additionally, Weisman Kennedy held a leadership role in the In re: Stryker Rejuvenate and ABG-II Hip Implants Products Liability Litigation, (MDL 2441). The Rejuvenate litigation settled quickly but Weisman Kennedy did all of the liability discovery and, again, was heavily involved in negotiating and helping to administer the settlement.

Currently, Weisman Kennedy is serving on the Plaintiffs' Executive Committee in the In re: National Prescription Opiate Litigation, (MDL 2804). As part of this appointment, Weisman Kennedy has taken the lead in the liability discovery against one of the pharmacy defendants and has also heavily participated in the liability discovery against one of the distributor defendants. Additionally, Weisman Kennedy is serving as a consultant to the Trustee of the Fire Victims Trust in the \$13 billion dollar PG&E settlement for the California wildfires.

Examples of mass tort/class action/derivative cases of significant involvement include:

- Straus v. Critelli, et al., Cuyahoga County Court of Common Pleas Case No. CV-11-748467 (Derivative action on behalf of Eaton Corporation claiming that certain officers, employees, and directors of the Company breached their fiduciary duties in connection with a Mississippi state-court litigation when it secretly retained a lawyer to improperly influence the Judge. *Eaton Corp., et al. v. Jeffrey D. Frisby, et al.*, Circuit Court of Hinds County, Mississippi Case No. 251-04-642. Upon discovery, Eaton, the plaintiff in the case was sanctioned by dismissal of the Mississippi action.)
- In re: Silicone Gel Breast Implant Products Liability Litigation, (MDL No. 926).
- In re: Air Disaster at New York LaGuardia Airport on March 22, 1992, (MDL No. 936).
- In re: Orthopedic Bone Screws Products Liability Litigation, (MDL 1014)
- In re: Telectronics (cardiac monitoring leads) Pacing Systems, Inc., (MDL No. 1057).
- In re: Diet Drugs (Phentermine / Fenfluramine / Dexfenfluramine) Products Liability Litigation, (MDL No. 1203).
- In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation, (MDL No. 1401).
- In re: Welding Fume Litigation, (MDL 1535).
- In re: DePuy ASR Hip Implant Products Liability Litigation, (MDL 2197).
- In re: Stryker Rejuvenate and ABG-II Hip Implants Products Liability Litigation, (MDL 2441).
- In re: National Prescription Opiate Litigation, (MDL 2804).
- In re: Phar-Mor, Inc. Securities Litigation.
- James Wojtkiewicz v. Blue Cross and Blue Shield Mutual of Ohio; Marlene Misch v. Community Mutual Insurance Company.
- In re: Valence Technology Securities Litigation.
- In re: Royal Appliance Securities Litigation.
- In re: Valley Systems Securities Litigation.
- In Re: Figgie International, Inc. Securities Litigation.
- Goldy v. Auto Owners Insurance Company, et al. (Insurance class action).

- In re: Gliatech Inc. Securities Litigation.
- Sherma v. Cole National Corp. et al. (Securities class action).
- In re: First Energy Securities Litigation.
- Kline v. The Progressive Corporation, et al. (Insurance class action).
- Wright v. Travelers Property Casualty Ins. Co. of Illinois, et al. (Insurance class action).
- Rudean Ellens v. Genworth Life and Annuity Ins. Co. (Insurance class action).
- David Middleton v. Genworth Life and Annuity Ins. Co. (Insurance class action).
- Dana McGill v. Parker Centennial Assurance Co. (Insurance class action).
- Hyrnak v. Mid-West National Life Insurance Co. of Tennessee (Insurance class action).
- Hardy v. Minnesota Life Insurance Co. (Insurance class action).
- Townsend v. Protective Life Insurance Co. (Insurance class action).
- Lonardo v. Travelers Indemnity Co. (Insurance class action).

## STRAUSS TROY

Strauss Troy is a general business, commercial law, and dispute resolution law firm providing service from its Ohio and Covington, Kentucky offices to businesses and individuals throughout the mid-west. The firm's Complex Litigation Practice Group has a long history of aggressive and creative advocacy for individual shareholders, as well as public and private corporations, financial institutions and other professionals in complex single party and class action litigation involving state and federal securities laws, officer and director fiduciary law, antitrust, consumer, product liability and other difficult class action claims in state and federal courts across the country. The firm's reputation for excellence has been recognized on repeated occasions by courts that have appointed its attorneys to major positions in complex class, multi-district or other consolidated actions. More information about Strauss Troy is available on the firm's website: [www.strausstroy.com](http://www.strausstroy.com).

Richard S. Wayne, Co-Chair of Strauss Troy's Litigation Department, has served, or is presently acting as lead attorney, co-lead counsel, class counsel or plaintiff's trial counsel, in numerous class action and derivative actions in state and federal jurisdictions throughout the country. Some of these actions include:

### Federal Securities Law Class Action Litigation

- *Ohio Public Employees Retirement System vs. Federal Home Loan Mortgage Corporation, et al.*  
No. 4:08-cv-160 (N.D. Ohio)
- *John Capannari, et al. v. Glen Galemme, et al.*  
No. 1:13-cv-883 (S.D. Ohio)
- *Brian Molnar v. Green Bankshares, Inc., et al.*  
No. 2:11-cv-00014 (E.D. Tennessee)
- *In re AtriCure, Inc. Securities Litigation*  
No. 1:08-cv-00867 (S.D. Ohio)
- *Argent Classic Convertible Arbitrage Fund, Ltd. v. National City Corporation, et al.*  
No. 1:08-nc-70016 (N.D. Ohio)
- *In Re Humana, Inc. Securities Litigation*  
No. 3:08-CV-0162 (W.D. Kentucky)

- *Jack Merzin v. Provident Financial Group, Inc.*  
No. C-1-03-165 (S.D. Ohio)
- *In re Broadwing Securities Litigation*  
No. C-1-02-795 (S.D. Ohio)
- *In re Procter & Gamble Company Securities Litigation*  
No. C-1-00-CV-190 (S.D. Ohio)
- *Fidel vs. AK Steel Holding Corp.*  
No. C-1-00-320 (S.D. Ohio)
- *In Re Smartalk Teleservices Inc. Securities Litigation*  
MDL No. 00-1315 (S.D. Ohio)
- *Woodward v. Great American Life Insurance Company*  
No. A-99-00587 (Hamilton Co., Ohio)
- *In Re Premiere Technologies, Inc. Securities Litigation*  
No. 1:98-CV-1804 (N.D. Georgia)
- *In Re: Corpro Companies, Inc. Securities Litigation*  
No. 5:95CV1223 (N.D. Ohio)
- *In Re: Cincinnati Microwave, Inc. Securities Litigation*  
Master File No. C-1-95-905 (S.D. Ohio)
- *In re American Premier Underwriters, Inc. Securities Litigation*  
No. A-94-06195 (Hamilton Co., Ohio)
- *In re Structural Dynamics Research Corporation Securities Litigation*  
No. C-1-94-630 (S.D. Ohio)
- *In Re: Roberds Litigation*  
No. C-3-94-86 (S.D. Ohio)
- *Brown v. Chiquita Brands International, Inc.*  
Master File No. C-1-92-366 (S.D. Ohio)
- *In re Nord Resources Corporation Securities Litigation*  
Master File No. C-3-900380 (S.D. Ohio)

- *In Re: Eagle-Picher Industries, Inc. Securities Litigation*  
Master File No. C-1-88-936 (S.D. Ohio)
- *Lancz Associates, Inc. v. Sithe Energies, L.P., et al.*  
No. 9566 (Del. Chancery 1988)
- *In re Gulf States Utilities Securities Litigation*  
No. B-86-574 (E.D. Texas)
- *In re Middle South Utilities Securities Litigation*  
No. 85-3681 (E.D. Louisiana)
- *Lockspeiser v. Western Maryland Company, et al.*  
No. H-13-117 (N.D. Maryland)
- *Lockspeiser v. The Bibb Company, et al.*  
No. 1-85-CV-4035 (N.D. Georgia)
- *Menowitz, et al. v. NCR Corporation, et al.*  
[1990-91 Transfer Binder] Fed.Sec.L.Rep. ¶95,866 (CCH) (S.D. Ohio 1991)
- *Howing Co., Inc. v. Nationwide Corporation*  
No. C-1-83-1693 (S.D. Ohio)

#### **Shareholder Derivative and Investor Claims**

- *In re the Wendy's Company Shareholder Derivative Action*  
Case No. 1:16-cv-1153-TSB, (U.S. District Court – S.D. Ohio)
- *Steven A. Ettinger Inc. Profit Sharing Plan v. Richard J. Kramer, et al.*  
CV-2018-10-4432 (Summit Co., Ohio)
- *Colleen Witmer v. Phyllis Yale, et al.*  
No. 16-CI-001246 (Jefferson Circuit Court, Kentucky)
- *Robert W. Black v. Cincinnati Financial Corporation, et al.*  
No. 1:11-CV-210 (U.S. District Court – S.D. Ohio)
- *Franklin, Plotnick & Carl, Inc. Profit Sharing Plan v. Michael J. Critelli, et al.*  
Case No. CV 11 748467 (Cuyahoga Co., Ohio)
- *Delduco v. Boykin Lodging Company*  
Case No. CV-06-59403 (Cuyahoga Co., Ohio)
- *Official Committee of Unsecured Creditors (Baldwin Piano & Organ Co) v. Karen Hendricks*



No. 1:04-CV-66 (S.D. Ohio)

- *In Re Fannie Mae Securities Litigation*  
MDL-1688, Consolidated Civil Action No. 1:04-CV-1639 (D.C.)
- *In Re Mutual Funds Investment Litigation*  
MDL-1586, Lead Case No. 04-md-15863 (D. Maryland)
- *Ohio Public Employers Retirement System v. Federal Loan Mortgage Corp.*  
MDL-1584, Lead Case No. 03-CV-4261 (S.D. New York)
- *Smith v. Robert M. Ginn (Centerior Power Co.*  
Case No. 046065 (Cuyahoga Co., Ohio)
- *IT Litigation Trust v. D'Aniello*  
No. 02-10118 (Del.)
- *Austern Trust v. Peter H. Forster (Dayton Power & Light)*  
No. A-02-07067 (Hamilton Co., Ohio)
- *Steiner, et al. v. Figgie International, Inc.*  
No. 1:94 Civ. 0805 (N.D. Ohio)
- *Adelman v. Meadowbrook Rehabilitation Group*  
No. C-93-0561-CAL (N.D. California)
- *In re Penn Central Corporation Derivative Shareholders Litigation*  
Case No. A-90-09331 (Hamilton Co., Ohio)
- *In re Dayco Corporation Derivative Securities Litigation*  
No. C-3-82-254 (S.D. Ohio)

#### **Products Liability and Consumer Class Action Litigation**

- *Combs v. Crown Life Insurance Company*  
No. 1:07-CV-00151 (S.D. Ohio)
- *Crail v. Best Buy Co., Inc.*  
No. 2:06-CV-227 (E.D. Kentucky)
- *Cowit v. Celleo Partnership d/b/a Verizon Wireless*  
Case No. A-05-05869 (Hamilton Co., Ohio)
- *Academy of Medicine of Cincinnati v. Aetna Health, Inc.*  
Case No. A-02-04947 (Hamilton Co., Ohio)

- *Woodward, et al. v. Great American Life Insurance Company*  
Case No. A-99-0587 (Hamilton Co., Ohio)
- *Sulzer Orthopedics Inc. Hip Prosthesis and Knee Prosthesis Products Liability Litigation*  
No. 1-CV-9000, MDL-1401 (N.D. Ohio)
- *In Re: Telectronics Pacing Systems, Inc. Accufix Atrial "J" Leads Products Liability Litigation*  
MDL-1057 (S.D. Ohio)
- *In Re: Community Mutual Co-Payment Litigation*  
No. C-1-94-428 (S.D. Ohio)
- *Wojtkiewicz v. Blue Cross & Blue Shield Mutual of Ohio, Inc.*  
Case No. 254993 (Cuyahoga Co., Ohio)
- *In re Silicon Gel Breast Implant Prod. Liability Litigation*  
MDL-926 (N.D. Alabama)
- *Immerman v. Harbour Towne Yacht Club Condominiums*  
Case No. A-88-03801 (Hamilton Co., Ohio)

## **The Strauss Troy Complex Litigation Practice Group**

### **Partners/Shareholders**

**Richard S. Wayne** is a member of the Board of Directors of Strauss Troy, Co-Chairman of its Litigation Department, and has been a member of the bar since 1979. He is a member of the Cincinnati, Ohio State, Federal and American Bar Associations. For more than 30 years, Mr. Wayne has specialized in the area of securities and corporate litigation, product liability and consumer fraud litigation, including complex multi-district litigation. He is admitted to the United States District Courts for the Southern District of Ohio and the Eastern District of Michigan, and to the United States Court of Appeals for the Fourth, Fifth, Sixth, Eighth, Ninth and Eleventh Circuits. Mr. Wayne has been an arbitrator for the NASD and the American Arbitration Association. Mr. Wayne has been a member of the United States District Court for the Southern District of Ohio Merit Selection Committee for Magistrate Judges. He has been a lecturer at the annual Ohio Securities Conference, sponsored by the Ohio Division of Securities, the Cleveland Bar Association Annual Private Securities Litigation Reform Act seminar, and has presented/lectured on the following: Plaintiff Perspectives in Class Action Litigation (October 2000); Directors and Officers – Fiduciary Duties at the Midwest Regional Bankruptcy Seminar (2002); Law on Corporations, guest instructor at the University of Dayton School of Law; *The Future of D&O Litigation – What is the Next Hot Issue?* at the AON Risk Management Seminar

(2006); The Principles and Policies of Aggregate Litigation: CAFA, PSLRA, and Beyond, at the 24<sup>th</sup> Annual Corporation Law Center Symposium, University of Cincinnati College of Law (Panelist, April 2011).

Mr. Wayne has also represented public corporations, officers and directors of public corporations, insurance companies, brokerage firms, shareholders of public corporations in a variety of commercial litigation, and individuals against both public and private corporations.

Mr. Wayne is a graduate of the University of Dayton School of Law. While in law school, Mr. Wayne was Case Counsel for the Moot Court program and an Associate Editor of the University of Dayton Law Review. He also published the following article in the University of Dayton Law Review: *Environmental Law Case Work for Administratively Imposed Civil Money Penalties in the Enforcement of Policy Objectives*, 3 U.Day.L.Rev. 153 (Winter, 1978).

In addition to the cases listed above, Mr. Wayne was lead counsel *In Re: Eagle-Picher Industries, Inc. Securities Litigation*, Master File No. No. C-1-88-936 (S.D. Ohio) (Spiegel, J.), in which Judge Spiegel stated that:

Plaintiffs' primary counsel are nationally known leaders in the field of securities class actions. The quality and efficiency of their representation is beyond reproach. (Slip op. at 7)

In the *Community Mutual Co-Payment Litigation*, in which Mr. Wayne served as lead counsel for plaintiffs, U.S. District Court Judge Beckwith and Judge O'Connor stated that:

The high caliber of Class Counsel is well reflected in the affidavits submitted by each individual attorney involved in the prosecution of this litigation. Each attorney has established a national reputation for management of complex class actions. Each attorney enjoys the respect of the bench and bar for his or her ability to efficiently pursue class claims and secure substantial benefits for the class.

\* \* \*

These cases often present difficult and complex factual scenarios, as well as legal issues of first impression. They cannot be lightly undertaken by inexperienced counsel nor by law firms unprepared to significant expenses of litigation over long periods of time. Both Class Counsel and their law firms are to be commended for their dedication to this case and the others that they have championed.

**R. Guy Taft** is Co-Chairman of Strauss Troy's Litigation Department and practices in Federal and State Court litigation and appeals. Primary areas of litigation are in breach of contract, fraud, commercial, corporate, partnership, and shareholder disputes, unlawful competition, patent and trademark infringement, non-compete agreements, employer/employee disputes, ERISA insurance, health care, product liability and personal injury. He has been a partner at Strauss Troy from 1989 to present; formerly partner/associate at Steer, Strauss, White & Tobias from 1976 to 1988. Mr. Taft has served as lead trial counsel in litigation of the above law specialties since 1982, and has handled numerous jury trials, trials to the court, arbitrations, and mediations in federal and state courts, as well as arbitrations for the American Arbitration Association. He was admitted to practice in Ohio and Federal Courts in 1976. He is a member of the following professional associations: ABA (Business Law and Litigation Committees); Ohio Bar Association; Cincinnati Bar Association: Board of Trustees 1996-2000, Chairman of Community Services Committee 1996-1998; Cincinnati Bar Foundation Board of Trustees 1999-2000; Federal Bar Association; American and Ohio Trial Lawyers Associations. Mr. Taft is a graduate of the University of Cincinnati (BA-72; JD-76).

**William K. Flynn** is a member of the Board of Directors of Strauss Troy, Co-Chair of the Litigation Department and leads the Financial Services Sub-Group. He is a graduate of Miami University of Ohio and the University of Cincinnati Taft College of Law (1985), where he was selected to compete in the National Moot Court Competition and won the National Administrative Law Competition and Best Brief Award. Mr. Flynn's litigation practice includes business, employment, commercial, and investor claims in state and federal courts, including extensive experience in class action and other multi-party complex lawsuits involving claims for violations of state and federal securities laws, business torts and other anti-fraud violations, control shareholder, officer and director and financial fiduciary violations involving both public and private companies. Mr. Flynn has considerable specific experience representing individual investors, advisors, retail brokers and other fiduciaries involving financial services industry disputes, particularly in the prosecution and defense of claims for fraud, professional negligence and breach of duty claims, as well as industry related employment disputes and state and certain federal regulatory and enforcement by the SEC and Ohio Division of Securities. Mr. Flynn is admitted to practice in Ohio and Kentucky, the United States District Courts for the Southern and Northern Districts of Ohio, the Western District of Kentucky, the United States Court of Appeals for the Sixth Circuit, and is a member of the Federal, Ohio, Kentucky, Cincinnati and Public Investor Arbitration Bar Associations.

**Joseph J. Braun** is a member of the Board of Directors of Strauss Troy and the firm's Litigation Department, with an emphasis in commercial and complex litigation (involving shareholder, product liability and other consumer issues), constitutional law, employment discrimination and general business law. Mr. Braun is admitted to practice in Ohio, the United States District Court for the Southern District of Ohio, the Northern District of Ohio and the United States Court of Appeals for the Sixth and Eleventh Circuits. Mr. Braun is a member of the Cincinnati, Ohio State and American Bar Associations, as well as the American and Ohio Trial Lawyers Associations. Mr. Braun graduated from the

University of Kentucky (B.A. 1995) and the University of Toledo College of Law (1998). He also serves as the City Solicitor and Mayor's Court Prosecutor for the City of Loveland, Law Director for Miami Township, Clermont County, Ohio, Solicitor of the Village of Georgetown, Ohio and Law Director of the City.

**Matthew W. Fellerhoff** is a member of the Strauss Troy Litigation and Real Estate Departments. He focuses on complex litigation, advocating for clients in private and public controversies. Matt joined Strauss Troy after serving as a Municipal Court Judge in Hamilton County, Ohio. Prior to his public service, he practiced law for 16 years and established himself as a leader in the areas of litigation, complex land use matters, local government, eminent domain, property rights and employment law. He served as long-time law director for the Villages of Moscow and Woodlawn, Ohio and has represented numerous other units of local government in Ohio, assisting in employment matters, annexations and constitutional issues. Mr. Fellerhoff has extensive experience in property rights matters, including inverse condemnation suits, land use and zoning proceedings, eminent domain and real estate development. He has successfully tried numerous eminent domain "right to take" cases on behalf of property owners, preventing local agencies from taking their property. He further has extensive experience in eminent domain valuation cases. He has participated in and litigated local and federal environmental and historic preservation matters. Mr. Fellerhoff has represented numerous property owners, developers, community groups and others in actions before local zoning boards and subsequently in court on issues of zoning approvals, variances and special exemptions related to the use of property.

He is admitted to practice in the State of Ohio, the United States District Court for the Southern District of Ohio and the United States Court of Appeals for the Sixth Circuit. He has also handled matters in other states, including Kentucky and Indiana. He is a member of the American, Ohio and Cincinnati Bar Associations.

**Ron Parry** is a member of Strauss Troy's Litigation Department. He graduated from Western Kentucky University (B.S. 1970) and the University of Tennessee Law School (J.D. 1972). Mr. Parry is licensed to practice law in Kentucky, Ohio and Iowa. He is a member of the Kentucky and Ohio Bar Associations, the American Bar Association, the American Association for Justice (formerly the American Trial Lawyers Association), the Kentucky Justice Association, and a Master of the Bench in the Potter Stewart Inn of Court in the Southern District of Ohio. He has previously served as a member of the Board of Governors of the Kentucky Justice Association (formerly the Kentucky Academy of Trial Attorneys) and as President and Treasurer of the Kentucky Chapter of the American Board of Trial Advocates (ABOTA). At the time Mr. Parry was selected as a member of ABOTA, he had to demonstrate that he had tried to conclusion more than 50 civil and criminal jury trials.

Mr. Parry's practice is primarily in the field of complex litigation. He has handled a substantial number of class actions for investors, life insurance policyholders, auto

insurance claimants and other consumers. He also has experience in mass tort cases involving medical devices and pharmaceutical products.

Mr. Parry was appointed to the Executive Committee for Plaintiffs' Counsel in *In re The Prudential Insurance Co. of America Sales Practices Litigation*, 962 F. Supp. 572, 585-586 (D.N.J. 1997). In approving a \$2 billion settlement of a nationwide class action against a life insurer for deceptive sales practices, Judge Wolin observed:

[T]he results achieved by plaintiffs' counsel in this case in the face of significant legal, factual and logistical obstacles and formidable opposing counsel, are nothing short of remarkable.

\* \* \*

Finally, the standing and professional skill of plaintiffs' counsel, in particular Co-Lead Counsel, is high and undoubtedly furthered by their ability to negotiate a valuable settlement and argue its merits before this Court. Several members of plaintiffs' counsel are leading attorneys in the area of class action litigation.

At the Fairness Hearing, Judge Wolin stated that "there is no doubt that Class Counsel have prosecuted the interests of the class members with the utmost vigor and expertise." *In re The Prudential Insurance Co. of America Sales Practices Litigation*, 962 F. Supp. 450, 519 (D.N.J. 1997).

Mr. Parry is admitted to practice before the United States District Courts for the Eastern and Western Districts of Kentucky, the Southern District of Ohio, and the United States Court of Appeals for the Sixth, Ninth and Eleventh Circuits. He has also received pro hac vice admission to practice before numerous State and Federal Courts throughout the country.

Mr. Parry has lectured at seminars presented by the Kentucky Justice Association, the American Conference Institute and SeminarWeb on the subject of class actions, the Class Action Fairness Act and ethical issues presented in class actions.

**Robert R. Sparks** is a member of the Strauss Troy Litigation Department and concentrates his practice in civil trial and appellate practice in the areas of consumer class actions, consumer fraud, investment fraud, insurance litigation, insurance brokerage matters, and shareholder derivative and investor claims. Mr. Sparks has represented people harmed by fraud and unscrupulous business practices in state and federal courts throughout the United States. Claims in these cases typically include consumer protection, unfair and deceptive practices, misrepresentation, breach of contract and fraud. This experience includes:



- Co-lead counsel in federal court in Texas representing a class of life insurance policy owners challenging an insurer's attempt to increase cost of insurance charges in the life insurance contract. This litigation resulted in a multi-million dollar settlement for the class.
- Representing elderly investors in a multi-million dollar Ponzi scheme involving the sale of life insurance as an investment.
- Representing about 70 investors in a \$100 million real estate Ponzi scheme which involved litigation and mediation in state court, federal court and in private arbitration. The representation also included negotiations with state and federal regulators investigating the Ponzi scheme. Part of the representation included obtaining a favorable award after a two-week arbitration for 20 investors against a major regional bank.
- Representing people harmed when an insurance company changed the benefit definition in a supplemental insurance policy in an attempt to reduce benefits to policy owners and save millions of dollars for the insurance company.
- Representing investors in FINRA arbitrations against their broker, brokerage firm, and insurers.
- Representing individuals and classes against mortgage lenders and servicers for predatory lending practices, unfair and improper fees and charges, and breach of contract.

Mr. Sparks has worked on over a dozen complex, nationwide insurance class actions involving deceptive sales practices and fraud such as "vanishing premiums," "churning," and the sale of life insurance as an investment.

Mr. Sparks is also a trial attorney. He has obtained favorable verdicts and arbitration awards in a variety of cases involving insurance, personal injury, investment fraud, and consumer protection.

He graduated *magna cum laude* from Northern Kentucky University, Salmon P. Chase College of Law. While there, Mr. Sparks was a member of the Northern Kentucky Law Review and inducted into the Order of the Curia. Mr. Sparks is a member of the Kentucky Justice Association, the American Association for Justice, and the National Association of Consumer Advocates.

Mr. Sparks is admitted to practice in the courts of Kentucky and Ohio and before the United States District Courts for the Eastern and Western Districts of Kentucky, Southern District of Ohio, Eastern District of Wisconsin, and the United States Court of Appeals for the Sixth Circuit. He has also received pro hac vice admission to practice before numerous State and Federal Courts throughout the country.



**Emily T. Supinger** is a member of the Strauss Troy Litigation Department. Her practice focuses on civil litigation, property rights, zoning and land use planning, eminent domain, municipal law and employment law. Emily has represented political subdivisions, locally and across Ohio, in a variety of matters, including zoning disputes and eminent domain cases. She currently serves as the law director for the City of Wyoming and the Village of Woodlawn (both in Hamilton County), and for the Village of Moscow and the Village of Bethel, Ohio (both in Clermont County). As a law director, Ms. Supinger deals with all aspects of government representation and governance, including public records and open meetings, contracts, real estate, zoning and economic development issues, elections law and referendum, as well as employment and personnel matters.

Ms. Supinger has extensive experience in eminent domain matters and has successfully challenged the government's "right to take" property on behalf of property owners, thereby preventing government agencies from acquiring their property. She has also represented public agencies in acquiring property for public projects. Her creative and thoughtful approach in such matters has resulted in expeditious and fair results for the parties involved.

**Stephen E. Schilling** is a member of Strauss Troy's Litigation Department. Prior to joining Strauss Troy, he served as a law clerk to the Honorable Michael R. Barrett, Federal District Judge, Southern District of Ohio. Mr. Schilling's practice involves various aspects of state and federal litigation with an emphasis on commercial and complex litigation. He is admitted to practice in Ohio and the United States District Courts for the Southern District of Ohio, and he is a member of the Ohio State Bar Association and the Cincinnati and Dayton Bar Associations. Mr. Schilling is a magna cum laude graduate of the University of Dayton School of Law, where he was the Managing Publication Editor of the University of Dayton Law Review. He has published numerous law-review articles on a variety of subjects.

**Amy L. Hunt** is a member of the Strauss Troy Litigation Department, where she concentrates her practice in the areas of complex litigation, including consumer class actions, insurance litigation and financial products. Ms. Hunt's practice involves various aspects of state and federal litigation, with an emphasis on commercial and complex litigation. She has represented consumers in cases against large property and life casualty insurance carriers involved in deceptive practices and improper claims handling practices. Ms. Hunt is admitted to practice in Ohio and the United States District Courts for the Southern District of Ohio. She is a member of the Ohio State Bar Association and the Cincinnati Bar Association.

## **Of Counsel**

**Philomena S. Ashdown** practices in the areas of bankruptcy (Chapter 11 and workouts), UCC and general commercial law, banking, and debtor-creditor law and

financial and commercial litigation. Mrs. Ashdown is admitted to practice in Ohio, the United States District Court for the Southern District of Ohio, the United States District Court for the Northern District of Ohio (including Bankruptcy Courts), the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit. She was the co-founder and the first President of Commercial Real Estate Women, Inc. of Greater Cincinnati (CREW); the former President of the Greater Cincinnati Women Lawyer's Association; the former President and current member of the TriState Association for Corporate Recovery; and a member of the Board of Catholic Charities of Southwestern Ohio, former Board President. She currently serves on the Bankruptcy Committee of the Cincinnati Bar Association, its CARE subcommittee (Co-Chair of the Judicial Liaison Sub-Committee). Mrs. Ashdown is a graduate of the University of Madras (Stella Maris College) (B.Sc. 1978), the University of Madras Law College (LL.B. 1984), and the University of Notre Dame Law School (J.D. 1986).

## **Associates**

**Jeffrey A. Levine** is a member of Strauss Troy's Litigation and Corporate Departments. Mr. Levine's primary practice involves all aspects of state and federal civil litigation, as well as corporate law, including entity formations and acquisitions. Prior to joining Strauss Troy, he served as a law clerk to Hamilton County Common Pleas Judge Jody M. Luebbbers. Mr. Levine is a Cincinnati native and a graduate of the University of Cincinnati College of Law, where he served on the Moot Court Executive Board and received membership to the Order of the Barristers. Mr. Levine has published numerous articles on a variety of subjects, including the legal risks associated with the use of social media. He is admitted to practice in Ohio and the United States District Court for the Southern District of Ohio.

**R. Austin Stevenson** focuses his practice on general corporate and business law, litigation, labor and employment, and real estate. Originally from Wheelersburg, Ohio, he earned his bachelor's degree in Political Science from NKU and his law degree from University of Kentucky College of Law. While at the University of Kentucky, Austin was a member of the Kentucky Law Journal, chairman of the UK Federalist Society, and secretary of the UK Christian Legal Society. Austin serves on the Northern Kentucky Young Alumni Council.



July 25, 2022

**DWORKEN & BERNSTEIN Co., L.P.A.**

Dworken & Bernstein is a 25-attorney firm in practice for more than half-century, providing simple and complex representations to individuals, business and government. The firm is staffed with approximately 60 professional and administrative staff, employing respected and successful attorneys in complex litigation, corporate, banking, business, serious injury, class and collective actions and other areas.

The firm's class and collective action practice is nationally recognized, through representation of more than 500,000 individuals, firms and small businesses as class members in cases throughout the U.S. These cases involve misconduct in the field of banking, insurance, telecommunications, investments, real estate, government programs and a host of others, resulting in more than \$1 billion in settlements or recoveries for class members. The hallmark of this practice has been handling cases rejected by other firms. Success on these matters was achieved through creative litigation, including successfully demanding changes in law. The team relies on its AV-rated attorneys, certified specialists, and respected litigators ranked in the top 75 Trial Lawyers in the U.S.

The head of the department, Patrick J. Perotti (Cleveland-Marshall, Magna Cum Laude, 1982) is an award-winning national leader in the fields of consumer class actions, employment discrimination, and wage and hour litigation. With verdicts and settlements exceeding \$1 billion dollars, Mr. Perotti is regularly selected to lead class suits in Ohio and around the country. His reputation developed from a demand for outcomes which not only offered compensation to class members but also stopped unlawful government and corporate practices. That is, deterrence for future misconduct. Using the class action device to achieve deterrence, these efforts have opposed settlements which do not properly disgorge unlawful profits from wrongdoers. These efforts have also directed more than \$50 million in unclaimed class funds from settlements to charities and non-profits around the country through court approved *cy pres*.

The bench, bar and community have recognized Mr. Perotti's legal and community accomplishments with the National Trial Lawyers Top 100 Award, the defense bar's Top 75 Plaintiff Trial Lawyers in the United States, the Ohio State Bar Association's highest honor, the Ritter Award, and his alma mater Marshall College of Law's highest honor, the Alumnae of the Year Award. As a frequent lecturer at state and national conferences on class actions, employment law, and the *cy pres* doctrine, Mr. Perotti is regularly consulted by the bench, bar and media on those subjects.

His cases typically involve extremely complex legal and discovery issues, against mega-entities such as Facebook, AT&T, Fannie Mae, Fitbit, State of Ohio BWC, and others. He has a reputation of extreme fairness, impartiality and professionalism in working with opposing counsel, co-counsel, and the court. His simple motto for everything is, "Do the right thing." His work as class counsel is consistently described by courts as "Exceptional representation for the class members. Taking into consideration the complexity of the legal issues at hand and the result achieved by Class Counsel, it is clear to the Court that the legal representation in this case was superb."



### Some Representative Sample Class and Collective Actions:

Case Name	Court
Asset Acceptance v. Caszatt	Lake County Court of Common Pleas
Brickman v. Fitbit, Inc.	U.S. District Court, Northern District of California; U.S. Court of Appeals, 9 <sup>th</sup> Circuit
Brickman v. Maximus, Inc. et al	U.S. District Court, Southern District of Ohio
Brickman v. Meta Platforms, Inc. (Facebook)	U.S. Court of Appeals, 9 <sup>th</sup> Circuit
Cantlin v. Smythe Cramer Co.	Lake County Court of Common Pleas
Conley v. The Kroger Company	U.S. District Court, Southern District of Ohio
Cranfield v. State Farm Fire and Casualty Company	U.S. District Court, Northern District of Ohio
Dilthey v. First Community Credit Union	Circuit Court of St. Louis County, MO
Eighmey v. City of Cleveland	Ohio Court of Appeals, 8 <sup>th</sup> District
Ferguson-Luke v. Allstate Property & Casualty Insurance Company	U.S. District Court, Northern District of Ohio
Fox et al v. American Family Insurance Company	U.S. District Court, Northern District of Ohio
Gallagher v. Santander Consumer USA Inc.	U.S. District Court, Eastern District of MO
Gault v. Clerk of Courts, Medina County, et al.	Ohio Court of Appeals, 7 <sup>th</sup> District
Hughes v. Portage County, Ohio	Ohio Court of Appeals, 11 <sup>th</sup> District
Hurt, et al v. Commerce Energy, Inc., et al	U.S. District Court, Northern District of Ohio
Koz v. Village of Newburgh Heights	Cuyahoga County Court of Common Pleas
Lado v. Allstate Vehicle and Property Insurance Company	U.S. District Court, Northern District of Ohio
Lycan, et al. v. City of Cleveland	Supreme Court of Ohio; Ohio Court of Appeals, 8 <sup>th</sup> District.
Maniaci v. Allstate Insurance Company	U.S. District Court, Northern District of Ohio
Monaco v. WV Parkways Authority	U.S. Court of Appeals, 4 <sup>th</sup> Circuit
Musial Offices, Ltd. v. County of Cuyahoga	Cuyahoga County Court of Common Pleas; Ohio Court of Appeals, 8 <sup>th</sup> District, Ohio Supreme Court



Painter v. Woodstream Corporation	U.S. Court of Appeals, 6th Circuit, U.S. District Court, Northern District of Ohio
Papp v. Cuyahoga County,	Cuyahoga County Court of Common Pleas
Patterson v. United Healthcare Insurance Company, et al.	U.S. Court of Appeals, 6th Circuit
Perry v. Allstate Indemnity Company et al.	U.S. Court of Appeals, 6 <sup>th</sup> Circuit, U.S. District Court, Northern District of Ohio
Pivonka v. Maureen Corcoran, Director of Ohio Department of Medicaid	Cuyahoga County Court of Common Pleas; Ohio Court of Appeals, 8 <sup>th</sup> District, Ohio Supreme Court
Radatz v. Federal National Mortgage Association (Fannie Mae)	Cuyahoga County Court of Common Pleas; U.S. District Court, Northern District of Ohio; Ohio Court of Appeals, 8th District; Ohio Supreme Court
San Allen, Inc., et al. v. Sarah Morrison, Administrator, Ohio Bureau of Workers' Compensation	Cuyahoga County Court of Common Pleas; Ohio Court of Appeals, 8th District; Ohio Supreme Court
Schmidt v. AT&T, and SBC Internet Services, Inc., dba AT&T Internet Services	Cuyahoga County Court of Common Pleas; U.S. District Court, Northern District of Ohio; Ohio Court of Appeals, 8th District
Sherman, et al. v Ohio Public Employees Retirement System	Franklin County Court of Common Pleas; Ohio Court of Appeals, 10 <sup>th</sup> District, Ohio Supreme Court
Valentine v. Cedar Fair, LP	Ohio Supreme Court; Ohio Court of Appeals, 6 <sup>th</sup> District, Erie County Court of Common Pleas

Mr. Perotti is the founder of the firm's Ohio Lawyers Give Back initiative. In recent years, this effort advocated for the use of *cy pres* to direct unclaimed class action funds to charities. These unique efforts, with court approval, have directed over \$50 million dollars to more than 300 charities and non-profits. *See*, [www.ohiolawyersgiveback.org](http://www.ohiolawyersgiveback.org).



MARKOVITS  
STOCK  
DeMARCO

W. B. Markovits  
Attorney

July 25, 2022

***By Hand Delivery & Federal Express***

The Honorable John R. Adams  
2 South Main Street, Suite 510  
Akron, OH 44308

Re: *Miller v. Anderson et al.*, No. 5:20-cv-01743 (N.D. Ohio)

Your Honor:

I write on behalf of Markovits, Stock & DeMarco, LLC ("MSD") and Abraham, Fruchter & Twersky LLP ("AFT"), counsel for Todd Augenbaum, a shareholder of FirstEnergy Corp. ("FirstEnergy" or the "Company"), in response to the Court's July 13, 2022 Order inviting any counsel interested in appointment to represent the interests of FirstEnergy in this derivative suit to notify the Court via a written submission. ECF No. 332.

***AFT & MSD's Representation of FirstEnergy Shareholders in Related Matters to Date***

AFT and MSD initially represented FirstEnergy shareholder Leslie Katz in making a litigation demand on FirstEnergy's Board of Directors to investigate and take action on behalf of FirstEnergy against ClearSulting LLC ("ClearSulting") and PriceWaterhouseCoopers LLP ("PwC") in connection with the Company's bribery scandal. Mr. Augenbaum later joined that litigation demand.

AFT and MSD, in their capacity as counsel to Mr. Augenbaum, are the only law firms who have appeared in the Southern District of Ohio to timely object to the proposed settlement. A copy of that objection (the "Augenbaum Objection") is enclosed herewith. MSD and AFT believe that the Augenbaum Objection is important because it seeks to prevent the U.S. District Court for the Southern District of Ohio from entering an order potentially impairing the ability of the Company or any FirstEnergy shareholder to continue to litigate the claims pending before this Court. Accordingly, if the Augenbaum Objection is overruled by the Southern District of Ohio, Mr. Augenbaum, as the only shareholder known to have timely objected, will have unquestioned standing to challenge any approval of the proposed settlement.

Our firms, if appointed by Your Honor, will vigorously prosecute this action including the Compensation Claims (as defined in the Augenbaum Objection at p.10), for which demand has already been found futile and which are not subject to being released in the proposed settlement being presented to the Southern District of Ohio. *See* Augenbaum Objection at pp.10-12. The same is true of claims against ClearSulting and PwC with respect to which Mr. Augenbaum believes that



July 25, 2022

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the SLC has constructively refused his demand by failing to act and, instead, agreeing to language in the proposed settlement which could be read to release those claims (*see* Augenbaum Objection at pp.4-6) as well as many other claims remaining in the action, including unknown claims. *See* Augenbaum Objection at pp.12-13.

*AFT & MSD are Qualified to Serve as Lead Shareholder Derivative Counsel*

AFT and MSD's combined experience and resources make us particularly suitable to serve as lead shareholder derivative counsel in this matter. AFT is a New York based law firm with substantial experience prosecuting shareholder derivative and federal securities actions.<sup>1</sup> AFT has achieved material results in derivative actions involving the reckless management of a company's operations causing damage to the company. In one such case, as co-lead counsel, AFT recovered \$25 million on behalf of a mutual fund after successfully litigating a demand for books and records through summary judgment. *See In re Third Avenue Trust Shareholder & Derivative Litig.*, Consolidated C.A. No. 12184-VCL (Del. Ch.). In another action, AFT played a leading role in prosecuting claims brought derivatively on behalf of the Bank of New York Corporation with respect to the damage caused to the company by corporate insiders' failure to properly institute the internal controls necessary to prevent money laundering. After the denial of a motion to dismiss, taking substantial pre-trial discovery and defeating an effort to have the case decided by a special committee, the case was resolved for a cash payment of \$26.5 million for the benefit of the Bank of New York.

AFT has also served as lead counsel in several derivative actions challenging the wrongful refusal of a stockholder's demand which is potentially relevant here given Augenbaum having made a demand on the Board. *Fagin v. Scolnick*, No. ATL-L-3406-07-MT (N.J. Super. Ct.), is an example of a case in which AFT served as lead counsel in a shareholder derivative action following the failure of the Merck & Co. board of directors' failure to sue in response to a litigation demand relating to corporate insiders' misconduct surrounding Merck's pain reliever Vioxx. In that action, AFT successfully brought about material corporate governance reform, which the presiding judge described as "far reaching and act[ing] to position Merck at the forefront of sound corporate governance and risk management practices," "ensur[ing] scientific integrity and drug patient safety," and "provid[ing] substantial benefit to Merck and its shareholders because they may serve to prevent future liability from the sale of potentially dangerous drugs." The corporate governance changes, which provided, *inter alia*, for a Chief Medical Officer to act as an advocate for patient safety, were similarly praised by industry analysts as something "every pharma company should have[.]" Similarly, in a shareholder derivative action brought on behalf of

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<sup>1</sup> Since this case may implicate federal securities laws, we note AFT's expertise in prosecuting such claims. In *Pyramid Holdings, Inc. v. Terraform Global, Inc. et al.*, No. 16-cv-07981-PKC (S.D.N.Y.), AFT, as sole lead counsel for the class, secured a \$48.75 million settlement, approved in 2019, representing more than 50% of likely recoverable damages based upon rulings in a related multi-district litigation. Recently, AFT defeated a motion to dismiss claims under federal securities laws in another class action brought arising under the federal securities laws. *See In re CBL & Assocs. Props, Inc. Sec. Litig.*, No. 119CV00181JRGCHS, 2022 WL 1405415 (E.D. Tenn. May 3, 2022), *opinion clarified*, 2022 WL 1714484 (E.D. Tenn. May 25, 2022).



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Johnson & Johnson AFT served as court-appointed lead demand refused counsel and was responsible for obtaining corporate governance changes found to confer a substantial benefit on the company. *In re Johnson & Johnson Derivative Litig.*, 900 F. Supp. 2d 467, 496 (D.N.J. 2012). In addition, AFT served as a lead counsel in a shareholder derivative action brought on behalf of Google Inc. after successfully defeating a motion to dismiss based upon a demand review committee's refusal to bring the action. *See City of Orlando Police Pension Fund v. Page*, 970 F. Supp. 2d 1022 (N.D. Cal. 2013). The action was eventually settled for substantial governance reforms including Google being required to provide at least \$50 million per year principally collectively on its product quality operations, policy enforcement, and User Safety Initiative.

AFT is currently prosecuting several other derivative actions. These include an action brought on behalf of Xerox to disgorge profits that Carl Icahn and his affiliates made by allegedly frontrunning Xerox's attempted acquisition of HP, Inc., where AFT successfully appealed a dismissal on the pleadings, demonstrating that demand was futile and that a factual finding that the Company did not suffer damages because of an alleged breach of fiduciary duties was erroneous and, in any event, did not support dismissal. *See Miami Firefighters' Relief & Pension Fund v. Icahn*, 158 N.Y.S.3d 44, 199 A.D.3d 524 (N.Y. App. Div., 1st Dep't 2021). AFT is also prosecuting several cases as lead or co-lead counsel seeking to disgorge profits from insider sales that were allegedly motivated by material nonpublic information, including *In re Rocket Co. Inc Stockholder Derivative Litigation*, No. 2021-1021 (Del. Ch.), *Silverberg ex rel. Funko, Inc. v. Mariotti*, No. 2021-0517 (Del. Ch.), and *In re Kraft Heinz Company Derivative Litigation*, No. 2019-0587 (Del. Ch.) (appeal pending).

MSD is a law firm based in Cincinnati, Ohio that has substantial experience serving as lead counsel in complex cases. MSD was appointed by the Ohio Attorney General to serve as a lead counsel in *In re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation*, No. 1:04-cv-1639 (D.D.C.), a 10b-5 securities class action that settled for \$153 million in 2014. MSD is currently a lead counsel through appointment by the Attorney General in *Ohio Employees Retirement System v. Federal Home Loan Mortgage, aka Freddie Mac*, No. 4:08-cv-00160 (N.D. Ohio), a securities class action that MSD has diligently prosecuted for more than a decade, including a successful Sixth Circuit Appeal. Furthermore, MSD served as lead counsel in *Williams v. Duke Energy International*, No. 1:08-cv-0046 (S.D. Ohio), resulting in an \$80.875 million settlement before Judge Edmund A. Sargus, Jr., including antitrust and civil RICO claims stemming from alleged bribery payments to select large energy consumers.

Notably, MSD was recently selected to step in as replacement lead counsel in the settlement of an ERISA class action, *Shy v. Navistar International Corp.*, No. 92-cv-0333-WHR (S.D. Ohio), which was resolved with a settlement valued at over \$742 million. Similar to what is being requested of replacement lead shareholder derivative counsel in this case, MSD assumed the lead counsel role for plaintiffs in *Shy* – a case that had been pending since 1992 – and seamlessly guided the historic settlement to conclusion with Judge Walter H. Rice granting final approval on June 13, 2022. Highlighting MSD's experience handling complex representative actions, one Ohio federal court recently noted with respect to MSD: "plaintiffs' attorneys have appeared in this Court many times and have substantial experience litigating class actions and other complex matters." *Bechtel v. Fitness Equip. Servs., LLC*, No. 1:19-CV-726, 2021 WL 4147766, at \*11 (S.D. Ohio Sept. 12, 2021). Accordingly, MSD is qualified to serve as lead shareholder derivative counsel

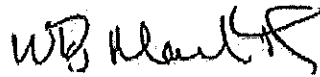
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here and looks forward to the opportunity, if presented, to serve the plaintiffs and FirstEnergy and appear before this Court.

We appreciate the Court's consideration of our application to serve as co-lead counsel in this Action and remain ready to answer any additional inquiries the Court may have.

Very truly yours,



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MARKOVITS, STOCK & DEMARCO, LLC  
W.B. Markovits (bmarkovits@msdlegal.com)



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ABRAHAM, FRUCHTER & TWERSKY, LLP  
Jeffrey S. Abraham (jabraham@aftlaw.com)

Enclosures

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE  
CITY OF ST. LOUIS, et al.,

Plaintiffs,

v.

CHARLES E. JONES, et al.,

Defendants,

and

FIRSTENERGY CORP.,

Nominal Defendant.

Case No. 2:20-cv-04813

Chief Judge Algenon L. Marbley

Magistrate Judge Kimberly A. Jolson

**TODD AUGENBAUM'S OBJECTION TO THE PROPOSED SETTLEMENT**

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Todd Augenbaum,<sup>1</sup> by his undersigned counsel, respectfully submits this objection to the proposed settlement (the “Proposed Settlement”) of this action brought derivatively on behalf of FirstEnergy Corporation (“FirstEnergy” or the “Company”), and in response to Plaintiffs’ Motion for Final Approval of Settlement and other relief (the “Motion”), ECF No. 179.<sup>2</sup>

### PRELIMINARY STATEMENT

The Proposed Settlement appears impressive at first glance. However, upon closer examination, it becomes apparent that Plaintiffs fail to satisfy their burden to establish that the Proposed Settlement will benefit FirstEnergy. The Company is sacrificing \$40 million of insurance coverage that it would otherwise be able to use to offset liabilities, and effectively becoming self-insured for the blowback from its bribery scandal in other existing material claims being prosecuted against it, despite the fact that its insurance coverage would otherwise almost certainly be exhausted absent a settlement. The Proposed Settlement also does not resolve the

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<sup>1</sup> Pursuant paragraph 112 of to the Notice of (I) Pendency and Proposed Settlement of Stockholder Derivative Actions; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Litigation Expenses (the “Notice”), Augenbaum states: his home address is 136-87 71st Rd, Flushing, NY 11367, but he should only be contacted through his undersigned counsel at Abraham, Fruchter & Twersky, LLP (“AF&T”), and through their telephone number. Augenbaum and his counsel do not currently intend to appear at the Settlement Fairness Hearing but reserve their right to do so, in which case they do not intend to call witnesses. The grounds for Augenbaum’s objections are set forth herein. Proof that Augenbaum owned shares of FirstEnergy common stock as of the close of business on March 11, 2022 is filed herewith as Exhibit A, which also avers that Augenbaum continues to hold shares of FirstEnergy common stock today and will continue to hold such shares as of the Settlement Fairness Hearing. Augenbaum objects to filing that information on the public record because he is represented by counsel and should only be contacted through his counsel, making it oppressive and non-beneficial to force him to file personal information publicly, especially where Plaintiffs have not done so. Augenbaum also objects to the notice purporting to require copies of this objection, which is being served pursuant to Fed. R. Civ. P. 5, to “also be delivered (by hand, first- class mail, or express service) to Co-Lead Counsel for the Southern District Plaintiffs, Representative Counsel for Defendants, and counsel for the SLC and FirstEnergy at the addresses set forth below such that the objection is received on or before July 21, 2022.” (Notice ¶111 (emphasis removed)).

<sup>2</sup> Capitalized terms undefined herein are defined in the Motion.

cornerstone of the operative complaint, and, instead, could leave Charles Jones (“Jones”), Michael Dowling (“Dowling”), and Dennis Chack (“Chack” and with Jones and Dowling the “Terminated Executives”) – each of whom was fired for violating FirstEnergy’s policies and code of conduct – in a better position vis-à-vis the Company if approved while, at the same time, unnecessarily releasing potentially valuable claims against the Company’s auditors. Finally, the Proposed Settlement stretches too far by releasing broad unknown claims. Thus, as the record currently stands, at a very minimum, further information is needed to find the Proposed Settlement fair, reasonable, and adequate.

#### SUMMARY OF ADDITIONAL RELEVANT FACTS

FirstEnergy is defending other actions arising out of the same facts as this Action (the “Direct Claims”) which are likely to subject it to hundreds of millions of dollars (or more) in additional settlements or judgments. The Direct Claims in which FirstEnergy believes it will incur a loss in resolving include: a SEC investigation, a civil racketeering suit by the State of Ohio, a class action pursuant to federal securities laws (the “Securities Class Action”), a ratepayers class action, and an investigation by FERC. *See* 2/16/22 Form 10-K at pp.63-65.<sup>3</sup>

Clearsulting LLC (“Clearsulting”), an Ohio entity, is a management consulting firm specializing in financial systems and controls. *See FirstEnergy Corp. and Clearsulting, LLC v. Pircio*, Docket No. 1:20-cv-01966 (the “*Whistleblower* Action”), ECF No. 1, ¶6 (N.D. Ohio). Starting in June 2019, Clearsulting provided consulting services to FirstEnergy. *Id.* at ¶¶11-12.

On August 7, 2020, a former Clearsulting employee, acting as a whistleblower, provided the SEC with evidence of violations of federal law by FirstEnergy. *Whistleblower* Action, ECF No. 14 at ¶¶20, 34. The precise evidence provided to the SEC is undisclosed, but it appears to be

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<sup>3</sup> Available at <https://www.sec.gov/Archives/edgar/data/1031296/000103129622000013/fe-20211231.htm>.



convincing. “[O]n August 10, 2020, the SEC, through its Division of Enforcement, issued an order directing an investigation of possible securities laws violations by FirstEnergy, and on September 1, 2020, issued subpoenas to FirstEnergy and certain of its officers.” *See* 2/18/21 Form 10-K at 9.<sup>4</sup> FirstEnergy expects to incur a loss in resolving that matter. *See* 4/21/22 Form 10-Q at 8-9.<sup>5</sup>

After reviewing the *Whistleblower* Action, Augenbaum and another stockholder made litigation demands (the “Augenbaum Litigation Demand”) on the Board to investigate and assert claims against Clearstreaming and PricewaterhouseCoopers (“PwC” and with Clearstreaming the “Auditors”), the Company’s external auditor, and to institute certain related corporate governance reforms. *See* Exhibit B.

The Augenbaum Litigation Demand was referred to a demand review committee and then to the SLC, but Augenbaum has received no substantive response despite additional inquiries and the passage of more than a year. On June 8, 2022, after reviewing the Proposed Settlement, Augenbaum sent a letter to counsel for all of the Settling Parties seeking to ensure FirstEnergy’s claims against the Auditors were preserved and, to the extent appropriate, prosecuted. *See* Ex. C. Six weeks later, after 10:00 pm on July 19, 2022, the SLC responded to Augenbaum’s June 8, 2022, letter by stating that it did not believe that the claims against Auditors are released (see Ex. D), and the next morning Plaintiffs’ counsel joined in the SLC’s position.

### ARGUMENT

The Settling Parties “bear the burden of persuasion that the proposed settlement is fair, reasonable, and adequate.” MCL 4th §§21.61, 21.631 (2004); *see also In re Dry Max Pampers*

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<sup>4</sup> Available at <https://www.sec.gov/Archives/edgar/data/1031296/000103129621000020/fe-20201231.htm>.

<sup>5</sup> Available at <https://www.sec.gov/ix?doc=/Archives/edgar/data/1031296/000103129622000013/fe-20211231.htm>

*Litig.*, 724 F.3d 713, 719 (6th Cir. 2013) (“The burden of proving the fairness of the settlement is on the proponents.”) (quoting 4 Newberg on Class Actions § 11:42 (4th ed.)). Here, Plaintiffs – the only Settling Party moving for approval of the Proposed Settlement – have not carried their burden for three principal reasons: (1) the Proposed Settlement and unnecessarily releases potentially valuable claims against the Clearsulting and other third parties that should be preserved; (2) the Proposed Settlement does not resolve the allegations laying at the heart of the operative complaint, but instead appears to sacrifice future insurance coverage, making the Company self-insured for amounts likely to exceed available coverage, and potentially benefitting the Terminated Executives; and, (3) the broad release of unknown claims is improper. If the Proposed Settlement is not rejected, the Settling Parties should be compelled to clarify the record, and to further notify FirstEnergy’s stockholders about the aspects of the Proposed Settlement discussed in this memorandum.

**I. PLAINTIFFS FAIL TO DEMONSTRATE THAT THE POTENTIAL RELEASE OF CLAIMS PROVIDED FOR CLEARSULTING AND OTHER ADVISORS IS FAIR AND REASONABLE**

The Federal Judicial Center counsels wariness with respect to “releasing claims against parties who did not contribute to the class settlement.” MCL 4th §21.61 & n.957 (citing cases).<sup>6</sup> Nevertheless, the Proposed Settlement, if approved, could potentially release Defendants’ “consultants, experts, and attorneys (provided, however, that consultants, experts and attorneys are only “Released Defendants’ Persons” insofar as they were engaged by Defendants and are not released under this Stipulation if and to the extent that they were engaged by the Company).” Proposed Settlement §1(y) (emphasis added).

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<sup>6</sup> While the quoted language uses the word “class[,]” Section 21 of the Manual for Complex Litigation clarifies that the MCL does not distinguish between different types of representative actions, including class actions and derivative actions. *See* MCL 4th §21 (2004) at p.244.

In addition to unnecessarily releasing parties who are not contributing to the Proposed Settlement, that definition is problematic. FirstEnergy's stockholders cannot understand the scope of "Released Defendants Persons" without knowing which consultants, experts, or attorneys were "engaged by the Company" and which were "engaged by Defendants[.]" See *Sauers v. United Water Restoration Grp., Inc.*, 2017 WL 3425789, at \*1 (M.D. Fla. July 21, 2017) (explaining that the court previously rejected a settlement agreement because "ambiguous language in the parties' proposed settlement agreement made [the scope of the release] unclear"). Here, because that information is non-public and because FirstEnergy can only act through its agents (*Orum Stair, LLC v. GJJG Ents., LLC*, 2016-Ohio-7064, ¶ 32, 72 N.E.3d 190, 199 (10th Dist. 2016)), stockholders are forced to guess which consultants would be released by the Proposed Settlement, which is unworkable.

Concerned with a potential release of the Auditors, Augenbaum attempted to seek clarity from the Settling Parties (see Exhibit C) but received no substantive written response explaining their position for over six weeks. Thirty-six hours before the objection deadline, the SLC conveyed its position that the claims are not released. See Exhibit D. The next day, Plaintiffs' counsel joined the SLC's position.

While Augenbaum is somewhat comforted by the SLC's and Plaintiffs' intention, their positions alone are inadmissible parol evidence. See *Williams v. Spitzer Autoworld Canton, L.L.C.*, 2009-Ohio-3554, ¶21, 122 Ohio St. 3d 546, 552, 913 N.E.2d 410, 417. By contrast to the SLC's letter, which states that the Auditors were "engaged by the Company" (see Ex. D), page 3 of the Company's Audit Committee Charter<sup>7</sup> states that the Company's audit committee "shall be solely

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<sup>7</sup> Available at <https://www.firstenergycorp.com/content/dam/investor/files/policies-charters/board-charters/Audit-Charter.pdf>.

responsible for the *appointment*, compensation *and retention of* (subject to shareholder ratification, if such ratification is required)” of the Company’s independent auditor. (Emphasis added) Because all members of the Audit Committee are Defendants being released from liability, PwC, for example, may be able to assert that claims against it were released while the SLC is still investigating the same. The SLC and FirstEnergy may have convincing arguments to the contrary, but there is no reason for the Company to face any risk of persuasion.

Here, the possibility of FirstEnergy releasing Clearsulting and other potentially liable consultants without receiving any compensation from those entities should be eliminated by amending the Proposed Settlement. Plaintiffs’ basis for approval of the Proposed Settlement – a wasting insurance policy and individuals who cannot satisfy a judgment (Motion at 32) – cannot justify potentially releasing claims against profitable consultants. While Clearsulting appears to be privately owned and does not disclose its revenue,<sup>8</sup> PwC disclosed annual revenue exceeding \$45 billion globally, with over \$18 billion of that coming from the Americas.<sup>9</sup> Presenting the Proposed Settlement as essentially a limited fund thus depends upon either not releasing third parties or making a showing that is absent from the Motion. Otherwise, the Company is sacrificing (or at the very least handicapping its prosecution of) claims, which are corporate assets, without any benefit or justification. *See, e.g., Quadrant Structured Prod. Co. v. Vertin*, 102 A.3d 155, 181 (Del. Ch. 2014) (“A corporate claim is an asset of the corporation”). Amending the Proposed Settlement to eliminate such a reading (or alternatively not releasing any consultants unless there is a necessary reason to do so) would sufficiently protect the Company’s assets.

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<sup>8</sup> See [https://www.glassdoor.com/Overview/Working-at-Clearsulting-EI\\_IE1843048.11,23.htm](https://www.glassdoor.com/Overview/Working-at-Clearsulting-EI_IE1843048.11,23.htm).

<sup>9</sup> See <https://www.pwc.com/gx/en/about-pwc/global-annual-review-2021/downloads/pwc-global-annual-review-2021.pdf> at p.10; *see also* Complaint ¶153.

Finally, even if the SLC is correct that claims against ClearSulting and other third parties are preserved, the Proposed Settlement is unclear about what would happen if Auditors crossclaim against Defendants. Claims against the Auditors could be substantial, and the fact that a portion of the Company's recoveries might be released from the Proposed Settlement, and not be realizable by the Company as a result of the Proposed Settlement, must be explored before the Proposed Settlement can be found to be fair, reasonable, and adequate. For example, the Auditors may claim that they relied upon management representations, and that the Terminated Executives misled them.<sup>10</sup> What then? Would any damages attributable to management be unrecoverable, and FirstEnergy's rights to them waived by the Proposed Settlement? Those questions should be answered before the Proposed Settlement is approved, as they potentially represent another example of the Terminated Executives being further enriched at FirstEnergy's expense.

## **II. PLAINTIFFS FAIL TO DEMONSTRATE THAT THE SETTLEMENT OF CLAIMS AGAINST THE DIRECTORS AND OFFICERS IS REASONABLE**

### **A. Plaintiffs Fail to Explain How Much Money Resolving the Direct Claims Is Likely to Cost FirstEnergy or What Other Insurance Coverage Is Available to the Company**

The most important factor in evaluating the fairness of a settlement is how the compensation received weighs against the expected value of litigation. *Shy v. Navistar Int'l Corp.*, 2022 WL 2125574, at \*6 (S.D. Ohio June 13, 2022). This factor augurs against granting the Motion as the Settling Parties concededly cannot "determine[] the total damages incurred by FirstEnergy" much of which "remain[s] speculative." Motion at 30-31 & n.12. That is a sufficient reason to reject the Proposed Settlement.

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<sup>10</sup> See <https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadable/documents/au-00333.pdf>.

It is almost certain that the defense and resolution of the Direct Claims will cost FirstEnergy more than \$220 million. For example, a median recovery in the Securities Class Action, alone, would exhaust the vast majority of available insurance coverage absent the Proposed Settlement based upon the \$10 billion drop in the Company's market capitalization.<sup>11</sup> FirstEnergy spent \$230 million in connection with its Deferred Prosecution Agreement. The chance of it resolving all remaining Direct Claims within policy limits (or the monetary component of the Proposed Settlement) appears negligible considering the five Direct Claims for which the Company believes a loss is probable, including the Securities Class Action and an Ohio ratepayer class action.

Plaintiffs also make no showing of other insurance policies available to the Company to resolve the Direct Claims. Absent such a showing, the Court should assume that there is no other insurance coverage to prosecute or settle the Direct Claims except for that which would be released pursuant to the Proposed Settlement.

**B. Plaintiffs Fail to Establish that the \$180 Million in Insurance Proceeds Would Otherwise Be Unavailable to Pay for the Direct Claims**

Here, while Plaintiffs point to the \$180 million dollars that would be recovered by the Proposed Settlement, they do not explain what would happen absent the Proposed Settlement. It appears to Augenbaum that if the Proposed Settlement is approved, FirstEnergy would effectively become self-insured, responsible for defending and resolving the Direct Claims for which it believes that it is probable that it will incur a loss.

The Motion states that the insurance policies that could pay these claims had approximately \$220 million in coverage remaining. Motion at 4, Proposed Settlement §1(y)). The Motion contends that the Proposed Settlement should be approved because those policies were subject to

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<sup>11</sup> See NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review, at 24 (Jan. 25, 2022), *available at* [https://www.nera.com/content/dam/nera/publications/2022/PUB\\_2021\\_Full-Year\\_Trends\\_012022.pdf](https://www.nera.com/content/dam/nera/publications/2022/PUB_2021_Full-Year_Trends_012022.pdf)

“erosion to pay ... defense costs and potential settlements in other related actions” (Motion at 4) but that ignores that while these policies are “wasting” they are also “the primary source of any recovery on the scale of damages alleged.” *Id.* at 14, 32.

In other words, Plaintiffs’ description of the facts acknowledges that the insurance policies that would fund the Proposed Settlement would otherwise be available to defend or resolve the Direct Claims absent the Proposed Settlement. Given those facts, it is Plaintiffs’ burden to establish that the \$220 million (\$180 million of which is to be paid under the Proposed Settlement) would not be utilized by the Company through the Direct Claims. Because resolving the Direct Claims is likely to exhaust the \$220 million remaining on the policies, it is unclear why the Company would leave any – let alone 20% – of its insurance coverage on the table in any negotiation. Absent unexpectedly favorable resolutions of the Direct Claims, that coverage will almost certainly be exhausted.

Because the record does not reflect what other insurance coverage (if any) is available to FirstEnergy, the Court should require such a showing before approving the Proposed Settlement. *See Owner-Operator Indep. Drivers Ass’n, Inc. v. Arctic Express, Inc.*, 2016 WL 5122565, at \*5 (S.D. Ohio Sept. 21, 2016) (“[p]arties to the settlement must proffer sufficient evidence to allow the district court to review the terms and legitimacy of the settlement.” (quoting *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007))). If, instead, FirstEnergy is exchanging \$220 million dollars of insurance coverage that would otherwise almost certainly be exhausted in the near future in exchange for a payment of \$180 million now, then the Proposed Settlement should



be rejected because, in those circumstances, Plaintiffs fail to explain how the monetary aspect confers any material benefit upon the Company.<sup>12</sup>

**C. Plaintiffs Fail to Account for the Negative Impact of the Broad Release on Existing Litigation and Claims Involving the Terminated Executives**

The Proposed Settlement carves out compensation-based claims between FirstEnergy, on the one hand, and the Terminated Executives, on the other hand (the “Compensation Claims”). Proposed Settlement §§1(x), 1(z). That is an extraordinary carve-out considering it is well-settled that the “[r]easonableness [of a settlement agreement] depends on an analysis of the Class allegations and claims and *the responsiveness of the settlement to those claims.*” MCL 4th §21.62 (2004) (emphasis added).<sup>13</sup>

The Compensation Claims are central to this Action, which alleges that FirstEnergy paid bribes “driven by the Officer Defendants’ selfish interests in executive compensation tied to revenues, contrary to FirstEnergy’s long-term interests, and expos[ing] the Company to enormous harm.” ECF No. 75 (complaint) at ¶2; *see also id.* at ¶¶4, 9, 87, Prayer F (alleging how Defendants caused FirstEnergy to pay bribes to increase Defendants’ compensation and seeking restitution for all compensation obtained by Defendants). That is the crux of this Action, as echoed when the parties briefed, and the Court denied, Defendants’ motions to dismiss. *See* ECF No. 86 (motion

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<sup>12</sup> A failure to approve the Proposed Settlement does not appear likely to impact the governance reforms contemplated by the Proposed Settlement, most of which have already been implemented or are being implemented. *See* Motion at 17. The Motion states that “[i]f the Settlement is approved, FirstEnergy will also implement additional governance reforms ensuring that the Board takes ownership of political and lobbying activities” but reforms aimed at lobbying were part of the Company’s Deferred Prosecution Agreement with the Department of Justice. *See* <https://www.sec.gov/Archives/edgar/data/1031296/000103129621000071/ex101-8k7x22x21.htm> at §5.F and Attachment B. Whether Plaintiffs’ counsel conferred a benefit by causing these governance reforms is entirely independent of whether the Released Claims should be released.

<sup>13</sup> The use of the term “class” in the MCL 4th is a shorthand for representative actions. *See* n.6, *supra*.

to dismiss opposition) at 2, 5-10; *Emps. Ret. Sys. Of City of St. Louis v. Jones*, 2021 WL 1890490, at \*2 (S.D. Ohio May 11, 2021) (“The Company’s financial situation also impacted each of the Officer Defendants, since most of their compensation was based on the Company’s annual financial performance.”); *id.* at \*14 (“Plaintiffs allege Defendants were motivated to engage in the Ohio bribery scheme because ‘it increased the amount of their performance-based compensation tied to the achievement of certain FirstEnergy financial targets.’”); *see also* Motion at 20.

The Proposed Settlement leaves the Compensation Claims unresolved, undermining the assertion that the Proposed Settlement will allow “FirstEnergy and its newly refreshed and reformed Board to move past the bribery scandal and avoid the uncertainties and distractions of continued litigation that otherwise might have weighed on the Company for years to come.” Motion at 4. Instead, the Proposed Settlement, if approved, will allow the Terminated Executives to seek further compensation or damages from FirstEnergy. *See* ECF No. 179-3 at 24 (“Released Defendants’ Claims does not include any claims that [Jones, Dowling, and Chack] have or may assert against FirstEnergy, including but not limited to, claims for [various types of compensation] and further including any claims for wrongful termination and/or any and all claims relating thereto.”). Moreover, it seems that the release of Released Claims will leave the Terminated Executives with claims against FirstEnergy while limiting FirstEnergy’s claims against them. Proposed Settlement §§1(x), 1(z). Augenbaum does not believe that would be fair or reasonable.

Whatever compensation the Terminated Executives believe they may be owed, including any potential clawbacks to which the Company believes it is entitled, must be dwarfed by potential claims the Company would have from the fallout from the Terminated Executives’ disloyal conduct. Moreover, it has been reported that “[t]he Board elected not to use the contracted claw back provisions which could have recouped compensation paid during the years investigated” for

“several executives (including the former President and CEO) [who] were terminated by FirstEnergy.”<sup>14</sup> If that is correct, then the bilateral carve-outs can only harm FirstEnergy. If it is not correct, the record should be clarified.

At the very least, the Proposed Settlement should not be approved unless the Terminated Executives release claims they may have against the Company given the immense amount of actual and prospective damages caused by the bribery scandal that they spearheaded. Indeed, Plaintiffs identify “the more than \$100 million in compensation FirstEnergy paid to the Individual Defendants while the scheme was on going” (Motion at 31 n.12) as a concrete potentially recoverable damage but seemingly ignore the possibility that that amount might *increase* if the Proposed Settlement is approved. The Court should not countenance that possibility as fair, reasonable, or adequate.

### III. THE BROAD RELEASE OF UNKNOWN CLAIMS IS IMPROPER

The Proposed Settlement would release “any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims ... that Plaintiffs, the Company, or the SLC ... could have asserted on behalf of the Company that in any way are based on, arise from or relate to the allegations, transactions, facts, matters, disclosures or nondisclosures set forth in the Complaints[.]” Proposed Settlement §1(z). That is extraordinarily broad.

Faced with a similar proposed release in *In re Hewlett-Packard Co. S'holder Derivative Litig.*, 2015 WL 1153864 (N.D. Cal. Mar. 13, 2015), Judge Breyer found that it might be reasonable to release claims relating to HP's acquisition of Autonomy, which laid “at the heart of th[at] litigation[.]” but that a second clause of that would release “all Known Claims arising from the allegations in the Complaints, that Settling Plaintiffs or any other Securities Holder asserted or

<sup>14</sup> See Pennsylvania Public Utility Comm'n, Bureau of Audits, FE-PA Companies Management and Operations Audit 2022 at 63, *available at* <https://www.puc.pa.gov/pcdocs/1748700.pdf>.

could have asserted derivatively on behalf of the Company” was too broad to be approved. *Id.* at \*3. Judge Breyer reasoned that “it was impossible for the Court or parties to determine the scope and merits of the claims released by this second clause, and because it encompassed a universe of claims that strayed far beyond the Autonomy acquisition at the heart of the litigation, the Court could not say it was a fair and reasonable resolution of this action.” *Id.*

Here, Judge Breyer’s reasoning applies with considerably more force. The scope and merits of claims released is indeterminate because the Proposed Settlement would release Unknown Claims tangentially related to the claims pled. If approved, that would resolve not only every claim that would be barred by *res judicata* if this case proceeded to judgment, but also a panoply of other rights that are tangential to the Complaint. *See UniSuper Ltd. v. News Corp.*, 898 A.2d 344, 347 (Del. Ch. 2006) (“a release may be overbroad if it could be interpreted to ‘encompass any claim that has some relationship—however remote or tangential—to any ‘fact,’ ‘act’ or conduct ‘referred to’ in the Action.’ In other words, a release is overly broad if it releases claims based on a common set of tangential facts, as opposed to operative or core facts.”) (footnote omitted). The Court should require that the release of claims be limited to those claims pled in the Complaint and, at most, to other claims that are specifically described and that were sufficiently investigated by counsel for Plaintiffs and the SLC.

### CONCLUSION

For the foregoing reasons, the Court should reject the Proposed Settlement.

Dated: July 21, 2022

/s/ W. B. Markovits, Esq.  
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*Counsel for Todd Augenbaum*

### CERTIFICATE OF SERVICE

This certifies that the foregoing Objection was filed on July 21, 2022 via the Court's electronic filing system, which automatically results in service upon counsel of record for the defendants.

/s/ W. B. Markovits, Esq.  
W. B. Markovits, Esq. (0018514)

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE  
CITY OF ST. LOUIS, et al.,

Plaintiffs,

v.

CHARLES E. JONES, et al.,

Defendants,

and

FIRSTENERGY CORP.,

Nominal Defendant.

Case No. 2:20-cv-04813

Chief Judge Algenon L. Marbley

Magistrate Judge Kimberly A. Jolson

**DECLARATION OF TODD AUGENBAUM**

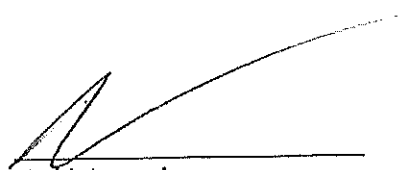
I, Todd Augenbaum, declare:

1. I currently own 200 shares of FirstEnergy Corp. common stock and I have been a shareholder of FirstEnergy continuously since 2018.

2. I will continue to hold such shares as of the Settlement Fairness Hearing scheduled for August 4, 2022.

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

Executed on July 21, 2022.

  
Todd Augenbaum





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March 1, 2022 - March 31, 2022

Account Number: **Re**-4046

Account Type: INDIVIDUAL

Account Status: Pro Elite

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TODD AUGENBAUM

136-87 71ST ROAD

FLUSHING NY 11367-1942

Redacted

**E\*TRADE**



Account Type: INDIVIDUAL

[illegible]





Statement Period : March 1, 2022 - March 31, 2022

Account Type: INDIVIDUAL

DIVIDENDS & INTEREST ACTIVITY					AMOUNT DEBITED	AMOUNT CREDITED
DATE	TRANSACTION TYPE	DESCRIPTION	SYMBOL/ CUSIP			
03/01/22	Dividend	FIRSTENERGY CORP CASH DIV ON 190 SHS REC 02/07/22 PAY 03/01/22	FE			74.10

DOW ▼-1.41%

NASDAQ ▼-1.08%

S&amp;P 500 ▼-1.30%

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Last  
Price \$

Change \$

Change %

Day's  
Gain \$

Qty #

Price Paid \$

Total Gain \$

Total  
Gain %

Value \$

Redacted



» Symbol ^	Last Price \$	Change \$	Change %	Day's Gain \$	Qty #	Price Paid \$	Total Gain \$	Total Gain %	Value \$
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Redacted

FE	R	Trade	36.97	-0.22	-0.59%	-44.00	200	22.3981	2,914.39	65.06%	7,394.00
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Redacted

# EXHIBIT B



ABRAHAM, FRUCHTER & TWERSKY, LLP

March 23, 2021

*By e-Mail*

Joseph C. Weinstein, Esq.  
Squire Patton Boggs (US) LLP  
4900 Key Tower  
127 Public Square  
Cleveland, Ohio 44114

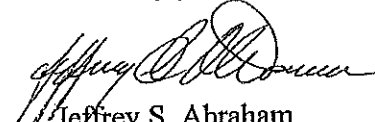
Re: Todd Augenbaum's Demand Upon FirstEnergy's Board

Dear Joe,

I write to advise you that my client, Todd Augenbaum, a shareholder of FirstEnergy Corporation ("FirstEnergy" or the Company"), joins in the November 18, 2020, demand (the "Demand") of Leslie Katz that the board of directors of FirstEnergy investigate, institute litigation and take any other suitable and necessary action on behalf of FirstEnergy against Clearsulting LLC and PriceWaterhouseCoopers LLP. If you would like me to transmit another copy of the Demand, please let me know.

I look forward to hearing from you.

Sincerely yours,



Jeffrey S. Abraham

cc: Mr. Todd Augenbaum  
William Markovitz, Esq.  
Zachary Schaengold, Esq.





ABRAHAM, FRUCHTER & TWERSKY, LLP

November 18, 2020

*By Federal Express*

Board of Directors  
FirstEnergy Corp.  
76 South Main Street  
Akron, Ohio 44308

**Re: Demand Upon the Board of Directors to Investigate Claims, Initiate Legal Action and Take Necessary and Appropriate Remedial Measures with Respect to the Conduct of the Company's Auditors**

To the Members of the Board of Directors:

This firm represents Mr. Leslie Katz (also referred to herein as the "Stockholder"), who is, and at all times relevant to the issues addressed in this letter was, a stockholder of FirstEnergy Corp. (with its subsidiaries, "FirstEnergy" or the "Company"). This letter is a demand (the "Demand") pursuant to Ohio Revised Code §1701.59 (2020) that the Company's Board of Directors (the "Board") investigate, institute litigation, and take necessary and suitable actions to recover damages on behalf of FirstEnergy in connection with the actions taken by Clearsulting LLC ("Clearsulting") and PricewaterhouseCoopers LLP ("PwC").

This Demand is limited to claims which Mr. Katz is seeking to have the Company investigate and assert, as appropriate, against Clearsulting and PwC and does not extend to any claims against any of the Company's former or current officers or directors. Mr. Katz is continuing to investigate those claims through demands for books and records he has made pursuant to Ohio law which are now the subject of a complaint filed in the Summit County Court of Common Pleas. *See Katz v. First Energy Co.*, CV-2020-10-2973. Therefore, in making this Demand, Mr. Katz is not conceding the independence or the ability of the Board to impartially consider the filing of any other litigation against any other person whether relating to the subject matter of this Demand or otherwise.

#### **Background and Relevant Facts**

FirstEnergy, through its subsidiaries, generates, transmits, and distributes electricity in the United States. The company serves approximately six million customers in Ohio, Pennsylvania, West Virginia, Maryland, New Jersey, and New York. FirstEnergy Corp. was founded in 1996 and is headquartered in Akron, Ohio. FirstEnergy's subsidiaries include the wholly owned FirstEnergy Solutions ("FES") and FirstEnergy Nuclear Operating Co. ("FENOC").

Board of Directors  
FirstEnergy Corp.  
November 18, 2020  
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In 2017, FirstEnergy lobbied for a Zero-Emissions Nuclear Resource program (“ZEN”) energy proposal, calling for increased government subsidies and higher costs for local electricity consumers. In April 2017, legislation was introduced before the Ohio General Assembly that would create ZEN credits to last up to 16 years to compensate nuclear power plants for environmental, energy security, and other attributes benefitting the state and its retail customers. The Ohio House Public Utilities Committee held hearings but did not advance the April 2017 legislation. In October 2017, new legislation was introduced before the Ohio General Assembly providing for a similar ZEN program that provided for an approximately 12-year lifespan for the program, but that legislation also did not pass.

On July 21, 2020, Federal agents arrested Ohio House of Representatives Speaker Larry Householder, FES lobbyist Juan Cespedes, and others in a racketeering conspiracy. An Affidavit in support of a Criminal Complaint filed by Blane J. Wetzel, a Special Agent in the Federal Bureau of Investigation’s Public Corruption Squad (the “Wetzel Affidavit”) supported those arrests. The Wetzel Affidavit clearly refers to FirstEnergy as “Company A.” For example, the Wetzel Affidavit quotes, verbatim, Charles E. Jones’s statements on the Company’s 4Q 2016 Earnings Call in paragraph 11. There is no other occurrence of the same words in any earnings conference call, let alone during the quarter referenced in the Wetzel Affidavit.

The Wetzel Affidavit details how Mr. Householder was re-entering politics in Ohio while FirstEnergy was “in search of a solution to its nuclear energy problem[.]” Wetzel Affidavit ¶13. The affidavit details that:

Following his January 2017 trip on Company A’s private jet, in March 2017, Householder began receiving quarterly \$250,000 payments from Company A into a bank account in the name of a 501(c)(4) entity secretly controlled by Householder called Generation Now. In 2017 and 2018, Householder’s Enterprise received into Generation Now, and the entities it controlled, over \$2.9 million from Company A. Members of Householder’s Enterprise used Company A’s payments for their own personal benefit and to gain support for Householder’s political bid to become Speaker.

.... The Investigation shows that the plan worked. Householder-backed candidates that benefitted from Company A money received by Generation Now ... helped elect Householder as the Ohio Speaker of the House in January 2019. And Householder fulfilled his end of the *corrupt bargain* shortly thereafter. Three months into his term as Speaker, HB 6 subsidized nuclear energy operations in Ohio through a monthly charge on all Ohioan’s energy bills. Neil Clark described the legislation as a “bailout” for Company A’s nuclear assets, worth \$1.3 billion to Company A.

Wetzel Aff. ¶¶13-14. The Wetzel Affidavit goes on to explain how FirstEnergy began increasing its payments to Generation Now, including a \$1.5 million wire on April 30, 2019, and four wires totaling \$8 million in May 2019, while HB6 was pending. Wetzel Aff. ¶15. The Wetzel Affidavit

Board of Directors  
 FirstEnergy Corp.  
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also provides details how after HB6 was signed into law in July of 2019, Company controlled accounts wired another \$38 million to defeat a ballot initiative to stop the law from going into effect. *Id.* ¶15. In short, FirstEnergy “entities paid Householder Enterprises[<sup>1</sup>] \$60,866,835.86 in secret payments over the approximately three-year period in exchange for a billion-dollar-bailout.” *Id.* ¶18 (footnote omitted).

Those payments were described as “bribe money ... akin to bags of cash” that were unregulated, unreported, and not subject to public scrutiny. In addition, the Wetzel Affidavit explains that Householder spoke with FirstEnergy CEO Jones 30 times during the first half of 2019, and 84 times from early 2017 through July 2019. Householder spoke with First Energy’s Vice President of External Affairs Michael J. Dowling 14 times during that time period, and with its Ohio Director of State Affairs 188 times during that period. Wetzel Aff. ¶182. Further, lobbyist Matt Borges is cited in the Affidavit describing an incident in which he drove Mr. Jones and other FirstEnergy executives to the airport in September of 2019, during the ballot initiative fight, during which Mr. Jones requested that Mr. Borges divert the car to a place where a person would be collecting signatures to repeal HB 6, so that he could “get out and talk to him.” Wetzel Aff. ¶240.

As a result of the Company’s actions, a shareholder class action lawsuit has been filed against the Company, Mr. Jones, James F. Pearson, who served as CFO of FirstEnergy until March 2018, at which time he transitioned to Vice President of Finance of FirstEnergy until his retirement in April 2019, Steven E. Strah, who served as FirstEnergy’s CFO from March 2018 until he transitioned to President of FirstEnergy, K. Jon Taylor, who took over as FirstEnergy’s CFO from Defendant Strah. That case, styled *Owens v. FirstEnergy Corp. et al.*, Case No. 2:20-cv-03785-ALM-KAJ (S.D. Ohio), exposes the Company to damages relating to alleged violations of the federal securities laws between February 21, 2017 and July 21, 2020, in connection with misrepresenting the value of the Company’s business and prospects by overstating its earnings and concealing the significant defects in its internal controls. At the same time, the Securities and Exchange Commission (“SEC”) “through its Division of Enforcement, issued an order directing an investigation of possible securities laws violations by the Company, and on September 1, 2020 [and] issued subpoenas to the Company and certain of its officers.” See Form 12b-25 Notification of Late Filing (11/9/20).

The Company’s potential liability for wrongdoing extends far beyond the liabilities imposed by the federal and securities laws and, instead, extends to the very electricity rates which the scheme sought to raise. Thus, the State of Ohio has sued the Company for engaging in a pattern of corrupt activity. See *Ohio ex rel. Yost v. FirstEnergy Corp., et al.*, 20 CV 006281 (Franklin Cty. Common Pleas). Similarly, Ohio consumers are prosecuting a consolidated class actions relating to alleged overcharges on their electricity bills arising from the underlying fraudulent conduct. See, e.g., *Smith v. FirstEnergy Corp., et al.*, Docket No. 2:20-cv-03755 (S.D. Ohio); *Buldas v. FirstEnergy Corp., et al.*, Docket No. 2:20-cv-03987 (S.D. Ohio); *Hudock et al. v.*

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<sup>1</sup> The “Householder Enterprise” is defined in the Wetzel Affidavit as Defendants Larry Householder, Jeffrey Longstreth, Neil Clark, Matthew Borges, Juan Cespedes, Generation Now, and others known and unknown.

Board of Directors  
FirstEnergy Corp.  
November 18, 2020  
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*FirstEnergy Corp., et al.*, Docket No. 2:20-cv-03954 (S.D. Ohio). Each of these actions is subjecting the Company to substantial costs and exposure to potentially material damages. The harm to the Company from these actions could and should have been prevented. Among other things, the Board's audit committee (the "Audit Committee") is tasked in its charter with oversight of the Company's compliance with legal requirements. To assist it, the Audit Committee relies upon, *inter alia*, audits by PwC and ClearSulting. PwC and ClearSulting apparently failed to bring red flags to the Audit Committee's attention.

On September 1, 2020, FirstEnergy and ClearSulting sued Michael Pircio. *See FirstEnergy Corp. et al. v. Pirico*, 1:20-cv-01966-PAB (N.D. Ohio) (the "*Pirico* Action"). Since approximately June 2019, ClearSulting has provided consulting services to FirstEnergy. *See Pirico* Action, ECF No. 1 (the "*Pirico* Complaint") at ¶1. Mr. Pirico was an employee of ClearSulting "for a very brief period" from March 16, 2020, until July 30, 2020. *Id.* ¶1. "ClearSulting utilized design assessments, which detailed FirstEnergy's existing processes in four areas relevant to the Sarbanes-Oxley Act: Accounts Payable, Cash Management, Payroll, and Tax. Additionally, ClearSulting assisted FirstEnergy's testing of whether the Sarbanes-Oxley Act controls in place within those four areas performed as designed." *Id.* ¶12.

Mr. Pirico participated in ClearSulting's audit and validation of certain FirstEnergy processes and procedures for Sarbanes-Oxley compliance. *Id.* ¶2. During his very brief window of visibility into FirstEnergy's internal control processes, payment procedures, and sensitive employee and vendor information, Mr. Pirico accessed and downloaded otherwise confidential information. *Id.* ¶3.

Mr. Pirico alleges that he was functionally acting as FirstEnergy's employee and that he witnessed potentially prohibited conduct by the Company. *Pirico* Action, ECF No. 14 (the "*Pirico* Answer") at Counterclaim ¶8. After Mr. Householder was indicted, Mr. Pircio realized that ClearSulting's work may have related to the indictment. *Id.* ¶10. Mr. Pircio reviewed the instructions that FirstEnergy gave to ClearSulting, observing that ClearSulting's 2019 audit of FirstEnergy may have violated one or more federal statutes. *Id.* ¶11. Mr. Pircio asked two of his superiors at ClearSulting whether the scope of the 2019 audit of FirstEnergy "was deliberately limited in a way that was not justified in light of the contractual relationship between [FirstEnergy Solutions ("FES")] and FirstEnergy that required FirstEnergy to provide auditing and compliance services for FES." *Id.* ¶12. Mr. Pircio collected from the ClearSulting database approximately fifty-seven files containing documents related to the 2019 internal audit conducted by ClearSulting pursuant to its engagement with FirstEnergy. *Id.* ¶17. On or about August 7, 2020, Mr. Pircio submitted his report and claims, through counsel, to the SEC to report suspected violation of federal laws resulting in the opening of the SEC Investigation. *Id.* ¶20 and *Pirico* Action, ECF No. 11.

PwC has been the Company's independent auditor since 2002. ClearSulting performed internal audits that FirstEnergy would then present to PwC. *Pirico* Answer at Counterclaim ¶7. PwC thus presumably had access to and reviewed the information Mr. Pirico presented to the SEC, causing the SEC to open the SEC Investigation within a matter of days.



Board of Directors  
FirstEnergy Corp.  
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PwC was required to apply audit procedures specifically directed to ascertaining whether an illegal act had occurred if specific information came to its attention that provides evidence concerning the existence of possible illegal acts that could have a material indirect effect on the Company's financial statements. *See* Auditing Standard No. 2405. Among the red flags identified by AS 2407 are "[l]arge payments for unspecified services to consultants, affiliates or employees" (AS 2407.09) such as those made by the company and described in the Wetzel Affidavit.

If PwC became aware of such payments, which presumably it did if it was doing its job competently, it was required to obtain an understanding of the nature of the act, the circumstances in which it occurred, and sufficient other information to evaluate the effect on the financial statements, including inquiring of management at a level above those involved, if possible. An auditor must also assure itself that the audit committee is adequately informed as soon as practicable and prior to the issuance of the auditor's report with respect to illegal acts that come to the auditor's attention. *See* AS 2407.17.

#### **Demand to Bring Action**

This letter is intended to demand that the Company investigate potential claims which could be asserted against Clearsulting and PwC, and assert such claims as are appropriate, for, among other things, breach of contract, professional malpractice and aiding and abetting the breach of fiduciary duty by any of FirstEnergy's officers and directors. Liability could be based alternatively on factual findings from your investigation that either or both of Clearsulting and PwC failed to properly perform their audit functions or, to the extent they uncovered any wrongdoing failed, to bring it to the attention of the Audit Committee or other relevant authorities. In that context, the Stockholder notes that Mr. Pirico was able to uncover documents, in a matter of weeks, causing the SEC to commence an investigation within three days of receipt thereof while Clearsulting and PwC, seemingly in possession of the same information, failed to take any action.

Mr. Katz also demands that FirstEnergy institute corporate governance reforms by expanding the scope of its auditor's engagement, pursuant to Auditing Standard No. 2405.24, to entail a greater responsibility for detecting illegal acts. FirstEnergy's auditor should be responsible for testing and reporting on compliance with laws and regulations applicable to lobbying and should report on compliance therewith. To the extent that the Board or any government agency finds that either or both of PwC and Clearsulting failed to act appropriately at the relevant times, they should be replaced as the Company's external and internal auditors, respectively.

In the event the Company fails to promptly commence the investigation which is the subject of this Demand letter or to bring an action within ninety (90) days, Mr. Katz will commence an action derivatively on behalf of First Energy.

Case: 2:20-cv-04813-ALM-KAJ Doc #: 181-2 Filed: 07/21/22 Page: 8 of 8 PAGEID #: 4050

Board of Directors  
FirstEnergy Corp.  
November 18, 2020  
Page 6 of 6

If you wish to discuss this matter further or have any questions concerning this Demand letter, please do not hesitate to contact me through your attorney.

Very truly yours,

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ABRAHAM, FRUCHTER & TWERSKY, LLP  
Jeffrey S. Abraham  
Michael J. Klein

cc: Mr. Leslie Katz  
Geoffrey Ritts, Esq. (via email)  
Marjorie P. Duffy, Esq. (via email)  
Bill Markovits, Esq.  
Terence R. Coates, Esq.

# EXHIBIT C





ABRAHAM, FRUCHTER & TWERSKY, LLP

June 8, 2022

*By Email*

Jeroen van Kwawegen, Esq.  
Bernstein Litowitz Berger  
& Grossmann LLP  
Jeroen@blbglaw.com

Saxena White P.A.  
Attn: Thomas Curry  
tcurry@saxenawhite.com

Maeve O'Connor, Esq.  
John Gleeson, Esq.  
Debevoise & Plimpton LLP  
mloconnor@debevoise.com  
jgleeson@debevoise.com

Re: *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ (S.D. Ohio)

Dear Counsel:

On behalf of FirstEnergy stockholder Todd Augenbaum, I write with respect to the March 11, 2022, Stipulation and Agreement of Settlement in the above-captioned action.<sup>1</sup>

Mr. Augenbaum previously made a demand (the "Demand"), *inter alia*, that the Board institute litigation on behalf of FirstEnergy against ClearSulting LLC and PriceWaterhouseCoopers LLP (together the "Auditors") for failing to properly perform their audit functions while the Company was bribing Householder. Mr. Augenbaum has not yet received any substantive response to the Demand.

The Stipulation defines "Released Defendants' Persons" as including "consultants, experts and attorneys" if they were "engaged by Defendants" but not "if and to the extent that they were engaged by the Company[.]" Stipulation ¶1(y). The Stipulation does not define what it means to be "engaged by" a party, which could allow the Auditors to claim that they were engaged by a Defendant even though the actual engagement ran through the Company, thus resulting in claims against the Auditors being released.

To protect FirstEnergy's interest, please amend the Stipulation so that the Auditors are clearly identified as not being within the scope of Released Defendants' Persons.

Very truly yours,

ABRAHAM, FRUCHTER & TWERSKY LLP  
Jeffrey S. Abraham  
Michael J. Klein

<sup>1</sup> Capitalized terms undefined herein are defined in the Stipulation.

Cc: Geoffrey J. Ritts, Esq. ([gjritts@jonesday.com](mailto:gjritts@jonesday.com))  
Daniel R. Warren, Esq. ([dwarren@bakerlaw.com](mailto:dwarren@bakerlaw.com))  
William S. Scherman, Esq. ([wscherman@gibsondunn.com](mailto:wscherman@gibsondunn.com))  
Marcella L. Lape, Esq. ([marcie.lape@skadden.com](mailto:marcie.lape@skadden.com))  
John F. McCaffrey, Esq. ([john.mccaffrey@tuckerellis.com](mailto:john.mccaffrey@tuckerellis.com))  
Steven S. Scholes, Esq. ([sscholes@mwe.com](mailto:sscholes@mwe.com))  
Timothy D. Katsiff, Esq. ([katsiff@ballardspahr.com](mailto:katsiff@ballardspahr.com))  
Michael L. Kichline, Esq. ([michael.kichline@morganlewis.com](mailto:michael.kichline@morganlewis.com))  
Lauren Bell, Esq. ([lbell@bsflp.com](mailto:lbell@bsflp.com))  
Ralph E. Cascarilla, Esq. ([rcascarilla@walterhav.com](mailto:rcascarilla@walterhav.com))

# EXHIBIT D

**Debevoise  
& Plimpton**

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022  
+1 212 909 6000

July 19, 2022

BY EMAIL

Todd Augenbaum  
c/o Jeffrey S. Abraham  
Michael J. Klein  
Abraham, Fruchter & Twersky LLP

**Re: “Employees Retirement System of the City of St. Louis, et al. v. Jones, et al., Case  
No. 2:20-cv-04813-ALM-KAJ (S.D. Ohio)”**

Dear Mr. Abraham and Mr. Klein:

We write on behalf of the Special Litigation Committee of the Board of Directors of First Energy Corporation (the “SLC”) in response to your letter of June 8, 2022.

We have reviewed your letter and your concerns regarding the scope of the release provided in the Stipulation of Settlement dated March 11, 2022 (the “Settlement Stipulation”). We disagree with your contention that PriceWaterhouseCoopers, the Company’s external auditor, or Clearswift LLC, an entity engaged as a consultant by the Company, could be read to fall within the definition of “Released Defendants’ Persons.” To the contrary, the Settlement Stipulation expressly carves out possible third party claims, noting that “consultants, experts and attorneys are only “Released Defendants’ Persons” insofar as they were engaged by Defendants and are not released under this Stipulation if and to the extent that they were engaged by the Company).” Accordingly, there is no reason to amend the stipulation of settlement.

The SLC’s review of the claims set forth in Mr. Augenbaum’s demand remains ongoing. We will contact you when the SLC has reached the conclusion of its inquiry.

Sincerely,

/s/Maeve O’Connor

Maeve O’Connor  
Debevoise & Plimpton LLP

*Counsel for the Special Litigation  
Committee of the Board of Directors of First  
Energy Corp.*

**WOLLMUTH MAHER & DEUTSCH LLP**

500 FIFTH AVENUE  
NEW YORK, NEW YORK 10110

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TELEPHONE (212) 382-3300  
FACSIMILE (212) 382-0050

July 25, 2022

The Honorable John R. Adams  
United States District Court for the Northern District of Ohio  
2 South Main Street, Suite 510  
Akron, Ohio 44308

Re: Miller v. Anderson et al., No. 20-cv-1743

Dear Judge Adams:

Wollmuth Maher & Deutsch LLP (“WMD” or the “Firm”) writes in response to the Court’s solicitation for counsel interested in prosecuting the claims in the above-referenced action. (ECF No. 332). As set forth below, the Firm routinely handles complex commercial matters, is a uniquely qualified applicant to best serve the shareholders’ interests here, and is interested in the opportunity to litigate this case to resolution.

While the Court has taken the unique step of seeking new counsel in this action, we recognize that in shareholder derivative actions the “decision regarding appointment of lead counsel is within the discretion of the court.” *In re Gas Nat., Inc.*, 2014 U.S. Dist. LEXIS 191536, at \*4-5 (N.D. Ohio Mar. 7, 2014). We understand that in selecting counsel, courts are traditionally guided by “who ‘will best serve the interest of the plaintiffs’”, *id.* (citation omitted), and consider, among other things, the “competence of counsel,” *id.*, and “access to resources necessary to prosecute the claims at issue.” *In re Wendy’s Co. S’holder Derivative Action*, 2018 U.S. Dist. LEXIS 211957, at \*6 (S.D. Ohio Dec. 17, 2018) (citation omitted); *see also* Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv).

This is a complex shareholder securities derivative action alleging that FirstEnergy officers or directors “breached their fiduciary duties to the Company, were unjustly enriched, wasted corporate assets, and committed violations of Section 14(a) of the Securities Exchange Act of 1934. . . .” *See* ECF No. 31 at 1. It will require expertise and substantial resources to effectively litigate. The Firm has monitored this case and other proceedings related to FirstEnergy’s role in the House Bill 6 scandal, is familiar with the facts and issues involved, and has the legal and industry expertise as well as the professional reputation and credibility necessary to prosecute this action vigorously and effectively. In addition, the Firm has a proven track record of successfully litigating complex securities cases on behalf of an array of clients including domestic and international companies, municipalities, and institutional investors.

## The Firm's Extensive Commercial Litigation Experience and Legal Knowledge

WMD is a highly regarded New York-based litigation firm representing plaintiffs and defendants. Our Firm includes approximately 60 attorneys, many of whom began their careers at international law firms or have served as federal or state prosecutors.<sup>1</sup> WMD's attorneys who will lead the charge in this matter have decades of experience litigating complex commercial and securities actions. In addition, WMD's reputation in the legal community provides the credibility required to successfully litigate against the nation's top defense-focused law firms. The Firm's attorneys have also developed a reputation for being collegial lawyers who work cooperatively and respectfully with both courts and opposing counsel.

WMD has a successful track record in all forms of commercial litigation, including especially matters concerning securities, corporate governance, and derivative and class action litigation. While our Firm has significant experience in individual actions, we also are deeply experienced in handling financial-based and other securities class actions as sole or lead class counsel, involving similar claims to those present here.<sup>2</sup> The Firm's cases involve many sophisticated legal and factual issues that require a keen understanding of how various financial markets operate in order to effectively prosecute the unlawful conduct. The Firm's attorneys have acquired extensive knowledge of the applicable law and have honed their skills to allow them to litigate against defendants effectively and efficiently on similar issues to those that may arise in this action. Indeed, WMD has developed expertise in investigating, developing, and litigating securities and breach of fiduciary duty claims in complex cases similar to this one, which will greatly benefit FirstEnergy and its shareholders.

Of note, the Firm's successes include the prosecution of securities and common law fraud claims in Ohio courts. *W. & S. Life Ins. Co. v. JPMorgan Chase Bank, N.A.*, No. 11-cv-495 (S.D. Ohio), was one of nearly a dozen Ohio cases in which the Firm represented The Western & Southern Life Insurance Company and its affiliates ("Western & Southern") against the sponsors and underwriters of residential mortgage-backed securities. In *W. & S. Life Ins. Co. v. JPMorgan Chase Bank, N.A.*, the Firm also litigated Ohio Corrupt Activities Act claims. There, the Firm defeated a motion to dismiss and negotiated an advantageous settlement for the investors that earned the Court's full approval. For a firm based in New York, WMD has unique experience with Ohio litigation and can draw on those experiences as necessary here.

FirstEnergy's shareholders are typical of many of the Firm's clients, which include some of the largest institutional investors in the world, such as AIG, Berkshire Hathaway, and Commerzbank, and government entities such as the FDIC.<sup>3</sup> The Firm also frequently represents

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<sup>1</sup> This applies to the attorneys who will lead this matter, including David H. Wollmuth (Davis Polk) and R. Scott Thompson (Davis Polk/federal prosecutor).

<sup>2</sup> For example, in *Touchstone Strategic Trust et al. v. Gen. Elec. Co. et al.*, No. 19-cv-1876 (JMF), the Firm represents investment funds and other institutional investors against GE and its former CEO and CFO. In addition to asserting fraud claims arising under the Securities Exchange Act of 1934 stemming from the historic stock price collapse of GE, the plaintiffs are pursuing claims under the Ohio Securities Act and seeking rescission of approximately \$100 million of GE common shares.

<sup>3</sup> In the interest of transparency and based on a review of publicly available data, the Firm has previously both represented and been adverse to several FirstEnergy shareholders, none of whom are named as parties in this action.



clients involved in corporate governance disputes, including breach of fiduciary duty and waste claims. The Firm is regularly involved in novel and important complex litigations.<sup>4</sup> WMD is unique among potential lead counsel applicants because it has significant experience representing *both* plaintiffs and defendants in complex securities litigations.

In short, the Firm is well equipped to serve as shareholders' counsel in this action.

### **Committing Resources to Represent the Shareholders**

The lead attorneys committed to this matter are Scott Thompson, head of WMD's trial practice, and David Wollmuth, WMD's managing partner. Between them they have over 60 years' experience (including substantial experience in sophisticated financial litigation and white-collar crime), and have handled some of the leading financial cases of our time, including in Ohio. We believe they will be an ideal team to lead the prosecution of this case.

Scott Thompson has more than 35 years of litigation experience, much of it in the white-collar area. After practicing in the white-collar area at Davis Polk & Wardwell, he spent four years as an Assistant United States Attorney prosecuting organized crime and complex financial crimes. He then spent the next 20 years practicing largely in the white-collar area, including defending criminal cases and conducting internal investigations for clients such as AT&T, Lucent Technologies, and Cerberus Capital Management. He defended clients in investigations involving the Foreign Corrupt Practices Act, and advised clients on how to create and deploy effective FCPA compliance programs. He has been lead trial counsel in dozens of cases across a broad spectrum of civil and criminal issues.

David Wollmuth is a leading financial litigator in New York, and he founded WMD (along with two other partners), twenty-five years ago after clerking in federal court and working at Davis Polk & Wardwell for many years. In his career, he has secured well over \$1 billion in settlements for his clients. He has served Ohio's Western & Southern in sophisticated financial litigations for approximately twenty years. Mr. Wollmuth's representation of Western & Southern began with successfully representing Western & Southern in connection with the Enron debacle in the early 2000s. Among other references (which are available upon request), Mr. Wollmuth invites the Court to contact Western & Southern's current general counsel, Jonathan Niemeyer, regarding Mr. Wollmuth and WMD (Mr. Niemeyer's email and telephone will be provided upon request).

Beyond Messrs. Thompson and Wollmuth, WMD is ready to commit the required time and resources essential to effectively prosecute the claims on behalf of FirstEnergy and its

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(Firm clients who are FirstEnergy shareholders include AIG and For Washington Investment Advisors; shareholders the Firm has been adverse to include Bank of America, Bank of New York Mellon, Deutsche Bank AG, Goldman Sachs, HSBC, JPMorgan, Morgan Stanley, Nuveen, US Bank, and Wells Fargo). These prior representations will in no way hinder the Firm's ability to advocate on behalf of the FirstEnergy shareholders. On the contrary, the Firm's extensive experience in similar matters with the kinds of institutions involved will greatly advantage the shareholders in their litigation of these claims. And should a conflict arise, the Firm will promptly notify the Court and take the necessary steps to address it.

<sup>4</sup> One example is the Firm's current representation of LTL Management, LLC in its Chapter 11 bankruptcy, *In re LTL Management, LLC*, No. 21-30589 (MBK) (Bankr. NJ. Feb. 25, 2022). Additional illustrative examples of the Firm's representations, as well as biographies of the Firm's lead attorneys, can be found in Exhibit A, enclosed herewith.

shareholders. The Firm will closely manage the time spent and the costs incurred in litigating this matter to ensure the case is being litigated efficiently. WMD recognizes that it has a duty to manage the case in an efficient and cost-effective manner to ultimately maximize the potential recovery.

### **WMD's Familiarity with the Claims in this Litigation**

The Firm has monitored the developments in this case and the various related cases in other courts, as well as the regulatory proceedings that arose from the shocking events of the House Bill 6 bribery scandal. The Firm recognizes the severity of the allegations in the amended complaint here and the impact of the conduct not only on FirstEnergy shareholders, but also on the citizens of Ohio. This action fits the profile of the type of case the Firm typically handles, and as with all its cases, the Firm will seek the most favorable outcome possible for FirstEnergy shareholders, pursue utmost transparency for the benefit of shareholders and citizens alike, and seek full approval from this Court of any potential resolution, if one is reached.

Accordingly, for the reasons set forth herein in response to the Court's notice (ECF No. 332), the Firm states its interest in substituting as shareholders' counsel in this action. We appreciate the Court's attention to this matter and will be available at the Court's convenience.

Respectfully submitted,

WOLLMUTH MAHER & DEUTSCH LLP

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Enclosure