UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE HEARTWARE INTERNATIONAL, INC. SECURITIES LITIGATION	No. 1:16-cv-00520-RA

DECLARATION OF JOHN RIZIO-HAMILTON IN SUPPORT OF (I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

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I, JOHN RIZIO-HAMILTON, declare as follows:

1. I am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"). BLB&G serves as counsel for Lead Plaintiff St. Paul Teachers' Retirement Fund Association ("St. Paul Teachers" or "Lead Plaintiff") and Lead Counsel for the Class in the above-captioned action (the "Action").[1] I have personal knowledge of the matters set forth herein based on my active participation in all aspects of the prosecution and settlement of the Action.

2. I submit this declaration in support of Lead Plaintiff's motion, pursuant to Federal Rule of Civil Procedure 23(e), for final approval of the proposed Settlement with Defendants that will resolve the claims asserted in the Action and approval of the proposed plan of allocation of the proceeds of the Settlement (the "Plan of Allocation") and Lead Counsel's motion for an award of attorneys' fees and litigation expenses (the "Fee and Expense Application").

3. In support of these motions, Lead Plaintiff and Lead Counsel are also submitting the exhibits attached hereto, the Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation (the "Settlement Memorandum"), and the Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses (the "Fee Memorandum").

I. INTRODUCTION

4. The proposed Settlement before the Court provides for the resolution of all claims in the Action in exchange for a cash payment of $54,500,000 for the benefit of the Class. As

[1] All capitalized terms that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement dated November 13, 2018 (ECF No. 69-1) (the "Stipulation"), which was entered into by and among (i) Lead Plaintiff, on behalf of itself and the Class, and (ii) defendant HeartWare International, Inc. ("HeartWare" or the "Company") and Douglas E. Godshall ("Godshall" and, together with HeartWare, "Defendants").

detailed herein, Lead Plaintiff and Lead Counsel believe that the proposed Settlement represents an excellent result and is in the best interests of the Class. Lead Plaintiff would have faced significant risks in establishing Defendants' liability and proving damages in the Action, and the proposed $54.5 million Settlement represents a substantial percentage of the maximum damages that Lead Plaintiff reasonably believed could be established at trial. Thus, as explained further below, the Settlement provides a considerable benefit to the Class by conferring a substantial, certain, and immediate recovery while avoiding the significant risks and expense of continued litigation, including the risk that the Class could recover nothing or less than the Settlement Amount after years of additional litigation and delay.

5. The proposed Settlement is the result of extensive efforts by Lead Plaintiff and Lead Counsel, which included, among other things detailed herein: (i) conducting an extensive investigation into the alleged fraud, including a thorough review of SEC filings, analyst reports, conference call transcripts, press releases, company presentations, media reports and other public information, consultation with experts, and interviews with numerous former employees of HeartWare and other potential witnesses; (ii) drafting an initial complaint and a detailed amended complaint based on this investigation; (iii) successfully defeating Defendants' motion to dismiss through briefing and oral argument; (iv) successfully obtaining class certification; (v) undertaking substantial fact discovery efforts, including serving document requests on Defendants, serving document subpoenas on 27 non-parties, and preparing letters rogatory for service on a key non-party witness in the United Kingdom, and obtaining and reviewing more than 450,000 pages of documents produced by Defendants and non-parties as a result of these efforts; (vi) consulting extensively throughout the litigation with a variety of experts and consultants, including experts in bioengineering, cardiovascular medicine, statistics, regulatory compliance, and financial

economics; and (vii) engaging in extensive arm's-length settlement negotiations to achieve the Settlement, including two mediation sessions with Jed D. Melnick, Esq. of JAMS.

6. Due to the efforts summarized in the foregoing paragraph, and more fully set forth below, Lead Plaintiff and Lead Counsel were well informed of the strengths and weaknesses of the claims and defenses in the Action at the time they reached the proposed Settlement. The Settlement was achieved only after extended arm's-length negotiations between the Parties with the assistance of Mr. Melnick, who is an experienced mediator of securities class actions like this one. Lead Plaintiff and Lead Counsel believe that the Settlement represents a very favorable outcome for the Class and that its approval would be in the best interests of the Class.

7. As discussed in further detail below, the Plan of Allocation was developed with the assistance of Lead Plaintiff's damages expert, and provides for the distribution of the Net Settlement Fund to Class Members who submit Claim Forms that are approved for payment by the Court on a *pro rata* basis based on losses attributable to the alleged fraud.

8. For its efforts in achieving the Settlement, Lead Counsel requests a fee award of 24% of the Settlement Fund (or $13,080,000, plus interest earned at the same rate as the Settlement Fund). The 24% fee requested is based on a retainer agreement entered into with Lead Plaintiff at the outset of the litigation, and, as discussed in the Fee Memorandum, is well within the range of percentage awards granted by courts in this Circuit and elsewhere in similarly sized class action settlements. Moreover, the requested fee represents a multiplier of 2.18 of Lead Counsel's lodestar, which is on the lower end of the range of multipliers typically awarded in class actions with significant contingency risks such as this one, and thus, the lodestar cross-check also supports the reasonableness of the fee. Lead Counsel respectfully submits that the fee request is fair and

reasonable in light of the result achieved in the Action, the efforts of Lead Counsel, and the risks and complexity of the litigation.

9. For all of the reasons set forth herein and in the accompanying memoranda, including the quality of the result obtained and the numerous significant litigation risks discussed below, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation are fair, reasonable and adequate, and should be approved. In addition, Lead Counsel respectfully submits that its request for attorneys' fees and litigation expenses – which has been reviewed and approved by Lead Plaintiff – is also fair and reasonable, and should be approved.

II. HISTORY OF THE ACTION

A. Background

10. Defendant HeartWare is a medical device company that develops and manufactures implantable heart pumps known as ventricular assist devices ("VADs"). VADs are used to treat patients suffering from advanced heart failure. These are generally patients who are awaiting heart transplants and have a high risk of death. During the Class Period – from June 10, 2014 through January 11, 2016 – HeartWare was a publicly traded company whose common stock traded on the NASDAQ. Shortly after the end of the Class Period, HeartWare was acquired by Medtronic plc, another medical device company, and is now a wholly owned subsidiary of that company.

11. At all relevant times, HeartWare had a single commercialized product, known as the HeartWare Ventricular Assist Device ("HVAD"). During the Class Period, HeartWare was also developing a newer, smaller, and purportedly safer VAD, called the Miniaturized Ventricular Assist Device ("MVAD"). HeartWare and its investors considered the prospects for the MVAD to be the most important driver of the Company's growth and future commercial success.

12. By the time the Class Period began in June 2014, HeartWare was close to beginning medical trials for the MVAD in Europe (known as a "CE Mark trial"). The CE Mark trial was a

critical first step in obtaining regulatory approval to market MVAD in Europe, which would then be followed by regulatory review in the United States and, ultimately, the commercial introduction of MVAD domestically. On June 3, 2014, one week before the Class Period began, HeartWare received a Warning Letter from the FDA directing it to remedy significant deficiencies in its manufacturing, testing, and validation processes at its only manufacturing facility, where it manufactured its VAD devices.

13. Throughout the Class Period, Defendants made multiple statements about: (i) HeartWare's progress in remediating the deficiencies identified in the FDA Warning Letter; (ii) the commercial viability and safety profile of the MVAD; and (iii) the early data from the first human implants of the MVAD in the CE Mark trial, which began in July 2015.

14. The price of HeartWare's common stock dropped significantly following a series of disclosures from September 1, 2015 through January 11, 2016. On September 1, 2015, HeartWare announced a highly dilutive transaction with another company named Valtech Cardio Ltd. ("Valtech"). Following that announcement, HeartWare's stock price dropped 21% on heavy volume. On October 12, 2015, analysts reported rumors that HeartWare had experienced a cluster of adverse events in the early stages of its CE Mark trial. In response, HeartWare announced on that it was investigating "reported adverse events in certain clinical trial patients" who had been implanted with MVAD. HeartWare also stated that the adverse events were "typical of those seen in other clinical trials for ventricular assist devices." HeartWare's common stock price fell nearly 30% following that announcement. Finally, on January 11, 2016, HeartWare announced that nearly half of the patients enrolled in the CE Mark trial had suffered pump thrombosis, a serious complication arising from the formation of an obstructive blood clot in the VAD, and that

HeartWare would be indefinitely suspending the clinical trial. HeartWare shares fells another 35% following that announcement.

B. Commencement of the Action and the Appointment of Lead Plaintiff and Lead Counsel

15. On January 22, 2016, St. Paul Teachers filed a class action complaint in the United States District Court for the Southern District of New York (the "Court"), styled *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc. et al.*, Case No. 1:16-cv-00520 asserting federal securities claims against Defendants HeartWare and Godshall. (ECF No. 1.)

16. On March 22, 2016, St. Paul Teachers moved for appointment as lead plaintiff and for approval of its counsel, BLB&G, as Lead Counsel. (ECF Nos. 18-20.)

17. By Order dated April 11, 2016, the Court (the Honorable Louis L. Stanton) appointed St. Paul Teachers as Lead Plaintiff for the Action; and approved Lead Plaintiff's selection of BLB&G as Lead Counsel for the class. (ECF No. 22.) The Order also provided that the case be recaptioned as *In re HeartWare International, Inc. Securities Litigation*, Master File No. 1:16-cv-00520 (the "Action") and that any subsequently filed, removed, or transferred actions related to the claims asserted in the Action be consolidated for all purposes. *Id*.

C. The Investigation and Filing of the Complaint

18. Prior to filing the consolidated complaint on behalf of Lead Plaintiff, Lead Counsel undertook an extensive investigation into the allegations and the facts surrounding the alleged fraud. This investigation included a thorough review and analysis of: (a) HeartWare's public filings with the SEC; (b) public reports and news articles related to HeartWare and the MVAD; (c) research reports by securities and financial analysts; (d) transcripts of HeartWare's investor conference calls; (e) economic analyses of the movement and pricing data associated of HeartWare's common stock; and (f) other publicly available material and data.

19. In connection with this investigation, Lead Counsel and its in-house investigators contacted 197 potential witnesses, including numerous former employees of HeartWare as well as individuals from other companies who were believed to potentially possess information relevant to the claims. Lead Counsel eventually spoke to 91 potential witnesses and included information received from six former HeartWare employees in the Complaint.

20. Lead Counsel also retained and consulted with multiple relevant experts in connection with the preparation of the Complaint, including experts in bioengineering, loss causation, and damages. For example, Lead Counsel consulted with a damages expert concerning the impact of Defendants' alleged misstatements and omissions on the market price of HeartWare's common stock, and the damages suffered by HeartWare shareholders.

21. On June 29, 2016, Lead Plaintiff filed and served its Amended Class Action Complaint (the "Complaint") asserting claims against both Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against Defendant Godshall under Section 20(a) of the Exchange Act. (ECF No. 29.) The Complaint alleges that, during the Class Period, Defendants made materially false and misleading statements about: (i) the progress of HeartWare's remediation of deficiencies identified in the FDA Warning Letter; (ii) the safety profile and commercial viability of the MVAD; and (iii) the nature and extent of adverse effects encountered in the first clinical trial of the MVAD. The Complaint further alleges that the price of HeartWare common stock was artificially inflated during the Class Period as a result of Defendants' allegedly false and misleading statements, and declined when the truth was revealed.

D. Defendants' Motion to Dismiss

22. On August 30, 2016, Defendants filed and served a motion to dismiss the Complaint. (ECF Nos. 31-33.) Defendants argued that the Complaint should be dismissed because

Lead Plaintiff had failed to identify any materially false and misleading statements made by Defendants during the Class Period; that the challenged statements were also inactionable because they were forward-looking statements, statements of corporate optimism, or statements of opinion; that the Complaint failed to allege facts giving rise to a strong inference of scienter; and that the Complaint failed to adequately allege loss causation. Specifically, Defendants argued, among other things:

(a) that Defendants' statements about HeartWare's progress in remediating the deficiencies identified in the Warning Letter were not false or misleading because Defendants never told investors that HeartWare had successfully completed its work on the FDA warning letter and, in fact, had warned that the Company still had work ahead of it;

(b) that anecdotal statements from unnamed former employees cited in the Complaint did not establish the falsity of any of HeartWare's statements about the remediation efforts;

(c) that Defendants made frequent disclosures about the pre-approval process for the MVAD and did not promise that the development and approval of the MVAD would progress according to any specific timeline;

(d) with respect to the safety profile of the MVAD, Defendants pointed to the fact that they fully disclosed that the MVAD had not been implanted in any human patients prior to the CE Mark trial and argued that there was no evidence that the MVAD would not have a highly favorable safety profile at the time the Company described its lab and animal testing. They also argued that here was no indication in the Complaint that there was any data demonstrating high rates of thrombosis in the lab tests of the MVAD, let alone that HeartWare hid any such data;

(e) that many of the statements challenged by Lead Plaintiff were forward-looking statements accompanied by meaningful cautionary language and thus were protected by the PSLRA's "safe harbor" provision;

(f) that many of the alleged misstatements were non-actionable because they were expressions of corporate optimism or statements of opinion;

(g) that Complaint did not adequately plead scienter because Lead Plaintiff did not allege any motive for Defendants to engage in fraud, such as insider selling, and the alleged fraud lacked any rational motive;

(h) that Lead Plaintiff failed to allege strong circumstantial evidence of recklessness because the Complaint lacked specific allegations that Defendant Godshall had received information contrary to Defendants' public statements;

(i) that any misstatements were negligent, rather than fraudulent, because experimental medical technology is highly uncertain by nature;

(j) that the Complaint did not adequately allege loss causation because each of the alleged corrective disclosures did not reveal anything with respect to the MVAD that was inconsistent with the Company's prior statements. Specifically, Defendants argued that the September 1, 2015 disclosure of the Valtech Transaction revealed nothing new about the MVAD, and later disclosures about adverse advents in the MVAD's clinical trial were announcements of new information – not corrections of any previously disclosed information; and

(k) that the Section 20(a) claim against Godshall for control-person liability should be dismissed because the Complaint failed to plead a primary violation of Section 10(b).

(ECF No. 32.) Defendants' memorandum in support of their motion to dismiss was supported by over 400 pages of exhibits. (ECF No. 33.)

23. On October 28, 2016, Lead Plaintiff served its 53-page memorandum of law in opposition to Defendants' motion to dismiss the Complaint. (ECF No. 36.) Among other things, Lead Plaintiff argued that the Complaint adequately alleged specific false or misleading statements by Defendants, including specifically that:

(a) Defendants' statement that adverse events observed in the CE Mark trial were "typical" of those observed in other VAD trials was false because Defendants possessed trial data showing a much higher incidence of pump thrombosis in the MVAD than in other devices;

(b) Defendants' statements about their progress in remediating deficiencies identified in the FDA warning letter were misleading;

(c) Defendants' statements about MVAD's favorable safety profile were misleading because HeartWare was aware of several defects in the MVAD through laboratory testing that contributed to adverse thrombosis events and were not disclosed; and

(d) Defendants' statements that MVAD's qPulse algorithm and controller enhanced patient safety, and gave MVAD an advantage in the marketplace, were misleading because these features were defective and actually exacerbated patients' safety risk.

In addition, Lead Plaintiff contended:

(a) that Defendants' alleged misstatements were not inactionable, immaterial puffery as a matter of law in light of the importance of the statements to HeartWare's business and the fact that the statements contained factual representations at their core;

(b) that Defendants' alleged misstatements were not protected by the PSLRA's "safe harbor" because they were material misstatements or omissions of present or historical facts or because the accompanying cautionary language, which were often general, boilerplate caveats, was insufficient;

(c) that Defendants' statements were not inactionable opinions – that most of the alleged misstatements were not statements of opinion and those that were opinions were actionable because Defendants lacked the basis for making those statements a reasonable investor would expect or did not fairly align with information in their possession;

(d) that the Complaint alleged a strong circumstantial inference of scienter because (i) Defendants' reassuring statements about adverse events in the MVAD clinical trial were contradicted by concrete data in Defendants' possession, (ii) the Complaint alleged that Godshall was aware of dangerous defects in the MVAD, (iii) the alleged misstatements concerned the most important issues facing HeartWare during the Class Period, (iv) the pervasiveness of deficiencies in the testing and manufacturing process for the MVAD and the severity of defects in the MVAD made it unlikely that the Defendants would be unaware of them, and (v) the proposed Valtech Transaction indicated that Defendants were aware of problems with the MVAD; and

(e) the Complaint adequately alleged loss causation, because (i) the market recognized that the proposed Valtech Transaction disclosed on September 1, 2015 indicated that there was greater risk associated with MVAD than previously believed and called into question Defendants' prior representations concerning the device; and (ii) the subsequent disclosures of adverse events in the MVAD clinic trial revealed the fact that Defendants' previous statements about MVAD's favorable safety profile were false.

24. On December 9, 2016, Defendants filed and served their reply papers in further support of their motion to dismiss. (ECF Nos. 42-43.)

25. On December 12, 2016, the Action was reassigned from Judge Stanton to the Honorable Ronnie Abrams for all further proceedings.

26. The Court heard oral argument on Defendants' motion to dismiss on March 16, 2018. (ECF No. 44.) Following the argument, the Court issued its decision from the bench denying Defendants' motion to dismiss the Complaint, and entered an Order reflecting that decision on that same day. (ECF No. 45.)

27. On May 16, 2018, Defendants filed and served their Answer to the Complaint. (ECF No. 51.) In their Answer, Defendants denied that any of the statements at issue were materially false or misleading, or made with scienter, and asserted eight affirmative defenses including, among others, that their statements were protected by the PSLRA safe harbor and that the alleged misrepresentations and omissions did not affect the market price of HeartWare's common stock.

E. The Parties Conduct Discovery

28. Discovery in the Action commenced in April 2018. The Parties exchanged initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure on April 19, 2018 and served their initial requests for production of documents on one another on April 20, 2018.

29. In addition, following negotiations with Defendants, Lead Plaintiff submitted a proposed Case Management Plan and Scheduling Order on April 20, 2018, to govern, among other things, the scheduling of fact and expert discovery, and the filing of motions for class certification and summary judgment. (ECF No. 49.) The Court entered the Case Management Plan and Scheduling Order on April 24, 2018. (ECF No. 50.) The deadlines set forth in this order included the following:

Motion for class certification to be filed	June 22, 2018
Substantial completion of production of documents responsive to initial document requests	August 24, 2018

Interrogatories (other than contention interrogatories) and requests for admission served	November 16, 2018
Fact discovery, including depositions, to be completed	January 18, 2019
Initial expert reports served	February 15, 2019
Rebuttal export reports served	March 15, 2019
Reply expert reports served	April 5, 2019
Contention interrogatories served	April 19, 2019
End of all discovery	May 17, 2019
Deadline for motions for summary judgment	May 31, 2019

30. The Parties also negotiated the terms of the protective order governing the treatment of documents and other information produced in discovery, which Lead Plaintiff submitted to the Court on June 29, 2018. (ECF No. 56.) The Court entered the stipulated protective order on July 2, 2018. (ECF No. 57.)

1. Document Discovery

31. As noted above, Lead Plaintiff served its first request for production of documents on Defendants on April 20, 2018. Defendants' served their Responses and Objections to this request on May 25, 2018 and began production of documents in July 2018, following entry of the protective order. In the months that followed, Lead Counsel engaged in numerous meet and confers and extensive negotiations with Defendants' Counsel over the scope and adequacy of Defendants' discovery responses, including relating to search terms to be used and custodians whose documents should be searched.

32. Lead Plaintiff served its first set of interrogatories on Defendants on June 15, 2018, which were aimed at identifying all non-party reviewers, experts, or consultants who performed work in connection with the MVAD's development and testing, HeartWare's remediation of issues identified in the FDA Warning Letter, or any audit or analysis of HeartWare's compliance with FDA's manufacturing standards, so that Lead Plaintiff could seek evidence from these relevant

non-parties. Defendants served their Response to Lead Plaintiff's First Set of Interrogatories on July 23, 2018 and served a Supplemental Response on August 6, 2018.

33. Lead Plaintiff issued extensive discovery requests to various non-parties. After an intensive search for persons and entities who might possess relevant information, Lead Plaintiff issued 27 subpoenas to non-parties. The entities subpoenaed included the U.S. Food and Drug Administration, an analyst, and numerous entities that were employed by HeartWare to assist in the development or testing of MVAD or certain of its components, in the clinical trial of MVAD, or in HeartWare's efforts to remediate issues identified in the FDA Warning Letter. The chart below identifies the recipients of the subpoenas issued by Lead Plaintiff and the date of the subpoena:

Subpoenaed Entity	**Date**
Leerink Partners LLC	6/8/2018
U.S. Food and Drug Administration	6/25/2018
Andrew Ferencz Consulting	8/3/2018
Artze Corp.	8/3/2018
Benchmark Electronics	8/3/2018
Delserro Engineering Solutions	8/3/2018
Dohmen Life Science Services	8/3/2018
EduQuest, Inc.	8/3/2018
Electrochem Solutions Inc. (now, Greatbatch)	8/3/2018
Enhanced Compliance, Inc.	8/3/2018
Goode Compliance International	8/3/2018
Intertek	8/3/2018
Minnetronix	8/3/2018
Reilly & Associates, LLC	8/3/2018
UL LLC	8/3/2018
VDX, Inc.	8/3/2018
BioSurg, Inc.	8/6/2018
Continuum Innovation	8/6/2018
DDL, Inc.	8/6/2018
Fischer Healthcare	8/6/18 (attempted)
Foliage, Inc.	8/6/2018
Xdot Engineering and Analysis, PLLC	8/6/2018

ADSP Consulting, LLC	8/9/2018
Chiltern International Limited, Subsidiary of Laboratory Corporation of America Holdings (LabCorp)	8/9/2018
Xaplos Inc.	8/11/2018
Felix Le Consulting, Inc.	8/13/18 and 8/15/18 (attempted)
MECA	9/12/2018

34. As part of its extensive efforts to conduct non-party discovery, Lead Plaintiff also successfully applied for letters rogatory to obtain evidence from Chiltern International Limited, the United Kingdom clinical research organization that HeartWare had hired to assist with aspects of the CE Mark clinical trial of MVAD that was central to this case.

35. In response to the requests for production of documents and subpoenas, Defendants and non-parties produced a total of approximately 450,000 pages of documents to Lead Plaintiff. Lead Counsel reviewed, analyzed, and coded the documents received. In reviewing the documents, the attorneys were tasked with making several analytical determinations as to the documents' importance and relevance. Specifically, they determined whether the documents were "hot," "relevant," or "not relevant." They also assessed which specific issues the documents concerned and determined the identities of the HeartWare employees or other potential deponents to whom the documents related so that the documents could be easily retrieved when preparing for depositions. The attorneys also conducted a review of scientific literature in connection with document analysis, and work on targeted document collection projects supporting deposition preparation, expert analysis, and mediation. Lead Counsel conducted weekly team meetings of the attorneys involved in the document discovery to discuss the key documents obtained and to map out litigation strategies and theories.

36. In addition, Lead Plaintiff searched for and gathered documents that were responsive to Defendants' requests for production of documents, which documents were then reviewed by Lead Counsel. In total, Lead Plaintiff produced over 7,500 pages of documents to Defendants in response to their requests.

2. Preparation for Depositions

37. Prior to the time the agreement in principle to settle was reached, Lead Plaintiff had noticed the depositions of three HeartWare executives: Christopher Taylor, Vice President of Corporate Communications and Investor Relations, Mairi Maclean, a Senior Project Manager involved in overseeing development of the MVAD, and Katrin Leadley, HeartWare's Chief Medical Officer. Lead Plaintiff also noticed the deposition of one of the former HeartWare employees whose information had been incorporated in the Complaint (referred in the Complaint as Former Employee 2). Before the Settlement was reached, Lead Counsel engaged in substantial preparations to take these initial four depositions, including having teams of attorneys review documents relevant to each deponent and prepare sets of key documents that might be used in the depositions. The depositions, which had been scheduled to occur in late October 2018 and November 2018, were ultimately not held because the Parties reached an agreement in principle to settle the Action in early October.

F. Lead Plaintiff's Motion for Class Certification

38. On July 22, 2018, Lead Plaintiff filed and served its motion for class certification. (ECF Nos. 53-55.) The motion was supported by a memorandum of law (ECF No. 54) and an expert report from Lead Plaintiff's market efficiency expert, Professor Steven P. Feinstein, opining that the market for HeartWare common stock was efficient and that damages for Class Members could be calculated through a common methodology (ECF No. 55-1).

39. On August 17, 2018, Defendants filed a Notice of Non-Opposition to the class certification motion. (ECF No. 62.) On August 27, 2018, the Court granted the motion, certifying the proposed Class, appointing Lead Plaintiff as Class Representative, and appointing BLB&G as Class Counsel. (ECF No. 64.)

G. Work with Experts

40. Lead Plaintiff retained seven highly qualified experts in disciplines including bioengineering, cardiovascular medicine, statistics, regulatory compliance, and financial economics to assist in the prosecution of this Action. Lead Counsel consulted extensively with these experts throughout the litigation and believes that the development of this expert evidence was essential to the successful prosecution of the claims and to overcome Defendants' anticipated defenses. Lead Plaintiff's experts consultants included: (a) Professor Steven P. Feinstein, of Crowninshield Financial Research, a financial economist who served as Lead Plaintiff's expert on market efficiency; (b) Chad W. Coffman, of Global Economics Group, who provided Lead Plaintiff with expert advice on damages and loss causation issues; (c) Graham Foster, a bio-mechanical engineer with expensive experience in the development and testing of ventricular assist devices; (d) two cardiologists with expertise in transplant cardiology; (e) the FDA Group, LLC, which provided expert consultation on FDA regulatory compliance as well as advice on the types of documents that Lead Plaintiff should request from the FDA; and (f) David Madigan, a professor of statistics at Columbia University.

41. Lead Counsel consulted with these experts throughout the litigation of the Action, including in preparing the Complaint, in reviewing documents produced in discovery, and during the settlement negotiations. In addition, as noted above, Lead Counsel worked with Professor Feinstein to prepare an expert report on market efficiency and class-wide damages methodology that was filed in support of Lead Plaintiff's class certification motion. After the Settlement was

reached, Lead Counsel worked with Mr. Coffman and his team at Global Economics in developing the Plan of Allocation, as discussed below.

H. The Parties Settle the Action

42. While discovery continued, the Parties discussed the possibility of resolving the litigation through settlement and agreed to mediation before Jed D. Melnick, Esq. of JAMS, an experienced mediator of securities class actions and other complex litigation. An in-person mediation session with Mr. Melnick was scheduled for September 12, 2018. In advance of the mediation, the Parties prepared detailed mediation statements addressing liability and damages issues with numerous exhibits that they exchanged and submitted to Mr. Melnick.

43. At the September 12 mediation session, the Parties engaged in vigorous settlement negotiations over the course of the day with the assistance of Mr. Melnick but were not able to reach an agreement.

44. The Parties continued their negotiations and scheduled a second mediation with Mr. Melnick for October 3, 2018. At the conclusion of the second mediation session on October 3, 2019, the Parties reached an agreement in principle to settle the Action for $54,500,000.

45. In the ensuing weeks, the parties negotiated the terms of the Settlement and drafted the settlement agreement and related papers such as notices to be provided to the Class. On November 13, 2018, the parties executed the Stipulation and Agreement of Settlement (ECF No. 69-1) (the "Stipulation"), which set forth the full terms of the Parties' agreement to settle all claims asserted in the Action for $54,500,000, subject to the approval of the Court.

I. The Court Grants Preliminary Approval to the Settlement

46. On November 16, 2018, Lead Plaintiff filed an unopposed motion for preliminary approval of the Settlement. (ECF Nos. 69-72.)

47. On December 12, 2018, the Court entered the Order Preliminarily Approving Settlement and Authorizing Dissemination of Settlement Notice (ECF No. 74) (the "Preliminary Approval Order"), which, among other things: (i) preliminarily approved the Settlement; (ii) approved the form of Notice, Summary Notice, and Claim Form, and authorized notice to be given to Class Members through mailing of the Notice and Claim Form, posting of the Notice and Claim Form on a Settlement website, and publication of the Summary Notice in *The Wall Street Journal* and over *PR Newswire*; (iii) established procedures and deadlines by which Class Members could participate in the Settlement, request exclusion from the Class, or object to the Settlement, the proposed Plan of Allocation, or the fee and expense application; and (iv) set a schedule for the filing of opening papers and reply papers in support of the proposed Settlement, Plan of Allocation, and the Fee and Expense Application. The Preliminary Approval Order also set a Settlement Hearing for April 12, 2019 at 11:45 a.m. to determine, among other things, whether the Settlement should be finally approved.

III. RISKS OF CONTINUED LITIGATION

48. The Settlement provides an immediate and certain benefit to the Class in the form of a $54,500,000 cash payment, and represents a significant portion of the recoverable damages in the Action. Lead Plaintiff and Lead Counsel believe that the proposed Settlement is an excellent result for the Class in light of the risks of continued litigation. As explained below, Lead Plaintiff faced substantial risks with respect to proving liability and establishing loss causation and damages in this case.

A. Risks Concerning Liability

49. While Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants in the Action are meritorious, they recognize that this Action presented a number of substantial risks to establishing Defendants' liability. Defendants had vigorously contested and

would have continued to argue that their challenged statements about HeartWare's remediation of deficiencies identified in the FDA warning letter and the safety and commercial viability of MVAD were not false or misleading or were not actionable, and, in any event, that Defendants did not know that the statements were false or were not reckless in making the alleged misstatements.

1. Falsity

50. Lead Plaintiff would have faced substantial challenges in proving that Defendants' statements were materially false and misleading when made.

51. **Statements Regarding Remediation Efforts.** Defendants would have continued to argue that the vast majority, if not all, of their statements about the progress of remediation of the deficiencies identified by the FDA Warning Letter were too vague and indefinite to support a fraud claim. Defendants would argue that their statements, which used words like "significant," "enormous," and "diligent" to describe the extent, scope, or progress of HeartWare's remediation, were inactionable puffery or expressions of corporate optimism. Moreover, Defendants would also argue that any sufficiently definite and verifiable statements that they made about the Company's remediation efforts were accurate because the Company had, in fact, engaged in very extensive efforts to address the issues raised in the Warning Letter, including hiring a third-party consultant and multiple contractors to address the issue, and had spent more than $10 million dollars on remediation efforts during the Class Period. Defendants would also have argued that their statements about HeartWare's remediation efforts were properly qualified, noting for example that the Company never stated that it had completed the remediation process and, indeed, had noted that there was "a considerable amount of work ahead." In light of these issues, there was a meaningful risk that a jury could find that Defendants' statements about their remediation efforts were either too vague to support a fraud claim or were not false.

52. **Statements Regarding the MVAD's Safety Profile.** Lead Plaintiff would also have faced challenges in proving that Defendants' statements regarding the safety profile of the MVAD were materially false or misleading. Defendants would argue that, before beginning the CE Mark trial, HeartWare performed extensive pre-clinical bench testing and animal testing and that the MVAD had performed better in that testing than the HVAD had in its pre-clinical testing. Defendants would contend that the statements they made on this topic were well supported by the data that the Company had at the time the statements were made. Defendants could also point to repeated cautionary statements they made warning investors that the Company may not have foreseen all potential problems with the new device and that the clinical trial could be delayed or terminated if adverse events occurred. Thus, there was a risk that the jury could include, in light of these warning and caveats, that Defendants' statements were not false or misleading.

53. **Statements Regarding Adverse Events in the CE Mark Trial.** Defendants had argued and would continue to argue that their October 12, 2015 alleged misstatement – that the adverse events observed in the MVAD clinical trial were "typical" of adverse events observed in trials of other VADs – was not false or misleading. Defendants would assert that the adverse events in question – "thrombotic events" related to the formation of obstructive blood clots in the device – were indeed typical in trials of such devices. Defendants would contend that they stated only that the type of event (thrombosis) was typical and they did not refer to the frequency or speed with which adverse events had occurred as typical. Moreover, Defendants would contend that, in light of the fact that they disclosed that multiple adverse events had occurred in a group of just eleven patients only a few months after the trial commenced, the failure to disclose the exact number and timing of the adverse events did not significantly alter the total mix of information available to the market.

2. Scienter

54. Even if Lead Plaintiff succeeded in proving that Defendants' statements were false, Lead Plaintiff would have faced challenges in proving that Defendants made the alleged false statements with the intent to mislead investors or were reckless in making the statements.

55. Defendants would have argued that their statements concerned experimental medical technology and an early-stage medical trial, which are inherently unpredictable and risky by nature, and that if any of their statements were false when they were made, the misstatements were innocent rather than intentionally misleading. Defendants also would have argued that they candidly stated that the MVAD might not succeed, making investors aware of the risks that ultimately materialized. Moreover, a number of the alleged misstatements involve "soft" statements (about, for example, the extent and quality of the Company's remediation efforts), which would also have made proof of scienter more difficult. For example, with respect to Defendants' statements that they had taken "significant" steps to remediate the Warning Letter deficiencies, a juror might have concluded that Godshall might have held a reasonable *subjective* belief that the mediation efforts were meaningful, thus negating any intent to defraud.

56. Defendants would also contend that Lead Plaintiff could not show any motive for Defendants to mislead the public. Defendants would argue that they had no incentive to overstate the extent of HeartWare's remediation efforts because the public would be able to independently verify whether HeartWare had remediated the issues by monitoring whether the FDA had closed out the Warning Letter (which was a matter of public record). Defendants also contended that they had no motive to misrepresent the safety profile of MVAD prior to clinical trials because they knew that ultimately successful completion of those clinical trials was imperative to any commercial prospects for the device. Thus, they would argue that it would not have been logical for HeartWare to rush MVAD into clinical trials knowing the device had serious flaws and would

likely fail the trials. Defendants would argue that the more plausible explanation is that Defendants were unaware of the magnitude and frequency of the adverse events that would occur with the MVAD when they made the statements. Similarly, Defendants would argue that they had no incentive to mislead the public regarding the nature of adverse events it observed in the CE Mark trial, because they knew they would soon have to disclose the full results of the trial.

57. Defendants would also point to the fact that Godshall did not sell HeartWare common stock during the Class Period and thus had no financial motive to raise the stock price. *See ECA, Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 198 (2d Cir. 2009) ("In order to raise a strong inference of scienter through 'motive and opportunity' to defraud, Plaintiffs must allege that [Defendant] or its officers 'benefitted in some concrete and personal way from the purported fraud.").

58. Further, in support of their argument that they did not act with fraudulent intent, Defendants could have pointed to the fact that neither the SEC or FDA pursued any enforcement action related to the claims asserted in this Action.

59. While many of these arguments were made unsuccessfully by Defendants on their motions to dismiss, when the Court was required to accept all allegations in the Complaint as true, there was a significant possibility that Defendants could have succeeded in these arguments at subsequent stages of the litigation when allegations in the Complaint would need to be supported by admissible evidence.

60. Moreover, in addressing falsity and scienter issues at trial, Defendants would likely attempt to portray HeartWare as a sympathetic company that strives to create a highly experimental, extremely complex, and beneficial product for patients who are extremely ill and need to be kept alive until they can obtain a heart transplant. There was a meaningful risk that this

sympathetic portrayal – and the inherent difficulty in anticipating how such a complex product will perform – would sway a jury. This risk is heightened by the fact that it may be difficult for a fact finder to believe that Defendants initiated a clinical trial with a technology that they knew was doomed to fail.

61. On all these issues, Lead Plaintiff would have to prevail at several stages – on a motion for summary judgment and at trial, and if it prevailed on those, on the appeals that would likely to follow – which would likely have taken years. At each stage, there would be very significant risks attendant to the continued prosecution of the Action, as well as considerable delay.

B. Risks Related to Loss Causation and Damages

62. Even assuming that Lead Plaintiff overcame each of the above risks and successfully established liability, Lead Plaintiff would have confronted considerable additional challenges in establishing loss causation and damages. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005) (plaintiffs bear the burden of proving "that the defendant's misrepresentations 'caused the loss for which the plaintiff seeks to recover'"). While Defendants raised the issue of loss causation in their motion to dismiss and the Court rejected that argument, the threshold for alleging loss causation at the pleading stage is not onerous, and these arguments could have been presented with much more force at summary judgment and trial where Defendants' position would likely have been supported by expert testimony opining that there was no loss causation, and limited or no damages. Risks related to loss causation and damages were an important driver of the settlement value of this case.

63. Defendants had contended and would have continued to argue that the declines in the price of HeartWare common stock identified by Lead Plaintiff were not caused by revelations that Defendants' earlier statements were (allegedly) false and misleading, but rather resulted from the disclosure of new information on those dates. In making this argument, Defendants could point

to the fact that ***none*** of the alleged corrective disclosures directly revealed that Defendants' prior statements about the remediation efforts and MVAD were false. Defendants would argue that the Warning Letter had primarily concerned procedures related to manufacturing for the HVAD and thus any disclosures at the end of the Class Period about adverse events in the MVAD trial were unrelated to the alleged misstatements about Warning Letter remediation.

64. Further, Defendants would argue that, even if ***some*** of the stock price declines on those dates could be considered to have been caused by the revelation of the truth concerning the past alleged misstatements, the non-fraud-related information revealed on those dates ***also*** had a substantial negative affect on the price of HeartWare's common stock on those days, and Lead Plaintiff bore the burden of establishing how much of the price decline resulted from the revelation of the fraud, rather than from the unrelated information. *See In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 36 (2d Cir. 2009) ("to establish loss causation, Dura requires plaintiffs to disaggregate those losses caused by 'changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events,' from disclosures of the truth behind the alleged misstatements"). Defendants would have argued that this "disaggregation" could not be done by Lead Plaintiff's expert in this case, and that even if it could, it would substantially reduce damages following each of the alleged corrective disclosures.

65. Defendants would be able to assert these arguments about each of the three alleged corrective disclosures identified by Lead Plaintiff in the Complaint.

1. The September 1, 2015 Alleged Corrective Disclosure

66. Lead Plaintiff's first alleged corrective disclosure was the announcement on September 1, 2015 of the Company's proposed acquisition of Valtech (the "Valtech Transaction").

67. Defendants argued vigorously that this announcement did not correct any alleged misstatements about the Company's remediation efforts or MVAD's prospects. Defendants could

correctly point out that none of these subjects was mentioned at all in HeartWare's September 1, 2015 statement. Defendants would argue that the substantial decline in the stock price following the announcement of the Valtech Transaction was instead related to the highly dilutive nature of the proposed acquisition.

68. In response, Lead Plaintiff contended that, while the announcement of the Valtech Transaction did not directly address the MVAD, investors understood that the announcement indicated that there was greater risks associated with MVAD than previously disclosed and thus called into question Defendants' prior representations concerning the device, and Lead Plaintiff could point to analyst reports following the announcement that reached that conclusion.

69. While Lead Plaintiff believes this argument had merit, it acknowledges that the lack of any direct disclosures about the MVAD or remediation efforts in the September 1 announcement created a severe risk that the Court on summary judgment or a jury at trial might conclude that the price decline following that announcement was not caused by the alleged fraud. The Court in its on-the-record ruling upholding the Complaint (on the much less demanding standard for pleading loss causation) noted that the connection between the September 1 disclosure and the alleged fraud was perhaps "attenuated." (ECF No. 47, Transcript at 43:21.) Further, Defendants could provide a plausible explanation for the timing of the announcement of the Valtech Transaction – unrelated to concerns about the MVAD – due to the upcoming closure of a period in which HeartWare had the right to exclusively negotiate for the purchase of Valtech.

70. Moreover, Defendants would have argued that, even if the Valtech announcement could be considered to have indirectly revealed the existence of concealed problems with the MVAD, at the very least, a substantial part of the price decline that occurred was a reaction to the dilutive nature of the transaction, not to information related to the fraud. For example, Defendants

could point to the fact that HeartWare stock rose significantly when HeartWare later announced, on January 28, 2016, that it would not pursue the Valtech Transaction (after the truth about the MVAD had been fully disclosed). Defendants would point to this market reaction as strong evidence that the Valtech Transaction itself had an independent, negative value for investors and would contend that Lead Plaintiff would not be able to prove how much (if any) of the price decline on September 2, 2015 related to revelation of alleged fraud, as opposed to investors' concerns about the transaction.

2. The October 12, 2015 and January 11, 2016 Alleged Corrective Disclosures

71. The second and third corrective disclosures identified by Lead Plaintiff were related to disclosures of adverse events in the CE Mark clinical trial of the MVAD.

72. Defendants would argue that these were simply announcements of new developments in the MVAD clinical trial and did not contain any disclosures of the reasons for the adverse events and certainly did not directly reveal that previous statements about the MVAD were false. While Lead Plaintiff would contend that these adverse events in the CE Mark trial were a materialization of risks concealed by Defendants' alleged misstatements about MVAD's safety profile, Defendants would argue that the negative outcome of the MVAD clinical trial did not represent the materialization of any risk obscured or concealed by any of Defendants' alleged misstatements, but, instead, was the materialization of a risk that was fully disclosed and understood by investors – that medical devices that are still being tested in clinical trials may sometimes cause adverse events that prevent them from reaching the market. Defendants would further argue that Lead Plaintiff had the burden of proving what portion of the resulting stock drop was the result of undisclosed risk and what portion was the result of known or disclosed risk, which would have been challenging here.

3. Other Damages Issues

73. Lead Plaintiff also faced other potential arguments related to damages that might have further reduced any possible recovery for the Class.

74. Defendants argued that the 90-day bounce-back provision of the PSLRA, which requires that damages be capped based on the average trading price over the 90 days following "the date on which information correcting the misstatement or omission . . . [was] disseminated to the market," 15 U.S.C. § 78u-4(e)(1), should be applied after each of the alleged corrective disclosures in the Action (rather than only after the final disclosure, as Lead Plaintiff contended). If Defendants' view were accepted, this would have further reduced the maximum amount of potential damages that could be established in this case.

75. Defendants would also point to the fact that Medtronic plc purchased HeartWare for $58 per share not long after the end of the Class Period, which was more than double the stock price at the end of the Class Period. Defendants would contend that the large number of Class Members who continued to hold their shares and ultimately sold them for a gain in the acquisition suffered no damages as a result of the alleged fraud.

C. The Settlement Amount Compared to Likely Damages that Could Be Proved at Trial

76. The $54.5 million Settlement is also a very favorable result when it is considered in relation to the likely amount of damages that could be established at trial, assuming that Lead Plaintiff and the Class prevailed on liability issues, such as falsity and scienter. Assuming that Lead Plaintiff prevailed on liability issues at trial (which was far from certain), the Settlement Amount would be equal to approximately 29% to 66% of the likely recoverable damages, depending on the outcome of disputed loss causation and damages arguments. This represents an

excellent recovery for the Class in light of the other risks in the litigation, and the substantial additional costs and delays that would result from continued litigation.

77. As discussed above, this case presented some complex questions with respect to determining the amount of damages that could be recovered and the range of possible damages varied widely depending on assumptions and methodology adopted. Considering Defendants' arguments concerning damages and loss causation, Lead Counsel believes that the total damages that Lead Plaintiff would be reasonably likely to be able to prove at trial would be approximately $190 million. If Defendants succeeded with respect to certain other of their loss causation and damages arguments, damages would be reduced to approximately $82 million. Defendants had additional arguments that damages should be even lower or zero. Accordingly, the Settlement represents approximately 29% to 66% of the likely recoverable damages here. This level of recovery is exceptionally good for a securities fraud action and is very favorable here in light of all of the particular risks of proving liability discussed above.

78. Other realistic possible outcomes could have further narrowed damages. It is certainly possible that the factfinder at trial could determine that only certain of the alleged misstatements were false when made or uttered with scienter. For example, one possible outcome at trial would have been for a factfinder to find that Defendants' earlier and more general statements about remediation of the Warning Letter and MVAD's safety profile were not false or actionable, and find liability only for the October 12, 2015 statement that the adverse events that HeartWare had seen in the MVAD trial were "typical" of events seen in other devices. If liability were only based on this later statement, the class period would be shortened dramatically and the aggregate damages for the Class would have been substantially smaller.

* * *

79. As noted above, Lead Plaintiff and the Class still faced the substantial burdens of summary judgment motions and trial – a process which could possibly extend for years and might lead to a smaller recovery, or no recovery at all. Further, even if Lead Plaintiff were successful at trial, Defendants could have challenged the damages of each and every large class member in post-trial proceedings, substantially reducing any aggregate Class recovery. Finally, even if Lead Plaintiff had succeeded in proving all elements of their case at trial and in post-trial proceedings, Defendants would almost certainly have appealed. An appeal would not only have renewed all the risks faced by Lead Plaintiff and the Class, as Defendants would be able to re-assert all their arguments summarized above, it would also have engendered significant additional delay and costs before Class Members could have received any recovery from this case.

80. Given these significant litigation risks, and the immediacy and amount of the $54,500,000 recovery for the Class, Lead Plaintiff and Lead Counsel believe that the Settlement is an excellent result, is fair, reasonable, and adequate, and is in the best interest of the Class.

IV. LEAD PLAINTIFF'S COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE

81. The Court's Preliminary Approval Order directed that the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and Proof of Claim and Release Form ("Claim Form") be disseminated to the Class. The Preliminary Approval Order also set a March 22, 2019 deadline for Class Members to submit objections to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application or to request exclusion from the Class, and set a final approval hearing date of April 12, 2019.

82. Pursuant to the Preliminary Approval Order, Lead Counsel instructed Analytics Consulting, LLC ("Analytics"), the Court-approved Claims Administrator, to begin disseminating

copies of the Notice and the Claim Form by mail and to publish the Summary Notice. The Notice contains, among other things, a description of the Action, the Settlement, the proposed Plan of Allocation, and Class Members' rights to participate in the Settlement, object to the Settlement, the Plan of Allocation and/or the Fee and Expense Application, or exclude themselves from the Class. The Notice also informs Class Members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 24% of the Settlement Fund, and for reimbursement of Litigation Expenses in an amount not to exceed $400,000. To disseminate the Notice, Analytics obtained information from HeartWare and from banks, brokers, and other nominees regarding the names and addresses of potential Class Members. *See* Declaration of Michelle Kopperud Regarding (A) Mailing of Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Kopperud Decl."), attached hereto as Exhibit 1, at ¶¶ 3-6.

83. Analytics began mailing copies of the Notice and Claim Form (together, the "Notice Packet") to potential Class Members and nominee owners on January 4, 2019. *See* Kopperud Decl. ¶¶ 2-4. As of March 8, 2019, Analytics had disseminated a total of 19,644 Notice Packets to potential Class Members and nominees. *Id.* ¶ 7.

84. On January 22, 2019, in accordance with the Preliminary Approval Order, Analytics caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over the *PR Newswire*. *Id.* ¶ 8.

85. Lead Counsel also caused Analytics to establish a dedicated settlement website, www.HeartWareSecuritiesLitigation.com, to provide potential Class Members with information concerning the Settlement and access to downloadable copies of the Notice and Claim Form, as well as copies of the Stipulation, Preliminary Approval Order, and Complaint. *See* Kopperud Decl.

¶ 10. That website became operational on January 4, 2019. *Id*. Lead Counsel also made copies of the Notice and Claim Form available on its own website, www.blbglaw.com.

86. As set forth above, the deadline for Class Members to file objections to the Settlement, Plan of Allocation, and/or Fee and Expense Application, or to request exclusion from the Class is March 22, 2019. To date, no requests for exclusion have been received. *See* Kopperud Decl. ¶ 11. In addition, no objections to the Settlement, Plan of Allocation, or Lead Counsel's Fee and Expense Application have been received. Lead Counsel will file reply papers on or before April 5, 2019, that will address any requests for exclusion and objections that may be received.

V. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

87. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Class Members who want to participate in the distribution of the Net Settlement Fund (*i.e.*, the Settlement Fund less any (a) Taxes, (b) Notice and Administration Costs, (c) Litigation Expenses awarded by the Court, (d) attorneys' fees awarded by the Court, and (e) any other costs or fees approved by the Court) must submit a valid Claim Form with all required information postmarked no later than May 14, 2019. As set forth in the Notice, the Net Settlement Fund will be distributed among Class Members who submit eligible claims according to the plan of allocation approved by the Court.

88. Lead Counsel consulted with Lead Plaintiff's damages expert in developing the proposed plan of allocation for the Net Settlement Fund (the "Plan of Allocation"). Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Class Members who suffered losses as result of the conduct alleged in the Complaint.

89. The Plan of Allocation is set forth at pages 9 to 12 of the Notice. *See* Kopperud Decl., Ex. A at pp. 9-12. As described in the Notice, calculations under the Plan of Allocation are

not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover at trial or estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. Notice ¶ 51. Instead, the calculations under the plan are only a method to weigh the claims of Class Members against one another for the purposes of making an equitable allocation of the Net Settlement Fund.

90. In developing the Plan of Allocation, Lead Plaintiff's damages expert calculated the estimated amount of artificial inflation in HeartWare common stock during the Class Period allegedly caused by Defendants' alleged false and misleading statements and material omissions. In calculating the estimated artificial inflation, Lead Plaintiff's damages expert considered price changes in HeartWare common stock in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and material omissions, adjusting for price changes on those days that were attributable to market or industry forces. Notice ¶ 53.[2]

91. In general, the Recognized Loss Amounts calculated under the Plan of Allocation will be the lesser of: (a) the difference between the amount of alleged artificial inflation in HeartWare common stock at the time of purchase or acquisition and the time of sale, or (b) the difference between the purchase price and the sale price (if sold during the Class Period). Notice ¶¶ 55, 57.

[2] With respect to the amount of artificial inflation removed from the price of the common stock on September 2, 2015, as a result of disclosures made after the close of market on September 1, 2015, which concerned the announcement of HeartWare's intent to acquire Valtech, Lead Plaintiff's damages expert considered the change in price of HeartWare's common stock on September 2, 2015 (adjusted for market and industry forces) and then reduced that amount by the increase in HeartWare's stock price that occurred on January 28, 2016, after HeartWare announced its intention to abandon the Valtech acquisition (also adjusted for market and industry forces). *See* Notice ¶ 53 n.5.

92. Claimants who purchased and sold all their HeartWare shares before the first alleged corrective disclosure on September 1, 2015, or who purchased and sold all their HeartWare shares between two consecutive dates on which artificial inflation was allegedly removed from the price of HeartWare stock (that is, they did not hold the shares over a date where artificial inflation was allegedly removed from the stock price), will have no Recognized Loss Amount under the Plan of Allocation with respect to those transactions because the level of artificial inflation is the same between the corrective disclosures, and any loss suffered on those sales would not be the result of the alleged misstatements in the Action.

93. In accordance with the PSLRA, Recognized Loss Amounts for shares of HeartWare common stock sold during the 90-day period after the end of the Class Period are further limited to the difference between the purchase price and the average closing price of the stock from the end of the Class Period to the date of sale. Notice ¶ 57(c)(ii). Recognized Loss Amounts for HeartWare common stock still held as of the close of trading on April 8, 2016, the end of the 90-day period, will be the lesser of (a) the amount of artificial inflation on the date of purchase or (b) the difference between the purchase price and $32.58, the average closing price for the stock during that 90-day period. Notice ¶ 57(d).

94. The sum of a Claimant's Recognized Loss Amounts for all their purchases of HeartWare common stock during the Class Period is the Claimant's "Recognized Claim." Notice ¶ 59. The Plan of Allocation also limits Claimants based on whether they had an overall market loss in their transactions in HeartWare common stock during the Class Period. A Claimant's Recognized Claim will be limited to his, her, or its market loss in common stock transactions during the Class Period. Notice ¶¶ 65-66. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Notice ¶ 67.

95. In sum, the Plan of Allocation was designed to fairly and rationally allocate the proceeds of the Net Settlement Fund among Class Members based on damages they suffered on purchases of HeartWare common stock that were attributable to the misconduct alleged in the Complaint. Accordingly, Lead Counsel respectfully submits that the Plan of Allocation is fair and reasonable and should be approved by the Court.

96. As noted above, as of March 8, 2019, more than 19,600 copies of the Notice, which contains the Plan of Allocation and advises Class Members of their right to object to the proposed Plan of Allocation, had been sent to potential Class Members and nominees. S*ee* Kopperud Decl. ¶ 7. To date, no objections to the proposed Plan of Allocation have been received.

VI. THE FEE AND EXPENSE APPLICATION

97. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel is applying to the Court for an award of attorneys' fees of 24% of the Settlement Fund (or $13,080,000, plus interest earned at the same rate as the Settlement Fund) (the "Fee Application"). Lead Counsel also requests payment for litigation expenses that it incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of $262,522.35. Lead Counsel further requests reimbursement to Lead Plaintiff St. Paul Teachers of $2,840.00 in costs and expenses that St. Paul Teachers incurred directly related to its representation of the Class, in accordance with the PSLRA, 15 U.S.C. § 78u-4(a)(4). The legal authorities supporting the requested fee and expenses are discussed in Lead Counsel's Fee Memorandum. The primary factual bases for the requested fee and expenses are summarized below.

A. The Fee Application

98. For its efforts on behalf of the Class, Lead Counsel is applying for a fee award to be paid from the Settlement Fund on a percentage basis. As set forth in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because it aligns

the lawyers' interest in being paid a fair fee with the interest of the Lead Plaintiff and the Class in achieving the maximum recovery in the shortest amount of time required under the circumstances and taking into account the litigation risks faced in a class action. Use of the percentage method has been recognized as appropriate by the Supreme Court and Second Circuit for cases of this nature.

99. Based on the quality of the result achieved, the extent and quality of the work performed, the significant risks of the litigation, and the fully contingent nature of the representation, Lead Counsel respectfully submits that the requested fee award is reasonable and should be approved. As discussed in the Fee Memorandum, a 24% fee award is fair and reasonable for attorneys' fees in common fund cases such as this and is within the range of percentages awarded in securities class actions in this Circuit with comparable settlements.

1. Lead Plaintiff Has Authorized and Supports the Fee Application

100. St. Paul Teachers is a sophisticated institutional investor that closely supervised and monitored the prosecution and settlement of the Action. *See* Declaration of Jill E. Schurtz (the "Schurtz Decl."), attached hereto as Exhibit 2, at ¶¶ 2-4. Lead Plaintiff has evaluated the Fee Application and fully supports the fee requested. The fee requested is consistent with a retainer agreement entered into between Lead Plaintiff and Lead Counsel at the outset of the litigation. *Id* ¶ 6. After the agreement to settle the Action was reached, Lead Plaintiff again reviewed the proposed fee and believes it is fair and reasonable in light of the result obtained for the Class, the substantial risks in the litigation, and the work performed by Lead Counsel. *Id*. Lead Plaintiff's endorsement of Lead Counsel's fee request further demonstrates its reasonableness and should be given weight in the Court's consideration of the fee award.

2. The Work and Experience of Lead Counsel

101. Attached hereto as Exhibit 3 is a schedule summarizing the amount of time spent by the attorneys and professional support staff employees of BLB&G who billed more than ten hours to the Action from its inception through February 28, 2019, and a lodestar calculation for those individuals. As set forth in Exhibit 3, the number of hours expended by BLB&G on the Action from its inception through February 28, 2019 is 13,252, for a lodestar of $6,001,215.00. The requested fee of 24% of the Settlement Fund is $13,080,000 plus interest, and therefore represents a multiplier of approximately 2.18 of Lead Counsel's lodestar. As discussed in further detail in the Fee Memorandum, the requested multiplier is well within the range of fee multipliers typically awarded in comparable securities class actions and in other class actions involving significant contingency fee risk, in this Circuit and elsewhere.

102. The schedule set forth in Exhibit 3 was prepared from contemporaneous daily time records regularly prepared and maintained by BLB&G, which are available at the request of the Court. As noted above, attorneys and support staff who billed fewer than ten hours to the Action have been removed from the schedule and no time expended in preparing the application for fees and expenses has been included. The hourly rates for attorneys and paraprofessionals included in the schedule are their current hourly rates, which are commensurate with the hourly rates charged by lawyers and paraprofessionals performing similar services in New York, New York. For personnel who are no longer employed by BLBG, the lodestar calculation is based upon the hourly rates for such personnel in his or her final year of employment with the firm.

103. As described above in greater detail, the work that Lead Counsel performed in this Action included: (i) conducting an extensive investigation into the claims asserted, including through a detailed review of public documents, interviews with possible witnesses, and consultation with experts; (ii) researching and drafting an initial complaint and a detailed

consolidated complaint; (iii) researching, briefing, and arguing Lead Plaintiff's successful opposition to Defendants' motion to dismiss; (iv) preparing and filing Lead Plaintiff's motion for class certification; (v) undertaking substantial fact discovery efforts, including serving document requests on Defendants and serving document subpoenas on 27 non-parties, and obtaining and reviewing more than 450,000 pages of documents produced by Defendants and non-parties as a result of these efforts; (vi) consulting extensively throughout the litigation with a variety of experts and consultants, including experts in bioengineering, cardiovascular medicine, statistics, regulatory compliance, and financial economics; and (vii) engaging in extensive arm's-length settlement negotiations to achieve the Settlement, including two mediation sessions with Jed D. Melnick of JAMS.

104. As detailed above, throughout this case, Lead Counsel devoted substantial time to the prosecution of the Action. I maintained control of and monitored the work performed by other lawyers at BLB&G. While I personally devoted substantial time to this case, and personally reviewed and edited all pleadings, court filings, and other correspondence prepared on behalf of Lead Plaintiff, other experienced attorneys at my firm were involved in settlement negotiations and other matters. More junior attorneys and paralegals also worked on matters appropriate to their skill and experience level. Throughout the litigation, Lead Counsel maintained an appropriate level of staffing that avoided unnecessary duplication of effort and ensured the efficient prosecution of this litigation.

105. As demonstrated by the firm resume attached as Exhibit 4 hereto, Lead Counsel is among the most experienced and skilled law firms in the securities litigation field, with a long and successful track record representing investors in such cases. BLB&G is consistently ranked among the top plaintiffs' firms in the country. Further, BLB&G has taken complex cases such as this to

trial, and it is among the few firms with experience doing so on behalf of plaintiffs in securities class actions. I believe this willingness and ability added valuable leverage in the settlement negotiations.

3. Standing and Caliber of Defendants' Counsel

106. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of its opposition. Defendants were represented by extremely able counsel – initially Shearman & Sterling LLP and subsequently Wilmer Cutler Pickering Hale and Dorr LLP. In the face of this skillful and well-financed opposition, Lead Counsel was nonetheless able to develop a case that was sufficiently strong to persuade Defendants and their counsel to settle the case on terms that will significantly benefit the Class.

4. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Cases

107. The prosecution of these claims was undertaken entirely on a contingent-fee basis, and the considerable risks assumed by Lead Counsel in bringing this Action to a successful conclusion are described above. Those risks are relevant to the Court's evaluation of an award of attorneys' fees. Here, the risks assumed by Lead Counsel, and the time and expenses incurred by Lead Counsel without any payment, were extensive.

108. From the outset, Lead Counsel understood that it was embarking on a complex, expensive, lengthy, and hard-fought litigation with no guarantee of ever being compensated for the substantial investment of time and the outlay of money that vigorous prosecution of the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources (in terms of attorney and support staff time) were dedicated to the litigation, and that Lead Counsel would further advance all of the costs necessary to pursue the case vigorously on a fully contingent basis, including funds to compensate vendors and consultants and

to cover the considerable out-of-pocket costs that a case such as this typically demands. Because complex shareholder litigation generally proceeds for several years before reaching a conclusion, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Lead Counsel has received no compensation during the course of this Action and no reimbursement of out-of-pocket expenses, yet it has incurred more than $260,000 in expenses in prosecuting this Action for the benefit of HeartWare investors.

109. Lead Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset this case presented a number of significant risks and uncertainties, including challenges in proving the falsity of Defendants' statements, establishing scienter, and establishing loss causation and damages.

110. As noted above, the Settlement was reached only after Lead Counsel had engaged in substantial discovery and after Lead Plaintiff's motion for class certification was decided. However, had the Settlement not been reached when it was and this litigation continued, Lead Counsel would have been required to complete fact discovery, which would have included continued document discovery and the taking of depositions of a substantial number of high-level HeartWare employees. Following the conclusion of fact discovery, Lead Counsel would have had to engage in extensive expert discovery efforts, including assisting with the preparation of opening and rebuttal reports from Lead Plaintiff's experts on topics such as damages and loss causation, compliance with FDA regulations, bioengineering, cardiovascular medicine, medical trials, and statistics; preparing for and defending their depositions; and taking the depositions of Defendants' experts. After the close of discovery, it would be highly likely that Defendants would move for summary judgment, which would have to be briefed and argued, a pre-trial order would have to be prepared, proposed jury instructions would have to be submitted, and motions *in limine* would

have to be filed and argued. Substantial time and expense would also need to be expended in preparing the case for trial. The trial itself would be expensive and uncertain. Moreover, even if the jury returned a favorable verdict after trial, it is likely that any verdict would be the subject of post-trial motions, post-trial challenges to individual class members' damages, and appeals.

111. Lead Counsel's persistent efforts in the face of significant risks and uncertainties have resulted in a significant and certain recovery for the Class. In light of this recovery and Lead Counsel's investment of time and resources over the course of the litigation, Lead Counsel believes the requested attorneys' fee is fair and reasonable and should be approved.

5. The Reaction of the Class to the Fee Application

112. As noted above, as of March 8, 2019, over 19,600 Notice Packets had been sent to potential Class Members advising them that Lead Counsel would apply for attorneys' fees in an amount not to exceed 24% of the Settlement Fund. *See* Kopperud Decl. ¶ 7 and Ex. A (Notice ¶¶ 5, 72). In addition, the Court-approved Summary Notice has been published in *The Wall Street Journal* and transmitted over the *PR Newswire*. *Id*. ¶ 8. To date, no objections to the request for attorneys' fees have been received.

113. In sum, Lead Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted it without any compensation or guarantee of success. Based on the favorable result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Lead Counsel respectfully submits that the requested fee is fair and reasonable.

B. The Litigation Expense Application

114. Lead Counsel also seeks payment from the Settlement Fund of $262,522.35 for litigation expenses that it reasonably incurred in connection with the prosecution of the Action (the "Expense Application").

115. From the outset of the Action, Lead Counsel has been cognizant of the fact that it might not recover any of its expenses, and, further, if there were to be reimbursement of expenses, it would not occur until the Action was successfully resolved, often a period lasting several years. Lead Counsel also understood that, even assuming that the case was ultimately successful, reimbursement of expenses would not necessarily compensate them for the lost use of funds advanced by them to prosecute the Action. Consequently, Lead Counsel was motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

116. As set forth in Exhibit 5 hereto, Lead Counsel has paid or incurred a total of $262,522.35 in unreimbursed litigation expenses in connection with the prosecution of the Action. The expenses are summarized in Exhibit 5, which identifies each category of expense, *e.g.*, expert fees, on-line legal and factual research, travel costs, telephone, and photocopying expenses, and the amount incurred for each category. These expenses are reflected on the books and records maintained by Lead Counsel, which are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. These expenses are submitted separately by Lead Counsel and are not duplicated by the firm's hourly rates.

117. Of the total amount of expenses, $109,359.93, or approximately 42%, was expended for the retention of experts. As discussed above, Lead Counsel consulted extensively with experts in loss causation and damages, bioengineering, cardiovascular medicine, statistics, and FDA regulatory compliance during its investigation and the preparation of the Complaint and during the course of discovery. In connection with Lead Plaintiff's motion for class certification, Lead Plaintiff's market efficiency expert, Professor Feinstein, submitted a report on the efficiency of the market for HeartWare common stock and classwide damages. Lead Counsel consulted

further with its experts during settlement negotiations with Defendants and in connection with the development of the proposed Plan of Allocation. All of these experts were instrumental in Lead Counsel's appraisal of the claims and in bringing about the favorable result achieved.

118. Another significant cost was the expense of document management and litigation support, which included, among other things, the costs of retaining of a database provider to host and manage the database containing the documents produced in the Action and approximately $6,000 in costs paid to one non-party for their expenses in producing documents in response to Lead Plaintiff's subpoena. The document management costs in total came to $70,335.06, or approximately 27% of the total expenses. The combined costs of on-line legal and factual research were $22,248.04, or approximately 8.5% of the total expenses.

119. Lead Plaintiff's share of the mediation costs paid to JAMS for the services of Mr. Melnick were $21,065.48 or 8% of the total expenses. Lead Counsel's expenses also include $6,568.75 for attorneys' fees for retention of a law firm that acted as independent counsel for a former HeartWare employee whose statements were included in the Complaint and who was preparing to be deposed at the time the Settlement was reached.

120. The other expenses for which Lead Counsel seeks payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, travel costs, copying costs (in-house and through outside vendors), long distance telephone charges, and postage and delivery expenses.

121. The expenses reflected in Exhibit 5 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:

(a) Out-of-Town Travel – airfare is capped at coach rates, hotel charges per night are capped at $350 for "high cost" cities and $250 for "low cost" cities (the relevant cities and how

they are categorized are reflected on Exhibit 5); meals are capped at $20 per person for breakfast, $25 per person for lunch, and $50 per person for dinner.

(b) Out-of-Office Meals – capped at $25 per person for lunch and $50 per person for dinner.

(c) In-Office Working Meals – capped at $20 per person for lunch and $30 per person for dinner.

(d) Internal Copying/Printing – charged at $0.10 per page.

(e) On-Line Research – charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is charged to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

122. In addition, Lead Plaintiff seeks reimbursement of the reasonable costs and expenses that it incurred directly in connection with its representation of the Class. Such payments are expressly authorized and anticipated by the PSLRA, as more fully discussed in the Fee Memorandum at 21-22. Lead Plaintiff seeks reimbursement of $2,840.00 for the time expended in connection with the Action by St. Paul Teachers' Executive Director Jill E. Schurtz and other employees of St. Paul Teachers, who spent a substantial amount of time communicating with Lead Counsel, reviewing pleadings and motion papers, and gathering and reviewing documents in response to discovery requests. *See* Schurtz Decl. ¶¶ 4, 10.

123. The Notice informed potential Class Members that Lead Counsel would be seeking reimbursement of Litigation Expenses in an amount not to exceed $400,000, which might include an application for the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Class. Notice ¶¶ 5, 72. The total amount requested, $265,362.35, which

includes $262,522.35 for Lead Counsel's litigation expenses and $2,840.00 for costs and expenses incurred by Lead Plaintiff, is significantly below the $400,000 that Class Members were advised could be sought. To date, no objection has been raised as to the maximum amount of expenses set forth in the Notice.

124. The expenses incurred by Lead Counsel and Lead Plaintiff were reasonable and necessary to represent the Class and achieve the Settlement. Accordingly, Lead Counsel respectfully submits that the application for payment of Litigation Expenses from the Settlement Fund should be approved.

125. Attached hereto are true and correct copies of the following documents cited in the Fee Memorandum:

Exhibit 6: *Freudenberg v. E*Trade Fin. Corp.*, No. 07 Civ. 8538 (JPO) (MHD), slip op. (S.D.N.Y. Oct. 20, 2012), ECF No. 154

Exhibit 7: *In re Merrill Lynch & Co. Sec., Derivative & ERISA Litig.*, No. 07-cv-9633 (JSR)(DFE), slip op. (S.D.N.Y. Aug. 21, 2009), ECF No. 272

Exhibit 8: *In re Xerox Corp. ERISA Litig.*, No. 02-CV-1138 (AWT), slip op. (D. Conn. Apr. 14, 2009), ECF No. 354

Exhibit 9: *In re Am. Express Fin. Advisors Sec. Litig.*, No. 04 Civ. 1773 (DAB), slip op. (S.D.N.Y. July 18, 2007), ECF No. 170

Exhibit 10: *In re Pfizer Inc. Sec. Litig.,* No. 04-cv-09866 (LTS) (HBP), slip op. (S.D.N.Y. Dec. 21, 2016), ECF No. 727

VII. CONCLUSION

126. For all the reasons set forth above, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Lead Counsel further submits that the requested fee should be approved as fair and

reasonable, and the request for payment of total litigation expenses in the amount of $265,362.35, which includes Lead Plaintiff's costs and expenses, should also be approved.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed March 8, 2019.

/s John Rizio-Hamilton
John Rizio-Hamilton

#1274161

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE HEARTWARE INTERNATIONAL, INC. SECURITIES LITIGATION	No. 1:16-cv-00520-RA

DECLARATION OF MICHELLE KOPPERUD REGARDING (A) MAILING OF NOTICE AND CLAIM FORM; (B) PUBLICATION OF SUMMARY NOTICE; AND (C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE

I, MICHELLE KOPPERUD, declare as follows:

1. I am a Project Manager for Analytics Consulting, LLC ("Analytics"). Pursuant to the Court's December 12, 2018 Order Preliminarily Approving Settlement and Authorizing Dissemination of Settlement Notice (the "Preliminary Approval Order"), Analytics was authorized to act as the Claims Administrator in connection with the Settlement of the above-captioned action (the "Action").[1] I am over 21 years of age and am not a party to the Action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

MAILING OF THE NOTICE AND PROOF OF CLAIM

2. Pursuant to the Preliminary Approval Order, Analytics mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and the Proof of Claim and Release Form (the "Claim Form" and, collectively with the

[1] Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated November 13, 2018 (ECF No. 69-1) (the "Stipulation").

Notice, the "Notice Packet") to potential Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

3. On December 6, 2018, Analytics received a data file provided by Defendants' Counsel containing a total of 163 unique names and addresses of record holders of HeartWare common stock during the Class Period. On January 4, 2019, Analytics caused Notice Packets to be sent by First-Class Mail to those potential Class Members.

4. As in most class actions of this nature, the large majority of potential Class Members are expected to be beneficial purchasers whose securities are held in "street name" – *i.e.*, the securities are purchased by brokerage firms, banks, institutions, and other third-party nominees in the name of the respective nominees, on behalf of the beneficial purchasers. Analytics maintains a proprietary database with names and addresses of the largest and most common banks, brokers, and other nominees. At the time of the initial mailing, this database contained 3,933 mailing records. On January 4, 2019, Analytics caused Notice Packets to be sent by First-Class Mail to those 3,933 mailing records.

5. The Notice directed those nominees who purchased or otherwise acquired HeartWare common stock during the Class Period for the beneficial interest of a person or organization other than themselves to either (a) within seven (7) calendar days of receipt of the Notice, request from Analytics sufficient copies of the Notice Packet to forward to all such beneficial owners, or (b) within seven (7) calendar days of receipt of the Notice, provide to Analytics the names and addresses of all such beneficial owners. *See* Notice ¶ 86.

6. As of March 8, 2019, Analytics had received an additional 7,702 names and addresses of potential Class Members from individuals or brokerage firms, banks, institutions, and other nominees. Analytics has also received requests from brokers and other nominee holders for

6,940 Notice Packets to be forwarded by the nominees to their customers. Additionally, Analytics has received confirmation from Broadridge Financial that they had emailed the Notice Packet to 906 potential Class Members based on their internal records. All such requests have been, and will continue to be, complied with and addressed in a timely manner.

7. As of March 8, 2019, a total of 19,644 Notice Packets have been mailed or emailed to potential Class Members and their nominees. In addition, Analytics has remailed 69 Notice Packets to persons whose original mailings were returned by the U.S. Postal Service ("USPS") and for whom updated addresses were provided to Analytics by the USPS.

PUBLICATION OF THE SUMMARY NOTICE

8. In accordance with Paragraph 4(d) of the Preliminary Approval Order, Analytics caused the Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Notice") to be published in *The Wall Street Journal* and released via *PR Newswire* on January 22, 2019. Copies of proof of publication of the Summary Notice in *The Wall Street Journal* and over *PR Newswire* are attached hereto as Exhibits B and C, respectively.

TELEPHONE HELP LINE

9. On January 4, 2019, Analytics established a case-specific, toll-free telephone helpline, 1-866-710-9044, with an interactive voice response system and live operators, to accommodate potential Class Members with questions about the Action and the Settlement. The automated attendant answers the calls and presents callers with a series of choices to respond to basic questions. Callers requiring further help have had the option to be transferred to a live operator during business hours. Analytics continues to maintain the telephone helpline and will

update the interactive voice response system as necessary through the administration of the Settlement.

SETTLEMENT WEBSITE

10. In accordance with Paragraph 4(c) of the Preliminary Approval Order, Analytics established the Settlement website for this Action, www.HeartWareSecuritiesLitigation.com. The Settlement website includes information regarding the Action and the proposed Settlement, including the exclusion, objection, and claim-filing deadlines and the date and time of the Court's Settlement Hearing. In addition, copies of the Notice, Claim Form, Stipulation, Complaint, and the Preliminary Approval Order are posted on the website and are available for downloading. The Settlement website was operational beginning on January 4, 2019, and is accessible 24 hours a day, 7 days a week.

REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE

11. The Notice informed potential Class Members that requests for exclusion are to be sent to the Claims Administrator, such that they are received no later than March 22, 2019. The Notice also sets forth the information that must be included in each request for exclusion. As of March 8, 2019, Analytics has received no requests for exclusion. Analytics will submit a supplemental declaration after the March 22, 2019 deadline addressing any requests for exclusion that may be received.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 8, 2019.

Michelle Kopperud

Michelle Kopperud

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE HEARTWARE INTERNATIONAL, INC. SECURITIES LITIGATION	No. 1:16-cv-00520-RA

NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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

NOTICE OF PENDENCY OF CLASS ACTION: Please be advised that your rights may be affected by the above-captioned securities class action (the "Action") pending in the United States District Court for the Southern District of New York (the "Court"), if, during the period from June 10, 2014 through January 11, 2016, inclusive (the "Class Period"), you purchased or otherwise acquired the common stock of HeartWare International, Inc. (NASDAQ ticker symbol HTWR), and were damaged thereby.[1]

NOTICE OF SETTLEMENT: Please also be advised that the Court-appointed Lead Plaintiff, St. Paul Teachers' Retirement Fund Association ("Lead Plaintiff"), on behalf of itself and the Class (as defined in ¶ 24 below), has reached a proposed settlement of the Action for $54,500,000 in cash that, if approved, will resolve all claims in the Action (the "Settlement").

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

If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact HeartWare or its counsel. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 87 below).

1. **Description of the Action and the Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors alleging, among other things, that defendants HeartWare International, Inc. ("HeartWare" or the "Company") and its former Chief Executive Officer Douglas E. Godshall (collectively, "Defendants") violated the federal securities laws by making false and misleading statements regarding HeartWare's business. A more detailed description of the Action is set forth in paragraphs 11-23 below. The proposed Settlement, if approved by the Court, will settle claims of the Class, as defined in paragraph 24 below.

2. **Statement of the Class's Recovery:** Subject to Court approval, Lead Plaintiff, on behalf of itself and the Class, has agreed to settle the Action in exchange for a settlement payment of $54,500,000 in cash (the "Settlement Amount") to be deposited into an escrow account. The Net Settlement Fund (i.e., the Settlement Amount plus any and all interest earned thereon (the "Settlement Fund") less (a) any Taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses awarded by the Court, (d) any attorneys' fees awarded by the Court, and (e) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Class. The proposed plan of allocation (the "Plan of Allocation") is set forth on pages 9–12 below.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiff's damages expert's estimates of the number of shares of HeartWare common stock purchased or acquired during the Class Period that may have been affected by the conduct at issue in the Action and assuming that all Class Members elect to participate in the Settlement, the estimated average recovery (before the deduction of any Court-approved fees, expenses and costs as described herein) is $3.28 per affected share. Class Members should note, however, that the foregoing average recovery per share is only an estimate. Some Class Members may recover more or less than this estimated amount depending on, among

[1] All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated November 13, 2018 (the "Stipulation"), which is available at www.HeartWareSecuritiesLitigation.com.

other factors, when and at what prices they purchased/acquired or sold their HeartWare stock, and the total number and value of valid Claim Forms submitted. Distributions to Class Members will be made based on the Plan of Allocation set forth herein (*see* pages 9–12 below) or such other plan of allocation as may be ordered by the Court.

4. **Average Amount of Damages Per Share:** The Parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiff were to prevail in the Action. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Class as a result of their conduct.

5. **Attorneys' Fees and Expenses Sought:** Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP, which has been prosecuting the Action on a wholly contingent basis since its inception in 2016, has not received any payment of attorneys' fees for their representation of the Class and has advanced the funds to pay expenses necessarily incurred to prosecute this Action. Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 24% of the Settlement Fund. In addition, Lead Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the institution, prosecution and resolution of the Action, in an amount not to exceed $400,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Class. Any attorneys' fees and expenses awarded by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses. The estimated average cost for such fees and expenses, if the Court approves Lead Counsel's fee and expense application, is $0.81 per affected share.

6. **Identification of Attorneys' Representative:** Lead Plaintiff and the Class are represented by John Rizio-Hamilton, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, (800) 380-8496, settlements@blbglaw.com.

7. **Reasons for the Settlement:** Lead Plaintiff's principal reason for entering into the Settlement is the substantial immediate cash benefit for the Class without the risk or the delays inherent in further litigation. Moreover, the substantial cash benefit provided under the Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – might be achieved after contested motions, a trial of the Action and the likely appeals that would follow a trial. This process could be expected to last several years. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden and expense of further protracted litigation.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:	
SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN MAY 14, 2019.	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Class Member and you remain in the Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs' Claims (defined in ¶ 34 below) that you have against Defendants and the other Defendants' Releasees (defined in ¶ 35 below), so it is in your interest to submit a Claim Form.
EXCLUDE YOURSELF FROM THE CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS *RECEIVED* NO LATER THAN MARCH 22, 2019.	If you exclude yourself from the Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Defendants or the other Defendants' Releasees concerning the Released Plaintiffs' Claims.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS *RECEIVED* NO LATER THAN MARCH 22, 2019.	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the fee and expense request unless you are a Class Member and do not exclude yourself from the Class.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT (*CONTINUED*):	
GO TO A HEARING ON APRIL 12, 2019 AT 11:45 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS *RECEIVED* NO LATER THAN MARCH 22, 2019.	Filing a written objection and notice of intention to appear by March 22, 2019 allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys' fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.
DO NOTHING.	If you are a member of the Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

WHAT THIS NOTICE CONTAINS

WHY DID I GET THIS NOTICE?

8. The Court directed that this Notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired HeartWare common stock during the Class Period. The Court has directed us to send you this Notice because, as a potential Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how this class action lawsuit may generally affect your legal rights. If the Court approves the Settlement, and the Plan of Allocation (or some other plan of allocation), the claims administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation and the motion by Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Settlement Hearing"). *See* paragraph 78 below for details about the Settlement Hearing, including the date and location of the hearing.

10. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

WHAT IS THIS CASE ABOUT?

11. HeartWare is a medical device company that manufactures heart pumps known as ventricular assist devices, that are implanted in patients suffering from heart failure. During the Class Period – from June 10, 2014 through January 11, 2016 – HeartWare was a publicly traded company with its common stock traded on the NASDAQ under the ticker symbol HTWR.[2]

12. In this Action, Lead Plaintiff alleges that HeartWare and its then-CEO, Douglas E. Godshall made a series of alleged misstatements and omissions about the safety and commercial viability of HeartWare's new product, a heart pump called the "MVAD." Specifically, Lead Plaintiff alleges that Defendants misrepresented HeartWare's progress in remedying deficiencies in its processes for manufacturing and testing the MVAD that had been identified in a warning letter from the U.S. Food and Drug Administration ("FDA") and made misstatements and omissions about the safety and commercial prospects of the MVAD. Lead Plaintiffs allege that the truth emerged through a series of disclosures in the fall of 2015 and January 2016, including the announcements that serious adverse events had been observed in a pivotal clinical trial of the MVAD, which led to the indefinite suspension of clinical trials for that product.

13. On January 22, 2016, Lead Plaintiff filed a class action complaint in the United States District Court for the Southern District of New York (the "Court"), styled *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc. et al.*, Case No. 1:16-cv-00520.

14. By Order dated April 11, 2016, the Court ordered that the case be recaptioned as *In re HeartWare International, Inc. Securities Litigation*, Master File No. 1:16-cv-00520 (the "Action") and that any subsequently filed, removed, or transferred actions related to the claims asserted in the Action be consolidated for all purposes; appointed St. Paul Teachers' Retirement Fund Association as Lead Plaintiff for the Action; and approved Lead Plaintiff's selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for the class.

15. On June 29, 2016, Lead Plaintiff filed and served its Amended Class Action Complaint (the "Complaint") asserting claims against both Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against Defendant Godshall under Section 20(a) of the Exchange Act. The Complaint alleges that, during the Class Period, Defendants made materially false and misleading statements about; (i) the safety and commercial viability of the MVAD, and (ii) the progress of HeartWare's remediation of deficiencies identified in the FDA's warning letter. The Complaint further alleges that the price of HeartWare common stock was artificially inflated as a result of Defendants' allegedly false and misleading statements, and declined when the truth was revealed.

16. On August 30, 2016, Defendants filed and served a motion to dismiss the Complaint. On October 28, 2016, Lead Plaintiff served its memorandum of law in opposition to this motion and, on December 9, 2016, Defendants served their reply papers.

17. On December 12, 2016, the Action was reassigned to the Honorable Ronnie Abrams for all further proceedings.

18. The Court held oral argument on Defendants' motion to dismiss on March 16, 2018. Following the argument, the Court issued its decision from the bench denying Defendants' motion to dismiss the Complaint. That same day, the Court entered an Order reflecting that decision. On May 16, 2018, Defendants filed and served their Answer to the Complaint.

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[2] In August 2016, after the end of the relevant time period for this case, HeartWare was acquired by another medical device company (Medtronic plc) and became a wholly owned subsidiary of that company. HeartWare's stock is no longer publicly traded.

19. Discovery in the Action commenced in April 2018. Lead Plaintiff prepared and served initial disclosures, requests for production of documents, and interrogatories on Defendants, exchanged numerous letters with Defendants concerning discovery issues, and served 27 document subpoenas on third parties, including the FDA. As part of its extensive efforts to conduct third-party discovery, Lead Plaintiff successfully applied for letters rogatory to obtain evidence from the United Kingdom clinical research organization that HeartWare had hired to assist with aspects of the clinical trial of MVAD. Defendants and third parties produced a total of approximately 450,000 pages of documents to Lead Plaintiff, and Lead Plaintiff produced over 7,500 pages of documents to Defendants in response to their requests.

20. On June 22, 2018, Lead Plaintiff filed its motion for class certification, which was accompanied by a report from Lead Plaintiff's expert on market efficiency and common damages methodologies. On August 17, 2018, Defendants filed a Notice of Non-Opposition to the class certification motion and, on August 27, 2018, the Court granted the motion, certifying the proposed Class, appointing Lead Plaintiff as Class Representative and appointing Bernstein Litowitz Berger & Grossmann LLP as Class Counsel.

21. While discovery continued, the Parties discussed the possibility of resolving the litigation through settlement and agreed to mediation before Jed D. Melnick, Esq. of JAMS. An in-person mediation session with Mr. Melnick was scheduled for September 12, 2018. In advance of the mediation, the Parties exchanged detailed mediation statements addressing liability and damages issues with numerous exhibits. At the September 12 mediation session, the Parties engaged in vigorous settlement negotiations with the assistance of Mr. Melnick but were not able to reach an agreement. The Parties continued their negotiations and scheduled a second mediation with Mr. Melnick for October 3, 2018. Following that session, the Parties agreed to settle the Action in return for a cash payment by or on behalf of Defendants of $54,500,000 for the benefit of the Class.

22. On November 13, 2018, the Parties entered into the Stipulation and Agreement of Settlement (the "Stipulation"), which sets forth the terms and conditions of the Settlement. The Stipulation can be viewed at www.HeartWareSecuritiesLitigation.com.

23. On December 12, 2018, the Court preliminarily approved the Settlement, authorized this Notice to be disseminated to potential Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT? WHO IS INCLUDED IN THE CLASS?

24. If you are a member of the Class, you are subject to the Settlement, unless you timely request to be excluded. The Class means the class certified in the Court's August 27, 2018 Order. Specifically, the Class includes:

> all persons and entities who purchased or otherwise acquired the common stock of HeartWare from June 10, 2014 through January 11, 2016, inclusive (the "Class Period"), and who were damaged thereby.

Excluded from the Class by definition are: Defendants; any parents, subsidiaries, affiliates, or acquirors of HeartWare; the Officers[3] and directors of HeartWare during the Class Period; Immediate Family Members[4] of Mr. Godshall and those Officers and directors; any entity in which any of the foregoing has or had a controlling interest; and the legal representatives, heirs, successors, or assigns of any such excluded person. Also excluded from the Class are any persons and entities who or which exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice. *See* "What If I Do Not Want To Be A Member Of The Class? How Do I Exclude Myself?" on page 12 below.

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.

IF YOU ARE A CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN MAY 14, 2019.

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[3] "Officer" means any officer as that term is defined in Securities and Exchange Act Rule 16a-1(f).

[4] "Immediate Family Members" means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this definition, "spouse" shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

WHAT ARE LEAD PLAINTIFF'S REASONS FOR THE SETTLEMENT?

25. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against Defendants through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. First, Lead Plaintiff would have faced substantial challenges in proving that Defendants' statements about HeartWare's remediation of deficiencies identified in the FDA warning letter and the safety and commercial viability of the MVAD were materially false and misleading when made. For example, Defendants contended that all of the sufficient definite and verifiable statements they made about the progress of the remediation efforts were accurate and that any other alleged misstatements were unactionable statements of corporate optimism or puffery. Defendants would also argue that their statements during the Class Period that the adverse events observed in the MVAD clinical trial were "typical" of adverse events observed in trials of other ventricular assist devices were not false or misleading because the adverse events in question – "thrombotic events" related to the formation of obstructive blood clots in the device – were typical in trials of such devices. Second, Lead Plaintiff would also have faced challenges in proving that Defendants made the alleged false statements with the intent to mislead investors or were reckless in making the statements. For example, Defendants would contend that Lead Plaintiff could not show any motive for Defendants to mislead the public, pointing to Defendant Godshall's lack of sales of HeartWare common stock during the Class Period.

26. Lead Plaintiff would also have faced significant hurdles in establishing "loss causation" – that the alleged misstatements were the cause of investors' losses – and in proving damages. Defendants would argue that declines in HeartWare's stock price identified by Lead Plaintiff were not caused by the alleged misstatements because the disclosures that caused these price declines did not directly reveal that the alleged misstatements were false. For example, Defendants would contend that the disclosure of the Company's proposed acquisition of a private company called Valtech Cardio Ltd. ("Valtech") on September 1, 2015 did not correct any alleged misstatements about the Company's remediation efforts or the MVAD's prospects, and that the decline in the stock price following the announcement of the Valtech transaction was, instead, related to the dilutive nature of the proposed acquisition. Similarly, Defendants contended that the disclosures of adverse events in the MVAD clinical did not specifically relate to or correct any of the alleged misstatements regarding HeartWare's remediation efforts or MVAD's safety profile. In short, Defendants would argue that the negative outcome of the MVAD clinical trial did not represent the materialization of a risk obscured by any of Defendants alleged misstatements, but, instead, was the materialization of a risk that was fully disclosed and understood by investors – i.e., that medical devices that are still being tested in clinical trials may sometimes demonstrate adverse events that prevent them from reaching the market. Moreover, on all these issues, Lead Plaintiff would have to prevail at several stages – on a motion for summary judgment and at trial, and if it prevailed on those, on the appeals that would likely to follow. Thus, there were very significant risks attendant to the continued prosecution of the Action.

27. In light of these risks, the amount of the Settlement and the immediacy of recovery to the Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit to the Class, namely $54,500,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no recovery after summary judgment, trial and appeals, possibly years in the future.

28. Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission of any wrongdoing by Defendants.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

29. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of their claims against Defendants, neither Lead Plaintiff nor the other members of the Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses, either at summary judgment, at trial or on appeal, the Class could recover substantially less than the amount provided in the Settlement, or nothing at all.

HOW ARE CLASS MEMBERS AFFECTED BY THE ACTION AND THE SETTLEMENT?

30. As a Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance

on the attorneys listed in the section entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?," on page 13 below.

31. If you are a Class Member and do not wish to remain a Class Member, you may exclude yourself from the Class by following the instructions in the section entitled, "What If I Do Not Want To Be A Member Of The Class? How Do I Exclude Myself?," on page 12 below.

32. If you are a Class Member and you wish to object to the Settlement, the Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, and if you do not exclude yourself from the Class, you may present your objections by following the instructions in the section entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?," on page 13 below.

33. If you are a Class Member and you do not exclude yourself from the Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (as defined in ¶ 34 below) against the Defendants and the other Defendants' Releasees (as defined in ¶ 35 below); shall be deemed to have agreed to a covenant not to sue the Defendants' Releasees with respect to all such Released Plaintiffs' Claims; and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees. The Court (and in particular Judge Abrams, if available) shall retain full, complete, and exclusive authority to interpret and enforce that permanent injunction, and Class Members expressly waive all rights to seek any adjudication concerning the injunction in any forum other than the Court.

34. "Released Plaintiffs' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether direct or representative, whether arising under federal, state, common, or foreign law, that Lead Plaintiff or any other member of the Class: (i) asserted in the Complaint, or (ii) could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and that relate to the purchase or acquisition of HeartWare common stock during the Class Period. For the avoidance of doubt, Released Plaintiffs' Claims do not include: (i) any claims relating to the enforcement of the Settlement; and (ii) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court.

35. "Defendants' Releasees" means Defendants and their current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, and attorneys, in their capacities as such.

36. "Unknown Claims" means any Released Plaintiffs' Claims which Lead Plaintiff or any other Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly waive, and each of the other Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

Lead Plaintiff and Defendants acknowledge, and each of the other Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

37. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim (as defined in ¶ 38 below) against Lead Plaintiff and the other Plaintiffs' Releasees

(as defined in ¶ 39 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees.

38. "Released Defendants' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against Defendants. Released Defendants' Claims do not include: (i) any claims relating to the enforcement of the Settlement; or (ii) any claims against any person or entity who or which submits a request for exclusion from the Class that is accepted by the Court.

39. "Plaintiffs' Releasees" means Lead Plaintiff, all other plaintiffs in the Action, and all other Class Members, and their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, and attorneys, in their capacities as such.

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

40. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Class and you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than May 14, 2019**. A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, www.HeartWareSecuritiesLitigation.com, or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-866-710-9044. Please retain all records of your ownership of and transactions in HeartWare common stock, as they may be needed to document your Claim. If you request exclusion from the Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

HOW MUCH WILL MY PAYMENT BE?

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

42. Pursuant to the Settlement, Defendants have agreed to pay or caused to be paid fifty-four million five hundred thousand dollars ($54,500,000) in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the "Settlement Fund." If the Settlement is approved by the Court and the Effective Date occurs, the "Net Settlement Fund" (that is, the Settlement Fund less (a) all federal, state and/or local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing notice to Class Members and administering the Settlement on behalf of Class Members; (c) any attorneys' fees and Litigation Expenses awarded by the Court; and (d) any other costs or fees approved by the Court) will be distributed to Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

43. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

44. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court's order or judgment approving the Settlement becomes Final. Defendants shall not have any liability, obligation or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund or the plan of allocation.

45. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

46. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked on or before May 14, 2019 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Class Member releases the Released Plaintiffs' Claims (as defined in ¶ 34 above) against the Defendants' Releasees (as defined in ¶ 35 above) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiffs' Claims against any of the Defendants' Releasees whether or not such Class Member submits a Claim Form.

47. Participants in and beneficiaries of a plan covered by ERISA ("ERISA Plan") should NOT include any information relating to their transactions in HeartWare common stock held through the ERISA Plan in any Claim Form that they may submit in this Action. They should include ONLY those shares that they purchased or acquired outside of the ERISA Plan. Claims based on any ERISA Plan's purchases or acquisitions of HeartWare common stock during the Class Period may be made by the plan's trustees. To the extent any of the Defendants or any of the other persons or entities excluded from the Class are participants in the ERISA Plan, such persons or entities shall not receive, either directly or indirectly, any portion of the recovery that may be obtained from the Settlement by the ERISA Plan.

48. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Class Member.

49. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim Form.

50. Only Class Members, *i.e.*, persons and entities who purchased or otherwise acquired HeartWare common stock during the Class Period and were damaged as a result of such purchases or acquisitions will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Class by definition or that exclude themselves from the Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. The only security that is included in the Settlement is HeartWare common stock.

PROPOSED PLAN OF ALLOCATION

51. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund to those Class Members who suffered economic losses as a result of the alleged violations of the federal securities laws. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Claimants against one another for the purposes of making pro rata allocations of the Net Settlement Fund.

52. In developing the Plan of Allocation, Lead Plaintiff's damages expert calculated the estimated amount of artificial inflation in the per-share closing price of HeartWare common stock that allegedly was proximately caused by Defendants' alleged false and misleading statements and material omissions.

53. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Lead Plaintiff's damages expert considered price changes in HeartWare common stock in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and material omissions, adjusting for price changes on those days that were attributable to market or industry forces.[5] The estimated artificial inflation in HeartWare common stock is stated in Table A at the end of this Notice.

54. In order to have recoverable damages, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of HeartWare common stock. In this case, Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the period from June 10, 2014 through January 11, 2016, inclusive, which had the effect of artificially inflating the price of the stock. Lead Plaintiff further alleges that corrective information was released to the market on: September 1, 2015 (after the close of trading), October 12, 2015 (before the opening of trading), October 13, 2015 (before the opening of trading), and January 11, 2016 (after the close of trading), which partially removed the artificial inflation from the price of HeartWare common stock on: September 2, 2015, October 12, 2015, October 13, 2015, and January 12, 2016.

55. Recognized Loss Amounts are based primarily on the difference in the amount of alleged artificial inflation in the prices of HeartWare common stock at the time of purchase or acquisition and at the time of sale or the difference between the actual purchase price and sale price. Accordingly, in order to have a Recognized Loss Amount under the Plan of Allocation, a Class Member who or which purchased or otherwise acquired HeartWare common stock prior to the first corrective disclosure, which occurred after the close of trading on September 1, 2015, must have held his, her, or its shares of HeartWare common stock through at least the end of day on September 1, 2015. A Class Member who

[5] With respect to the amount of artificial inflation removed from the price of the common stock on September 2, 2015, as a result of disclosures made after the close of market on September 1, 2015, which concerned the announcement of HeartWare's intent to acquire Valtech, Lead Plaintiffs' damages expert considered the change in price of HeartWare's common stock on September 2, 2015 (adjusted for market and industry forces) and then reduced that amount by the increase in HeartWare's stock price that occurred on January 28, 2016, after HeartWare announced its intention to abandon the Valtech acquisition (also adjusted for market and industry forces).

purchased or otherwise acquired HeartWare common stock from September 2, 2015 through the close of trading on January 11, 2016, must have held those shares through at least one of the later dates where new corrective information was released to the market and partially removed the artificial inflation from the price of the stock.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

56. Based on the formula stated below, a "Recognized Loss Amount" will be calculated for each purchase or acquisition of HeartWare common stock that is listed on the Claim Form and for which adequate documentation is provided. If a Recognized Loss Amount calculates to a negative number or zero under the formula below, the Recognized Loss Amount for that transaction will be zero.

57. For each share of HeartWare common stock purchased or otherwise acquired during the Class Period (*i.e.*, from June 10, 2014 through and including the close of trading on January 11, 2016), and:

    (a) Sold before the opening of trading on September 2, 2015, the Recognized Loss Amount will be $0.00;

    (b) Sold from the opening of trading on September 2, 2015 through the close of trading on January 11, 2016, the Recognized Loss Amount will be ***the lesser of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A (found at the end of this Notice) *minus* the amount of artificial inflation per share on the date of sale as stated in Table A; or (ii) the purchase/acquisition price *minus* the sale price.

    (c) Sold from January 12, 2016 through the close of trading on April 8, 2016, the Recognized Loss Amount will be ***the least of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; (ii) the purchase/acquisition price *minus* the average closing price between January 12, 2016 and the date of sale as stated in Table B (found at the end of this Notice); or (iii) the purchase/acquisition price *minus* the sale price.

    (d) Held as of the close of trading on April 8, 2016, the Recognized Loss Amount will be ***the lesser of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; or (ii) the purchase/acquisition price minus $32.58.[6]

ADDITIONAL PROVISIONS

58. The Net Settlement Fund will be allocated among all Authorized Claimants whose Distribution Amount (defined in paragraph 67 below) is $10.00 or greater.

59. **Calculation of Claimant's "Recognized Claim":** A Claimant's "Recognized Claim" will be the sum of his, her, or its Recognized Loss Amounts as calculated above with respect to all shares of HeartWare common stock purchased or otherwise acquired during the Class Period.

60. **FIFO Matching:** If a Class Member made more than one purchase/acquisition or sale of HeartWare common stock during the Class Period, all purchases/acquisitions and sales will be matched on a First In, First Out ("FIFO") basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

61. **"Purchase/Sale" Dates:** Purchases or acquisitions and sales of HeartWare common stock will be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance, or operation of law of HeartWare common stock during the Class Period shall not be deemed a purchase, acquisition or sale of HeartWare common stock for the calculation of a Claimant's Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition/sale of the stock unless (i) the donor or decedent purchased or otherwise acquired the stock during the Class Period; (ii) the instrument of gift

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[6] Pursuant to Section 21D(e)(1) of the Exchange Act, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of HeartWare common stock during the "90-day look-back period," from January 12, 2016 through April 8, 2016. The mean (average) closing price for HeartWare common stock during this 90-day look back period was $32.58.

or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to those shares.

62. **Short Sales:** The date of covering a "short sale" is deemed to be the date of purchase or acquisition of the HeartWare common stock. The date of a "short sale" is deemed to be the date of sale of the HeartWare common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "short sales" and the purchases covering "short sales" is zero.

63. In the event that a Claimant has an opening short position in HeartWare common stock, the earliest purchases or acquisitions of HeartWare common stock during the Class Period will be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

64. **Common Stock Purchased/Sold Through the Exercise of Options:** Option contracts are not securities eligible to participate in the Settlement. With respect to HeartWare common stock purchased or sold through the exercise of an option, the purchase/sale date of the common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

65. **Market Gains and Losses:** The Claims Administrator will determine if the Claimant had a "Market Gain" or a "Market Loss" with respect to his, her, or its overall transactions in HeartWare common stock during the Class Period. For purposes of making this calculation, the Claims Administrator shall determine the difference between (i) the Claimant's Total Purchase Amount[7] and (ii) the sum of the Claimant's Total Sales Proceeds[8] and the Claimant's Holding Value.[9] If the Claimant's Total Purchase Amount minus the sum of the Claimant's Total Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain.

66. If a Claimant had a Market Gain with respect to his, her, or its overall transactions in HeartWare common stock during the Class Period, the value of the Claimant's Recognized Claim will be zero, and the Claimant will not be eligible to receive a payment in the Settlement but will, nonetheless, be bound by the Settlement. If a Claimant suffered an overall Market Loss with respect to his, her, or its overall transactions in HeartWare common stock during the Class Period but that Market Loss was less than the Claimant's Recognized Claim, then the Claimant's Recognized Claim will be limited to the amount of the Market Loss.

67. **Determination of Distribution Amount:** The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a "Distribution Amount" will be calculated for each Authorized Claimant, which shall be the Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

68. If an Authorized Claimant's Distribution Amount calculates to less than $10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

69. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator, no less than seven (7) months after the initial distribution, will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least $10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least $10.00 on such additional re-distributions may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions,

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[7] The "Total Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes and commissions) for all shares of HeartWare common stock purchased or acquired during the Class Period.

[8] The Claims Administrator shall match any sales of HeartWare common stock during the Class Period first against the Claimant's opening position in HeartWare common stock (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (not deducting any fees, taxes and commissions) for sales of the remaining shares of HeartWare common stock sold during the Class Period is the "Total Sales Proceeds."

[9] The Claims Administrator shall ascribe a "Holding Value" of $26.50 per share to HeartWare common stock purchased or acquired during the Class Period that was still held as of the close of trading on January 11, 2016. This Holding Value is based on the closing price of HeartWare common stock on January 12, 2016.

after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance will be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court.

70. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, will be conclusive against all Claimants. No person shall have any claim against Lead Plaintiff, Lead Counsel, Lead Plaintiff's damages expert, Defendants, Defendants' Counsel, or any of the other Releasees, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiff, Defendants, and their respective counsel, and all other Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the plan of allocation; the determination, administration, calculation, or payment of any Claim or nonperformance of the Claims Administrator; the payment or withholding of taxes owed by the Settlement Fund; or any losses incurred in connection therewith.

71. The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by Lead Plaintiff after consultation with their damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the case website, www.HeartWareSecuritiesLitigation.com.

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

72. Lead Counsel has not received any payment for its services in pursuing claims against the Defendants on behalf of the Class, nor has Lead Counsel been reimbursed for its out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 24% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for reimbursement of Litigation Expenses in an amount not to exceed $400,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Class. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

WHAT IF I DO NOT WANT TO BE A MEMBER OF THE CLASS? HOW DO I EXCLUDE MYSELF?

73. Each Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Class, addressed to *In re HeartWare International, Inc. Securities Litigation*, EXCLUSIONS, c/o Analytics Consulting, P.O. Box 2003, Chanhassen, MN 55317-2003. The exclusion request must be ***received*** **no later than March 22, 2019**. You will not be able to exclude yourself from the Class after that date. Each Request for Exclusion must (a) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities the name and telephone number of the appropriate contact person; (b) state that such person or entity "requests exclusion from the Class in *In re HeartWare International, Inc. Securities Litigation*, Master File No. 1:16-cv-00520"; (c) state the number of HeartWare common stock that the person or entity requesting exclusion (i) owned as of the opening of trading on June 10, 2014 and (ii) purchased/acquired and/or sold during the Class Period (i.e., from June 10, 2014 through January 11, 2016, inclusive), as well as the dates and prices of each such purchase/acquisition and sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

74. If you do not want to be part of the Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Defendants' Releasees.

75. If you ask to be excluded from the Class, you will not be eligible to receive any payment out of the Net Settlement Fund.

76. Defendants have the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the Class in an amount that exceeds an amount agreed to by Lead Plaintiff and Defendants.

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

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

78. The Settlement Hearing will be held on April 12, 2019 at 11:45 a.m., before the Honorable Ronnie Abrams at the United States District Court for the Southern District of New York, Courtroom 1506 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Class.

79. Any Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Southern District of New York at the address set forth below on or before March 22, 2019. You must also serve the papers on Lead Counsel and on Defendants' Counsel at the addresses set forth below so that the papers are ***received*** **on or before March 22, 2019**.

Clerk's Office	**Lead Counsel**	**Defendants' Counsel**
United States District Court	**Bernstein Litowitz Berger & Grossmann LLP**	**Wilmer Cutler Pickering Hale and Dorr LLP**
Southern District of New York	John Rizio-Hamilton, Esq.	Michael G. Bongiorno, Esq.
Daniel Patrick Moynihan U.S. Courthouse	1251 Avenue of the Americas	7 World Trade Center
500 Pearl Street	44th Floor	250 Greenwich Street
New York, NY 10007	New York, NY 10020	New York, NY 10007

80. Any objection (a) must state the name, address and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in the Class, including documents showing the number of shares of HeartWare common stock that the objecting Class Member (i) owned as of the opening of trading on June 10, 2014 and (ii) purchased/acquired and/or sold during the Class Period (i.e., from June 10, 2014 through January 11, 2016, inclusive), as well as the dates and prices of each such purchase/acquisition and sale. Documentation establishing membership in the Class must consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from the objector's broker containing the transactional and holding information found in a broker confirmation slip or account statement. You may not object to the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses if you exclude yourself from the Class or if you are not a member of the Class.

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

82. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you timely file and serve a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth above so that it is ***received*** **on or before March 22, 2019**. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

83. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 79 above so that the notice is ***received*** **on or before March 22, 2019**.

84. The Settlement Hearing may be adjourned by the Court without further written notice to the Class. If you plan to attend the Settlement Hearing, you should confirm the date and time with Lead Counsel.

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

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

86. If you purchased or otherwise acquired any shares of HeartWare common stock from June 10, 2014 through January 11, 2016, inclusive, for the beneficial interest of persons or organizations other than yourself, you must either (a) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (the "Notice Packet") to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to *In re HeartWare International, Inc. Securities Litigation*, c/o Analytics Consulting, P.O. Box 2003, Chanhassen, MN 55317-2003. If you choose the second option, the Claims Administrator will send a copy of the Notice and the Claim Form to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form may also be obtained from the website maintained by the Claims Administrator, www.HeartWareSecuritiesLitigation.com, or by calling the Claims Administrator toll-free at 1-866-710-9044.

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

87. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Southern District of New York, Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, NY 10007. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, www.HeartWareSecuritiesLitigation.com.

All inquiries concerning this Notice and the Claim Form should be directed to:

In re HeartWare International, Inc. Securities Litigation
c/o Analytics Consulting
P.O. Box 2003
Chanhassen, MN 55317-2003
1-866-710-9044
www.HeartWareSecuritiesLitigation.com

and/or

John Rizio-Hamilton, Esq.
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
1251 Avenue of the Americas, 44th Floor
New York, NY 10020
(800) 380-8496
settlements@blbglaw.com

DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS, OR THEIR COUNSEL REGARDING THIS NOTICE.

Dated: January 4, 2019

By Order of the Court
United States District Court
Southern District of New York

TABLE A

Estimated Artificial Inflation with Respect to Purchases/Acquisitions and Sales of HeartWare Common Stock from June 10, 2014 through January 11, 2016

Date Range	Artificial Inflation Per Share
June 10, 2014 - September 1, 2015	$42.53
September 2, 2015 – October 11, 2015	$29.28
October 12, 2015	$22.89
October 13, 2015 - January 11, 2016	$14.92

TABLE B

Closing Price and Average Closing Price for HeartWare Common Stock from January 12, 2016 through April 8, 2016

Date	Closing Price	Average Closing Price Between January 12, 2016 and Date Shown
1/12/2016	$26.50	$26.50
1/13/2016	$26.46	$26.48
1/14/2016	$29.07	$27.34
1/15/2016	$30.46	$28.12
1/19/2016	$29.63	$28.42
1/20/2016	$31.18	$28.88
1/21/2016	$32.64	$29.42
1/22/2016	$34.50	$30.06
1/25/2016	$34.48	$30.55
1/26/2016	$35.44	$31.04
1/27/2016	$34.50	$31.35
1/28/2016	$37.90	$31.90
1/29/2016	$40.14	$32.53
2/1/2016	$40.38	$33.09
2/2/2016	$39.96	$33.55
2/3/2016	$40.23	$33.97
2/4/2016	$40.89	$34.37
2/5/2016	$39.12	$34.64
2/8/2016	$34.29	$34.62
2/9/2016	$33.78	$34.58
2/10/2016	$34.31	$34.56
2/11/2016	$34.10	$34.54
2/12/2016	$33.19	$34.48
2/16/2016	$34.32	$34.48
2/17/2016	$34.39	$34.47

Date	Closing Price	Average Closing Price Between January 12, 2016 and Date Shown
2/18/2016	$33.82	$34.45
2/19/2016	$33.49	$34.41
2/22/2016	$34.25	$34.41
2/23/2016	$33.28	$34.37
2/24/2016	$32.43	$34.30
2/25/2016	$30.13	$34.17
2/26/2016	$32.35	$34.11
2/29/2016	$31.96	$34.05
3/1/2016	$33.38	$34.03
3/2/2016	$33.50	$34.01
3/3/2016	$29.98	$33.90
3/4/2016	$30.85	$33.82
3/7/2016	$31.23	$33.75
3/8/2016	$29.72	$33.65
3/9/2016	$30.15	$33.56
3/10/2016	$29.75	$33.47
3/11/2016	$31.10	$33.41
3/14/2016	$31.06	$33.36
3/15/2016	$29.09	$33.26
3/16/2016	$28.80	$33.16
3/17/2016	$30.24	$33.10
3/18/2016	$30.37	$33.04
3/21/2016	$30.25	$32.98
3/22/2016	$31.08	$32.94
3/23/2016	$30.42	$32.89
3/24/2016	$30.28	$32.84
3/28/2016	$29.61	$32.78
3/29/2016	$30.84	$32.74
3/30/2016	$31.40	$32.72
3/31/2016	$31.42	$32.69
4/1/2016	$31.51	$32.67
4/4/2016	$32.62	$32.67
4/5/2016	$31.20	$32.65
4/6/2016	$31.49	$32.63
4/7/2016	$31.54	$32.61
4/8/2016	$31.11	$32.58

In re HeartWare International, Inc. Securities Litigation
c/o Analytics Consulting
P.O. Box 2003
Chanhassen, MN 55317-2003

Toll-Free Number: 1-866-710-9044
Email: info@HeartWareSecuritiesLitigation.com
Website: www.HeartWareSecuritiesLitigation.com

PROOF OF CLAIM AND RELEASE FORM

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of this Action, you must complete and sign this Proof of Claim and Release Form ("Claim Form") and mail it by first-class mail to the above address, ***postmarked*** **no later than May 14, 2019**.

Failure to submit your Claim Form by the date specified will subject your claim to rejection and may preclude you from being eligible to receive any money in connection with the Settlement.

Do not mail or deliver your Claim Form to the Court, the parties to the Action, or their counsel. Submit your Claim Form only to the Claims Administrator at the address set forth above.

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PART I – CLAIMANT INFORMATION

The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above. Complete names of all persons and entities must be provided.

Beneficial Owner's Name

First Name | Last Name

Joint Beneficial Owner's Name (*if applicable*)

First Name | Last Name

If this claim is submitted for an IRA, and if you would like any check that you MAY be eligible to receive made payable to the IRA, please include "IRA" in the "Last Name" box above (*e.g.*, Jones IRA).

Entity Name (*if the Beneficial Owner is not an individual*)

Name of Representative, if applicable (*executor, administrator, trustee, c/o, etc.*), if different from Beneficial Owner

Last 4 digits of Social Security Number or Taxpayer Identification Number

Street Address

City | State/Province | Zip Code

Foreign Postal Code (*if applicable*) | Foreign Country (*if applicable*)

Telephone Number (Day) | Telephone Number (Evening)

Email Address (*email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim*):

Type of Beneficial Owner:

Specify one of the following:

☐ Individual(s) ☐ Corporation ☐ UGMA Custodian ☐ IRA ☐ Partnership ☐ Estate ☐ Trust

☐ Other (*describe:*_____)

PART II – GENERAL INSTRUCTIONS

1. It is important that you completely read and understand the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") that accompanies this Claim Form, including the Plan of Allocation of the Net Settlement Fund set forth in the Notice. The Notice describes the proposed Settlement, how Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the releases described therein and provided for herein.

2. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlement described in the Notice. IF YOU ARE NOT A CLASS MEMBER (see the definition of the Class on page 5 of the Notice, which sets forth who is included in and who is excluded from the Class), OR IF YOU, OR SOMEONE ACTING ON YOUR BEHALF, SUBMITTED A REQUEST FOR EXCLUSION FROM THE CLASS, DO NOT SUBMIT A CLAIM FORM. **YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A CLASS MEMBER.** THUS, IF YOU ARE EXCLUDED FROM THE CLASS, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.

3. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.**

4. Use the Schedule of Transactions in Part III of this Claim Form to supply all required details of your transaction(s) in and holdings of, HeartWare common stock. On this schedule, provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of HeartWare common stock (including free transfers and deliveries), whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time period may result in the rejection of your claim.**

5. **Please note**: Only HeartWare common stock purchased or acquired during the Class Period (i.e., from June 10, 2014 through January 11, 2016, inclusive) is eligible under the Settlement. However, sales of HeartWare common stock during the period from January 12, 2016 through April 8, 2016, inclusive, will be used for purposes of calculating your claim under the Plan of Allocation. Therefore, in order for the Claims Administrator to be able to balance your claim, the requested purchase/acquisition information during this period must also be provided.

6. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of HeartWare common stock set forth in the Schedule of Transactions in Part III of this Claim Form. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Parties and the Claims Administrator do not independently have information about your investments in HeartWare common stock. IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. **Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.**

7. Use Part I of this Claim Form entitled "CLAIMANT INFORMATION" to identify the beneficial owner(s) of HeartWare common stock. The complete name(s) of the beneficial owner(s) must be entered. If you held the eligible HeartWare common stock in your own name, you were the beneficial owner as well as the record owner. If, however, your shares of eligible HeartWare common stock were registered in the name of a third party, such as a nominee or brokerage firm, you were the beneficial owner of these shares, but the third party was the record owner. The beneficial owner, not the record owner, must sign this Claim Form to be eligible to participate in the Settlement. If there were joint beneficial owners each must sign this Claim Form and their names must appear as "Claimants" in Part I of this Claim Form.

8. **One Claim should be submitted for each separate legal entity.** Separate Claim Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual's name). Conversely, a single Claim Form should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (*e.g.*, a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).

9. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

   (a) expressly state the capacity in which they are acting;

   (b) identify the name, account number, Social Security Number (or taxpayer identification number), address, and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the HeartWare common stock; and

   (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)

10. By submitting a signed Claim Form, you will be swearing that you:

    (a) owned the HeartWare common stock you have listed in the Claim Form; or

    (b) are expressly authorized to act on behalf of the owner thereof.

11. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

12. If the Court approves the Settlement, payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after any appeals are resolved, and after the completion of all claims processing. The claims process will take substantial time to complete fully and fairly. Please be patient.

13. **PLEASE NOTE**: As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her or its *pro rata* share of the Net Settlement Fund. If the prorated payment to any Authorized Claimant calculates to less than $10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

14. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, Analytics Consulting, at the address on the first page of the Claim Form, by email at info@HeartWareSecuritiesLitigation.com, or by toll-free phone at 1-866-710-9044, or you can visit the website, www.HeartWareSecuritiesLitigation.com, where copies of the Claim Form and Notice are available for downloading.

15. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the ***mandatory*** electronic filing requirements and file layout, you may visit the settlement website at www.HeartWareSecuritiesLitigation.com or you may email the Claims Administrator's electronic filing department at info@HeartWareSecuritiesLitigation.com. **Any file not in accordance with the required electronic filing format will be subject to rejection.** Only one claim should be submitted for each separate legal entity (*see* ¶ 8 above) and the ***complete*** name of the beneficial owner of the securities must be entered where called for (*see* ¶ 7 above). No electronic files will be considered to have been submitted unless the Claims Administrator issues an email to that effect. **Do not assume that your file has been received until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at info@HeartWareSecuritiesLitigation.com to inquire about your file and confirm it was received.**

IMPORTANT: PLEASE NOTE

YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-866-710-9044.

PART III – SCHEDULE OF TRANSACTIONS IN HEARTWARE COMMON STOCK

The only eligible security is HeartWare International, Inc. common stock (**Ticker: NASDAQ: HTWR, CUSIP: 422368100**). Do not include information regarding securities other than HeartWare common stock. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, ¶ 6, above.

1. **HOLDINGS AS OF JUNE 10, 2014** – State the total number of shares of HeartWare common stock held as of the opening of trading on June 10, 2014. (*Must be documented.*) If none, write "zero" or "0." ☐☐☐☐☐☐☐ — Confirm Proof of Position Enclosed ☐

2. **PURCHASES/ACQUISITIONS FROM JUNE 10, 2014 THROUGH JANUARY 11, 2016** – Separately list each and every purchase or acquisition (including free receipts) of HeartWare common stock from after the opening of trading on June 10, 2014 through the close of trading on January 11, 2016. (*Must be documented.*)

Date of Purchase/Acquisition (*List Chronologically*) MM DD YY	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Purchase/Acquisition Price (*excluding any commissions, taxes and fees*)	Confirm Proof of Purchase Enclosed
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐

3. **PURCHASES/ACQUISITIONS FROM JANUARY 12, 2016 THROUGH APRIL 8, 2016** – State the total number of shares of HeartWare common stock purchased or acquired (including free receipts) from January 12, 2016 through the close of trading on April 8, 2016. If none, write "zero" or "0."[1] ☐☐☐☐☐☐☐

4. **SALES FROM JUNE 10, 2014 THROUGH APRIL 8, 2016** – Separately list each and every sale or disposition (including free deliveries) of HeartWare common stock from after the opening of trading on June 10, 2014 through the close of trading on April 8, 2016. (*Must be documented.*) **IF NONE, CHECK HERE** ☐

Date of Sale (*List Chronologically*) MM DD YY	Number of Shares Sold	Sale Price Per Share	Total Sale Price (*not deducting any commissions, taxes or fees*)	Confirm Proof of Sale Enclosed
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐
/ /		$.	$.	☐

5. **HOLDINGS AS OF APRIL 8, 2016** – State the total number of shares of HeartWare common stock held as of the close of trading on April 8, 2016. (*Must be documented.*) If none, write "zero" or "0." ☐☐☐☐☐☐☐ — Confirm Proof of Position Enclosed ☐

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/ TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX. ☐

[1] **Please note:** Information requested with respect to your purchases and acquisitions of HeartWare common stock from January 12, 2016 through and including April 8, 2016 is needed in order to balance your claim; purchases and acquisitions during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

PART IV - RELEASE OF CLAIMS AND SIGNATURE

YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 7 OF THIS CLAIM FORM.

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) (the claimant(s)') heirs, executors, administrators, predecessors, successors and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment **(1)** shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (including, without limitation, any Unknown Claims) against the Defendants' Releasees; **(2)** shall be deemed to have agreed to a covenant not to sue the Defendants' Releasees with respect to all such Released Plaintiffs' Claims; and **(3)** shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees. The United States District Court for the Southern District of New York (the "Court") (and in particular Judge Ronnie Abrams, if available) shall retain full, complete, and exclusive authority to interpret and enforce the permanent injunction set forth in the previous sentence, and I (we) expressly waive all rights to seek any adjudication concerning the permanent injunction in any forum other than the Court.

CERTIFICATION

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Class as set forth in the Notice;
3. that the claimant(s) did ***not*** submit a request for exclusion from the Class;
4. that I (we) owned the HeartWare common stock identified in the Claim Form and have not assigned the claim against any of the Defendants or any of the other Released Defendant Persons to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant(s) has (have) not submitted any other claim covering the same purchases of HeartWare common stock and knows (know) of no other person having done so on the claimant's (claimants') behalf;
6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;
8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the determination by the Court of the validity or amount of this Claim, and waives any right of appeal or review with respect to such determination;
9. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
10. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (i) the claimant(s) is (are) exempt from backup withholding or (ii) the claimant(s) has (have) not been notified by the IRS that he, she, or it is subject to backup withholding as a result of a failure to report all interest or dividends or (iii) the IRS has notified the claimant(s) that he, she, or it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he, she, it, or they is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

Signature of Claimant **Date Signed** M M – D D – Y Y Y Y

Print Claimant Name Here

Signature of Joint Claimant, if any **Date Signed** M M – D D – Y Y Y Y

Print Joint Claimant Name Here

If the claimant is other than an individual, or is not the person completing this form, the following also must be provided:

Signature of Person Signing on Behalf of Claimant **Date Signed** M M – D D – Y Y Y Y

Print Name of Person Signing on Behalf of Claimant Here

Capacity of person signing on behalf of claimant, if other than an individual, *e.g.*, executor, president, trustee, custodian, etc. (*Must provide evidence of authority to act on behalf of claimant – see ¶ 9 on page 4 of this Claim Form.*)

REMINDER CHECKLIST

1. Sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Attach only ***copies*** of acceptable supporting documentation as these documents will not be returned to you.
3. Do not highlight any portion of the Claim Form or any supporting documents.
4. Keep copies of the completed Claim Form and documentation for your own records.
5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at 1-866-710-9044.**
6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.
7. If you have any questions or concerns regarding your claim, contact the Claims Administrator at the address below, by email at info@HeartWareSecuritiesLitigation.com, or by toll-free phone at 1-866-710-9044, or you may visit www.HeartWareSecuritiesLitigation.com. DO NOT call HeartWare or its counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, ***POSTMARKED*** **NO LATER THAN MAY 14, 2019**, ADDRESSED AS FOLLOWS:

In re HeartWare International, Inc. Securities Litigation
c/o Analytics Consulting
P.O. Box 2003
Chanhassen, MN 55317-2003

1-866-710-9044
www.HeartWareSecuritiesLitigation.com

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before May 14, 2019 is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

EXHIBIT B

Bank Shares Surge Despite Terrible Trading Results

By Telis Demos

Wall Street trading desks had a horror-show fourth quarter that dragged on bank results. But investors in big-bank stocks focused instead on gains in lending businesses and improving sentiment around the U.S. economy.

Last week, bank stocks posted their strongest five-day gains in more than two years. The KBW Nasdaq Bank index rallied 7.7%, the best one-week rise since the 2016 presidential election. That has erased a chunk of steep losses suffered amid fourth-quarter market tumult.

Those late-2018 declines were sparked by uncertainty over the path of Federal Reserve rate increases, worries around the U.S.-China trade dispute and fears the U.S. economy could slip into recession in coming months. The selloff became so pronounced that it sparked a surprise statement of support for banks from Treasury Secretary Steven Mnuchin, a move that ended up rattling investors further.

In fourth-quarter results posted last week, however, big banks didn't show signs of lasting damage. While market volatility hurt trading desks, causing some banks to miss earnings and revenue targets, those banks continued to report a lift from higher interest rates.

This fueled further gains among banks, whose shares had been rising along with broader markets in 2019. The KBW index is up more than 20% since its recent Dec. 24 nadir.

The rebound has been particularly pronounced among the banks that suffered the most. Citigroup Inc., for example, fell nearly 30% in the fourth quarter of 2018. This year, it is up more than 20%.

Its big-bank peers—JPMorgan Chase & Co., Bank of America Corp. and Wells Fargo & Co.—followed a similar pattern, even if their moves were somewhat less pronounced. All three fell more than 10% in the fourth quarter. This month, they have risen between 7% and 19%.

Fourth-quarter results helped assuage some worries. For example, the banks showed scant signs of being stressed by lending to consumers or companies. The latter is a particular worry for some analysts, given that corporate debt represents as big a share of gross domestic product as at any time since the 2008 financial crisis.

JPMorgan said it did reserve more against possible losses on "select" commercial and industrial clients. But the bank described those as idiosyncratic situations and not reflective of any broader laxity in lending. "There's nothing to see right now in our portfolios, and we're looking," JPMorgan Chief Financial Officer Marianne Lake told analysts.

Overall, the four big banks and several regional banks that reported results last week collectively increased business loans by around 3.8% from the third quarter, the fastest quarter-over-quarter pace since 2012, according to analysts at Autonomous Research, a stock-research firm. Consumer credit-card spending and lending at those banks also grew.

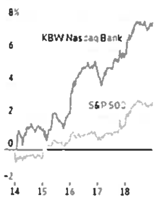
Banks also forecast continued gains from higher rates, even if the Federal Reserve raises rates only once in 2019. Citigroup, for example, said it would earn about $2 billion more from higher rates in 2019, about the same amount of income added in 2018.

Fears receded on other fronts as well. At Citigroup, investors had grown jittery late last year about the bank's international exposure, given trade-war talk and worries about a slowdown in China.

Adjusted for changes in currency rates, core consumer-banking revenue in Latin America and Asia still grew, and the treasury and trade services business grew by 11% from a year earlier.

Stock Bounce

Index performance in the week ended Jan. 18



Source: SIX

Investors Add Cash Holdings

Continued from page B1

ment portfolios now include cash, up from 12% for 2018, which was one of the lowest figures in the Goldman data. Besides pressuring stock returns, a rush toward cash could also signal a looming economic downturn, Goldman data show, as allocations tend to rise continuously in the 12 to 15 months before a recession.

Stock allocations, meanwhile, fell to 41% in January from October's 45%, which was one of the highest levels in the data.

Cash allocations had been trending downward throughout most of the decade since the financial crisis, reflecting negative "real" interest rates that meant holders lost money after inflation.

Now, cash is competitive again following rate increases that have pushed real, inflation-adjusted rates into positive territory and have brought bond yields into line with stock-dividend yields.

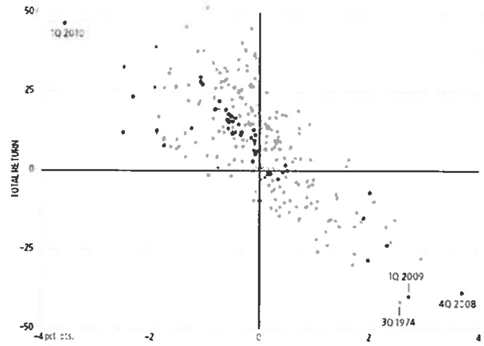
Some Wall Street strategists say investors should consider holding more cash, in case trade tensions resurface or the market hits another rough patch as the Fed continues winding down its easy-money policies. But they warn not to get carried away.

"Cash is a great short-term way to mitigate volatility and defer purchasing power, but as you lengthen the horizon you're going to erode your purchasing power," said Matthew McLennan, a portfolio manager with First Eagle Asset Management, whose cash level has come down lately but remains above its historical average.

Money Drag

Stock returns tend to be negative when investors' cash allocations rise.

S&P 500 total return and change in cash allocation, quarterly 1952-2018*



*Through 3Q 2018

Source: Goldman Sachs Global Investment Research (total return, change in cash allocation); Lipper (Flows)

Some analysts expect to see further gains in the stock market if the companies in the S&P 500 post double-digit profit growth for the fourth quarter. FactSet projects a 10% jump in profits for the period, down from expected growth of 16% in September.

For now, analysts expect rising yields on cash to continue to compete with stocks.

PagnatoKarp, a $3.8 billion wealth-management firm, for example, is rolling out a new offering in the next several weeks that pays individuals a 2.3% interest rate on deposits of up to $1.5 million, or $3 million for a couple. PagnatoKarp will spread the cash across several banks to make sure total sum is insured by the Federal Deposit Insurance Corp., and no minimum is needed to open the account.

"We never did this before, but we noticed and recognized a need," said the firm's founder, Paul Pagnato. "Cash is a real asset class, and that's something we're taking advantage of."

'Cash is a great short-term way to mitigate volatility,' says one manager.

Betterment LLC, an automated investment manager that relies on algorithms to make investor recommendations, now offers a Smart Saver account that puts clients' cash into a mix of short-term U.S. Treasurys and investment-grade bonds for a yield of more than 2%, net of fees. Launched last year, the accounts are available to about half of Betterment's more than 400,000 users.

"In the past, you had no other opportunity but to take risk," said Phil Blancato, chief executive of Ladenburg Thalmann Asset Management, of the impact of low interest rates on investors' options. "The recent volatility gave investors an opportunity to de-risk, shore up portfolios and get ready for 2019, assuming it's a lot like 2018."

—Lisa Beilfuss contributed to this article.

Currencies

U.S.-dollar foreign-exchange rates in late New York trading

Country/currency	Mon in US$	Mon per US$	US$ vs, YTD chg (%)
Americas			
Argentina peso	.0264	37.8100	0.4
Brazil real	.2663	3.7550	-3.3
Canada dollar	.7524	1.3292	-2.6
Chile peso	.001488	672.20	-3.1
Ecuador US dollar	1	1	unch
Mexico peso	.0522	19.1662	-2.5
Uruguay peso	.03058	32.7000	1.0
Venezuela b. fuerte	.03058	32.70000	1.0
Asia-Pacific			
Australian dollar	.7157	1.3972	-1.5
China yuan	.1472	6.7933	-1.2
Hong Kong dollar	.1275	7.8451	0.2
India rupee	.01405	71.195	2.3
Indonesia rupiah	.0000703	14223	-1.1
Japan yen	.009115	109.66	0.1
Kazakhstan tenge	.002639	378.97	-1.4
Macau pataca	.1237	8.0840	0.2
Malaysia ringgit	.2425	4.1242	-0.2
New Zealand dollar	.6731	1.4857	-0.2
Pakistan rupee	.00715	139.849	0.04
Philippines peso	.0190	52.750	0.5
Singapore dollar	.7358	1.3590	-0.3
South Korea won	.0008819	1133.37	1.8
Sri Lanka rupee	.0055006	181.80	-0.6
Taiwan dollar	.03235	30.900	1.0
Thailand baht	.03144	31.810	-1.6

Country/currency	Mon in US$	Mon per US$	US$ vs, YTD chg (%)
Vietnam dong	.00004311	23199	0.02
Europe			
Czech Rep. koruna	.04443	22.507	0.4
Denmark krone	.1522	6.5688	0.9
Euro area euro	1.1367	.8798	0.9
Hungary forint	.003580	279.35	-0.2
Iceland krona	.008250	121.21	4.3
Norway krone	.1168	8.5617	-0.9
Poland zloty	.2653	3.7692	0.8
Russia ruble	.01506	66.394	-4.1
Sweden krona	.1109	9.0167	1.9
Switzerland franc	1.0027	.9973	1.6
Turkey lira	.1879	5.3220	0.6
Ukraine hryvnia	.0358	27.9640	0.9
UK pound	1.2891	.7757	-1.0
Middle East/Africa			
Bahrain dinar	2.6524	.3770	0.02
Egypt pound	.0558	17.9320	0.1
Israel shekel	.2706	3.6955	-1.2
Kuwait dinar	3.2956	.3034	0.1
Oman sul rial	2.5970	.3851	0.01
Qatar rial	.2746	3.641	0.2
Saudi Arabia riyal	.2665	3.7518	0.01
South Africa rand	.0723	13.8244	-3.7

	Close	Net Chg	% Chg	YTD % Chg
WSJ Dollar Index	89.57	0.02	0.02	-0.18

Sources: Tullett Prebon, Dow Jones Market Data

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE HEARTWARE INTERNATIONAL, INC. SECURITIES LITIGATION	No. 1:16-cv-00520-RA

SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO: **All persons and entities who purchased or otherwise acquired the common stock of HeartWare International, Inc. ("HeartWare") from June 10, 2014 through January 11, 2016, inclusive (the "Class Period"), and who were damaged thereby (the "Class"):**

PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York, that the above-captioned litigation (the "Action") has been certified as a class action on behalf of the Class, except for certain persons and entities who are excluded from the Class by definition as set forth in the full printed Notice of (I) Pendency of Class Action and Proposed Settlement, (II) Settlement Fairness Hearing, and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice").

YOU ARE ALSO NOTIFIED that Lead Plaintiff in the Action has reached a proposed settlement of the Action for $34,500,000 in cash (the "Settlement"), that, if approved, will resolve all claims in the Action.

A hearing will be held on April 12, 2019 at 11:45 a.m., before the Honorable Ronnie Abrams at the United States District Court for the Southern District of New York, Courtroom 1506 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007, to determine (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated November 13, 2018 (and in the Notice) should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses should be approved.

If you are a member of the Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund. If you have not yet received the Notice and Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at *In re HeartWare International, Inc. Securities Litigation*, c/o Analytics Consulting, P.O. Box 2003, Chanhassen, MN 55317-2003. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, www.HeartWareSecuritiesLitigation.com.

If you are a member of the Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form *postmarked* no later than May 11, 2019. If you are a Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Class and wish to exclude yourself from the Class, you must submit a request for exclusion such that it is *received* no later than March 22, 2019, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of expenses, must be filed with the Court and delivered to Lead Counsel and Defendants' Counsel such that they are *received* no later than March 22, 2019, in accordance with the instructions set forth in the Notice.

Please do not contact the Court, the Clerk's office, HeartWare, or its counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to Lead Counsel or the Claims Administrator.

Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel:

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
John Rizio-Hamilton, Esq.
1251 Avenue of the Americas, 44th Floor
New York, NY 10020
(800) 380-8496
settlements@blbglaw.com

Requests for the Notice and Claim Form should be made to:

In re HeartWare International, Inc. Securities Litigation
c/o Analytics Consulting
P.O. Box 2003
Chanhassen, MN 55317-2003
1-866-710-9044
www.HeartWareSecuritiesLitigation.com

By Order of the Court

EXHIBIT C

Michelle Kopperud

Subject: FW: HeartWare - WSJ Publication Successful

From: Pete Egloff <pegloff@milleraa.com>
Sent: Tuesday, January 22, 2019 11:00 AM
To: Michelle Kopperud <mkopperud@analyticsllc.com>
Cc: 'Adam Levin' <alevin@milleraa.com>
Subject: RE: HeartWare - WSJ Publication Successful

Michelle,

The release was successfully sent out, here is the link to it on PR Newswire:

https://www.prnewswire.com/news-releases/bernstein-litowitz-berger--grossmann-llp-announces-proposed-settlement-of-the-heartware-international-inc-securities-litigation-300778840.html

We will send a follow up e-mail with the performance ASAP.

Pete Egloff
Miller Legal Services
a division of Miller Advertising Agency, Inc.
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Fax: 773.435.6291
pegloff@milleraa.com

Visit our website: www.levinadvertising.com

Bernstein Litowitz Berger & Grossmann LLP Announces Proposed Settlement of the Heartware International, Inc. Securities Litigation

New York / January 22, 2019 / PR Newswire --

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE HEARTWARE INTERNATIONAL, INC. SECURITIES LITIGATION	No. 1:16-cv-00520-RA

SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO: All persons and entities who purchased or otherwise acquired the common stock of HeartWare International, Inc. ("HeartWare") from June 10, 2014 through January 11, 2016, inclusive (the "Class Period"), and who were damaged thereby (the "Class"):

PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York, that the above-captioned litigation (the "Action") has been certified as a class action on behalf of the Class, except for certain persons and entities who are excluded from the Class by definition as set forth in the full printed Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice").

YOU ARE ALSO NOTIFIED that Lead Plaintiff in the Action has reached a proposed settlement of the Action for $54,500,000 in cash (the "Settlement"), that, if approved, will resolve all claims in the Action.

A hearing will be held on April 12, 2019 at 11:45 a.m., before the Honorable Ronnie Abrams at the United States District Court for the Southern District of New York, Courtroom 1506 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007, to determine (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated

November 13, 2018 (and in the Notice) should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses should be approved.

If you are a member of the Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund. If you have not yet received the Notice and Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at *In re HeartWare International, Inc. Securities Litigation*, c/o Analytics Consulting, P.O. Box 2003, Chanhassen, MN 55317-2003. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, www.HeartWareSecuritiesLitigation.com.

If you are a member of the Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form *postmarked* no later than May 14, 2019. If you are a Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Class and wish to exclude yourself from the Class, you must submit a request for exclusion such that it is *received* no later than March 22, 2019, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of expenses, must be filed with the Court and delivered to Lead Counsel and Defendants' Counsel such that they are *received* no later than March 22, 2019, in accordance with the instructions set forth in the Notice.

Please do not contact the Court, the Clerk's office, HeartWare, or its counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to Lead Counsel or the Claims Administrator.

Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel:

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
John Rizio-Hamilton, Esq.
1251 Avenue of the Americas, 44th Floor
New York, NY 10020
(800) 380-8496
settlements@blbglaw.com

Requests for the Notice and Claim Form should be made to:

In re HeartWare International, Inc. Securities Litigation
c/o Analytics Consulting
P.O. Box 2003
Chanhassen, MN 55317-2003

1-866-710-9044
www.HeartWareSecuritiesLitigation.com

By Order of the Court
United States District Court
Southern District of New York

Contact (visible to media only, not to general public): Bernstein Litowitz Berger & Grossmann LLP, attn. John Rizio-Hamilton, Esq., 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, (212-554-1505)

Source: Bernstein Litowitz Berger & Grossmann LLP

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE HEARTWARE INTERNATIONAL, INC. SECURITIES LITIGATION	No. 1:16-cv-00520-RA

DECLARATION OF JILL E. SCHURTZ, EXECUTIVE DIRECTOR OF ST. PAUL TEACHERS' RETIREMENT FUND ASSOCIATION, IN SUPPORT OF (A) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

I, JILL E. SCHURTZ, hereby declare under penalty of perjury as follows:

1. I am the Executive Director of the St. Paul Teachers' Retirement Fund Association ("St. Paul Teachers" or "Lead Plaintiff"), the Court-appointed Lead Plaintiff and Class Representative in this securities class action (the "Action").[1] I submit this declaration in support of (a) Lead Plaintiff's motion for final approval of the proposed Settlement and the proposed Plan of Allocation; (b) Lead Counsel's motion for an award of attorneys' fees and litigation expenses; and (c) St. Paul Teachers' request to recover reasonable costs and expenses that it incurred directly related to its representation of the Class in this Action.

2. St. Paul Teachers is a public pension fund established in 1909 that provides retirement benefits for teachers employed by the St. Paul, Minnesota public school system. As of June 30, 2017, St. Paul Teachers managed approximately $1 billion in assets for the benefit of its members and their beneficiaries.

[1] Unless otherwise indicated herein, capitalized terms shall have those meanings contained in the Stipulation and Agreement of Settlement dated November 13, 2018 (ECF No. 69-1).

I. Lead Plaintiff's Oversight of the Litigation

3. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995. As the Executive Director of St. Paul Teachers, I have overseen St. Paul Teachers' service as lead plaintiff or named plaintiff in several securities class actions. I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action as well as the negotiations leading to the Settlement, and I could and would testify competently thereto.

4. I and other employees of St. Paul Teachers had regular communications with Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), the Court-appointed Lead Counsel for the Class, throughout the litigation. St. Paul Teachers, through my involvement and the involvement of other employees, has supervised, monitored, and was actively involved in all material aspects of the prosecution of the Action. St. Paul Teachers received periodic status reports from BLB&G on case developments, and participated in discussions with attorneys from BLB&G concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, St. Paul Teachers has, among other things, (a) communicated with BLB&G concerning significant developments in the litigation, including case strategy; (b) reviewed all significant pleadings and briefs filed in the Action; (c) reviewed periodic reports from BLB&G concerning the status of the litigation; (d) collected information for and assisted in preparing St. Paul Teachers' discovery responses, including responses to document requests; (e) searched for and collected documents for production in response to Defendants' discovery requests; (f) consulted with BLB&G regarding settlement negotiations and the parties' respective positions during that process; and (g) evaluated and approved the proposed settlement of the Action.

II. St. Paul Teachers Strongly Endorses Approval of the Settlement

5. Based on its involvement throughout the prosecution and resolution of the Action, St. Paul Teachers believes that the proposed Settlement is fair, reasonable, and adequate and in the best interest of the Class. St. Paul Teachers believes that the Settlement represents an excellent recovery for the Class because it represents a substantial percentage of Class's likely recoverable damages at trial and is particularly favorable in light of the substantial risks in the litigation and the additional costs and delays that would result from continued litigation. Therefore, St. Paul Teachers strongly endorses approval of the Settlement by the Court.

III. St. Paul Teachers Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses

6. St. Paul Teachers also believes that Lead Counsel's requested fee of 24% of the Settlement Fund is fair and reasonable. St. Paul Teachers has evaluated Lead Counsel's fee request in light of the work Lead Counsel performed on behalf of Lead Plaintiff and the Class, the risks of the Action, and the recovery obtained for the Class. St. Paul Teachers takes seriously its role as Lead Plaintiff to ensure that attorneys' fees are fair and reasonable in light of the result of achieved and risks of the litigation. St. Paul Teachers negotiated a fee agreement with BLB&G at the outset of the litigation in an effort to set reasonable fees for the Class, while incentivizing counsel to achieve a substantial recovery for the Class. The 24% fee request is consistent with that agreement. Following the agreement to settle the Action, we again reviewed the proposed fee and believe it is fair and reasonable in light of the result obtained for the Class, the substantial risks in the litigation, and the work performed by Lead Counsel.

7. St. Paul Teachers further believes that the litigation expenses being requested are reasonable, and represent costs and expenses that were necessary for the successful prosecution and resolution of the Action. Based on the foregoing, and consistent with its obligation to the

Class to obtain the best result at the most efficient cost, St. Paul Teachers fully supports Lead Counsel's motion for an award of attorneys' fees and litigation expenses.

8. St. Paul Teachers understands that reimbursement of a lead plaintiff's reasonable costs and expenses is authorized under the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(4). For this reason, in connection with Lead Counsel's motion for litigation expenses, St. Paul Teachers seeks reimbursement in the amount of $2,840 which represents the cost to St. Paul Teachers of the 46 hours that its employees devoted to supervising and participating in the litigation.

9. As Executive Director of St. Paul Teachers, I am responsible for overseeing all aspects of St. Paul Teachers' operations, including monitoring litigation matters involving the fund, including St. Paul Teachers' activities in the securities class actions where (as here) it has been appointed lead plaintiff or class representative. In addition, Janet Williams, who is responsible for Operations and Member Services, and Rachel Pastick, who is responsible for Communications & Information Technology and Member Services, also dedicated time to the prosecution of this Action.

10. In total, I spent at least 10 hours participating in this Action on behalf of St. Paul Teachers. A reasonable hourly rate for my time is $80 per hour and, thus, the total costs of my time dedicated to the Action is $800. In total, Ms. Williams dedicated at least 15 hours to this Action on behalf of SPTRFA. A reasonable hourly rate for her is $80 per hour, thus, the total costs of her time is $1,200. In total, Ms. Pastick dedicated at least 21 hours to this Action on behalf of SPTRFA. A reasonable hourly rate for her is $40 per hour, thus, the total costs of her time is $840. The hours that we devoted to the Action included communicating with BLB&G on

case strategy and settlement, preparation and review of discovery responses, and assisting in document collection.

11. The time that I and other St. Paul Teachers' employees devoted to the representation of the Class in this Action was time that we otherwise would have expected to spend on other work for St. Paul Teachers and, thus, represented a cost to St. Paul Teachers. Accordingly, St. Paul Teachers seeks reimbursement in the total amount of $2,840 for the time that we dedicated to the Action.

IV. Conclusion

12. In conclusion, St. Paul Teachers was closely involved throughout the prosecution and settlement of the Action, strongly endorses the Settlement as fair, reasonable and adequate, and believes that it represents a very favorable recovery for the Class in light of the risks of continued litigation. St. Paul Teachers further supports Lead Counsel's attorneys' fee and litigation expense request and believes that it represents fair and reasonable compensation for counsel in light of the extensive work performed, the recovery obtained for the Class, and the risks of the litigation. Accordingly, St. Paul Teachers respectfully requests that the Court approve (a) Lead Plaintiff's motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation; (b) Lead Counsel's motion for an award of attorneys' fees and litigation expenses; and (c) St. Paul Teachers' request for reimbursement for costs incurred by St. Paul Teachers directly related to its representation of the Class in the Action, as set forth above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of St. Paul Teachers.

Executed this 8th day of March, 2019.

Jill E. Schurtz

Executive Director
St. Paul Teachers' Retirement Fund Association

Exhibit 3

EXHIBIT 3

In re HeartWare International, Inc. Sec. Litig.,
No. 1:16-cv-00520-RA

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
TIME REPORT

From Inception Through February 28, 2019

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Max Berger	99.25	$1,300	$129,025.00
Michael Blatchley	136.50	$800	109,200.00
John Rizio-Hamilton	565.75	$850	480,887.50
Senior Counsel			
Abe Alexander	1,458.25	$775	1,130,143.75
Associates			
David L. Duncan	74.75	$700	52,325.00
Julia Tebor	525.25	$550	288,887.50
Staff Attorneys			
Sheela Aiyappasamy	202.25	$375	75,843.75
Erik Aldeborgh	873.75	$395	345,131.25
Ben Bakke	151.50	$375	56,812.50
Jim Briggs	1,165.50	$350	407,925.00
Alexa Butler	119.00	$395	47,005.00
Brian Chau	304.00	$375	114,000.00
Erika Connolly	321.50	$350	112,525.00
Lauren Cormier	141.75	$350	49,612.50
Reiko Cyr	909.00	$395	359,055.00
Mashariki Daniels	148.75	$350	52,062.50
Alex Dickin	337.50	$350	118,125.00
Danielle Disporto	313.75	$375	117,656.25
George Doumas	227.50	$395	89,862.50
Kris Druhm	232.00	$395	91,640.00
Addison F. Golladay	222.50	$375	83,437.50
Daniel Gruttadaro	494.50	$350	173,075.00
Jared Hoffman	291.50	$375	109,312.50
Lawrence Hosmer	402.50	$395	158,987.50
Stephen Imundo	353.50	$395	139,632.50
John Moore	116.00	$350	40,600.00

NAME	HOURS	HOURLY RATE	LODESTAR
Christina Suarez (Papp)	629.25	$375	235,968.75
Jeff Powell	310.25	$395	122,548.75
Jessica Purcell	189.00	$375	70,875.00
Emily Strickland	318.75	$350	111,562.50
Kit Wong	115.00	$395	45,425.00
Paralegals			
Yvette Badillo	36.25	$300	10,875.00
Jose Echegaray	201.25	$335	67,418.75
Ellen Jordan	157.50	$245	38,587.50
Matthew Mahady	131.75	$335	44,136.25
Desiree Morris	65.75	$335	22,026.25
Investigators			
Chris Altiery	58.00	$300	17,400.00
Amy Bitkower	47.50	$550	26,125.00
Jenna Goldin	170.25	$300	51,075.00
Lisa C. Williams (Burr)	376.50	$300	112,950.00
Financial Analysts			
Nick DeFilippis	28.50	$575	16,387.50
Tanjila Sultana	37.75	$350	13,212.50
Director of Investor Services			
Adam Weinschel	22.75	$500	11,375.00
Litigation Support			
Babatunde Pedro	48.00	$295	14,160.00
Andrea R. Webster	26.75	$330	8,827.50
Jessica M. Wilson	93.25	$295	27,508.75
TOTAL LODESTAR	**13,252.00**		**$6,001,215.00**

Exhibit 4

BLB&G

Trusted Advocacy. Proven Results.

Bernstein Litowitz Berger & Grossmann LLP

Attorneys at Law

Firm Resume

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BLB&G Bernstein Litowitz Berger & Grossmann LLP

TABLE OF CONTENTS

Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history – over $32 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including four of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.

FIRM OVERVIEW

Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), a national law firm with offices located in New York, California, Louisiana and Illinois, prosecutes class and private actions on behalf of individual and institutional clients. The firm's litigation practice areas include securities class and direct actions in federal and state courts; corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; mergers and acquisitions and transactional litigation; alternative dispute resolution; distressed debt and bankruptcy; civil rights and employment discrimination; consumer class actions and antitrust. We also handle, on behalf of major institutional clients and lenders, more general complex commercial litigation involving allegations of breach of contract, accountants' liability, breach of fiduciary duty, fraud, and negligence.

We are the nation's leading firm in representing institutional investors in securities fraud class action litigation. The firm's institutional client base includes the New York State Common Retirement Fund; the California Public Employees' Retirement System (CalPERS); the Ontario Teachers' Pension Plan Board (the largest public pension funds in North America); the Los Angeles County Employees Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the Teacher Retirement System of Texas; the Arkansas Teacher Retirement System; Forsta AP-fonden ("AP1"); Fjarde AP-fonden ("AP4"); the Florida State Board of Administration; the Public Employees' Retirement System of Mississippi; the New York State Teachers' Retirement System; the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio; the Oregon Public Employees Retirement System; the Virginia Retirement System; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers' Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities.

MORE TOP SECURITIES RECOVERIES

Since its founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has litigated some of the most complex cases in history and has obtained over $32 billion on behalf of investors. Unique among its peers, the firm has negotiated the largest settlements ever agreed to by public companies related to securities fraud, and obtained many of the largest securities recoveries in history (including 6 of the top 12):

- *In re WorldCom, Inc. Securities Litigation* – $6.19 billion recovery
- *In re Cendant Corporation Securities Litigation* – $3.3 billion recovery
- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* – $2.43 billion recovery
- *In re Nortel Networks Corporation Securities Litigation* ("Nortel II") – $1.07 billion recovery
- *In re Merck & Co., Inc. Securities Litigation* – $1.06 billion recovery
- *In re McKesson HBOC, Inc. Securities Litigation* – $1.05 billion recovery*

*Source: ISS Securities Class Action Services

For over a decade, ISS Securities Class Action Services has compiled and published data on securities litigation recoveries and the law firms prosecuting the cases. BLB&G has been at or near the top of their rankings every year – often with the highest total recoveries, the highest settlement average, or both.

BLB&G also eclipses all competitors on ISS SCAS's "Top 100 Settlements of All Time" report, having recovered nearly 40% of all the settlement dollars represented in the report (nearly $25 billion), and having prosecuted nearly a third of all the cases on the list (33 of 100).

Giving Shareholders a Voice and Changing Business Practices for the Better

BLB&G was among the first law firms ever to obtain meaningful corporate governance reforms through litigation. In courts throughout the country, we prosecute shareholder class and derivative actions, asserting claims for breach of fiduciary duty and proxy violations wherever the conduct of corporate officers and/or directors, as well as M&A transactions, seek to deprive shareholders of fair value, undermine shareholder voting rights, or allow management to profit at the expense of shareholders.

We have prosecuted seminal cases establishing precedents which have increased market transparency, held wrongdoers accountable, addressed issues in the boardroom and executive suite, challenged unfair deals, and improved corporate business practices in groundbreaking ways.

From setting new standards of director independence, to restructuring board practices in the wake of persistent illegal conduct; from challenging the improper use of defensive measures and deal protections for management's benefit, to confronting stock options backdating abuses and other self-dealing by executives; we have confronted a variety of questionable, unethical and proliferating corporate practices. Seeking to reform faulty management structures and address breaches of fiduciary duty by corporate officers and directors, we have obtained unprecedented victories on behalf of shareholders seeking to improve governance and protect the shareholder franchise.

Advocacy for Victims of Corporate Wrongdoing

While BLB&G is widely recognized as one of the leading law firms worldwide advising institutional investors on issues related to corporate governance, shareholder rights, and securities litigation, we have also prosecuted some of the most significant employment discrimination, civil rights and consumer protection cases on record. Equally important, the firm has advanced novel and socially beneficial principles by developing important new law in the areas in which we litigate.

The firm served as co-lead counsel on behalf of Texaco's African-American employees in *Roberts v. Texaco Inc*., which resulted in a recovery of $176 million, the largest settlement ever in a race discrimination case. The creation of a Task Force to oversee Texaco's human resources activities for five years was unprecedented and served as a model for public companies going forward.

In the consumer field, the firm has gained a nationwide reputation for vigorously protecting the rights of individuals and for achieving exceptional settlements. In several instances, the firm has obtained recoveries for consumer classes that represented the entirety of the class's losses – an extraordinary result in consumer class cases.

PRACTICE AREAS

SECURITIES FRAUD LITIGATION

Securities fraud litigation is the cornerstone of the firm's litigation practice. Since its founding, the firm has had the distinction of having tried and prosecuted many of the most high-profile securities fraud class actions in history, recovering billions of dollars and obtaining unprecedented corporate governance reforms on behalf of our clients. BLB&G continues to play a leading role in major securities litigation pending in federal and state courts, and the firm remains one of the nation's leaders in representing institutional investors in securities fraud class and derivative litigation.

The firm also pursues direct actions in securities fraud cases when appropriate. By selectively opting out of certain securities class actions, we seek to resolve our clients' claims efficiently and for substantial multiples of what they might otherwise recover from related class action settlements.

The attorneys in the securities fraud litigation practice group have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many of the attorneys in this practice group also have accounting backgrounds. The group has access to state-of-the-art, online financial wire services and databases, which enable it to instantaneously investigate any potential securities fraud action involving a public company's debt and equity securities.

CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

The Corporate Governance and Shareholders' Rights Practice Group prosecutes derivative actions, claims for breach of fiduciary duty, and proxy violations on behalf of individual and institutional investors in state and federal courts throughout the country. The group has obtained unprecedented victories on behalf of shareholders seeking to improve corporate governance and protect the shareholder franchise, prosecuting actions challenging numerous highly publicized corporate transactions which violated fair process and fair price, and the applicability of the business judgment rule. We have also addressed issues of corporate waste, shareholder voting rights claims, workplace harassment, and executive compensation. As a result of the firm's high-profile and widely recognized capabilities, the corporate governance practice group is increasingly in demand by institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the board's accountability to shareholders.

The firm is actively involved in litigating numerous cases in this area of law, an area that has become increasingly important in light of efforts by various market participants to buy companies from their public shareholders "on the cheap."

EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

The Employment Discrimination and Civil Rights Practice Group prosecutes class and multi-plaintiff actions, and other high-impact litigation against employers and other societal institutions that violate federal or state employment, anti-discrimination, and civil rights laws. The practice group represents diverse clients on a wide range of issues including Title VII actions: race, gender, sexual orientation and age discrimination suits; sexual harassment, and "glass ceiling" cases in which otherwise qualified employees are passed over for promotions to managerial or executive positions.

Bernstein Litowitz Berger & Grossmann LLP is committed to effecting positive social change in the workplace and in society. The practice group has the necessary financial and human resources to ensure that the class action approach to discrimination and civil rights issues is successful. This

litigation method serves to empower employees and other civil rights victims, who are usually discouraged from pursuing litigation because of personal financial limitations, and offers the potential for effecting the greatest positive change for the greatest number of people affected by discriminatory practice in the workplace.

General Commercial Litigation and Alternative Dispute Resolution

The General Commercial Litigation practice group provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees and other business entities. We have faced down powerful and well-funded law firms and defendants – and consistently prevailed. However, not every dispute is best resolved through the courts. In such cases, BLB&G Alternative Dispute practitioners offer clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. BLB&G has extensive experience – and a marked record of successes – in ADR practice. For example, in the wake of the credit crisis, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. Our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association (AAA), FINRA, JAMS, International Chamber of Commerce (ICC) and the London Court of International Arbitration.

Distressed Debt and Bankruptcy Creditor Negotiation

The BLB&G Distressed Debt and Bankruptcy Creditor Negotiation Group has obtained billions of dollars through litigation on behalf of bondholders and creditors of distressed and bankrupt companies, as well as through third-party litigation brought by bankruptcy trustees and creditors' committees against auditors, appraisers, lawyers, officers and directors, and other defendants who may have contributed to client losses. As counsel, we advise institutions and individuals nationwide in developing strategies and tactics to recover assets presumed lost as a result of bankruptcy. Our record in this practice area is characterized by extensive trial experience in addition to completion of successful settlements.

Consumer Advocacy

The Consumer Advocacy Practice Group at Bernstein Litowitz Berger & Grossmann LLP prosecutes cases across the entire spectrum of consumer rights, consumer fraud, and consumer protection issues. The firm represents victimized consumers in state and federal courts nationwide in individual and class action lawsuits that seek to provide consumers and purchasers of defective products with a means to recover their damages. The attorneys in this group are well versed in the vast array of laws and regulations that govern consumer interests and are aggressive, effective, court-tested litigators. The Consumer Practice Advocacy Group has recovered hundreds of millions of dollars for millions of consumers throughout the country. Most notably, in a number of cases, the firm has obtained recoveries for the class that were the entirety of the potential damages suffered by the consumer. For example, in actions against MCI and Empire Blue Cross, the firm recovered all of the damages suffered by the class. The group achieved its successes by advancing innovative claims and theories of liabilities, such as obtaining decisions in Pennsylvania and Illinois appellate courts that adopted a new theory of consumer damages in mass marketing cases. Bernstein Litowitz Berger & Grossmann LLP is, thus, able to lead the way in protecting the rights of consumers.

THE COURTS SPEAK

Throughout the firm's history, many courts have recognized the professional excellence and diligence of the firm and its members. A few examples are set forth below.

IN RE WORLDCOM, INC. SECURITIES LITIGATION

THE HONORABLE DENISE COTE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

"I have the utmost confidence in plaintiffs' counsel…they have been doing a superb job…. The Class is extraordinarily well represented in this litigation."

"The magnitude of this settlement is attributable in significant part to Lead Counsel's advocacy and energy…. The quality of the representation given by Lead Counsel...has been superb...and is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation."

"Lead Counsel has been energetic and creative. . . . Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions."

IN RE CLARENT CORPORATION SECURITIES LITIGATION

THE HONORABLE CHARLES R. BREYER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

"It was the best tried case I've witnessed in my years on the bench . . ."

"[A]n extraordinarily civilized way of presenting the issues to you [the jury]. . . . We've all been treated to great civility and the highest professional ethics in the presentation of the case…."

"These trial lawyers are some of the best I've ever seen."

LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION

VICE CHANCELLOR J. TRAVIS LASTER OF THE DELAWARE COURT OF CHANCERY

"I do want to make a comment again about the excellent efforts . . . put into this case. . . . This case, I think, shows precisely the type of benefits that you can achieve for stockholders and how representative litigation can be a very important part of our corporate governance system . . . you hold up this case as an example of what to do."

MCCALL V. SCOTT (COLUMBIA/HCA DERIVATIVE LITIGATION)

THE HONORABLE THOMAS A. HIGGINS OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

"Counsel's excellent qualifications and reputations are well documented in the record, and they have litigated this complex case adeptly and tenaciously throughout the six years it has been pending. They assumed an enormous risk and have shown great patience by taking this case on a contingent basis, and despite an early setback they have persevered and brought about not only a large cash settlement but sweeping corporate reforms that may be invaluable to the beneficiaries."

RECENT ACTIONS & SIGNIFICANT RECOVERIES

Bernstein Litowitz Berger & Grossmann LLP is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. Some examples from our practice groups include:

SECURITIES CLASS ACTIONS

CASE: ***IN RE WORLDCOM, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $6.19 billion securities fraud class action recovery – the second largest in history; unprecedented recoveries from Director Defendants.

CASE SUMMARY: Investors suffered massive losses in the wake of the financial fraud and subsequent bankruptcy of former telecom giant WorldCom, Inc. This litigation alleged that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings and financial condition in violation of the federal securities and other laws. It further alleged a nefarious relationship between Citigroup subsidiary Salomon Smith Barney and WorldCom, carried out primarily by Salomon employees involved in providing investment banking services to WorldCom, and by WorldCom's former CEO and CFO. As Court-appointed Co-Lead Counsel representing Lead Plaintiff the **New York State Common Retirement Fund**, we obtained unprecedented settlements totaling more than $6 billion from the Investment Bank Defendants who underwrote WorldCom bonds, including a $2.575 billion cash settlement to settle all claims against the Citigroup Defendants. On the eve of trial, the 13 remaining "Underwriter Defendants," including J.P. Morgan Chase, Deutsche Bank and Bank of America, agreed to pay settlements totaling nearly $3.5 billion to resolve all claims against them. Additionally, the day before trial was scheduled to begin, all of the former WorldCom Director Defendants had agreed to pay over $60 million to settle the claims against them. An unprecedented first for outside directors, $24.75 million of that amount came out of the pockets of the individuals – 20% of their collective net worth. *The Wall Street Journal*, in its coverage, profiled the settlement as literally having "shaken Wall Street, the audit profession and corporate boardrooms." After four weeks of trial, Arthur Andersen, WorldCom's former auditor, settled for $65 million. Subsequent settlements were reached with the former executives of WorldCom, and then with Andersen, bringing the total obtained for the Class to over $6.19 billion.

CASE: ***IN RE CENDANT CORPORATION SECURITIES LITIGATION***

COURT: **United States District Court for the District of New Jersey**

HIGHLIGHTS: $3.3 billion securities fraud class action recovery – the third largest in history; significant corporate governance reforms obtained.

CASE SUMMARY: The firm was Co-Lead Counsel in this class action against Cendant Corporation, its officers and directors and Ernst & Young (E&Y), its auditors, for their role in disseminating materially false and misleading financial statements concerning the company's revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996 and 1997 fiscal years and all fiscal quarters therein. Cendant agreed to settle the action for $2.8 billion to adopt some of the most extensive corporate governance changes in history. E&Y settled for $335 million. These settlements remain the largest sums ever recovered from a public company and a public accounting firm through securities class action litigation. BLB&G represented Lead Plaintiffs **CalPERS –** the **California Public Employees' Retirement System**, the **New York State Common Retirement Fund** and the **New York City Pension Funds**, the three largest public pension funds in America, in this action.

CASE: ***IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $2.425 billion in cash; significant corporate governance reforms to resolve all claims. This recovery is by far the largest shareholder recovery related to the subprime meltdown and credit crisis; the single largest securities class action settlement ever resolving a Section 14(a) claim – the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation; the largest ever funded by a single corporate defendant for violations of the federal securities laws; the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; and one of the 10 largest securities class action recoveries in history.

DESCRIPTION: The firm represented Co-Lead Plaintiffs the **State Teachers Retirement System of Ohio**, the **Ohio Public Employees Retirement System**, and the **Teacher Retirement System of Texas** in this securities class action filed on behalf of shareholders of Bank of America Corporation ("BAC") arising from BAC's 2009 acquisition of Merrill Lynch & Co., Inc. The action alleges that BAC, Merrill Lynch, and certain of the companies' current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with the acquisition. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay billions in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted to approve the acquisition.

CASE: ***IN RE NORTEL NETWORKS CORPORATION SECURITIES LITIGATION ("NORTEL II")***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: Over $1.07 billion in cash and common stock recovered for the class.

DESCRIPTION: This securities fraud class action charged Nortel Networks Corporation and certain of its officers and directors with violations of the Securities Exchange Act of 1934, alleging that the Defendants knowingly or recklessly made false and misleading statements with respect to Nortel's financial results during the relevant period. BLB&G clients the **Ontario Teachers' Pension Plan Board** and the **Treasury of the State of New Jersey and its Division of Investment** were appointed as Co-Lead Plaintiffs for the Class in one of two related actions (Nortel II), and BLB&G was appointed Lead Counsel for the Class. In a historic settlement, Nortel agreed to pay $2.4 billion in cash and Nortel common stock (all figures in US dollars) to resolve both matters. Nortel later announced that its insurers had agreed to pay $228.5 million toward the settlement, bringing the total amount of the global settlement to approximately $2.7 billion, and the total amount of the Nortel II settlement to over $1.07 billion.

CASE: ***IN RE MERCK & CO., INC. SECURITIES LITIGATION***

COURT: **United States District Court, District of New Jersey**

HIGHLIGHTS: $1.06 billion recovery for the class.

DESCRIPTION: This case arises out of misrepresentations and omissions concerning life-threatening risks posed by the "blockbuster" Cox-2 painkiller Vioxx, which Merck withdrew from the market in 2004. In January 2016, BLB&G achieved a $1.062 billion settlement on the eve of trial after more than 12 years of hard-fought litigation that included a successful decision at the United States Supreme Court. This settlement is the second largest recovery ever obtained in the Third Circuit, one of the top 11 securities recoveries of all time, and the largest securities recovery ever achieved against a pharmaceutical company. BLB&G represented Lead Plaintiff the **Public Employees' Retirement System of Mississippi.**

CASE: ***IN RE MCKESSON HBOC, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the Northern District of California**

HIGHLIGHTS: $1.05 billion recovery for the class.

DESCRIPTION: This securities fraud litigation was filed on behalf of purchasers of HBOC, McKesson and McKesson HBOC securities, alleging that Defendants misled the investing public concerning HBOC's and McKesson HBOC's financial results. On behalf of Lead Plaintiff the **New York State Common Retirement Fund**, BLB&G obtained a $960 million settlement from the company; $72.5 million in cash from Arthur Andersen; and, on the eve of trial, a $10 million settlement from Bear Stearns & Co. Inc., with total recoveries reaching more than $1 billion.

CASE: ***IN RE LEHMAN BROTHERS EQUITY/DEBT SECURITIES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $735 million in total recoveries.

DESCRIPTION: Representing the **Government of Guam Retirement Fund**, BLB&G successfully prosecuted this securities class action arising from Lehman Brothers Holdings Inc.'s issuance of billions of dollars in offerings of debt and equity securities that were sold using offering materials that contained untrue statements and missing material information.

After four years of intense litigation, Lead Plaintiffs achieved a total of $735 million in recoveries consisting of: a $426 million settlement with underwriters of Lehman securities offerings; a $90 million settlement with former Lehman directors and officers; a $99 million settlement that resolves claims against Ernst & Young, Lehman's former auditor (considered one of the top 10 auditor settlements ever achieved); and a $120 million settlement that resolves claims against UBS Financial Services, Inc. This recovery is truly remarkable not only because of the difficulty in recovering assets when the issuer defendant is bankrupt, but also because no financial results were restated, and that the auditors never disavowed the statements.

CASE: ***HEALTHSOUTH CORPORATION BONDHOLDER LITIGATION***

COURT: **United States District Court for the Northern District of Alabama**

HIGHLIGHTS: $804.5 million in total recoveries.

DESCRIPTION: In this litigation, BLB&G was the appointed Co-Lead Counsel for the bond holder class, representing Lead Plaintiff the **Retirement Systems of Alabama**. This action arose from allegations that Birmingham, Alabama based HealthSouth Corporation overstated its earnings at the direction of its founder and former CEO Richard Scrushy. Subsequent revelations disclosed that the overstatement actually exceeded over $2.4 billion, virtually wiping out all of HealthSouth's reported profits for the prior five years. A total recovery of $804.5 million was obtained in this litigation through a series of settlements, including an approximately $445 million settlement for shareholders and bondholders, a $100 million in cash settlement from UBS AG, UBS Warburg LLC, and individual UBS Defendants (collectively, "UBS"), and $33.5 million in cash from the company's auditor. The total settlement for injured HealthSouth bond purchasers exceeded $230 million, recouping over a third of bond purchaser damages.

CASE: ***IN RE CITIGROUP, INC. BOND ACTION LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $730 million cash recovery; second largest recovery in a litigation arising from the financial crisis.

DESCRIPTION: In the years prior to the collapse of the subprime mortgage market, Citigroup issued 48 offerings of preferred stock and bonds. This securities fraud class action was filed on behalf of purchasers of Citigroup bonds and preferred stock alleging that these offerings contained material misrepresentations and omissions regarding Citigroup's exposure to billions of dollars in mortgage-related assets, the loss reserves for its portfolio of high-risk residential mortgage loans, and the credit quality of the risky assets it held in off-balance sheet entities known as "structured investment vehicles." After protracted litigation lasting four years, we obtained a $730 million cash recovery – the second largest securities class action recovery in a litigation arising from the financial crisis, and the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. As Lead Bond Counsel for the Class, BLB&G represented Lead Bond Plaintiffs Minneapolis Firefighters' Relief Association, Louisiana Municipal Police Employees' Retirement System, and Louisiana Sheriffs' Pension and Relief Fund.

CASE: ***IN RE WASHINGTON PUBLIC POWER SUPPLY SYSTEM LITIGATION***

COURT: **United States District Court for the District of Arizona**

HIGHLIGHTS: Over $750 million – the largest securities fraud settlement ever achieved at the time.

DESCRIPTION: BLB&G was appointed Chair of the Executive Committee responsible for litigating the action on behalf of the class in this action. The case was litigated for over seven years, and involved an estimated 200 million pages of documents produced in discovery; the depositions of 285 fact witnesses and 34 expert witnesses; more than 25,000 introduced exhibits; six published district court opinions; seven appeals or attempted appeals to the Ninth Circuit; and a three-month jury trial, which resulted in a settlement of over $750 million – then the largest securities fraud settlement ever achieved.

CASE: ***IN RE SCHERING-PLOUGH CORPORATION/ENHANCE SECURITIES LITIGATION; IN RE MERCK & CO., INC. VYTORIN/ZETIA SECURITIES LITIGATION***

COURT: **United States District Court for the District of New Jersey**

HIGHLIGHTS: $688 million in combined settlements (Schering-Plough settled for $473 million; Merck settled for $215 million) in this coordinated securities fraud litigations filed on behalf of investors in Merck and Schering-Plough.

DESCRIPTION: After nearly five years of intense litigation, just days before trial, BLB&G resolved the two actions against Merck and Schering-Plough, which stemmed from claims that Merck and Schering artificially inflated their market value by concealing material information and making false and misleading statements regarding their blockbuster anti-cholesterol drugs Zetia and Vytorin. Specifically, we alleged that the companies knew that their "ENHANCE" clinical trial of Vytorin (a combination of Zetia and a generic) demonstrated that Vytorin was no more effective than the cheaper generic at reducing artery thickness. The companies nonetheless championed the "benefits" of their drugs, attracting billions of dollars of capital. When public pressure to release the results of the ENHANCE trial became too great, the companies reluctantly announced these negative results, which we alleged led to sharp declines in the value of the companies' securities, resulting in significant losses to investors. The combined $688 million in settlements (Schering-Plough settled for $473 million; Merck settled for $215 million) is the second largest securities recovery ever in the Third Circuit, among the top 25 settlements of all time, and among the ten largest recoveries ever in a case where there was no financial restatement. BLB&G represented Lead Plaintiffs **Arkansas Teacher Retirement System,** the **Public Employees' Retirement System of Mississippi,** and the **Louisiana Municipal Police Employees' Retirement System**.

CASE: ***IN RE LUCENT TECHNOLOGIES, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the District of New Jersey**

HIGHLIGHTS: $667 million in total recoveries; the appointment of BLB&G as Co-Lead Counsel is especially noteworthy as it marked the first time since the 1995 passage of the Private Securities Litigation Reform Act that a court reopened the lead plaintiff or lead counsel selection process to account for changed circumstances, new issues and possible conflicts between new and old allegations.

DESCRIPTION: BLB&G served as Co-Lead Counsel in this securities class action, representing Lead Plaintiffs the **Parnassus Fund**, **Teamsters Locals 175 & 505 D&P Pension Trust**, **Anchorage Police and Fire Retirement System** and the **Louisiana School Employees' Retirement System.** The complaint accused Lucent of making false and misleading statements to the investing public concerning its publicly reported financial results and failing to disclose the serious problems in its optical networking business. When the truth was disclosed, Lucent admitted that it had improperly recognized revenue of nearly $679 million in fiscal 2000. The settlement obtained in this case is valued at approximately $667 million, and is composed of cash, stock and warrants.

CASE: ***IN RE WACHOVIA PREFERRED SECURITIES AND BOND/NOTES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: $627 million recovery – among the 20 largest securities class action recoveries in history; third largest recovery obtained in an action arising from the subprime mortgage crisis.

DESCRIPTION: This securities class action was filed on behalf of investors in certain Wachovia bonds and preferred securities against Wachovia Corp., certain former officers and directors, various underwriters, and its auditor, KPMG LLP. The case alleges that Wachovia provided offering materials that misrepresented and omitted material facts concerning the nature and quality of Wachovia's multi-billion dollar option-ARM (adjustable rate mortgage) "Pick-A-Pay" mortgage loan portfolio, and that Wachovia's loan loss reserves were materially inadequate. According to the Complaint, these undisclosed problems threatened the viability of the financial institution, requiring it to be "bailed out" during the financial crisis before it was acquired by Wells Fargo. The combined $627 million recovery obtained in the action is among the 20 largest securities class action recoveries in history, the largest settlement ever in a class action case asserting only claims under the Securities Act of 1933, and one of a handful of securities class action recoveries obtained where there were no parallel civil or criminal actions brought by government authorities. The firm represented Co-Lead Plaintiffs **Orange County Employees Retirement System** and **Louisiana Sheriffs' Pension and Relief Fund** in this action.

CASE: ***OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM V. FREDDIE MAC***

COURT: **United States District Court for the Southern District of Ohio**

HIGHLIGHTS: $410 million settlement.

DESCRIPTION: This securities fraud class action was filed on behalf of the **Ohio Public Employees Retirement System** and the **State Teachers Retirement System of Ohio** alleging that Federal Home Loan Mortgage Corporation ("Freddie Mac") and certain of its current and former officers issued false and misleading statements in connection with the company's previously reported financial results. Specifically, the Complaint alleged that the Defendants misrepresented the company's operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the company's earnings and to hide earnings volatility. In connection with these improprieties, Freddie Mac restated more than $5 billion in earnings. A settlement of $410 million was reached in the case just as deposition discovery had begun and document review was complete.

CASE: ***IN RE REFCO, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: Over $407 million in total recoveries.

DESCRIPTION: The lawsuit arises from the revelation that Refco, a once prominent brokerage, had for years secreted hundreds of millions of dollars of uncollectible receivables with a related entity controlled by Phillip Bennett, the company's Chairman and Chief Executive Officer. This revelation caused the stunning collapse of the company a mere two months after its initial public offering of common stock. As a result, Refco filed one of the largest bankruptcies in U.S. history. Settlements have been obtained from multiple company and individual defendants, resulting in a total recovery for the class of over $407 million. BLB&G represented Co-Lead Plaintiff **RH Capital Associates LLC**.

CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

CASE: ***CITY OF MONROE EMPLOYEES' RETIREMENT SYSTEM, DERIVATIVELY ON BEHALF OF TWENTY-FIRST CENTURY FOX, INC. V. RUPERT MURDOCH, ET AL.***

COURT: **Delaware Court of Chancery**

HIGHLIGHTS: Landmark derivative litigation establishes unprecedented, independent Board-level council to ensure employees are protected from workplace harassment while recouping $90 million for the company's coffers.

DESCRIPTION: Before the birth of the #metoo movement, BLB&G led the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveil a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind – the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC) – majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries – $90 million – ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries. The firm represented 21st Century Fox shareholder the **City of Monroe (Michigan) Employees' Retirement System.**

CASE: ***IN RE ALLERGAN, INC. PROXY VIOLATION SECURITIES LITIGATION***

COURT: **United States District Court for the Central District of California**

HIGHLIGHTS: Litigation recovered over $250 million for investors in challenging unprecedented insider trading scheme by billionaire hedge fund manager Bill Ackman.

DESCRIPTION: As alleged in groundbreaking litigation, billionaire hedge fund manager Bill Ackman and his Pershing Square Capital Management fund secretly acquire a near 10% stake in pharmaceutical concern Allergan, Inc. as part of an unprecedented insider trading scheme by Ackman and Valeant Pharmaceuticals International, Inc. What Ackman knew – but investors did not – was that in the ensuing weeks, Valeant would be launching a hostile bid to acquire Allergan shares at a far higher price. Ackman enjoys a massive instantaneous profit upon public news of the proposed acquisition, and the scheme works for both parties as he kicks back hundreds of millions of his insider-trading proceeds to Valeant after Allergan agreed to be bought by a rival bidder. After a ferocious three-year legal battle over this attempt to circumvent the spirit of the U.S. securities laws, BLB&G obtains a $250 million settlement for Allergan investors, and creates precedent to prevent similar such schemes in the future. The Plaintiffs in this action were the **State Teachers Retirement System of Ohio**, the **Iowa Public Employees Retirement System**, and **Patrick T. Johnson.**

CASE: ***UNITEDHEALTH GROUP, INC. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **United States District Court for the District of Minnesota**

HIGHLIGHTS: Litigation recovered over $920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.

DESCRIPTION: This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over $920 million in ill-gotten compensation directly from the former officer Defendants – the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, "investors everywhere should applaud [the UnitedHealth settlement]…. [T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings." The Plaintiffs in this action were the **St. Paul Teachers' Retirement Fund Association**, the **Public Employees' Retirement System of Mississippi**, the **Jacksonville Police & Fire Pension Fund**, the **Louisiana Sheriffs' Pension & Relief Fund**, the **Louisiana Municipal Police Employees' Retirement System** and **Fire & Police Pension Association of Colorado**.

CASE: ***CAREMARK MERGER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Landmark Court ruling orders Caremark's board to disclose previously withheld information, enjoins shareholder vote on CVS merger offer, and grants statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise offer by $7.50 per share, equal to more than $3.3 billion in additional consideration to Caremark shareholders.

DESCRIPTION: Commenced on behalf of the **Louisiana Municipal Police Employees' Retirement System** and other shareholders of Caremark RX, Inc. ("Caremark"), this shareholder class action accused the company's directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation ("CVS"), all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark's shareholders—forcing CVS to increase the consideration offered to shareholders by $7.50 per share in cash (over $3 billion in total).

CASE: ***IN RE PFIZER INC. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board that will be supported by a dedicated $75 million fund.

DESCRIPTION: In the wake of Pfizer's agreement to pay $2.3 billion as part of a settlement with the U.S. Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company's most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer's senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous "red flags" that Pfizer's improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs **Louisiana Sheriffs' Pension and Relief Fund** and **Skandia Life Insurance Company, Ltd.** In an unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory

and Compliance Committee of the Pfizer Board of Directors (the "Regulatory Committee") to oversee and monitor Pfizer's compliance and drug marketing practices and to review the compensation policies for Pfizer's drug sales related employees.

CASE: ***MILLER ET A. V. IAC/INTERACTIVECORP ET AL.***

COURT: **Delaware Court of Chancery**

HIGHLIGHTS: Litigation shuts down efforts by controlling shareholders to obtain "dynastic control" of the company through improper stock class issuances, setting valuable precedent and sending strong message to boards and management in all sectors that such moves will not go unchallenged.

DESCRIPTION: BLB&G obtained this landmark victory for shareholder rights against IAC/InterActiveCorp and its controlling shareholder and chairman, Barry Diller. For decades, activist corporate founders and controllers seek ways to entrench their position atop the corporate hierarchy by granting themselves and other insiders "supervoting rights." Diller lays out a proposal to introduce a new class of non-voting stock to entrench "dynastic control" of IAC within the Diller family. BLB&G litigation on behalf of IAC shareholders ends in capitulation with the Defendants effectively conceding the case by abandoning the proposal. This becomes critical corporate governance precedent, given trend of public companies to introduce "low" and "no-vote" share classes, which diminish shareholder rights, insulate management from accountability, and can distort managerial incentives by providing controllers voting power out of line with their actual economic interests in public companies.

CASE: ***IN RE DELPHI FINANCIAL GROUP SHAREHOLDER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Dominant shareholder is blocked from collecting a payoff at the expense of minority investors.

DESCRIPTION: As the Delphi Financial Group prepared to be acquired by Tokio Marine Holdings Inc., the conduct of Delphi's founder and controlling shareholder drew the scrutiny of BLB&G and its institutional investor clients for improperly using the transaction to expropriate at least $55 million at the expense of the public shareholders. BLB&G aggressively litigated this action and obtained a settlement of $49 million for Delphi's public shareholders. The settlement fund is equal to about 90% of recoverable Class damages – a virtually unprecedented recovery.

CASE: ***QUALCOMM BOOKS & RECORDS LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Novel use of "books and records" litigation enhances disclosure of political spending and transparency.

DESCRIPTION: The U.S. Supreme Court's controversial 2010 opinion in *Citizens United v. FEC* made it easier for corporate directors and executives to secretly use company funds – shareholder assets – to support personally favored political candidates or causes. BLB&G prosecuted the first-ever "books and records" litigation to obtain disclosure of corporate political spending at our client's portfolio company – technology giant Qualcomm Inc. – in response to Qualcomm's refusal to share the information. As a result of the lawsuit, Qualcomm adopted a policy that provides its shareholders with comprehensive disclosures regarding the company's political activities and places Qualcomm as a standard-bearer for other companies.

CASE: ***IN RE NEWS CORP. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **Delaware Court of Chancery – Kent County**

HIGHLIGHTS: An unprecedented settlement in which News Corp. recoups $139 million and enacts significant corporate governance reforms that combat self-dealing in the boardroom.

DESCRIPTION: Following News Corp.'s 2011 acquisition of a company owned by News Corp. Chairman and CEO Rupert Murdoch's daughter, and the phone-hacking scandal within its British newspaper division, we filed a derivative litigation on behalf of the company because of institutional shareholder concern with the conduct of News Corp.'s management. We ultimately obtained an unprecedented settlement in which News Corp. recouped $139 million for the company coffers, and agreed to enact corporate governance enhancements to strengthen its compliance structure, the independence and functioning of its board, and the compensation and clawback policies for management.

CASE: ***IN RE ACS SHAREHOLDER LITIGATION (XEROX)***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: BLB&G challenged an attempt by ACS CEO to extract a premium on his stock not shared with the company's public shareholders in a sale of ACS to Xerox. On the eve of trial, BLB&G obtained a $69 million recovery, with a substantial portion of the settlement personally funded by the CEO.

DESCRIPTION: Filed on behalf of the **New Orleans Employees' Retirement System** and similarly situated shareholders of Affiliated Computer Service, Inc., this action alleged that members of the Board of Directors of ACS breached their fiduciary duties by approving a merger with Xerox Corporation which would allow Darwin Deason, ACS's founder and Chairman and largest stockholder, to extract hundreds of millions of dollars of value that rightfully belongs to ACS's public shareholders for himself. Per the agreement, Deason's consideration amounted to over a 50% premium when compared to the consideration paid to ACS's public stockholders. The ACS Board further breached its fiduciary duties by agreeing to certain deal protections in the merger agreement that essentially locked up the transaction between ACS and Xerox. After seeking a preliminary injunction to enjoin the deal and engaging in intense discovery and litigation in preparation for a looming trial date, Plaintiffs reached a global settlement with Defendants for $69 million. In the settlement, Deason agreed to pay $12.8 million, while ACS agreed to pay the remaining $56.1 million.

CASE: ***IN RE DOLLAR GENERAL CORPORATION SHAREHOLDER LITIGATION***

COURT: **Sixth Circuit Court for Davidson County, Tennessee; Twentieth Judicial District, Nashville**

HIGHLIGHTS: Holding Board accountable for accepting below-value "going private" offer.

DESCRIPTION: A Nashville, Tennessee corporation that operates retail stores selling discounted household goods, in early March 2007, Dollar General announced that its Board of Directors had approved the acquisition of the company by the private equity firm Kohlberg Kravis Roberts & Co. ("KKR"). BLB&G, as Co-Lead Counsel for the **City of Miami General Employees' & Sanitation Employees' Retirement Trust**, filed a class action complaint alleging that the "going private" offer was approved as a result of breaches of fiduciary duty by the board and that the price offered by KKR did not reflect the fair value of Dollar General's publicly-held shares. On the eve of the summary judgment hearing, KKR agreed to pay a $40 million settlement in favor of the shareholders, with a potential for $17 million more for the Class.

CASE: ***LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Protecting shareholders from predatory CEO's multiple attempts to take control of Landry's Restaurants through improper means. Our litigation forced the CEO to increase his buyout offer by four times the price offered and obtained an additional $14.5 million cash payment for the class.

DESCRIPTION: In this derivative and shareholder class action, shareholders alleged that Tilman J. Fertitta – chairman, CEO and largest shareholder of Landry's Restaurants, Inc. – and its Board of Directors stripped public shareholders of their controlling interest in the company for no premium and severely devalued remaining public shares in breach of their fiduciary duties. BLB&G's prosecution of the action on behalf of Plaintiff **Louisiana Municipal Police Employees' Retirement System** resulted in recoveries that included the creation of a settlement fund composed of $14.5 million in cash, as well as significant corporate governance reforms and an increase in consideration to shareholders of the purchase price valued at $65 million.

EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

CASE: ***ROBERTS V. TEXACO, INC.***

COURT: **United States District Court for the Southern District of New York**

HIGHLIGHTS: BLB&G recovered $170 million on behalf of Texaco's African-American employees and engineered the creation of an independent "Equality and Tolerance Task Force" at the company.

DESCRIPTION: Six highly qualified African-American employees filed a class action complaint against Texaco Inc. alleging that the company failed to promote African-American employees to upper level jobs and failed to compensate them fairly in relation to Caucasian employees in similar positions. BLB&G's prosecution of the action revealed that African-Americans were significantly under-represented in high level management jobs and that Caucasian employees were promoted more frequently and at far higher rates for comparable positions within the company. The case settled for over $170 million, and Texaco agreed to a Task Force to monitor its diversity programs for five years – a settlement described as the most significant race discrimination settlement in history.

CASE: ***ECOA - GMAC/NMAC/FORD/TOYOTA/CHRYSLER - CONSUMER FINANCE DISCRIMINATION LITIGATION***

COURT: **Multiple jurisdictions**

HIGHLIGHTS: Landmark litigation in which financing arms of major auto manufacturers are compelled to cease discriminatory "kick-back" arrangements with dealers, leading to historic changes to auto financing practices nationwide.

DESCRIPTION: The cases involve allegations that the lending practices of General Motors Acceptance Corporation, Nissan Motor Acceptance Corporation, Ford Motor Credit, Toyota Motor Credit and DaimlerChrysler Financial cause African-American and Hispanic car buyers to pay millions of dollars more for car loans than similarly situated white buyers. At issue is a discriminatory kickback system under which minorities typically pay about 50% more in dealer mark-up which is shared by auto dealers with the Defendants.

NMAC: The United States District Court for the Middle District of Tennessee granted final approval of the settlement of the class action against Nissan Motor Acceptance Corporation ("NMAC") in which NMAC agreed to offer pre-approved loans to hundreds of thousands of current and potential African-American and Hispanic NMAC customers, and limit how much it raises the interest charged to car buyers above the company's minimum acceptable rate.

GMAC: The United States District Court for the Middle District of Tennessee granted final approval of a settlement of the litigation against General Motors Acceptance Corporation ("GMAC") in which GMAC agreed to take the historic step of imposing a 2.5% markup cap on loans with terms up to 60 months, and a cap of 2% on extended term loans. GMAC also agreed to institute a substantial credit pre-approval program designed to provide special financing rates to minority car buyers with special rate financing.

DAIMLERCHRYSLER: The United States District Court for the District of New Jersey granted final approval of the settlement in which DaimlerChrysler agreed to implement substantial changes to the company's practices, including limiting the maximum amount of mark-up dealers may charge customers to between 1.25% and 2.5% depending upon the length of the customer's loan. In addition, the company agreed to send out pre-approved credit offers of no-markup loans to African-American and Hispanic consumers, and contribute $1.8 million to provide consumer education and assistance programs on credit financing.

FORD MOTOR CREDIT: The United States District Court for the Southern District of New York granted final approval of a settlement in which Ford Credit agreed to make contract disclosures informing consumers that the customer's Annual Percentage Rate ("APR") may be negotiated and that sellers may assign their contracts and retain rights to receive a portion of the finance charge.

CLIENTS AND FEES

We are firm believers in the contingency fee as a socially useful, productive and satisfying basis of compensation for legal services, particularly in litigation. Wherever appropriate, even with our corporate clients, we will encourage retention where our fee is contingent on the outcome of the litigation. This way, it is not the number of hours worked that will determine our fee, but rather the result achieved for our client.

Our clients include many large and well known financial and lending institutions and pension funds, as well as privately-held companies that are attracted to our firm because of our reputation, expertise and fee structure. Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.

IN THE PUBLIC INTEREST

Bernstein Litowitz Berger & Grossmann LLP is guided by two principles: excellence in legal work and a belief that the law should serve a socially useful and dynamic purpose. Attorneys at the firm are active in academic, community and *pro bono* activities, as well as participating as speakers and contributors to professional organizations. In addition, the firm endows a public interest law fellowship and sponsors an academic scholarship at Columbia Law School.

BERNSTEIN LITOWITZ BERGER & GROSSMANN PUBLIC INTEREST LAW FELLOWS

COLUMBIA LAW SCHOOL – BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donated funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This newly endowed fund at Columbia Law School will provide Fellows with 100% of the funding needed to make payments on their law school tuition loans so long as such graduates remain in the public interest law field. The BLB&G Fellows are able to begin their careers free of any school debt if they make a long-term commitment to public interest law.

FIRM SPONSORSHIP OF HER JUSTICE

NEW YORK, NY – BLB&G is a sponsor of Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally battered women, in connection with the myriad legal problems they face. The organization trains and supports the efforts of New York lawyers who provide *pro bono* counsel to these women. Several members and associates of the firm volunteer their time to help women who need divorces from abusive spouses, or representation on issues such as child support, custody and visitation. To read more about Her Justice, visit the organization's website at www.herjustice.org.

THE PAUL M. BERNSTEIN MEMORIAL SCHOLARSHIP

COLUMBIA LAW SCHOOL – Paul M. Bernstein was the founding senior partner of the firm. Mr. Bernstein led a distinguished career as a lawyer and teacher and was deeply committed to the professional and personal development of young lawyers. The Paul M. Bernstein Memorial Scholarship Fund is a gift of the firm and the family and friends of Paul M. Bernstein, and is awarded annually to one or more second-year students selected for their academic excellence in their first year, professional responsibility, financial need and contributions to the community.

FIRM SPONSORSHIP OF CITY YEAR NEW YORK

NEW YORK, NY – BLB&G is also an active supporter of City Year New York, a division of AmeriCorps. The program was founded in 1988 as a means of encouraging young people to devote time to public service and unites a diverse group of volunteers for a demanding year of full-time community service, leadership development and civic engagement. Through their service, corps members experience a rite of passage that can inspire a lifetime of citizenship and build a stronger democracy.

MAX W. BERGER PRE-LAW PROGRAM

BARUCH COLLEGE – In order to encourage outstanding minority undergraduates to pursue a meaningful career in the legal profession, the Max W. Berger Pre-Law Program was established at Baruch College. Providing workshops, seminars, counseling and mentoring to Baruch students, the program facilitates and guides them through the law school research and application process, as well as placing them in appropriate internships and other pre-law working environments.

NEW YORK SAYS THANK YOU FOUNDATION

NEW YORK, NY – Founded in response to the outpouring of love shown to New York City by volunteers from all over the country in the wake of the 9/11 attacks, The New York Says Thank You Foundation sends volunteers from New York City to help rebuild communities around the country affected by disasters. BLB&G is a corporate sponsor of NYSTY and its goals are a heartfelt reflection of the firm's focus on community and activism.

OUR ATTORNEYS

MEMBERS

MAX W. BERGER, the firm's senior founding partner, supervises BLB&G's litigation practice and prosecutes class and individual actions on behalf of the firm's clients.

He has litigated many of the firm's most high-profile and significant cases, and has negotiated seven of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* ($3.3 billion); *Citigroup–WorldCom* ($2.575 billion); *Bank of America/Merrill Lynch* ($2.4 billion); *JPMorgan Chase–WorldCom* ($2 billion); *Nortel* ($1.07 billion); *Merck* ($1.06 billion); and *McKesson* ($1.05 billion).

Most recently, before the #metoo movement came alive, on behalf of an institutional investor client, he handled the prosecution of the unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveiled a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind – the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC) – majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries – $90 million – ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries.

Mr. Berger's work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. Unique among his peers, *The New York Times* highlighted his remarkable track record in an October 2012 profile entitled "Investors' Billion-Dollar Fraud Fighter," which also discussed his role in the Bank of Americ*a/Merrill Lynch Merger* litigation. In 2011, Mr. Berger was twice profiled by *The American Lawyer* for his role in negotiating a $627 million recovery on behalf of investors in the *In re Wachovia Corp. Securities Litigation,* and a $516 million recovery in *In re Lehman Brothers Equity/Debt Securities Litigation*. Previously, Mr. Berger's role in the *WorldCom* case generated extensive media coverage including feature articles in *BusinessWeek* and *The American Lawyer*. For his outstanding efforts on behalf of WorldCom investors, *The National Law Journal* profiled Mr. Berger (one of only eleven attorneys selected nationwide) in its annual 2005 "Winning Attorneys" section. He was subsequently featured in a 2006 *New York Times* article, "A Class-Action Shuffle," which assessed the evolving landscape of the securities litigation arena.

One of the "100 Most Influential Lawyers in America"

Widely recognized for his professional excellence and achievements, Mr. Berger was named one of the "100 Most Influential Lawyers in America" by *The National Law Journal* for being "front and center" in holding Wall Street banks accountable and obtaining over $5 billion in cases arising from the subprime meltdown, and for his work as a "master negotiator" in obtaining numerous multi-billion dollar recoveries for investors.

Described as a "standard-bearer" for the profession in a career spanning over 40 years, he is the 2014 recipient of *Chambers USA*'s award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Mr. Berger's "numerous headline-grabbing successes," as well as his unique stature among colleagues – "warmly lauded by his peers, who are nevertheless loath to find him on the other side of the table."

Law360 published a special feature discussing his life and career as a "Titan of the Plaintiffs Bar," and also named him one of only six litigators selected nationally as a "Legal MVP" for his work in securities litigation.

For the past ten years in a row, Mr. Berger has received the top attorney ranking in plaintiff securities litigation by *Chambers* and is consistently recognized as one of New York's "local litigation stars" by *Benchmark Litigation* (published by *Institutional Investor* and *Euromoney*).

Since their various inceptions, he has also been named a "leading lawyer" by the *Legal 500 US* Guide, one of "10 Legal Superstars" by *Securities Law360*, and one of the "500 Leading Lawyers in America" and "100 Securities Litigators You Need to Know" by *Lawdragon* magazine. Further, *The Best Lawyers in America* guide has named Mr. Berger a leading lawyer in his field.

Considered the "Dean" of the U.S. plaintiff securities bar, Mr. Berger has lectured extensively for many professional organizations, and is the author and co-author of numerous articles on developments in the securities laws and their implications for public policy. He was chosen, along with several of his BLB&G partners, to author the first chapter – "Plaintiffs' Perspective" – of Lexis/Nexis's seminal industry guide *Litigating Securities Class Actions*. An esteemed voice on all sides of the legal and financial markets, in 2008 the SEC and Treasury called on Mr. Berger to provide guidance on regulatory changes being considered as the accounting profession was experiencing tectonic shifts shortly before the financial crisis.

Mr. Berger also serves the academic community in numerous capacities. A long-time member of the Board of Trustees of Baruch College, he is now the President of the Baruch College Fund. A member of the Dean's Council to Columbia Law School, he has taught Profession of Law, an ethics course at Columbia Law School, and serves on the Advisory Board of Columbia Law School's Center on Corporate Governance. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in February 2011, Mr. Berger received Columbia Law School's most prestigious and highest honor, "The Medal for Excellence." This award is presented annually to Columbia Law School alumni who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students. As a recipient of this award, Mr. Berger was profiled in the Fall 2011 issue of *Columbia Law School Magazine.*

Mr. Berger is currently a member of the New York State, New York City and American Bar Associations, and is a member of the Federal Bar Council. He is also a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. In addition, Mr. Berger is a member of the Board of Trustees of The Supreme Court Historical Society.

Mr. Berger lectures extensively for many professional organizations. In 1997, Mr. Berger was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, where he was a "Trial Lawyer of the Year" Finalist for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

Among numerous charitable and volunteer works, Mr. Berger is an active supporter of City Year New York, a division of AmeriCorps, dedicated to encouraging young people to devote time to public service. In July 2005, he was named City Year New York's "Idealist of the Year," for his long-time service and work in the community. He and his wife, Dale, have also established The Dale and Max Berger Public Interest Law Fellowship at Columbia Law School and the Max Berger Pre-Law Program at Baruch College.

EDUCATION: Baruch College-City University of New York, B.B.A., Accounting, 1968; President of the student body and recipient of numerous awards. Columbia Law School, J.D., 1971, Editor of the *Columbia Survey of Human Rights Law*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit; U.S. Supreme Court.

JOHN RIZIO-HAMILTON is involved in a variety of the firm's litigation practice areas, focusing specifically on securities fraud, corporate governance, and shareholder rights. He currently represents the firm's institutional investor clients as counsel in a number of major pending actions, including the securities class action arising from Facebook's IPO, captioned *In re Facebook, Inc. IPO Securities Litigation*.

Mr. Rizio-Hamilton was a member of the trial team prosecuting *In re Bank of America Securities Litigation*, which settled for $2.425 billion, the single largest securities class action recovery ever resolving violations of Sections 14(a) and 10(b) of the Securities Exchange Act, and one of the top securities litigation settlements obtained of all time. He also served as counsel on behalf of the institutional investor plaintiffs in *In re Citigroup, Inc. Bond Action Litigation*, which settled for $730 million, the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. In addition, Mr. Rizio-Hamilton was a member of the team that prosecuted the *In re Wachovia Corp. Bond/Notes Litigation*, in which the firm recovered a total of $627 million on behalf of investors, one of the 15 largest securities class action recoveries in history. Most recently, he served as a key member of the team that recovered $150 million for investors in *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising out of misrepresentations and omissions concerning JPMorgan's Chief Investment Office, the company's risk management systems, and the trading activities of the so-called "London Whale."

Mr. Rizio-Hamilton has also been a member of the trial teams in several additional securities litigations through which the firm has successfully recovered hundreds of millions of dollars on behalf of injured investors. Among other matters, he was part of the trial teams that prosecuted *Eastwood Enterprises LLC v. WellCare*, *In re MBIA, Inc. Securities Litigation*, and *In re RAIT Financial Trust Securities Litigation*.

For his remarkable accomplishments, Mr. Rizio-Hamilton was recognized by *Law360* as one of the country's "Top Attorneys Under 40," and a national "Rising Star" in the area of class action litigation.

Before joining BLB&G, Mr. Rizio-Hamilton clerked for the Honorable Chester J. Straub of the United States Court of Appeals for the Second Circuit, and the Honorable Sidney H. Stein of the United States District Court for the Southern District of New York.

EDUCATION: The Johns Hopkins University, B.A., *with honors*, 1997. Brooklyn Law School, J.D., *summa cum laude;* Editor-in-Chief of the *Brooklyn Law Review;* first-place winner of the J. Braxton Craven Memorial Constitutional Law Moot Court Competition.

BAR ADMISSIONS: New York; U.S. District for the Southern District of New York.

MICHAEL D. BLATCHLEY's practice focuses on securities fraud litigation. He is currently a member of the firm's New Matter department in which he, along with a team of attorneys, financial analysts, forensic accountants, and investigators, counsels the firm's clients on their legal claims.

Mr. Blatchley has also served as a member of the litigation teams responsible for prosecuting a number of the firm's significant cases. For example, Mr. Blatchley was a key member of the team that recovered $150 million for investors in *In re JPMorgan Chase & Co. Securities Litigation*, a securities fraud class action arising out of misrepresentations and omissions concerning JPMorgan's Chief Investment Office, the company's risk management systems, and the trading activities of the so-called "London Whale." He was also a member of the litigation team in *In re Medtronic, Inc. Securities Litigation*, an action arising out of allegations that Medtronic promoted the Infuse bone graft for dangerous "off-label" uses, which resulted in an $85 million recovery for investors. In addition, Mr. Blatchley prosecuted a number of cases related to the financial crisis, including several actions arising out of wrongdoing related to the issuance of residential mortgage-

backed securities and other complex financial products. Currently, Mr. Blatchley is a member of the team prosecuting *In re Allergan, Inc. Proxy Violation Securities Litigation*.

Mr. Blatchley was recently named to *Benchmark Litigation's* "Under 40 Hot List," which recognizes him as one the nation's most accomplished legal partners under the age of 40.

While attending Brooklyn Law School, Mr. Blatchley held a judicial internship position for the Honorable David G. Trager, United States District Judge for the Eastern District of New York. In addition, he worked as an intern at The Legal Aid Society's Harlem Community Law Office, as well as at Brooklyn Law School's Second Look and Workers' Rights Clinics, and provided legal assistance to victims of Hurricane Katrina in New Orleans, Louisiana.

EDUCATION: University of Wisconsin, B.A., 2000. Brooklyn Law School, J.D., *cum laude,* 2007; Edward V. Sparer Public Interest Law Fellowship, William Payson Richardson Memorial Prize, Richard Elliott Blyn Memorial Prize, Editor for the *Brooklyn Law Review,* Moot Court Honor Society.

BAR ADMISSIONS: New York, New Jersey; U.S. District Courts for the Southern District of New York and the District of New Jersey.

SENIOR COUNSEL

ABE ALEXANDER practices out of the New York office, where he focuses on securities fraud, corporate governance and shareholder rights litigation.

As a principal member of the trial team prosecuting *In re Merck Vioxx Securities Litigation*, Mr. Alexander helped recover over $1.06 billion on behalf of injured investors. The case, which asserted claims arising out of the Defendants' alleged misrepresentations concerning the safety profile of Merck's pain-killer, VIOXX, was settled shortly before trial and after more than 10 years of litigation, during which time plaintiffs achieved a unanimous and groundbreaking victory for investors at the U.S. Supreme Court. The settlement is the largest securities recovery ever achieved against a pharmaceutical company and among the 15 largest recoveries of all time.

Mr. Alexander was also a principal member of the trial team that prosecuted *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*, which settled on the eve of trial for a combined $688 million. This $688 million settlement represents the second largest securities class action recovery against a pharmaceutical company in history and is among the largest securities class action settlements of any kind.

Mr. Alexander has also obtained several additional significant recoveries on behalf of investors in pharmaceutical and life sciences companies, including a $142 million recovery in *Medina v. Clovis Oncology, Inc.*, a securities fraud class action arising from Defendants' alleged misstatements about the efficacy and safety of its most important drug, and a $55 million recovery in *In re HeartWare International, Inc. Securities Litigation*, a case arising from Defendants' alleged misstatements about the device-maker's compliance with FDA regulations and the performance of its key heart pump in clinical and bench testing.

As lead associate on the firm's trial team, Mr. Alexander helped achieve a $150 million settlement of investors' claims against JPMorgan Chase arising from alleged misrepresentations concerning the trading activities of the so-called "London Whale." Mr. Alexander also played a key role in obtaining a substantial recovery on behalf of investors in *In re Penn West Petroleum Ltd. Securities Litigation*. He is currently prosecuting *In re Cognizant Technology Solutions Corp. Securities Litigation; In re Equifax, Inc. Securities Litigation; In re Akorn, Inc. Securities*

Litigation; In re Adeptus Health, Inc. Securities Litigation; and City of Sunrise Firefighters' Pension Fund v. Oracle Corp., among others.

Prior to joining the firm, Mr. Alexander represented institutional clients in a number of high-profile securities, corporate governance, and antitrust matters.

Mr. Alexander was an award-winning member of his law school's national moot court team. Following law school, he served as a judicial clerk to Chief Justice Michael L. Bender of the Colorado Supreme Court.

Super Lawyers has regularly selected Mr. Alexander as a New York "Rising Star" in recognition of his accomplishments.

EDUCATION: New York University – The College of Arts and Science, B.A., Analytic Philosophy, *cum laude*, 2003. University of Colorado Law School, J.D., 2008; Order of the Coif.

BAR ADMISSIONS: Delaware; New York; U.S. District Court for the District of Delaware; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the First Circuit.

ASSOCIATES

DAVID L. DUNCAN's practice concentrates on the settlement of class actions and other complex litigation and the administration of class action settlements.

Prior to joining BLB&G, Mr. Duncan worked as a litigation associate at Debevoise & Plimpton, where he represented clients in a wide variety of commercial litigation, including contract disputes, antitrust and products liability litigation, and in international arbitration. In addition, he has represented criminal defendants on appeal in New York State courts and has successfully litigated on behalf of victims of torture and political persecution from Sudan, Côte d'Ivoire and Serbia in seeking asylum in the United States.

While in law school, Mr. Duncan served as an editor of the *Harvard Law Review*. After law school, he clerked for Judge Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit.

EDUCATION: Harvard College, A.B., Social Studies, *magna cum laude*, 1993. Harvard Law School, J.D., *magna cum laude*, 1997.

BAR ADMISSIONS: New York; Connecticut; U.S. District Court for the Southern District of New York.

JULIA TEBOR practices out of the New York office and prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. She was a member of the trial team that recovered $210 million on behalf of defrauded investors in *In re Wilmington Trust Securities Litigation*. She is currently a member of the teams prosecuting *In re Green Mountain Coffee Roasters, Inc. Securities Litigation,* and *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc.*

A former litigation associate with Seward & Kissel, Ms. Tebor also has broad experience in white collar, general commercial, and employment litigation matters on behalf of clients in the financial services industry, as well as in connection with SEC and DOJ investigations.

EDUCATION: Tufts University, B.A., Spanish and English, 2006; *Dean's List*. Boston University School of Law, J.D., *cum laude,* 2012; Notes Editor, *American Journal of Law and Medicine.*

BAR ADMISSIONS: Massachusetts; New York.

STAFF ATTORNEYS

SHEELA AIYAPPASAMY Ms. Aiyappasamy has worked on numerous matters at BLB&G, including *In re Akorn, Inc., Securities Litigation, Mudrick Capital Management, L.P. v. Globalstar, Inc.*, *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., Medina et al v. Clovis Oncology, Inc., et al* and *In re Salix Pharmaceuticals, Ltd., Securities Litigation.*

Prior to joining the firm in 2016, Ms. Aiyappasamy was a law clerk at the U.S. Attorney's Office for the Eastern District of New York, where she worked on complex financial litigations. Previously, she was a staff attorney at Simpson Thacher & Bartlett, where she represented several international banks in residential mortgage-backed securities matters.

EDUCATION: Boston University, B.A., 2001. University of Miami School of Law, J.D., 2004. Florida International University, M.B.A., 2008.

BAR ADMISSIONS: Florida.

ERIK ALDEBORGH Mr. Aldeborgh has worked on numerous matters at BLB&G, including *In re Adeptus Health Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Levy v. Gutierrez, et al. (GTAT Securities Litigation), Fresno County Employees' Retirement Association v. comScore, Inc., Medina, et al v. Clovis Oncology, Inc., et al, In re Virtus Investment Partners, Inc. Securities Litigation, In re Wilmington Trust Securities Litigation* and *Bear Stearns Mortgage Pass-Through Litigation.*

Prior to joining the firm in 2014, Mr. Aldeborgh was an associate at Goodwin Proctor, LLP, and litigation counsel at Liberty Mutual Insurance Company.

EDUCATION: Union College, B.A., *with Honors*, 1981. Northeastern University School of Law, J.D., 1987.

BAR ADMISSIONS: Massachusetts.

BEN BAKKE Mr. Bakke has worked on several matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation, Mudrick Capital Management, L.P. v. Globalstar, Inc., St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al.* and *Bear Stearns Mortgage Pass-Through Litigation.*

Prior to returning to the firm in 2018, Mr. Bakke was an Investigative Attorney, Civil Division, United States Attorney's Office for the Eastern District of New York, where he worked on a complex financial investigation of a major bank involving mortgage-backed securities.

EDUCATION: University of Wisconsin, B.A., 2002. Emory University School of Law, J.D., 2005. Baruch College – Zicklin School of Business, M.B.A., 2014.

BAR ADMISSIONS: New York.

JIM BRIGGS Mr. Briggs has worked on numerous matters at BLB&G, including *In re Adeptus Health Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., Medina et al v. Clovis Oncology, Inc., et al, In re Salix Pharmaceuticals, Ltd., Securities Litigation, In re JPMorgan Chase & Co. Securities Litigation* and *In re Merck & Co., Inc., Securities Litigation (VIOXX-related)*.

Prior to joining the firm in 2013, Mr. Briggs was a contract attorney at Stull, Stull & Brody and at Paul, Weiss, Rifkind, Wharton & Garrison LLP, where he worked on complex securities litigations.

EDUCATION: Cornell University, College of Agriculture and Life Sciences, B.S. in Biological Science, *cum laude*, May 2007. Fordham University School of Law, J.D., 2010.

BAR ADMISSIONS: New York.

ALEXA BUTLER Ms. Butler has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Medina, et al v. Clovis Oncology, Inc., et al, In re Virtus Investment Partners, Inc. Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, In re JPMorgan Chase & Co. Securities Litigation, In re Merck & Co., Inc. Securities Litigation (VIOXX-related), In re MBIA Inc. Securities Litigation*, *In re Washington Mutual, Inc. Securities Litigation, In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation (Bond Action), In re Refco, Inc. Securities Litigation* and *Affiliated Computer Services, Inc. Shareholder Derivative Litigation*.

Prior to joining the firm in 2007, Ms. Butler was a contract attorney at Whatley Drake & Kallas, LLC, where she worked on complex class action litigation.

EDUCATION: Georgia Institute of Technology, B.S., 1993. St. John's University School of Law, J.D., 1997.

BAR ADMISSIONS: New York.

BRIAN CHAU Mr. Chau has worked on numerous matters at BLB&G, including *In re Akorn, Inc., Securities Litigation, In re SCANA Corporation Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., In re Salix Pharmaceuticals, Ltd. Securities Litigation, In re Genworth Financial Inc. Securities Litigation, In re Facebook, Inc., IPO Securities and Derivative Litigation, In re MF Global Holdings Limited Securities Litigation, SMART Technologies, Inc. Shareholder Litigation* and *In re Bank of America Securities Litigation*.

Prior to joining the firm in 2010, Mr. Chau was an associate at Conway & Conway where he worked on securities litigation on behalf of individual investors.

EDUCATION: New York University, Stern School of Business, B.S., 2003. Fordham University School of Law, J.D., 2006.

BAR ADMISSIONS: New York.

ERIKA CONNOLLY Ms. Connolly has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation, In re Stericycle, Inc., Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., In re Green Mountain Coffee Roasters, Inc. Securities Litigation, In re MF Global Holdings Limited Securities Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2014, Ms. Connolly was an attorney at Stull, Stull & Brody, where she worked on complex securities class action litigation.

EDUCATION: Boston University, B.A., *magna cum laude*, 2007. Fordham University School of Law, J.D., 2011.

BAR ADMISSIONS: New York.

LAUREN CORMIER Ms. Cormier has worked on numerous matters at BLB&G, including *In re SCANA Corporation Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re MF Global Holdings Limited Securities Litigation and In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2013, Ms. Cormier was a staff attorney at Brower Piven, where she worked on complex securities class action litigation.

EDUCATION: University of Richmond, B.A., 2002. St. John's University School of Law, J.D., 2010.

BAR ADMISSIONS: New York.

REIKO CYR Ms. Cyr has worked on numerous matters at BLB&G, including *In re Akorn, Inc., Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Levy v. Gutierrez, et al. (GTAT Securities Litigation), Bach v. Amedisys, Inc., Medina et al v. Clovis Oncology, Inc., et al, In re Green Mountain Coffee Roasters, Inc., Securities Litigation, In re NII Holdings, Inc., Securities Litigation, General Motors Securities Litigation* and *In re Bank of New York Mellon Corp. Forex Transactions Litigation.*

Prior to joining the firm in 2013, Ms. Cyr was an attorney at Constantine Cannon LLP, where she worked on antitrust and complex commercial litigation.

EDUCATION: University of Alberta, B.S., 1990. McGill University, Faculty of Law, LL.B and B.C.L., 1999.

BAR ADMISSIONS: New York.

MASHARIKI DANIELS Ms. Daniels has worked on several matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation, Mudrick Capital Management, L.P. v. Globalstar, Inc., St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al.* and *Fresno County Employees' Retirement Association v. comScore, Inc.*

Prior to joining the firm in 2017, Ms. Daniels was a staff attorney at Bleichmar, Fonti & Auld LLP and Labaton Sucharow LLP, where she worked on complex securities litigations. Previously, Ms. Daniels was an associate at Gersten Savage, LLP, where she worked on corporate securities transactions.

EDUCATION: Norfolk State University, B.A., 1999. Thomas M. Cooley Law School, J.D., 2007.

BAR ADMISSIONS: New York.

ALEX DICKIN Mr. Dickin has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation, City of Sunrise General Employees' Retirement Plan v. FleetCor Technologies, Inc., et al, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re Salix Pharmaceuticals, Ltd. Securities Litigation* and *In re Wilmington Trust Securities Litigation.*

Prior to joining the firm in 2014, Mr. Dickin was an attorney at Labaton Sucharow, where he focused on residential mortgage-backed securities litigation. Previously, Mr. Dickin was an associate at Herbert Smith Freehills, where he worked on M&A, private equity and corporate restructuring agreements, among other responsibilities.

EDUCATION: Macquarie University, B.B.A. 2005; L.L.B. 2008, with *Honors*.

BAR ADMISSIONS: New York.

DANIELLE DISPORTO Ms. Disporto has worked on numerous matters at BLB&G, including *In re Akorn, Inc., Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., Medina et al v. Clovis Oncology, Inc., et al, Town of Davie Police Pension Plan v. CommVault Systems, Inc., et al* and *In re Altisource Portfolio Solutions, S.A., Securities Litigation.*

Prior to joining the firm in 2016, Ms. Disporto was an associate at Levy Konigsberg, LLP, Dreier LLP, and Wolf Popper LLP, where she worked on complex class action and derivative litigation, with an emphasis on securities, consumer, antitrust and ERISA law.

EDUCATION: University of Delaware, B.S., 1998; Seton Hall University School of Law, J.D., *cum laude*, 2003.

BAR ADMISSIONS**:** New York, New Jersey.

GEORGE DOUMAS Mr. Doumas has worked on numerous matters at BLB&G, including *City of Sunrise General Employees' Retirement Plan v. FleetCor Technologies, Inc., et al, In re SCANA Corporation Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., In re NII Holdings, Inc. Securities Litigation, General Motors Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, JPMorgan Mortgage Pass-Through Litigation, In re Citigroup Inc. Bond Litigation, In re Huron Consulting Group, Inc. Securities Litigation* and *In re Bristol-Myers Squibb Co. Securities Litigation*.

Prior to joining the firm in 2008, Mr. Doumas was a contract attorney for several law firms, where he worked on investigations relating to subprime mortgages and collateralized debt obligations, and other complex litigation. Mr. Doumas began his career representing clients in civil and bankruptcy matters.

EDUCATION: St. John's University, B.S., Accounting, 1994. Southern New England School of Law, J.D., 1997.

BAR ADMISSIONS: Maryland, Massachusetts.

KRIS DRUHM Mr. Druhm has worked on numerous matters at BLB&G, including *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., General Motors Securities Litigation, In re MF Global Holdings Limited Securities Litigation, In re Citigroup Inc. Bond Litigation* and *In re Washington Mutual, Inc. Securities Litigation*.

Prior to joining the firm in 2010, Mr. Druhm was a litigation associate at Morgenstern Fisher & Blue, LLC, where he worked on large-scale securities litigations. Mr. Druhm began his career as a litigation associate at Cahill, Gordon & Reindel.

EDUCATION: State University of New York at Potsdam, B.A., 1992; Masters in Teaching, 1994. Albany Law School of Union University, J.D., *summa cum laude*, 1998.

BAR ADMISSIONS: New York.

ADDISON GOLLADAY Mr. Golladay has worked on numerous matters at BLB&G, including *In re Akorn, Inc., Securities Litigation, Mudrick Capital Management, L.P. v. Globalstar, Inc.*, *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., In re Allergan, Inc. Proxy Violation Securities Litigation, Allstate Insurance Company v. Morgan Stanley & Co., Inc.*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation, In re News Corp. Shareholder Litigation* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2011, Mr. Golladay was a litigation associate at Latham & Watkins LLP.

EDUCATION: Columbia College, B.A., *cum laude*, 1993. Stephen M. Ross School of Business, M.B.A 2005. The University of Michigan Law School, J.D., 2005.

BAR ADMISSIONS: New York.

DANIEL GRUTTADARO Mr. Gruttadaro has worked on numerous matters at BLB&G, including including *In re Signet Jewelers Limited Securities Litigation, In re Stericycle, Inc., Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Medina, et al v. Clovis Oncology, Inc., et al, Bach v. Amedisys, Inc., In re Salix Pharmaceuticals, Ltd. Securities Litigation, General Motors Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*.

Prior to joining the Firm in 2014, Mr. Gruttadaro was a staff attorney at Stull, Stull & Brody.

EDUCATION: State University of New York at Geneseo, B.S., 2005. State University of New York at Buffalo Law School, J.D., *cum laude*, 2009.

BAR ADMISSIONS: New York.

JARED HOFFMAN Mr. Hoffman has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation, Mudrick Capital Management, L.P. v. Globalstar, Inc., St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., In re Allergan, Inc. Proxy Violation Securities Litigation, In*

re NII Holdings, Inc. Securities Litigation, In re Facebook, Inc., IPO Securities and Derivative Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, SMART Technologies, Inc. Shareholder Litigation and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2011, Mr. Hoffman was an associate at Blank Rome LLP.

EDUCATION: Emory University, Goizueta Business School, B.B.A., 2002. New York University, School of Law, J.D., 2005.

BAR ADMISSIONS: New York.

LAWRENCE S. HOSMER Mr. Hosmer has worked on numerous matters at BLB&G, including *In re Adeptus Health Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., In re Allergan, Inc. Proxy Violation Securities Litigation, In re NII Holdings, Inc. Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re State Street Corporation Securities Litigation*.

Prior to joining the firm in 2012, Mr. Hosmer was an eDiscovery attorney and project manager on several matters arising from the conduct of former Tyco International CEO Dennis Kozlowski, including the securities class action, ERISA action, criminal action and other related actions.

EDUCATION: University of Texas at Austin, B.A., 1993; National Merit Scholar. Southern Methodist University School of Law, J.D., 1996.

BAR ADMISSIONS: Texas.

STEPHEN IMUNDO Mr. Imundo has worked on numerous matters at BLB&G, including *In re Akorn, Inc., Securities Litigation, In re Stericycle, Inc., Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Fernandez, et al v. UBS AG, et al ("UBS Puerto Rico Bonds"), Bach v. Amedisys, Inc., In re Salix Pharmaceuticals, Ltd. Securities Litigation, Kohut v. KBR, Inc. et al., In re Bank of New York Mellon Corp. Forex Transactions Litigation, Dexia Holdings, Inc. v. JP Morgan, In re Citigroup Inc. Bond Litigation* and *In re Huron Consulting Group, Inc. Securities Litigation*.

Prior to joining the firm in 2010, Mr. Imundo worked as a contract attorney at Labaton Sucharow LLP and Constantine & Cannon, LLP.

EDUCATION: Mercy College, B.S., *summa cum laude*, 1994. Fordham University School of Law, J.D., 2002.

BAR ADMISSIONS: New York, Connecticut.

JOHN MOORE Mr. Moore has worked on several matters at BLB&G, including *In re Akorn, Inc., Securities Litigation, Mudrick Capital Management, L.P. v. Globalstar, Inc.*, *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., California Public Employees' Retirement System v. IAC/InterActiveCorp, et al*, and *In re Salix Pharmaceuticals, Ltd. Securities Litigation.*

Prior to joining the firm in 2016, Mr. Moore was engaged in a general law practice, and also provided pro bono assistance to pro se litigants in consumer credit and bankruptcy actions.

EDUCATION: Colorado University, Bachelor of Music, 1986. Northeastern University School of Law, J.D., 2007.

BAR ADMISSIONS: New York.

CHRISTINA (SUAREZ) PAPP Ms. Papp has worked on numerous matters at BLB&G, including *In re Akorn, Inc., Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., In re Volkswagen AG Securities Litigation, Arkansas Teacher Retirement System, et al. v. Insulet Corp., et al., Town of Davie Police Pension Plan v. CommVault Systems, Inc., et al, Kohut v. KBR, Inc. et al., In re NII Holdings, Inc. Securities Litigation* and *In re JPMorgan Chase & Co. Securities Litigation.*

Prior to joining the firm in 2014, Ms. Papp was a litigation associate at Schulte Roth & Zabel LLP.

EDUCATION: Barnard College, Columbia University, B.A., *magna cum laude*, 2002. George Washington University Law School, J.D., 2006.

BAR ADMISSIONS: New York.

ROBERT JEFFREY POWELL Mr. Powell has worked on numerous matters at BLB&G, including *In re SCANA Corporation Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Bach v. Amedisys, Inc., Fernandez, et al v. UBS AG, et al ("UBS Puerto Rico Bonds"), In re Salix Pharmaceuticals, Ltd. Securities Litigation, In re Green Mountain Coffee Roasters, Inc. Securities Litigation, In re Genworth Financial Inc. Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation, Bear Stearns Mortgage Pass-Through Litigation, Cambridge Place Investment Management Inc. v. Morgan Stanley & Co., Inc., et al., SMART Technologies, Inc. Shareholder Litigation* and *In re Citigroup Inc. Bond Litigation.*

Prior to joining the firm in 2011, Mr. Powell was a litigation associate at Pillsbury Winthrop LLP and Constantine Cannon LLP.

EDUCATION: University of the South, B.A., *magna cum laude*, 1992; Phi Beta Kappa. Harvard Law School, J.D., 2001.

BAR ADMISSIONS: New York.

JESSICA PURCELL Ms. Purcell has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re Wilmington Trust Securities Litigation, In re Allergan, Inc. Proxy Violation Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2011, Ms. Purcell was a contract attorney at Constantine & Cannon, LLP.

EDUCATION: Georgetown University, B.S., Business Administration (Accounting) 2002. Catholic University of America, Columbus School of Law, J.D., *cum laude*, 2006.

BAR ADMISSIONS: Connecticut, New York.

EMILY STRICKLAND Ms. Strickland has worked on numerous matters for BLB&G, including *In re Equifax Inc., Securities Litigation, Lehigh County Employees' Retirement System v. Novo Nordisk A/S et al, Roofers' Pension Fund v. Joseph C. Papa, et al ("Perrigo"), St. Paul Teachers'*

Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., In re NII Holdings, Inc. Securities Litigation, General Motors Securities Litigation, In re Bank of New York Mellon Corp. Forex Transactions Litigation.

Prior to joining the firm in 2014, Ms. Strickland was Compliance Counsel for DCM, Inc.

EDUCATION: St. John's College, B.A., 2003. Suffolk University Law School, J.D., 2009.

BAR ADMISSIONS: New York, Massachusetts.

KIT WONG Ms. Wong has worked on numerous matters at BLB&G, including *In re SCANA Corporation Securities Litigation, St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc., Hefler et al. v. Wells Fargo & Company et al., Fresno County Employees' Retirement Association v. comScore, Inc., In re Wilmington Trust Securities Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related).*

Prior to joining the firm in 2012, Ms. Wong was staff attorney at Labaton Sucharow LLP.

EDUCATION: City College of New York, B.A., *magna cum* laude, 1994; Phi Beta Kappa. New York Law School, J.D., 1999.

BAR ADMISSIONS: New York.

Exhibit 5

EXHIBIT 5

In re HeartWare International, Inc. Sec. Litig.,
No. 1:16-cv-00520-RA

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
EXPENSE REPORT

From Inception Through February 28, 2019

CATEGORY	AMOUNT ($)
Paid Expenses	
Service of Process	$10,157.05
PSLRA Notice Costs	1,379.00
On-Line Legal Research	18,435.19
On-Line Factual Research	3,812.85
Document Management/Litigation Support	11,096.60
Telephone/Faxes	221.94
Postage & Express Mail	301.35
Hand Delivery Charges	14.50
Local Transportation	2,166.45
Internal Copying & Printing	6,717.10
Outside Copying & Printing	1,735.21
Out-of-Town Travel*	3,861.23
Working Meals	5,105.79
Court Reporters and Transcripts	717.72
Special Publications	567.75
Experts & Consultants	57,535.93
Mediation Fees	21,065.48
Total Paid:	**$144,891.14**
Outstanding Expenses	
Document Management/Litigation Support	59,238.46
Independent Counsel for Witness	6,568.75
Experts & Consultants	51,824.00
Total Outstanding:	**$117,631.21**
TOTAL EXPENSES:	**$262,522.35**

* This includes only coach airfares and includes hotels in the following lower-cost city capped at $250 per night: St. Paul, Minnesota.

Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LARRY FREUDENBERG, Individually and On Behalf of All Others Similarly Situated, Plaintiff, - against - E*TRADE FINANCIAL CORPORATION, MITCHELL H. CAPLAN, ROBERT J. SIMMONS and DENNIS E. WEBB, Defendants.	Civil Action No. 07 Civ. 8538 (JPO) (MHD)

FINAL JUDGMENT AND ORDER OF DISMISSAL

This matter came before the Court for hearing pursuant to this Court's Order Granting Preliminary Approval of Settlement, Granting Conditional Class Certification, and Providing for Notice dated June 12, 2012 ("Preliminary Approval Order"), and the Court having received declarations attesting to the mailing of the Notice and the publication of the Summary Notice in accordance with the Preliminary Approval Order, on the application of the Settling Parties for approval of the settlement ("Settlement") set forth in the Stipulation of Settlement dated as of May 17, 2012 ("Stipulation"), the proposed Plan of Allocation of the Settlement proceeds, Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses, and interim reimbursement of notice and administration expenses and, following a hearing on October 11, 2012 before this Court to consider the applications, all supporting papers and arguments of the Settling Parties, the objections, supporting papers and arguments submitted by Paul Liles, Leon Behar, Chris Andrews, and Eldon Ventris, and other proceedings held herein, and good cause appearing therefore,

IT IS HEREBY ADJUDGED, DECREED AND ORDERED:

1. This Final Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation unless set forth differently herein. The terms of the Stipulation are fully incorporated in this Final Judgment as if set forth fully herein.

2. The Court has jurisdiction over the subject matter of this Action and all parties to the Action, including all Settlement Class Members.

3. This Court finds that due and adequate notice was given of the Settlement, the Plan of Allocation of the Settlement proceeds, and Plaintiffs' Counsel's application for an award of attorneys' fees and/or reimbursement of expenses, as directed by this Court's Preliminary Approval Order, and that the forms and methods for providing such notice to Settlement Class Members:

(a) constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort;

(b) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of: (i) the proposed Settlement of this class action and the right to exclude themselves from the Settlement Class; (ii) their right to object to any aspect of the proposed Settlement, including the terms of the Stipulation and the Plan of Allocation; (iii) their right to appear at the Settlement Hearing, either on their own or through counsel hired at their own expense, if they are not excluded from the Settlement Class; and (iv) the binding effect of the proceedings, rulings, orders and judgments in this

Action, whether favorable or unfavorable, on all persons who are not excluded from the Settlement Class;

(c) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and

(d) fully satisfied all the applicable requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable laws.

4. Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the Court hereby grants final certification of the Settlement Class consisting of all Persons (other than those Persons who timely and validly request exclusion from the Settlement Class) who purchased or otherwise acquired E*TRADE securities between April 19, 2006 and November 9, 2007, inclusive. Excluded from the Settlement Class are Defendants, members of the Individual Defendants' immediate families, the directors, officers, subsidiaries, and affiliates of E*TRADE, any firm, trust, corporation, or other entity in which any Defendant has a controlling interest, and the legal representatives, affiliates, heirs, successors-in-interest or assigns of any such excluded person or entity.

5. The Settlement Class excludes those Persons who timely and validly filed requests for exclusion from the Settlement Class pursuant to the Notice sent to Settlement Class Members as provided in this Court's Preliminary Approval Order. A list of such Persons who filed timely, completed and valid requests for exclusion from the Settlement Class is attached hereto as Exhibit 1. Persons who filed timely, completed and valid requests for exclusion from the Settlement Class are not bound by this Final Judgment or the terms of the Stipulation, and may pursue their own individual remedies against Defendants and the Released Persons. Such

Persons are not entitled to any rights or benefits provided to Settlement Class Members by the terms of the Stipulation.

6. With respect to the Settlement Class, the Court finds that:

(a) the Settlement Class Members satisfy all of the requirements of Rule 23(a) of the Federal Rules of Civil Procedure because:

i. the members of the Settlement Class are so numerous that joinder of all members is impracticable;

ii. there are questions of law and fact common to the Settlement Class;

iii. the claims and defenses of the representative parties are typical of the Settlement Class; and

iv. the representative parties will fairly and adequately protect the interests of the Settlement Class.

(b) In addition, the Court finds that the Action satisfies the requirement of Federal Rule of Civil Procedure 23(b)(3) in that there are questions of law and fact common to the Settlement Class Members that predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and

(c) The Court finds that Plaintiffs, Kristen Management Limited, Straxton Properties, Inc., Javed Fiyaz, Ira Newman, Peter Farah and Andrea Frascaroli, possess claims that are typical of the claims of Settlement Class Members and that they have and will adequately represent the interest of Settlement Class Members and appoints them as the representatives of the Settlement Class, and appoints Lead Counsel, Brower Piven, A

Professional Corporation, and Co-Lead Counsel, Levi & Korsinsky, LLP, as counsel for the Settlement Class ("Plaintiffs' Counsel").

7. The Court hereby finds that objectors Liles and Andrews lack standing to object to the Settlement. The Court further finds that the objections of objectors Liles, Behar, and Andrews to the Notice and/or the Settlement are without factual or legal merits and hereby overrules them in their entirety.

8. Pursuant to Fed. R. Civ. P. 23(e), this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement, and all transactions preparatory and incident thereto, is, in all respects, fair, reasonable, and adequate to, and is in the best interests of, Plaintiffs and all Settlement Class Members based on, among other things: the Settlement resulted from arm's-length negotiations between the Settling Parties and/or their counsel; the amount of the recovery for Settlement Class Members being within the range of reasonableness given the strengths and weaknesses of the claims and defenses thereto and the risks of non-recovery and/or recovery of a lesser amount than is represented through the Settlement by continued litigation through all pretrial, trial and appellate procedures; the recommendation of the Settling Parties, in particular experienced Plaintiffs' Counsel, and the absence of objections from any Settlement Class Member to the Settlement. All objections to the proposed Settlement, if any, are overruled in their entirety. Accordingly, the Settlement embodied in the Stipulation is hereby approved in all respects and shall be consummated in accordance with its terms and conditions. The Settling Parties are hereby directed to perform the terms of the Stipulation, and the Clerk of the Court is directed to enter and docket this Class Judgment in this Action.

9. The Court hereby finds that objector Andrews lacks standing to object to the Plan of Allocation. The Court further finds that the objections of objectors Behar and Andrews to the Plan of Allocation are without factual or legal merits and hereby overrules them in their entirety.

10. This Court hereby approves the Plan of Allocation as set forth in the Notice as fair and equitable, and overrules all objections to the Plan of Allocation, if any, in their entirety. The Court directs Plaintiffs' Lead Counsel to proceed with the processing of Proofs of Claim and the administration of the Settlement pursuant to the terms of the Plan of Allocation and, upon completion of the claims processing procedure, to present to this Court a proposed final distribution order for the distribution of the Net Settlement Fund to eligible Settlement Class Members, as provided in the Stipulation and Plan of Allocation.

11. The Court hereby finds that objectors Liles and Andrews lack standing to object to Plaintiffs' Counsel's request for an award of attorneys' fees and request for reimbursement of litigation expenses. The Court further finds that the objections of objectors Liles, Behar, and Andrews to the Plaintiffs' request for an award of attorneys' fees and request for reimbursement of litigation expenses are without factual or legal merits and hereby overrules them in their entirety.

12. This Court hereby awards Plaintiffs' Counsel reimbursement of their out-of-pocket expenses in the amount of $ 554,950.23, and attorneys' fees equal to 28 % percent of the balance of the Settlement Fund, with interest to accrue on all such amounts at the same rate and for the same periods as has accrued by the Settlement Fund from the date of this Final Judgment to the date of actual payment of said attorneys' fees and expenses to Plaintiffs' Counsel as provided in the Stipulation. The Court finds the amount of attorneys' fees awarded herein are fair and reasonable based on: (a) the work performed and costs incurred

by Plaintiffs' Counsel; (b) the complexity of the case; (c) the risks undertaken by Plaintiffs' Counsel and the contingent nature of their employment; (d) the quality of the work performed by Plaintiffs' Counsel in this Action and their standing and experience in prosecuting similar class action securities litigation; (e) awards to successful plaintiffs' counsel in other, similar litigation; (f) the benefits achieved for Settlement Class Members through the Settlement; and (g) the absence of a significant number of objections from Settlement Class Members to either the application for an award of attorneys' fees or reimbursement of expenses to Plaintiffs' Counsel. The Court also finds that the requested reimbursement of expenses is proper as the expenses incurred by Plaintiffs' Counsel, including the costs of experts, were reasonable and necessary in the prosecution of this Action on behalf of Settlement Class Members.

13. Based on the foregoing, the Court finds that the objection by Mr. Ventris has been resolved and is moot. The attorneys' fees awarded and expenses reimbursed above shall otherwise be paid to Plaintiffs' Counsel as provided in the Stipulation.

14. Plaintiffs' Counsel may apply, from time to time, for any fees and/or expenses incurred by them solely in connection with the administration of the Settlement and distribution of the Net Settlement Fund to Settlement Class Members.

15. All payments of attorneys' fees and reimbursement of expenses to Plaintiffs' Counsel in the Action shall be made from the Settlement Fund, and the Released Persons shall have no liability or responsibility for the payment of any of Plaintiffs' or Plaintiffs' Counsel's attorneys' fees or expenses except as expressly provided in the Stipulation with respect to the cost of Notice and administration of the Settlement.

16. Pursuant to Federal Rule of Civil Procedure 23(c)(3), all Settlement Class Members who have not filed timely, completed and valid requests for exclusion from the

Settlement Class are thus Settlement Class Members who are bound by this Final Judgment and by the terms of the Stipulation.

17. The Released Persons are hereby released and forever discharged from any and all of the Released Claims. All Settlement Class Members are hereby forever barred and enjoined from asserting, instituting or prosecuting, directly or indirectly, any Released Claim in any court or other forum against any of the Released Persons. All Settlement Class Members are bound by paragraph 4.4 of the Stipulation and are hereby forever barred and enjoined from taking any action in violation of that provision.

18. The Court hereby dismisses with prejudice the Action and all Released Claims against each and all Released Persons and without costs to any of the Settling Parties as against the others.

19. Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (c) is admissible in any proceeding except an action to enforce or interpret the terms of the Stipulation, the settlement contained therein, and any other documents executed in connection with the performance of the agreements embodied therein. Defendants and/or the other Released Persons may file the Stipulation and/or this Final Judgment and Order in any action that may be brought against them in order to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, full faith and credit,

release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

20. The Court finds that during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

21. Without affecting the finality of this Final Judgment in any way, this Court hereby reserves and retains continuing jurisdiction over: (a) implementation and enforcement of any award or distribution from the Settlement Fund or Net Settlement Fund; (b) disposition of the Settlement Fund or Net Settlement Fund; (c) determining applications for payment of attorneys' fees and/or expenses incurred by Plaintiffs' Counsel in connection with administration and distribution of the Net Settlement Fund; (d) payment of taxes by the Settlement Fund; (e) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation; and (f) any other matters related to finalizing the Settlement and distribution of the proceeds of the Settlement.

22. Neither appellate review nor modification of the Plan of Allocation set forth in the Notice, nor any action in regard to the motion by Plaintiffs' Counsel for attorneys' fees and/or reimbursement of expenses and the award of costs and expenses to Plaintiffs, shall affect the finality of any other portion of this Final Judgment, nor delay the Effective Date of the Stipulation, and each shall be considered separate for the purposes of appellate review of this Final Judgment.

23. In the event that the Settlement does not become Final in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants, then this Final Judgment shall be

rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

24. This Final Judgment and Order is a final judgment in the Action as to all claims asserted. This Court finds, for purposes of Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay and expressly directs entry of judgment as set forth herein.

Dated: Oct. 20, 2012

HONORABLE J. PAUL OETKEN
UNITED STATES DISTRICT JUDGE

Exhibit A – Exclusions

1. Robert F Lentes Jr TOD

2. Ronald M Tate, Trustee

3. George Avakian

4. Jaehong Park

5. Kenneth L. Kientz

6. Luis Aragon & Michelle Aragon

Exhibit 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MERRILL LYNCH & CO., INC. SECURITIES, DERIVATIVE AND ERISA LITIGATION	:	Master File No. 07-cv-9633 (JSR)(DFE)
This Document Relates To: ERISA Action, 07-cv-10268 (JSR)(DFE)	:	

ORDER AND FINAL JUDGMENT

This is a case brought under the Employment Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.* ("ERISA"), claiming breach of fiduciary duty. Named Plaintiffs Carl Esposito, Barbara Boland, Alan Maltzman, and Mary Gidaro filed a Consolidated Supplemental Complaint For Violations of the Employee Retirement Income Security Act (the "Complaint") (Dkt. No. 64) on September 23, 2008. The Stipulation and Agreement of Settlement ERISA Action, dated February 27, 2009 ("Settlement Stipulation"), a copy of which is attached hereto as Exhibit 1, was submitted to the Court on February 27, 2009. Before the Court are: (1) Plaintiffs' Motion For Final Approval of Class Action Settlement and Plan of Allocation ("Final Approval Motion"); and (2) Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Case Contribution Awards ("Fee Motion").[1]

[1] All capitalized terms used in this Order and Final Judgment and not defined herein shall have the meanings assigned to them in the Settlement Stipulation.

On March 17, 2009, the Court entered its Order Preliminarily Approving Settlement, Preliminarily Certifying Settlement Class, Approving Notice Plan, and Setting Fairness Hearing Date ("Preliminary Approval Order"). ("Dkt. No. 91). The Court has received the declaration attesting to the mailing of the Notice and publication of the Publication Notice in accordance with the Preliminary Approval Order. *See* Declaration of Jennifer M. Keough re: Notice Dissemination and Publication ("Keough Decl."), attached as Exhibit A to the Joint Declaration of Lynn L. Sarko and Marc I. Machiz in Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation and Motion for Award of Attorneys' Fees, Expenses, and Case Contribution Awards ("Joint Decl."). A hearing was held on July 27, 2009 to: (i) determine whether to grant the Final Approval Motion; (ii) determine whether to grant the Fee Motion; and (iii) rule upon such other matters as the Court might deem appropriate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of this action, all members of the Class, and all Settling Defendants pursuant to 29 U.S.C. § 1132(e).

2. In accordance with Federal Rule of Civil Procedure 23 and the requirements of due process, the Class has been given proper and adequate notice of the Settlement, the Fairness Hearing, and the Plan of Allocation, such notice having been carried out in accordance with the Preliminary Approval Order. The Notice, Publication Notice and notice methodology implemented pursuant to the Settlement Stipulation and the Court's Preliminary Approval Order (a) were appropriate and reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (b) met all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law.

3. The Settlement was negotiated at arm's-length by experienced counsel who were fully informed of the facts and circumstances of the action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties had fully briefed motions to dismiss and engaged in extensive negotiations. The parties exchanged information during the settlement negotiations, and have engaged in confirmatory discovery. Co-Lead Counsel and Defendants' Counsel are therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

4. The Court finds that the requirements of the United States Constitution, the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, and any other applicable laws have been met as to the "Class" defined below, in that:

a. The Class is cohesive and well defined;

b. The members of the Class are ascertainable from records kept with respect to the Plans, and the members of the Class are so numerous that their joinder before the Court would be impracticable;

c. Based on allegations in the Complaint, the Court preliminarily finds that there are one or more questions of fact and/or law common to the Class;

d. Based on allegations in the Complaint that the Defendants engaged in misconduct affecting members of the Class in a uniform manner, the Court finds that the claims of the Named Plaintiffs are typical of the claims of the Class;

e. The Named Plaintiffs will fairly and adequately protect the interests of the Class in that: (i) the interests of Named Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Class; (ii) there appear to be no conflicts between or among Named Plaintiffs and the Class; and (iii) Named Plaintiffs and the members of the Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated ERISA class actions;

f. The prosecution of separate actions by individual members of the Class would create a risk of (i) inconsistent or varying adjudications as to individual Class members that would establish incompatible standards of conduct for the parties opposing the claims asserted in the ERISA Action or (ii) adjudications as to individual Class members that would, as a practical matter, be dispositive of the interests of the other Class members not parties to the adjudications, or substantially impair or impede the ability of those persons to protect their interests; and

g. Based on allegations in the Complaint that Defendants have acted or refused to act on grounds generally applicable to the Class, final injunctive, declaratory, or other equitable relief is appropriate with respect to the Class as a whole.

5. Based on the findings set out in paragraph 4 above, the Court certifies the following class (the "Class") for settlement purposes under Fed. R. Civ. P. 23(b)(1) and (2):

> (a) All current and former participants and beneficiaries of any of the Plans whose individual Plan account(s) included investments in Merrill Lynch stock at any time between September 30, 2006 and December 31, 2008, inclusive and (b) as to each Person within the scope of

subsection (a) of this Paragraph, his, her or its beneficiaries, alternate payees (including spouses of deceased Persons who were participants of one or more of the Plans), Representatives and Successors-In-Interest, provided, however, that the Class shall not include any Defendant or any of their Immediate Family, beneficiaries, alternate payees (including spouses of deceased Persons who were Plan participants), Representatives or Successors-In-Interest, except for spouses and immediate family members who themselves are or were participants in any of the Plans, who shall be considered members of the Class with respect to their own Plan accounts.

6. The Court confirms the appointment of Named Plaintiffs as class representatives for the Class, and Keller Rohrback L.L.P. and Cohen Milstein Sellers & Toll PLLC as Co-Lead Counsel for the Class.

7. The Settlement warrants final approval pursuant to Federal Rule of Civil Procedure 23(e)(1)(A) and (C) because it is fair, adequate, and reasonable to the Class and others whom it affects based upon (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the Class to the Settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action through the trial; (7) the ability of the Defendants to withstand a greater judgment; (8) the range of reasonableness of the Settlement Fund in light of the best possible recovery; and (9) the range of reasonableness of the Settlement Fund to a possible recovery in light of all the attendant risks of litigation.

8. The Settlement was intended by the parties thereto to be a contemporaneous exchange of value, and in fact constitutes such a contemporaneous exchange.

9. The Final Approval Motion is GRANTED, and the Settlement hereby is APPROVED as fair, reasonable, adequate to members of the Class, and in the public interest. The settling parties are directed to consummate the Settlement in accordance with the terms of the Settlement Stipulation.

10. The Plan of Allocation, a copy of which is attached hereto as Exhibit 2, is hereby APPROVED as fair, adequate, and reasonable. Upon or after the Effective Date of the Settlement, the Custodian shall, at the direction of Co-Lead Counsel, disburse the Net Settlement Fund to the Plans for distribution by the Plans' trustee(s) in accordance with the Plan of Allocation, subject to any amounts withheld by the Custodian for the payment of taxes and related expenses as authorized in the Settlement Stipulation, and attorneys fees and expenses and case contribution awards to Named Plaintiffs as authorized by this Order. The Court finds payments and distributions made in accordance with such Plan of Allocation to be "restorative payments" as defined in IRS Revenue Ruling 2002-45. Any modification or change in the Plan of Allocation that may hereafter be approved shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

11. A case contribution award of $ 5,000.- payable from the Gross Settlement Fund is awarded to each Named Plaintiff. Such award may be distributed to each Named Plaintiff by the Custodian upon the Effective Date of the Settlement.

12. Co-Lead Counsel are hereby awarded attorneys' fees of $ 18,750,000.- and expenses of $ 372,312.94. Such award may be distributed to Co-Lead Counsel by the Custodian only after all other payments and distributions of any kind have been made.

13. The Court retains jurisdiction over this action and the Parties, the Plans, and members of the Class for all matters relating to this action, including (without limitation) the administration, interpretation, effectuation or enforcement of the Settlement Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to members of the Class.

14. Without further order of the Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement Stipulation.

15. Named Plaintiffs and all members of the Class, on behalf of themselves, and the Class, and their personal representatives, heirs, executors, administrators, trustees, successors, and assigns, with respect to each and every Settled Claim, fully, finally and forever release, relinquish and discharge, and are forever enjoined from prosecuting, any Settled Claim against any of the Released Parties, provided that, no Released Party shall seek any remedy for violation of the foregoing injunction by any Class Member other than a Named Plaintiff until at least thirty (30) days after having provided such Class Member with written notice of such injunction and demand to desist from any conduct in violation thereof.

16. The Defendants fully, finally, and forever release, relinquish, and discharge, and are forever enjoined from prosecuting, the Settled Defendants' Claims against Named Plaintiffs, all members of the Class, and their respective counsel.

17. All counts asserted in the ERISA Action are DISMISSED WITH PREJUDICE, without further order of the Court, pursuant to the terms of the Settlement Stipulation.

18. In the event that the Settlement is terminated in accordance with the terms of the Settlement Stipulation, this Judgment shall be null and void and shall be vacated nunc pro tunc, and paragraph 8.5 of the Settlement Stipulation shall govern the rights of the Parties thereto.

SO ORDERED this 21st day of August, 2009.

HONORABLE JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

Exhibit 8

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

In re XEROX CORPORATION ERISA LITIGATION This Document Relates To: All Actions	Master File No. 02-CV-1138 (AWT) CLASS ACTION

ORDER GRANTING PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, EXPENSES, AND CASE CONTRIBUTION AWARDS

On April 14, 2009, the Court heard Plaintiffs' Motion for Award of Attorneys' Fees, Expenses, and Case Contribution Award ("Motion"). Having heard argument and having fully considered the pleadings and evidence submitted, the Court hereby finds as follows:

1. The Settlement Class has been given proper and adequate notice of the Motion and that such notice has been provided in accordance with the Court's Order Preliminarily Approving Settlement and Confirming Final Settlement Hearing in this action.

2. Based on the entire record, including the evidence presented in support of the Motion, and specifically including the Joint Declaration of Lynn L. Sarko and Charles R. Watkins in Support of Motion for Final Approval of Class Action Settlement, Plan of Allocation and Request for Fees, Expenses and Case Contribution Awards,

a. The Settlement achieved as a result of the efforts of Plaintiffs' Counsel has created the Settlement Fund, a common fund of $51 million in cash that is already on deposit, plus interest thereon, and which will benefit thousands of Settlement Class Members;

b. More than 40,000 copies of the Class Notice was mailed and otherwise disseminated to Settlement Class Members stating that Plaintiffs' Counsel were moving for attorney's fees in the amount of up to 30 percent of the Settlement Fund and for reimbursement of expenses and that such request would be presented at the Fairness Hearing;

c. Plaintiffs' Counsel initiated and have conducted the litigation in the face of substantial risk and achieved the Settlement as a result of their skill, perseverance, and diligent advocacy;

d. The Action involved complex factual and legal issues prosecuted over nearly seven years and, in the absence of a settlement, would involve further lengthy proceedings, the resolution of which would be uncertain;

e. Had Plaintiffs' Counsel not achieved the Settlement, there would remain a significant risk that the Named Plaintiffs and the Settlement Class would recover less or nothing from the Defendants;

f. The amount of the case contribution awards and the attorneys' fees awarded and expenses reimbursed from the Settlement Fund are reasonable, well-warranted by the facts and circumstances of this case and consistent with awards in similar cases;

g. Plaintiffs' Counsel has expended more than 22,164 hours, with a lodestar value of $9,318,130.70, to achieve the Settlement; and

h. Named Plaintiffs David Alliet, Thomas Patti, Linda Willis and Cheryl Wright and Plaintiff William Saba rendered valuable service to the Plans and to the Plans' participants and beneficiaries. Without their participation, there would have been no case and no settlement, and the Plans would not have recouped any of their losses.

3. The expenses for which Plaintiffs Counsel seek reimbursement from the common fund created by the Settlement were reasonably incurred for the benefit of the Class in prosecuting the Class's claims and in obtaining the Settlement.

4. Named Plaintiffs David Alliet, Thomas Patti, Linda Willis and Cheryl Wright and Plaintiff William Saba should be awarded compensation for the time and effort they have invested for the benefit of the Class, including providing information to Plaintiffs' Counsel, reviewing and approving pleadings, assisting with discovery, and participating in settlement discussions.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Plaintiffs' Motion is granted.

2. Plaintiffs' Counsel are awarded $15,250,000 from the Settlement Fund as attorneys' fees in this case, which shall be paid to Co-Lead Counsel. Co-Lead Counsel shall allocate the award among Plaintiffs' Counsel.

3. Co-Lead Counsel are further awarded $982,766.93 for reimbursement of their expenses, to be paid out of the Settlement Fund, which amount shall be paid to Co-Lead Counsel, who shall allocate the award among Plaintiffs' Counsel.

4. Named Plaintiffs David Alliet, Thomas Patti, Linda Willis and Cheryl Wright and the estate of Plaintiff William Saba are each awarded $5,000 as compensation for their substantial contribution to the litigation on behalf of the Class.

It is so ordered.

Dated this 14th day of April, 2009 at Hartford, Connecticut.

_____/s/ AWT_____
Alvin W. Thompson
United States District Judge

Exhibit 9

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re AMERICAN EXPRESS FINANCIAL ADVISORS SECURITIES LITIGATION

Master File No. 04 Civ. 1773 (DAB)

ORDER AND FINAL JUDGMENT

On July 13, 2007, the Court held a hearing to determine (1) whether the terms and conditions of the Stipulation of Settlement dated January 18, 2007 ("Stipulation")[1] are fair, reasonable, and adequate for the settlement of all claims asserted on behalf of the Class in the above-captioned Action, including the release of Defendants, Nominal Defendants, and the other Released Persons, and should be approved; (2) whether judgment should be entered dismissing the Action on the merits and with prejudice in favor of Defendants and Nominal Defendants and as against all Class Members who are not Opt-Outs; (3) whether the Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel is a fair, reasonable, and adequate method of allocating the settlement proceeds among the Class Members; (4) whether and in what amount Plaintiffs' Co-Lead Counsel should be awarded attorneys' fees and reimbursement of expenses; and (5) whether and in what amount incentive awards should be given to the lead plaintiffs in the instant action and in a related action, known as *Haritos v. American Express Financial Advisors, Inc.*, Case No. 02-2255 PHX-PGR, pending in the United States District Court for the District of Arizona ("Haritos").

1. All defined terms have the same meaning as defined in the Stipulation of Settlement dated January 18, 2007.

The Court, having considered all matters submitted to it at the hearing and otherwise; and it appearing from the submissions of the parties that, in accordance with the Court's Order Provisionally Certifying Class, Directing Dissemination of Notice, and Setting Settlement Fairness Hearing, dated February 14, 2007 ("Notice Order"), a notice of the Settlement and Final Fairness Hearing, substantially in the form approved by the Court, was mailed to all Class Members who could be identified with reasonable effort, using the information provided by Defendant American Express Financial Advisors, Inc. or its successor, Ameriprise Financial Services, Inc. (collectively, "AEFA"), pursuant to the Notice Order; and it appearing that a summary notice of the Settlement and Final Fairness Hearing, substantially in the form approved by the Court, was published once in the national edition of The Wall Street Journal and Parade Magazine in accordance with the Notice Order; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested by Plaintiffs' Co-Lead Counsel; and all defined terms used herein having the meanings as set forth and defined in the Stipulation,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, Plaintiffs, all Class Members, and Defendants.

2. The Court makes a final determination that, for the purposes of the Settlement, the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that (a) the Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) Plaintiffs' claims are typical of the claims of the Class they seek to represent; (d) Plaintiffs and their counsel will fairly and adequately represent the interests of the Class; (e) questions of

law and fact common to the Class Members predominate over questions affecting only individual members of the Class; and (f) a class action settlement is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and, for the purposes of the Settlement, this Court hereby makes final its certification of the Action as a class action on behalf of the following Class:

All Persons who, at any time during the Class Period:

(i) Paid a fee for financial advice, financial planning, or Financial Advisory Services;

(ii) Purchased any of the Non-Proprietary Funds through AEFA or for which AEFA was listed as the broker;

(iii) Purchased any of the AXP Funds through AEFA or for which AEFA was listed as the broker; and/or;

(iv) Paid a fee for financial advice, financial planning, or other financial advisory services rendered in connection with an SPS, WMS and/or SMA account.

Excluded from the Class are Defendants, Nominal Defendants, members of Defendant James M. Cracchiolo's immediate family, any entity in which any Defendant or Nominal Defendant has or had a controlling interest, and the employees, agents, legal affiliates, or representatives who had been employees, agents, legal affiliates or representatives during the Class Period, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party, and all persons and entities who timely and properly requested exclusion from the Class pursuant to the Mailed Notice or Publication Notice disseminated in accordance with the Notice

Order, and six persons whose tardy exclusions are excused due to extenuating circumstances. Those six persons are: Carroll Neinhaus, James King, Dorothy King, Muriel Wester, Joseph Centineo and Ester Saabye.

4. Plaintiffs assert claims against Defendants under Sections 12(a)(2) and 15 of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rules 10b-5(a)-(c) and 10b-10 promulgated thereunder; Section 20(a) of the Securities Exchange Act of 1934; the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-5, 80b-6; the Minnesota Uniform Deceptive Trade Practices Act, Minnesota Consumer Fraud Act, Minnesota False Advertisement Act, and Minnesota Unlawful Trade Practices Act; and for breach of fiduciary duty and unjust enrichment. The Complaint alleges that Defendants engaged in a common course of conduct that included, among other things, misrepresentations and omissions in connection with the (a) marketing and sale of financial plans and advice to Defendants' clients; (b) the marketing, recommending, and sale of certain non-proprietary mutual funds that paid inadequately disclosed compensation to Defendants for such promotion; and (c) the marketing, recommending, and sale of Defendants' proprietary mutual funds and other proprietary products. For purposes of the Settlement only, the Court makes final its certification of these claims for class treatment.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby makes final its appointment of Plaintiffs (Leonard D. Caldwell, Carol M. Anderson, Donald G. Dobbs, Kathie Kerr, Susan M. Rangeley, and Patrick J. Wollmering) as representatives of the Class for purposes of the Settlement.

6. Having considered the factors described in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court hereby makes final its appointment of Plaintiffs' counsel, the law

firms of Girard Gibbs LLP, Milberg Weiss LLP, and Stull Stull & Brody, as counsel for the Class for purposes of the Settlement.

7. In accordance with the Notice Order, individual notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort, using the information provided by Defendant AEFA, supplemented by published notice. The form and method of notifying the Class of the pendency of the Action as a class action, the terms and conditions of the Settlement, and the Final Fairness Hearing met the requirements of Rule 23 of the Federal Rules of Civil Procedure; Section 21D(a)(7) of the Securities Exchange Act of 1934 (as amended by the Private Securities Litigation Reform Act of 1995), 15 U.S.C. § 78u-4(a)(7); and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

8. The Settlement is approved as fair, reasonable, and adequate, and the Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

9. The Complaint, which the Court finds was filed on a good-faith basis in accordance with the Private Securities Litigation Reform Act of 1995, based upon publicly available information, is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against Defendants.

10. Class Members, and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any and all Released Claims against any and all Released Persons. The Released Claims are hereby compromised, settled, released, discharged, and dismissed as to all

Class Members and their successors and assigns and as against the Released Persons on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

11. Defendants and Nominal Defendants and their successors and assigns are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any and all Settled Defendants' Claims against any Plaintiffs, Class Members, or their attorneys. The Settled Defendants' Claims of all Defendants and Nominal Defendants are hereby compromised, settled, released, discharged, and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

12. The Released Persons are hereby discharged from all claims for indemnity and contribution by any person or entity, whether arising under state, federal or common law, based upon, arising out of, relating to or in connection with the Released Claims of the Class or any Class Member, other than claims for indemnity or contribution asserted by a Released Person against another Released Person. Accordingly, the Court hereby bars all claims for indemnity and/or contribution by or against the Released Persons based upon, arising out of, relating to, or in connection with the Released Claims of the Class or any Class Member; provided, however, that this bar order does not prevent any Released Person from asserting a claim for indemnity or contribution against another Released Person.

13. Neither this Order and Final Judgment, nor the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against Defendants or Nominal Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Defendant with respect to the truth of any fact alleged by Plaintiffs, the

certification of the class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants or Nominal Defendants;

(b) offered or received against Defendants or Nominal Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Defendant or Nominal Defendant;

(c) offered or received against Defendants or Nominal Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any Defendant or Nominal Defendant, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that Defendants and/or Nominal Defendants may refer to this Order and Final Judgment and/or the Stipulation to effectuate the liability protection granted them thereunder;

(d) construed as an admission or concession that the consideration given under the Stipulation represents the amount which could be or would have been recovered after dispositive motions or trial; or

(e) construed as or received in evidence as an admission, concession, or presumption against Plaintiffs or any Class Members that any of their claims are without merit, or that any defenses asserted by Defendants or Nominal Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Settlement Payment.

14. The Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel for allocating the proceeds of the Settlement is approved as fair, reasonable, and adequate, and the Claims Administrator is directed to administer the Settlement and allocate the Settlement Fund in accordance with its terms and provisions.

15. The Court finds that all Parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

16. Plaintiffs' Co-Lead Counsel are hereby awarded 27 percent of the Settlement Fund in attorneys' fees, which sum the Court finds to be fair and reasonable, and $597,204 in reimbursement of expenses, which fees and expenses shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund with interest at the same net rate that the Settlement Fund earns, from the date the Court approves the Fee and Expense Award. Plaintiffs' Co-Lead Counsel shall allocate the award of attorneys' fees among themselves according to their own agreement, and among any other counsel in a fashion that, in the opinion of Plaintiffs' Co-Lead Counsel, fairly compensates such counsel for their contribution to the prosecution of the Action.

17. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $100,000,000 in cash that is already on deposit, plus interest thereon, and that numerous Class Members who file acceptable Proof of Claim forms will benefit from the Settlement created by Plaintiffs' Co-Lead Counsel;

(b) The Settlement obligates Defendants to pay all reasonable expenses of notice and settlement administration and to adopt remedial measures negotiated with Plaintiffs' Co-Lead Counsel and designed to address the issues giving rise to the Action;

(c) Over 3,012,814 copies of the Settlement Notice were disseminated to putative Class Members indicating that Plaintiffs' Co-Lead Counsel were moving for attorneys' fees and reimbursement of expenses in the requested amounts, and there were approximately 80 written comments and objections in opposition to the proposed Settlement and/or the fees and expenses requested by Plaintiffs' Co-Lead Counsel which have been considered by the Court and the Court overrules; RAB 7/18/07

(d) Plaintiffs' Co-Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(e) The Action involves complex factual and legal issues and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of such issues;

(f) Had Plaintiffs' Co-Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class would recover significantly less or nothing from Defendants and/or Nominal Defendants;

(g) Plaintiffs' Co-Lead Counsel have submitted affidavits showing that they expended over 24,000 hours, with a lodestar value of $9,572,865, in prosecuting the Action and achieving the Settlement; and

(h) The amounts of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases.

18. Plaintiffs' Co-Lead Counsel are authorized to pay, from the amount awarded by the Court for attorneys' fees, incentive awards of $5,000 each to each of the six class representatives in this action and each of the five plaintiffs in the related Haritos case.

19. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to this Action and the Settlement, including (a) the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order and Final Judgment; (b) any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Class Members; (c) any dispute over attorneys' fees or expenses sought in connection with the Action or the Settlement; and (d) determination whether, in the event an appeal is taken from any aspect of the Judgment approving the Settlement or any award of attorneys' fees, notice should be given under Federal Rule of Civil Procedure 23(d), at the appellant's expense, to some or all members of the Class apprising them of the pendency of the appeal and such other matters as the Court may order.

20. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

DATED: July 18, 2017

Deborah A. Batts

THE HONORABLE DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE

Exhibit 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PFIZER INC. SECURITIES LITIGATION

No. 04-cv-9866 (LTS)(HBP)

ECF CASE

ORDER GRANTING LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

WHEREAS:

A. On December 21, 2016, a hearing was held before this Court to consider, among other things: (1) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses (the "Fee and Expense Application"); and (2) the fairness and reasonableness of the Fee and Expense Application;

B. All interested Persons were afforded the opportunity to be heard;

C. The maximum amount of fees and litigation expenses that would be requested by Lead Counsel, including the maximum amount of costs and expenses to Plaintiffs incurred in connection with representing the Class, was set forth in the Notice of Proposed Settlement of Securities Class Action, Application for Attorneys' Fees and Expenses, and Settlement Fairness Hearing (the "Notice") that was disseminated to the Class in accordance with the Court's September 16, 2016 Order Preliminarily Approving Settlement, Directing Notice to Class Members, and Setting Hearing for Final Approval of Settlement (ECF No. 703, the "Preliminary Approval Order");

D. The Notice advised Class Members of their right to object to the Fee and Expense Application and that any objections to the Fee and Expense Application were required to be filed with the Court no later than November 28, 2016, and served on designated counsel for the Parties;

E. On November 11, 2016, Lead Counsel filed its Fee and Expense Application;

F. All objections relating to the Fee and Expense Application have been considered, and the Court has overruled all such objections; and

G. This Court has duly considered Lead Counsel's Fee and Expense Application, the declarations and memoranda of law submitted in support thereof, and all the submissions and arguments presented with respect thereto.

NOW, THEREFORE, after due deliberation and for the reasons stated on the record of the December 21, 2016 hearing, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**:

1. This Order hereby incorporates by reference the definitions in the Stipulation and Agreement of Settlement (*see* ECF No. 700, Ex. 1) (the "Settlement Agreement"), and all initial capitalized terms, unless otherwise defined herein, shall have the same meanings as set forth in the Settlement Agreement.

2. Lead Counsel is hereby awarded 28% of the $486 million Settlement Amount, plus interest at the same rate earned by the Settlement Fund, to be paid from the Settlement Fund.

3. Lead Counsel is hereby awarded the sum of $20,005,879.33 in litigation expenses, plus interest at the same rate earned by the Settlement Fund, to be paid from the Settlement Fund.

4. Lead Counsel shall allocate the attorneys' fees and expenses awarded amongst Plaintiffs' Counsel in a manner in which it in good faith believes reflects the contribution of such counsel to the prosecution and settlement of the Action.

5. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $486 million in cash that has been funded into escrow pursuant to the terms of the Settlement Agreement, and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Court-appointed Class Representatives, including the institutional investor Lead Plaintiff, that oversaw the prosecution and resolution of the Action;

(c) Copies of the Notice were mailed to over 4.1 million potential Class Members and nominees stating that Lead Counsel, on behalf of Plaintiffs' Counsel, would ask the Court for an award of attorneys' fees not to exceed 30% of the Settlement Fund and expenses paid or incurred in connection with the institution, prosecution and resolution of the claims against Defendants in an amount not to exceed $25 million, plus interest, to be paid from the Settlement Fund;

(d) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the other members of the Class may have recovered less or nothing from Defendants;

(g) Plaintiffs' Counsel devoted more than 290,000 hours, with a lodestar value of over $120 million, to achieve the Settlement; and

(h) The amount of attorneys' fees and expenses awarded from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Lead Plaintiff Teachers' Retirement System of Louisiana is hereby awarded $4,015, Class Representative Christine Fleckles is hereby awarded $7,500, Class Representative Julie Perusse is hereby awarded $5,000, and Class Representative Alden Chace is hereby awarded $5,000, for reimbursement of their costs and expenses directly related to their representation of the Class, to be paid from the Settlement Fund.

7. The Notice provided the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the fee and litigation expense request, to all Persons entitled to such Notice, and said Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, §21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, and all other applicable law and rules.

8. Any appeal or any challenge affecting this Court's approval of any attorneys' fees and expense application will in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. There is no just reason for delay in entry of this Order Granting Lead Counsel's Motion for an Award of Attorneys' Fee and Reimbursement of Expenses, and immediate entry of this Order by the Clerk of the Court is expressly directed.

SO ORDERED.

Dated: New York, New York
December 21, 2016

LAURA TAYLOR SWAIN
United States District Judge