ABRAHAM, FRUCHTER & TWERSKY, LLP

January 5, 2016

By Federal Express

Donald C. Kendig
Retirement Administrator
Board Members
Fresno County Employees' Retirement Association (FCERA)
1111 H Street
Fresno, California 93721

Re: ***Introduction to AF&T Portfolio Monitoring and Shareholder Litigation Services***

Dear Mr. Kendig and Board Members:

I am an attorney at Abraham, Fruchter & Twersky, LLP ("AF&T" or the "Firm") and serve as the Director of Institutional Investor Relations for the firm. AF&T is headquartered in New York City, with offices in San Diego, California. AF&T has extensive experience representing public pension funds and other institutional investors on issues related to corporate governance, shareholder rights, and securities litigation in state and federal courts throughout the United States.

We would welcome the opportunity to provide our shareholder litigation and portfolio monitoring services to the Fresno County Employees' Retirement Association (the "System"). These services are unique and stand apart from those provided by our competitors in that not only does AF&T represent very large institutional investors such as General Electric ("GE") and Lord Abbett for example, but we have specifically designed our portfolio monitoring services to serve the interests of our smaller to mid-size public pension fund clients. Among the services we provide as set forth below, is the identification of potential corporate misconduct giving rise to securities and shareholder claims relating to the System's investment portfolio; our services are **provided without cost** or obligation to the System.[1]

Overview of AF&T's Portfolio Monitoring Services

AF&T provides its clients with industry-leading portfolio monitoring and case evaluation services, designed to identify material losses in our clients' securities portfolios caused by fraud, breaches of fiduciary duty, or other violations of applicable corporate and/or securities laws. AF&T's portfolio monitoring program would utilize a direct connection with the System's custodial banks that would allow the Firm to continuously review and update the System's

[1] Please be aware that in some jurisdictions this letter may be considered to be "Attorney Advertising." In that respect, we must note that prior results do not guarantee a similar outcome in future actions.

securities holdings and trading records in a way that requires no ongoing involvement or time commitment from the System's employees.

Once engaged as portfolio monitoring counsel, AF&T will continuously monitor and evaluate market events and other information that may cause a material loss or other negative impacts on the System's investment portfolios. This monitoring will include scrutiny of all class action notices that are filed under the Private Securities Litigation Reform Act of 1995 (PSLRA) and material corporate transactions (such as mergers, executive compensation and stock option grants), as well as monitoring of bankruptcy proceedings to determine their impact on the System.

Once we identify a situation in which the System appears to have incurred a loss as a result of corporate misconduct, AF&T will provide a detailed investigative memorandum discussing all available legal options and all relevant information relating to a potential securities case. Such a memorandum is likely to include, among other things, an analysis of the potential claims, the potential defendants, the background of the company, the overall damages to the class and potential recovery, the specific losses suffered by the System, the availability of insurance coverage from which a judgment may be satisfied, the likelihood of appointment as lead plaintiff, the lead plaintiff deadline, the class period, the jurisdiction of the matter, the potential benefit of pursuing relief on an individual basis, and an assessment of all available legal options and the attendant risks and advantages of each option.

In evaluating cases for recommendation to the System, the Firm's single, overriding concern will be that the System only pursue lawsuits that represent credible opportunities for substantial economic recovery; or, that preserve or enforce an important right or claim on behalf of the System. Accordingly, AF&T exercises tremendous discretion to ensure that we only recommend meritorious cases in which we believe there has been an actionable legal violation. Moreover, we believe it is our responsibility to always present a fair and objective analysis of potential cases, and to advise the System not only concerning meritorious cases, but also concerning cases that are not of a caliber and quality suitable for the System's participation. After submitting an investigative memorandum to the System, AF&T's attorneys would remain fully available to the System to answer any questions and/or conduct any necessary follow up investigations; and our attorneys would continue to monitor the facts and circumstances of the litigation in order to ensure that any decisions made by the System are based on the most current information.

Upon the System's decision to actively pursue litigation, AF&T would propose to represent the System in all aspects of the litigation in the particular case. Note, however, that the System's retention of AF&T as portfolio monitoring counsel in no way obligates the System's engagement of AF&T as litigation counsel in any given matter. Furthermore, AF&T expects that it would, in all cases, represent the System on a contingent basis, with the Firm absorbing all costs. AF&T would be paid (and its expenses reimbursed) solely from any recovery obtained by the Firm in the cases it handles. In addition, with regard to costs that the System might incur in

connection with any class action in which it serves, or seeks to serve, as lead plaintiff when represented by AF&T, the Firm will pay such costs or reimburse the System for such costs when permitted.

The Firm generally negotiates with our clients a fee schedule specific to each litigation that reflects the strengths and risks attendant with that particular case, either in advance of filing an action or prior to moving for appointment as lead plaintiff. It would be the Firm's objective to arrive at a fee agreement that will align the Firm's interests with that of the System and the class. We would typically propose a contingent fee agreement that would be based upon: (1) the timing of recovery (*i.e.*, the stage of the litigation at which the settlement or recovery is achieved); and (2) the amount of the recovery (*i.e.*, the gross amount of the settlement paid by defendants).

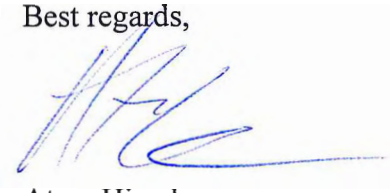
AF&T's Unique Qualifications

AF&T has unique experience in pursuit of shareholder claims and an unwavering commitment to our clients' needs, which often leads to the Firm's retention over alternate monitoring counsel. Unlike many of our competitors, we view institutional investors as traditional law firm clients who require legal counsel and representation of the highest professional standard for the protection of their rights and interests. Our overriding aim is to assist our clients in maximizing the value of their investment portfolios rather than having them serve as mere vehicles for appointment as lead attorneys in connection with securities fraud class actions that seek to aggregate the largest number of claimants.

Thus, instead of merely seeking to bring together all damage claims present in any given securities fraud, we monitor our clients' portfolios for unique claims that differ from those possessed by other shareholders who were the subject of the same corporate fraud, and claims that might provide our clients with superior recoveries on a *pro rata* basis. Examples of such claims are those arising from the purchase of securities offered to the public by issuers as opposed to those arising from the purchase of securities in the securities markets. Claims arising from the issuer offering may be pursued individually or on behalf of a class of similarly situated investors who stand apart from those who purchased in the securities markets. Indeed, AF&T has been extremely successful in obtaining recoveries for our clients that were far superior to those obtained by other shareholders who were damaged in the same corporate fraud.

I hope you will find the information I have provided of interest. I look forward to further discussing our firm's professional services.

Best regards,



Atara Hirsch

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ABRAHAM, FRUCHTER & TWERSKY, LLP

New York | California

aftlaw.com

FIRM RESUME

Abraham, Fruchter & Twersky, LLP ("AF&T" or the "Firm") works to protect shareholder rights, bring claims on behalf of consumers who have been damaged by false advertising or the improper marketing of goods or services, and to protect businesses from unfair competition and business practices. AF&T's attorneys have a broad range of experience in representing investors in securities and shareholder litigation in both trial and appellate courts throughout the United States. In regard to shareholder rights, we litigate individual and representative actions involving claims of corporate fraud, mismanagement, insider trading and breaches of fiduciary duties. The Firm's mission is to protect investors and maximize shareholder value through the diligent and capable representation of our clients. AF&T also represents consumer fraud victims and has participated in consumer fraud cases involving, among others, mortgage lenders, consumer product manufacturers and insurance companies.

AF&T maintains offices located in New York, New York and San Diego, California. Our Firm's lawyers pride themselves on their diligence, professionalism, courtesy, responsiveness and capacity to deal with the most complex legal and factual issues. As a consequence of these qualities, skills and experiences, we have achieved favorable results in the cases we have litigated and have successfully litigated issues of first impression.

FIRM PRACTICE AREAS

Securities Fraud Litigation

AF&T's Securities Fraud Litigation practice includes the prosecution of shareholder actions on behalf of purchasers or sellers of public and private securities, and relates to the misrepresentation of, or failure to disclose, material facts to investors. AF&T has represented clients in pursuit of their individual and class action claims. Typically, actions brought by the Firm's Securities Fraud Litigation practice group allege violations of the Securities Exchange Act of 1934 and the Securities Act of 1933.

AF&T's lawyers have substantial experience and have successfully resolved many Securities Fraud Litigation shareholder actions, including *In re China Medicine Corp. Sec. Litig.,* No. 8:11-cv-1061-JST (C.D. Cal.), in which our firm served as Lead Counsel on behalf of a class of investors that resulted in a recovery of 41% of estimated damages for the recovery class.

In *Citiline Holdings, Inc. v. iStar Financial, Inc.,* No. 08-cv-3612-RWS (S.D.N.Y), AF&T served as co-Lead Counsel and helped procure a settlement fund of $29 million on behalf of the class of damaged investors.

In *In re Global Crossing Securities Litigation,* 2005 U.S. Dist. LEXIS 16232 (S.D.N.Y.), where our firm's lawyers represented purchasers of Asia Global Crossing securities, our attorneys helped achieve an incredibly strong recovery for the benefit of the Asia Global Crossing shareholders in an amount equal to 8% of the funds recovered in the entire Global Crossing case, when they only suffered 1% of the losses.

AF&T also served as co-lead counsel in *In re Peregrine Systems, Inc. Securities Litigation,* 2002 U.S. Dist. LEXIS 27690 (S.D.Cal.), representing a class of shareholders who acquired Peregrine securities in exchange for their shares of stock in certain companies that were acquired by Peregrine. Along with a class of open-market purchasers, a settlement of approximately $117.5 million was obtained to resolve all claims, despite the company's bankruptcy filing, the lack of any insurance proceeds to contribute to the settlement and the dissolution of Arthur Anderson, LLP, the company's auditor, which was responsible for certifying the relevant false and misleading financial statements. Of the settlement amount, approximately $65 million was obtained from individual corporate officers and directors, amounting to one of the largest recoveries from individual defendants in a case of this nature. As a result of AF&T's efforts, the class of investors who acquired their Peregrine shares as a result of a stock exchange pursuant to a prospectus received a recovery that was approximately three times greater than those shareholders who acquired their shares in the open market.

In re: Dreyfus Aggressive Growth Mutual Fund Litigation, 98 CV 4318 (HB) (S.D.N.Y.), is a case in which members of our firm served on the executive committee of a class action brought on behalf of purchasers of two mutual funds for damages arising from misleading statements made in the offering prospectuses. Plaintiffs settled their claims for $18.5 million in cash.

AF&T has an established record of successfully resolving securities class actions and procuring substantial recoveries on behalf of investors while serving as Lead Counsel or Co-Lead Counsel. A representative list of actions that have been successfully resolved by AF&T includes:

In re Giant Interactive Group, Inc. Sec. Litig., No. 07-cv-10588-RWS (S.D.N.Y.) ($13 million);

In re Warner Chilcott Lt. Sec. Litig., No. 06-cv-11515-WHP (S.D.N.Y.) ($16.5 million);

Liberty Cap. Group, Inc. v. Kongzhong Corp., No. 04-cv-6746-SAS (S.D.N.Y.) ($7.5 million);

In re Internap Network Serv. Corp. Sec. Litig., No. 08-cv-3462-JOF (N.D. Ga.) ($9.5 million)

Insider Trading

AF&T's Insider Trading practice focuses on both federal and state law claims that seek to remedy and/or prevent unlawful insider trading by corporate insiders. These actions include claims that arise out of short-swing insider trading in violation of Section 16(b) of the Securities Exchange Act of 1934 which prohibits a statutorily defined insider from purchasing and selling on issuers shares within a six month period. The Firm's attorneys are among the leading experts in the nation with respect to 16(b) litigation, and have been at the forefront of obtaining favorable court rulings that have both enabled substantial recoveries for the ultimate benefit of investors and helped prevent future acts of corporate malfeasance associated with short-swing insider trading.

In one such 16(b) action, AF&T successfully resolved the matter for a cash settlement of $20 million. In another 16(b) case, AF&T achieved a $9.4 million settlement following a successful appeal to the U.S. Court of Appeals for the Eleventh Circuit.

In *Levy v. Sterling Holding Company,* 314 F. 3d 106 (3rd Cir. 2002), the United States Court of Appeals for the Third Circuit resolved, in a manner that was consistent with the position advocated by the Firm, certain issues of first impression relating to the scope and interpretation of Rule 16b-3 and Rule 16b-7 promulgated by the SEC pursuant to the Securities Exchange Act of 1934.

In addition to bringing cases under Section 16(b), AF&T has been at the forefront of efforts to cause corporate insiders to disgorge the proceeds of insider trading profits earned during the time period the issuer's financial results were improperly reported or other material facts were improperly concealed from members of the investing public. These cases have involved asserting claims arising under state law principles of fiduciary duty in shareholder derivative actions which are described in the section below.

Shareholder Derivative Litigation

AF&T's Shareholder Derivative Litigation practice focuses on actions brought by shareholders of a corporation in order to obtain a recovery on behalf of that corporation from a corporate insider or other party for a violation of state or federal law that has caused damage to the corporation. Often, these actions seek to disgorge corporate insiders of the proceeds realized from self-interested transactions that deprive the company and its public shareholders of the true value of the assets involved or from insiders exploiting their positions for their own personal gain. Many of these actions also result in remedial corporate governance changes designed to prevent recurrent wrongdoing.

Among the shareholder derivative cases in which AF&T has served as a lead counsel include *Kahn v. Buttner*, Index No. 650320/2008 (Sup. Ct. N.Y. Cty.) controlling shareholder would pay $2.9 million to a settlement fund for the sole benefit of Value Line Inc.'s 13.5% shareholders, representing a recovery for the minority shareholders of more than 85% of the maximum amount of monetary damages recoverable if shareholders were successful at trial and on appeal.

Our Shareholder Derivative Litigation practice also extends to cases involving the reckless management of a company's operations that causes damage to the company. One action making such allegations in which members of the Firm played a leading role was brought on behalf of the Bank of New York Corporation against corporate insiders with respect to the damage caused to the company by their failure to properly institute the internal controls necessary to prevent money laundering. After the denial of a motion to dismiss, the taking of substantial pre-trial discovery and the defeat of an effort to have the case decided by a special committee, the case was resolved for a cash payment of $26.5 million for the benefit of the Bank of New York.

AF&T's Shareholder Derivative Litigation practice also places great emphasis on achieving substantive corporate governance reform. For example, members of the Firm had a leading role in gaining significant and valuable remedial benefits designed to prevent a recurrence of corporate malfeasance at ImClone Systems Inc. (in addition to gaining a cash payment of $8.75 million). AF&T also served as lead counsel in a derivative shareholder action against Merck & Co. related to the company's misconduct surrounding its pain reliever Vioxx. The Firm successfully brought about material corporate governance reform, which the presiding Judge described as "far reaching and act[ing] to position Merck at the forefront of sound corporate governance and risk management practices," "ensur[ing] scientific integrity and drug patient safety," and "provid[ing] substantial benefit to Merck and its shareholders because they may serve to prevent future liability from sale of potentially dangerous drugs." The corporate governance changes, which provide, *inter alia,* for a Chief Medical Officer to act as an advocate for patient safety, were similarly praised by industry analysts as something "every pharma company should have..." Likewise, in *In re Schering-Plough Corp. Shareholders Derivative Litig.,* Master Derivative Docket Civ. Action No. 01-1412, 2008 U.D. Dist. LEXIS 2569 (D. N.J. Jan. 14, 2008), the Firm was responsible for obtaining comprehensive corporate governance changes at Schering-Plough Corporation.

AF&T's attorneys are currently or have recently taken a leading role in shareholder derivative actions brought on behalf of, among others, Google, Johnson & Johnson, Tenet Health Systems, MedcoHealth Solutions, Inc., and Escala Group, Inc.

Corporate Transactions & Shareholder Rights

AF&T's Corporate Transactions & Shareholder Rights practice handles cases dealing with transactions in which the interests of minority shareholders or limited partners are eliminated through either the sale of the entity's underlying assets or through the sale of the entity itself. In such transactions, corporate officers may be liable for advancing the financial or corporate interests of the controlling shareholder(s) or general partner(s) at the

expense of minority investors. These cases often arise under Section 14(a) of the Securities Exchange Act of 1934 and state law principles requiring corporate officers and controlling shareholders to discharge their fiduciary duties with loyalty, care and prudence.

Members of the Firm have been active in this practice area, and the Firm has recently represented public institutions in challenging recent transactions. Recently, AF&T achieved a settlement of $10.5 million in a case brought on behalf of the limited partners of a series of limited partnerships controlled by Jones Intercable, Inc. The Firm also achieved a $5 million case settlement in a transaction involving the sale of a cable television system owned by American Cable TV Partners V, L.P. Another notable case led by AF&T resulted in an approximately 20% increase in the price offered in a management buyout of the minority interests of an investment trust.

Consumer Fraud

Consumers often feel powerless to stop major corporations from engaging in wrongful conduct, whether it be in the form of an improper fee or charge, an undelivered service, or a product that simply does not live up to expectations based on the company's advertising and labeling. AF&T regularly fights to protect consumers who have been wronged, no matter how small the individual damages.

As an example, AF&T achieved a favorable ruling from a New York State Appellate Court on an issue of first impression barring mortgage lenders from charging New York State residents a fax fee in connection with the provision of mortgage payoff statements and holding that consumers had an implied private right of action to recover any such fees paid. The decision was "Decision of the Day" in the November 19, 1999, edition of The New York Law Journal and is reported as *Negrin v. Norwest Mortgage, Inc.* (163) A.D.2d 39, 700 N.Y.S.2d 184 (2d Dep't 1999).

FIRM ATTORNEYS

***Jeffrey S. Abraham,* Partner**

Following his graduation from Columbia University School of Law in 1987, Mr. Abraham worked for one year as a corporate securities lawyer for a mid-size New York City law firm. Thereafter, Mr. Abraham joined what, at the time, was the largest firm specializing in plaintiffs' securities litigation, a firm then known as Milberg Weiss Bershad Specthrie & Lerach. After working at Milberg Weiss for several years, Mr. Abraham left to start the Law Offices of Jeffrey S. Abraham, which subsequently merged with and into Fruchter & Twersky, LLP, to become AF&T.

Mr. Abraham's practice at Milberg Weiss focused on the prosecution of shareholder class actions on behalf of defrauded investors with the occasional representation of corporate clients in various litigation matters. Among the class actions which he was active in prosecuting during his tenure at Milberg Weiss were *In Re Crazy Eddie Securities*

Litigation, 97 Civ. 87-0033 (E.D.N.Y.) in which a recovery in excess of $76 million was achieved for defrauded investors, and *Axton Candy & Tobacco Co., Inc. v. Alert Holdings Inc., (Alert Holdings Income Limited Partnership Litigation),* 92-Z-1191 (D. Colo.), in which a recovery of $60 million was achieved for defrauded investors. Mr. Abraham also successfully defended the appeal challenging the terms of that settlement before the Tenth Circuit. *See Hillman v. Webley,* 1996 U.S. App. LEXIS 25702 (10th Cir. 1996).

At AF&T, Mr. Abraham continues to focus on securities and shareholder litigation. During his tenure at the Firm, Mr. Abraham has served as lead counsel in many cases, including: *In re Peregrine Securities Litigation,* Civil No. 02cv870-J (S.D. Cal.) in which a settlement of approximately $117.5 million was achieved notwithstanding the company's bankruptcy, the lack of insurance proceeds to contribute to the settlement, and the dissolution of the company's auditors who shared liability. In another case, Mr. Abraham acted as co-lead counsel on behalf of purchasers of the securities of Asia Global Crossing in connection with *In Re Global Crossing Securities Litigation,* 02 CV 910 (S.D.N.Y.) in which a pro rata recovery was achieved for the Asia Global Subclass members that far exceeded the pro rata recovery obtained by the other defrauded investors in Global Crossing securities.

On another occasion, in a case arising under the short-swing insider trading provisions of Section 16(b) of the Securities Exchange Act of 1934, Mr. Abraham assisted in achieving a cash recovery of $20 million (without the benefit of insurance coverage) which at the time was the largest known cash recovery under that statute. Judge John S. Martin, Jr., the former U.S. Attorney for the Southern District of New York and the presiding Judge in the action, complimented the Firm's performance in the case in stating "the shareholders of Illinois Semiconductor Company received a $20,000,000.00 benefit as the sole result of the diligence and sagacity of Plaintiffs counsel." *Steiner v. Williams; Levy v. Southbrook Int'l Investments, Ltd.,* 2001 U.S. Dist. LEXIS 7097, at * 20 (S.D.N.Y. May 31, 2001).

Other cases in which Mr. Abraham has had a primary litigation role include: *City Partnership Co. v. Jones Intercable, Inc.,* Civil Action No. 99-WM-1051 (D. Colo.), in which a recovery of $10 million was achieved on behalf of investors with respect to the sale of cable television systems and *City Partnership Co. v. IR-TCI Partners V, L.P.,* Civil Action No. 99-RB-2122 (D. Colo.) in which $5 million was recovered on behalf of limited partners with respect to the sale of a cable television system to a business affiliate of the general partner.

Mr. Abraham has successfully argued appeals in the U.S. Courts of Appeals for the Second, Third, Tenth and Eleventh Circuits.

Mr. Abraham is admitted to practice in the Courts of the State of New York, the United States District Courts for the Southern District of New York, Eastern District of New York and District of Colorado, and the U.S. Courts of Appeal for the Second, Third, Fourth, Seventh, Ninth, Tenth and Eleventh Circuits as well as before the U.S. Supreme Court.

***Jack G. Fruchter,* Partner**

Mr. Fruchter is a 1992 *cum laude* graduate of the Benjamin N. Cardozo School of Law. Prior to founding the law firm of Fruchter & Twersky, LLP whose name was later changed to Abraham, Fruchter & Twersky, LLP, Mr. Fruchter was employed by the enforcement division of the U.S. Securities and Exchange Commission as well as a litigation associate at the law firm of Hughes Hubbard and Reed, LLP in New York City.

Mr. Fruchter has played a lead role in many of the securities fraud class actions litigated by our firm, including AirGate PCS, Inc., Printcafe Software, Inc., KhongZhong Ltd., Warner Chilcott Limited, Giant Interactive Group, Inc. and iStar Financial, Inc.

In *Liberty Capital Group, Inc. v. Kongzhong Corporation,* 04-CV06746SAS (S.D.N.Y.), for example, Mr. Fruchter took the lead in a securities class action alleging that the issuer's registration statement in connection with an IPO failed to disclose that the issuer had breached its service agreement with its primary customer, China Mobile Communications Corporation, resulting in sanctions against the issuer and a strained relationship with the customer. The case settled for 20% of the maximum provable damages, which is well in excess of the average recovery of 2-3% of damages in securities fraud litigation.

Mr. Fruchter has also focused on short-swing insider trading actions pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934. Mr. Fruchter has appeared at SEC staff meetings to discuss pending issues concerning Section 16(b) litigation and has been referred to as a leading practitioner in the field of Section 16(b) litigation. Romeo & Dye, Comprehensive Section 16 Outline 288 (June 2003).

Mr. Fruchter is admitted to practice in the Courts of the State of New York, the United States District Courts for the Southern and Eastern Districts of New York and the United States Courts of Appeals for the Third and Eleventh Circuits. Mr. Fruchter has also routinely appeared *pro hac vice* in Courts throughout the United States.

***Mitchell M.Z. Twersky,* Partner**

Following his graduation from the Georgetown University Law Center in 1991, Mr. Twersky was employed for several years as a commercial and civil litigation associate for a boutique litigation firm in New York City. In 1996 he founded the law firm of Fruchter & Twersky, LLP, which later changed its name to Abraham, Fruchter & Twersky, LLP.

At Abraham, Fruchter & Twersky, LLP, Mr. Twersky has focused on, among other things, short-swing insider trading actions pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934. Mr. Twersky played a lead role in *Levy v. Office Depot, Inc.,* in which a shareholder of Purchasepro.com alleged that as a consequence of the CEO of Office Depot serving on the Board of Directors of Purchasepro.com, Office Depot's trades in Purchasepro.com securities violated the insider trading provision of Section 16(b). Following PurchasePro.com's bankruptcy filing, AF&T was retained by the Debtor with the Bankruptcy Court's approval to continue with the prosecution of the action on the Debtor's behalf. The

case settled for $9.4 million, more than half of the recoverable profits, after the Firm's successful appeal to the U.S. Court of Appeals for the Eleventh Circuit.

Mr. Twersky also played a lead role in a settlement valued at $38 million in *Rosenberg v. Delta Airlines, Inc.,* an action commenced in Delaware District Court against Delta Air Lines on behalf of Priceline.com for violations of the insider trading provisions of Section 16(b). He also played a lead role in a $20 million cash settlement of a Section 16(b) action in *Levy v. Southbrook International Investments, Ltd., et al.* brought in U.S. District Court for the Southern District of New York where Judge John S. Martin, Jr. in praising AF&T's work stated "counsel's effort here provided a bonanza to the corporation .. as the sole result of the diligence and sagacity of Plaintiff's counsel." 2001 U.S. Dist. LEXIS 7097, at * 20 (S.D.N.Y. May 31, 2001).

Mr. Twersky has appeared several times at SEC staff meetings to discuss pending issues concerning Section 16(b) litigation, has provided the SEC with written comments concerning the proposed promulgation of SEC Rules pertaining to Section 16(b) (Comments with respect to *Proposed Rule: Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Release Nos. 34-49895, 35-27861, IC-26471*(June 21, 2004), available at www.sec.gov) and has been referred to as a leading practitioner in the field of Section 16(b) litigation. Romeo & Dye, Comprehensive Section 16 Outline 288 (June 2003).

Mr. Twersky has also played a leading role in AF&T's consumer and antitrust class action litigation. Mr. Twersky achieved a favorable ruling from a New York State Appellate Court on an issue of first impression barring mortgage lenders from charging New York State residents a fax fee in connection with the provision of mortgage payoff statements and holding that consumers had an implied private right of action to recover any such fees paid. The decision was "Decision of the Day" in the November 19, 1999, edition of The New York Law Journal and is reported as *Negrin v. Norwest Mortgage, Inc.* (163) A.D.2d 39, 700 N.Y.S.2d 184 (2d Dep't 1999).

In a case the Firm brought on behalf of consumers across the country against the four largest sunscreen manufacturers in the U.S. alleging the false advertising and labeling of sunscreen products. The case is currently pending in the Superior Court of California, Los Angeles County. *In re Sunscreen Cases,* JCCP 4352 (Sup. Ct. Cal.).

Mr. Twersky has been interviewed and quoted widely by the media, including the *Los Angeles Times*, *The New York Times*, *The New York Post*, *The Miami Herald*, and *The Wall Street Journal.* Mr. Twersky has also appeared on television and radio programs, including NBC's *Today in New York*, Comcast's *Nitebeat*, and National Public Radio's *Marketplace*.

Mr. Twersky has served on the Federal Regulation of Securities Committee of the American Bar Association as well as its Civil Litigation and SEC Enforcement Matters and Annual Review of Federal Securities Regulation Subcommittees.

Mr. Twersky is admitted to practice in the Courts of the State of New York, the United States District Courts for the Southern and Eastern Districts of New York, the U.S.

Courts of Appeal for the First, Second, Third, Seventh, Ninth and Eleventh Circuits, and the Supreme Court of the United States of America. Mr. Twersky has also routinely appeared *pro hac vice* in Courts throughout the United States.

***Atara Hirsch,* Of Counsel**

Ms. Hirsch concentrates her practice in securities litigation and institutional investor relations. Ms. Hirsch is a graduate of Brooklyn Law School and is admitted to practice before the Courts of the State of New York, the United States District Court for the Southern District of New York and the United States District for the Eastern District of New York.

Ms. Hirsch serves as the Firm's Director of Institutional Investor Services, advising public and private institutions throughout the world with respect to shareholder rights related to class action and individual direct action claims arising under U.S. federal and state securities laws. Ms. Hirsch is a frequent speaker on securities litigation issues, particularly as they relate to the rights and responsibilities of institutional investors. Ms. Hirsch has addressed the National Conference on Public Employee Retirement Systems, the Native American Finance Conference and the Florida Public Pension Trustees Association, and has authored, "Custodians Leave Investor Money on the Table" *(PERSist,* National Conference on Public Employee Retirement Systems (Fall 2009,) detailing the myriad of issues that may arise when pension funds rely solely on their custodians to monitor their stock portfolio.

***Ian D. Berg,* Of Counsel**

Mr. Berg concentrates his practice in the area of securities litigation on behalf of public and private institutional investors, and has helped obtain significant recoveries on behalf of class members in several nationwide securities class actions, including *In re Tyco, International Securities Litigation* ($3.2 billion), *In re Initial Public Offering* ($586 million) and *In re Delphi Corporation Securities Litigation* ($325 million).

Mr. Berg has also helped resolve individual direct action claims on behalf of institutional funds, many of whom elected to opt-out of class action settlement recoveries. In particular, Mr. Berg helped several prominent mutual funds and a respected investment advisor resolve individual claims against Marsh & McLennan Companies, at a substantial premium to what they otherwise would have recovered by participating in the $400 million class action settlement.

Mr. Berg has also published several articles advising institutional investors regarding securities class action litigation. Mr. Berg has authored or co- authored the following articles: "Why Institutional Investors Opt-Out of Securities Fraud Class Actions and Pursue Direct Individual Actions" *(PLI Securities Litigation and Enforcement Institute,* July 23, 2009); "Credit Rating Agencies: Out of Control and in Need of Reform" *(Securities Litigation & Regulation Reporter,* June 30, 2009); "Ruling Warns Funds to Follow Class Actions" *(Pensions & Investments,* December 8, 2008); and "The 7th Circuit Sends a

Strong Message: Institutions Must Monitor Securities Class Actions Claims" *(The NAPPA Report,* August 2008).

Mr. Berg is a graduate of Northwestern University (B.A.) and the Northwestern University School of Law (J.D.). Mr. Berg is admitted to practice in California, Pennsylvania and Illinois, as well as before the Southern District of California, Northern District of California, District of Colorado and the U.S. Courts of Appeal for the First, Second, and Third Circuits.

***Lawrence D. Levit,* Of Counsel**

Lawrence D. Levit is a 1976 graduate of Franklin and Marshall College. He also received an M.A. in political science from the Eagleton Institute of Politics in 1978. Mr. Levit is a 1985 graduate of Brooklyn Law School where he was the Second Circuit Editor for the Law Review. He published an article entitled: *Habeas Corpus and the Exhaustion Doctrine: Daye Lights Dark Corner of the Law,* 50 Brooklyn Law Review 565 (1984).

Mr. Levit has specialized in class action litigation for approximately twenty years, primarily representing shareholders and consumers. Prior to joining AF&T, Mr. Levit was a partner at a mid-size law firm until 2002, where he was involved in actions that recovered hundreds of millions of dollars for class members. While at AF&T, he has served as co-lead counsel in *In re Peregrine Systems, Inc. Securities Litigation,* No. 02- CV-0870-BEN (RBB) (S.D. Cal), representing a class of claimants for violations of the federal securities laws. A settlement was obtained for approximately $117.5 million, with approximately $65.5 million of that amount being obtained from individual corporate officers and directors, one of the largest recoveries directly from individuals in a case of this nature. The investors represented by the Firm (*i.e.,* those who acquired their Peregrine shares as a result of a stock exchange pursuant to a prospectus) received a recovery that was approximately three times greater than shareholders who acquired their shares by purchasing them on the open market. In another recent action, *Liberty Capital Group, Inc. v. KongZhong Corp.,* No. 1:04-CV-06746-SAS (S.D.N.Y.), Mr. Levit served co-lead counsel and was responsible for settling the action for 20% of the maximum provable damages, well in excess of the average recovery of 2-3% of damages in securities fraud litigation.

Mr. Levit is a member of the New York and New Jersey bars and is admitted to practice before the United States District Courts for the Southern District of New York, the Eastern District of New York and the District of Colorado as well as the United States Courts of Appeal for the Second, Third, and Fourth Circuits.

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Mr. Kellar practices out of the Firm's San Diego office and concentrates his practice in the area of securities litigation on behalf of public and private institutional investors. Prior to joining Abraham, Fruchter & Twersky, LLP, Mr. Kellar practiced securities litigation at Bernstein, Litowitz, Berger & Grossmann LLP, where he prosecuted securities

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Custodians Leave Investor Money on the Table

Recently several of my pension fund clients have referred their fellow pension fund friends to our law firm. Many of these funds had not previously engaged the services of an outside law firm to monitor their investment portfolios. Some of them knew of the free services that our firm, and others like ours offered, but many of them were not fully familiar with the extent of our legal services and more importantly: Why they needed these services. They were referred to my firm because, in light of the economic crisis, investment portfolios everywhere were losing money. They were trying, more diligently then ever, to recoup some of these losses; and in an effort to do so, many of them found that when they relied solely on their custodian bank to monitor for class action settlements, money was going unclaimed. I had long suspected this and began to investigate; what I found was shocking: The lack of participation by institutional investors in U.S. securities class-action lawsuits has left nearly $12 billion in unclaimed funds on the table between 2000 and 2007. Of that amount, $8.4 billion has been left unclaimed by U.S. investors.

In a pilot study published several years ago, nearly two-thirds of the institutional investors with financial losses in fifty-three settled securities class actions failed to submit claims. As a result, the substantial sums that these investors were entitled to receive were given to other investors. By asking institutional investors about their claim-filing practices, i.e., who was responsible for such tasks, how such tasks were performed, and what, if any, performance monitoring was done, the study concluded that most institutions "relied on their custodian banks to file claims for them in securities fraud class action settlements, that many of these institutions did little monitoring of whether the custodian actually performed these services, and that custodians had financial disincentives to file claims on behalf of their clients." One commentator estimated that more than $1 billion was left on the settlement table by non-filing institutional investors annually.

Some explanations for why institutions are not filing claims include: 1) the institutional investor's frequent change of its custodian banks, 2) the institutional investor's failure to receive notices of settlement, and 3) the custodian bank's potential financial disincentives for filing claims on behalf of their clients.

The first explanation for the institutional investor's failure to file claims may lie in how frequently it changes custodian banks. An institutional investor's change in its custodian bank is significant because it is often the custodian bank that is expected to file claims for the institutional investor. A departing custodian bank does not customarily forward to the institutional investor, or the custodian's successor, the trading records for the portfolio the departing custodian had previously managed. This can be problematic because the length of time between the trade that qualifies the investor for membership in the class and the date the settlement notice is received can be very long. Without the institutional investor's prior trading records, a succeeding custodian or the institutional investor itself will not have access to sufficient information to evaluate whether the institutional investor has a provable claim that can be submitted to the settlement administrator.

Additionally an institutional investor may not be able to gain access to it's trading records at a terminated custodian to determine if it is eligible to participate in a securities fraud class action settlement. Although custodian banks generally retain records for their current clientele, the appeal of preserving trading records for former clients is much weaker. And even if the prior trading records had been retained, technological advancement may have rendered such records inaccessible at any reasonable cost. For example, electronic records kept on an outdated system may no longer be machine-readable by new software systems. Although hand tabulation may still be possible, it is extremely expensive.

A second explanation for an institutional investor's failure to file claims may be that the institutional investor never received the notices of settlement; as when the Notice of Settlement was sent to a terminated

continued on page 8

Note on the Author: ***Ms. Hirsch*** *heads the client relations and development team at Abraham, Fruchter & Twersky, LLP ("AF&T"). As head of the department, she regularly meets with institutional investors, including trustees of private and public pension funds to discuss securities fraud litigation and shareholder rights generally and to inform them of the services our firm provides. She contributes regularly at institutional investor conferences and has authored articles in this area. Ms. Hirsch is also responsible for AF&T's securities portfolio monitoring program and consequently meets with institutional investors to inform them of potential securities fraud claims that arise from investment losses and counsels them on their legal rights and potential courses of action. Ms. Hirsch is an attorney admitted to practice in both State and Federal courts in NYC.*

Custodians Leave Investor *from page 2*

custodian and not forwarded to the institutional investor.

The final explanation for an institutional investor's poor claims-filing record may lie in a custodian bank's financial disincentives for filing claims on behalf of their clients. One cannot be sure how custodian banks treat an institutional investor's instruction to file all claims; it is possible that custodians ignore their client's instruction and, instead, file only cost-justified claims. Of more concern is that if the custodian receives a fixed fee for its services but pays all of the costs for filing claims without reimbursement from the institutional investor, then the bank's financial interests would seem to be to do as little claims-filing as possible. This result could lead to a potential conflict of interest between the custodian and its client, the institutional investor. As minimal fund monitoring appears to be the norm, a problem like this could remain undetected if the client fund gives the custodian bank full discretion and does little or no monitoring of securities fraud class-action settlements.

Thus, in light of the fiduciary obligations of institutional investors and their trustees, it is imperative, most especially in the current economic environment, that institutional investors not rely solely on their custodian banks and, instead, monitor for securities fraud class-action settlements that may entitle them to a financial recovery as well as monitor for potential securities fraud claims that have not yet been prosecuted. Taking such action will help ensure both that custodians will not leave an institutional investor's money on the table and that institutional investors maximize the value of their securities portfolio. ❖

NCPERS Members *from page 5*

The Miami Fire Fighters have also filed a proposal at Honeywell seeking an independent chairman of the board. In the U.S., the chairman of the board of a company is usually an insider—typically the chief executive officer ("CEO"). One of the prime responsibilities of the chairman is to monitor and supervise the key executives on behalf of shareholders. Obviously that monitoring and supervising is not going to be very effective if the chairman and the CEO is the same person.

NCPERS urges its members to alert their proxy voting agents to these 2010 shareholder proposals filed by the Kansas City Fire Fighters, Miami Fire Fighters, and Philadelphia Public Employees. ❖

Massachusetts Firefighters *from page 6*

advice of counsel, have a chilling effect?

- Whether criminal liability for expressing trustee viewpoints undermines the inherent structure and makeup of many retirement systems?

What is the effect of California's specific constitutional provision in Article XVI, Section 17(b), of the California Constitution which provides that the members of the pension board "shall discharge their duties with respect to the system solely in the interests of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, **minimizing employer contributions thereto**, and defraying reasonable expenses of administering the system"? How does this language compare with other state constitutions which impose fiduciary duties in their state constitutions? This California provision is unusual, in that it specifically requires consideration of employer contributions – exactly what the pension board did at the city's request.

Lastly, consider the following policy argument. The city placed the board in a very tenuous position by tying together fiduciary decisions with negotiations. In particular, the city's negotiation position from the outset was that benefit enhancements were contingent on approval of contribution relief for the city. By doing so, the Board was placed into the "middle of benefit determination"/labor negotiations. As a general rule, pension boards should be insulated from actual negotiations. Likewise, negotiations and benefits should ordinarily not be made contingent on pension board decisions and should never be based on contribution relief by the plan sponsor.

Lexin v. Superior Court of San Diego County, 65 Cal.Rptr. 3d 574 (Cal. App. 2007); Review Granted, 171 P.3d 546 (Cal.2007). ❖

1There are scores of decisions in sister jurisdictions finding similar actions and restrictions as an unconstitutional impairment of the pension contract. For example: *Wisconsin Retired Teachers v. Employee Trust Funds*, 558 N.W.2d 83 (Wis 1997)(reduction in COLA formula); *McDermott v. Regan*, 624 N.E.2d 985 (NY 1993)(change in actuarial methods to lower employer contribution); *Flisock v. State*, 818 P.2d 640 (Alaska 1991)(change in definition of regular compensation); *Board of Administration v. Wilson*, 61 Cal.Rptr.2d 207 (Cal. App. 1997)(any change in benefits must be offset by corresponding new benefits).

This article is a regular feature of PERSIST. ***Robert D. Klausner,*** *a well-known lawyer specializing in public pension law throughout the United States, is General Counsel of NCPERS as well as a lecturer and law professor. While all efforts have been made to insure the accuracy of this section, the materials presented here are for the education of NCPERS members and are not intended as specific legal advice. For more information go to* ***www.robertdklausner.com***

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

DOROTHY D. BRAGDON, et al..)) Plaintiffs,) -against-)) TELXON CORPORATION, et al..)) Defendants.)	Civil Action No. 5:98-CV-2876 J. O'Malley
PARK EAST INC., et al.,)) Plaintiffs,) -against-)) TELXON CORPORATION, et al.,)) Defendants.)	Civil Action No. 5:98-CV-2880 J. O'Malley
JAMES FRANKFORT, et al.)) Plaintiffs,) -against-)) TELXON CORPORATION, et al.,)) Defendants.)	Civil Action No. 5:98-CV-2888 J. O'Malley
NATHAN R. STRACHAN, et al.,)) Plaintiffs,) -against-)) TELXON CORPORATION, et al.,)) Defendants.)	Civil Action No. 5:98-CV-2890 J. O'Malley

SECRETARY OF LABOR'S MEMORANDUM OF LAW AS AMICUS CURIAE IN SUPPORT OF FSBA'S MOTION FOR APPOINTMENT AS LEAD PLAINTIFF

PRELIMINARY STATEMENT

The Florida State Board of Administration ("FSBA") seeks appointment as lead plaintiff in these several actions against Telxon Corporation. In their briefs in opposition to the FSBA's motion, the Telxon and Alsin Groups argue that ERISA, as incorporated by Florida Statute section 215.47(a), bars fiduciaries such as FSBA from serving as lead plaintiffs in class action lawsuits. The Secretary's brief addresses solely whether this contention is accurate.

INTEREST OF THE SECRETARY

The Secretary is charged with interpreting and enforcing the provisions of Title I of the Employee Retirement Income Security Act ("ERISA"). She thus has a substantial interest in the application of ERISA by the courts. The Secretary's interests include promoting uniformity of law and protecting participants and beneficiaries. Secretary of Labor v. Fitzsimmons, 805 F.2d 682 (7th Cir. 1986) (en banc). Assuring the proper interpretation of ERISA's fiduciary provisions is of particular interest to the Secretary.

ARGUMENT

I. ERISA'S STATUTORY FRAMEWORK

The FSBA, through Sec 215.47(a), is required to discharge its duties in accordance with the standards set forth in 29 U.S.C. §§ 1104(a)(1)(A), (B), and (C), ERISA § 404(a)(1)(A), (B), (C). Because ERISA is a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans," Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 90 (1983); Nachman Corp. v. Pension Ben. Guaranty Corp., 446 U.S. 359, 361-362 (1980), the Secretary briefly explains ERISA's statutory framework.

"Congress enacted ERISA in order to protect pensions and other delayed compensation

for the benefit of employees," M & R Investment Co., Inc. v. Fitzsimmons, 685 F.2d 283, 287 (9th Cir. 1982) (citation omitted), and to ensure the equitable character and financial soundness of employee benefit plans by "establishing standards of conduct, responsibility, and obligation for fiduciaries" with respect to those plans. ERISA § 2(b), 29 U.S.C. § 1001(b). The central standards of conduct are set forth in ERISA 404(a), 29 U.S.C. § 1104(a), which codifies principles developed in the common law of trusts and makes them applicable to employee benefit plans. Katsaros v. Cody, 744 F.2d 270, 279 (2d Cir.), cert. denied, 469 U.S. 1072 (1984). The fiduciary duties under ERISA are "the highest known to the law." Donovan v. Bierwirth, 680 F.2d 263, 272 n.8 (2d Cir.), cert. denied, 459 U.S. 1069 (1982).

Section 404(a)(1)(A) of ERISA codifies the duty of loyalty, and requires that a fiduciary act "solely in the interest" of a plan's participants and beneficiaries, and for the "exclusive purpose of: (I) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan." 29 U.S.C. § 1104(a)(1)(A). This rule against divided loyalties is designed "[t]o deter the trustee from all temptation and to prevent any possible injury to the beneficiary" and "must be enforced with 'uncompromising rigidity.'" NLRB v. Amax Coal Co., 453 U.S. 322, 329-330 (1981), quoting Meinhard v. Salmon, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928) (Cardozo, C.J.). Section 404(a)(1)(A) dictates that fiduciaries act with "an eye single" to the interests of the participants and beneficiaries of employee benefit plans. Bierwirth, 680 F.2d at 271. The findings and declaration of policy contained in Section 2(a) of ERISA, 29 U.S.C. § 1001(a), specifically cite Congress' concern with the adequacy of plan funds as a basis for the passage of ERISA: "owing to the inadequacy of current [pre-ERISA] minimum standards, the soundness and stability of plans with respect to

adequate funds to pay promised benefits may [have been] endangered."

The duty of prudence embodied in ERISA § 404(a)(1)(B), on the other hand, requires a fiduciary to discharge his duties "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B). The prudence standard contained in ERISA incorporates, but makes "more exacting[,] the requirements of the common law of trusts relating to employee benefit trust funds." Donovan v. Mazzola, 716 F.2d 1226, 1231 (9th Cir. 1983), cert. denied, 464 U.S. 1040 (1984). Prudence requires careful consideration of the merits of a transaction and thoughtful attention to the available alternatives. Brock v. Robbins, 830 F.2d 640, 648 (7th Cir. 1987) (fiduciaries violated duty of prudence by approving fee arrangement for claims-processing after minimal consideration, even though the fees paid were, in fact, reasonable). This is necessarily a "flexible standard," dependant upon the particular facts and circumstances of each individual situation. Donovan v. Cunningham, 716 F.2d 1455, 1464-65 (5th Cir. 1983), cert. denied, 467 U.S. 1251 (1984).

ERISA's core fiduciary obligations set forth in §§ 404(a)(1)(A) and (B) are supplemented by the per se prohibitions of section 406, 29 U.S.C. § 1106. Section 406 was drafted to bar entire categories of "insider" transactions that Congress believed posed an especially high risk of abuse of plan assets. Donovan v. Cunningham, 716 F.2d at 1464-65; Cutair v. Marshall, 590 F.2d 523, 528-31 (3rd Cir. 1979). The prohibited transaction rules "are an important part of Congress's effort to tailor traditional judge-made trust law to fit the activities of fiduciaries functioning in the special context of employee benefit plans." Donovan v. Cunningham, 716 F.2d at 1464.

In general, section 406(b) prohibits a fiduciary from dealing with plan assets in his own interest or for his own account and from acting on behalf of a party who has interests adverse to the plan in a transaction involving the plan. 29 U.S.C. § 1106(b). These prohibitions are absolute.

II. ERISA §404(A) DOES NOT PROHIBIT FIDUCIARIES FROM SERVING AS LEAD PLAINTIFFS IN CLASS ACTIONS.

The questioned posed by the parties opposing FSBA's motion is easily answered. There is nothing in ERISA which prohibits fiduciaries from serving as lead plaintiffs. ERISA's per se proscriptions are set forth in §§ 406(a) and (b), which bar various types of self-dealing as well as transactions benefitting parties with interests adverse to the plan. Here, there are no allegations that FSBA will itself benefit in any way by serving as lead plaintiff. Nor is it alleged that the other potential class members have interests opposed to the parties FSBA represents. Thus, under ERISA, FSBA would not be prohibited per se from serving as a lead plaintiff. In reaching the contrary conclusion, the Alsin and Texlon groups have adopted a false premise, which is that a fiduciary's duty to act exclusively in the interest of participants and beneficiaries prohibits them from taking actions that benefit their charges as well as parties with similar interests. That argument is not well-founded. ERISA addresses three groups in whose interest a fiduciary shall not act: (1) its own; (2) parties in interest; and (3) parties with interests adverse to the participants. Serving as lead plaintiff does not necessarily implicate any of these restrictions; in fact, the theory behind class actions is that the interests of the class members are similar and that consolidation of the actions is in the interest of the parties.

Moreover, courts have addressed whether an "incidental benefit" to other parties is a

violation of the exclusive benefit rule and have concluded that it is not. In Donovan v. Bierwirth, 680 F.2d 263, the court held that fiduciaries may take actions that benefit parties in interest as long as the actions are also in the best interest of participants and the decision was made with the interest of the participants in mind. 680 F.2d at 271. Other courts have similarly held that a fiduciary's actions may lawfully create an incidental benefit even to an affiliated party. See Trenton v. Scott Paper Co., 832 F.2d 806, 809 (3rd Cir. 1987). cert. denied. 485 US 1022 (1988); Donovan v. Walton, 609 F. Supp. 1221, 1245-46 (S.D. Fla. 1985), aff'd sub. nom Brock v. Walton, 794 F.2d 1190,1196 (E.D.N.Y. 1986).[1] Thus, FSBA is not precluded from serving as a lead plaintiff simply because to do so may benefit the other class members.

Not only is a fiduciary not prohibited from serving as a lead plaintiff, the Secretary believes that a fiduciary has an affirmative duty to determine whether it would be in the interest of the plan participants to do so. The Secretary has previously taken the position that it may not only be prudent to initiate litigation, but also a breach of a fiduciary's duty to not pursue a valid claim. See, e.g., Martin v. Feilen, 965 F.2d 660, 667 (8th Cir. 1992) (Secretary of Labor may sue a fiduciary for breach of fiduciary duty for deciding not to pursue a derivative claim). This position arises out of ERISA's prudence requirement, which encompasses "several narrower duties which have evolved under the law of trusts" including "the duty to take reasonable steps to realize on claims held in trust." Donovan v. Bryans, 556 F. Supp. 1258, 1262 (E.D. Pa. 1983).

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[1] Congress also anticipated that certain actions by a fiduciary might benefit others as well as the participants of a particular plan and provided that the Secretary shall establish exemptions from section 406(a)'s party-in-interest restrictions. Such exempted transactions must, among other things, be in the interest of the participants and beneficiaries. 29 U.S.C. § 1108(a), ERISA § 408(a).

See also Central States Pension Fund v. Central Transp., 472 U.S. 559.572 (1985) ("One of the fundamental common law duties of a trustee is to preserve and maintain trust assets.). See also IIA Scott on Trusts, § 177; Restatement (Second) on Trusts. §177 (1959). In McMahon v. McDowell, 794 F.2d 100, 108-113 (3rd Cir.), cert. denied, 479 U.S. 971 (1986), the court noted that this duty to pursue litigation is not absolute; it merely requires that the option be considered and that a claim could be abandoned if determined to be futile. Similarly, in a class action context, a fiduciary must determine whether it would be in the best interest of the plan to serve as the lead plaintiff. For example, a fiduciary may have a duty to serve as lead plaintiff where no single individual has sufficient interest or resources to serve in such capacity or where, as a large stakeholder, the fiduciary has an interest in assuring that an alternate class representative with a less substantial stake in the outcome does not unduly compromise the interests of the class in settlement, fails to vigorously prosecute the action, or fails to protect the interests of the class vis a vis its attorneys.

Once a fiduciary governed by ERISA takes on the duties of a federal class representative, he cannot favor his plan's interest over the interests of other class members without violating Rule 23. See Fed. R. Civ. Proc. (a)(4). It is this potential conflict with the duties owed to his plan that forms the basis for arguing that plan fiduciaries are unsuitable class representatives. Once a plan fiduciary determines that it is in the interest of the plan for him to voluntarily assume the duties to other class members, however, he must abide by the applicable law creating those duties, unless the law is preempted by ERISA. Because ERISA explicitly saves from preemption other applicable federal law in section 514(d), 29 U.S.C. § 1144(d) , Rule 23 duties are not superseded by ERISA. A plan fiduciary must act for the interests of his plan to the extent

such actions do not involve violating otherwise applicable federal law, in this case Rule 23.

By analogy, the Florida statute incorporating ERISA's duties must be read in harmony with Rule 23, since under the Supremacy Clause, it cannot preempt Rule 23. The public plan fiduciary with ERISA-like duties must act in the interests of the plan, to the extent that he can without running afoul of his Rule 23 duties. For the fiduciary to undertake class representative status is no different than for the fiduciary to engage in any act which would subject the fiduciary to federal law. For example, a fiduciary on behalf of a plan cannot buy and operate a radio station without complying with federal law requiring that he act in the public interest in operating the station. See 47 U.S.C. § 151 et seq. (1998).

This does not mean that the fiduciary rules are irrelevant to a fiduciary's decision to undertake the role of class representative. At the time the fiduciary decides whether to volunteer himself for such a role, he must decide whether fulfilling his duties as class representative subject to the constraints of Rule 23 is in the interest of the plan to which he owes fiduciary duties. Once having satisfied himself, however, he must abide by applicable non-preempted law.

CONCLUSION

For the foregoing reasons. the Secretary requests that the Court hold that ERISA does not per se preclude a fiduciary from serving as a lead plaintiff in a class action.

Dated: April 23, 1999

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April 1999, I caused true and correct copies of the foregoing to be served by first class mail, postage prepaid, or by Federal Express where noted, to the attached service list.

Paul Adair

PAUL C. ADAIR

ABRAHAM, FRUCHTER & TWERSKY, LLP

QUARTERLY PORTFOLIO MONITORING REPORT

RIVER BEND EMPLOYEES' RETIREMENT SYSTEM

1Q 2011

TABLE OF CONTENTS

I. Securities Litigation: A Review of 1Q 2011 3

II. Relevant Securities Fraud Cases Filed in 1Q 2011 5

A. Tekelec 5

B. Bank of America Corporation 7

C. China Valves Technology, Inc. 10

D. Itron, Inc. 12

E. Weatherford International, Ltd. 14

F. Finisar Corporation 16

G. Medifast, Inc. 18

H. Kid Brands, Inc. 20

I. China Integrated Energy, Inc. 22

J. Wilshire Bancorp, Inc. 24

K. Cisco Systems, Inc. 26

L. Urban Outfitters, Inc. 28

I. SECURITIES LITIGATION: A REVIEW OF 1Q 2011

In the first quarter 2011 ("1Q 2011"), there were 61 new securities class actions suits filed, an increase of nearly 50% from the fourth quarter 2010 ("4Q 2010"). China-based companies continued to be targeted in large concentration during 1Q 2011, as were companies in the information technology industry.[1]

In 1Q 2011, there were 11 new actions filed against China-based companies listed on U.S. exchanges. These lawsuits typically concern large discrepancies between revenue reported to the United States Securities and Exchange Commission ("SEC") and statements filed with the China State Administration for Industry and Commerce ("SAIC"). Such discrepancies have come to light in many instances due to the reports of anonymous short sellers utilizing pseudonyms such as "Alfred Little" and "Sinclair Upton Research." For example, the securities class action filed against China Integrated Energy, Inc. ("China Integrated"), alleges that company funds were transferred to certain executive officers through fraudulent sham transactions, and that China Integrated's SEC financial statements were significantly overstated, specifically with respect to China Integrated's operating subsidiary in China. Indeed, China Integrated reported 2009 net income of $130,000 in its SAIC filings, but reported net income of $38 million in its SEC filings.

A number of the securities class actions filed against information technology companies allege generally that those companies failed to disclose the known effects of increased competition and pricing pressures, which caused decreased product demand. For example, Finisar Corporation ("Finisar"), a supplier of components used to build file servers and base stations for wireless networks, is alleged to have failed to disclose, *inter alia*, that it was conceding to steep discounts on products to retain customers. In addition, the company failed to disclose that its increased revenues were not the result of organic growth, but also due, in part, to an inventory buildup by customers trying to hedge against supply chain uncertainty.

While private securities class action lawsuits targeting the financial sector were not as prominent during 1Q 2011 as they have been in recent quarters, the Federal Deposit Insurance Corporation ("FDIC") has authorized actions against 158 directors and officers of failed banks in an attempt to recover $3.6 billion. For example, one lawsuit against former Washington Mutual executives seeks to recover $900 million in losses caused by their gross negligence related to the lending practices that led to the bank's collapse. These FDIC lawsuits may spawn private actions alleging similar claims.

[1] Many of the statistics presented may be attributed to the "Securities Litigation Reaches a Crescendo: An Advisen Quarterly Report – Q1 2011," by John W. Moka III, Senior Industry Analyst and Editor, Advisen Ltd

The recovery for securities class action suits settled in 1Q 2011 was $54.6 million, including the $602 million settlement agreed to by Bank of America Corporation ("BoA"), the successor to Countrywide Financial Corporation. BoA inherited exposure to billions of dollars worth of redemptions and potential buy-backs from the sale of faulty mortgage loans, the true extent of which BoA hid from investors throughout the class period.

As shareholder litigation evolves in response to economic conditions, regulatory reforms, court decisions, and other factors, Abraham, Fruchter & Twersky, LLP ("AF&T") continues to monitor these important developments. This Quarterly Report is intended to provide the most current information regarding trends in the field and specific information regarding securities class action filings during 1Q 2011 that AF&T has investigated and found to be meritorious, and which relate to the holdings of River Bend Employees' Retirement System ("River Bend System"). Please note, the "Approximate Actionable Losses" presented in this report are based on the "First-In, First-Out" ("FIFO") and "Last-In, First-Out" ("LIFO") accounting methods, which are used by various courts to compare financial interests when appointing the Lead Plaintiff.

II. RELEVANT SECURITIES FRAUD CASES FILED IN 1Q 2011

A. TEKELEC

Company	Tekelec	
Ticker	NASDAQ: TKLC	
CUSIP	879101103	
Date Class Action Filed	January 6, 2011	
Date of PSLRA Notice	January 6, 2011	
Class Period	February 11, 2010 to August 5, 2010	
Presiding Court	Eastern District of North Carolina	
Complaint Caption(s)	*Pipefitters Local No. 636 Defined Benefit Plan, et al. v. Tekelec, et al.*, Docket No. 5:11-cv-00004-D (E.D.N.C.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (864,500.00)**	LIFO **$ (725,200.00)**

COMPANY BACKGROUND:

Tekelec, based in Morrisville, North Carolina, is a global provider of communication network software and systems that enable its customers, predominantly mobile or fixed line service providers, to deliver a range of communications services including number portability (*i.e*. the ability to transfer numbers between carriers), voice, text messaging, and mobile data services. Throughout the class period, Tekelec touted its growth in emerging markets such as India, where the government was in the process of mandating number portability and in which Tekelec had recently booked eight new contracts with telecommunications carriers to provide such services.

ALLEGATIONS:

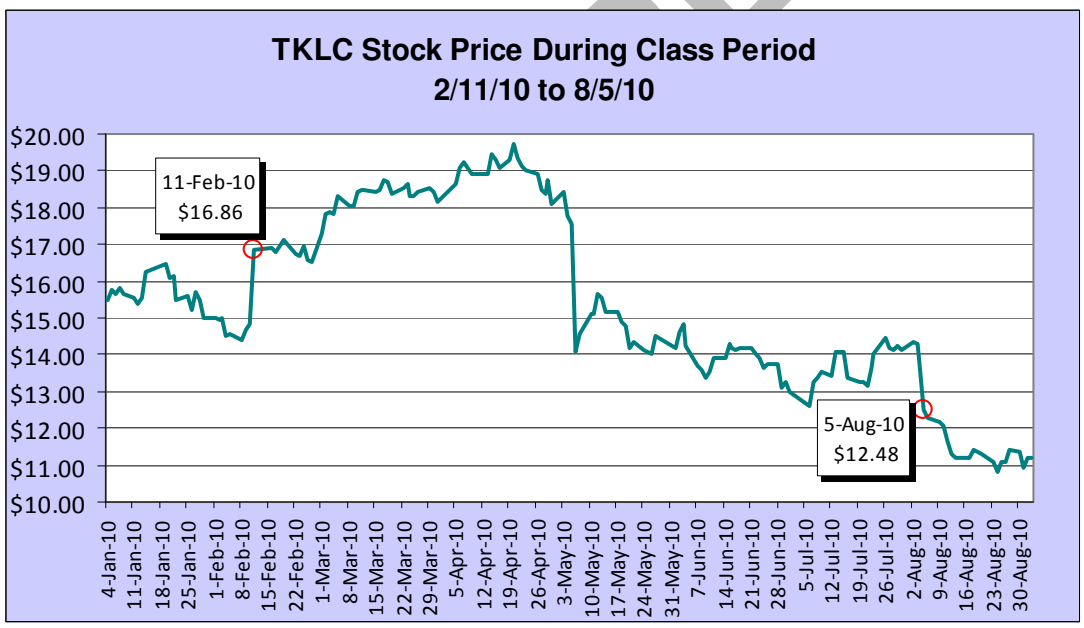
On January 6, 2011, a class action complaint was filed in the U.S. District Court for the Eastern District of North Carolina against Tekelec and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 [15 U.S.C. §§78j(b) and 78t(a)] (the "Exchange Act"), and Rule 10b-5 promulgated thereunder by the Securities Exchange Commission ("SEC") [17 C.F.R. §240.10b-5] ("Rule 10b-5") during the alleged class period of February 11, 2010 to August 5, 2010.

The complaint alleges that throughout the class period, defendants issued false and misleading statements regarding the company's operations and financial performance.

Specifically, defendants failed to disclose that: (i) the company was experiencing delays in fulfilling orders in India due in part to regulatory issues requiring Tekelec to receive a security clearance from the Indian government prior to receiving purchase orders from telecommunications carriers; (ii) service providers that contract with Tekelec in other emerging market regions such as the Middle East and Africa continued to be challenged with credit issues causing them to delay purchases; and (iii) the company was experiencing a sharp decline in new orders. The complaint alleges that as a result of the foregoing, defendants' representations concerning their "visibility" into the company's earnings were materially false and misleading.

The company's true prospects and financial condition were disclosed on August 5, 2010, when Tekelec issued a press release announcing its operating results for the second quarter 2010. The company's orders were $72.1 million, a decrease of 31% from the second quarter 2009, due primarily to a reduction in orders in emerging markets, and ongoing delays caused by security-related regulations imposed by the Indian government. Following the announcement, the price per share of Tekelec common stock fell more than 9%, or $1.29, to close at $12.48, on heavy trading volume.

HISTORICAL STOCK PRICE:



B. BANK OF AMERICA CORPORATION

Company	Bank of America Corporation	
Ticker	NYSE: BAC	
CUSIP	060505104	
Date Class Action Filed	February 2, 2011	
Date of PSLRA Notice	February 2, 2011	
Class Period	July 23, 2009 through October 19, 2010 (initially January 20, 2010 through October 19, 2010)	
Presiding Court	Southern District of New York	
Complaint Caption(s)	1st Filed Complaint: *Pipefitters Local No. 636 Defined Benefit Plan, et al. v. Bank of America Corporation, et al.*, Docket No. 1:11-cv-00733-WHP (S.D.N.Y.) 2nd Filed Complaint : *Patricia Grossberg Living Trust, et al. v. Bank of America Corporation, et al.*, Docket No. 1:11-cv-01982-WHP (S.D.N.Y.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (797,900.00**	LIFO **$ (730,700.00)**

COMPANY BACKGROUND:

Bank of America Corporation, based in Charlotte, North Carolina, is a bank holding company, and a financial holding company. BoA serves individual consumers, small and middle market businesses, corporations and governments with a range of banking, investing, asset management, and other financial and risk management products and services. On July 1, 2008, BoA acquired Countrywide Financial Corporation, overnight becoming one of the largest mortgage lenders in the United States.

After acquiring Countrywide, BoA discovered serious deficiencies in Countrywide's mortgage origination and servicing practices, exposing the company to tens of billions of dollars due to potential repurchase demands from investors who had purchased these faulty loans from Countrywide. Throughout the class period, the company disregarded or hid its true exposure and repeatedly reassured investors that it had adequately reserved for any potential losses that would result from forced repurchases, and that its exposure was manageable.

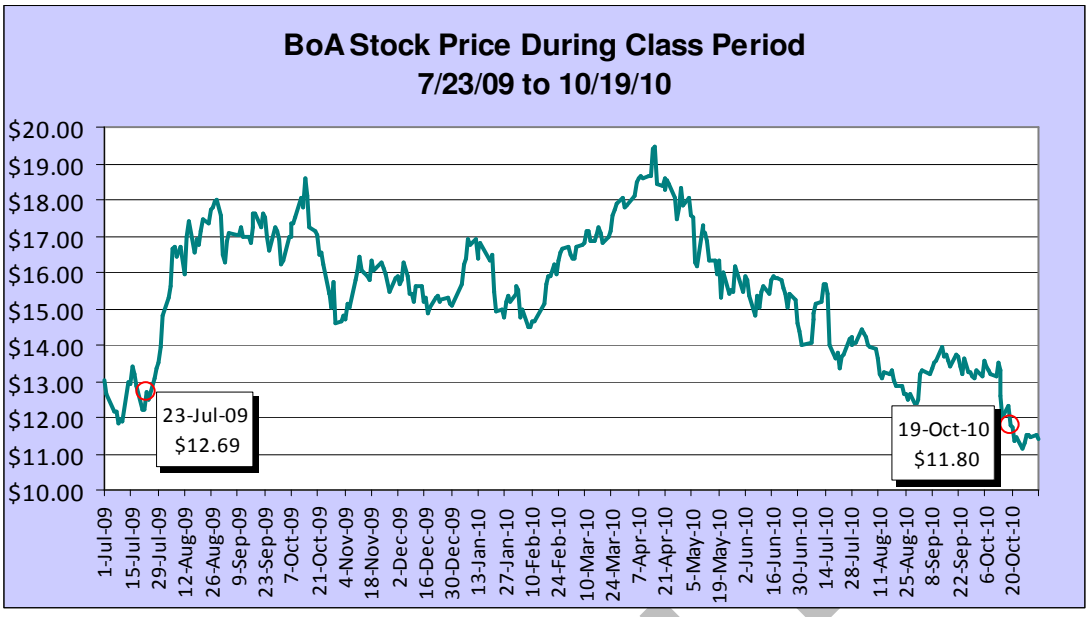
ALLEGATIONS:

On February 2, 2011, a class action complaint was filed in the U.S. District Court for the Southern District of New York against BoA and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 [15 U.S.C. §§78j(b) and 78t(a)] (the "Exchange Act"), and Rule 10b-5 promulgated thereunder by the Securities Exchange Commission ("SEC") [17 C.F.R. §240.10b-5] ("Rule 10b-5") during the period of January 20, 2010 to October 19, 2010. On March 25, 2011, a subsequent complaint was filed alleging identical claims during the extended class period of July 23, 2009 to October 19, 2010.

The complaints allege that throughout the class period, defendants issued false and misleading statements regarding the company's operations and financial performance. Specifically, defendants failed to disclose that: (i) BoA did not have adequate personnel to process the huge numbers of foreclosed loans in its portfolio; (ii) BoA, through Countrywide, had not properly recorded many of its mortgages when originated or acquired, which severely complicated the foreclosure process on a material portion of its defaulted mortgage portfolio; (iii) defendants failed to maintain proper internal controls related to processing of foreclosures; (iv) BoA's failure to properly process both mortgages and foreclosures impaired the ability of BoA to dispose of bad loans; and (v) BoA engaged in a practice known internally as "dollar rolling," which describes a short-term agreement in which the bank would move billions of dollars worth of mortgage-backed securities off its books to another entity, while agreeing to repurchase the package at a later date (usually after it had reported its quarterly financial statement to the SEC). Such transfers were recorded as "sales" when they were really a form of secured borrowing, and had the effect of hiding the staggering amount of debt exposure the bank was facing in its filed earnings reports over a period of several years.

On October 19, 2010, BoA announced its third quarter 2010 financial results, reporting a net loss of $7.3 billion and diluted earnings per share loss of $0.77. BoA further reported receiving $18 billion in claims related to faulty home loans that it may have to repurchase. On this news, the price per share of BoA dropped $0.54, or 5%, to close at $11.80 on heavy trading volume.

HISTORICAL STOCK PRICE:



C. CHINA VALVES TECHNOLOGY, INC.

Company	China Valves Technology, Inc.	
Ticker	NASDAQ: CVVT	
CUSIP	169476207	
Date Class Action Filed	February 4, 2011	
Date of PSLRA Notice	February 4, 2011	
Class Period	January 12, 2010 to January 13, 2011	
Presiding Court	Southern District of New York	
Complaint Caption(s)	*Donald Foster, et al. v. China Valves Technology, Inc., et al.*, Docket No. 1:11-cv-00796-LAK (S.D.N.Y.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (581,500.00)**	LIFO **$ (497,200.00)**

COMPANY BACKGROUND:

China Valves Technology, Inc. ("China Valves"), based in Kaifeng, China, is engaged in the development, manufacture, and sale of metal valves. The company sells its products to customers in the electricity, petroleum, chemical, water, gas, nuclear power station, and metal industries throughout China. On February 3, 2010, China Valves acquired Able Delight (Changsha) Valve Company, Ltd. ("Changsha Valve"). Then, on April 9, 2010, China Valves acquired Shanghai Pudong Hanwei Valve Co., Ltd. ("Hanwei Valve").

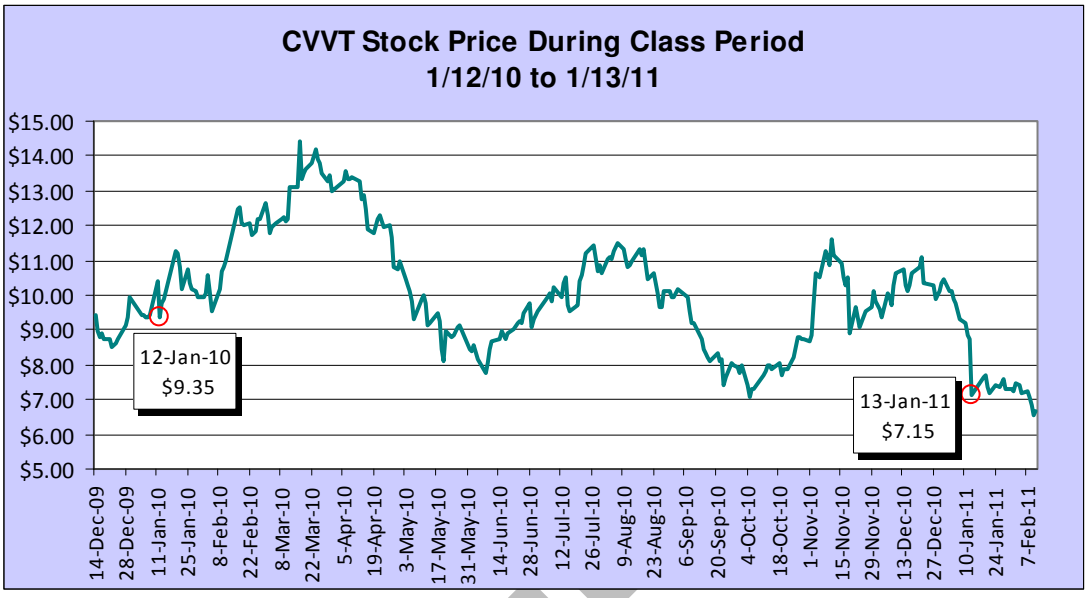
ALLEGATIONS:

On February 4, 2011, a class action complaint was filed in the U.S. District Court for the Southern District of New York against China Valves and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 during the period of January 12, 2010 to January 13, 2011.

As alleged in the complaint, defendants made false and misleading statements related to the company's acquisition of Changsha Valve and Hanwei Valve. On January 13, 2011, Citron Research published a report that China Valves concealed that both of these acquisitions involved payments to entities or persons that are related to management at China Valves. These payments violate Generally Accepted Accounting Principles ("GAAP") and SEC regulations. In addition, China Valves allegedly overstated the

business prospects and financial condition of Changsha Valve and Hanwei Valve. On this news, the price per share of China Valves stock fell more than 18%, or $1.57, to close at $7.15 that same day, on extremely heavy trading volume.

HISTORICAL STOCK PRICE:



D. ITRON, INC.

Company	Itron, Inc.	
Ticker	NASDAQ: ITRI	
CUSIP	465741106	
Date Class Action Filed	February 23, 2011	
Date of PSLRA Notice	February 23, 2011	
Class Period	April 28, 2010 to February 16, 2011	
Presiding Court	Eastern District of Washington	
Complaint Caption(s)	*Bill Coady, et al. v. Itron, Inc., et al.*, Docket No. 2:11-cv-00077-RMP (E.D. Wash.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (620,800.00)**	LIFO **$ (581,400.00)**

COMPANY BACKGROUND:

Itron, Inc. ("Itron"), based in Liberty Lake, Washington, is a provider of metering, data collection, and utility software solutions for the energy and water markets worldwide. The company's products include OpenWay meters and modules, which are automated meter reading systems that measure energy use. Throughout the class period, Itron boasted strong financial results, purportedly driven by substantial amounts of OpenWay contract shipments and new order bookings.

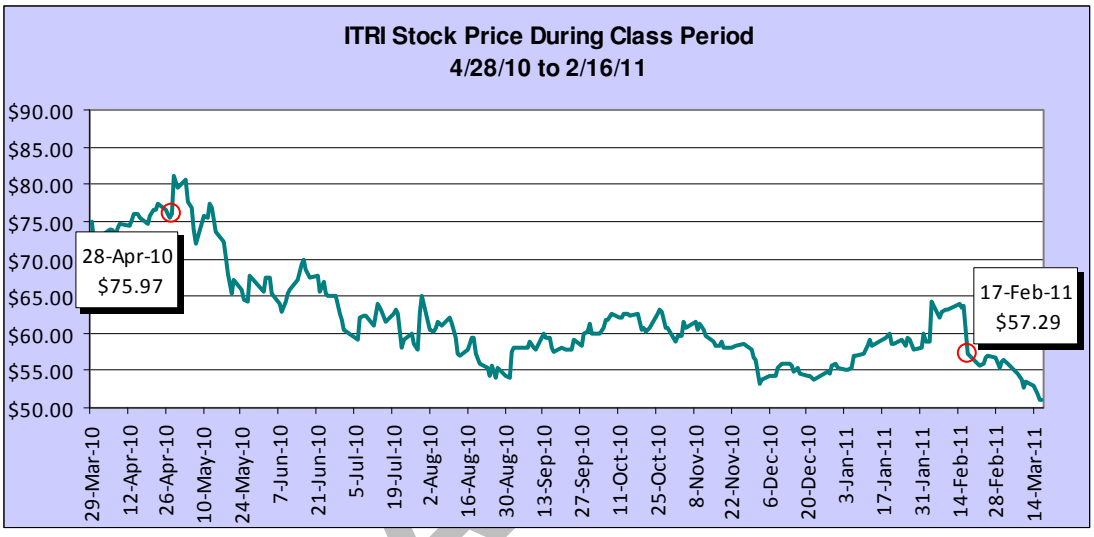
ALLEGATIONS:

On February 23, 2011, a class action complaint was filed in the U.S. District Court for the Eastern District of Washington against Itron and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 during the period of April 28, 2010 to February 16, 2011.

On February 16, 2011, Itron announced it would restate its financial results for the quarters ended March 31, June 30, and September 30, 2010, to correct improperly recognized revenue on an OpenWay contract shipment. The company's restatement reduced total revenue for the first nine months of 2010 by $6.1 million, and both GAAP and non-GAAP diluted earnings per share were reduced by $0.11 over this same period. On this news, the price per share of Itron stock declined nearly 10%, or $6.33, to close on February 17, 2011, at $57.29, on unusually heavy trading volume.

The complaint alleges that throughout the class period, defendants issued false and misleading statements regarding the company's operations and financial performance. Specifically, defendants failed to disclose that: (i) the company improperly recognized revenue on an OpenWay contract shipment due to a misinterpretation of an extended warranty obligation, which had the effect of reducing revenue and earnings in each of the first three quarters of 2010; (ii) as a result, the company's revenue and financial results were overstated during the class period; (iii) the company's financial results were not prepared in accordance with GAAP; (iv) the company lacked adequate internal and financial controls; and (v), as a result of the above, the company's financial statements were materially false and misleading at all relevant times.

HISTORICAL STOCK PRICE:



E. WEATHERFORD INTERNATIONAL, LTD.

Company	Weatherford International, Ltd.	
Ticker	NYSE: WFT	
CUSIP	H27013103	
Date Class Action Filed	March 9, 2011	
Date of PSLRA Notice	March 10, 2011	
Class Period	April 25, 2007 to March 1, 2011	
Presiding Court	Southern District of New York	
Complaint Caption(s)	*Mike Dobina, et al. v. Weatherford International Ltd., et al.*, Docket No. 1:11-cv-01646-DLC (S.D.N.Y.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (641,800.00)**	LIFO **$ (559,400.00)**

COMPANY BACKGROUND:

Weatherford International Ltd. ("Weatherford"), based in Geneva, Switzerland, provides equipment and services to independent oil and natural gas producing companies worldwide for use in the drilling, evaluation, completion, production, and intervention of oil and natural gas wells. The company's stock trades on the NYSE and Weatherford files periodic financial reports with the SEC.

ALLEGATIONS:

On March 9, 2011, a class action complaint was filed in the U.S. District Court for the Southern District of New York against Weatherford and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 during the period of April 25, 2007 to March 1, 2011.

The complaint alleges that throughout the class period, Weatherford filed numerous false and misleading financial statements with the SEC, including Quarterly and Annual Earnings Reports on Forms 10-Q and 10-K, in addition to releasing a number of press releases announcing (mostly positive) earnings results during each respective period.

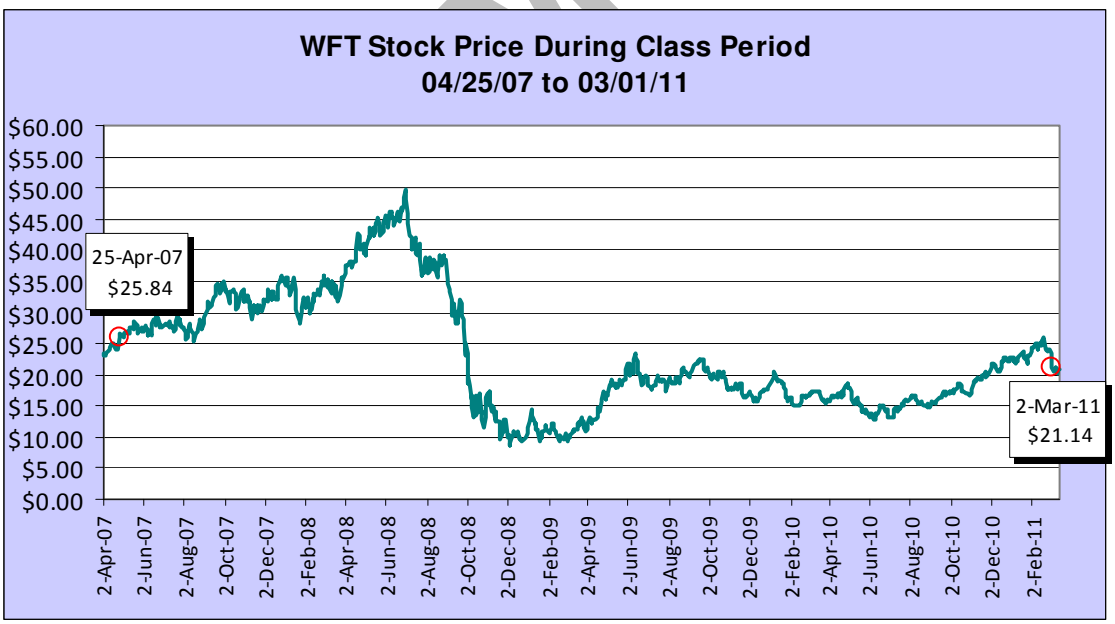
Indeed, it was later revealed that the internal processes within the company throughout the class period were riddled with material weaknesses, rendering the historical statements throughout the class period materially misleading and in violation of GAAP.

On March 1, 2011, the company announced that it would delay filing its earnings results for the year ended December 31, 2010 based on its identification of the following material weaknesses in the company's internal controls: (i) inadequate staffing and technical expertise within the company related to taxes; (ii) ineffective review and approval practices relating to taxes; (iii) inadequate processes to effectively reconcile income tax accounts; and (iv) inadequate controls over the preparation of quarterly tax provisions.

The company further stated that as a result of the above-mentioned material weaknesses in internal controls, it had identified errors that would required adjustments to Weatherford's historical financial statements and reported fourth quarter 2010earnings totaling approximately $500 million for the periods from 2007 to 2010. Approximately $460 million of these adjustments related to an error in determining the tax consequences of intercompany amounts over multiple years. Another $40 million related to the company's treatment of foreign tax assets. As a result of the anticipated adjustments, the company announced that its previously issued financial statements dating back to 2007 should no longer be relied upon.

In response to the company's March 1, 2011 announcement, the price per share of Weatherford stock fell more than 10%, or $2.38, from a close of $23.52 to close at $21.14 on March 2, 2011, on unusually heavy trading volume.

HISTORICAL STOCK PRICE:



F. FINISAR CORPORATION

Company	Finisar Corporation	
Ticker	NASDAQ: FNSR	
CUSIP	31787A507	
Date Class Action Filed	March 15, 2011	
Date of PSLRA Notice	March 15, 2011	
Class Period	December 2, 2010 to March 8, 2011	
Presiding Court	Northern District of California	
Complaint Caption(s)	*Martin Derchi-Russo, et al. v. Finisar Corporation, et al.*, Docket No. 5:11-cv-01252-JW (N.D. Cal.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (679,300.00)**	LIFO **$ (624,800.00)**

COMPANY BACKGROUND:

Finisar Corporation, based in Sunnyvale, California, is a provider of optical subsystems and components consisting primarily of transmitters, receivers, transceivers and transponders, which provide the fundamental optical-electrical interface for connecting the equipment used to build networks, including switches, routers, file servers, and base stations for wireless networks. Throughout the class period, Finisar assured investors of solid growth in product demand and normal levels of pricing pressures compared to the company's historical expectations.

ALLEGATIONS:

On March 15, 2011, a class action complaint was filed in the U.S. District Court for the Northern District of California against Finisar and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 during the period of December 2, 2010 to March 8, 2011.

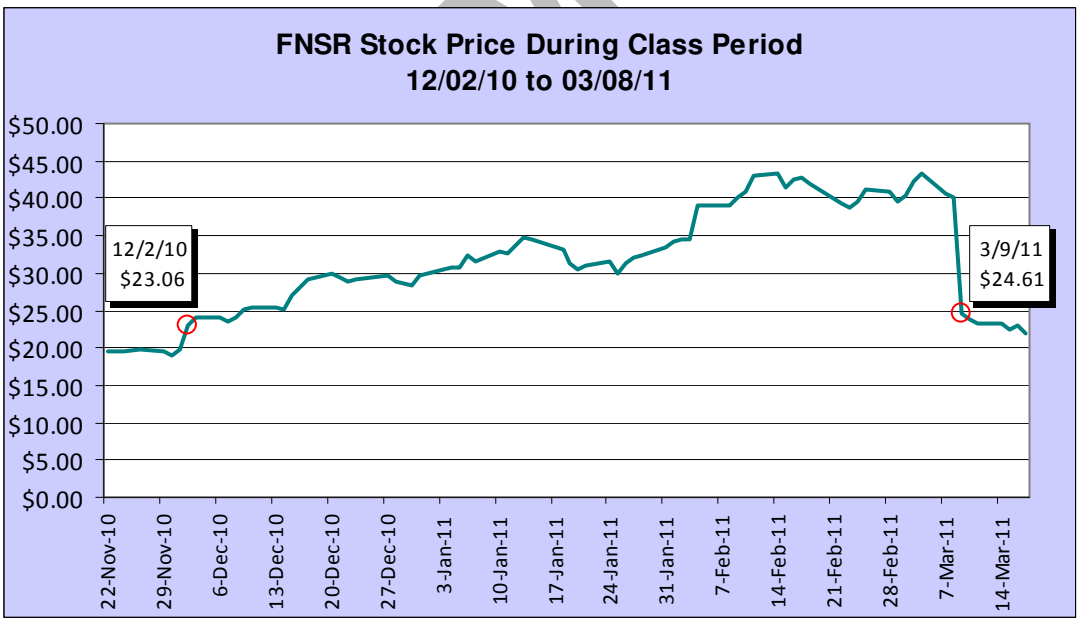
The complaint alleges that throughout the class period, defendants issued false and misleading statements regarding the company's operations and financial performance. Specifically, defendants failed to disclose that: (i) Finisar's recent revenue surge was not solely the result of organic growth from real end-market demand, but rather was partially due to an inventory buildup by the company's customers to cover any potential shortages and meet their current needs. (As the supply constraints loosened, the customers were

left with an oversupply of inventory and thus would need to decrease the amount of products they ordered from Finisar in order to reduce their inventory levels); (ii) Finisar was experiencing increasing pricing pressures due to a lack of demand and intense competition in the industry and, as a result, it was forced to concede to steep discounts in order to retain certain of its customers; (iii) Finisar was experiencing a serious slowdown in business from China, which would have a detrimental effect on the company's ability to continue growing at unprecedented rates; and (iv) their were known trends and uncertainties concerning its revenue growth rate.

On December 1, 2010, Finisar issued a press release announcing record revenues for the third quarter 2010. On this news, Finisar stock closed at $23.06 per share on December 2, 2010, a rise of $3.29 per share from the previous trading day. Then, on December 27, 2010, with the price of Finisar stock artificially inflated, Finisar completed a secondary offering that netted proceeds of $117.9 million.

Just three months later, after the market close on March 8, 2011, Finisar issued a press release announcing its third quarter fiscal year 2011 results and disclosed that its fourth quarter 2011 revenues would be much lower than analysts' estimates due to an oversupply of inventory in the market, pricing pressures, and a slowdown in business from China. On this news, the price per share of Finisar's stock fell $15.43, or 39%, to close at $24.61 on March 9, 2011, on unusually heavy volume.

HISTORICAL STOCK PRICE:



G. MEDIFAST, INC.

Company	Medifast, Inc.	
Ticker	NASDAQ: MED	
CUSIP	58470H101	
Date Class Action Filed	March 17, 2011	
Date of PSLRA Notice	March 18, 2011	
Class Period	March 4, 2010 to March 10, 2011	
Presiding Court	District of Maryland	
Complaint Caption(s)	*Oren Proter, et al. v. Medifast, Inc., et al.*, Docket No. 1:11-cv-00720-BEL (D. Md.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (837,300.00)**	LIFO **$ (778,600.00)**

COMPANY BACKGROUND:

Medifast, Inc. ("Medifast"), based in Owings Mills, Maryland, is engaged in the production, distribution, and sale of weight management and disease management products and other consumable health and diet products. The company's product lines include weight and disease management, meal replacement, and vitamins. Throughout the class period, Medifast touted its strong product growth and earnings across all of the company's product lines.

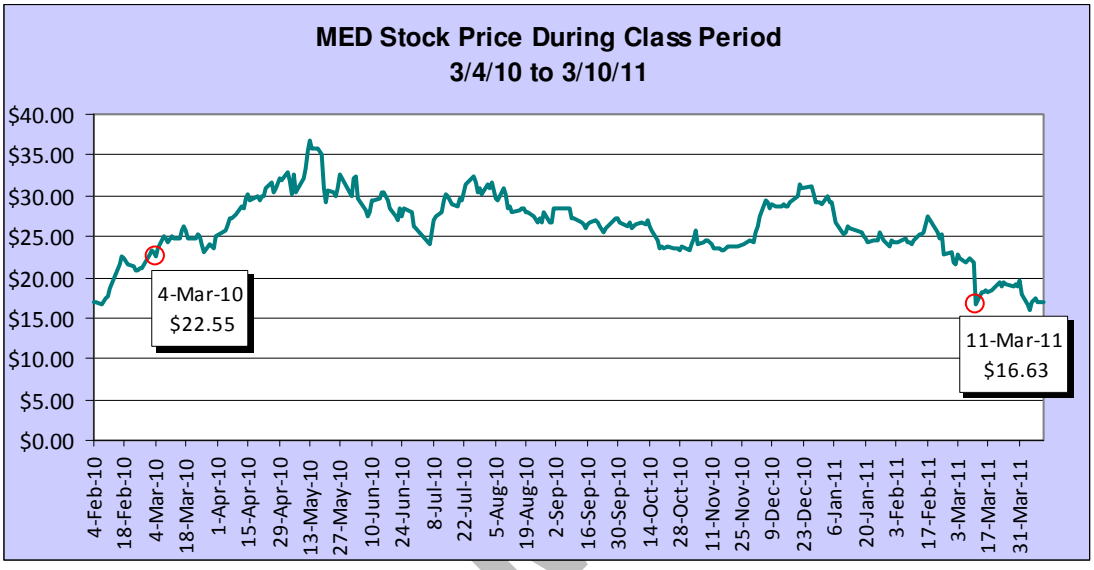
ALLEGATIONS:

On March 17, 2011, a class action complaint was filed in the U.S. District Court for the District of Maryland against Medifast and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 during the period of March 4, 2010 to March 10, 2011.

The complaint alleges that throughout the class period, defendants issued false and misleading statements regarding the company's operations and financial performance. Specifically, defendants failed to disclose that: (i) the company was improperly recognizing certain expenses; (ii) the company lacked adequate internal and financial controls; and (iii) that, as a result of the foregoing, the company's financial results were materially false and misleading at all relevant times.

On March 11, 2011, the company disclosed that it would be forced to delay the filing of its fiscal year 2010 financial results and its Annual Report. According to the limited information provided by the company regarding the delay, Medifast required additional time to complete its year-end financial statements due to the need to review the recognition of certain expenses in prior periods. On this news, the price per share of Medifast stock declined $5.27, or more than 24%, to close at $16.63 on unusually heavy trading volume.

HISTORICAL STOCK PRICE:



H. KID BRANDS, INC.

Company	Kid Brands, Inc.	
Ticker	NYSE: KID	
CUSIP	49375T100	
Date Class Action Filed	March 22, 2011	
Date of PSLRA Notice	March 23, 2011	
Class Period	March 26, 2010 to March 15, 2011	
Presiding Court	District of New Jersey	
Complaint Caption(s)	*Shah Rahman, et al. v. Kid Brands, Inc., et al.*, Docket No. 2:11-cv-01624-JLL (D. N.J.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (592,100.00)**	LIFO **$ (556,800.00)**

COMPANY BACKGROUND:

Kid Brands, Inc. ("Kid Brands"), based in Wayne, New Jersey, is a designer, importer, marketer, and distributor of branded infant and juvenile consumer products including, among others things, infant bedding, nursery furniture, developmental toys, and baby care items. Throughout the class period, the company assured investors that it had adequate quality control procedures in place, particularly with respect to goods shipped from Asian ports through one of its subsidiaries, Lajobi, Inc. ("Lajobi").

ALLEGATIONS:

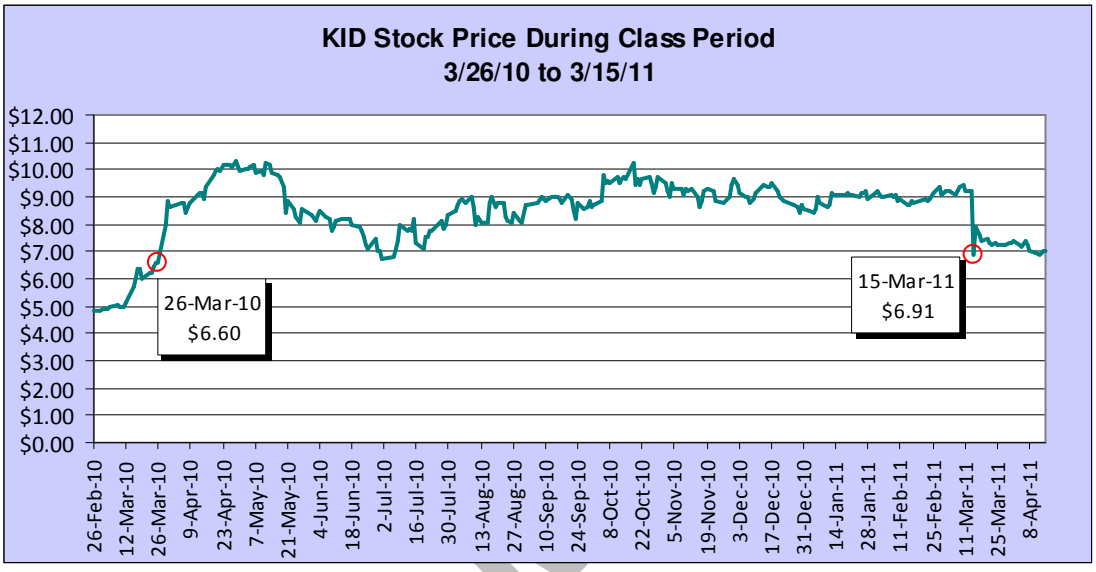
On March 22, 2011, a class action complaint was filed in the U.S. District Court for the District of New Jersey against Kid Brands and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 during the period of March 26, 2010 to March 15, 2011.

The complaint alleges that throughout the class period, defendants issued false and misleading statements regarding the company's operations and financial performance. On March 15, 2011, Kid Brands issued a press release announcing the termination of two high-level executives at LaJobi and admitting to a violation of United States Customs laws. Specifically, the company admitted to instances at LaJobi where incorrect import duties were applied on certain wooden furniture imported from vendors in China, resulting in a violation of anti-dumping regulations.

An internal company investigation revealed that there was misconduct involved on the part of certain LaJobi employees, and estimated that the company would incur costs of approximately $7 million relating to customs duty owed, and that it may be assessed a penalty by U.S. Customs officials.

On this news, the price per share of Kid Brands stock fell more than 25%, or $2.33, to close at $6.91 on March 15, 2011, on heavy trading volume.

HISTORICAL STOCK PRICE:



I. CHINA INTEGRATED ENERGY, INC.

Company	China Integrated Energy, Inc.	
Ticker	NASDAQ: CBEH	
CUSIP	16948P105	
Date Class Action Filed	March 25, 2011	
Date of PSLRA Notice	March 25, 2011	
Class Period	March 31, 2010 through April 21, 2011 (as amended)	
Presiding Court	Central District of California	
Complaint Caption(s)	*Larry Brown, et al. v. China Integrated Energy, Inc., et al.*, Docket No. 2:11-cv-02559-MMM (C.D. Cal.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (433,400.00)**	LIFO **$ (394,200.00)**

COMPANY BACKGROUND:

China Integrated Energy, Inc., based in Xi'an City, China, is an integrated energy company in China engaged in three business segments: the wholesale distribution of finished oil and heavy oil products, the production and sale of biodiesel, and the operation of retail gas stations. The company is headquartered in Delaware and its stock trades on the NYSE. Throughout the class period, China Integrated made regular SEC filings purporting to disclose all of the company's "related party transactions."

ALLEGATIONS:

On March 25, 2011, a class action complaint was filed in the U.S. District Court for the Central District of California against China Integrated and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 during the period of March 31, 2010 to March 16, 2011. On May 6, 2011, the complaint was amended to expand the class period to March 31, 2010 through April 21, 2011.

The complaint alleges that throughout the class period, defendants issued materially false and misleading statements regarding the company's business and financial results. Specifically, defendants transferred company funds to management insiders through fraudulent sham acquisitions, and also fabricated SEC financial statements.

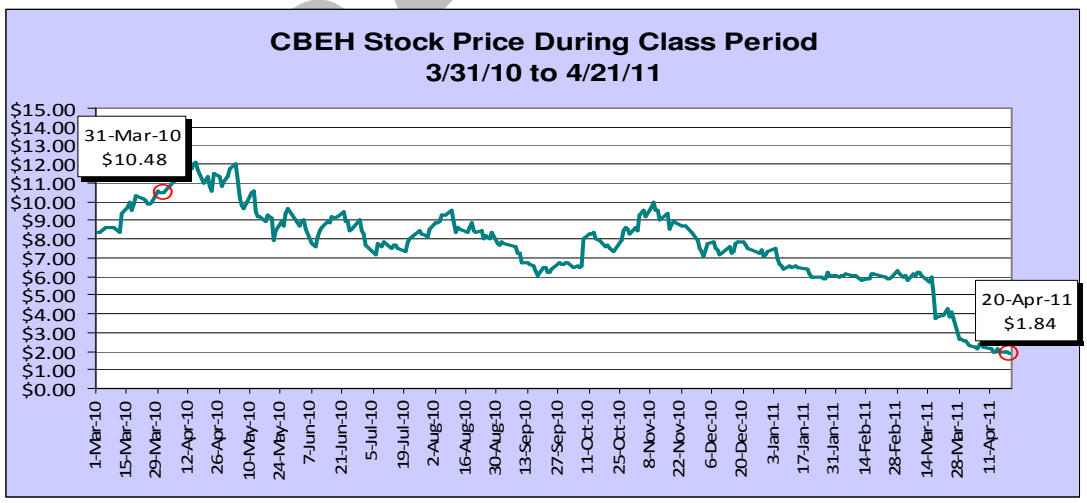
On March 13, 2010, the company issued its financial results for 2009. Under the heading "related party transactions," the company failed to disclose payments amounting to $35 million dollars made by the company to entities in which the CEO's firstborn son, Gao Bo, held controlling interests. The company's subsequent financial statements for the first, second, and third quarters of 2010 also failed to disclose these related-party transactions.

Investors first learned of these improper transactions on March 16, 2011, when a firm utilizing the pseudonym "Sinclair Upton Research" published a report alleging that China Integrated concealed a host of transactions that had the effect of funneling cash to the company's officers and directors. In addition, the report cited inconsistent filings with the Chinese SAIC in alleging that China Integrated misrepresented its financial performance, business prospects, and financial condition to investors. It claimed that the company's CEO had been funneling money to corporations owned by Gao Bo. On this news, the company's stock price fell nearly 37%, to close at $3.77 per share on March 17, 2011, on unusually heavy trading volume.

On March 22, 2011, the company issued a press release conceding to one of the related party transactions revealed in the Sinclair Upton Research report. On this news, the price per share of China Integrated stock fell nearly 10% to close at $3.83 on March 23, 2011, on heavy trading volume.

Then, on April 20, 2011, trading in the company's stock was halted at $1.84 per share by the NASDAQ, and will remain halted until China Integrated has fully satisfied NASDAQ's request for additional information.

HISTORICAL STOCK PRICE:



J. WILSHIRE BANCORP, INC.

Company	Wilshire Bancorp, Inc.	
Ticker	NASDAQ: WIBC	
CUSIP	97186T108	
Date Class Action Filed	March 29, 2011	
Date of PSLRA Notice	March 29, 2011	
Class Period	March 15, 2010 to March 16, 2011	
Presiding Court	Central District of California	
Complaint Caption(s)	*Michael Fairservice, et al. v. Wilshire Bancorp, Inc., et al.*, Docket No. 2:11-cv-02645-VBF (C.D. Cal.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (685,300.00)**	LIFO **$ (624,600.00)**

COMPANY BACKGROUND:

Wilshire Bancorp, Inc. ("Wilshire Bancorp"), based in Los Angeles, California, is a bank holding company offering a range of financial products and services primarily through its main subsidiary, Wilshire State Bank, a California state-chartered commercial bank. It operates in three primary business segments: Banking Operations; Trade Finance Services; and Small Business Administration Lending Services. Throughout the class period, Wilshire Bancorp assured investors it had adequate internal controls in place and would closely follow its underwriting policies and procedures in extending credit.

ALLEGATIONS:

On March 29, 2011, a class action complaint was filed in the U.S. District Court for the Central District of California against Wilshire Bancorp and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 during the period of March 15, 2010 to March 16, 2011.

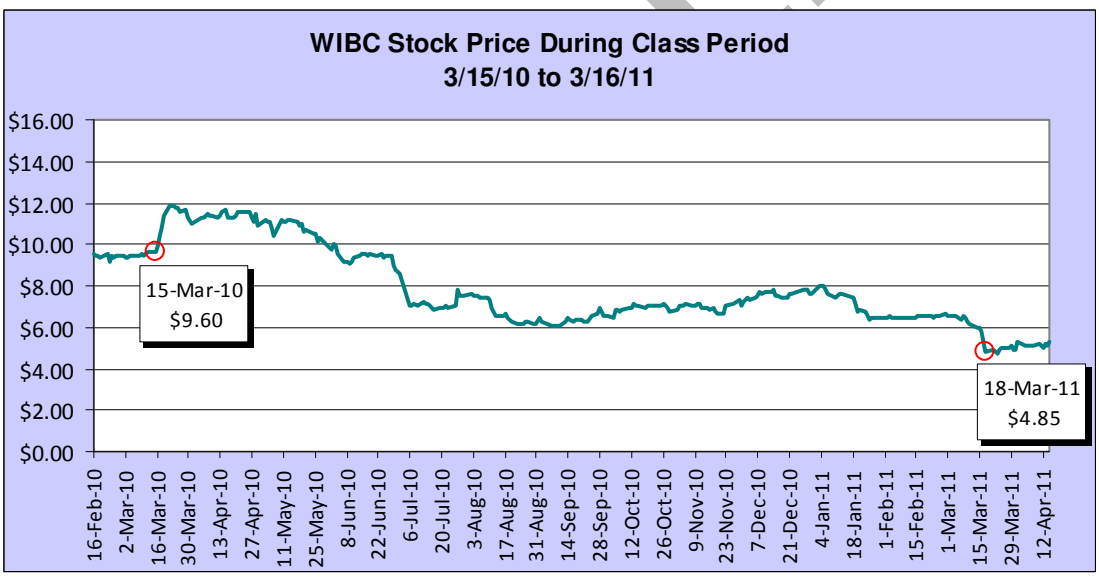
The complaint alleges that throughout the class period, defendants issued false and misleading statements regarding the company's operations and financial performance. Specifically, defendants failed to disclose that the company: (i) had deficiencies in its underwriting, origination, and renewal processes and procedures; (ii) was not adhering to its underwriting policies; and (iii) lacked adequate internal and financial controls. As a

result of the above, the company's statements were materially false and misleading at all relevant times.

On March 16, 2011, Wilshire Bancorp disclosed that it had conducted an internal investigation with assistance of outside independent professional firms and the company's internal audit department, and discovered a significant deficiency in the operating effectiveness of loan underwriting, approval, and renewal processes for those loan originations and asset sales associated with a former loan officer. Further, the company disclosed that these processes lacked effective supervision and oversight and that the company's operating efficiencies were hindered by the former chief executive officer and other management personnel.

As a result of this news, the price per share of Wilshire Bancorp stock declined $0.54, or more than 9%, to close on March 17, 2011 at $5.27, on unusually heavy trading volume. The following day, Wilshire Bancorp shares further declined another $0.42 per share, or nearly 8%, to close on March 18, 2011, at $4.85 per share.

HISTORICAL STOCK PRICE:



K. CISCO SYSTEMS, INC.

Company	Cisco Systems, Inc.	
Ticker	NASDAQ: CSCO	
CUSIP	17275R102	
Date Class Action Filed	March 31, 2011	
Date of PSLRA Notice	March 31, 2011	
Class Period	February 3, 2010 through February 9, 2011 (Initially May 12, 2010 through February 9, 2011).	
Presiding Court	Northern District of California	
Complaint Caption(s)	1st Filed Complaint: *Harry Schipper, et al. v. CISCO Systems, Inc., et al.*, Docket No. 3:11-cv-01568 (N.D. Cal.) 2nd Filed Complaint: *Christine Ziolkowski, et al. v. Cisco Systems, Inc., et al.*, Docket Number: 3:11-cv-01782-CRB (N.D. Cal.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (808,900.00)**	LIFO **$ (729,700.00)**

COMPANY BACKGROUND:

Cisco Systems, Inc. ("Cisco"), based in San Jose, California, designs, manufactures, and sells internet protocol-based networking and other products related to the communications and information technology industry. The company conducts business globally and is primarily managed on a geographic basis via five segments: U.S. and Canada, European Markets, Emerging Markets, Asia Pacific, and Japan. Throughout the class period, Cisco announced strong revenue growth across all geographic segments, and made numerous positive statements about the company and its prospects, including increased growth rates, market share, orders, new product introductions, and gross and operating margins.

ALLEGATIONS:

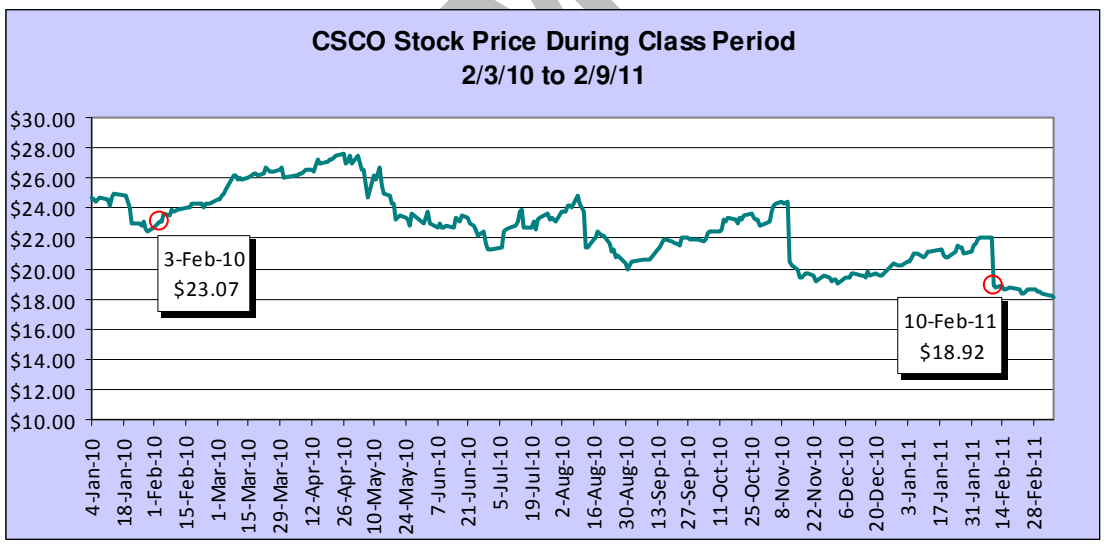
On March 31, 2011, a class action complaint was filed in the U.S. District Court for the Northern District of California against Cisco and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 during the period of May 12, 2010 to February 9, 2011. On April 12, 2011, a subsequent complaint

was filed alleging identical claims during the extended class period of February 3, 2010 to February 9, 2011.

The complaints allege that throughout the class period, defendants issued false and misleading statements regarding the company's operations and financial performance. Specifically, defendants failed to disclose that: (i) Cisco was facing intense pricing pressure for its products from its more traditional competitors and emerging Chinese competitors; and (ii) in order to maintain market share and meet its previously announced growth rate targets in the face of the intense pricing pressure being exerted by the company's competitors, Cisco was forced to dramatically lower prices, which was having a material adverse effect on the company's margins. As a result of the foregoing, defendants lacked a reasonable basis for their positive statements about Cisco's financial condition and prospects.

On February 9, 2011, Cisco held a conference call announcing disappointing financial results for the second quarter of fiscal year 2011, noting that non-GAAP gross margins were 62.4%, down 1.9% quarter-over-quarter and 3.2% year-over-year. Product related non-GAAP gross margins for the second quarter were 61.1%, down 2.9% from the prior quarter. In response to the unexpected drop in Cisco's margins, the price per share of Cisco stock fell $3.12, or more than 14%, to close the following trading day at $18.92, on extremely heavy trading volume.

HISTORICAL STOCK PRICE:



L. URBAN OUTFITTERS, INC.

Company	Urban Outfitters, Inc.	
Ticker	NASDAQ: URBN	
CUSIP	917047102	
Date Class Action Filed	March 31, 2011	
Date of PSLRA Notice	April 1, 2011	
Class Period	November 15, 2010 to March 7, 2011	
Presiding Court	Eastern District of Pennsylvania	
Complaint Caption(s)	*Edward R. Koller, III, et al. v. Urban Outfitters, Inc., et al.*, Docket No. 2:11-cv-02292-GP (E.D. Pa.)	
Approximate Actionable Losses Sustained by River Bend System	FIFO **$ (346,800.00)**	LIFO **$ (327,600.00)**

COMPANY BACKGROUND:

Urban Outfitters, Inc. ("Urban Outfitters"), based in Philadelphia, Pennsylvania, is a lifestyle specialty retail company that operates under the *Urban Outfitters*, *Anthropologie*, *Free People* and *Terrain* brands. Its retail stores offer differentiated collections of fashion apparel, accessories, and home goods. Throughout the class period, Urban Outfitters assured investors that the company would be able to manage the emerging shifts in fashion trends and that the company had effective inventory management controls and systems.

ALLEGATIONS:

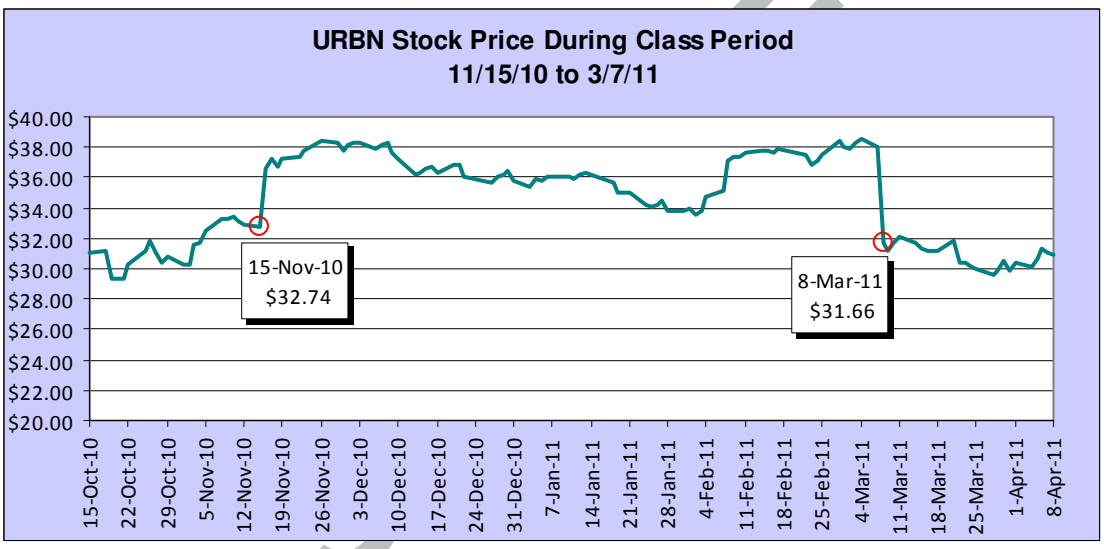
On March 31, 2011, a class action complaint was filed in the U.S. District Court for the Eastern District of Pennsylvania against Urban Outfitters and certain of its executive officers, alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 during the period of November 15, 2010 to March 7, 2011.

The complaint alleges that throughout the class period, defendants issued false and misleading statements regarding the company's operations and financial performance. Specifically, defendants failed to disclose that: (i) the company's inventories were increasing materially more than sales; and (ii) sales at the company's namesake *Urban Outfitters* store and *Anthropologie* division were materially declining due to lack of customer demand, especially for women's apparel. As a result of the foregoing, the

company was forced to mark down the price of inventory, which materially adversely affected the company's margins and financial results for the quarter ended January 31, 2011.

On March 7, 2011, defendants disclosed the company's financial results for the quarter ended January 31, 2011. Among other things, the company disclosed (i) fourth quarter earnings of $75 million or $0.45 per share, significantly less than the $0.52 per share expected by analysts; (ii) that gross profit margin materially declined, primarily due to increased merchandise markdowns to clear seasonal inventory associated with changing women's apparel fashion trends; and (iii) total inventories grew by 23% on a year-over-year basis. On this news, the price per share of Urban Outfitters stock declined nearly 17%, or $6.33, to close at $31.66 the following trading day, on unusually heavy trading volume.

HISTORICAL STOCK PRICE:



ABRAHAM, FRUCHTER & TWERSKY, LLP

AF&T: Our Unique Portfolio Monitoring Services

- In house monitoring by attorneys and analysts - unlike many of our competitors **we do not outsource our portfolio monitoring** - therefore all data is kept strictly confidential.
- An AF&T niche is the service of the smaller and midsize pension fund - we monitor with an eye toward recovering money for our funds in an individualized way that best suits the needs of each of our public pension fund clients.
- AF&T investigates ALL claims big and small alike.
- AF&T will customize quarterly reports for your Fund detailing every loss you suffer.
- AF&T is a team player and when appropriate, works with other Law Firms to best serve the interest of the Fund.
- AF&T is concerned with all your Fund's losses and rights and is not just concerned with cases in which we can generate a large fee.
- AF&T is creative in our approach, we "think outside the box".
- We stay in direct contact with you as a Fund.
- You will know who we are and AF&T will not be a nameless firm who occasionally asks you to sign papers in order to file a suit.
- AF&T will attend board meetings at your request to explain any securities issues pertaining to your investment portfolio and shareholder litigation.
- As your monitoring counsel, we will work toward a personal relationship with both the Funds' board members and executive director.
- Atara Hirsch, who is an attorney as well as Director of Institutional Investor Services, will serve as the AF&T permanent liaison to the Fund and will be involved in all the firm's monitoring and litigation activities on behalf of your Fund.

SAXENA WHITE

February 2, 2016

Dear Mr. Kendig and Members of the FCERA Board of Trustees:

We at Saxena White P.A. ("Saxena White") appreciate the opportunity to address you and the Board regarding securities litigation and portfolio monitoring services and would be honored to provide such services to the Fresno County Employees' Retirement Association ("FCERA"). Here are some highlights of what makes us different:

We go the extra step: We are not a large firm with massive overhead. We handle only a few cases per year, enabling us to focus on client service and on effectively and efficiently handling litigation. Our attorneys are assigned to no more than two cases at a time, enabling them to become experts in that particular matter. Our strategy has been successful. In the history of our firm, we have lost motions to dismiss in only two cases (one on appeal) and have successfully litigated to resolution over 60 cases, with settlements in excess of $2 billion. Similar to FCERA's current law firms, Saxena White represents public pension funds in major cases nationwide, as well as international cases.

Foreign Litigation: We not only monitor foreign securities litigation, but we carefully assess our clients' exposure to foreign cases, recommend a course of action, and guide them through it. Ms. Saxena serves on the National Association of Public Pension Attorneys' securities litigation committee and committee for international litigation, and co-authored an extensive study. The article, "*Living in a Post-Morrison World: How to Protect Your Assets Against Securities Fraud*," focuses on the options to pursue recovery abroad. We do not accept any referral fees for assisting our clients in foreign litigation.

For example, in the existing case against Volkswagen pending in Germany and Holland, we have committed significant resources to analyzing and comparing the various foreign cases that have been filed, calculating our clients' losses, evaluating the best and most cost-effective opportunities for them and advising them accordingly. We have also been successful in grouping together larger clients losses for increased leverage to reduce fees in some international cases. Some of our clients have requested that we handle all paperwork and communications for foreign opt-in actions through a power of attorney, further reducing their burden to recover claims in this complex and developing area. We have developed affiliations with over thirty law firms in Europe and Asia to assist in protecting our clients' foreign assets, and also utilize three comprehensive subscription based financial databases to ensure all opt-in deadlines are analyzed and met. An example of our typical analysis for foreign matters is attached.

Claims Tracking: In addition to providing portfolio monitoring, we provide an auditing and claims tracking service, which helps ensure that claims are monitored in a timely and accurate manner. We work closely with your custodian bank, including sending the proof of claims forms in pending settlements and verifying their filing. While many custodian banks prepare reports detailing funds received through settlements, our service takes this an extra step by verifying that the amounts received match with the plans of allocation and distribution plans in settled cases.

Sophisticated Monitoring Technology: Saxena White provides 24/7 online access for monitoring clients. Our clients receive a unique login that allows them to log in through Saxena White's main page, and then be redirected to an extranet page that is supported by Saxena White. Detailed loss calculations; case descriptions and links to electronic dockets; notice of settlements and claim forms; individual alerts when a certain loss threshold is hit; auditing and claims tracking information, and up-to-date securities news are available to be viewed. This access can be customized for the client's preferences, to add or remove certain features. Saxena White also has the capability to provide webinars at any time upon request. We are happy to provide an online demonstration of the monitoring and claims tracking platform at FCERA's convenience.

Our Clients are Informed and Prepared: Keeping our clients informed is a cornerstone of our monitoring service. We provide our clients regular updates on cases they are both actively involved in and ones in which they may only have a small loss. Importantly, if our clients decide to take a lead plaintiff role in a case, we make sure they are knowledgeable and prepared for deposition and discovery, should it be necessary. In fact, our client was the only client certified as an adequate class representative in the massive securities fraud case against Lehman Brothers, resulting in a settlement of over $500 million. We proactively manage discovery in cases where our clients serve as lead plaintiffs, to ensure that there is a very minimal burden on fund staff.

Community Involvement: We are privileged to represent over 100 municipal, union, and state retirement systems nationwide. We not only learn our clients' preferences when it comes to reporting and participation in cases, but we involve ourselves in our clients' communities as well. We routinely participate in charity events that benefit our clients' charitable causes. We regularly prepare educational presentations for institutional investors, and frequently are asked to speak at conferences and seminars to address topics of interest to this audience.

Minority/Female Status: We are the only firm specializing in securities litigation which is federally certified and certified in several states as a female and minority owned business.

We are familiar with the highly regarded law firms that FCERA currently uses and we co-monitor many funds with these same firms. We have worked with these firms successfully in the past, and would welcome the opportunity to work with them in the future for the benefit of FCERA. We would be happy to meet with you to address any questions you may have.

Very Truly Yours,

Maya Saxena

Maya Saxena

Volkswagen -- International Actions

Group	Venue	"Relevant Period"	Strategy	Fee Structure	Deadline	Opt-In Required	Notes
"Deminor Group" Funders - DRS Belgium SCRL / CVBA; Deminor Recovery Services (Luxembourg) SàRL Litigator(s) - TBD	Germany	Main Focus: May 1, 2014 through September 18, 2015 (subject to extension or shortening)	3 stage strategy: Stage 1. Tolling the statute of limitations for all clients by registering claims Stage 2. Participate in VW shareholders' meeting in April 2016 (asking for special audit; if rejected will ask Court to appoint special auditor) Stage 3. Monitor KapMuG proceedings through passive participation. Not recommending clients to seek lead plaintiff role in KapMuG proceedings. Recommending a passive role, so minimal discovery obligations to client. Deminor held a webcast on January 12, 2016 which we participated in. The webcast reviewed fee model, German law, litigation risk as well as the team's background in obtaining similar recoveries.	Pure contingency: *(Fee schedule based on stage)* - Phase I: 20% (request of special audit + monitoring of class action + tolling of statute of limitations) - Phase II: 27.5% (as from issuing of proceedings for the Deminor Group) - Phase III: 35% (if court decides to split up our case in individual cases). No recourse to client if fee shifting occurs.	February 28, 2016	Yes	Funders retain discretion over litigation decisions. 12/13/15: Marc spoke to Melissa Dubois at Deminor. Clients' data provided. Loss estimated at $1.4 million for shortened class period. Reviewed funding agreement, no issues all costs covered.
"Bentham Group" Funders – JV between Bentham Europe Limited and Elliot Management subsidiaries Litigator(s) – Quinn Emanuel Urquhart & Sullivan, LLP	Germany	Two sub-periods: January 1, 2009 through July 9, 2012 and July 10, 2012 through September 15, 2015	Losses on trades prior to July 9, 2012 will be pursued under German civil law (requiring a higher degree of involvement from the claimaint); losses suffered on trading after July 10, 2012 are claimable under the German Securities Trading Act.	Return of costs and a percentage of recovery, braodly in the range of between 15% to 30%, depending on the value of the claim and the time taken to achieve a recovery. They will propose specific pricing terms before entering into Funding Agreement	February 5, 2016 (Note: new extended deadline to provided by Bentham)	Yes	Funders retain discretion over litigation decisions
"DRRT Group" Funders – DRRT, Grant & Eisenhofer, Kessler Topaz Meltzer & Check and Claims Funding Europe Ltd Litigator(s) – TISAB law firm	Germany	January 6, 2008 through September 25, 2015	German Securities Trading Act claims (KapMuG model)	Pure contingency (most likely sliding scale based on size of recovery)	January 31, 2016	Yes	Funders retain discretion over litigation decisions
"RGRD Group" Funder - TBD Litigator(s) - Nieding and Barth; MüllerSeidelVos; RGRD	Germany	n/a	German Securities Trading Act claims (KapMuG model); filed with one large investor and will reportedly have an additional 60+ clients join claim	Pure contingency	Action already filed on or about January 18, 2016	Yes	http://www.ft.com/intl/cms/s/0/185c4086-bb9f-11e5-bf7e-8a339b6f2164.html#axzz3xp2WOu3x
"Labaton Group" Funder - Labaton Sucharow LLP, AKD Litigator(s) - Breiteneder Rechtsanwälte	Netherlands	April 23, 2008 through September 21, 2015	Claims filed by a claim vehicle known as "stichting," (or association): - Stepping stone to Class Settlement -No court supervision, No monetary damages or compensation, although a draft bill will likely be issued to enable monetary claims too. -No class, no class certification, no lead plaintiff. -acting in its own name on behalf of others people's interest that are appropriate to bundle	TBD by terms of Stichting (terms are vague and do not list fee agreement)	TBD	Yes (technically, requires signing claims over to nonprofit via power of attorney)	-Declaratory or injunctive relief, only binding between plaintiff and defendant (not binding on German actions)