

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE PENN WEST PETROLEUM LTD.  
SECURITIES LITIGATION

Master File No. 14-cv-6046-JGK

**JOINT DECLARATION OF JOHN RIZIO-HAMILTON AND  
LIONEL Z. GLANCY IN SUPPORT OF (I) LEAD PLAINTIFFS' MOTION  
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF  
ALLOCATION, AND (II) CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

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2	Declaration of Avi Rojany, in Support of (A) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; (B) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (C) Lead Plaintiff Avi Rojany's Request for Reimbursement of Costs and Expenses
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10	<i>In re Tower Grp. Int'l Ltd. Sec. Litig.</i> , 13 Civ. 5852 (AT), slip op. (S.D.N.Y. Nov. 23, 2015)

11	<i>In re Am. Express Fin. Advisors Sec. Litig.</i> , No. 04 Civ. 1773 (DAB), slip op. (S.D.N.Y. July 18, 2007)
12	<i>Arkansas Teacher Ret. Sys. v. Bankrate, Inc.</i> , No. 13-cv-7183 (JSR), slip op. (S.D.N.Y. Nov. 25, 2014)
13	<i>Cornwell v. Credit Suisse Grp.</i> , No. 08-cv-03758 (VM), slip op. (S.D.N.Y. July 18, 2011)

JOHN RIZIO-HAMILTON and LIONEL Z. GLANCY declare as follows:

**I. INTRODUCTION**

1. We, John Rizio-Hamilton and Lionel Z. Glancy, are partners in the law firms of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”), and Glancy Prongay & Murray LLP (“GP&M”), respectively.<sup>1</sup> BLB&G and GP&M (together, “Co-Lead Counsel”) represent the Court-appointed Lead Plaintiffs, the City of Miami Fire Fighters’ and Police Officers’ Retirement Trust and Avi Rojany (collectively, “Lead Plaintiffs”) in this consolidated securities class action lawsuit (the “Action”). We have personal knowledge of the matters set forth herein based on our active supervision of and participation in the prosecution and settlement of the claims asserted in the Action.

2. We respectfully submit this Declaration in support of Lead Plaintiffs’ motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the proposed settlement (the “Settlement”) that the Court preliminarily approved by its Order Preliminarily Approving Proposed Settlement and Providing for Notice filed March 1, 2016 (the “Preliminary Approval Order”). *See* ECF No. 124. We also respectfully submit this Declaration in support of: (a) Lead Plaintiffs’ motion for approval of the proposed plan for allocating the proceeds of the Settlement to eligible Settlement Class Members (the “Plan of Allocation”); and (b) Co-Lead Counsel’s motion for an award of attorneys’ fees in the amount of 25% of the Settlement Fund, reimbursement of Co-Lead Counsel’s expenses in the amount of \$320,317.47, and awards pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”) in the total amount

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<sup>1</sup> All capitalized terms that are not defined herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated as of February 12, 2016 (*see* ECF No. 121-1) (the “Stipulation”).

of \$5,241.44 for costs and expenses incurred by Lead Plaintiffs in connection with their representation of the Settlement Class (the “Fee and Expense Application”).<sup>2</sup>

3. The proposed Settlement now before the Court provides for the resolution of all claims in the Action in exchange for a cash payment of Can\$26,500,000, which equated to US\$19,759,282 on the date of payment, an amount which was based on acceptance of a mediator’s recommendation by the parties. As detailed herein, Lead Plaintiffs and Co-Lead Counsel respectfully submit that the Settlement represents a very favorable result for the Settlement Class in light of the significant risks in the Action. As explained further below, the Settlement provides a considerable benefit to the Settlement Class by conferring a substantial, certain and immediate recovery while avoiding the significant risks and expense of continued litigation, including the risk that the class could recover less than the Settlement Amount (or nothing) after years of additional litigation and delay.

4. The proposed Settlement is the result of significant efforts by Co-Lead Counsel, which included, among other things described herein: (a) conducting an extensive investigation of the claims asserted in the Action, including a detailed review of SEC filings, press releases, analyst reports, news reports and other public information, interviews with former Penn West employees, and consultation with accounting and damages experts; (b) researching and preparing

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<sup>2</sup> Unless otherwise expressly indicated, dollar amounts provided in this Declaration are in U.S. dollars. In conjunction with this Declaration, Lead Plaintiffs and Co-Lead Counsel, respectively, are also submitting a Memorandum of Law in Support of Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation (the “Settlement Memorandum”) and Memorandum of Law in Support of Co-Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Fee Memorandum”).

a detailed 116-page Consolidated Amended Class Action Complaint (“Complaint”) based on this investigation; (d) opposing Defendants’ motions to dismiss the Complaint; (e) engaging in a mediation process overseen by Judge Daniel Weinstein (Ret.) of JAMS, which involved written submissions concerning liability and damages, a full-day formal mediation session, consultations with Lead Plaintiffs’ damages expert, and weeks of follow-up negotiations; and (f) conducting substantial due diligence discovery that included the review of approximately 20,000 pages of documents and an interview of David Dyck, Penn West’s current CFO. Lead Plaintiffs and Co-Lead Counsel believed that the Settlement was in the best interests of the Settlement Class at the time the agreement to settle was initially reached, and this view was further confirmed by the due diligence discovery upon which the agreement to settle was conditioned. Lead Plaintiffs and Co-Lead Counsel are informed of the strengths and weaknesses of the claims and defenses in the Action and they believe the Settlement represents a favorable outcome of the Action for the Settlement Class.

5. As discussed in further detail below, the Plan of Allocation was developed with the assistance of Lead Plaintiffs’ damages expert, and provides for the distribution of the net proceeds of the Settlement to Settlement Class Members who submit Claim Forms that are approved for payment by the Court on a *pro rata* basis based on their losses attributable to the alleged fraud. With respect to the Fee and Expense Application, as discussed in the Fee Memorandum, the requested fee is well within the range of percentage awards granted by courts in this Circuit and across the country in comparable securities class actions. Additionally, the requested fee results in a multiplier of 1.94 on Co-Lead Counsel’s lodestar – which is well within the range of multipliers routinely awarded by courts in this Circuit and across the country.



6. For all of the reasons set forth herein and in the accompanying memoranda, including the quality of the result obtained and the numerous significant litigation risks discussed below, Lead Plaintiffs and Co-Lead Counsel respectfully submit that the Settlement and the Plan of Allocation are “fair, reasonable and adequate” and should be approved. In addition, Co-Lead Counsel respectfully submit that their request for attorneys’ fees and reimbursement of Litigation Expenses is also fair and reasonable, and should be approved.

## **II. PROSECUTION OF THE ACTION**

### **A. Background**

7. Defendant Penn West Petroleum Ltd. (“Penn West” or the “Company”) is one of the largest conventional oil and natural gas producers in Canada. Penn West is headquartered in Canada and its securities were traded on both the New York Stock Exchange (“NYSE”) in the U.S. and on the Toronto Stock Exchange (“TSX”) in Canada. Prior to January 1, 2011, Penn West operated as an income trust and its “trust units” were listed and traded on both the NYSE and TSX. On January 1, 2011, Penn West changed its corporate form and began to operate as a corporation, and its trust units were converted to shares of common stock on a one-for-one basis.

8. On July 29, 2014, Penn West announced that its Audit Committee was conducting an internal review of certain of the Company’s accounting practices and that it intended to restate the Company’s audited financial statements for 2012, 2013 and the first quarter of 2014, based on allegedly improper accounting practices adopted by “senior finance and accounting personnel” that had the effect of reducing operating costs and increasing reported capital expenditures and royalty expenses. On the first trading day after this announcement, Penn West’s stock price fell 14%. On September 18, 2014, Penn West announced the results of its internal review and restated its financials for 2012, 2013 and the first quarter of 2014.

9. Beginning on August 4, 2014, multiple putative securities class action complaints were filed in the United States District Court for the Southern District of New York (the “Court”).

10. On October 3, 2014, the City of Miami Fire Fighters’ and Police Officers’ Retirement Trust (“Miami FIPO”), Avi Rojany, and several other potential lead plaintiffs filed motions to be appointed lead plaintiff under the PSLRA and for appointment of their selected counsel. *See* ECF Nos. 10-41. On October 17, 2014, Miami FIPO and Mr. Rojany, recognizing that they had the “largest financial interest” of any of the lead plaintiff movants and following discussions with counsel for all other movants, filed a stipulation for the joint appointment of Miami FIPO and Mr. Rojany as lead plaintiffs. ECF No. 50. All other lead plaintiff movants consented to the stipulation and did not oppose Miami FIPO and Mr. Rojany’s appointment as lead plaintiffs.

11. Following a hearing on October 29, 2014, the Court entered an Order on October 29, 2014 that consolidated the related actions, appointed Miami FIPO and Mr. Rojany to serve as Lead Plaintiffs for the consolidated action, and approved Lead Plaintiffs’ selection of BLB&G and Glancy Binkow & Goldberg LLP (now known as Glancy Prongay & Murray LLP) to serve as Co-Lead Counsel. *See* ECF No. 61.

**B. The Preparation and Filing of the Complaint**

12. Co-Lead Counsel conducted a detailed investigation of Penn West and the alleged fraud in connection with researching, preparing and drafting the Complaint. This investigation included, among other things, a review and analysis of: (i) Penn West’s public SEC filings, including the Company’s July 29, 2014 announcement of its intention to restate its financial results and its September 18, 2014 restatement of financial results; (ii) public reports and news articles; (iii) research reports by securities and financial analysts; (iv) economic analyses of

securities movement and pricing data; (v) transcripts of Penn West's investor calls; and (vi) other publicly available material and data. As part of this investigation, investigators for Co-Lead Counsel also conducted interviews with numerous former Penn West employees and Co-Lead Counsel consulted with experts in the fields of accounting and damages.

13. On December 19, 2014, Lead Plaintiffs filed and served the 116-page Complaint. *See* ECF No. 71. The Complaint asserts claims for securities fraud under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder against Penn West and the Individual Defendants, and under Section 20(a) of the Exchange Act against the Individual Defendants. The Individual Defendants identified in the Complaint are William E. Andrew, Penn West's CEO from May 2005 through August 10, 2011; Murray R. Nunns, Penn West's CEO from August 10, 2011 through June 19, 2013; David E. Roberts, Penn West's CEO since June 19, 2013; Todd H. Takeyasu, Penn West's CFO from 2005 through March 24, 2014; and Jeffery Curran, Penn West's interim CFO from March 24, 2014 through May 1, 2014.

14. The Complaint alleges that, from February 18, 2010 through July 29, 2014, the Defendants materially misstated Penn West's financial results, including its operating expenses, assets, and net income, principally by miscategorizing operating expenses as capital expenses. The Complaint alleges that, as noted above, on July 29, 2014, Penn West disclosed that the Audit Committee of its Board of Directors was conducting an internal review of certain accounting practices, and that certain of Penn West's financial statements for prior years would be restated. The Complaint further alleges that, in response to this announcement, Penn West's stock price fell by more than 14% the next trading day.

**C. Defendants' Motion to Dismiss and Lead Plaintiffs' Opposition**

15. On March 6, 2015, Defendants served their motions to dismiss the Complaint. *See* ECF Nos. 82, 85, 88. In support of their motions, Defendants submitted 40 exhibits totaling over 300 pages. Defendants argued that the Complaint should be dismissed on numerous grounds.

16. For instance, Defendants contended that Lead Plaintiffs failed to allege facts giving rise to a “strong inference” of scienter as required to maintain a claim for securities fraud. Defendants advanced a number of contentions in support of this argument, including that: (i) there was no allegation that any Defendant benefited in any concrete or personal way from the misstatement of Penn West’s financials, such as through insider trading; (ii) the accounting errors at issue in Penn West’s restatement (principally, misclassification of operating expenses as capital expenses) were determinations that required the application of professional judgment; (iii) KPMG signed off each year on the accuracy of Penn West’s financial statements and the effectiveness of the Company’s internal accounting controls; and (iv) the Company’s executive officers relied on its accounting personnel and outside auditors, and promptly corrected and disclosed the accounting errors when those errors came to management’s attention.

17. Defendants also contended that certain of the alleged false statements, those concerning Penn West’s ability to control future costs, were statements of opinion that were honestly held at the time they were made and thus not actionable under the Second Circuit’s decision in *Fait v. Regions Financial Corporation*, 655 F.3d 105 (2d Cir. 2011).

18. Defendants further contended that Lead Plaintiffs could not plead loss causation based on Penn West’s November 6, 2013 announcement because the announcement was unrelated to the September 2014 restatement, and nothing in that announcement revealed anything about the improper classification of expenses.

19. Defendants Andrews and Nunns, former CEOs of Penn West, submitted their own additional briefs, adopting arguments asserted in the brief filed by Penn West and the other Individual Defendants and further contending that they made no actionable misstatements or omissions and cannot be held liable for failing to correct the alleged misrepresentations of other parties.

20. On April 24, 2015, Lead Plaintiffs served their omnibus opposition brief in opposition to Defendants' motions to dismiss. *See* ECF No. 94. In their opposition, Lead Plaintiffs contended that they adequately pled a strong inference of scienter for all Defendants, arguing that, among other things, the nature, duration and magnitude of the accounting violations, and Penn West's admission that senior finance and accounting personnel were responsible for the improper accounting practices, supported an inference of scienter. Responding to Defendants' remaining arguments, Lead Plaintiffs rebutted the assertion that certain of the alleged misstatements were inactionable opinions, and argued that loss causation and control person liability were adequately pled.

21. Defendants filed their reply papers in support of their motions to dismiss on May 15, 2015. *See* ECF Nos. 102, 103, 105.

**D. Mediation Before Judge Weinstein and the Negotiation of the Settlement**

22. In November 2015, while Defendants' motions to dismiss were pending, Lead Plaintiffs, the plaintiffs in related Canadian actions (the "Canadian Actions"), and Penn West agreed to engage in formal mediation in an effort to resolve this Action and the Canadian Actions.<sup>3</sup>

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<sup>3</sup> There are parallel securities class actions pending against Penn West in Canada, where Penn West is headquartered, which are based on the same facts alleged in this Action. The Canadian

23. Lead Plaintiffs and Co-Lead Counsel believed that a strategy of prompt mediation was in the best interests of Lead Plaintiffs and the class based on the substantial deterioration in Penn West's financial condition during the course of the litigation due to the sharp decline in oil prices. As explained in greater detail in Section III-A below, Co-Lead Counsel believed that, as a result of this deterioration, Penn West had little or no assets to satisfy a judgment against it and that its insurance would be the only substantial source of recovery for both the U.S. Action and the Canadian Actions. The available insurance was also being reduced by the costs of defending these actions, and the insurance would have been depleted at a substantially greater rate if the actions proceeded into discovery or to trial. Co-Lead Counsel also considered the risk that Penn West might file for bankruptcy before a resolution could be reached, which would have made obtaining any recovery at all from the Company extremely difficult and time consuming.

24. Accordingly, the Parties agreed to retain Judge Daniel Weinstein (Ret.) of JAMS to act as a mediator. Judge Weinstein is a retired California State Court Judge and an experienced mediator who has successfully mediated many complex securities cases.

25. On November 24, 2015, Lead Plaintiffs, the plaintiffs in the Canadian Actions, and Penn West exchanged mediation statements, which addressed issues of liability, damages, and Penn West's ability to fund a settlement or judgment. On December 8, 2015, the Parties participated in an all-day mediation in Toronto under the auspices of Judge Weinstein. However, a settlement was not reached at that time. Thereafter, settlement discussions continued and, on December 18, 2015, Judge Weinstein issued a mediator's recommendation that this Action and

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Actions were at a similar stage as the U.S. Action, and the Parties agreed that given the limited financial resources available to settle all litigation, the U.S. and Canadian actions should both participate in any attempt to settle the cases.

the Canadian Actions be settled for a total of Can\$53 million, which was to be apportioned evenly between this Action and the Canadian Action given that the trading volume on the two exchanges was approximately equal.

26. The Parties accepted Judge Weinstein's recommendation on January 4, 2016, and thus reached an agreement in principle to settle the U.S. Action for Can\$26.5 million. Following substantial additional negotiations between Lead Plaintiffs and Defendants on a number of non-monetary issues, including the terms of the class release, Defendants' right to terminate the Settlement if a certain threshold of opt-outs is reached, and Lead Plaintiffs' right to conduct due diligence discovery to confirm the reasonableness of the Settlement, the agreement to settle was memorialized in a term sheet (the "Term Sheet") executed on February 5, 2016. The Term Sheet set forth, among other things, the Parties' agreement to settle and release all claims referenced therein in return for a cash payment of Can\$26,500,000 that Penn West would cause to be paid from insurance proceeds for the benefit of the Settlement Class.

27. Thereafter, the Parties negotiated the final terms of the Settlement and drafted the Stipulation and Agreement of Settlement and related settlement papers. The Stipulation (*see* ECF No. 121-1) was executed on February 12, 2016 and was submitted to the Court as part of Lead Plaintiffs' February 12, 2016 motion for preliminary approval of the Settlement and certification of the Settlement Class. *See* ECF Nos. 121-122.

28. On March 1, 2016, the Court entered the Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order"), which preliminarily approved the Settlement, certified the Settlement Class for settlement purposes, appointed Lead Plaintiffs as class representatives, and appointed Co-Lead Counsel as class counsel. *See* ECF No. 124.

29. The certified Settlement Class is defined as follows:

all persons or entities who or which (i) purchased or otherwise acquired Penn West common stock or trust units on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, or (ii) purchased or otherwise acquired Penn West call options, or sold or wrote Penn West put options, on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, from February 18, 2010 through July 29, 2014, inclusive, and who were damaged thereby. Excluded from the Settlement Class are Defendants, KPMG, the General Counsel, officers, directors and partners of Penn West and KPMG at all relevant times, any entity in which any Defendant or KPMG has or had a controlling interest, and the members of the Immediate Families and the legal representatives, heirs, successors or assigns of any of the foregoing. Also excluded from the Settlement Class are any persons or entities that exclude themselves by submitting a request for exclusion that is accepted by the Court.

Stipulation ¶ 1(vv); Preliminary Approval Order ¶ 1.

**E. Due Diligence Discovery**

30. Lead Plaintiffs conditioned the Settlement on their right to conduct due diligence discovery. As part of the Settlement, Penn West agreed to produce to Lead Plaintiffs: (a) documents concerning the Company's lack of ability to pay settlement amounts beyond its applicable insurance coverage, and (b) documents concerning Penn West's auditor, KPMG, to be determined by the parties, provided that any such document production would not cause Penn West to breach any confidentiality obligations owed to KPMG, and would not be unreasonably burdensome for Penn West. *See* Stipulation ¶ 33. Penn West also agreed to produce officers or employees to sit for one or two interviews on these subjects. *See id.* The Parties agreed that Lead Plaintiffs, by and through Co-Lead Counsel, would have the right to withdraw from the Settlement if Judge Weinstein issued a written determination that the information produced by Penn West rendered the proposed Settlement unfair, unreasonable, or inadequate. *See id.*

31. Following the Court's preliminary approval of the Settlement, Co-Lead Counsel and counsel for Penn West negotiated and drafted a Stipulation and Protective Order to govern



the confidentiality of materials produced by Penn West in the due diligence discovery, which was submitted to the Court on March 11, 2016 (*see* ECF No. 127) and so-ordered by the Court on March 15, 2016 (*see* ECF No. 130).

32. Penn West began to produce documents at the end of March 2016. Over the course of the due diligence discovery, Penn West produced and Co-Lead Counsel reviewed approximately 20,000 pages of documents relating to (a) Penn West's financial condition and ability to pay and (b) KPMG's audits. Co-Lead Counsel also conducted a detailed interview of current Penn West CFO David Dyck on May 10, 2016, who was questioned about both topics.

33. Co-Lead Counsel's review of the documents produced by Penn West and interview of Mr. Dyck have confirmed Lead Plaintiffs' and Co-Lead Counsel's concerns that Penn West lacked assets to fund a settlement in excess of its insurance coverage and have likewise confirmed their belief that the Settlement is fair, reasonable and adequate. In addition, Lead Plaintiffs retained J.T. Atkins of Cypress Associates LLC, an experienced investment banker and valuation expert, to advise them on Penn West's ability to pay an amount in excess of its available insurance coverage. *See* Affidavit of J.T. Atkins, attached hereto as Exhibit 3 (the "Atkins Aff."), ¶¶ 1-3 and Exhibit A thereto (Mr. Atkins's *curriculum vitae*). Mr. Atkins reviewed Penn West's financial statements and the confidential documents obtained through the due diligence discovery, including the terms of Penn West's lending commitments and debt covenants, and a member of his team from Cypress Associates LLC was present at the interview of Mr. Dyck. *See id.* ¶ 1. As detailed in Mr. Atkins's affidavit, he has concluded that Penn West lacked the ability to settle the class action for more than its insurance coverage. *See id.* ¶¶ 2, 28.

### **III. RISKS OF CONTINUED LITIGATION**

34. The Settlement provides an immediate and certain benefit to the Settlement Class in the form of a cash payment of US\$19,759,282. As explained below, there were significant

risks that Lead Plaintiffs and the class might recover substantially less than the Settlement Amount – or no recovery at all – if the case proceeded through additional years of litigation to a potentially litigated verdict. Penn West’s precarious financial condition and limited insurance, which would be eroded by substantial defense costs, created a very real risk that Lead Plaintiffs would not be able to recover on a judgment as large as the Settlement after trial or that Penn West might become insolvent during the course of the litigation. Defendants also had substantial defenses with respect to liability, loss causation and damages in this case. Thus, there were significant risks that, after years of protracted litigation, Lead Plaintiffs and the Settlement Class could achieve no recovery at all, or a lesser recovery than the Settlement.

**A. Ability to Pay Risks**

35. Penn West’s financial condition has deteriorated severely since the litigation was commenced in August 2014. As noted above, Penn West is one of Canada’s largest producers of oil and natural gas. During the time period of this litigation, oil prices declined sharply, falling from approximately \$100 per barrel in August 2014 to approximately \$30 per barrel in early 2016 when the agreement to settle was reached.<sup>4</sup> Consequently, Penn West’s financial condition and cash position deteriorated severely during this period. For example, since the filing of the Complaint in December 2014, Penn West has reported more than \$2.6 billion in net losses. The Company has undertaken a series of drastic steps, including suspending its dividend, laying off a substantial portion of its workforce, and selling oil fields in order to raise cash. In its most recent financial statements, issued on March 10, 2016, for the year ending December 31, 2015, Penn West reported only Can\$2 million cash on its balance sheet, down from Can\$67 million in cash

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<sup>4</sup> Oil prices have rebounded slightly over the last few months to approximately the \$40 to \$46 range but still remain far lower than prices prevailing during the Settlement Class Period.

on hand as of year-end 2014. Its stock price, which was \$7.85 at the end of the Settlement Class Period, has also declined substantially, and currently trades at approximately \$0.67 per share. In September 2015 and January 2016, Penn West received notification from the NYSE that its stock faces suspension and possible de-listing if its stock price does not recover to exceed an average of \$1 for 30 trading days. Analysts and the financial press have reported that the Company could soon breach its debt covenants and file for bankruptcy if oil prices do not recover significantly.

36. As a result of Penn West's deteriorating financial position, Lead Plaintiffs and Co-Lead Counsel believed at the time the Settlement was reached that the Company had little or no assets to pay a judgment and thus there was a very substantial risk that, even if Lead Plaintiffs prevailed on all issues through the remainder of the litigation and secured a verdict at trial, such a victory might be meaningless to the class because they would not be able to recover on that judgment. Lead Plaintiffs also faced the risk that the Company might become insolvent and declare bankruptcy, which would stay the Action against Penn West, making any recovery against the Company difficult and delaying any such recovery for years.

37. The documents and information that Co-Lead Counsel received during the due diligence discovery process, including Mr. Atkins's opinion, have further confirmed Co-Lead Counsel's view that Penn West lacks the ability to pay a judgment beyond its insurance coverage.

38. Moreover, recent events have further confirmed this conclusion. On May 16, 2016, Penn West issued a press release that disclosed the risk that it expected it would not be in compliance with its bank facility and noteholder agreements as of the close of the second quarter on June 30, 2016, which could jeopardize the Company's ability to continue as a going concern. The press release stated:

If the current low commodity price environment continues, we anticipate that we will not be able to certify, following the end of the second quarter, compliance with the Senior Debt to EBITDA or Total Debt to EBITDA financial covenants at June 30, 2016. We are engaged in discussions with our lenders with a view to entering into agreements to amend these financial covenants prior to the end of the second quarter of 2016, which if successful will mitigate the risk of default. In order to reduce the risk of default, we will continue to pursue our strategy of reducing absolute debt levels through further dispositions of assets and we will also continue to consider other options such as pursuing additional sources of capital from strategic investors. However, as there is a risk that the Company will not be in compliance with its financial covenants at the end of the second quarter of 2016 and there is no guarantee that the [sic] Penn West will be successful in negotiating amended financial covenants with its lenders or in pursuing other options, there is a risk of default under the Company's bank facility and noteholder agreements. This has resulted in uncertainty on the Company's ability to continue as a going concern.

39. Penn West's precarious financial condition meant that its insurance coverage was the only practical source of any substantial recovery. This limited pool of money covered litigation costs for both the U.S. and Canadian Actions. These funds would be rapidly drained by defense costs if the Company continued to litigate multiple securities class actions in the U.S. and Canada. Accordingly, the very significant risk that continued litigation might yield a smaller recovery several years in the future supported entering into the Settlement.

#### **B. Risks of Proving Liability**

40. Lead Plaintiffs and Co-Lead Counsel also recognized that this Action presented a number of substantial risks to establishing liability, loss causation and damages. While Penn West's restatement served as an admission that its financial statements had been materially misstated, establishing that the accounting misstatements were made with scienter was a separate and much more significant hurdle, one that presented risks at both at the motion to dismiss stage, where plaintiffs were required to plead facts raising a strong inference of scienter, and at trial, where plaintiffs would have to prove scienter to a factfinder after development of the factual record.

41. Defendants had raised credible arguments directed at the adequacy of Lead Plaintiffs' allegations that Defendants acted with sufficient knowledge or recklessness to prevail under the federal securities laws. Specifically, Defendants argued that Lead Plaintiffs had not alleged any motive to engage in fraud through insider trading and could not point to any witnesses, internal documents or other particularized facts that supported their allegations that Defendants knowingly or recklessly committed fraud. While Lead Plaintiffs had arguments that the nature and magnitude of the accounting errors supported an inference of scienter, Defendants had a number of arguments to the contrary. Defendants could cite to case law that a restatement, even a substantial one, is not sufficient by itself to establish scienter. Moreover, Defendants had contended and would continue to argue that the accounting errors at issue in Penn West's restatement (such as the misclassification of operating expenses as capital expenses) were determinations that required the application of professional judgment and, thus, the accounting misstatements were not intentional (and, even if they had been, were not made by the Individual Defendants or senior Penn West management). Defendants pointed to the fact that the restatement revealed that some accounting errors had gone the other way – that is, capital expenses had also been misclassified as operating expenses (an error that would tend to reduce revenues and other key metrics) – as supporting their view that the accounting errors resulted from failures of judgment or inadequate controls, not a systemic effort by the Company to mislead investors. Defendants could also point to the fact that KPMG signed off each year on the accuracy of Penn West's financial statements and the effectiveness of the Company's internal accounting controls. This provided Defendants with an argument that the Individual Defendants and Penn West's other senior management had reasonably relied on KPMG's approval of the financial statements and could have made proof of scienter at trial extremely difficult. Finally,

Defendants argued that the timing and handling of the restatement actually demonstrated their lack of scienter – that the Company’s executive officers had relied on its accounting personnel and outside auditors, and then promptly corrected and disclosed the accounting errors when those errors came to management’s attention. Thus, there is no guarantee that Lead Plaintiffs would have prevailed on the scienter issue at the pleading stage, let alone at summary judgment and trial after development of the evidentiary record.

**C. Risks of Proving Loss Causation and Damages**

42. Even assuming that Lead Plaintiffs overcame the above risks and successfully established liability, Lead Plaintiffs would have confronted considerable challenges in establishing loss causation and damages. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005) (plaintiffs bear the burden of proving “that the defendant’s misrepresentations ‘caused the loss for which the plaintiff seeks to recover’”).

43. First, Lead Plaintiffs would have faced substantial hurdles in establishing loss causation with respect to the decline in stock price in reaction to Penn West’s November 6, 2013 quarterly earnings announcement. Lead Plaintiffs would have argued that the November 6, 2013 announcement revealed problems with Penn West’s operating cost structure, which were among the risks concealed by Defendants’ alleged fraud. But Defendants had strong arguments that the declines in Penn West’s stock price following that announcement were not attributable to disclosure of the alleged fraud because the announcement was made nearly nine months *before* Penn West disclosed it was reviewing its financials and intended to issue a restatement, and the announcement itself did not directly reveal anything about improper classification of expenses or any other accounting error.

44. Moreover, with respect to the decline following the July 29, 2014 announcement of Penn West’s intended restatement, Defendants would have asserted that a substantial portion

of the decline was due to other negative news, unrelated to the alleged fraud, or to uncertainty about the extent of the restatement that would actually occur. They would argue that Penn West's stock price *increased* following an update on the issue on August 26, 2014 and after the actual restatement was issued on September 18, 2014, and that these price increases should be counted against the decline resulting from the initial corrective disclosure in July in calculating damages, because if Penn West had waited and released the full information at one time, they argue, only that smaller drop would have resulted. Had Defendants' loss causation and damages arguments been accepted, they could have dramatically limited any potential recovery.

**D. Other Risks**

45. In order to succeed, Lead Plaintiffs would also have had to prevail at several stages – the pending motions to dismiss, on a motion for class certification, an expected motion for summary judgment, and at trial and, even if Lead Plaintiffs prevailed on all of those, on appeals that were likely to follow. This is a process could possibly extend for years and might lead ultimately to a smaller recovery, or no recovery at all. Indeed, even prevailing at trial would not have guaranteed a recovery larger than the Can\$26,500,000 Settlement – especially given the Company's compromised financial condition.

46. Given these significant litigation risks and ability-to-pay concerns, Lead Plaintiffs and Co-Lead Counsel believe that the Settlement represents an excellent result for the Settlement Class.

**E. The Settlement is Reasonable in Light of the Risks and the Potential Recovery in the Action**

47. The Settlement is also fair and reasonable in light of the potential recovery and all the attendant risks of litigation discussed above. Lead Plaintiffs' realistic estimate of damages that they could prove at trial was approximately \$270 million. While Lead Plaintiffs had

arguments that damages could be higher than this amount, these arguments were subject to significant risk on loss causation grounds. In contrast, Defendants would have contended that there were no damages at all. As noted above in ¶¶ 42-44, Defendants also put forward several damages and loss causation arguments that, if accepted, would have greatly reduced damages. Specifically, if these arguments were accepted, maximum damages would have been reduced to the \$45 million to \$60 million range. Accordingly, the proposed Settlement, which is equal to US\$19,759,282, represents approximately 7.3% of Lead Plaintiffs' realistic estimate of maximum damages provable at trial and 33% to 44% of Defendants' estimate of maximum damages. This level of recovery is reasonable in light of the significant litigation risks and the very serious ability-to-pay risks created by Penn West's deteriorating financial condition.

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

48. The Court's Preliminary Approval Order directed that the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and Proof of Claim and Release Form ("Claim Form") be disseminated to the Settlement Class. The Preliminary Approval Order also set a June 20, 2016 deadline for Settlement Class Members to submit objections to the Settlement, the Plan of Allocation and/or the Fee and Expense Application or to request exclusion from the Settlement Class, and set a final approval hearing date of July 19, 2016. By Order dated June 2, 2016, the Court granted Lead Plaintiffs' request to reschedule the final approval hearing for June 28, 2016.

49. Pursuant to the Preliminary Approval Order, Co-Lead Counsel instructed Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the Court-approved Claims Administrator, to begin disseminating copies of the Notice and the Claim Form by mail and to publish the



Summary Notice. The Notice contains, among other things, a description of the Action; the definition of the Settlement Class; a summary of the terms of the Settlement and the proposed Plan of Allocation; and a description of Settlement Class Members' rights to participate in the Settlement, object to the Settlement, the Plan of Allocation and/or the Fee and Expense Application, or exclude themselves from the Settlement Class. The Notice also informs Settlement Class Members of Co-Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund, and for reimbursement of Litigation Expenses in an amount not to exceed USD \$525,000. To disseminate the Notice, Epiq obtained information from Penn West's transfer agent and from banks, brokers and other nominees regarding the names and addresses of potential Settlement Class Members. *See* Declaration of Stephanie A. Thurin Regarding: (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Thurin Decl."), attached hereto as Exhibit 4, ¶¶ 2-8.

50. On March 29, 2016, Epiq disseminated 4,969 copies of the Notice and Claim Form (together, the "Notice Packet") to potential Settlement Class Members and nominees by first-class mail. *See* Thurin Decl. ¶ 5. As of June 2, 2016, Epiq had disseminated 273,414 Notice Packets. *See id.* ¶ 8.

51. On April 12, 2016, in accordance with the Preliminary Approval Order, Epiq caused the Summary Notice to be published once each in *Investor's Business Daily* and the *National Post* (Canada) and to be transmitted once over the *PR Newswire*. *See id.* ¶ 9.

52. Co-Lead Counsel also caused Epiq to establish a dedicated settlement website, [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com), to provide potential Settlement Class Members with

information concerning the Settlement and access to downloadable copies of the Notice and Claim Form, as well as copies of the Stipulation and Preliminary Approval Order. *See id.* ¶ 14.

53. Both the mailed Notice and website disclose the parallel proposed Canadian settlement for persons and entities who acquired Penn West securities on the Toronto Stock Exchange or another Canadian market, and refer potential members of the Canadian Class to a separate website dedicated to the Canadian cases, [www.PennWestCanadianClassAction.com](http://www.PennWestCanadianClassAction.com).

54. As set forth above, the deadline for Settlement Class Members to file objections to the Settlement, the Plan of Allocation and/or the Fee and Expense Application, or to request exclusion from the Settlement Class, is June 20, 2016. To date, 15 requests for exclusion have been received (*see* Thurin Decl. ¶ 15), and no objections to the Settlement, the Plan of Allocation or Co-Lead Counsel's Fee and Expense Application have been received. Pursuant to the Court's June 2, 2016 Order, Co-Lead Counsel will file reply papers on June 24, 2016 that will address the requests for exclusion and any objections that may be received.

#### **V. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT**

55. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Settlement Class Members who want to participate in the distribution of the Net Settlement Fund (*i.e.*, the Settlement Fund less (a) any Taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses awarded by the Court, and (d) any attorneys' fees awarded by the Court) must submit a valid Claim Form with all required information postmarked no later than August 26, 2016. As set forth in the Notice, the Net Settlement Fund will be distributed among Settlement Class Members according to the plan of allocation approved by the Court.

56. Lead Plaintiffs' damages expert developed the proposed Plan of Allocation in consultation with Co-Lead Counsel. Co-Lead Counsel believe that the Plan of Allocation

provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Settlement Class Members who suffered losses as result of the conduct alleged in the Complaint.

57. The Plan of Allocation is set forth at pages 9 to 14 and 17 to 25 of the Notice. *See* Notice, attached as Exhibit A to the Thurin Decl., at 9-14, 17-25. As described in the Notice, calculations under the Plan of Allocation are not intended be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover at trial or estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. Instead, the calculations under the plan are only a method to weigh the claims of Settlement Class Members against one another for the purposes of making an equitable allocation of the Net Settlement Fund.

58. In developing the Plan of Allocation, Lead Plaintiffs' damages expert calculated the estimated amount of artificial inflation in the per share or per unit closing prices of Penn West common stock, trust units and call options (and the amount of artificial deflation in the per share closing prices of Penn West put options) which allegedly was proximately caused by Defendants' alleged false and misleading statements and material omissions. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Lead Plaintiffs' damages expert considered price changes in Penn West common stock and options (collectively, "Penn West Securities") in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and material omissions, adjusting for price changes that were attributable to market or industry forces and disclosures of information unrelated to the alleged fraud as well as the evidence developed in support of the allegations in the Complaint, and the strength of the claims.

59. Under the Plan of Allocation, a “Recognized Loss Amount” will be calculated for each purchase or other acquisition of Penn West common stock/trust units and call options, and each sale of Penn West put options, during the Settlement Class Period that is listed in the Claim Form and for which adequate documentation is provided. The calculation of Recognized Loss Amounts will depend upon several factors, including when the Penn West Security was purchased or acquired and sold, and at what price. In general, the Recognized Loss Amount calculated will be the difference between the estimated artificial inflation on the date of purchase and the estimated artificial inflation on the date of sale, or the difference between the actual purchase price and sales price, whichever is less. *See* Notice ¶¶ 57, 60, 61.

60. Claimants who purchased and sold all their Penn West trust units and shares (and closed their positions in Penn West options) before the close of trading on November 5, 2013, or who purchased and sold all their Penn West Securities between the two corrective disclosures (from November 6, 2016 through the close of trading on July 29, 2014), will have no Recognized Loss Amount under the Plan of Allocation with respect to those transactions because the level of artificial inflation or deflation is the same between the corrective disclosures and any loss suffered on those sales would not be the result of the alleged misstatements in the Action.

61. The sum of a Claimant’s Recognized Loss Amounts is the Claimant’s “Recognized Claim” and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. *See* Notice ¶ 74.

62. In sum, the Plan of Allocation was designed to fairly and rationally allocate the proceeds of the Net Settlement Fund among Settlement Class Members based on the losses they suffered on transactions in Penn West Securities that were attributable to the conduct alleged in

the Complaint. Accordingly, Co-Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable and should be approved by the Court.

63. As noted above, as of June 2, 2016, more than 273,400 copies of the Notice, which contains the Plan of Allocation, and advises Settlement Class Members of their right to object to the proposed Plan of Allocation, had been sent to potential Settlement Class Members. *See* Thurin Decl. ¶ 8. To date, no objections to the proposed Plan of Allocation have been received.

## **VI. THE FEE AND LITIGATION EXPENSE APPLICATION**

64. In addition to seeking final approval of the Settlement and Plan of Allocation, Co-Lead Counsel are applying to the Court for an award of attorneys' fees of 25% of the Settlement Fund (or \$4,939,820.50 plus interest earned at the same rate as the Settlement Fund) (the "Fee Application"). Co-Lead Counsel also request reimbursement of expenses that Co-Lead Counsel incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of \$320,317.47. Co-Lead Counsel further request reimbursement to Lead Plaintiffs in the total amount of \$5,241.44 for costs and expenses they incurred directly related to their representation of the Settlement Class pursuant to 15 U.S.C. § 78u-4(a)(4). The legal authorities supporting the requested fee and expenses are set forth in Co-Lead Counsel's Fee Memorandum. The primary factual bases for the requested fee and expenses are summarized below.

### **A. The Fee Application**

65. For its efforts on behalf of the Settlement Class, Co-Lead Counsel are applying for a fee award to be paid from the Settlement Fund on a percentage basis. As set forth in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because it aligns the lawyers' interest in being paid a fair fee with the interest of the Settlement Class in achieving the maximum recovery in the shortest amount of time required

under the circumstances and has been recognized as appropriate by the Supreme Court and Second Circuit for cases of this nature.

66. Based on the quality of the result achieved, the extent and quality of the work performed, the significant risks of the litigation, and the fully contingent nature of the representation, Co-Lead Counsel respectfully submit that the requested fee award is reasonable and should be approved. As discussed in the Fee Memorandum, a 25% fee award is fair and reasonable for attorneys' fees in common fund cases such as this and is within the range of percentages awarded in securities class actions in this Circuit with comparable settlements.

### **1. Lead Plaintiffs Support the Fee Application**

67. Each of the Lead Plaintiffs has evaluated the Fee Application and believes it to be reasonable. As set forth in the declarations submitted by Lead Plaintiffs, each of the Lead Plaintiffs has concluded that Co-Lead Counsel's requested fee is fair and reasonable based on the work performed, the recovery obtained for the Settlement Class, and the risks of the Action. *See* Declaration of Dania L. Orta, Administrator of The City of Miami Fire Fighters' and Police Officers' Retirement Trust, in Support of (A) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; (B) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (C) Lead Plaintiff Miami Fire Fighters' and Police Officers' Retirement Trust's Request for Reimbursement of Costs and Expenses (the "Orta Decl."), attached thereto as Exhibit 1, ¶ 7; Declaration of Avi Rojany, in Support of (A) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; (B) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (C) Lead Plaintiff Avi Rojany's Request for Reimbursement of Costs and Expenses (the "Rojany Decl."), attached hereto as Exhibit 2, ¶ 7.

Lead Plaintiffs' endorsement of Co-Lead Counsel's fee request further demonstrates its reasonableness and should be given weight in the Court's consideration of the fee award.

**2. The Work and Experience of Counsel**

68. Attached hereto as Exhibit 5 are declarations from both Co-Lead Counsel firms in support of an award of attorneys' fees and reimbursement of litigation expenses. The first page of Exhibit 5 contains a summary chart of the hours expended and lodestar amounts for the two firms, as well as a summary of each firm's litigation expenses. Included within each supporting declaration is a schedule summarizing the hours and lodestar of each firm from the inception of the case through and including June 1, 2016, a summary of expenses by category, and a firm resume. Attorneys and support staff who billed fewer than twenty hours to the Action have been removed from the schedules, and no time expended in preparing the application for fees and reimbursement of expenses has been included.

69. As set forth in Exhibit 5, Co-Lead Counsel have collectively expended a total of 4,823.20 hours in the investigation and prosecution of the Action through and including June 1, 2016. The resulting total lodestar is \$2,546,427.50. The requested fee of 25% of the Settlement Fund represents \$4,939,820.50 (plus interest), and therefore represents a multiplier of 1.94 to Co-Lead Counsel's lodestar. We believe that this multiplier is fair and reasonable based on the risks of the litigation, the quality of the representation, and the results obtained. As discussed in further detail in the Fee Memorandum, the requested multiplier is well within the range of fee multipliers typically awarded in comparable securities class actions and in other class actions involving significant contingency fee risk, in this Circuit and elsewhere.

70. As detailed above, throughout this case, Co-Lead Counsel devoted substantial time to the prosecution of the Action. We maintained control of and monitored the work performed by lawyers and other personnel on this case. While we personally devoted substantial

time to this case, and personally reviewed and edited all pleadings, court filings, and other correspondence prepared on behalf of Lead Plaintiffs, other experienced attorneys at our firms were involved in Settlement negotiations and other matters. More junior attorneys and paralegals also worked on matters appropriate to their skill and experience level. Throughout the litigation, Co-Lead Counsel maintained an appropriate level of staffing that avoided unnecessary duplication of effort and ensured the efficient prosecution of this litigation.

71. As demonstrated by the firm resumes included as Exhibits 5A-3 and 5B-3 hereto, Co-Lead Counsel are experienced and skilled law firms in the securities litigation field, with a long and successful track record representing investors in such cases. BLBG is consistently ranked among the top plaintiffs' firms in the country. Further, BLBG has taken complex cases such as this to trial, and it is among the few firms with experience doing so on behalf of plaintiffs in securities class actions. GP&M is also an experienced firm that has successfully prosecuted class action cases and complex litigation in federal and state courts throughout the country. We believe counsel's experience added valuable leverage in the settlement negotiations.

### **3. Standing and Caliber of Defendants' Counsel**

72. The quality of the work performed by Co-Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Defendants were represented by Sullivan & Cromwell LLP, Covington & Burling LLP, Baker Botts L.L.P., Morvillo Abramowitz Grand Iason & Anello PC and Lankler Siffert & Wohl LLP, all of which are capable and renowned law firms that vigorously represented the interests of their clients throughout this Action. In the face of this experienced and formidable opposition, Co-Lead Counsel were nonetheless able to persuade Defendants to settle the case on terms favorable to the Settlement Class.



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

73. This prosecution was undertaken by Co-Lead Counsel entirely on a contingent-fee basis. From the outset, Co-Lead Counsel understood that they were embarking on a complex, expensive and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Co-Lead Counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate attorneys and staff and to cover the considerable litigation costs that a case like this requires. With an average lag time of many years for complex cases like this to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Co-Lead Counsel received no compensation during the course of the Action and have incurred over \$320,000 in litigation expenses in prosecuting the Action.

74. Co-Lead Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset, this case presented multiple risks and uncertainties that could have prevented any recovery whatsoever. Despite the most vigorous and competent of efforts, success in contingent-fee litigation like this is never assured. Co-Lead Counsel know from experience that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

75. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. As recognized by Congress through the

passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private investors, particularly institutional investors, take an active role in protecting the interests of shareholders. If this important public policy is to be carried out, the courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action.

76. Co-Lead Counsel's extensive efforts in the face of substantial risks and uncertainties have resulted in a significant recovery for the benefit of the Settlement Class. In circumstances such as these, and in consideration of the hard work and the result achieved, the requested fee is reasonable and should be approved.

#### **5. The Reaction of the Settlement Class to the Fee Application**

77. As noted above, as of June 2, 2016, over 273,400 Notice Packets had been mailed advising Settlement Class Members that Co-Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund. *See* Thurin Decl. ¶ 8. In addition, the Court-approved Summary Notice has been published in *Investor's Business Daily* and the *National Post* (Canada), and transmitted over the *PR Newswire*. *See id.* ¶ 9. To date, no objections to the attorneys' fees set forth in the Notice have been received. Should any objections be received, they will be addressed in Co-Lead Counsel's reply papers.

78. In sum, Co-Lead Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted it without any compensation or guarantee of success. Based on the favorable result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Co-Lead Counsel respectfully submit that a fee award of 25%, resulting in a multiplier of 1.94, is fair and reasonable, and is supported by the fee awards courts have granted in other comparable cases.

**B. The Litigation Expense Application**

79. Co-Lead Counsel also seek reimbursement from the Settlement Fund of \$320,317.47 in litigation expenses that were reasonably incurred by Co-Lead Counsel in connection with commencing, litigating and settling the claims asserted in the Action.

80. From the beginning of the case, Co-Lead Counsel were aware that they might not recover any of their expenses, and, even in the event of a recovery, would not recover any of its out-of-pocket expenditures until such time as the Action might be successfully resolved. Co-Lead Counsel also understood that, even assuming that the case was ultimately successful, reimbursement for expenses would not compensate it for the lost use of the funds advanced by it to prosecute the Action. Accordingly, Co-Lead Counsel were motivated to and did take appropriate steps to avoid incurring unnecessary expenses and to minimize costs without compromising the vigorous and efficient prosecution of the case.

81. As set forth in Exhibit 5 hereto, Co-Lead Counsel have incurred a total of \$320,317.47 in unreimbursed litigation expenses in connection with the prosecution of the Action. The expenses are summarized in Exhibit 6, which identifies each category of expense, *e.g.*, expert fees, mediation fees, on-line research, photocopying, and postage and delivery expenses, and the amount incurred for each category. These expense items are billed separately by Co-Lead Counsel, and such charges are not duplicated in Co-Lead Counsel's billing rates.

82. Of the total amount of expenses, \$156,508.36, or 48.9%, was expended on Lead Plaintiffs' experts and consultants. As noted above, Lead Plaintiffs retained and consulted experts in the fields of accounting and damages to assist in the preparation of the Complaint and the prosecution of the Action. Lead Plaintiffs' damages expert also assisted Lead Counsel during the mediation and settlement negotiations with the Defendants and with the development of the proposed Plan of Allocation.

83. Another large component of the litigation expenses was for online legal and factual research, which was necessary to prepare the Complaint and research the law pertaining to the claims asserted in the Action. The charges for on-line research amounted to \$33,647.18, or 10.5% of the total amount of expenses.

84. Additionally, Co-Lead Counsel paid \$52,940.00 for their share of the mediation fees charged by Judge Weinstein, which is 16.5% of the total expenses.

85. The other expenses for which Co-Lead Counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, costs of out-of-town travel, copying costs, long distance telephone and facsimile charges, and postage and delivery expenses.

86. All of the litigation expenses incurred by Co-Lead Counsel were reasonable and necessary to the successful litigation of the Action, and have been approved by the Lead Plaintiffs. *See* Orta Decl. ¶ 8; Rojany Decl. ¶ 8.

87. Additionally, Lead Plaintiffs Miami FIPO and Mr. Rojany seek reimbursement of their reasonable costs and expenses directly incurred in connection with their representation of the Settlement Class, in the amount of \$241.44 and \$5,000, respectively. *See* Orta Decl. ¶¶ 9-11; Rojany Decl. ¶¶ 9-10.

88. The Notice informed potential Settlement Class Members that Co-Lead Counsel would be seeking reimbursement of expenses in an amount not to exceed \$525,000. The total amount requested, \$325,558.91, which includes \$320,317.47 in reimbursement of litigation expenses incurred by Co-Lead Counsel and \$5,241.44 in reimbursement of total costs and expenses incurred by Lead Plaintiffs, is significantly below the \$525,000 that Settlement Class

Members were advised could be sought. To date, no objection has been raised as to the maximum amount of expenses set forth in the Notice.

89. The expenses incurred by Co-Lead Counsel and Lead Plaintiffs were reasonable and necessary to represent the Settlement Class and achieve the Settlement. Accordingly, Co-Lead Counsel respectfully submit that the Litigation Expenses should be reimbursed in full from the Settlement Fund.

## VII. CONCLUSION

90. For all the reasons set forth above, Lead Plaintiffs and Co-Lead Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable and adequate. Co-Lead Counsel further submit that the requested fee in the amount of 25% of the Settlement Fund should be approved as fair and reasonable, and the request for reimbursement of total Litigation Expenses in the amount of \$325,558.91, which includes Lead Plaintiffs' costs and expenses, should also be approved.

We declare, under penalty of perjury under the laws of the United States, that the foregoing facts are true and correct.

Executed this 3rd day of June, 2016.

/s/ John Rizio-Hamilton  
JOHN RIZIO-HAMILTON

Executed this 3rd day of June, 2016.

/s/ Lionel Z. Glancy  
LIONEL Z. GLANCY

#984040

# Exhibit 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE PENN WEST PETROLEUM  
LTD. SECURITIES LITIGATION

Master File No. 14-cv-6046-JGK

**DECLARATION OF DANIA L. ORTA, ADMINISTRATOR OF THE  
CITY OF MIAMI FIRE FIGHTERS' AND POLICE OFFICERS' RETIREMENT  
TRUST, IN SUPPORT OF (A) LEAD PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION;  
(B) CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES; AND (C) LEAD  
PLAINTIFF MIAMI FIRE FIGHTERS' AND POLICE OFFICERS' RETIREMENT  
TRUST'S REQUEST FOR REIMBURSEMENT OF COSTS AND EXPENSES**

I, DANIA L. ORTA, hereby declare under penalty of perjury as follows:

1. I am the Administrator of the City of Miami Fire Fighters' and Police Officers' Retirement Trust ("Miami FIPO"), one of the Court appointed Lead Plaintiffs in the above-captioned securities class action (the "Action"). I submit this declaration on behalf of Miami FIPO and in support of (a) Lead Plaintiffs' motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation; (b) Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses; and (c) approval of Miami FIPO's request to recover the reasonable costs and expenses it incurred in connection with its representation of the Settlement Class in the prosecution of this litigation.

2. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of

the Action, as well as the negotiations leading to the Settlement, and I could and would testify competently to these matters.

**I. LEAD PLAINTIFF MIAMI FIPO'S OVERSIGHT OF THE LITIGATION**

3. Miami FIPO is a public pension fund that manages over \$1.5 billion in assets. Miami FIPO's mission is to administer the retirement benefit plan for the Fire Fighters and Police Officers of the City of Miami.

4. On behalf of Miami FIPO, I, as well as my predecessor as Administrator of Miami FIPO, Robert Nagle, had regular communications with Co-Lead Counsel Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), as well as Cypen & Cypen ("Cypen"), throughout the litigation. Through my and other Miami FIPO employees' active and continuous involvement, Miami FIPO closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution of the Action. Miami FIPO received periodic status reports from BLB&G and Cypen on case developments, and participated in regular discussions with attorneys from BLB&G and Cypen concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I and other employees of Miami FIPO (a) regularly communicated with BLB&G and Cypen regarding the posture and progress of the case; (b) reviewed all significant pleadings and briefs filed in the Action; (c) reviewed the Court's orders and discussed them with BLB&G and Cypen; (d) consulted with BLB&G and Cypen regarding the settlement negotiations; and (e) evaluated and approved the proposed Settlement.

**II. MIAMI FIPO ENDORSES APPROVAL OF THE SETTLEMENT**

5. Through my active participation, Miami FIPO was kept informed of the progress of the settlement negotiations in this litigation. Before and during the mediation process presided



over by Judge Daniel Weinstein (Ret.), I conferred with BLB&G and Cypen regarding the parties' respective positions and the mediator's recommendation.

6. Based on its involvement throughout the prosecution and resolution of the claims asserted in the Action, Miami FIPO believes that the proposed Settlement is fair, reasonable, and adequate to the Settlement Class. Miami FIPO believes that the Settlement provides an excellent recovery for the Settlement Class, particularly in light of the risks of continued litigation. Therefore, Miami FIPO strongly endorses approval of the Settlement by the Court.

**III. MIAMI FIPO SUPPORTS CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

7. Miami FIPO believes that Co-Lead Counsel's request for an award of attorneys' fees in the amount of 25% of the Settlement Fund is fair and reasonable in light of the work Co-Lead Counsel performed on behalf of the Settlement Class. Miami FIPO takes seriously its duty as a lead plaintiff to ensure that the attorneys' fees are fair in light of the result achieved for the class and reasonably compensate plaintiffs' counsel for the work involved and the substantial risks they undertook in litigating the Action. Miami FIPO has evaluated Co-Lead Counsel's fee request by considering the work performed, the recovery obtained for the Settlement Class, and the risks of the Action.

8. Miami FIPO further believes that the litigation expenses being requested for reimbursement to Co-Lead Counsel are reasonable, and represent costs and expenses necessary for the prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with its obligation to the Settlement Class to obtain the best result at the most efficient cost, Miami FIPO fully supports Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses.

9. Miami FIPO understands that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4). For this reason, in connection with Co-Lead Counsel's request for reimbursement of litigation expenses, Miami FIPO seeks reimbursement for the costs and expenses that it incurred directly relating to its representation of the Settlement Class in the Action.

10. As Administrator, I have general responsibility for administering and overseeing the activities of Miami FIPO, which include overseeing litigation matters involving Miami FIPO, such as Miami FIPO's activities in securities class actions where (as here) it has been appointed lead plaintiff. As set forth above, my predecessor as Administrator of Miami FIPO, Robert Nagle, also participated in the prosecution of this Action. Miami FIPO is not seeking reimbursement for the time Mr. Nagle or other employees devoted to this Action on behalf of the fund. Accordingly, Miami FIPO is only seeking reimbursement for a small portion of the work it performed in connection with its responsibilities as a Lead Plaintiff.

11. The time that I devoted to the representation of the Settlement Class in this Action was time that I otherwise would have spent on other work for Miami FIPO and, thus, represented a cost to Miami FIPO. Miami FIPO seeks reimbursement in the amount of \$241.44 for time that I devoted to this Action (4 hours at \$60.36 per hour<sup>1</sup>).

#### **IV. CONCLUSION**

12. In conclusion, Miami FIPO was closely involved throughout the prosecution and settlement of the claims in this Action, strongly endorses the Settlement as fair, reasonable, and adequate, and believes that the Settlement represents a significant recovery for the Settlement Class. Accordingly, Miami FIPO respectfully requests that the Court approve (a) Lead Plaintiffs'

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<sup>1</sup> The hourly rates used for purposes of this request are based on my annual salary and benefits.

motion for final approval of the proposed Settlement and approval of the Plan of Allocation; (b) Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses; and (c) Miami FIPO's request for reimbursement for its reasonable costs and expenses incurred in prosecuting the Action on behalf of the Settlement Class.

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

Executed this 2<sup>nd</sup> day of June, 2016.



Dania L. Orta  
Administrator  
City of Miami Fire Fighters' and Police Officers'  
Retirement Trust

#986503

# Exhibit 2

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE PENN WEST PETROLEUM  
LTD. SECURITIES LITIGATION

Master File No. 14-cv-6046-JGK

**DECLARATION OF AVI ROJANY, IN SUPPORT OF (A) LEAD  
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT AND PLAN OF ALLOCATION; (B) CO-LEAD COUNSEL'S  
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT  
OF LITIGATION EXPENSES; AND (C) LEAD PLAINTIFF AVI ROJANY'S  
REQUEST FOR REIMBURSEMENT OF COSTS AND EXPENSES**

I, Avi Rojany, hereby declare under penalty of perjury as follows:

1. I am one of the Court appointed Lead Plaintiffs in the above-captioned securities class action (the "Action"). I submit this declaration in support of (a) Lead Plaintiffs' motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation; (b) Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses; and (c) approval of my request to recover the reasonable costs and expenses I incurred in connection with my representation of the Settlement Class in the prosecution of this litigation.

2. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlement, and I could and would testify competently to these matters.

**I. LEAD PLAINTIFF AVI ROJANY'S OVERSIGHT OF THE LITIGATION**

3. I am an investment banker serving to manage the diverse investments of my extended family. For the past forty-five years, I have served as an investment banker for private clients.

4. Throughout the litigation, I received periodic status reports from Co-Lead Counsel Glancy Prongay & Murray LLP on case developments, and participated in regular discussions concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I: (a) regularly communicated with my attorneys regarding the posture and progress of the case; (b) reviewed all significant pleadings and briefs filed in the Action; (c) reviewed the Court's orders and discussed them with my attorneys; (d) consulted with my attorneys regarding the settlement negotiations; and (e) evaluated and approved the proposed Settlement.

**II. APPROVAL OF THE SETTLEMENT**

5. Through my active participation, I was kept informed of the progress of the settlement negotiations in this litigation. Before and during the mediation process presided over by Judge Daniel Weinstein (Ret.), I conferred with my attorneys regarding the parties' respective positions and the mediator's recommendation.

6. Based on my involvement throughout the prosecution and resolution of the claims asserted in the Action, I believe that the Settlement provides an excellent recovery for the Settlement Class, particularly in light of the risks of continued litigation. Thus, I believe that the proposed Settlement is fair, reasonable, and adequate to the Settlement Class and I strongly endorse approval of the Settlement by the Court.

**III. CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

7. I believe that Co-Lead Counsel's Counsel's request for an award of attorneys' fees in the amount of 25% of the Settlement Fund is fair and reasonable in light of the work Co-Lead Counsel performed on behalf of the Settlement Class. I have evaluated Co-Lead Counsel's fee request by considering the work performed, the recovery obtained for the Settlement Class, and the risks of the Action, and have authorized this fee request for the Court's ultimate determination.

8. I further believe that the litigation expenses being requested for reimbursement to Co-Lead Counsel are reasonable, and represent costs and expenses necessary for the prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with my obligation to the Settlement Class to obtain the best result at the most efficient cost, I fully supports Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses.

9. I understand that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4). For this reason, in connection with Co-Lead Counsel's request for reimbursement of litigation expenses, I am seeking reimbursement for the costs and expenses that I incurred directly relating to my representation of the Settlement Class in the Action.

10. The time that I devoted to the representation of the Settlement Class in this Action was time that I otherwise would have spent on other professional activities and, thus, represented

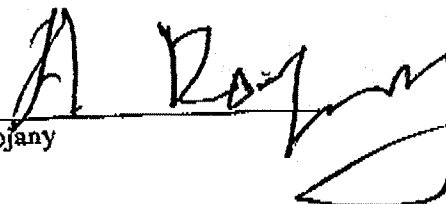
a cost to me. I seek reimbursement in the amount of \$5,000 (approximately 20 hours at \$250 per hour) for the time that I devoted to participating in this Action.<sup>1</sup>

IV. CONCLUSION

11. In conclusion, I was closely involved throughout the prosecution and settlement of the claims in this Action, strongly endorse the Settlement as fair, reasonable, and adequate, and believe that the Settlement represents a significant recovery for the Settlement Class. Accordingly, I respectfully request that the Court approve (a) Lead Plaintiffs' motion for final approval of the proposed Settlement and approval of the Plan of Allocation; (b) Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses; and (c) my request for reimbursement of the reasonable costs and expenses incurred in prosecuting the Action on behalf of the Settlement Class.

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

Executed this 31st day of May, 2016.

  
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Avi Rojany

<sup>1</sup> My request for reimbursement of costs is based on a very conservative estimate of the amount of time I spent on this litigation.



# Exhibit 3

**IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF NEW YORK**

IN RE PENN WEST PETROLEUM LTD.  
SECURITIES LITIGATION

Master File No. 14-cv-6046-JGK

**DECLARATION OF J.T. ATKINS**

I, J.T. Atkins, hereby declare as follows:

1. I have been retained by Co-Lead Counsel for Lead Plaintiffs The City of Miami Fire Fighters' and Police Officers' Retirement Trust and Avi Rojany. I have been asked by counsel to investigate Penn West Petroleum Ltd.'s ("Penn West") ability, as of December 31, 2015, to pay more than its insurance coverage to settle the above-captioned action (the "Action"). The basis for my conclusion is my review of Penn West's public filings and statements, Penn West's internal budget documents, and third party research. A Cypress Associates LLC ("Cypress") colleague also attended the telephonic interview of Penn West's Chief Financial Officer, David A. Dyck ("Mr. Dyck"), conducted by Co-Lead Counsel. My colleague observed that Mr. Dyck's responses during the interview were consistent with my review of foregoing documents.

2. As discussed below, I have concluded that as of December 31, 2015 Penn West was not in a financial position to settle the Action for more than Penn West's insurance coverage.

3. I am a Managing Director and the head of Cypress in New York, New York. Cypress is an investment banking firm specializing in providing mergers and acquisitions advice, capital raising, restructuring advisory services and litigation consulting services, including expert reports and testimony. My *curriculum vitae* is attached as Exhibit A.

4. I am a graduate of University of Virginia with highest honors and Harvard Law School *cum laude*, and I have been an investment banker for more than 30 years, specializing in mergers and acquisitions, restructurings and bankruptcies and leveraged finance transactions. I have worked for companies in many industries including, among others, power and energy, oil and gas, business services, transportation, telecommunications, media/entertainment, manufacturing, automotive, consumer products, retailing, pulp and paper, health care, food and beverage,

chemicals, financial institutions, textiles, retailing, real estate, educational services, infrastructure services and technology.

5. Following several years working as a mergers and acquisitions transactional attorney for Skadden Arps Slate Meagher & Flom, I began my investment banking career in 1985 at PaineWebber Inc. ("PaineWebber") as an Associate in the Mergers and Acquisitions group. In 1990, I was promoted to the position of managing director. At Paine Webber, I worked on many middle market and large capitalization transactions. Much of the acquisition work involved arranging debt and equity financing on behalf of PaineWebber's clients. I was also named co-head of PaineWebber's Restructuring group in 1989.

6. In 1991, I joined Houlihan Lokey Howard & Zukin ("Houlihan Lokey") as a Managing Director in the Merger and Acquisition department. At Houlihan Lokey, I ran the New York office's M&A group.

7. In 1995, I joined Oppenheimer & Co. ("Oppenheimer") as a Managing Director in the Corporate Finance department. At Oppenheimer, I worked primarily on mergers and acquisitions, financings and restructuring advisory assignments. I also assisted clients in the private placement of debt securities and the public issuance of MLP units.

8. I became a Managing Director at CIBC World Markets ("CIBC") in the Corporate and Leveraged Finance group, which I joined as a result of CIBC's acquisition of Oppenheimer in 1997. At CIBC, I was co-head of the Restructuring and Bankruptcy advisory group as well as participated in the firm's fairness opinion practice.

9. In 2001, I formed Cypress. During the course of my investment banking career, I have been involved in analyzing more than a thousand potential transactions. I have been retained to perform investment banking services in more than 250 of such transactions. In addition to the

foregoing, I served on the Board of Directors of the general partner of Heritage Propane Partners, L.P., a public company (now Energy Transfer Partners), between 1996 and 2000.

10. Based on my analysis I conclude that at the time the parties reached a settlement,<sup>1</sup> Penn West did not have the ability to pay a judgment or fund a settlement in excess of its insurance coverage without substantially impairing the Company's operations and jeopardizing the Company's ability to continue as an ongoing concern. First, as of December 2015 Penn West had no free cash with which to fund a settlement or judgment. Second, Penn West had entered into a number of restrictive amendments to the Company's agreements with its lenders and noteholders that would have made it very difficult for Penn West to either sell assets or borrow against existing credit capacity to fund a judgment or settlement. In fact, at the time the parties reached a settlement, the Company was projecting an imminent breach of these covenants. Any attempt on the Company's part to borrow money or use operating cash to pay a judgment would have made it highly unlikely – if not impossible – for Penn West to avoid breaching its debt covenants. Finally, Penn West had granted a floating charge on all its assets to the Company's lenders and noteholders, making it impossible for the Company to use the proceeds of any assets sales for any purpose other than paying down debt. Accordingly, in my opinion, as of December 2015, the Company had no ability to pay a judgment or settlement in excess of insurance. The bases for my conclusion are explained below.

11. Penn West is a senior exploration and production company, holding interests in oil and natural gas properties and related production infrastructure in the Western Canada

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<sup>1</sup> I understand that the mediator's proposal in this Action was made on December 18, 2015 and was accepted on January 4, 2016. The fact that the proposal was accepted a few days after December 31, 2015 has no impact on my conclusions. Indeed, as explained in paragraph 26, Penn West's financial distress has continued to the present.

Sedimentary Basin.<sup>2</sup> Penn West's financial results depend on the price of oil – determining how much Penn West can invest in future production, how much it can produce currently and for how much it can sell such production.

12. At the time the parties accepted the mediator's recommendation on January 4, 2016, the large decline in the price of oil over the preceding months had significantly and negatively impacted the Company's financial results and operational flexibility. In 2013 the average WTI spot price<sup>3</sup> was US\$97.98 per barrel, peaking at \$110.62.<sup>4</sup> While the average price in 2014 only declined slightly to US\$93.17 per barrel, oil peaked at US\$107.95 per barrel on June 20, 2014 and ended 2014 at US\$53.45.<sup>5</sup> The decline continued in 2015 with the WTI spot price closing the year at US\$37.13.<sup>6</sup>

13. As of December 2015, the decline in the price of oil depressed Penn West's financial results and significantly increased its leverage ratio, the ratio of debt to earnings before interest, taxes, depreciation and amortization ("EBITDA").<sup>7</sup> EBITDA is a widely-used financial metric that acts as a proxy for a company's pre-tax cash flow and is an important measure of a company's financial health. The following table demonstrates the deterioration in the company's EBITDA and corresponding significant increase in its leverage ratio:

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<sup>2</sup> Penn West 2015 Form 40-F, Exhibit 99.3, p. 8

<sup>3</sup> West Texas Intermediate ("WTI") is a grade of crude oil used as a benchmark in oil pricing.

<sup>4</sup> U.S. Energy Information Administration, Cushing, OK WTI Spot Price FOB

<sup>5</sup> U.S. Energy Information Administration, Cushing, OK WTI Spot Price FOB

<sup>6</sup> U.S. Energy Information Administration, Cushing, OK WTI Spot Price FOB

<sup>7</sup> Senior debt and total debt includes letters of credit outstanding. Sources: "Penn West Announces its Financial and Operational Results for the Year Ended December 31, 2015 and 2015 Reserves Results," March 10, 2016. "Penn West Announces its Financial and Operational Results for the Fourth Quarter and Year Ended December 31, 2014 and 2014 Reserves Results," March 12, 2015. "(Restated) Management's Discussion & Analysis and Financial Statements for the Year Ended December 31, 2013."

(C\$ in millions)	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Senior debt and total debt	C\$2,695	C\$2,465	C\$2,154	C\$1,955
EBITDA	C\$1,224	C\$1,066	C\$1,022	C\$427
Leverage ratio	2.2x	2.3x	2.1x	4.6x

14. As the table above demonstrates, Penn West' EBITDA shrank dramatically in 2015, constraining the Company's access to free cash and jeopardizing its ability to pay debts as they came due.

15. Beginning in 2014 Penn West took numerous steps consistent with a comprehensive plan to mitigate the commodity price decline, maintain operational flexibility and avoid defaulting on its debt.

16. In October 2014, Penn West announced the sale of \$355 million of non-core assets, consistent with Penn West's long-term plan announced in November 2013 to reduce debt through the disposition of non-core and non-producing assets in the range of \$1.5 billion to \$2.0 billion. Such assets dispositions in conjunction with favorable commodity prices earlier in the year had helped Penn West to reduce debt.<sup>8</sup>

17. However, the commodity price environment – and crude oil prices specifically – quickly deteriorated, leading Penn West to announce in December 2014 revisions its 2015 capital budget that had previously been announced only a month earlier. Penn West reduced its capital budget by approximately \$215 million and reduced its 2015 dividend by approximately \$160 million (cutting the quarterly amount from \$0.14 per share to \$0.03 per share).<sup>9</sup> Reductions to the Company's capital budget negatively impacted Penn West's ability to produce oil and natural gas,

<sup>8</sup> "Penn West Announces \$355 Million Non-Core Asset Disposition," October 23, 2014.

<sup>9</sup> "Penn West Announces a Reduction in its 2015 Capital Budget and 2015 Dividend and Suspends Dividend Reinvestment Plan ("DRIP")," December 17, 2014.

and, thus, its ability to generate revenue. Accordingly, these reductions in the Company's capital budget not only signaled that the Company lacked excess cash to invest in operations (or borrowing capacity to fund those investments), but also limited projected revenue.

18. As part of Penn West's 2014 earnings announcement in March 2015, Penn West announced that it was being proactive in light of crude oil prices ranging between approximately US\$43 per barrel and US\$55 per barrel since the beginning of 2015 and the prospect that persistent prices below US\$50 per barrel in the second half of 2015 would lead to covenant compliance challenges. There is a significant risk that a violation of Penn West's financial covenants would lead Penn West's lenders to declare a default. At a minimum, a default declaration would raise the interest rate on outstanding borrowings and could restrict Penn West's ability to access undrawn capacity under its syndicated bank facility and restrict the Company's ability to operate.<sup>10</sup> At worst, Penn West's lenders could require full repayment<sup>11</sup> or force the Company into bankruptcy. Penn West announced an agreement in principle with its lenders and noteholders to amend some covenants in return for temporarily granting floating charge security over all of Penn West's property and the temporary reduction in Penn West's dividend from the previously announced \$0.03 per share to \$0.01 per share. Following the amendment, if Penn West was unable to repay the amounts owing under its credit facilities and Senior Notes, the lenders could proceed to foreclose on the collateral granted under the amendment.<sup>12</sup> Pursuant to the amendment, Penn West was required to maintain the following senior debt to EBITDA leverage ratios:<sup>13</sup>

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<sup>10</sup> Penn West 2014 Annual Information Form, p. 46

<sup>11</sup> *Id.*

<sup>12</sup> Penn West 2014 Annual Information Form, p. 46

<sup>13</sup> "Penn West Announces Its Financial And Operational Results For The Second Quarter Ended June 30, 2015 And Provides Updated 2015 Guidance," July 30, 2015. First Amending Agreement, dated as of May 22, 2015. "(Restated) Management's Discussion & Analysis and Financial Statements for the Year Ended December 31, 2013."



Senior Debt to EBITDA Leverage Ratio Covenant								
	2015			2016			Thereafter	
	Q2	Q3	Q4	Q1	Q2	Q3		
Old Covenant	3.0x	3.0x	3.0x	3.0x	3.0x	3.0x	3.0x	3.0x
Amended Covenant	5.0x	5.0x	5.0x	5.0x	5.0x	4.5x	4.0x	3.0x

19. Penn West also agreed to cancel the \$500 million tranche of its existing \$1.7 billion syndicated bank facility and, until March 30, 2017, offer aggregate net proceeds up to \$650 million received from all property dispositions to prepay at par on a pro rata basis its noteholders and syndicated bank facility.<sup>14</sup>

20. In July 2015, Penn West updated its funds flow from operations guidance, lowering it from a range of \$500 million to \$550 million to a range of \$350 million to \$400 million. Additionally, Penn West's capital budget was reduced from \$625 million to \$575 million as a result of a deferral of certain projects and reduced cost estimates.<sup>15</sup>

21. However, the capital budget reduction was not sufficient and on September 1, 2015, in response to the commodity environment, Penn West announced additional cash preservation measures: (i) limiting capital expenditures to funds flow from operations (an additional \$75 million cut in capital expenditures from July guidance to \$500 million); (ii) suspending the Company's dividend; and (iii) reducing costs through a 35% workforce reduction and lower non-management board compensation.<sup>16</sup>

<sup>14</sup> "Penn West Announces its Financial and Operational Results for the Fourth Quarter and Year Ended December 31, 2014 and 2014 Reserves Results," March 12, 2015.

<sup>15</sup> "Penn West Announces Its Financial and Operational Results for the Second Quarter Ended June 30, 2015 and Provides Updated 2015 Guidance," July 30, 2015

<sup>16</sup> "Penn West Announces Further Actions in Response to Current Commodity Price Environment and Updates 2015 Guidance," September 1, 2015.

22. Given all of the actions taken by the Company to reduce cash expenditures, Penn West's October 1, 2015 production guidance was 84,000 to 88,000 barrel of oil equivalent ("boe") per day down from 95,000 to 105,000 boe per day in November 2014.<sup>17</sup>

23. By year end 2015, Penn West's outlook had deteriorated even further as prices continued to decline from an average WTI price of US\$42 in November 2015 to a December 31, 2015 price of US\$37.<sup>18</sup> Penn West management publicly stated that the Company needed to amend Penn West's leverage covenants again as prevailing oil prices were projected to lead to violations of the amended covenants as early as the second quarter of 2016, with significant risk of a breach in the first quarter of 2016.<sup>19</sup> As discussed above, any use of Penn West's cash or credit capacity to fund a settlement would have increased the risk of default.

24. Research analysts who follow public companies and publish financial analysis were likewise projecting that PWE would breach its debt covenants in the near-term given the Company's precarious financial condition. RBC Capital Markets noted in a December 17, 2015 research report that "Under 2016E strip prices of US\$42/b WTI and US\$2.38/mmBtu Henry Hub, we estimate that Penn West will generate negligible cash flow and as a consequence may require further covenant relaxation in 2016."<sup>20</sup> In fact, RBC projected negative free cash flow of (\$C63) million for 2016.<sup>21</sup> Raymond James noted in a December 2, 2015 report on Penn West that

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<sup>17</sup> "Penn West Announces Details of its 2015 Capital Budget and Long-term Plan Update," November 17, 2014 and "Penn West Announces the Sale of its Non-operated 9.5% Working Interest in the Weyburn Unit for \$205 Million and Updates its Annual Production Guidance," October 1, 2015.

<sup>18</sup> U.S. Energy Information Administration, Cushing, OK WTI Spot Price FOB

<sup>19</sup> "Penn West Announces its Financial and Operational Results for the Year Ended December 31, 2015 and 2015 Reserves Results," March 10, 2016.

<sup>20</sup> "Penn West Petroleum Ltd. Downgrading to Underperform," RBC Capital Markets research report dated December 17, 2015

<sup>21</sup> "Penn West Petroleum Ltd. Downgrading to Underperform," RBC Capital Markets research report dated December 17, 2015

bankruptcy was a possibility with an “alarming” projected debt to cash flow ratio and “with the company potentially breaching its debt covenants next June under current commodity prices.”<sup>22</sup>

25. Projected covenant violations and negative free cash flow suggest that covenant amendment discussions would be difficult and that Penn West had limited flexibility to pursue even necessary operational and capital projects let alone potential non-operational needs such as settling the Action. Without the lenders granting the Company relief from the covenants, as discussed above, Penn West would face higher interest rates, limited access to capital, potential demands for repayments and/or lenders foreclosing on its assets. Under those circumstances, bankruptcy would be a distinct possibility.

26. While I am assessing Penn West’s ability to pay a settlement as of December 31, 2015, it is instructive that Penn West has continued to struggle in 2016. In March, Penn West noted that since the time of renegotiating the Company’s covenants in 2015, oil prices had fallen approximately 50%, leading Penn West to open discussions with its lenders to again revise its covenants.<sup>23</sup> In late March, Penn West announced the sale of core assets in the Slave Point area, whereas prior asset sales had been of non-core assets.<sup>24</sup> Then, on May 16, 2016, Penn West announced that during the first quarter of 2016 Penn West had “experienced the lowest crude oil and natural gas prices in over a decade.”<sup>25</sup> The WTI spot price hit a low of US\$26.19 per barrel in Q1 2016.<sup>26</sup> Moreover, Penn West disclosed that it was continuing discussions with its lenders

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<sup>22</sup> Raymond James research report on Penn West “Initiating Coverage: This One Thing Could Change Everything,” December 2, 2015.

<sup>23</sup> “Penn West Announces its Financial and Operational Results for the Year Ended December 31, 2015 and 2015 Reserves Results,” March 10, 2016.

<sup>24</sup> “Penn West Announces the Sale of Slave Point and Non-core Assets for Cash Proceeds of Approximately \$230 Million,” March 21, 2016

<sup>25</sup> “Penn West Announces its Financial and Operational Results for the First Quarter Ended March 31, 2016,” May 16, 2016.

<sup>26</sup> U.S. Energy Information Administration, Cushing, OK WTI Spot Price FOB

to amend the Company's financial covenants and that Penn West's "ability to continue as a going concern depends on the ability to enter into amending agreements with our lenders."<sup>27</sup>

27. In the lead-up to December 2015, Penn West proactively took a comprehensive set of measures to maintain its financial covenants and financial viability. By December 2015, Penn West had cut its dividend twice before eliminating it altogether. Penn West reduced its capital budget by over 90%, underwent a significant reduction in its workforce and reduced board compensation. Penn West sold a number of non-core assets to repay debt and most recently engaged in the sale of some of its core assets. The combination of continued low commodity pricing, the sale of non-core and core assets, the reduction in capital expenditures and the cutback of non-economic production, all contributed to a reduction in 2015 EBITDA and projected 2016 EBITDA. Excluding asset sales, the proceeds of which were committed to the lenders to reduce debt, Penn West had negative free cash flow in 2015<sup>28</sup> and prevailing commodity prices as of December 31, 2015 led to projections of more of the same in 2016. As of December 31, 2015, Penn West had balance sheet cash of only C\$2 million, negative non-cash working capital of (C\$323) million and all of the Company's assets were pledged as security to its lenders<sup>29</sup> so they could not be sold to satisfy a settlement of this Action.

28. With negative free cash flow, no cash, all assets pledged to its lenders and no ability to draw on financing without further harming its business, Penn West did not have any ability to pay a settlement above the expected proceeds from insurance.

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<sup>27</sup> "Penn West Announces its Financial and Operational Results for the First Quarter Ended March 31, 2016," May 16, 2016.

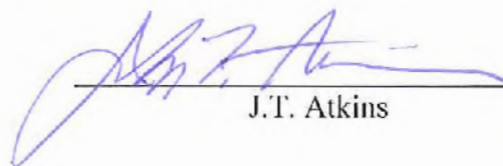
<sup>28</sup> Penn West 2015 Form 40-F, Exhibit 99.3, p. 6

<sup>29</sup> Penn West 2015 Form 40-F, Exhibit 99.3, pp. 5 and 26

29. Moreover, Penn West would have been an unattractive acquisition target as of December 2015 given the Company's high leverage ratio. Accordingly, it was unlikely that a solvent purchaser, with the means to fund a settlement or judgment, would acquire Penn West.

30. I declare, under penalty of perjury, that the foregoing facts are true and correct under the laws of the United States of America.

Executed this 31<sup>st</sup> day of May, 2016, at New York, NY.

  
\_\_\_\_\_  
J.T. Atkins

# Exhibit A

**J.T. Atkins**  
**Curriculum Vitae**

J.T. Atkins has been an investment banker for more than 30 years, specializing in mergers and acquisitions, restructurings and bankruptcies and leveraged finance transactions. Mr. Atkins has worked for companies in many industries including, among others, business services, transportation, telecommunications, media/entertainment, manufacturing, automotive, consumer products, retailing, oil and gas, power and energy, pulp and paper, health care, food and beverage, chemicals, financial institutions, textiles, retailing, real estate, educational services, infrastructure services and technology.

Mr. Atkins is the head of Cypress Associates LLC, an advisory firm specializing in mergers and acquisitions, private placements of debt and equity, corporate restructurings and recapitalizations and litigation advisory services/expert witness representations. As part of activities on behalf of clients, Cypress provides advisory services to acquirors and sellers of assets, debtors, creditors and other parties-in-interest. Cypress acts as placement agent in arranging financing for clients seeking to obtain financing for growth or acquisitions. Cypress also works with attorneys for its clients in providing expert witness reports and supporting testimony.

Cypress' clients include Fortune 500 as well as middle market companies, large mutual funds and insurance companies, debtors, creditors and financial sponsor and strategic buyers. At Cypress, Mr. Atkins has been the senior banker representing clients that include, among others, InterActive Corp., Energy Transfer Partners, Inergy GP, Onex Corporation, Heritage Propane, Allegheny Energy, du Pont, ConAgra, AT&T Wireless, HealthSouth, Wilmington Trust Company, FAO Inc., Leonard Green & Partners, the New York State Common Pension Fund, Chem Rx Corp., Case Pomeroy & Co., the equity owner of Venture Industries, the bondholders of Sunnyside Cogeneration Associates, the creditors of Vacaville Recreation Corporation, the special committees of the Board of Directors of Gart Sports Company, The Aristotle Corporation and Ascendia Brands, and to the Beloit Liquidating Trust and the High Voltage Engineering Liquidating Trust. Mr. Atkins was also the liquidating trustee of the Orion Refining liquidating trust. Mr. Atkins also acted as an advisor to American Rock Salt Co. in its private placement of \$100 million Senior Notes.

Before forming Cypress, Mr. Atkins was a managing director with CIBC World Markets in the Corporate and Leveraged Finance group, which he joined as a result of CIBC's acquisition of Oppenheimer & Co. in 1997. At CIBC, Mr. Atkins was co-head of the Restructuring and Bankruptcy advisory group as well as participating in the firm's fairness opinion practice. Mr. Atkins was the senior team leader in many publicly announced transactions, including the sale of GP Strategies to Veronis Suhler, the squeeze-out acquisition of Mercom Cable by ABRY, an affiliate of Bain Capital, the restructuring and sale of Sunnyside Cogeneration to Constellation Power, the restructuring and sale of Great Lakes Pulp and Fibre, the reorganization and sale of Okeelanta Power, an affiliate of PG&E, to the Fanjul family following the successful settlement of litigation against Florida Power and Light, the restructuring of Mobile Energy, an affiliate of Southern Company and the restructuring of Ramtron Corporation's convertible preferred stock. Prior to the CIBC acquisition, Mr. Atkins was a Managing Director in Oppenheimer's Corporate Finance department beginning in 1995. At Oppenheimer, Mr. Atkins worked on both merger

and acquisition, financings and restructuring advisory assignments. Mr. Atkins' transactions, among others, included the management buyout of Heritage Propane from Golder Thoma Cressey and Prudential, the squeeze out mergers of General Physics by National Patent, and of Faulding Inc. by Faulding Limited, the restructuring and sale of American Fiber Resources, an affiliate of Ahlstrom Engineering, to Cerberus Partners and the restructuring of Robbins Resources, an affiliate of the Foster Wheeler Company. Mr. Atkins also assisted clients including Heritage Propane in the private placement of debt securities and the public issuance of MLP units.

Before joining Oppenheimer, Mr. Atkins was a Managing Director in the Merger and Acquisition department at Houlihan Lokey Howard & Zukin starting in 1991. At Houlihan Lokey, Mr. Atkins ran the New York office's M&A group, overseeing the sale of Petrolane Partners to Suburban Propane, an affiliate of Quantum Chemical, the go private merger of textile manufacturer Alba Waldensian and the restructuring of Synergy Gas.

From 1985 to 1991, Mr. Atkins was in the Mergers and Acquisitions group at PaineWebber Inc. Mr. Atkins started as an Associate, becoming a Managing Director in 1990. At Paine Webber, Mr. Atkins worked on many middle market and large capitalization transactions, including the acquisition by Campeau Corp. of Allied Stores, the leveraged buyouts of Martha White Flour and White Lily Foods, the sale of H.J. Wilson to Service Merchandise, the sale of Bally's to Golden Nugget, the bid by Martin Sosnoff for Caesar's Palace, the bid by Centaur Partners for the Pennwalt Corporation and the acquisition of National Intergroup. Much of the acquisition work involved arranging debt and equity financing on behalf of PaineWebber's clients. Mr. Atkins also was named co-head of PaineWebber's Restructuring group in 1989, overseeing the restructuring of Federated Stores on behalf of the senior creditors and the restructuring of Ames Department Stores of behalf of certain trade creditors.

As part of his work in both mergers and acquisitions and restructuring, throughout his career Mr. Atkins has been involved in numerous litigations and settlement negotiations where he has actively assisted attorneys in examining strategies, analyzing discovery materials, providing both fact and expert testimony and both performing and supporting valuation analyses. Mr. Atkins has been deposed more than 60 times and has testified on dozens of occasions, including numerous times in Delaware Chancery and Federal courts. Mr. Atkins has been qualified as an expert in both acquisition and bankruptcy related litigations. Specifically, Mr. Atkins has been qualified as an expert in valuation, damages, solvency analysis, evaluating leveraged acquisitions, capital structures, the development and analysis of projections, the reasonableness of fees paid to participants in certain merger and acquisition transactions, merger and acquisition and restructuring customs and practices, securities valuation (including illiquid securities), feasibility of restructuring plans, the evaluation of management's ability to operate distressed companies and the fairness of sale processes in bankruptcies. Mr. Atkins also was the lead negotiator in the \$225 million settlement of the Okeelanta Power litigation with Florida Power and Light, the \$53 million settlement for Mobile Energy from Kimberly Clark and the \$29 million settlement for American Fiber Resources from Ahlstrom Engineering.

Cypress is currently retained in seven large and active commercial litigations, in which Mr. Atkins is the designated expert for four of them. Since 2005, Mr. Atkins has been deposed as an



expert witness in *In re Venture Holdings Company LLC (Fed. Bank. Ct. ED Mi. 2003)*, *Benihana of Tokyo, Inc. et al. v. Benihana, Inc. (Del. Ch. Ct. 2004)*, *In the matter of Internet Shopping Network LLC et al. and Kirk Loevner (Fla. Arb. 2004)*, *U.S. Bank National Association v. U.S. Timberlands Klamath Falls LLC et al. (Del. Ch. Ct. 2004)*, *CC Investors III, LP, et al. v. Alfred C. Eckert (NJ Sup. Ct. 2005)*, *In re Musicland Holding Corp., et al. (S.D.N.Y. 2006)*, *Enbridge Energy Company, Inc., et al. v. United States of America (S.D. Texas 2006)*, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (E.D.N.Y. 2005)*, *Gearreald et al. v. Just Care Inc. (De. Ch. Ct. 2010)*, *G-2 Trading LLC v. Inergy, GP, LLC et al. (De. Ch. Ct. 2010)*, *CrossCountry Energy LLC v. El Paso Corp. et al. (Del. Ch. Ct. 2011)*, *In Re Bank of America Corp. Securities, Derivative and ERISA Litigation (S.D.N.Y. 2009)*, *In re McAfee Shareholder Litigation (Sup. Ct. Cal. 2010)*, *Eagle Materials Inc. V. United States of America (N.D. Texas 2011)*, *In re Epicor Software Corporation Shareholder Litigation (S.C. Ca. 2011)*, *Kumiva Group, LLC v. Garda USA Inc. (NY Sup. Ct. 2008)*, *Novack v. GCI Commerce, Inc. et al. (Sup. Ct. Mass. 2011)*, *In re: Activision Blizzard, Inc. Stockholder Litigation (Del. Ch. Ct. 2013)*, *Elting v. Shawe (Del. Ch. St. 2014)*, *Durham v. The Stephens Group, LLC et al. (Tex. County Ct., 2013)*, *Quadrant Structured Products v. Vertin, et al. (Del. Ch. 2012)*, *In re Comverge, Inc. Shareholders Litigation (Del. Ch. 2015)* and *Broyles et al. v. Cantor Fitzgerald & Co., et al. (M.D. La., 2011)* and provided expert testimony at trial in *In re Venture Holdings Company LLC*, *Benihana of Tokyo, Inc. et al. v. Benihana, Inc., et al.*, *In the matter of Internet Shopping Network LLC et al. and Kirk Loevner*, *U.S. Bank National Association v. U.S. Timberlands Klamath Falls LLC et al.*, *CC Investors III, LP, et al. v. Alfred C. Eckert*, *Gearreald et al. v. Just Care Inc.*, *Richard L. Marshall and Patsy L. Marshall, Transferees, et al. v. Commissioner of Internal Revenue*, *Richard L. Marshall and Patsy L. Marshall, Transferees, et al. v. Commissioner (U.S. Tax Ct. 2011)*, *Novack v. GCI Commerce, Inc. et al.*, *Pacific Management Group et a. v. Commissioner (U.S. Tax Ct. 2007)*, *Elting v. Shawe* and *Quadrant Structured Products v. Vertin, et al.*

Mr. Atkins also provides instruction for attorneys on how to work with investment bankers in rendering fairness opinions, for which attorneys receive CLE credit.

Prior to joining PaineWebber, Mr. Atkins was an attorney from 1982 to 1984 at Skadden, Arps, Slate, Meagher & Flom in the merger and acquisitions department.

Mr. Atkins received his B.A. with Highest Honors from the University of Virginia in 1979 and J.D. cum laude from Harvard Law School in 1982. Mr. Atkins was a Teaching Fellow in the Department of Economics at Harvard College from 1980 to 1982.

Mr. Atkins also served on the Board of Directors of the general partner of Heritage Propane Partners, L.P., a public company (now Energy Transfer Partners), between 1996 and 2000. As a Board member, he served as the sole member of Heritage Propane's special committee in evaluating more than a dozen intercompany transactions between Heritage and its general partner. Mr. Atkins also was co-chairman of Heritage's special committee in evaluating the fairness to Heritage's unitholders of its merger with U.S. Propane LLC in 2000.

Mr. Atkins is a member of both the American Bankruptcy Institute and the Turnaround Management Association. Cypress' affiliate, Cypress Partners LLC, is a FINRA registered broker-dealer. Mr. Atkins holds Series 7, 63 and 24 licenses with FINRA.

# Exhibit 4

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE PENN WEST PETROLEUM  
LTD. SECURITIES LITIGATION

Master File No. 14-cv-6046-JGK

**DECLARATION OF STEPHANIE A. THURIN REGARDING: (A) MAILING OF THE NOTICE AND PROOF OF CLAIM FORM; (B) PUBLICATION OF THE SUMMARY NOTICE; AND (C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

I, Stephanie A. Thurin, declare and state as follows:

1. I am a Project Manager employed by Epiq Class Action & Claims Solutions, Inc. (“Epiq”). Pursuant to the Court’s March 1, 2016 Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 124) (“Preliminary Approval Order”), Epiq was authorized to act as the Claims Administrator in connection with the Settlement of the above-captioned action.<sup>1</sup> The following statements are based on my personal knowledge and information provided by other Epiq employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

**DISSEMINATION OF THE NOTICE PACKET**

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

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in the Stipulation and Agreement of Settlement dated February 12, 2016 (ECF No. 121-1) (the “Stipulation”).

and Claim Form are the “Notice Packet”), to potential Settlement Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

3. On March 8, 2016, Epiq received six Excel files from Co-Lead Counsel that had been received from Penn West’s transfer agent, with names and addresses of purchasers of Penn West securities who were potential Settlement Class Members for initial noticing. Epiq extracted these records from all files and after clean-up and de-duplication there remained 3,382 unique names and addresses. Epiq formatted the Notice Packet, and caused it to be printed, personalized with the name and address of each potential Settlement Class Member, posted for first-class mail, postage prepaid, and mailed to these 3,382 potential Settlement Class Members on March 29, 2016.

4. As in most class actions of this nature, the large majority of potential Settlement Class Members are beneficial purchasers whose securities are held in “street name” – *i.e.*, the securities are purchased by brokerage firms, banks, institutions and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. Epiq maintains and updates an internal list of the largest and most common banks, brokers and other nominees. At the time of the initial mailing, Epiq’s internal broker list contained 1,587 mailing records. On March 29, 2016, Epiq caused additional Notice Packets to be mailed to the 1,587 mailing records contained in its internal broker list.

5. In total, 4,969 copies of the Notice Packet were mailed to potential Settlement Class Members and nominees by first-class mail on March 29, 2016.

6. The Notice directed those who purchased or otherwise acquired Penn West common stock, trust units or call options, and/or sold Penn West put options from February 18, 2010 through July 29, 2014, inclusive, for the beneficial interest of a person or organization other

than themselves to either: (i) request within seven (7) calendar days of receipt of the Notice additional copies of the Notice Packet for such beneficial owners from the Claims Administrator, and send a copy of the Notice Packet to such beneficial owners, no later than seven (7) calendar days after such nominees' receipt of the additional copies of the Notice Packet; or (ii) provide to Epiq the names and addresses of such beneficial owners no later than seven (7) calendar days after such nominees' receipt of the Notice.

7. Through June 2, 2016, Epiq mailed an additional 225,246 Notice Packets to potential members of the Settlement Class whose names and addresses were received from individuals, entities or nominees requesting that Notice Packets be mailed to such persons, and mailed another 43,199 Notice Packets to nominees who requested Notice Packets to forward to their customers. Each of the requests was responded to in a timely manner, and Epiq will continue to timely respond to any additional requests received.

8. As of June 2, 2016, an aggregate of 273,414 Notice Packets had been disseminated to potential Settlement Class Members and nominees by first-class mail. In addition, Epiq has re-mailed 207 Notice Packets to persons whose original mailing was returned by the U.S. Postal Service and for whom updated addresses were provided to Epiq by the Postal Service.

#### **PUBLICATION OF THE SUMMARY NOTICE**

9. In accordance with paragraph 8(d) of the Preliminary Approval Order, Epiq caused the Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Notice") to be published once in *Investor's Business Daily* and the *National Post* (Canada), and to be transmitted once over the *PR*

*Newswire* on April 12, 2016. Attached as Exhibit B is a Confirmation of Publication attesting to the publication of the Summary Notice in *Investor's Business Daily* and the *National Post* (Canada), and a screen shot attesting to the transmittal of the Summary Notice over the *PR Newswire* (both *PR Newswire* US and *PR Newswire* Canada).

### **CALL CENTER SERVICES**

10. Epiq reserved a toll-free phone number for the Settlement, (877) 835-0545, which was set forth in the Notice, the Claim Form, the published Summary Notice, and on the Settlement website.

11. The toll-free number connects callers with an Interactive Voice Recording (“IVR”). The IVR provides callers with pre-recorded information, including a brief summary about the Action and the option to request a copy of the Notice. The toll-free telephone line with pre-recorded information is available 24 hours a day, 7 days a week.

12. Epiq made the IVR available on March 29, 2016, the same date Epiq began mailing the Notice Packets.

13. In addition, Monday through Friday from 9:00 a.m. to 9:00 p.m. Eastern Time (excluding official holidays), callers are able to speak to a live operator regarding the status of the Action and/or obtain answers to questions they may have about communications they receive from Epiq. During other hours, callers may leave a message for an agent to call them back.

### **WEBSITE**

14. Epiq established and is maintaining a website dedicated to this Settlement ([www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com)) to provide additional information to Settlement Class Members. Users of the website can download copies of the Notice, the Claim Form, the Stipulation, and the Preliminary Approval Order, among other relevant documents. The web


address was set forth in the published Summary Notice, the Notice, and on the Claim Form. The website was operational beginning on March 29, 2016, and is accessible 24 hours a day, 7 days a week. Epiq will continue operating, maintaining and, as appropriate, updating the website until the conclusion of this administration.

**EXCLUSION REQUESTS**

15. Pursuant to the Preliminary Approval Order, Settlement Class Members who wish to be excluded from the Settlement Class are required to request exclusion in writing so that the request is received by June 20, 2016. This deadline has not yet passed. As of the date of this Declaration, Epiq has received 15 requests for exclusion. Epiq will submit a supplemental declaration after the June 20, 2016 deadline for requesting exclusion that will address all requests received.

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

Executed on June 2, 2016, at Beaverton, Oregon.



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Stephanie A. Thurin



# Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE PENN WEST PETROLEUM LTD.  
SECURITIES LITIGATION

Master File No. 14-cv-6046-JGK

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

**TO:** All persons or entities who or which (i) purchased or otherwise acquired Penn West Petroleum Ltd. ("Penn West") common stock or trust units on an open market located within the United States, including but not limited to the New York Stock Exchange ("NYSE") or another domestic exchange, or (ii) purchased or otherwise acquired Penn West call options, or sold or wrote Penn West put options, on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, from February 18, 2010 through July 29, 2014, inclusive (the "Settlement Class Period"), and who were damaged thereby (the "Settlement Class").<sup>1</sup>

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

***You may be eligible to participate in this Settlement regardless of whether you are domiciled in the United States or are a United States citizen or resident.***

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by the above-captioned securities class action (the "Action" or "U.S. Action") pending in the United States District Court for the Southern District of New York (the "Court").

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiffs, the City of Miami Fire Fighters' and Police Officers' Retirement Trust ("Miami FIPO") and Avi Rojany (collectively, "Lead Plaintiffs"), on behalf of themselves and the other members of the Settlement Class, have reached a proposed settlement of the U.S. Action with defendant Penn West, and defendants Todd H. Takeyasu, Jeffery Curran, David E. Roberts, William E. Andrew and Murray R. Nunns (the "Individual Defendants" and, together with Penn West, the "Defendants") for Can\$26,500,000 in cash (the "Settlement"), which equated to US\$19,759,282 on the date of payment. If the Settlement is approved, it will resolve all claims in the U.S. Action.

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

**If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Court, Penn West, any other Defendants in the Action, or their counsel. All questions should be directed to Co-Lead Counsel or the Claims Administrator (see ¶ 95 below).**

1. **Description of the U.S. Action and the Settlement Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors alleging, among other things, that Defendants violated the federal securities laws by making false and misleading statements regarding Penn West's reported financial results. A more detailed description of the Action is set forth in paragraphs 11-23 below. The proposed Settlement, if approved by the Court, will settle the claims of the Settlement Class, as defined in paragraph 24 below.

2. **Statement of the Settlement Class's Recovery:** Subject to Court approval, Lead Plaintiffs, on behalf of themselves and the Settlement Class, have agreed to settle the U.S. Action in exchange for a settlement payment of Can\$26,500,000 in cash (the "Settlement Amount"), which equated to US\$19,759,282 on the day it was deposited into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (the "Settlement Fund") less (a) any Taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses awarded by the Court, and (d) any attorneys' fees awarded by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court. The proposed plan of allocation (the "Plan of Allocation"), which dictates how the Net Settlement Fund is allocated among members of the Settlement Class, is set forth on pages 9-14 below.

<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated February 12, 2016 (the "Stipulation"), which is available at [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com).

3. **Estimate of Average Amount of Recovery Per Share, Trust Unit or Option:** Lead Plaintiffs' damages expert estimates that the conduct at issue in the Action affected approximately 219 million shares of Penn West common stock or trust units<sup>2</sup> and 13.6 million Penn West call options<sup>3</sup> purchased, and 4.4 million Penn West put options written or sold, during the Settlement Class Period.<sup>4</sup> If all eligible Settlement Class Members elect to participate in the Settlement, the estimated average recovery would be approximately US\$0.09 per affected share of common stock or trust unit, US\$0.01 per affected call option, and US\$0.03 per affected put option. Settlement Class Members should note, however, that the foregoing average recovery per share, trust unit or option is only an estimate. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, which Penn West securities they purchased, when and at what prices they purchased/acquired or sold their Penn West securities, and the total number of valid Claim Forms submitted.

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

5. **Attorneys' Fees and Expenses Sought:** Court-appointed Co-Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP and Glancy Prongay & Murray LLP, who have been prosecuting this Action on a wholly contingent basis since its inception in 2014, have not received any payment of attorneys' fees for their representation of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute the Action. Co-Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund. In addition, Co-Lead Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the institution, prosecution and resolution of the claims against the Defendants, in an amount not to exceed US\$525,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Settlement Class. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. If the Court approves Co-Lead Counsel's fee and expense application, the estimated average amount of fees and expenses, assuming claims are filed for all affected shares, trust units and call and put options, will be approximately US\$0.025 per affected share of common stock or trust unit, US\$0.004 per affected call option, and US\$0.008 per affected put option.

6. **Identification of Attorneys' Representatives:** Lead Plaintiffs and the Settlement Class are represented by John Rizio-Hamilton, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, (800) 380-8496, blbg@blbglaw.com; and Peter A. Binkow, Esq. of Glancy Prongay & Murray LLP, 1925 Century Park East, Suite 2100, Los Angeles, California 90067, (888) 773-9224, settlements@glancylaw.com.

7. **Reasons for the Settlement:** Lead Plaintiffs' principal reason for entering into the Settlement is the substantial immediate cash benefit for the Settlement Class without the risk or delays inherent in further litigation. A principle reason for the Settlement was the significant deterioration in the financial condition of Penn West. Given Penn West's compromised financial condition, had the litigation continued, there would have been a significant risk that a smaller recovery – or indeed no recovery at all – might have been achieved after contested motions, a trial of the Action and the likely appeals that would follow a trial. This process could be expected to last several years. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden and expense of further protracted litigation.

<sup>2</sup> An affected share/trust unit might have been traded more than once during the Settlement Class Period, and this average recovery would be the total for all purchasers of that share/unit.

<sup>3</sup> All options-related amounts in this paragraph are per share or unit of the underlying security (*i.e.*, 1/100 of a contract).

<sup>4</sup> Penn West common stock, trust units and call and put options are collectively referred to herein as "Penn West Securities."

**YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:**

<p><b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN AUGUST 26, 2016.</b></p>	<p>This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs' Claims (defined in ¶ 35 below) that you have against Defendants and the other Defendants' Releasees (defined in ¶ 36 below), so it is in your interest to submit a Claim Form.</p>
<p><b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN JUNE 20, 2016.</b></p>	<p>If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Defendants or the other Defendants' Releasees concerning the Released Plaintiffs' Claims.</p>
<p><b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN JUNE 20, 2016.</b></p>	<p>If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.</p>
<p><b>GO TO A HEARING ON JULY 19, 2016 AT 4:30 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN JUNE 20, 2016.</b></p>	<p>Filing a written objection and notice of intention to appear by June 20, 2016 allows you to speak in Court at the discretion of the Court about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys' fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but do not have to) attend the hearing and speak to the Court about your objection.</p>
<p><b>DO NOTHING.</b></p>	<p>If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.</p>

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## WHY DID I GET THIS NOTICE?

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

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation and the motion by Co-Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Settlement Fairness Hearing"). See paragraph 86 below for details about the Settlement Fairness Hearing, including the date and location of the hearing.

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

## WHAT IS THIS CASE ABOUT?

11. This is a securities class action brought by investors alleging, among other things, that Defendants violated the federal securities laws by making false and misleading statements regarding Penn West's reported financial results. The U.S. Action commenced with the filing of a class action complaint in the United States District Court for the Southern District of New York on August 4, 2014.

12. On October 29, 2014, the Court appointed Miami FIPO and Avi Rojany to serve as Lead Plaintiffs in the U.S. Action, and approved Lead Plaintiffs' selection of Bernstein Litowitz Berger & Grossmann LLP and Glancy Prongay & Murray LLP to serve as Co-Lead Counsel. Thereafter, on December 19, 2014, Lead Plaintiffs filed a 116 page Consolidated Amended Class Action Complaint (the "Complaint"). The Complaint asserts claims for securities fraud against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act.

13. The Complaint alleges that, from February 18, 2010 through July 29, 2014, the Defendants materially misstated Penn West's financial results, including its operating expenses, assets, and net income, principally by mis-booking operating expenses as capital expenses.

14. The Complaint alleges that on July 29, 2014, Penn West disclosed that the Audit Committee of its Board of Directors was conducting an internal review of certain accounting practices, and that certain of Penn West's financial statements for prior years would be restated. The Complaint further alleges that, in response to this announcement, Penn West's stock price fell by more than 14% the next trading day.

15. On March 6, 2015, Defendants moved to dismiss the Complaint. On April 24, 2015, Lead Plaintiffs filed an opposition brief. The motions to dismiss were fully briefed on May 15, 2015, and were pending before the Court at the time the Parties reached an agreement to settle the case. Thereafter, the Court dismissed the motions to dismiss without prejudice to renewal if the Settlement does not become effective.

16. Although the Parties believe in the merits of their respective positions, they also recognized the benefits that would accrue if they could reach an agreement to resolve the U.S. Action given the severe deterioration in Penn West's financial condition. Thus, they began to explore whether a settlement could be reached through a mediation process.

17. There were also parallel securities class actions pending against Penn West in Canada (the "Canadian Actions"), where Penn West is based, based on the same facts alleged in the U.S. Action. The Canadian Actions

were at a similar stage as the U.S. Action, and the Parties agreed that given the limited financial resources available to settle all litigation, the U.S. and Canadian Actions should both participate in any attempt to settle the cases.

18. Judge Daniel Weinstein (Ret.) was selected to serve as a mediator for the Canadian and U.S. Actions. On November 24, 2015, the plaintiffs in the U.S. and Canadian Actions and Penn West submitted extensive mediation statements to Judge Weinstein, and, on December 8, 2015, participated in an all-day mediation. The session ended without any agreements being reached. Thereafter, settlement discussions continued, and Judge Weinstein issued a mediator's recommendation on December 18, 2015.

19. The Parties accepted Judge Weinstein's recommendation on or about January 4, 2016, thus reaching an agreement in principle to settle the U.S. and Canadian Actions. The Parties to the U.S. Action subsequently negotiated and entered into the Stipulation that sets forth the detailed terms of the Settlement.

20. Lead Plaintiffs have not yet had access to Defendants' documents. Therefore, a condition of the agreement in principle to settle the U.S. Action was Penn West's agreement to provide certain information that would allow Lead Plaintiffs and Co-Lead Counsel to confirm the propriety of the decision to settle on the agreed-to terms.

21. Based on the investigation and mediation of the case and Lead Plaintiffs' direct oversight of the prosecution of this matter and with the advice of their counsel, each of the Lead Plaintiffs has agreed to settle and release the claims raised in the U.S. Action pursuant to the terms and provisions of the Stipulation, after considering, among other things: (a) the substantial financial benefit that Lead Plaintiffs and the other members of the Settlement Class will receive under the proposed Settlement; and (b) the significant risks and costs of continued litigation and trial.

22. Defendants are entering into the Stipulation solely to eliminate the uncertainty, burden and expense of further protracted litigation. Each of the Defendants denies any wrongdoing, and the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants, or any other of the Defendants' Releasees (defined in ¶ 36 below), with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have, or could have, asserted. Similarly, the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit.

23. On March 1, 2016, the Court preliminarily approved the Settlement and certified the Settlement Class for settlement purposes only, authorized this Notice to be disseminated to potential Settlement Class Members, and scheduled the Settlement Fairness Hearing to consider whether to grant final approval to the Settlement.

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

24. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of the following, regardless of which state or country the person or entity may reside or be domiciled in:

all persons or entities who or which (i) purchased or otherwise acquired Penn West common stock or trust units on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, or (ii) purchased or otherwise acquired Penn West call options, or sold or wrote Penn West put options, on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, from February 18, 2010 through July 29, 2014, inclusive (the "Settlement Class Period"), and who were damaged thereby.

Excluded from the Settlement Class are Defendants, KPMG LLP and KPMG LLP (Canada) (collectively with KPMG LLP, "KPMG"), the General Counsel, officers, directors and partners of Penn West and KPMG at all relevant times, any entity in which any Defendant or KPMG has or had a controlling interest, and the members of the Immediate Families and the legal representatives, heirs, successors or assigns of any of the foregoing. Also excluded from the Settlement Class are any persons or entities who or which exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice. See "What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Seek To Exclude Myself," on page 14 below.

**PLEASE NOTE:**

(a) In January 2011, Penn West trust units were converted to shares of Penn West common stock on a one-to-one basis. The holders of Penn West trust units as of January 1, 2011 received one share of Penn West common stock for every trust unit they held as of that date. The receipt of Penn West common stock as a result of this

conversion is not considered an “acquisition” of Penn West common stock for purposes of determining membership in the Settlement Class.

(b) Receipt of this Notice does not mean that you are a Settlement Class Member or that you will be entitled to receive proceeds from the Settlement. If you are a Settlement Class Member and you wish to be eligible to participate in the distribution of proceeds from the Settlement, you are required to submit the Claim Form that is being distributed with this Notice and the required supporting documentation as set forth therein **postmarked no later than August 26, 2016**.

(c) There is a separate settlement for persons who acquired the securities of Penn West on the Toronto Stock Exchange, on an alternative trading market in Canada, or otherwise in Canada from March 17, 2011 through July 29, 2014, inclusive, and/or July 30, 2014 through September 18, 2014, inclusive, and held some or all of those securities at the close of trading on July 29, 2014 or September 18, 2014 (the “Canadian Class”). This Notice only discusses the rights and options of members of the Settlement Class in the U.S. Action. If you are a member of the Canadian Class, you can learn more about your rights and options at the website dedicated to the Canadian cases: [www.PennWestCanadianClassAction.com](http://www.PennWestCanadianClassAction.com).

## WHAT ARE LEAD PLAINTIFFS’ REASONS FOR THE SETTLEMENT?

25. Lead Plaintiffs and Co-Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against the Defendants through a decision on Defendants’ motions to dismiss, summary judgment motions, trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. The Court had not ruled on the motions to dismiss when the Parties reached their agreement in principle to settle. Defendants raised credible arguments directed at the adequacy of Lead Plaintiffs’ allegations concerning whether Defendants acted with sufficient knowledge or recklessness to prevail under the federal securities laws. Specifically, Defendants argued that Lead Plaintiffs had not alleged any motive to engage in fraud through insider trading and could not point to any witnesses or internal documents or particularized facts that supported their allegations that Defendants knowingly or recklessly committed securities fraud.

26. Defendants had a number of additional significant arguments, including those relating to loss causation and damages. Defendants argued that much of the decline in Penn West’s stock price was caused by issues unrelated to the announcement of the restatement of Penn West’s financial statements, and that Lead Plaintiffs’ damages were far less than alleged. Had any of these arguments been accepted in whole or in part, it could have eliminated or, at a minimum, drastically limited any potential recovery. Further, in order to succeed, Lead Plaintiffs would have had to prevail at several stages – motion to dismiss, motion for summary judgment, and trial, and even if Lead Plaintiffs prevailed on those, on the appeals that were likely to follow. Thus, there were significant risks attendant to the continued prosecution of the Action, and there was no guarantee that further litigation would have resulted in a higher recovery, or any recovery at all.

27. Finally, there were also very real risks to recovering a judgment larger than the Settlement in light of Penn West’s financial condition and limited officer and directors’ insurance. Penn West is one of Canada’s largest producers of oil and natural gas. Over approximately the past 18 months, oil prices have sharply declined. Penn West’s financial condition and cash position have deteriorated significantly along with the decline in oil prices. Penn West’s deteriorating financial position meant that its insurance coverage was the only practical source of recovery for both the U.S. and Canadian Actions, and these funds would be reduced by defense costs if the litigations continued.

28. Taking into account the aforementioned risks, the amount of the Settlement and the immediacy of recovery to the Settlement Class, Lead Plaintiffs and Co-Lead Counsel believe that the Settlement represents an excellent result.

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

## WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

30. If there were no Settlement and Lead Plaintiffs failed to establish any essential legal or factual element of their claims against Defendants, neither Lead Plaintiffs nor the other members of the Settlement Class would recover anything from Defendants. Also, if Defendants were successful in their motions to dismiss, or in proving any of their defenses, either at summary judgment, at trial or on appeal, or if Penn West were to file for bankruptcy, the

Settlement Class could recover substantially less than the amount provided in the Settlement, or nothing at all.

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

31. As a Settlement Class Member, you are represented by Lead Plaintiffs and Co-Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” below.

32. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may seek to exclude yourself from the Settlement Class by following the instructions in the section entitled, “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Seek To Exclude Myself?,” below.

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

34. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, to the extent permitted by law, Lead Plaintiffs and each member of the Settlement Class, on behalf of themselves and their respective past and present directors, officers, employees, agents, trustees, fiduciaries, servants, consultants, underwriters, advisors, representatives, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, in their capacities as such, and any other person or entity legally entitled to bring Released Plaintiffs’ Claims (as defined in ¶ 35 below) on behalf of a Settlement Class Member, in that capacity, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Plaintiffs’ Claim against the Defendants and the other Defendants’ Releasees (as defined in ¶ 36 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Defendants’ Releasees. This release shall not apply to any Excluded Claims (as defined in ¶ 35 below).

35. “Released Plaintiffs’ Claims” means, to the extent permitted by law, all claims and causes of action of every nature and description, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever and wherever incurred, and rights and liabilities of any nature whatsoever, including interest, costs, expenses, administration expenses, penalties, Co-Lead Counsel’s attorneys’ fees, suspected or unsuspected, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that Lead Plaintiffs or any other member of the Settlement Class alleged or could have alleged, whether directly or indirectly, arising out of, based upon, or related to (a) (i) the purchase or acquisition of Penn West common stock or trust units on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, during the Settlement Class Period, or (ii) the purchase or acquisition of Penn West call options, or sale or writing of Penn West put options, on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, during the Settlement Class Period, and (b) any act, facts, transactions, events, disclosures, statements, or omissions that were or could have been alleged in the U.S. Action. Released Plaintiffs’ Claims do not include: (i) any claims against KPMG, its parents, affiliates, subsidiaries, successors, or predecessors, or current or former officers, directors and partners thereof; (ii) any claims relating to the enforcement of the Settlement; or (iii) any claims of any person or entity that submits a request for exclusion that is accepted by the Court (the “Excluded Claims”).

36. “Defendants’ Releasees” means Defendants; the current and former employers, officers, directors, employees, agents, servants, representatives, parents, affiliates, subsidiaries, successors, predecessors, assigns, assignees, advisors, attorneys, and insurers of Penn West and the Individual Defendants; and each of their respective heirs, executors, administrators, successors and assigns; *provided, however*, that KPMG, and its parents, affiliates, subsidiaries, successors, and predecessors, as well as any current or former officers, directors and partners thereof, shall not be a Defendants’ Releasee and shall not be released in this Settlement.

37. “Unknown Claims” means any Released Plaintiffs’ Claims which any Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendants’ Claims which any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that,



upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

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

38. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves and their respective past and present directors, officers, employees, agents, trustees, fiduciaries, servants, consultants, underwriters, advisors, representatives, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, in their capacities as such, and any other person or entity legally entitled to bring Released Defendants' Claims (as defined in ¶ 39 below) on behalf of a Defendant, in that capacity, shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants' Claim against Lead Plaintiffs and the other Plaintiffs' Releasees (as defined in ¶ 40 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees. This release shall not apply to (i) any claims relating to the enforcement of the Settlement; or (ii) any claims of any person or entity that submits a request for exclusion from the Settlement Class that is accepted by the Court.

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

40. "Plaintiffs' Releasees" means Lead Plaintiffs, all other plaintiffs in the U.S. Action, and their respective attorneys, and all other Settlement Class Members, their respective current and former officers, directors, employees, agents, servants, representatives, parents, affiliates, subsidiaries, successors, predecessors, assigns, assignees, advisors, attorneys, and insurers, and each of their respective heirs, executors, administrators, successors and assigns.

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

41. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than August 26, 2016**. A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at (877) 835-0545 or by emailing the Claims Administrator at [info@PennWestUSSecuritiesLitigation.com](mailto:info@PennWestUSSecuritiesLitigation.com). Please retain all records of your ownership of and transactions in Penn West Securities, because they may be needed to document your Claim. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

## HOW MUCH WILL MY PAYMENT BE?

42. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement. Moreover, the Settlement of the U.S. Action is contingent on the settlement of the Canadian Actions. If the Canadian Actions are not settled, Defendants will have the option to terminate the settlement of the U.S. Action and, if exercised, Lead Plaintiffs and Defendants shall be restored to their respective positions in the U.S. Action immediately prior to January 4, 2016.

43. Pursuant to the Settlement, Defendants have agreed to pay or caused to be paid Can\$26,500,000 in cash, which equated to US\$19,759,282 on the day it was deposited into an escrow account dedicated to this Settlement.

The Settlement Amount plus any interest earned thereon is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the “Net Settlement Fund” (that is, the Settlement Fund less (a) any Taxes; (b) any Notice and Administration Costs; and (c) any attorneys’ fees and Litigation Expenses awarded by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

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

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

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

47. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form postmarked on or before August 26, 2016 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Settlement Class Member releases the Released Plaintiffs’ Claims (as defined in ¶ 35 above) against the Defendants’ Releasees (as defined in ¶ 36 above) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiffs’ Claims against any of the Defendants’ Releasees whether or not such Settlement Class Member submits a Claim Form.

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

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

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

51. Only Settlement Class Members will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms.

### **PROPOSED PLAN OF ALLOCATION**

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

53. In developing the Plan of Allocation, Lead Plaintiffs’ damages expert calculated the estimated amount of artificial inflation in the per share or per unit closing prices of Penn West common stock, trust units and call options (and the amount of artificial deflation in the per share closing prices of Penn West put options) which allegedly was proximately caused by Defendants’ alleged false and misleading statements and material omissions. In calculating the estimated artificial inflation allegedly caused by Defendants’ alleged misrepresentations and omissions, Lead Plaintiffs’ damages expert considered price changes in Penn West common stock and options in reaction to certain public announcements allegedly revealing the truth concerning Defendants’ alleged misrepresentations and material

omissions, adjusting for price changes that were attributable to market or industry forces and disclosures of information unrelated to the alleged fraud as well as the evidence developed in support of the allegations in the Complaint, and the strength of the claims. The estimated artificial inflation in Penn West trust units and common stock is set forth in Table 1 at the end of this Notice. The estimated artificial inflation in Penn West call options is set forth in Table 2, and the estimated artificial deflation in Penn West put options is set forth in Table 3.

54. For losses to be compensable damages under the federal securities laws, the disclosure of the allegedly misrepresented information must be, among other things, the cause of the decline in the price or value of the security. Lead Plaintiffs' damages expert has determined that allegedly corrective information that was released before the market opened on November 6, 2013 and after the market closed on July 29, 2014, had a statistically significant impact on the market prices of Penn West Securities. In order to have a "Recognized Loss Amount" under the Plan of Allocation, with respect to common stock, trust units and call options, the common stock, trust units or call options must have been purchased or acquired during the Settlement Class Period and held through at least one of the dates of the two alleged corrective disclosures and, with respect to put options, those options must have been sold (written) during the Settlement Class Period and not closed through at least one of the alleged corrective disclosures.

55. Recognized Loss Amounts are based primarily on the difference in the amount of alleged artificial inflation (or deflation in the case of put options) in the respective prices of the Penn West Securities at the time of purchase or acquisition and at the time of sale. Accordingly, in order to have a Recognized Loss Amount, a Settlement Class Member who purchased or acquired Penn West common stock, trust units or call options (or wrote put options) from February 18, 2010 through November 5, 2013, inclusive, must have held those Penn West Securities through at least the close of trading on November 5, 2013. With respect to common stock, trust units or call option contracts purchased/acquired and put options contracts sold (written) from November 6, 2013, through and including July 29, 2014, those securities must have been held through at least the close of trading on July 29, 2014.

### **CALCULATION OF RECOGNIZED LOSS AMOUNTS**

56. Based on the formulas stated below, a "Recognized Loss Amount" will be calculated for each purchase of Penn West common stock/trust units and call options and each sale of Penn West put options during the Settlement Class Period that is listed on the Claim Form and for which adequate documentation is provided. If a Recognized Loss Amount calculates to a negative number or zero under the formula below, that Recognized Loss Amount will be zero.

#### **Penn West Common Stock / Trust Unit Calculations**

57. For each share of Penn West common stock or Penn West trust unit purchased or otherwise acquired during the period from February 18, 2010 through and including the close of trading on July 29, 2014,<sup>5</sup> and:

- (a) Sold prior to the close of trading on November 5, 2013, the Recognized Loss Amount will be \$0.00.
- (b) Sold during the period from November 6, 2013 through and including the close of trading on July 29, 2014, the Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial inflation per share on the date of purchase as set forth in Table 1 *minus* the amount of artificial inflation per share on the date of sale as set forth in Table 1; or (ii) the purchase price minus the sale price.
- (c) Held as of the close of trading on July 29, 2014, the Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial inflation per share on the date of purchase as set forth in Table 1; or (ii) the purchase price minus \$7.85, the closing price for Penn West common stock on July 30, 2014.

#### **Penn West Call and Put Options Calculations**

58. Exchange-traded options are traded in units called "contracts" which entitle the holder to buy (in the case of a call option) or sell (in the case of a put option) 100 shares of the underlying security, which in this case is Penn West common stock. Throughout this Plan of Allocation, all price quotations are *per share of the underlying security* (i.e., 1/100 of a contract).

59. Each option contract specifies a strike price and an expiration date. Contracts with the same strike price and expiration date are referred to as a "series" and each series represents a different security that trades in the market and has its own market price (and thus artificial inflation or deflation). Under the Plan of Allocation, the dollar

<sup>5</sup> Penn West trust units held as of January 1, 2011 were converted to shares of Penn West common stock on a one-to-one basis in January 2011. The receipt of Penn West common stock as a result of this conversion is not considered an "acquisition" of Penn West common stock under the Plan of Allocation: the price and date of the original purchase or acquisition of Penn West trust units and the ultimate disposition of the common stock received as a result of the conversion will be used to determine the eligibility of the claim and the amount of the Recognized Loss Amount.

artificial inflation per share (*i.e.*, 1/100 of a contract) for each series of Penn West call options and the dollar artificial deflation per share (*i.e.*, 1/100 of a contract) for each series of Penn West put options has been calculated by Lead Plaintiffs' damages expert. Table 2 below sets forth the dollar artificial inflation per share in Penn West call options during the Settlement Class Period. Table 3 below sets forth the dollar artificial deflation per share in Penn West put options during the Settlement Class Period. Tables 2 and 3 list only series of Penn West options that expired after November 6, 2013 – the date of first alleged corrective disclosure. Transactions in Penn West options that expired before November 6, 2013 have a Recognized Loss Amount of zero under the Plan of Allocation.

60. For each Penn West call option purchased during the period from February 18, 2010 through and including the close of trading on July 29, 2014, and:

- (a) closed (through sale, exercise, or expiration) prior to the close of trading on November 5, 2013, the Recognized Loss Amount will be \$0.00.
- (b) closed (through sale, exercise, or expiration) during the period from November 6, 2013 through and including the close of trading on July 29, 2014, the Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial inflation per share on the date of purchase as set forth in Table 2 *minus* the amount of artificial inflation per share on the date of close as set forth in Table 2; or (ii) the purchase price *minus* the sale price (if sold).
- (c) open as of the close of trading on July 29, 2014, the Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial inflation per share on the date of purchase as set forth in Table 2; or (ii) the purchase price *minus* the closing price on July 30, 2014 (*i.e.*, the "Holding Price") as set forth in Table 2 below.

61. For each Penn West put option sold (written) during the period from February 18, 2010 through and including the close of trading on July 29, 2014, and:

- (a) closed (through purchase, exercise, or expiration) prior to the close of trading on November 5, 2013, the Recognized Loss Amount will be \$0.00.
- (b) closed (through purchase, exercise, or expiration) during the period from November 6, 2013 through and including the close of trading on July 29, 2014, the Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial deflation per share on the date of sale (writing) as set forth in Table 3 *minus* the amount of artificial deflation per share on the date of close as set forth in Table 3; or (ii) the purchase (closing) price *minus* the sale price.
- (c) open as of the close of trading on July 29, 2014, the Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial deflation per share on the date of sale (writing) as set forth in Table 3; or (ii) the closing price on July 30, 2014 (*i.e.*, the "Holding Price") as set forth in Table 3 below *minus* the sale price.

62. **Maximum Recovery for Options:** The Settlement proceeds available for Penn West call options purchased during the Settlement Class Period and Penn West put options sold (written) during the Settlement Class Period shall be limited to a total amount equal to 2% of the Net Settlement Fund.

#### ADDITIONAL PROVISIONS

63. **Calculation of Claimant's "Recognized Claim":** A Claimant's "Recognized Claim" under the Plan of Allocation will be the sum of his, her or its Recognized Loss Amounts as calculated above with respect to all Penn West Securities.

64. **Conversion of Penn West Trust Units to Common Stock.** In January 2011, Penn West trust units were converted to shares of Penn West common stock on a one-to-one basis. The holders of Penn West trust units as of January 1, 2011 received one share of Penn West common stock for every trust unit they held as of that date. The receipt of Penn West common stock as a result of this conversion is not an eligible "acquisition" of Penn West common stock for purposes of determining membership in the Settlement Class or for calculation of a Claimant's Recognized Loss Amount under the Plan of Allocation: the price and date of the original purchase or acquisition of the Penn West trust units and the ultimate disposition of the common stock received as a result of the conversion will be used to determine the eligibility of the claim and the amount of the Recognized Loss Amount.

65. **FIFO Matching:** If a Settlement Class Member made more than one purchase/acquisition or sale of any Penn West Security during the Settlement Class Period, all purchases/acquisitions and sales of the like security shall be matched on a First In, First Out ("FIFO") basis. With respect to Penn West common stock, trust units

and call options, Settlement Class Period sales will be matched first against any holdings at the beginning of the Settlement Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Settlement Class Period. For purposes of this matching, Penn West trust units and common stock shall be treated as the same security. Thus, if you purchased or acquired Penn West trust units from February 18, 2010 through January 1, 2011 which were held though January 1, 2011 and converted to Penn West common stock, your sales of Penn West common stock will be matched first with purchases/acquisitions of the trust units and then with any purchases/acquisitions of common stock in chronological order. For Penn West put options, Settlement Class Period purchases will be matched first to close out positions open at the beginning of the Settlement Class Period, and then against put options sold (written) during the Settlement Class Period in chronological order.

66. **“Purchase/Sale” Dates:** Purchases or acquisitions and sales of Penn West Securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance or operation of law of Penn West Securities during the Settlement Class Period shall not be deemed a purchase, acquisition or sale of these Penn West Securities for the calculation of a Claimant’s Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such Penn West Securities unless (i) the donor or decedent purchased or otherwise acquired such Penn West Securities during the Settlement Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such Penn West Securities.

67. **Short Sales:** With respect to Penn West common stock or trust units, the date of covering a “short sale” is deemed to be the date of purchase or acquisition of the common stock or trust units. The date of a “short sale” is deemed to be the date of sale of the Penn West common stock or trust units. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on “short sales” is zero.

68. In the event that a Claimant has an opening short position in Penn West trust units, the earliest purchases or acquisitions of Penn West trust units/common stock during the Settlement Class Period shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

69. If a Settlement Class Member has “written” call options, thereby having a short position in the call options, the date of covering such a written position is deemed to be the date of purchase or acquisition of the call option. The date on which the call option was written is deemed to be the date of sale of the call option. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on “written” call options is zero. In the event that a Claimant has an opening written position in call options, the earliest purchases or acquisitions of like call options during the Settlement Class Period shall be matched against such opening written position, and not be entitled to a recovery, until that written position is fully covered.

70. If a Settlement Class Member has purchased or acquired put options, thereby having a long position in the put options, the date of purchase/acquisition is deemed to be the date of purchase/acquisition of the put option. The date on which the put option was sold, exercised, or expired is deemed to be the date of sale of the put option. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on purchased/acquired put options is zero. In the event that a Claimant has an opening long position in put options, the earliest sales or dispositions of like put options during the Settlement Class Period shall be matched against such opening position, and not be entitled to a recovery, until that long position is fully covered.

71. **Common Stock and Trust Units Purchased/Sold Through the Exercise of Options:** With respect to Penn West common stock and trust units purchased or sold through the exercise of an option, the purchase/sale date of the common stock and trust units is the exercise date of the option and the purchase/sale price is the exercise price of the option.

72. **Market Gains and Losses:** With respect to all Penn West common stock, trust units and call options purchased or acquired or put options sold during the Settlement Class Period, the Claims Administrator will determine if the Claimant had a Market Gain or a Market Loss with respect to his, her or its overall transactions during the Settlement Class Period in those shares and options. For purposes of making this calculation, with respect to Penn West common stock, trust units and call options, the Claims Administrator shall determine the difference between (i) the Claimant’s Total Purchase Amount<sup>6</sup> and (ii) the sum of the Claimant’s Sales Proceeds<sup>7</sup> and the Claimant’s

<sup>6</sup> For Penn West common stock, trust units and call options, the “Total Purchase Amount” is the total amount the Claimant paid (excluding all fees, taxes and commissions) for all such Penn West securities purchased or acquired during the Settlement Class Period.

<sup>7</sup> For Penn West common stock, trust units and call options, the Claims Administrator shall match any sales of such Penn West securities during the Settlement Class Period first against the Claimant’s opening position in the like Penn West securities (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). For purposes of this matching, Penn West trust units and common stock are treated as the same security. The total amount received for sales of the remaining like Penn West securities sold during the Settlement Class Period is the “Sales Proceeds.”

Holding Value.<sup>8</sup> For Penn West common stock, trust units and call options, if the Claimant's Total Purchase Amount *minus* the sum of the Claimant's Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain. With respect to Penn West put options, the Claims Administrator shall determine the difference between (i) the sum of the Claimant's Total Purchase Amount<sup>9</sup> and the Claimant's Holding Value;<sup>10</sup> and (ii) the Claimant's Sales Proceeds.<sup>11</sup> For Penn West put options, if the sum of the Claimant's Total Purchase Amount and the Claimant's Holding Value *minus* the Claimant's Sales Proceeds is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain.

73. If a Claimant had a Market Gain with respect to his, her, or its overall transactions in Penn West Securities during the Settlement Class Period, the value of the Claimant's Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlement. If a Claimant suffered an overall Market Loss with respect to his, her, or its overall transactions in Penn West Securities during the Settlement Class Period but that Market Loss was less than the Claimant's Recognized Claim calculated above, then the Claimant's Recognized Claim will be limited to the amount of the Market Loss.

74. **Determination of Distribution Amount:** If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

75. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed *pro rata* to all Authorized Claimants entitled to receive payment.

76. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation (*i.e.*, the Recognized Claim will be deemed to be zero) and no distribution will be made to that Authorized Claimant. Any prorated amounts of less than \$10.00 will be included in the pool distributed to those whose prorated payments are \$10.00 or greater.

77. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund nine (9) months after the initial distribution, if Co-Lead Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 on such additional re-distributions may occur thereafter if Co-Lead Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Co-Lead Counsel and approved by the Court.

78. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiffs, Co-Lead Counsel, Lead Plaintiffs' damages expert, Defendants, Defendants' Counsel, or any of the other Plaintiffs' Releasees or Defendants' Releasees, or the Claims Administrator or other agent designated by Co-Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by

<sup>8</sup> The Claims Administrator shall ascribe a "Holding Value" of \$7.85 to each Penn West trust unit or share of common stock purchased or acquired during the Settlement Class Period that was still held as of the close of trading on July 29, 2014. For each Penn West call option purchased or acquired during the Settlement Class Period that was still held as of the close of trading on July 29, 2014, the Claims Administrator shall ascribe a "Holding Value" for that option which shall be the Holding Price set forth on Table 2.

<sup>9</sup> For Penn West put options, the Claims Administrator shall match any purchases during the Settlement Class Period to close out positions in put options first against the Claimant's opening position in put options (the total amount paid with respect to those purchases will not be considered for purposes of calculating market gains or losses). The total amount paid for the remaining purchases during the Settlement Class Period to close out positions in put options is the "Total Purchase Amount."

<sup>10</sup> For each Penn West put option sold (written) during the Settlement Class Period that was still outstanding as of the close of trading on July 29, 2014, the Claims Administrator shall ascribe a "Holding Value" for that option which shall be the Holding Price set forth on Table 3.

<sup>11</sup> For Penn West put options, the total amount received for put options sold (written) during the Settlement Class Period is the "Sales Proceeds."

the Court, or further Orders of the Court. Lead Plaintiffs, Defendants and their respective counsel, and all other Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the plan of allocation; the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

79. The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by Lead Plaintiffs after consultation with their damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Settlement Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the settlement website, [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com).

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

80. Co-Lead Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Settlement Class, nor have Co-Lead Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Co-Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund. At the same time, Co-Lead Counsel also intend to apply for reimbursement of Litigation Expenses in an amount not to exceed US\$525,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Settlement Class. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

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

81. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to Penn West U.S. Securities Litigation, EXCLUSIONS, c/o Epiq, P.O. Box 3967, Portland, OR 97208-3967. The exclusion request must be **received no later than June 20, 2016**. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must (a) state the name, address and telephone number of the person or entity requesting exclusion, and in the case of entities the name and telephone number of the appropriate contact person; (b) state that such person or entity "requests exclusion from the Settlement Class in *In re Penn West Petroleum Securities Litigation*, Master File No. 14-cv-6046-JGK"; (c) state the number of shares of Penn West common stock, trust units, call options, and/or put options that the person or entity requesting exclusion purchased, acquired and/or sold from February 18, 2010 through July 29, 2014, inclusive, as well as the dates and prices of each such purchase/acquisition and sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

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

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

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

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

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

86. The Settlement Fairness Hearing will be held on July 19, 2016 at 4:30 p.m., before the Honorable John G. Koeltl in Courtroom 12B of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007-1312. The Court reserves the right to approve the Settlement, the Plan of Allocation, Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses and/or any other matter related to the Settlement at or after the Settlement Fairness Hearing without further notice to the members of the Settlement Class.

87. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation or Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Southern District of New York at the address set forth below **on or before June 20, 2016**. You must also serve the papers on Co-Lead Counsel and on representative Defendants' Counsel at the addresses set forth below so that the papers are **received on or before June 20, 2016**.

**Clerk's Office**

United States District Court  
for the Southern District  
of New York  
Clerk of the Court  
Daniel Patrick Moynihan  
U.S. Courthouse  
500 Pearl Street  
New York, NY 10007-1312

**Co-Lead Counsel**

**Bernstein Litowitz Berger  
& Grossmann LLP**  
John Rizio-Hamilton, Esq.  
1251 Avenue of the  
Americas, 44th Floor  
New York, NY 10020

**Glancy Prongay & Murray LLP**  
Peter A. Binkow, Esq.  
1925 Century Park East  
Suite 2100  
Los Angeles, CA 90067

**Representative  
Defendants' Counsel**

**Sullivan & Cromwell LLP**  
Robert J. Giuffra, Jr., Esq.  
125 Broad Street  
New York, NY 10004

88. Any objection (a) must state the name, address and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove the objector's membership in the Settlement Class, such as the number of shares of Penn West common stock, trust units, call options, and/or put options purchased, acquired and sold during the Settlement Class Period, as well as the dates and prices of each such purchase, acquisition, and sale. You may not object to the Settlement, the Plan of Allocation or Co-Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

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

90. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation or Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you timely file and serve a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Co-Lead Counsel and representative Defendants' Counsel at the addresses set forth above so that it is **received on or before June 20, 2016**. Persons who intend to object and desire to present evidence at the Settlement Fairness Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

91. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Fairness Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Co-Lead Counsel and representative Defendants' Counsel at the addresses set forth in ¶ 87 above so that the notice is **received on or before June 20, 2016**.

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



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

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

94. If, for the beneficial interest of any person or entity other than yourself, you purchased or acquired Penn West common stock, trust units or call options and/or sold Penn West put options during the period from February 18, 2010 through July 29, 2014, inclusive, you must either (a) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (the "Notice Packet") to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to Penn West U.S. Securities Litigation, c/o Epiq, P.O. Box 3967, Portland, OR 97208-3967. If you choose the second option, the Claims Administrator will send a copy of the Notice and the Claim Form to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form may also be obtained from the website maintained by the Claims Administrator, [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com), by calling the Claims Administrator toll-free at (877) 835-0545, or by emailing the Claims Administrator at [info@PennWestUSSecuritiesLitigation.com](mailto:info@PennWestUSSecuritiesLitigation.com).

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

95. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Southern District of New York, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007-1312. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com).

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

Penn West U.S. Securities Litigation  
c/o Epiq  
P.O. Box 3967  
Portland, OR 97208-3967  
Toll-Free: (877) 835-0545  
Email: [Info@PennWestUSSecuritiesLitigation.com](mailto:Info@PennWestUSSecuritiesLitigation.com)  
[www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com)

and/or

John Rizio-Hamilton, Esq.  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
1251 Avenue of the Americas, 44th Floor  
New York, NY 10020  
Toll-Free: (800) 380-8496  
Email: [blbg@blbglaw.com](mailto:blbg@blbglaw.com)

Peter A. Binkow, Esq.  
GLANCY PRONGAY & MURRAY LLP  
1925 Century Park East  
Suite 2100  
Los Angeles, CA 90067  
Toll-Free: (888) 773-9224  
Email: [settlements@glancylaw.com](mailto:settlements@glancylaw.com)

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

Dated: March 29, 2016

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

TABLE 1

**Estimated Artificial Inflation in Penn West Common Stock / Trust Units  
from February 18, 2010 through and including July 29, 2014**

Transaction Date	Inflation Per Share
February 18, 2010 – November 5, 2013	\$2.17
November 6, 2013 – July 29, 2014	\$1.29

TABLE 2

**Estimated Artificial Inflation in Penn West Call Options  
from February 18, 2010 through and including July 29, 2014**

Expiration Date	Strike Price	Call Option Artificial Inflation per Share During Trading Periods		Holding Price
		February 18, 2010 – November 5, 2013	November 6, 2013 – July 29, 2014	
11/16/2013	\$4.00	\$0.63	\$0.00	\$0.00
11/16/2013	\$5.00	\$0.63	\$0.00	\$0.00
11/16/2013	\$6.00	\$0.75	\$0.00	\$0.00
11/16/2013	\$7.00	\$0.71	\$0.00	\$0.00
11/16/2013	\$8.00	\$0.79	\$0.00	\$0.00
11/16/2013	\$9.00	\$0.81	\$0.00	\$0.00
11/16/2013	\$10.00	\$0.51	\$0.00	\$0.00
11/16/2013	\$11.00	\$0.16	\$0.00	\$0.00
11/16/2013	\$12.00	\$0.03	\$0.00	\$0.00
11/16/2013	\$13.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$14.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$15.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$16.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$17.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$18.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$19.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$20.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$1.00	\$0.83	\$0.00	\$0.00
12/21/2013	\$2.00	\$0.88	\$0.00	\$0.00
12/21/2013	\$3.00	\$0.88	\$0.00	\$0.00
12/21/2013	\$4.00	\$0.88	\$0.00	\$0.00
12/21/2013	\$5.00	\$0.88	\$0.00	\$0.00
12/21/2013	\$6.00	\$0.83	\$0.00	\$0.00
12/21/2013	\$7.00	\$0.81	\$0.00	\$0.00
12/21/2013	\$8.00	\$0.81	\$0.00	\$0.00
12/21/2013	\$9.00	\$0.68	\$0.00	\$0.00
12/21/2013	\$10.00	\$0.50	\$0.00	\$0.00
12/21/2013	\$11.00	\$0.28	\$0.00	\$0.00
12/21/2013	\$12.00	\$0.13	\$0.00	\$0.00

Expiration Date	Strike Price	Call Option Artificial Inflation per Share During Trading Periods		Holding Price
		February 18, 2010 – November 5, 2013	November 6, 2013 – July 29, 2014	
12/21/2013	\$13.00	\$0.03	\$0.00	\$0.00
12/21/2013	\$14.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$15.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$16.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$17.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$18.00	\$0.00	\$0.00	\$0.00
3/22/2014	\$4.00	\$0.80	\$0.00	\$0.00
3/22/2014	\$5.00	\$0.83	\$0.00	\$0.00
3/22/2014	\$6.00	\$0.78	\$0.00	\$0.00
3/22/2014	\$7.00	\$0.76	\$0.00	\$0.00
3/22/2014	\$8.00	\$0.75	\$0.00	\$0.00
3/22/2014	\$9.00	\$0.63	\$0.00	\$0.00
3/22/2014	\$10.00	\$0.49	\$0.00	\$0.00
3/22/2014	\$11.00	\$0.33	\$0.00	\$0.00
3/22/2014	\$12.00	\$0.21	\$0.00	\$0.00
3/22/2014	\$13.00	\$0.13	\$0.00	\$0.00
3/22/2014	\$14.00	\$0.06	\$0.00	\$0.00
3/22/2014	\$15.00	\$0.03	\$0.00	\$0.00
3/22/2014	\$16.00	\$0.01	\$0.00	\$0.00
3/22/2014	\$17.00	\$0.01	\$0.00	\$0.00
3/22/2014	\$18.00	\$0.00	\$0.00	\$0.00
3/22/2014	\$19.00	\$0.00	\$0.00	\$0.00
3/22/2014	\$20.00	\$0.00	\$0.00	\$0.00
6/21/2014	\$3.00	\$0.85	\$0.00	\$0.00
6/21/2014	\$4.00	\$0.85	\$0.00	\$0.00
6/21/2014	\$5.00	\$0.88	\$0.00	\$0.00
6/21/2014	\$6.00	\$0.85	\$0.00	\$0.00
6/21/2014	\$7.00	\$0.79	\$0.00	\$0.00
6/21/2014	\$8.00	\$0.73	\$0.00	\$0.00
6/21/2014	\$9.00	\$0.60	\$0.00	\$0.00
6/21/2014	\$10.00	\$0.49	\$0.00	\$0.00
6/21/2014	\$11.00	\$0.35	\$0.00	\$0.00
6/21/2014	\$12.00	\$0.25	\$0.00	\$0.00
6/21/2014	\$13.00	\$0.15	\$0.00	\$0.00
6/21/2014	\$14.00	\$0.10	\$0.00	\$0.00
6/21/2014	\$15.00	\$0.08	\$0.00	\$0.00
6/21/2014	\$16.00	\$0.04	\$0.00	\$0.00
6/21/2014	\$17.00	\$0.01	\$0.00	\$0.00
6/21/2014	\$18.00	\$0.01	\$0.00	\$0.00
6/21/2014	\$19.00	\$0.00	\$0.00	\$0.00
8/16/2014	\$2.00	\$0.00	\$1.49	\$5.70

Expiration Date	Strike Price	Call Option Artificial Inflation per Share During Trading Periods		Holding Price
		February 18, 2010 – November 5, 2013	November 6, 2013 – July 29, 2014	
8/16/2014	\$3.00	\$0.00	\$1.49	\$4.70
8/16/2014	\$4.00	\$0.00	\$1.49	\$3.70
8/16/2014	\$5.00	\$0.00	\$1.49	\$2.70
8/16/2014	\$6.00	\$0.00	\$1.49	\$1.70
8/16/2014	\$7.00	\$0.00	\$1.32	\$0.90
8/16/2014	\$8.00	\$0.00	\$0.99	\$0.23
8/16/2014	\$9.00	\$0.00	\$0.32	\$0.03
8/16/2014	\$10.00	\$0.00	\$0.02	\$0.03
8/16/2014	\$11.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$12.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$13.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$14.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$15.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$16.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$17.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$18.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$1.00	\$0.00	\$1.54	\$6.70
9/20/2014	\$2.00	\$0.00	\$1.34	\$5.85
9/20/2014	\$3.00	\$0.00	\$1.54	\$4.70
9/20/2014	\$4.00	\$0.00	\$1.49	\$3.70
9/20/2014	\$5.00	\$0.00	\$1.54	\$2.70
9/20/2014	\$6.00	\$0.00	\$1.51	\$1.73
9/20/2014	\$7.00	\$0.00	\$1.17	\$1.03
9/20/2014	\$8.00	\$0.00	\$0.87	\$0.40
9/20/2014	\$9.00	\$0.00	\$0.37	\$0.13
9/20/2014	\$10.00	\$0.00	\$0.05	\$0.08
9/20/2014	\$11.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$12.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$13.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$14.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$15.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$16.00	\$0.00	\$0.00	\$0.03
12/20/2014	\$1.00	\$0.00	\$1.44	\$6.80
12/20/2014	\$2.00	\$0.00	\$1.34	\$5.85
12/20/2014	\$3.00	\$0.00	\$1.44	\$4.80
12/20/2014	\$4.00	\$0.00	\$1.39	\$3.80
12/20/2014	\$5.00	\$0.00	\$1.36	\$2.83
12/20/2014	\$6.00	\$0.00	\$1.36	\$1.83
12/20/2014	\$7.00	\$0.00	\$1.07	\$1.20
12/20/2014	\$8.00	\$0.00	\$0.74	\$0.65
12/20/2014	\$9.00	\$0.00	\$0.42	\$0.33

Expiration Date	Strike Price	Call Option Artificial Inflation per Share During Trading Periods		Holding Price
		February 18, 2010 – November 5, 2013	November 6, 2013 – July 29, 2014	
12/20/2014	\$10.00	\$0.00	\$0.17	\$0.18
12/20/2014	\$11.00	\$0.00	\$0.07	\$0.08
12/20/2014	\$12.00	\$0.00	\$0.02	\$0.05
12/20/2014	\$13.00	\$0.00	\$0.00	\$0.03
12/20/2014	\$14.00	\$0.00	\$0.00	\$0.03
12/20/2014	\$15.00	\$0.00	\$0.00	\$0.03
12/20/2014	\$16.00	\$0.00	\$0.00	\$0.03
12/20/2014	\$17.00	\$0.00	\$0.00	\$0.03
1/17/2015	\$3.00	\$0.00	\$1.44	\$4.80
1/17/2015	\$4.00	\$0.00	\$1.39	\$3.80
1/17/2015	\$5.00	\$0.00	\$1.46	\$2.73
1/17/2015	\$6.00	\$0.00	\$1.27	\$1.98
1/17/2015	\$7.00	\$0.00	\$1.07	\$1.23
1/17/2015	\$8.00	\$0.00	\$0.74	\$0.70
1/17/2015	\$9.00	\$0.00	\$0.45	\$0.38
1/17/2015	\$10.00	\$0.00	\$0.22	\$0.20
1/17/2015	\$11.00	\$0.00	\$0.10	\$0.10
1/17/2015	\$12.00	\$0.00	\$0.02	\$0.08
1/17/2015	\$13.00	\$0.00	\$0.02	\$0.03
1/17/2015	\$14.00	\$0.00	\$0.00	\$0.03
1/17/2015	\$15.00	\$0.00	\$0.00	\$0.03
1/17/2015	\$16.00	\$0.00	\$0.00	\$0.03
1/17/2015	\$17.00	\$0.00	\$0.00	\$0.03
3/20/2015	\$1.00	\$0.00	\$1.44	\$6.80
3/20/2015	\$2.00	\$0.00	\$1.44	\$5.80
3/20/2015	\$3.00	\$0.00	\$1.44	\$4.80
3/20/2015	\$4.00	\$0.00	\$1.39	\$3.80
3/20/2015	\$5.00	\$0.00	\$1.34	\$2.85
3/20/2015	\$6.00	\$0.00	\$1.22	\$2.03
3/20/2015	\$7.00	\$0.00	\$1.02	\$1.30
3/20/2015	\$8.00	\$0.00	\$0.74	\$0.80
3/20/2015	\$9.00	\$0.00	\$0.50	\$0.45
3/20/2015	\$10.00	\$0.00	\$0.30	\$0.25
3/20/2015	\$11.00	\$0.00	\$0.15	\$0.15
3/20/2015	\$12.00	\$0.00	\$0.05	\$0.10
3/20/2015	\$13.00	\$0.00	\$0.05	\$0.05
3/20/2015	\$14.00	\$0.00	\$0.02	\$0.03
3/20/2015	\$15.00	\$0.00	\$0.00	\$0.03
3/20/2015	\$16.00	\$0.00	\$0.00	\$0.03
3/20/2015	\$17.00	\$0.00	\$0.00	\$0.03
1/15/2016	\$3.00	\$0.00	\$1.39	\$4.85

Expiration Date	Strike Price	Call Option Artificial Inflation per Share During Trading Periods		Holding Price
		February 18, 2010 – November 5, 2013	November 6, 2013 – July 29, 2014	
1/15/2016	\$5.00	\$0.00	\$1.49	\$2.85
1/15/2016	\$7.00	\$0.00	\$0.84	\$1.60
1/15/2016	\$10.00	\$0.00	\$0.37	\$0.50
1/15/2016	\$12.00	\$0.00	\$0.17	\$0.28
1/15/2016	\$15.00	\$0.00	\$0.05	\$0.10
1/15/2016	\$17.00	\$0.00	\$0.02	\$0.05

TABLE 3

**Estimated Artificial Deflation in Penn West Put Options  
from February 18, 2010 through and including July 29, 2014**

Expiration Date	Strike Price	Put Option Artificial Deflation per Share During Trading Periods		Holding Price
		February 18, 2010 – November 5, 2013	November 6, 2013 – July 29, 2014	
11/16/2013	\$4.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$5.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$6.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$7.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$8.00	\$0.00	\$0.00	\$0.00
11/16/2013	\$9.00	\$0.03	\$0.00	\$0.00
11/16/2013	\$10.00	\$0.34	\$0.00	\$0.00
11/16/2013	\$11.00	\$0.69	\$0.00	\$0.00
11/16/2013	\$12.00	\$0.84	\$0.00	\$0.00
11/16/2013	\$13.00	\$0.83	\$0.00	\$0.00
11/16/2013	\$14.00	\$0.75	\$0.00	\$0.00
11/16/2013	\$15.00	\$0.75	\$0.00	\$0.00
11/16/2013	\$16.00	\$0.63	\$0.00	\$0.00
11/16/2013	\$17.00	\$0.65	\$0.00	\$0.00
11/16/2013	\$18.00	\$0.85	\$0.00	\$0.00
11/16/2013	\$19.00	\$0.75	\$0.00	\$0.00
11/16/2013	\$20.00	\$0.80	\$0.00	\$0.00
12/21/2013	\$1.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$2.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$3.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$4.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$5.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$6.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$7.00	\$0.00	\$0.00	\$0.00
12/21/2013	\$8.00	\$0.01	\$0.00	\$0.00
12/21/2013	\$9.00	\$0.13	\$0.00	\$0.00

Expiration Date	Strike Price	Put Option Artificial Deflation per Share During Trading Periods		Holding Price
		February 18, 2010 – November 5, 2013	November 6, 2013 – July 29, 2014	
12/21/2013	\$10.00	\$0.35	\$0.00	\$0.00
12/21/2013	\$11.00	\$0.59	\$0.00	\$0.00
12/21/2013	\$12.00	\$0.75	\$0.00	\$0.00
12/21/2013	\$13.00	\$0.71	\$0.00	\$0.00
12/21/2013	\$14.00	\$0.74	\$0.00	\$0.00
12/21/2013	\$15.00	\$0.73	\$0.00	\$0.00
12/21/2013	\$16.00	\$0.65	\$0.00	\$0.00
12/21/2013	\$17.00	\$0.65	\$0.00	\$0.00
12/21/2013	\$18.00	\$0.63	\$0.00	\$0.00
3/22/2014	\$4.00	\$0.00	\$0.00	\$0.00
3/22/2014	\$5.00	\$0.00	\$0.00	\$0.00
3/22/2014	\$6.00	\$0.00	\$0.00	\$0.00
3/22/2014	\$7.00	\$0.01	\$0.00	\$0.00
3/22/2014	\$8.00	\$0.11	\$0.00	\$0.00
3/22/2014	\$9.00	\$0.24	\$0.00	\$0.00
3/22/2014	\$10.00	\$0.38	\$0.00	\$0.00
3/22/2014	\$11.00	\$0.51	\$0.00	\$0.00
3/22/2014	\$12.00	\$0.63	\$0.00	\$0.00
3/22/2014	\$13.00	\$0.71	\$0.00	\$0.00
3/22/2014	\$14.00	\$0.65	\$0.00	\$0.00
3/22/2014	\$15.00	\$0.63	\$0.00	\$0.00
3/22/2014	\$16.00	\$0.68	\$0.00	\$0.00
3/22/2014	\$17.00	\$0.65	\$0.00	\$0.00
3/22/2014	\$18.00	\$0.65	\$0.00	\$0.00
3/22/2014	\$19.00	\$0.63	\$0.00	\$0.00
3/22/2014	\$20.00	\$0.58	\$0.00	\$0.00
6/21/2014	\$3.00	\$0.00	\$0.00	\$0.00
6/21/2014	\$4.00	\$0.00	\$0.00	\$0.00
6/21/2014	\$5.00	\$0.00	\$0.00	\$0.00
6/21/2014	\$6.00	\$0.04	\$0.00	\$0.00
6/21/2014	\$7.00	\$0.08	\$0.00	\$0.00
6/21/2014	\$8.00	\$0.14	\$0.00	\$0.00
6/21/2014	\$9.00	\$0.26	\$0.00	\$0.00
6/21/2014	\$10.00	\$0.38	\$0.00	\$0.00
6/21/2014	\$11.00	\$0.50	\$0.00	\$0.00
6/21/2014	\$12.00	\$0.59	\$0.00	\$0.00
6/21/2014	\$13.00	\$0.69	\$0.00	\$0.00
6/21/2014	\$14.00	\$0.75	\$0.00	\$0.00
6/21/2014	\$15.00	\$0.75	\$0.00	\$0.00
6/21/2014	\$16.00	\$0.80	\$0.00	\$0.00
6/21/2014	\$17.00	\$0.85	\$0.00	\$0.00

Expiration Date	Strike Price	Put Option Artificial Deflation per Share During Trading Periods		Holding Price
		February 18, 2010 – November 5, 2013	November 6, 2013 – July 29, 2014	
6/21/2014	\$18.00	\$0.85	\$0.00	\$0.00
6/21/2014	\$19.00	\$0.85	\$0.00	\$0.00
8/16/2014	\$2.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$3.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$4.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$5.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$6.00	\$0.00	\$0.00	\$0.03
8/16/2014	\$7.00	\$0.00	\$0.02	\$0.05
8/16/2014	\$8.00	\$0.00	\$0.32	\$0.35
8/16/2014	\$9.00	\$0.00	\$1.07	\$1.25
8/16/2014	\$10.00	\$0.00	\$1.46	\$2.30
8/16/2014	\$11.00	\$0.00	\$1.46	\$3.30
8/16/2014	\$12.00	\$0.00	\$1.44	\$4.25
8/16/2014	\$13.00	\$0.00	\$1.49	\$5.30
8/16/2014	\$14.00	\$0.00	\$1.39	\$6.20
8/16/2014	\$15.00	\$0.00	\$1.39	\$7.20
8/16/2014	\$16.00	\$0.00	\$0.35	\$7.15
8/16/2014	\$17.00	\$0.00	\$1.49	\$9.30
8/16/2014	\$18.00	\$0.00	\$1.44	\$10.25
9/20/2014	\$1.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$2.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$3.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$4.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$5.00	\$0.00	\$0.00	\$0.03
9/20/2014	\$6.00	\$0.00	\$0.02	\$0.05
9/20/2014	\$7.00	\$0.00	\$0.15	\$0.18
9/20/2014	\$8.00	\$0.00	\$0.50	\$0.58
9/20/2014	\$9.00	\$0.00	\$0.94	\$1.28
9/20/2014	\$10.00	\$0.00	\$1.29	\$2.25
9/20/2014	\$11.00	\$0.00	\$1.51	\$3.35
9/20/2014	\$12.00	\$0.00	\$1.51	\$4.35
9/20/2014	\$13.00	\$0.00	\$1.49	\$5.30
9/20/2014	\$14.00	\$0.00	\$1.39	\$6.20
9/20/2014	\$15.00	\$0.00	\$1.39	\$7.20
9/20/2014	\$16.00	\$0.00	\$1.44	\$8.25
12/20/2014	\$1.00	\$0.00	\$0.00	\$0.03
12/20/2014	\$2.00	\$0.00	\$0.00	\$0.03
12/20/2014	\$3.00	\$0.00	\$0.00	\$0.03
12/20/2014	\$4.00	\$0.00	\$0.00	\$0.03
12/20/2014	\$5.00	\$0.00	\$0.02	\$0.05
12/20/2014	\$6.00	\$0.00	\$0.10	\$0.15



Expiration Date	Strike Price	Put Option Artificial Deflation per Share During Trading Periods		Holding Price
		February 18, 2010 – November 5, 2013	November 6, 2013 – July 29, 2014	
12/20/2014	\$7.00	\$0.00	\$0.27	\$0.38
12/20/2014	\$8.00	\$0.00	\$0.55	\$0.85
12/20/2014	\$9.00	\$0.00	\$0.84	\$1.53
12/20/2014	\$10.00	\$0.00	\$1.12	\$2.38
12/20/2014	\$11.00	\$0.00	\$1.27	\$3.35
12/20/2014	\$12.00	\$0.00	\$1.34	\$4.30
12/20/2014	\$13.00	\$0.00	\$1.34	\$5.30
12/20/2014	\$14.00	\$0.00	\$1.39	\$6.30
12/20/2014	\$15.00	\$0.00	\$1.34	\$7.25
12/20/2014	\$16.00	\$0.00	\$1.24	\$8.15
12/20/2014	\$17.00	\$0.00	\$1.34	\$9.25
1/17/2015	\$3.00	\$0.00	\$0.00	\$0.03
1/17/2015	\$4.00	\$0.00	\$0.00	\$0.03
1/17/2015	\$5.00	\$0.00	\$0.07	\$0.10
1/17/2015	\$6.00	\$0.00	\$0.15	\$0.20
1/17/2015	\$7.00	\$0.00	\$0.35	\$0.50
1/17/2015	\$8.00	\$0.00	\$0.57	\$0.98
1/17/2015	\$9.00	\$0.00	\$0.87	\$1.68
1/17/2015	\$10.00	\$0.00	\$1.09	\$2.50
1/17/2015	\$11.00	\$0.00	\$1.27	\$3.45
1/17/2015	\$12.00	\$0.00	\$1.39	\$4.45
1/17/2015	\$13.00	\$0.00	\$1.34	\$5.40
1/17/2015	\$14.00	\$0.00	\$1.39	\$6.40
1/17/2015	\$15.00	\$0.00	\$1.44	\$7.40
1/17/2015	\$16.00	\$0.00	\$1.44	\$8.40
1/17/2015	\$17.00	\$0.00	\$1.44	\$9.40
3/20/2015	\$1.00	\$0.00	\$0.00	\$0.03
3/20/2015	\$2.00	\$0.00	\$0.00	\$0.03
3/20/2015	\$3.00	\$0.00	\$0.00	\$0.03
3/20/2015	\$4.00	\$0.00	\$0.02	\$0.05
3/20/2015	\$5.00	\$0.00	\$0.02	\$0.08
3/20/2015	\$6.00	\$0.00	\$0.17	\$0.28
3/20/2015	\$7.00	\$0.00	\$0.32	\$0.58
3/20/2015	\$8.00	\$0.00	\$0.60	\$1.10
3/20/2015	\$9.00	\$0.00	\$0.82	\$1.75
3/20/2015	\$10.00	\$0.00	\$1.04	\$2.58
3/20/2015	\$11.00	\$0.00	\$1.22	\$3.50
3/20/2015	\$12.00	\$0.00	\$1.24	\$4.40
3/20/2015	\$13.00	\$0.00	\$1.34	\$5.40
3/20/2015	\$14.00	\$0.00	\$1.34	\$6.35

Expiration Date	Strike Price	Put Option Artificial Deflation per Share During Trading Periods		Holding Price
		February 18, 2010 – November 5, 2013	November 6, 2013 – July 29, 2014	
3/20/2015	\$15.00	\$0.00	\$1.34	\$7.35
3/20/2015	\$16.00	\$0.00	\$1.44	\$8.40
3/20/2015	\$17.00	\$0.00	\$1.39	\$9.35
1/15/2016	\$3.00	\$0.00	\$0.02	\$0.08
1/15/2016	\$5.00	\$0.00	\$0.15	\$0.35
1/15/2016	\$7.00	\$0.00	\$0.42	\$1.08
1/15/2016	\$10.00	\$0.00	\$0.94	\$3.10
1/15/2016	\$12.00	\$0.00	\$1.09	\$4.80
1/15/2016	\$15.00	\$0.00	\$1.34	\$7.65
1/15/2016	\$17.00	\$0.00	\$1.39	\$9.60

**Penn West U.S. Securities Litigation**  
**c/o Epiq**  
**P.O. Box 3967**  
**Portland, OR 97208-3967**  
**Toll-Free Number: (877) 835-0545**  
**Email: [Info@PennWestUSSecuritiesLitigation.com](mailto:Info@PennWestUSSecuritiesLitigation.com)**  
**Settlement Website: [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com)**

**PROOF OF CLAIM AND RELEASE FORM**

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of the *In Re Penn West Petroleum Securities Litigation*, Master File No. 14-cv-6046-JGK (the “U.S. Action”) pending in the United States District Court for the Southern District of New York (the “Court”), you must be a Settlement Class Member and complete and sign this Proof of Claim and Release Form (“Claim Form”) and mail it by first-class mail to the above address, **postmarked no later than August 26, 2016.**

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

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

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**PART I – CLAIMANT INFORMATION**

(Please read General Instructions below before completing this page.)

The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above.

Beneficial Owner's First Name	MI	Beneficial Owner's Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Co-Beneficial Owner's First Name	MI	Co-Beneficial Owner's Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Entity Name (if Beneficial Owner is not an individual)

Representative or Custodian Name (if different from Beneficial Owner(s) listed above)

Address 1 (street name and number)

Address 2 (apartment, unit or box number)

City	State	ZIP Code / Postal Code (if outside U.S.)
<input type="text"/>	<input type="text"/>	<input type="text"/>

Country

Last four digits of Social Security Number or Taxpayer Identification Number

Telephone Number (home)	Telephone Number (work)
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>

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

Account Number (account(s) through which the securities were traded)<sup>1</sup>:

Claimant Account Type (check appropriate box):

<input type="checkbox"/> Individual (includes joint owner accounts)	<input type="checkbox"/> Pension Plan	<input type="checkbox"/> Trust
<input type="checkbox"/> Corporation	<input type="checkbox"/> Estate	
<input type="checkbox"/> IRA/401K	<input type="checkbox"/> Other _____ (please specify)	

<sup>1</sup> If the account number is unknown, you may leave blank. If the same legal entity traded through more than one account you may write "multiple." Please see paragraph 10 of the General Instructions for more information on when to file separate Claim Forms for multiple accounts, *i.e.*, when you are filing on behalf of distinct legal entities.

**PART II – GENERAL INSTRUCTIONS**

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

2. This Claim Form is directed to all members of the “Settlement Class.” The Settlement Class consists of the following, regardless of which state or country the person or entity may reside or be domiciled in:

all persons or entities who or which (i) purchased or otherwise acquired Penn West common stock (“Penn West Common Stock”) or trust units (“Penn West Trust Units”) on an open market located within the United States, including but not limited to the New York Stock Exchange (“NYSE”) or another domestic exchange, or (ii) purchased or otherwise acquired Penn West call options (“Penn West Call Options”), or sold or wrote Penn West put options (“Penn West Put Options”), on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, from February 18, 2010 through July 29, 2014, inclusive (the “Settlement Class Period”), and who were damaged thereby.

3. Penn West Common Stock, Trust Units, Call Options, and Put Options are referred to collectively as “Penn West Securities.” All persons and entities that are members of the Settlement Class are referred to as “Settlement Class Members.”

4. Excluded from the Settlement Class by definition are Defendants, KPMG LLP and KPMG LLP (Canada) (collectively with KPMG LLP, “KPMG”), the General Counsel, officers, directors and partners of Penn West and KPMG at all relevant times, any entity in which any Defendant or KPMG has or had a controlling interest, and the members of the Immediate Families and the legal representatives, heirs, successors or assigns of any of the foregoing. Also excluded from the Settlement Class are any persons or entities who or which submit a request for exclusion from the Settlement Class in accordance with the requirements set forth in the Notice.

5. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlement described in the Notice. If you are not a Settlement Class Member, or if you, or someone acting on your behalf, submitted a request for exclusion from the Settlement Class, do not submit a Claim Form. **You may not, directly or indirectly, participate in the Settlement if you are not a Settlement Class Member.** Thus, if you are excluded from the Settlement Class, any Claim Form that you submit, or that may be submitted on your behalf, will not be accepted.

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

7. The only securities eligible to participate in the Settlement are Penn West Common Stock, Penn West Trust Units, and Penn West Call Options purchased or otherwise acquired, and Penn West Put Options sold (written), on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, during the Settlement Class Period. Use the Schedules of Transactions in Parts III – V of this Claim Form to supply all required details of your transaction(s) (including free transfers) in and holdings of the applicable Penn West Securities. On the Schedules of Transactions, please provide all of the requested information with respect to your holdings, purchases, acquisitions and sales of the applicable Penn West Securities, whether such transactions resulted in a profit or a loss. Failure to report all transaction and holding information during the requested time periods may result in the rejection of your claim.

8. **PLEASE NOTE:** In January 2011, Penn West Trust Units were converted to shares of Penn West Common Stock on a one-to-one basis. The holders of Penn West Trust Units as of January 1, 2011 received one share of Penn West Common Stock for every Trust Unit they held as of that date. The receipt of Penn West Common Stock as a result of this conversion is not an eligible “acquisition” of Penn West Common Stock for purposes of determining membership in the Settlement Class or for calculation of a claimant’s Recognized Loss Amount under the Plan of Allocation: the price and date of the original purchase or acquisition of the Penn West Trust Units and the ultimate disposition of the Penn West Common Stock received as a result of the conversion will be used to determine the eligibility of the claim and the amount of the Recognized Loss Amount.

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

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

11. All joint beneficial owners must sign this Claim Form. If you purchased or otherwise acquired Penn West Trust Units, Penn West Common Stock, or Penn West Call Options, or sold (or wrote) Penn West Put Options, during the Settlement Class Period and held the securities in your name, you are the beneficial owner as well as the record owner and you must sign this Claim Form to participate in the Settlement. If, however, you purchased or otherwise acquired Penn West Trust Units, Penn West Common Stock, or Penn West Call Options, or sold (or wrote) Penn West Put Options, during the Settlement Class Period and the securities were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of these securities, but the third party is the record owner. The beneficial owner, not the record owner, must sign this Claim Form.

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

- (a) expressly state the capacity in which they are acting;
- (b) identify the name, account number, Social Security Number (or taxpayer identification number), address and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the Penn West Securities; and
- (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade stock in another person's accounts.)

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

- (a) own(ed) the Penn West Securities you have listed in the Claim Form; or
- (b) are expressly authorized to act on behalf of the owner thereof.

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

15. If the Court approves the Settlement, payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after the completion of all claims processing. This could take substantial time. Please be patient.

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

17. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, Epiq, at P.O. Box 3967, Portland, OR 97208-3967, by email at [info@PennWestUSSecuritiesLitigation.com](mailto:info@PennWestUSSecuritiesLitigation.com), or by toll-free phone at (877) 835-0545, or you can visit the Settlement website, [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com), where copies of the Claim Form and Notice are available for downloading.

18. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the Settlement website at [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com) or you may email the Claims Administrator's electronic filing department at [info@PennWestUSSecuritiesLitigation.com](mailto:info@PennWestUSSecuritiesLitigation.com). Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to that effect after processing your file with your claim numbers and respective account information. **Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at [info@PennWestUSSecuritiesLitigation.com](mailto:info@PennWestUSSecuritiesLitigation.com) to inquire about your file and confirm it was received and acceptable.**

**IMPORTANT: PLEASE NOTE**

**YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, PLEASE CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT (877) 835-0545.**





**PART IV—SCHEDULE OF TRANSACTIONS IN PENN WEST CALL OPTIONS**

Complete this Part IV if and only if you purchased/acquired Penn West Call Options on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, during the period from February 18, 2010 through and including July 29, 2014. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph 9, above. Do not include information in this section regarding securities other than Penn West Call Options purchased/acquired on an open market located within the United States, including but not limited to the NYSE or another domestic exchange.

**1. BEGINNING HOLDINGS** – Separately list all positions in Penn West Call Option contracts in which you had an open interest as of the opening of trading on February 18, 2010. (Must be documented.)

**IF NONE, CHECK HERE**

Strike Price of Call Option Contract	Expiration Date of Call Option Contract (MMDDYY)	Number of Call Option Contracts in Which You Had an Open Interest
\$ [ ][ ] . [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]
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**2. PURCHASES/ACQUISITIONS DURING THE SETTLEMENT CLASS PERIOD** – Separately list each and every purchase/acquisition (including free receipts) of Penn West Call Option contracts from after the opening of trading on February 18, 2010 through and including the close of trading on July 29, 2014. (Must be documented.)

Date of Purchase/ Acquisition (List Chronologically) (MMDDYY)	Strike Price of Call Option Contract	Expiration Date of Call Option Contract (MMDDYY)	Number of Call Option Contracts Purchased/ Acquired	Purchase/ Acquisition Price Per Call Option Contract	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Insert an "E" if Exercised		Insert an "X" if Expired	
						Exercise Date (MMDDYY)	Exercise Date (MMDDYY)		
[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]	[ ][ ] [ ][ ] . [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] .	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] .	[ ][ ]	[ ][ ]	[ ][ ]	[ ][ ]
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**IF NONE, CHECK HERE**

**3. SALES DURING THE SETTLEMENT CLASS PERIOD** – Separately list each and every sale/disposition (including free deliveries) of Penn West Call Options from after the opening of trading on February 18, 2010 through and including the close of trading on July 29, 2014. (Must be documented.)

Date of Sale (List Chronologically) (MMDDYY)	Strike Price of Call Option Contract	Expiration Date of Call Option Contract (MMDDYY)	Number of Call Option Contracts Sold	Sale Price Per Call Option Contract	Total Sale Price (excluding taxes, commissions, and fees)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**IF NONE, CHECK HERE**

**4. ENDING HOLDINGS** – Separately list all positions in Penn West Call Option contracts in which you had an open interest as of the close of trading on July 29, 2014. (Must be documented.)

Strike Price of Call Option Contract	Expiration Date of Call Option Contract (MMDDYY)	Number of Call Option Contracts in Which You Had an Open Interest
\$ <input type="text"/>	<input type="text"/>	<input type="text"/>
\$ <input type="text"/>	<input type="text"/>	<input type="text"/>
\$ <input type="text"/>	<input type="text"/>	<input type="text"/>
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**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS/HOLDINGS YOU MUST**

**PHOTOCOPY THIS PAGE AND CHECK THIS BOX**

**IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED**

**PART V – SCHEDULE OF TRANSACTIONS IN PENN WEST PUT OPTIONS**

Complete this Part V if and only if you sold (wrote) Penn West Put Options on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, during the period from February 18, 2010 through and including July 29, 2014. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph 9, above. Do not include information in this section regarding securities other than Penn West Put Options sold (written) on an open market located within the United States, including but not limited to the NYSE or another domestic exchange.

**1. BEGINNING HOLDINGS** – Separately list all positions in Penn West Put Option contracts in which you had an open interest as of the opening of trading on February 18, 2010. (Must be documented.)

**IF NONE, CHECK  
HERE**

Strike Price of Put Option Contract	Expiration Date of Put Option Contract (MMDDYY)	Number of Put Option Contracts in Which You Had an Open Interest
\$ [ ][ ] . [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]
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**2. SALES (WRITING) DURING THE SETTLEMENT CLASS PERIOD** – Separately list each and every sale (writing) (including free deliveries) of Penn West Put Option contracts from after the opening of trading on February 18, 2010 through and including the close of trading on July 29, 2014. (Must be documented.)

Date of Sale (Writing) (List Chronologically) (MMDDYY)	Strike Price of Put Option Contract	Expiration Date of Put Option Contract (MMDDYY)	Number of Put Option Contracts Sold (Written)	Sale Price Per Put Option Contract	Total Sale Price (excluding taxes, commissions, and fees)	Insert an "E" if Exercised	
						Insert an "X" if Expired	Exercise Date (MMDDYY)
[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]	[ ][ ] . [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]	<input type="checkbox"/>	[ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ] [ ][ ]
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**IF NONE, CHECK HERE**

**3. PURCHASES/ACQUISITIONS DURING THE SETTLEMENT CLASS PERIOD** – Separately list each and every purchase/acquisition (including free receipts) of Penn West Put Option contracts from after the opening of trading on February 18, 2010 through and including the close of trading on July 29, 2014. (Must be documented.)

Date of Purchase/ Acquisition (List Chronologically) (MMDDYY)	Strike Price of Put Option Contract	Expiration Date of Put Option Contract (MMDDYY)	Number of Put Option Contracts Purchased/ Acquired	Purchase/ Acquisition Price Per Put Option Contract	Total Purchase/Acquisition Price (excluding taxes, commissions, and fees)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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**IF NONE, CHECK HERE**

**4. ENDING HOLDINGS** – Separately list all positions in Penn West Put Option contracts in which you had an open interest as of the close of trading on July 29, 2014. (Must be documented.)

Strike Price of Put Option Contract	Expiration Date of Put Option Contract (MMDDYY)	Number of Put Option Contracts in Which You Had an Open Interest
\$ <input type="text"/>	<input type="text"/>	<input type="text"/>
\$ <input type="text"/>	<input type="text"/>	<input type="text"/>
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**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS/HOLDINGS YOU MUST  
PHOTOCOPY THIS PAGE AND CHECK THIS BOX**

**IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED**

**PART VI – RELEASE OF CLAIMS AND SIGNATURE****YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 12 OF THIS CLAIM FORM.**

I (we) hereby acknowledge that as of the Effective Date of the Settlement, pursuant to the terms set forth in the Stipulation, I (we), on behalf of myself (ourselves) and my (our) past and present directors, officers, employees, agents, trustees, fiduciaries, servants, consultants, underwriters, advisors, representatives, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, in their capacities as such, and any other person or entity legally entitled to bring Released Plaintiffs' Claims (as defined in the Stipulation and in the Notice) on behalf of myself (ourselves), in that capacity, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Plaintiffs' Claim against the Defendants and the other Defendants' Releasees (as defined in the Stipulation and in the Notice), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

**CERTIFICATION**

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

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) Settlement Class Member(s), as defined in the Notice and in paragraphs 2 and 3 on page 3 of this Claim Form, and is (are) not excluded from the Settlement Class by definition or pursuant to request as set forth in the Notice and in paragraph 4 on page 3 of this Claim Form;
3. that I (we) own(ed) the Penn West Trust Units, Penn West Common Stock, and/or Penn West Call Options and/or had an interest in the Penn West Put Options identified in the Claim Form and have not assigned the claim against the Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
4. that the claimant(s) has (have) not submitted any other claim covering the same purchases/acquisitions of Penn West Trust Units, Penn West Common Stock, or Penn West Call Options, or sales of Penn West Put Options, and knows (know) of no other person having done so on the claimant's (claimants') behalf;
5. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
6. that I (we) agree to furnish such additional information with respect to this Claim Form as Co-Lead Counsel, the Claims Administrator or the Court may require;
7. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the Court's summary disposition of the determination of the validity or amount of the claim made by this Claim Form;
8. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
9. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the claimant(s) is (are) exempt from backup withholding or (b) the claimant(s) has (have) not been notified by the IRS that he/she/it is subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the claimant(s) that he/she/it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he, she or it is subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

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

Signature of claimant

Date   -   -    
MM DD YY

Print your name here

Signature of joint claimant, if any

Date   -   -    
MM DD YY

Print your name here

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

Signature of person signing on behalf of claimant

Date   -   -    
MM DD YY

Print your name here

Capacity of person signing on behalf of claimant, if other than an individual, e.g., executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – see paragraph 12 on page 4 of this Claim Form.)

**REMINDER CHECKLIST:**

1. Please sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Remember to attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.
3. Please do not highlight any portion of the Claim Form or any supporting documents.
4. Do not send original security certificates or documentation. These items cannot be returned to you by the Claims Administrator.
5. Keep copies of the completed Claim Form and documentation for your own records.
6. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at (877) 835-0545.**
7. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, please send the Claims Administrator written notification of your new address. If you change your name, please inform the Claims Administrator.
8. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at [info@PennWestUSSecuritiesLitigation.com](mailto:info@PennWestUSSecuritiesLitigation.com), or toll-free at (877) 835-0545, or visit [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com). Please DO NOT call Penn West or any of the other Defendants or their counsel with questions regarding your claim.

**THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, POSTMARKED NO LATER THAN AUGUST 26, 2016, ADDRESSED AS FOLLOWS:**

Penn West U.S. Securities Litigation  
c/o Epiq  
P.O. Box 3967  
Portland, OR 97208-3967

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before August 26, 2016 is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

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

# Exhibit B

## CONFIRMATION OF PUBLICATION

IN THE MATTER OF: *Penn West Petroleum LTD. Securities Litigation*

I, Kathleen Komraus, hereby certify that

(a) I am the Media Coordinator at Epiq Systems Class Action & Claims Solutions, a noticing administrator, and;

(b) The Notice of which the annexed is a copy was published in the following publications on the following dates:

*4.12.16 – Investor’s Business Daily*

*4.12.16 – National Post*

*4.12.16 – PR Newswire (United States)*

*4.12.16 – PR Newswire (Canada – English)*

X Kathleen Komraus  
(Signature)

Media Coordinator  
(Title)





## B.C. STUDY

**KEY TO HITTING  
MINERAL PAYDIRT  
MIGHT IN TREETOPS**

**Trees could hold the key** to identifying new mineral deposits. A B.C. science group is set to release the results of an innovative project that samples the tops of trees for trace amounts of precious minerals in order to help mining firms hit paydirt. Bruce Madu of Geoscience BC says coniferous trees pick up metals and other elements from soil and concentrate them in twigs, bark and needles.



Madu says analyzing these tree elements over a broad area could offer a lens into the types and abundance of commercially valuable materials deep beneath their roots. Last June, researchers used a helicopter to collect samples from more than 420 trees scattered across a plateau region of central B.C. The method offers a way to study regions difficult to access. *The Canadian Press*

# Flowers & the Mafia: Dutch company was alleged front

## ITALIAN ACCUSED OF DRUG TRAFFICKING

STEVE SCHERER  
*in Rome*

**T**o traders at the famous Royal FloraHolland flower market near Amsterdam, Vincenzo Crupi was just another businessman helping to make the Netherlands the largest exporter of cut flowers in the world.

To the police, Crupi was a mafia suspect allegedly concealing drugs worth millions of dollars alongside fragrant bouquets he trucked to Italy. By last year they were hot on his scent. So they bugged his offices at the flower market.

In conversations recorded by hidden microphones and cameras, the 52-year-old Italian was heard speaking at length about mafia affairs, according to previously unpublished details of the investigation contained in 1,700 pages of Italian court documents reviewed by Reuters.

Crupi was heard allegedly discussing drug deals, arms shipments and a lethal power struggle between mafia members in Canada. "They are killing each other over there," he said in one recorded telephone call after returning from a trip to Toronto.

Last September, at least two decades after Crupi began working at the flower market, police swooped while the Italian was on a trip home, arresting him in the dead of night south of Rome.

Prosecutors will seek trials against Crupi later this year for drug trafficking and mafia membership, judicial sources said.

Police and prosecutors say the case sheds new light on the 'Ndrangheta — the Calabrian mafia — and the way it has spread its tentacles

to Holland and set up in business at the FloraHolland market in the town of Aalsmeer, two former employees of Crupi's company told Reuters.

In 2002, Crupi was joined by his brother-in-law, Vincenzo Macri, 51, who had spent 13 years in prison in the United States for drug smuggling, according to court documents. In the florist business, Macri was in charge of collecting unpaid bills from clients, former employees said.

To the flower traders of Holland, Crupi and Macri appeared to be ordinary businessmen.

"These guys were up at four o'clock in the morning most of the time, and they went straight to FloraHolland," said the police commander in charge of the Dutch side of the investigation.

"They didn't have Ferraris or big watches. If you looked at them you wouldn't see anything strange. They seemed to be ordinary people, but they were not."

What the employees at the flower market did not know was that Crupi and Macri were — prosecutors allege — part of the Comisso clan, which prosecutors say is based in the small coastal town of Siderno and is one of the 'Ndrangheta's most powerful arms.

Vincenzo, the younger Macri, is currently a fugitive and could not be contacted for comment. Maria Candida Tripodi, a lawyer who says she



REMKO DE WAAL / AFP / GETTY IMAGES FILES

**FloraHolland.** With the port of Rotterdam and Schiphol airport nearby, accused Vincenzo Crupi's flower business was perfectly positioned to receive drug shipments.

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IN RE PENN WEST PETROLEUM LTD.  
SECURITIES LITIGATION

Master File No. 14-cv-6046-JGK

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

**TO: All persons or entities who or which (i) purchased or otherwise acquired Penn West Petroleum Ltd. ("Penn West") common stock or trust units on an open market located within the United States, including but not limited to the New York Stock Exchange ("NYSE") or another domestic exchange, or (ii) purchased or otherwise acquired Penn West call options, or sold or wrote Penn West put options, on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, from February 18, 2010 through July 29, 2014, inclusive (the "Settlement Class Period"), and who were damaged thereby (the "Settlement Class"):**

**PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT, AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT. YOU MAY BE ELIGIBLE TO PARTICIPATE IN THIS SETTLEMENT REGARDLESS OF WHETHER YOU ARE DOMICILED IN THE UNITED STATES OR ARE A UNITED STATES CITIZEN OR RESIDENT.**

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

YOU ARE ALSO NOTIFIED that Lead Plaintiffs in the Action have reached a proposed settlement of the Action for Can\$26,500,000 in cash (the "Settlement"), which equated to US\$19,759,282 on the day it was deposited into an escrow account. If the Settlement is approved, it will resolve all claims in the Action.

A hearing will be held on July 19, 2016 at 4:30 p.m., before the Honorable John G. Koeltl in Courtroom 12B of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007-1312, to determine (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate;

“  
IF IT'S TRUE ...  
HE'S A BETTER  
ACTOR THAN  
ROBERT DE NIRO

against Crupi later this year for drug trafficking and mafia membership, judicial sources said.

Police and prosecutors say the case sheds new light on the 'Ndrangheta — the Calabrian mafia — and the way it has spread its tentacles from southern Italy into dozens of countries across five continents. More than 50 other suspects were arrested in the same investigation.

Crupi, currently in prison, denies any wrongdoing. His lawyer, Giuseppe Belcastro, told Reuters that his client was an honest businessman.

“He’s been in the flower business forever,” said Belcastro, whose office is near the Vatican. “He had a legal and functioning flower business, and there is proof of that.”

The police and prosecutors disagree. They say the 'Ndrangheta has cleverly kept a low profile abroad, and that Crupi embodies its international business model. He ran a legitimate flower business, they say, because it was the perfect cover for the 'Ndrangheta to expand overseas, smuggle drugs and launder illicit profits.

“The (secretly recorded) conversations confirm the full participation” of Crupi and others in an international mafia network, says the arrest warrant issued in Reggio Calabria, the capital of Calabria in Italy’s southern tip.

A spokeswoman for the FloraHolland co-operative, where Crupi had his office, said the co-operative was never aware he was a suspected mobster.

For much of the last century, the Calabrian mafia made its money from extortion and kidnappings. Then in the late 1980s and early 1990s the group, which consists of about 160 patriarchal clans, bet big on the cocaine trade.

Its success at drug smuggling catapulted the 'Ndrangheta past its more storied Sicilian rival, the Cosa Nostra, in both wealth and power. Italian authorities now consider the 'Ndrangheta to be Europe’s single biggest importer of cocaine.

“The 'Ndrangheta is a trademark, or guarantee, of criminal seriousness,” said David Ellero, the head of Europol’s organized crime squad in The Hague.

In the early 1990s, or possibly earlier, Crupi moved from Siderno

## IF IT’S TRUE ... HE’S A BETTER ACTOR THAN ROBERT DE NIRO AND AL PACINO.

was hired by a family member to defend Macri, said that he is innocent.

At the FloraHolland market, Crupi and Macri ran a business called Fresh BV, which boasted on its website that it was “a major player of the Italian wholesale market” with a trucking business providing “distribution that allows us to be proud of our speed and methods.” In the mid-2000s, Fresh BV was sending about a truckload of flowers a day to Italy, former employees said. In recent years the volume had decreased, police said, but the company was still sending several trucks each week.

The FloraHolland market in Aalsmeer is enormous, equivalent in size to 400 soccer pitches. Since speed is of the essence in delivering fresh flowers, 18-wheeler trucks rumble in and out at all hours.

With the port of Rotterdam and Schiphol airport nearby, Crupi’s flower business was perfectly positioned to receive drug shipments from South America and distribute them onward, say police and prosecutors.

Police carried out the first arrests in the investigation in August 2014, when they witnessed an Albanian man allegedly picking up drugs in Rome from a flower-truck driver working for the Crupi family.

The police investigation is ongoing. In both Rome and Reggio Calabria, prosecutors plan to seek a trial against Crupi, Macri and others for drug trafficking and mafia membership later this year, judicial sources said.

Meanwhile, some of Crupi’s former colleagues in Holland are still shocked at the accusation that he’s part of the mafia. “If it’s true,” said a former employee of Crupi’s flower company, “then he’s a better actor than Robert De Niro and Al Pacino rolled into one.”

Reuters

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**If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund.** If you have not yet received the Notice, which more completely describes the Settlement and your rights thereunder, and Claim Form, you may obtain copies of these documents, as well as a copy of the Stipulation (which, among other things, contains definitions for the defined terms used in this Summary Notice) by contacting the Claims Administrator at Penn West U.S. Securities Litigation, c/o Epiq, P.O. Box 3967, Portland, OR 97208-3967, (877) 835-0545, or [Info@PennWestUSSecuritiesLitigation.com](mailto:Info@PennWestUSSecuritiesLitigation.com). Copies of the Notice, Claim Form and Stipulation can also be downloaded from the website maintained by the Claims Administrator, [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com).

If you are a member of the Settlement Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form **postmarked no later than August 26, 2016**. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is **received no later than June 20, 2016**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel’s motion for attorneys’ fees and reimbursement of Litigation Expenses, must be filed with the Court and delivered to Co-Lead Counsel and representative Defendants’ Counsel such that they are **received no later than June 20, 2016**, in accordance with the instructions set forth in the Notice.

**Please do not contact the Court, the Clerk’s office, Penn West, any other Defendant, or their counsel, regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to the Claims Administrator or Co-Lead Counsel.**

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

Penn West U.S. Securities Litigation  
c/o Epiq  
P.O. Box 3967  
Portland, OR 97208-3967  
(877) 835-0545  
[Info@PennWestUSSecuritiesLitigation.com](mailto:Info@PennWestUSSecuritiesLitigation.com)  
[www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com)

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

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP John Rizio-Hamilton, Esq. 1251 Avenue of the Americas, 44th Floor New York, NY 10020 (800) 380-8496	or	GLANCY PRONGAY & MURRAY LLP Peter A. Binkow, Esq. 1925 Century Park East, Suite 2100 Los Angeles, CA 90067 (888) 773-9224
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Please note that there is a separate settlement for persons who acquired the securities of Penn West on the Toronto Stock Exchange, on an alternative trading market in Canada, or otherwise in Canada from March 17, 2011 through July 29, 2014, inclusive, and/or July 30, 2014 through September 18, 2014, inclusive, and held some or all of those securities at the close of trading on July 29, 2014 or September 18, 2014 (the “Canadian Class”). This notice only discusses the rights and options of members of the Settlement Class (defined above). If you are a member of the Canadian Class, you can learn more about your rights and options at the website dedicated to the Canadian cases: [www.PennWestCanadianClassAction.com](http://www.PennWestCanadianClassAction.com).

By Order of the Court

# **Bernstein Litowitz Berger & Grossmann LLP and Glancy Prongay & Murray LLP Announce Pendency and Proposed Settlement of In re Penn West Petroleum Ltd. Securities Litigation, Master File No. 14-cv-6046-JGK (S.D.N.Y.)**

07:59 ET from Bernstein Litowitz Berger & Grossmann LLP and Glancy Prongay & Murray  
LLP (<http://www.prnewswire.com/news/bernstein+litowitz+berger+%27and%27+grossmann+llp+and+glancy+prongay+%27and%27+murray+llp>)



NEW YORK, April 12, 2016 /PRNewswire/ --

## **UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK**

IN RE PENN WEST PETROLEUM LTD.  
SECURITIES LITIGATION

Master File No. 14-cv-6046-JGK

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

**TO: All persons or entities who or which (i) purchased or otherwise  
acquired Penn West Petroleum Ltd. ("Penn West") common stock or trust  
units on an open market located within the United States, including but not**

[Case 1:14-cv-06046-JGK Document 138-4 Filed 06/03/16 Page 51 of 59](#)  
**limited to the New York Stock Exchange ("NYSE") or another domestic exchange, or (ii) purchased or otherwise acquired Penn West call options, or sold or wrote Penn West put options, on an open market located within the United States, including but not limited to the NYSE or another domestic exchange, from February 18, 2010 through July 29, 2014, inclusive (the "Settlement Class Period"), and who were damaged thereby (the "Settlement Class"):**

**PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT, AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT. YOU MAY BE ELIGIBLE TO PARTICIPATE IN THIS SETTLEMENT REGARDLESS OF WHETHER YOU ARE DOMICILED IN THE UNITED STATES OR ARE A UNITED STATES CITIZEN OR RESIDENT.**

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c/o Epiq

P.O. Box 3967

Portland, OR 97208-3967

(877) 835-0545 

[Info@PennWestUSSecuritiesLitigation.com](mailto:Info@PennWestUSSecuritiesLitigation.com)

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John Rizio-Hamilton, Esq.  
1251 Avenue of the Americas, 44th Floor  
New York, NY 10020  
(800) 380-8496

or

GLANCY PRONGAY & MURRAY LLP  
Peter A. Binkow, Esq.  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
(888) 773-9224

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By Order of the Court

SOURCE Bernstein Litowitz Berger & Grossmann LLP and Glancy Prongay & Murray LLP

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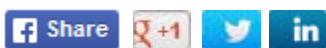
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# Bernstein Litowitz Berger & Grossmann LLP and Glancy Prongay & Murray LLP Announce Pendency and Proposed Settlement of In re Penn West Petroleum Ltd. Securities Litigation, Master File No. 14-cv-6046-JGK (S.D.N.Y.)



NEW YORK, April 12, 2016 /CNW/ --

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IN RE PENN WEST PETROLEUM LTD. SECURITIES LITIGATION	Master File No. 14-cv-6046-JGK
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### Organization Profile

**Bernstein  
Litowitz Berger &  
Grossmann LLP  
and Glancy  
Prongay &  
Murray LLP**

More on this organization (<http://www.newswire.ca/news/bernstein-litowitz-berger--grossmann-llp-and-glancy-prongay--murray-llp>)

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(mailto:Info@PennWestUSSecuritiesLitigation.com. ) Copies of the Notice, Claim Form and Stipulation can also be downloaded from the website maintained by the Claims Administrator, [www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com) (<http://www.pennwestussecuritieslitigation.com/>).

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If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is **received no later than June 20, 2016**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses, must be filed with the Court and delivered to Co-Lead Counsel and representative Defendants' Counsel such that they are **received no later than June 20, 2016**, in accordance with the instructions set forth in the Notice.

**Please do not contact the Court, the Clerk's office, Penn West, any other Defendant, or their counsel, regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to the Claims Administrator or Co-Lead Counsel.**

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

Penn West U.S. Securities Litigation  
c/o Epiq  
P.O. Box 3967  
Portland, OR 97208-3967  
(877) 835-0545  
Info@PennWestUSSecuritiesLitigation.com  
(mailto:Info@PennWestUSSecuritiesLitigation.com)  
[www.PennWestUSSecuritiesLitigation.com](http://www.PennWestUSSecuritiesLitigation.com)  
(<http://www.pennwestussecuritieslitigation.com/>)

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

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

or

GLANCY PRONGAY & MURRAY LLP  
Peter A. Binkow, Esq.  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
(888) 773-9224

Please note that there is a separate settlement for persons who acquired the securities of Penn West on the Toronto Stock Exchange, on an alternative trading market in Canada, or otherwise in Canada from March 17, 2011 through July 29, 2014, inclusive, and/or July 30, 2014 through September 18, 2014, inclusive, and held some or all of those securities at the close of trading on July 29, 2014 or September 18, 2014 (the "Canadian Class"). This notice only discusses the rights and options of members of the Settlement Class (defined above). If you are a member of the

Canadian Class, you can learn more about your rights and options at the website dedicated to the Canadian cases: [www.PennWestCanadianClassAction.com](http://www.PennWestCanadianClassAction.com) (<http://www.pennwestcanadianclassaction.com/>).

By Order of the Court

SOURCE Bernstein Litowitz Berger & Grossmann LLP and Glancy Prongay & Murray LLP

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# Exhibit 5

**EXHIBIT 5**

*In Re Penn West Petroleum Ltd. Securities Litigation*  
Master File No. 14-cv-6046-JGK

**SUMMARY OF CO-LEAD COUNSEL'S  
LODESTAR AND EXPENSES**

<b>TAB</b>	<b>FIRM</b>	<b>HOURS</b>	<b>LODESTAR</b>	<b>EXPENSES</b>
A	Bernstein Litowitz Berger & Grossmann LLP	2,972.50	\$1,546,851.25	\$213,361.85
B	Glancy Prongay & Murray LLP	1,850.70	999,576.25	106,955.62
	<b>TOTAL:</b>	<b>4,823.20</b>	<b>\$2,546,427.50</b>	<b>\$320,317.47</b>

# Exhibit 5A



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE PENN WEST PETROLEUM LTD.  
SECURITIES LITIGATION

Master File No. 14-cv-6046-JGK

**DECLARATION OF JOHN RIZIO-HAMILTON IN SUPPORT OF  
CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF  
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

I, John Rizio-Hamilton, declare as follows:

1. I am a partner at the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"). My firm, and Glancy Prongay & Murray LLP, are the Court-appointed Co-Lead Counsel in the above-captioned action (the "Action"). I submit this declaration in support of Co-Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the Action, as well as for reimbursement of litigation expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm, as Co-Lead Counsel, was involved in all aspects of the litigation and its settlement as set forth in Joint Declaration of John Rizio-Hamilton and Lionel Z. Glancy In Support of: (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

3. In addition to Co-Lead Counsel, the firms Cypen & Cypen and Wolf Popper LLP performed work for the benefit of Lead Plaintiffs and the Settlement Class in this Action. At Co-Lead Counsel's direction, Cypen & Cypen ("Cypen") reviewed pleadings in the Action, provided periodic status updates on the case to the Miami FIPO board, advised Miami FIPO concerning

whether to move for lead plaintiff status in the Action, advised Miami FIPO concerning the mediation of the Action, and presented the proposed Settlement to Miami FIPO's board for approval. Co-Lead Counsel intend to share a small portion of any fee they are awarded with Cypen.

4. Wolf Popper LLP ("Wolf Popper") filed the initial complaint and an amended complaint in the Action and conducted an initial investigation into Penn West's alleged misconduct, which was shared with Co-Lead Counsel. Co-Lead Counsel intend to share a small portion of any attorneys' fees awarded with Wolf Popper, and are seeking reimbursement for Wolf Popper's expenses in the amount of \$2,459.64, as set forth in Exhibit 2 hereto.

5. Co-Lead Counsel have not included the time of these two firms in the lodestar as part of this fee application because Co-Lead Counsel seek the fee award based upon the time and efforts of Co-Lead Counsel and, in any event, the time expended by these firms would not make a material difference to the total lodestar.

6. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including June 1, 2016, billed twenty or more hours to this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on Co-Lead Counsel's application for fees and reimbursement of expenses has not been included in this request.

7. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.

8. The total number of hours reflected in Exhibit 1 from inception through and including June 1, 2016 is 2,972.50. The total lodestar reflected in Exhibit 1 for that period is \$1,546,851.25, consisting of \$1,278,280.00 for attorneys' time and \$268,571.25 for professional support staff time.

9. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

10. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$213,361.85 in expenses incurred in connection with the prosecution of this Action.

11. The litigation expenses reflected in Exhibit 2 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:

(a) Out-of-Town Travel – Airfare is at coach rates; hotel charges are capped at \$350 per night; and meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.

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

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

(d) Internal Copying – Charged at \$0.10 per page.

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

12. The litigation expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

13. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on June 3, 2016.

*/s/ John Rizio-Hamilton*

John Rizio-Hamilton

**EXHIBIT 1**

*In Re Penn West Petroleum Ltd. Securities Litigation*  
Master File No. 14-cv-6046-JGK

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

**TIME REPORT**

Inception through and including June 1, 2016

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Max Berger	39.25	995.00	39,053.75
Michael Blatchley	97.25	700.00	68,075.00
Avi Josefson	23.50	800.00	18,800.00
John Rizio-Hamilton	421.00	750.00	315,750.00
Gerald Silk	107.00	945.00	101,115.00
<b>Senior Counsel</b>			
Joseph Cohen	99.75	700.00	69,825.00
<b>Associates</b>			
Abe Alexander	607.25	575.00	349,168.75
Dave Duncan	83.75	600.00	50,250.00
Catherine McCaw	333.75	450.00	150,187.50
John Mills	112.25	600.00	67,350.00
<b>Staff Attorney</b>			
Jim Briggs	143.25	340.00	48,705.00
<b>Financial Analysts</b>			
Adam Weinschel	24.75	415.00	10,271.25
Michelle Miklus	32.50	325.00	10,562.50
<b>Investigators</b>			
Amy Bitkower	23.25	495.00	11,508.75
Chris Altieri	77.00	245.00	18,865.00
Lisa C. Burr	212.50	290.00	61,625.00
<b>Litigation Support</b>			
Babatunde Pedro	23.50	275.00	6,462.50

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Paralegals</b>			
Yvette Badillo	182.75	285.00	52,083.75
Martin Braxton	85.00	245.00	20,825.00
Matthew Mahady	157.75	310.00	48,902.50
Gary Weston	64.00	325.00	20,800.00
<b>Managing Clerk</b>			
Errol Hall	21.50	310.00	6,665.00
<b>TOTALS</b>	<b>2,972.50</b>		<b>\$1,546,851.25</b>

**EXHIBIT 2**

*In Re Penn West Petroleum Ltd. Securities Litigation*  
Master File No. 14-cv-6046-JGK

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

**EXPENSE REPORT<sup>1</sup>**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$ 873.13
PSRLA Notice Costs	1,240.00
On-Line Legal Research	20,516.67
On-Line Factual Research	6,656.09
Telephones/Faxes	114.80
Postage & Express Mail	124.73
Hand Delivery Charges	26.60
Local Transportation	3,044.72
Internal Copying	3,690.20
Outside Copying	3,242.30
Out of Town Travel	4,512.98
Working Meals	1,976.77
Court Reporters and Transcripts	248.88
Experts	136,623.98
Mediation Fees	30,470.00
<b>TOTAL EXPENSES:</b>	<b>\$213,361.85</b>

---

<sup>1</sup> This Expense Report includes expenses incurred by Wolf Popper. Wolf Popper's expenses were provide to me by a partner at the firm, Robert C. Finkel, Esq., and are included in the Expense Report as follows: (a) Court Fees (\$800); (b) PSLRA Notice Costs (\$1,240); (c) On-Line Legal Research (\$394.04); and (d) Local Transportation (\$25.60).

**EXHIBIT 3**

FIRM RESUME AND BIOGRAPHIES





Bernstein Litowitz Berger & Grossmann LLP

Attorneys at Law

# Firm Resume

## **New York**

1251 Avenue of the Americas, 44th Floor  
New York, NY 10020  
Tel: 212-554-1400  
Fax: 212-554-1444

## **California**

12481 High Bluff Drive, Suite 300  
San Diego, CA 92130  
Tel: 858-793-0070  
Fax: 858-793-0323

## **Louisiana**

2727 Prytania Street, Suite 14  
New Orleans, LA 70130  
Tel: 504-899-2339  
Fax: 504-899-2342

## **Illinois**

875 North Michigan Avenue, Suite 3100  
Chicago, IL 60611  
Tel: 312-373-3880  
Fax: 312-794-7801

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Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history – over \$27 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including four of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.

## FIRM OVERVIEW

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

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

## MORE TOP SECURITIES RECOVERIES

Since its founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has litigated some of the most complex cases in history and has obtained over \$30 billion on behalf of investors. Unique among its peers, the firm has negotiated the largest settlements ever agreed to by public companies related to securities fraud, and obtained many of the largest securities recoveries in history (including 5 of the top 10):

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

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

BLB&G also eclipses all competitors on SCAS’s “Top 100 Settlements” report, having recovered 37% of all the settlement dollars represented in the report (nearly \$23 billion), and having prosecuted nearly a third of all the cases on the list (29 of 100).

## GIVING SHAREHOLDERS A VOICE AND CHANGING BUSINESS PRACTICES FOR THE BETTER

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

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

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

## ADVOCACY FOR VICTIMS OF CORPORATE WRONGDOING

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



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

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

## PRACTICE AREAS

### SECURITIES FRAUD LITIGATION

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

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

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

### CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

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

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

### EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

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

Bernstein Litowitz Berger & Grossmann LLP is committed to effecting positive social change in the workplace and in society. The practice group has the necessary financial and human resources to ensure that the class action approach to discrimination and civil rights issues is successful. This litigation method serves to empower employees and other civil rights victims, who are usually discouraged from pursuing litigation because of personal financial limitations, and offers the potential for effecting the greatest positive change for the greatest number of people affected by discriminatory practice in the workplace.

## GENERAL COMMERCIAL LITIGATION AND ALTERNATIVE DISPUTE RESOLUTION

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

## DISTRESSED DEBT AND BANKRUPTCY CREDITOR NEGOTIATION

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

## CONSUMER ADVOCACY

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

## THE COURTS SPEAK

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

### ***IN RE WORLD.COM, INC. SECURITIES LITIGATION***

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

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

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

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

### ***IN RE CLARENT CORPORATION SECURITIES LITIGATION***

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

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

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

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

### ***LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION***

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

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

### ***MCCALL V. SCOTT (COLUMBIA/HCA DERIVATIVE LITIGATION)***

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

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



## RECENT ACTIONS & SIGNIFICANT RECOVERIES

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

### SECURITIES CLASS ACTIONS

**CASE:** *IN RE WORLD.COM, INC. SECURITIES LITIGATION*

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

**HIGHLIGHTS:** \$1.06 billion recovery for the class.

**DESCRIPTION:** This case arises out of misrepresentations and omissions concerning life-threatening risks posed by the “blockbuster” Cox-2 painkiller Vioxx, which Merck withdrew from the market in 2004. In January 2016, BLB&G achieved a \$1.062 billion settlement on the eve of trial after more than 12 years of hard-fought litigation that included a successful decision at the United States Supreme Court. This settlement is the second largest recovery ever obtained in the Third Circuit, one of the top 10 securities recoveries of all time, and the largest securities recovery ever achieved against a pharmaceutical company. BLB&G represented Lead Plaintiff the **Public Employees’ Retirement System of Mississippi**.



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

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

**HIGHLIGHTS:** \$1.05 billion recovery for the class.

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

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

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

**HIGHLIGHTS:** \$735 million in total recoveries.

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

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

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

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

**HIGHLIGHTS:** \$804.5 million in total recoveries.

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

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

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

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

**DESCRIPTION:** In the years prior to the collapse of the subprime mortgage market, Citigroup issued 48 offerings of preferred stock and bonds. This securities fraud class action was filed on behalf of purchasers of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**HIGHLIGHTS:** \$410 million settlement.

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

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

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

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

## CORPORATE GOVERNANCE AND SHAREHOLDERS’ RIGHTS

- CASE:** ***UNITEDHEALTH GROUP, INC. SHAREHOLDER DERIVATIVE LITIGATION***
- COURT:** **United States District Court for the District of Minnesota**
- HIGHLIGHTS:** Litigation recovered over \$920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.
- DESCRIPTION:** This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over \$920 million in ill-gotten compensation directly from the former officer Defendants – the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, “investors everywhere should applaud [the UnitedHealth settlement].... [T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings.” The Plaintiffs in this action were the **St. Paul Teachers’ Retirement Fund Association**, the **Public Employees’ Retirement System of Mississippi**, the **Jacksonville Police & Fire Pension Fund**, the **Louisiana Sheriffs’ Pension & Relief Fund**, the **Louisiana Municipal Police Employees’ Retirement System** and **Fire & Police Pension Association of Colorado**.
- CASE:** ***CAREMARK MERGER LITIGATION***
- COURT:** **Delaware Court of Chancery – New Castle County**
- HIGHLIGHTS:** Landmark Court ruling orders Caremark’s board to disclose previously withheld information, enjoins shareholder vote on CVS merger offer, and grants statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise offer by \$7.50 per share, equal to more than \$3.3 billion in additional consideration to Caremark shareholders.
- DESCRIPTION:** Commenced on behalf of the **Louisiana Municipal Police Employees’ Retirement System** and other shareholders of Caremark RX, Inc. (“Caremark”), this shareholder class action accused the company’s directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation (“CVS”), all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark’s shareholders—forcing CVS to increase the consideration offered to shareholders by \$7.50 per share in cash (over \$3 billion in total).



- CASE:** *IN RE PFIZER INC. SHAREHOLDER DERIVATIVE LITIGATION*
- COURT:** United States District Court for the Southern District of New York
- HIGHLIGHTS:** Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board that will be supported by a dedicated \$75 million fund.
- DESCRIPTION:** In the wake of Pfizer’s agreement to pay \$2.3 billion as part of a settlement with the U.S. Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company’s most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer’s senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous “red flags” that Pfizer’s improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs **Louisiana Sheriffs’ Pension and Relief Fund and Skandia Life Insurance Company, Ltd.** In an unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board of Directors (the “Regulatory Committee”) to oversee and monitor Pfizer’s compliance and drug marketing practices and to review the compensation policies for Pfizer’s drug sales related employees.
- CASE:** *IN RE EL PASO CORP. SHAREHOLDER LITIGATION*
- COURT:** Delaware Court of Chancery – New Castle County
- HIGHLIGHTS:** Landmark Delaware ruling chastises Goldman Sachs for M&A conflicts of interest.
- DESCRIPTION:** This case aimed a spotlight on ways that financial insiders – in this instance, Wall Street titan Goldman Sachs – game the system. The Delaware Chancery Court harshly rebuked Goldman for ignoring blatant conflicts of interest while advising their corporate clients on Kinder Morgan’s high-profile acquisition of El Paso Corporation. As a result of the lawsuit, Goldman was forced to relinquish a \$20 million advisory fee, and BLB&G obtained a \$110 million cash settlement for El Paso shareholders – one of the highest merger litigation damage recoveries in Delaware history.
- CASE:** *IN RE DELPHI FINANCIAL GROUP SHAREHOLDER LITIGATION*
- COURT:** Delaware Court of Chancery – New Castle County
- HIGHLIGHTS:** Dominant shareholder is blocked from collecting a payoff at the expense of minority investors.
- DESCRIPTION:** As the Delphi Financial Group prepared to be acquired by Tokio Marine Holdings Inc., the conduct of Delphi’s founder and controlling shareholder drew the scrutiny of BLB&G and its institutional investor clients for improperly using the transaction to expropriate at least \$55 million at the expense of the public shareholders. BLB&G aggressively litigated this action and obtained a settlement of \$49 million for Delphi’s public shareholders. The settlement fund is equal to about 90% of recoverable Class damages – a virtually unprecedented recovery.
- CASE:** *QUALCOMM BOOKS & RECORDS LITIGATION*
- COURT:** Delaware Court of Chancery – New Castle County
- HIGHLIGHTS:** Novel use of “books and records” litigation enhances disclosure of political spending and transparency.
- DESCRIPTION:** The U.S. Supreme Court’s controversial 2010 opinion in *Citizens United v. FEC* made it easier for corporate directors and executives to secretly use company funds – shareholder assets – to support personally favored political candidates or causes. BLB&G prosecuted the first-ever “books and records” litigation to obtain disclosure of corporate political spending at our client’s portfolio company – technology giant Qualcomm Inc. – in response to Qualcomm’s refusal to share the information. As a result of the lawsuit, Qualcomm adopted a policy that provides its shareholders

with comprehensive disclosures regarding the company's political activities and places Qualcomm as a standard-bearer for other companies.

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

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

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

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

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

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

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

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

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

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

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

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

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



- COURT:** Delaware Court of Chancery – New Castle County
- HIGHLIGHTS:** Protecting shareholders from predatory CEO’s multiple attempts to take control of Landry’s Restaurants through improper means. Our litigation forced the CEO to increase his buyout offer by four times the price offered and obtained an additional \$14.5 million cash payment for the class.
- DESCRIPTION:** In this derivative and shareholder class action, shareholders alleged that Tilman J. Fertitta – chairman, CEO and largest shareholder of Landry’s Restaurants, Inc. – and its Board of Directors stripped public shareholders of their controlling interest in the company for no premium and severely devalued remaining public shares in breach of their fiduciary duties. BLB&G’s prosecution of the action on behalf of Plaintiff **Louisiana Municipal Police Employees’ Retirement System** resulted in recoveries that included the creation of a settlement fund composed of \$14.5 million in cash, as well as significant corporate governance reforms and an increase in consideration to shareholders of the purchase price valued at \$65 million.

## EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

- CASE:** **ROBERTS V. TEXACO, INC.**
- COURT:** United States District Court for the Southern District of New York
- HIGHLIGHTS:** BLB&G recovered \$170 million on behalf of Texaco’s African-American employees and engineered the creation of an independent “Equality and Tolerance Task Force” at the company.
- DESCRIPTION:** Six highly qualified African-American employees filed a class action complaint against Texaco Inc. alleging that the company failed to promote African-American employees to upper level jobs and failed to compensate them fairly in relation to Caucasian employees in similar positions. BLB&G’s prosecution of the action revealed that African-Americans were significantly under-represented in high level management jobs and that Caucasian employees were promoted more frequently and at far higher rates for comparable positions within the company. The case settled for over \$170 million, and Texaco agreed to a Task Force to monitor its diversity programs for five years – a settlement described as the most significant race discrimination settlement in history.
- CASE:** **ECOFA - GMAC/NMAC/FORD/TOYOTA/CHRYSLER - CONSUMER FINANCE DISCRIMINATION LITIGATION**
- COURT:** Multiple jurisdictions
- HIGHLIGHTS:** Landmark litigation in which financing arms of major auto manufacturers are compelled to cease discriminatory “kick-back” arrangements with dealers, leading to historic changes to auto financing practices nationwide.
- DESCRIPTION:** The cases involve allegations that the lending practices of General Motors Acceptance Corporation, Nissan Motor Acceptance Corporation, Ford Motor Credit, Toyota Motor Credit and DaimlerChrysler Financial cause African-American and Hispanic car buyers to pay millions of dollars more for car loans than similarly situated white buyers. At issue is a discriminatory kickback system under which minorities typically pay about 50% more in dealer mark-up which is shared by auto dealers with the Defendants.
- NMAC:** The United States District Court for the Middle District of Tennessee granted final approval of the settlement of the class action against Nissan Motor Acceptance Corporation (“NMAC”) in which NMAC agreed to offer pre-approved loans to hundreds of thousands of current and potential African-American and Hispanic NMAC customers, and limit how much it raises the interest charged to car buyers above the company’s minimum acceptable rate.
- GMAC:** The United States District Court for the Middle District of Tennessee granted final approval of a settlement of the litigation against General Motors Acceptance Corporation (“GMAC”) in which GMAC agreed to take the historic step of imposing a 2.5% markup cap on loans with terms up to 60 months, and a cap of 2% on extended term loans. GMAC also agreed to institute a substantial credit pre-approval program designed to provide special financing rates to

minority car buyers with special rate financing.

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

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

## CLIENTS AND FEES

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

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

## IN THE PUBLIC INTEREST

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

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

### FIRM SPONSORSHIP OF HER JUSTICE

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

### THE PAUL M. BERNSTEIN MEMORIAL SCHOLARSHIP

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

### FIRM SPONSORSHIP OF CITY YEAR NEW YORK

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

### MAX W. BERGER PRE-LAW PROGRAM

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

### NEW YORK SAYS THANK YOU FOUNDATION

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

## OUR ATTORNEYS

### MEMBERS

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

He has litigated many of the firm’s most high-profile and significant cases, and has negotiated six of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* (\$3.3 billion); *Citigroup–WorldCom* (\$2.575 billion); *Bank of America/Merrill Lynch* (\$2.4 billion); *JPMorgan Chase–WorldCom* (\$2 billion); *Nortel* (\$1.07 billion); and *McKesson* (\$1.04 billion).

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

#### One of the “100 Most Influential Lawyers in America”

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

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

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

For the past ten years in a row, Mr. Berger has received the top attorney ranking in plaintiff securities litigation by *Chambers* and is consistently recognized as one of New York’s “local litigation stars” by *Benchmark Litigation* (published by *Institutional Investor* and *Euromoney*). *Law360* also named him one of only six litigators selected nationally as a “Legal MVP” for his work in securities litigation.

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

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

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

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

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

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

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

**GERALD H. SILK**’s practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants’ liability, and the fiduciary duties of corporate officials, as well as general commercial and corporate litigation. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context.

Mr. Silk is a managing partner of the firm and oversees its New Matter department in which he, along with a group of attorneys, financial analysts and investigators, counsels institutional clients on potential legal claims. He was the subject of “Picking Winning Securities Cases,” a feature article in the June 2005 issue of *Bloomberg Markets* magazine, which detailed his work for the firm in this capacity. A decade later, in December 2014, Mr. Silk was recognized by *The National Law Journal* in its inaugural list of “Litigation Trailblazers & Pioneers” – one of 50 lawyers in the country who have changed the practice of litigation through the use of innovative legal strategies – in no small part for the critical role he has played in helping the firm’s investor clients recover billions of dollars in litigation arising from the financial crisis, among other matters. In addition,

*Lawdragon* magazine, which has named Mr. Silk one of the “100 Securities Litigators You Need to Know,” one of the “500 Leading Lawyers in America” and one of America’s top 500 “rising stars” in the legal profession, also recently profiled him as part of its “Lawyer Limelight” special series, discussing subprime litigation, his passion for plaintiffs’ work and the trends he expects to see in the market. Recognized as one of an elite group of notable practitioners by *Chambers USA*, Mr. Silk is also named as a “Litigation Star” by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs’ securities litigation, and has been selected by *New York Super Lawyers* every year since 2006.

Mr. Silk is currently advising institutional investors worldwide on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, “Mortgage Investors Turn to State Courts for Relief.”

Mr. Silk is also representing the New York State Teachers’ Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company’s cars. In addition, he is actively involved in the firm’s prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation – which led to an increase of approximately \$3.5 billion in the consideration offered to shareholders.

Mr. Silk was one of the principal attorneys responsible for prosecuting the *In re Independent Energy Holdings Securities Litigation*. A case against the officers and directors of Independent Energy as well as several investment banking firms which underwrote a \$200 million secondary offering of ADRs by the U.K.-based Independent Energy, the litigation was resolved for \$48 million. Mr. Silk has also prosecuted and successfully resolved several other securities class actions, which resulted in substantial cash recoveries for investors, including *In re Sykes Enterprises, Inc. Securities Litigation* in the Middle District of Florida, and *In re OM Group, Inc. Securities Litigation* in the Northern District of Ohio. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for \$3.2 billion.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Mr. Silk served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.

Mr. Silk lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including “Improving Multi-Jurisdictional, Merger-Related Litigation,” American Bar Association (February 2011); “The Compensation Game,” *Lawdragon*, Fall 2006; “Institutional Investors as Lead Plaintiffs: Is There A New And Changing Landscape?,” *75 St. John’s Law Review* 31 (Winter 2001); “The Duty To Supervise, Poser, Broker-Dealer Law and Regulation,” 3<sup>rd</sup> Ed. 2000, Chapter 15; “Derivative Litigation In New York after Marx v. Akers,” *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He is a frequent commentator for the business media on television and in print. Among other outlets, he has appeared on NBC’s *Today*, and CNBC’s *Power Lunch*, *Morning Call*, and *Squawkbox* programs, as well as being featured in *The New York Times*, *Financial Times*, *Bloomberg*, *The National Law Journal*, and the *New York Law Journal*.

EDUCATION: Wharton School of the University of Pennsylvania, B.S., Economics, 1991. Brooklyn Law School, J.D., *cum laude*, 1995.

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

**AVI JOSEFSON** prosecutes securities fraud litigation for the firm's institutional investor clients, and has participated in many of the firm's significant representations, including *In re SCOR Holding (Switzerland) AG Securities Litigation*, which resulted in a recovery worth in excess of \$143 million for investors. He was also a member of the team that litigated the *In re OM Group, Inc. Securities Litigation*, which resulted in a settlement of \$92.4 million.

As a member of the firm's New Matter department, Mr. Josefson counsels institutional clients on potential legal claims. He has presented argument in several federal and state courts, including an appeal he argued before the Delaware Supreme Court.

Mr. Josefson is also actively involved in the M&A litigation practice, and represented shareholders in the litigation arising from the proposed acquisitions of Ceridian Corporation and Anheuser-Busch. A member of the firm's subprime litigation team, he has participated in securities fraud actions arising from the collapse of subprime mortgage lender American Home Mortgage and the actions against Lehman Brothers, Citigroup and Merrill Lynch, arising from those banks' multi-billion dollar loss from mortgage-backed investments. Mr. Josefson has prosecuted actions against Deutsche Bank and Morgan Stanley arising from their sale of mortgage-backed securities, and is advising U.S. and foreign institutions concerning similar claims arising from investments in mortgage-backed securities.

Mr. Josefson practices in the firm's Chicago and New York Offices.

EDUCATION: Brandeis University, B.A., *cum laude*, 1997. Northwestern University, J.D., 2000; *Dean's List*; Justice Stevens Public Interest Fellowship (1999); Public Interest Law Initiative Fellowship (2000).

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

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

Mr. Rizio-Hamilton was a member of the trial team prosecuting *In re Bank of America Securities Litigation*, which settled for \$2.425 billion, the single largest securities class action recovery ever resolving violations of Sections 14(a) and 10(b) of the Securities Exchange Act, and one of the top securities litigation settlements obtained of all time. He also served as counsel on behalf of the institutional investor plaintiffs in *In re Citigroup, Inc. Bond Action Litigation*, which settled for \$730 million, the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. In addition, Mr. Rizio-Hamilton was a member of the team that prosecuted the *In re Wachovia Corp. Bond/Notes Litigation*, in which the firm recovered a total of \$627 million on behalf of investors, one of the 15 largest securities class action recoveries in history.

Mr. Rizio-Hamilton has also been a member of the trial teams in several additional securities litigations through which the firm has successfully recovered hundreds of millions of dollars on behalf of injured investors. Among other matters, he was part of the trial teams that prosecuted

*Eastwood Enterprises LLC v. WellCare, In re MBIA, Inc. Securities Litigation, and In re RAIT Financial Trust Securities Litigation.*

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

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

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

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

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

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

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

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

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



## SENIOR COUNSEL

**JOSEPH COHEN** has extensive complex civil litigation experience and currently practices in the firm's settlement department where he has primary responsibility for negotiating, documenting and obtaining court approval of the firm's securities, merger and derivative settlements.

Prior to joining the firm, Mr. Cohen successfully prosecuted numerous securities fraud, consumer fraud, antitrust and constitutional law cases in federal and state courts throughout the country. Cases in which Mr. Cohen took a lead role include: *Jordan v. California Department of Motor Vehicles*, 100 Cal. App. 4<sup>th</sup> 431 (2002) (complex action in which the California Court of Appeal held that California's Non-Resident Vehicle \$300 Smog Impact Fee violated the Commerce Clause of the United States Constitution, paving the way for the creation of a \$665 million fund and full refunds, with interest, to 1.7 million motorists); *In re Geodyne Resources, Inc. Sec. Litig.* (Harris Cty. Tex.) (settlement of securities fraud class action, including related litigation, totaling over \$200 million); *In re Community Psychiatric Centers Sec. Litig.* (C.D. Cal.) (settlement of \$55.5 million was obtained from the company and its auditors, Ernst & Young, LLP); *In re McLeodUSA Inc., Sec. Litig.* (N.D. Iowa) (\$30 million settlement); *In re Arakis Energy Corp. Sec. Litig.* (E.D.N.Y.) (\$24 million settlement); *In re Metris Companies, Inc., Sec. Litig.* (D. Minn.) (\$7.5 million settlement); *In re Landry's Seafood Restaurants, Inc. Sec. Litig.* (S.D. Tex.) (\$6 million settlement); and *Freedman v. Maspeth Federal Loan and Savings Association*, (E.D.N.Y.) (favorable resolution of issue of first impression under RESPA and full recovery of improperly assessed late fees).

Mr. Cohen was also a member of the teams that obtained substantial recoveries in the following cases: *In re: Foreign Exchange Benchmark Rates Antitrust Litig.* (S.D.N.Y.) (partial settlements of approximately \$2 billion); *In re Washington Mutual Mortgage-Backed Securities Litigation* (W.D. Wash.) (settlement of \$26 million); *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company* (E.D. Pa.) (\$8 million recovery on behalf of class of indirect purchasers of the prescription drug Doryx); *City of Omaha Police and Fire Retirement Sys. v. LHC Group, Inc.* (W.D. La.) (securities class action settlement of \$7.85 million); and *In re Pacific Biosciences of Cal., Inc. Sec. Litig.* (Cal. Super. Ct.) (\$7.6 million recovery).

EDUCATION: University of Rhode Island, B.S., Marketing, *cum laude*, 1986; Case Western Reserve University School of Law, J.D., 1989; New York University School of Law, LL.M., 1990.

BAR ADMISSIONS: California; District of Columbia; U.S. Court of Appeals for the Ninth Circuit; U.S. District Courts for the Central, Northern and Southern Districts of California.

## ASSOCIATES

**ABE ALEXANDER** practices out of the New York office, where he focuses on securities fraud, corporate governance and shareholder rights litigation. He was a principal member of the trial team that prosecuted *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*, which settled on the eve of trial for a combined \$688 million. This \$688 million settlement represents the largest securities class action recovery against a pharmaceutical company in history and is among the largest securities class action settlements of any kind. As lead associate on the firm's trial team, Mr. Alexander helped achieve a \$150 million settlement of investors' claims against JPMorgan Chase arising from alleged misrepresentations concerning the trading activities of the so-called "London Whale." He is currently prosecuting securities claims against Merck and others arising from alleged misrepresentations concerning the safety profile of Merck's pain-killer, VIOXX.

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

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

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

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

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

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

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

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

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

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

**JOHN J. MILLS**' practice concentrates on Class Action Settlements and Settlement Administration. Mr. Mills also has experience representing large financial institutions in corporate finance transactions.

EDUCATION: Duke University, B.A., 1997. Brooklyn Law School, J.D., *cum laude*, 2000; Member of *The Brooklyn Journal of International Law*; Carswell Merit Scholar recipient.

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

**CATHERINE MCCAW** (former associate) practiced out of the New York office, where she focused on securities fraud and corporate governance and shareholder rights litigation.

Prior to joining the firm, Ms. McCaw clerked for the Honorable Chester J. Straub of the United States Court of Appeals for the Second Circuit and the Honorable Richard J. Holwell of the United States District Court for the Southern District of New York. She also served as a Presidential Management Fellow at the General Counsel's Office for the Federal Bureau of Investigation (FBI).

EDUCATION: Harvard College, A.B., *magna cum laude*, History, 2003. Harvard Law School, J.D., 2009; Articles Editor, *Harvard Civil Rights-Civil Liberties Law Review*.

BAR ADMISSION: Massachusetts.



## STAFF ATTORNEYS

**JIM BRIGGS** has worked on numerous matters at BLB&G, including *In re JPMorgan Chase & Co. Securities Litigation*, *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)* and *In re Penn West Petroleum Ltd. Securities Litigation*.

Prior to joining the firm in 2013, Mr. Briggs was a contract attorney at Paul, Weiss, Rifkind, Wharton & Garrison LLP and Stull, Stull & Brody.

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

BAR ADMISSIONS: New York.

# Exhibit 5B

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE PENN WEST PETROLEUM LTD.  
SECURITIES LITIGATION

Master File No. 14-cv-6046-JGK

**DECLARATION OF LIONEL Z. GLANCY IN SUPPORT OF  
CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF  
GLANCY PRONGAY & MURRAY LLP**

I, LIONEL Z. GLANCY, declare as follows:

1. I am Managing Partner of the law firm Glancy Prongay & Murray LLP ("GP&M"). My firm, along with Bernstein Litowitz Berger & Grossmann LLP, are the Court-appointed Co-Lead Counsel in the above-captioned action (the "Action"). I submit this declaration in support of Co-Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the Action, as well as for reimbursement of litigation expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. GP&M, as Co-Lead Counsel, was involved in all aspects of the Action and its settlement as set forth in Joint Declaration of John Rizio-Hamilton and Lionel Z. Glancy in Support of: (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

3. In addition to Co-Lead Counsel, the law firm Robbins Geller Rudman & Dowd LLP (“RGR&D”) performed work for the benefit of Lead Plaintiffs and the Settlement Class in this Action. At Co-Lead Counsel’s direction, RGR&D attorneys reviewed and provided feedback on pleadings in the Action; attended the Penn West mediation in Toronto on December 8, 2015; and, in conjunction with GP&M, provided periodic status updates on the case to Lead Plaintiff Avi Rojany and presented the Settlement offer and terms to Mr. Rojany for his consideration. Co-Lead Counsel intend to share a portion of any attorneys’ fees awarded with RGR&D.

4. Co-Lead Counsel have not included RGR&D’s time in the lodestar as part of this fee application because Co-Lead Counsel seek the fee award based upon the time and efforts of Co-Lead Counsel and, in any event, the time expended by RGR&D would not make a meaningful difference to the total lodestar.

5. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by GP&M attorneys and professional support staff employees who, from inception of the Action through and including June 1, 2016, billed twenty or more hours to the Action, and the lodestar calculation for those individuals based on GP&M’s current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by GP&M. Time expended on Co-Lead Counsel’s application for fees and reimbursement of expenses has not been included in this request.

6. The hourly rates for GP&M’s attorneys and professional support staff included in Exhibit 1 are substantially the same as the regular rates that have been accepted in other securities or shareholder litigation.

7. The total number of hours reflected in Exhibit 1 from inception through and including June 1, 2016 is 1,850.70. The total lodestar reflected in Exhibit 1 for that period is \$999,576.25, consisting of \$935,764.75 for attorneys' time and \$63,811.50 for professional support staff time.

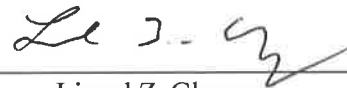
8. GP&M's lodestar figures are based on its billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in GP&M's billing rates.

9. As detailed in Exhibit 2, GP&M is seeking the reimbursement of a total of \$106,955.62 in expenses incurred in connection with the prosecution of the Action.

10. The litigation expenses incurred in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

11. Attached hereto as Exhibit 3 is a brief biography of GP&M, including the attorneys who were involved in the Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on June 2, 2016.

  
\_\_\_\_\_  
Lionel Z. Glancy



GLANCY PRONGAY MURRAY LLP

## FIRM LODESTAR REPORT

## EXHIBIT 1

IN RE PENNWEST SECURITIES LITIGATION  
INCEPTION THROUGH JUNE 1, 2016

TIMEKEEPER/CASE	STATUS	HOURS	RATE	LODESTAR
<b>ATTORNEYS:</b>				
Lionel Z. Glancy	Partner	97.25	795.00	77,313.75
Robert Prongay	Partner	85.50	695.00	59,422.50
Joshua Crowell	Partner	326.50	695.00	226,917.50
Peter A. Binkow	Of Counsel	193.90	775.00	150,272.50
Casey Sadler	Associate	65.50	525.00	34,387.50
Lesley Portnoy	Associate	30.75	600.00	18,450.00
Leanne Heine	Associate	304.10	595.00	180,939.50
Elaine Chang	Associate	337.70	395.00	133,391.50
Charles Linehan	Associate	33.20	350.00	11,620.00
Nilla Watkins	Staff Attorney	123.00	350.00	43,050.00
<b>TOTAL ATTORNEY</b>		<b>1,597.40</b>		<b>935,764.75</b>
<b>PARALEGALS/STAFF:</b>				
Jack Ligman	Research Analyst	147.00	265.00	38,955.00
Erin Krikorian	Research Analyst	62.60	240.00	15,024.00
Michaela Ligman	Research Analyst	43.70	225.00	9,832.50
<b>TOTAL PARALEGAL</b>		<b>253.30</b>		<b>63,811.50</b>
<b>TOTAL LODESTAR</b>		<b>1,850.70</b>		<b>999,576.25</b>

GLANCY PRONGAY MURRAY LLP

## FIRM EXPENSES REPORT

## EXHIBIT 2

IN RE PENNWEST LITIGATION  
INCEPTION THROUGH JUNE 2, 2016

<b>CATEGORY</b>	<b>AMOUNT</b>
COURT FEES	1,202.00
PSLRA NOTICE COSTS	595.00
SERVICE OF PROCESS	29.44
ONLINE LEGAL RESEARCH	6,474.42
TELEPHONE/FAXES	105.59
HAND DELIVERY CHARGES	172.67
OUT OF TOWN TRAVEL	7,432.35
WORKING MEALS	1,401.79
COUR REPORTERS AND TRANSCRIPTS	62.40
EXPERTS	19,884.38
INVESTIGATIONS	47,125.58
MEDIATION FEES	22,470.00
<b>GRAND TOTAL</b>	<b>106,955.62</b>

**EXHIBIT 3**

FIRM RESUME AND BIOGRAPHIES



## FIRM RESUME

**Glancy Prongay & Murray LLP** (the “Firm”) has represented investors, consumers and employees for over 25 years. Based in Los Angeles with offices in New York City and Berkeley, the Firm has successfully prosecuted class action cases and complex litigation in federal and state courts throughout the country. As Lead Counsel or as a member of Plaintiffs’ Counsel Executive Committees, the Firm has recovered billions of dollars for parties wronged by corporate fraud and malfeasance. Indeed, the Institutional Shareholder Services unit of RiskMetrics Group has recognized the Firm as one of the top plaintiffs’ law firms in the United States in its Securities Class Action Services report for every year since the inception of the report in 2003. The Firm’s efforts have been publicized in major newspapers such as the *Wall Street Journal*, the *New York Times*, and the *Los Angeles Times*.

Glancy Prongay & Murray’s commitment to high quality and excellent personalized services has boosted its national reputation, and we are now recognized as one of the premier plaintiffs’ firms in the country. The Firm works tenaciously on behalf of clients to produce significant results and generate lasting corporate reform.

The Firm’s integrity and success originate from our attorneys, who are among the brightest and most experienced in the field. Our distinguished litigators have an unparalleled track record of investigating and prosecuting corporate wrongdoing. The Firm is respected for both the zealous advocacy with which we represent our clients’ interests as well as the highly-professional and ethical manner by which we achieve results. We are ideally positioned to interpret securities litigation, consumer litigation, antitrust litigation, and derivative and corporate takeover litigation. The Firm’s outstanding accomplishments are the direct result of the exceptional talents of our attorneys and employees.

Appointed as Lead or Co-Lead Counsel by judges throughout the United States, Glancy Prongay & Murray has achieved significant recoveries for class members, including:

In re Mercury Interactive Corporation Securities Litigation, USDC Northern District of California, Case No. 05-3395, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$117 million.

In re Real Estate Associates Limited Partnership Litigation, USDC Central District of California, Case No. 98-7035 DDP, in which the Firm served as local counsel and plaintiffs achieved a \$184 million jury verdict after a complex six week trial in Los Angeles, California and later settled the case for \$83 million.

The City of Farmington Hills Employees Retirement System v. Wells Fargo Bank, N.A., USDC District of Minnesota, Case No. 10-cv-04372-DWF/JJG, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at \$62.5 million.

In re Lumenis, Ltd. Securities Litigation, USDC Southern District of New York, Case No.02-CV-1989, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$20 million.

In re Heritage Bond Litigation, USDC Central District of California, Case No. 02-ML-1475-DT, where as Co-Lead Counsel, the Firm recovered in excess of \$28 million for defrauded investors and continues to pursue additional defendants.

In re ECI Telecom Ltd. Securities Litigation, USDC Eastern District of Virginia, Case No. 01-913-A, in which the Firm served as sole Lead Counsel and recovered almost \$22 million for defrauded ECI investors.

Jenson v. First Trust Corporation, USDC Central District of California, Case No. 05-cv-3124-ABC, in which the Firm was appointed sole lead counsel and achieved an \$8.5 million settlement in a very difficult case involving a trustee's potential liability for losses incurred by investors in a Ponzi scheme. Kevin Ruf of the Firm also successfully defended in the 9th Circuit Court of Appeals the trial court's granting of class certification in this case.

Yaldo v. Airtouch Communications, State of Michigan, Wayne County, Case No. 99-909694-CP, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$32 million for defrauded consumers.

In re Infonet Services Corporation Securities Litigation, USDC Central District of California, Case No. CV 01-10456 NM, in which as Co-Lead Counsel, the Firm achieved a settlement of \$18 million.

In re Musicmaker.com Securities Litigation, USDC Central District of California, Case No. 00-02018, a securities fraud class action in which the Firm was sole Lead Counsel for the Class and recovered in excess of \$13 million.

In re ESC Medical Systems, Ltd. Securities Litigation, USDC Southern District of New York, Case No. 98 Civ. 7530, a securities fraud class action in which the Firm served as sole Lead Counsel for the Class and achieved a settlement valued in excess of \$17 million.

In re Lason, Inc. Securities Litigation, USDC Eastern District of Michigan, Case No. 99 76079, in which the Firm was Co-Lead Counsel and recovered almost \$13 million for defrauded Lason stockholders.

In re Inso Corp. Securities Litigation, USDC District of Massachusetts, Case No. 99 10193, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of \$12 million.

In re National TechTeam Securities Litigation, USDC Eastern District of Michigan, Case No. 97-74587, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of \$11 million.

In re Ramp Networks, Inc. Securities Litigation, USDC Northern District of California, Case No. C-00-3645 JCS, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of nearly \$7 million.

In re Gilat Satellite Networks, Ltd. Securities Litigation, USDC Eastern District of New York, Case No. 02-1510 CPS, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$20 million.

Taft v. Ackermans (KPNQwest Securities Litigation), USDC Southern District of New York, Case No. 02-CV-07951, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement worth \$11 million.

Ree v. Procom Technologies, Inc., USDC Southern District of New York, Case No. 02CV7613, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$2.7 million.

Capri v. Comerica, Inc., USDC Eastern District of Michigan, Case No. 02CV60211 MOB, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$6.0 million.

Tatz v. Nanophase Technologies Corp., USDC Northern District of Illinois, Case No. 01C8440, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$2.5 million.

In re Livent, Inc. Noteholders Litigation, USDC Southern District of New York, Case No. 99 Civ 9425, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of over \$27 million.

Plumbing Solutions Inc. v. Plug Power, Inc., USDC Eastern District of New York, Case No. CV 00 5553 (ERK) (RML), a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of over \$5 million.

Schleicher v. Wendt, (Conseco Securities Litigation), USDC Southern District of Indiana, Case No. 02-1332 SEB, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of over \$41 million.

Lapin v. Goldman Sachs, USDC Southern District of New York, Case No. 03-0850-KJD, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$29 million.

Senn v. Sealed Air Corporation, USDC New Jersey, Case No. 03-cv4372, a securities fraud class action, in which the Firm acted as co-lead counsel for the Class and achieved a settlement of \$20 million.

The Firm filed the initial landmark antitrust lawsuit against all of the major NASDAQ market makers and served on Plaintiffs' Counsel's Executive Committee in In re Nasdaq Market-Makers Antitrust Litigation, USDC Southern District of New York, Case No. 94 C 3996 (RWS), MDL Docket No. 1023, which recovered \$900 million for investors in numerous heavily traded Nasdaq issues.

Glancy Prongay & Murray has also previously acted as Class Counsel in obtaining substantial benefits for shareholders in a number of actions, including:

In re F & M Distributors Securities Litigation,  
Eastern District of Michigan, Case No. 95 CV 71778 DT (Executive Committee Member)  
(\$20.25 million settlement)

James F. Schofield v. McNeil Partners, L.P. Securities Litigation,  
California Superior Court, County of Los Angeles, Case No. BC 133799

Resources High Equity Securities Litigation,  
California Superior Court, County of Los Angeles, Case No. BC 080254

The Firm has served and currently serves as Class Counsel in a number of antitrust class actions, including:

In re Nasdaq Market-Makers Antitrust Litigation,  
USDC Southern District of New York, Case No. 94 C 3996 (RWS), MDL Docket No. 1023

In re Brand Name Prescription Drug Antitrust Litigation,  
USDC Northern District of Illinois, Eastern Division, Case No. 94 C 897

Glancy Prongay & Murray has been responsible for obtaining favorable appellate opinions which have broken new ground in the class action or securities fields, or which have promoted shareholder rights in prosecuting these actions. The Firm successfully argued the appeals in a number of cases:

In Smith v. L'Oreal, 39 Cal.4th 77 (2006), Firm partner Kevin Ruf established groundbreaking law when the California Supreme Court agreed with the Firm's position that waiting penalties under the California Labor Code are available to *any* employee after termination of employment, regardless of the reason for that termination.

Other notable Firm cases are: Silber v. Mabon I, 957 F.2d 697 (9th Cir. 1992) and Silber v. Mabon II, 18 F.3d 1449 (9th Cir. 1994), which are the leading decisions in the Ninth Circuit regarding the rights of opt-outs in class action settlements. In Rothman v. Gregor, 220 F.3d 81 (2d Cir. 2000), the Firm won a seminal victory for investors before

the Second Circuit Court of Appeals, which adopted a more favorable pleading standard for investors in reversing the District Court's dismissal of the investors' complaint. After this successful appeal, the Firm then recovered millions of dollars for defrauded investors of the GT Interactive Corporation. The Firm also argued Falkowski v. Imation Corp., 309 F.3d 1123 (9th Cir. 2002), *as amended*, 320 F.3d 905 (9th Cir. 2003) and favorably obtained the substantial reversal of a lower court's dismissal of a cutting edge, complex class action initiated to seek redress for a group of employees whose stock options were improperly forfeited by a giant corporation in the course of its sale of the subsidiary at which they worked. The revived action is currently proceeding in the California state court system.

The Firm is also involved in the representation of individual investors in court proceedings throughout the United States and in arbitrations before the American Arbitration Association, National Association of Securities Dealers, New York Stock Exchange, and Pacific Stock Exchange. Mr. Glancy has successfully represented litigants in proceedings against such major securities firms and insurance companies as A.G. Edwards & Sons, Bear Stearns, Merrill Lynch & Co., Morgan Stanley, PaineWebber, Prudential, and Shearson Lehman Brothers.

One of the Firm's unique skills is the use of "group litigation" - the representation of groups of individuals who have been collectively victimized or defrauded by large institutions. This type of litigation brought on behalf of individuals who have been similarly damaged often provides an efficient and effective economic remedy that frequently has advantages over the class action or individual action devices. The Firm has successfully achieved results for groups of individuals in cases against major corporations such as Metropolitan Life Insurance Company, and Occidental Petroleum Corporation.

Glancy Prongay & Murray LLP currently consists of the following attorneys:

## PARTNERS

**LEE ALBERT**, a partner, was admitted to the bars of the Commonwealth of Pennsylvania, the State of New Jersey, and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey in 1986. He received his B.S. and M.S. degrees from Temple University and Arcadia University in 1975 and 1980, respectively, and received his J.D. degree from Widener University School of Law in 1986. Upon graduation from law school, Mr. Albert spent several years working as a civil litigator in Philadelphia, PA. Mr. Albert has extensive litigation and appellate practice experience having argued before the Supreme and Superior Courts of Pennsylvania and has over fifteen years of trial experience in both jury and non-jury cases and arbitrations. Mr. Albert has represented a national health care provider at trial obtaining injunctive relief in federal court to enforce a five-year contract not to compete on behalf of a national health care provider and injunctive relief on behalf of an undergraduate university.



Currently, Mr. Albert represents clients in all types of complex litigation including matters concerning violations of federal and state antitrust and securities laws, mass tort/product liability and unfair and deceptive trade practices. Some of Mr. Albert's current major cases include *In Re Automotive Wire Harness Systems Antitrust Litigation* (E.D. Mich.); *In Re Heater Control Panels Antitrust Litigation* (E.D. Mich.); *Kleen Products, et al. v. Packaging Corp. of America* (N.D. Ill.); and *In re Class 8 Transmission Indirect Purchaser Antitrust Litigation* (D. Del.). Previously, Mr. Albert had a significant role in *Marine Products Antitrust Litigation* (C.D. Cal.); *Baby Products Antitrust Litigation* (E.D. Pa.); *In re ATM Fee Litigation* (N.D. Cal.); *In re Canadian Car Antitrust Litigation* (D. Me.); *In re Broadcom Securities Litigation* (C.D. Cal.); and has worked on *In re Avandia Marketing, Sales Practices and Products Liability Litigation* (E.D. Pa.); *In re Ortho Evra Birth Control Patch Litigation* (N.J. Super. Ct., Middlesex County); *In re AOL Time Warner, Inc. Securities Litigation* (S.D.N.Y.); *In re WorldCom, Inc. Securities Litigation* (S.D.N.Y.); and *In re Microsoft Corporation Massachusetts Consumer Protection Litigation* (Mass. Super. Ct.).

**JOSHUA L. CROWELL**, a partner in the firm's Los Angeles office, concentrates his practice on prosecuting complex securities cases on behalf of investors. Recently he helped achieve a successful resolution of the Hansen Medical, Inc., securities action, No. C 09-5094 CW (N.D. Cal.), resulting in a settlement of \$8.5 million for the shareholder class.

Prior to joining Glancy Prongay & Murray LLP, Joshua was an Associate at Labaton Sucharow LLP in New York, where he helped secure several large federal securities class settlements in cases such as *In re Countrywide Financial Corporation Securities Litigation*, No. CV 07-05295 MRP (MANx) (C.D. Cal.) (\$624 million), and the Oppenheimer Champion Fund and Core Bond Fund actions, Nos. 09-cv-525-JLK-KMT and 09-cv-1186-JLK-KMT (D. Colo.) (\$100 million combined). He began his legal career as an Associate at Paul, Hastings, Janofsky & Walker LLP in New York, primarily representing financial services clients in commercial litigation.

Prior to attending law school, Joshua was a Senior Economics Consultant at Ernst & Young LLP, where he priced intercompany transactions and calculated the value of intellectual property. Joshua received a J.D., *cum laude*, from The George Washington University Law School. During law school, he was an Associate of *The George Washington Law Review* and a member of the Mock Trial Board. He was also a law intern for Chief Judge Edward J. Damich of the United States Court of Federal Claims. Joshua earned a B.A. in International Relations from Carleton College.

**LIONEL Z. GLANCY**, a graduate of University of Michigan Law School, is the founding partner of the Firm. After serving as a law clerk for United States District Judge Howard McKibben, he began his career as an associate at a New York law firm concentrating in securities litigation. Thereafter, he started a boutique law firm specializing in securities litigation, and other complex litigation, from the Plaintiff's perspective. Mr. Glancy has established a distinguished career in the field of securities litigation over the last fifteen years, having appeared and been appointed lead counsel on behalf of aggrieved investors in securities class action cases throughout the country. He has appeared and

argued before dozen of district courts and a number of appellate courts. His efforts have resulted in the recovery of hundreds of millions of dollars in settlement proceeds for huge classes of shareholders. Well known in securities law, he has lectured on its developments and practice, including having lectured before Continuing Legal Education seminars and law schools.

Mr. Glancy was born in Windsor, Canada, on April 4, 1962. Mr. Glancy earned his undergraduate degree in political science in 1984 and his Juris Doctor degree in 1986, both from the University of Michigan. He was admitted to practice in California in 1988, and in Nevada and before the U.S. Court of Appeals, Ninth Circuit, in 1989.

**MARC L. GODINO** has extensive experience successfully litigating complex, class action lawsuits as a plaintiffs' lawyer. Mr. Godino has played a primary role in cases resulting in settlements of more than \$100 million. He has prosecuted securities, derivative, merger & acquisition, and consumer cases throughout the country in both state and federal court, as well as represented defrauded investors at FINRA arbitrations. Mr. Godino manages the Firm's consumer class action department.

While an associate with Stull Stull & Brody, Mr. Godino was one of the two primary attorneys involved in *Small v. Fritz Co.*, 30 Cal. 4th 167 (April 7, 2003), in which the California Supreme Court created new law in the State of California for shareholders that held shares in detrimental reliance on false statements made by corporate officers. The decision was widely covered by national media including *The National Law Journal*, the *Los Angeles Times*, the *New York Times*, and the *New York Law Journal*, among others, and was heralded as a significant victory for shareholders.

Successes with the firm include: *Ord v. First National Bank of Pennsylvania*, Case No. 12-766 (W. D. Pa.) (\$3,000,000 cash settlement plus injunctive relief); *Pappas v. Naked Juice Co. of Glendora, Inc.*, Case No. 11-08276 (C.D. Cal.) (\$9,000,000 cash settlement plus injunctive relief); *Astiana v. Kashi Company*, Case No. 11-1967 (S.D. Cal.) (\$5,000,000 cash settlement); *In re Magma Design Automation, Inc. Securities Litigation*, Case No. 05-2394 (N.D. Cal.) (\$13,500,000.00 cash settlement for shareholders); *In re Hovnanian Enterprises, Inc. Securities Litigation*, Case No. 08-cv-0099 (D.N.J.) (\$4,000,000.00 cash settlement for shareholders); *In re Skilled Healthcare Group, Inc. Securities Litigation*, Case No. 09-5416 (C.D. Cal.) (\$3,000,000.00 cash settlement for shareholders); *Kelly v. Phiten USA, Inc.*, Case No. 11-67 (S.D. Iowa) (\$3.2 million dollar cash settlement in addition to injunctive relief); *Shin et al., v. BMW of North America*, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (after defeating a motion to dismiss, the case settled on very favorable terms for class members including free replacement of cracked wheels); *Payday Advance Plus, Inc. v. MIVA, Inc.*, Case No. 06-1923 (S.D.N.Y.) (\$3,936,812 cash settlement for class members); *Esslinger, et al. v. HSBC Bank Nevada, N.A.*, Case No. 10-03213 (E.D. Pa.) (\$23.5 million settlement pending final approval); *In re Discover Payment Protection Plan Marketing and Sales Practices Litigation*, Case No. 10-06994 (\$10.5 million settlement pending final approval).

Other published decisions include: *Kramer v. Toyota Motor Corp.*, 705 F. 3d 1122 (9th Cir. 2013) (affirming denial of Defendant's motion to compel arbitration); *In re Zappos.com, Inc., Customer Data Sec. Breach Litigation*, 893 F. Supp. 2d 1058 (D. Nev. Sep 27, 2012) (motion to compel arbitration denied); *Sateriale v. R.J. Reynolds Tobacco Co.*, 697 F. 3d 777 (9th Cir. 2012) (reversing order dismissing class action complaint); *Lilly v. Jamba Juice Company*, 2014 WL 4652283 (N. D. Cal. Sep 18, 2014) (class certification granted in part); *Small v. University Medical Center of Southern Nevada*, 2013 WL 3043454 (D. Nev. June 14, 2013) (order granting conditional certification to FLSA class); *Peterson v. ConAgra Foods, Inc.*, 2014 WL 3741853 (S. D. Cal. July 29, 2014) (motion to dismiss denied); *In re 2TheMart.com Securities Litigation*, 114 F. Supp. 2d 955 (C.D. Cal. 2002) (motion to dismiss denied); *In re Irvine Sensors Securities Litigation*, 2003 U.S. Dist. LEXIS 18397 (C.D. Cal. 2003) (motion to dismiss denied); *Shin v. BMW of North America*, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (motion to dismiss denied).

The following represent just a few of the more than two dozen cases Mr. Godino is currently litigating in a leadership position: *In re Avon Anti-Aging Skincare Creams and Products Marketing and Sales Practices Litigation*, Case No. 13-150 (S.D.N.Y.); *PB Property Management, Inc. v. Goodman Manufacturing Company, L.P., et al.*, Case No. 12-1366 (M.D. Fl.); *Grodzitsky v. American Honda Motor Co., Inc.*, Case No. 12-1142 (C.D. CA); *Sciortino v. Pepsico, Inc.*, Case No. 14-478 (N.D. CA); *Javorsky v. Western Athletic Clubs, Inc.*, Case No. 13-528384 (Sup. Ct. San Francisco).

Mr. Godino received his undergraduate degree from Susquehanna University with a Bachelor of Science degree in Business Management. He received his Juris Doctor degree from Whittier Law School in 1995.

Mr. Godino is admitted to practice before the Supreme Court of the United States, the State of California, the United States District Courts for the Central, Northern, and Southern Districts of California, the District of Colorado, and the Ninth Circuit Court of Appeals.

**MARK S. GREENSTONE** specializes in consumer, financial fraud and employment-related class actions. Possessing significant law and motion and trial experience, Mr. Greenstone has represented clients in multi-million dollar disputes in California state and federal courts, as well as the Court of Federal Claims in Washington, D.C.

Mr. Greenstone received his training as an associate at Sheppard, Mullin, Richter & Hampton LLP where he specialized in complex business litigation relating to investment management, government contracts and real estate. Upon leaving Sheppard Mullin, Mr. Greenstone founded an internet-based company offering retail items on multiple platforms nationwide. He thereafter returned to law bringing a combination of business and legal skills to his practice.

Mr. Greenstone graduated Order of the Coif from the UCLA School of Law. He also received his undergraduate degree in Political Science from UCLA, where he graduated Magna Cum Laude and was inducted into the Phi Beta Kappa honor society.

Mr. Greenstone is a member of the Consumer Attorneys Association of Los Angeles, the Santa Monica Bar Association and the Beverly Hills Bar Association. He is admitted to practice in state and federal courts throughout California.

**SUSAN G. KUPFER** is the founding partner of the Firm's Berkeley office and head of the Firm's Antitrust Practice Group. Ms Kupfer joined the Firm in 2003. She is a native of New York City, and received her A.B. degree from Mount Holyoke College in 1969 and her Juris Doctor degree from Boston University School of Law in 1973. She did graduate work at Harvard Law School and, in 1977, was named Assistant Dean and Director of Clinical Programs at Harvard, supervising and teaching in that program of legal practice and related academic components.

For much of her legal career, Ms. Kupfer has been a professor of law. Her areas of academic expertise are Civil Procedure, Federal Courts, Conflict of Laws, Constitutional Law, Legal Ethics, and Jurisprudence. She has taught at Harvard Law School, Hastings College of the Law, Boston University School of Law, Golden Gate University School of Law, and Northeastern University School of Law. From 1991 through 2002, she was a lecturer on law at the University of California, Berkeley, Boalt Hall, teaching Civil Procedure and Conflict of Laws. Her publications include articles on federal civil rights litigation, legal ethics, and jurisprudence. She has also taught various aspects of practical legal and ethical training, including trial advocacy, negotiation and legal ethics, to both law students and practicing attorneys.

Ms. Kupfer previously served as corporate counsel to The Architects Collaborative in Cambridge and San Francisco, and was the Executive Director of the Massachusetts Commission on Judicial Conduct. She returned to the practice of law in San Francisco with Morgenstein & Jubelirer and Berman DeValerio LLP before joining the Firm.

Ms. Kupfer's practice is concentrated in complex antitrust litigation. She currently serves, or has served, as Co-Lead Counsel in several multidistrict antitrust cases: *In re Photochromic Lens Antitrust Litig.* (MDL 2173, M.D. Fla. 2010); *In re Fresh and Process Potatoes Antitrust Litig.* (D. ID. 2011); *In re Korean Air Lines Antitrust Litig.* (MDL No. 1891, C.D. Cal. 2007); *In re Urethane Antitrust Litigation* (MDL 1616, D. Kan. 2004); *In re Western States Wholesale Natural Gas Litigation* (MDL 1566, D. Nev. 2005); and *Sullivan et al v. DB Investments et al* (D. N.J. 2004). She has been a member of the lead counsel teams that achieved significant settlements in: *In re Sorbates Antitrust Litigation* (\$96.5 million settlement); *In re Pillar Point Partners Antitrust Litigation* (\$50 million settlement); and *In re Critical Path Securities Litigation* (\$17.5 million settlement).

Ms. Kupfer is a member of the bar of Massachusetts and California, and is admitted to practice before the United States District Courts for the Northern, Central, Eastern and Southern Districts of California, the District of Massachusetts, the Courts of Appeals for the First and Ninth Circuits, and the U.S. Supreme Court.

**BRIAN MURRAY**, the managing partner of the Firm's New York office, was admitted to the bars of Connecticut in 1990, New York and the United States District Courts for the

Southern and Eastern Districts of New York in 1991, the Second Circuit in 1997, the First and Fifth Circuits in 2000, the Ninth Circuit in 2002, and the Eastern and Western Districts of Arkansas in 2011. He received Bachelor of Arts and Master of Arts degrees from the University of Notre Dame in 1983 and 1986, respectively. He received a Juris Doctor degree, *cum laude*, from St. John's University School of Law in 1990. At St. John's, he was the Articles Editor of the ST. JOHN'S LAW REVIEW. Mr. Murray co-wrote: *Jurisdição Estrangeira Tem Papel Relevante Na De Fiesa De Investidores Brasileiros*, ESPAÇA JURÍDICO BOVESPA (August 2008); *The Proportionate Trading Model: Real Science or Junk Science?*, 52 CLEVELAND ST. L. REV. 391 (2004-05); *The Accident of Efficiency: Foreign Exchanges, American Depository Receipts, and Space Arbitrage*, 51 BUFFALO L. REV. 383 (2003); *You Shouldn't Be Required To Plead More Than You Have To Prove*, 53 BAYLOR L. REV. 783 (2001); *He Lies, You Die: Criminal Trials, Truth, Perjury, and Fairness*, 27 NEW ENGLAND J. ON CIVIL AND CRIMINAL CONFINEMENT 1 (2001); *Subject Matter Jurisdiction Under the Federal Securities Laws: The State of Affairs After Itoba*, 20 MARYLAND J. OF INT'L L. AND TRADE 235 (1996); *Determining Excessive Trading in Option Accounts: A Synthetic Valuation Approach*, 23 U. DAYTON L. REV. 316 (1997); *Loss Causation Pleading Standard*, NEW YORK LAW JOURNAL (Feb. 25, 2005); *The PSLRA 'Automatic Stay' of Discovery*, NEW YORK LAW JOURNAL (March 3, 2003); and *Inherent Risk In Securities Cases In The Second Circuit*, NEW YORK LAW JOURNAL (Aug. 26, 2004). He also authored *Protecting The Rights of International Clients in U.S. Securities Class Action Litigation*, INTERNATIONAL LITIGATION NEWS (Sept. 2007); *Lifting the PSLRA "Automatic Stay" of Discovery*, 80 N. DAK. L. REV. 405 (2004); *Aftermarket Purchaser Standing Under § 11 of the Securities Act of 1933*, 73 ST. JOHN'S L. REV. 633 (1999); *Recent Rulings Allow Section 11 Suits By Aftermarket Securities Purchasers*, NEW YORK LAW JOURNAL (Sept. 24, 1998); and *Comment, Weissmann v. Freeman: The Second Circuit Errs in its Analysis of Derivative Copy-rights by Joint Authors*, 63 ST. JOHN'S L. REV. 771 (1989).

Mr. Murray was on the trial team that prosecuted a securities fraud case under Section 10(b) of the Securities Exchange Act of 1934 against Microdyne Corporation in the Eastern District of Virginia and he was also on the trial team that presented a claim under Section 14 of the Securities Exchange Act of 1934 against Artek Systems Corporation and Dynatach Group which settled midway through the trial.

Mr. Murray's major cases include *In re Eagle Bldg. Tech. Sec. Litig.*, 221 F.R.D. 582 (S.D. Fla. 2004), 319 F. Supp. 2d 1318 (S.D. Fla. 2004) (complaint against auditor sustained due to magnitude and nature of fraud; no allegations of a "tip-off" were necessary); *In re Turkcell Iletisim A.S. Sec. Litig.*, 209 F.R.D. 353 (S.D.N.Y. 2002) (defining standards by which investment advisors have standing to sue); *In re Turkcell Iletisim A.S. Sec. Litig.*, 202 F. Supp. 2d 8 (S.D.N.Y. 2001) (liability found for false statements in prospectus concerning churn rates); *Feiner v. SS&C Tech., Inc.*, 11 F. Supp. 2d 204 (D. Conn. 1998) (qualified independent underwriters held liable for pricing of offering); *Malone v. Microdyne Corp.*, 26 F.3d 471 (4th Cir. 1994) (reversal of directed verdict for defendants); and *Adair v. Bristol Tech. Systems, Inc.*, 179 F.R.D. 126 (S.D.N.Y. 1998) (aftermarket purchasers have standing under section 11 of the Securities Act of 1933). Mr. Murray also prevailed on an issue of first impression in the

Superior Court of Massachusetts, in *Cambridge Biotech Corp. v. Deloitte and Touche LLP*, in which the court applied the doctrine of continuous representation for statute of limitations purposes to accountants for the first time in Massachusetts. 6 Mass. L. Rptr. 367 (Mass. Super. Jan. 28, 1997). In addition, in *Adair v. Microfield Graphics, Inc.* (D. Or.), Mr. Murray settled the case for 47% of estimated damages. In the *Qiao Xing Universal Telephone* case, claimants received 120% of their recognized losses.

Among his current cases, Mr. Murray represents the West Virginia Investments Management Board in a major litigation against ResidentialAccredit Loans, Deutsche Bank, and Credit Suisse. Mr. Murray is also currently co-lead counsel in *Avenarius, et al., v. Eaton Corp., et al.* (D. Del.), an antitrust class action against the world's largest commercial truck and transmission manufactures.

Mr. Murray served as a Trustee of the Incorporated Village of Garden City (2000-2002); Commissioner of Police for Garden City (2000-2001); Co-Chairman, Derivative Suits Subcommittee, American Bar Association Class Action and Derivative Suits Committee, (2007-Present); Member, Sports Law Committee, Association of the Bar for the City of New York, 1994-1997; Member, Litigation Committee, Association of the Bar for the City of New York, 2003-2007; Member, New York State Bar Association Committee on Federal Constitution and Legislation, 2005-2008; Member, Federal Bar Council, Second Circuit Committee, 2007-present.

Mr. Murray has been a panelist at CLEs sponsored by the Federal Bar Council and the Institute for Law and Economic Policy, at the German-American Lawyers Association Annual Meeting in Frankfurt, Germany, and is a frequent lecturer before institutional investors in Europe and South America on the topic of class actions.

**ROBERT V. PRONGAY** is a partner in the Firm's Los Angeles office where he focuses on the investigation, initiation, and prosecution of complex securities cases on behalf of institutional and individual investors. Mr. Prongay's practice concentrates on actions to recover investment losses resulting from violations of the federal securities laws and various actions to vindicate shareholder rights in response to corporate and fiduciary misconduct.

Mr. Prongay has extensive experience litigating complex cases in state and federal courts nationwide. Since joining the Firm, Mr. Prongay has successfully recovered millions of dollars for investors victimized by securities fraud and has negotiated the implementation of significant corporate governance reforms aimed at preventing the recurrence of corporate wrongdoing.

Several of Mr. Prongay's cases have received national and regional press coverage. Mr. Prongay has been interviewed by journalists and writers for national and industry publications, ranging from *The Wall Street Journal* to the *Los Angeles Daily Journal*. Mr. Prongay recently appeared as a guest on Bloomberg Television where he was interviewed about the securities litigation stemming from the high-profile initial public offering of Facebook, Inc.

Mr. Prongay received his Bachelor of Arts degree in Economics from the University of Southern California and his Juris Doctor degree from Seton Hall University School of Law. Mr. Prongay is also an alumnus of the Lawrenceville School.

**KEVIN F. RUF** graduated from the University of California at Berkeley in 1984 with a Bachelor of Arts in Economics and earned his Juris Doctor degree from the University of Michigan in 1987. Mr. Ruf was admitted to the State Bar of California in 1988. Mr. Ruf was an associate at the Los Angeles firm Manatt Phelps and Phillips from 1988 until 1992, where he specialized in commercial litigation and was a leading trial lawyer among the associates there. In 1993, he joined the firm Corbin & Fitzgerald in order to gain experience in criminal law. There, he specialized in white collar criminal defense work, including matters related to National Medical Enterprises, Cynergy Film Productions and the Estate of Doris Duke. Mr. Ruf joined the Firm in 2001 and has taken a lead trial lawyer role in many of the Firm's cases. In 2006, Mr. Ruf argued before the California Supreme Court in the case *Smith v. L'Oreal* and achieved a unanimous reversal of the lower court rulings; the case established a fundamental right of all California workers to immediate payment of all earnings at the conclusion of employment. In 2007, Mr. Ruf took an important case before the Ninth Circuit Court of Appeals, convincing the Court to affirm the lower court's certification of a class action in a fraud case (fraud cases have traditionally faced difficulty as class actions because of the requirement of individual reliance). Mr. Ruf has extensive trial experience, including jury trials, and considers his courtroom and oral advocacy skills to be his strongest asset as a litigator. Mr. Ruf currently acts as the Head of the Firm's Labor and Consumer Practice, and has extensive experience in securities cases as well. Mr. Ruf also has experience in real estate law and has been a Licensed California Real Estate Broker since 1999.

**CASEY E. SADLER** is a native of New York, New York. After graduating from the University of Southern California, Gould School of Law, Mr. Sadler joined the Firm in 2010. While attending law school, Mr. Sadler externed for the Enforcement Division of the Securities and Exchange Commission, spent a summer working for P.H. Parekh & Co. – one of the leading appellate law firms in New Delhi, India – and was a member of USC's Hale Moot Court Honors Program.

Mr. Sadler's practice focuses on securities and consumer litigation. A partner in the Firm's Los Angeles office, Mr. Sadler is admitted to the State Bar of California and the United States District Courts for the Northern, Southern, and Central Districts of California.

**EX KANO S. SAMS II** earned his Bachelor of Arts degree in Political Science from the University of California Los Angeles. Mr. Sams earned his Juris Doctor degree from the University of California Los Angeles School of Law, where he served as a member of the UCLA Law Review. After law school, Mr. Sams practiced class action civil rights litigation on behalf of plaintiffs. Subsequently, Mr. Sams was a partner at Coughlin Stoia Geller Rudman & Robbins LLP (currently Robbins Geller Rudman & Dowd LLP) – the largest plaintiffs' class action firm in the country – where his practice focused on securities and consumer class actions on behalf of investors and consumers.

Mr. Sams has served as lead counsel in dozens of securities class actions, shareholder derivative actions, and complex litigation cases throughout the United States. In conjunction with the efforts of co-counsel, Mr. Sams briefed and successfully obtained the reversal in the Ninth Circuit of an order dismissing class action claims brought pursuant to Sections 11 and 15 of the Securities Act of 1933. *Hemmer Grp. v. SouthWest Water Co.*, No 11-56154, 2013 WL 2460197 (9th Cir. June 7, 2013). In another securities case that he actively litigated, Mr. Sams assisted in a successful appeal before a Fifth Circuit panel that included former United States Supreme Court Justice Sandra Day O'Connor sitting by designation, in which the court unanimously vacated the lower court's denial of class certification, reversed the lower court's grant of summary judgment, and issued an important decision on the issue of loss causation in securities litigation: *Alaska Electrical Pension Fund v. Flowserve Corp.*, 572 F.3d 221 (5th Cir. 2009). The case settled for \$55 million.

Mr. Sams has also obtained other significant results. Notable examples include: *Forbush v. Goodale*, No. 33538/2011, 2013 WL 582255 (N.Y. Sup. Feb. 4, 2013) (denying motions to dismiss in a shareholder derivative action); *Curry v. Hansen Med., Inc.*, No. C 09-5094 CW, 2012 WL 3242447 (N.D. Cal. Aug. 10, 2012) (upholding securities fraud complaint; case settled for \$8.5 million); *Wilkof v. Caraco Pharm. Labs., Ltd.*, 280 F.R.D. 332 (E.D. Mich. 2012) (granting class certification); *Puskala v. Koss Corp.*, 799 F. Supp. 2d 941 (E.D. Wis. 2011) (upholding securities fraud complaint); *Mishkin v. Zynex Inc.*, Civil Action No. 09-cv-00780-REB-KLM, 2011 WL 1158715 (D. Colo. Mar. 30, 2011) (denying defendants' motion to dismiss securities fraud complaint); *Wilkof v. Caraco Pharm. Labs., Ltd.*, No. 09-12830, 2010 WL 4184465 (E.D. Mich. Oct. 21, 2010) (upholding securities fraud complaint and cited favorably by the Eighth Circuit in *Public Pension Fund Grp. v. KV Pharm. Co.*, 679 F.3d 972, 981-82 (8th Cir. 2012)); and *Tsirekidze v. Syntax-Brilliant Corp.*, No. CV-07-02204-PHX-FJM, 2009 WL 2151838 (D. Ariz. July 17, 2009) (granting class certification; case settled for \$10 million).

Additionally, Mr. Sams has successfully represented consumers in class action litigation. Mr. Sams worked on nationwide litigation and a trial against major tobacco companies, and in statewide tobacco litigation that resulted in a \$12.5 billion recovery for California cities and counties in a landmark settlement. He also was a principal attorney in a consumer class action against one of the largest banks in the country that resulted in a substantial recovery and a change in the company's business practices. Mr. Sams also participated in settlement negotiations on behalf of environmental organizations along with the United States Department of Justice and the Ohio Attorney General's Office that resulted in a consent decree requiring a company to perform remediation measures to address the effects of air and water pollution.

Mr. Sams is a member of the John M. Langston Bar Association, as well as other local and business bar associations. Additionally, Mr. Sams has volunteered at community legal clinics to provide pro bono legal services to low-income and underrepresented individuals in South Central Los Angeles. Mr. Sams also serves as a mentor to law students through the John M. Langston Bar Association.



**KARA M. WOLKE**'s practice spans consumer, labor, securities, and other areas of complex class action prosecution. She has extensive experience in written appellate advocacy in both State and Federal Circuit Courts of Appeals, and has successfully argued before the Court of Appeals for the State of California.

Ms. Wolke graduated summa cum laude with a B.S.B.A. in Economics from The Ohio State University in 2001, and subsequently earned her J.D. (with honors) from Ohio State, where she was active in Moot Court and received the Dean's Award for Excellence during each of her three years. In 2005, she was a finalist in a national writing competition co-sponsored by the American Bar Association and the Grammy® Foundation. Her article, regarding United States Copyright Law's failure to provide a public performance right in sound recordings, is published at 7 Vand. J. Ent. L. & Prac. 411.

Since joining the firm in 2005, and becoming a partner in 2014, Ms. Wolke has aided in the prosecution of class action cases which have recovered hundreds of millions of dollars for injured investors, consumers, and employees, including: Schleicher, et al. v. Wendt, et al. (Conseco), Case No. 02-cv-1332 (S.D. Ind.) (\$41.5 million securities class action settlement); Lapin v. Goldman Sachs, Case No. 03-850 (S.D.N.Y.) (\$29 million securities class action settlement); In Re: Mannkind Corporation Securities Litigation, Case No. 11-929 (C.D. Cal) (approximately \$22 million settlement - \$16 million in cash plus stock); Jenson v. First Trust Corporation, Case No. 05-3124 (C.D. Cal.) (\$8.5 million settlement of class action alleging breach of fiduciary duty and breach of contract); and Pappas v. Naked Juice Co., Case No. 11-08276 (C.D. Cal.) (\$9 million settlement in consumer class action alleging misleading labeling of juice products as "All Natural"). With a background in intellectual property, Ms. Wolke is currently prosecuting a class action seeking to have a large music publisher's claim of copyright ownership over the song "Happy Birthday to You" declared invalid.

Ms. Wolke is admitted to the State Bar of California, the Ninth Circuit Court of Appeals, as well as the United States District Courts for the Northern, Southern, and Central Districts of California.

## SENIOR COUNSEL

**GREGORY B. LINKH** works out of the New York office, where he specializes in securities, shareholder derivative, antitrust, and consumer litigation. Greg graduated from the State University of New York at Binghamton in 1996 and from the University of Michigan Law School in 1999. While in law school, Greg externed with United States District Judge Gerald E. Rosen of the Eastern District of Michigan. Greg was previously associated with the law firms Dewey Ballantine LLP, Pomerantz Haudek Block Grossman & Gross LLP, and Murray Frank LLP.

Greg is the co-author of Inherent Risk In Securities Cases In The Second Circuit, NEW YORK LAW JOURNAL (Aug. 26, 2004); Staying Derivative Action Pursuant to PSLRA

and SLUSA, NEW YORK LAW JOURNAL, P. 4, COL. 4 (Oct. 21, 2005) and the SECURITIES REFORM ACT LITIGATION REPORTER, Vol. 20, No. 3 (Dec. 2005).

## OF COUNSEL

**PETER A. BINKOW** has prosecuted lawsuits on behalf of consumers and investors in state and federal courts throughout the United States. He served as Lead or Co-Lead Counsel in many class action cases, including: *In re Mercury Interactive Securities Litigation* (\$117.5 million recovery); *Schleicher v Wendt* (Conseco Securities litigation - \$41.5 million recovery); *Lapin v Goldman Sachs* (\$29 million recovery); *In re Heritage Bond Litigation* (\$28 million recovery); *In re National Techteam Securities Litigation* (\$11 million recovery for investors); *In re Lason Inc. Securities Litigation* (\$12.68 million recovery), *In re ESC Medical Systems, Ltd. Securities Litigation* (\$17 million recovery); and many others. In *Schleicher v Wendt*, Mr. Binkow successfully argued the seminal Seventh Circuit case on class certification, in an opinion authored by Chief Judge Frank Easterbrook. He has argued and/or prepared appeals before the Ninth Circuit, Seventh Circuit, Sixth Circuit and Second Circuit Courts of Appeals.

Mr. Binkow joined the Firm in 1994. He was born on August 16, 1965 in Detroit, Michigan. Mr. Binkow obtained a Bachelor of Arts degree from the University of Michigan in 1988 and a Juris Doctor degree from the University of Southern California in 1994.

## ASSOCIATES

**ELAINE CHANG** graduated from the University of California, Berkeley with a Bachelor of Science degree in Business Administration and a Bachelor of Arts degree in Economics. Ms. Chang received her Juris Doctor degree from the UCLA School of Law, where she was on the editorial board of the *UCLA Journal of Law and Technology* and the *Asian Pacific American Law Journal*, as well as a member of the UCLA Moot Court Honors Board. While in law school, Ms. Chang also externed for the Honorable Gary A. Feess in the Central District of California.

Prior to law school, Ms. Chang worked on a number of financial reporting and securities fraud investigations at a big four accounting firm. Ms. Chang also worked in the marketing and product management department at an investment management firm in New York.

**CHRISTOPHER FALLON** joined the firm in 2013 specializing in securities, consumer, and anti-trust litigation. Prior to joining the firm, Mr. Fallon was a contract attorney with O'Melveny & Myers LLP working on anti-trust and business litigation disputes. He is a Certified E-Discovery Specialist through the Association of Certified E-Discovery Specialists (ACEDS).

Mr. Fallon earned his J.D. and a Certificate in Dispute Resolution from Pepperdine Law School in 2004. While attending law school, Christopher worked at the Pepperdine Special Education Advocacy Clinic and interned with the Rhode Island Office of the

Attorney General. Prior to attending law school, he graduated from Boston College with a Bachelor of Arts in Economics and a minor in Irish Studies, then served as Deputy Campaign Finance Director on a U.S. Senate campaign.

**LEANNE HEINE SOLISH** joined Glancy Prongay & Murray LLP in 2012. Leanne graduated *summa cum laude* from Tulane University with a B.S.M. in Accounting and Finance in 2007, and she received her J.D. from the University of Texas School of Law in 2011. While attending law school, Leanne was an editor for the Texas International Law Journal, a student attorney for the Immigration and Worker Rights Clinics, and she externed with MALDEF and the Texas Civil Rights Project. Leanne is a member of the Beta Gamma Sigma Business Honors Society. She is a registered CPA in Illinois, and was admitted to the California State Bar in 2011.

**THOMAS J. KENNEDY** works out of the New York office, where he specializes in securities, antitrust, and consumer litigation. He received a Juris Doctor degree from St. John's University School of Law in 1995. At St. John's, he was a member of the ST. JOHN'S JOURNAL OF LEGAL COMMENTARY. Mr. Kennedy graduated from Miami University in 1992 with a Bachelor of Science degree in Accounting and has passed the CPA exam. Mr. Kennedy was previously associated with the law firm Murray Frank LLP.

**CHARLES H. LINEHAN** joined the Firm in 2015. Mr. Linehan graduated *summa cum laude* from the University of California, Los Angeles with a Bachelor of Arts degree in Philosophy and a minor in Mathematics. Mr. Linehan received his Juris Doctor degree from the UCLA School of Law, where he was a member of the UCLA Moot Court Honors Board. While attending law school, Mr. Linehan participated in the school's First Amendment Amicus Brief Clinic (now the Scott & Cyan Banister First Amendment Clinic) where he worked with nationally recognized scholars and civil rights organizations to draft amicus briefs on various Free Speech issues.

**ALEXA MULLARKY** joined the Firm in 2015. Ms. Mullarky graduated *cum laude* from the University of Washington with a Bachelor of Arts degree in Law, Societies, and Justice. Ms. Mullarky received her Juris Doctor degree from the USC Gould School of Law, where she was a member of the Hale Moot Court Honors Program Executive Board. While attending law school, Ms. Mullarky interned in the legal department of Southern California Edison, a Fortune 500 company, where she worked in energy regulations.

**JARED F. PITT** joined Glancy Prongay & Murray LLP in 2012 specializing in securities, consumer, and anti-trust litigation. Prior to joining the firm, Mr. Pitt was an associate at Willoughby Doyle LLP and was a senior financial statement auditor for KMPG LLP where he earned his CPA license.

Mr. Pitt earned his J.D. from Loyola Law School in 2010. Prior to attending law school he graduated with honors from both the University of Michigan's Ross School of Business and USC's Marshall School of Business where he received a Masters of Accounting.

**LESLEY F. PORTNOY** joined the firm in 2014. He has represented clients throughout the country in securities litigation and class actions. Mr. Portnoy has previously served as counsel to investors in Bernard L. Madoff securities, assisting the SIPC trustee Irving Picard in recovering money on behalf of defrauded investors. During law school, he worked in the New York Supreme Court Commercial Division, the Second Circuit Court of Appeals, and the New York City Law Department. Mr. Portnoy has represented pro bono clients in New York and California. In his time off, he enjoys cycling, reading, sports, and spending time with his wife and three children.

**GARTH A. SPENCER** joined the firm in 2016 and is based in the New York office. His work includes securities, antitrust and consumer litigation. Mr. Spencer also works on whistleblower matters.

Mr. Spencer received his B.A. in Mathematics from Grinnell College in 2006. He received his J.D. in 2011 from Duke University School of Law, where he was a staff editor on the Duke Law Journal. From 2011 until 2014 he worked in the tax group of a large, international law firm. Since 2014 he has worked on tax whistleblower matters. Immediately prior to joining Glancy Prongay & Murray, Mr. Spencer attended New York University's LL.M. in Taxation program.

**BRIAN S. UMPIERRE** has specialized in class action, consumer and antitrust litigation since his admission to the California Bar in 2005, where he is a member of the Antitrust and Unfair Competition Section of the California Bar. While in law school at Villanova University School of Law, Mr. Umpierre was an extern for the U.S. Environmental Protection Agency - Region III in Philadelphia, PA. He graduated from the University of Scranton, where he was a member of Alpha Kappa Delta, the International Sociology Honor Society.

**MELISSA WRIGHT** joined the Firm in 2014. Melissa received her J.D. from the UC Davis School of Law in 2012, where she was a board member of Tax Law Society and externed for the California Board of Equalization's Tax Appeals Assistance Program focusing on consumer use tax issues. Melissa also graduated from NYU School of Law, where she received her LL.M. in Taxation in 2013.

# Exhibit 6

**EXHIBIT 6**

*In Re Penn West Petroleum Ltd. Securities Litigation*  
Master File No. 14-cv-6046-JGK

**BREAKDOWN OF CO-LEAD COUNSEL'S  
LITIGATION EXPENSES BY CATEGORY**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$ 2,075.13
PSRLA Notice Costs	1,835.00
Service of Process	29.44
On-Line Legal Research	26,991.09
On-Line Factual Research	6,656.09
Telephones/Faxes	220.39
Postage & Express Mail	124.73
Hand Delivery Charges	199.27
Local Transportation	3,044.72
Internal Copying	3,690.20
Outside Copying	3,242.30
Out of Town Travel	11,945.33
Working Meals	3,378.56
Court Reporters and Transcripts	311.28
Experts	156,508.36
Investigations	47,125.58
Mediation Fees	52,940.00
<b>TOTAL EXPENSES:</b>	<b>\$320,317.47</b>

# Exhibit 7

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CITILINE HOLDINGS, INC., Individually	:	Civil Action No. 1:08-cv-03612-RJS
and On Behalf of All Others Similarly Situated,	:	<b>(Consolidated)</b>
	:	
Plaintiff,	:	<u>CLASS ACTION</u>
	:	
vs.	:	
	:	
ISTAR FINANCIAL INC., et al.,	:	
	:	
Defendants.	:	

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ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>4-5-13</u>
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This matter having come before the Court on April 5, 2013, on the motion of Co-Lead Counsel for an award of attorneys' fees and expenses in the Litigation, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;


IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Settlement Agreement dated September 5, 2012 (the "Stipulation") and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.
2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.
3. The Court hereby awards Co-Lead Counsel attorneys' fees of 30% of the Settlement Fund, plus expenses in the amount of \$234,901.71, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.
4. The fees and expenses shall be allocated among Lead Plaintiffs' counsel in a manner which, in Co-Lead Counsel's good-faith judgment, reflects each such counsel's contribution to the institution, prosecution, and resolution of the Litigation.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall immediately be paid to Co-Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶¶6.2-6.3 thereof, which terms, conditions, and obligations are incorporated herein.

SO ORDERED.

DATED: April 5, 2013  
New York, New York



RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE

# Exhibit 8

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 3/17/11

*Sullivan*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
In re L.G. PHILIPS LCD CO., LTD.	:	Civil Action No. 1:07-cv-00909-RJS
SECURITIES LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	X	

[REDACTED] ORDER AWARDING CO-LEAD COUNSEL ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on March 17, 2011, on the motion of Co-Lead Counsel for an award of attorneys' fees and expenses incurred in the action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement dated October 15, 2010 (the "Stipulation"), and filed with the Court.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Co-Lead Counsel attorneys' fees of 30% of the Settlement Amount, plus litigation expenses in the amount of \$81,993.45, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid, pursuant to 15 U.S.C. §78u-4(a)(6). The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.


4. The fees and expenses shall be allocated among Lead Plaintiffs' counsel in a manner which, in Co-Lead Counsel's good-faith judgment, reflects each such counsel's contribution to the institution, prosecution, and resolution of the action.

5. Justin M. Coren is awarded \$1,500.00 pursuant to 15 U.S.C. §78u-4(a)(4) for his efforts and service to the Class during the action.

6. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Co-Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶8 thereof which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: March 17, 2011

  
\_\_\_\_\_  
THE HONORABLE RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE



# Exhibit 9

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

POLICE AND FIRE RETIREMENT SYSTEM OF  
THE CITY OF DETROIT, PLYMOUTH  
COUNTY RETIREMENT SYSTEM, STATE-  
BOSTON RETIREMENT SYSTEM, and  
MICHAEL GOLDE, On Behalf of Themselves and  
All Others Similarly Situated,

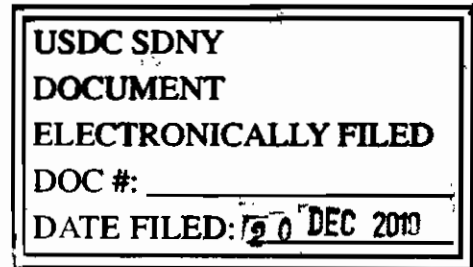
Plaintiffs,

v.

SAFENET, INC., ANTHONY A. CAPUTO,  
KENNETH A. MUELLER, CAROLE D. ARGO,  
THOMAS A. BROOKS, IRA A. HUNT, Jr.,  
BRUCE R. THAW, ARTHUR L. MONEY,  
SHELLEY A. HARRISON, and ANDREW E.  
CLARK,

Defendants.

Lead Case No. 06-cv-5797 (PAC)



~~PROPOSED~~ **ORDER AWARDING ATTORNEYS' FEES AND EXPENSES** *PAC*

This matter came for hearing on December 20, 2010 (the "Settlement Hearing") (a) on the application of Lead Counsel for an award of attorneys' fees and reimbursement of litigation expenses and (b) on the Applications of the Court-appointed Class Representatives (Police and Fire Retirement System of the City of Detroit ("Detroit P&F") and Plymouth County Retirement System ("Plymouth")) and Subclass Representative (Michael Golde) (collectively "Lead Plaintiffs") for awards of their respective costs and expenses pursuant to 15 U.S.C. § 78u-4(a)(4).

Having considered all matters presented to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing in the form approved by the Court were mailed to all Class Members that could be identified with reasonable effort, and that summary notices of the



hearing in the form approved by the Court were published in *Investor's Business Daily* and over the *Business Wire*, and the Court having duly considered the above-referenced applications,,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated September 13, 2010 (the "Stipulation"), and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation unless otherwise specified.

2. The Court has jurisdiction to enter this Order, and has jurisdiction over the subject matter of this Litigation and all parties thereto, including all Class Members.

3. Notice of Lead Counsel's application for attorneys' fees and reimbursement of expenses (and of the Lead Plaintiffs' respective applications) was given to all Class Members who could be identified with reasonable effort, and the form and method of notifying the Settlement Class of the applications constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the motion and satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and the Private Securities Litigation Reform Act of 1995 (as codified at 15 U.S.C. §77z-1(a)(7) and 15 U.S.C. §78u-4(a)(7)).

4. Lead Counsel are hereby awarded attorneys' fees in the amount of 28.5 % of the Settlement Fund, which award the Court finds to be fair and reasonable, and \$ 447,817.37 in reimbursement of litigation expenses, with interest on such expenses at the same rate as earned by the Settlement Fund from the dates it was funded to the date of payment, to be paid from the Settlement Fund. Lead counsel shall allocate the attorneys' fees award between their two firms consistent with the terms of the Stipulation.

5. Class Representative Detroit P&F is awarded \$ 13,800.00 as reimbursement for its costs and expenses directly relating to its services in representing the Settlement Class.

6. Class Representative Plymouth is awarded \$ 10,000.00 as reimbursement for its costs and expenses directly relating to its services in representing the Settlement Class.

7. Subclass Representative Michael Golde is awarded \$ 14,250.00 as reimbursement for his costs and expenses directly relating to his services in representing the Settlement Class and Subclass.

8. In making the foregoing awards of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found as follows:

(a) The Settlement has created an all-cash settlement fund of \$25 million that is already on deposit and earning interest, and numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Lead Counsels' efforts;

(b) The requested attorneys' fee award has been reviewed and approved as fair and reasonable by Lead Plaintiffs Detroit P&F and Plymouth (who are sophisticated institutional investors that were directly involved in the prosecution and resolution of the Litigation and who have a substantial interest in insuring that any fees paid to Lead Counsel are duly earned and not excessive), and by Subclass Representative Golde (who is an experienced investor and attorney who was also directly involved in the prosecution of the Litigation).

(c) Over 49,000 copies of the Notice have been disseminated to putative Class Members stating that Lead Counsel would apply for attorneys' fees equal to 28.5% of the Settlement Fund, and for reimbursement of expenses incurred in connection with the prosecution and resolution of this Litigation of not more than \$675,000 (including Lead Plaintiffs' respective applications for costs and expenses), and no Class Member has objected to any of the fee or expense applications;

(d) Lead Counsel have conducted the Litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(e) The Litigation involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(f) Had the Settlement not been achieved, there was significant risk that Lead Plaintiffs and the Settlement Class would have recovered less or nothing in this action; and

(g) The amounts of the attorneys' fees awarded and expenses reimbursed are fair and reasonable, and consistent with awards in similar cases.

9. Any appeal or any challenge affecting this Court's approval of any application for attorneys' fees and expense application (including the Lead Plaintiffs' expense applications) shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

10. The Court retains exclusive jurisdiction over the parties and the Class Members for all matters relating to this Litigation, including the administration and the distribution of the settlement proceeds to the members of the Settlement Class.

11. If the Settlement is terminated or does not become Final or the Effective Date does not occur pursuant to the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by the Stipulation, and shall be vacated in accordance with the terms thereof.

12. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

Dated: New York, NY  
December 20, 2010

  
\_\_\_\_\_  
Honorable Paul A. Crotty  
UNITED STATES DISTRICT JUDGE

# Exhibit 10

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE TOWER GROUP INTERNATIONAL,  
LTD. SECURITIES LITIGATION

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/23/2015

13 Civ. 5852 (AT)

**ORDER GRANTING LEAD COUNSEL'S MOTION FOR  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

WHEREAS, Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Fee Motion," ECF Nos. 161, 162) came before the Court for hearing on November 23, 2015, pursuant to the Court's Order dated August 13, 2015 preliminarily approving the Settlement and providing for Notice (the "Preliminary Approval Order," ECF No. 152), and the Court's September 10, 2015 Order rescheduling the hearing date (ECF No. 154); and

WHEREAS, due and adequate notice having been given to the Settlement Classes as required by the Preliminary Approval Order, and the Court, having read and considered the Fee Motion and supporting declarations and exhibits and being fully informed of the related proceedings, now FINDS, CONCLUDES AND ORDERS as follows:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement with Tower Defendants (the "Stipulation," ECF No. 148), and all capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation.
2. This Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the members of the Settlement Classes.

3. Members of the Settlement Classes have been given the opportunity to object to the Fee Motion in compliance with Federal Rule of Civil Procedure 23(h)(2).

4. The Fee Motion is hereby GRANTED.

5. The Court hereby awards attorneys' fees in the amount of 25% of the Settlement Amount, plus interest earned at the same rate and for the same time period as the Settlement Fund, to be paid from the Settlement Fund. The Court finds that an award of attorneys' fees of 25% is fair and reasonable in light of the following factors, among others: the contingent nature of the case; the risks of this complex litigation against the Tower Defendants; the quality of the legal services rendered; the benefits obtained for the Settlement Classes; the institutional Lead Plaintiffs' support of the fee and expense application; the fees awarded in similar actions; and the reaction of the Settlement Classes. Further, the requested award of attorneys' fees is also supported by a lodestar multiplier cross-check. The fee award is further justified by the risk Lead Counsel undertook and the results they achieved for the Settlement Classes through the quality of their representation of Lead Plaintiffs and the Settlement Classes in this complex litigation.

6. The Court also grants Lead Counsel's request for reimbursement of Plaintiffs' Counsel's Litigation Expenses in the amount of \$235,934.52, to be paid from the Settlement Fund. The Litigation Expenses incurred by Plaintiffs' Counsel have been adequately documented and were reasonably incurred for the benefit of the Settlement Classes, and the Court finds that the reimbursement of those expenses is justified.

7. The Court also grants the request for reimbursement of Lead Plaintiff Kansas City, Missouri Employees' Retirement System's costs and expenses in the amount of \$2,922.00, and Lead Plaintiff ADAR Enhanced Investment Fund, Ltd. and ADAR Investment Fund, Ltd.'s costs

and expenses in the amount of \$7,000.00, pursuant to the Private Securities Litigation Reform Act of 1995, to be paid from the Settlement Fund.

8. Pursuant to Paragraph 16 of the Stipulation, the attorneys' fees and Litigation Expenses awarded above shall be paid to Lead Counsel immediately upon award subject to the terms, conditions and obligations as set forth in the Stipulation.

9. Pursuant to Paragraph 17 of the Stipulation, Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution and settlement of the Action.

10. There is no just reason to delay the entry of this Order, and immediate entry of this Order by the Clerk of the Court is expressly directed.

SO ORDERED.

Dated: November 23, 2015  
New York, New York



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ANALISA TORRES  
United States District Judge

# Exhibit 11



ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: July 18, 2007

In re AMERICAN EXPRESS FINANCIAL  
ADVISORS SECURITIES LITIGATION

Master File No. 04 Civ. 1773 (DAB)

**ORDER AND FINAL JUDGMENT**

On July 13, 2007, the Court held a hearing to determine (1) whether the terms and conditions of the Stipulation of Settlement dated January 18, 2007 (“Stipulation”)<sup>1</sup> are fair, reasonable, and adequate for the settlement of all claims asserted on behalf of the Class in the above-captioned Action, including the release of Defendants, Nominal Defendants, and the other Released Persons, and should be approved; (2) whether judgment should be entered dismissing the Action on the merits and with prejudice in favor of Defendants and Nominal Defendants and as against all Class Members who are not Opt-Outs; (3) whether the Plan of Allocation proposed by Plaintiffs’ Co-Lead Counsel is a fair, reasonable, and adequate method of allocating the settlement proceeds among the Class Members; (4) whether and in what amount Plaintiffs’ Co-Lead Counsel should be awarded attorneys’ fees and reimbursement of expenses; and (5) whether and in what amount incentive awards should be given to the lead plaintiffs in the instant action and in a related action, known as *Haritos v. American Express Financial Advisors, Inc.*, Case No. 02-2255 PHX-PGR, pending in the United States District Court for the District of Arizona (“Haritos”).

1. All defined terms have the same meaning as defined in the Stipulation of Settlement dated January 18, 2007.

The Court, having considered all matters submitted to it at the hearing and otherwise; and it appearing from the submissions of the parties that, in accordance with the Court's Order Provisionally Certifying Class, Directing Dissemination of Notice, and Setting Settlement Fairness Hearing, dated February 14, 2007 ("Notice Order"), a notice of the Settlement and Final Fairness Hearing, substantially in the form approved by the Court, was mailed to all Class Members who could be identified with reasonable effort, using the information provided by Defendant American Express Financial Advisors, Inc. or its successor, Ameriprise Financial Services, Inc. (collectively, "AEFA"), pursuant to the Notice Order; and it appearing that a summary notice of the Settlement and Final Fairness Hearing, substantially in the form approved by the Court, was published once in the national edition of The Wall Street Journal and Parade Magazine in accordance with the Notice Order; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested by Plaintiffs' Co-Lead Counsel; and all defined terms used herein having the meanings as set forth and defined in the Stipulation,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, Plaintiffs, all Class Members, and Defendants.
2. The Court makes a final determination that, for the purposes of the Settlement, the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that (a) the Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) Plaintiffs' claims are typical of the claims of the Class they seek to represent; (d) Plaintiffs and their counsel will fairly and adequately represent the interests of the Class; (e) questions of

law and fact common to the Class Members predominate over questions affecting only individual members of the Class; and (f) a class action settlement is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and, for the purposes of the Settlement, this Court hereby makes final its certification of the Action as a class action on behalf of the following Class:

All Persons who, at any time during the Class Period:

- (i) Paid a fee for financial advice, financial planning, or Financial Advisory Services;
- (ii) Purchased any of the Non-Proprietary Funds through AEFA or for which AEFA was listed as the broker;
- (iii) Purchased any of the AXP Funds through AEFA or for which AEFA was listed as the broker; and/or;
- (iv) Paid a fee for financial advice, financial planning, or other financial advisory services rendered in connection with an SPS, WMS and/or SMA account.

Excluded from the Class are Defendants, Nominal Defendants, members of Defendant James M. Cracchiolo's immediate family, any entity in which any Defendant or Nominal Defendant has or had a controlling interest, and the employees, agents, legal affiliates, or representatives who had been employees, agents, legal affiliates or representatives during the Class Period, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party, and all persons and entities who timely and properly requested exclusion from the Class pursuant to the Mailed Notice or Publication Notice disseminated in accordance with the Notice

Order, and six persons whose tardy exclusions are excused due to extenuating circumstances. Those six persons are: Carroll Neinhaus, James King, Dorothy King, Muriel Wester, Joseph Centineo and Ester Saabye.

4. Plaintiffs assert claims against Defendants under Sections 12(a)(2) and 15 of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rules 10b-5(a)-(c) and 10b-10 promulgated thereunder; Section 20(a) of the Securities Exchange Act of 1934; the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-5, 80b-6; the Minnesota Uniform Deceptive Trade Practices Act, Minnesota Consumer Fraud Act, Minnesota False Advertisement Act, and Minnesota Unlawful Trade Practices Act; and for breach of fiduciary duty and unjust enrichment. The Complaint alleges that Defendants engaged in a common course of conduct that included, among other things, misrepresentations and omissions in connection with the (a) marketing and sale of financial plans and advice to Defendants' clients; (b) the marketing, recommending, and sale of certain non-proprietary mutual funds that paid inadequately disclosed compensation to Defendants for such promotion; and (c) the marketing, recommending, and sale of Defendants' proprietary mutual funds and other proprietary products. For purposes of the Settlement only, the Court makes final its certification of these claims for class treatment.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby makes final its appointment of Plaintiffs (Leonard D. Caldwell, Carol M. Anderson, Donald G. Dobbs, Kathie Kerr, Susan M. Rangeley, and Patrick J. Wollmering) as representatives of the Class for purposes of the Settlement.

6. Having considered the factors described in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court hereby makes final its appointment of Plaintiffs' counsel, the law

firms of Girard Gibbs LLP, Milberg Weiss LLP, and Stull Stull & Brody, as counsel for the Class for purposes of the Settlement.

7. In accordance with the Notice Order, individual notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort, using the information provided by Defendant AEFA, supplemented by published notice. The form and method of notifying the Class of the pendency of the Action as a class action, the terms and conditions of the Settlement, and the Final Fairness Hearing met the requirements of Rule 23 of the Federal Rules of Civil Procedure; Section 21D(a)(7) of the Securities Exchange Act of 1934 (as amended by the Private Securities Litigation Reform Act of 1995), 15 U.S.C. § 78u-4(a)(7); and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

8. The Settlement is approved as fair, reasonable, and adequate, and the Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

9. The Complaint, which the Court finds was filed on a good-faith basis in accordance with the Private Securities Litigation Reform Act of 1995, based upon publicly available information, is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against Defendants.

10. Class Members, and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any and all Released Claims against any and all Released Persons. The Released Claims are hereby compromised, settled, released, discharged, and dismissed as to all

Class Members and their successors and assigns and as against the Released Persons on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

11. Defendants and Nominal Defendants and their successors and assigns are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any and all Settled Defendants' Claims against any Plaintiffs, Class Members, or their attorneys. The Settled Defendants' Claims of all Defendants and Nominal Defendants are hereby compromised, settled, released, discharged, and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

12. The Released Persons are hereby discharged from all claims for indemnity and contribution by any person or entity, whether arising under state, federal or common law, based upon, arising out of, relating to or in connection with the Released Claims of the Class or any Class Member, other than claims for indemnity or contribution asserted by a Released Person against another Released Person. Accordingly, the Court hereby bars all claims for indemnity and/or contribution by or against the Released Persons based upon, arising out of, relating to, or in connection with the Released Claims of the Class or any Class Member; provided, however, that this bar order does not prevent any Released Person from asserting a claim for indemnity or contribution against another Released Person.

13. Neither this Order and Final Judgment, nor the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against Defendants or Nominal Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Defendant with respect to the truth of any fact alleged by Plaintiffs, the

certification of the class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants or Nominal Defendants;

(b) offered or received against Defendants or Nominal Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Defendant or Nominal Defendant;

(c) offered or received against Defendants or Nominal Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any Defendant or Nominal Defendant, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that Defendants and/or Nominal Defendants may refer to this Order and Final Judgment and/or the Stipulation to effectuate the liability protection granted them thereunder;

(d) construed as an admission or concession that the consideration given under the Stipulation represents the amount which could be or would have been recovered after dispositive motions or trial; or

(e) construed as or received in evidence as an admission, concession, or presumption against Plaintiffs or any Class Members that any of their claims are without merit, or that any defenses asserted by Defendants or Nominal Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Settlement Payment.

14. The Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel for allocating the proceeds of the Settlement is approved as fair, reasonable, and adequate, and the Claims Administrator is directed to administer the Settlement and allocate the Settlement Fund in accordance with its terms and provisions.

15. The Court finds that all Parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

16. Plaintiffs' Co-Lead Counsel are hereby awarded 27 percent of the Settlement Fund in attorneys' fees, which sum the Court finds to be fair and reasonable, and \$597,204 in reimbursement of expenses, which fees and expenses shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund with interest at the same net rate that the Settlement Fund earns, from the date the Court approves the Fee and Expense Award. Plaintiffs' Co-Lead Counsel shall allocate the award of attorneys' fees among themselves according to their own agreement, and among any other counsel in a fashion that, in the opinion of Plaintiffs' Co-Lead Counsel, fairly compensates such counsel for their contribution to the prosecution of the Action.

17. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of \$100,000,000 in cash that is already on deposit, plus interest thereon, and that numerous Class Members who file acceptable Proof of Claim forms will benefit from the Settlement created by Plaintiffs' Co-Lead Counsel;

(b) The Settlement obligates Defendants to pay all reasonable expenses of notice and settlement administration and to adopt remedial measures negotiated with Plaintiffs' Co-Lead Counsel and designed to address the issues giving rise to the Action;



(c) Over 3,012,814 copies of the Settlement Notice were disseminated to putative Class Members indicating that Plaintiffs' Co-Lead Counsel were moving for attorneys' fees and reimbursement of expenses in the requested amounts, and there were <sup>approximately 80</sup> ~~42~~ written comments and objections in opposition to the proposed Settlement and/or the fees and expenses requested by Plaintiffs' Co-Lead Counsel which have been considered by the Court and the Court overrules;

JAB  
7/18/07

(d) Plaintiffs' Co-Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(e) The Action involves complex factual and legal issues and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of such issues;

(f) Had Plaintiffs' Co-Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class would recover significantly less or nothing from Defendants and/or Nominal Defendants;

(g) Plaintiffs' Co-Lead Counsel have submitted affidavits showing that they expended over 24,000 hours, with a lodestar value of \$9,572,865, in prosecuting the Action and achieving the Settlement; and

(h) The amounts of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases.

18. Plaintiffs' Co-Lead Counsel are authorized to pay, from the amount awarded by the Court for attorneys' fees, incentive awards of \$5,000 each to each of the six class representatives in this action and each of the five plaintiffs in the related Haritos case.

19. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to this Action and the Settlement, including (a) the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order and Final Judgment; (b) any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Class Members; (c) any dispute over attorneys' fees or expenses sought in connection with the Action or the Settlement; and (d) determination whether, in the event an appeal is taken from any aspect of the Judgment approving the Settlement or any award of attorneys' fees, notice should be given under Federal Rule of Civil Procedure 23(d), at the appellant's expense, to some or all members of the Class apprising them of the pendency of the appeal and such other matters as the Court may order.

20. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

DATED: July 18, 2007

Deborah A. Batts  
THE HONORABLE DEBORAH A. BATTS  
UNITED STATES DISTRICT JUDGE

# Exhibit 12

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ARKANSAS TEACHER RETIREMENT SYSTEM  
and FRESNO COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

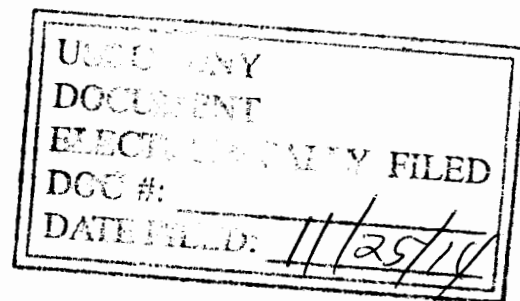
v.

BANKRATE, INC. et al.,

Defendants.

Case No. 13-cv-7183 (JSR)

ECF CASE



**ORDER AWARDING ATTORNEYS' FEES AND EXPENSES**

This matter came on for hearing on November 21, 2014 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, except those persons or entities excluded from the definition of the Settlement Class, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Amended Stipulation and Agreement of Settlement dated September 17, 2014 (ECF No. 73-1) (the "Amended

Stipulation”) and all terms not otherwise defined herein shall have the same meanings as set forth in the Amended Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel’s motion for attorneys’ fees and reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for attorneys’ fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Lead Counsel is hereby awarded attorneys’ fees in the amount of 25 % of the Settlement Fund, net of Court-awarded expenses, and \$ 194,426.83 in reimbursement of litigation expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable.

5. Lead Counsel shall be paid 50% of the attorneys’ fees awarded and 100% of the approved expenses immediately upon entry of this Order. Payment of the balance of the attorneys’ fees awarded shall be made to Lead Counsel when distribution of the Net Settlement Fund to claimants has been very substantially completed.

6. In making this award of attorneys’ fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of \$18,000,000 in cash that has been funded into escrow pursuant to the terms of the Amended Stipulation, and that numerous

Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Lead Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as fair and reasonable by Lead Plaintiffs, who are institutional investors that oversaw the prosecution and resolution of the Action;

(c) Copies of the Notice were mailed to over 35,000 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 25% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$300,000, and there were no objections to the requested attorneys' fees and expenses;

(d) Lead Counsel has conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the other members of the Settlement Class may have recovered less or nothing from Defendants;

(g) Lead Counsel devoted over 5,100 hours, with a lodestar value of approximately \$2,485,000, to achieve the Settlement; and

(h) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

7. Lead Plaintiff Arkansas Teacher Retirement System is hereby awarded \$ 4,270.22 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

8. Lead Plaintiff Fresno County Employees' Retirement Association is hereby awarded \$ 850.67 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

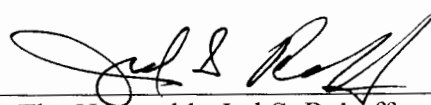
9. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

10. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Amended Stipulation and this Order.

11. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Amended Stipulation.

12. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 21<sup>st</sup> day of November, 2014.

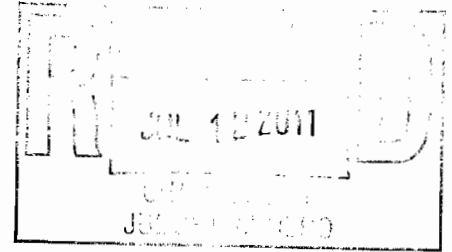


The Honorable Jed S. Rakoff  
United States District Judge

# Exhibit 13

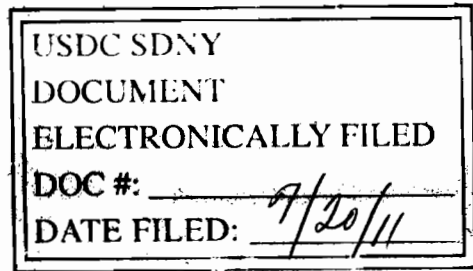


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



\_\_\_\_\_  
KEVIN CORNWELL, Individually and On :  
Behalf of All Others Similarly Situated, :  
  
Plaintiff, :  
  
vs. :  
  
CREDIT SUISSE GROUP, et al., :  
  
Defendants. :  
\_\_\_\_\_ X

Civil Action No. 08-cv-03758(VM)  
**(Consolidated)**  
  
CLASS ACTION  
  
ORDER AWARDING  
ATTORNEYS' FEES AND EXPENSES



THIS MATTER having come before the Court on July 18, 2011, on the motion of Lead Plaintiffs' counsel for an award of attorneys' fees and expenses incurred in the Action; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the Action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated March 7, 2011.
2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.
3. Counsel for the Lead Plaintiffs are entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Second Circuit recognizes the propriety of the percentage-of-the-fund method when awarding fees. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).
4. Lead Plaintiffs' counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Fund, plus interest.
5. This Court adopts the percentage-of-recovery method of awarding fees in this case, and concludes that the percentage of the benefit is the proper method for awarding attorneys' fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Fund, plus interest at the same rate as earned on the Settlement Fund. The Court finds the fee award to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Fund is consistent with awards made in similar cases.

7. Said fees shall be allocated among plaintiffs' counsel by Co-Lead Counsel in manner which, in their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action.

8. The Court hereby awards expenses in an aggregate amount of \$285,072.62, plus interest.

9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set forth in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In evaluating the *Goldberger* factors, the Court finds that:

(a) Counsel for Lead Plaintiffs expended considerable effort and resources over the course of the Action researching, investigating and prosecuting Lead Plaintiffs' claims. Lead Plaintiffs' counsel have represented that they have reviewed tens of thousands of pages of documents, interviewed witnesses and opposed legally and factually complex motions to dismiss. The parties also engaged in settlement negotiations that lasted several months. The services provided by Lead Plaintiffs' counsel were efficient and highly successful, resulting in an outstanding recovery for the Settlement Class without the substantial expense, risk and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.

(b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 U.S. Dist. LEXIS 17588, at \*31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more

difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Despite the novelty and difficulty of the issues raised, and the procedural posture of the case, Lead Plaintiffs' counsel secured an excellent result for the Settlement Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Lead Plaintiffs' counsel's representation of the Settlement Class supports the requested fee. Lead Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Lead Plaintiffs' counsel's diligent efforts on behalf of the Settlement Class, as well as their skill and reputations, Lead Plaintiffs' counsel were able to negotiate a very favorable result for the Settlement Class. Lead Plaintiffs' counsel are among the most experienced and skilled practitioners in the securities litigation field, and have unparalleled experience and capabilities as preeminent class action specialists. Their efforts in efficiently bringing the Action to a successful conclusion against the Defendants are the best indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers from a prominent firm. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of Lead Plaintiffs' counsel to obtain such a favorable settlement for the Settlement Class in the face of such formidable opposition confirms the superior quality of their representation and the reasonableness of the fee request.

(d) The requested fee of 27.5% of the settlement is within the range normally awarded in cases of this nature.

(e) Public policy supports the requested fee, because the private attorney general role is “vital to the continued enforcement and effectiveness of the Securities Acts.” *Taft v. Ackermans*, No. 02 Civ. 7951(PKL), 2007 U.S. Dist. LEXIS 9144, at \*33 (S.D.N.Y. Jan. 31, 2007) (citation omitted).


(f) Lead Plaintiffs’ counsel’s total lodestar is \$4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002), the requested fee is reasonable.

10. The awarded attorneys’ fees and expenses, and interest earned thereon, shall be paid to Co-Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

Dated: New York, NY

18 July, 2011

  
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THE HONORABLE VICTOR MARRERO  
UNITED STATES DISTRICT JUDGE



CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011, I submitted the foregoing to orders and judgments@nysd.uscourts.gov and e-mailed to the e-mail addresses denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 11, 2011.

s/ Ellen Gusikoff Stewart  
\_\_\_\_\_  
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