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8 **SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY**

9 IN RE FUNKO, INC. SECURITIES  
10 LITIGATION,

No. 17-2-29838-7 SEA

(Consol. with Nos. 18-2-01264-3 SEA,  
18-2-01582-1 SEA, 18-2-02535-4 SEA,  
18-2-08153-0 SEA, 18-2-12229-5 SEA,  
and 18-2-14811-1 SEA)

13 CLASS ACTION

14 **DECLARATION OF AARON L.**  
15 **BRODY FILED ON BEHALF OF**  
16 **STULL, STULL & BRODY IN**  
17 **SUPPORT OF APPLICATION FOR**  
18 **AWARD OF ATTORNEY'S FEES**  
19 **AND EXPENSES**

20 I, Aaron L. Brody, declare as follows:

21 1. I am over the age of 21, have personal knowledge of the matters set forth herein,  
22 and am competent to testify.

23 2. I am the Managing Partner of the firm of Stull, Stull & Brody ("SSBNY" or the  
24 "Firm"). I am submitting this declaration in support of the application for an award of attorneys'  
25 fees and expenses in connection with services rendered in the above-entitled action.

26 3. Stull, Stull & Brody is Counsel of record for Class Representative Robert  
Lowinger and together with Robbins Geller Rudman & Dowd LLP was appointed by the Court

1 as Class Counsel for Class Representatives Robert Lowinger, The Ronald and Maxine Linde  
2 Foundation, Carl Berkelhammer, and the certified Plaintiff Class in the above-captioned  
3 securities class action.

4 4. The information in this declaration regarding my Firm's time and expenses is  
5 taken from time and expense reports and supporting documentation prepared and/or maintained  
6 by my Firm in the ordinary course of business. I am the Managing Attorney who oversaw and/or  
7 conducted the day-to-day activities in the litigation, and I reviewed these reports (and backup  
8 documentation where necessary or appropriate) in connection with the preparation of this  
9 declaration. The purpose of this review was to confirm both the accuracy of the entries as well  
10 as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As  
11 a result of this review, reductions were made to both time and expenses in the exercise of billing  
12 judgment. Based on this review and the adjustments made, I believe that the time reflected in  
13 the Firm's lodestar calculation and the expenses for which payment is sought herein are  
14 reasonable and were necessary for the effective and efficient prosecution and resolution of the  
15 litigation.

16 5. After the reductions referred to above, the number of hours spent on the litigation  
17 by my Firm is 1,519.89. A breakdown of the lodestar is provided in **Exhibit A**. The lodestar  
18 amount for attorney/paraprofessional time based on the Firm's current rates is \$1,361,885.75.  
19 The hourly rates shown in Exhibit A are consistent with hourly rates submitted by the Firm in  
20 other securities class action litigation. The Firm's rates are set based on periodic analysis of rates  
21 charged by firms performing comparable work both on the plaintiff and defense side. Different  
22 timekeepers within the same employment category may have different rates based on a variety  
23 of factors, including years of practice, years at the Firm, years in the current position, relevant  
24 experience, relative expertise, and the rates of similarly experienced peers at this Firm or other  
25 firms. For personnel who are no longer employed by the Firm, the "current rate" used for the  
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1 lodestar calculation is based upon the rate for that person in his or her final year of employment  
2 with the Firm.

3 6. My Firm seeks an award of \$21,316.52 in expenses and charges in connection  
4 with the prosecution of the litigation. Those expenses and charges are summarized by category  
5 in **Exhibit B**.

6 7. The expenses pertaining to this case are reflected in the books and records of this  
7 Firm. These books and records are prepared from receipts, expense vouchers, check records, and  
8 other documents and are an accurate record of the expenses.

9 8. The Firm's resume, attached as **Exhibit C**, provides additional background and  
10 information regarding the firm.

11 I declare under penalty of perjury under the laws of the State of Washington that the  
12 foregoing is true and correct. Executed this 27<sup>th</sup> day of April 2025 at New York, New York.

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AARON L. BRODY (*pro hac vice*)  
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Telephone: (212) 687-7230  
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# **EXHIBIT A**

**EXHIBIT A**

*In re Funko, Inc. Securities Litigation*, Case No. 17-2-29838-7 SEA

**STULL, STULL & BRODY**

Inception through February 11, 2025

NAME		HOURS	RATE	LODESTAR
Mark Levine	A	124.20	\$950	\$117,990.00
Howard T. Longman	A	1	\$950	\$950.00
Patrick Slyne	A	826.30	\$925	\$764,327.50
Aaron Brody	A	408.50	\$850	\$347,225.00
Michael Klein	A	151.29	\$825	\$124,814.25
Jason D. D'Agnenica	A	8.60	\$765	\$6,579.00
<b>TOTAL</b>		<b>1,519.89</b>		<b>\$1,361,885.75</b>

(A) Attorney

# **EXHIBIT B**

**EXHIBIT B**

*In re Funko, Inc. Securities Litigation*, Case No. 17-2-29838-7 SEA  
STULL, STULL & BRODY  
Inception through April 24, 2025

CATEGORY	AMOUNT
Filing and Other Fees	\$2,897.46
Postage and Scanning	\$14.81
Messenger and/or Overnight Delivery	\$119.17
Court Hearing and Deposition Reporting, and Transcripts	\$533.98
Photocopies	\$379.83
Online Legal Research	\$2,490.55
Conference Calls	\$19.37
Travel, Meals, and Miscellaneous Expenses	\$5,861.35
Expert Fee	\$9,000.00
<b>TOTAL</b>	<b>\$21,316.52</b>

# **EXHIBIT C**



## BRIEF BIOGRAPHY OF STULL, STULL & BRODY

For more than forty-five years, Stull, Stull & Brody's ("SS&B") high-quality legal representation has been nationally recognized.

SS&B's efforts were recognized by a late member of the United States Congress, the Representative Paul E. Gillmor, Rep. Ohio 5th District. As The Honorable Congressman Gillmor wrote in connection with *In re Merck & Co., Inc. Sec., S'holder Derivative and ERISA Litig.*, Case No 3:05-CV-01151 (MDL 1658):

I was one of the court appointed lead plaintiffs in *In re Safety-Kleen Rollins Shareholders Litigation*, Civil Action No. 3:00-CV1343-17, which was pending before Judge Joseph Anderson in the District of South Carolina. In that case, which alleged, among other things, violation of the Securities Exchange Act of 1934, I and the other court appointed lead plaintiffs selected Stull, Stull & Brody to be one of the lead counsel for the plaintiffs. That case resulted in a settlement recovery for the class of a very substantial portion of the money that could have been recovered if the case had gone to trial net of fees, expenses and administration fees.

During the course of that litigation, which lasted for about five years, Stull, Stull & Brody kept me apprised of all significant developments in the action such as class certification, settlement negotiations, litigation strategy, pending motions, court rulings and trial preparation. I would regularly speak to counsel by telephone at which time the foregoing topics would typically be discussed and I would have the opportunity to ask questions and provide input.

(Letter from Rep. Paul E. Gillmor of January 2, 2007, annexed hereto)

Based upon SS&B's results, the "Top 100 Settlements Semi-Annual Report" for the second half of 2012, which "identifies the largest securities class action settlements filed after the passage of the Private Securities Litigation Reform Act of 1995, ranked by the total value of the settlement fund[,]" shows that SS&B ranked in the top ten in a section that lists the law firms that served as lead or co-lead counsel for each litigation in the Top 100 settlements and identifies the most frequent lead or co-lead counsel appearing in the Top 100 settlements.

Indeed, SS&B has earned a national reputation for the zealous representation of plaintiffs in complex litigations, including securities class actions, ERISA actions and consumer class actions. SS&B has litigated hundreds of cases achieving an aggregate of more than two billion dollars in recoveries for aggrieved class members. SS&B's skill and expertise are demonstrated by its results, recovering at least \$100 million for aggrieved investors while serving in a leadership role in each of the following class actions:

- ◆ *In re Merck & Co., Inc., Sec., Derivative & "ERISA" Litig.*, MDL No. 1658 (SRC), Case No. 2:05-CV-01151-SRC-MF (D.N.J.); Case No. 2:05-CV-02367-SRC-MF (D.N.J.) (recovery of \$1.062 billion).
- ◆ *In re Initial Public Offerings Sec. Litig.*, 21 MC 92 (S.D.N.Y. 2009) (recovery of \$586 million; SS&B served on plaintiffs' executive committee)
- ◆ *In re BankAmerica Corp. Sec. Litig.*, MDL No. 1264 (E.D. Mo. 2002) (recovery of \$490 million, which at that time was the highest ever securities settlement in a case without an institutional lead plaintiff)
- ◆ *In re Geodyne Resources, Inc. Sec. Litig.* (S.D.N.Y. and Harris County Tex.) (recovery of \$125 million cash plus an additional \$75 million of contingent benefits)
- ◆ *In re Computer Assoc. Sec. Litig.*, Master File No. 98-CV-4839 (TCP) (E.D.N.Y. 2003) (recovery of 5.7 million shares valued at \$133.5 million)
- ◆ *Spahn v. Edward D. Jones & Co., L.P.*, 04-CV-00086 (E.D. Mo. 2007) (recovery of \$72.5 million in credits for current Edward Jones customers and \$55 million in cash for former Edward Jones customers. In addition, defendants paid class notice and settlement administration costs)
- ◆ *In re Peregrine Sys., Inc. Sec. Litig.*, Civil Action No. 02-CV-870 J (RBB) (S.D. Ca. 2006, S.D. Ca. 2009) (recovery of \$117.5 million)
- ◆ *In re American Express Fin. Advisors Sec. Litig.*, 04-CV-1773 (S.D.N.Y.) (recovery of \$100 million in cash and implementation of significant remedial measures. In addition, defendants paid an estimated \$15 to \$18 million for class notice and settlement administration costs)
- ◆ *In re Ikon Office Solutions, Inc. Sec. Litig.*, MDL No. 1318 (E.D. Pa. May 9, 2000) (recovery of \$111 million, the then-largest ever securities settlement in the Eastern District of Pennsylvania)
- ◆ *In re AOL Time Warner ERISA Litig.*, Civil Action No. 02 CV 8853 (SWK) (S.D.N.Y.) (recovery of \$100 million in cash to the company's 401(k) plan in what the court noted was "one of the largest ERISA settlements to date")
- ◆ *In re Salomon Brothers Treasury Litig.*, Consolidated Action No. 91 Civ. 5471 (RPP) (S.D.N.Y. 1994) (recovery of \$100 million)

SS&B's expertise has also been recognized by the following courts: *In re Frontier Group Ins., Inc. Sec. Litig.*, 172 F.R.D. 31 (E.D.N.Y. 1997); *In re Allegheny Int'l Inc. S'holder Litig.*, 86-835 (W.D. Pa.) (Order, December 10, 1987, Diamond J.); *Zucker v. United States Steel*, C-1-79-588 (S.D. Ohio) (Order, October 14, 1981, Rubin, C.J.); *Friedman v. Colgate Palmolive*, 80 Civ. 2340 (CPS) (E.D. N.Y.) (Order, June 16, 1981, Sifton, J.); *Zuckerman v. Sparton*, G79-457-C.A. (W.D. Mich.) (Opinion and Order, April 14, 1981, Fox, J.); *Mottoros v. Abrams*, 524 F. Supp. 254 (N.D. Ill. 1981); *Koenig v.*

*Smith*, 79 C 452 (ERN) (E.D.N.Y.) (Memorandum Opinion and Order, December 3, 1980, Neaher, J.); *Koenig v. Kenneally*, 79 Civ. 0487 (LBS) (S.D.N.Y.) (Opinion No. 49289, November 5, 1979, Sand, J.); *In Re Commonwealth Oil-Tesoro Petroleum Sec. Litig.*, MDL No. 347 (Order, July 24, 1979, Higginbotham, J.); *Wietschner v. McCulloch*, CV 78-4036-RMT (C.D. Ca.) (Order, June 29, 1979, Takasugi, J.); *Fruchthandler v. LTV Corp.*, 77C 1879 (E.D.N.Y.) (Order, May 10, 1978, Nickerson, J.); *Lewis v. Adikes*, 76 F.R.D. 68 (E.D.N.Y. 1977); *Lewis v. Black*, [1976-77 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,738 (E.D.N.Y. 1976) (Mishler, C.J.); and *Fruchthandler v. Blakely*, 73 F.R.D. 318 (S.D.N.Y. 1976).

## **SEMINAL CASES**

Throughout its 45 year history, SS&B has been involved with a number of seminal cases that have significantly affected the landscape of securities litigation.

- ◆ In *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633 (2010), in a case brought on behalf of investors in Merck securities alleging that they were defrauded due to misrepresentations made by Merck, the United States Supreme Court issued a ruling making it easier for defrauded investors to file actions claiming violation of the Securities Exchange Act of 1934 by holding that the statute of limitations does not begin to run until the investor should have known that a materially false statement was knowingly or recklessly made.
- ◆ In *Rand v. Monsanto Co.*, 926 F.2d 596 (7th Cir. 1991), the firm appeared on behalf of the plaintiff in a landmark decision establishing the principle that a class representative plaintiff need not be willing to bear all of the class' costs in an action to satisfy the adequacy of representation requirement of Federal Rule of Civil Procedure 23.
- ◆ In *In re Lucent Tech., Inc. ERISA Litig.*, Civil Action No. 01-cv-3491 (JAP) (D.N.J. 2005), the firm was largely responsible for a frequently-cited district court decision that denied defendants' motion to stay the ERISA litigation until a related securities class action was resolved. SS&B's briefing in opposition to the stay motion highlighted the significant differences between ERISA and securities class actions, even when those actions involve the same factual issues. The court ruled that "resolution of the securities class action . . . will not necessarily resolve all issues in this matter" and "[t]he legal issues here will still have to be determined, and a stay or continuance shall not change that fact."
- ◆ In *Small v. Fritz Co. Inc.*, 30 Cal. 4th 167 (2003), the firm successfully argued before the California Supreme Court that a non-trading shareholder has the right to sue a corporation for damages where the shareholder relies on false financial statements issued by the corporation. The decision represented a significant change in legal doctrine and was widely heralded as a potent new weapon for investors.
- ◆ In *Howard v. Everex*, 228 F.3d 1057 (9th Cir. 2000), SS&B successfully advocated that a corporate officer can be liable in a private anti-fraud action for signing a

document filed with the SEC that he knows (or is reckless in not knowing) contains misrepresentations, even if the officer was not involved in preparing the document. The Ninth Circuit decision was a precursor to Section 302(a) of the Sarbanes-Oxley Act of 2002 which now requires corporate officers that sign documents filed with the SEC to certify the accuracy of information therein.

- ♦ In *Lewis v. Black*, 74 F.R.D. 1 (E.D.N.Y. 1975), the firm established that neither the personality nor the motive of a proposed class representative was determinative of whether he would provide vigorous advocacy on behalf of the class, thereby preventing defendants from compelling representatives to respond to questions regarding motives and actions in past cases.
- ♦ In *In re Cabletron Sys., Inc. Sec. Litig.*, 311 F.3d 11 (1st Cir. 2002), the firm was instrumental in obtaining a reversal of a district court order dismissing a complaint under the pleading requirements of the Private Securities Litigation Reform Act. This case established in the First Circuit that plaintiffs are not required to name confidential sources in a complaint.
- ♦ In *In re Frontier Group Ins. Litig.*, Master File No. 94 Civ. 5213 (E.D.N.Y. 2002), the firm was instrumental in defeating a *Daubert* challenge, thereby enabling the expert to testify as to aggregate damages based on the use of a trading model.
- ♦ In *Harman v. Lyphomed, Inc.*, 122 F.R.D. 522 (N.D. Ill. 1988), the firm established the applicability of the fraud-on-the-market theory of reliance for stocks trading on the NASDAQ.
- ♦ The firm was instrumental in establishing new law on fraud-on-the-market theory in *Finkel v. Docutel/Olivetti Corp.*, 817 F.2d 356 (5th Cir. 1987), *cert. denied*, 485 U.S. 959 (1988), and *Mottoros v. Abrams*, 524 F. Supp. 254 (N.D. Ill. 1981).
- ♦ In *In re Wilmington Trust Corp. ERISA Litig.*, 2013 U.S. Dist. LEXIS 125891 (D. Del. Sept. 4, 2013), among the first reported decisions of its kind, the court granted plaintiffs' motion to proceed without class certification, allowing plaintiffs to represent all participants in an ERISA plan because of the derivative nature of ERISA's fiduciary duties.

Serving in a leadership role, SS&B has obtained more than two billion dollars on behalf of class members. A sampling of such cases includes:

### **Settled Securities and Antitrust Class Action Cases**

- ♦ *In re Merck & Co., Inc., Sec., Derivative & "ERISA" Litig.*, MDL No. 1658 (SRC), Case No. 2:05-CV-01151-SRC-MF (D.N.J.); Case No. 2:05-CV-02367-SRC-MF (D.N.J.) (recovery of \$1.062 billion).
- ♦ *In re Initial Public Offerings Sec. Litig.*, 21 MC 92 (S.D.N.Y.) (recovery of \$586 million, SS&B served on Plaintiffs' Executive Committee)

- ◆ *In re BankAmerica Corp. Sec. Litig.*, MDL No. 1264 (E.D. Mo.) (recovery of \$490 million)
- ◆ *In re Geodyne Resources, Inc. Sec. Litig.* (S.D.N.Y and Harris County Tex.) (recovery of \$125 million cash settlement plus contingent benefits of additional \$75 million)
- ◆ *In re Computer Assoc. Sec. Litig.*, Master File No. 98-CV-4839 (TCP) (E.D.N.Y.) (recovery of 5.7 million shares valued at \$133.551 million))
- ◆ *Spahn v. Edward D. Jones & Co., L.P.*, 04-CV-00086 (E.D. Mo.) (recovery of \$72.5 million in credits for current Edward Jones customers and \$55 million in cash for former Edward Jones customers. In addition, defendants paid an estimated \$15 to \$18 million for class notice and settlement administration costs)
- ◆ *In re Peregrine Sys., Inc. Sec. Litig.*, Civil Action No. 02-CV-870 J (RBB) (S.D. Ca.) (recovery of \$117,567,922)
- ◆ *In re American Express Fin. Advisors Sec. Litig.*, 04-CV-1773 (S.D.N.Y.) (recovery of \$100 million in cash and implementation of significant remedial measures. In addition, defendants paid all class notice and settlement administration costs, which is estimated to be \$15 to 18 million)
- ◆ *In re Ikon Office Solutions, Inc. Sec. Litig.*, MDL No. 1318 (E.D. Pa.) (recovery of \$111 million)
- ◆ *In re Salomon Brothers Treasury Litig.*, Consolidated Action No. 91 Civ. 5471 (RPP) (S.D.N.Y. 1994) (recovery of \$100 million)
- ◆ *In re Priceline.com, Inc. Sec. Litig.*, Master File No. 3:00CV01884 (AVC) (D. Conn.) (recovery of \$80 million)
- ◆ *In re Westinghouse Sec. Litig.*, Civil Action No. 91-354 (W.D. Pa.) (recovery of \$67.25 million)
- ◆ *Bachman v. AG Edwards, Inc.*, Cause No. 22052-01266-02 (Mo. Cir. Ct.) (recovery of \$60 million)
- ◆ *In re Thomas & Betts Sec. Litig.*, Case No. 00-2127 (W.D. Tenn.) - related case: *Pifko v. KPMG LLP*, Civ. Action No. 01-CV-2553 (W.D. Tenn.) (recovery of \$51.15 million)
- ◆ *In re Tenneco Inc. Sec. Litig.*, Civ. Action No. H-91-2010 (S.D. Tex.) (recovery of \$50 million)
- ◆ *In re Apria Healthcare Group Sec. Litig.*, Master File No. 797060 (Cal. Super. Ct, Orange Cty) (recovery of \$42 million)
- ◆ *Levitan v. McCoy, Jr.*, Case No. 00 C 5096 (N.D. Ill.) (recovery of \$39.9 million)

- ◆ *In re Cannon Group Sec. Litig.*, 86-5559-WMB (JRx) (C.D. Ca.) (recovery of \$33 million)
- ◆ *Teichler v. DSC Commc'n Corp.*, CA 3-85-2005-T (N.D. Tex.) (recovery of \$30 million)
- ◆ *Berger v. Compaq Computer Corp.*, Civ. Action No. 98-1148 (S.D. Tex.) (recovery of \$28.65 million)
- ◆ *In re: Northeast Utilities Sec. Litig.*, Civil Action No. 397 CV 00189 AVC (D. Ct.) (recovery of \$25 million)
- ◆ *Lasky v. Brown (United Co. Fin. Corp.) Sec. Litig.*, Civil Action No. 99-1035-B-M2 (M.D. La.) (recovery of \$20.5 million)
- ◆ *Lasker v. Kanas* (North Fork Bancorporation), Index No. 103557/06 (NY Sup. Ct.) (recovery of \$20 million and other consideration)
- ◆ *Feinberg v. Hibernia Corp.*, Civil Action No. 90-4245 (E.D. La.) (recovery of \$20 million)
- ◆ *In re Dreyfus Aggressive Growth Mut. Fund Litig.*, Master File No. 98 Civ. 4318 (HB) (S.D.N.Y.) (recovery of \$18.5 million)
- ◆ *In re Rambus, Inc. Sec. Litig.*, Master File No. C-06-4346-JF (N.D. Cal.) (recovery of \$18.33 million)
- ◆ *In re C.R. Bard, Inc. Sec. Litig.*, Master File No. 90-948 (AMW) (D.N.J.) (recovery of \$17.9 million)
- ◆ *Spring v. Cont'l Illinois Corp.*, 84 C 4648 (N.D. Ill. 1987) (recovery of \$17.5 million)
- ◆ *In re Rhythms Sec. Litig.*, Civil Action No. 02-K-35 (GCL) (D. Co.) (recovery of \$17.5 million)
- ◆ *Morse v. Abbott Lab.*, C.A. No. 90 C 1982 (N.D. Ill.) (recovery of approximately \$14 million on a claims-made basis. SS&B served as co-lead trial counsel in representing a class of purchasers of common stock of Abbott Laboratories. On March 15, 1994, the jury returned a verdict in favor of the plaintiff class in the amount of \$15,279,219. The case was settled during the pendency of post-trial motions.)
- ◆ *In re Green Tree Fin. Corp. Stock Litig.*, Master File No. 97-2666 (JRT/RLE) (D. Minn.) (recovery of \$12.45 million)
- ◆ *In re Elscint Sec. Litig.*, Civ. Action No. 85-2662-K (D. Mass.) (recovery of \$12 million)

- ◆ *In re Nat'l Med. Enter. Sec. Litig. II*, Case No. CV 93-5224 TJH (Bx) (C.D. Ca.) (recovery of \$11.65 million)
- ◆ *Bash v. Diagnostic, Inc.*, Civil Action No. 94-784 (D.N.M.) (recovery of \$10.7 million)
- ◆ *In re Cybermedia, Inc. Sec. Litig.*, Master File No. 98-1811CBM (Ex) (C.D. Ca.) (recovery of \$10.5 million)
- ◆ *In re Cabletron Sys., Inc. Sec. Litig.*, C 97-542 (D.R.I.) (recovery of \$10.5 million)
- ◆ *In re Physicians Corp. of Am. Sec. Litig.*, Case No. 97-3678-CIV (S.D. Fla.) (recovery of \$10.2 million)
- ◆ *In re Complete Mgmt. Inc. Sec. Litig.*, Master File No. 99 Civ. 1454 (NRB) (S.D.N.Y.) (recovery of \$10.15 million)
- ◆ *In re U.S.A. Detergent Sec. Litig.*, 97-CV-2459 (D.N.J.) (recovery of \$10 million)
- ◆ *In Re: Biopure Corp. Sec. Litig.*, Docket No. 03-CV-12628 (NG) (D. Mass.) (cash recovery of \$10 million)
- ◆ *In re Nice Sys., Ltd. Sec. Litig.*, Master File No. 2:01 CV 737 (Judge Greenaway) (D.N.J.) (recovery of \$10 million)
- ◆ *Harman v. Lyphomed*, 88 C 476 (N.D. Ill.) (recovery of \$9.99 million)
- ◆ *In re Beverly Enter., Inc. Sec. Litig.*, Master File No. CV 88-01189-RSWL (Tx) (C.D. Ca.) (recovery of \$9.975 million)
- ◆ *Bharucha v. Reuters Holdings PLC*, Case. No. 90-cv-03838 (E.D.N.Y.) (recovery of \$9.5 million)
- ◆ *Greenfield v. Compuserve Corp.*, Case No. 96-CV-06-4810 (Franklin County, Ohio) (recovery of \$9.5 million)
- ◆ *In re Stratosphere Sec. Litig.*, Master File No. CV-S-96-00708-PMP (RLH) (D. Nev.) (recovery of \$9 million)
- ◆ *In re Steven Madden Ltd. Sec. Litig.*, No. 00-CV-3676 (JG) (E.D.N.Y.) (recovery of \$9 million)
- ◆ *In re Gibraltar Fin. Corp. Sec. Litig.*, CV 87-07876 MRP (Gx) (C.D. Ca.) (recovery of \$8.5 million)
- ◆ *In re FHP Sec. Litig.*, Master File No. SACV 91-580-GLT (RWRx) (C.D. Ca.) (recovery of \$8.25 million)

- ◆ *Zucker v. Maxicare Health Plans, Inc.*, Case No. 88-02499-LEW (Tx) (C.D. Ca.) (recovery of \$8.1 million)
- ◆ *In re Orion Pictures Corp. Sec. Litig.*, Master File No. 91 CV 1903 (CBA) (E.D.N.Y.) (recovery of \$8 million)
- ◆ *Berlinsky v. Alcatel*, 94-CIV-9084 CBM (S.D.N.Y.) (recovery of \$8 million)
- ◆ *In re Triton Energy Corp. Sec. Litig.*, Master File No. 3:92-CV-1069-H (N.D. Tex.) (recovery of \$8 million)
- ◆ *Ganesh v. Computer Learning Ctr.*, Civil Action No. 98-CV-00859 (E.D. Va.) (recovery of \$7.5 million)
- ◆ *In re Metris Co., Inc. Sec. Litig.*, Civil Action No. 02-CV-3677 JMR/FLN (D. Minn.) (recovery of \$7.5 million)
- ◆ *In re Cityscape*, CV 97 5668 (E.D.N.Y.) (recovery of \$7 million)
- ◆ *In re Dime Savings Bank of New York Sec. Litig.*, MDL Docket No. 846 (E.D.N.Y.) (recovery of \$6.8 million)
- ◆ *In re Western Digital Sec. Litig.*, SACV 91-375(A) GLT (RWRx) (C.D. Ca.) (recovery of \$6.75 million)
- ◆ *In re Bank of New England Corp. Class Action and S'holder Litig.*, C.A. Nos. 89-2582-S, 89-2811-S (D. Mass.) (recovery of \$6.5 million)
- ◆ *Bobbitt v. Andrew J. Filipowski*, No. 06-11072-PBS (D. Mass.) (recovery of \$6.3 million)
- ◆ *In re Berkshire Realty Co., Inc. S'holder Litig.*, C.A. No. 17242 (Del. Ch.) (recovery of \$6.25 million)
- ◆ *Gerstein v. Micron Tech., Inc.*, Civil No. 89-1262 (D. Id.) (recovery of \$6 million)
- ◆ *In re Ziff-Davis, Inc. Sec. Litig.*, Master File No. 98-CIV-7158 (SWK) (S.D.N.Y.) (recovery of \$6 million)
- ◆ *Dynegy Inc. v. Bernard V. Shapiro*, No. 2002-00080 (129th Judicial District, Harris Cty, TX) (recovery of \$6 million)
- ◆ *In re FleetBoston Fin. Corp. Sec. Litig.*, Civ. No. 02-4561 (WGB) (D.N.J.) (recovery of \$5.5 million)
- ◆ *In re Ascend Commc'n Sec. Litig.*, Case No. 97-9376 MRP (AN) (C.D. Ca.) (recovery of \$5.45 million)



- ◆ *Miller v. Int'l Murex Tech. Corp.*, Civ. No. 93 Civ. 336 (E.D.N.Y.) (recovery of \$5.4 million)
- ◆ *In re Brightpoint, Inc. Sec. Litig.*, Case No. IP 01 1796 C-T/K (recovery of \$5.25 million)
- ◆ *Kushner v. Wang Lab.*, Civil Action No. 89-1963-Y (D. Mass.) (recovery of \$5 million)
- ◆ *In re SouthEast Banking Corp. Sec. Litig.*, Master File No. 90-0760-CIV-MOORE (S.D. Fla.) (recovery of \$5 million)
- ◆ *Wells v. Southmark Corp.*, CA3-85-1518-G (N.D. Tex.) (recovery of \$5 million)
- ◆ *In Re: Interlink Elec. Inc. Sec. Litig.*, 05-CV 08133 (AG) (SH) (C.D. Cal.) (recovery of \$5 million)
- ◆ *Chilton v. Smith Barney Fund Mgmt. LLC*, 1:05-cv-07583-WHP (S.D.N.Y.) (recovery of \$4.95 million)
- ◆ *In re Regeneron Pharma., Inc. Sec. Litig.*, Civil Action No. 03 CV 311 (RWS) (S.D.N.Y.) (recovery of \$4.7 million)
- ◆ *In re Sunglass Hut Intl., Inc. Sec. Litig.*, Case No. 97-0191-CIV-MOORE (S.D. Fl.) (recovery of \$4.5 million)
- ◆ *Clive T. Miller v. Apropos Tech., Inc.*, No. 01 C 8406 (N.D. Ill.) (recovery of \$4.5 million)
- ◆ *In re Fidelity Holdings Sec. Litig.*, Case No. CV 00 5078 (CPS) (VVP) (E.D.N.Y.) (recovery of \$4.45 million)
- ◆ *Adam Burstyn v. Worldwide Xceed Group, Inc.*, Case No. 01 CV 1125 (GEL) (S.D.N.Y.) (recovery of \$4.4 million)
- ◆ *In re NetEase.com Sec. Litig.*, Civil Action No. 01-CV-9405 (RO) (S.D.N.Y.) (recovery of \$4.35 million)
- ◆ *In re Flextronics, Inc. Sec. Litig.*, No. C-03-2102 PJH (N.D. Ca.) (recovery of \$4.25 million)
- ◆ *Schaffer v. Timberland Co.*, 94-634-JD (D.N.H.) (recovery of \$4.2 million)
- ◆ *In re HMO Am. Sec. Litig.*, Civ. No. 92 C 3305 (CPK) (N.D. Ill.) (recovery of \$4 million)
- ◆ *In re Nanophase Tech. Corp. Sec. Litig.*, Case No. 98 C 3450 (N.D. Ill.) (recovery of \$4 million)

- ◆ *In re Quintex Sec. Litig.*, Master File No. CV-89-6182-R (C.D. Ca.) (recovery of \$4 million)
- ◆ *Walsingham v. Biocontrol Tech. Inc.*, Civil Action No. 96-809 (W.D. Pa.) (recovery of \$3.7 million)
- ◆ *In re Irvine Sensors Corp. Sec. Litig.*, Master File No. SA 02-00159 GLT (MLGx) (C.D. Ca.) (recovery of \$3.5 million)
- ◆ *Miller v. Material Sci. Corp.*, Civil Action No. 97-CV-2450 (N.D. Ill.) (recovery of \$3.25 million)
- ◆ *In re iTurf Inc. S'holder Litig.*, Consolidated Civil Action No. 18242 NC (Del. Ch.) (recovery of \$3.25 million)
- ◆ *In re Safety Kleen Rollins S'holder Litig.*, Case No. 3:00-1343-17 (D.S.C.) (recovery of \$3.15 million)
- ◆ *In re Kay Jewelers Sec. Litig.*, Civil Action No. 90-1663A (E.D. Va.) (recovery of \$3 million)
- ◆ *Clarkson v. Greyhound Lines, Inc.*, 96-11329-C (Dist. Ct., Dallas Cty, Tex.) (recovery of \$3 million)
- ◆ *In re TwinLab Corp. Sec. Litig.*, Master File No. 00-CV-6975 (DRH) (E.D.N.Y.) (recovery of \$3 million)
- ◆ *In re Spectrian Corp. Sec. Litig.*, Master File No. C-97-4672-CW (N.D. Ca.) (recovery of \$2.975 million)
- ◆ *In re Arotech Corp. Sec. Litig.*, Master File No. 07-CV-1838 (E.D.N.Y.) (RJD) (VVP) (recovery of \$2.9 million)
- ◆ *In re Mut. Funds Inv. Litig.*, MDL 1586, Case No. 04-MD-15863 (JFM) (D. Md.); *Parthasarathy v. RS Inv. Mgmt., L.P.*, Case No. 04-cv-3798-JFM (D. Md.) (recovery of \$2.83 million)
- ◆ *Moriarty v. Molina*, Case No. 99-0255-CIV-MORENO (S.D. Fla. 2003) (recovery of \$2.8 million)
- ◆ *In re Peritus Software Serv., Inc. Sec. Litig.*, Civ. Action No. 98CV10955 WGY (D. Mass.) (recovery of \$2.8 million)
- ◆ *In re 2TheMart.com, Inc. Sec. Litig.*, Case No. 99-1127 DOC (ANx) (C.D. Ca.) (recovery of \$2.7 million)
- ◆ *McBride v. Vision Twenty-One, Inc.*, Case No. 99-138-CIV-T-25F (M.D. Fl.) (recovery of \$2.5 million)

- ♦ *In re Pharmaprint Inc. Sec. Litig.*, Civ. No. 00-61 (AJL) (D.N.J.) (recovery of \$2.3 million)
- ♦ *In Re: Columbia Entities Litig.*, 04-CV-11704 (D. Mass.) (settled for a reduction in the overall rate charged as advisory fees (i.e., “breakpoints) when a mutual funds advised by the advisers reach certain levels of assets under management, enhanced shareholder communications, and a \$100,000 contribution to research expenses for the benefit of the settling funds).

### **Settled ERISA Cases**

- ♦ *In re AOL Time Warner ERISA Litig.*, Civil Action No. 02 CV 8853 (SWK) (S.D.N.Y.) (recovery of \$100 million in cash to the company’s 401(k) plan in what the court noted was “one of the largest ERISA settlements to date”)
- ♦ *In re Global Crossing Ltd. ERISA Litig.*, Master File No. 02-cv-7453 (GEL) (S.D.N.Y.) (recovery of \$79 million in cash to the company’s 401(k) plan; SS&B served as liaison counsel))
- ♦ *Overby v. Tyco Int’l, Ltd.*, Case No. 02-CV-1357-B (D.N.H.) (recovery of \$70.525 million in cash to the company’s 401(k) plan; over 80 million pages of discovery were produced to counsel and over 250 days of deposition were taken)
- ♦ *In re Lucent Tech., Inc. ERISA Litig.*, Civil Action No. 01-cv-3491 (JAP) (D.N.J.) (recovery of \$69 million in cash and stock to the company’s 401(k) plan)
- ♦ *In re WorldCom, Inc. ERISA Litig.*, Master File No. 02-4816 (DLC) (S.D.N.Y.) (recovery of \$47.15 million in cash to the company’s 401(k) plan; SS&B served as local counsel)
- ♦ *Harrington v. Household Int’l, Inc.*, Civil Action No. 02 C 8257 (SY) (N.D. Ill.) (recovery of \$46.5 million in cash to the company’s 401(k) plan)
- ♦ *Nat’l City Corp. Sec., Derivative & ERISA Litig.*, 1:08-cv-07000-PAG (N.D. Ohio) (recovery of \$43 million in cash to the company’s 401(k) plan)
- ♦ *In re Cardinal Health, Inc. ERISA Litig.*, No. C2-04-643 (ALM) (S.D. Ohio) (recovery of \$40 million in cash to the company’s 401(k) plan)
- ♦ *Zilhaver v. UnitedHealth Group, Inc.*, Case No. 06-cv-2237 (JMR) (D. Minn.) (recovery of \$17 million in cash to the company’s 401(k) plan)
- ♦ *In re Sears, Roebuck & Co. ERISA Litig.*, No. 02 C 8324 (JWD) (N.D. Ill.) (recovery of \$14.5 million in cash to the company’s 401(k) plan)
- ♦ *Kenney v. State St. Corp.*, No. 09-10750-PBS (D. Mass.) (recovery of \$10 million in cash to the company’s 401(k) plan)

- ◆ *Russell v. Conseco Serv., LLC* 1:02-cv-1639-LJM (S. D. Ind.) (recovery of \$9.975 million in cash to the company's 401(k) plan)
- ◆ *In re 2014 Avon Prod., Inc. ERISA Litig.*, 1:14-cv-10083-LGS (S.D.N.Y) (recovery of \$6.25 million in cash to the company's 401(k) plan is pending preliminary approval)
- ◆ *In Re SunTrust Banks, Inc. ERISA Litigation*, Docket No. 1:08-cv-03384-RWS (N.D. Ga. Oct 31, 2008) (recovery of \$4.75 million in cash to the company's 401(k) plan)
- ◆ *In re: Diebold ERISA Litig.*, Case No. 06-cv-00170 (SEL) (N.D. Ohio) (recovery of \$4.5 million in cash to the company's 401(k) plan)
- ◆ *In re Sprint Corp. ERISA Litig.*, Master File No. 2:03-CV-02202-JWL (D. Kan.) (recovery of \$4 million in cash to the company's 401(k) plan, and increased benefits to participants in the company's 401(k) plans including: increased vesting of employee accounts; increased company matching of employer contributions; participant-friendly plan amendments; and improved participant communications)
- ◆ *Walter v. Level 3 Commc'n, Inc.*, 1:09-cv-00658-REB (D. Colo.) (recovery of \$3.2 million in cash to the company's 401(k) plan)
- ◆ *In Re: Wilmington Trust Corp. ERISA Litig.*, 1:11-cv-00101-SD (D. Del.) (recovery of \$3 million in cash to the company's 401(k) plan and recognizing that "SS&B's ERISA litigation experience, particularly litigation appearing similar to the issue at bar, indicates extensive experience and knowledge of applicable law.")
- ◆ *Griffin v. Flagstar Bancorp, Inc.*, 2:10-cv-10610-PDB-MKM (E.D. Mich) (recovery of \$3 million in cash to the company's 401(k) plan, representing 85% of likely recoverable damages, was recognized as "excellent" by the court)
- ◆ *Lipman v. Terex Corp.*, 3:10-cv-00006-RNC (D. Conn.) (recovery of \$2.5 million in cash to the company's 401(k) plan)

SS&B's advocacy in these and other ERISA actions, which have been brought on behalf of 401(k) retirement plan participants and beneficiaries, has also yielded new law in the ERISA field, including the *Lucent* and *Wilmington Trust* opinions cited in the Seminal Cases section above.

### **Settled Consumer Class Action Cases**

- ◆ *Szymczak v. Nissan North Am. Inc.*, 10-cv-07493-VB (S.D.N.Y.) (recovery including cash and direct monetary benefits of over \$14 million on behalf of multi-state nationwide class of car owners of certain Nissan vehicles for damage to vehicles' transmissions caused by leaking radiator fluid)

- ◆ *Lubitz, et al. v. DaimlerChrysler Corp.*, BER-L-4883-04 (NJ Super., Bergen Cty) (recovery valued at \$14.5 million to owners of Jeep Grand Cherokees, model years 1999 through 2004 for defective brake assemblies on behalf of a nationwide settlement class)
- ◆ *In re: The Home Depot, Inc. Data Sec. Breach Litig.*, Case No.: 1:14-md-02583-TWT (N.D. Ga) (SS&B served as a member of the court appointed Consumer Plaintiffs' Steering Committee, recovery of \$13 million to the settlement class and provision for 18 months of Identity Guard® Essentials monitoring services for settlement class members who had information compromised, plus attorneys' fees, costs, and expenses and Home Depot the costs of notifying the class and administering the settlement)
- ◆ *In Re Anthem, Inc. Data Breach Litig.*, Case No. 15-MD-02617-LHK (N.D. Ca.) (SS&B developed unique claims on behalf of current and former federal employees in a massive data breach of health insurer Anthem, Inc. and its multiple state subsidiaries involving theft of Anthem insureds' PHI and PII, including social security numbers and medical records; a proposed settlement between the plaintiffs and Anthem set up a \$115 million settlement fund and required Anthem to enhance its cybersecurity)
- ◆ *Spillman v. Hiko Energy, LLC*, Docket No. 651798/2015 (N.Y. Sup Ct. May 21, 2015) (recovery of \$2.1 million as part of *Chen v. Hiko Energy LLC*, Case No. 7:14-cv-01771 (SDNY))

### **Settled Derivative Cases**

- ◆ *In re Trump Hotels S'holder Derivative Litig.*, 98-Civ-7820 (GEL) (S.D.N.Y.) (recovery of assets for corporation valued at approximately \$10 million)
- ◆ *Esther Sadowsky Testamentary Trust v. Brendsel (Federal Home Loan Mortgage Corp.)*, 05-cv-2596 (S.D.N.Y.) (recovery of approximately \$100 million for the company as well as significant corporate governance measures)
- ◆ *In re Bank of New York Corp. Derivative Litig.*, Index No. 604465/99 (Sup. Ct. NY) (recovery of \$26.5 million for the company and the adoption of significant corporate governance measures)
- ◆ *In re FirstEnergy S'holder Derivative Litig.*, 03-CV-1826 (N.D. Oh.) (recovery of approximately \$25 million for the company and the adoption of significant corporate governance measures)
- ◆ *In re Hewlett-Packard Co. Derivative Litig.*, 1:06-cv-071186 (Cal. Super. Ct., Santa Clara County), 2426-VCN (Del. Ch.) (resulted in numerous widespread and substantial corporate governance changes directed toward HP's code of business ethics and guidelines were implemented as a result of a derivative action stemming from the board of directors' alleged leak of an investigation that

ultimately led to the firing/resignation of various high level officers and directors of HP.)

- ◆ *Molloy v. Boynton*, No. 3:17-cv-01157-TJC-MCR (S.D. FL.) (alleging wrongful demand refusal on behalf of holders of Rayonier, Inc.) (settlement effecting significant corporate governance measures was approved)
- ◆ *In re Emerson S'holder Litig.*, 87-CV-4046 (JBW) (E.D.N.Y.) (recovery of \$7.5 million for the company and the adoption of significant corporate governance measures)
- ◆ *Gallic v. Appelbaum*, 3:06-cv-5523-FLW-TJB (D.N.J.) (recovery for the company of \$1,387,471 as a repayment for backdated stock options received; repricing of stock options worth potentially \$8,113,847; and significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *Hirt v. United States Timberlands Serv. Co., LLC*, C.A. No. 19575 (Del. Ch.) (recovery for the company of \$3.1 million in the form of an offer increase of about 9%, from \$2.75 per partnership unit to \$3.00 per partnership unit)
- ◆ *In re Foundry Networks, Inc. Deriv. Litig.*, 1:06-cv-068878 (Cal. Super. Ct., Santa Clara Cty) (recovery for the company of \$2.1 million, repricing of certain allegedly backdated stock options, and significant corporate governance reforms)
- ◆ *Lasker v. Massengill (In re State Court Western Digital Corp. Deriv. Litig.)*, 06-CC-00159 (Cal. Super. Ct., Orange Cty) (recovery of \$522,680 for the company and significant corporate governance changes designed to strengthen its granting of, and accounting for, stock options)
- ◆ *In re Titan Corp. Derivative Litig.*, GIC 832018 (Cal. Super. Ct., San Diego Cty) (recovery of increased merger consideration from \$22.76 to \$23.10 per share of Titan common stock, a reduction in the termination fee; and, additional disclosures relating to the merger)
- ◆ *Ekas v. Burris (Citrix Sys., Inc.)*, 07-016114-11 (Fla. Cir. Ct., Broward Cty) (resulted in significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *In Re Jabil Circuit Options Backdating Litig.*, 06-CV-01257 (M.D. Fla.) (resulted in significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *Edelstein v. Brodie*, Case No. 3:07-cv-00596-FLW-JJH (D.N.J.) (resulted in significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *Soojian v. Jacobs f/b/o Royal Dutch Petroleum Co.*, No. 04-cv-4160 (D.N.J.) (resulted in the adoption of significant corporate governance changes)

PAUL E. GILLMOR  
5TH DISTRICT, OHIO

COUNTIES: ASHLAND (PART), CRAWFORD,  
DEFIANCE, FULTON, HENRY, HURON, LUCAS (PART),  
MERCER (PART), PAULDING, PUTNAM, SANDUSKY, SENECA,  
VAN WERT, WILLIAMS, WOOD, WYANDOT (PART)

DEPUTY MAJORITY WHIP



Congress of the United States  
House of Representatives

Washington, DC 20515-3505

January 2, 2007

COMMITTEE ON ENERGY AND COMMERCE

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SUBCOMMITTEES:

CAPITAL MARKETS, INSURANCE AND  
GOVERNMENT SPONSORED ENTERPRISES  
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

Via Federal Express and ECF

The Honorable Stanley R. Chesler  
United States District Judge  
Martin Luther King, Jr. Federal Building  
and United States Courthouse  
50 Walnut Street  
Newark, NJ 08608

Re: In re Merck & Co, Inc., Securities, Shareholder Derivative and ERISA Litig.  
(MDL 1658); Case No. 3:05-cv-01151 SRC-MF

Dear Judge Chesler:

I was one of the court appointed lead plaintiffs in *In re Safety-Kleen Rollins Shareholders Litigation*, Civil Action No. 3:00-CV1343-17, which was pending before Judge Joseph Anderson in the District of South Carolina. In that case, which alleged, among other things, violation of the Securities Exchange Act of 1934, I and the other court appointed lead plaintiffs selected Stull, Stull & Brody to be one of the lead counsel for the plaintiffs. That case resulted in a settlement recovery for the class of a very substantial portion of the money that could have been recovered if the case had gone to trial, net of attorneys fees, expenses and administrative fees.

During the course of that litigation, which lasted for about five years, Stull, Stull & Brody kept me apprised of all significant developments in the action such as class certification, settlement negotiations, litigation strategy, pending motions, court rulings and trial preparation. I would regularly speak to counsel by telephone at which time the foregoing topics would typically be discussed and I would have the opportunity to ask questions and provide input.

Respectfully submitted,

Paul E. Gillmor

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