UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFFREY LEONARD, IN HIS CAPACITY AS TRUSTEE OF THE POPLAWSKI 2008 INSURANCE TRUST; PHYLLIS POPLAWSKI; PBR PARTNERS, BRIGHTON TRUSTEES, LLC, on behalf of and as trustee for COOK STREET MASTER TRUST III; BANK OF UTAH, solely as security intermediary for COOK STREET MASTER TRUST III; PEAK TRUST COMPANY, AK, on behalf of and as trustee for SUSAN L. CICIORA TRUST and STEWART WEST INDIES TRUST; and ADVANCE TRUST & LIFE ESCROW SERVICES, LTA, as securities intermediary for LIFE PARTNERS POSITION HOLDER TRUST, on behalf of themselves and all others similarly situated, Plaintiffs, vs. JOHN HANCOCK LIFE INSURANCE COMPANY OF NEW YORK and JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), Defendants.	Civil Action No. 18-cv-04994-AKH

DECLARATION OF SETH ARD IN SUPPORT OF CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND INCENTIVE AWARDS

I, Seth Ard, declare as follows:

1. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Awards, in connection with the proposed class action settlement between Plaintiffs, on behalf of themselves and the proposed class, and Defendants John Hancock Life Insurance Company of New York and John Hancock Life Insurance Company (U.S.A.) (together, "Hancock" or "Defendants").

2. I am a partner in the law firm of Susman Godfrey L.L.P., which is counsel for Plaintiffs. I am a member in good standing of the bar of this Court. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the transcript from the January 5, 2022 conference at which the Court preliminarily approved the settlement in this action.

4. Susman Godfrey has significant experience with insurance litigation and class actions, including cost of insurance ("COI") class actions and settlements thereof. Susman Godfrey has represented numerous classes of policyowners seeking recovery of COI overcharges against insurers, including AXA Equitable Life Insurance Company, Voya Life Insurance Company, and Security Life of Denver Insurance Company. The lawyers working for the Class have substantial experience prosecuting large-scale class actions and life settlement litigation. A copy of the firm's class action profile and the profiles of myself and my fellow Class Counsel, are attached hereto as **Exhibit 2**.

5. On January 22, 2019, the Court appointed Susman Godfrey L.L.P. as Interim Class Counsel ("Class Counsel") pursuant to Rule 23(g)(3). (Dkt. 52.) Susman Godfrey's application (Dkts. 30-32) focused on its experience with class actions and life insurance COI litigation.

6. In May 2018, Hancock announced that it was raising the COI rates for about 1,500 life insurance policies held by policy owners throughout the country. Class Counsel responded promptly by investigating and challenging the rate hike on behalf of the putative class. The complaint was filed on June 5, 2018.

7. Without the benefit of a government investigation, whistleblower, or news exposé, Class Counsel performed the initial factual and legal investigation prior to filing the lawsuit. As part of the pre-filing investigation, Class Counsel, in consultation with industry experts, studied the language of the Hancock policy forms, the trends in actuarial assumptions from the time the policies issued as detailed in Hancock's filings with insurance regulators, such as its improving mortality expectations, and the information Hancock provided about the increase to assess whether the COI increase was permitted by the policies and other applicable laws. This analysis enabled Class Counsel to draft a highly-detailed complaint, which it filed on June 5, 2018.

8. The original complaint alleged several theories of liability, including that the increase was not based on the enumerated factors in the policies, were non-uniform and discriminatory, and that the increases were designed to recoup past losses rather than respond to future expectations. (Dkt. 1.) The complaint discussed surveys of large life insurance companies conducted by the Society of Actuaries (SOA), Hancock's parent company's annual reports, Hancock's statements to regulators, and technical, industry-standard mortality tables, including the 1980 Commissioners Standard Ordinary Mortality Table, the 2001 Commissioners Standard Ordinary Mortality Table, the 1990-95 Basic Mortality Tables published by the SOA. (Dkt. 1.)

9. John Hancock filed its Answer on August 22, 2018. (Dkt. 17.)

10. Class Counsel pushed the case forward by serving 34 document requests within two months of Hancock's Answer. Over the course of 3.5 years of discovery, Class Counsel served 83

requests for production that resulted in nearly 1 million pages of documents, 25 interrogatories, and 298 requests for admission.

11. The approximately 1 million pages of documents produced by Hancock included extensive actuarial tables, policy-level data reflecting the historical credits and deductions to the account value of all Class Members' policies, and thousands of spreadsheets. These documents were carefully reviewed by Class Counsel.

12. Class Counsel purchased a third-party license (and spent nearly $50,000 per year) to access the proprietary software AXIS in order to review and reconstruct Hancock's extremely complex actuarial models. Class Counsel oversaw the training of Plaintiffs' experts on the AXIS system. By starting with first principles and examining John Hancock's models and internal documents from the ground up, Class Counsel alleged that Hancock appeared to have manipulated the mortality assumptions upon which the COI Increase was predicated, as set forth in the Second Amended Complaint.

13. Class Counsel engaged in numerous meet-and-confers with Hancock and concerning deficiencies its productions. Class Counsel filed three motions to compel against Hancock, two of which were granted or granted in substantial part. (Dkts. 81, 99, 149.) Through these motions, Class Counsel successfully obtained key discovery, including (i) custodial documents from high-level John Hancock employees, including communications reporting on conversations had with NYDFS regarding the COI increase (Dkt. 99); (ii) documents resulting from additional search terms run through the custodial files of key fact witnesses (Dkt. 99); and (iii) settlement agreements with certain owners of policies that are not in the Settlement Class hit by the COI Increase (Dkt. 81, Dkt. 93).

14. Per the Court's Individual Rule 2.E, the parties exchanged drafts of thirteen additional joint letters concerning discovery disputes that were never filed with the Court. Class Counsel was able to successfully resolve these disputes, and obtain the discovery needed, without Court intervention.

15. Class Counsel reviewed Hancock's 220-page privilege log and engaged in extensive meet and confer negotiations with respect to Hancock's asserted claims of privilege or work product. Class Counsel negotiated a solution under which, in accordance with Fed. R. Evid. 502(d), Hancock agreed to disclose information in documents over which it previously asserted privilege or work product. Class Counsel challenged 875 documents on Hancock's privilege log, and, under the Rule 502(d) compromise, Hancock produced 792 of those documents in whole or in part.

16. Class Counsel expended time and resources to obtain critical, relevant discovery from third parties. For example, Class Counsel issued eight subpoenas to third parties, including Hancock's reinsurers and the entities that conducted peer reviews of Hancock's COI increase pursuant to Canadian regulations. Plaintiffs obtained thousands of pages of valuable documents from these subpoenas, many of which had not already been produced by Hancock. For example, in response to a subpoena Plaintiffs served on one of Hancock's reinsurer, and after extensive negotiations regarding a privilege log they served, Class Counsel obtained call notes between the legal departments of Hancock and the reinsurer that contained what Class Counsel contends are key admissions regarding the reasons behind the COI increase, which were not produced elsewhere in the litigation

17. Class Counsel engaged in a lengthy dispute to take third-party discovery from Hancock's parent company's auditor, Ernst & Young of Canada (EY Canada). On June 25, 2019,

Class Counsel filed a motion for issuance of letters rogatory. (Dkt. 56, 61.) EY Canada would not willingly produce any documents absent a compulsory discovery process and Hancock argued the scope of the requests were too broad. On July 23, 2019, Class Counsel appeared before the Court to argue in support of the motion for issuance of letters rogatory, and the Court instructed the parties to reach an agreement with EY Canada regarding a procedure to govern the requested discovery. After spending time and effort coming to a resolution on many issues, Class Counsel had to contest Hancock's attempt to limit Plaintiffs' request for a limited number of EY Canada's documents. (Dkt. 71.). The Court ultimately agreed with Plaintiffs (Dkt. 72) and issued a favorable order regarding discovery from EY Canada. (Dkt. 74.) Despite this resolution, Class Counsel had to move again for an order compelling EY Canada to produce thirteen audit workpapers from its 2017 audit of Hancock's actuarial assumptions (Dkt. 177), which the Court ultimately granted. (Dkt. 186.) This dispute ultimately yielded key discovery regarding EY Canada's views of Hancock's actuarial assumptions.

18. Using facts ascertained from this extensive discovery process, Class Counsel drafted and filed an amended complaint on March 6, 2020. (Dkt. 114.) The Amended Complaint further developed Plaintiffs' theories of liability, including the liability theory that alleged that Hancock had manipulated its "current" and "baseline" assumptions to justify the COI increase, allowing it to recoup past losses that it had recognized long ago, in violation of the policies' periodic review provisions. (Dkt. 129.)

19. Hancock issued 174 requests for production, 152 interrogatories, and 1,124 requests for admission.

20. Class Counsel and Plaintiffs worked together to search, review, and produce 232,177 pages of documents and to craft verified interrogatory responses.

21. Class Counsel took and defended 23 highly technical depositions. Representatives of 6 of the 7 Plaintiffs were deposed. All of these depositions were taken virtually during the COVID-19 pandemic, and, therefore, required numerous hours of additional coordination and preparation. Many of these depositions took place over two days.

22. Class Counsel deposed key Hancock employees, including its Head of US Legacy Business, the Chief Actuary for Hancock's parent company, and the Head of Inforce Management for John Hancock's parent company, who formerly served as Chief Actuary for Canadian business and valuation actuary for U.S. insurance business. These depositions often uncovered additional relevant discovery that Hancock had not previously produced. In one, for example, Class Counsel learned that Hancock had not produced documents from its internal folder concerning the construction of a key mortality table, which resulted in the subsequent production of more than a thousand additional, highly relevant spreadsheets.

23. Class Counsel spent hours working with Plaintiffs in preparation and defense of their depositions, many of which were highly technical. As just one example, the 30(b)(6) deposition of Plaintiff Advance Trust & Life Escrow Services ("ATLES") involved complex questions concerning ATLES's valuation and premium optimization of life insurance policies. All Plaintiffs were asked detailed questions by counsel for Hancock about the history of the litigation and the allegations in the case.

24. Class Counsel also prepared and served a 30(b)(6) deposition notice with 40 topics on multiple subparts. Class Counsel spent over 20 hours meeting and conferring over the scope of that deposition.

25. Class Counsel incurred and met significant funding requirements of experts. The out-of-pocket costs for expert analysis were advanced at Class Counsel's own risk and with no

outside litigation funding or assistance. These experts worked closely with Class Counsel to ascertain documents, spreadsheets, and data necessary for class certification and trial.

26. To help prove its case, Class Counsel reconstructed John Hancock's actuarial models. This required spending hundreds of hours reviewing the documents and actuarial tables produced by Hancock and third parties, discussing those documents with experts, and conferring with Hancock about deficiencies in the technical productions it made.

27. Class Counsel devoted significant time preparing expert reports. Under the Scheduling Order that was in place at the time the parties reached the settlement, opening expert reports were due on January 20, 2022.

28. Plaintiffs anticipated moving for class certification in 2022, and Hancock indicated that it anticipated filing motions for summary judgment after resolution of class certification. Class Counsel engaged in 3.5 years of hard-fought discovery with the goal of winning these dispositive motions.

29. I was among the principal negotiators of the class action settlement with Hancock. Following extensive negotiations, the parties signed a memorandum of understanding on October 18, 2021, and the final Settlement Agreement was executed on December 29, 2021.

30. The Settlement Agreement is the result of extended negotiations between the parties with the assistance of an experienced mediator, former Magistrate Judge James Francis. In his declaration submitted in connection with Plaintiffs' motion for preliminary approval, Judge Francis opined that the settlement represents "an excellent result." (Dkt. 201-6 ¶ 8.)

31. On August 26, 2021, Class Counsel met with counsel for Defendant to discuss settlement at an in-person mediation before Judge Francis. The parties prepared for the mediation and submitted detailed position papers in advance, but were unable to reach agreement. However,

the parties continued to negotiate, with Judge Francis's assistance, over the following eight weeks. The parties exchanged numerous offers and counteroffers, submitted detailed briefing to the mediator, and participated in teleconferences and email discussions. On October 18, 2021, the parties signed a memorandum of understanding for a settlement. The parties exchanged multiple drafts of a long-form settlement agreement, which took over two months to agree to, and on December 29, 2021, the parties fully executed a long-form settlement agreement.

32. The terms of the settlement were negotiated after the parties exchanged numerous offers and counteroffers, submitted detailed briefing to the mediator, and participated in teleconferences and email discussions. By the time the settlement was reached, Class Counsel was well informed of material facts and the negotiations were hard-fought and non-collusive.

33. Class Counsel took steps to ensure that it had all the necessary information to advocate for a fair settlement that serves the best interests of the Settlement Class.

34. Class Counsel, with the assistance of its damages expert Robert Mills, analyzed data provided by Hancock and determined that, as a result of Hancock's 2018 COI increase, the class policies paid $134,875,757.07 more in COI charges than they would have had the COI increase not been implemented.

35. The specific terms and conditions of the Settlement are set forth in the Settlement Agreement, which was submitted in connection with Plaintiffs' Motion for Preliminary Approval of the Settlement. (Dkt. 201-4.) The principal terms of the Settlement are the following:

- **CASH**: A cash settlement fund of up to **$123,074,128.32.**
    - This non-reversionary cash fund is equal to ***91.25%*** of all COI overcharges collected by Hancock from the Class Policies through August 31, 2021. A "COI overcharge" refers to the amount a Settlement Class member paid in COI charges in excess of what she would have paid had Hancock not implemented the COI increase that is the subject of this lawsuit (the "Policy Settlement Amount"). The overcharge is a proper measure of damages

because breach of contract damages can be measured by "an amount equal to the difference between the rate charged and the rate that would have been charged" in the absence of the breach. *Gonzales v. Agway Energy Servs., LLC,* No. 5:18-cv-235(MAD)(ATB), 2018 WL 5118509, at *4 (N.D.N.Y. Oct. 22, 2018).

- For any policy that opts out, the cash settlement fund decreases on a *pro rata* basis in proportion to the Policy Settlement Amount for that opting out policy. The proceeds of the settlement will *not* revert to John Hancock, and checks will be mailed directly to class members without having to fill out claim forms.

- **COI RATE FREEZE:** A total and complete freeze on any new COI increase for a period of five years following Final Approval of the Settlement. Thus, even if Hancock has a future change in expectations that would otherwise permit a COI rate increase under the terms of the policies, Hancock will not increase COI rates for 5 years. Policyholders now have the ability to predict, with certainty, what their COI obligations will be for a substantial period of time

- **COI RATE FREEZE MOST-FAVORED-NATION ("MFN") CLAUSE**: If Hancock agrees to a rate freeze that is longer than five years with any owner of an opt-out or excluded policy, then Hancock shall extend the duration of the Class COI Rate Freeze so that it is as long as provided under that agreement.

- **VALIDITY CONFIRMATION:** Agreement not to challenge the validity and enforceability of any eligible policies owned by participating Class Members on the grounds of lack of an insurable interest or misrepresentations in the application for such policies.

36. In my opinion, the cash payment alone adequately compensates the members of the proposed Settlement Class for their damages in view of the risks of litigation. As discussed above, Class Counsel, with the assistance of its damages expert Robert Mills, analyzed data provided by Hancock and determined that, as a result of Hancock's 2018 COI increase, the class policies paid $134,875,757.07 more in COI charges than they would have had the COI increase not been implemented. A cash fund by John Hancock of more than $123 million therefore represents 91.25% of those alleged overcharges through that period.

37. The Settlement represents an especially good result for the proposed Class because, after reducing the settlement fund *pro rata* for opt outs, checks will be mailed automatically to eligible Class Members and none of the cash in the settlement fund will be returned to Hancock.

38. In addition to the cash payment to the Class, the Settlement Agreement states Hancock will provide two non-monetary benefits to the Class: (i) a promise not to raise COI rates for the next 5 years (the "Class Rate Freeze"); and (ii) a promise not to contest a death claim on the grounds that the policy lacks an insurable interest or that the application policy contained misrepresentations (the "Validity Confirmation"). As described in the Report on the Value of the Non-Monetary Benefits Achieved in the Class Action Settlement with John Hancock filed concurrently with Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Awards, assuming no opt outs, a reasonable estimate of the value of the COI Rate Freeze is $55.96 million and a reasonable estimate of the value of the Validity Confirmation is $11.79 million. These non-monetary guarantees provide substantial benefits to the Class that could not have been obtained even if the litigation had been successful.

39. It is the opinion of Class Counsel that the Settlement with Hancock is fair and reasonable, especially in view of the large size of the payment by Hancock, Class Counsel's detailed assessments of the strengths and weaknesses of the claims asserted, the applicable damages, and the likelihood and timing of recovery, if any.

40. The insureds on the Class Policies ranged from the ages of 70 to 100 and averaged nearly 85 at the time of the COI Increase that was the subject of this litigation.

41. Following negotiations for this Settlement, Class Counsel expended time and effort drafting and filing papers in support of preliminary and final approval of this settlement.

42. Susman Godfrey frequently takes high-stakes non-class commercial cases on a contingent fee basis. In cases like this one where the firm is advancing expenses, the firm has a standard contingency agreement, under which it receives 40% of the gross sum recovered by a settlement that is agreed upon, or other resolution that occurs, on or before the 60th day preceding any trial, plus reimbursement of expenses. Sophisticated parties and institutions have agreed to these standard market terms. The requested fee here of 28% of the cash component viewed in isolation or 18% of the value of the gross settlement benefit is *less* than what Susman Godfrey would receive under its standard contingency agreement entered into in a competitive market.

43. The schedule below is a summary reflecting the amount of time spent by the attorneys and professional support staff of Susman Godfrey who were involved in this litigation, and the lodestar calculation using Susman Godfrey's 2022 billing rates or equivalent 2022 billing rates for an attorney or paralegal who left the firm prior to 2022. The following schedule was prepared from daily time records regularly prepared and maintained by Susman Godfrey, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses are excluded and not reflected below.

Attorneys	**Current Rate**	**Hours**	**Value**
Ard, Seth (Partner)	$975	1,031.70	$1,005,907.50
Caforio, Bryan J. (Partner)	$725	659.70	$478,282.50
Healy, Andres (Partner)	$700	456.90	$319,830.00
Kirkpatrick, Ryan C. (Partner)	$900	612.10	$550,890.00
Sargent, Edgar G. (Partner)	$650	86.40	$56,160.00
Sklaver, Steven G. (Partner)	$1,200	666.90	$800,280.00
Bridgman, Glenn (Partner/Associate)[1]	$650	150.70	$97,955.00
Savage, Zach (Partner/Associate)[2]	$650	1,179.80	$766,870.00

[1] Mr. Bridgman was an associate for the vast majority of his time on this case; he was promoted to partner in January 2022.
[2] Mr. Savage was an associate for the vast majority of his time on this case; he was promoted to partner in January 2022.

Franklin, Beatrice (Associate)	$625	21.00	$13,125.00
Gregory, Amy (Associate)	$550	859.50	$472,725.00
Jolly, Richard (Associate)	$625	887.30	$554,562.50
Nath, Rohit (Associate)	$625	20.10	$12,562.50
Reed, Mahogane (Associate)	$525	1,208.70	$634,567.50
Ruben, Ari (Associate)	$625	2,669.90	$1,668,687.50
Adimora, Brenda (Staff Attorney)	$350	196.90	$68,915.00
Davis II, Brandon (Staff Attorney)	$350	1,119.90	$391,965.00
Fenwick, Samantha (Staff Attorney)	$375	1,726.60	$647,475.00
Kaminsky, Alex (Staff Attorney)	$375	54.00	$20,250.00
Paralegals	**Current Rate**	**Hours**	**Value**
Bruton, Rhonda	$325	1,067.40	$346,905.00
Chokshi, Aashka	$275	20.80	$5,720.00
Clements, Charla	$325	12.40	$4,030.00
Polanco, Rodney	$325	12.40	$4,030.00
Santos, Vanessa	$325	105.60	$34,320.00
Totals		**14,826.70**	**$8,956,015.00**

44. The total number of hours expended on this litigation by Susman Godfrey's attorneys, paralegals, and staff is 14,826.70 hours through February 28, 2022. The total lodestar value of Susman Godfrey's professional services, derived by multiplying each professional's hours by his or her current hourly rates, is $8,956,015. All time spent litigating this matter was reasonably necessary and appropriate to prosecute the action, and the results achieved further confirm that the time spent on the case was proportionate to the amounts at stake.

45. The hourly rates for Susman Godfrey's attorneys and professional support staff are the firm's standard hourly rates. The hourly rates of Class Counsel's attorneys range from $375 to $1,200 and the hourly rates of paralegals range from $275 to $325.

46. Unlike many firms on the class action side, Susman Godfrey represents plaintiffs and defendants; when entering into result-based fee deals, Susman Godfrey strives for a substantial return on its investment in time and expenses to compensate for risks and opportunity costs,

including the opportunity to work on hourly billing work that provides a steady income stream. As is common in the industry, Susman Godfrey's contingency percentages are traditionally based on the gross amount recovered and provide for the recoupment of any advanced expenses.

47. As detailed and categorized in the below schedule, Susman Godfrey has advanced a total of $1,427,596.29 in un-reimbursed expenses in connection with the prosecution of this litigation. These expenses were reasonably necessary to the prosecution of this action, and are of the type that Susman Godfrey normally incurs in litigation.

Expense Category	**Cumulative Expenses**
Deposition Expenses/Subpoena Witness Fees	$89,781.38
Document Review Hardware/Hosting	$150,368.84
Expert/Consultants	$1,103,369.77
Filing/Service/Court Reporter Fees/Transcripts/Court Fees	$4,826.08
Mediation	$6,250.00
Photocopies/Reproduction/Messenger Services	$6,493.30
Research/Westlaw	$56,609.13
Travel/Meals/Hotels/Transportation	$9,897.79
Total Expenses	**$1,427,596.29**

48. The amount of Settlement Administration Expenses incurred by Settlement Administrator JND Legal Administration LLC through February 28, 2022 is $90,197.06. Class Counsel seeks permission to reimburse the forgoing Settlement Administration Expenses pursuant to Section 7.4 of the Settlement Agreement, and such additional expenses as may be incurred by the Settlement Administrator.

49. Plaintiffs have generously contributed their time for the benefit of the Class and, in the opinion of Class Counsel, are deserving of the requested service awards and all of the representatives were provided opportunities to review pleadings and motions, reviewed other court

filings, communicated regularly with Class Counsel, and were continuously involved in the litigation and settlement process.

50. In response to Hancock's 174 requests for production, Plaintiffs searched for and produced 232,177 pages of documents. Plaintiffs also verified answers to Hancock's 152 interrogatories.

51. Plaintiffs spent hours preparing for and attending their depositions. Seven individuals (representing six of the seven Named Plaintiffs) were deposed in their personal capacity or as representatives of Plaintiffs: (1) Jeffrey Leonard; (2) Phyllis Poplawski; (3) Stewart Horesji, in connection with Plaintiff Peak Trust Company, AK ("Peak Trust"); (4) Steven Miller, in connection with Plaintiff Peak Trust; (5) Kade Baird, in his personal capacity and as the 30(b)(6) witness for Plaintiff Bank of Utah; (6) Eduardo Espinosa, in his personal capacity and as the 30(b)(6) witness for Plaintiff ATLES; (7) David Louie, the 30(b)(6) witness for BroadRiver Asset Management, L.P. and Plaintiff Brighton Trustees, LLC.[3] Plaintiffs' depositions involved detailed questioning by counsel for Hancock about the history of the litigation, the allegations in the case, and also activities outside of this case, including the deponents' education, employment, and sensitive personal matters. These depositions were taken virtually during the COVID-19 pandemic, which imposed additional burdens on Plaintiffs and additional training for Plaintiffs on how to use the Zoom technology platform specifically for depositions.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: March 11, 2022

/s/ Seth Ard
Seth Ard

[3] Plaintiffs agreed to cross-designate the deposition testimony of BroadRiver Asset Management, L.P. as the Rule 30(b)(6) testimony of Brighton Trustees, LLC.

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VICOF II TRUST, et al.,

Plaintiffs,

v. 19 Civ. 11093 (AKH)
Telephone Conference

JOHN HANCOCK LIFE INSURANCE COMPANY OF NEW YORK,

Defendant.

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New York, N.Y.
January 5, 2022
2:30 p.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

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-and-
FRIED FRANK HARRIS SHRIVER & JACOBSON LLP
BY: MOTTY SHULMAN
-and-
WILMERHALE
BY: ROBERT KINGSLEY SMITH

(The Court and all parties appearing telephonically)

(Case called)

THE COURT: So I have everyone here. This is the agenda I plan to follow.

First, I will discuss the motion for preliminary approval of the class action, and I'll ask after that what is the status of the cases that opted out of the class.

The second item is a review of the several consolidated complaints that we have here, to note their differences and their similarities, and to ask how this case will be tried, whether this should be one consolidated plaintiff or more.

Third, we'll deal with the schedule of experts.

Fourth, we'll resolve the motion to preclude.

Fifth, we'll resolve the motion for sealing.

I think that covers everything. Is there anything I missed?

MR. LA SALLE: Your Honor, this is John La Salle for the defendants.

There is a joint letter from November 29th regarding Wells Fargo's compliance with your Honor's October 14th order.

THE COURT: That has to do with the motion to preclude, does it not?

MR. LA SALLE: No, your Honor. That has to do with Wells Fargo's compliance order to search for documents that

were discussed at the October 13th hearing.

THE COURT: We'll get to that soon.

MR. LA SALLE: Okay. Thank you, your Honor.

THE COURT: All right. We'll start with the class action. Mr. Ard will talk about that.

MR. ARD: Sure, your Honor. I can walk through the Grinnell factors or the more recent 23 factors, if your Honor would like.

THE COURT: Yes.

MR. ARD: Sure. So under the new --

THE COURT: I'm really set out in paragraphs 15 and 16 of your declaration.

MR. ARD: Yes, your Honor, and in our brief, too, on pages -- I can walk through them, but it's on pages 15 to 20. Around there, I think.

THE COURT: Yes.

MR. ARD: So Rule 23, of course, was recently amended, I believe, in 2019. It has a two-part test, but courts have recognized, as we set forth in our brief, that the new 23 test really sort of mirrors a lot of lazy old Grinnell factors.

So first, there is procedural fairness. When there has been a settlement with the assistance of a mediator, there is a strong presumption of procedural fairness. Second Circuit said that under Greynolds v. Richards. It's cited in our brief. And there is a presumption of fairness, reasonableness,

and adequacy in a settlement when there has been a mediator involved.

Here, we conducted mediation in person in front of Judge Francis, JAMS, in Manhattan. And it lasted -- we had in-person mediation over 10 hours or so. And then, for the next two months, we went back and forth and had a long arm's length mediation.

As for adequacy, all class members have the same interests to maximize the recovery for the COI overcharges.

And the next factor in Rule 23 is whether counsel is qualified. And we've been named lead class counsel in several COI class actions, including in SDNY by Judge McMahon, (indiscernible) by Judge Furman, in Voya (ph.) by Judge Castel, and in other cases across the country.

As I discussed, the mediation was arm's length, that's the other factor of Rule 23. So that's procedural fairness, your Honor.

As to substantive fairness, the first factor listed in Rule 23 now is the costs, the risks, and delay of trial and appeal. This litigation was highly complex. It involved actuarial standards, propriety of John Hancock's actuarial assumptions, actuarial modeling. We had to pay $50,000 licensing fee to get the software that was used by John Hancock to do the modeling, required a team of experts to analyze. Judge McMahon recognized in a similar COI case that these sorts

of cases are highly complex and favor settlement.

Delays are the next factor. There are significant delays dealing with trial here. There are COVID delays to begin with. There have been numerous news reports, and we cited some. Your Honor is well aware, more than anybody else, the backlog of cases in SDNY because of COVID. The schedule that was recently proposed by the individual plaintiffs and the defendants, I think has -- summary not even briefed until the end of the year. So there is a good chance of the trial happening until 2023. And class certification would have added months to that timeline.

As to risk, we could walk through a lot of them, but I think the main headline here is the New York Department of Financial Services, which is the toughest insurance regulator in the country, which has nullified several other proposed cost insurance increases by their companies, for example, by Phoenix, by Voya. They set up a formal procedure a couple years ago to vest cost insurance increases, to more stringent requirements than used in the past. And John Hancock was the first, as far as we know, and only company to have gone through that form of procedure and the department did not object to their increase in the end. So this is a tough case.

There are many other risks. I think a lot of this case would come down to expert disputes about actuarial reasonableness and standards, and that's something, at best,

would go to a jury for us, and then it's a question largely which experts the jury trusts and finds most credible.

As to the range of reasonableness, it's an outstanding result, it's 91.25 percent of the overcharges through August of 2021. By comparison, Judge McMahon, in the Phoenix, case cost insurance (indiscernible) said that a settlement with a cash award of 68.5 percent of COI overcharges was, quote, one of the most remunerative settlements this court has ever been asked to approve, and this beats that by over 20 percentage points, an outstanding result to the class.

In addition to that, there is nonmonetary relief that's very significant and which, it's worth emphasizing, could not have been obtained through the litigation. So there is an agreement by John Hancock not to increase rates again in the next five years. That's especially valuable during the pandemic, given skyrocketing mortality rates. There has been an insurance expert in another case, submitted a declaration saying that the pandemic justifies raising COI rates now and there are articles we cited talking about how death benefit claims and mortality rates have been higher, you know, raised more in the last year than anytime in decades. So we're protecting class members against that.

John Hancock also agreed not to challenge policies for any misrepresentations in the policy application or on the ground that there is no insurable interest, something called

STOLI. There has been a wave of litigation by insurance companies in recent years challenging policies for not having insurable interest. We're getting them to agree not to challenge that. Judge McMahon, in the Phoenix case, valued simial relief at $94 million, just the noncash relief that we're getting here. And we'll put an expert report --

THE COURT: I don't understand that point. Could you go over that again.

MR. ARD: Yes, your Honor. It's discussed a little bit in our brief, too, on -- let me see where the cite to it is.

THE COURT: Forget about the cite. Why would the insurance companies not extend insurance?

MR. ARD: Well, so, they may say that you lied in your application. For example, you had HIV, but you didn't disclose it in your application. They are, in certain circumstances, allowed, 20 years later, 10 years later, when you file your death benefit claim, to say, well, we're not going to pay that because you lied in your application.

They also may say that you took out the policy of what's called no insurable interest, which means that you took it out solely for the purpose of selling it to a third-party investor who then is going to pay the premium to get the profits from the policy. A lot of states have banned that. There has been a wave of litigation in the United States in the

last few years where insurance companies are making exactly that claim. They wait until you file a death benefit claim and then they say, oh, wait, thanks for paying us premiums for 15 years, but now we have bad news, we're not going to pay you the amounts because we think the policy is invalid.

The insurance company, John Hancock, we got them to agree not to assert either of those types of challenges to any class policy, which is something that they could not have gotten in litigation. So it's over and above the relief they could have gotten in the case.

As I was trying to explain, Judge McMahon, in the Phoenix case, we got similar relief there, which is part of why we're able to press for it here. In there, we put in an expert report that tried to value that relief, that nonmonetary relief I just mentioned, and she adopted the expert valuation of the COI rate freeze at $61 million and the valuation of the policy validity guarantee at $33 million. That's why we think $94 million relief (indiscernible).

Does that answer your question, your Honor?

THE COURT: Yes, it does. Bottom line, Mr. Ard --

MR. ARD: Yes, your Honor.

THE COURT: -- your expert figures a total damage possibility of about $135 million for the class, and you're severing for 91.25 percent of that amount.

MR. ARD: That's right, your Honor. It's a

$123 million fund with any opt out reduction. So, if somebody opts out --

THE COURT: There would be an adjustment?

MR. ARD: You would adjust it, but every class that stays in would still get the 91.25 percent. So it's pro rata.

THE COURT: There is no regression on that, there is no reverter in that --

MR. ARD: -- no reverter --

THE COURT: -- two distributions, and if there is something left over and it doesn't qualify as a distribution, it doesn't go back to John Hancock?

MR. ARD: It would never go back to John Hancock. That's correct, your Honor. And there is no claim form. The money will be -- and it's cash. It's hard cash. It's not putting credit to the count value. It's hard cash that will be mailed to the addresses that John Hancock has on file. So there will be no claim forms or anything else.

THE COURT: I read the elaborate procedure you have to ensure that there will be a mailing and that there is likely to be an entitled person at the end of that mailing.

MR. ARD: That's right, your Honor.

THE COURT: And you obtained relief in the sense of future relief. There will not be a rate increase to the class.

MR. ARD: Correct, your Honor.

THE COURT: And if anybody gets a better deal, you get

that better deal.

MR. ARD: Exactly, your Honor.

THE COURT: Is there any comment from anyone else? Any opposition?

Well, I approved, preliminarily, the settlement. I think it's an outstanding result. It follows years of intensive and expensive litigation. It's helpful to have a mediator. But in these cases, when you look at the mediation and you look at the substance of the result -- and clearly this is an outstanding result, and it was fought for and opposition was overcome, and it was clearly done at arm's length.

The method of distribution to the class seems to be appropriate and fair. The notice provisions are also appropriate.

One question about that, you wanted first-class mailing. I take that would be a deduction from the recovery.

MR. ARD: Not quite -- well, yes, your Honor. The defendants have agreed to pay $100,000 for publication costs on top of the recovery.

THE COURT: Excellent. In addition to that, you'll set up a web page and spread the outline of the settlement on that.

And third, there will be a summary notice through the newspapers. I wondered if the Wall Street Journal was an appropriate publication, as well, or some magazine for

insurance people, a journal of commerce or something like that.

MR. ARD: Well, we thought -- let's see. We have the New York Times, the USA Today, and Financial Times I believe is what we were proposing.

THE COURT: Yes.

MR. ARD: And our view was that the -- that was the -- I have to speak to a claims administrator with this type of case. That is what they recommended to give us the bang for the buck for the most outreach (technical interruption) to potential class members with the effective amount of costs. So we can certainly add in The Wall Street Journal. That sounds like an excellent idea, your Honor.

THE COURT: Is that a newspaper that's likely to be read by claimants?

MR. ARD: Yes, your Honor. We believe that USA Today and New York Times and Financial Times covers the waterfront, but if your Honor would like us to add in the Wall Street Journal, we're happy to do that.

THE COURT: I'll let it go the way you recommend. I don't insist on that. I just raised the question.

You proposed to appoint a JND company as the settlement neutral, but I'd like to have an individual appointed. I guess it would be Gina Intrepido-Bowden, the officer. But you can have both the institution and the individual. We need to have an individual responsible person.

MR. ARD: Okay.

THE COURT: And I want that specific court appointment. I want an obligation of reporting to the Court at such intervals as the settlement neutral recommends and the Court approves, and the provision that if there are disputes, you'll come to court, you'll come to me.

MR. ARD: Yes, your Honor.

THE COURT: I take it those will be added?

MR. ARD: Yes, your Honor.

THE COURT: I find that the method of notice is appropriate, the class notice is accurate, the methods of reporting are accurate, the provision for distribution to a neutral, who has an impressive reputation of its own and her own, is also appropriate. So I approve that aspect of the settlement.

We need a date for the fairness hearing so I can sign an order. Do you have one to recommend? I tell you what, you'll submit it afterwards and Ms. Tyler, my law clerk, can discuss it with you and you'll give me an order with that date in it. I don't think there are any other blanks.

MR. ARD: Yes, your Honor. And just to be clear, we'll submit a revised proposed order that includes the fact that you want an individual appointed for the settlement administrator and the other terms that you laid out. And in there, we can speak with your clerk first and get a date

proposed for final approval, and we'll put that in the same order.

THE COURT: Thank you.

MR. ARD: Thank you, your Honor.

THE COURT: So that's concluded. Excellent result. Congratulations.

MR. ARD: Thank you, your Honor.

THE COURT: And congratulations to the defendants for having done their part in the negotiations. That would be Mr. Shulman of Fried Frank and Mr. Kingsley Smith of WilmerHale. Is that right?

MR. SHULMAN: Yes. Thank you, your Honor.

THE COURT: Do you have any comments, Mr. Shulman?

MR. SHULMAN: No, I think Mr. Ard laid out the settlement and we appreciate your Honor approving it preliminarily.

THE COURT: Okay. Now, let me ask, with regard to the opt outs, did you enter into this settlement discussion, as well? I guess who would be -- should it be Mr. Fearon who should answer the question?

MR. FEARON: Your Honor, it's Stephen Fearon on behalf of plaintiff Davydov.

No, we weren't part of the settlement discussions. We had filed one of these cases as a class action early on in 2018, and then your Honor appointed the Susman firm to lead the

case, you know, mentioned that we can participate on behalf of our client, so we did.

And then we saw the settlement papers last week and the definition of the settlement class excluded people who otherwise, like Mr. Davydov, would be a class member, but had filed an individual or filed their own action. So the way that the class is defined, we are excluded from the class and we did not participate in the discussions.

THE COURT: Do you wish to participate?

MR. FEARON: Well, the discussions have resulted in settlement. Once we learned about it, I reached out to defense counsel and we've talked a bit and they're supposed to talk some more.

THE COURT: Would Judge Francis be in conflict if he helped you? I don't think so.

MR. FEARON: I don't think so. I think that might make sense if we can't make sufficient headway with defendants in the near future. And I appreciate that suggestion.

THE COURT: I think you should move ahead on this to see if you can settle your aspects of the case, as well. We're going to have an intensive schedule and it may interfere with your ability to have a settlement discussion. So I'm not going to hold you up for settlement discussions.

MR. FEARON: I understand, your Honor.

THE COURT: So whatever way is most sufficient to see

if you can resolve your case along the path of the settlement hammered out by Mr. Ard.

MR. FEARON: I understand, your Honor, and we will do that.

THE COURT: Okay. Now, apart from the Davydov case, we have three other cases, I believe, that are also proceeding. That doesn't work. The issues are likely to be the same and I wonder if anyone will speak to a consolidation of all the private actions.

MR. LEQUANG: Your Honor this is Khai LeQuang, counsel for the plaintiffs in the VICOF case now, consolidated VICOF case.

We have considered the possibility of consolidating these cases, but while the liability side of the cases may be similar, I'm not sure they're even identical because I think there are different claims asserted by different plaintiffs.

THE COURT: They're basically the same issue, that John Hancock raised the premiums when it should not have. It comes down to that.

MR. LEQUANG: Right. Although, I think that some cases involve another aspect of John Hancock's conduct, which is not specifically tied to the rate increase itself, but rather the --

THE COURT: For example.

MR. LEQUANG: Yes. It's very specific to the issuance

of illustrations, which are statements about the performance or anticipated performance of the policies. So I think at least some of the cases have an element of or claim for false illustrations or false or fraudulent illustrations.

THE COURT: You can't have both a recision claim and a damages claim.

MR. LEQUANG: Right. There are, I think, slightly different damages theories and damage issues. So I think there are unique issues for --

THE COURT: I don't understand why that should be so. Basically, to simplify, you are claiming damages on the spread of what should have been the premium increase and what was the premium increase. If you recover those damages, you recover full amount.

MR. LEQUANG: That is one form of the damages that I think is common to all the cases. What has each one been, you know, how much was deducted by John Hancock in light of or as a result of the rate increase would be a common damage theory for all the cases.

But one of the -- at least for our case, the VICOF case, there is the issue of policies that were sold in a no longer owned by the current plaintiff, but that were sold at a lower purchase price as a result of the rate increase. So there is a difference, a market value difference.

THE COURT: The damage is capped by the selling price.

It's a combination of securities frauds. Theoretically, this will come up again with the discovery motions. Theoretically, the issue is, are you entitled to damages if you no longer hold the policy but you sold it at a market price that was less than the price would have been had there been no premium increases that were unlawful.

MR. LEQUANG: That's right.

THE COURT: Same issue.

MR. LEQUANG: It is not a --

THE COURT: Same issue. I'm not going to tolerate separate claims here. We're going to have one trial, just one. I'll recognize that there may be different points to be brought out, but there is going to be one trial counsel covering all the claims, they're all going to be on identical schedules, they'll start the same time, they're going to finish the same time. Is that clear?

MR. LEQUANG: Your desire is clear.

I would like to maybe propose some alternatives that may address the timing issue that your Honor is concerned about or coordination issue, which is simply to avoid any confusion because of the fact that different plaintiffs may present different evidence theories claim, that we at least be given an opportunity to meet and confer about a way to consolidate the liability side of the case, i.e., whether John Hancock breached the policies of improperly raising rates, which could be done

in a single trial, but then having a step -- once that is established, having a second stage of damages or other issues that might remove some of the different issues among plaintiffs that could cause confusion with the jury. I would say we could meet and confer and discuss --

THE COURT: I don't understand. Name one additional issue.

MR. LEQUANG: I think damages are, but the affirmative defenses that John Hancock may assert in each of these cases may be different, and I suspect that they are based on what we've seen. So different --

THE COURT: For example.

MR. LEQUANG: Well, I mean, John Hancock has asserted --

THE COURT: Mr. Vickery, I would like your take on this issue.

MR. VICKERY: Your Honor, may I refer to John La Salle, who is focused on this?

THE COURT: Okay.

MR. LA SALLE: Yes, your Honor. This is John La Salle.

We favor a consolidated trial. We think that that makes the most sense in terms of burden on our client, in terms of witnesses. The parties have agreed to coordinate expert discovery and there will be overlapping experts among the

different matters. So as far as the experts and the fact witnesses, we think that have having a consolidated trial makes a lot of sense.

THE COURT: Do you have different defenses for different plaintiffs?

MR. LA SALLE: The defenses are -- my recollection is that the defenses are pretty uniform across the different cases. I would have to take a look to see if there is anything that jumps out as a particular defense with regard, for example, to Vida's decision to try to seek this damages theory on a theory that their policies were sold at a depressed market rate. That is a unique case that was raised for the first time at the end of fact discovery by a single one of these plaintiffs. So those are some unique issues, but if the preclusion motion plays out the way we think it ought to, I don't think that will be an issue that needs to be tried.

THE COURT: So how should I proceed, Mr. La Salle, if I want to rule that there should be a consolidation of the remaining complaints, one trial counsel with other counsel able to make additional points?

MR. LA SALLE: I think that that makes sense. There is, as Mr. LeQuang identified, a type of illustration claim that is specific to just one of the plaintiffs that we would not want to see duplicated among plaintiffs who have not asserted those claims.

THE COURT: What claim is that?

MR. LA SALLE: That's the illustration claim that LSH has brought.

THE COURT: What does that mean? I'm not familiar with it.

MR. LA SALLE: LSH is one of the plaintiffs that have brought illustration claims. The other plaintiffs have not brought illustration claims.

THE COURT: What's the illustration claim?

MR. GOLDBERG: Your Honor, this is Daniel Goldberg on behalf of LSH.

The New York insurance law has a provision, section 4226, that provides that if an insurer issues misleading illustrations or any other similar types of documents, that there is a statutory remedy of a return of the entirety of all premiums paid on the policy from inception without canceling the policy. So that's the extra claim. In our view, it's a powerful remedy, and I believe everyone is correct that we are the only ones who have asserted that claim.

THE COURT: That doesn't seem to be a claim that will dominate everything else. We can figure out a way to entertain it. Is this a jury case?

MR. GOLDBERG: I believe it is.

THE COURT: We're going to have to figure out a way how to do it.

How do you want to proceed under my ruling that there should be one consolidated complaint with additional issues and one trial counsel?

MR. LEQUANG: Your Honor, this is Khai LeQuang.

I would suggest that the parties meet and confer about what that would look like and how we would proceed under a scenario like that.

THE COURT: When will you submit your proposal?

MR. LEQUANG: I think we could accomplish that within the next two to three weeks.

THE COURT: I will set the next conference date tentatively, January 27th, at 2:30. I would like to hear you worked together as much as possible, but if you can't work together, I'll get joint proposals by both of you in one document noting your separate proposals, submitted by January 24.

MR. GOLDBERG: Your Honor, this is Daniel Goldberg.

I'm confident plaintiffs' counsel will be able to figure out a mechanism to handle a consolidated trial.

I have two slight requests, for which I apologize, only because I am traveling the week of the 17th. If that deadline could be the 25th instead of the 24th, that would just make my life a lot easier.

THE COURT: Yes. Deadline by January 25.

MR. GOLDBERG: Thank you very much, your Honor.

THE COURT: That resolves that aspect.

I have a question. The California lawsuit names as defendant John Hancock Life Insurance Co. USA and not John Hancock Life Insurance Company of New York. How is that going to affect things?

MR. LEQUANG: Your Honor, this is Khai LeQuang for the plaintiffs in the California case that has since been transferred.

I don't think it will impact the cases. We stipulated to transfer the case. There are different defendants. I can't speak to the other cases, but the John Hancock Life Insurance Company USA entity is the issuing entity for all policies outside the State of New York.

This does flag, possibly, another issue for the joint trial. If other plaintiffs -- again, I don't know enough about the other plaintiff cases, but have policies issued in different states, because you do have choice-of-law issues with regard to those states. But the USA entity issued policies in all states except New York, and then the John Hancock Life Insurance Company of New York entity issued policies only in the State of New York.

THE COURT: How many plaintiffs are there?

MR. LEQUANG: There are, among the opt outs here, I believe there are four different groups of plaintiffs and I think five different plaintiffs or six different plaintiffs.

THE COURT: Well, if California is the governing law, it's not likely to be different from New York on this issue. I think probably the same is with other places, as well.

My suggestion to Mr. La Salle is that you work out a stipulation where judgment against any one of these companies will be a judgment against whoever will be the paying agent.

MR. LA SALLE: Your Honor, we'll take that under advisement. I don't think that there is a distinction as far as the different companies. The New York company and the nationwide company issued different policies, but they are represented by the same counsel in these matters.

And to respond to something Mr. LeQuang said, our view is that the -- so there will be choice-of-law issues regardless, because even in most of the matters, there are policies that were issued in several different states. We will have to work out those choice-of-law issues to the extent there is a conflict among them, but it's not --

THE COURT: You have a single breach of contract issue, whether a certain promise was made was common to all, and one of the premiums that were charged in the ensuing years violated that contract. I don't think choice of law is going to be a very important issue. It's to your clients' interest that we find a way to make this an efficient method of trying the case. No one knows how long COVID is going to be around here. We need to have an efficient trial. We need to have a

jury that comes and sits on an efficient trial, is capable of understanding the issues, does understand the issues, and comes out to a just result. The more simplification we can create, the better it will be for everybody.

MR. LA SALLE: Your Honor, I agree with that. And including that, I think there is more than just one express contract claim that's in these cases, and I think that summary judgment will be a good opportunity for the case to be narrowed substantially, if not resolved entirely on the papers. I understand that others may disagree with that, but certainly there are implied -- there are breach of the implied duty claims that arise under different states' laws that have been pled that we think are deficient and that we should be able to substantially narrow the case, if not resolve it altogether at summary judgment.

THE COURT: I think it's too late to narrow pleadings issues. The pleadings will be as they are. It will be attached to create a simplified consolidated complaint, there will be additional issues which we'll deal with, and let's not get defeated by imagining complications that don't need to exist.

All right. So much for that. Next, let's turn to the schedule of experts. I guess this is directed to the plaintiffs, I guess to Mr. LeQuang. Mr. LeQuang, how many experts --

MR. LEQUANG: Yes. Khai LeQuang here. Yes.

THE COURT: How many experts will there be?

MR. LEQUANG: I don't think there will be that many. I think there is a total of three on the plaintiffs' side, no more than five, but I believe it's currently three.

THE COURT: What subjects will they cover?

MR. LEQUANG: There is an auctorial expert evaluating the auctorial or behind the rate increase itself. There will be a regulatory expert who will give opinions about the sort of impact of or meaning of the DFS's input into the rate increase in the New York Department of Financial Services' input into the rate increase, and a damages expert.

THE COURT: Won't that be a question of fact?

MR. LEQUANG: Will what be a question of fact?

THE COURT: The intervention of the Department of Financial Services?

MR. LEQUANG: It will be -- the fact of the DFS's involvement will be. The scope and role of DFS, the function of DFS, and the impact that it has in terms of whether it approved or disapproved or objected or did not object to the rate increase is more of --

THE COURT: I don't see how that's relevant.

MR. LEQUANG: It's relevant because, as Mr. Ard alluded to earlier in the class certification motion, DFS did provide some input into this rate increase, but the role that

it played preceded the implementation of the regulation that Mr. Ard also alluded to, and so there is a question of what role or what impact did DFS -- would it have in issuing any opinions of the rate increase as it did in this case.

THE COURT: I understand the Department of Financial Services regulates ceilings, it will not push up floors. So the decision made to increase the premium, that's a decision that's made by the insurance company subject to the regulatory service saying no. But if they don't say no, there is no impact on the judgment theory. I see this as a digression.

Who's speaking?

MR. GOLDBERG: Sorry to interrupt. This is Daniel Goldberg for the LFH plaintiffs.

We agree this issue is not relevant in our view. The defendant, however, is relying on the DFS purported action. And so I think the idea is that the plaintiffs are offering an expert to counter that.

MR. LA SALLE: Your Honor, this is John La Salle for the defendants.

On this, I'll say we agree with Mr. Ard's characterization of the importance of the fact that New York had no objection to this increase. The reason why it is relevant to the inquiry, your Honor, is New York identified what the statutory requirements are, and the statutory requirements for approval track the claims in the complaint.

So the plaintiffs want to have a trial saying we didn't use reasonable assumptions, as to, for example, investment income, mortality, persistency, expenses, while the New York DFS, which is the hardest regulator to appease in the country, told John Hancock that its regulation requires that changes be based on reasonable assumptions as to those factors and that upon review, the department was satisfied that the proposed changes do not violate any New York State statutes or regulations.

THE COURT: I suppose that the plaintiff will make a motion in limine to include that defense.

MR. GOLDBERG: That's correct, your Honor. Again, this is Daniel Goldberg. DFS does not rule on whether insurer action (technical interruption) does not violate a contract.

THE COURT: So, if you want to waste money on experts, you can, but it doesn't seem to me that there is going to be any relevance to that.

Why rebuttal expert reports? I never allowed them. The reports themselves are not evidence and there is no need to have a resolution of experts' issues in this stage of the case. That's unnecessary. So I would strike number 4.

Are there going to be depositions of experts?

MR. LEQUANG: This is Kyle LeQuang. Yes, your Honor.

MR. LA SALLE: John La Salle. Yes, your Honor.

THE COURT: How do you provide for it in the schedule?

MR. LA SALLE: In between the number 4 and number 5, that the rebuttal reports were due June 2nd and the expert discovery ends July 14th. And the reason we had that period of time there was because I think Mr. LeQuang identified three experts for the plaintiffs. I understand that there is a fourth damages expert for one of the plaintiffs.

THE COURT: You'll have between May 5 and July 14 to do that.

MR. LA SALLE: Okay.

THE COURT: Before there is any dispositive motions made, I want to see you again for a status conference, July 14, at 2:30, then we'll discuss dispositive motions at that time.

I would like to also tentatively schedule trial to begin February 24. I'm taking this is a two-week trial, possibly three weeks?

MR. LEQUANG: I was only going to say subject to our discussions about the order and process for trial, but that does sound accurate as an estimate.

THE COURT: I don't follow you. Who is speaking to me?

MR. LEQUANG: Again, this is Khai LeQuang. I was just agreeing with your trial estimate, but noting that we will have the meeting and conferring about what that trial will look like, that may impact the estimate, but generally agree with you on the trial estimate.

THE COURT: I agree, it's too early.

THE DEPUTY CLERK: Judge, you said February 24 of what year?

THE COURT: 2023.

THE DEPUTY CLERK: That's a Friday.

THE COURT: Pull it up. Let me just see what it is. Thank you, Bridgett. That was very good.

THE DEPUTY CLERK: What are you looking at, the 20th or the 27th?

THE COURT: I'm looking at -- just a minute. I'm looking at February 23.

THE DEPUTY CLERK: That's not on a Monday. I'm confused.

THE COURT: Actually, let's keep February 23 as a date for a final pretrial conference at 2:30 with trial to begin March 6.

That takes care of the scheduling. Now we're up to motions to seal.

Anybody need a break for a couple of minutes?

MR. LA SALLE: This is John La Salle. No, your Honor.

THE COURT: Keep going. Okay. Give me a moment.

Who's proposing the motion to seal?

MR. LEQUANG: Your Honor, this is Kyle LeQuang. I believe this is a motion to seal --

THE COURT: I meant the motion to seal. So it's your

motion?

MR. LEQUANG: I believe it is. I'll let Mr. Krebs answer that. I think he may be able to better answer that.

MR. KREBS: Your Honor, this is Richard Krebs for the plaintiffs.

I believe we have two pending motions to seal that relate to some discrete redaction to sensitive information and purchase of sale agreement.

THE COURT: You go first, Mr. Krebs. What do you want to seal?

MR. KREBS: There is certain information in purchase and sale agreements with nonparties regarding certain financial parameters of the sale --

THE COURT: What exhibit is that?

MR. KREBS: There is, for example -- I'm looking at -- we have two pending motions to seal. There is a December 20th motion. And, for example, Exhibit 1 is one of the purchase and sale agreements where we've highlighted what we're requesting to seal.

THE COURT: And where will I find that?

MR. KREBS: It's docket number --

THE DEPUTY CLERK: Judge, I'm going to send you a separate email. I'm going to send it to you by email right now.

THE COURT: I know you said this before, but where do

I look?

MR. KREBS: Your Honor, this is Richard Krebs. I was referencing docket number 134.

THE COURT: Let me deal with my clerk to find out where it is.

MR. KREBS: Okay.

THE COURT: There is too much paper for me to swallow or understand. So Em, are you on?

THE DEPUTY CLERK: Yes, Judge. I'm working on sending you the email.

THE COURT: Tell me where it was before.

THE DEPUTY CLERK: It was in an email with the exhibit and answer, but I'm putting these in an email for you right now. Judge, it should be coming through to you.

THE COURT: I have the motion of December 20. Em, where do I find the --

THE DEPUTY CLERK: The second one is attached. There is another email that should be somewhere, ECF number 134, if you scroll down.

THE COURT: Which memo do I scroll down? Em, please tell me, what memo did you send to me that has this document?

THE DEPUTY CLERK: I don't know, Judge, at the moment.

THE COURT: Mr. Krebs, I have a listing of exhibits. Will I find it on that?

MR. KREBS: I'm sorry, your Honor. My apologies. Are

you on docket 134?

THE COURT: I'll get to it just a minute. What's the index number?

MR. KREBS: 134.

THE COURT: What index number should I look at?

MR. KREBS: The case number. My apologies. It's 19CV11093.

THE COURT: 11903?

MR. KREBS: 11093.

THE COURT: Okay. I'll get it. I can't get those on mine. This is part of a memo of law in support of the motion to continue sealing.

MR. KREBS: That's correct, your Honor. There is part of it with some discrete names and dollar amounts and agreements. The dollar amounts are as to policies that are not at issue in this case. And these are very competitive transactions. These are transactions that our client, Vida, entered into with nonparties in a very competitive market where there is a lot of deals going on right now.

THE COURT: Are these relevant to the case?

MR. KREBS: The information we're proposing to redact -- the agreements are relevant -- the agreements are relevant because they pertain to Vida's damages claims on the policies they sold, which Mr. LeQuang referenced earlier, policies that they sold for a reduced purchase price. The

information we're proposing to redact relate to dollar amounts for policies that are not at issue in this case, as well as personal identifying information of some of the nonparties to those transactions.

THE COURT: Without objection, motion is granted.

MR. KREBS: Thank you, your Honor.

THE COURT: What's next?

MR. LA SALLE: Your Honor, this is John La Salle.

You mentioned at the beginning of the call the motion by John Hancock to preclude Vida's damages theory --

THE COURT: I want to finish sealing first.

MR. LA SALLE: I'm sorry, your Honor. I thought that the sealing was completed.

THE COURT: There are a lot of motions involved with the sealing, aren't there? Or am I wrong?

MR. KREBS: Your Honor, there is one more that was filed last night, which is docket number 144 in the same index, 19CV11093.

THE COURT: Won't be able to get it. So tell me about the document.

MR. KREBS: Again, it's just -- it's a deposition transcript of a Vida employee and interrogatory responses, and the redactions in these are solely --

THE COURT: One minute, please. One minute, please. Okay.

(Pause)

Keep going. Go ahead.

MR. KREBS: Yes, your Honor. So it's a deposition transcript and interrogatory responses. And again, it's just a few targeted redactions of personal identifying --

THE COURT: Is it the same issue as before?

MR. KREBS: It is the same issue as before. They relate to these same transactions and identifying information of nonparties to those transactions.

THE COURT: Will plaintiff have trouble proving damages because of that?

MR. KREBS: No, your Honor.

THE COURT: Okay. Motion granted.

MR. KREBS: Thank you.

THE COURT: Are there any other motions to seal?

MR. KREBS: Those are the only ones I'm aware of, your Honor, that have not already been entered by the Court.

THE COURT: I find that the interest of sealing outweigh the public interest of disclosure and grant the motion to seal.

We'll now do the motion to preclude. Who's the proponent of the motion?

MR. LA SALLE: John Hancock, your Honor. This is John La Salle.

THE COURT: Okay, Mr. La Salle.

MR. LA SALLE: So the motion to preclude --

THE COURT: Let me get this straight first, some background so I understand the issue. In the issue disclosure, plaintiff has to identify its damage theory, and I understand from this motion that plaintiff failed to identify that part of its damages would be based on policies that were sold. Is that a correct assumption?

MR. LA SALLE: That is correct, your Honor.

THE COURT: So how do these proofs come into the case if --

MR. LEQUANG: Your Honor, I want to confirm, you're only directing these questions to Mr. La Salle at this point, right?

THE COURT: Well, you didn't identify. Who is speaking now?

MR. LEQUANG: This is Khai LeQuang representing the VICOF party.

THE COURT: Mr. LeQuang, why were they not identified in the initial disclosures?

MR. LEQUANG: They were not identified in the initial disclosures because the policies had not yet been sold at that time and that was not a damage theory that Vida was pursuing at the time it made those disclosures because it owned all the policies at that time, and all it was seeking at that time were the types of damages you referred to previously, which is

the --

THE COURT: When were the policies sold?

MR. LEQUANG: They were sold during a period between 2020 and 2021. They were sold not all at the same time, but in various transactions during the last year.

THE COURT: When was it that you notified defendants that these contracts would be part of your damages?

MR. LEQUANG: We notified John Hancock that Vida was evaluating these damages in September or October of this year, 2021, which was soon after some of the more recent sales had closed.

THE COURT: When did you make production?

MR. LEQUANG: I'm sorry. I missed that question.

THE COURT: When did you make production?

MR. LEQUANG: We had produced many of the documents that are relevant to these damages in part because John Hancock was insisting on their production even before we had disclosed these damages.

THE COURT: The question is when.

MR. LEQUANG: Those documents had been produced earlier in 2021, roughly between -- in the summer of 2021. After we had disclosed the damages to John Hancock, we told them that if they needed anything else -- and we recognized that there may be some additional documents that were relevant, we started to produce those and told them if they need anything

else, we would be happy to produce them or happy to accommodate any document requests they had, which they followed up with and we have since produced a number of documents. And even as of the time we filed our opposition to this motion, we believed we had produced everything that would be relevant to those damages, at least from our perspective. And I understand there really remains only one dispute, which really isn't a question of documents relevant to the damages, but a question of whether those documents, in fact, have any relevance to these damages. But as far as everything they have sought, aside from this one category of documents, we have already produced to them.

MR. LA SALLE: Your Honor, if I may, this is John La Salle.

THE COURT: Just a minute. When did you complete production, Mr. LeQuang?

MR. LEQUANG: I believe it was in December of 2021, but Mr. Krebs can correct me if that's not accurate.

THE COURT: Why did you make piece meal production once you gave notice to everything?

MR. LEQUANG: Right. We produced the documents as soon as we could. We did it in a rolling production. So rather than wait until we can collect and gather everything, we had to wait, you know, we just rolled out what we could. I think, in fact, there may have been some discussions about the scope of that production in which, ultimately, rather than

fight those issues, we agreed to produce almost everything John Hancock asked for with exception of this one category of documents.

THE COURT: What is that category?

MR. LEQUANG: It's a set of documents that is -- it's hard for me to even understand or characterize, but documents that reflect when the investors in Vida, which is a fund, might be paid out cash at some point in time. That's the best way I can describe it.

MR. LA SALLE: Your Honor, this is John La Salle. I would like to talk to both the sufficiency of the productions before and after the disclosure of this new theory and that category of outstanding documents, if I may.

THE COURT: Yes, tell me.

MR. LA SALLE: So the claim has been made on this call that many of the documents were produced in the summer of 2021. We were surprised when we saw that statement in the opposition brief and we looked at the documents that had been produced that summer and followed up with counsel for the plaintiffs to say what are these many documents that you're talking about. They identified five emails that don't refer to any actual sales and evaluations from years before the COI increase. The fact is, they produced one redacted purchase and sale agreement in late August on the Friday before their 30(b)(6) deposition. One of the topics at the 30(b)(6) deposition was actual and

potential sales of the policies. Their representative was unprepared to discuss sales, did not, was not aware that sales had been made, and when we then followed up immediately after the deposition, it took six weeks for them to decide whether or not they were going to tell us that they were going to pursue these damages on this newly disclosed theory.

THE COURT: What is the date that they --

MR. LA SALLE: The date they told us was October 25th. The date of the status conference before your Honor, the last time we were before you was October 13th where counsel for Vida told you that they had their numbers set and their theories formulated. So 10 days after that, they tell us about this brand new theory of damages and then they spend the next four weeks, which is the last four weeks of the discovery period, which your Honor said you would not extend in both your October 14th order and at the October 13th hearing, that you would not extend, and all during that four-week period where we, John Hancock, are working extremely hard to finish up the discovery obligations that we have, we are introduced with this brand new theory of damages, brand new set of documents we've never seen before.

Allowing this theory to go forward would require us to reopen depositions that are closed, including the 30(b)(6) deposition, including the deposition, the individual deposition of the 30(b)(6) representative who, at his deposition, told us

he was unprepared to talk about sales. And this is all during a period when fact discovery is closed, closed on November 19th.

MR. LEQUANG: Your Honor, Khai LeQuang. I feel I need to clarify --

THE COURT: No one asked you a question, Mr. LeQuang.

MR. LEQUANG: Sure.

THE COURT: Who is a witness that could tell everything that Mr. La Salle wants to know?

MR. LEQUANG: There is either one or two witnesses, but it would be -- I believe it is somebody we have offered to make available to John Hancock since October, since we disclosed these damages, and we were willing to schedule these depositions already before even today. It was during that period from October to today, but it would be either or both of John Hendrickson or Adam Meltzer is my understanding. I think there is still some internal discussion about who might know the most information or be the most qualified to do that, but we've been ready to provide this deposition since we disclosed these damages, just as we have been ready to produce the documents.

THE COURT: How much do you think it would cost you to do these depositions over?

MR. LA SALLE: I think it would be in the tens of thousands of dollars to prepare for and take the depositions

again. And, your Honor, I just want to be clear, it's not a single --

THE COURT: -- would you be willing to pay $10,000 to open it up?

MR. LEQUANG: Your Honor, I would have to ask my client, but --

THE COURT: You want me to grant the motion to preclude?

MR. LEQUANG: Absolutely. I would say I think they would -- without their input, I think they would be fine to do that rather than preclude, because preclusion is the harshest remedy possible, and if it can be avoided through other means, this would be one of those means.

THE COURT: Mr. LeQuang, I practiced a good long time before I became a judge. I'm well aware of that. The question is, would you rather have a motion to preclude granted or pay $10,000 to open up those two depositions? And they will be done within the next two weeks.

MR. LEQUANG: Your Honor, I will agree to pay the $10,000 to open those two depositions.

THE COURT: All right. Within the next two weeks?

MR. LEQUANG: Yes.

MR. LA SALLE: Your Honor, I have a conflict over the next week, but I'm sure we can find the time that we can set for those depositions to take place. But I just -- this is

John La Salle. I just want to be clear, it's not --

THE COURT: Send them your bill for $10,000 and I don't need to make it an order or anything else.

MR. LA SALLE: Yes, your Honor. I just want to also be clear. The scope of discovery that they're talking about introduces causation issues. It's not a single witness that we need just to talk to Vida. They're saying that our increases affected the costs that they sold these policies at. We need to get testimony from the people who agreed --

THE COURT: That's an expert.

MR. LA SALLE: No, your Honor, I don't believe so because -- and the reason I don't believe so is because if they're saying this is a fair -- an arm's length transaction with a buyer on the market who they said the identity is so sensitive that they don't want it disclosed in public filings on the docket, I need to understand who that buyer is and what elements went into the negotiation for these purchases. The buyers --

THE COURT: You don't need to understand that. It can be done in a flash, it could have been done over time. It has nothing to do with the reasonableness. An expert will determine the reasonableness. You are entitled to the buyer, you are entitled to seek the documents. If the buyer is sensitive, it can be done under a protective order.

MR. LA SALLE: But I'm entitled to get testimony --

THE COURT: You're not entitled -- I'm not going to give you the right to poke around in a buyer to try to figure out why he's paying this price. He paid a price, it's either market or not market. You learn by an expert. That's the rule.

MR. LEQUANG: Thank you, your Honor.

THE COURT: All right. So, are we clear on what's going to happen? Mr. LeQuang, you're going to give him the contract, an actual contract, and memorandums that relate to that contract.

MR. LEQUANG: Understood, your Honor. It's my understanding those documents have already been produced. So we'll make the depositions available as it's so convenient over the next two weeks.

THE COURT: I'd like you to make sure they're produced, and if there is any question, identify the production numbers of what they were.

MR. LEQUANG: Will do.

THE COURT: It boggles my mind that when you two want to prove damages, you're playing hide the ball. It boggles my mind. You act as if the discovery game is a game all to itself. You're very fortunate that I'm ruling this way. You had an obligation to disclose that you're adding to damages at the time you made the first sale and you had the obligation to give full disclosure. I'm allowing because we're not close to

trial, I'm allowing the discovery to go ahead. I don't want anymore games.

Okay. We're finished with that point.

MR. LEQUANG: Thank you, your Honor.

THE COURT: Is there anything else?

MR. LA SALLE: There is the joint letter from November 29th regarding Wells Fargo's compliance regarding your order of October 14th, your Honor.

THE COURT: What's the issue?

MR. LA SALLE: The issue, your Honor -- this is John La Salle for defendants. The issue is that Wells Fargo is seeking to place a limitation on your Honor's order that your Honor has rejected twice. Wells Fargo claims to be a plaintiff in this action as securities intermediary. The parties wrote a joint --

THE COURT: What does that mean, securities intermediary?

MR. LA SALLE: That they act as a directive entity on behalf of the other plaintiffs. For example, Wells Fargo, as securities intermediary, is the owner of the policy in John Hancock's records. They stand in front of John Hancock and standing behind them, in the corners, are the investor plaintiffs in this action. So Wells Fargo is the only party with which we are in privity, we, John Hancock, is in privity. And you have previously told the parties in your September 10th

order that plaintiffs have an obligation to produce responsive documents within their custody and control. See Federal Rule 34, whether held as a fiduciary or in another capacity, but reasonable limitations may be required. That was in your September 10th order. Then the parties submitted further briefing on document requests and you held a hearing, your Honor, on October 13th.

At that hearing, you directed Wells Fargo to produce all documents in its possession that refer to matters alleged in paragraph 62 of the then operative complaint. Counsel at the hearing said, oh, wait a minute, just one thing, that's going to be limited by this capacity limitation, right, and you said no, produce what you have. And you issued a very clear order --

THE COURT: What does paragraph 62 say?

MR. LA SALLE: I can read it into the record. I'll try not to go too quickly. This is paragraph 5 of your order.

THE COURT: Give me the gist of it.

MR. LA SALLE: Sure. It says Wells Fargo shall produce all documents in its possession that refer to the matters alleged in paragraph 62.

THE COURT: What's the gist of 62?

MR. LA SALLE: This is the paragraph where they say that mortality rates have improved in the industry as demonstrated by various industry and mortality tables. And a

report by the society of actuaries --

THE COURT: So the matter is relevant to the question of market rate. These are all --

MR. LA SALLE: It's relevant to -- they've alleged in their complaint that there is no way that John Hancock could have increased cost of insurance rates because mortality is an important factor. Mortality is getting better, see these tables. John Hancock increased the rates, which it shouldn't have done, is their theory.

So it goes to -- I mean, just last night, Wells Fargo, in another matter, submitted an interrogatory response where we asked them for material facts about their contentions and they said look at these improving mortality tables. That's relevant to their claims, right? So you ordered Wells Fargo to produce any documents they have that relate to that topic and you rejected their capacity defense. And in the course of us meeting and conferring about their compliance with the order, we learned that their searches have been limited by the capacity defense. They are not --

THE COURT: I've gotten enough. Mr. Rousseau, what's your position?

MR. ROUSSEAU: Thank you, your Honor. Jule Rousseau. I represent Wells Fargo.

I think all the other plaintiffs' firms do, as well. In my case, Wells Fargo is the only party involved. We did not

name the client or the customers of Wells Fargo.

THE COURT: Who's active on Wells Fargo on this issue?

MR. LEQUANG: This is Khai LeQuang. Let me step in.

I think this is a motion directed at us and Ric Fukushima can address it.

MR. FUKUSHIMA: This is Ric Fukushima for the Wells Fargo securities intermediaries for VICOF and EFG.

I want to clarify, the issue is not as John Hancock or Mr. La Salle described. The issue before you is whether or not Wells Fargo has complied with your October 14th order by conducting a reasonable and diligent search for documents concerning the discrete and narrow allegations in paragraph 62 of the then operative complaint.

While Mr. La Salle had pointed to that portion of your order, what he had failed to highlight to you is that at the October 13th hearing when both Mr. La Salle and I were there and present in your courtroom, as well as your subsequent order the next day, you had denied -- the Court had denied John Hancock's motion to compel Wells Fargo to produce a number of other documents, including Wells Fargo's documents, to the extent they even exist, concerning Wells Fargo's actuarial assumptions concerning Wells Fargo's analysis of mortality, et cetera. You made it very clear at the hearing that John Hancock had no business poking around in what Wells Fargo was doing and that is because you framed the issue that is going to

be tried in this case, and you echoed those sentiments today --

THE COURT: Let me interrupt, Mr. Fukushima. Your complaint makes reference to mortality tables. That opens the door. That opens the door. Respond.

MR. FUKUSHIMA: Your Honor, we did. After your order on October 14th, what we did is Wells Fargo searched through the files that it maintains for the plaintiffs in this case --

THE COURT: No. No. No. No. No. All mortality tables that are involved in this. If it relates to your allegation in 62, you have to give it.

MR. FUKUSHIMA: Your Honor, we did. We conducted a search for those documents and we found zero responsive documents in the files that Wells Fargo maintains for the plaintiffs in this case. These are the plaintiffs that formulated the allegation in this complaint --

THE COURT: You're not listening to me. I didn't limit it to plaintiffs when I just spoke. You made a reference generally to mortality tables as an indication of price and reasonableness of price. You opened the door, give the documents. Do you understand?

MR. FUKUSHIMA: Your Honor, if I may, I just want to --

THE COURT: Do you understand? Do you understand? Give the documents.

MR. LEQUANG: Your Honor, if I may, this is Khai

LeQuang. I just want to address. We have produced those documents. We have produced those tables that are the basis for that very narrow allegation. We also conducted a search for all of the documents that would discuss those tables, but as Wells Fargo was or you or Mr. La Salle was describing the securities intermediary relationship, all that means is that Wells Fargo holds these policies for somebody else.

So in this case, they hold it for the EFG Bank and for the VICOF -- certain of the VICOF entities, but in that capacity and in the role that they make this allegation, it's simply taking the direction from these other entities. Those are the real parties to the --

THE COURT: Wells Fargo, by bringing this lawsuit, is the real party in interest.

MR. LEQUANG: Yes, but --

THE COURT: Tell me what -- that you have to give mortality -- get documents relating to lots of other people?

MR. LEQUANG: Well, we have produced all of the documents that relate to the policies in this case. We have also produced --

THE COURT: Don't repeat yourself. I heard what you said before. It's not in the -- the document demand goes beyond that. I slipped off of this issue because I don't understand it and I still don't understand it very well. But apparently, you were defending the reasonableness of the price

that you got or your beneficial owner got, and you defended it by reference to mortality tables. That gives a reasonable scope for the other side to investigate what you said, what you mean.

MR. LEQUANG: So, just to be clear, this allegation is not about price. This allegation was a plausibility allegation because we asked John Hancock -- when John Hancock raised the rates, they said they raised the rates because mortality had gotten worse. In other words, people were dying earlier.

Now, we then asked John Hancock to give us -- before filing a lawsuit, we asked John Hancock to produce the documents to us that show that people are living shorter, because our understanding, based on all we've seen, is people are living longer. They refused to provide those documents. We actually tried to make a FOIL request to the New York Department of Financial Services to try to get any such documents and they objected to that. So when we filed a complaint, we needed to allege that John Hancock's mortality was not, in fact, worse than it would based on the information they claimed it was based on the information available to us. And the information that was available to us was these publicly available mortality tables. That's why we cited that in that complaint.

Now, since the last status conference, you actually ordered us to remove these plausibility allegations, which we

have now done, and that (technical interruption) resulted in the removal of this paragraph here because the only reason it existed was to show sort of why we believed, at the time we filed this lawsuit, that John Hancock's claim that mortality had gotten so bad that they could nearly double our rates was false.

Now, as you recognized at the last status conference, ultimately, what this case is going to come down to is not what those public mortality tables say — which we have, by the way, produced to John Hancock — it's going to be about what John Hancock's actual mortality experience is. And that's why your Honor made the comment, there is no reason to probe around Wells Fargo, whose only role here is to do what the other plaintiffs tell it to do, to look for things that are not likely to exist, and based on our searches, we have found nothing in that kind. The public mortality tables are the source. If you want to verify whether, in fact, the mortality is worse or better according to the tables and according to our allegation at issue here, you only need to look at the tables.

Now we went beyond that. We didn't just produce the tables, we searched for anything that referred to those tables and for all of the plaintiffs in this case and with respect to Wells Fargo for the only likely source. We're only required to search sources that are reasonably likely to have information. So we searched the files of the plaintiffs in this case. They

produced nothing.

Now, the Sedona conference rules on discovery say you can take what you've learned from your searches, i.e., you found nothing here and conclude there is no reason to search dozens or hundreds of other records to find what you didn't find here for the plaintiffs here.

So all we're saying is we took your order to heart, we did the searches that you asked us, we found nothing, they have what they need in the form of the tables to verify the allegation that we made: Did mortality get worse or better across these tables. You only need to look at the tables for that.

MR. LA SALLE: Your Honor, this is John La Salle.

One of the problems with doing telephonic hearings is I had my and up for a while, but I'm sure you couldn't see it.

We brought a motion to seek compliance with a clear order of yours, and everything that you're hearing right now is a motion for reconsideration of that written order. They have the order. They have cabined their search so that they're looking at documents that they say they've already looked at, and they're trying to say that what their search involved is a reasonable limitation and ignoring the fact that that is the one limitation that this Court has already overruled. When they say that they took your order to heart, what they're saying is that they have applied the same limitation that we

fought about in a joint letter in August that we fought about in letters in September and that we argued before you in October. And when they also say (technical interruption) their plausibility argument --

THE COURT: Let me see if I can cut through this issue. Behind the arguments, it seems to me that the existing request would require an enormous search to find a document of marginal, if any, relevance. I will confess to you, in resolving this discovery dispute, I did not really think there would be issues. I'm not sure I know them now, but I'm willing to give you a reasonable scope of discovery. Can you give me a definition of what you need?

MR. LA SALLE: Yes, your Honor. So we had a meet and confer on the last day of fact discovery --

THE COURT: Don't give me -- excuse me. Don't give me -- what it is you need?

MR. LA SALLE: We need Wells Fargo to do a diligent and reasonable request for documents that are responsive to paragraph 62 that's not limited by their capacity objections. We have confirmed that they did not conduct a single interview of anyone beyond anyone outside --

THE COURT: Without reference to 62, what is it you want them to do?

MR. LA SALLE: Right. So if there is a document that references one of the mortality tables that is referenced in

paragraph 62 and discusses, analyzes, comments, or concludes whether or not mortality has improved or declined, that's a responsive document, and the parties have agreed that that's the scope of what would be responsive. I would ask you to order Wells Fargo --

THE COURT: That's a boundless search.

MR. LA SALLE: No. That's what makes the documents responsive. What makes it limited is who you ask that question to, right? So I would ask you to order Wells Fargo to conduct interviews for people outside of their longevity fund group that are likely to have those documents. We're not Wells Fargo. We've identified, I think, four areas of the bank that fit the bill of people who are likely to have responsive documents. Those are people involved in managing the ownership of portfolios.

THE COURT: That's much too wide and much too intrusive. What's the relevance of these documents?

MR. LA SALLE: They have the allegations in their current complaint that is well known in the industry that since these policies were issued, the performance (indiscernible) policy issued, mortalities improved, not worsened. That's what they say in paragraph 6 of their current complaint. This improvement in mortalities has resulted --

THE COURT: Are the facts within their documents or outside their documents? The proposition is mortality has

improved.

MR. LA SALLE: And they're relying on the tables --

THE COURT: The documents are of no relevance. The issue is, did mortality improve or did it become worse.

MR. LA SALLE: That's subject to an actionable --

THE COURT: Only an expert can deal with that.

MR. LA SALLE: Well, it's subject to actuarial judgment interpretation. I think having put it in two of their complaints and having Wells Fargo be the party that is the plaintiff, we are entitled to understand what their documents say on that topic.

THE COURT: How would it be relevant? Let's suppose the documents say mortality has improved, you wouldn't accept that.

MR. LA SALLE: But if they agree that mortality has not improved, we would certainly accept that. That goes to one of our justifications for adjusting the cost of insurance increase.

THE COURT: Their assumption of whether it's improved or not improved is not relevant.

MR. LA SALLE: So their reliance on industry tables is not relevant. Is that what follows?

THE COURT: The tables are what they are. If there is indicia of a mortality, that's accepted to some degree in the industry. The overall issue is whether the selling prices were

at a market rate or below it. There is nothing in the file that's going to help you with that.

MR. LA SALLE: But if there are --

THE COURT: I don't see the relevance of it and therefore I'm not going to order it. I'm going to deny the motion to preclude.

MR. LA SALLE: Not the motion to preclude, the motion to enforce compliance, your Honor.

THE COURT: Yes. Okay.

MR. LA SALLE: Thank you, your Honor.

THE COURT: Anything else? I apologize for having been uncertain and dragging this out, but the issue is difficult for me.

Okay. So I see you next when?

MR. GOLDBERG: Your Honor, apologies. This is Daniel Goldberg. We have one small housekeeping matter. (Technical interruption) submitted a stipulation as to depositions a while ago, and much of it is now moot, but some of it is not as it deals with the use of depositions at trial and so forth. I don't believe the Court has so ordered the stipulation, at least not in our specific case.

THE COURT: It's premature for me to do that now. I can't really tell. Tell me what you want. Tell me what you want.

MR. GOLDBERG: So the stip addresses the fact that

depositions taken in one of the cases can be used in all of the cases.

THE COURT: Yes. That's for sure.

MR. GOLDBERG: Exactly. It's not controversial. The Court, I believe, has so ordered it in the other cases, just not in ours.

THE COURT: Okay. Anything else?

MR. GOLDBERG: Not from us.

THE COURT: Would you put a stipulation in just for that?

MR. LEQUANG: Of course, your Honor. Yes.

THE COURT: Then I'll sign it. There is no objection, is there?

MR. LA SALLE: No, your Honor. This is John La Salle.

THE COURT: All right. Then we're finished. I hope you're less exhausted as I am.

MR. LEQUANG: Thank you, your Honor.

MR. LA SALLE: Thank you, your Honor.

THE COURT: Now that the class has settled, does it make sense to try to settle all the other cases?

MR. LA SALLE: Your Honor, this is John La Salle. I'm hearing several beeps, indicating that folks have dropped from the line. I'm happy to stay on, obviously.

THE COURT: Well, take it up with your colleagues. There is a lot more expense in the case and you want a

settlement that has laid out some kind of a path in order to pursue. Okay. Thanks very much.

MR. LA SALLE: Who else is on the line right now? Do you know if the plaintiffs are still on?

MR. FEARON: It's Stephen Fearon, hi.

THE COURT: You heard what I said?

MR. FEARON: Yes, I did.

MR. LA SALLE: I relay the message, your Honor. Thank you, your Honor.

THE COURT: Okay. Goodbye.

* * *

EXHIBIT 2

The Susman Godfrey Difference

For forty years, Susman Godfrey has focused its nationally recognized practice on just one thing: high-stakes commercial litigation. We are one of the nation's leading litigation boutique law firms, with offices in Houston, Seattle, Los Angeles and New York. We have a unique perspective, the will to win, and an uncommon structure, which taken together provide the way to win.

The Will to Win

At Susman Godfrey, we want to win because we are stand-up trial attorneys, not discovery litigators. We approach each case as if it is headed for trial. Everything that we do is designed to prepare our attorneys to persuade a jury. When you are represented by Susman Godfrey, the opposing party will know that you are willing to take the case all the way to a verdict if necessary; this fact alone can make a good settlement possible.

Susman Godfrey has a longstanding reputation as one of the premier firms of trial lawyers in the United States. We are often brought in on the eve of trial to "rescue" troubled cases or to take the reins when the case requires trial lawyers with a proven record of courtroom success.

We also want to win because we share the risk with our clients. We prefer to work on a contingency-fee basis so that our time and efforts pay off only when we win. Our interests are aligned with our clients—we want to achieve the best-possible outcome at the lowest possible cost.

Finally, we want to win because each of our attorneys shares a commitment to your success. Each attorney at the firm—associate as well as partner—examines every proposed contingent fee case and has an equal vote on whether or not to accept it. The resulting profit or loss affects the compensation of every attorney at the firm. This model has been a tremendous success for both our attorneys and our clients. In recent years, we have achieved the highest profit-per-partner results in the nation. Our associates have enjoyed performance bonuses equal to their annual salaries. When you win, our attorneys win.

Unique Perspective

Susman Godfrey represents both plaintiffs and defendants. Ours is not a cookie-cutter practice turning out the same case from the same side of the bar time after time. We thrive on variety, flexibility, and creativity. Clients appreciate the insights that our broad experience brings. "I think that's how they keep their tools sharp," says one.

Many companies who have had to defend cases brought by Susman Godfrey on behalf of plaintiffs are so impressed with our work in the courtroom that they hire us themselves next time around—companies like El Paso Corporation, Georgia-Pacific Corporation, Mead Paper, and Nokia Corporation.

We know from experience what motivates both plaintiffs and defendants. This dual perspective informs not just our trial tactics, but also our approach to settlement negotiations and mediation presentations. We are successful in court because we understand our opponent's case as well as our own.

An Uncommon Structure

At Susman Godfrey, our clients hire us to achieve the best possible result in the courtroom at the least possible cost. Because we learned to run our practice on a contingency-fee model where preparation of a case is at our expense, we have developed a very efficient approach to commercial litigation. We proved that big cases do not require big hours. And, because we staff and run all cases using the same model, clients who prefer to hire us by the hour also benefit from our approach.

There is no costly pyramid structure at Susman Godfrey. As a business, we are lean, mean and un-leveraged—with a two-to-one ratio between partners and associates. To counter the structural bloat of our opponents, who often have three associates for each partner, we rely on creativity and efficiency.

Susman Godfrey's experience has taught what is important at trial and what can be safely ignored. We limit document discovery and depositions to the essential. For most depositions and other case-related events we send one attorney and one attorney alone to handle the matter. After three decades of trials, we know what we need—and what is just a waste of time and money.

Unparalleled Talent

Susman Godfrey prides itself on a talent pool as deep as any firm in the country. Clerking for a judge in the federal court system is considered to be the best training for a young trial attorney, 100% of our Associates and over 90% of our Partners served in these highly sought-after clerkships after law school. Ten of our trial lawyers have clerked at the highest level—for Justices of the United States Supreme Court.

Our associates are not document-churning drones. Each associate at Susman Godfrey is expected to second-chair cases in the courtroom from the start. Because we are so confident in their abilities, we consider associates for partnership after seven years with the firm, unless they joined us following a federal judicial clerkship. In that case, we give credit for the clerkship, and the partnership track is generally six years. We pay them top salaries and bonuses, make them privy to the firm's financials, and let them vote—on an equal standing with partners—on virtually all firm decisions.

Each trial attorney at Susman Godfrey is invested in our unique model and stands ready to handle your big-stakes commercial litigation.

A Record of Winning

One of Susman Godfrey's early cases, the Corrugated Container antitrust trial, led to one of the highest antitrust jury verdicts ever obtained. Since that extraordinary start, the firm has remained devoted to helping businesses and individuals achieve similarly extraordinary results.

Recent high-profile victories include:

- Secured a $600 million settlement for residents of Flint, Michigan in the nationally followed Flint Water Crisis litigation.
- Won a $706.2 million unanimous jury verdict for client HouseCanary, in a breach of contract and misappropriation of trade secrets case against Quicken Loans affiliate, Title Source, Inc. The judgement appears at number four on *The National Law Journal*'s "Top 100 Verdicts of the Year" list.
- Won a $25.25 million jury verdict for client, Steven Lamar, in a contract and intellectual property dispute with Dr. Dre and Jimmy Iovine over the iconic Beats headphones — this verdict was also included on *The National Law Journal*'s "Top 100 Verdicts of the Year" list.
- Secured a favorable settlement for Uber in its epic battle against Google's Waymo over self-driving car technology.
- Won a jury verdict valued at $128 million for client General Electric, in its legal battle against the Nebraska Investment Finance Authority.
- Secured a settlement valued at $100 million for a certified class of plaintiffs in a copyright infringement class action against well-known music streaming service, Spotify.
- Recovered $40 million for a class of derivatives investors in a securities class action against Valeant Pharmaceuticals International, Inc. The deal is believed to be the largest recovery ever obtained on behalf of derivative investors in history.
- Won a $50.3 million federal jury verdict for client, Green Mountain Glass, in a patent infringement lawsuit against Ardagh Glass, Inc. This verdict was #34 on *The National Law Journal*'s "Top 100 Verdicts of 2017" list.
- Secured a $91.25 million settlement for insurance policy owners in *37 Besen Parkway, LLC v. John Hancock Life Insurance Company*
- Secured nearly $600 million with various international investment banks on behalf of our plaintiff clients in the ongoing LIBOR antitrust class action. The agreement with these banks represents the resolution of claims by investors that transacted directly with the international banks on the panel to determine US Dollar LIBOR. Just recently the class that Susman Godfrey represents became the first and only class certified by the SDNY.
- Won a $70 million judgement for Wellstat Therapeutics against BTG International, Inc. in a pharmaceutical contract dispute in the Delaware Court of Chancery.

- Secured a settlement valued at $73 million while representing Flo & Eddie (the founding members of 60's music group, The Turtles) along with a class of owners of pre-1972 sound recordings for copyright violations by music provider Sirius XM. Susman Godfrey attorneys on this matter were named "California Lawyer Attorneys of the Year" by *The Daily Journal* for their legal work on this case.
- Won an over $43.2 million federal court jury award in favor of Apache Deepwater LLC and against W&T Offshore in an oil and gas related breach of contract case having to do with deepwater wells in the Gulf of Mexico. This verdict was named by *The National Law Journal* as one of "The Top 100 Verdicts of 2016" and appeared on Texas Lawyer's "Hall of Fame Verdicts" in 2019.
- Secured over $1.2 billion with several international automobile parts suppliers in the In Re Automotive Parts (Auto Parts) price-fixing class action. The multidistrict litigation, pending in the United States District Court for the Eastern District of Michigan, alleges long-running global collusion by auto parts companies to fix prices of automotive component parts.
- Secured as lead counsel in a case that challenged Phoenix Life Insurance Company's and PHL Variable Insurance Company's decision to raise the cost of insurance ("COI") nationwide on life insurance policy owners. The case settled with plaintiffs receiving a $48.5 million cash fund, COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth $9 billion in face value.
- Secured one of the largest settlement awards ever to a single whistleblower in a False Claims Act case—over $450 million from Novartis Pharmaceuticals, who was accused of defrauding Medicare and Medicaid by illegally paying kickbacks to pharmacies so they would recommend Novartis's medications to doctors and patients.
- Secured a $244 million settlement in a federal monopolization and antitrust class action against News Corporation (News Corp) on behalf of a certified class of more than 500 consumer packaged goods companies. The media giant also agreed to change its business practices regarding in-store advertising.

Pro Bono

At Susman Godfrey, we take seriously our obligation as lawyers to use our skills and position in society to make our communities better places to live. Our attorneys are committed to improving both the laws and the legal system by representing or counseling those who cannot afford to pay for legal services. We encourage our attorneys to participate in pro bono opportunities and make firm resources available to ensure our pro bono efforts are meaningful and effective.

We have partnered with various human rights organizations to drive forward significant and timely pro bono litigation. These organizations include, among many, the American Civil Liberties Union (ACLU), the Civil Rights Corps, the Texas Fair Defense Project, the Next

Generation Action Network Legal Advocacy, and the International Rescue Committee. Susman Godfrey has been included on *The National Law Journal*'s "Pro Bono Hot List".

The cases below illustrate the variety and importance of the matters we litigate pro bono.

Constitutional Challenges

- ***O'Donnell v. Harris County.*** For decades, the Harris County Jail held tens of thousands of people who were arrested for misdemeanors but financially unable to post bail. Though arrested for the same minor offense, a person with money could avoid jail entirely while an indigent person would spend days or weeks in jail before determination of merits. Along with Civil Rights Corps and the Texas Fair Defense Project, Susman Godfrey represents on a pro bono basis a class of indigent arrestees who challenged the constitutionality of Harris County's money bail practices. After an 8-day evidentiary hearing, the US District Court found Harris County's system unconstitutional and ordered broad injunctive relief. After the bail reforms went into effect, the US Court of Appeals for the 5th Circuit affirmed the district court's rulings that the system was unconstitutional. In the first year in which the injunctive relief was in effect, more than 12,000 people were released from jail.

Human Rights/Anti-Discrimination

- ***Faculty, Alumni and Students Opposed to Racial Preferences v. New York University Law Review.*** Defended New York University Law Review against allegations that its diversity and inclusiveness initiatives violate federal bias law by favoring female and minority applicants and authors. The Hon. Edgardo Ramos of the Southern District of New York granted the motion filed by Susman Godfrey to dismiss the case.
- ***Texas v. United States of America and the International Rescue Committee.*** Represented the International Rescue Committee (IRC) pro bono when the State of Texas sued to block the federal government and the IRC from resettling any Syrian refugees in Texas. Working with the ACLU and the Southern Poverty Law Center, the team defeated the State's multiple requests for injunctive relief. The federal district court later dismissed all of the State's claims.
- ***Jared Woodfill et al. v. Annise Parker et al.*** Served as lead trial counsel for the City of Houston and won a jury verdict and a final judgment in a closely-watched trial over a challenge to Houston's Equal Rights Ordinance, a law that prohibits discrimination based on an individual's sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity, or pregnancy in city employment and city services, city contracts, public accommodations, private employment (excluding religious organizations), and housing. The City asked Susman Godfrey to represent it pro bono and defend the ordinance. After a two-week trial, the jury issued its verdict resoundingly in the City's favor. After two months of post-verdict briefing, the court issued a final judgment in favor of the City.

- ***International Franchise Ass'n, Inc. et al. v. City of Seattle, et al.*** The City of Seattle retained Susman Godfrey on a partial pro bono basis to defend its landmark $15 per hour minimum wage ordinance. Several Seattle franchise businesses challenged the ordinance on a number of legal grounds, including violation of the Equal Protection Clause and Dormant Commerce Clause of the US Constitution. The district court denied the plaintiff franchise group's motion for a preliminary injunction and found that the plaintiffs had failed to demonstrate a likelihood of succeeding on the merits of any of their claims.

Death Penalty Appeals/Prisoners' Rights

- ***David Daniels et al. v. Dallas County Sheriff Marian Brown.*** Partnered with the American Civil Liberties Union, ACLU of Texas, Civil Rights Corps, and the Next Generation Action Network Legal Advocacy Fund to bring a federal class-action lawsuit for emergency relief to remedy the Dallas County Jail's ongoing failure to manage the extraordinary risks COVID-19 poses to its detainees, staff, and the larger community.
- ***In re: Alfred DeWayne Brown.*** Represented a wrongfully convicted man, Alfred Dewayne Brown, in his now successful quest to obtain an "actual innocence" finding from the Harris County D.A.'s office after nearly a decade on death row for a murder he didn't commit.
- ***Harris v. Fischer.*** Secured an important pro bono appellate victory on behalf of a former Bedford Hills Correctional Facility inmate who alleged her Fourth and Eighth Amendment rights were violated during a body cavity search while she was incarcerated. In its ruling, the US Court of Appeals for the Second Circuit vacated the district court's decision dismissing the case and remanded for further consideration.
- **Death Penalty Appeals.** Has handled several death penalty appeals focusing on the requirement for the State of Texas to release information about the chemicals used to put prisoners to death in order for counsel to protect the rights of their clients not to be subject to cruel and unusual punishment. In one case, the Susman Godfrey team obtained an injunction against execution due to this issue.

Other Significant Pro Bono Work

- ***Alley Theater v. Hanover Insurance Co.*** The Tony Award-winning Alley Theatre, the oldest professional theatre company in Texas and the third-oldest resident theatre in the country, suffered devastating destruction during Hurricane Harvey, incurring millions in losses from property damage, lost income and expenses. Susman Godfrey represented the Theatre pro bono in insurance litigation related to hurricane-caused business interruption. Susman Godfrey first secured a partial summary judgment ruling on behalf of Alley in a coverage lawsuit against Hanover over claims the theatre was not properly reimbursed for hurricane-related business interruption losses. The firm later scored a second victory for the theater when they settled the final piece of the litigation.

- ***First Presbyterian Church of Houston v. Presbytery of the New Covenant, Inc.*** Represented First Presbyterian Church of Houston (FPC), one of the oldest congregations in Houston, in a property dispute against the Presbyterian Church (PCUSA), which claimed for close to 30 years that it has a trust interest in FPC's property in Houston, Texas. The Court ruled in FPC's favor on summary judgment, entering final judgment and a permanent injunction against the Presbytery of the New Covenant and finding that the PCUSA has no interest in FPC's property. After appellate arguments, the parties settled, with the denomination releasing any claim to any interest in FPC's property.
- **Law Center to Prevent Gun Violence.** For years, Susman Godfrey has provided pro bono legal research, consultation, and strategy advice to the Law Center to Prevent Gun Violence regarding measures to regulate the sale and use of firearms.

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Overview

Named one of *Lawdragon's* 500 Leading Lawyers in 2020, a recipient of the California Lawyer Attorneys of the Year award in 2017 and selected as "Top Plaintiff Lawyers in all of California" in 2016 and 2017 by *The Daily Journal;* Steven Sklaver has secured substantial litigation victories for both plaintiffs and defendants. For plaintiffs, Sklaver was lead counsel for a certified class of insurance policy owners, helping them achieve what the Court in the Southern District of New York described as "the best settlement pound for pound for the class that I've ever seen." You can read the Court's statement in full here. You can also read more about the case in The Deal's profile on the litigation here. Sklaver was also lead trial and appellate counsel for investors against an insurance company that resulted in a complete victory and full pay-out of a $20 million life insurance policy. A copy of the appellate court decision is available here. To listen to Sklaver's appellate oral argument, click here. That matter was the feature cover story of the April 2012 California Lawyer.

Sklaver also represents the former members of the legendary rock group The Turtles in ***Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*** (C.D. Cal.) in a certified class action lawsuit against Sirius XM that settled less than 48 hours before the jury trial was scheduled to begin. Sirius XM agreed to pay at least $25.5 million (over $16 million after fees and expenses) and royalties under a 10-year license that is valued up to $62 million (over $41 million after fees and expenses) as compensation for publicly performing without a license Pre-1972 sound recordings. The settlement was approved by the Court, and has received widespread media coverage from publications such as The New York Times, Billboard, The Hollywood Reporter,Law360, Rolling Stone, Variety, Reuters and Managing IP.

Within six months after the Sirius XM class action settled, so did Sklaver's copyright class action brought on behalf of artists owed mechanical royalties for compositions made available by Spotify, the leader in digital music streaming. Spotify agreed to a class action settlement valued at over $112 million (over $95 million after fees and expenses), a settlement for which the district court granted final approval and remains subject to a pending appeal. You can read more about this matter in *Billboard*.

Sklaver's many significant and widely covered class action results in 2016 helped secure Susman Godfrey's recognition as *Law360's* "Class Action Group of the Year" in early 2017. You can read that article announcing the award here.

For defendants, Sklaver has handled numerous employment class actions across the country. He served, along with the Managing Partner of Susman Godfrey, as trial counsel for Wal-Mart, the world's largest retailer, trying a large employment class action in California. He also successfully defended and defeated class certification in numerous, substantial wage and hour matters for Alta-Dena Certified Dairy, LLC, dairy producers for Dean Foods, one of the leading food and beverage companies in the United States. Copies

of the pro-employer decisions are available here, here, and here.

Sklaver has tried complex commercial and class action disputes — including jury trials and bench trials in federal and state court, as well as arbitrations. Sklaver graduated cum laude from Dartmouth College, magna cum laude and Order of the Coif from Northwestern University School of Law, and clerked for Judge David Ebel on the United States Court of Appeals for the Tenth Circuit. Sklaver also won the National Debate Tournament for Dartmouth College, and is just one of four individuals in debate history to win three national championships at the high school and collegiate level. From 2010-2017, Sklaver has been recognized every year as a "Super Lawyer" in Southern California, awarded to no more than the top 5% of the lawyers in the state of California (Law & Politics Magazine, Thomson Reuters).

Sklaver currently serves on the Board of Directors for the Western Center on Law & Poverty, the Los Angeles Metropolitan Debate League, and the Association of Business Trial Lawyers. Sklaver was also selected as the 2016-2017 Ninth Circuit Judicial Conference Lawyer Representative.

Education

- Dartmouth College (B.A., *cum laude*)
- Northwestern University School of Law (J.D., *magna cum laude* and Order of the Coif)

Clerkship

Law Clerk to the Honorable David M. Ebel, United States Court of Appeal for the Tenth Circuit

Honors and Distinctions

- Named one of the 500 Leading Lawyers in America by Lawdragon (2020)
- Recognized for Outstanding Antitrust Litigation Achievement in Private Law Practice by the American Antitrust Institute (2019) for work on *In re: Automotive Parts Antitrust Litigation*.
- Named one of California's Lawyer Attorneys of the Year in 2017 by *The Daily Journal.* Click here for a photo of Sklaver, along with co-counsel, receiving the award.
- Selected as 1 of the 30 Top Plaintiff Lawyers in all of California in 2016 by *The Daily Journal*
- 2010-2018 listings of Southern California "Super Lawyers" awarded to no more than the top 5% of the lawyers in the state of California (Law & Politics Magazine, Thomson Reuters)
- Northwestern Law Review member and editor
- National Debate Tournament (NDT) collegiate championship winner

Articles and Speeches

"Federal Power to Commandeer State Courts: Implications for the Theory of Judicial Federalism," 32 Ind. L. Rev. 71 (1998) (with Martin H. Redish, Professor, Northwestern University School of Law).

Speaking Engagements

- "Compliance Track: Cost of Insurance Litigation Overview" – The 24th Annual Fall Life Settlement and Compliance Conference (Orlando, Florida)
- "Cost of Insurance" – The Life Settlements Conference 2018 (New York City, NY)

- "Cost of Insurance: What Has Been Filed and Decided and What Will Happen Next?" Anticipating Tomorrow – A Symposium on Emerging Legal Issues in Life Insurance. (Philadelphia, PA)
- "Current COI Increases – What's it All About? The Legal Perspective." ReFocus2017 Conference (Las Vegas, NV)
- "Litigation Update: Will the Arthur Kramer Insurable-Interest Decision Lift the Cloud Over Much of the Litigation in the Market?" The 2011 International Life Settlements Conference (London, England)
- "Seeking Interlocutory Appellate Review of Class-Certification Rulings: Tactics, Strategies, and Selected Issues." Bridgeport 10th Annual Class Action Litigation Conference (Los Angeles, CA)
- PwC 2010 Securities Litigation Study Luncheon. (Los Angeles, CA)
- Life Settlement Litigation Update. 2010 Life Settlement Compliance Conference and Legal Round Table (Atlanta, GA)
- "Litigation: What are the Legal Trends Affecting the Market?" The Life Settlements Conference 2010 (Las Vegas, NV)

Professional Associations and Memberships

- United States Supreme Court
- United States Court of Appeals for the Ninth and Tenth Circuits
- United States District Courts for the Central, Southern, Northern, and Eastern Districts of California and District of Colorado
- Admitted to state bars of Illinois, Colorado, and California
- Board of Directors, Los Angeles Metropolitan Debate League
- Board of Directors, Western Center on Law & Poverty

Notable Representations

Class Actions

- ***Copyright Infringement:*** Sklaver serves as co-lead counsel with the Gradstein & Marzano firm representing Flo & Eddie (the founding members of 70's music group, The Turtles) along with a class of owners of pre-1972 sound recordings for copyright violations by music provider Sirius XM. The day before trial was to commence before a California jury in federal court in late 2016, Flo & Eddie reached a landmark settlement with Sirius XM on behalf of the class in a deal potentially worth $99 million. The Court granted final approval of the settlement in May 2017. Click here for more. Sklaver with his co-leads were recently named "California Lawyer Attorneys of the Year" by *The Daily Journal* for their outstanding legal work on this case.
- In May 2017, Sklaver, as co-lead counsel with Gradstein Marzano, secured a deal valued at$112 million to settle a class-action lawsuit with Spotify brought on behalf of music copyright owners. The suit alleged that Spotify made music available online without securing mechanical rights from the tracks' composers. Under the terms of the deal, Spotify will pay songwriters $43.45 million for past royalties, as well as commit to pay ongoing royalties that are valued at $63 million. Read more about the case here and see Billboards coverage of it here.

- ***Insurance***: In a seminal insurance class action filed in the Southern District of New York, resolved in September 2015, Mr. Sklaver served as lead counsel in a case that challenged Phoenix Life Insurance Company's and PHL Variable Insurance Company's decision to raise the cost of insurance ("COI") nationwide on life insurance policy owners. After winning class certification and defeating two motions

for class decertification and a motion for summary judgment, the case settled the day of the final Pretrial Conference — less than two months before trial. Settlement terms included: $48.5 million cash fund ($34 million after fees and expenses), COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth $9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval hearing, the Court concluded, ***"I want to say publicly that I think this is an excellent settlement. I think this is a superb – this may be the best settlement pound for pound for the class that I've ever seen."*** You can read the statement in full on page 3 here. You can also read more about the case in *The Deal's* feature on the matter here.

- ***Antitrust:*** *In In re Automotive Parts Antitrust Litigation.* In the largest price-fixing cartel ever brought to light, Mr. Sklaver and a team of Susman Godfrey lawyers run a massive MDL litigation in which the firm serves as co-lead counsel for a class of consumer plaintiffs in multidistrict price-fixing cases pending in a Detroit, Michigan federal court. The actions, alleging anti-competitive conduct, were brought by indirect purchasers of component parts included in over 20 million automobiles, and involve parts such as wire harnesses, instrument panel clusters, fuel senders, heater control panels and alternators.The Department of Justice has imposed fines exceeding $2.6 billion pursuant to guilty plea agreements with some of the defendants, and its investigation is still ongoing. The Susman Godfrey team together with its co-lead counsel has defeated multiple motions to dismiss. Settlements have been reached with a certain defendants for a combined $620 million thus far. Final settlement (after fees and expenses) has not yet been determined. The case remains ongoing against the remaining defendants.

LIFE SETTLEMENTS

- Represented Jonathan Berck, as Trustee of the Rosamond Janis Insurance Trust in a $5 million rescission claim brought by the Lincoln Life and Annuity Company of New York for alleged violations of New York's insurable interest laws and other "STOLI" (stranger originated life insurance) related claims. RESULT: Summary judgment granted in favor of my client. A copy of the summary judgment order is available here.
- Won reversal in a $20 million life settlement rescission lawsuit against Lincoln Life & Annuity Company of New York. Lincoln's lawsuit was based on allegations that the insurance policies lacked an insurable interest because they were procured by third-parties for investment purposes and because there were net worth and other misrepresentations in the applications. The appellate court ordered that the trial court enter judgment in favor of the trust. The appellate court also affirmed our trial court victory that Lincoln's fraud claim was time barred because the policies were incontestable. The case is Lincoln Life & Annuity Co. of New York v. Jonathan Berck, as Trustee of the Jack Teren Insurance Trust, Court of Appeal Case No. D056373 (Cal. Ct. App. May 17, 2011). A copy of the appellate court decision is available here. To listen to Mr. Sklaver's appellate oral argument, click here. The *Teren* case was the feature, cover story of the April 2012 *California Lawyer*.
- Represents investors, trusts, trustees, brokers, and insureds in life settlement and STOLI litigation across the country against insurance companies seeking to rescind policies with face values worth more than $125 million. Mr. Sklaver is also a frequent speaker and commentator on life settlement and STOLI litigation, in both trade publications and conferences.

FINANCIAL FRAUD

- Represented Royal Standard Minerals, which was the plaintiff in a federal securities lawsuit against a "group" of more than ten dissident shareholders for failing to file Schedule 13-D disclosures. RESULT: Preliminary injunction granted and final judgment entered that, among other things, required for three years the votes of all shares owned by any of the defendants to be voted as directed by the Board of Directors of my client.
- Represented plaintiff who held millions of WorldCom shares as an opt-out to the class in In re WorldCom Securities Litig. RESULT: Settled on confidential terms.

- Represented plaintiff Accredited Home Lenders in a TRO and breach of contract action over a wrongful default declared by Wachovia in a credit re-purchase agreement. RESULT: The case was resolved favorably, following the entry of a TRO.
- Represented Walter Hewlett in his challenge to the Hewlett-Packard/Compaq merger. In preparation for that trial, Mr. Sklaver deposed Compaq's former CEO Michael Capellas about his famous handwritten journal note which, describing the merger, stated "at our course and speed we will fail." Mr. Capellas was right.

EMPLOYMENT

- Represented one of the world's largest retailers in the defense of a four month long jury trial, wage and hour class action pending in California. One of the world's largest retailers appointed Susman Godfrey L.L.P. to be its national trial counsel for wage and hour litigation.

ANTITRUST

- Lead day-to-day lawyer for the class in White, et al. v. NCAA, a certified, antitrust class action alleging that the NCAA violated the federal antitrust laws by restricting amounts of athletic based financial aid. ESPN Magazine coverage of the lawsuit may be found here. RESULT: The NCAA settled and paid an additional $218 million for use by current student-athletes to cover the costs of attending college, paid $10 million to cover educational and professional development expenses for former student-athletes, and enacted new legislation to permit Division I institutions to provide year-round comprehensive health insurance to student-athletes.

ENTERTAINMENT

- Represented NAACP image award winner Morris Taylor "Buddy" Sheffield in his breach of contract lawsuit against ABC Cable Networks Group regarding the creation of Hannah Montana. RESULT: Defendant settled less than four weeks before trial.

PRO BONO

- Appointed to represent Carl Petersen, who was charged by the United States Attorney's Office with being a felon in possession of a firearm — a charge that carries a five-year prison sentence and an 89% conviction rate. RESULT: Acquittal. Jury deliberation lasted less than four hours.Appointed by the United States Court of Appeals for the Tenth Circuit as appellate counsel in five cases, including: United States v. Petersen; United States v. Blaze (specifically noting Mr. Sklaver's "good workmanship"); and Sorrentino v. IRS (appointed as amicus curiae by and for the Court)

SUSMAN GODFREY L.L.P.

Seth Ard

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Overview

Seth Ard, a partner in Susman Godfrey's New York office and a member of the firm's Executive Committee, has secured substantial litigation victories for both plaintiffs and defendants. For plaintiffs, Ard was co-lead counsel for a certified class of insurance policy owners, helping them achieve what the Court in the Southern District of New York described as "the best settlement pound for pound for the class that I've ever seen." For defendants, Ard has obtained take-nothing judgments for NASDAQ and Dorfman Pacific in contract and intellectual property actions seeking tens of millions of dollars. In both 2019 and 2020, Mr. Ard was named one of the country's Leading Plaintiff Financial Lawyers by *Lawdragon*.

Before joining the firm, Mr. Ard clerked for the Honorable Shira A. Scheindlin of the United States District Court for the Southern District of New York, and for the Honorable Rosemary S. Pooler of the United States Court of Appeals for the Second Circuit. Mr. Ard graduated magna cum laude from Harvard Law School and completed his undergraduate work first in his class with a perfect GPA from Michigan State University, with dual degrees in philosophy and French literature. For the past three years, Ard has been recognized as a "Rising Star" in New York by Super Lawyers magazine.

Education

- Michigan State University, first in class, highest honors (B.A., Philosophy & French Literature, 1997)
- Northwestern University (M.A., A.B.D., Philosophy, 2003)
- Harvard Law School, magna cum laude (J.D. 2007)

Clerkship

Law Clerk to the Honorable Shira A. Scheindlin, United States District Court for the Southern District of New York, 2008-2009

Law Clerk to the Honorable Rosemary S. Pooler, United States Court of Appeals for the Second Circuit, 2007-2008

Honors and Distinctions

- Recognized on Lawdragon 500's 2019 list of the country's Leading Plaintiff Financial Lawyers (2019, 2020)

- 2013-2015 listings of Super Lawyers "Rising Stars" in New York (Law & Politics Magazine, Thomson Reuters)
- Teaching and Research Assistant for Professor Arthur Miller (Harvard Law School)
- Teaching Assistant for Professor Jon Hanson (Harvard Law School)
- Editorial Board, Harvard Civil Rights/Civil Liberties Law Review

Professional Associations and Memberships

State of New York

Notable Representations

In re LIBOR-Based Financial Instruments Litigation (SDNY)
Ongoing. Along with Bill Carmody, Marc Seltzer, and Arun Subramanian, Ard serves as co-lead counsel for the class of over-the-counter purchasers of LIBOR-based instruments, directly representing Yale University and the Mayor and City Council of Baltimore as named plaintiffs. We reached a $120 million settlement with Barclays, and pursue claims against the rest of the 16 LIBOR panel banks.

In re Municipal Derivatives Litigation (SDNY)
Ongoing. Along with Bill Carmody and Marc Seltzer, Ard serves as co-lead counsel to a class of municipalities suing 10 large banks and broker for rigging municipal auctions. On behalf of the class and class counsel, Ard argued final approval and fee application motions approving cash settlements in excess of $100 million, as well as several key discovery motions against defendants and the DOJ that paved the way for those settlements.

Fleisher et al. v. Phoenix Life Insurance Company (SDNY)
September 2015. Along with Steven Sklaver and Frances Lewis, Ard served as class counsel in a seminal action challenging 2 cost of insurance increases by Pheonix. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final Pretrial Conference in a settlement valued by the Court at over $140 million. Judge Colleen McMahon praised Susman Godfrey's settlement of the case as "an excellent, excellent result for the class," which "may be the best settlement pound for pound for the class that I've ever seen."

Globus Medical v. Bonutti Skeletal (EDPA)
March 2015. Along with Jacob Buchdahl and Arun Subramanian, Ard represents defendant Bonutti Skeletal in patent litigation brought by Globus Medical. Ard successfully argued a partial motion to dismiss the patent complaint, defeating claims of indirect infringement, vicarious liability and punitive damages.

Sentius v. Microsoft (NDCA)
February 2015. Along with Max Tribble and Vineet Bhatia, Ard represented plaintiff Sentius in a patent infringement suit against Microsoft. A few weeks before trial, Ard successfully argued a Daubert motion that sought to exclude plaintiff's survey expert. The case settled on highly favorable terms within 24 hours of that motion being denied. Previously, Ard had successfully argued an early summary judgment motion and supplemental claim construction, both of which would have gutted plaintiff's claims.

Jefferies v. NASDAQ Arbitration (New York)
January 2013. ***Jefferies & Co. v. NASDAQ.*** – Along with Steve Susman and Steve Morrissey, Ard represented NASDAQ and its affiliate IDCG in an arbitration in New York. The plaintiff, Jefferies & Co., sought tens of millions of dollars in damages based on a claim that it was fraudulently induced to clear interest rate swaps through the IDCG clearinghouse. After a one week arbitration trial in the fall of 2012, at which Ard put on NASDAQ's expert and crossed Jefferies' expert, the Panel issued a decision in January

2013 denying all of Jefferies' claims and awarding no damages. The arbitrators were former Judge Layn Phillips, Judge Vaughn R. Walker, and Judge Abraham D. Sofaer.

GMA v. Dorfman Pacific (SDNY)

November 2012. Along with Bill Carmody and Jacob Buchdahl, Ard obtained a complete defense victory on summary judgment in a trademark infringement dispute before Judge Forrest in SDNY. We were hired after the close of discovery and after our client had suffered significant discovery sanctions that threatened to undermine its defense. We were able to overturn those sanctions, reopen discovery and obtain key admissions during a deposition of Plaintiff's CEO, and win on summary judgment (without argument and based on briefing done by Ard).

Washington Mutual Bankruptcy (Bkrtcy. Del.)

February 2012. Along with Parker Folse, Edgar Sargent, and Justin Nelson, Ard represented the Official Committee of Equity Holders in Washington Mutual, Inc. at two trials contesting $7 billion reorganization plans that would have wiped out shareholders stemming from the largest bank failure in American financial history. Both plans were supported by the debtor and all major creditors. After the first trial, at which Ard put on the Equity Committee's expert and crossed the debtor's expert, the Judge denied the plan of reorganization. The debtors and creditors negotiated a new reorganization plan that again would have wiped out shareholders. After the second trial, at which Ard put on the Equity Committee's expert, crossed the debtor's expert, and conducted a full-day cross examination of hedge fund Appaloosa Management that held over $1 billion in creditor claims and that was accused of insider trading, the Court again denied the plan of reorganization, finding that the Equity Committee stated a viable claim of insider trading against the hedge funds. The Equity Committee then negotiated with the debtor and certain key creditors a resolution that provided shareholders with 95 percent of the post-bankruptcy WaMu plus other assets in a package worth hundreds of millions of dollars – an outstanding result especially given that when we were appointed counsel, the debtor tried to disband the equity committee on the ground that equity was "hopelessly out of the money" without any chance of recovery.

Lincoln Life v. LPC Holdings (Supreme Court Onandaga, New York)

2011. Along with Steven Sklaver and Arun Subramanian, Ard represented an insurance trust in STOLI litigation against an insurance company seeking to rescind a life insurance policy with a face value of $20 million. After Ard argued and won a hotly contested motion to compel in which the Court threatened to revoke the pro hoc license of opposing counsel, Lincoln settled the case on very favorable terms.

SUSMAN GODFREY L.L.P.

Ryan Kirkpatrick

Partner

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Overview

Ryan Kirkpatrick rejoins Susman Godfrey after spending four years as General Counsel and Senior Managing Director of McCourt Global, an alternative asset management firm. In that role, Ryan served as head of the New York office where he oversaw all legal affairs of the firm and its business verticals, including a $1 billion commercial real estate development joint venture, MG Sports & Media (which owns the LA Marathon and co-owns Global Champions Tour and Global Champions League), and MG Capital (owner of a private direct lender and registered investment adviser).

Ryan's experience at McCourt equipped him with a deep understanding of how to successfully manage and direct a wide variety of multi-national legal matters. Ryan obtained or negotiated billions of dollars in judgments, settlements, and transactions while at McCourt. Working on both the plaintiff and defense sides, Ryan also developed a deep understanding of and how to successfully leverage litigation (and the threat of it) to accomplish financial and business objectives while at the same time managing and mitigating the financial and operational costs of litigation to a business. For example, while serving as director of Global Champions League, Ryan initiated an EU competition law action against Fédération Equestre International, the international governing body for equestrian sports. After obtaining a landmark preliminary injunction that was upheld by the Brussels Court of Appeals—and has implications for all international sports federations—Ryan helped negotiate a highly favorable settlement with the FEI. As of 2017, Global Champions League has now sold/licensed 18 team franchises and holds 15 events around the world. This use of EU competition law to effect worldwide relief for a client was reminiscent of one of Ryan's first cases at Susman Godfrey, where he and Steve Susman guided start-up mainframe manufacturer Platform Solutions, Inc. to a $200 million buy-out by IBM following years of contentious of antitrust, patent infringement, and copyright infringement proceedings in both the Southern District of New York and the European Commission.

Ryan was first elected to the Susman Godfrey partnership in 2011. At the time, he was representing Frank McCourt and the Los Angeles Dodgers in connection with Mr. McCourt's highly-publicized divorce and the team's bankruptcy. This three-year representation culminated in a favorable settlement of the divorce, the sale of the Dodgers to Guggenheim Partners for $2.15 billion—the highest amount ever paid for a professional sports franchise—and the formation of a $550 million joint venture with affiliates of Guggenheim Partners. Ryan has been interviewed and quoted by numerous media outlets regarding the case, including the Wall Street Journal, Bloomberg News, the Los Angeles Time, ESPN, the National Law Journal, the Associated Press, KABC, and KTLA. Shortly following the sale, Mr. McCourt asked Ryan to help lead McCourt Global.

Prior to his time at Susman Godfrey, Kirkpatrick clerked for the Hon. Ruggero J. Aldisert of the US Court of Appeals for the Third Circuit.

Education

- Yale University (B.A., Political Science, 2001)
- University of California, Los Angeles (J.D., Order of the Coif, 2005)

Clerkship

- Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit (2005-2006)

Notable Representations

During his previous tenure at Susman Godfrey, Kirkpatrick led numerous successful litigation matters in a variety of legal areas including intellectual property, insurance, securities, antitrust and class actions. For example,

- Successfully represented various hedge funds investing in "stranger-owned life insurance," including obtaining complete defense victory for a hedge fund in a case in which an insurer sued to rescind a $20 million life insurance policy for alleged fraud and lack of an insurable interest, and initiating a class action against an insurer relating to cost of insurance increases that resulted in a settlement valued at $134 million.

- Obtained a $45 million damages judgment on behalf of Masimo Corporation in an antitrust case against Tyco Healthcare involving pulse oximetry products, which judgment was upheld by the Ninth Circuit on appeal, with the client receiving a net recovery of approximately $27 million.

- Defeated class certification of a putative wage and hour class action brought against a subsidiary of Dean Foods.

- Obtained a $16.5 million settlement for a group of investors in Seattle-based Dendreon Corporation in a case alleging securities fraud and insider trading, with the class receiving approximately $12 million.

- Guided start-up mainframe manufacturer Platform Solutions, Inc. to a $200 million buy-out by IBM following years of contentious of antitrust, patent infringement, and copyright infringement proceedings in both the Southern District of New York and the European Commission.

- Represented Frank McCourt and the Los Angeles Dodgers in connection with Mr. McCourt's highly-publicized divorce and the team's bankruptcy. This three-year representation culminated in a favorable settlement of the divorce, the sale of the Dodgers to Guggenheim Partners for $2.15 billion—the highest amount ever paid for a professional sports franchise—and the formation of a $550 million joint venture with affiliates of Guggenheim Partners.

Articles

"Rat Race: Insider Advice on Landing Judicial Clerkships," 110 *Penn. St. L. Rev.*835 (2006) (co-authored with the Honorable Ruggero J. Aldisert and James R. Stevens, III)

Professional Associations and Memberships

- State Bar of New York
- State Bar of California
- District of Columbia Bar
- United States District Court for the Central District of California
- United States District Court for the Northern District of California
- United States Court of Appeals for the Seventh Circuit
- United States District Court for the Eastern District of Texas

SUSMAN GODFREY L.L.P.

Zach Savage

Partner

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Overview

A former law clerk on the Supreme Court of the United States, Zach Savage is a trial and appellate lawyer who represents clients around the world in complex business disputes. Zach is experienced in a broad array of litigation areas including breach of contract, oil and gas disputes, intellectual property, and insurance litigation. His clients range from industry leaders such as General Electric and Walmart to smaller businesses and individuals in the financial, technology, and media sectors.

Results

- ***GE v. Nebraska Investment Finance Authority* (S.D.N.Y.)** Won breach-of-contract jury verdict for General Electric, obtaining relief valued at over $100 million. The suit, against the Nebraska Investment Finance Authority, concerned above-market interest payments under the parties' investment contracts. The verdict was affirmed on appeal by the Second Circuit. *See GE Funding Capital Markets Services, Inc. v. Nebraska Investment Finance Authority*, 767 Fed. App'x 110 (2d Cir. 2019).
- ***Leonard v. John Hancock* (S.D.N.Y)** Secured preliminary approval of a $123 million settlement on behalf of a class of life insurance policyholders in breach-of-contract suit against John Hancock who challenged its increases to cost-of-insurance charges. Zach spoke to *Law360* about the win in its coverage of the case (subscription required).
- ***Avi Dorfman v. Compass* (New York Supreme Court, New York County)** Represented Avi Dorfman in a co-founder dispute against real estate brokerage Compass. After seven years of litigation, the parties settled on confidential terms, with Compass acknowledging Dorfman's role as a founding team member.
- ***Innovius v. Sharp Corporation* (Texas State Court, Dallas County)** Represented patent licensing business, Innovius, in a lawsuit against Sharp Corporation concerning the breach of a multi-million dollar patent licensing agreement. The parties settled on confidential terms.

Background

Zach joined Susman Godfrey in 2015 and, after clerking for Justice Elena Kagan on the United States Supreme Court in 2018, returned to the firm in 2019. He formerly served as Managing Editor of the *NYU Law Review.*

Education

New York University School of Law (J.D., *magna cum laude*, 2013)
Princeton University (A.B., *summa cum laude*, 2008)

Clerkship

Law Clerk to the Honorable Elena Kagan, Supreme Court of the United States
Law Clerk to the Honorable Anthony J. Scirica, United States Court of Appeals for the Third Circuit
Law Clerk to the Honorable Jesse M. Furman, United States District Court for the Southern District of New York

Notable Representations

Business Disputes

- **Confidential investment fund arbitration.** Represented individual against former investment fund employer in confidential arbitration concerning multi-million dollar partnership dispute.
- ***Synergy Global Outsourcing LLC v. Hinduja Global Solutions, Inc*.** Defending U.S. subsidiary of publicly traded Indian company, Hinduja Global Solutions, Inc in breach-of-contract and fiduciary duty litigation in Texas state court.
- **Confidential sports agency arbitration.** Representing sports agency in confidential arbitration concerning departure of agents to competing agency.
- ***Hulley Enterprises v. Russian Federation* (D.D.C.)** Representing the former investors in Russian oil and gas company Yukos, seeking confirmation of a $50 billion arbitral award against the Russian Federation.

Mass Actions

- ***Leonard v. John Hancock* (S.D.N.Y.)** Secured preliminary approval of a $123 million settlement on behalf of a class of life insurance policyholders in breach-of-contract suit against John Hancock who challenged its increases to cost-of-insurance charges. Read more (subscription required).
- ***Farneth v. Walmart* (W.D. Pa.)** Represented Walmart in a certified class action in Allegheny County, Pennsylvania challenging Walmart's collection of sales tax on certain in-store transactions.
- **Baltimore Opioid Litigation.** Represented City of Baltimore in litigation against nationwide opioid manufacturers and distributors.
- ***Advance Trust & Life Escrow Services v. Security Life of Denver* (D. Colo.)** Representing a class of life insurance policyholders in breach-of-contract suit against insurer Security Life of Denver, challenging increases to cost-of-insurance charges. Successfully obtained nationwide class certification on state law breach-of-contract claim.

International Disputes

- ***Vertical Aviation v. Government of Trinidad & Tobago* (S.D.N.Y)** Represented international aviation financing and leasing company Vertical Aviation in a breach-of-contract action against the Government of Trinidad & Tobago. The parties settled on confidential terms.
- ***U.S. v. Prevezon Holdings Ltd* (2nd Circ.)** Secured writ of mandamus from the Second Circuit on behalf of third-party hedge fund client Hermitage Capital, disqualifying its former counsel from representing the defendant in a forfeiture action brought by the United States.

Honors and Distinctions

- Managing Editor, *NYU Law Review*
- Order of the Coif
- Pomeroy Scholar

- Weinfeld Prize for Scholarship in Procedure and Courts
- Furman Academic Scholarship

Professional Associations and Memberships

- State of New York
- United States District Court for the Southern District of New York
- United States District Court for the Eastern District of New York
- United States District Court for the Eastern District of Michigan
- United States Court of Appeals for the Second Circuit
- Associate Member, Federal Bar Council American Inn of Court

SUSMAN GODFREY L.L.P.

Ari Ruben

Associate

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Overview

Ari Ruben joined Susman Godfrey after clerking for Judge Bruce M. Selya of the United States Court of Appeals for the First Circuit and for Judge Richard J. Sullivan, then of the United States District Court for the Southern District of New York. Before clerking, he practiced commercial litigation at another leading firm, where his team represented a life-settlement investor in a two-month bench trial in the Southern District of New York. Mr. Ruben graduated *cum laude* from both Harvard College and Harvard Law School.

Education

Harvard College (A.B., *cum laude* in History, 2008)

Harvard Law School (J.D., *cum laude*, 2014)

Clerkship

Law Clerk to the Honorable Bruce M. Selya, United States Court of Appeals for the First Circuit

Law Clerk to the Honorable Richard J. Sullivan, United States District Court for the Southern District of New York

Honors and Distinctions

Thomas T. Hoopes Prize, Harvard College

Dean's Award for Community Leadership, Harvard Law School

Supervising Editor, *Harvard Journal on Legislation*

Professional Memberships

United States District Court for the Southern District of New York

United States District Court for the Eastern District of New York

New York State Bar

Massachusetts State Bar (Inactive)

Barrister, New York American Inn of Court

Member, Federal Bar Council

SUSMAN GODFREY L.L.P.

Amy Gregory

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Overview

Amy Gregory joined Susman Godfrey after clerking for Judge Dennis Jacobs of the United States Court of Appeals for the Second Circuit. Before clerking, she practiced commercial litigation at another leading firm. Ms. Gregory graduated *magna cum laude* and Phi Beta Kappa from Georgetown University. She earned her J.D. from Columbia Law School, where she was a Notes Editor on the board of the *Columbia Law Review*.

Education

Columbia Law School
(J.D., 2018)

Georgetown University (B.S., International Political Economy, *magna cum laude*, 2013)

Clerkship

Honorable Dennis Jacobs, United States Court of Appeals for the Second Circuit

Honors and Distinctions

James Kent Scholar

Harlan Fiske Stone Scholar

Notes Editor, *Columbia Law Review*