

EXHIBIT H

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LOUISIANA MUNICIPAL POLICE
EMPLOYEES' RETIREMENT SYSTEM, on
behalf of itself and all other similarly situated
shareholders of Landry's Restaurants, Inc., and
derivatively on behalf of nominal defendant
Landry's Restaurants, Inc.,

Plaintiff,

v.

C.A. No. 4339-VCL

TILMAN J. FERTITTA, STEVEN L.
SCHEINTHAL, KENNETH BRIMMER,
MICHAEL S. CHADWICK, MICHAEL
RICHMOND, JOE MAX TAYLOR,
FERTITTA HOLDINGS, INC., FERTITTA
ACQUISITION CO., RICHARD LIEM,
FERTITTA GROUP, INC. and FERTITTA
MERGER CO.

Defendants, and

LANDRY'S RESTAURANTS, INC.,

Nominal Defendant.

**DECLARATION OF MARY S. THOMAS
IN SUPPORT OF MOTION FOR AN
AWARD OF ATTORNEYS' FEES AND EXPENSES**

I, MARY S. THOMAS, declare as follows:

1. I am a director of Grant & Eisenhofer P.A., co-counsel for Plaintiff and Court-appointed Class Representative Louisiana Municipal Police Employees' Retirement System in the above-captioned action (the "Action"). I have actively participated in the prosecution and settlement of this Action.

2. I respectfully submit this affidavit in support of the application of Co-Lead Counsel for an award of attorneys' fees amounting to \$11,625,000 achieved for the Classes as a result of our efforts in this hard-fought litigation.

3. A firm resume for G&E, which includes background on the firm and its directors, is attached as Exhibit D to the Declaration Of Mary S. Thomas In Support Of Class Plaintiff's Motion For Final Approval Of Proposed Settlements, Plan Of Allocation, And Requested Award Of Attorneys' Fees And Reimbursement Of Expenses.

4. From the commencement of this Action through September 15, 2010, G&E attorneys and paralegals have dedicated nearly 5,000 hours to the successful prosecution and settlement of this Action. Our firm's total lodestar amount for attorney/paralegal time based on the firm's current rates is \$1,988,496.50. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. A breakdown of the lodestar is as follows:

<u>Timekeeper</u>	<u>Total Hours</u>	<u>Rate</u>	<u>Total</u>
Stuart M. Grant	137.30	\$845	\$ 116,018.50
John C. Kairis	1,134.30	\$650	737,295.00
Mary Thomas	275.60	\$650	179,140.00
Jennifer Heisinger	145.10	\$620	89,962.00
Dereck Scott	222.00	\$325	72,150.00
Lindsay Doering	9.00	\$325	2,925.00
Crystal Wilson	15.80	\$290	4,582.00
Thomas Engel	852.40	\$290	247,196.00
Christian Keeney	1,103.40	\$280	308,952.00
LaSonya Thompson	463.90	\$250	115,975.00
Carolynn A. Nevers	247.60	\$225	55,710.00
Matthew Hartman	16.20	\$225	3,645.00
Nancy Smith	72.90	\$190	13,851.00
Ronald E. Wittman	15.60	\$190	2,964.00
Valisity Beal	5.50	\$190	1,045.00
Kennedy Comer	6.80	\$140	952.00
Paige Alderson	258.10	\$140	36,134.00
	4,981.50		\$1,988,496.50

5. During the course of this Action, G&E incurred and disbursed \$239,977.27 in expenses necessary to the prosecution of the Action, to various vendors.

These expenses are broken down as follows:

Case-Related Publication	\$	15.00
Duplication Services	\$	42,523.58
Filing Fee	\$	9,046.24
Litigation Fund Contribution	\$	145,000.00
Postage & Delivery	\$	1,319.64
Research	\$	21,936.55
Service Fees	\$	75.00
Telephone	\$	89.57
Transcription Services	\$	4,507.80
Travel	\$	15,463.89
Total Expenses	\$	239,977.27

6. The expenses pertaining to this case are reflected in the books and records of G&E. These books and records are prepared from invoices, bills, expense vouchers and check records, kept in the normal course of business.

7. I respectfully ask this Court to award the attorneys' fees requested and to approve reimbursement of the expenses incurred and paid.

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

Dated: September 17, 2010

/s/ Mary S. Thomas
Mary S. Thomas (Del. I.D. No. 5072)
GRANT & EISENHOFER P.A.
1201 North Market Street
Wilmington, DE 19801
Tel.: (302) 622-7000
Fax: (302) 622-7100

EXHIBIT I

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LOUISIANA MUNICIPAL POLICE
EMPLOYEES' RETIREMENT SYSTEM, on
behalf of itself and all other similarly situated
shareholders of Landry's Restaurants, Inc., and
derivatively on behalf of nominal defendant
Landry's Restaurants, Inc.,

Plaintiff,

v.

C.A. No. 4339-VCL

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RICHMOND, JOE MAX TAYLOR,
FERTITTA HOLDINGS, INC., FERTITTA
ACQUISITION CO., RICHARD LIEM,
FERTITTA GROUP, INC. and FERTITTA
MERGER CO.

Defendants, and

LANDRY'S RESTAURANTS, INC.,

Nominal Defendant.

**AFFIDAVIT OF MARK LEOVITCH
IN SUPPORT OF MOTION FOR AN
AWARD OF ATTORNEYS' FEES AND EXPENSES**

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Mark Lebovitch, being duly sworn, deposes and says:

1. I am a partner at Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz"), co-counsel for Plaintiff and Court-appointed Class Representative, Louisiana Municipal Police Employees' Retirement System in the above-captioned action (the "Action"). I

am familiar with the facts and proceedings herein and submit this affidavit in support of the motion for an award of attorneys' fees and expenses.

2. Bernstein Litowitz, which served as co-counsel in this Action, was involved in all aspects of the litigation and its settlements as set forth in the Joint Declaration submitted by me and co-counsel in support of Plaintiff's motion for final approval of the settlements and co-counsel's application for an award of attorneys' fees and reimbursement of expenses. As detailed in the Joint Declaration, counsel for Plaintiff have dedicated significant time, effort, and expenses to the investigation and prosecution of this Action, which most tangibly resulted in an increase of \$65 million in merger consideration for the 2009 Class and \$14.5 million payment by Defendants for the 2008 Class to settle the claims asserted in this Action.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by each attorney and professional support staff who was involved in this litigation, and the lodestar calculation based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

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

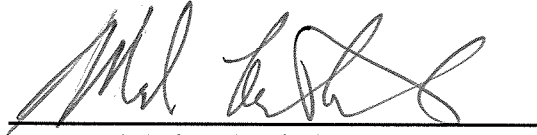
5. As set forth on Exhibit 1, the total number of hours expended on this litigation by Bernstein Litowitz through Monday, September 15, 2010 is 7,164.50. The total lodestar for

attorneys and professional support staff for Bernstein Litowitz is \$3,073,303, consisting of \$2,824,334.25 for attorney time and \$248,968.75 for professional support staff time.

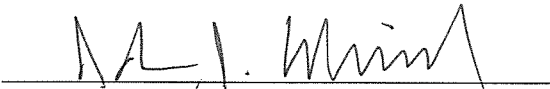
6. As detailed in the schedule attached hereto as Exhibit 2, Bernstein Litowitz has incurred a total of \$359,526.44 in unreimbursed expenses in connection with the prosecution of this litigation. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

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

I declare under the penalty of perjury under the laws of the State of Delaware that the foregoing facts are true and correct.


Mark Lebovitch

Subscribed and sworn to before me this
17th day of September 2010


Notary Public

ADAM J. WEINSCHEL
Notary Public, State Of New York
No. 01WE6045618
Qualified In ~~New York~~ QUEENS County
Commission Expires July 31, 20 14

EXHIBIT 1
LANDRY'S LITIGATION
C.A. No. 4339-VCL
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
TIME REPORT
Inception through September 15, 2010

Name	Hours	Rate	Lodestar
Partners			
Max Berger	84.50	\$895.00	\$75,627.00
Mark Lebovitch	689.25	\$625.00	\$430,781.00
Gerald Silk	90.00	\$750.00	\$67,500.00
Senior Counsel			
Rochelle Hansen	8.75	\$650.00	\$5,687.50
Of Counsel			
Bruce Bernstein	100.00	\$550.00	\$55,000.00
Jonathan Harris	17.00	\$650.00	\$11,050.00
Associates			
Amy Miller	1,324.75	\$465.00	\$616,008.75
John Mills	200.75	\$490.00	\$98,367.50
Argilio Rodriguez	247.00	\$350.00	\$86,450.00
Jeroen Van Kwawegen	865.25	\$450.00	\$389,362.50
Staff Associates			
Matt Berman	10.00	\$390.00	\$3,900.00
Scott Aurnou	72.75	\$395.00	\$28,736.25
David C. Carlet	10.00	\$395.00	\$3,950.00
Mark van der Hast	331.50	\$375.00	\$124,312.50
Spencer Oster	820.75	\$375.00	\$307,781.25
Robert Stimson	409.00	\$395.00	\$161,555.00
Andrew Tolan	907.00	\$395.00	\$358,265.00
Total for Attorneys:	6,188.25		\$2,824,334.25
Investigators			
Amy Bitkower	4.25	\$425.00	\$1,806.25
Lisa C. Burr	34.50	\$250.00	\$8,625.00
Joelle Landino	8.50	\$250.00	\$2,125.00
Database Managers/IT			
Sheron P. Brathwaite	79.75	\$250.00	\$19,937.50
Jesse Baidoe	219.25	\$220.00	\$48,235.00

EXHIBIT 1
LANDRY'S LITIGATION
C.A. No. 4339-VCL
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
TIME REPORT
Inception through September 15, 2010

Name	Hours	Rate	Lodestar
Case Managers			
Larry Silvestro	13.75	\$275.00	\$3,781.25
Yvette Badillo	349.50	\$275.00	\$96,112.50
Kenneth Cardwell	184.75	\$275.00	\$50,806.25
Paralegals			
Erik Andrieux	15.00	\$210.00	\$3,150.00
Dena Bielasz	8.00	\$250.00	\$2,000.00
Martin Braxton	59.00	\$210.00	\$12,390.00
Total for Professional Support Staff:	976.25		\$248,968.75
TOTAL TIME	7,164.50		\$3,073,303.00

EXHIBIT 2

LANDRY'S LITIGATION
C.A. No. 4339-VCL
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

EXPENSE REPORT
Inception through September 15, 2010

Category of Expense	Expense Amount
Court Fees and Service of Process	\$305.00
Service of Process	\$180.00
On-line Legal Research	\$14,419.14
On-line Factual Research	\$5,679.73
Telephone	\$603.14
Faxes	\$3.00
Postage & Express Mail	\$23,762.06
Hand Delivery Charges	\$23.90
Local Transportation	\$4,257.97
Internal Copying	\$12,533.25
Outside Copying	\$602.95
Out of Town Travel	\$34,793.68
Working Meals	\$2,145.75
Court Reporting & Transcripts	\$1,973.81
Staff Overtime	\$67.47
Contributions to Plaintiff's Litigation Fund	\$20,000.00
SUBTOTAL:	\$121,350.85
Outstanding Expert Invoices	\$90,278.00
Outstanding Court Reporting Expenses	\$28,151.30
SUBTOTAL:	\$239,780.15
Adjustment	-\$1,604.56
TOTAL EXPENSES:	\$359,526.44

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

ATTORNEYS AT LAW

NEW YORK ● CALIFORNIA ● LOUISIANA

FIRM RESUME

Visit our web site at www.blbglaw.com for the most up-to-date information on the firm, its lawyers and practice groups.

Bernstein Litowitz Berger & Grossmann LLP, a firm of over 50 attorneys in offices located in New York, California and Louisiana, prosecutes class and private actions, nationwide, on behalf of individual and institutional clients. The firm's litigation practice areas include securities class and direct actions in federal and state courts; corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; mergers and acquisitions and transactional litigation; intellectual property; alternative dispute resolution; distressed debt and bankruptcy; civil rights and employment discrimination; consumer class actions and antitrust. We also handle, on behalf of major institutional clients and lenders, more general complex commercial litigation involving allegations of breach of contract, accountants' liability, breach of fiduciary duty, fraud, and negligence.

We are the nation's leading firm in representing institutional investors in securities fraud class action litigation. The firm's institutional client base includes the New York State Common Retirement Fund, the California Public Employees Retirement System (CalPERS), and the Ontario Teachers' Pension Plan, the largest public pension funds in North America, collectively managing over \$300 billion in assets; the Los Angeles County Employees' Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the State of Wisconsin Investment Board; the Retirement Systems of Alabama; the Connecticut Retirement Plans and Trust Funds; the City of Detroit Pension Systems; the Houston Firefighters' and Municipal Employees' Pension Funds; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers' Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities.

Since its founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has litigated some of the most complex cases in history and has obtained over \$20 billion on behalf of investors. Unique among its peers, the firm has negotiated the largest settlements ever agreed to by public companies related to securities fraud, and obtained four of the ten largest securities recoveries in history.

As Co-Lead Counsel for the Class representing Lead Plaintiff the New York State Common Retirement Fund in *In re WorldCom, Inc. Securities Litigation*, arising from the financial fraud and subsequent bankruptcy at WorldCom, Inc., we obtained unprecedented settlements totaling more than \$6 billion from the investment bank defendants who underwrote WorldCom bonds, the second largest securities recovery in history. Additionally, the former WorldCom Director Defendants agreed to pay over \$60 million to settle the claims against them. An unprecedented first for outside directors, \$24.75 million of that amount is coming out of the pockets of the individuals—20% of their collective net worth. Also, after four weeks of trial, Arthur Andersen, WorldCom's former auditor, settled for \$65 million. In July 2005, settlements were reached with the former executives of WorldCom, bringing the total obtained for the Class to over \$6.15 billion.

The firm was also Co-Lead Counsel in *In re Cendant Corporation Securities Litigation*, which settled for more than \$3 billion in cash. This settlement, the largest sums ever recovered from a public company and a public accounting firm, includes some of the most significant corporate governance changes ever achieved through securities class

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BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

action litigation. The firm represented Lead Plaintiffs CalPERS, the New York State Common Retirement Fund, and the New York City Pension Funds on behalf of all purchasers of Cendant securities during the class period. The firm also recovered over \$1.3 billion for investors in Nortel Networks, and recent settlements in *In re McKesson HBOC Inc. Securities Litigation* total over \$1 billion in monies recovered for investors. Additionally, the firm was lead counsel in the celebrated *In re Washington Public Power Supply System Litigation*, which, after seven years of litigation and three months of jury trial, resulted in what was then the largest securities fraud recovery ever – over \$750 million.

A leader in representing institutional shareholders in litigation arising from the widespread stock options backdating scandals of recent years, the firm recovered nearly \$920 million in ill-gotten compensation directly from former officers and directors in the *UnitedHealth Group, Inc. Shareholder Derivative Litigation*. The largest derivative recovery in history, the settlement is notable for holding individual wrongdoers accountable for their role in illegally backdating stock options, as well as for the company's agreement to far-reaching reforms to curb future executive compensation abuses. (Court approval of the recovery is pending.)

The firm's prosecution of Arthur Andersen LLP, for Andersen's role in the 1999 collapse of the Baptist Foundation of Arizona ("BFA"), received intense national and international media attention. As lead trial counsel for the defrauded BFA investors, the firm obtained a cash settlement of \$217 million from Andersen in May 2002, after six days of what was scheduled to be a three month trial. The case was covered in great detail by *The Wall Street Journal*, *The New York Times*, *The Washington Post*, "60 Minutes II," National Public Radio, and the BBC, as well as various other international news outlets.

The firm is also a recognized leader in representing the interests of shareholders in M&A litigation arising from transactions that are structured to unfairly benefit the company's management or directors at the shareholder's expense. For example, in the high-profile *Caremark Takeover Litigation*, the firm obtained a landmark ruling from the Delaware Court of Chancery ordering Caremark's board to disclose previously withheld information, enjoin a shareholder vote on CVS' merger offer, and grant statutory appraisal rights to Caremark shareholders. CVS was ultimately forced to raise its offer by \$7.50 per share, equal to more than \$3 billion in additional consideration to Caremark shareholders.

Equally important, Bernstein Litowitz Berger & Grossmann LLP has successfully advanced novel and socially beneficial principles by developing important new law in the areas in which we litigate.

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

On behalf of twelve public pension funds, including the New York State Common Retirement Fund, CalPERS, LACERA, and other institutional investors, the firm successfully prosecuted *McCall v. Scott*, a derivative suit filed against the directors and officers of Columbia/HCA Healthcare Corporation, the subject of the largest health care fraud investigation in history. This settlement included a landmark corporate governance plan which went well beyond all recently enacted regulatory reforms, greatly enhancing the corporate governance structure in place at HCA.

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

Our firm is dedicated to litigating with the highest level of professional competence, striving to secure the maximum possible recovery for our clients in the most efficient and professionally responsible manner. In those cases where we have served as either lead counsel or as a member of plaintiffs' executive committee, the firm has recovered billions of dollars for our clients.

THE FIRM'S PRACTICE AREAS

Securities Fraud Litigation

Securities fraud litigation is the cornerstone of the firm's litigation practice. Since its founding, the firm has tried and settled many high profile securities fraud class actions and continues to play a leading role in major securities litigation pending in federal and state courts. Moreover, since passage of the Private Securities Litigation Reform Act of 1995, which sought to encourage institutional investors to become more pro-active in securities fraud class action litigation, the firm has become the nation's leader in representing institutional investors in securities fraud and derivative litigation. The firm has the distinction of having prosecuted many of the most complex and high-profile cases in securities law history, recovering billions of dollars and obtaining unprecedented corporate governance reforms on behalf of our clients.

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

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

Corporate Governance and Shareholders' Rights

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

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

Employment Discrimination and Civil Rights

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

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

limitations, and offers the potential for effecting the greatest positive change for the greatest number of people affected by discriminatory practice in the workplace.

Intellectual Property

BLB&G's Intellectual Property Litigation practice group is dedicated to protecting the creativity and innovation of individuals and firms. Patent cases exemplify the type of complex, high-stakes litigation in which we specialize. Our areas of concentration include patent, trademark, false advertising, copyright, and trade-secret litigation. We have successfully prosecuted these actions against infringers in both federal and state courts across the country, in foreign courts and before administrative bodies. The firm is currently prosecuting patent cases on behalf of inventors in a variety of industries including electronics, liquid crystal display ("LCD") panels, and computer technology.

General Commercial Litigation and Alternative Dispute Resolution

The General Commercial Litigation practice group provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees and other business entities. We have faced down powerful and well-funded law firms and defendants — and consistently prevailed.

However, not every dispute is best resolved through the courts. In such cases, BLB&G Alternative Dispute practitioners offer clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. BLB&G has extensive experience — and a marked record of successes — in ADR practice. For example, in the wake of the credit crisis, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. Our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association (AAA), FINRA, JAMS, International Chamber of Commerce (ICC) and the London Court of International Arbitration.

Distressed Debt and Bankruptcy Creditor Negotiation

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

Consumer Advocacy

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

THE COURTS SPEAK

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

Judge Denise Cote (United States District Court for the Southern District of New York) has noted, several times on the record, the quality of BLB&G's ongoing representation of the Class in *In re WorldCom, Inc. Securities Litigation*. Judge Cote on December 16, 2003:

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

In granting final approval of the \$2.575 billion settlement obtained from the Citigroup Defendants, Judge Cote again praised BLB&G's efforts:

"The magnitude of this settlement is attributable in significant part to Lead Counsel's advocacy and energy....The quality of the representation given by Lead Counsel...has been superb...and is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation. Lead Counsel has been energetic and creative.... Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions."

* * *

In February 2005, at the conclusion of trial of *In re Clarent Corporation Securities Litigation*, The Honorable Charles R. Breyer of the United States District Court for the Northern District of California praised the efforts of counsel: "It was the best tried case I've witnessed in my years on the bench....[A]n extraordinarily civilized way of presenting the issues to you [the jury]....We've all been treated to great civility and the highest professional ethics in the presentation of the case.... The evidence was carefully presented to you....They got dry subject matter and made it interesting... [brought] the material alive... good trial lawyers can do that.... I've had fascinating criminal trials that were far less interesting than this case. [I]t's a great thing to be able to see another aspect of life... It keeps you young...vibrant... [and] involved in things... These trial lawyers are some of the best I've ever seen."

* * *

In granting the Court's approval of the resolution and prosecution of *McCall v. Scott*, a shareholder derivative lawsuit against certain former senior executives of HCA Healthcare (formerly Columbia/HCA), Senior Judge Thomas A. Higgins (United States District Court, Middle District of Tennessee) said that the settlement "confers an exceptional benefit upon the company and the shareholders by way of the corporate governance plan. . . . Counsel's excellent qualifications and reputations are well documented in the record, and they have litigated this complex case adeptly and tenaciously throughout the six years it has been pending. They assumed an enormous risk and have shown great patience by taking this case on a contingent basis, and despite an early setback they have persevered and brought about not only a large cash settlement but sweeping corporate reforms that may be invaluable to the beneficiaries."

* * *

Judge Walls (District of New Jersey), in approving the \$3.2 billion *Cendant* settlement, said that the recovery from all defendants, which represents a 37% recovery to the Class, "far exceeds recovery rates of any case cited by the parties." The Court also held that the \$335 million separate recovery from E&Y is "large" when "[v]iewed in light of recoveries against accounting firms for securities damages." In granting Lead Counsel's fee request, the Court determined that "there is no other catalyst for the present settlement than the work of Lead Counsel. . . . This Court, and no other judicial officer, has maintained direct supervision over the parties from the outset of litigation to the present time. In addition to necessary motion practice, the parties regularly met with and reported to the Court every

five or six weeks during this period about the status of negotiations between them. . . . [T]he Court has no reason to attribute a portion of the Cendant settlement to others' efforts; Lead Counsel were the only relevant material factors for the settlement they directly negotiated." The Court found that "[t]he quality of result, measured by the size of settlement, is very high. . . . The Cendant settlement amount alone is over three times larger than the next largest recovery achieved to date in a class action case for violations of the securities laws, and approximately ten times greater than any recovery in a class action case involving fraudulent financial statements. . . . The E&Y settlement is the largest amount ever paid by an accounting firm in a securities class action." The Court went on to observe that "the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel were high in this action. Lead Counsel are experienced securities litigators who ably prosecuted the action." The Court concluded that this Action resulted in "excellent settlements of uncommon amount engineered by highly skilled counsel with reasonable cost to the class."

* * *

After approving the settlement in *Alexander v. Pennzoil Company*, the Honorable Vanessa D. Gilmore of the United States District Court for the Southern District of Texas ended the settlement hearing by praising our firm for the quality of the settlement and our commitment to effectuating change in the workplace. "... the lawyers for the plaintiffs ... did a tremendous, tremendous job. ... not only in the monetary result obtained, but the substantial and very innovative programmatic relief that the plaintiffs have obtained in this case ... treating people fairly and with respect can only inure to the benefit of everybody concerned. I think all these lawyers did an outstanding job trying to make sure that that's the kind of thing that this case left behind."

* * *

On February 23, 2001, the United States District Court for the Northern District of California granted final approval of the \$259 million cash settlement in *In re 3Com Securities Litigation*, the largest settlement of a securities class action in the Ninth Circuit since the Private Securities Litigation Reform Act was passed in 1995, and the fourth largest recovery ever obtained in a securities class action. The district court, in an Order entered on March 9, 2001, specifically commented on the quality of counsel's efforts and the settlement, holding that "counsel's representation [of the class] was excellent, and ... the results they achieved were substantial and extraordinary." The Court described our firm as "among the most experienced and well qualified in this country in [securities fraud] litigation."

* * *

United States District Judge Todd J. Campbell of the Middle District of Tennessee heard arguments on Plaintiffs' Motion for Preliminary Injunction in *Cason v. Nissan Motor Acceptance Corporation Litigation*, the highly publicized discriminatory lending class action, on September 5, 2001. He exhibited his own brand of candor in commenting on the excellent work of counsel in this matter: "In fact, the lawyering in this case... is as good as I've seen in any case. So y'all are to be commended for that."

* * *

In approving the \$30 million settlement in the *Assisted Living Concepts, Inc. Securities Litigation*, the Honorable Ann L. Aiken of the Federal District Court in Oregon, praised the recovery and the work of counsel. She stated that, "...without a doubt...this is a...tremendous result as a result of very fine work...by the...attorneys in this case."

* * *

The Honorable Judge Edward A. Infante of the United States District Court for the Northern District of California expressed high praise for the settlement and the expertise of plaintiffs' counsel when he approved the final settlement in the *Wright v. MCI Communications Corporation* consumer class action. "The settlement. . . . is a very favorable settlement to the class. . . . to get an 85% result was extraordinary, and plaintiffs' counsel should be complimented for it on this record. . . . The recommendations of experienced counsel weigh heavily on the court. The lawyers before me are specialists in class action litigation. They're well known to me, particularly Mr. Berger,

and I have confidence that if Mr. Berger and the other plaintiffs' counsel think this is a good, well-negotiated settlement, I find it is." The case was settled for \$14.5 million.

* * *

At the *In re Computron Software, Inc. Securities Litigation* settlement hearing, Judge Alfred J. Lechner, Jr. of the United States District Court for the District of New Jersey approved the final settlement and commended Bernstein Litowitz Berger & Grossmann's efforts on behalf of the Class. "I think the job that was done here was simply outstanding. I think all of you just did a superlative job and I'm appreciat[ive] not only for myself, but the court system and the plaintiffs themselves. The class should be very, very pleased with the way this turned out, how expeditiously it's been moved."

* * *

The *In re Louisiana-Pacific Corporation Securities Litigation*, filed in the United States District Court, District of Oregon, was a securities class action alleging fraud and misrepresentations in connection with the sale of defective building materials. Our firm, together with co-lead counsel, negotiated a settlement of \$65.1 million, the largest securities fraud settlement in Oregon history, which was approved by Judge Robert Jones on February 12, 1997. The Court there recognized that "... the work that is involved in this case could only be accomplished through the unique talents of plaintiffs' lawyers ... which involved a talent that is not just simply available in the mainstream of litigators."

* * *

Judge Kimba M. Wood of the United States District Court for the Southern District of New York, who presided over the six-week securities fraud class action jury trial in *In re ICN/Viratek Securities Litigation*, also recently praised our firm for the quality of the representation afforded to the class and the skill and expertise demonstrated throughout the litigation and trial especially. The Court commented that "... plaintiffs' counsel did a superb job here on behalf of the class. . . This was a very hard fought case. You had very able, superb opponents, and they put you to your task. . . The trial work was beautifully done and I believe very efficiently done. . ."

* * *

Similarly, the Court in the *In re Prudential-Bache Energy Income Partnership Securities Litigation*, United States District Court, Eastern District of Louisiana, recognized Bernstein Litowitz Berger & Grossmann LLP's "... professional standing among its peers." In this case, which was settled for \$120 million, our firm served as Chair of the Plaintiffs' Executive Committee.

* * *

In the landmark securities fraud case, *In re Washington Public Power Supply System Litigation* (United States District Court, District of Arizona), the district court called the quality of representation "exceptional," noting that "[t]his was a case of overwhelmingly unique proportions. . . a rare and exceptional case involving extraordinary services on behalf of Class plaintiffs." The Court also observed that "[a] number of attorneys dedicated significant portions of their professional careers to this litigation, . . . champion[ing] the cause of Class members in the face of commanding and vastly outnumbering opposition. . . [and] in the face of uncertain victory. . . . [T]hey succeeded admirably."

* * *

Likewise, in *In re Electro-Catheter Securities Litigation*, where our firm served as co-lead counsel, Judge Nicholas Politan of the United States District Court for New Jersey said, "Counsel in this case are highly competent, very skilled in this very specialized area and were at all times during the course of the litigation...always well prepared, well spoken, and knew their stuff and they were a credit to their profession. They are the top of the line."

* * *

In our ongoing prosecution of the *In re Bennett Funding Group Securities Litigation*, the largest “Ponzi scheme” fraud in history, partial settlements totaling over \$140 million have been negotiated for the class. While the action continues to be prosecuted against other defendants, the United States District Court for the Southern District of New York has already found our firm to have been “extremely competent” and of “great skill” in representing the class.

* * *

Judge Sarokin of the United States District Court for the District of New Jersey, after approving the \$30 million settlement in *In re First Fidelity Bancorporation Securities Litigation*, a case in which we were lead counsel, praised the “. . . outstanding competence and performance” of the plaintiffs’ counsel and expressed “admiration” for our work in the case.

RECENT ACTIONS & SIGNIFICANT RECOVERIES

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

Securities Class Actions

In re WorldCom, Inc. Securities Litigation -- (United States District Court for the Southern District of New York) The largest securities fraud class action in history. The court appointed BLB&G client the **New York State Common Retirement Fund** as Lead Plaintiff and the firm as Lead Counsel for the class in this securities fraud action arising from the financial fraud and subsequent bankruptcy at WorldCom, Inc. The complaints in this litigation allege that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings and financial condition in violation of the federal securities and other laws. As a result, investors suffered tens of billions of dollars in losses. The Complaint further alleges a nefarious relationship between Citigroup subsidiary Salomon Smith Barney and WorldCom, carried out primarily by Salomon employees involved in providing investment banking services to WorldCom (most notably, Jack Grubman, Salomon's star telecommunications analyst), and by WorldCom's former CEO and CFO, Bernard J. Ebbers and Scott Sullivan, respectively. On November 5, 2004, the Court granted final approval of the \$2.575 billion cash settlement to settle all claims against the Citigroup defendants. In mid-March 2005, on the eve of trial, the 13 remaining "underwriter defendants," including J.P. Morgan Chase, Deutsche Bank and Bank of America, agreed to pay settlements totaling nearly \$3.5 billion to resolve all claims against them, bringing the total over \$6 billion. Additionally, by March 21, 2005, the day before trial was scheduled to begin, all of the former WorldCom Director Defendants had agreed to pay over \$60 million to settle the claims against them. An unprecedented first for outside directors, \$24.75 million of that amount is coming out of the pockets of the individuals—20% of their collective net worth. The case generated headlines across the country—and across the globe—and is changing the way Wall Street does business. In the words of Lynn Turner, a former SEC chief accountant, the settlement sent a message to directors "that their own personal wealth is at risk if they're not diligent in their jobs." After four weeks of trial, Arthur Andersen, WorldCom's former auditor, settled for \$65 million. In July 2005, settlements were reached with the former executives of WorldCom, bringing the total obtained for the Class to over \$6.15 billion.

In re Cendant Corporation Securities Litigation -- (United States District Court, District of New Jersey) Securities class action filed against Cendant Corporation, its officers and directors and Ernst & Young, its auditors. Cendant settled the action for \$2.8 billion and Ernst & Young settled for \$335 million. The settlements are the third largest in history in a securities fraud action. Plaintiffs allege that the company disseminated materially false and misleading financial statements concerning CUC's revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996 and 1997 fiscal years and all fiscal quarters therein. A major component of the settlement was Cendant's agreement to adopt some of the most extensive corporate governance changes in history. The firm represented Lead Plaintiffs **CalPERS** - the **California Public Employees Retirement System**, the **New York State Common Retirement Fund** and the **New York City Pension Funds**, the three largest public pension funds in America, in this action.

Baptist Foundation of Arizona v. Arthur Andersen, LLP -- (Superior Court of the State of Arizona in and for the County of Maricopa) Firm client, the **Baptist Foundation of Arizona Liquidation Trust** ("BFA") filed a lawsuit charging its former auditors, the "Big Five" accounting firm of Arthur Andersen LLP, with negligence in conducting its annual audits of BFA's financial statements for a 15-year period beginning in 1984, and culminating in BFA's bankruptcy in late 1999. Investors lost hundreds of millions of dollars as a result of BFA's demise. The lawsuit alleges that Andersen ignored evidence of corruption and mismanagement by BFA's former senior management team and failed to investigate suspicious transactions related to the mismanagement. These oversights of accounting work, which were improper under generally accepted accounting principles, allowed BFA's undisclosed losses to escalate to hundreds of millions of dollars, and ultimately resulted in its demise. On May 6, 2002, after one week of trial, Andersen agreed to pay \$217 million to settle the litigation. The court approved the settlement on September 13, 2002 and, ultimately, investors are expected to recover 70% of their losses.

In re Nortel Networks Corporation Securities Litigation -- (“Nortel II”) (United States District Court for the Southern District of New York) Securities fraud class action on behalf of persons and entities who purchased or acquired the common stock of Nortel Networks Corporation. The action charges Nortel, and certain of its officers and directors, with violations of the Securities Exchange Act of 1934, alleging that the defendants knowingly or, at a minimum, recklessly made false and misleading statements with respect to Nortel's financial results during the relevant period. BLB&G clients the Ontario Teachers' Pension Plan Board and the Treasury of the State of New Jersey and its Division of Investment were appointed as Co-Lead Plaintiffs for the Class, and BLB&G was appointed Lead Counsel for the Class by the court in July 2004. On February 8, 2006, BLB&G and Lead Plaintiffs announced that they and another plaintiff had reached an historic agreement in principle with Nortel to settle litigation pending against the Company for approximately \$2.4 billion in cash and Nortel common stock (all figures in US dollars). The Nortel II portion of the settlement totaled approximately \$1.2 billion. Nortel later announced that its insurers had agreed to pay \$228.5 million toward the settlement, bringing the total amount of the global settlement to approximately \$2.7 billion, and the total amount of the Nortel II settlement to over \$1.3 billion.

HealthSouth Corporation Bondholder Litigation -- (United States District Court for the Northern District of Alabama {Southern Division}) On March 19, 2003, the investment community was stunned by the charges filed by the Securities and Exchange Commission against Birmingham, Alabama based HealthSouth Corporation and its former Chairman and Chief Executive Officer, Richard M. Scrushy, alleging a “massive accounting fraud.” Stephen M. Cutler, the SEC’s Director of Enforcement, said “HealthSouth’s fraud represents an appalling betrayal of investors.” According to the SEC, HealthSouth overstated its earnings by at least \$1.4 billion since 1999 at the direction of Mr. Scrushy. Subsequent revelations have disclosed that the overstatement actually exceeded over \$2.4 billion, virtually wiping out all of HealthSouth’s reported profits for the last five years. A number of executives at HealthSouth, including its most senior accounting officers -- including every chief financial officer in HealthSouth’s history -- have pleaded guilty to criminal fraud charges. In the wake of these disclosures, numerous securities class action lawsuits have been filed against HealthSouth and certain individual defendants. On June 24, 2003, the Honorable Karon O. Bowdre of the District Court appointed the **Retirement Systems of Alabama** to serve as Lead Plaintiff on behalf of a class of all purchasers of HealthSouth bonds who suffered a loss as a result of the fraud. Judge Bowdre appointed BLB&G to serve as Co-Lead Counsel for the bondholder class. On February 22, 2006, the RSA announced that it and several other institutional plaintiffs leading investor lawsuits arising from the corporate scandal at HealthSouth Corporation had reached a class action settlement with HealthSouth, certain of the company’s former directors and officers, and certain of the company’s insurance carriers. The total consideration to be paid in the settlement is approximately \$445 million. The action continues against the remaining defendants.

In re McKesson HBOC, Inc. Securities Litigation -- (United States District Court, Northern District of California) Securities fraud litigation filed on behalf of purchasers of HBOC, McKesson and McKesson HBOC securities. On April 28, 1999, the Company issued the first of several press releases which announced that, due to its improper recognition of revenue from contingent software sales, it would have to restate its previously reported financial results. Immediately thereafter, McKesson HBOC common stock lost \$9 billion in market value. On July 14, 1999, the Company announced that it was restating \$327.8 million of revenue improperly recognized in the HBOC segment of its business during the fiscal years ending March 31, 1997, 1998 and 1999. The complaint alleges that, during the Class Period, Defendants issued materially false and misleading statements to the investing public concerning HBOC’s and McKesson HBOC’s financial results, which had the effect of artificially inflating the prices of HBOC’s and the Company’s securities. On September 28, 2005, the court granted preliminary approval of a \$960 million settlement which BLB&G and its client, Lead Plaintiff the **New York State Common Retirement Fund**, obtained from the company. On December 19, 2006, defendant Arthur Andersen agreed to pay \$72.5 million in cash to settle all claims asserted against it. This settlement brings the total recovery to more than \$1 billion for distribution to eligible Settlement Class Members. The action continues against remaining defendant Bear Stearns.

Ohio Public Employees Retirement System, et al. v. Freddie Mac, et al. -- (United States District Court for the Southern District of Ohio {Eastern Division}) Securities fraud class action filed on behalf of the **Ohio Public Employees Retirement System** and the **State Teachers Retirement System of Ohio** against the Federal Home Loan Mortgage Corporation (“Freddie Mac”) and certain of its current and former officers. The Class includes all purchasers of Freddie Mac common stock during the period July 15, 1999 through June 6, 2003. The Complaint alleges that Freddie Mac and certain current or former officers of the Company issued false and misleading

statements in connection with Company's previously reported financial results. Specifically, the complaint alleges that the defendants misrepresented the Company's operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the Company's earnings and to hide earnings volatility. On November 21, 2003, Freddie Mac restated its previously reported earnings in connection with these improprieties, ultimately restating more than \$5.0 billion in earnings. In October 2005, with document review nearly complete, Lead Plaintiffs began deposition discovery. On April 25, 2006, the parties reported to the Court that they had reached an agreement in principle to settle the case for \$410 million. On October 26, 2006, the Court granted final approval of the settlement.

In re Washington Public Power Supply System Litigation -- (United States District Court, District of Arizona) Commenced in 1983, the firm was appointed Chair of the Executive Committee responsible for litigating the action on behalf of the class. The action involved an estimated 200 million pages of documents produced in discovery; the depositions of 285 fact witnesses and 34 expert witnesses; more than 25,000 introduced exhibits; six published district court opinions; seven appeals or attempted appeals to the Ninth Circuit; and a three-month jury trial, which resulted in a settlement of over \$750 million – then the largest securities fraud settlement ever achieved.

In re Lucent Technologies, Inc. Securities Litigation -- (United States District Court for the District of New Jersey) A securities fraud class action filed on behalf of purchasers of the common stock of Lucent Technologies, Inc. from October 26, 1999 through December 20, 2000. In the action, BLB&G served as Co-Lead Counsel for the shareholders and Lead Plaintiffs, the **Parnassus Fund** and **Teamsters Locals 175 & 505 D&P Pension Trust**, and also represented the **Anchorage Police and Fire Retirement System** and the **Louisiana School Employees' Retirement System**. Lead Plaintiffs' complaint charged Lucent with making false and misleading statements to the investing public concerning its publicly reported financial results and failing to disclose the serious problems in its optical networking business. When the truth was disclosed, Lucent admitted that it had improperly recognized revenue of nearly \$679 million in fiscal 2000. On September 23, 2003, the Court granted preliminary approval of the agreement to settle this litigation, a package which is currently valued at approximately \$517 million composed of cash, stock and warrants. The appointment of BLB&G as Co-Lead Counsel is especially noteworthy as it marks the first time since the 1995 passage of the Private Securities Litigation Reform Act that a court has reopened the lead plaintiff or lead counsel selection process to account for changed circumstances, new issues and possible conflicts between new and old allegations.

In re Williams Securities Litigation -- (United States District Court for the Northern District of Oklahoma) Securities fraud class action filed on behalf of a class of all persons or entities that purchased or otherwise acquired certain securities of The Williams Companies. The action alleged securities claims pursuant to Section 10(b) of the Securities Exchange Act of 1934 and Section 11 of the Securities Act of 1933. After a massive discovery and intensive litigation effort, which included taking more than 150 depositions and reviewing in excess of 18 million pages of documents, BLB&G and its clients, the Arkansas Teacher Retirement System and the Ontario Teachers' Pension Plan Board, announced an agreement to settle the litigation against all defendants for \$311 million in cash on June 13, 2006. The recovery is among the largest recoveries ever in a securities class action in which the corporate defendant did not restate its financial results.

In re Delphi Corporation Securities Litigation -- (United States District Court, Eastern District of Michigan) This action, initiated in 2005, alleges that the Delphi Corporation its outside auditor Deloitte & Touche LLP ("Deloitte"), a number of Delphi's investment banks and other parties entered into sham transactions intended to falsely inflate Delphi's reported financial results. BLB&G is Co-Lead Counsel of the Class representing its client the **Public Employees' Retirement System of Mississippi**. The case was prosecuted over a protracted period due, in part, to complexities surrounding the Company's declaration of bankruptcy in October 2005. Negotiations subsequently resulted in two settlement agreements totaling \$330 million, including approximately \$294 million with Delphi and its former officers and directors (the "Delphi Settlement") and \$38.25 million with Deloitte (the "Deloitte Settlement"). Unfortunately, since that time, the Delphi has been unable to secure necessary financing and, as a result, has not been able to emerge bankruptcy as anticipated. As originally reached, the Delphi Settlement consisted of an allowed claim in the bankruptcy to be paid in Delphi Plan Currency with a potential value of \$204 million and \$90.1 million in cash (these funds are currently being held in escrow) and was contingent upon Delphi's emergence from bankruptcy. Based on Delphi's current circumstances, it appears that even if it were to emerge from bankruptcy there will not be sufficient assets to pay any distribution on this settlement. BLB&G and co-

counsel negotiated with Delphi to develop a way to release the funds currently in escrow for distribution to the Class without having to wait until Delphi's emergence from bankruptcy. Thereafter, by Orders dated September 25, 2009 and November 20, 2009, the court preliminarily and finally approved the modification. BLB&G and other co-counsel anticipate that distribution of the \$90.1 from the Delphi Settlement along with the \$38.25 million from the Deloitte Settlement to Class Claimants will begin shortly.

In re The Mills Corporation Securities Litigation -- (United States District Court, Eastern District of Virginia) On July 27, 2007, BLB&G and **Mississippi Public Employees' Retirement System** ("Mississippi") filed a Consolidated Complaint against The Mills Corporation ("Mills" or the "Company"), a former real estate investment trust, certain of its current and former senior officers and directors, its independent auditor, Ernst & Young LLP, and its primary joint venture partner, the KanAm Group. This action alleges that, during the Class Period, Mills issued financial statements that materially overstated the Company's actual financial results and engaged in accounting improprieties that enabled it to report results that met or exceeded the market's expectations and resulted in the announcement of a restatement. Mills conducted an internal investigation into its accounting practices, which resulted in the retirement, resignation and termination of 17 Company officers and concluded, among other things, that: (a) there had been a series of accounting violations that were used to "meet external and internal financial expectations"; (b) there were a set of accounting errors that were not "reasonable and reached in good faith" and showed "possible misconduct"; and (c) the Company "did not have in place fully adequate accounting information systems, personnel, formal policies and procedures, supervision, an internal controls." On June 22, 2009, the Honorable Liam O'Grady granted preliminary approval of settlements with Mills' auditor, Ernst & Young, for \$29.75 million, and the Kan Am Defendants, for \$8 million. Together with a settlement previously reached with the Mills Defendants, for which preliminary approval was given on March 4, 2009, total recoveries obtained for the class are \$202.75 million plus interest. This settlement represents the largest recovery ever achieved in a securities class action in Virginia, and the second largest ever achieved in the Fourth Circuit Court of Appeals.

In re DaimlerChrysler Securities Litigation -- (United States District Court for the District of Delaware) A securities class action filed against defendants DaimlerChrysler AG, Daimler-Benz AG and two of DaimlerChrysler's top executives, charging that Defendants acted in bad faith and misrepresented the nature of the 1998 merger between Daimler-Benz AG and the Chrysler Corporation. According to plaintiffs, defendants framed the transaction as a "merger of equals," rather than an acquisition, in order to avoid paying an "acquisition premium." Plaintiffs' Complaint alleges that Defendants made this representation to Chrysler shareholders in the August 6, 1998 Registration Statement, Prospectus, and Proxy, leading 97% of Chrysler shareholders to approve the merger. BLB&G is court-appointed Co-Lead Counsel for Co-Lead Plaintiffs the **Chicago Municipal Employees Annuity and Benefit Fund** and the **Chicago Policemen's Annuity and Benefit Fund**. BLB&G and the Chicago funds filed the action on behalf of investors who exchanged their Chrysler Corporation shares for DaimlerChrysler shares in connection with the November 1998 merger, and on behalf of investors who purchased DaimlerChrysler shares in the open market from November 13, 1998 through November 17, 2000. On August 22, 2003, BLB&G, as Co-Lead Counsel for Plaintiffs, obtained an agreement in principle to settle the action for \$300 million.

In re Bennett Funding Group Securities Litigation -- (United States District Court, Southern District of New York) Investor class action involving the sale of \$570 million in fraudulent investments, described as the largest "Ponzi" scheme in United States history. The action was prosecuted against over fifty defendants including Bennett's former auditors, insurers and broker-dealers who sold Bennett investment. The class includes all purchasers of Bennett securities from March 29, 1992 through March, 29, 1996. The action settled with multiple defendants for over \$165 million.

Corporate Governance and Shareholders' Rights

UnitedHealth Group, Inc. Shareholder Derivative Litigation -- (United States District Court, District of Minnesota) Shareholder derivative action filed on behalf of Plaintiffs the St. Paul Teachers' Retirement Fund Association, the Public Employees' Retirement System of Mississippi, the Jacksonville Police & Fire Pension Fund, the Louisiana Sheriffs' Pension & Relief Fund, the Louisiana Municipal Police Employees' Retirement System and Fire & Police Pension Association of Colorado ("Public Pension Funds"). The action is brought in the name and for the benefit of UnitedHealth Group, Inc. ("UnitedHealth" or the "Corporation") against certain current and former executive

officers and members of the Board of Directors of UnitedHealth. It alleges that defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered nearly \$920 million in ill-gotten compensation directly from the former officer defendants—the largest derivative recovery in history. The settlement is notable for holding these individual wrongdoers accountable for their role in illegally backdating stock options, as well as for the fact that the company agreed to far-reaching reforms to curb future executive compensation abuses. As feature coverage in *The New York Times* indicated, “investors everywhere should applaud [the UnitedHealth settlement]...[T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings.” (Court approval of the recovery is pending.)

Caremark Merger Litigation – (Delaware Court of Chancery - New Castle County) Shareholder class action against the directors of Caremark RX, Inc. (“Caremark”) for violations of their fiduciary duties arising from their approval and continued endorsement of a proposed merger with CVS Corporation (“CVS”) and their refusal to consider fairly an alternative transaction proposed by Express Scripts, Inc. (“Express Scripts”). On December 21, 2006, BLB&G commenced this action on behalf of the **Louisiana Municipal Police Employees’ Retirement System** and other Caremark shareholders in order to force the Caremark directors to comply with their fiduciary duties and otherwise obtain the best value for shareholders. In a landmark decision issued on February 23, 2007, the Delaware Court of Chancery ordered the defendants to disclose additional material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark’s shareholders. The Court also heavily criticized the conduct of the Caremark board of directors and, although declining to enjoin the shareholder vote on procedural grounds, noted that subsequent proceedings will retain the power to make shareholders whole through the availability of money damages. The lawsuit forced CVS to increase the consideration offered to Caremark shareholders by a total of \$7.50 per share in cash (over \$3 billion in total), caused Caremark to issue a series of additional material disclosures, and twice postponed the shareholder vote to allow shareholders sufficient time to consider the new information. On March 16, 2007, Caremark shareholders voted to approve the revised offer by CVS.

In re Dollar General Corporation Shareholder Litigation -- (Sixth Circuit Court for Davidson County, Tennessee; Twentieth Judicial District, Nashville) Class action filed against Dollar General Corporation (“Dollar General” or the “Company”) for breaches of fiduciary duty related to its proposed acquisition by the private equity firm Kohlberg Kravis Roberts & Co. (“KKR”), and against KKR for aiding and abetting those breaches. A Nashville, Tennessee corporation that operates retail stores selling discounted household goods, in early March 2007, Dollar General announced that its board of directors had approved the acquisition of the Company by KKR. On March 13, 2007, BLB&G filed a class action complaint alleging that the “going private” offer was approved as a result of breaches of fiduciary duty by the board and that the price offered by KKR did not reflect the fair value of Dollar General’s publicly-held shares. The Court appointed BLB&G Co-Lead Counsel and **City of Miami General Employees’ & Sanitation Employees’ Retirement Trust** as Co-Lead Plaintiff. On the eve of the summary judgment hearing, KKR agreed to pay a \$40 million settlement in favor of the shareholders. The Court granted final approval of the settlement (with a potential for \$17 million more for the Class).

In re Yahoo! Inc., Takeover Litigation -- (Delaware Court of Chancery) Shareholder class action filed on behalf of the Police & Fire Retirement System of the City of Detroit and the General Retirement System of the City of Detroit (collectively “Plaintiffs”) (the “Detroit Funds”), and all other similarly situated public shareholders (the “Class”) of Yahoo! Inc. (“Yahoo” or the “Company”). The action alleged that the Board of Directors at Yahoo breached their fiduciary duties by refusing to respond in good faith to Microsoft Corporation’s (“Microsoft”) non-coercive offer to acquire Yahoo for \$31 per share - a 62% premium above the \$19.18 closing price of Yahoo common stock on January 31, 2008. The initial complaint filed on February 21, 2008 alleged that Yahoo pursued an “anyone but Microsoft” approach, seeking improper defensive options to thwart Microsoft at the expense of Yahoo’s shareholders, including transactions with Google, AOL, and News Corp. The Complaint also alleged the Yahoo Board adopted improper change-in-control employee severance plans designed to impose tremendous costs and risks for an acquirer by rewarding employees with rich benefits if they quit and claimed a constructive termination in the wake of merger. Following consolidation of related cases and appointment of BLB&G as co-lead counsel by Chancellor Chandler on March 5, 2008, plaintiffs requested expedited proceedings and immediately commenced discovery, including document reviews and depositions of certain third parties and defendants. In December 2008,

the parties reached a settlement of the action which provided significant benefits to Yahoo's shareholders including substantial revisions to the two challenged Change-in-Control Employee Severance Plans that the Yahoo board of directors adopted in immediate response to Microsoft's offer back in February of 2008. These revisions included changes to the first trigger of the severance plans by modifying what constitutes a "change of control" as well as changes to the second trigger by narrowing what amounts to "good reason for termination" or when an employee at Yahoo could leave on his own accord and claim severance benefits. Finally, the settlement provided for modifications to reduce the expense of the plan. The Court approved the settlement on March 6, 2009.

Ceridian Shareholder Litigation -- (Delaware Chancery Court, New Castle County) Shareholder litigation filed in 2007 against the Ceridian Corporation ("Ceridian" or "the Company"), its directors, and Ceridian's proposed merger partners on behalf of BLB&G client, **Minneapolis Firefighter's Relief Association** ("Minneapolis Firefighters"), and other similarly situated shareholders, alleging that the proposed transaction arose from the board of directors' breaches of their fiduciary duty to maximize shareholder value and instead is driven primarily as a means to enrich Ceridian's management at the expense of shareholders. Ceridian is comprised primarily of two divisions: Human Resources Solutions and Comdata. The Company's biggest shareholder pursued a proxy fight to replace the current board of directors. In response to these efforts, the Company disclosed an exploration of strategic alternatives and later announced that it had agreed to be acquired by Thomas H. Lee Partners, LP ("THL") and Fidelity National Financial, Inc. ("Fidelity"), and had entered into a definitive merger agreement in a deal that values Ceridian at \$5.3 billion, or \$36 per share. In addition, Ceridian's directors were accused of manipulating shareholder elections by embedding into the merger agreement a contractual provision that allowed THL and Fidelity an option to abandon the deal if a majority of the current board is replaced. This "Election Walkaway" provision would have punished shareholders for exercising the shareholder franchise and thereby coerce the vote. The defendants were also accused of employing additional unlawful lockup provisions, including "Don't Ask Don't Waive" standstill agreements, an improper "no-shop/no-talk" provision, and a \$165 million termination fee as part of the merger agreement in order to deter and preclude the successful emergence of alternatives to the deal with THL and Fidelity. Further, in the shadow of the ongoing proxy fight, Ceridian refused to hold its annual meeting for over 13 months. Pursuant to Section 211 of the Delaware General Corporation Law, BLB&G and Minneapolis Firefighters successfully filed a petition to require that the Company hold its annual meeting promptly which resulted in an order compelling the annual meeting to take place. BLB&G and Minneapolis also obtained a partial settlement in the fiduciary duty litigation. Pursuant to the settlement terms, the "Election Walkaway" provision in the merger agreement and the "Don't Ask Don't Waive" standstills were eliminated, letters were sent by the Ceridian board to standstill parties advising them of their right to make a superior offer, and the "no-shop/no-talk" provision in the merger agreement was amended to significantly expand the scope of competing transactions that can be considered by the Ceridian board. On February 25, 2008, the court approved the final settlement of the action.

McCall v. Scott -- (United States District Court, Middle District of Tennessee). A derivative action filed on behalf of Columbia/HCA Healthcare Corporation -- now "HCA" -- against certain former senior executives of HCA and current and former members of the Board of Directors seeking to hold them responsible for directing or enabling HCA to commit the largest healthcare fraud in history, resulting in hundreds of millions of dollars of loss to HCA. The firm represents the **New York State Common Retirement Fund** as Lead Plaintiff, as well as the **California Public Employees' Retirement System** ("CalPERS"), the **New York City Pension Funds**, the **New York State Teachers' Retirement System** and the **Los Angeles County Employees' Retirement Association** ("LACERA") in this action. Although the district court initially dismissed the action, the United States Court of Appeals for the Sixth Circuit reversed that dismissal and upheld the complaint in substantial part, and remanded the case back to the district court. On February 4, 2003, the Common Retirement Fund, announced that the parties had agreed in principle to settle the action, subject to approval of the district court. As part of the settlement, HCA will adopt a corporate governance plan that goes well beyond the requirements both of the Sarbanes-Oxley Act and of the rules that the New York Stock Exchange has proposed to the SEC, and also enhances the corporate governance structure presently in place at HCA. HCA also will receive \$14 million. Under the sweeping governance plan, the HCA Board of Directors will be substantially independent, and will have increased power and responsibility to oversee fair and accurate financial reporting. In granting final approval of the settlement on June 3, 2003, the Honorable Senior Judge Thomas A. Higgins of the District Court said that the settlement "confers an exceptional benefit upon the company and the shareholders by way of the corporate governance plan."

Official Committee of Unsecured Creditors of Integrated Health Services, Inc. v. Elkins, et al. -- (Delaware

Chancery Court) The Official Committee of Unsecured Creditors (the “Committee”) of Integrated Health Services (“IHS”), filed a complaint against the current and former officers and directors of IHS, a health care provider which declared bankruptcy in January 2000. The Committee, on behalf of the Debtors Bankruptcy Estates, sought damages for breaches of fiduciary duties and waste of corporate assets in proposing, negotiating, approving and/or ratifying excessive and unconscionable compensation arrangements for Robert N. Elkins, the Company’s former Chairman and Chief Executive Officer, and for other executive officers of the Company. BLB&G is a special litigation counsel to the committee in this action. The Delaware Chancery Court sustained most of Plaintiff’s fiduciary duty claims against the defendants, finding that the complaint sufficiently pleaded that the defendants “consciously and intentionally disregarded their responsibilities.” The Court also observed that Delaware law sets a very high bar for proving violation of fiduciary duties in the context of executive compensation. Resulting in a multi-million dollar settlement, the Integrated Health Services litigation was one of the few executive compensation cases successfully litigated in Delaware.

Employment Discrimination and Civil Rights

Roberts v. Texaco, Inc. -- (United States District Court for the Southern District of New York) Six highly qualified African-American employees filed a class action complaint against Texaco Inc. alleging that the Company failed to promote African-American employees to upper level jobs and failed to compensate them fairly in relation to Caucasian employees in similar positions. Two years of intensive investigation on the part of the lawyers of Bernstein Litowitz Berger & Grossmann LLP, including retaining the services of high level expert statistical analysts, revealed that African-Americans were significantly under-represented in high level management jobs and Caucasian employees were promoted more frequently and at far higher rates for comparable positions within the Company. Settled for over \$170 million. Texaco also agreed to a Task Force to monitor its diversity programs for five years. The settlement has been described as the most significant race discrimination settlement in history.

GMAC/NMAC/Ford/Toyota/Chrysler Consumer Finance Discrimination Litigation The cases involve allegations that the lending practices of General Motors Acceptance Corporation, Nissan Motor Acceptance Corporation, Ford Motor Credit, Toyota Motor Credit and Chrysler Financial cause black and Hispanic car buyers to pay millions of dollars more for car loans than similarly situated white buyers. At issue is a discriminatory kickback system under which minorities typically pay about 50% more in dealer mark-up which is shared by auto dealers with the defendants. On February 24, 2003, the Honorable Todd J. Campbell of the States District Court for the Middle District of Tennessee granted preliminary approval of the settlement of the class action pending against Nissan Motor Acceptance Corporation (“NMAC”). Under the terms of the settlement, NMAC will offer pre-approved loans to hundreds of thousands of current and potential black and Hispanic NMAC customers, and will limit how much it raises the interest charged to car buyers above the company’s minimum acceptable rate. The company will also contribute \$1 million to America Saves, to develop a car financing literacy program targeted toward minority consumers. The settlement also provides for the payment of \$5,000 to \$20,000 to the 10 people named in the class-action lawsuit. Other car buyers wishing to recover damages will still be able to sue NMAC separately. BLB&G continues to prosecute the actions against the other auto lenders.

Alexander v. Pennzoil Company -- (United States District Court, Southern District of Texas) A class action on behalf of all salaried African-American employees at Pennzoil alleging race discrimination in the Company’s promotion, compensation and other job related practices. The action settled for \$6.75 million.

Butcher v. Gerber Products Company -- (United States District Court, Southern District of New York) Class action asserting violations of the Age Discrimination in Employment Act arising out of the mass discharging of approximately 460 Gerber sales people, the vast majority of whom were long-term Gerber employees aged 40 and older. Settlement terms are confidential.

Consumer Class Actions

E*Trade Group, Inc. -- (Superior Court of California, Santa Clara County) A class action filed on behalf of all individuals who have or had accounts with E*Trade from September 1996 to the present. The complaint alleges that E*Trade's representations to customers regarding the manner in which their accounts would be handled were false and misleading; that the electronic trading systems were inadequate to meet customer demands; and that, as a result of these misrepresentations, customers suffered significant losses and have been deprived of the benefits which E*Trade had represented they would receive.

General Motors Corporation -- (Superior Court of New Jersey Law Division, Bergen County) A class action consisting of all persons who owned W-body cars with defective rear disc brake caliper pins which tended to corrode, creating both a safety hazard and premature wearing of the front and rear disc brakes, causing extensive economic damage. BLB&G is co-lead counsel in this case where a proposed settlement would provide \$19.5 million to the class for reimbursement of brake repairs.

Empire Blue Cross -- (United States District Court, Southern District of New York) Overcharging health care subscribers. BLB&G was lead counsel in a recently approved \$6.6 million settlement that represented 130% of the class' damages and offered all the overcharged subscribers 100 cents on the dollar repayment.

DoubleClick -- (United States District Court, Southern District of New York). Internet Privacy. A class action on behalf of Internet users who have had personal information surreptitiously intercepted and sent to a major Internet advertising agency. In the settlement agreement reached in this action, DoubleClick committed to a series of industry-leading privacy protections for online consumers while continuing to offer its full range of products and services. This is likely the largest class action there has ever been - virtually every, if not every, Internet user in the United States.

Toxic/Mass Torts

Fen/Phen Litigation ("Diet Drug" Litigation) -- -- (Class action lawsuits filed in 10 jurisdictions including New York, New Jersey, Vermont, Pennsylvania, Florida, Kentucky, Indiana, Arizona, Oregon and Arkansas) The firm played a prominent role in the nationwide "diet drug" or "fen-phen" litigation against American Home Products for the Company's sale and marketing of Redux and Pondimin. The suits alleged that a number of pharmaceutical companies produced these drugs which, when used in combination, can lead to life-threatening pulmonary hypertension and heart valve thickening. The complaint alleged that these manufacturers knew of or should have known of the serious health risks created by the drugs, should have warned users of these risks, knew that the fen/phen combination was not approved by the FDA, had not been adequately studied, and yet was being routinely prescribed by physicians. This litigation led to one of the largest class action settlements in history, the multi-billion dollar Nationwide Class Action Settlement with American Home Products approved by the United States District Court for the Eastern District of Pennsylvania. In this litigation, BLB&G was involved in lawsuits filed in the 10 jurisdictions and was designated Class Counsel in the Consolidated New York and New Jersey state court litigations. Additionally, the firm was Co-Liaison Counsel in the New York litigations and served as the State Court Certified Class Counsel for the New York Certified Class to the Nationwide Settlement.

CLIENTS AND FEES

Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.

As stated, our client roster includes many large and well known financial and lending institutions and pension funds, as well as privately held corporate entities which are attracted to our firm because of our reputation, particular expertise and fee structure.

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

IN THE PUBLIC INTEREST

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

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

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

The Paul M. Bernstein Memorial Scholarship, Columbia Law School. Paul M. Bernstein was the founding senior partner of the firm. Mr. Bernstein led a distinguished career as a lawyer and teacher and was deeply committed to the professional and personal development of young lawyers. The Paul M. Bernstein Memorial Scholarship Fund is a gift of the firm of Bernstein Litowitz Berger & Grossmann LLP, and the family and friends of Paul M. Bernstein. Established in 1990, the scholarship is awarded annually to one or more second-year students selected for their academic excellence in their first year, professional responsibility, financial need and contributions to fellow students and the community.

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

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

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

THE MEMBERS OF THE FIRM

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

Together, with the other partners at the firm, he has litigated many of the firm's most high profile and significant cases, including five of the largest securities fraud recoveries in history - the \$6.15 billion settlement of *In re WorldCom, Inc. Securities Litigation*, the \$3.3 billion settlement of *In re Cendant Corporation Securities Litigation*, the \$1.3 billion recovery in *In re Nortel Networks Corporation Securities Litigation*, the \$1.04 billion partial settlement of *In re McKesson HBOC, Inc. Securities Litigation*, and the over \$600 million investor recovery in *In re Lucent Technologies, Inc. Securities Litigation*.

Mr. Berger's role in the *WorldCom* case received extensive media attention and has been the subject of feature articles in numerous major publications including *BusinessWeek* and *The American Lawyer*. For his outstanding efforts on behalf of the *WorldCom Class*, *The National Law Journal* profiled Mr. Berger (one of only eleven attorneys selected nationwide) in its special June 2005 "Winning Attorneys" section. Additionally, Mr. Berger was featured in the July 2006 *New York Times* article, "A Class-Action Shuffle," which assessed the evolving landscape of the securities litigation arena.

Mr. Berger is widely recognized for his professional excellence and achievements. For the past four consecutive years, he has received the top attorney ranking in plaintiff securities litigation by the *Chambers and Partners' Guide to America's Leading Lawyers for Business*. In the 2010 edition of *Benchmark: The Definitive Guide to America's Leading Litigation Firms & Attorneys* (published by Legal Media Group - *Institutional Investor* and *Euromoney*), Mr. Berger was singled out as one of New York's "local litigation stars." Additionally, since their various inception, he has been named a "litigation star" by the *Legal 500 USA Guide*, one of "10 Legal Superstars" by *Securities Law360*, and is consistently named as one of the "500 Leading Lawyers in America" and "100 Securities Litigators You Need to Know" by *Lawdragon* magazine. Further, *The Best Lawyers in America* 2010 guide named Mr. Berger a leading lawyer in the fields of "Commercial Litigation of Securities" and "Professional Malpractice Law," relating to accountants and professional liability.

Mr. Berger also serves the academic community in numerous capacities as a member of the Dean's Council to Columbia Law School, and as a member of the Board of Trustees of Baruch College. In May 2006, he was presented with the Distinguished Alumnus Award for his many and varied contributions to Baruch College. In June 2009, he was elected to the Board of Trustees of The Supreme Court Historical Society, a prestigious non-profit organization committed to preserving the history of the Supreme Court of the United States. Mr. Berger is an Advisor to the American Law Institute, Restatement Third of Torts, and he currently serves on the Advisory Board of Columbia Law School's Center on Corporate Governance. Additionally, Mr. Berger has taught Profession of Law, an ethics course at Columbia.

Mr. Berger is a past chairman of the Commercial Litigation Section of the Association of Trial Lawyers of America (now known as the American Association for Justice) and lectures for numerous professional organizations. In 1997, Mr. Berger was honored for his outstanding contribution to the public interest by Trial Lawyers For Public Justice, where he was a "Trial Lawyer of the Year" Finalist for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

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

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

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

GERALD H. SILK's practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants' liability and the fiduciary duties of corporate officials. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context. Additionally, Mr. Silk is one of the partners who oversee the firm's new matter department, in which he, along with a group of financial analysts and investigators, counsels institutional clients on potential legal claims. He was the subject of "Picking Winning Securities Cases," a feature article in the June 2005 issue of *Bloomberg Markets* magazine, which detailed his work for the firm in this capacity. *Lawdragon* magazine has named him one of the "100 Securities Litigators You Need to Know," one of the "500 Leading Lawyers in America," and one of America's top 500 "rising stars" in the legal profession. Mr. Silk has also been selected for inclusion among *New York Super Lawyers* every year since 2006.

Mr. Silk is currently representing public pension funds who participated in a securities lending program administered and managed by Northern Trust Company and sustained losses as a result of Northern Trust's alleged breaches of fiduciary duty. He is also prosecuting claims on behalf of investors who purchased limited partnership interests in investment funds managed by Swiss bank Union Bancaire Privée ("UBP"), which were ultimately invested (and lost) in Bernie Madoff Investment Securities. Mr. Silk is also actively involved in the firm's prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation – which led to an increase of approximately \$3 billion in the consideration offered to shareholders.

Mr. Silk was one of the principal attorneys responsible for prosecuting the *In re Independent Energy Holdings Securities Litigation*, a case against the officers and directors of Independent Energy as well as several investment banking firms which underwrote a \$200 million secondary offering of ADRs by the U.K.-based Independent Energy. The Independent Energy litigation was resolved for \$48 million. Mr. Silk has also prosecuted and successfully resolved several other securities class actions, which resulted in substantial cash recoveries for investors, including *In re Sykes Enterprises, Inc. Securities Litigation* in the Middle District of Florida, and *In re OM Group, Inc. Securities Litigation* in the Northern District of Ohio. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for \$3.2 billion.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Mr. Silk served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.

Mr. Silk lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including "The Compensation Game," *Lawdragon*, Fall 2006; "Institutional Investors as Lead Plaintiffs: Is There A New And Changing Landscape?," *75 St. John's Law Review* 31 (Winter 2001); "The Duty To Supervise, Poser, Broker-Dealer Law and Regulation", 3rd Ed. 2000, Chapter 15; "Derivative Litigation In New York after Marx v. Akers", *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

EDUCATION: Wharton School of the University of Pennsylvania, B.S., Economics, 1991. Brooklyn Law School, J.D., *cum laude*, 1995.

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

MARK LEBOVITCH is primarily responsible for the firm's corporate governance litigation practice, focusing on derivative suits and transactional litigation. Among other things, he is currently prosecuting a case of first impression challenge to the legal validity of "Proxy Puts" – contractual provisions that are common in corporate debt agreements and that allegedly undermine shareholders' fundamental voting rights. In addition, he is prosecuting the allegedly self-interested termination of a premium acquisition agreement by the CEO of the Landry's Restaurants, Inc., the Emulex board's allegedly bad faith rejection of a premium takeover offer by Broadcom Corporation, the restructuring transactions of DirecTV, and the inclusion in the Atmel Corporation poison pill of vaguely defined derivative securities.

In prior matters, he represented public pension systems seeking to vindicate shareholder voting rights allegedly infringed by Yahoo!, Inc.'s employee severance plan and by unique merger agreement and standstill provisions used in the private equity buyout of Ceridian Corporation. He recently obtained up to \$57 million for shareholders over a year after the closing of the buyout of Dollar General Stores. He has also helped obtain for shareholders higher prices and meaningful corporate governance improvements in suits arising from, among other things, the hostile takeover battles over Caremark Rx, Inc., CBOT Holdings, Inc., Longs Drug Stores, Inc., and Anheuser-Busch Companies, Inc.

Mr. Lebovitch is also a member of the firm's subprime litigation team, and in that capacity is currently prosecuting *In re MBIA, Inc. Securities Litigation* and *In re Merrill Lynch Bondholders Litigation*, which recently settled for \$150 million.

Mr. Lebovitch clerked for Vice Chancellor Stephen P. Lamb on the Court of Chancery of the State of Delaware, and was a litigation associate at Skadden, Arps, Slate, Meagher & Flom in New York, where he represented clients in a variety of corporate governance, commercial and federal securities matters.

Mr. Lebovitch is a member of the Board of Advisors for the Institute for Law and Economics, and an author and frequent speaker at industry events and continuing legal education programs on a wide range of corporate governance and securities related issues. His publications include "Novel Issues' or a Return to Core Principles? Analyzing the Common Link Between the Delaware Chancery Court's Recent Rulings in Option Backdating and Transactional Cases" (*NYU Journal of Law & Business*, Volume 4, Number 2); "Calling a Duck a Duck: Determining the Validity of Deal Protection Provisions in Merger of Equals Transactions" (2001 *Columbia Business Law Review* 1) and "Practical Refinement" (*The Daily Deal*, January 2002), each of which discussed evolving developments in the law of directors fiduciary duties.

EDUCATION: Binghamton University – State University of New York, B.A., *cum laude*, 1996. New York University School of Law, J.D., *cum laude*, 1999.

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

ASSOCIATES

JEREMY FRIEDMAN prosecutes corporate governance and shareholder rights litigation on behalf of the firm's institutional investors, focusing on merger and acquisition litigation. Prior to joining the firm, Mr. Friedman was an associate at Simpson Thacher & Bartlett LLP, where he represented clients in merger and acquisition transactions and debt financings. During this time, he also served as an associate counsel for the Lawyers' Committee For Civil Rights Under Law, where he led non-partisan election protection efforts for the organization's National Campaign for Fair Elections.

EDUCATION: University of Maryland, B.S., *summa cum laude*, 2004; Honors program, President's Scholarship, Beta Gamma Sigma Business Fraternity . New York University School of Law, J.D., *magna cum laude*, 2007; Order of the Coif

BAR ADMISSIONS: New York

AMY MILLER is the senior associate responsible for the firm's corporate governance litigation practice. She prosecutes corporate governance and shareholder rights litigation on behalf of the firm's institutional investor clients. Her practice often focuses on merger and acquisition litigation arising from transactions that are structured to unfairly benefit the company's management or directors at the shareholder's expense, and other corporate governance disputes.

She has litigated numerous suits fighting "poison pills," "poison puts," and other defensive measures used by corporate boards to effectively sabotage buyout offers from other companies and infringe upon shareholders' voting rights. As counsel in the *Atmel Corporation Litigation*, she was a member of the team that successfully challenged the Atmel Board's novel extension of the poison pill device and obtained a revision of such pill that clarified its triggering points and provided shareholders with an opportunity to be heard in an advisory vote if Atmel adopts another poison pill in the future.

Ms. Miller also represents institutional clients seeking accountability from corporate management on issues ranging from corporate waste to breach of fiduciary duty. A recent successful example is the prosecution of the *In re Data Domain Shareholder Litigation* which obtained for Data Domain shareholders an increased purchase price by forcing the Data Domain Board of Directors to negotiate with an additional potential acquirer that the Board previously refused to consider.

Ms. Miller is currently counsel in a shareholder class action and derivative suit involving Landry's Restaurants, Inc. and its Board of Directors, which alleges that the Board breached their fiduciary duties by allowing Landry's CEO and Chairman to strip Landry's public shareholders of their controlling interest in the Company for no premium thereby severely devaluing Landry's remaining public shares. She is also prosecuting the *Alcon Shareholder Litigation*, where Alcon's controlling shareholders, Novartis and Nestlé, are attempting to force a transaction on the Alcon minority shareholders at an unfair price without any vote or ability to refuse the transaction - despite promises made in Alcon's SEC filings that ensured certain protections for the Alcon minority shareholders in the event of a merger. In addition, Ms. Miller is a member of the team preparing for trial in Delaware Chancery Court on behalf of ACS shareholders against the ACS' Board for violation of its fiduciary duties relating to the Company's acquisition by Xerox Corporation and Boulder Acquisition Corp.

In 2009, Ms. Miller authored "Where Do Investors Stand After the Recent Delaware Chancery Court Decisions in Citigroup and AIG?" published in the firm's quarterly newsletter the *Advocate For Institutional Investors*.

Prior to joining the firm, Ms. Miller worked at Cadwalader, Wickersham & Taft, where she participated in a number of securities and corporate governance-related litigations, which included investigations by the S.E.C., Massachusetts United States Attorney's Office and Illinois United States Attorney's Office. Ms. Miller has also participated in an externship with the Honorable George B. Daniels of the U.S. District Court for the Southern District of New York.

EDUCATION: Boston University, B.A., *magna cum laude*, 1995. New York Law School, J.D., *summa cum laude*, 2001; Member and Articles Editor, *New York Law School Law Review*; Merit Based Scholarship.

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

JOHN J. MILLS' practice concentrates on Class Action Settlements and Settlement Administration. Mr. Mills also has experience representing large financial institutions in corporate finance transactions.

EDUCATION: Duke University, B.A., 1997. Brooklyn Law School, J.D., *cum laude*, 2000; Member of *The Brooklyn Journal of International Law*; Carswell Merit Scholar recipient.

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

BRETT VAN BENTHUSEN prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients.

Prior to joining the firm, Mr. Van Benthysen interned at the New Jersey Office of the Attorney General, Securities Fraud Prosecution Section, as well as at the Seton Hall Center for Social Justice, assisting Newark homeowners who were defrauded by a predatory lending scheme.

EDUCATION: The College of New Jersey, B.A., *magna cum laude*, 2004. New York University, M.S., 2006. Seton Hall University School of Law, J.D., *cum laude*, 2009., Civil Litigation Clinic Practitioner Award.

BAR ADMISSION: New Jersey.

JEROEN VAN KWAWEGEN has litigated a wide array of securities class actions and derivative actions, including securities fraud and actions involving breach of fiduciary duties. Prior to joining BLB&G, Mr. van Kwawegen was a litigation associate in the New York office of Latham and Watkins LLP specializing in internal financial investigations and insurance disputes. He also worked as a Dutch lawyer at Schut & Grosheide in the Netherlands where his practice focused on commercial and business disputes, including international arbitration.

Mr. van Kwawegen's numerous *pro bono* activities include constitutional challenges to federal and state Internet censorship statutes and post-conviction relief proceedings on behalf of a person sentenced to death.

EDUCATION: University of Amsterdam School of Law, 1998, LL.M. Columbia University Law School, 2003, J.D., Harlan Fiske Stone Scholar.

BAR ADMISSIONS: New York, U.S. Courts of Appeals for the Second and Third Circuits; U.S. District Courts for the Southern and Eastern Districts of New York.

EXHIBIT J

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LOUISIANA MUNICIPAL POLICE
EMPLOYEES' RETIREMENT SYSTEM, on
behalf of itself and all other similarly situated
shareholders of Landry's Restaurants, Inc., and
derivatively on behalf of nominal defendant
Landry's Restaurants, Inc.,

Plaintiff,

v.

C.A. No. 4339-VCL

TILMAN J. FERTITTA, STEVEN L.
SCHEINTHAL, KENNETH BRIMMER,
MICHAEL S. CHADWICK, MICHAEL
RICHMOND, JOE MAX TAYLOR,
FERTITTA HOLDINGS, INC., FERTITTA
ACQUISITION CO., RICHARD LIEM,
FERTITTA GROUP, INC. and FERTITTA
MERGER CO.

Defendants, and

LANDRY'S RESTAURANTS, INC.,

Nominal Defendant.

AFFIDAVIT OF MARK LEOVITCH REGARDING LITIGATION FUND

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Mark Lebovitch, being duly sworn, deposes and says:


1. I am a partner at Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz"), co-counsel for Plaintiff and Court-appointed Class Representative, Louisiana Municipal Police Employees' Retirement System in the above-captioned action (the "Action"). I am familiar with the facts and proceedings herein and submit this affidavit in support of the motion for an award of attorneys' fees and expenses.

2. During the course of this litigation, co-counsel maintained a litigation fund for certain common expenses incurred in connection with the prosecution of the Action (the "Litigation Fund").

3. As summarized in the schedule attached hereto as Exhibit 1, from inception of the litigation through the September 15, 2010, the Litigation Fund received contributions totaling \$165,000.00 and disbursed a total of \$163,395.44 for unreimbursed litigation expenses, with a remaining balance of \$1,604.56.

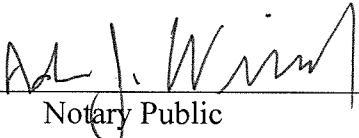
4. The expenses incurred by the Litigation Fund are reflected on the books and records of my firm, segregated to reflect the fact that this is a Litigation Fund. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

I declare under the penalty of perjury under the laws of the State of Delaware that the foregoing facts are true and correct.



Mark Lebovitch

Subscribed and sworn to before me this
17th day of September 2010



Notary Public

ADAM J. WEINSCHTEL
Notary Public, State Of New York *Queens*
No. 01WE6045618
Qualified In ~~New York County~~
Commission Expires July 31, 20 11

EXHIBIT 1

LANDRY'S LITIGATION
C.A. No. 4339-VCL

**CONTRIBUTIONS TO AND
DISBURSEMENTS FROM THE LITIGATION FUND**
For Expenses Incurred from Inception through September 15, 2010

CONTRIBUTIONS:

Firm	Amount Contributed
Grant & Eisenhofer P.A.	\$145,000.00
Bernstein Litowitz Berger & Grossmann LLP	\$20,000.00
TOTAL CONTRIBUTED:	\$165,000.00

DISBURSEMENTS:

Category of Expense	Amount Disbursed
Experts	\$148,328.00
Outside Copying	\$5,341.19
Mediation Fees	\$9,726.25
TOTAL DISBURSED:	\$163,395.44

BALANCE:* **\$1,604.56**

* The balance in the litigation fund will be used towards the payment of outstanding invoices. The total amount for outstanding invoices set forth in Exhibit 2 to the Affidavit of Mark Lebovitch (a separate Exhibit to the Thomas Declaration) has been reduced by the amount of the balance in the litigation fund as reflected in the line item marked "Adjustment."