



Independent Fiduciary Experience Litigation Settlements

Fiduciary Counselors has acted or is currently acting as independent fiduciary for more than 50 class action litigation settlements related to violations of U.S. Securities law or ERISA (see Exhibit A for a partial list). We have filed claims on behalf of the plans in almost all the securities settlements we have reviewed.

Settlement Fiduciary Responsibilities

Depending on the nature of the settlement, Fiduciary Counselors will assume responsibility for:

- Determining whether the settlement satisfies the conditions of Prohibited Transaction Exemption 2003-39 (“PTE 2003-39”), including negotiating any changes necessary to protect the interests of the plan and its participants;
- Determining whether the plan should opt out of the settlement;
- Determining whether any objections should be brought on behalf of the plan, and if so, filing the objections;
- Determining whether the plan should agree to any release required from the plan as part of the settlement, and if so, signing the release;
- Preparing and filing claims on behalf of the plan in the settlement;
- Determining how the proceeds of the settlement are allocated to participants’ accounts; and
- Preparing or reviewing participant communications.

Determining whether to opt out, filing claims and allocating the proceeds ordinarily are not required in ERISA settlements.

We generally provide a report describing our conclusions, which may be submitted to the court.

In making our determinations, we review the strength of the claims brought in the litigation, the potential recovery if the suit had been won, the recovery obtained, the scope of the release being granted (particularly as a securities settlement release affects the plan’s potential ERISA claims or an ERISA settlement release affects the plan’s potential securities claims), the plan of allocation and the reasonableness of fees paid to plaintiffs’ counsel.

In preparing claims in securities cases, we work with a firm with expertise in claims processing (i) to determine whether it is more advantageous to submit claims based on trust level transactions or participant level transactions and (ii) to assure the claims and supporting data conform to all submission guidelines. To the extent possible (given limitations of data), we have allocated any recovery to participants in securities cases in proportion to the claims participants would have had if they acquired the stock directly. However, in cases where sufficient historical data about participant transactions has not been available, we have used other methods to approximate each participant’s share of the recovery,

such as the amount of stock held by each participant in the class period. In ERISA settlements, the allocation method has usually been negotiated as part of the settlement and we have reviewed it for reasonableness as part of our overall review of the settlement.

Qualifications and Experience of Litigation Committee

Three experienced ERISA attorneys form Fiduciary Counselors' Litigation Committee, which evaluates class action settlements:

- **Thomas O'Connor** is Fiduciary Counselors' President and CEO. He has participated in all aspects of the Litigation Committee's assignments since 2009. In addition to being a certified public accountant, Mr. O'Connor's primary background is in taxation with an emphasis in employee benefits law. He is also a member of the firm's Investment Committee. Previously, he taught both ERISA Law and Accounting for Lawyers as an adjunct professor at George Mason's School of Law.
- **Stephen Caflisch** is Fiduciary Counselors' Senior Vice President and General Counsel. He has more than twenty-five years of experience in employee benefits. Before joining Fiduciary Counselors, Mr. Caflisch was an employee benefits consultant at Price Waterhouse, specializing in qualified and non-qualified plans with an emphasis on qualified retirement plans. Prior to his work at Price Waterhouse, Mr. Caflisch worked on issues involving both single-employer and multiemployer plans as a Special Counsel at the Pension Benefit Guaranty Corporation. Mr. Caflisch also specialized in employee benefits as an associate with the law firm of Reed Smith Shaw & McClay in Washington, DC.
- **Kathryn Ricard** is Fiduciary Counselors' Senior Vice President. Ms. Ricard has over twenty-five years experience working with employee benefit plans as a lawyer, CPA and public policy expert. Prior to joining Fiduciary Counselors, Ms. Ricard was Senior Vice President, Retirement Policy at The ERISA Industry Committee (ERIC) and had overall responsibility for developing retirement policy on behalf of ERIC's members. At ERIC, Ms. Ricard focused on retirement policy issues as they impacted large employers in policy areas including regulatory, legislative and judicial.

The Litigation Committee will consult as appropriate with **Ivan Strasfeld**, who serves as a Senior Advisor to Fiduciary Counselors and has unparalleled experience and expertise with respect to the Department of Labor's perspective on prohibited transactions and exemptions. Before retiring from the Department of Labor in February 2012, Mr. Strasfeld worked at the Employee Benefits Security Administration for 24 years as the Director of the Office of Exemption Determinations. Prior to that, he worked for 10 years in several positions in the Office of Regulations and Interpretations ("ORI") including Chief of ORI's Division of Fiduciary Interpretations and Regulations and Chief of ORI's Division of Regulatory Coordination.

Exhibit A
List of Litigation Settlements Reviewed by Fiduciary Counselors*

- Affiliated Computer Services (ERISA)
- AIG (ERISA)
- Allegheny Energy (ERISA)
- Allegheny Energy (securities)
- Amerada Hess (ERISA)
- Amerada Hess (securities)
- Amgen (ERISA)
- Amgen (securities)
- AOL Time Warner (ERISA)
- Bay Environmental Management, Inc. (ERISA)
- Bear Stearns Companies Inc. (ERISA)
- Beverly Enterprise (ERISA)
- Boston Scientific Corp. (ERISA)
- Broadwing (ERISA)
- Broadwing (securities)
- Brown University (ERISA)
- Calpine Corp. (ERISA)
- Chemtura Corporation (securities)
- CHS/Community Health Systems (ERISA)
- CIGNA (securities)
- Comair (ERISA)
- ConAgra (ERISA)
- Diebold, Incorporated (ERISA)
- Dillard's (ERISA)
- Duke Energy Corporation (securities)
- Eaton Vance (ERISA)
- Enron (securities)
- Federal-Mogul Corporation (ERISA)
- Federal-Mogul Corporation (securities)
- Fidelity (ERISA)
- Fifth Third (securities)
- Fluor (securities)
- Franklin Resources (ERISA)
- Goodyear (ERISA)
- Global Crossing (ERISA)
- Global Crossing (securities)
- Gucci (ERISA)
- Huntington Bancshares Inc. (2011) (ERISA)
- Huntington Bancshares Inc. (2021) (ERISA)
- IBEW Local No. 82 Joint Pension Fund (ERISA and labor)
- IBM (securities)
- International Game Technology (securities)
- Invesco (ERISA)
- J.C. Penney (ERISA)
- J.C. Penney (securities)
- JDS Uniphase (ERISA)
- JPMorgan Chase Bank, N.A. (ERISA)
- Lear Corporation (ERISA)
- Level 3 Communications, Inc. (ERISA)
- MBNA (ERISA)
- Massachusetts Financial Services (ERISA)
- Massachusetts Financial Services (securities)
- Mirant (ERISA)
- M&T Bank (ERISA)
- National City (shareholder derivative)
- McKinsey & Company (ERISA)
- Neuberger Berman (ERISA)
- NovaStar Financial, Inc. (ERISA)
- Northern Trust Investments (ERISA)
- NUI (ERISA)
- Polaroid (ERISA)
- Popular, Inc. (ERISA)
- Popular, Inc. (securities)
- Princeton University (ERISA)
- Putnam Investments (ERISA)
- RadioShack Corporation (ERISA)
- RCN (ERISA)
- Safeway (ERISA)
- SEI Investments (ERISA)
- Sprint (securities)
- State Street Bank & Trust Co. (ERISA)
- Sterling Financial (securities)
- SunTrust Banks (ERISA)
- Teva Pharmaceuticals USA (ERISA)
- Tower Automotive (ERISA)
- United Air Lines ESOP (ERISA)
- UnitedHealth Group (ERISA)
- YRC Worldwide, Inc. (ERISA)

* This exhibit excludes reviews that are subject to confidentiality. Where ERISA and securities litigation are listed, Fiduciary Counselors reviewed separate ERISA and securities settlements.