

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Stuart Krohnengold, Wayne Antoine, Lee
Webber, Anthony Medici, Joseph Bendrihem,
Larry Gilbert, Rafael Musni, Thomas Lantz,
Sandra Scanni, and Claudia Gonzalez, as
representatives of a class of similarly situated
persons, and on behalf of the New York Life
Insurance Employee Progress Sharing
Investment Plan, and the New York Life
Insurance Company Agents Progress Sharing
Plan,

Case No. 1:21-cv-01778 - JMF

Plaintiffs,

v.

New York Life Insurance Company; the
Fiduciary Investment Committee; the Board
of Trustees; Katherine O'Brien; Anthony R.
Malloy; Yie-Hsin Hung; Arthur A. Seter;
Scott L. Lenz; Robert J. Hynes; and John and
Jane Does 1-20,

Defendants.

**DECLARATION OF KAI RICHTER IN SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE
AWARDS**

I, Kai Richter, hereby submit this Declaration in support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Class Representative Service Awards.

Professional Background

1. I am Of Counsel at Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") and a member of the firm's Employee Benefits/ERISA Practice Group. Cohen Milstein is counsel for Plaintiffs in this action, and I have served as Cohen Milstein's lead counsel in the action.

2. I am a member in good standing of the State Bar of Minnesota, and I am admitted to practice before this Court *pro hac vice*. I also have been admitted in numerous federal courts across the country, including the following:

United States Supreme Court
1st Circuit Court of Appeals
2nd Circuit Court of Appeals
3rd Circuit Court of Appeals
4th Circuit Court of Appeals
6th Circuit Court of Appeals
8th Circuit Court of Appeals
9th Circuit Court of Appeals
10th Circuit Court of Appeals
District of Minnesota
District of Colorado
Eastern District of Michigan
Western District of New York
Eastern District of Wisconsin

3. I have been actively engaged in the practice of law since 1999 and have substantial class action experience and other complex litigation experience.

4. For the past fourteen years, at both Cohen Milstein and my former law firm, my practice has focused exclusively on class action cases. I have been appointed class counsel for litigation or settlement purposes in over thirty class action cases in total. In connection with those cases, I have personally negotiated class action settlements providing for more than \$450 million in available relief to class members nationwide.

5. The principal types of class action cases that I have handled are consumer class actions and ERISA class actions. In the course of my former consumer practice, I spearheaded class action litigation against several major financial institutions, including JPMorgan Chase, Bank of America, U.S. Bank, Wells Fargo, Citibank, GMAC Mortgage, RBS Citizens, and MidFirst Bank. For example, I successfully argued contested class certification motions in *Hofstetter v.*

Chase Home Finance, LLC, 2011 WL 1225900 (N.D. Cal. Mar. 31, 2011) and *Ellsworth v. U.S. Bank, N.A.*, 2014 WL 2734953 (N.D. Cal. June 13, 2014), successfully argued before the First Circuit Court of Appeals in *Lass v. Bank of America, N.A.*, 695 F.3d 129 (1st Cir. 2012), and successfully argued and/or briefed dispositive motions in a number of other consumer class cases, including *Jackson v. Wells Fargo Bank, N.A.*, 2013 WL 5945732 (W.D. Pa. Nov. 6, 2013); *Leghorn v. Wells Fargo Bank, N.A.*, 950 F. Supp. 2d 1093 (N.D. Cal. 2013); *Casey v. Citibank, N.A.*, 915 F. Supp. 2d 255 (N.D.N.Y. 2013); *Berger v. Bank of America, N.A.*, 931 F. Supp. 2d 292 (D. Mass. 2013); *Morris v. Wells Fargo Bank, N.A.*, 2012 WL 3929805 (W.D. Pa. Sept. 7, 2012); *Ulbrich v. GMAC Mortgage, LLC*, 2012 WL 3516499 (S.D. Fla. Aug. 15, 2012); *Walls v. JPMorgan Chase Bank, N.A.*, 2012 WL 3096660 (W.D. Ky. July 30, 2012); *Skansgaard v. Bank of America, N.A.*, 896 F. Supp. 2d 944 (W.D. Wash. 2011); and *Wulf v. Bank of America, N.A.*, 798 F. Supp. 2d 586 (E.D. Pa. 2011).

6. More recently, I have focused on ERISA class action litigation. I was a co-founder of the ERISA litigation practice at my former law firm, and have continued to focus on ERISA class action cases since joining Cohen Milstein in March 2022. I have served as counsel of record in two dozen cases involving retirement plans where classes were certified for litigation and/or settlement purposes, including *Andrus v. New York Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.), *Beach v. JPMorgan Chase Bank, N.A.*, 1:17-cv-00563 (S.D.N.Y.) (Furman, J.), and other cases in the Southern District of New York. A list of these cases is provided below:

- *Andrus v. New York Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y.);
- *Main v. Am. Airlines, Inc.*, No. 3:16-cv-01033 (N.D. Tex.);
- *Sims v. BB&T Corp.*, No. 1:15-cv-00732 (M.D.N.C.);
- *Stevens v. SEI Invs. Co.*, No. 2:18-cv-04205 (E.D. Pa.);

- *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, No. 8:15-cv-01614 (C.D. Cal.);
- *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 5:16-cv-03698 (N.D. Cal.);
- *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375 (W.D.N.Y.);
- *Wildman v. Am. Century Servs., LLC*, No. 4:16-cv-00737 (W.D. Mo.);
- *Moreno v. Deutsche Bank Ams. Holding Corp.*, No. 1:15-cv-09936 (S.D.N.Y.);
- *Clark v. Oasis Outsourcing Holdings Inc.*, No. 9:18-cv-81101 (S.D. Fla.);
- *Velazquez v. Mass. Fin. Servs. Co.*, No. 1:17-cv-11249 (D. Mass.);
- *Beach v. JPMorgan Chase Bank, N.A.*, No. 1:17-cv-00563 (S.D.N.Y.);
- *Intravaia v. Nat'l Rural Elec. Coop. Assoc.*, No. 1:19-cv-00973 (E.D. Va.);
- *Larson v. Allina Heath Sys.*, No. 17-cv-03835 (D. Minn.);
- *Brotherston v. Putnam Invs., LLC*, No. 1:15-cv-13825 (D. Mass.);
- *Mass v. The Regents of the Univ. of Cal.*, No. RG17-879223 (Alameda Cnty. Sup. Ct.);
- *Moitoso v. FMR LLC*, No. 1:18-cv-12122 (D. Mass.);
- *Reetz v. Lowe's Cos., Inc.*, No. 5:18-cv-00075 (W.D.N.C.);
- *Toomey v. Demoulas Super Mkts., Inc.*, No. 1:19-cv-11633 (D. Mass.);
- *Bhatia v. McKinsey & Co., Inc.*, No. 1:19-cv-01466 (S.D.N.Y.);
- *Kirk v. Ret. Comm. of CHS/Cnty. Health Sys., Inc.*, No. 3:19-cv-00689 (M.D. Tenn.);
- *Baker v. John Hancock Life Ins. Co. (U.S.A.)*, No. 1:20-cv-10397 (D. Mass.);
- *Kinder v. Koch Indus., Inc.*, No. 1:20-cv-02973 (N.D. Ga.); and
- *Hill v. Mercy Health Sys. Corp.*, No. 3:20-cv-50286 (N.D. Ill.).

7. I have tried three ERISA class action cases: the *Putnam* case in 2017, the *American Century* case in 2018, and the *Lowe's* case in 2021. I also have negotiated numerous settlements

that have received final court approval, including in *Andrus v. New York Life*, *American Airlines*, *SEI*, *Allianz*, *Fujitsu*, *M&T*, *Deutsche Bank*, *Oasis Outsourcing*, *Massachusetts Financial Services*, *National Rural Electric Cooperative Association* (“NRECA”), *Putnam*, *Huntington*, *FMR* (“Fidelity”), *Lowe’s* (partial settlement with one defendant), *Demoulas*, *McKinsey*, *CHS*, *John Hancock*, *Koch*, and *Mercy Health*.¹

8. In several of the above cases, I successfully briefed and/or argued contested class certification motions, including *BB&T*, *Allianz*, *American Century*, *Deutsche Bank*, *JPMorgan Chase*, *Putnam*, and *University of California*, and reached stipulations concerning class certification in cases with *Massachusetts Financial Services*, *Fidelity*, *Lowe’s*, and *John Hancock*.

9. I have spoken by invitation at several national conferences and seminars on ERISA litigation, including: (1) an American Bar Association seminar, entitled “ERISA: Beyond the Basics” on a panel regarding “The Next Frontiers of Plan Fee Litigation” (May 9, 2024); (2) a Practising Law Institute seminar on ERISA Investment Basics, where I served on a panel regarding “401(k) Plan Fiduciary Fundamentals” (March 21, 2023); (3) five annual employee benefits programs sponsored by the American Law Institute (September 2018 – October 2022); (4) a webinar on “Fee Litigation” sponsored by the American Bar Association (November 12, 2019); (5) a Professional Liability Directors & Officers conference on a panel regarding “Plan Fee Litigation” (February 6, 2019); (6) an American Bankers Association Insurance Risk Management Conference on a panel concerning excessive fee ERISA class actions (February 5, 2019); (7) an American Law Institute webcast on Excessive Fee Litigation (November 28, 2018); (8) the American Conference Institute’s National Forum on ERISA Litigation (on both March 1, 2017 and November 2, 2017), where I was a member of the “Fiduciary Investment Litigation Update”

¹ In addition to the foregoing, I also helped litigate *BB&T*, *JPMorgan Chase*, and *Allina* to court-approved settlements, but did not serve as lead counsel and was not directly involved in the negotiation of those settlements.

panel; and (9) the Retirement Advisor Council's annual meeting (May 22, 2018), where I was a member of a panel on "The Moving Litigation Frontier."

10. Prior to my work at Cohen Milstein and my former firm, I served as the Manager of the Complex Litigation Division of the Office of the Minnesota Attorney General. During my tenure (from February 2008 to March 2010), I supervised and handled a large number of complex matters. For example, in June and September of 2009, I co-chaired a three-week trial involving claims for fraudulent sales of annuities and legal plans to over 1,200 Minnesota senior citizens, which ultimately resulted in a favorable judgment from the trial court. In addition, I handled a significant consumer enforcement action against Sprint Nextel relating to wrongfully imposed contracts and termination fees, which resulted in a comprehensive settlement in October 2009.

11. I also had significant prior class action experience, including two multi-week class action trials: a statewide wage and hour class action against Wal-Mart Stores in Minnesota (tried in 2007) and a landmark class action against the University of Michigan Law School, *see Grutter v. Bollinger*, 539 U.S. 306 (2003).

12. I received my law degree from University of Minnesota Law School in 1999, and my B.A. from Dartmouth College in 1995.

Law Firm Overview

13. I am honored to be a member of Cohen Milstein's ERISA litigation team. Cohen Milstein is widely recognized as a leader in class action litigation, and has a highly-regarded ERISA class action practice.

14. Cohen Milstein was named one of the ten "Most Feared Plaintiffs Firms" by *Law360*, and *Forbes* has called the firm a "class action powerhouse." In 2022, the *U.S. News* -

Best Lawyers “Best Law Firms” rankings recognized Cohen Milstein among the “Top Firms Nationally.”

15. Cohen Milstein’s Employee Benefits/ERISA Practice Group has been specifically recognized for the quality of its work. In 2022, our Practice Group was named by *Law360* as “Practice Group of the Year – Benefits” and earned that distinction for three out of four years. *Chambers USA* has also given Cohen Milstein its highest ranking for ERISA litigation on behalf of plaintiffs nationwide (Band 1). In conferring this honor, *Chambers USA* noted that “Cohen Milstein Sellers & Toll is highly regarded for its representation of plaintiffs in ERISA class actions. The firm is regularly sought out to represent plan participants and beneficiaries in a range of ERISA claims including breach of fiduciary duty.”

16. Cohen Milstein’s Employee Benefits/ERISA Practice Group has successfully litigated and resolved numerous ERISA cases on behalf of its clients, including in the area of proprietary funds affiliated with 401(k) plan sponsors. Within the past few years alone, the Group received final approval of three class action settlements in cases involving proprietary funds: *Becker v. Wells Fargo & Co.*, No. 0:20-cv-02016, ECF 283 (D. Minn. Aug. 31, 2022) (\$32.5 million); *Feinberg v. T. Rowe Price Group, Inc., et al.*, No. 1:17-cv-00427, ECF 258 (D. Md. July 6, 2022) (\$7 million); and *Baird v. BlackRock Institutional Trust Co.*, No. 4:17-cv-01892, ECF 490 (N.D. Cal. Nov. 3, 2021) (\$9.65 million). Moreover, the Group previously has achieved extraordinary results in other ERISA cases as well, including *In re Merrill Lynch, & Co., Inc. Securities, Derivative and ERISA Litigation*, No. 07-cv-10268 (S.D.N.Y.) (\$75 million settlement), and *In re Beacon Associates Litigation*, No. 09-cv-00777 (S.D.N.Y.) (\$219 million).

17. We also have achieved favorable pretrial rulings in several recent ERISA cases, including this case, *see* ECF 58 (denying motion to dismiss in part); ECF 93 (denying motion to

dismiss in full); and *Lloyd v. Argent Tr. Co.*, 2022 WL 17542071 (S.D.N.Y. Dec. 6, 2022) (denying motions to compel arbitration and motion to dismiss for lack of standing). Further, we recently achieved favorable appellate rulings in *Harrison v. Envision Management Holding, Inc. Bd. of Dirs.*, 59 F.4th 1090 (10th Cir. 2023) and *Burnett v. Prudent Fiduciary Servs., LLC*, No. 23-1527 (3d. Cir. Aug. 15, 2023) (summary affirmance).

18. Each of my Practice Group colleagues who are counsel of record in this case are seasoned class action litigators with experience handling high-profile ERISA cases such as this.

19. The Chair of the Practice Group, Michelle Yau, has over 20 years of ERISA litigation experience since graduating from Harvard Law School in 2003 (including as an Honors Program attorney at the Department of Labor before joining Cohen Milstein), and also has financial expertise as a former financial analyst in the Financial Institutions Group of the Investment Banking Division at Goldman Sachs. Like myself, Ms. Yau is a frequent speaker at ERISA seminars across the country.

20. Eleanor Frisch was a lead author of plaintiffs' appeal brief in *Brotherston v. Putnam Investments, LLC*, 907 F.3d 17, 31 (1st Cir. 2018), a successful appeal that resulted in a partial vacatur of the trial court's adverse judgment on plaintiffs' ERISA claims (and ultimately, to an eight-figure settlement post-appeal). Ms. Frisch also has significant additional class action experience since graduating *magna cum laude* from the University of Minnesota Law School in 2014 and clerking for the Eighth Circuit.

21. Daniel Sutter was recently named by *Chambers USA* as an "Associate to Watch" in the area of plaintiff-side ERISA Litigation, and has extensive experience litigating ERISA class action cases since graduating from George Washington University Law School in 2016 and joining our Practice Group. Before that, he also worked for Cohen Milstein as both a law clerk and analyst.

22. Jacob Schutz served with me on the *Putnam* trial team and also served as counsel of record in several ERISA class cases with me, including the *Deutsche Bank* case in this District and the *M&T Bank* case in the Western District of New York. Mr. Schutz earned his undergraduate degree from the University of Pennsylvania and his law degree from the University of Minnesota.

23. Caroline Bressman also has experience litigating multiple ERISA class actions, and is an adjunct faculty member at the University of Minnesota Law School. Ms. Bressman earned her undergraduate degree from St. Olaf College and her law degree from the University of Minnesota Law School.²

24. Further information regarding Cohen Milstein's Employee Benefits/ERISA Practice Group and the attorneys in the Group is available at <https://www.cohenmilstein.com/practice-area/employee-benefits-erisa>. For ease of reference, a Law Firm, Practice Group, and Attorney Overview is attached as Exhibit 1.

Work Performed by Class Counsel

25. As a result of our firm's experience litigating ERISA cases and other class action cases, we were able to efficiently and effectively handle this action.

26. Notwithstanding the efficient manner in which the matter was handled, Cohen Milstein has dedicated a significant amount of time to this case.

27. Prior to filing this action, Cohen Milstein conducted a thorough investigation of the at-issue Plans, their investments, and potential claims. As a result of those efforts, Cohen Milstein was able to prepare a lengthy 47-page Complaint with detailed factual allegations and charts.

² In addition to the foregoing attorneys, Michael Eisenkraft from our New York Office is also counsel of record in this case. Mr. Eisenkraft is a partner at Cohen Milstein and a member of the firm's Executive Committee. Mr. Eisenkraft chiefly practices in the areas of securities and antitrust, but is currently working with me on one other ERISA matter, *Lewandowski v. Johnson & Johnson*, 3:24-cv-00671 (D.N.J.). Mr. Eisenkraft received his law degree from Harvard Law School and his undergraduate degree from Brown University. More information about Mr. Eisenkraft is available at <https://www.cohenmilstein.com/bio/michael-b-eisenkraft/>.

28. After the action was filed, we drafted two amended complaints, fully briefed two motions to dismiss, and defeated those motions to dismiss either in whole (on the second motion to dismiss) or in part (on the first motion).

29. We also briefed a contested motion for class certification (ECF 115) and two discovery motions via letter briefing (ECFs 106, 147), and attended an in-person hearing on the latter discovery motion (*see* ECF 149), prior to filing Plaintiffs' motion for preliminary approval of the Settlement and (ECF 174) and the present motion.

30. Discovery was also extensive. During the course of fact discovery, we took eleven depositions (eight defense witness depositions plus three third-party depositions) and defended all ten Plaintiff depositions. We also served multiple rounds of written discovery requests on Defendants, issued subpoenas to third parties, and reviewed over a quarter million pages of documents and spreadsheets (179,000 pages of documents from Defendants and over 100,000 pages from third parties). In addition, we responded to ten sets of interrogatories and document requests that were separately served on each of the named Plaintiffs. Throughout the process, we extensively met and conferred with defense counsel regarding discovery.

31. We also engaged two experienced experts (Dr. Steve Pomerantz as Plaintiffs' investment expert and Marcia Wagner as Plaintiffs' fiduciary process expert), submitted both initial reports and reply reports from those experts, and defended their depositions. In addition, we took the depositions of both of Defendants' rebuttal experts, after receiving and reviewing their reports.

32. In connection with settlement, we participated in an in-person settlement conference with defense counsel in New York in September 2023 pursuant to the Court's Scheduling Order (ECF 133). Following those discussions, we served a demand on Defendants and the parties agreed to continue their settlement discussions via mediation.

33. On January 18, 2024, we participated in a full-day mediation with Robert Meyer from JAMS, and prepared a fulsome mediation statement in advance of the mediation. As a result of extensive arm's length negotiations throughout the mediation (which were facilitated by Mr. Meyer and lasted approximately ten hours), the parties reached a settlement-in-principle.

34. Our firm then prepared the initial draft of the Settlement Agreement and exhibits thereto (including the Notice of Settlement and Former Participant Rollover Form), and negotiated the details of the Settlement. Once the Settlement was finalized, we prepared Plaintiffs' preliminary approval motion and coordinated with the Settlement Administrator and Escrow Agent with respect to settlement administration. This included communicating with Analytics to facilitate distribution of the Notice of Settlement, reviewing the Settlement Website and scripts for the telephone support line, and ensuring that the initial deposit into the Qualified Settlement Fund was received and invoices for settlement administration were processed as appropriate pending final approval. In addition, Jacob Schutz and I also made ourselves available for an interview with the Independent Fiduciary as part of its due diligence process.

35. In connection with this and other work on the case (e.g., Rule 26(f) conference and case management report, Rule 16 hearing, client communications, responding to class member inquiries, etc.), Cohen Milstein attorneys and staff have expended over 5,600 hours on the action to date (4,271.90 attorney hours and 1,379.85 non-attorney hours), with a lodestar value of \$4,193,574.50 at the firm's customary billing rates.³ Below is a true and correct itemization of the foregoing time and lodestar by timekeeper. In the event that the Court would like further detail, we would be happy to provide it.

³ These figures exclude time spent on the present motion and additional time that I have not counted as a matter of billing discretion.

	Reported CMST Lodestar (through May 31, 2024)			
Attorneys	Admitted to Bar	Hours	Rate⁴	Lodestar
Caroline Bressman	2018	65.90	\$650	\$42,835.00
Michael Eisenkraft	2004	5.05	\$1,005	\$5,075.25
Eleanor Frisch	2014	592.50	\$755	\$447,337.50
Karen L. Handorf*	1975	193.25	\$1,025	\$198,081.25
Scott Lempert*	1995	281.25	\$840	\$236,250.00
Laura Older Rockmore*	2021	84.35	\$550	\$46,392.50
Kai Richter	1999	998.6	\$1,060	\$ 1,058,516
Jacob Schutz	2013	1,096.4	\$785	\$ 860,674
Daniel Sutter	2016	680.20	\$740	\$503,348.00
Michelle C. Yau	2004	274.40	\$1,005	\$ 275,772
Paralegals				
Norma Mejia*	Paralegal	83.5	325	\$27,137.50
Sydney Greenman	Paralegal	274.45	380	\$104,291.00
Doron Hadar	Paralegal	924.55	380	\$ 351,329.00
Ciara O'Neill*	Paralegal	15.25	350	\$5,337.50
Jillian Pincus	Paralegal	82.10	380	\$31,198.00
Total		5,651.75		\$4,193,574.5

36. In setting the billing rates shown above, our firm is cognizant of the rates approved in other ERISA class action cases (as set forth in our accompanying Memorandum), as well as the rates charged by the defense bar in this field. These rates are also consistent with the rates that our firm charges for non-contingent fee work.

37. In my professional opinion, and based on my personal knowledge of the work that was performed and the requirements of this case and similar cases, the time expended on this action by Class Counsel was reasonable and necessary.

38. All of the work that has been performed has been undertaken on a contingent basis. To date, Class Counsel have not been compensated for any of this work.

⁴ Current rates used for all attorneys and paralegals currently at the firm. Former rates used for timekeepers no longer at the firm (denoted with an asterisk).

39. After the date of this Declaration, we expect to perform additional work on behalf of the Settlement Class, including: (1) researching, drafting, and filing Plaintiffs' motion for final approval of the Settlement; (2) preparing for and attending the Fairness Hearing; (3) if final approval is granted, supervising Analytics and the Escrow Agent to ensure proper and efficient distribution of payments to the Class Members; (4) responding to questions from Class Members; and (5) taking other actions necessary to support the Settlement until the conclusion of the Settlement Period. Based on my experience supporting and supervising similar settlements, I estimate that Class Counsel will expend at least an additional 50 to 150 hours of professional time after the date of this Declaration.

Litigation Expenses

40. In connection with the action, Cohen Milstein also has advanced a significant amount of expenses.

41. Because our firm handled this action on a contingent basis, we have not yet received reimbursement for any of these expenses.

42. As of the date of this Declaration, Cohen Milstein has incurred \$465,573.76 in litigation-related expenses in connection with this matter. These expenses are broken down below:

Category	Cost
Copying/Printing	\$75.24
Court Reporter, Transcript, and Video Fees	\$45,188.82
Courier Services	\$720.62
Filing and PHV Fees	\$2,290.30
Process Server Fee	\$822.00
Travel Expenses	\$9,479.73
Mediation	\$13,400
Westlaw/PACER	\$9,749.21
Document Database Charges	\$10,408.51
Expert Witness Fees	\$373,226.07
Miscellaneous	\$213.26
TOTAL	\$465,573.76

43. Based on my review and my experience handling similar matters, all of these expenses are reasonable and appropriate for an ERISA class action case such as this. If the Court would like any additional information regarding these expenses, we would be happy to provide it.

Settlement Administration Expenses

Analytics

44. Cohen Milstein solicited bids from several settlement administration firms in connection with this action. After reviewing the various bids, we selected Analytics Consulting, LLC (“Analytics”) because Analytics has extensive experience handling class action settlements, including ERISA settlements, and submitted the least expensive bid.

45. Based on the bid submitted by Analytics, it will cost \$108,762 to administer the settlement in this action. This is reasonable based on my experience handling similar cases and in light of the bids that our firm received.

46. Analytics has diligently carried out its duties as Settlement Administrator to date by, among other things: (1) formatting and printing the Notices of Settlement and mailing those Notices on April 19, 2024 to 46,593 Class Members pursuant to the Court’s preliminary approval order; (2) establishing a telephone support line for Class Members; (3) creating and maintaining the Settlement Website (www.NYLifeERISAsettlement.com); and (4) communicating regularly with the Parties regarding the status of settlement administration, and accepting feedback from our firm and defense counsel regarding the Settlement Website and scripts for the telephone support line.

47. Upon final approval of the Settlement, Analytics also will calculate each Class Member’s share of the Settlement based on the settlement allocation formula, coordinate distribution of payments to Class Members, and review and process any Former Participant

Rollover Forms submitted by Former Participants (or their Beneficiaries or Alternate Payees) to ensure that they receive their payment in the form of a rollover if they so elect.

Escrow Agent

48. Eagle Bank is the approved Escrow Agent for the Qualified Settlement Fund. Eagle Bank previously served as the escrow agent in connection with the ERISA class action settlement in *Becker v. Wells Fargo Co.*, No. 0:20-cv-02016 (D. Minn.) (another case involving funds affiliated with the plan sponsor), and has agreed to serve as the Escrow Agent for a nominal charge of \$500. This is a fraction of the amount that other financial institutions have charged for this service in my experience.

49. Eagle Bank has diligently carried out its duties as the Escrow Agent to date by establishing the Qualified Settlement Fund, investing the assets of the Qualified Settlement Fund, processing the initial deposit specified by Section 4.2(b) of the Settlement Agreement, and processing invoices for settlement administration as necessary pending final approval.

50. Upon final approval of the Settlement, Eagle Bank will process the final deposit into the Qualified Settlement Fund and release the monies in the Qualified Settlement Fund as provided by the Settlement Agreement. In addition, Eagle Bank (or the Settlement Administrator on its behalf) will adhere to all tax reporting and payment requirements in connection with the Qualified Settlement Fund. *Id.* § 4.5.

Independent Fiduciary

51. Additional administrative expenses arise from the Independent Fiduciary's review of the Settlement and proposed release on behalf of the Plan pursuant to PTE 2003-39 and Paragraph 2.2 of the Settlement. Under the Settlement Agreement, Defendants are responsible for arranging this review by the Independent Fiduciary, and the expense is an Administrative Expense that may be paid from the Gross Settlement Amount. Defendants have engaged Newport Trust

Company, LLC (“Newport”) to serve as the Independent Fiduciary, and the fee for Newport’s services in this matter will be \$12,500.

52. On May 29, 2024, Newport issued a written opinion approving the Settlement and the proposed attorneys’ fees and other sums to be paid from the recovery. A copy of that written opinion is attached as Exhibit 2.⁵

Assistance of the Class Representatives

53. It has been my honor to represent the Class Representatives in this matter.⁶

54. Throughout the course of this action, the named Plaintiffs have been mindful of their responsibilities as Class Representatives, and have actively participated in the action. Among other things, the Class Representatives (1) reviewed the allegations in the complaints bearing their name; (2) communicated with our firm and provided us with documents and information; (3) provided information in response to Defendants’ Interrogatories; (4) produced documents in response to Defendants’ document requests; (5) testified under oath during their depositions and prepared in advance for their depositions; and (6) discussed the proposed Settlement with counsel and reviewed the terms of the Settlement Agreement.

55. Based on the time and assistance that the named Plaintiffs have provided as Class Representatives, and their initiative in pursuing this action, I believe that the requested class representative service awards are reasonable and appropriate. As noted in our motion papers, the amount that the Class Representatives are seeking (\$10,000) is consistent with other ERISA cases.

⁵ Class Counsel provided the Independent Fiduciary with a draft of their motion papers in connection with the instant motion for fees, expenses, and service awards in advance of the Independent Fiduciary’s Report. Class Counsel have not made material changes to their motion papers since providing that draft. The only changes made were to update time through May 31, 2024, share the Independent Fiduciary’s opinions, and cite check the memo and include tables. The distributions sought in connection with the motion and the underlying rationales and legal authority for those distributions are the same.

⁶ In connection with the representation, the Class Representatives agreed to a one-third contingency fee, and to reimbursement of expenses in the event that the action was successfully resolved.

No Objections

56. The Notice of Settlement that was approved by the Court disclosed the material terms of the Settlement and also disclosed that, “Subject to approval by the Court, up to \$10,000 may be paid to each of the Plaintiffs as the Class Representatives in recognition of time and effort they expended on behalf of the Class.” The Notice also disclosed that, “Class Counsel will apply to the Court for an award of attorneys’ fees not to exceed 33% of the \$19,000,000.00 settlement amount plus their litigation expenses incurred in the prosecution of the case.” To my knowledge, none of the Settlement Class Members have objected to the Settlement terms or the proposed fees, expenses, or service awards as of the date of this motion.

57. I have also met and conferred with Defendants’ counsel regarding the present motion, and have been advised that Defendants do not oppose the motion.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: June 5, 2024

/s/ Kai Richter
Kai Richter

EXHIBIT 1

Law Firm, Practice Group, and Attorney Overview

June 5, 2024



COHENMILSTEIN

| About the Firm

We are trailblazers in plaintiff-side and class action litigation, handling groundbreaking cases resulting in landmark decisions involving antitrust, securities, consumer rights, civil rights, and other far-reaching matters.

We fight corporate abuse by pursuing litigation on behalf of individuals, investors, whistleblowers, small businesses, and other institutions in lawsuits that have raised significant and often novel legal issues.

With more than 100 attorneys in 10 practice areas in eight offices across the country, including Boston, Chicago, Minneapolis, New York, Palm Beach Gardens, Philadelphia, Raleigh, and Washington, we are recognized as one of the largest and most diversified plaintiffs' firms in the country.

We regularly litigate complex matters across a wide range of practice areas:

- Antitrust
- Civil Rights & Employment
- Complex Tort Litigation
- Consumer Protection
- Employee Benefits / ERISA
- Ethics and Fiduciary Counseling
- Human Rights
- Public Client
- Securities Litigation & Investor Protection
- Whistleblower/False Claims Act

In 2024, *Law360* recognized our Securities Litigation & Investor Protection practice as a "2023 Practice Group of the Year." In 2023, *The National Law Journal* named Cohen Milstein "Law Firm of the Year" for Civil Rights and Employee Rights. *Chambers USA* and *Legal 500* have also consistently ranked Cohen Milstein as a "Top Tier Firm" and "Leading Firm" in Antitrust, Securities Litigation, Product Liability, Mass Torts, and Employment Law. The firm has also been named among the "Best Law Firms for Female Attorneys" in *Law360's* 2023 "Glass Ceiling Report."

Our attorneys, individually, are heralded as among the best in their practices by peer-reviewed surveys and industry organizations, such as American Antitrust Institute, *The American Lawyer*, *Benchmark Litigation*, *Chambers USA*, *Global Competition Review*, *Law360*, *Lawdragon*, *Legal 500*, and *The National Law Journal*.

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| Employee Benefits / ERISA

Our nationally acclaimed Employee Benefits/ERISA attorneys represent the interests of employees, retirees, and plan participants or beneficiaries in their pursuit of economic justice.

Through often cutting-edge class actions, we address the mismanagement of employee retirement benefit plans governed by the Employee Retirement Income Security Act (ERISA), including:

- 401(k) plans
- Employee Stock Ownership Plans (ESOPs)
- Traditional pension plans

We also address mismanagement issues of other types of health and employee benefit plans.

Recognition for Our Work

We have been recognized by the legal industry as one of the top ERISA plaintiffs' firms in the country:

- Chambers USA – Top Ranked Firm – ERISA Litigation (2022, 2023)
- Law360 – Practice Group of the Year – Benefits (2019, 2021, 2022)
- Bloomberg BNA "Employee Benefits Law, the Nation's Main ERISA Treatise," Senior Editor, Michelle Yau
- Law360's Benefits Editorial Advisory Board – Michelle Yau (2022, 2023); Dan Sutter (2024)

Industry Commentary:

"Cohen Milstein Sellers & Toll does first-class work and is very strong in this practice area."

"I view them as one of the best ERISA trial practices in the country, they are a joy to work with."

Chambers USA

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Individual Accolades

- Chambers USA – "Top Ranked Individual, ERISA Litigation – Band 1" – Michelle Yau (2022, 2023)
- Chamber USA – "Top Ranked Individual, ERISA Litigation – Band 1" – Kai Richter (2023)
- Chambers USA – "Associate to Watch, ERISA Litigation: – Dan Sutter (2022–2023)
- The AmLaw Litigation Daily – Litigator of the Week Runners-Up (Sept. 2021; Feb. 2023)
- Law360 – Benefits MVP – Michelle Yau (2021)
- The National Law Journal – Elite Trial Lawyers Rising Star – Dan Sutter (2023)

Making an Impact

We have led some of the most significant ERISA-related litigation in recent U.S. history, including up to the U.S. Supreme Court. Precedent-setting decisions include:

- **Defeating Motion to Compel Arbitration:** Enforceability of arbitration clauses is a crucial issue for workers, which can entirely shift the dynamics of a case and their pursuit of economic justice. We have achieved precedent-setting decisions before the Third, Seventh, and Tenth Circuits – all addressing lower court rulings denying Defendants' motions to compel arbitration under ERISA. On October 10, 2023, the United States Supreme Court declined to review our 10th Circuit win in *Harrison v. Envision Management Holding, Inc. Boards of Directors, et al.* (D. Col.). To date, Cohen Milstein has won decisions striking down arbitration and class waivers in three appellate courts and five district courts.
- **In re Beacon Association Litigation:** Acted as ERISA Counsel for a certified class which settled their claims for \$219 million, representing 70% of the Class members' out-of-pocket losses. The judge praised the settlement, describing the outcome as "extraordinary" and the praising the "hard work" done by plaintiffs' counsel, including Cohen Milstein.

We also have the unique capability to represent employees who purchased overvalued employer stock through employer-sponsored 401(k) retirement plans, given our extensive experience with securities fraud and investor protection litigation. While employees may pursue claims under securities fraud laws, ERISA provides additional rights and remedies to recover losses in 401(k) retirement plans.

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| Employee Benefits / ERISA Matters – Representative Matters

We have recovered hundreds-of-millions of dollars in damages for injured plaintiffs in some of the nation’s most complex ERISA class actions.

401(K) Retirement Plans

- **Wells Fargo 401(k) Litigation (D. Minn.):** Cohen Milstein achieved a \$32.5 million settlement prior to class certification and expert discovery. On August 31, 2022, the Court granted final approval of the settlement, resulting in a recovery of 40% of estimated damages for the plaintiffs. The lawsuit alleged that Wells Fargo and its affiliates violated numerous provisions of ERISA by breaching their fiduciary duties and engaging in self-dealing transactions prohibited under ERISA.

- **BlackRock 401(k) Litigation (N.D. Cal.):** Cohen Milstein successfully settled this certified class action, in which plaintiffs alleged that the BlackRock 401(k) plan administrators engaged in corporate self-dealing—restricting plan options to BlackRock’s own proprietary funds, and in many cases failing to provide the lowest cost versions of those funds. On November 3 2021, the Court granted final approval of a \$9.65 million settlement.

- **T. Rowe Price 401(k) Litigation (D. Md.):** Cohen Milstein successfully settled this certified class action, in which plaintiffs alleged that T. Rowe Price violated federal law and reaped millions of dollars in illicit fees by offering only T. Rowe Price’s own in-house investment funds in the 401(k) Plan, failing to offer the lowest cost versions of those funds, and failing to even consider any funds from other companies that offered lower fees and better performance. On July 6, 2022 the Court granted final approval of the \$7 million settlement.

- **New York Life 401(k) Plan Litigation (S.D.N.Y.):** Cohen Milstein represents employees and agents of New York Life Insurance in a class action against New York Life for allegedly

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mismanaging the 401(k) and engaging in corporate self-dealing and the prohibited transfer of employees' retirement assets by, among other things, impermissibly investing participants investments into the Fixed Dollar Account by default and improperly favoring and including New York Life's own in-house investment funds in its Plans, such as the MainStay Income Builder Fund, MainStay Epoch U.S. All Cap Fund and MainStay Epoch U.S. Small Cap Fund, thereby earning New York Life and its affiliates windfall profit. On March 5, 2024, the Court granted preliminary approval of a \$19 million settlement and granted class certification in this class action.

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- **GWA, LLC 401(k) Profit Sharing Plan Litigation (D. Conn.):** Cohen Milstein represents participants in the GWA, LLC 401(k) Profit Sharing Plan, who allege that GWA, LLC and George A. Weiss breached their fiduciary duties and misused employee retirement plan assets to further their own pecuniary interest, in violation of ERISA. Specifically, Plaintiffs allege that 100% of the Plan's investments (all of which are 401(k) assets) were and continue to be invested in "The Weiss Funds," which includes the company's flagship hedge fund named the "Weiss Multi-Strategy Partners Ltd." and the company's mutual fund named the "Weiss Alternative Multi-Strategy Fund," which generally "replicates" the hedge fund's strategy.

Pension Plans

- **Dignity Health Church Plan Litigation (N.D. Cal.):** Cohen Milstein represented a certified class of defined benefit participants, which alleges that Dignity Health is improperly claiming that its pension plans are exempt from ERISA's protections because they are "church plans," and as a result has underfunded its plans by over \$1.2 billion. In 2016, the Supreme Court agreed to hear arguments on consolidated church plan cases, and in June 2017, it reversed previous rulings and ordered plaintiffs, in this case, to file an amended complaint. On July 15, 2022, the Court granted final approval to the \$100 million settlement.
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- **CITGO Pension Plan Litigation (N.D. Ill.):** Cohen Milstein represents a certified class of participants and beneficiaries of the CITGO Petroleum Corporation Salaried and Hourly Employees Pension Plans, who allege CITGO violated ERISA by applying outdated mortality tables to the CITGO Plans to determine the value of joint and survivor annuities, resulting in married retirees receiving less than the actuarial

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equivalent of the benefit that ERISA protects. On May 6, 2024, the Court largely denied CITGO's motion for summary judgment. Then, on May 16, the Court (certified the class.

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- **AT&T Pension Benefit Plan Litigation (N.D. Cal.):** Cohen Milstein represents a putative class of participants and beneficiaries in the AT&T Pension Benefit Plan, who allege that AT&T improperly calculated the pension benefits of certain retirees who retired early and/or took a joint and survivor annuity. As a result of the improper calculation, plaintiffs received a lower pension benefit than they were entitled to under ERISA. Class certification is pending court approval.
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- **Intel Minimum Pension Plan Litigation (N.D. Cal.):** Cohen Milstein represents a putative class of pension plan participants and beneficiaries, who allege that the Intel Minimum Pension Plan utilized outdated mortality tables to determine the value of joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.
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- **IBM Personal Pension Plan Litigation (S.D.N.Y.):** Cohen Milstein represents participants and beneficiaries of the IBM Personal Pension Plan, who allege that the IBM Personal Pension Plan uses outdated mortality tables to determine the value of joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects in violation of ERISA.
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- **Luxtotta Group Pension Plan Litigation (E.D.N.Y.):** Cohen Milstein represents Luxottica pension plan participants in a putative class action, alleging that the plan used outdated mortality tables to determine the value of participants' joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.
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- **Southern Company Pension Plan Litigation (N.D. Ga.):** Cohen Milstein represents participants and beneficiaries of the Southern Company Pension Plan, alleging that the Southern Company Pension Plan uses outdated mortality tables to determine the value of joint and survivor annuities and the amount it charges retirees for pre-retirement survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.
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Employee Stock Ownership Plans (ESOPs)

- **Triad Manufacturing Inc. ESOP Litigation (N.D. Ill.):** Cohen Milstein represented participants and beneficiaries in the Triad Manufacturing ESOP who alleged that the ESOP's trustees breached their fiduciary duties in connection with the sale of Triad Manufacturing to the ESOP. In September 2021, the Seventh Circuit, in a precedent-setting decision, cited an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. On August 23, 2023, the court granted final approval of a \$14.8 million settlement and granted class certification.
- **World Travel ESOP Litigation (E.D. Pa.):** Cohen Milstein represented a certified class of employee stock option plan participants and beneficiaries who allege that the founders of World Travel and the ESOP trustees created the ESOP and then sold 100% of the employees World Travel stock to the ESOP at an above-market price, saddling it with over \$200 million in debt. On June 22, 2023, the Court granted plaintiffs unopposed motion for class certification and final approval of a \$8.7 million settlement.
- **Envision Management Holding, Inc. ESOP Litigation (D. Col.):** Cohen Milstein represents Envision Management Holding ESOP participants in a lawsuit in connection with the sale of Envision Management Holding, Inc. to the ESOP at an inflated price, which caused a multi-million-dollar loss to the ESOP. On February 9, 2023, A three-judge panel for the Tenth Circuit, in a 41-page published opinion, sided with Plaintiffs argument — backed up by the U.S. Department of Labor, which participated as amicus on behalf of the plaintiffs in the case — that an arbitration provision tucked in Envision workers' ESOP plan documents impermissibly blocked remedies under ERISA. That triggered the so-called effective vindication doctrine under the Federal Arbitration Act, which permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. On October 10, 2023, the U.S. Supreme Court denied Defendants' petition review the Tenth Circuit's decision, thereby affirming the lower court's March 24, 2022 ruling, which denied Defendants' motion to compel arbitration.

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- **Casino Queen ESOP Litigation (S.D. Ill.):** Cohen Milstein represents ESOP participants who allege that the Board of Directors of CQ Holding Company, Inc. and related defendants violated ERISA when they created an ESOP to buy their Casino Queen stock for \$170 million, a significantly inflated price. In late 2021, the Seventh Circuit directed Defendants to voluntarily dismiss their appeal on the arbitration issue on the heels of our precedent-setting victory before the Seventh Circuit in *Smith v. GreatBanc Trust Company*, which cited an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. As of June 28, 2023 the Court referred the case to mediation and stayed the case pending resolution of the mediation.
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- **Western Global Airlines ESOP Litigation (D. Del.):** Cohen Milstein represents employees in connection challenging the valuation of Western Global Airlines at approximately \$1.3 billion based on the sale of 37.5% of the Company to the ESOP for \$510 million. The lawsuit seeks to restore substantial losses to the ESOP and to disgorge all ill-gotten gains received by the Neff family. On March 8, 2023, the Court adopted the Magistrate Judge's January 25, 2023 recommendation to dismiss Western Global Airlines motion to enforce arbitration. On August 15, 2023, the Third Circuit denied defendant's appeal and refused to enforce arbitration, backing the lower court's decision.
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- **Western Milling ESOP Litigation (E.D. Cal.):** We represent participants and beneficiaries of the Western Milling Employee Stock Ownership Plan, who allege that the ESOP's trustees breached their fiduciary duties by engaging in risky investments in violation of ERISA, including purchasing 100% of Kruse-Western, Inc. company stock, which was valued at approximately 90% of the purchase price for several years after the ESOP Transaction.
-
- **WBBQ ESOP Litigation (S.D.N.Y.):** Cohen Milstein represents participants and beneficiaries of the W BBQ Holdings, Inc. Employee Stock Ownership Plan, who allege that the trustee of the WBBQ ESOP, Argent Trust Company and the company's owner, and controlling managers and shareholders breached their fiduciary duties, causing the ESOP to engage in transactions that are prohibited under ERISA and in connection with the sale of the company to the ESOP for an inflated purchase price that far exceeded its fair market value.



Other Plans

- **Johnson & Johnson Health Plan (D. N.J.):** Cohen Milstein represents employees and participants in J&J's Health Plan, who accuse the pharmaceutical giant of mismanaging its own health plans' prescription drug program, costing employees millions of dollars in the form of higher payments for prescription drugs, higher out-of-pocket costs and co-pays, and, ultimately, lower wages in violation of ERISA.

- **MassMutual Thrift Plan Litigation (D. Mass.):** Cohen Milstein represents participants and beneficiaries of the MassMutual Thrift Plan in a class action against Massachusetts Mutual Life Insurance and other fiduciaries responsible for managing the MassMutual Thrift Plan, a defined contribution retirement plan. Plaintiffs allege that MassMutual and other fiduciaries engaged in self-dealing in violation of ERISA, cost its employees tens of millions of dollars in retirement savings.

- **Nationwide Savings Plan Litigation (S.D. Ohio):** Cohen Milstein represents participants in the Nationwide Savings Plan in a certified class action, alleging that Nationwide improperly set its own compensation, earned impermissible profits at the expense of its employees, and exposed its employees' retirement savings to undue risk. On March 28, 2024, the Court granted class certification.

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Michelle C. Yau

Partner

WASHINGTON, DC

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Michelle Yau, chair of Cohen Milstein's Employee Benefits/ERISA practice, has spearheaded some of the most significant ERISA class actions in the nation.

Since 2022, *Chambers USA* has named her a "Top Ranked" individual in ERISA Litigation and in 2021, she was named a *Law360* Benefits MVP. Michelle combines ardent dedication to protecting her clients' retirement assets with rare insight into complex financial transactions and actuarial issues, informed by her Wall Street and government experience.

Michelle is passionate about righting economic injustice and protecting pension plan participants. She has a unique background having served as an Honors Program Attorney at the Department of Labor where she enforced and administered a variety of labor statutes and working as a financial analyst at Goldman Sachs in the Financial Institutions Group of the Investment Banking Division. This experience has allowed Michelle to play an instrumental role in important financial litigation, including high-profile ERISA lawsuits emerging from the Madoff Ponzi scheme.

Michelle is a senior editor of the ERISA treatise published by *Bloomberg BNA, Employee Benefits Law*, and a member of the Benefits Editorial Advisory Board for *Law360*.

During law school, Michelle was awarded several public interest fellowships, including the Heyman Fellowship for academic excellence and a demonstrated commitment to federal public service. As an undergraduate, she was selected as an Echols Scholar and awarded the Student

PRACTICE AREAS

Employee Benefits / ERISA

ADMISSIONS

District of Columbia
Massachusetts

EDUCATION

Harvard Law School, J.D.,
2003
University of Virginia, B.A.,
Phi Beta Kappa, 1997

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Council Scholarship for leadership, academic achievement, and community service.

New York Life Insurance Company 401(k) Litigation

New York Life 401(k) Plan Litigation (S.D.N.Y.): We represents employees and agents of New York Life Insurance in a class action against New York Life for allegedly mismanaging the 401(k) and engaging in corporate self-dealing and the prohibited transfer of employees' retirement assets by, among other things, impermissibly investing participants investments into the Fixed Dollar Account by default and improperly favoring and including New York Life's own in-house investment funds in its Plans, such as the MainStay Income Builder Fund, MainStay Epoch U.S. All Cap Fund and MainStay Epoch U.S. Small Cap Fund, thereby earning New York Life and its affiliates windfall profit. On March 5, 2024, the Court granted preliminary approval of a \$19 million settlement and granted class certification in this class action.

Beacon/Madoff ERISA Litigation

In re Beacon Association Litigation (S.D.N.Y.): Cohen Milstein represented the trustees and participants of ERISA-covered employee benefit plans whose assets were invested by Beacon Associates LLC I and Beacon Associates LLC II (the "Feeder Funds") in and lost money by investment the investment schemes of Bernard L. Madoff, Bernard L. Madoff Investment Securities, LLC.

Dignity Health Church Plan Litigation

Dignity Health Church Plan Litigation (N.D. Cal.): We represented a certified class of defined benefit participants, which alleges that Dignity Health is improperly claiming that its pension plans are exempt from ERISA's protections because they are "church plans," and as a result has underfunded its plans by over \$1.2 billion. In 2016, the Supreme Court agreed to hear arguments on consolidated church plan cases, and in June 2017, it reversed previous rulings and ordered plaintiffs, in this case, to file an amended complaint. On July 15, 2022, the Court granted final approval to the \$100 million settlement.

Wells Fargo 401(k) Litigation

Wells Fargo 401(k) Litigation (D. Minn.): Cohen Milstein achieved a \$32.5 million settlement prior to class certification and expert discovery. On August 31, 2022, the Court granted final approval of the settlement, resulting in a recovery of 40% of estimated damages for the plaintiffs. The lawsuit alleged that Wells Fargo and its affiliates violated numerous provisions of ERISA by breaching their fiduciary duties and engaging in self-dealing transactions prohibited under ERISA.

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Triad Manufacturing, Inc. ESOP Litigation

Triad Manufacturing, Inc. ESOP Litigation (N.D. Ill.): Cohen Milstein represented participants and beneficiaries in the Triad Manufacturing ESOP who alleged that the ESOP's trustees breached their fiduciary duties in connection with the sale of Triad Manufacturing to the ESOP. In September 2021, the Seventh Circuit, in a precedent-setting decision, cited an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. On August 23, 2023, the court granted final approval of a \$14.8 million settlement and granted class certification.

BlackRock 401(k) Retirement Plan Litigation

BlackRock 401(k) Litigation (N.D. Cal.): Cohen Milstein successfully settled this certified class action, in which plaintiffs alleged that the BlackRock 401(k) plan administrators engaged in corporate self-dealing—restricting plan options to BlackRock's own proprietary funds, and in many cases failing to provide the lowest cost versions of those funds. On November 3 2021, the Court granted final approval of a \$9.65 million settlement.

World Travel ESOP Litigation

World Travel ESOP Litigation (E.D. Pa.): Cohen Milstein represented a certified class of employee stock option plan participants and beneficiaries who allege that the founders of World Travel and the ESOP trustees created the ESOP and then sold 100% of the employees World Travel stock to the ESOP at an above-market price, saddling it with over \$200 million in debt. On June 22, 2023, the Court granted plaintiffs unopposed motion for class certification and final approval of a \$8.7 million settlement.

T. Rowe Price 401(k) Litigation

T. Rowe Price 401(k) Litigation (D. Md.): On July 6, 2022 the Court granted final approval of the \$7 million settlement in this certified ERISA class action. Participants in the T. Rowe Price 401(k) plan alleged that plan fiduciaries violated their duties under ERISA causing the participants to pay millions of dollars in illicit fees by offering only T. Rowe Price's own in-house investment funds in the 401(k) plan, failed to offer the lowest cost versions of those funds, and failed to consider funds from other companies that offered lower fees or better performance.

Envision Management Holding, Inc. ESOP Litigation

Envision Management Holding, Inc. ESOP Litigation (D. Col.): Cohen Milstein represents Envision Management Holding ESOP participants in a lawsuit in connection with the sale of Envision Management Holding, Inc. to the ESOP at an inflated price, which caused a multi-million-dollar loss to the ESOP. On February 9, 2023, A three-judge panel for the Tenth Circuit, in a 41-page published

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opinion, sided with Plaintiffs argument — backed up by the U.S. Department of Labor, which participated as amicus on behalf of the plaintiffs in the case — that an arbitration provision tucked in Envision workers' ESOP plan documents impermissibly blocked remedies under ERISA. That triggered the so-called effective vindication doctrine under the Federal Arbitration Act, which permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. On October 10, 2023, the U.S. Supreme Court denied Defendants' petition review the Tenth Circuit's decision, thereby affirming the lower court's March 24, 2022 ruling, which denied Defendants' motion to compel arbitration.

Casino Queen ESOP Litigation

Casino Queen ESOP Litigation (S.D. Ill.): Cohen Milstein represents ESOP participants who allege that the Board of Directors of CQ Holding Company, Inc. and related defendants violated ERISA when they created an ESOP to buy their Casino Queen stock for \$170 million, a significantly inflated price. In late 2021, the Seventh Circuit directed Defendants to voluntarily dismiss their appeal on the arbitration issue on the heels of our precedent-setting victory before the Seventh Circuit in *Smith v. GreatBanc Trust Company*, which cited an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. As of June 28, 2023 the Court referred the case to mediation and stayed the case pending resolution of the mediation.

AT&T Pension Benefit Plan Litigation

AT&T Pension Benefit Plan Litigation (N.D. Cal.): Cohen Milstein represents participants and beneficiaries in the AT&T Pension Benefit Plan who allege that AT&T failed comply with ERISA's actuarial equivalence requirements when providing married participants joint and survivor annuities.

CITGO Pension Plan Litigation

CITGO Pension Plan Litigation (N.D. Ill.): We represent a certified class of participants and beneficiaries of the CITGO Petroleum Corporation Salaried and Hourly Employees Pension Plans, who allege CITGO violated ERISA by applying outdated mortality tables to the CITGO Plans to determine the value of joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects. On May 6, 2024, the Court largely denied CITGO's motion for summary judgment. Then, on May 16, the Court certified the class.

IBM Personal Pension Plan Litigation

Cohen Milstein represents participants and beneficiaries of the IBM Personal Pension Plan, who allege that the IBM Personal Pension Plan uses outdated mortality tables to determine the value of

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joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects in violation of ERISA.

Intel Minimum Pension Plan Litigation

Berkeley v. Intel Corporation et al (N.D. Cal.): Cohen Milstein represents a putative class of pension plan participants and beneficiaries, who allege that the Intel Minimum Pension Plan utilized outdated mortality tables to determine the value of joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.

Luxottica Group Pension Plan Litigation

Luxottica Group Pension Plan Litigation (E.D.N.Y.): Cohen Milstein represents Luxottica pension plan participants in a lawsuit, alleging that the plan used outdated mortality tables to determine the value of participants' joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.

Nationwide Savings Plan Litigation

MassMutual Thrift Plan Litigation (D. Mass.): We represent participants and beneficiaries of the MassMutual Thrift Plan in a class action against Massachusetts Mutual Life Insurance and other fiduciaries responsible for managing the MassMutual Thrift Plan, a defined contribution retirement plan. Plaintiffs allege that MassMutual and other fiduciaries engaged in self-dealing in violation of ERISA, cost its employees tens of millions of dollars in retirement savings.

Western Global Airlines ESOP Litigation

Western Global Airlines ESOP Litigation (D. Del.): Cohen Milstein represents employees in challenging the valuation of Western Global Airlines at approximately \$1.3 billion, based on the sale of 37.5% of the company to the ESOP for \$510 million. The lawsuit seeks to restore substantial losses to the ESOP and to disgorge all ill-gotten gains received by the Neff family.

Western Milling ESOP Litigation

Western Milling ESOP Litigation (E.D. Cal.): We represent participants and beneficiaries of the Western Milling Employee Stock Ownership Plan, who allege that the ESOP's trustees breached their fiduciary duties by engaging in risky investments in violation of ERISA, including purchasing 100% of Kruse-Western, Inc. company stock, which was valued at approximately 90% of the purchase price for several years after the ESOP Transaction.

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GWA, LLC 401(k) Profit Sharing Plan Litigation

GWA, LLC 401(k) Profit Sharing Plan Litigation (D. Conn.): We represent participants in the GWA, LLC 401(k) Profit Sharing Plan who allege that GWA, LLC and George A. Weiss breached their fiduciary duties and misused employee retirement plan assets to further their own pecuniary interest, in violation of ERISA. Specifically, Plaintiffs allege that 100% of the Plan's investments (all of which are 401(k) assets) were and continue to be invested in "The Weiss Funds," which includes the company's flagship hedge fund named the "Weiss Multi-Strategy Partners Ltd." and the company's mutual fund named the "Weiss Alternative Multi-Strategy Fund," which generally "replicates" the hedge fund's strategy.

WBBQ ESOP Litigation

WBBQ ESOP Litigation (S.D.N.Y): Cohen Milstein represents participants and beneficiaries of the WBBQ Holdings, Inc. Employee Stock Ownership Plan, who allege that the trustee of the WBBQ ESOP, Argent Trust Company and the company's owner, and controlling managers and shareholders breached their fiduciary duties, causing the ESOP to engage in transactions that are prohibited under ERISA and in connection with the sale of the company to the ESOP for an inflated purchase price that far exceeded its fair market value.

Southern Company Pension Plan Litigation

Southern Company Pension Plan Litigation (N.D. Ga.): Cohen Milstein represents participants and beneficiaries of the Southern Company Pension Plan, alleging that the Southern Company Pension Plan uses outdated mortality tables to determine the value of joint and survivor annuities and the amount it charges retirees for pre-retirement survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.

AMPAM Parks Mechanical ESOP Litigation

Barrios, et al. v. AMPAM Parks Mechanical, Inc., et al. (S.D. Cal.): Cohen Milstein represents employee participants and beneficiaries of the AMPAM Parks Mechanical, Inc. Employee Stock Ownership Plan in a class action lawsuit alleging that AMPAM Parks Mechanical and the founders of AMPAM, Buddy Parks, John D. Parks, James Parks, and Jason Parks breached their fiduciary duties in the management of the ESOP in violation of ERISA.

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Kai Richter

Of Counsel

MINNEAPOLIS

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Kai Richter, of counsel in Cohen Milstein’s Employee Benefits/ERISA practice, has extensive trial and appellate experience in ERISA class action litigation in federal courts across the country.

Prior to joining Cohen Milstein, Kai was a partner and practice leader at a highly regarded national plaintiffs’ law firm, where he represented clients in all manner of class actions, including over two dozen ERISA class actions as court-appointed class counsel.

Kai’s experience also includes public service as the Manager of the Complex Litigation Division of the Minnesota Attorney General’s Office, and as a litigator in the Office of General Counsel for the Federal Election Commission.

A sought-after public speaker, Kai has spoken frequently on ERISA before the American Law Institute, American Bar Association, Professional Liability Underwriting Society, Retirement Advisor Council, Practising Law Institute, and American Conference Institute.

In addition, Kai has held teaching roles as the co-director of the Robert F. Wagner Labor Law Moot Court Program for the University of Minnesota Law School, and as an adjunct legal writing instructor at Hamline University. He also formerly served as the co-chair of the Minnesota State Bar Association Consumer Litigation Section.

PRACTICE AREAS

Employee Benefits / ERISA

ADMISSIONS

Minnesota

EDUCATION

University of Minnesota Law School, J.D., cum laude, 1999

Dartmouth College, B.A., cum laude, 1995

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New York Life Insurance Company 401(k) Litigation

New York Life 401(k) Plan Litigation (S.D.N.Y.): We represents employees and agents of New York Life Insurance in a class action against New York Life for allegedly mismanaging the 401(k) and engaging in corporate self-dealing and the prohibited transfer of employees' retirement assets by, among other things, impermissibly investing participants investments into the Fixed Dollar Account by default and improperly favoring and including New York Life's own in-house investment funds in its Plans, such as the MainStay Income Builder Fund, MainStay Epoch U.S. All Cap Fund and MainStay Epoch U.S. Small Cap Fund, thereby earning New York Life and its affiliates windfall profit. On March 5, 2024, the Court granted preliminary approval of a \$19 million settlement and granted class certification in this class action.

Envision Management Holding, Inc. ESOP Litigation

Envision Management Holding, Inc. ESOP Litigation (D. Col.): Cohen Milstein represents Envision Management Holding ESOP participants in a lawsuit in connection with the sale of Envision Management Holding, Inc. to the ESOP at an inflated price, which caused a multi-million-dollar loss to the ESOP. On February 9, 2023, A three-judge panel for the Tenth Circuit, in a 41-page published opinion, sided with Plaintiffs argument — backed up by the U.S. Department of Labor, which participated as amicus on behalf of the plaintiffs in the case — that an arbitration provision tucked in Envision workers' ESOP plan documents impermissibly blocked remedies under ERISA. That triggered the so-called effective vindication doctrine under the Federal Arbitration Act, which permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. On October 10, 2023, the U.S. Supreme Court denied Defendants' petition review the Tenth Circuit's decision, thereby affirming the lower court's March 24, 2022 ruling, which denied Defendants' motion to compel arbitration.

GWA, LLC 401(k) Profit Sharing Plan Litigation

GWA, LLC 401(k) Profit Sharing Plan Litigation (D. Conn.): We represent participants in the GWA, LLC 401(k) Profit Sharing Plan who allege that GWA, LLC and George A. Weiss breached their fiduciary duties and misused employee retirement plan assets to further their own pecuniary interest, in violation of ERISA. Specifically, Plaintiffs allege that 100% of the Plan's investments (all of which are 401(k) assets) were and continue to be invested in "The Weiss Funds," which includes the company's flagship hedge fund named the "Weiss Multi-Strategy Partners Ltd." and the company's mutual fund named the "Weiss Alternative Multi-Strategy Fund," which generally "replicates" the hedge fund's strategy.

AT&T Pension Benefit Plan Litigation

AT&T Pension Benefit Plan Litigation (N.D. Cal.): Cohen Milstein represents participants and beneficiaries in the AT&T Pension Benefit Plan who allege that AT&T failed comply with ERISA's

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actuarial equivalence requirements when providing married participants joint and survivor annuities.

Luxottica Group Pension Plan Litigation

Luxottica Group Pension Plan Litigation (E.D.N.Y.): Cohen Milstein represents Luxottica pension plan participants in a lawsuit, alleging that the plan used outdated mortality tables to determine the value of participants' joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.

MassMutual Thrift Plan Litigation

MassMutual Thrift Plan Litigation (D. Mass.): Cohen Milstein represent participants and beneficiaries of the MassMutual Thrift Plan in a class action against Massachusetts Mutual Life Insurance and other fiduciaries responsible for managing the MassMutual Thrift Plan, a defined contribution retirement plan. Plaintiffs allege that MassMutual and other fiduciaries engaged in self-dealing in violation of ERISA, cost its employees tens of millions of dollars in retirement savings.

Nationwide Savings Plan Litigation

MassMutual Thrift Plan Litigation (D. Mass.): We represent participants and beneficiaries of the MassMutual Thrift Plan in a class action against Massachusetts Mutual Life Insurance and other fiduciaries responsible for managing the MassMutual Thrift Plan, a defined contribution retirement plan. Plaintiffs allege that MassMutual and other fiduciaries engaged in self-dealing in violation of ERISA, cost its employees tens of millions of dollars in retirement savings.

WBBQ ESOP Litigation

WBBQ ESOP Litigation (S.D.N.Y.): Cohen Milstein represents participants and beneficiaries of the W BBQ Holdings, Inc. Employee Stock Ownership Plan, who allege that the trustee of the WBBQ ESOP, Argent Trust Company and the company's owner, and controlling managers and shareholders breached their fiduciary duties, causing the ESOP to engage in transactions that are prohibited under ERISA and in connection with the sale of the company to the ESOP for an inflated purchase price that far exceeded its fair market value.

Western Milling ESOP Litigation

Western Milling ESOP Litigation (E.D. Cal.): We represent participants and beneficiaries of the Western Milling Employee Stock Ownership Plan, who allege that the ESOP's trustees breached their fiduciary duties by engaging in risky investments in violation of ERISA, including purchasing 100% of Kruse-Western, Inc. company stock, which was valued at approximately 90% of the purchase price for several years after the ESOP Transaction.

COHENMILSTEIN

Jacob Schutz

Associate

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Jacob Schutz is an associate in Cohen Milstein's Employee Benefits/ERISA practice. He represents the interests of employees, retirees, plan participants and beneficiaries in ERISA class-action lawsuits across the country.

Prior to joining Cohen Milstein, Jacob was an associate for several years at a highly regarded national plaintiffs' law firm, where he represented clients in employee benefits/ERISA class actions.

In law school, Jacob was a notes and articles editor for the *ABA Journal of Labor & Employment Law* and a member of the Order of the Coif. He also published the note: *Association Discrimination under the Americans with Disabilities Act: The Case of Dependent Healthcare Costs*, 27 ABA J. Lab. & Emp. L. 485

PRACTICE AREAS

Employee Benefits / ERISA

ADMISSIONS

Minnesota

EDUCATION

University of Minnesota Law School, J.D., magna cum laude, 2013

University of Pennsylvania, B.A., summa cum laude, 2010

New York Life Insurance Company 401(k) Litigation

New York Life 401(k) Plan Litigation (S.D.N.Y.): We represents employees and agents of New York Life Insurance in a class action against New York Life for allegedly mismanaging the 401(k) and engaging in corporate self-dealing and the prohibited transfer of employees' retirement assets by, among other things, impermissibly investing participants investments into the Fixed Dollar Account by default and improperly favoring and including New York Life's own in-house investment funds in its Plans, such as the MainStay Income Builder Fund, MainStay Epoch U.S. All Cap Fund and MainStay Epoch U.S. Small Cap Fund, thereby earning New York Life and its affiliates windfall profit. On March 5, 2024, the Court granted preliminary approval of a \$19 million settlement and granted class certification in this class action.

COHENMILSTEIN

Nationwide Savings Plan Litigation

MassMutual Thrift Plan Litigation (D. Mass.): We represent participants and beneficiaries of the MassMutual Thrift Plan in a class action against Massachusetts Mutual Life Insurance and other fiduciaries responsible for managing the MassMutual Thrift Plan, a defined contribution retirement plan. Plaintiffs allege that MassMutual and other fiduciaries engaged in self-dealing in violation of ERISA, cost its employees tens of millions of dollars in retirement savings.

Western Milling ESOP Litigation

Western Milling ESOP Litigation (E.D. Cal.): We represent participants and beneficiaries of the Western Milling Employee Stock Ownership Plan, who allege that the ESOP's trustees breached their fiduciary duties by engaging in risky investments in violation of ERISA, including purchasing 100% of Kruse-Western, Inc. company stock, which was valued at approximately 90% of the purchase price for several years after the ESOP Transaction.

AMPAM Parks Mechanical ESOP Litigation

Barrios, et al. v. AMPAM Parks Mechanical, Inc., et al. (S.D. Cal.): Cohen Milstein represents employee participants and beneficiaries of the AMPAM Parks Mechanical, Inc. Employee Stock Ownership Plan in a class action lawsuit alleging that AMPAM Parks Mechanical and the founders of AMPAM, Buddy Parks, John D. Parks, James Parks, and Jason Parks breached their fiduciary duties in the management of the ESOP in violation of ERISA.

COHENMILSTEIN

Eleanor Frisch

Associate

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Eleanor Frisch, an associate in Cohen Milstein's Employee Benefits/ERISA practice, represents the interests of employees, retirees, plan participants and beneficiaries in ERISA class-action lawsuits across the country.

Prior to joining Cohen Milstein, Eleanor spent several years at an appellate litigation boutique representing employees and consumers before the federal courts of appeals. Before that, they were an associate at a highly regarded national plaintiffs' law firm, where they represented clients in employee benefits/ERISA, employment and consumer class actions.

Before entering private practice, Eleanor served as a law clerk to the Honorable Roger L. Wollman on the U.S. Court of Appeals for the Eighth Circuit.

Eleanor is one of the founding board members of the Minnesota Disability Bar Association. They have moderated or spoken on a number of panels about disabilities in the legal profession and are committed to promoting equity and accessibility for attorneys with disabilities.

Some of their legal publications include:

- Coauthor, *Building a More Accessible Bar*, Minnesota State Bar Association (Jan. 30, 2023), available at <https://www.lexblog.com/2023/01/30/building-a-more-accessible-bar/>.
- Coauthor, "The Fair Labor Standards Act," ch. 2, Minnesota Continuing Legal Education, *The Complete*

PRACTICE AREAS

Employee Benefits / ERISA

ADMISSIONS

California

Minnesota

EDUCATION

University of Minnesota Law School, J.D., magna cum laude, 2104

Trinity University, B.A., magna cum laude, 2008

COHENMILSTEIN

Employment Lawyer's Quick Answer Book (May 2017)

- *State Sexual Harassment Definitions and Disaggregation of Sex Discrimination Claims*, 98 Minn. L. Rev. 1943 (2014)
- Coauthor, *The Canary Sings Again: New Life for the Minnesota Whistleblower Act*, Bench & B. Minn. (Sept. 2013)

In law school, Eleanor was an executive board member of the *Minnesota Law Review* and a member of the Order of the Coif.

New York Life Insurance Company 401(k) Litigation

New York Life 401(k) Plan Litigation (S.D.N.Y.): We represents employees and agents of New York Life Insurance in a class action against New York Life for allegedly mismanaging the 401(k) and engaging in corporate self-dealing and the prohibited transfer of employees' retirement assets by, among other things, impermissibly investing participants investments into the Fixed Dollar Account by default and improperly favoring and including New York Life's own in-house investment funds in its Plans, such as the MainStay Income Builder Fund, MainStay Epoch U.S. All Cap Fund and MainStay Epoch U.S. Small Cap Fund, thereby earning New York Life and its affiliates windfall profit. On March 5, 2024, the Court granted preliminary approval of a \$19 million settlement and granted class certification in this class action.

Envision Management Holding, Inc. ESOP Litigation

Envision Management Holding, Inc. ESOP Litigation (D. Col.): Cohen Milstein represents Envision Management Holding ESOP participants in a lawsuit in connection with the sale of Envision Management Holding, Inc. to the ESOP at an inflated price, which caused a multi-million-dollar loss to the ESOP. On February 9, 2023, A three-judge panel for the Tenth Circuit, in a 41-page published opinion, sided with Plaintiffs argument — backed up by the U.S. Department of Labor, which participated as amicus on behalf of the plaintiffs in the case — that an arbitration provision tucked in Envision workers' ESOP plan documents impermissibly blocked remedies under ERISA. That triggered the so-called effective vindication doctrine under the Federal Arbitration Act, which permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. On October 10, 2023, the U.S. Supreme Court denied Defendants' petition review the Tenth Circuit's decision, thereby affirming the lower court's March 24, 2022 ruling, which denied Defendants' motion to compel arbitration.

Western Global Airlines ESOP Litigation

Western Global Airlines ESOP Litigation (D. Del.): Cohen Milstein represents employees in challenging the valuation of Western Global Airlines at approximately \$1.3 billion, based on the sale of 37.5% of the company to the ESOP for \$510 million. The lawsuit seeks to restore substantial losses to the ESOP and to disgorge all ill-gotten gains received by the Neff family.

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MassMutual Thrift Plan Litigation

MassMutual Thrift Plan Litigation (D. Mass.): Cohen Milstein represent participants and beneficiaries of the MassMutual Thrift Plan in a class action against Massachusetts Mutual Life Insurance and other fiduciaries responsible for managing the MassMutual Thrift Plan, a defined contribution retirement plan. Plaintiffs allege that MassMutual and other fiduciaries engaged in self-dealing in violation of ERISA, cost its employees tens of millions of dollars in retirement savings.

Nationwide Savings Plan Litigation

MassMutual Thrift Plan Litigation (D. Mass.): We represent participants and beneficiaries of the MassMutual Thrift Plan in a class action against Massachusetts Mutual Life Insurance and other fiduciaries responsible for managing the MassMutual Thrift Plan, a defined contribution retirement plan. Plaintiffs allege that MassMutual and other fiduciaries engaged in self-dealing in violation of ERISA, cost its employees tens of millions of dollars in retirement savings.

Southern Company Pension Plan Litigation

Southern Company Pension Plan Litigation (N.D. Ga.): Cohen Milstein represents participants and beneficiaries of the Southern Company Pension Plan, alleging that the Southern Company Pension Plan uses outdated mortality tables to determine the value of joint and survivor annuities and the amount it charges retirees for pre-retirement survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.

AMPAM Parks Mechanical ESOP Litigation

Barrios, et al. v. AMPAM Parks Mechanical, Inc., et al. (S.D. Cal.): Cohen Milstein represents employee participants and beneficiaries of the AMPAM Parks Mechanical, Inc. Employee Stock Ownership Plan in a class action lawsuit alleging that AMPAM Parks Mechanical and the founders of AMPAM, Buddy Parks, John D. Parks, James Parks, and Jason Parks breached their fiduciary duties in the management of the ESOP in violation of ERISA.

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Daniel R. Sutter

Associate

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Daniel R. Sutter is an associate in Cohen Milstein's Employee Benefits/ERISA practice. He represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to becoming an associate at Cohen Milstein, Dan served as a Legal Fellow in the firm's Employee Benefits practice, where he investigated, developed, and drafted complaints against major financial institutions for ERISA violations. Before that, Dan worked at Cohen Milstein as a law clerk (2013–2016) and as an analyst (2010–2016), where he researched and aided in the development of potential cases for a number of practices.

In law school, Dan was a member of the *Federal Circuit Bar Journal*, and he also worked as a law clerk at the Consumer Financial Protection Bureau, Legal Division, in the summer of 2015. He also studied at the London School of Economics.

PRACTICE AREAS

Employee Benefits / ERISA

ADMISSIONS

District of Columbia
Maryland

EDUCATION

The George Washington University Law School, J.D., 2016
The George Washington University, B.A., 2010

New York Life Insurance Company 401(k) Litigation

New York Life 401(k) Plan Litigation (S.D.N.Y.): We represents employees and agents of New York Life Insurance in a class action against New York Life for allegedly mismanaging the 401(k) and engaging in corporate self-dealing and the prohibited transfer of employees' retirement assets by, among other things, impermissibly investing participants investments into the Fixed Dollar Account by default and improperly favoring and including New York Life's own in-house investment funds in its Plans, such as the MainStay Income Builder Fund, MainStay Epoch U.S. All Cap Fund and MainStay Epoch U.S. Small Cap Fund, thereby earning New York Life and its affiliates windfall profit. On March 5, 2024, the Court granted preliminary approval of a \$19 million settlement and granted class certification in this class action.

COHENMILSTEIN

BlackRock 401(k) Retirement Plan Litigation

BlackRock 401(k) Litigation (N.D. Cal.): Cohen Milstein successfully settled this certified class action, in which plaintiffs alleged that the BlackRock 401(k) plan administrators engaged in corporate self-dealing—restricting plan options to BlackRock’s own proprietary funds, and in many cases failing to provide the lowest cost versions of those funds. On November 3 2021, the Court granted final approval of a \$9.65 million settlement.

Triad Manufacturing, Inc. ESOP Litigation

Triad Manufacturing, Inc. ESOP Litigation (N.D. Ill.): Cohen Milstein represented participants and beneficiaries in the Triad Manufacturing ESOP who alleged that the ESOP’s trustees breached their fiduciary duties in connection with the sale of Triad Manufacturing to the ESOP. In September 2021, the Seventh Circuit, in a precedent-setting decision, cited an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. On August 23, 2023, the court granted final approval of a \$14.8 million settlement and granted class certification.

Wells Fargo 401(k) Litigation

Wells Fargo 401(k) Litigation (D. Minn.): Cohen Milstein achieved a \$32.5 million settlement prior to class certification and expert discovery. On August 31, 2022, the Court granted final approval of the settlement, resulting in a recovery of 40% of estimated damages for the plaintiffs. The lawsuit alleged that Wells Fargo and its affiliates violated numerous provisions of ERISA by breaching their fiduciary duties and engaging in self-dealing transactions prohibited under ERISA.

CITGO Pension Plan Litigation

CITGO Pension Plan Litigation (N.D. Ill.): We represent a certified class of participants and beneficiaries of the CITGO Petroleum Corporation Salaried and Hourly Employees Pension Plans, who allege CITGO violated ERISA by applying outdated mortality tables to the CITGO Plans to determine the value of joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects. On May 6, 2024, the Court largely denied CITGO’s motion for summary judgment. Then, on May 16, the Court certified the class.

AT&T Pension Benefit Plan Litigation

AT&T Pension Benefit Plan Litigation (N.D. Cal.): Cohen Milstein represents participants and beneficiaries in the AT&T Pension Benefit Plan who allege that AT&T failed comply with ERISA’s actuarial equivalence requirements when providing married participants joint and survivor annuities.

COHENMILSTEIN

GWA, LLC 401(k) Profit Sharing Plan Litigation

GWA, LLC 401(k) Profit Sharing Plan Litigation (D. Conn.): We represent participants in the GWA, LLC 401(k) Profit Sharing Plan who allege that GWA, LLC and George A. Weiss breached their fiduciary duties and misused employee retirement plan assets to further their own pecuniary interest, in violation of ERISA. Specifically, Plaintiffs allege that 100% of the Plan's investments (all of which are 401(k) assets) were and continue to be invested in "The Weiss Funds," which includes the company's flagship hedge fund named the "Weiss Multi-Strategy Partners Ltd." and the company's mutual fund named the "Weiss Alternative Multi-Strategy Fund," which generally "replicates" the hedge fund's strategy.

Intel Minimum Pension Plan Litigation

Berkeley v. Intel Corporation et al (N.D. Cal.): Cohen Milstein represents a putative class of pension plan participants and beneficiaries, who allege that the Intel Minimum Pension Plan utilized outdated mortality tables to determine the value of joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.

Luxottica Group Pension Plan Litigation

Luxottica Group Pension Plan Litigation (E.D.N.Y.): Cohen Milstein represents Luxottica pension plan participants in a lawsuit, alleging that the plan used outdated mortality tables to determine the value of participants' joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.

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Southern Company Pension Plan Litigation

Southern Company Pension Plan Litigation (N.D. Ga.): Cohen Milstein represents participants and beneficiaries of the Southern Company Pension Plan, alleging that the Southern Company Pension Plan uses outdated mortality tables to determine the value of joint and survivor annuities and the amount it charges retirees for pre-retirement survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.

WBBQ ESOP Litigation

WBBQ ESOP Litigation (S.D.N.Y): Cohen Milstein represents participants and beneficiaries of the WBBQ Holdings, Inc. Employee Stock Ownership Plan, who allege that the trustee of the WBBQ ESOP, Argent Trust Company and the company's owner, and controlling managers and shareholders breached their fiduciary duties, causing the ESOP to engage in transactions that are prohibited under ERISA and in connection with the sale of the company to the ESOP for an inflated purchase price that far exceeded its fair market value.

Western Global Airlines ESOP Litigation

Western Global Airlines ESOP Litigation (D. Del.): Cohen Milstein represents employees in challenging the valuation of Western Global Airlines at approximately \$1.3 billion, based on the sale of 37.5% of the company to the ESOP for \$510 million. The lawsuit seeks to restore substantial losses to the ESOP and to disgorge all ill-gotten gains received by the Neff family.

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Caroline E. Bressman

Associate

WASHINGTON, DC

T 612.807.1575

cbressman@cohenmilstein.com



Caroline E. Bressman represents the interests of employees, retirees, plan participants, and beneficiaries in ERISA class action lawsuits across the country.

Prior to joining Cohen Milstein, she was an associate at a highly regarded national plaintiffs' law firm, where she represented clients in employee benefits/ERISA and employment law class actions.

In addition to managing a full docket, Caroline is an adjunct faculty member at the University of Minnesota Law School, where she teaches a Law in Practice course. She also speaks frequently on ERISA, wage theft and employment law topics in continuing legal education programs.

During law school, Caroline was a staff member (Vol. 101) and the Symposium Articles Editor (Vol. 102) for the *Minnesota Law Review*.

PRACTICE AREAS

Employee Benefits / ERISA

ADMISSIONS

District of Columbia
Minnesota

EDUCATION

University of Minnesota
Law School, J.D., cum
laude, 2018

St. Olaf College, B.A.,
magna cum laude, 2015

New York Life Insurance Company 401(k) Litigation

New York Life 401(k) Plan Litigation (S.D.N.Y.): We represents employees and agents of New York Life Insurance in a class action against New York Life for allegedly mismanaging the 401(k) and engaging in corporate self-dealing and the prohibited transfer of employees' retirement assets by, among other things, impermissibly investing participants investments into the Fixed Dollar Account by default and improperly favoring and including New York Life's own in-house investment funds in its Plans, such as the MainStay Income Builder Fund, MainStay Epoch U.S. All Cap Fund and MainStay Epoch U.S. Small Cap Fund, thereby earning New York Life and its affiliates windfall profit. On March 5, 2024, the Court granted preliminary approval of a \$19 million settlement and granted class certification in this class action.

COHENMILSTEIN

Triad Manufacturing, Inc. ESOP Litigation

Triad Manufacturing, Inc. ESOP Litigation (N.D. Ill.): Cohen Milstein represented participants and beneficiaries in the Triad Manufacturing ESOP who alleged that the ESOP's trustees breached their fiduciary duties in connection with the sale of Triad Manufacturing to the ESOP. In September 2021, the Seventh Circuit, in a precedent-setting decision, cited an exception to the Federal Arbitration Act that permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. On August 23, 2023, the court granted final approval of a \$14.8 million settlement and granted class certification.

Envision Management Holding, Inc. ESOP Litigation

Envision Management Holding, Inc. ESOP Litigation (D. Col.): Cohen Milstein represents Envision Management Holding ESOP participants in a lawsuit in connection with the sale of Envision Management Holding, Inc. to the ESOP at an inflated price, which caused a multi-million-dollar loss to the ESOP. On February 9, 2023, A three-judge panel for the Tenth Circuit, in a 41-page published opinion, sided with Plaintiffs argument — backed up by the U.S. Department of Labor, which participated as amicus on behalf of the plaintiffs in the case — that an arbitration provision tucked in Envision workers' ESOP plan documents impermissibly blocked remedies under ERISA. That triggered the so-called effective vindication doctrine under the Federal Arbitration Act, which permits a court to overrule an arbitration agreement if it blocks a party from being able to bring claims under federal law. On October 10, 2023, the U.S. Supreme Court denied Defendants' petition review the Tenth Circuit's decision, thereby affirming the lower court's March 24, 2022 ruling, which denied Defendants' motion to compel arbitration.

AT&T Pension Benefit Plan Litigation

AT&T Pension Benefit Plan Litigation (N.D. Cal.): Cohen Milstein represents participants and beneficiaries in the AT&T Pension Benefit Plan who allege that AT&T failed comply with ERISA's actuarial equivalence requirements when providing married participants joint and survivor annuities.

GWA, LLC 401(k) Profit Sharing Plan Litigation

GWA, LLC 401(k) Profit Sharing Plan Litigation (D. Conn.): We represent participants in the GWA, LLC 401(k) Profit Sharing Plan who allege that GWA, LLC and George A. Weiss breached their fiduciary duties and misused employee retirement plan assets to further their own pecuniary interest, in violation of ERISA. Specifically, Plaintiffs allege that 100% of the Plan's investments (all of which are 401(k) assets) were and continue to be invested in "The Weiss Funds," which includes the company's flagship hedge fund named the "Weiss Multi-Strategy Partners Ltd." and the company's mutual fund named the "Weiss Alternative Multi-Strategy Fund," which generally "replicates" the hedge fund's strategy.

COHENMILSTEIN

Intel Minimum Pension Plan Litigation

Berkeley v. Intel Corporation et al (N.D. Cal.): Cohen Milstein represents a putative class of pension plan participants and beneficiaries, who allege that the Intel Minimum Pension Plan utilized outdated mortality tables to determine the value of joint and survivor annuities, resulting in married retirees receiving less than the actuarial equivalent of the benefit that ERISA protects.

World Travel ESOP Litigation

World Travel ESOP Litigation (E.D. Pa.): Cohen Milstein represented a certified class of employee stock option plan participants and beneficiaries who allege that the founders of World Travel and the ESOP trustees created the ESOP and then sold 100% of the employees World Travel stock to the ESOP at an above-market price, saddling it with over \$200 million in debt. On June 22, 2023, the Court granted plaintiffs unopposed motion for class certification and final approval of a \$8.7 million settlement.

COHENMILSTEIN

Michael B. Eisenkraft

Partner

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meisenkraft@cohenmilstein.com



Michael B. Eisenkraft leads Cohen Milstein's efforts in prosecuting innovative cases relating to the protection of the global financial markets.

He serves in both the Antitrust and Securities practices, is the administrative partner of the firm's New York office, chair of the New Business Development Committee, and a member of the firm's Executive Committee.

Michael currently represents putative classes of investors asserting antitrust or securities claims in the Stock Lending, Interest Rate Swaps, Treasuries, Bristol CVR, XIV ETN, Overstock.com, and Pesticides markets. In addition to recently securing \$580 million in settlements in the Stock Lending litigation, Michael helped investors recover hundreds of millions of dollars in the firm's mortgage-backed securities cases and represents businesses in commercial contingency litigation, including breach of contract cases.

PRACTICE AREAS

Securities Litigation &
Investor Protection
Antitrust

ADMISSIONS

New Jersey
New York

EDUCATION

Harvard Law School, J.D.,
cum laude, 2004
Brown University, B.A.,
magna cum laude, Phi
Beta Kappa, 2001

New York Life Insurance Company 401(k) Litigation

New York Life 401(k) Plan Litigation (S.D.N.Y.): We represents employees and agents of New York Life Insurance in a class action against New York Life for allegedly mismanaging the 401(k) and engaging in corporate self-dealing and the prohibited transfer of employees' retirement assets by, among other things, impermissibly investing participants investments into the Fixed Dollar Account by default and improperly favoring and including New York Life's own in-house investment funds in its Plans, such as the MainStay Income Builder Fund, MainStay Epoch U.S. All Cap Fund and MainStay Epoch U.S. Small Cap Fund, thereby earning New York Life and its affiliates windfall profit. On March 5,

COHENMILSTEIN

2024, the Court granted preliminary approval of a \$19 million settlement and granted class certification in this class action.

Stock Loan Antitrust Litigation

Iowa Public Employees Retirement System et al. v. Bank of America Corp. (S.D.N.Y.): Cohen Milstein is co-counsel in this groundbreaking putative class action, in which investors accuse Morgan Stanley, Goldman Sachs, Credit Suisse, UBS, J.P. Morgan, and other Wall Street banks of conspiring to thwart the modernization of and preserve their dominance over the \$1.7 trillion stock loan market. On September 1, 2023, the court granted preliminary approval of a historic settlement of \$499 million in cash along with injunctive relief against defendants Morgan Stanley, Goldman Sachs, UBS, JP Morgan, and EquiLend, bringing total settlements to \$580 million thus far. Litigation against Bank of America continues.

In re Interest Rate Swaps Antitrust Litigation

In re Interest Rate Swaps Antitrust Litigation (S.D.N.Y.): Cohen Milstein serves as Co-Lead Counsel and represents the Public School Teachers' Pension and Retirement Fund of Chicago and other proposed buy-side investor class members in this ground breaking putative antitrust class action against numerous Wall Street investment banks. Plaintiffs allege that the defendants conspired to prevent class members from trading IRS on modern electronic trading platforms and from trading with each other, all to protect the banks' trading profits from inflated bid/ask spreads.

Set Capital, et al. v. Credit Suisse Group AG, et al.

Set Capital, et al. v. Credit Suisse Grp. AG, et al. (S.D.N.Y.): Cohen Milstein is Co-Lead Counsel in this path-breaking securities class action alleging fraud and market manipulation of XIV Exchange Traded Notes. On March 17, 2023, the court certified one of three proposed investor classes.

In re Overstock Securities Litigation

In Re Overstock Securities Litigation (D. Utah): Cohen Milstein is sole Lead Counsel in this putative securities class action against Overstock.com Inc., its former CEO, CFO, and current Retail President for engineering a market manipulation "short squeeze" scheme, committing fraud and engaging in insider trading.

Northwest Biotherapeutics, Inc. v. Canaccord Genuity LLC, et al.

Northwest Biotherapeutics, Inc. v. Canaccord Genuity LLC, et al. (S.D.N.Y.): Cohen Milstein is leading this securities litigation against market makers Canaccord Genuity LLC, Citadel Securities LLC, G1 Execution Services LLC, GTS Securities LLC, Instinet LLC, Lime Trading Corp., Susquehanna International

COHENMILSTEIN

Group LLP, and Virtu Americas LLC for repeated market manipulation tactics involving the spoofing of company stock.

Phunware, Inc. v. UBS Securities LLC

Phunware, Inc. v. UBS Securities (S.D.N.Y.): Cohen Milstein is leading this securities litigation against UBS Securities for its repeated market manipulation tactics involving the spoofing of Phunware's stock.

Novastar MBS Litigation

NovaStar MBS Litigation: Cohen Milstein is lead counsel in litigation alleging that RBS, Wells Fargo (formerly Wachovia) and Deutsche Bank sold toxic mortgage-backed securities to investors. The litigation is one of the last outstanding class action MBS lawsuits. The Second Circuit Court of Appeals reversed an earlier dismissal of the lawsuit, paving the way for prosecution of the case. In March 2019, the Court granted final approval of a \$165 million all-cash settlement.

Harborview MBS Litigation

New Jersey Carpenters Health Fund, et al., v. The Royal Bank of Scotland Group, PLC (S.D.N.Y.): Litigation gave rise to a \$275 million settlement with Royal Bank of Scotland. Cohen Milstein was lead counsel in a complex case, in which presiding Judge Loretta A. Preska, of the U.S. District Court, Southern District of New York, commented on the "job well done" by the Cohen Milstein team.

LIBOR Antitrust Litigation (Exchange Traded Class)

In re: Libor-Based Financial Instruments Antitrust Litigation (S.D.N.Y.): Cohen Milstein played a significant role in representing the putative Exchange-Based Plaintiffs class that was a part of this large multi-district litigation that was consolidated in 2011. On September 17, 2020, after significant litigation, the court granted final approval of a \$187 million settlement between the Exchange-Based Plaintiffs and seven of the 16 of the world's largest banks, and on April 26, 2024, the court preliminarily approved an additional \$3.45 in settlements against the remaining defendants. The combined settlements totaling more than \$190 million represent the largest recovery in a "futures-only" commodities class action litigation.

RALI MBS Litigation

RALI MBS Litigation (S.D.N.Y.): Cohen Milstein was Lead counsel in a securities class action alleging RALI and its affiliates sold shoddy MBS securities that did not meet the standards of their underwriters. In July 2015, the court granted final approval to a global settlement totaling \$335 million, marking an end to a long and complicated class action that took seven years of intense litigation to resolve.

EXHIBIT 2



May 29, 2024

New York Life Insurance Company
c/o James O. Fleckner
Goodwin Procter, LLP
100 Northern Avenue
Boston, MA 02110

Re: Statement of Independent Fiduciary – Settlement of *Krohnengold v. New York Life Insurance Company et al*, Docket No. 1:21-cv-01778 (S.D.N.Y. Mar 02, 2021)

This statement is made by Newport Trust Company, LLC (“Newport Trust”) in its capacity as independent fiduciary for New York Life Insurance Employee Progress-Sharing Investment Plan and the New York Life Insurance Company Agents Progress-Sharing Plan (the “Plans”) in connection with the proposed settlement (the “Settlement”) of *Krohnengold v. New York Life Insurance Company et al*, Docket No. 1:21-cv-01778 (S.D.N.Y. Mar 02, 2021) (the “Litigation”).

Newport Trust was engaged by New York Life Insurance Company (the “Company”) on behalf of the Plans pursuant to U.S. Department of Labor Prohibited Transaction Class Exemption 2003-39, as amended, 75 Fed. Reg. 33,830 (June 15, 2010) (the “Class Exemption”), to serve as the independent fiduciary for the Plans for the limited purpose of determining whether to authorize the Plans’ participation in the Settlement as described below. Newport Trust has extensive experience in serving in the capacity of an independent fiduciary on behalf of employee benefit plans in connection with the settlement of litigation, and is closely familiar with the fiduciary obligations imposed by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

The Class Exemption permits a plan subject to ERISA, such as the Plans, to release a claim against a party in interest in exchange for consideration, provided certain requirements are met. Among these requirements is the authorization of the plan’s participation in the settlement by a fiduciary that “has no relationship to, or interest in, any of the parties involved in the litigation, other than the plan, that might affect the exercise of such person’s best judgment as a fiduciary.” The Class Exemption is designed to ensure that, subject to court approval, a party that is independent of the plan sponsor (here, a defendant in the Litigation) represents the plan’s interests in settling a claim. Absent the Class Exemption, an ERISA plan’s entry into such a settlement could be a prohibited transaction under Section 406 of ERISA, 29 U.S.C. §1106.

In accordance with the conditions of the Class Exemption, Newport Trust may authorize the Plans’ participation in the Settlement if the Settlement satisfies the applicable conditions of the Class Exemption including that: (i) the terms of the Settlement, including the scope of the release of claims; the amount of cash and the value of any non-cash assets and other consideration received by the Plans and the amount of the attorneys’ fees and other amounts paid from the recovery, are

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reasonable in light of the Plans' likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone; (ii) the terms and conditions of the transaction are no less favorable to the Plans than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; and (iii) the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

Consistent with the requirements of the Class Exemption: (i) Newport Trust has no relationship to, or interest in, any of the parties involved in the Litigation that might affect the exercise of its best judgment as an independent fiduciary; (ii) the terms of the Settlement are specifically described in a written settlement agreement; (iii) Newport Trust has acknowledged in writing that it is a fiduciary on behalf of the Plans with respect to the Settlement; and (iv) Newport Trust will maintain or cause to be maintained for a period of six years the records described in the Class Exemption.

In making the determinations described above and deciding whether to accept or reject the Settlement on behalf of the Plans, Newport Trust is required to act in accordance with the fiduciary responsibility standards of ERISA. Consistent with the Class Exemption, Newport Trust can authorize the Settlement on behalf of the Plans if, after a review of the Settlement, Newport Trust concludes that the chances of obtaining any further relief for the Plans from the settling defendants are not justified by the expense and risk involved in pursuing such relief. In determining whether the Settlement is reasonable in light of the Plans' likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone, Newport Trust is obligated to weigh these factors pursuant to a prudent decision-making process, given the facts and circumstances of the Litigation.

Newport Trust primarily considered the merits of the parties' claims and their respective arguments; the amount of cash consideration paid and other consideration provided for in connection with the Settlement; and the terms of the Settlement, including but not limited to the scope of the release, the plan of allocation, and the amount of legal fees requested by Plaintiffs' counsel.

In fulfilling its responsibilities and in evaluating the reasonableness of the Settlement, Newport Trust has taken the following actions:

1. Reviewed court documents and other information and documents in the Litigation that it deemed relevant;
2. Interviewed counsel for the parties;
3. Evaluated the strengths and weaknesses of the legal and factual arguments on which the Litigation was based;
4. Reviewed and analyzed the terms of the Settlement, including but not limited to the Settlement consideration and the scope of the Settlement release;
5. Reviewed the plan of allocation proposed by the parties; and
6. Reviewed draft Plaintiffs' Motion for Approval of Attorneys' Fees, Expenses, and Class

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Representative Service Awards¹.

Based on its evaluation of the relevant documents and information associated with the class action and the Settlement, and taking into account the fiduciary obligations imposed by ERISA, Newport Trust has concluded, consistent with the requirements of the Class Exemption, that: (i) the Settlement terms, (i) the Settlement terms, including the scope of the release of claims, the \$19,000,000 Settlement amount and non-monetary relief provided for in the Settlement, and the amount of any attorneys' fee award or any other sums to be paid from the recovery (presuming there are no material changes to the draft Plaintiffs' Motion for Approval of Attorneys' Fees, Expenses, and Class Representative Service Awards provided for Newport Trust's review), are reasonable in light of the Plans' likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone; (ii) the terms and conditions of the transaction are no less favorable to the Plans than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; and (iii) the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

As a result, Newport Trust has determined that the Plans should not object to the Settlement or any portion thereof, including but not limited to the requested attorneys' fees and costs, and as such authorizes the Plans' participation in the Settlement.

Very truly yours,

By: 
Name: William E. Ryan III
Title: CEO, President and Chief Fiduciary Officer

¹ The Plaintiffs' motion is due to the Court after the date Newport's determination is due pursuant to the requirements of the Settlement Agreement; Plaintiffs' counsel provided a draft of this motion for Newport's review.