UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, v. State Street Bank and Trust Company, Defendants.	)	C.A. No. 11-10230-MLW
ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated, Plaintiffs, v. State Street Bank and Trust Company, Defendants.	)	C.A. No. 11-12049-MLW
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on behalf of itself, and JAMES PEHOUSHEK-STANGELAND, and all others similarly situated, Plaintiffs, v. State Street Bank and Trust Company, Defendants.	)	C.A. No. 12-11698-MLW

ERISA COUNSEL'S MEMORANDUM IN SUPPORT OF PROPOSED PARTIAL RESOLUTION OF ISSUES FOR THE COURT'S CONSIDERATION

ERISA Counsel, Keller Rohrback L.L.P. ("Keller"), Zuckerman Spaeder, LLP ("Zuckerman") and McTigue Law LLP ("McTigue"), request that Section II of the Special Master's Supplement to His Report and Recommendations and Proposed Partial Resolution of Issues for the Court's Consideration ("Resolution"), ECF No. 485, be approved. ERISA Counsel submit this memorandum per the Court's Order dated October 16, 2018, ECF No. 494, as amended by Order dated October 25, 2018, ECF No. 502.

ERISA Counsel support the essential findings and conclusions of the Special Master's Report and Recommendation ("R&R") filed June 28, 2018, ECF No. 357. Most of the R&R is directed to the conduct of Customer Class Counsel,[1] not ERISA Counsel. For example:

- The R&R takes no issue with adequacy of the ERISA Class Representatives (Keller's clients The Andover Companies Employee Savings and Profit Sharing Plan and James Pehoushek-Stangeland, and McTigue's and Zuckerman's clients Arnold Henriquez, Michael T. Cohn, William R. Taylor, and Richard A. Sutherland),[2] ERISA Counsel's portion of the joint fee petition,[3] or ERISA Counsel's reported billing rates.[4] All ERISA Counsel and their respective local counsel appeared and participated in the action.[5]

[1] Labaton Sucharow LLP ("Labaton"); Thornton Law Firm; and Lieff Cabraser Heimann & Bernstein, LLP (collectively, "Customer Class Counsel").
[2] R&R at 77-80.
[3] *Id*. at 217-18 (ERISA Counsel recorded a reasonable number of hours, delegated appropriately between senior and junior lawyers, and contributed "value . . . [that] far exceeded their straight hour tally.").
[4] *Id*. at 173-76.
[5] *Id*. at 54-65; 217-18.

- The R&R found, further, that ERISA Counsel "obtained a very favorable result for the class" by "drawing on several decades of experience litigating complex ERISA cases."[6]
- The R&R correctly notes that ERISA Counsel did not use "staff attorneys" in this case and had nothing to do with other firms' double-counting of staff attorney time.[7]
- The R&R recognizes that ERISA Counsel had no knowledge of the Chargois arrangement,[8] and that if ERISA Counsel had been informed of the Chargois arrangement they would not have agreed to a joint fee petition, they would have filed their own fee petition (or petitions), they would have asked for more in fees than they ultimately received, *see* footnote 15 below, and they would not have agreed to Labaton's Claw Back Letter Agreement.[9]

Consequently, the R&R recommended that Labaton disgorge the amount of the payment to Chargois ($4.1 million), of which $3.4 million would be paid by Labaton to ERISA Counsel.[10] This fee adjustment was recommended for two reasons: 1) the non-disclosure of the Chargois arrangement to ERISA counsel; and 2), through no fault of their own, ERISA Counsel incurred significant costs related to the Special Master's exhaustive investigation.[11] Indeed, ERISA

[6] *Id*. at 157-58.
[7] *Id*. at 224 ("The ERISA firms did not utilize staff attorneys in this case, and as Goldsmith noted in his November 10 letter, the ERISA firms' lodestars were unaffected by the double-counting.").
[8] *Id*. at 115-18, 287-89.
[9] *Id*. at 132-33.
[10] *Id*. at 368-69.
[11] *Id.* at 351-52.

Counsel provided valuable assistance to the Special Master's investigation notwithstanding the burden and cost of doing so.

On October 10, 2018, the Special Master submitted the Resolution to the Court, representing a compromise contingent on the approval of the Court. Dkt. 485-0 at 11. Section II of the Resolution represents a compromise by ERISA Counsel to reduce the R&R's proposed ERISA fee allocation adjustment from $3.4 million to $2.75 million, together with other related agreements reached with the Special Master and Labaton.[12] ERISA Counsel agreed to this compromise in the interest of expediting and simplifying resolution of the case, and to serve as "additional Lead Counsel" alongside Labaton, if helpful to the Court. According to the Special Master, this compromise would facilitate his separate negotiations with Labaton that resulted in Section I of the Resolution.

Section I of the Resolution represents a compromise solely between the Special Master and Labaton. [13] ERISA class representatives and ERISA Counsel take no position on the Special Master's decision to compromise those issues, but we fully support the Special Master's recommended structural relief and proposed repayments to the Class.[14] The Resolution also provides fair compensation to ERISA Counsel without imposing additional costs on the Class itself.[15]

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[12] *E.g.*, ERISA Counsel will not seek any additional funds from Labaton and Labaton will not claw back any funds ERISA Counsel has already been paid.

[13] ERISA class representatives and ERISA Counsel did not participate in the negotiations concerning Section I of the Resolution and are not parties to the agreements in Section I.

[14] The Resolution provides for additional oversight of the ongoing settlement process by both ERISA Counsel and ERISA Class Representatives, Resolution 5-6, as well as the return of over $2,052,666 to the Class, *id.* at 4, 6.

[15] ERISA Counsel refer the Court to Zuckerman's Notice of Exception, ECF No. 390 (explaining that ERISA Counsel would not have agreed to file a joint fee petition or limit their fee in this matter to 9% had the Chargois arrangement and payment been disclosed, and further explaining that under the Special Master's $3.4 million reallocation, ERISA Counsel's revised fee would be

ERISA Counsel, as noted, are not implicated in the alleged misconduct investigated by the Special Master. ERISA Counsel have diligently represented the interests of the Class and particularly class members with claims under ERISA.[16] Going forward, ERISA Counsel and ERISA Class Representatives are willing to continue service to the Class for purposes of concluding this litigation.

Lastly, we recognize that even if the Court accepts the Special Master's Resolution, there are other outstanding objections to the R&R that the Court must consider. Ultimately the Court must decide whether to accept the Special Master's R&R in whole or in part, and what modifications to make to the fee award. We stand ready, willing, and able to assist the Court as requested, whether as "additional Lead Counsel," as provided in the Resolution, or otherwise.

Dated: October 30, 2018

Respectfully submitted,

KELLER ROHRBACK L.L.P.

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just under $10.9 million, or 18.167% of the $60 million allocated to ERISA members of the settlement class). Pursuant to the Resolution, the payment to ERISA Counsel would be reduced from $3.4 million to $2.75 million, resulting in a lower percentage award and a lodestar multiplier for ERISA Counsel well under the multiplier initially approved by the Court in November 2016.

[16] The ERISA claims were alleged in the *Andover* and *Henriquez* complaints.

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2018, I electronically filed the above with the Clerk of the Court using the CM/ECF system, which in turn sent notice to all counsel of record.

/s/ Laura R. Gerber
Laura R. Gerber

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-10230 MLW
ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, STATE STREET GLOBAL MARKETS, LLC and DOES 1-20, Defendants.	No. 11-cv-12049 MLW
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on behalf of itself, and JAMES PEHOUSHEK-STANGELAND, and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

LABATON SUCHAROW LLP'S MEMORANDUM IN SUPPORT OF PROPOSED PARTIAL RESOLUTION OF ISSUES (ECF 485)

Pursuant to Paragraph 3 of the Court's October 16, 2018 Order, ECF 494, Labaton Sucharow LLP ("Labaton" or the "Firm") respectfully submits this memorandum in support of the Special Master's Supplement to His Report and Recommendations and Proposed Partial Resolution of Issues for the Court's Consideration (the "Proposed Partial Resolution"), ECF 485.

INTRODUCTION

The Proposed Partial Resolution, among Labaton, the Special Master, and the ERISA Firms[1], represents a good-faith attempt to work with the Special Master and other counsel, in order to present "reasonable suggestions that would, if adopted, reduce the length and expense of proceedings in this matter." *See* Aug. 28, 2018 Mem. and Order at 6, ECF 460. In the Proposed Partial Resolution, Labaton acknowledges the errors that led to the so-called "double counting," and acknowledges that disclosures to its client Arkansas Teacher Retirement System ("ATRS"), to its co-counsel in the State Street matter, and to the Court, did not comply with emerging best practices regarding fee petitions and fee arrangements. Labaton agrees that if the proposal is accepted, the Firm will make guaranteed payments to the class and to ERISA counsel; forego its right to *de novo* review by the Court with respect to its objections to the Master's Report and Recommendation ("Report"); and implement significant processes designed to bring Labaton into compliance with emerging best practices so that issues like those at the heart of the Master's investigation will not recur. For the reasons described below, Labaton respectfully requests that the Court approve and adopt the Proposed Partial Resolution.

[1] Keller Rohrback L.L.P., McTigue Law LLP, and Zuckerman Spaeder LLP (together, the"ERISA Firms").

BACKGROUND

On July 26, 2016, after lengthy and contentious mediation and negotiations, the parties reached an agreement to settle the Plaintiffs' and their classes' claims against State Street Bank and Trust Company for $300 million. *See* Stipulation and Agreement of Settlement at 8, ECF 89. On November 2, 2016, the Court approved the settlement. Order and Final Judgment, ECF 110.

Labaton, in its role as lead counsel, moved on behalf of all of Plaintiffs' counsel for $74,541,250 in attorneys' fees, as well as expenses and service awards for the named Plaintiffs. *See* Lead Counsel's Mot. for an Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF 102. At a November 2, 2016 fairness hearing, the Court granted counsels' fee application, holding that the request for fees was reasonable. November 2, 2016 Hearing Tr. at 35, ECF 114. Following the law in this Circuit in assessing reasonableness, the Court used a common fund approach with a lodestar cross-check. *Id.* The Court calculated that the requested fees were approximately 25% of the settlement fund. *Id.* The Court concluded that this was a typical percentage of the common fund awarded by other courts in the Circuit in common fund cases. *Id.* Applying the lodestar cross-check, the Court calculated that the requested fees were 1.8 times the approximately $41 million lodestar. *Id.* at 36. The Court concluded that this too was reasonable and entered an order approving the fee award. *See* Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs, ECF 111. Plaintiffs' counsel allocated the aggregate fee award among themselves.

On November 10, 2016, Labaton on behalf of itself, Lieff Cabraser Heimann & Bernstein LLP ("Lieff"), and the Thornton Law Firm LLP ("Thornton") (together, "Customer Class Counsel"), filed a letter with the Court informing the Court that Labaton, Lieff, and Thornton's

lodestar reports inadvertently double-counted 9,322.9 hours of work by shared staff attorneys, which resulted in the three firms' lodestar being overstated by $4,058,654.50. November 10, 2016 Letter to Hon. Mark L. Wolf, ECF 116.

Following this disclosure, and a *Boston Globe* article raising issues regarding the fee petition, on March 8, 2017, the Court appointed retired United States District Judge Gerald E. Rosen as a Master to "investigate and prepare a Report and Recommendation concerning all issues relating to the attorneys' fees, expenses, and service awards previously made in this case." March 8, 2017 Mem. and Order at ¶ 2, ECF 173. To fund the investigation, the Court ordered Labaton on behalf of Customer Class Counsel to pay to the Clerk of the United States District Court for the District of Massachusetts $2,000,000 from the award of attorneys' fees and expenses previously distributed to Customer Class Counsel. March 8, 2017 Order ¶¶ 13-14. The Court has subsequently ordered Customer Class Counsel to pay an additional $2.8 million to fund the Master and his team's fees and expenses. October 24, 2017 Order at 3-4, ECF 208; April 23, 2018 Order at 4, ECF 217; October 16, 2018 Order at 3, ECF 494.

During his fourteen-month investigation, the Master learned that Labaton paid $4.1 million from Customer Class Counsels' portion of the attorneys' fees awarded to Plaintiffs' counsel to Chargois & Herron, a Texas law firm, pursuant to an agreement reached between Labaton and that firm's named partner, Damon Chargois. Mr. Chargois assisted Labaton in making introductions to representatives of ATRS.[2] Labaton and Mr. Chargois agreed that Mr. Chargois would receive 20% of any attorneys' fees received by Labaton in any litigation in which ATRS was lead plaintiff and Labaton lead or co-lead counsel. Mr. Chargois did not enter

[2] The expectation and original intent of the agreement was that Mr. Chargois would provide legal assistance with clients developed jointly with Labaton, and would be involved in representing the clients in cases handled on their behalf. *See* Belfi Decl. at ¶ 2, ECF 506-2.

an appearance in the State Street case and did not work on the State Street case, nor was he identified in the fee petition. *See* Report at 89-96 ("Report"), ECF 357.

Following the completion of his investigation, on May 14, 2018, the Master submitted his 377-page Report to the Court, which contained recommended factual findings, legal conclusions, and remedies. With respect to the double-counting issue, the Master recommended that Labaton, Lieff, and Thornton pay to the class, in equal shares, $4,058,000 million – which represents the amount of the lodestar attributable to the double-counted fees. Report at 364. With respect to disclosures regarding the Chargois payment, the Master recommended that Labaton pay $3.4 million to the ERISA Firms, and $700,000 to the class. *Id.* at 368-69. Together, these two figures total the amount of the payment to Chargois & Heron in this case. *Id.*

On June 22, 2018, the Court granted Labaton's Motion for Relief from the Order Awarding Attorneys' Fees, Payment of Litigation Expenses, and Awarding Service Awards to Plaintiffs (the "Fee Order") "to assure the court's continuing jurisdiction to modify the Fee Order, should the court find modification to be appropriate, during the pendency of this matter." June 22, 2018 Order at 2, ECF 331.

Labaton, Lieff, and Thornton each filed objections to the Master's Report. ECF 359, 361, 367, 379, 404. The ERISA Firms filed exceptions to Labaton's, Lieff's, and Thornton's objections but did not object to the Report itself. ECF 387, 392, 398.

At an August 9, 2018 hearing, the Master informed the Court that the Master and Customer Class Counsel were engaged in discussions that could result in revised recommendations by the Master that would propose a resolution of Customer Class Counsels' objections to the Master's Report. August 9, 2018 Hearing Tr. at 44, ECF 448. With the firms' agreement, the Court resubmitted the Master's Report to the Master to respond to Customer

Class Counsels' objections, and the Court authorized the Master to participate in subsequent proceedings concerning his Report. August 10, 2018 Order at ¶ 2, ECF 445.

After additional negotiation, on September 18, 2018, the Master advised the Court that he had reached a tentative, proposed agreement with Labaton and the ERISA Firms to resolve Labaton's objections to the Master's Report and the ERISA Firms' exceptions. Special Master's Response to Court's September 7, 2018 Order at 2, ECF 468. The Master reported that he had been unable to reach an agreement with Lieff or Thornton and would therefore respond to Lieff's and Thornton's objections to the Master's Report so that those matters could be addressed by the Court. *Id.* The Master requested two weeks for the agreeing parties to finalize and memorialize a proposed resolution and submit it to the Court for the Court's consideration. *Id.*

On October 10, 2018, the Master filed the Special Master's Supplement to his Report and Recommendations and Proposed Partial Resolution of Issues for the Court's Consideration, which attaches as Exhibit A the Supplemental Response of Labaton Sucharow LLP to the Special Master's Supplement to His Report and Recommendations and Proposed Partial Resolution of Issues for the Court's Consideration ("Labaton's Supplemental Response"). *See* ECF 485; 485-1. The details of the Proposed Partial Resolution, as reflected in these documents, will be discussed in detail *infra*.

On October 16, 2018, the Court ordered the Master, Labaton, and ERISA Counsel to submit memoranda in support of the Proposed Partial Resolution. October 16, 2018 Order at ¶ 3, ECF 494. Labaton now respectfully submits this memorandum in response.

ARGUMENT

I. The Proposed Partial Resolution is a Reasonable Way to Resolve and Address the Findings and Recommendations of the Master Regarding Labaton.

The Proposed Partial Resolution has two primary components: payments to the class and to the ERISA Firms and significant structural, personnel, and policy changes at Labaton to comply with emerging best practices. Labaton has agreed to make payments to the class up to the full amounts recommended by the Master in his Report. The reforms to which Labaton agrees in the Proposed Partial Resolution—and which Labaton has already begun to institute—fully address the issues identified by the Master in the Report and in order to bring Labaton into compliance with emerging best practices. Labaton discusses these two components in detail below.

A. Labaton Has Agreed to Make Payments to the Class and to the ERISA Firms.

In the Proposed Partial Resolution, Labaton agrees to pay to the class up to $1,352,666.67, its pro rata share of the amount of the lodestar submission attributable to inadvertently double-counted staff attorney fees (should the Court adopt the recommendation that there be a payment to the class with respect to this issue), and a guaranteed $700,000 relating to the Chargois payment. These payments would equal the full amounts that the Master recommended be paid to the class in the Report.[3] Proposed Partial Resolution at 4-6. Labaton

[3] Payment of a pro rata share of the amounts that the Master has attributed to the double counting issue is consistent with Massachusetts law that would apply in the analogous context of joint tortfeasors. *See* G.L. c. 231B, § 1(b) and § 2 (providing that contribution of joint tortfeasors is determined on a pro rata basis, without any attempt to consider relative degrees of fault).

also will pay to the ERISA Firms, and the ERISA Firms have agreed to accept, $2.75 million as a further term to resolve the Master's recommendation as to the Chargois payment. *Id.* at 9.[4]

Labaton's agreement in the Proposed Partial Resolution to pay these amounts without further litigation is a significant concession by Labaton. Labaton argues that, because the double-counting error was inadvertent and did not materially affect the lodestar cross-check—it increased the lodestar multiplier to 2.0, which is well within the range of approved settlements in this and many other jurisdictions—there should be no payment at all related to the double-counting. Labaton's Objections to Special Master's Report and Recommendations at 81-83, ECF 359. Labaton also objected on numerous grounds to the Master's recommendation that Labaton disgorge fees reflecting the payment to Chargois. *See, e.g.,* Labaton's Objections at 25-78; 83. Absent the Court's approval of the Proposed Partial Resolution, Labaton would continue to litigate its objections to the Report, and if successful before this Court or in the First Circuit, could obtain a judgment that the full amount of the original fee award should be reinstated, without any payment to either the class or ERISA counsel.[5]

B. Labaton has Agreed to Implement Procedures Designed to Address Shortcomings Identified in the Report and Ensure that Labaton Follows Emerging Best Practices with Respect to Fee Arrangements and Fee Petitions.

In addition to monetary payments, Labaton agrees as part of the Proposed Partial Resolution to institute broad measures throughout the Firm that, separately and together, are designed to ensure that the double-counting issues identified by the Master in the Report will not recur, and that the Firm will be in compliance with emerging best practices with regard to

[4] This amount reflects a negotiated compromise of the Master's recommendation in his Report that Labaton pay the ERISA Firms $3.4 million related to the Chargois payment. *Id.*

[5] Labaton recognizes that it also is possible that, during its *de novo* review, this Court could increase the amount payable by Labaton. Labaton suggests that this possibility underscores that the proposed settlement represents a fair middle ground or compromise.

referral and retention agreements. These reforms go above and beyond what the law, the Federal Rules of Civil Procedure, and the rules of professional conduct of any jurisdiction require. Labaton's reforms would require that referral arrangements be disclosed in detail to the client, the court, co-counsel, and the class. Proposed Partial Resolution at 5; Labaton's Supplemental Response at 5-7. By instituting these reforms, Labaton will become a leader in emerging best practices for fee petitions, referral fees, and the obligations of lead counsel in class actions to clients, co-counsel, courts, and the class. More specifically:

First, Labaton has already discontinued its practice of allowing another firm to pay for Labaton-housed staff attorneys and allowing another firm to include Labaton staff attorneys on its lodestar report. Proposed Partial Resolution at 4; Labaton's Supplemental Response at 4 ¶ (a). Therefore, there is no chance that the error in this case that led to the double-counting of staff attorney time will happen in any case in which Labaton is counsel.

Second, to address the "compartmentalization" that the Master identified as a primary source of the double-counting error and Labaton's failure to disclose the Chargois payment, Labaton has agreed to institute several reforms. *See, e.g.*, Report at 96-98, 223-24, 325-26. Labaton has created a new position, Head of Litigation, which is now held by Labaton's former General Counsel, Jonathan Gardner. Proposed Partial Resolution at 6-7; Labaton's Supplemental Response at 4 ¶ (b). Having a single Head of Litigation, who will oversee all litigation from start to finish, will ensure that information about a particular litigation is centralized, rather than compartmentalized among different attorneys and departments working on a single case. This position will provide continuity across the life cycle of a case, thus preventing situations where only one group of attorneys working on a case is aware of information (e.g. the Chargois payment obligation). *See* Report at 97-98 (finding that some

members of the litigation team were aware of the Chargois payment obligation but others were not).

Labaton also has adopted a practice of assembling a "settlement team" once Labaton has reached a settlement in principle in a matter. Proposed Partial Resolution at 7. This team will consist of the head of Labaton's Settlement Litigation Group, a client relationship attorney familiar with the client, and a member of the litigation team. *Id.*; Labaton's Supplemental Response at 4 ¶ (c). The settlement team process will ensure that once a settlement in principle is reached, the litigators remain closely involved with the negotiation and drafting of the settlement documents and do not hand the case off to the settlement department, which the Master concluded contributed to the double-counting error.[6] *See* Report at 56. Similarly, consolidating information about the case in a settlement team comprised of the individuals listed above will ensure that these attorneys share information about the client and how the case has progressed throughout the litigation. This will prevent a situation akin to the Chargois payment obligation, in which some of the relevant attorneys were aware of the payment obligation, but others were not. *See* Report at 96-98 (finding that while the ATRS relationship partners and some of the litigators were aware of the Chargois payment obligation, the principal litigator, who appeared at the final approval hearing, and settlement counsel, who negotiated and drafted the fee petition, did not). More specifically, the attorneys responsible for deciding what information should go into the fee petition, and what should be disclosed to the court, will be fully informed. All members of the settlement team will review the fee submissions before filing, and the fee submissions will be circulated to the other firms involved in prosecuting a case to review before filing. Labaton's Supplemental Response at 4 ¶ (c).

[6] As noted above, Labaton will no longer share staff attorneys with co-counsel, so this specific issue will not recur.

Third, Labaton has undertaken a comprehensive ethics review of all of its active referral agreements, whether written or un-written. Labaton's Supplemental Response at 6 ¶ (o). As explained in detail in the declaration of Labaton's General Counsel Michael Canty filed with the Court on October 18, 2018, ECF 498-1, beginning in January 2018, Labaton's then-General Counsel, Jonathan Gardner, along with an outside ethics expert, Hal Lieberman, began a review of all active cases to ascertain whether these cases had referral agreements. Canty Decl. ¶ 2. Mr. Canty took over responsibility for this project when he became General Counsel in July 2018 and Mr. Gardner became the new Head of Litigation. To ensure that they were aware of all existing referral fee arrangements, Labaton reviewed all of the 150 open cases. Canty Decl. ¶ 3. 48 of these cases involve 18 referral agreements. *Id.* For 46 of the 48 cases, Mr. Gardner and Mr. Lieberman ensured that all of the agreements complied with New York ethics rules, which are considered to be among those that are the most stringent with regard to referral relationships. *Id.* All of the referral agreements in these 46 cases were replaced with one of the two uniform referral fee agreement templates attached as Exhibits B and C to Mr. Canty's declaration. *Id.* Since Mr. Canty completed this ethics review, Labaton has entered into two new referral agreements using the new templates. *Id.*

To ensure that the review was comprehensive, Mr. Canty inquired at a partners' meeting about any additional referral arrangements and followed up with all partners by email. *Id.* at ¶ 4. This approach was aimed at identifying any active referral arrangements at Labaton that may not be reduced to writing, or that were known by only a few partners at the firm. *See* Report at 94, 96-98 (finding that the Chargois arrangement was never formally memorialized in writing and that only certain partners were aware of the arrangement). Mr. Canty learned of no other fee arrangements through these steps. Canty Decl. ¶ 4.

Fourth, as noted, Labaton has made the formal appointment of Mr. Canty as Labaton's General Counsel, and Carol Villegas as Labaton's Chief Compliance Officer, to provide ethics advice to the firm, and to coordinate with Labaton's outside ethics expert. Labaton's Supplemental Response at 6 ¶ (j). In particular, Mr. Canty will review and sign all engagement letters *before* any litigation commences, ensuring that a process is in place so that all future engagement letters are reviewed for compliance with all ethical obligations before a case is filed. Proposed Partial Resolution at 7; Labaton's Supplemental Response at 6 ¶ (k). All referral agreements must be signed both by the General Counsel (ensuring the General Counsel is aware of all referral agreements and that they are memorialized in writing) and the law firm with which Labaton has the referring obligation. Canty Decl. ¶ 5. And, any fees paid out of a settlement to referring counsel must be paid pursuant to a referral agreement approved by the General Counsel. Canty Decl. ¶ 6.

Fifth, Labaton has formally adopted a policy prohibiting "bare referral" arrangements,[7] like the Chargois arrangement. Thus, all attorneys with whom Labaton enters into referral relationships must (among other things) accept joint responsibility for the case and/or perform work commensurate with the amount received for any case in which the attorney is entitled to a share of the attorneys' fees. Proposed Partial Resolution at 8; Labaton's Supplemental Response at 6 ¶ (n); Canty Decl. Exs. B and C.

Sixth, Labaton has taken measures to ensure that all Labaton attorneys are aware of their ethical and transparency obligations. For example, Labaton has implemented training for all partners, including senior level partners, explaining client disclosure and consent requirements that incorporate both New York's strict rules on referral fees and emerging best practices.

[7] "Bare referral" arrangements are those where the referring attorney does not perform work on the case or accept joint responsibility for the case. Report at 251 n.196.

Proposed Partial Resolution at 7. Labaton has retained the service of Hal Lieberman to provide this training biannually. Labaton's Supplemental Response at 5 ¶ (g). Labaton is implementing a policy that requires that all fee sharing arrangements be disclosed in writing to the client and consented to in writing by the client at the time of the retention. *Id.* at 6 ¶ (l). Labaton also is developing additional requirements for inclusion in its Case Transition and Complaint Drafting Policy that require that, before the filing of a Complaint or the transition to Labaton of a case, every attorney must review the ethics rules for the jurisdiction in which the case has been, or will be, filed, as well as the New York Ethics Rules, and flag any potential ethical issues to the partner in charge of the case. Labaton's Supplemental Response at 5 ¶ (f). And, Labaton will adopt and codify a policy to comply with the Local Rules of the Eastern and Southern Districts of New York requiring disclosure to the Court of fee sharing arrangements regardless of the rules of the jurisdiction in which the litigation is pending. *Id.* at 6 ¶ (m).

Seventh, as part of its reforms, Labaton has created firm-wide template agreements that reflect appropriate ethical standards and current emerging best practices for various types of retention agreements, including securities class actions, antitrust retentions, liaison counsel agreements, whistleblower retentions, and fee allocation agreements with counsel. Labaton's Supplemental Response at 7 ¶ (p). Labaton is also developing a Policy and Procedure for Retainer Agreements Manual with which practicing attorneys at the firm must familiarize themselves. *Id.* at 5 ¶ (e).

Eighth, Labaton has changed its fee declaration template language. The language used in Labaton's fee petition in the State Street case states:

> The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other complex class actions.

Decl. of Lawrence A. Sucharow on Behalf of Labaton Sucharow LLP in Support of Lead Counsel's Mot. for an Award of Attorneys' Fees and Payment of Expenses at ¶ 7, ECF 104-15. Importantly, as counsel explained at the hearing on October 15, 2018, this phrase in Mr. Sucharow's declaration was accurate. Labaton has a robust process to set its reasonable billing rates, and Labaton has billed hourly clients at those set rates. *See* Labaton's Response to Special Master Hon. Gerald E. Rosen's (Ret.) First Set of Interrog. To Labaton – June 9 Response at 34, ECF 401-173 (explaining that Labaton occasionally has clients that Labaton charges an hourly rate); Wolosz Decl. Ex. A, Labaton's Response to Special Master Hon. Gerald E. Rosen's (Ret.) First Set of Interrog. To Labaton – July 10 Response (excerpts), at 23-25 (listing the hourly rates Labaton has charged to hourly clients for each of the years 2010-2016).

Nevertheless, although Mr. Sucharow's statement was accurate, Labaton now understands that its use of the phrase "regular rates charged for their services" can be interpreted to suggest that Labaton charges these rates to hourly clients with greater frequency than it has. In order to remove any possible ambiguity, and ensure no confusion going forward, Labaton no longer uses this language in its fee declarations.

Finally, within 60 days of signing the agreement, Labaton will retain a retired member of the judiciary for one year to work with Labaton to ensure that Labaton's retention, fee sharing agreements, and other fee petition policies are in compliance with all applicable rules and emerging best practices. As of this submission, Labaton is in discussions with the Honorable Garrett E. Brown, Jr. (Ret.), former Judge and Chief Judge of the United States District Court for the District of New Jersey, and anticipates his retention. Labaton's anticipated retention of Judge Brown is to perform the tasks delegated to Judge Holderman under the terms of the Proposed

Partial Resolution. *See* Proposed Partial Resolution at 8; Labaton's Supplemental Response at 5 ¶ (i).

Individually and together, each of these reforms provided for in the Proposed Partial Resolution or that Labaton has already instituted are a safeguard that none of the issues identified by the Master in his Report will occur again.

II. Approval and Adoption of the Proposed Partial Resolution.

A. Approval of the Proposed Partial Resolution Will Result in Payment to the Class and Avoid Further Litigation.

Approving the Proposed Partial Resolution will guarantee an additional $700,000 payment to the class and guarantee payment of Labaton's pro rata share up to $1,352,666.67 should the Court order some amount paid to the class regarding the double-counting. Labaton respectfully suggests that this is a fair and reasonable compromise. Should the Court decline to accept the Proposed Partial Resolution, Labaton and the other parties to the Proposed Partial Resolution, by the agreement's terms, will revert to the position they held prior to reaching the proposed agreement. Labaton's Supplemental Response at 9 ¶ (z). In that case, Labaton will be constrained to pursue its objections to the Master's Report, which would require a response by the Master to Labaton's objections, a reply by Labaton, a possible evidentiary hearing or hearings, and other possible proceedings as part of this Court's *de novo* review. Thereafter, if necessary, there could be an appeal to the First Circuit, further extending these proceedings. Approving the Proposed Partial Resolution provides finality as to Labaton and the ERISA Firms, and a guaranteed payment to the latter Firms and to the class.

The Master has advised that, in his view, the terms of the Proposed Partial Resolution, including the acknowledgements and remedial actions of Labaton that form a part of that proposed resolution, are an appropriate way to "address the findings and recommendations made

by the Special Master in his Report while promoting judicial efficiency and avoiding unnecessary cost." Proposed Partial Resolution at 11. Labaton respectfully requests that the Court accept the Special Master's recommendation, and approve the Proposed Partial Resolution.

B. The Court Should Not Defer Its Decision on the Proposed Partial Resolution Pending Lieff's and Thornton's Objections to the Master's Report.

During the hearing on October 15, the Court raised the question of whether it should consider the Proposed Partial Resolution now, or whether it must wait until it has concluded its *de novo* review of Lieff's and Thornton's objections to the Master's Report. Labaton respectfully suggests that delay is unnecessary, and that the Court should address the proposed settlement promptly.

Partial settlement agreements that involve fewer than all parties are routine. By analogy, in Massachusetts (as elsewhere), when there are "two or more persons liable in tort for the same injury" a statute defines a process that allows a settlement with fewer than all tortfeasors. G.L. c. 231B, § 4. Under this statute:

> When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury:
>
> (a) It shall not discharge any of the other tortfeasors from liability for the injury unless its terms so provide; but it shall reduce the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
>
> (b) *It shall discharge the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor*.

Id. (emphasis added). This statute does not require that the Court first proceed to judgment as to all defendants. To the contrary, it is designed to operate before there is a judgment and, indeed, its very purpose is to encourage such partial settlements. *See, e.g.*, *Bishop v. Klein*, 380 Mass. 285, 294 (1980); *Slocum v. Donahue*, 44 Mass. App. Ct. 937, 938 (1998).

The Private Securities Litigation Reform Act contains a similar provision. Pursuant to 15 U.S.C. § 78U-4(f)(7), a "covered person" who settles any private action before final verdict or judgment is discharged from claims for contribution, and the Court is directed to enter a bar order to that effect. Courts routinely enter such orders in cases in which fewer than all defendants have reached a settlement. *See, e.g.*, *Neuberger v. Shapiro,* 110 F. Supp. 2d 373, 382 (E.D. Pa. 2000) (approving partial settlement with some defendants and bar order over the non-settling defendants, observing that "[c]ase law has consistently upheld bar orders that extinguish contribution claims by non-settling defendants in securities fraud actions.").

Following the same practice here is reasonable and appropriate. This Court has recognized that it has the authority pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2) to allocate attorneys' fees, and this Court has the authority pursuant to Federal Rule of Civil Procedure 53(g)(3) to allocate the costs of the Master. The Court needs no more authority to accept and agree to the terms of the Proposed Partial Resolution. As requested by Labaton and the Special Master, the Court should accept the settlement as soon as reasonably practicable, and approve the requested bar order to prevent any non-settling party from bringing an action against Labaton for contribution or indemnification, regardless of how it is styled or denominated. Proposed Partial Resolution at 6; Labaton's Supplemental Response at 8-9 ¶ (x); *cf.* G.L. c. 231B, § 4; 15 U.S.C. § 78U-4(f)(7).

During the hearing, the Court suggested that it was concerned about proceeding in this manner, and about considering the Proposed Partial Resolution now, because acceptance of the resolution would require the Court to "sever" Labaton from Thornton. Oct. 15, 2018 Tr. at 14, ECF 496. The Court asked whether such a "severance" is possible or appropriate before the

issues have been decided with respect to Thornton. *Id.* Labaton respectfully suggests that the Court's concerns do not provide a reason to wait, for at least two reasons.

First, the Court noted correctly that the template fee declaration that was the starting point for the declarations submitted both by Mr. Bradley and Mr. Sucharow was drafted by a Labaton partner, Nicole Zeiss. *Id.* Labaton and Thornton are not similarly situated with respect to the use of the language in the declarations, however, because (as explained above) Labaton has had paying clients. Accordingly, the language upon which the Court is focusing was accurate at the time Mr. Sucharow signed the declaration. Any other issues that the Master addressed with respect to the declaration are specific to Thornton. *See* Report at 226-245. There is no reason to delay entry of a settlement as to Labaton even if these issues regarding Mr. Bradley's declaration remain subject to further litigation.

Second, the Court noted that Mr. Bradley was "of counsel" to Labaton for a period of time, and questioned whether that relationship warrants a delay of consideration of the Proposed Partial Resolution until issues as to Thornton have been resolved. The agreement pursuant to which Mr. Bradley served as "of counsel" is before the Court, at Exhibit 141 to the Master's Report and Recommendation. ECF 401-140. That agreement was dated as of January 1, 2015 – well after ATRS had become a client of Labaton, and years after this litigation had been filed. *Id.* In any event, Mr. Bradley did not play any role as "of counsel" to Labaton in connection with the State Street litigation. To the contrary, from the beginning of this case, Mr. Bradley has been counsel of record as an attorney employed by the Thornton Law Firm or its predecessor, Thornton & Naumes LLP. *See, e.g.,* ECF No. 1. The existence of the temporary "of counsel" relationship Mr. Bradley had with Labaton is irrelevant to any questions regarding the Chargois relationship and payment.

For all of these reasons, Labaton respectfully suggests that the Court need not delay approving the Proposed Partial Resolution until after it has decided issues relating to Lieff and Thornton.

III. Labaton Should Remain Class Counsel to Continue Administering the Fund.

The Court has determined that the settlement itself was fair, and therefore the only outstanding issues are the administration of the settlement and reconsideration of the over-all attorneys' fee award. Labaton has agreed with the Special Master that ERISA Counsel should be recommended to the Court for appointment as co-Class Counsel. Labaton respectfully suggests that it should remain lead counsel for the settlement class, as provided in the Proposed Partial Resolution, because it has important ongoing responsibilities in overseeing the continuing settlement-related administrative work that would be disrupted if Labaton were removed as lead counsel. *See* Proposed Partial Resolution 5-6. As detailed previously in the Declaration of Nicole M. Zeiss, Labaton has overseen the entire pre and post-approval administrative process. Zeiss Decl. ¶ 2, ECF 429. Labaton is currently working with A.B. Data, the settlement claims administrator, and the United States Department of Labor to obtain information about Group Trusts that have not submitted certifications to A.B. Data about their ERISA assets or volume. Zeiss Decl. ¶ 5. Once the total volume of ERISA assets is known, Labaton will work with A.B. Data to determine payment amounts for class members other than regulated investment companies ("RICS"), notify class members of the payment amounts, and ask the Court's authorization to distribute the payments to the non-RIC class members. *Id.* A second distribution to RICs will follow. *Id.* Thereafter, Labaton will continue to work with A.B. Data to answer class questions about distributions and conduct additional distributions until the administration of the settlement is completed. *Id.* at ¶ 6.

Labaton has agreed in connection with the Proposed Partial Resolution, and the Master has requested, that the ERISA Firms be appointed to serve alongside Labaton as additional lead counsel for the settlement class. Proposed Partial Resolution at 6. Labaton respectfully suggests that no further changes to the leadership structure of this case are required.

CONCLUSION

For all of the foregoing reasons, Labaton Sucharow respectfully requests that the Court approve the Proposed Partial Resolution.

Dated: October 30, 2017

Respectfully submitted,

/s/ Joan A. Lukey

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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on October 30, 2018.

/s/ Joan A. Lukey
Joan A. Lukey

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-10230 MLW
ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, STATE STREET GLOBAL MARKETS, LLC and DOES 1-20, Defendants.	No. 11-cv-12049 MLW
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on behalf of itself, and JAMES PEHOUSHEK-STANGELAND, and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

DECLARATION OF JUSTIN J. WOLOSZ IN SUPPORT OF
PROPOSED PARTIAL RESOLUTION OF ISSUES (ECF 485)

I, Justin J. Wolosz, declare as follows:

1. I am a partner at the law firm of Choate Hall & Stewart LLP, which is counsel for Labaton Sucharow LLP ("Labaton") in this matter. I make this declaration in support of Labaton Sucharow LLP's Memorandum In Support of Proposed Partial Resolution of Issues (ECF 485).

2. Attached hereto as Exhibit A is a true and correct copy of excerpts from Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton – July 10 Response.

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

Executed on October 30, 2018.

/s/ Justin J. Woloz
Justin J. Wolosz

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to all counsel of record on October 30, 2018.

/s/ Joan A. Lukey
Joan A. Lukey

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 11-cv-10230 MLW
ARNOLD HENRIQUEZ, *et al.*, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, STATE STREET GLOBAL MARKETS, LLC and DOES 1-20, Defendants.	No. 11-cv-12049 MLW
THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, *et al.*, Plaintiffs, v. STATE STREET BANK AND TRUST COMPANY, Defendant.	No. 12-cv-11698 MLW

LABATON SUCHAROW LLP'S RESPONSE TO SPECIAL MASTER HONORABLE GERALD E. ROSEN'S (RET.) FIRST SET OF INTERROGATORIES TO LABATON SUCHAROW LLP – JULY 10 RESPONSE

Labaton Sucharow LLP ("Labaton Sucharow" or the "Firm") responds as follows to the Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP ("First Interrogatories"). This response addresses those interrogatories that, following conferral with counsel to the Special Master, are to be provided on July 10, 2017.

Labaton Sucharow's answers are based solely on the facts and contentions presently known. To the extent Labaton Sucharow answers any Interrogatory, it does so without waiving any rights or objections and expressly reserves all rights and objections. Labaton Sucharow's answers to the Interrogatories are made without waiving the right to: (i) amend, modify or supplement the answers and objections stated herein, if necessary; (ii) rely on any facts, documents or other evidence which may develop or come to Labaton Sucharow's attention at a later date; and (iii) rely upon, reference or put into evidence additional expert information, testimony or reports.

GENERAL OBJECTIONS

The following General Objections are incorporated by reference into each response to the First Interrogatories, whether or not they are referenced in a specific response below.

1. Labaton Sucharow objects to Definition No. 1 as overbroad, irrelevant, and lacking in proportionality. Per agreement of counsel to the Special Master, Labaton Sucharow will construe the term "you", "your", "the Firm", and "the Law Firm" to refer to Labaton Sucharow LLP, and its employees.

2. Labaton Sucharow objects to the First Interrogatories to the extent they seek information protected by the attorney-client privilege, the work product doctrine, or information that otherwise is privileged, protected or exempt from discovery. To the extent that Labaton Sucharow has provided any answers below that may include information that is privileged or

protected as work product, the Firm provides such answers pursuant to the Limited Protective Order of the Special Master Relating to Attorney/Client Privileged and Work Product Documents and Information Being Provided to the Special Master (ECF No. 191). Pursuant to this protective order, the provision of information to the Special Master does not constitute a waiver of the attorney-client privilege or work product protection.

3. Labaton Sucharow objects to the First Interrogatories to the extent they purport to impose obligations that differ from or exceed those imposed by the Federal Rules of Civil Procedure, particularly Rule 33, and by any court decisions interpreting those Rules.

4. Labaton Sucharow objects to the First Interrogatories to the extent they seek information beyond the scope of, or not relevant to, the Courts' February 6, 2017 Memorandum and Order in the above-referenced cases.

5. In responding to the First Interrogatories, Labaton Sucharow has made reasonable efforts to respond based on its understanding and interpretation of each Interrogatory. If the Special Master subsequently asserts a reasonable interpretation of an Interrogatory which differs from that of Labaton Sucharow, Labaton Sucharow reserves the right to supplement its responses.

6. Labaton Sucharow reserves the right to supplement its answers should additional responsive information be discovered following the designated dates for responses.

7. Capitalized terms shall have the meanings set forth in the First Interrogatories, subject to any objections asserted herein. All other capitalized but undefined terms used in this response have the same meanings as set forth in the Stipulation and Agreement of Settlement (ECF No. 89).

INTERROGATORY 46:

Please list all of the Firm's hourly rates charged to hourly clients for each of the years 2010-2016. For each attorney, please list the relative experience level.

RESPONSE TO INTERROGATORY 46:

The Firm incorporates the General Objections set forth above. The Firm again notes that the rates charged to its few "hourly clients" are generally the same as the rates used for contingent fee clients. Subject to and without waiving the foregoing objections, the Firm provides the following information:

Rates as of 12/31/10 Charged to Hourly Clients

Name	JD Year	2010 Billing Rate	Matter
PARTNER			
Labaton, Edward	1957	**840**	General Rate for Hourly Matters
Bleichmar, Javier	1998	**180**	Client 016533 [Name]
Fomti, Joseph	1999	**625**	General Rate for Hourly Matters
OF COUNSEL			
Einstein, Joseph H.	1960	**550**	General Rate for Hourly Matters
Sternberg, Joseph	1966	**600**	Client 016540 [Name]
Auld, Dominic	1998	**180**	Client 016533 [Name] (Matter 0002)
Auld, Dominic	1998	**575**	Client 016533 [Name] (Matter 0001)
ASSOCIATE			
Holmes, Colin	2006	**325**	Client 016540 [Name]
Ellman, Alan	2003	**490**	General Rate for Hourly Matters

Rates as of 12/31/11 Charged to Hourly Clients

Name	JD Year	2011 Billing Rate	Matter
PARTNER			
Labaton, Edward	1957	**860**	General Rate for Hourly Matters
OF COUNSEL			
Einstein, Joseph	1960	**550**	General Rate for Hourly Matters
Sternberg, Joseph	1966	**625**	Client 016540 [Name]

ASSOCIATE			
Holmes, Colin	2006	**400**	General Rate for Hourly Matters

Rates as of 12/31/12 Charged to Hourly Clients

Name	JD Year	2012 Billing Rate	Matter
PARTNER			
Gardner, Jonathan	1990	**750**	General Rate for Hourly Matters
Labaton, Edward	1957	**975**	General Rate for Hourly Matters
OF COUNSEL			
Einstein, Joseph H.	1960	**550**	General Rate for Hourly Matters
Sternberg, Joseph	1966	**750**	General Rate for Hourly Matters
Sternberg, Joseph	1966	**625**	Client 016540 [Name]
ASSOCIATE			
Holmes, Colin	2006	**525**	General Rate for Hourly Matters

Rates as of 12/31/13 Charged to Hourly Clients

Name	JD Year	2013 Billing Rate	Matter
PARTNER			
Labaton, Edward	1955	**975**	General Rate for Hourly Matters
OF COUNSEL			
Einstein, Joseph H.	1960	**550**	General Rate for Hourly Matters

Rates as of 12/31/14 Charged to Hourly Clients

Name	JD Year	2014 Billing Rate	Matter
PARTNER			
Himes, Jay L.	1972	**750**	Client 016887 - Services as Trustee in [Name]
Labaton, Edward	1955	**975**	General Rate for Hourly Matters
OF COUNSEL			
Einstein, Joseph H.	1960	**550**	General Rate for Hourly Matters
ASSOCIATE			
Wierzbowski, Elizabeth Rosenberg	2001	**585**	Client 016887 - Services as Trustee in [Name]

Rates as of 12/31/15 Charged to Hourly Clients

Name	JD Year	2015 Billing Rate	Matter
PARTNER			
Himes, Jay L.	1972	**750**	Client 016887 - Services as Trustee in [Name]
Labaton, Edward	1955	**975**	General Rate for Hourly Matters
OF COUNSEL			
Einstein, Joseph H.	1960	**550**	General Rate for Hourly Matters
ASSOCIATE			
Wierzbowski, Elizabeth Rosenberg	2001	**585**	Client 016887 - Services as Trustee in [Name]

Rates as of 12/31/16 Charged to Hourly Clients

Name	JD Year	2016 Billing Rate	Matter
PARTNER			
Arisohn, Mark S.	1972	**925**	Client 016641.0009 –[Name]
Bernstein, Joel H.	1975	**975**	Client 016641.0009 –[Name]
Goldsmith, David J.	1996	**800**	Client 016641.0009 –[Name]
Himes, Jay L.	1972	**800**	Client 016887 - Services as Trustee in [Name]
Schochet, Ira A.	1981	**925**	Client 016641.0009 –[Name]
OF COUNSEL			
Einstein, Joseph H.	1960	**550**	General Rate for Hourly Matters
Einstein, Joseph H.	1960	**600**	Rate for Client 009505 – [Name]
Okun, Barry	1981	**800**	Client 016641.0009 – [Name]
ASSOCIATE			
Rhodes, Corban S.	2007	**550**	Client 016641.0009 –[Name]
Wierzbowski, Elizabeth Rosenberg	2001	**585**	Client 016887 - Services as Trustee in [Name]

Dated: July 10, 2017

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Attorneys for Labaton Sucharow LLP

VERIFICATION

On behalf of Labaton Sucharow LLP, I have read Labaton Sucharow LLP's Response to Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – July 10 Response. The Response was prepared with the assistance of the employees, representatives, and counsel of Labaton Sucharow LLP, and the information provided is not fully within my personal knowledge. I reserve the right to make changes or additions to these responses if it appears at any time that errors or omissions have been made or if more accurate or complete information becomes available. To the extent that these responses are within my personal knowledge, I certify them to be true. To the extent that these responses are not within my personal knowledge, I have no reason to believe that they are not true.

Signed under oath under the penalties of perjury this 11th day of July, 2017.

Lawrence A. Sucharow, Chairman

CERTIFICATE OF SERVICE

I, Justin J. Wolosz, hereby certify that on this Tenth day of July I have caused a copy of the foregoing Labaton Sucharow LLP's Response To Special Master Honorable Gerald E. Rosen's (Ret.) First Set of Interrogatories to Labaton Sucharow LLP – July 10 Response to be served via email and overnight mail upon William F. Sinnott, Donoghue Barrett & Singal, P.C., One Beacon Street, Suite 1320, Boston, MA 02108.

Justin J. Wolosz

8186704

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated,

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.
_____/

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated,

Plaintiffs,

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.
_____/

THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on behalf of itself, and JAMES PEHOUSHEK-STANGELAND and all others similarly situated,

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.
_____/

SPECIAL MASTER'S MEMORANDUM IN SUPPORT OF HIS SUPPLEMENT TO HIS REPORT AND PROPOSED PARTIAL RESOLUTION OF ISSUES FOR THE COURT'S CONSIDERATION

On October 10, 2018, the Special Master filed a Supplement to his Report & Recommendations and Proposed Partial Resolution of Issues for the Court's Consideration ("the Proposed Partial Resolution"). Dkt. # 485. The Proposed Partial Resolution described a two-part agreement. The first part described the terms of an agreement between the Special Master and Labaton Sucharow, LLP ("Labaton") resolving Labaton's Objections to the Master's Report and Recommendations dated June 28, 2018 ("Labaton's Objections"). *See* Dkt. # 359. The second part described the terms of an agreement between the Special Master, Labaton, and the ERISA Firms[1] resolving the ERISA Firms' exceptions to Labaton's objections and the Master's recommendation that the ERISA Firms receive additional money reallocated from Labaton's share of the total attorneys' fee award. *See* Dkt. # 387; Dkt. # 398; Dkt. # 392.

After a hearing on October 15, 2018, which addressed, among other things, the Proposed Partial Resolution, the Court issued an order on October 16, 2018 directing the Special Master, Labaton, and ERISA Firms to each submit memorandum in support of the Proposed Partial Resolution. Dkt. # 494.

I. Relevant Background

The complete factual history of this case, which sets the stage for the Proposed Partial Resolution, is set forth in great detail in the Special Master's Report and Recommendations, filed under seal on May 14, 2018. *See* Dkt. # 357, pp. 8-137. While the parties have engaged in considerable collateral litigation after the filing of the Report, the pertinent events are as follows:

After the Master filed the Report under seal, the parties engaged in lengthy litigation over the appropriate redactions to the Report and the 266 accompanying exhibits. The Court resolved these issues and unsealed the Report on June 28, 2018. On June 28 & 29, 2018, the Customer

[1] Unless otherwise specified, ERISA Firms is used herein to refer to Keller Rohrback L.L.P., McTigue Law LLP, and Zuckerman Spaeder LLP.

Class firms (Labaton, Lieff Cabraser Heimann & Bernstein, and the Thornton Law Firm) filed their respective objections to the Report. Shortly thereafter, on July 10, 12 & 19, 2018, the ERISA Firms filed exceptions to Labaton's Objections.

Labaton's objections to the Report were voluminous, consisting of at least fifteen specific legal objections in an 85-page filing. Among those objections, Labaton strenuously objected to the Special Master's recommendation that it pay one-third of the total overstated lodestar ($4,058,000.00), or $1,352, 666.67 resulting from Customer Class Counsel's double-counting of certain staff attorney hours. *See* Dkt. # 357, pp. 81-83. Labaton took further exception to the Master's conclusion that its payment to Chargois did not strictly comply with the Massachusetts Rules of Professional Conduct, should have been disclosed to the Court, the client, the class, and co-counsel, and constituted an impermissible finder's fee. *See id.,* pp. 25-78. Labaton specifically challenged the Master's conclusion that it owed the ERISA Firms a contractual – or other legal – duty, and that its failure to meet that duty required it to reallocate a portion of its fee award to the ERISA Firms. *See id.,* pp. 78-81. Accordingly, Labaton contested all of the Special Master's proposed remedies, namely, a recommendation to reimburse the class one-third of the double-counted time, to disgorge the $4.1 million payment to Chargois, and to retain an outside consultant to ensure ethical compliance moving forward. *See id.*, pp. 81-84.

The ERISA Firms largely objected to Labaton's position that it owed no duty to inform the ERISA Firms about the payment to Chargois, that disclosure would have been immaterial, and thus, that the ERISA Firms were not entitled to additional compensation from Labaton. Suffice it to say that, after all the objections were filed, Labaton and the ERISA Firms, and Labaton and the Special Master, were seriously at odds.

In early August 2018, Labaton contacted the Special Master to open discussions about a possible resolution. Over the next two months, the Special Master, his counsel, and Labaton engaged in comprehensive discussions to try and reach a full resolution of the issues pertaining to Labaton. An essential component of those discussions was to resolve the dispute between Labaton and the ERISA Firms concerning the Special Master's rationale and recommendation that Labaton reallocate $3.4 million to the ERISA Firms. The Special Master negotiated with each party separately, and Labaton, the ERISA Firms, and the Special Master ultimately agreed on the terms memorialized in the Proposed Partial Resolution (Dkt. # 485).[2]

II. The Proposed Partial Resolution is fair, reasonable, and adequate to protect the class on whose behalf the complaints were brought.

a. The First Circuit heavily favors early resolution of litigation to preserve judicial resources and effectuate the intent of the parties consistent with the best interests of the class.

"Settlement agreements enjoy great favor with the courts 'as a preferred alternative to costly, time-consuming litigation.'" *Fidelity and Guar. Ins. Co. v. Star Equipment Corp*. 541 F.3d 1, 5 (1st Cir. 2008) (*quoting Mathewson Corp. v. Allied Marine Indust., Inc.*, 827 F.2d 850, 852 (1st Cir.1987)). This is true in the First Circuit, where early resolution is strongly preferred. *Puerto Rico Dairy Farmers Ass'n v. Pagan*, 748 F.3d 13, 20 (1st Cir. 2014); *Durrett v. Housing Authority of City of Providence*, 896 F.2d 600, 604 (1st Cir. 1990). This is not an aspirational goal, but a practice firmly in place. Courts in this circuit have held that it is not just a favored practice but *the duty* of the Court and counsel alike to explore voluntary resolution of matters where possible. *See Aggregates (Carolina), Inc. v. Kruse*, 134 F.R.D. 23, 27 (D.P.R. 1991). This is particularly true in complex class action cases where Courts balance the importance of

[2] The Special Master also negotiated with the Lieff and Thornton firms, but was not able to come to resolution with those firms.

ensuring that a settlement meets Rule 23(e)'s standard of fairness, reasonableness, and adequacy with the strong policy favoring resolution. *See, e.g., In re Tyco Intern., Ltd. Multidistrict Litigation*, 535 F.Supp.2d 249, 259 (D.N.H. 2007); *In re First Commodity Corp. of Boston Customer Account Litigation*, 119 F.R.D. 301, 313 (D. Mass. 1987) (*citing to Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d. Cir. 1982)); *Hill v. State Street Corp*., 2015 WL 127728, at *6 (D. Mass. 2015); *In re Relafen Antitrust Litigation*, 231 F.R.D. 52, 68 (D. Mass. 2005). Among the many benefits of early resolution is the conservation of scarce judicial resources. *See Lycos, Inc. v. Blockbuster, Inc.*, 2010 WL 5437226, at *3 (D.Mass. 2010).

Offsetting the judiciary's preference for settlement is a competing obligation to act as a fiduciary to the class in awarding attorneys' fees in class action contexts. *See, e.g., Bezdek v. Vibram USA Inc.*, 79 F.Supp.3d 324, 343 (D. Mass. 2015). This can only be done if the class stands to substantially benefit from the resolution, and such a resolution is fair given the alternatives of proceeding with litigation. The Special Master reiterates the finding in his Report and Recommendations that $300 million was an excellent result for the class given the risks and significant legal obstacles facing the class. Furthermore, putting aside the issues that have come to light during the course of the Special Master's investigation, the parties, the Special Master, and the Court have all recognized that counsel prosecuting this case on behalf of the class fought a long and difficult battle, worthy of a substantial fee that reflects a reasonable lodestar.[3] *See* Dkt. # 357, pp. 29-34.

[3] The issue has been raised as to whether the $300 million settlement amount should be considered as a "mega-fund," and all attorneys' fees derived from the settlement calculated using a lesser percentage than the traditional range of 20-30% frequently applied by the courts in the First Circuit, because the total settlement exceeds $100 million. In awarding attorneys' fees in mega-fund cases, several courts have adopted a practice of lowering the fee award percentage to avoid giving attorneys a windfall at the plaintiffs' expense. *See e.g., In re Neurontin Marketing and Sales Practices Litigation*, 58 F.Supp.3d 167, 170 (D. Mass. 2014); *In re Bluetooth Headset Productions Liability Litigation*, 654 F.3d 935, 942 (9th Cir. 2011) ("where awarding 25% of a 'mega-fund' would yield windfall profits for class counsel in light of the hours spent on the case, courts should adjust the benchmark percentage or employ the lodestar method instead."); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005);

There is no doubt that the posture of this case, which stems from a class action for which the Court approved settlement in 2016, renders the application of these standards unique in this instance. Here, the Proposed Partial Resolution – even though partial – balances these well-recognized goals of substantive fairness and conservation of judicial resources. First and foremost, it is fair to the class. Under the Proposed Partial Resolution, the class stands to gain the same amount the Special Master recommended be returned to it – no reduction was recommended in the Proposed Resolution from two amounts recommended in the Special Master's Report and Recommendations. And, given the lengthy history of this case, it is preferable to resolve a substantial number of the disputed areas in this case rather than continue down the road of drawn-out, trench warfare litigation in this post-Report stage. Second, the resolution of the issues pertaining to Labaton and ERISA significantly narrows the scope of the remaining issues to which the Special Master must respond – lessening the need for judicial decision-making on secondary and collateral issues moving forward. Moreover, Labaton has agreed to withdraw all pending motions and waived its right to appeal from the entrance of the Proposed Partial Resolution, further conserving the Court's resources and expediting resolution of the case in this Court and the appellate courts.

Beyond furthering these important policy objections, no doubt an essential place to begin, the reasonableness and fairness of the Proposed Partial Resolution can be viewed through two separate, but related, frameworks: (i) monetary award to the class; and (ii) Fed. R. Civ. P. 23(e).

Carlson v. Xerox Corp., 596 F.Supp.2d 400 (D.Conn. 2009); *In re Citigroup Inc. Bong Litigation*, 988 F.Supp.2d 371 (S.D.N.Y. 2013). There is no blackletter law, however, that attorneys' fees calculated in large settlements be capped at less than 20%, only a firm desire to prevent an attorney windfall in these cases. As the collective lodestar multiplier in the State Street case was calculated at approximately 2.0 (after adjustment for the double counting error), and did not, on its face, confer a windfall on the attorneys, the Special Master declined to automatically reduce the percentage of the fee consistent with previous treatment of mega-fund cases. The percentage of fund is, of course, only a starting point in the Court's calculation of an appropriate fee award, and the Court should consider the entirety of the circumstances surrounding a fee petition.

First, if approved by the Court, the class stands to receive *at least* an equal financial benefit under the Proposed Partial Resolution – slightly more than $2 million directly from Labaton – as that recommended by the Special Master in his Report and Recommendations.[4] Second, the Proposed Partial Resolution furthers the fundamental protections embodied in Federal Rule of Civil Procedure 23(e) requiring that settlement of a class action be fair, reasonable, and adequate. Finally, as is the case under Rule 23(e), the consistency between the Proposed Partial Resolution and the findings and conclusions expressed by the Special Master in his Report and Recommendations shows the Resolution was the product of an arm's length negotiation between the Special Master, on the one hand, and Labaton and, then separately, the ERISA Firms, on the other.

b. The Proposed Partial Resolution confers a significant benefit upon the individuals on whose behalf the State Street case was brought, the class.

Throughout the various twists and turns in this case – and, most recently, the investigation into the conduct of the attorneys who prosecuted the case – the Special Master's focus has remained, as it should, on the class members on whose behalf the case was brought. With that goal in mind, an important benchmark is evaluating how the Proposed Partial Resolution affects the total settlement fund owed to the class.

It is critical to the Special Master that the class receive the same benefit it would have had the objections raised by Labaton and ERISA stayed the normal course. Here, the Proposed Partial Resolution confers a significant benefit upon the class. Under its terms, Labaton must return to the class the same amount as was previously recommended in the Report and Recommendations – $2,052,666.67.

[4] The Special Maser recommended that additional funds be paid to the class by the non-settling firms, Lieff and Thornton. These recommendations will be among the subjects of the remaining litigation with those law firms.

As the court correctly observed, in addition to ensuring the class's interests are protected, the Court also has a duty to protect the administration and integrity of the justice system. Beyond the financial benefit to this class, the Special Master also recognizes the long-term and broad benefit to future classes which will be achieved through Labaton's institutional reforms and prohibitions on certain fee division practices that, while common to the industry, are ripe for nondisclosures that obscure the fee award process, which will greatly benefit institutional investors across the country who rely on sophisticated plaintiffs' class action firms to litigate on their behalf. These reforms include prohibiting bare referral payments in the future and disallowing any firm other than Labaton from including the hours worked by Labaton's staff attorneys.

c. The Proposed Partial Resolution satisfies the applicable factors considered under Rule 23(e), as applied to a post-settlement context.

While the requested approval of the Proposed Partial Resolution does not fit squarely within the Rule 23(e) framework, it is, however, the final thread of a complex class action case litigated on behalf of an absentee class. Throughout this negotiation process, the Special Master has not lost sight of the origins of this investigation in the larger State Street case. At this juncture – where a laudable settlement in the underlying case has been reached but an investigation into the proper award of attorneys' fees remains ongoing – the Court is again called-on to scrutinize the agreement between the Special Master, Labaton, and the ERISA Firms, and discharge its fiduciary duties to decide whether the Proposed Partial Resolution addressing fees to class counsel is fair, reasonable, and adequate to address past shortcomings of counsel and further the best interests of the class. Thus, the Proposed Partial Resolution must be consistent with the important benchmarks written into Rule 23(e).

Drawing from Rule 23(e), which also addresses the approval of attorneys' fees, the following factors emerge as relevant and reliable benchmarks of fairness and reasonableness as to approval of the terms in the Proposed Partial Resolution: (1) the impact on the class; (2) whether parties to the Proposed Partial Resolution are treated differently, and to the extent they are, the reasonableness of the different treatment; (3) whether the amount of attorneys' fees was negotiated after and separate from the amount of proposed settlement for the class members; (4) counsel's recommendations; (5) the failure of class members to object; and, (6) whether negotiations for a resolution were conducted at arm's length and without collusion. *See M. Berenson Co., Inc. v. Faneuil Hall Marketplace, Inc.*, 671 F.Supp. 819, 822-823 (D. Mass. 1987); *Disability Law Center v. Massachusetts Dept. of Correction*, 960 F.Supp.2d 271, 280-282 (D.Mass. 2012); *National Ass'n of Chain Drug Stores v. New England Carpenters Health Benefit Fund*, (582 F.3d 30, 44 (1st Cir. 2009).

On balance, each of these factors supports the approval of the Proposed Partial Resolution. First, the Proposed Partial Resolution adequately protects the class while imposing sufficiently tailored redress on the firms that failed to meet best practices to fully disclose information necessary for the Court to accurately award attorneys' fees. As described above, the Proposed Partial Resolution directs payment of a considerable amount of money back into the settlement fund – the same amount as recommended in the Report and Recommendations. Looking beyond the class, the Proposed Partial Resolution yields starkly different results for Labaton and the ERISA Firms. Disparate treatment, however, is appropriate in this instance to adequately resolve the objections that, in and of themselves, reflect the different roles played by Labaton, on the one hand, and the ERISA Firms, on the other.

The main areas in which the Special Master found it appropriate to impose remedies for Labaton involved its central role in the double counting and in the nondisclosure of its preexisting obligation to pay Damon Chargois, pursuant to what is referred to as the Chargois Arrangement. As described in detail below, Labaton now acknowledges that it was responsible for not disclosing the Chargois Arrangement to the Court and the class, as well as for withholding critical details from co-counsel. The Proposed Partial Resolution, therefore, is geared largely toward addressing Labaton's past shortcomings and nondisclosures.

By contrast, neither the double counting nor the nondisclosure of Chargois implicate the ERISA Firms. There is no dispute to the positions that the ERISA Firms did not submit an overstated lodestar and did not contribute to the double counting error. *See* 10/11/16 Goldsmith Letter, Dkt. # 116, p. 2, n. 3. Indeed, the ERISA Firms' principal exception to Labaton's objections centered around the ERISA Firms' collective belief that, had they known about the Chargois Arrangement, they would have approached the fee petition differently, including sharing that information with their clients and the Department of Labor, and possibly filing a separate fee petition. *See* Dkt. # 387, pp. 2-4; Dkt. # 392, p. 4; Dkt. # 398, pp. 1-2. Because the ERISA Firms have been dragged into this investigation through no fault of their own, and were deliberately not told about Chargois, Labaton has agreed to pay the ERISA Firms an additional $2.75 million beyond the $7.5 million anticipated in their own fee arrangement that was originally approved by the Court. Counsel for Labaton and the ERISA Firms all agree that this result is fair and reasonable.

Turning to the interplay between the Proposed Partial Resolution and the underlying State Street case, it is clear from the tortured history of this case that the resolution of issues concerning the Master's recommendation for adjustments to the fee award has not had, nor will it have, any bearing on the excellent result achieved for the class in the underlying case. To begin,

the negotiation of the Proposed Partial Resolution was conducted entirely separate from the settlement for the class. The Court approved the settlement award in November 2016, four months before it appointed the Special Master to investigate issues concerning the attorneys' fee award. The issues addressed by the Proposed Partial Resolution were first articulated by the Special Master in his Report and Recommendations on May 14, 2018. The Report, in turn, sparked numerous objections from the Law Firms, but it was not until August 2018 that discussions with the Special Master about resolving those issues began. In short, negotiation of the Proposed Partial Resolution was conducted well after the Law Firms negotiated the $300 million settlement with State Street, and, if approved by the Court, will take effect a full two years after the underlying case was resolved. The Proposed Partial Resolution has not impacted that $300 million settlement in any material way – positive or negative.

Finally, while there have been some initial concerns raised by the Competitive Enterprise Institute[5], no class members have objected to the Proposed Partial Resolution, which was filed publicly on October 10, 2018. The Special Master defers to the Court on whether it deems necessary a separate notice to the class describing the Proposed Resolution and its effects, but the failure of class members to object is a significant factor that the Court should consider in weighing the fairness of the Resolution.

[5] At the October 15, 2018 hearing, Theodore Frank of the Competitive Enterprise Institute raised some general concerns about proceeding with a partial resolution and the impact it may have on the class. *See* 10/15/18 Hearing Tr. pp. 53:9-55:5; 56:6-19. Mr. Frank raised, for example, the possibility that the Proposed Partial Resolution could lead to an increase in litigation arising from disputes among and between class counsel and the Court regarding the Resolution itself, and the level of culpability ascribed to Labaton under the terms of the Resolution. See 10/15/18 Hearing Tr. p. 54: 3-14. These concerns are largely dispelled by the bar order, proposed under the Resolution, against claims brought by the Lieff and Thornton firms against Labaton for indemnification or contribution, addressed further herein. Moreover, any implications by Mr. Frank that the Special Master has abandoned his objective role to favor class counsel's interests are wholly unfounded, as described in detail below. *See* 10/15/18 Hearing Tr. pp. 54: 19-22; 55: 10-20; 56: 6-12.

III. The Proposed Partial Resolution is the product of an arm's length negotiation by the Settling Parties and is consistent with the Special Master's legal conclusions and recommendations in his Report and Recommendations.

To be sure, the Proposed Partial Resolution strikes a different tone than the Report and Recommendations, and it does so for good reason. For the first time during the Master's investigation, Labaton has acknowledged that it acted deficiently in preparing and submitting the fee petition in the State Street case and, in doing so, deprived the Court, the class, and co-counsel of critical information. Its acknowledgments are accompanied by acceptance of responsibility as well as financial penalties and corrective actions. In sum, Labaton has recognized the inadequacy and misleading effects of its practices in this case and, through the Proposed Partial Resolution, now stands in agreement with the Special Master that these practices handicapped the Court in performance of its duty to safeguard the class. This certainly serves the objective of protecting and furthering the integrity of the justice system.

As evidenced in the Special Master's Report and Recommendations, the most concerning of Labaton's deficiencies was the nondisclosure of the $4.1 million payment to Chargois, an attorney who neither appeared in the State Street case nor worked on the litigation. Indeed, Labaton's refusal to recognize the need for such disclosures put Labaton at odds with the Special Master—a position that persisted in the post-Report proceedings. The resolution of this, and all other, outstanding issues has shifted the tides considerably toward ensuring that Labaton addresses its deficiencies, learns from its mistakes, and makes the class and co-counsel whole.

a. <u>The Special Master and Labaton, and the Master and ERISA, engaged in good faith negotiations consistent with the Special Master's Appointment Order and findings in his Report and Recommendations</u>.

The Proposed Partial Resolution represents a marked shift in Labaton's prior positions. Labaton affirmatively approached the Special Master over a year into the investigation to acknowledge that resolution would be the most beneficial way to move forward. The Special

Master was open to discussions consistent with his responsibilities under the Appointment Order, including an effort to bring a global resolution to the open issues remaining in his investigation at an all-parties meeting in Boston on September 11, 2018. When it became evident that a global resolution could not be attained, Labaton and the Special Master continued substantial discussions to narrow the issues still in dispute. A necessary part of resolving Labaton's objections was conferring, through the Special Master, with the ERISA Firms, who took exception to Labaton's objections and to whom the Special Master had recommended Labaton reallocate a substantial portion of the value paid to Chargois.

This was not easy process. Given the high stakes of the case, the parties, as can be expected, vigorously advocated their positions at every turn. Beyond this, the Special Master's appetite to move from his position in the Report and Recommendations was minimal given the explicit mandate from the Court to thoroughly investigate the Law Firms and make recommendations commensurate with the results of that investigation. However, both Labaton and the ERISA Firms recognized that resolution of these issues would prove an efficient and cost-saving measure for themselves and for the Court. In the end, the ERISA Firms agreed to accept a lesser amount from Labaton and Labaton agreed to, and has already begun to, put in place internal processes to ensure that all fee petitions and fee agreements achieve the levels of transparency and reliability reasonably expected by the Court, and that are necessary to ensure the integrity of the justice system, particularly in a class action context.

b. <u>The Proposed Partial Resolution addresses the fundamental concerns expressed in the Report and Recommendations about Labaton's past referral practices and other concerns.</u>

The Court has rightly observed that, in addition to ensuring the class's interests are protected, the Court has a fundamental duty to safeguard the administration of justice. The reforms adopted by Labaton not only address its shortcomings but, moving forward, address the

Court's concerns about protecting the integrity to the judicial process, especially in the class action practice context.

The Special Master's shift in tone results in large part from Labaton's own about-face as to how it views its past and present obligations in the class action context. In his Report and Recommendations, the Special Master identified several issues with Labaton's conduct in the submission of the fee petition in the State Street case, principally, Labaton's role in the double counting, resulting in an overstated lodestar, and its failure to disclose the existence of the Chargois Arrangement to the Court, to its client, and, most importantly, to the class. These are serious issues that threaten the integrity of the judicial system and severely hinder the Court's discharge of its fiduciary duties in class action cases.

While Labaton initially took the opposite view— that the double-counting did not affect the fee award and that its nondisclosure of Chargois was entirely permissible – Labaton now agrees that maintaining transparency during the fee award process is critical and that, by withholding important information about the recipients of the fee award from the Court and the class, and others involved in the process, Labaton handicapped the administration of justice in this instance. The Special Master is satisfied that reforms and acknowledgments identified in Section I of the Proposed Partial Resolution concerning Labaton, sufficiently addresses each of Labaton's past deficiencies in this case. These are set forth below with specificity:

1. Nondisclosure of the Chargois Arrangement

    a. *Nondisclosure of the Chargois Arrangement to the Class*.

The Special Master found that, while the attorney-client relationship that formed between Labaton and the class members may not impose the same fiduciary obligations as that created between an individual client and attorney, Labaton nevertheless had a fiduciary and ethical duty to disclose the Chargois Arrangement to at least the named class representatives, if not the class

as a whole, but that disclosure was not specifically required by the Federal Rules of Civil Procedure. *See* Dkt. # 357, pp. 281-285. By failing to disclose the Chargois Arrangement to the class, Labaton deprived the class members of information necessary to make informed decisions about settlement, and therefore, derogated its duties under the Massachusetts Rules of Professional Conduct. *Id*., p. 286.

Labaton acknowledges that the emerging best practices at the time of settlement contemplated that Labaton disclose in detail the terms of the Chargois Arrangement to the class, something that was not done here and has undertaken to do this in future case. These best practices balance the recognized lack of clarity in the federal jurisprudence concerning the scope of the attorney-client relationship, and duties imposed thereunder in a class action, with the ethical demands that class members – like any individual client – are entitled to receive a reasonable explanation adequate to weigh the risks of a proposed decision.

b. *Nondisclosure of the Chargois Arrangement to the Court*.

The Special Master concluded that the details of the Chargois Arrangement were material facts that should have been disclosed to the Court in connection with the fee petition. *See* Dkt. # 357, pp. 313-314. Regrettably, as the Court has recently pointed out, there was no discussion about Chargois or his sharing in the funds distributed as part of the attorneys' fee award. In part, this is because Labaton contended, until recently, that its payment to Chargois was a bare referral fee. As the Special Master concluded in his Report, by consciously deciding to withhold this information from the Court, Labaton derogated its ethical duties to maintain candor with the Court under the Massachusetts Rules of Professional Conduct and common law.[6] But, while the

[6] The Proposed Partial Resolution, which states that the *payment* to Chargois did not violate any rules of professional misconduct is not to the contrary. The Special Master made no finding with respect to the propriety of the payment itself made to Damon Chargois. *See* Dkt. # 357, p. 86. Instead, the Special Master focused on Labaton's failure to disclose the Chargois Arrangement, and its obligation thereunder.

Special Master noted the deleterious effects nondisclosure of the Chargois Arrangement had on the adversarial process during the fee award stage, the Master did not find a violation of any procedural rules. *See* Dkt. # 357, pp. 274-286.

Labaton has expressly acknowledged the role it played in the breakdown of the adversarial process in this case. Had the Court received full disclosure of the Chargois Arrangement, Labaton concedes that the Court may have awarded a lesser fee to Labaton – yielding a greater recovery to the class. Labaton also recognizes that full discussion of the Chargois Arrangement and the fact that Chargois did not work on or accept responsibility in this case was not only prudent, but essential for the Court to adequately perform its gatekeeping function, apart from whether it was specifically required to make such a disclosure under the Federal Rules of Civil Procedure. Moreover, Labaton recognizes that the $4.1 payment to Chargois was not a case-specific referral fee, as commonly understood in the legal industry.

In short, Labaton has conceded that the better practice was for it to fully disclose the terms of the Chargois Arrangement to the Court. Labaton has accepted responsibility for its past shortcomings, and has undertaken significant reforms to ensure that analogous fee arrangements are not implemented at Labaton. Through its newly-appointed General Counsel, Michael Canty, Esq. – who was not employed with Labaton during the litigation of the State Street case – Labaton has addressed all open cases, and in almost one-third of those cases, affirmatively informed its clients consistent with the New York ethical rules, of the details of the fee arrangements. *See* Dkt. # 498-1, Declaration of Michael P. Canty ("Canty Declaration"), ¶3. Going forward, all members of the firm must not only disclose the nature of any fee arrangements but communicate directly with the client to confirm that the client *understands* the terms of that agreement. *See id.*, ¶6; 10/15/18 Hearing Tr. pp. 40:21-41:2; 68:12-20. This is one area where communication substantially broke down with ATRS. The Special Master believes

that the extensive remedial measures put in place by Labaton evidence a recognition of its past failures, perhaps more so than any written expression of contrition on this point. Given Labaton's past failure to appreciate the full scope of its duty to the Court and the encumbering effects they had on the Court's duty to administer justice, the Special Master has reevaluated his conclusion that Labaton's omission of the Chargois Arrangement violated its duty of candor, but finds that Labton still failed to comport with emerging best practices as to disclosure of fee arrangements with the Court.

c. *Nondisclosure of the Chargois Arrangement to ATRS.*

The Special Master further concluded that ATRS, as Labaton's client, was entitled to know about the Chargois Arrangement and the salient details of what that arrangement entailed. Dkt. # 357, pp. 333-334. The failure to inform ATRS about the Chargois Arrangement raised particular concerns because ATRS, through its Executive Director George Hopkins, was serving as the lead class representative. *Id*., pp. 248; 258-259. As the Special Master pointed out, Massachusetts Rule of Professional Conduct 1.5(e) speaks directly to the issue of obtaining ATRS's informed consent in these circumstances. *Id*., pp. 249-254. While Rule 1.5(e) is not a model of clarity, in analyzing the various ways in which one could read the obligations imposed under the rule, the Special Master concluded that, in part because the Chargois Arrangement was not a traditional referral fee, Labaton had deprived ATRS of its ability to make a meaningful decision about Chargois in these circumstances, as the rule contemplated. *Id*., pp. 250, n. 194, 262-263.[7]

[7] By the same token, the Special Master analyzed whether the payment of a non-referral fee to another attorney for facilitating ATRS's retention of Labaton fell within Massachusetts Rule of Professional Conduct 7.2(b)'s [formerly Rule 7.2(c)] proscription on providing anything of value to a person for recommending a lawyer's services. Because Labaton did not fully inform its client, ATRS, about the details of the Chargois Arrangement, the Special Master concluded that, as a technical matter, Labaton's obligations to Chargois arising under the Chargois Arrangement fell within the ambit of Rule 7.2(b). Dkt. # 357, pp. 263-273. The Master did not, however, conclude that specific

Labaton has directly acknowledged that it *should have* disclosed the pertinent details of the Chargois Arrangement – at minimum, that Chargois did not commit to substantively work on or take responsibility for the State Street litigation – to ATRS at the onset of its representation. Such a disclosure would have been in line with the best practices emerging from Rule 1.5(e) at the time the case began in 2011, which contemplated fulsome disclosures to obtain informed client consent. The need for client consent was greatly heightened by the removed nature of Chargois' involvement in this case, making ATRS incapable of knowing about it independently. The perils of nondisclosure in the context of a fee division arrangement unknown to the client is further addressed by Labaton's concession that the $4.1 million payment to Chargois was not a case-specific referral fee and should not be treated as such, and it has implemented policies to ensure that clients are fully appraised of all fee sharing agreements going forward and consent to them in writing.

d. *Nondisclosure of the Chargois Arrangement to Co-Counsel*.

The Special Master further concluded that Labaton did not discharge basic duties of fairness and transparency in failing to disclose the full scope of the Chargois Arrangement to other Customer Class Counsel, and in failing to disclose Chargois altogether to the ERISA Firms. This nondisclosure to the ERISA Firms deprived those firms of more than simply their own right to know all relevant circumstances before filing a joint fee petition; it deprived the ERISA Firms of the opportunity to inform both its clients – the ERISA Firms represented six of the seven named class representatives – and the Department of Labor as to an outstanding obligation to pay Chargois. *See* Dkt. # 357, pp. 294-295. Labaton acknowledges as part of the

redress was necessary given the lack of guidance from the Massachusetts Courts and the bar associations as to the meaning of Rule 7.2(b), and specifically, its application to lawyers. *Id.*, pp. 337-338. The Special Master is cognizant of the lack of any legal guidance or precedent in Massachusetts on the intersection of Rules 1.5(e) and 7.2(b), and gives substantial weight to Labaton's acknowledgments made as part of the Proposed Partial Resolution that the payment to Chargois was not a permissible referral fee payment.

Proposed Partial Resolution that its disclosures to co-counsel were patently insufficient. It accepts that the more transparent practice, and the preferred one – though not written in blackletter law – was to disclose the Chargois Arrangement in detail to *all* interested parties, and at minimum to its co-counsel, including the ERISA Firms.

In part because the ERISA Firms were not informed of the Chargois Arrangement (and in part because the ERISA Firms played no role in the double counting error that lead to the appointment of the Special Master), the Special Master recommended that Labaton reallocate funds to the ERISA Firms to include the reasonable fees and expenses of participating in the Special Master's investigation. Through the Proposed Partial Resolution, Labaton agrees to make a substantial payment, of $2.75 million, to the ERISA Firms, and the ERISA Firms have agreed to accept this payment in full satisfaction of the concerns raised by the Special Master in his Report and Recommendations.

e. *Redress for failure to disclose the Chargois Arrangement*.

As explained above, the failure to disclose Chargois' role in the State Street case was Labaton's, and Labaton's alone. For that reason, the Special Master recommended in his Report that Labaton disgorge the entire $4.1 million to Chargois ($700,000 would be paid to the class). The allocation of $700,000 was recommended back to the class to account for the deprivation of the class's ability to make an informed determination as to whether to agree to the settlement, which triggered a payment to Chargois. Dkt. # 357, pp. 369-370.

Even after making the important findings and commensurate recommendations described above, the Special Master noted that because the ethical and legal questions relating to the Chargois payment have largely been "close calls" given the ambiguities in the law as currently written, and not always easily resolved, significant monetary remedies were adequate to address Labaton's past conduct and to positively influence future conduct. *Id*., pp. 370-371.

The Proposed Partial Resolution strikes this same balance between deterrence and fairness. It contemplates, as did the Master's recommendations, that Labaton return a substantial sum of money to account for Labaton's concealment of the Chargois Arrangement. Under the Proposed Partial Resolution, Labaton has agreed to make timely payment of approximately $4,802,666.67.[8] Of this amount, $2,052,666.67 will be returned to the class and another $2,750,000 will be paid directly to the ERISA Firms. Of the $2,052,66.67, $700,000 represents the allocation recommended back to the class as a consequence of the Chargois Arrangement, and $1,352,666.67 represents the one-third amount of the total overstated lodestar. These sums are, of course, in addition the costs Labaton agrees to incur moving forward to retain external legal and ethical assistance, including the anticipated retention of former District Court Judge Garrett Brown, and the current retention of ethics expert Hal Lieberman and to review fee sharing arrangements to ensure all fee agreements comport with the principles and standards articulated in the Special Master's Report.

2. Labaton's continuation as lead counsel and ATRS as lead plaintiff.

The Proposed Partial Resolution also provides for adequate representation of all class members moving forward. This is, of course, a paramount concern to the Court and to the Special Master. As the Special Master stated in his Report and Recommendations, Labaton's previous nondisclosures to its client, coupled with Hopkins' dereliction of his duties as class representative, gave the Special Master serious pause about Labaton's adequacy to serve in this role moving forward. These concerns have now been addressed by the inclusion of additional class counsel to represent the class and a recent change in leadership at ATRS, and the inclusion of the ERISA representatives as class representatives to stand alongside of ATRS.

[8] The difference between the disgorgements recommended in the Special Master's Report and those proposed under the Proposed Partial Resolution is $1,550,000, approximately $650, 000 of which reflects the lower ERISA payment.

Labaton has remedied its past deficiencies toward its client, ATRS, and adopted safeguards to ensure communication is robust and candid moving forward. While Labaton did not discuss in detail its fee arrangement, nor disclose the Chargois Arrangement specifically, with ATRS, it has now done so, and in a searingly open public forum. Labaton has also engaged in similar conversations with all of its current clients where a fee arrangement is in place. *See* Canty Declaration, ¶ 3; 10/15/18 Hearing Tr. pp. 40:21-41:2; 68:12-20. Perhaps more so than any other firm serving a similar role, Labaton is acutely aware of the full panoply of obligations it owes to the Court, its clients, and its co-counsel. Its wide-scale attempt to meet those obligations in all other open cases shows that these efforts embody a genuine shift in the firm's culture rather than a one-off attempt at disclosure confined to this case. *See* Canty Declaration, ¶¶ 3, 6. These efforts go to the core of the Master's concerns.[9] Furthermore, George Hopkins, who dedicated substantial time and effort to advocating on behalf of the class – contributing to the excellent result achieved – has announced his retirement, effective December 31, 2018. *See* 10/11/18 Hopkins Letter, Dkt. # 489, p. 1. With the change in leadership, the specific concerns about ATRS' ability to serve as an adequate class representative are largely allayed. Also, as noted, the six ERISA class representatives will continue to serve as as class representatives alongside ATRS.

But those concerns are not alleviated entirely by current events. The Special Master has also voiced concern that the hybrid nature of the class consisting of public pension funds (the "customer class") and private ERISA funds (the "ERISA class") presents unique challenges to any firm serving as lead counsel. *See* Dkt. # 357, p. 284. The inclusion of the ERISA Firms as class counsel with Labaton will ensure that the ERISA class members' interests are fully

[9] As the Special Master concluded in his Report and Recommendations, *see* Dkt. # 357, p. 125, n. 111, a detailed exploration of the origins of the Chargois Arrangement and Labaton's past dealings with the Arkansas State Legislature and/or ATRS is beyond the scope of the Master's appointment.

addressed and that those members are adequately represented in their own right. Moreover, a central concern resolved through the Proposed Partial Resolution is Labaton's failure to disclose Damon Chargois or the $4.1 million payment to Chargois to the ERISA Firms, and the obstacle such nondisclosure presented for the ERISA Firms in fulfilling their duties to their clients, to the government agencies involved, and in preparing a fee petition. Appointment of the ERISA Firms promotes full transparency in administering the class settlement fund and safeguards against any potential for future failures to communicate material issues to the class, and among counsel, moving forward.

3. Labaton's contributing role to the double counting error in the fee petition submitted to the Court.

While the Special Master concluded that the double counting error was largely inadvertent, the Special Master has expressed concern over two issues arising from that conclusion. First, as articulated throughout his investigation, the Special Master found that the practice of including the employees of one firm on the lodestar petition of another firm is an artifice fraught with the danger of misrepresentation and inaccuracy, just as occurred here. *See* Dkt. # 357, pp. 363-364. The Special Master criticized the Customer Class firms, including Labaton, for failing to execute a formal, written agreement spelling out the procedure for reporting the names of Labaton's and Lieff's staff attorneys on Thornton's lodestar, particularly given the highly unusual nature of the firms' arrangement. *Id.*, pp. 220-221, 237. In the case of Labaton, this potential for error was exacerbated by a second competing concern – Labaton's tradition of compartmentalization in its cases. *Id*., pp. 223, 325-326.

The Proposed Partial Resolution and Labaton's reforms address both issues. First, Labaton eliminated, prior to entering into the Proposed Partial Resolution, the practice of allowing other firms to carry Labaton staff attorneys on their lodestars. This step goes beyond the

recommendations of the Special Master. The Special Master certainly criticized the practice, but did not propose abolishing the practice, only that cost-sharing arrangements analogous to the agreement reached between Customer Class Counsel to allocate the cost of certain staff attorneys be disclosed in transparent terms to the Court moving forward. Complete prohibition is one step better and achieves this goal.

Second, Labaton expressly acknowledges that its past compartmentalization contributed to several of the Special Master's concerns, including the inclusion of $4,058,000 in overstated lodestar. To eliminate the deleterious effects arising out of such "siloing" moving forward, Labaton has taken affirmative steps to instill a greater continuity – and scrutiny – during the settlement stages. This includes assembling a "settlement team" in each case consisting of, at minimum, a member of the settlement group, a litigator with substantive knowledge of the case, and a relationship attorney with direct knowledge of the fee arrangement with the client. And as relevant to this case, in multi-firm cases, the settlement team has committed to circulating all fee submissions to each firm to review for potential errors.

Beyond this, of course Labaton has agreed to disgorge one-third of the amount of the total overstated lodestar that resulted from double-counting. As a result, an additional $1,352,666.67 will be allocated to the class.

4. Labaton's anticipated retention of Judge Brown as outside consultant on retention and fee-related issues and current retention ethics expert.

Labaton has also engaged external review of their policies and fee arrangements to cull out any other practices that have the effect of shielding the details of a fee arrangement. Prior to entering into negotiations with the Special Master, Labaton retained Hal R. Lieberman, Esq., a lecturer on legal ethics and an experienced practicing attorney at Emery Celli Brinckerhoff & Abady LLP. *See* Lieberman Resume, attached as Exhibit A. Beyond this, Labaton is in

discussion and anticipates an agreement to retain the Hon. Garrett Brown (Ret.), the former Chief Judge of the United States District Court for the District of New Jersey, to further ensure that Labaton complies with all applicable rules and emerging best practices concerning fee sharing agreements and retention policies. Through this anticipated retention, Labaton has committed to adopting fee sharing and fee application policies that meet its obligations and provide the maximum amount of transparency. While the anticipated arrangement is between Labaton and Judge Brown, Labaton will agree to provide unfettered access to Judge Brown and cooperate fully with him during his review to work toward the common goal. The results of the retention will be made available in a written report to the Special Master, and to the Court, if it wishes.

IV. Timely approval of the Proposed Partial Resolution is appropriate given the protracted nature of the investigation and the need for finality.

The Special Master fully appreciates the seriousness of Labaton's past conduct. It is with open eyes that the Master entered into discussions of resolution with all firms, including Labaton, conscious of his mandate from the Court and his current role of serving as a voice for the otherwise unrepresented class. But, as explained above, the Master's core concerns about Labaton's ethical and legal conduct have been squarely addressed by the firm through the Proposed Partial Resolution and its efforts to address deficiencies in its case staffing structure and ongoing fee arrangements and fee preparation structures, and to eradicate any agreements or internal roadblocks within the firm's organization in order to prevent such failures from occurring in the future.

While the Special Master recognizes that no remedy can rewrite history, or erase Labaton's past missteps, the Proposed Partial Resolution importantly holds Labaton accountable for its questionable conduct, has prompted extensive efforts to address past deficiencies and

effect more fulsome and candid conversations with its existing clients in cases in which fee arrangements are in place, and establishes significant safeguards to ensure compliance and achieve transparency moving forward. *See* Canty Declaration, ¶¶ 3, 5, 6. In reaching the Proposed Resolution, the Special Master has carefully considered the essential acknowledgments made by Labaton along with the firm's disgorgement of a substantial portion of its fee award – including repayment of the class. These factors, considered in light of the Master's directive to be judicious, weigh heavily in favor of resolving this case consistent with the proposed terms.

The Court has raised legitimate concerns about the impact that the Proposed Partial Resolution, if approved, would have on the remainder of the case. *See* 10/15/18 Hearing Tr. pp. 13:11-17; 38: 18-21. The Court specifically queried whether Labaton could fully resolve all its remaining issues without participation from Thornton in light of Garrett Bradley's role as "of counsel" to Labaton in 2015 into 2016, years after Labaton filed the complaint against State Street.[10] *See* 10/15/18 Hearing Tr. pp. 14:1-24; Dkt. # 357, pp. 105, n.86; Ex. 141. These concerns likely stem, at least in part, from the Special Master's Report as the Special Master cast serious doubt upon the testimony of Garrett Bradley – who held the title of "Of Counsel" to Labaton, and was tasked with negotiating directly with Chargois about his fee in the State Street case – that Bradley did not know the true nature of Chargois' role in the State Street case. *See* Dkt. # 357, p. 108-109, n.90. In fact, the Special Master did not find this testimony credible.

[10] The Court expressed concern about Labaton's and Thornton's representation in the fee petition that the hourly rates listed were "regularly charged" by the firms, who, in fact, had no paying clients. 10/15/18 Hearing Tr, p. 24, 1-3. In his Report, the Special Master indicated that the representation in the fee petition that the hourly rates listed for Labaton and Thornton reflected the firms' "regular rates charged for their services," was not entirely accurate because neither firm had hourly clients. *See* Dkt. # 357, p. 58, n.44. To clarify, while the overwhelming majority of Labaton's clients retained the firm on a contingency basis, i.e. were not "paying clients," Labaton provided information to the Special Master during written discovery showing that, from 2010-2016, Labaton had a small number of hourly clients who paid by invoice those rates listed on the fee petition, or commensurate with the listed rates. This was not the crux of Labaton's practice, but nevertheless, Labaton and Thornton do not stand on equal footing with regard to the accuracy of this statement and should be viewed independently by the Court on this issue.

On balance, timely approval of the Proposed Partial Resolution is appropriate. Entering a resolution at this stage significantly narrows the scope of the remaining legal and factual objections – leaving only issues relating to Thornton and Lieff ripe for address by the Special Master. Importantly, by way of the Proposed Partial Resolution, Labaton takes full responsibility for nondisclosure of the Chargois Arrangement to the Court, the class, its client, and co-counsel, eliminating the need for further in-depth discussion of those issues in the remainder of the case. This significant narrowing promotes a more expeditious and streamlined process moving forward.

The Proposed Partial Resolution, moreover, does not tie the hands of either Thornton or Lieff, who are free to vigorously pursue their objections.[11] This is, in part, because Labaton has accepted full responsibility for the concealment of Chargois. Turning to the second – but equally important – issue of the double-counted hours on the fee petition, Labaton's agreement to pay $1,352,666.67, or one-third, of the total overstated lodestar in acknowledgment for its role in bringing about these errors, does not bind Thornton or Lieff, who contest this recommendation. *See* 10/15/18 Hearing Tr. pp. 45:8-47:9; 59:22-60:6

While the Special Master believes, and has recommended, that each of the Customer Class firms share equally in disgorgement of the overstated lodestar, this is based on a finding that each firm had a separate and unique role that contributed to the double counting error. The agreement by Labaton to fulfill its one-third share – in recognition of *its* contribution to the double counting error – does not preclude Lieff and Thornton from arguing that they should not have to pay what is mathematically an equal one-third share. The Special Master will continue to

[11] The Proposed Partial Resolution recommends, however, that the Court enter a bar order prohibiting Lieff or Thornton from seeking contribution or indemnification directly from Labaton.

make his case for Lieff's and Thornton's responsibility for their one-third shares based upon the respective roles those firms played in contributing to the double counting error.

With regard to any shared responsibility between Thornton and Labaton stemming from Garrett Bradley's knowledge of the Chargois Arrangement, the Special Master did not make any explicit finding that Thornton or Bradley should have disclosed the Chargois Arrangement to the Court, the class, or others. However, such a finding or conclusion is not precluded by a resolution in which Labaton acknowledges its failure to be transparent with this information. A future recommendation that Bradley may share some of the blame for the critical nondisclosures to the Court and class can be adequately addressed separate and apart from Labaton's acknowledgment of its own role in the nondisclosure. To date, Labaton has not attempted to mitigate its own responsibility by shifting the obligation, in whole or in part, to Bradley or Thornton. There is no substantive or logistical hurdle to concluding down the road that others – in addition to Labaton – also bear responsibility.

V. Conclusion

The Proposed Partial resolution presents to the Court a fair, reasonable, and adequate agreement among independently-represented parties that protects the class, recognizes and addresses the deficient practices that deprived the class, the client, the Court, and co-counsel, especially ERISA counsel, of the knowledge necessary to make informed decisions, and suggests procedural, structural, and financial remedies to redress those failings. It provides the Court with the ability to conserve judicial resources without undermining the rights of non-settling and other parties. For these reasons, the Special Master urges the Court to accept the Proposed Partial Resolution.

Dated: October 30, 2018

Respectfully submitted,

SPECIAL MASTER HONORABLE GERALD E. ROSEN (RETIRED),

By his attorneys,

/s/ William F. Sinnott

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CERTIFICATE OF SERVICE

I hereby certify that this foregoing document was filed electronically on October 30, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing ("NEF"). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott
William F. Sinnott

Exhibit A

HAL R. LIEBERMAN
35 Prospect Park West, Apt. 10A
Brooklyn, NY 11215

EDUCATION

J.D. Harvard Law School, 1967
Editorial Board, *Harvard Civil Rights-Civil Liberties Law Review*, 1966-67

A.B. *cum laude* University of Chicago, 1964

BAR ADMISSIONS

New York
Massachusetts
United States Supreme Court
Federal Appeals and District Courts in the First and Second Circuits
Israel Chamber of Advocates

PROFESSIONAL EXPERIENCE

Current Position

Partner, 2014 – Present
Emery Celli Brinckerhoff & Abady LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020
212-763-5031
Website: hlieberman@ecbalaw.com
Blog: NYLegalEthics.attorney

Practice focuses on legal ethics, professional discipline, ethics expert witness testimony, malpractice, disqualification motions, sanctions, and law firm disputes

AV rated

Previous Positions

Partner, 2004 – 2014
(Managing Partner of New York Office, 2004 – 2012)
Hinshaw & Culbertson LLP
New York, NY 10022

Partner, 2000 - 2004
Edwards & Angell, LLP
New York, New York

***Previous Positions* (cont'd)**

Counsel to the Firm, 1998-2000
Beldock Levine & Hoffman, LLP
New York, New York

Chief Counsel, 1989-98
Principal Trial Attorney, 1987-89
Departmental Disciplinary Committee
New York Supreme Court, Appellate Division
First Judicial Department

Assistant Bar Counsel, 1983-87
Litigation Section, Office of the Bar Counsel
Board of Bar Overseers of the Supreme Judicial Court of Massachusetts

Litigation Associate, 1982-83
Cope & Wilson, P.C.
Worcester, Massachusetts

Executive Director, 1977-82
Central Massachusetts Legal Services, Inc.
Worcester, Massachusetts

Associate Appellate Counsel, 1974-77
Criminal Appeals Bureau
Legal Aid Society of New York City

Various staff positions involving civil legal services to the poor, 1970-74

Faculty Positions

Adjunct Professor of Law, 2007, 2014 (Spring semester)
Columbia University School of Law
Co-teaching course on *The Legal Profession*

Adjunct Professor of Law, 1989-2001
Brooklyn Law School
The Legal Profession Required course for third year law students

Visiting Lecturer, legal ethics and professional discipline, 1983-97
Harvard Law School, Fordham Law School, Hofstra Law School,
Cardozo Law School, New York Law School

Assistant Professor and Pre-Law Advisor, 1968-70
North Carolina Central University
Durham, North Carolina

Lecturer on Law 1968-70
University of North Carolina Graduate School of Social Work
Chapel Hill, North Carolina

PROFESSIONAL AFFILIATIONS AND *PRO BONO* ACTIVITIES

New York City Bar Association
Chair, Committee on Professional Discipline (2001 – 2004)
Member, Committee on Professional and Judicial Ethics (2013 – Present)
Boston Bar Association
Ethics Committee (2000 – 2004)
New York State Bar Association
Committee on Professional Discipline (1989-Present)
South Brooklyn Legal Services, Inc.
Board of Directors (1989 – 2012)
Fellow, The New York Bar Foundation
Federal Bar Council
U.S. District Court, E.D.N.Y.
Grievance Panel
American Law Institute (elected in 1996)
American Civil Liberties Union
Association of Professional Responsibility Attorneys (APRL)

ADDITIONAL PROFESSIONAL ACTIVITIES

Commission on Statewide Attorney Discipline

Appointed a member by Chief Judge Jonathan Lippman, March 2015 - present
Commission is conducting a top-to-bottom review of the attorney discipline system throughout the state and issuing recommendations on how to reshape attorney discipline in New York to ensure fairness, efficiency and effectiveness.

Continuing Legal Education

Accredited Provider, 1999 - 2004
Continuing Legal Education Board of New York

Lawline.com, Faculty

Alternative Dispute Resolution

Founder, Coordinator, Trainer, 1989 - 1998
Complaint Mediation Panel
Departmental Disciplinary Committee
The country's first lawyer-client dispute resolution program serving as an adjunct to the professional disciplinary system.

Special Mediator, 1999 - Present
Complaint Mediation Panel
Departmental Disciplinary Committee

Expert Testimony and Opinions: Legal Ethics and Professional Responsibility Law

Provided expert opinions, in the form of live testimony, or testimony by affidavit or declaration, in approximately 45 cases since 1998, including proceedings pending before the Federal courts in New York (S.D.N.Y. and E.D.N.Y.), Florida (M.D. and S.D. of Fla.), the New York State Supreme Court (New York, Queens, Kings, Bronx, Westchester, Rockland, Nassau and Suffolk Cnty.), the Delaware Court of Chancery, and the District Court for the 15th Cir., Florida.

Principal author of N.Y.C. Formal Op. 2000-1.

Within the last four years, I have testified as an expert in five matters:

Wittels v. Sanford, et al., JAMS Arbitration No. 1410006306. In May 2014, I testified as an expert witness for the plaintiff, an attorney. The case is subject to a confidentiality agreement.

Korff v. Corbett, et al., Index No. 601425/03 (Sup. Ct. N.Y. Cnty.). In August 2014, I was deposed as an expert witness for the defendant.

Cohen v. Cohen, et al., Case No.: 09C10230 (LAP) (S.D.N.Y.). In May 2015, I was deposed as an expert witness for the plaintiff.

AAA Case No. 13-194-Y-00669-14. AAA arbitration. In October 2015, I testified as an expert witness for the defendant law firm. The case is under seal.

Sisca, et al. v. Gizzi, et al., Index No. 64451/2014 (Sup. Ct. Westchester Cnty.). In March 2017, I testified as an expert witness for the plaintiffs.

Publications

NEW YORK ATTORNEY DISCIPLINE: PRACTICE AND PROCEDURE 2014 (New York Law Journal Books/ALM Media 2014); book co-authored with Richard J. Supple and Harvey Prager (updated for 2017)

"The First Department's New Rules for Attorney Discipline," New York Law Journal, July 28, 2017

"New Rules for Attorney Disciplinary Matters: 'Related Proceedings,'" New York Law Journal, March 20, 2017

"New Rules for Attorney Disciplinary Matters: Informal Proceedings," New York Law Journal, September 29, 2016

"New Rules for Attorney Disciplinary Matters; Formal Proceedings," New York Law Journal, April 1, 2016

"Fostering Efficiency in the Attorney Disciplinary Process," New York Law Journal, January 21, 2016

"New 2016 Edition, New York Attorney Discipline Practice and Procedure," New York Law Journal, November 13, 2015

"New York's Catch-All Rule: Is It Needed? Part 2," New York Legal Ethics Reporter, November 2, 2015

"Report on Statewide Attorney Discipline: Uniformity and Fairness," New York Law Journal, October 23, 2015

"New York's Catch-All Rule: Is It Needed? Part 1," New York Legal Ethics Reporter, October 1, 2015

"'Dunn': Collateral Estoppel and Attorney Discipline," New York Law Journal, June 16, 2015

"'Law Firm' Discipline and other Noteworthy Cases," New York Law Journal, February 4, 2015

"Recent Developments in Disciplinary Case Law," New York Law Journal, November 10, 2014

"Is New York's Disciplinary System Truly Broken?" New York Law Journal, July 16, 2014

"Should Disqualification Lead to Discipline?" New York Law Journal, April 4, 2014

"How Do I Get Back My Law License?" New York Law Journal, November 29, 2013

"Lawyers Who Commit Crimes: Disciplinary Consequences," New York Law Journal, August 22, 2013

"Appellate Review of Disciplinary Decisions," New York Law Journal, May 29, 2013

"Discipline for 'Private Conduct': Rationale and Recent Trends," New York Law Journal, Feb. 19, 2013

"New York's Attorney Discipline System: Does It Meet 'Due Process' Requirements?" New York Law Journal, December 28, 2012

"Attorney Discipline System: Does It Meet 'Due Process' Requirements?" New York Law Journal, August 31, 2012

"The 'Galasso' Case and the Duty of Supervision," co-authored with Katie Lachter, New York Law Journal, May 30, 2012

"New York's Attorney Discipline System: How Much 'Process' Is 'Due'?" New York Law Journal, April 4, 2012

"Q&A With Hal R. Lieberman," New York Law Journal, March 25, 2011

"New York's Lawyer Disciplinary System – Is it Fair?" Professional Responsibility column, New York Law Journal, March 1, 2010.

"Working Knowledge of Conflict of Interest Rules is Essential," New York Law Journal, special supplement, p. S7, col. 1, September 27, 2004

"Challenges in Handling Other People's Money," New York Law Journal, special supplement, p. S6, col. 1, November 10, 2003

"How to Avoid Common Ethics Problems," New York Law Journal, special supplement, p. S4, col. 1, October 28, 2002
"Private Conduct and Professional Discipline," co-authored with Richard Supple, New York Law Journal, p. 4, col. 3, July 23, 2002

"Six Clients in Search of a Lawyer: Or, Don't Take the Case," The New York Professional Responsibility Report, May, 2002

"Disqualification Denied Again: The Amazonas Case," The New York Professional Responsibility Report, July, 2001

"Prospective Client Perjury: A Lawyer's Dilemma," The New York Professional Responsibility Report, December, 2000

"Do Disbarred Lawyers Have Constitutional Rights?" The New York Professional Responsibility Report, October, 2000

"Be Aware of Ethical Witness Preparation Rules," New York Law Journal, p. 1 col. 1, May 25, 2000

"Gidatex v. Campaniello, The Anti-Contact Rule and Subordinate Employees," The New York Professional Responsibility Report, January, 2000

"Lawyer Incivility Provokes Three-Month Suspension," The New York Professional Responsibility Report, July, 1999

"The Future of Attorney Discipline in New York's First Judicial Department," The New York Professional Responsibility Report, February, 1999

"Does Your Client Have Insurance Coverage?" Liability Update, Winter, 1999

"If William Jefferson Clinton Were Admitted in New York,: "The New York Professional Responsibility Report, November, 1998

"Federal Judicial Conference Considers New Rules of Attorney Conduct," co-authored with Ronald C. Minkoff, New York Law Journal, p. 1, col. 1, October 14, 1998

"Use of Collateral Estoppel in Attorney Disciplinary Proceedings," New York Law Journal, p. 1, col. 1, July 27, 1998

"Lawyer Incivility is Also Unethical," New York Law Journal, p. 1, col. 1, November 15, 1993

"Informal Discipline in the First Department: 1991 Update (Letters of Caution--Part II)," New York Law Journal, p. 1, col. 1, November 27, 1992

"Informal Discipline in the First Department: 1991 Update (Letters of Admonition--Part I)," New York Law Journal, p. 1, col. 1, October 19, 1992

"Ethics, Lawyer Misconduct and Sanctions: The Disciplinary Committee Perspective," ALI-ABA Materials for October 17-19, 1991 Course of Study, Hilton Head, South Carolina

"Informal Discipline: Tool to Upgrade Ethics; Part II: Letters of Caution," New York Law Journal, p. 1, col. 1, May 20, 1991
"Informal Discipline: Tool to Upgrade Ethics; Part I: Admonitions," New York Law Journal, p. 1, col. 1, March 22, 1991

"A Lawyer's Duty to Report Misconduct Under DR 1-103(A)," New York Law Journal, p. 1, col. 1, August 21, 1990

"Mandatory *Pro Bono*: Non-Remedy for a Critical Problem," New York Law Journal, p. 1, col.1, January 13, 1989

"Ethical Considerations for Municipal Counsel Representing Multiple Defendants in Section 1983 Litigation," Suffolk University Law School Center for Continuing Professional Development, 1985

"China's Legal System After the Cultural Revolution: Impressions from a Recent Visit," Legal Lines (publication of the Worcester County Bar Association), November, 1981, February, 1982

"Israel's Legal Aid Law: Remedy for Injustice?" A Blueprint for Legal Services in Israel, 9 Israel Law Review 413, #3, July, 1974

"The Legal Significance of the Mental Illness" Criterion in the Civil Commitment Process," 2 NCCU Law Journal 55, 1970

"Recruitment and Training of Minority Students: Challenge for the Legal Profession," Harvard Law School Alumni Bulletin, Summer 1969

"Teachers and the 14th Amendment: The Role of the Faculty in the Desegregation Process," 46 North Carolina Review 313, 1968

Production

Co-Producer
Mediation Training Videotape
Alternative dispute resolution techniques for lawyer/client disputes

Media Appearances

Occasional guest on "Law Lines," a cable television program concerned with all aspects of the judiciary and the legal profession.

Panels/Lectures

Anatomy of a Disciplinary Hearing
New York State Bar Association
December 2014

Common Disciplinary Problems and How to Prevent Them
New York City Bar Association
October, 2014

***Panels/Lectures* (*cont'd*)**

Answers to Everyday Ethical Questions
New York City Bar Center for CLE
June 2014

Ethics Discipline & Real World Obligations
New York City Center for CLE
March 2014

Annual Seminar on Criminal Law and Ethics
Brooklyn Law School
December, 2010

Conflicts - - and Beyond!
Greenberg Traurig/Hoffman Professionalism Center
May, 2010

Ethical Immigration Strategies in the New Legal Environment
PLI – 43rd Annual Immigration and Naturalization Institute
April, 2010

The Future of Attorney Discipline
Association of Professional Responsibility Lawyers
April, 2010

Consider Yourself – New York's New Ethics Rules – What You Don't Know Can Hurt You
American Immigration Lawyers Association – New York Chapter
December, 2009

You Be The Legal Ethicist
Federal Bar Council – Fall Bench and Bar Retreat
October, 2009

Ethics, Discipline and Real World Obligations
New York City Bar Association
October, 2009

Ethics: Conflicts, Tripartite Relationships, and New Rules
Defense Association of New York
June, 2009

Character and Fitness Panel
ABA National Conference on Professional Responsibility
May, 2009

Introductory Lessons On Ethics and Civility
New York State Bar Association
April, 2009

***Panels/Lectures* (cont'd)**

The Ethics of Dealing With Clients' Demands and Demanding Clients
New York City Bar Association
February, 2009

Ethics Updates and Disciplinary Issues
Bronx County Bar Association
January, 2009

Ethics and Professionalism: Ethical and Unethical Behavior On The Big Screen
New York State Bar Association
December, 2008

Staying Out Of Trouble: What Every Attorney Must Know About Ethics
PLI
December, 2008

The Disciplinary Process: How It Works
New York City Bar Association
November, 2008

Confronting Ethical Issues Arising During Litigation
New York County Lawyers' Association
October, 2008

Complying With Ethical Obligations/Dealing With Fraud In The Client Context
PLI – 41st Annual Immigration and Naturalization Institute
October, 2008

Ethics, Discipline and Real World Obligations
New York City Bar Association
April, 2008

Introductory Strategies On Ethics and Civility In Everyday Lawyering
New York State Bar Association
April, 2008

Problems At The "Top" – Who Manages Risk For The Leaders?
Hinshaw's 2008 Legal Malpractice and Risk Management Conference
February, 2008

Disciplinary Ethics Update
Bronx County Bar Association
January, 2008

Ethics and Professionalism
New York State Bar Association
November, 2007

***Panels/Lectures* (cont'd)**

Practical Solutions to Routine Ethical Issues
New York City Bar Association
November, 2007

Practical Strategies for Avoiding Conflicts
New York City Bar Association and Suffolk University Law School
June, 2007

Witness Preparation: Effective Advocacy Consistent With The Obligations of Professional Responsibility

Federal Bar Council
June, 2007

Everyday Lessons on Ethics and Civility in Everyday Lawyering
New York State Bar Association April, 2007

They're Here! Are You In Compliance With The New Attorney Advertising Rules? Practical and Ethical Insights
New York City Bar Association
March, 2007

Risk Management Employment Considerations in Lawyer Terminations
Hinshaw's 2007 Legal Malpractice and Risk Management Conference
March, 2007

Common Ethical Problems
Queens County Women's Bar Association
January, 2007

Ethics and the Disciplinary Process: Current Trends in Ethics
Bronx County Bar Association
January 2007

IP and Ethics – Recent Developments
New York State Bar Association – Intellectual Property Law Section
January, 2007

Ethics and Professionalism
New York State Bar Association
December, 2006

Everyday Ethical Challenges in the Practice of Law
New York City Bar Association
November, 2006

***Panels/Lectures* (cont'd)**

Timely Ethical Issues
Federal Bar Council Fall Retreat
October, 2006

The COSAC Report
Hinshaw's Professional Responsibility and Risk Management Forum
October, 2006

Renaissance Litigators: Criminal Advocates in Civil Cases
New York City Bar Association
September, 2006

Law Firm Discipline: An Assessment of the Threat"
Hinshaw & Culbertson LLP Roundtable Presentation, June 2006

Hot Issues in Ethics for the Aviation Practitioner
ABA Section on Litigation, Aviation Litigation Committee
June, 2006

Ethics Update for Criminal Defense Lawyers

New York Criminal Bar Association
May, 2006

The Disclosure Obligations of Attorneys: The New Frontiers
Federal Bar Council
May, 2006

Hot Topics in Legal Ethics: Recent Developments
New York County Lawyers' Association
May, 2006

Legal Ethics: The Departmental Disciplinary Committee Process
7th Civil Affairs Regiment – New York Guard
April, 2006

Ethics and Civility in Litigation: Introductory Lessons for 21st County Litigators
New York State Bar Association
April, 2006

Professional Responsibility – Litigation Ethics
Hinshaw University
April, 2006

Ethics for Immigration Lawyers
AILA – New York Chapter
February, 2006

***Panels/Lectures** (cont'd)*

Ethics, Discipline and Real World Obligations in Law Firm Practice
New York City Bar Association
January, 2006

Ethics Overview
Bronx County Bar Association
January, 2006

Ethical Issues in Employment and Family-Based Immigration Practice
American Immigration Lawyers Association
December, 2005

Dodging the Bullets: Understanding and Voicing the New Threats to Lawyers and Law Firms
Hinshaw's New York Professional Responsibility and Risk Management seminar
October, 2005

Things I wish I'd Known When I Became Bar Counsel
American Bar Association 2005 National Conference on Professional Responsibility,
June, 2005

Ethics for the Immigration Lawyer
New York City Bar Association,
March, 2005

Law Firm Discipline: Vicarious and Supervisory Liability for Disciplinary Violations and White Collar Crime
Hinshaw's National Legal Malpractice and Risk Management Conference, Chicago, Illinois
February, 2005

Ethics Overview
Bronx County Bar Association
January, 2005

MCLE Marathon – 2004
Practicing Law Institute
December, 2004

Experts on Ethics
The New York Law Journal
December, 2004

Ethics and Professionalism
New York State Bar Association
November, 2004

Timely Ethical Issues
Federal Bar Council
November, 2004

***Panels/Lectures* (cont'd)**

Legal Malpractice, Ethics and Risk Management Seminar
The Florida Bar Practice Management and Development Section
October, 2004

Conflicts, Waivers and Billings
Association of Corporate Counsel of America (Westchester/So. Connecticut Chapter)
September, 2004

Everyday Ethical Challenges in the Practice of Law
New York City Bar Association
September, 2004

What Every Attorney Must Know About Professional Liability Insurance
New Jersey Institute for Continuing Legal Education
August, 2004

Ethics for Immigration Lawyers 2004
Practicing Law Institute
August, 2004

Bridge The Gap
New York City Bar Association
June, 2004

Introduction to Ethics and Civility in Litigation: What Every Lawyer Must Know
New York State Bar Association
April, 2004

Hot Topics in Legal Ethics: Recent Developments
New York County Lawyers' Association
April, 2004

Ethics for the Immigration Lawyer
New York City Bar Association
March, 2004

Conflicts of Interest
Fleet Bank – Professional Services Customer Base
March, 2004

How Solo and Small Firm Lawyers Can Effectively Avoid Malpractice
New York County Lawyers' Association
February, 2004

Ethics Overview
Bronx County Bar Association
January, 2004

***Panels/Lectures** (cont'd)*

Ethics for Business Attorneys
Practicing Law Institute
December, 2003

Ethics in Context
Practicing Law Institute
December, 2003

Ethics and Professionalism
New York State Bar Association
December, 2003

Ethics for Securities Regulators
Securities & Exchange Commission, Northeast Region
November, 2003

Ethical Pitfalls for Criminal Lawyers
New York State Bar Association, October, 2003

Ethics in a Criminal Case
Brooklyn Law School, Annual Seminar
October, 2003

Thorny Ethical Issues in Litigation
Federal Bar Council
October, 2003

Defending Disciplinary Proceedings for Attorneys With Psychological Difficulties
New York City Bar Association
September, 2003

Blueprint for Building Your Practice: A Conference for Solo and Small Firm Practitioners
New York County Lawyers Association
June, 2003

Ethics for Litigators
New York County Lawyers Association
March, 2003

Ethics and Professionalism on the Big Screen
New York State Bar Association
January, 2003

Electronic Discovery and Document Retention
Edwards & Angell, LLP in-house CLE (N.Y., N.J., FL.)
January, February, 2003

***Panels/Lectures** (cont'd)*

Ethics Overview
Bronx County Bar Association
January, 2003

New Developments in Ethical Considerations for the Business Attorney
Practicing Law Institute
December, 2002

Legal Ethics: What Every Practicing Lawyer Must Know
New York City Bar Association
December, 2002

Hot Topics in Ethics: Recent Developments in New York Ethics Law
New York County Lawyer's Association
December, 2002

Introduction to Civility and Ethics in Civil Litigation: What Every Lawyer Should Know
New York State Bar Association
November, 2002

Ethical Issues in Legal Services Practice
Legal Services of New York
November, 2002

Ethics and Professionalism
New York State Bar Association
November, 2002

Ethics for Criminal Lawyers
Annual Seminar, Brooklyn Law School
October, 2002

Ethical Challenges in Employment Law
New York City Bar Association
October, 2002

Bridge the Gap II for Newly Admitted Attorneys
Practicing Law Institute
August, 2002

Handling Client's Money and the Bank
Asian American Bar Association of New York
July, 2002

Ethics Roundtable
New York City Bar Association
June, 2002

***Panels/Lectures* (cont'd)**

The Impact of Enron: Regulatory, Ethical and Practical Issues for Counsel to Insurers, Underwriters, and Financial Institutions
Practicing Law Institute
April, 2002

Moderator – The Disciplinary Process (a hypothetical case presentation)
New York City Bar Association
April, 2002

Ethics Issues in Intellectual Property Law Practice

Fordham Law School – 10th Annual Conference on International Intellectual Property Law and Policy
April, 2002

Symposium on Legal Ethics and Large Law Firms
Georgetown University Law Center
February, 2002

Selected Ethical Issues for Commercial Financial Lawyers
Association of Commercial Financial Attorneys, Inc. (ACFA)
February, 2002

Ethics Overview
Bronx County Bar Association
January, 2002

Bridge the Gap II – What Every New Attorney Must Know About Ethics
Practicing Law Institute
January, 2002

Practical Lessons on Ethics for Transactional Attorneys
New York City Bar Association
December, 2001

Selected Ethical Issues for Criminal Defense Lawyers
New York State Association of Criminal Defense Lawyers
Poughkeepsie, New York
November, 2001

Litigating a Commercial Case-Advanced Issues (Ethics presentation)
New York State Bar Association
November, 2001

Current Ethical Issues for Insurance Practitioners
New York City Bar Association
November, 2001

***Panels/Lectures* (cont'd)**

Ethics in Insurance Practice for In-House and Outside Counsel
Practicing Law Institute (PLI)
August, 2001

Ethics Seminar
Securities and Exchange Commission – N.E. Regional Office
July, 2001

Bridge the Gap
New York City Bar Association
June, 2001

Annual Corporate & Securities Law Update (Ethics for Transactional Lawyers)
New York City Bar Association
May, 2001

Ethics for the Litigator
New York County Lawyers' Association
April, 2001

Ethical Issues Facing Young (and not so young) Associates
New York State Bar Association Committee on Legal Education and Bar Admissions
January, 2001

Ethics Overview
Bronx County Bar Association
January, 1999; January, 2000; January, 2001

Covenants Not To Compete in New York
Lorman Educational Services
December, 2000

Ethics and Professionalism
New York State Bar Association
December, 2000

Bridge The Gap
Practicing Law Institute
October and November, 2000; May, 2001; August 2001

Ethics for Criminal Advocates
Fordham Law School
November, 2000

Ethical Considerations for Transactional Attorneys
New York County Lawyers' Association
October, 2000

***Panels/Lectures* (cont'd)**

Annual Forum on Criminal Law (Ethics Component)
Brooklyn Law School
October, 1999; October, 2000

Avoiding Malpractice and Client Grievances
New York State Bar Association
October, 2000

ABCs of Civil Litigation
New York City Bar Association
September, 2000

Ethics
10th, 11th, 12th, and 13th Appellate Terms' Educational Seminar, St. Johns University School of Law 1996-99

Getting Wired: Practicing Law in the Internet Age
Ethics Panel, Association of the Bar of the City of New York
October, 1999

Trademark Law: Ethics Panel Discussion
The New York Intellectual Property Law Association
September, 1999

The Ethics Challenge: Issues in Professional Responsibility
New York County Lawyers' Association
September, 1999

After Starr Wars, Part II: Lawyers' Roles and Responsibilities in Private Practice and Public Office
25th ABA National Conference on Professional Responsibility, La Jolla, California
June, 1999

Ethics Œ99: An Update on Recent Developments and Guide to Safe Navigation
Corporate Counsel Section Meeting of the New York State Bar Association, Manchester, Vermont
May, 1999

Avoiding Ethical Pitfalls Facing Experienced Practitioners
Law Journal Seminars
May, 1999

Real World Ethics and Professionalism
Practicing Law Institute
February, August, October, November, 1999

Practical Ethics Information and How to Navigate the Disciplinary System
New York County Lawyers' Association
January, 1999

***Panels/Lectures* (cont'd)**

Civility and Ethics in Civil Litigation: What Every Lawyer Should Know
New York State Bar Association
November, 1998; November, 1999

Serving Clients Well: Avoiding Malpractice and Ethical Pitfalls in the Practice of Law
Seminar for practicing lawyers in New York's First Judicial Department
Fordham University School of Law
May, 1995; May, 1996; May, 1997; June, 1998

The Discipline of Law Firms
ABA Workshop, Chicago, Illinois
May, 1996

To Be or Not To Be Uncivil
New York City Bar Association, Small Firm/Solo Practitioner Section
April 1996

Handling Attorney Escrow Accounts in Real Property Transactions
New York State Bar Association
November 1995

Hot Topics in Ethics
New York Women's Bar Association
March 1995

New York's First Judicial Department: Intake and Referral of Disciplinary Complaints Collateral Estoppel
National Organization of Bar Counsel, Baltimore, Maryland
January 1995

Trial Publicity and DR 7-107
The Theodore Roosevelt American Inn of Court
Hofstra Law School, Mineola, New York
March 1993

Implementing McKay: Mediation as an Alternative to Minor Discipline--New York's Experience
National Organization of Bar Counsel, meeting in Boston, Massachusetts
February 1993

In the Clients' Best Interest: Cooperation Among Disciplinary Agencies, Client Protection Funds and Lawyer Assistance Programs
ABA Workshop, Palm Beach, Florida
June 1992

Safeguarding Your Practice: Everything You Always Wanted to Know But Were Afraid to Ask About the Disciplinary System
New York Court Lawyers' Association
April 1992

***Panels/Lectures* (cont'd)**

Judges and the Disciplinary System
Address to Supreme Court Justices, Bronx County, New York
April 1992

Ethics for Corporate Counsel
Address to Corporate Counsel Section of the Kentucky State Bar, Louisville, Kentucky
March 1992

Misery, Malpractice and Mail Fraud: Lawyers' Professional Liability in the 1990s
ALI-ABA Course of Study, Hilton Head Island, South Carolina
October 1991

Gentile v. Nevada State Bar, Ethical Perspectives
ABA Workshop, Scottsdale, Arizona
May 1991

Forum on United States Justice Department's "Thornburgh Memo"
New York City Bar Association
March 1991

Legal Ethics Training for Massachusetts Poverty Law Advocates
Workshop sponsored by Massachusetts Law Reform Institute, Boston, Massachusetts
February 1991

Ethical Problems Confronting Mental Hygiene Legal Services
Mental Hygiene Legal Services, Appellate Division, First Department, New York
January 1991

Legal Ethics: What Every Lawyer Needs to Know
Practicing Law Institute, New York
October 1990

Reporting Misconduct
ABA Workshop, New Orleans, Louisiana
June 1990

Prosecuting Prosecutors
ABA Workshop, New Orleans, Louisiana
February 1987

Prosecutorial Misconduct and Bar Discipline
Boston University Law School Seminar on the Prosecution Function
Boston, Massachusetts
April 1986

***Panels/Lectures* (cont'd)**

Ethical Considerations for Municipal Counsel Representing Multiple Defendants in Section 1983 Litigation
Suffolk Law School Symposium, Boston, Massachusetts
April 1986

Ethics and Government Lawyers
Symposium sponsored by the MBA Government Lawyers Section
Boston, Massachusetts
March 1986

How the Bar Discipline System Works in Massachusetts
Guest lecture, Harvard Law School, Cambridge, Massachusetts
December 1985 and December 1986

The Proper Disposition of Clients' Funds
Worcester County Bar Association Symposium, Worcester, Massachusetts
January 1984

Fair Trial--Free Press
Staff Symposium, Massachusetts Attorney General's Office, Boston, Massachusetts
August 1983