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10  
11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 IN RE OPTICAL DISK DRIVE PRODUCTS  
ANTITRUST LITIGATION

No. 3:10-md-2143 RS (JCS)

16  
17 NOTICE OF FILING OF DOCUMENTS  
PURSUANT TO COURT'S JULY 30,  
2020 ORDER [ECF NO. 2936]

18  
19  
20 DATE ACTION FILED: Oct. 27, 2009

21 This Document Relates to:

22 ALL INDIRECT PURCHASER ACTIONS  
23  
24  
25  
26  
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1 Pursuant to this Court's July 30, 2020 Order Vacating Case Management Conference, Setting  
2 Briefing Schedule, and Unsealing Documents (ECF No. 2936), Indirect Purchaser Plaintiffs (IPPs)  
3 hereby submit the following documents that were originally either filed under seal or submitted for  
4 *in camera* review by the Court:

5 Attachment A: Hagens Berman's *In Camera* Submission in Support of Appointment as  
6 Interim Lead Counsel for Indirect Purchasers (originally submitted May 13, 2010, ECF No.  
7 114); and

8 Attachment B: Declaration of Steve W. Berman in Support of Motion to Appoint Interim  
9 Lead Class Counsel on Behalf of Indirect Purchaser Class (originally submitted May 13,  
10 2010, ECF No. 115).

11  
12 DATED: July 31, 2020

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# **ATTACHMENT A**

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14 SAN FRANCISCO DIVISION

15 IN RE OPTICAL DISK DRIVE PRODUCTS )  
16 ANTITRUST LITIGATION ) MDL DOCKET No. M:10-cv-2143 VRW  
17 )  
18 ) HAGENS BERMAN'S *IN CAMERA*  
19 ) SUBMISSION IN SUPPORT OF  
20 ) APPOINTMENT AS INTERIM LEAD  
21 ) COUNSEL FOR INDIRECT  
22 ) PURCHASERS  
23 )

20 This Document Relates to:  
21 ALL INDIRECT PURCHASER ACTIONS  
22

25 \* \* \* FILED UNDER SEAL \* \* \*

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## I. INTRODUCTION

Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) submits this application in support of its request to be appointed interim lead counsel for the Indirect Purchaser class. Hagens Berman was one of seven firms previously agreed to by a majority of the Indirect Purchaser cases on file to be appointed interim lead counsel. After the Court invited all Plaintiffs’ counsel to make attorneys’ fees proposals, Hagens Berman informed all counsel who approached Hagens Berman that: (1) any and all counsel interested in seeking lead counsel status should apply to the Court; (2) Hagens Berman would not discuss any potential bid with other counsel; and (3) Hagens Berman would not make any representations – explicit or implicit – regarding what firms, if any, Hagens Berman would invite to assist in this matter if the Court selected Hagens Berman as lead interim counsel for the Indirect Purchaser class. *See e.g., In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71, 73 n.9 (S.D.N.Y. 2000).

In making this bid, Hagens Berman has tried to scrupulously follow this Court’s (and other courts’) procedures and previous opinions concerning the submission of bids for appointment of lead counsel. While there has been controversy regarding employing a bidding process to select lead counsel in class actions, when the process is used, there should be little question that its purpose will be defeated if counsel attempt to share information, make promises regarding potential future work if appointed lead counsel, or in any way stunt the competitive bidding process.

Hagens Berman believes the qualitative and quantitative information provided below will demonstrate the Court’s selection of our firm in this matter will be in the best interests of the class of Indirect Purchasers in this case.

## II. PROPOSAL

### A. Hagens Berman Has Independently Prepared This Proposal

As attested to in the accompanying Berman Declaration, Hagens Berman prepared this proposal independently of any other firm, entity or person not affiliated with the firm, except consulting with economic experts regarding characteristics of the optical disk drive (“ODD”)



1 market and possible outcomes of this case.<sup>1</sup> See section B, *infra*; Berman Decl., ¶ 2. Hagens  
2 Berman did not disclose any part of the proposal to anyone outside the firm prior to filing this  
3 submission with the Court. *Id.*, ¶ 3. Hagens Berman prepared this proposal without direct or  
4 indirect consultation with other firms that have filed actions on behalf of the proposed class in this  
5 matter, or entered an appearance in any fashion. *Id.*, ¶ 4. When approached, Hagens Berman  
6 informed other firms that it would not: (1) participate in a joint submission; (2) make any  
7 representations to any firm regarding potential future work on this matter if selected; and (3)  
8 discuss the terms of its contemplated submission to the Court. *Id.*, ¶ 5.

9 **B. Hagens Berman Has Evaluated the ODD Market and Potential Size of This Case**

10 **CONFIDENTIAL ATTORNEY-WORK PRODUCT**

11 \* \* \*

12 **The analyses and discussion included in Section B are preliminary in nature only, and**  
13 **are subject to revision based on discovery and the identification of relevant facts. Hagens**  
14 **Berman considers this material to be confidential attorney-work product. Accordingly,**  
15 **Hagens Berman respectfully requests that if this Court determines that information related**  
16 **to the lead counsel submissions should be made public, Hagens Berman be provided the**  
17 **opportunity to redact information contained in this Section B.**

18 \* \* \*

19 In preparing this submission, Hagens Berman has independently evaluated the case,  
20 including specifically the range and probability of recovery. See *Wenderhold v. Cylink Corp.*, 189  
21 F.R.D. 570, 573 (N.D. Cal. 1999). In making this proposal, Hagens Berman has consulted with  
22 one of the preeminent economists in the field, reviewed relevant industry information and  
23 examined the potential existence of antitrust injury and possible scope of damages in this case.

24 Based on the publicly available information and economic analysis of the market, damages  
25 can be estimated to be in the range of \$1 billion to \$1.4 billion. This estimate is obviously

26  
27 <sup>1</sup> “Berman Declaration” or “Berman Decl.” refers to the Declaration of Steve W. Berman in Support  
28 of *In Camera* Submission of Hagens Berman in Support of Appointment as Interim Lead Counsel for  
Indirect Purchasers, filed concurrently herewith.

1 preliminary, not based on actual transaction data which is in Defendants’ exclusive possession, and  
2 does not account for potential treble damages available in antitrust cases.

3 The market in this case concerns ODDs, devices which read data stored on optical disks  
4 such as compact disks (“CD”) or digital video disks (“DVD”). ODDs are used in CD players,  
5 DVD players, personal computers, game consoles and other electronic hardware devices, e.g., in  
6 living room entertainment. The Defendants named in this case are alleged to have engaged in a  
7 long-running conspiracy, for the purpose and effect of fixing, raising and maintaining prices for  
8 ODDs sold throughout the U.S. During this period, class members have paid supra-competitive  
9 prices for ODDs.

10 In examining the possible existence of antitrust injury and scope of damages in this case,  
11 Hagens Berman has examined four issues: (1) an estimation of ODD sales revenues from the U.S.  
12 market; (2) a very preliminary analysis of ODD pricing trends during at least part of the conspiracy  
13 period; (3) the evolution of industry concentration; and (4) likely pass-through rates from ODD  
14 components into finished goods.

15 **1. Estimated ODD Sales Revenues from the Relevant Market**

16 Hagens Berman has analyzed two different methodologies to estimate Defendants’  
17 revenues from sales of ODDs sold as components into U.S. sales channels or as components  
18 included in consumer electronics sold into the U.S. market. Both methodologies yield similar  
19 estimates. The first methodology uses publicly-available market information from units sold into  
20 computer and information technology (“IT”) applications. The second methodology uses official  
21 U.S. import statistics. Both approaches likely exclude ODDs sold to non U.S.-based computer  
22 manufacturers, which are then embedded in computer systems shipped to the U.S., making both  
23 methodologies in all likelihood biased downward.

24 **a. ODD Units Sold into Computer and Information Technology  
25 Applications**

26 **Methodology 1:** Hagens Berman analyzed consulting firm Techno Systems Research’s  
27 estimates worldwide of ODD units sold for use in IT applications, and revenues, as reported in  
28 various Samsung corporate presentations. These estimates have been multiplied by 30 percent

(approximate U.S. global market share in IT markets). The 30 percent estimate was arrived at based on the Industry and Technology Intelligence Services of Taiwan's Ministry of Economic Affairs, which estimates the share of Taiwanese information technology hardware sales going to the U.S. was 36 percent in 2002, 32.8 percent in 2003, 30 percent in 2004, 32.4 percent in 2005.<sup>2</sup> More specifically, the Taiwanese ODD sales share going to the U.S. was 28 percent in 2005 and 26 percent in 2006.<sup>3</sup> Another source shows 39 percent of all global ODD sales going into North America in 2001 and 38 percent in 2002.<sup>4</sup> Adopting this methodology results in the following chart:

**United States Optical Disc Drive Units and Revenues (IT Applications Only)  
based on 30% Worldwide Sales**

	2001	2002	2003	2004	2005	2006	2007	2008(e)	2009(f)	2010(f)	2001-2009
ODD Revenues	\$ 2,790,000,000	\$ 2,940,000,000	\$ 3,150,000,000	\$ 2,940,000,000	\$ 2,970,000,000	\$ 2,601,000,000	\$ 2,445,000,000	\$ 2,472,000,000	\$ 2,559,000,000	\$ 2,697,000,000	\$ 24,867,000,000
ODD Units	53,700,000	60,900,000	68,400,000	73,800,000	82,800,000	83,400,000	88,800,000	93,900,000	98,100,000	101,100,000	703,800,000

Using this method, sales of ODDs into the U.S. IT applications market are \$2.5 to \$3.2 billion annually or almost \$25 billion over the 2001-2009 period.

**Methodology 2:** Hagens Berman assumed all ODDs sold as components in U.S. sales channels, or incorporated into computer equipment sold in U.S. markets, are reported as an import in U.S. official import statistics. This is a downward biased estimate for two reasons: computer equipment sold in the U.S. may incorporate ODDs not sold to U.S. parties, and one U.S. import classification that includes ODDs has been excluded because it also includes other miscellaneous computer data storage components. Hagens Berman then added together these two ODD import classification items from official U.S. trade data available through the U.S. International Trade

<sup>2</sup> Industry and Technology Intelligence Service, Taiwan Industrial Outlook: Information Hardware Industry 95 (2004), <http://www.itis.org.tw/itisdata/English/2004T08.pdf> (last visited May 12, 2010); Industry and Technology Intelligence Service, Taiwan Industrial Outlook: Information Hardware Industry 8-5 (2005), [http://www.itis.org.tw/itisdata/English/ITISPO-0453-S402\(94\)0828.pdf](http://www.itis.org.tw/itisdata/English/ITISPO-0453-S402(94)0828.pdf) (last visited May 12, 2010); Industry and Technology Intelligence Service, Taiwan Industrial Outlook: IT Hardware Industry 8-9 (2006), <http://www.itis.org.tw/itisdata/English/2006T08IT%20Hardware%20Industry.pdf> (last visited May 12, 2010).

<sup>3</sup> Industry and Technology Intelligence Service, Taiwan Industrial Outlook: Information Technology Industry 120 (2007), [http://www.itis.org.tw/itisdata/English/ITISPO-0453-S602\(96\)e2-6.pdf](http://www.itis.org.tw/itisdata/English/ITISPO-0453-S602(96)e2-6.pdf) (last visited May 12, 2010).

<sup>4</sup> Y.C. Lee, *Trends of DVD World Market*, [http://ettrends.etri.re.kr/PDFData/17-6\\_182\\_192.pdf](http://ettrends.etri.re.kr/PDFData/17-6_182_192.pdf) (last visited May 12, 2010).

Commission's ("ITC") online trade database, which resulted in the following estimate of ODD shipments and revenues in the U.S. market:

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-2009
ODD Value	\$ 4,064,852,481	\$ 4,037,775,042	\$ 3,706,581,409	\$ 3,444,123,968	\$ 2,976,427,146	\$ 3,003,809,729	\$ 3,062,724,993	\$ 2,892,719,555	\$ 2,246,366,028		\$ 29,435,380,351
ODD Units	56,459,771	62,531,203	64,629,353	68,502,711	71,465,412	92,820,020	113,626,777	135,784,325	117,403,831		783,223,403
Average Value	\$72.00	\$64.57	\$57.35	\$50.28	\$41.65	\$32.36	\$26.95	\$21.30	\$19.13		

This method estimates U.S. imports of ODDs for IT applications from \$2.2 to \$4.1 billion annually, or \$29.4 billion over the 2001-2009 period.<sup>5</sup>

### b. ODDs Sold into Consumer Electronic Applications

U.S. import data show the following quantities of imports of consumer electronic equipment containing ODDs:

United States Unit Sales of Game Consoles Using Optical Discs [Partial] from NPD data											
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-2009
Game Console Units Incorporating ODDs [Partial]							23,770,000	20,952,800	20,499,100		65,221,900

Because the U.S. import classification does not break out game consoles containing ODDs, Hagens Berman needed to employ some partial data available from consulting firm NPD from 2007 on, to partially cover this segment of the market. NPD is a market research group that provides consumer market research and point-of-sale data. The NPD data showing game consoles with ODDs shipped from 2007 to 2009 are:

United States Unit Sales of Consumer Products Including Game Consoles [Partial]											
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2001-2009
ITC Consumer Products + Game Consoles	36,614,426	43,580,637	43,296,477	46,763,941	43,950,383	41,646,681	85,818,681	70,821,075	58,098,370		470,590,671

Adding these two sources together, the following chart reflects a (partial) estimate of consumer electronic goods containing ODDs:

United States Optical Disc Drive Units and Revenues for Consumer Products Including Game Consoles [Partial] (ITC and NPD data)										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2001-2009
Units	36,614,426	43,580,637	43,296,477	46,763,941	43,950,383	41,646,681	85,818,681	70,821,075	58,098,370	470,590,671
Revenues	\$2,636,075,877	\$2,814,096,002	\$2,483,111,919	\$2,351,159,650	\$1,830,467,486	\$1,347,755,641	\$2,313,178,514	\$1,508,756,689	\$1,111,634,974	

<sup>5</sup> These figures are higher than those produced using methodology 1 during the earlier years, and somewhat lower in the later years, and probably downward biased. However, these estimates do not rely on an assumed constant U.S. global market share. Furthermore, there is comparable U.S. ITC data available for consumer electronic equipment imports containing ODDs, which allow a rough estimate the value of consumer use ODDs sold into the U.S. market. Note that both methodologies give roughly similar estimates.

1 Multiplying this (partial) total of consumer electronic ODDs shipped by the average unit  
 2 value of IT application ODDs from the ITC import data, an estimate of consumer electronic ODD  
 3 units shipped and revenues is as follows:

**United States Optical Disc Drive Units and Revenues for Consumer Products Including Game Consoles [Partial]**  
(ITC and NPD data)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2001-2009
Units	36,614,426	43,580,637	43,296,477	46,763,941	43,950,383	41,646,681	65,818,681	70,821,075	58,098,370	470,590,671
Revenues	\$2,636,075,877	\$2,814,096,002	\$2,483,111,919	\$2,351,159,650	\$1,830,467,486	\$1,347,755,641	\$2,313,178,514	\$1,508,756,689	\$1,111,634,974	

### c. Total ODD Units Sold in the United States

7 Adding this last set of estimates to the estimates given above, Hagens Berman has an  
 8 estimate of total ODD units sold into the U.S. market, and the value of those units:  
 9

**Total United States Optical Disc Drive Units and Revenues (IT Applications and Consumer Products)**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2001-2009
Revenues	\$6,700,928,358	\$6,851,871,044	\$6,189,693,328	\$5,795,283,618	\$4,806,894,632	\$4,351,565,370	\$5,375,903,507	\$4,401,476,244	\$3,358,001,002	\$47,831,617,104
Units	93,074,197	106,111,840	107,925,830	115,266,652	115,415,795	134,466,701	199,445,458	206,605,400	175,502,201	1,253,814,074

10 The total sales by the Defendants of ODDs into the U.S. market ranged from \$3.4 to \$6.9  
 11 billion annually, for a total of almost \$48 billion dollars over the 2001-2009 period. Over the  
 12 conspiracy period, ODD sales value ranged from \$3.4 to \$5.4 billion annually. As previously  
 13 noted, there is reason to believe that these numbers underestimate the true volume of relevant sales.  
 14

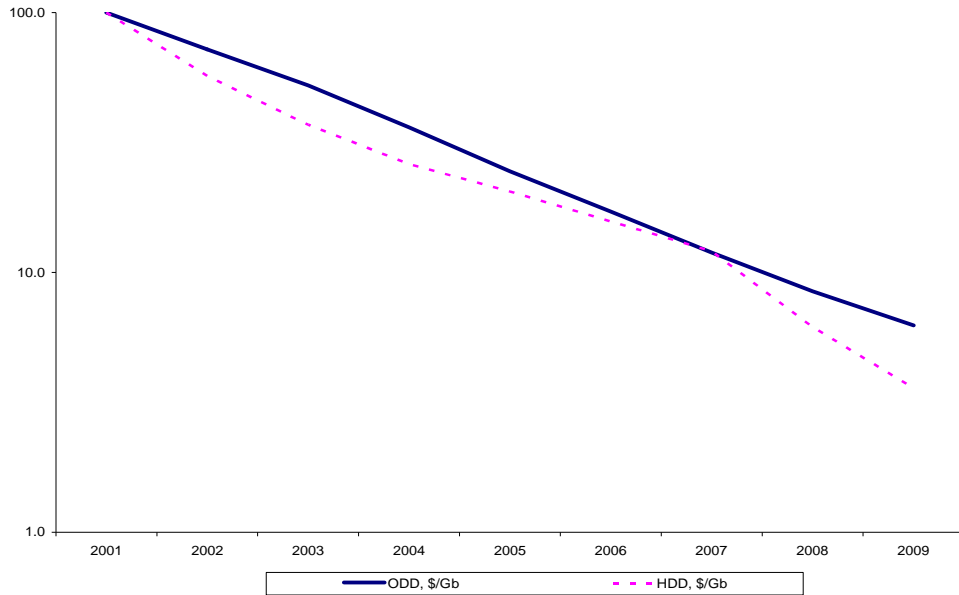
## 2. Pricing Behavior over the Conspiracy Period

15 As would be typical with most high tech IT products, normal behavior over time would  
 16 show significant declines in price and improvement in quality. An effective price-fixing  
 17 conspiracy might be expected to significantly slow what would otherwise be even more rapid  
 18 decline in quality-adjusted price, rather than increase the price in absolute terms. Put another way,  
 19 the price would be higher relative to a but-for world of more rapid price decline.  
 20

21 Improvements in quality adjusted prices for ODDs can be approximated by calculating the  
 22 weighted average writeable capacity per disk for an ODD, based on the breakdown of global ODD  
 23 shipments by type of drive (CD, DVD, Blue Ray). The U.S. ITC average import price for an ODD  
 24 used in IT applications could then be divided by this average drive capacity, to produce an estimate  
 25 of average price per megabyte of writable disk capacity in every year.  
 26

27 Hagens Berman has used this price index in order to compare it to a price index for a  
 28 comparable high tech product. Like ODDs, hard disk drives (with magnetic media) are precision

1 electro-mechanical components, with significant semiconductor content, and are also used for  
 2 digital data storage in computer systems. Hagens Berman’s consultants have calculated an index  
 3 of price per megabyte of storage capacity based on annual data from the Gartner Group. The  
 4 following figure shows the two indexes, with 2001 given a base value of 100:



15 The above figure shows that from 2001 through 2006, both quality-adjusted hard disk and optical  
 16 disk prices declined at very similar rates – roughly 30 percent annually. After 2006, however, the  
 17 rate of price decline for hard disks was significantly greater than that for optical disks, *by more*  
 18 *than a full ten percentage points* of decline annually. The following table displays compound  
 19 annual rates of decline in price for these two sub-periods:

	<b>Compound Annual Rates of Decline for 2001-2006</b>	<b>Compound Annual Rates of Decline for 2006-2009</b>
ODD	-29.7%	-28.5%
HDD	-30.9%	-38.9%

24 These data suggest that after moving together very closely for five years, in late 2005 prices the  
 25 two types of data storage systems started and continued to decline at significantly different rates  
 26 during the alleged conspiracy period, from 2006-2009.  
 27  
 28

### 3. Evolution of Industry Concentration

From 2001 through 2005, there was a significant increase in concentration in the global ODD industry. In 2006, the 2007 Taiwan Industrial Outlook noted that “[w]ith the ongoing merger and acquisition activity in the optical disc drive industry, the concentration ratio in this industry has been rising.” The following table shows this increase in concentration:

		ODD Market Shares		
2001 Entity	2006 Entity	2001 <sup>1</sup>	2006 <sup>2</sup>	2007 Forecast <sup>2</sup>
Hitachi / LG	Hitachi / LG	19%	28%	27%
Samsung	TSST	13%	21%	27%
Toshiba		5%		
LiteOn	LiteOn (PLDS)	11%	13%	12%
BenQ		5%		
Philips		3%		
Sony	Sony NEC Optiarc	2%	8%	8%
NEC		3%		
TEAC		6%		
Behavior Tech		5%		
MKE/Panasonic		5%	10%	11%
All Others		22%	20%	16%

**Sources:**

<sup>1</sup> Y.C. Lee, "Trends of DVD World Market," (in Korean), p. 88, available at [ettrends.etri.re.kr/PDFData/17-6\\_182\\_192.pdf](http://ettrends.etri.re.kr/PDFData/17-6_182_192.pdf)

<sup>2</sup> [www.stephenz.com/storageEvent/pdfs/SSI\\_NYC\\_Storage\\_Event\\_ODD.pdf](http://www.stephenz.com/storageEvent/pdfs/SSI_NYC_Storage_Event_ODD.pdf), p. 8.

### 4. Pass Through of Price Increases in ODD Components into Finished Goods Is Likely to Be Approximately 100 Percent

Pass through of price increases in the ODD market is expected to be approximately 100 percent. The extent to which input cost increases are passed through into output prices is entirely an empirical issue, and it is an area in which methods of empirical analysis are well established. Based on both theory and the published studies in this area, a competent and well-trained professional economist would readily accept that pass-through rates of ODD costs into computer and consumer electronics prices approximate 100 percent.

\* \* \*

As demonstrated above, Hagens Berman and its consultants have performed a robust, albeit preliminary, review of publicly available industry information to examine the possible scope of

1 damages and existence of injury in this case. Hagens Berman’s submission regarding the  
 2 appointment of lead counsel, is thus, well-supported by the facts of this case.

3 **C. Hagens Berman’s Proposed Attorneys’ Fees, Costs and Leadership Structure**

4 Employing bidding procedures for the position of lead counsel fosters competition amongst  
 5 counsel by attempting to replicate the private marketplace for legal services. *See In re Oracle Sec.*  
 6 *Litig.*, 131 F.R.D. 688, 690 (N.D. Cal. 1990). In the competitive bidding process, the Court’s task  
 7 is to “approximate as closely as possible the attorney selection and fee bargain that the class itself  
 8 would strike if it were able to do so.” *In re Wells Fargo Sec. Litig.*, 156 F.R.D. 223, 225 (N.D. Cal.  
 9 1994).<sup>6</sup> The Court stands “in the position of an intermediary acting for the class members in  
 10 establishing rates.” *In re Amino Acid Lysine Antitrust Litig.*, 918 F. Supp. 1190, 1194 (N.D. Ill.  
 11 1996).

12 Hagens Berman proposes a declining percentage of attorneys’ fees as recovery to the class  
 13 increases, depending on the stage of recovery, in recognition of this Court’s expressed rationale  
 14 that “increasing amounts of recovery do not require correspondingly increased levels of attorney  
 15 effort.” *Wenderhold*, 189 F.R.D. at 572. In addition, Hagens Berman’s proposal includes both  
 16 attorneys’ fees and costs, recognizing that this Court believes such a proposal provides the proper  
 17 incentive for lead counsel to minimize expenses to the class. *Id.* at 573. And finally, consistent  
 18 with this Court’s previously expressed desire to avoid “unnecessary duplication of effort” (*see In re*  
 19 *Wells Fargo Sec. Litig.*, 157 F.R.D. 467, 468 (N.D. Cal. 1994)), Hagens Berman proposes that only  
 20 one firm should be selected as lead counsel to represent the Indirect Purchaser class. If selected,  
 21 Hagens Berman will seek support and expertise from other firms involved in this case – at a  
 22 minimum two and at a maximum four – as it deems necessary and efficient to represent the  
 23 interests of the class. All payment to such counsel will be made from Hagens Berman’s award of  
 24 attorneys’ fees, consistent with the terms proposed in this submission.

25  
 26  
 27  
 28 <sup>6</sup> All internal citations and quotations omitted and all emphasis added, unless otherwise indicated.



1           **1. Hagens Berman’s Proposal for Attorneys’ Fees and Costs**

2           In considering competitive bids from counsel, “[j]udges don’t look for the lowest bid; they  
3 look for the best bid -- just as any private individual would do in selecting a law firm, an  
4 advertising firm, or a construction company.” *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 720 (7th  
5 Cir. 2001). But the relationship between attorneys’ fees and recovery to the class is a complex one,  
6 where courts often strive to align the interests of counsel and the class. This Court has previously  
7 expressed its belief “that a ‘percentage of recovery fee’ calculation holds the best promise of  
8 harmonizing the interests of the class and its future counsel.” *Wenderhold v. Cylink Corp.*, 188  
9 F.R.D. 577, 587 (N.D. Cal. 1999). Based on this Court’s rulings in other cases, Hagens Berman  
10 submits the following chart proposing percentage-based attorneys’ fees (including costs) based on  
11 recovery from each defendant at various stages of the case and over various recoveries for the  
12 class:

13           **HAGENS BERMAN’S PROPOSED ATTORNEYS’ FEES AND COSTS**

	<b>From Pleading Through Decision on Motion to Dismiss</b>	<b>After Motion to Dismiss Through Adjudication of Class Certification</b>	<b>After Adjudication of Summary Judgment</b>	<b>Through Trial Verdict and Final Appellate Determination</b>
17 First \$5,000,000	0%	0%	0%	0%
18 \$5,000,001- 19 \$25,000,000	5%	14%	14%	14%
20 \$25,000,001- \$50,000,000	4%	13%	13.25%	14%
21 \$50,000,001- \$75,000,000	3%	12%	13%	14%
22 \$75,000,001- 23 \$100,000,000	2.5%	11.5%	12.5%	13.5%
24 \$100,000,001- \$200,000,000	2%	10%	11%	12%
25 \$200,000,001- \$400,000,000	1.5%	7%	8%	9%
26 \$400,000,001 and above	1%	5%	6%	7%

27  
28

1 In accord with this Court's prior rulings, this proposal includes both attorneys' fees and  
2 costs, which this Court believes creates an incentive for counsel to minimize expenses in the case,  
3 to the benefit of the class. *See, e.g., Wenderhold*, 189 F.R.D. at 573.

4 **2. Hagens Berman's Proposed Structure for Plaintiffs' Counsel**

5 Hagens Berman makes this proposal as the sole proposed lead counsel. Hagens Berman  
6 proposes to select, subject to the Court's approval, the appointment of at least two, but no more  
7 than four, firms to assist in prosecuting this litigation, as Hagens Berman determines is necessary  
8 and efficient for prosecuting this matter on behalf of the class. These firms will be paid from lead  
9 counsel's fees. *See Wenderhold*, 188 F.R.D. at 587-88.

10 **D. A Myriad of Other Qualitative Factors Support Hagens Berman's Request to be**  
11 **Appointed Lead Counsel for Indirect Purchasers**

12 **1. Defendants from Which Recovery Will Be Sought**

13 Hagens Berman submits its proposal to be appointed lead against each defendant named in  
14 these consolidated cases. Hagens Berman has reviewed all pleadings filed in the various  
15 consolidated cases. If appointed lead counsel for indirect purchasers, Hagens Berman intends to  
16 file a consolidated pleading, naming the appropriate corporate entity or entities for each corporate  
17 family group.<sup>7</sup> A chart listing each of the defendants named in the cases consolidated before this  
18 Court is attached as Exhibit B to the Berman Declaration.

19 **2. Hagens Berman's Knowledge and Experience in Prosecuting Antitrust**  
20 **Litigation**

21 In compliance with this Court's prior rulings, Hagens Berman presents the background and  
22 experience of those lawyers in the firm who, it is anticipated, will be engaged in representing the  
23 class in the present litigation. *Wenderhold*, 189 F.R.D. at 573.

24  
25  
26 <sup>7</sup> For example, while the *Wagner* complaint names Samsung Electronics Co., several other  
27 complaints name Samsung Electronics Co., Ltd. Similarly, while the *Wagner* complaint names Sony NEC  
28 Optiarc Inc., other complaints name NEC Corporation. Sony NEC Optiarc Inc. was a joint venture between  
Sony Corporation and NEC Corporation for much of the relevant time period. As lead counsel, Hagens  
Berman will determine the correct corporate entities to be named.

1                   **a.       Hagens Berman Has Extensive Experience in Antitrust Class Actions**

2                   Hagens Berman has extensive, nationwide experience in antitrust and other complex class  
3 actions. Since its founding in 1993, Hagens Berman has represented plaintiffs in a broad spectrum  
4 of complex, multi-party antitrust cases as well as cases involving securities fraud, ERISA,  
5 consumer protection, and violations of civil and human rights. Hagens Berman's work includes  
6 many landmark cases. Hagens Berman has forty-seven lawyers with offices in Seattle, Los  
7 Angeles, Phoenix, Chicago, Berkeley, Boston and Washington, D.C. The firm has been recognized  
8 by courts throughout the country for its ability and experience in handling major complex  
9 litigation.

10                  To provide the Court further detail on the breadth and level of Hagens Berman's experience  
11 (*see In re Cal. Micro Devices Sec. Litig.*, No. C-94-2817, 1995 U.S. Dist. LEXIS 11587, at \*8  
12 (N.D. Cal. Aug. 4, 1995)), Hagens Berman includes the following chart listing its recent antitrust  
13 experience:

<b>HAGENS BERMAN'S RECENT ANTITRUST EXPERIENCE</b>					
<b>Title</b>	<b>Court</b>	<b>Docket Number</b>	<b>Date Filed</b>	<b>Position of Hagens Berman</b>	<b>Amount of Recovery on Behalf of the Class</b>
<i>In re Visa Check/Mastercard Antitrust Litig.</i>	USDC E.D.N.Y.	96-cv-05238	08/01/2002	Co-lead counsel.	Settled for over \$3 billion in cash and over \$20 billion in injunctive relief, making it the largest antitrust settlement in history.
<i>In re Dynamic Random Access Memory (DRAM) Antitrust Litig.</i>	USDC N.D. Cal.	02-cv-1486 PJH	10/23/2002	Co-lead counsel for direct purchasers.	Over \$325 million in settlement funds.
<i>In re Intel Corp. Microprocessor Antitrust Litig.</i>	D. Del.	MDL 1717	06/29/2005	Co-lead Counsel.	Litigation pending.
<i>McDonough, et al. v. Toys "R" Us, Inc. et al.</i>	USDC E.D. Pa.	06-0242-AB	01/19/2006	Co-lead counsel.	Litigation pending; class certified at 638 F. Supp. 2d 461 (E.D. Pa. 2009).
<i>In re Live Concert Litig.</i>	USDC C.D. Cal.	06-ML-1745-SVW	04/19/2006	Lead counsel.	Litigation pending; class certified at 247 F.R.D. 98 (C.D. Cal.

HAGENS BERMAN'S RECENT ANTITRUST EXPERIENCE					
Title	Court	Docket Number	Date Filed	Position of Hagens Berman	Amount of Recovery on Behalf of the Class
		(RCx)			2007).
<i>In re Static Random Access Memory (SRAM) Antitrust Litig.</i>	USDC N.D. Cal.	07-cv-01819-CW	02/20/2007	Executive Committee Member for direct purchasers.	Over \$35 million in settlement funds to date.
<i>In re eBay Sellers Antitrust Litig.</i>	USDC N.D. Cal.	07-cv-1882-JF	04/04/2007	Co-lead counsel.	Appeal pending.
<i>In re TFT-LCD Antitrust Litig.</i>	USDC N.D. Cal.	M 07-1827	04/20/2007	One of eight "Tier 1" firms representing direct purchasers.	Litigation pending; class certified on March 28, 2010.
<i>Barton v. Fidelity Nat'l Financial, Inc.</i>	USDC N.D. Cal.	08-cv-01341-JSW	03/10/2008	Co-lead counsel.	Litigation pending.
<i>Pecover v. Electronic Arts, Inc.</i>	USDC N.D. Cal.	08-cv-2820-VRW	06/05/2008	Co-lead counsel for indirect purchasers.	Litigation pending.

In addition to this extensive experience in prosecuting antitrust class actions, Hagens Berman has experience in defending such cases. In the wake of the Department of Justice antitrust litigation against Microsoft, Hagens Berman represented the company in twenty-three antitrust class actions across the country. Hagens Berman thus has learned about all aspects of how corporations respond to private, civil antitrust enforcement actions like this one.

So well known and respected are Hagens Berman and its managing partner, Steve Berman, that recently Mr. Berman was appointed interim co-lead counsel in the *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, and Prods. Liability Litig.*, Case No. 8:10-ML-02151 (C.D. Cal.), *sua sponte* by Judge Selna without an application by Hagens Berman.

A representative sample of Hagens Berman's extensive expertise is summarized below. A more complete summary of Hagens Berman's experience, and a representative sampling of its

1 other complex litigation experience, is set forth in the firm résumé submitted herewith (Berman  
2 Decl., Ex. A), or on the law firm’s website, www.hagens-berman.com.

- 3 • *In re Pharm. Indus. Average Wholesale Price Litig*, MDL No. 1456 (D. Mass.). The Court  
4 appointed Hagens Berman co-lead counsel after the consolidation of numerous nationwide  
5 actions against pharmaceutical manufacturers involving claims that since the early 1990s  
6 most of the nation’s major pharmaceutical companies have engaged in fraudulent reporting  
7 of fictitious Average Wholesale Prices (“AWP”s). The fictitious AWP’s resulted in inflated  
8 drug prices and billions of dollars in illegal profits reaped at the expense of American  
9 consumers. In this role, Hagens Berman has negotiated and settled with several defendants  
10 and served as lead trial counsel in a month-long trial against several defendants. Mr.  
11 Berman served as lead trial counsel in that trial and obtained a verdict in favor of plaintiffs,  
12 which was challenged by defendants. The First Circuit affirmed the verdict, *In re Pharm.*  
13 *Indus. Average Wholesale Price Litig.*, 582 F.3d 156 (1st Cir. 2009).
- 14 • *In re Bextra Celebrex Sales, Mktg. and Prods. Liab. Litig.*, 05-cv-01699-CRB (N.D. Cal.)  
15 (Breyer, J.). This MDL case consolidated thousands of misleading marketing and personal  
16 injury claims related to the drugs Bextra and Celebrex. The Court appointed Hagens  
17 Berman as lead counsel for the purchaser related claims, i.e., the economic loss claim. In  
18 this role, Hagens Berman worked on a daily basis with liaison counsel for the personal  
19 injury claims, Lieff Cabraser, and multiple other firms across the country to prosecute all  
20 claims efficiently and expeditiously through pleadings, motions to dismiss, discovery,  
21 expert witness development, a multi-day *Daubert* hearing, case strategy, trial preparation  
22 and ultimately mediation and settlement. In granting final approval to the purchaser  
23 settlement, Judge Breyer commented: “The attorneys on both sides were sophisticated,  
24 skilled, professional counsel whose object was to zealously pursue their clients’ interest, but  
25 not at the cost of abandoning the appropriate litigation goals, which were to see, whether or  
26 not, based upon the merits of the cases, a settlement could be achieved.” Transcript of  
27 Proceedings, Sept. 25, 2009, at 29.
- 28 • *New England Carpenters, et al. v. McKesson*. As an outgrowth of the *Average Wholesale*  
*Price* MDL, Hagens Berman discovered that McKesson and First Data had conspired to  
increase the list price on most brand-name drugs in the United States by 4%. Hagens  
Berman successfully obtained a nationwide class on behalf of all purchasers of over 400  
brand-name drugs. This may be one of the largest classes ever certified. The case settled  
for \$350 million and a rollback of the price of brand-name drugs that took effect in Sept.  
2009. Mr. Berman was lead counsel and argued all motions.
- *Attorney General Tobacco Litig.* Hagens Berman played a major role in representing state  
government in the historic litigation against the tobacco industry. The firm represented  
thirteen states in pursuing innovative claims against the tobacco companies and helped  
achieve the largest recovery in litigation history (\$260 billion). Mr. Berman was actively  
involved in every aspect of the case and in negotiating the nationwide settlement. Hagens  
Berman was also one of only two law firms who took a case to trial against the tobacco  
industry. Mr. Berman served as lead or co-lead trial counsel in the Washington State case  
and in all the other state cases in which Hagens Berman was counsel.
- *Kaiser Found. Health Plan, et al. v. Pfizer, Inc., et al.*, Civ. Action No. 04-cv-10739 (D.  
Mass). Hagens Berman served as *co-lead trial counsel* for plaintiffs in this case against  
Pfizer, Warner Lambert and Parke Davis related to Pfizer’s fraudulent and unlawful  
promotion of the drug Neurontin. A jury returned a \$47 million RICO verdict against the  
three defendants. Post-trial briefing is underway and a final judgment has not yet been  
entered. With interest and trebling, the final judgment is expected to exceed \$200 million.

- 1 • *In re Schwab Corp. Sec. Litig.*, Case No. 08-cv-01510 WHA (C.D. Cal.). Judge Alsup  
2 appointed Hagens Berman as lead counsel in this federal class action on behalf of investors  
3 in Schwab's YieldPlus Fund. The case alleges that Schwab marketed the fund as a money  
4 market alternative and a safe place to invest cash when actually fund managers over-  
5 concentrated fund assets in risky mortgage-backed securities. Hagens Berman recently  
6 negotiated a settlement of the federal securities class claims for \$235 million (approval  
7 pending).
- 8 • *In re Expedia Hotel Taxes and Fees Litig.*, Master File No. 05-2-02060-1-SEA (King  
9 County Superior Court, State of Washington). Hagens Berman was lead counsel in this  
10 nationwide class action on behalf of consumers who booked hotel reservations through  
11 Expedia. Plaintiffs alleged that Expedia engaged in deceptive trade practices in connection  
12 with its charges for taxes and service fees. The case resulted in the largest summary  
13 judgment award in state history, \$184 million, and subsequently settled, resulting in  
14 recoveries for Expedia users across the country.
- 15 • *In re Tremont Sec. Law, State Law and Ins. Litig.*, 08 Civ. 11117 (TPG) (S.D.N.Y.) (Madoff  
16 litigation). The Southern District of New York appointed Hagens Berman as interim co-  
17 lead counsel on behalf of the putative plaintiff State Law Class in this consolidated case  
18 which is comprised of three groups of cases: the Securities Action, the State Law Action  
19 and the Insurance Action. The State Law Action arises out of the multi-billion dollar Ponzi  
20 scheme orchestrated by convicted swindler Bernard L. Madoff.

**b. Experienced Antitrust Attorneys Will Be Involved in Prosecuting This  
Litigation**

**(1) Steve W. Berman**

21 Mr. Berman helped to found the firm in 1993, and is the managing partner. He has served  
22 as lead or co-lead counsel in securities, consumer, products liability, antitrust, employment class  
23 actions, and complex litigations in the Northwest and throughout the country. Mr. Berman's  
24 successes include obtaining a settlement of \$92 million in the *Boeing Sec. Litig.*, representing stock  
25 and bondholders in the *Bonneville Pacific Sec. Litig.*, and gaining approval of a \$290 million  
26 settlement in the *Louisiana Pacific Siding Litig.*, the largest product liability settlement in Pacific  
27 Northwest history. In the *WPPSS Sec. Litig.*, Mr. Berman represented bond purchasers in the  
28 largest securities trial in U.S. history. In addition to being a member of the trial team, the lead  
counsel designated him as a core group member alongside a group of class plaintiffs and Chemical  
Bank attorneys charged with prosecuting the case. The case resulted in a settlement exceeding  
\$850 million, the largest recovery in a securities class action at the time. Perhaps most notable is  
Mr. Berman's role as a special assistant attorney general for the states of Washington, Arizona,  
Illinois, Indiana, New York, Alaska, Idaho, Ohio, Oregon, Nevada, Montana, Vermont, and Rhode  
Island in the landmark Tobacco Litigation.

1 Other notable actions led by Mr. Berman include the *Morrison Knudsen Sec. Litig.*, *Contact*  
2 *Lens Disposable Antitrust Litig.* and *Piper Jaffray Closed-End Funds Litig.* in which he obtained a  
3 settlement valued at nearly \$60 million. Mr. Berman's cases have also involved corporate entities  
4 such as Egghead, Foodmaker, SuperMac, Immunex, Digital Systems, and Aldus. Recently, Mr.  
5 Berman successfully tried consumer class actions against AstraZeneca and Bristol Myers Squibb,  
6 and leads the *Average Wholesale Price Litig.* (over \$200 million in pending settlements) and the  
7 *McKesson Litig.* (\$350 million in pending settlements).

8 In April 2000, the National Law Journal listed Mr. Berman as the top litigator in the state  
9 and, in June, named him as one of the 100 most powerful lawyers in the nation. In January 2001,  
10 Seattle Magazine featured him in an issue profiling the top lawyers in Seattle. In June 2006, the  
11 National Law Journal once again named Mr. Berman as one of the nation's 100 most influential  
12 lawyers in America. Mr. Berman was also named as a finalist for the Trial Lawyer of the Year.

13 **(2) Anthony D. Shapiro**

14 Mr. Shapiro is a named partner at Hagens Berman where he concentrates on antitrust  
15 matters and general commercial disputes, and leads the firm's Personal Injury Group. Mr. Shapiro  
16 has also played a prominent role in a number of notable antitrust class actions including *Brand*  
17 *Name Prescription Drug Antitrust Litig.*, *Carbon Dioxide Antitrust Litig.*, *Carpet Antitrust Litig.*,  
18 *Infant Formula Antitrust Litig.*, *Baby Food Antitrust Litig.*, *Scouring Pads Antitrust Litig.*, *Medical*  
19 *X-Ray Film Antitrust Litig.*, *High Fructose Corn Syrup Antitrust Litig.*, *Visa/MasterCard Antitrust*  
20 *Litig.*, *Commercial Tissue Prods. Antitrust Litig.*, *Flat Glass Antitrust Litig.*, *Lease Oil Antitrust*  
21 *Litig.*, and *Bromine Antitrust Litig.* Recently, Mr. Shapiro served as lead counsel in *In Re DRAM*  
22 *Antitrust Litig.*, where, on behalf of a class of direct purchasers, he and others were able to secure  
23 in excess of \$325 million from domestic and foreign DRAM chip manufacturers. Currently, Mr.  
24 Shapiro serves on the plaintiffs' executive committee in a number of prominent antitrust class  
25 actions including *In Re LCD Antitrust Litig.* and *In Re SRAM Antitrust Litig.*

26 Mr. Shapiro has extensive trial experience, as prior to leading the Hagens Berman personal  
27 injury litigation practice, Mr. Shapiro was a member of the Washington state prosecuting  
28 attorney's office, where he represented the state in more than fifty serious felony jury trials,

1 including some of the state's most difficult and high-profile cases. Mr. Shapiro was given an AV  
2 rating by Martindale-Hubbell, the highest rating a lawyer can obtain, indicating a very high to  
3 preeminent legal ability and exceptional ethical standards as established by confidential opinions  
4 from members of the Bar. Mr. Shapiro is a frequent instructor at the National Institute of Trial  
5 Advocacy (NITA) and has taught trial practice at the University of Washington Law School since  
6 2004.

7 **(3) Jeff D. Friedman**

8 Mr. Friedman is a partner at Hagens Berman's Berkeley office where he specializes in class  
9 actions against large corporations involving securities fraud, consumer protection and privacy  
10 rights violations. Mr. Friedman's current focus is on antitrust litigation, including *In re eBay Seller*  
11 *Antitrust Litig.*, a class action on behalf of more than 15 million eBay sellers who claim eBay is  
12 monopolizing and attempting to monopolize the online auction and person-to-person payment  
13 system markets. Mr. Friedman is also working on *Pecover v. Elec. Arts Inc.*, currently pending  
14 before this Court, with class certification scheduled to be argued on August 11, 2010.

15 Prior to joining Hagens Berman, Mr. Friedman was general counsel to a public company in  
16 the fiber optic technology field. Mr. Friedman also was an Assistant U.S. Attorney in the Criminal  
17 Division of the U.S. Attorney's Office for the Central District of California (Los Angeles). Mr.  
18 Friedman has extensive trial experience, including numerous federal cases and prosecuted matters  
19 involving investor, bank, and real estate fraud, tax evasion, narcotics trafficking, and money  
20 laundering. Prior to joining the U.S. Attorney's office, Mr. Friedman clerked for the Honorable  
21 Manuel L. Real, United States District Court Judge, Central District of California.

22 **(4) George W. Sampson**

23 Mr. Sampson is a partner at Hagens Berman in the Seattle office where he has worked since  
24 1994. Mr. Sampson specializes in complex antitrust class actions, including both section 1 and  
25 section 2 claims. Mr. Sampson has been instrumental in many recent antitrust victories, including  
26 certification of a class in *McDonough v. Toys "R" Us, Inc.*, 638 F. Supp. 2d 461 (E.D. Pa. 2009),  
27 one of the first cases to certify allegations of vertical price fixing since the Supreme Court's  
28 decision in *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 127 S. Ct. 2705 (2007) (holding



1 vertical price fixing is no longer *per se* illegal but instead analyzed under the rule of reason). Mr.  
2 Sampson was also a key team member in the certification of a class in *Thompson v. Clear Channel*  
3 *Communs., Inc. (In re Live Concert Antitrust Litig.)*, 247 F.R.D. 98 (C.D. Cal. 2007), a definitive  
4 125 page opinion regarding the governing standards for class certification in the Ninth Circuit.

5 Prior to joining Hagens Berman, Mr. Sampson served as chief of the Antitrust Bureau for  
6 the New York Attorney General's Office. Mr. Sampson oversaw a twenty-two person staff and  
7 managed case selection and investigation for all civil and criminal prosecutions. He also served as  
8 attorney general liaison to the federal-state Executive Working Group-Antitrust. His position as  
9 chief involved a heavy trial practice, primarily in federal courts and often in conjunction with  
10 several states. During his ten years with the Antitrust Bureau, Mr. Sampson's notable cases  
11 included winning a \$7.8 million jury verdict in a highway bid rigging trial, serving as lead counsel  
12 for New York and obtaining a \$30 million settlement in insurance antitrust litigation, and  
13 negotiating a \$15 million return to consumers in a resale price maintenance settlement with  
14 Nintendo. Mr. Sampson sits on the Executive Committee of the Antitrust and Consumer Protection  
15 of the Washington State Bar Association and frequently speaks on antitrust issues.

16 (5) **Shana E. Scarlett**

17 Ms. Scarlett is an associate at Hagens Berman's Berkeley office where she specializes in  
18 the prosecution of class actions, including antitrust, securities fraud, consumer protection and  
19 privacy rights violations. Ms. Scarlett has extensive antitrust experience, including the *In re eBay*  
20 *Seller Antitrust Litig.*, where Ms. Scarlett was one of the team members responsible for drafting the  
21 plaintiffs' class certification motion and responding to defendant's motion for summary judgment.  
22 Ms. Scarlett is also one of the primary attorneys involved in *Pecover v. Elec. Arts Inc.*, currently  
23 pending before this Court, where plaintiffs allege Electronic Arts violated Section 2 of the Sherman  
24 Act by engaging in anticompetitive, exclusionary behavior by executing a licensing lockout  
25 strategy with representatives of the National Football League, current and former NFL Players, the  
26 Arena Football League, and NCAA Football. Plaintiffs seek to certify a class of indirect  
27 purchasers and have presented exhaustive briefs concerning issues of antitrust injury to indirect  
28 purchasers and the application of state antitrust law to indirect purchasers in multiple states.

1 Ms. Scarlett received her law degree from Stanford Law School and was selected as a  
2 “Northern California Rising Star 2009” and “Northern California Rising Star 2010” by Super  
3 Lawyers Magazine.

4 **3. Hagens Berman Is Qualified to Complete the Work Necessary**

5 Previously, in appointing lead counsel, this Court has considered the qualifications of  
6 counsel to complete the work necessary in complex litigation. *Wenderhold*, 189 F.R.D. at 574.  
7 Hagens Berman is a well-established and successful law firm that has the substantial resources and  
8 personnel necessary to pursue a case of this magnitude as it has demonstrated in numerous similar  
9 large-scale complex cases since its founding. Hagens Berman has more than forty-five lawyers  
10 nationwide in offices in Seattle, Los Angeles, Boston, Chicago, Phoenix, the Bay Area and  
11 Washington, D.C. The firm’s resources are not merely financial, but also include substantial  
12 expertise and work-product, discussed above, that they have developed which will be an obvious  
13 benefit to the Plaintiffs in this action.

14 **4. Hagens Berman Has Malpractice Insurance**

15 Another factor previously considered by this Court is the firm’s insurance coverage for  
16 malpractice. *Id.* at 573. Hagens Berman currently has in place malpractice insurance. Berman  
17 Decl., ¶ 6. If this Court so requires, Hagens Berman will produce, upon request, a copy of this  
18 insurance policy *in camera* for the Court’s review. *Id.*

19 **III. CONCLUSION**

20 For all the reasons stated above, Hagens Berman respectfully requests that this Court  
21 appoint it as interim lead counsel for the Indirect Purchaser class.

22 DATED: May 13, 2010

HAGENS BERMAN SOBOL SHAPIRO LLP

23  
24 By           /s/ Steve W. Berman            
25           STEVE W. BERMAN          

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28 Telephone: (206) 623-7292  
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Attorneys for Plaintiff Aaron Wagner

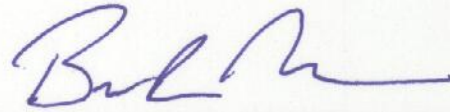
**CERTIFICATE OF SERVICE**

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a resident of the United States and employed in the City and County of Berkeley, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 715 Hearst Avenue, Suite 202, Berkeley, California 94710.

2. I hereby certify that on May 13, 2010, I caused the foregoing to be lodged with the Clerk of the Court via hand-delivery; and a courtesy copy of same to be hand-delivered to the chambers of the presiding judge in the above-captioned litigation. This document was filed *in camera* and lodged under seal. A copy was not served upon the other parties in this action.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of May 2010, at Berkeley, California.



---

BRIAN R. MILLER

# **ATTACHMENT B**

1 Jeff D. Friedman (173886)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
2 715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
3 Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
4 jefff@hbsslaw.com

5 Steve W. Berman (*Pro Hac Vice*)  
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6 1918 Eighth Avenue, Suite 3300  
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10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 IN RE OPTICAL DISK DRIVE PRODUCTS ) Case No. 10-cv-02143 VRW  
ANTITRUST LITIGATION )  
15 ) MDL No. 2143  
16 )  
17 ) DECLARATION OF STEVE W.  
18 ) BERMAN IN SUPPORT OF MOTION  
19 ) TO APPOINT INTERIM LEAD CLASS  
20 ) COUNSEL ON BEHALF OF INDIRECT  
PURCHASER CLASS  
21 )  
22 )  
23 )

21 This Document Relates to:  
22 ALL INDIRECT PURCHASER ACTIONS  
23

24  
25  
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27  
28

1 I, STEVE W. BERMAN, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of  
3 Washington and have been admitted *pro hac vice* to appear in this action. I am the managing  
4 partner of the law firm of Hagens Berman Sobol Shapiro LLP, one of the counsel of record for  
5 Plaintiffs in the above-entitled action. I have personal knowledge of the matters stated herein and,  
6 if called upon, I could and would competently testify thereto.

7 2. As set forth below, Hagens Berman Sobol Shapiro LLP (“Hagens Berman”), with  
8 its proposed lead counsel organization, has a proven track record of experience, knowledge and  
9 commitment of resources which is unmatched by any alternate firm or consortium.

10 **I. KNOWLEDGE AND EXPERIENCE IN PROSECUTING ANTITRUST AND**  
11 **OTHER COMPLEX CLASS ACTION LITIGATION**

12 3. Hagens Berman has extensive, nationwide experience in antitrust and other complex  
13 class actions. Since its founding in 1993, Hagens Berman has represented plaintiffs in a broad  
14 spectrum of complex, multi-party antitrust cases as well as cases involving securities fraud,  
15 ERISA, consumer protection, and violations of civil and human rights. Hagens Berman’s work  
16 includes many landmark cases.

17 4. Hagens Berman’s lawyers have had a leadership role or participated in antitrust  
18 cases covering a wide-spectrum of product markets, as demonstrated by the following list of cases:  
19 *Brand Name Prescription Drug Antitrust Litigation, Carbon Dioxide Antitrust Litigation, Carpet*  
20 *Antitrust Litigation, Infant Formula Antitrust Litigation, Medical Z-Ray Film Antitrust Litigation,*  
21 *High Fructose Corn Syrup Antitrust Litigation, Visa/MasterCard Antitrust Litigation, Commercial*  
22 *Tissue Products Antitrust Litigation, Flat Glass Antitrust Litigation, Lease Oil Antitrust Litigation,*  
23 *Bromine Antitrust Litigation, Linerboard Antitrust Litigation, OSB Antitrust Litigation, Hydrogen*  
24 *Peroxide Antitrust Litigation, DRAM Antitrust Litigation, SRAM Antitrust Litigation, and eBay*  
25 *Sellers Antitrust Litigation.*

26 5. The firm has been recognized by courts throughout the country for its ability and  
27 experience in handling major complex litigation. Among the hundreds of MDLs and class actions  
28 in which Hagens Berman has held leadership positions are numerous cases, such as this one, where

1 a multiplicity of claims have been consolidated for prosecution, requiring unique case structures  
2 and coordination.

3 6. A representative sample of Hagens Berman's experience is summarized below. A  
4 more complete summary of Hagens Berman's experience, and a representative sampling of its  
5 other complex litigation experience, is set forth in the firm resume attached as Exhibit A, or on the  
6 law firm's website, [www.hagens-berman.com](http://www.hagens-berman.com).

7 **A. Hagens Berman Representative Cases**

8 • *In re Visa Check/ Mastercard Antitrust Litigation*, CV-96-5238 (E.D.N.Y.). Hagens  
9 Berman served as co-lead counsel in this case which settled on the eve of trial for over \$3 billion in  
10 cash and over \$20 billion in injunctive relief, making it the largest antitrust settlement in history.

11 • *In re Dynamic Random Access Memory Antitrust Litigation*, No. M 02-1486 PJH  
12 (N.D. Calif.). Hagens Berman served as co-lead counsel for the direct purchasers class in this  
13 multi-class MDL. In that role, Hagens Berman successfully organized and supervised scores of co-  
14 counsel, wrote and oversaw all briefing (including class certification, summary judgment and trial  
15 briefs), coordinated with counsel for the indirect purchaser class, took or supervised the taking of  
16 over 100 depositions (both foreign and domestic), developed a cooperative working relationship  
17 with defense counsel and negotiated over \$ 320 million in settlements for the classes making it the  
18 largest antitrust settlement in the N.D. California.

19 • *Pecover, et al. v. Electronic Arts Inc.*, No. C-08-2820-VRW, (N.D. Cal.). Hagens  
20 Berman represents a potential class of thousands of persons in the United States who purchased  
21 Electronic Arts' interactive football software. Plaintiffs allege Electronic Arts violated Section 2 of  
22 the Sherman Act by engaging in anticompetitive, exclusionary behavior by executing a licensing  
23 lockout strategy with representatives of the National Football League, current and former NFL  
24 Players, the Arena Football League, and NCAA Football. Plaintiffs seek to certify a class of  
25 indirect purchasers and have presented exhaustive briefs to the Honorable Chief Judge Vaughn R.  
26  
27  
28



1 Walker concerning issues of antitrust injury to indirect purchasers and the application of state  
2 antitrust law to indirect purchasers in multiple states. These issues are currently pending.

- 3 • *McDonough, et al. v. Toys “R” Us, Inc. et al.*, Case No. 06-0242-AB (E.D. Pa.).

4 Hagens Berman is co-lead counsel in this antitrust litigation, in which Plaintiffs recently  
5 successfully certified a class of purchasers who paid artificially inflated prices for certain baby  
6 products. The case is one of the first – if not the first – to certify allegations of vertical price fixing  
7 since the Supreme Court’s decision in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 127 S.  
8 Ct. 2705 (2007) (holding vertical price fixing is no longer *per se* illegal but instead analyzed under  
9 the rule of reason).

- 11 • *eBay Sellers Antitrust Litigation*, Case No. C-07-1882-JF (N.D. Cal.). Judge Fogel  
12 appointed Hagens Berman co-lead counsel in this antitrust litigation, which involves novel issues  
13 in applying antitrust jurisprudence to internet firms, including the application of antitrust principles  
14 in the context of two-sided markets. Plaintiffs allege eBay monopolized and attempted to  
15 monopolize the online auction market and the online person-to-person payments market by a series  
16 of anticompetitive acts, such as acquiring competitors, enforcing exclusionary policies, and  
17 forming alliances with competitors or potential competitors to forestall or reduce competition. The  
18 issue of antitrust injury in this context is currently on appeal.

- 19 • *Enron ERISA Litigation*, Civ. Action No. H-01-3913, MDL No. 1446 (S.D. Tex.).

22 The court appointed Hagens Berman co-lead counsel in this MDL case on behalf of participants  
23 and beneficiaries of Enron’s Retirement Savings Plan and ESOP against Enron and various other  
24 defendants. The ERISA claims were consolidated with the companion securities case for  
25 prosecution. As lead counsel Hagens Berman coordinated extensively with securities class counsel  
26 to prosecute the case. The ERISA litigation recovered in excess of \$220 million, one of the largest  
27 settlements ever involving claims arising out of an ERISA Plan’s holdings of company stock.  
28

1           •       *In Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456  
2 (D. Mass.). The court appointed Hagens Berman co-lead counsel after the consolidation of  
3 numerous nationwide actions against pharmaceutical manufacturers involving claims that since the  
4 early 1990s most of the nation’s major pharmaceutical companies have engaged in fraudulent  
5 reporting of fictitious Average Wholesale Prices (AWPs). The fictitious AWPs resulted in inflated  
6 drug prices and billions of dollars in illegal profits reaped at the expense of American consumers.  
7 In this role, Hagens Berman has negotiated and settled with several defendants and served as lead  
8 trial counsel in a month-long trial against several defendants. Steve Berman served as lead trial  
9 counsel in that trial and obtained a verdict in favor of plaintiffs, which was challenged by  
10 defendants. The First Circuit affirmed the verdict, *In re Pharm. Indus. Average Wholesale Price*  
11 *Litig.*, 582 F.3d 156 (1st Cir. 2009).  
12

13           •       *In re Bextra Celebrex Sales, Marketing and Prods. Liab. Litig.*, 05-cv-01699-CRB  
14 (N.D. Cal.) (Breyer, J.). This MDL case consolidated thousands of misleading marketing and  
15 personal injury claims related to the drugs Bextra and Celebrex. The Court appointed Hagens  
16 Berman as lead counsel for the purchaser related claims, *i.e.*, the economic loss claim. In this role,  
17 Hagens Berman worked on a daily basis with liaison counsel for the personal injury claims, Lief  
18 Cabraser, and multiple other firms across the country to prosecute all claims efficiently and  
19 expeditiously through pleadings, motions to dismiss, discovery, expert witness development, a  
20 multi-day *Daubert* hearing, case strategy, trial preparation and ultimately mediation and settlement.  
21 In granting final approval to the purchaser settlement, Judge Breyer commented: “The attorneys  
22 on both sides were sophisticated, skilled, professional counsel whose object was to zealously  
23 pursue their clients' interest, but not at the cost of abandoning the appropriate litigation goals,  
24 which were to see, whether or not, based upon the merits of the cases, a settlement could be  
25 achieved.” Transcript of Proceedings, September 25, 2009, p. 29.  
26  
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28

1           •       *Exxon Valdez Oil Spill Litigation.* The firm represented various classes of  
2 claimants, including fisherman and businesses located in Prince William Sound and other impacted  
3 areas, who were damaged by the worst oil spill in United States history.

4           •       *Louisiana-Pacific Siding Litigation.* The firm acted as co-lead counsel on a  
5 consumer case arising from the failure of a widely-used type of hardboard home siding. Over a  
6 million consumers were in the class. The case resulted in a landmark, highly favorable settlement  
7 that has resulted in compensation for homeowners across the country.

8           •       *Tobacco Litigation.* Hagens Berman played a major role in representing state  
9 government in the historic litigation against the tobacco industry. The firm represented thirteen  
10 states in pursuing innovative claims against the tobacco companies and helped achieve the largest  
11 recovery in litigation history (\$206 billion). I was actively involved in negotiating the nationwide  
12 settlement. Hagens Berman was also one of only two law firms who took a state case to trial  
13 against the tobacco industry. Steve Berman served as lead trial counsel in the Washington State  
14 case.

15           •       *Kaiser Foundation Health Plan, et al v. Pfizer, Inc., et al, Civ. Action No. 04-cv-*  
16 *10739 (D. Mass).* Hagens Berman served as *co-lead trial counsel* for plaintiffs in this case against  
17 Pfizer, Warner Lambert and Parke Davis related to Pfizer's fraudulent and unlawful promotion of  
18 the drug Neurontin. A jury returned a \$ 47 million RICO verdict against the three defendants.  
19 Post-trial briefing is underway and a final judgment has not yet been entered. With interest and  
20 trebling, the final judgment is expected to exceed \$ 200 million.

21           •       *In re Tremont Securities Law, State Law and Insurance Litigation, 08 Civ. 11117*  
22 *(TPG) (S.D.N.Y.) (Madoff litigation).* The Southern District of New York appointed Hagens  
23 Berman as interim co-lead counsel on behalf of the putative plaintiff State Law Class in this  
24 consolidated case which is comprised of three groups of cases: the Securities Action, the State Law  
25  
26  
27  
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1 Action and the Insurance Action. The State Law Action arises out of the multi-billion dollar Ponzi  
2 scheme orchestrated by convicted swindler Bernard L. Madoff. Hagens Berman brings the State  
3 Law Action on behalf of a class of investors in certain funds operated through the Tremont Group  
4 Holdings, Inc., as part of the MassMutual Financial Group. Class plaintiffs and the class allegedly  
5 sustained losses in excess of \$3 billion. Plaintiffs allege that the defendants failed to investigate  
6 Madoff or monitor his handling of their clients' assets.

7  
8 **B. Experience on the Defense Side in Antitrust Cases**

9 7. In the wake of the DOJ antitrust litigation against Microsoft, Hagens Berman was  
10 hired to help the company dig out of the hole it was in before Judge Jackson and to represent the  
11 company in 23 antitrust class actions across the country. HB thus has learned about all aspects of  
12 how corporations respond to private, civil antitrust enforcement actions like this one.

13 **C. Hagens Berman's Leadership in this Case**

14 8. Hagens Berman's efforts in this case will be headed by Steve W. Berman.  
15 Mr. Berman helped to found the firm in 1993, and is the managing partner. He has served as lead  
16 or co-lead counsel in ERISA, securities, consumer, products liability, antitrust, employment class  
17 actions and complex litigations throughout the United States. The *National Law Journal* listed  
18 Mr. Berman as the top litigator in the Washington State in 2000 and in 2006 named him as one of  
19 the 100 most influential lawyers in the nation. Hagens Berman has been identified as one of the  
20 nation's leading plaintiffs' law firms by the National Law Journal ("NLJ") and placed on NLJ's  
21 "Plaintiffs' Hot List."

22 9. Other Hagens Berman attorneys who will be involved in this litigation are Jeff D.  
23 Friedman, a former federal prosecutor and partner in the Berkeley office, and Shana E. Scarlett, an  
24 associate in the Berkeley office, as well as others. The backgrounds and experience of all the  
25 Hagens Berman attorneys are summarized in the attached firm resume.

**II. WILLINGNESS AND ABILITY TO COMMIT TO A TIME-CONSUMING PROCESS**

**A. Hagens Berman’s History Demonstrates the Firm’s Commitment**

10. Hagens Berman’s extensive experience in bringing and pursuing complex cases such as this one demonstrates that Hagens Berman fully understands the substantial investment of time and resources necessary to pursue and lead this case properly, and are committed to making the necessary investment. Typically, Hagens Berman does not become involved in cases in which it does not play a substantive role. This allows the firm to concentrate its time and resources effectively. The firm undertakes substantive work in all of the cases it prosecutes, from drafting the initial, amended and consolidated complaint, discovery and expert testimony development through trial and appeal. Hagens Berman lawyers are supported in this commitment by a team of highly-qualified, seasoned paralegals and investigators, many of whom have been with the law firm since its earliest years.

11. The firm’s resume also demonstrates its ability to fund adequately its share of litigation costs over the years it may take to prosecute a complex and hard-fought case to conclusion. The firm’s success record in seeing complex and risky cases to conclusion through trial or settlement, underscores this commitment.

**B. Ability to Work Cooperatively With Others**

12. The firm’s history demonstrates its ability to collaborate with firms across the country. Courts frequently appoint Hagens Berman as lead counsel in complex cases and thus the firm has extensive experience allocating and supervising work among participating firms, managing multiple-firm funding of complex cases, coordinating discovery among plaintiffs and defendants, and negotiating resolutions of issues involving divergent interests. Hagens Berman has found that regular communication and coordination of effort among all counsel on a case are important to avoid the duplication of efforts and, again, the waste of resources that can result if numerous qualified firms complete the same work.



# EXHIBIT A



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David S. Nalven	29
Edward Notargiacomo	29
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## The Firm

Based in Seattle, Washington, **Hagens Berman Sobol Shapiro LLP (HBSS)** was founded in 1993 with one purpose - to pursue the type of law that most interested the founders – helping victims of wrongdoing that injures a broad group of people. Thus the firm has focused on representing plaintiffs in class actions and multi-party, large-scale complex litigation and becoming engaged in cases that had the potential for having a positive impact on protecting the rights of investors, consumers, workers, and the environment.

Since then, the firm has stayed true to that purpose and become one of the nation's leading firms in these fields, earning an international reputation for excellence and innovation.

### **Our Focus**

Our main focus is to represent plaintiffs in securities, investment fraud, product liability, tort, antitrust, consumer fraud, employment, environmental, and ERISA cases. In doing so, our firm has become particularly skilled at managing multi-state and nationwide class actions through an organized, coordinated approach that implements an efficient and aggressive prosecutorial strategy in order to place maximum pressure on the defendant. The firm has been rated by the National Law Journal in the top ten of plaintiffs' firms in the country.

### **We Win**

Lawyers in the field of mass tort and class action litigation are often accused of acting in their own interests or settling cheaply. HBSS believes that our excellence stems from a commitment to try each case and obtain maximum recovery for our clients. We believe we have tried a higher percentage of cases than our competition. Our opponents know this.

Winning is especially important to HBSS because our compensation depends so much on our performance. We devote approximately 95 percent of our time to litigation under fee agreements that tie our pay to the results we achieve, not to the hours we bill. We have developed innovative contingent and flat fee arrangements with many clients, including partial contingent fees that reduce our hourly rates for a stake in the outcome. We are willing to use reverse contingent fee arrangements for defending cases where the amount we saved our clients determined our compensation.

### **Our Offices**

As we have flourished over the years, we have increased our national presence through a network of branch offices in Boston, Phoenix, Los Angeles, Chicago, and San Francisco.

Founded in 1995, our Phoenix office has driven important litigation and has a strong legal presence in Arizona and the southwest.

Shortly thereafter in 1996, we founded the Los Angeles office, which manages our significant case load in California.

In June 2002, our firm opened an office in the Boston area. Now referred to as the Cambridge office, this office leads our drug litigation efforts, challenging the prices of dozens of prescription drugs, and claiming that manufacturers artificially drove up drug prices through numerous anti-competitive practices.

In 2004, in another step to become the nation's premier law firm in class-action and large-scale litigation, we opened a Chicago branch. The firm first created a presence among Illinois' legal and political scene with the landmark litigation against the tobacco industry, in which Steve Berman served as special assistant attorney general for the state.

We opened our sixth national and second California office in San Francisco in 2007. The second California office is a reflection of our continuing growth in one of the most vibrant parts of the country. Having offices in Los Angeles and San Francisco helps ensure our firm is on the leading edge of important social and governmental change within the legal landscape.

**A Nationwide Reach**

The firm expanded its practice to include representing governmental entities, including actions against the tobacco industry and the pharmaceutical industry. In the groundbreaking state tobacco litigation, the firm represented the states of Alaska, Arizona, Idaho, Illinois, Indiana, Montana, Nevada, New York, Ohio, Oregon, Rhode Island, Vermont, and Washington as special assistant attorneys general in their law enforcement actions against the tobacco industry.

Our firm has also served as court-appointed lead class counsel in state and federal litigation in states throughout the country, with heavy caseloads in Arizona, California, Idaho, Illinois, New York, and Washington.

Hagens Berman Sobol Shapiro's lawyers have played leading and major roles in cases that have resulted in total recoveries of more than \$206 billion.

# Our Major Successes

## *STATE OF WASHINGTON, ET AL. V. PHILIP MORRIS, ET AL.*

HBSS represented 13 states in the largest recovery in litigation history (\$206 billion recovery).

## *IN RE VISA-MASTERCARD ANTITRUST LITIGATION*

HBSS served as co-lead counsel in the largest antitrust settlement in history – valued at \$27 billion.

## *MCKESSON DRUG LITIGATION*

HBSS was co-lead counsel in a RICO case against McKesson related to McKesson's role in setting pharmaceutical prices which resulted in a \$350 million settlement.

## *SCHWAB YIELDPLUS SECURITIES LITIGATION*

HBSS is lead counsel in the class action challenging misrepresentations and omissions made by Schwab in connection with the sale and management of its YieldPlus Fund, which Schwab marketed as a money market alternative and a safe place to invest cash when actually the assets were over-concentrated in risky mortgage-backed securities. The federal securities class action recently settled for \$200 million. A bench trial will be held shortly to determine the recovery state law class's claims.

## *ENRON ERISA LITIGATION*

HBSS was co-lead counsel in the ERISA litigation that has recovered in excess of \$250 million, the largest ERISA settlement in history.

## *WASHINGTON MUTUAL ERISA LITIGATION*

HBSS acts as counsel on behalf of former Washington Mutual employees who lost hundreds of millions of dollars in retirement savings invested in company stock and the Washington Mutual 401(k) plan. A proposed settlement of the case is pending.

## *TENET HEALTHCARE LITIGATION*

The firm obtained a settlement – the first of its kind – on behalf of a class of 2 million uninsured patients in 19 different states. Based on novel theories upheld by the court, HBSS helped create a first of its kind settlement recently featured in the National Law Journal.

## *AVERAGE WHOLESALE PRICE LITIGATION*

HBSS is co-lead counsel in a ground breaking case where a \$210 million settlement is awaiting court approval.

## *NEURONTIN THIRD PARTY PAYOR LITIGATION*

HBSS recently served as co-lead trial counsel for plaintiffs in this case against three companies related to Pfizer's fraudulent and unlawful promotion of the drug Neurontin. A jury returned a \$47 million verdict against the three defendants. Post-trial briefing is underway and a final judgment has not yet been entered. Interest and trebling of damages are expected to boost the final judgment significantly.

## *EXPEDIA CONSUMER LITIGATION*

HBSS was lead counsel in this nationwide class action on behalf of consumers who booked hotel reservations through Expedia. Plaintiffs alleged that Expedia engaged in deceptive trade practices in

connection with its charges for taxes and service fees. The case resulted in the largest summary judgment award in state history and subsequently settled, resulting in recoveries for Expedia users across the country.

*DRAM ANTITRUST LITIGATION*

HBSS was co-lead counsel and the case settled for \$345 million resulting in a recovery for purchasers of DRAM.

*LUPRON SETTLEMENT*

A \$150 million settlement on behalf of patients using Lupron for prostate cancer.

*RELAFEN SETTLEMENT*

A \$75 million settlement in favor of plaintiffs who purchased Relafen.

*HUNGARIAN GOLD TRAIN SETTLEMENT*

HBSS filed a class-action suit against the United States on behalf of Hungarian Holocaust survivors. The suit claimed the plaintiffs' valuable personal property was loaded on a train by the Hungarian Nazi government during the waning days of WWII. The United States Army later seized the train and its contents. The suit contends that the property was never returned to its owners or heirs, and was instead unlawfully appropriated by the U.S.

The settlement in the case of *Rosner, et al. v. United States* creates a \$25.5 million settlement fund, and provides for a statement by the United States government acknowledging the events surrounding the Gold Train property. Because of the passage of time, lost documentation, and lack of an inventory, there is limited information about the specific items that were on the Gold Train and taken into U.S. custody in 1945. Thus it is very hard to fairly assess and compensate individual class members based on their personal losses. Therefore, the U.S. government and representatives for the class have agreed that a minimum of \$21 million in the settlement fund be used to augment existing social welfare programs for Hungarian victims of Nazi persecution. The settlement agreement also allocates \$500,000 to fund and create an archival collection of information and artifacts for the benefit of the class and other educational purposes.

## Leading Edge Cases

**CB RICHARD ELLIS SEXUAL HARASSMENT LITIGATION.** **Hagens Berman Sobol Shapiro** filed a class-action lawsuit against CB Richard Ellis, Inc. on behalf of a group of female employees. Filed in U.S. District Court in Illinois, the suit claims that the company has perpetuated a climate of severe sexual harassment against its female employees. According to the complaint, CB Richard Ellis discriminates against female employees by subjecting them to a hostile, intimidating and offensive work environment, which has resulted in emotional distress and other physical and economic injuries to the class.

HBSS negotiated an innovative and unprecedented settlement of a nationwide class action alleging sexual harassment over an eight-year period on behalf of 16,000 current and former female employees of a commercial property brokerage firm. In addition to requiring changes to human resources policies and procedures, the settlement affords class members the opportunity to participate in a stream-lined claims process that provides the potential for individual awards up to \$150,000 per class member. The “process-based” settlement, adjudicated by an independent and neutral Special Master, will award a range of damages to claimants who can demonstrate to the satisfaction of the Special Master that they were subjected to unlawful harassment. Claims are subject to certain monetary caps depending on a claimant’s elections regarding the extent of the process in which they wish to participate and the level of confidentiality their claim will be afforded. Additionally, under the terms of the settlement agreement, the company agreed to several human resources measures. These activities include amending or tightening existing harassment policies, implementing enhanced training for all employees, increasing supervisor accountability to address sexually inappropriate conduct in the workplace, enhancing record-keeping practices, and conducting two annual reviews of settlement compliance by a court appointed monitor.

**TENET HEALTHCARE.** HBSS pioneered this suit with claims against Tenet Healthcare Corporation. Originally filed in December 2002, the lawsuit claimed that patients not covered by insurance plans were charged excessive prices at 114 hospitals owned and operated by Tenet subsidiaries in 16 different states.

The settlement class includes any uninsured patient who received medically necessary services at any of its hospitals between June 15, 1999 and December 31, 2004, and paid for services based on the hospital’s gross charges. Under the terms of the proposed settlement, Tenet has agreed to refund amounts paid in excess of certain thresholds.

**INTEL ANTITRUST LITIGATION.** HBSS has filed the nation’s first proposed class-action lawsuit against Intel on behalf of consumers, claiming the microprocessor giant has unlawfully maintained a monopoly by engaging in a relentless, worldwide campaign to coerce customers to refrain from dealing with AMD, another microprocessor manufacturer.

According to the suit, consumers ultimately foot this bill, in the form of inflated PC prices and the loss of freedom to purchase computer products that best fit their needs.

The proposed class action includes all United States residents who purchased a microprocessor in the United States indirectly from Intel from June 29, 2001 through the present.

HBSS is one of the co-lead counsel.

**STARBUCKS ANTITRUST LITIGATION.** HBSS is litigating an antitrust claim against Starbucks Corporation for its alleged monopolization of the retail coffee market in Class-A buildings in downtown Bellevue and Seattle. The plaintiff is a small coffee retailer who has attempted to enter the market but has allegedly been prevented from doing so by Starbucks’ dominant presence and use of exclusive-dealing arrangements that are designed to prevent competitors from entering the market.

INSURANCE LITIGATION. HBSS has pioneered theories to ensure that in first and third party contexts consumers and insureds always receive the treatment and benefits to which they are entitled. We have certified several cases, including those where we secured expanded coverage owed and therefore more benefits because of a statutory violation, where we seek to recover for underpayments of benefits based on software programs, where we seek a return if uninsured/underinsured premiums received because of misleading tactics of the insurer. In addition, on individual cases, we have taken insurers to trial and recovered millions of dollars for our clients by way of verdict for bad faith, punitive damages, wage losses, and medical and rehabilitative care.

SEXUAL ABUSE LITIGATION. HBSS has represented a wide spectrum of individuals who have been the victims of sexual abuse, including children and developmentally disabled adults. We treat each case individually, with compassion and attention to detail and have the expertise, resources and track record to stand up to the toughest opponents. In the area of sexual abuse, our attorneys have obtained record-breaking verdicts, including the largest personal injury verdict ever upheld by an appellate court in the State of Washington.

NURSING HOME NEGLIGENCE. Nursing home negligence is a growing problem throughout the nation. As our population ages, reports of elder abuse and nursing home negligence continue to rise. Today, elder abuse is one of the most rapidly escalating social problems in our society. HBSS is uniquely qualified to represent the victims of elder abuse and nursing home negligence. Our attorneys have secured record-breaking settlements in this area of the law and are committed to holding nursing homes accountable.

SOCIAL WORK NEGLIGENCE. Social workers play a critical role in the daily lives of our state's most vulnerable citizens. Social workers, assigned to protect children, developmentally disabled and elderly adults are responsible for critical aspects in the lives of tens of thousands of citizens who are unable to protect themselves.

Many social workers do a fine job. Tragically, many do not. When a social worker fails to monitor and protect his/her vulnerable client, the results are often catastrophic. All too often, the failure to protect a child or disabled citizen leads to injury or sexual victimization by predators.

With over \$40 million in recoveries on behalf of vulnerable citizens who were neglected by social workers, the Hagens Berman Sobol Shapiro Personal Injury Group is the most experienced, successful and knowledgeable group of attorneys in this dynamic area of the law.

CLEAR CHANNEL ANTITRUST LITIGATION. HBSS obtained class certification in five regional test cases on behalf of purchasers of tickets to live rock concerts promoted by Clear Channel Communications Inc. or its successor Live Nation. Prosecuting 22 regional cases filed nationwide, HBSS is leading the fight against the nation's largest media and entertainment companies, which used their market dominance to illegally inflate ticket prices to live rock concerts across the country. The lawsuits assert that Clear Channel used anticompetitive, monopolistic practices to coerce artists into using the company's promotional services. The suits allege that Clear Channel's unlawful leveraging of its economic strength in the FM radio business obligates artists who would otherwise turn to other concert promoters to use Clear Channel's promotion services.



# The Practice

## AN OVERVIEW OF CURRENT LITIGATION\*

**ANTITRUST LITIGATION.** **Hagens Berman Sobol Shapiro** works to keep marketplaces free of price fixing and collusion, protecting the availability of high quality, low priced goods. The firm's antitrust practice includes nationally certified class actions against manufacturers of disposable contact lenses and a high-profile case in which the Justice Department has commenced parallel proceedings challenging the charges imposed by **Visa** and **MasterCard** in connection with use of the debit card.

**Microsoft** honored the firm by selecting **Hagens Berman** to represent the company in antitrust litigation. The firm served as national counsel in more than 100 class actions currently faced by the company.

In another major antitrust action the firm was named lead trial counsel in the case of **Information Resources, Inc. v. A.C. Nielsen** and the case was settled thereafter.

Other major antitrust cases include **DRAM, Intel, SRAM, Flash Memory, Korean Air, EA Sports, and eBay**.

**CIVIL RIGHTS.** **Hagens Berman Sobol Shapiro** actively seeks out complex civil rights cases, taking on the role of advocate for a variety of individuals and organizations. The firm vigilantly keeps abreast of new state and national legislation that allows it to better represent its clients, including diverse communities such as World War II prisoners of war and conscripted civilians.

**Hagens Berman Sobol Shapiro** led a team of lawyers in the **Hungarian Gold Train** case. The firm's involvement follows from its representation of former forced and enslaved laborers for German companies in the Nazi Slave Labor Litigation.

In conjunction with the Trial Lawyers for Public Justice, the firm won a settlement from city officials after filing a class action claiming violation of the First and Fourth Amendments. Tens of thousands of Seattle citizens became targets during their peaceful protest of the WTO convention on December 1, 1999. After Seattle officials banned any form of peaceful protest, Seattle police attacked anyone found in the designated "no protest" zones with rubber bullets and tear gas, arresting and incarcerating city residents for three to four days. A jury returned a verdict in favor of plaintiffs.

Riot Police Douse Peaceful Protesters with Pepper Spray

Riot Police Confront Protestors on Downtown Seattle Streets



\* In alphabetical order.

CONSUMER LITIGATION. Using large-scale litigation to pressure defendants who defraud or take advantage of customers, **Hagens Berman Sobol Shapiro** pursues opportunities to confront deceptive advertising practices, financing and insurance scams, and redlining practices, among other consumer fraud techniques. Consumer litigation remains one of the firm's largest practice areas, with attorneys representing millions of consumers in numerous actions.

DRUG LITIGATION. The firm actively engages in litigation that improves the quality of health products and medical systems, and confronts unscrupulous medical distributors and producers of products such as pharmaceutical drugs, herbal supplements and beauty products. **Hagens Berman Sobol Shapiro** frequently partners with consumer interest and senior organizations to challenge false advertising, pricing schemes, and other drug fraud activities.

Successes include reaching a settlement on behalf of all diet drug users in Montana and exerting landmark pressure on **Abbott Laboratories** causing them to send a letter warning laboratories about the risks of false positives in their tests for hCG. **Hagens Berman Sobol Shapiro** represented several plaintiffs in litigation against **Abbott** after false positives led to erroneous cancer diagnoses and unnecessary treatment including, in some cases, hysterectomies. In 2003, the firm settled a case against **Rexall** representing thousands of women who purchased their cellulite-fighting product "Cellasene." The plaintiffs alleged that the product didn't work, and **Hagens Berman Sobol Shapiro** filed the first case in the nation challenging Cellasene marketing. The FTC recently filed a similar action against Rexall.



Washington State Ferry  
Chinook

ENVIRONMENTAL LITIGATION. Believing that protecting and repairing our ecosystem from irresponsible use is some of the most rewarding work a law firm can do, the firm frequently represents homeowners and landowners injured by environmental abuses. The firm has handled a variety of landmark environmental litigation cases in the Northwest and internationally, using relationships with top-notch environmental experts to develop compelling arguments.

The firm successfully pursued a class action on the adverse environmental impacts of fast ferry service in Washington state. The settlement brought relief to the class members and slowed ferry vessels when traveling in sensitive areas. In other litigation, the firm represented plaintiffs in a case against **Kerr-McGee**, on behalf of thousands of persons exposed to radioactive material in a residential area in West Chicago, Illinois.

The firm's Arizona office represented the **Sierra Club** in a case challenging the U.S. Forest Service's approval of a commercial shopping center on the edge of the Grand Canyon. The District Court granted the firm's request to enjoin development of the shopping mall, protecting the Grand Canyon from overdevelopment.

ERISA LITIGATION. The federal Employee Retirement Income Security Act (ERISA) spells out the duties that plan administrators, trustees and other fiduciaries owe to participants and beneficiaries in retirement programs including Employee Stock Ownership Plans ("ESOPs"), 401k plans, healthcare and pension plans.

**Hagens Berman Sobol Shapiro** has substantial experience in recovering retirement funds lost by employees as the result of imprudent and disloyal conduct by plan fiduciaries, and in otherwise safeguarding the rights of ERISA plan participants. Courts have recognized the firm's aptitude in handling large ERISA cases, and have appointed the firm co-lead counsel in a number of such cases, including in the groundbreaking **Enron** ERISA litigation (which produced \$250 million in settlements for the benefit of former Enron employees, making it the largest ERISA settlement to date), and in the **GM ERISA** litigation (which resulted in a settlement for \$37.5 million and substantial injunctive relief for the benefit of a class of 401k plan participants). The firm also serves or has served as lead or co-lead counsel in ERISA cases on behalf of employees of **Washington Mutual, Inc.**, **IPALCO**, the **Montana Power Company** and **United Airlines**.

The firm pioneered the discovery of fraud in discounts to employee health plans, representing thousands of **Blue Cross** health insurance plan participants in 10 states who allege that the insurer overcharges participants, obtaining discounts from hospitals but not passing that savings along when calculating co-payments.

The firm's discovery led to a Congressional inquiry concerning the company's billing practices. **Hagens Berman Sobol Shapiro** also represents plaintiffs in a proposed class action against **Regence**, breaking new ground in the coverage of contraceptives by health insurance plans.

INSTITUTIONAL INVESTOR LITIGATION. **Hagens Berman Sobol Shapiro** provides specialized securities litigation services to public, private and Taft-Hartley pension funds, offering its proprietary and unparalleled asset protection and recovery services to both foreign and domestic institutions. By giving clients the ability to identify, investigate and react to potential wrongdoing by companies in which they invest, the firm enables them to be proactive, not merely reactive.

Recent class actions led by **Hagens Berman Sobol Shapiro** obtained significant settlements. In the **Morrison Knudsen** case, the firm secured a settlement of approximately 60 percent of the largest estimates of possible losses for class members, while in the **Oppenheimer Delta Partners Litigation** the class was awarded settlements of approximately 80 percent of possible losses. In the **Midisoft** case, **Hagens Berman Sobol Shapiro** obtained more than 50 percent of total damages. Numerous other recent cases such as **Waste Management** and **Cendant** have obtained hundreds of millions of dollars in settlements and recovered a large percentage of damages for injured shareholders.

INTELLECTUAL PROPERTY LITIGATION. **Hagens Berman Sobol Shapiro** has handled numerous cases involving various aspects of intellectual property (IP). Acting on inquiries from individuals and corporations, HBSS has conducted several investigations into the prosecution and defense of IP rights. IP law is designed to protect the property created by intellect, such as designs used in commerce, including inventions, patents, copyright, and trade dress. IP creations also include artistic works and literary works. In recent years, with the development of new electronic technology, advanced and specialized computer programs and Internet commerce, the definition of IP and how to protect the rights of such property has created very complicated and complex business issues. HBSS has successfully prosecuted and defended individuals and corporations in the area of intellectual property.

PRODUCT LIABILITY LITIGATION. When a product fails to meet accepted or advertised standards, the results can be hazardous or even deadly. In such cases, consumers deserve a right to redress. **Hagens Berman Sobol Shapiro's** product liability practice represents consumers in variety of product cases including automobile defects, home equipment and defective software.

Firm successes include a settlement involving **Louisiana-Pacific Siding** in which more than 130,000 claims have been paid exceeding \$500 million and a \$925 million settlement in a polybutylene piping case. **Hagens Berman Sobol Shapiro** also represents plaintiffs alleging defects in trunk release mechanisms in a case surrounding the death of four children who died locked in the trunk of a car. The firm continues to pursue **Ford** and **Nissan** on behalf of consumers with defective accelerators.

REAL ESTATE AND PREDATORY LENDING LITIGATION. As a result of the financial crisis the firm is deeply involved in lending class actions against Countrywide and Wells Fargo.

Arizona homeowners filed a class action lawsuit against Wells Fargo, claiming the lending giant illegally rigged the appraisal process in a scheme to boost profits at the expense of homeowners.

The lawsuit claims Wells Fargo forces homeowners to use its subsidiary, Rels Valuation, for appraisals. The lawsuit claims Rels Valuation subcontracts its appraisal work to a network of independent appraisers, offering them below market rates for appraisals. The company then marks the cost of the appraisal back as high as \$350 when invoicing homeowners.

Plaintiffs' claim the practice is damaging to homeowners who pay the inflated fee and results in tens of millions of dollars in additional profit for Wells Fargo for little to no work completed.

**Hagens Berman Sobol Shapiro** also filed a class action lawsuit claiming **Wells Fargo** and its appraisal management service, Rels Valuation, pressure and intimidate appraisers to deliver inflated home appraisal values. Rels provides the appraiser with a predetermined figure called the 'Borrower Estimated Value' and expects the appraisers to deliver reports with values exceeding the Rels-supplied figures. The lawsuit claims, if appraisers refuse to inflate prices and change their reports, they end up blacklisted and denied future work with the companies.

The lawsuit seeks to represent all state-licensed or state-approved appraisers nationwide who've been removed as an approved appraiser by Wells Fargo or Rels Valuation. The suit asks for treble damages and is the first lawsuit filed on behalf of appraisers against Wells Fargo and Rels. A similar case was filed against Countrywide and LandSafe for the same practice.

SECURITIES LITIGATION. A cornerstone of the firm's practice, **Hagens Berman Sobol Shapiro** contests securities fraud in courts across the nation. To prosecute these complex cases, the firm uses highly experienced experts in a variety of fields as an integral part of the prosecution team, expanding the group's expertise in sophisticated financial and accounting issues.

In a high-profile case, **Hagens Berman Sobol Shapiro** pursued **Boeing** after a tremendous stock loss resulted from the company allegedly conspiring to conceal production problems and bolster share prices through the conclusion of a stock-swap purchase of **McDonnell Douglas**. After several years of intense discovery and litigation, **Boeing** eventually agreed to a settlement that provided more than \$92 million to recoup investors for their losses.

The firm has also acted as co-lead counsel and plaintiffs' counsel representing investors in class actions for securities violations against a variety of corporations including **WPPSS, Boston Chicken, Oppenheimer, PriceCostco, MK Rail, Bonneville Pacific, Mercer International, and Omega Environmental**.

PERSONAL INJURY LITIGATION. Committed to justice and appropriate compensation in issues of personal injury and wrongful death, the firm assists clients in a range of personal injury litigation. **Hagens Berman Sobol Shapiro** knows that the health and quality of life of our clients hangs in the balance of the firm's work and has developed an exceptional track record in obtaining significant settlements and awards for the firm's clients.

WHISTEBLOWER LITIGATION. **Hagens Berman Sobol Shapiro** represents "whistleblowers" in a variety of industries with a significant number of cases involving clients using the False Claims Act to recover damages suffered by the federal government. Current cases include actions involving fraudulent Medicare billing, defense contractor fraud and distinctive theft cases.

## SPECIAL EXPERIENCE IN LITIGATION WITH THE PHARMACEUTICAL INDUSTRY

For years, HBSS has aggressively pursued pharmaceutical industry litigation, helping lead the fight for more affordable prescription drugs and for a more responsible pharmaceutical and medical device industry. We believe HBSS's pharmaceutical litigation practice is second to none in the nation in terms of expertise, commitment, and landmark results. In recent years, HBSS's aggressive prosecution of pharmaceutical industry litigation amounted to recovery of over *one-half billion dollars in gross settlement funds*. Recently, HBSS was lead counsel in three significant settlements:

NEW ENGLAND CARPENTERS HEALTH BENEFITS FUND V. FIRST DATABANK. HBSS recently negotiated a settlement, preliminarily approved by the United States District Court in the District of Massachusetts, that will result in a *four percent rollback* of prices on hundreds of drugs which represent ninety-five percent of the nation's retail branded drugs. The net impact of this rollback has been estimated to be in the billions of dollars and may lower the retail price for hundreds of brand name drugs, resulting in savings for health plans and consumers who have been overcharged for prescription drugs.

AVERAGE WHOLESALE PRICE DRUG LITIGATION. HBSS acted as lead trial counsel in a consolidated trial against four defendants. The court returned a verdict in favor of plaintiffs on claims against AstraZeneca and BMS, marking one of the first trial defeats for the pharmaceutical industry. On the heels of that verdict, AstraZeneca settled the consumer class for \$34 million. Each class member may receive *double damages* if they make a claim, a result unprecedented in a class settlement. Settlement with the consumer class was then obtained with BMS, again at double class member damages.

HBSS was the lead negotiator and counsel in a \$70 million settlement with GlaxoSmithKline, the world's second largest pharmaceutical manufacturer, over its role in artificially inflating the Average Wholesale Price that is used as a benchmark for almost all prescription drug sales in the United States. Thirty percent of the settlement will go to consumers, primarily individuals treated for cancer, who incurred co-payments based on AWP for certain drugs manufactured by GSK. The remaining seventy percent will go to third party payors, including health plans, HMOs, and other organizations, which purchased the GSK drugs.

SERONO DRUG LITIGATION. On February 14, 2007, the United States District Court for the District of Massachusetts preliminarily approved a \$24 million settlement negotiated by HBSS that will reimburse a class of consumers and third-party payors, including self-insured employers, health and welfare plans, and insurance companies, for part or all of their purchases of the AIDS drug Serostim. The underlying litigation alleges that Serono, Inc., a global biotechnology company, implemented a scheme to substantially increase the sales of Serostim by duping patients diagnosed with HIV into believing they were suffering from AIDS-wasting and required use of the drug.

In addition to these cases, HBSS is litigating more than two dozen other significant prescription drug and medical device cases involving antitrust and consumer protection claims. The various cases being prosecuted by HBSS challenge many aspects of systemic misconduct by pharmaceutical manufacturers and others in the prescription drug distribution chain, but they all have the same fundamental purposes: to lower prices of prescription drugs, improve access for consumers, and recover funds unfairly paid by governmental and private purchasers around the country. A description of existing and settled leading cases prosecuted by HBSS over the last five years is set forth below.

The following are examples of existing pharmaceutical and medical matters in which HBSS plays a lead role:

ZYPREXA PRODUCTS LIABILITY LITIGATION. HBSS is lead counsel for a nationwide class of private third-party payors in litigation against Eli Lilly & Co. This lawsuit challenges Lilly's fraudulent

promotion of the antipsychotic drug Zyprexa and alleges that Lilly engaged in a variety of fraudulent schemes to inflate sales at the expense of consumers and payors.

NEURONTIN MARKETING AND SALES PRACTICES LITIGATION. HBSS is the court-appointed liaison counsel for Plaintiffs and a member of the five-firm Plaintiffs Class Steering Committee. This lawsuit against Pfizer and its subsidiary, Parke-Davis, accuses the companies of circumventing FDA regulations to promote scientifically unproven “off-label” use of their drug Neurontin. HBSS served as co-lead trial counsel in the case which recently resulted in a \$47 million verdict against defendants. Interest and trebling of damages are expected to boost the final judgment significantly.

BEXTRA AND CELEBREX MARKETING SALES PRACTICES AND PRODUCT LIABILITY LITIGATION. HBSS is a member of the Plaintiffs Steering Committee and chair of the Purchase Claims Committee in MDL litigation against Merck and Pfizer on behalf of consumers and purchasers of the prescription pain medications Bextra and Celebrex. The suits allege Merck and Pfizer knowingly withheld information of the increased risk associated with the drugs of cardiovascular and other ailments in order to persuade doctors and consumers to purchase the drugs at inflated prices.

NEXIUM LITIGATION. HBSS is lead counsel in litigation against AstraZeneca Pharmaceuticals on behalf of purchasers of Nexium, a prescription drug used to treat heartburn. The suits allege AstraZeneca engaged in fraudulent and illegal activities related to the promotion and sale of Nexium, including sham patent infringement litigation against certain generic manufacturers in an attempt to extend the life and sales of Prilosec, Nexium’s precursor.

LOVENOX LITIGATION. HBSS is lead counsel in this litigation against Aventis Pharmaceuticals on behalf of end-payors of the anticoagulant Lovenox. The suit alleges Aventis engaged in sham patent infringement litigation against certain generic manufacturers in an attempt to thwart production of, and thus competition from, generic versions of Lovenox from entering the U.S. market.

The following examples show pharmaceutical and medical matters in which HBSS achieved substantial settlements:

LUPRON MARKETING AND SALES PRACTICES LITIGATION. This case alleges widespread fraudulent marketing and sales practices against TAP Pharmaceuticals, a joint venture between Abbott Laboratories and Takeda Pharmaceuticals, Inc., and it follows TAP’s agreement to pay \$875 million in combined criminal and civil penalties regarding marketing and sales practices for the prostate cancer drug Lupron. In late 2004, a proposed resolution on behalf of consumers and third-party payers of Lupron in the amount of \$150 million was announced.

AUGMENTIN ANTITRUST LITIGATION. HBSS is court-appointed co-lead counsel in this antitrust litigation against Glaxo SmithKline Corporation and its predecessors alleging that GSK engaged in a pattern and practice of sham litigation and fraudulent procurement of a patent relating to the broad spectrum antibiotic, Augmentin. A settlement of \$29 million on behalf of consumers and other payers of Augmentin was recently consummated.

PAXIL DIRECT PURCHASER LITIGATION. HBSS was court-appointed co-lead counsel in this litigation on behalf of direct purchasers of the “blockbuster” selective serotonin reuptake inhibitor Paxil in claims against Glaxo SmithKline Corporation alleging that GSK engaged in sham patent litigation with respect to certain patents, all in an effort to delay competition from the entry of a generic form of the drug. HBSS announced a \$100 million resolution of these claims in 2004.

RELAFEN ANTITRUST LITIGATION. HBSS was court-appointed liaison counsel and the firm has helped spearhead this litigation against Glaxo SmithKline Corporation and its predecessors alleging that GSK fraudulently obtained a patent to prevent a generic version of Relafen, a frequently prescribed brand

name pharmaceutical, from coming to market. Litigated for twelve to eighteen months, HBSS announced a proposed \$75 million resolution of end-payor claims in 2004.

# Hagens Berman vs. Big Tobacco

Hagens Berman Sobol Shapiro played a major role in representing state government in litigation against the tobacco industry. Because of the unprecedented nature of this litigation, Hagens Berman Sobol Shapiro's role and approach is detailed here.

**A TRIAL HARDENED LITIGATION TEAM.** In the State Attorneys General actions, only two states actually took their cases to trial - Washington and Minnesota. This means that in a government tobacco law enforcement and medical cost recovery action, only two private firms in the entire country have trial experience against the industry - **Hagens Berman Sobol Shapiro** is one of those firms.

In the Washington case, the firm's managing partner Steve Berman was co-lead trial counsel. In this role at trial, he participated in voir dire, delivered the majority of the State's opening statement and presented witnesses, two of whom would become the most important witnesses in the liability phase of the case (Dr. Jack Henningfield, an expert on cigarette design, and Dr. William Farone, former director of research for Philip Morris). Steve also chaired major strategic decisions, and the firm assisted in the preparation of other witnesses presented by the State's other trial lawyers in the case.

**AN EMPHASIS ON LAW ENFORCEMENT.** **Hagens Berman Sobol Shapiro** was instrumental in developing what came to be accepted as the predominant legal tactic to use against the tobacco industry; to wit, emphasizing traditional law enforcement claims such as state consumer protection, antitrust and racketeering laws. Before **Hagens Berman Sobol Shapiro's** involvement in the state cases, the predominant claims being pursued by most of the states were traditional tort claims, which proved in many states to be unsuccessful. With the exception of the Idaho case, not a single court in a case where **Hagens Berman Sobol Shapiro** served as private counsel to a state dismissed a state's consumer protection or antitrust claims.

In three states - Arizona, Ohio and Oregon - **Hagens Berman Sobol Shapiro** took the lead in pressing the respective states' racketeering statutes and, as a result, the tobacco defendants were faced with the very real prospect of a profits disgorgement remedy, penalties and, in the case of Ohio, the payment of double damages.

**EXCELLENT WITNESS RAPPORT.** One of the keys to beating the tobacco industry lies with presenting the proper witnesses, both expert and lay witnesses. With so many states in litigation against the industry, the time and resources of many of the important expert witnesses were taxed. As a result, several witnesses decided to limit their involvement to a small number of states. We found that some of these witnesses most approved of the manner in which **Hagens Berman Sobol Shapiro** assisted in the preparation and presentation of their testimony. Therefore, our firm and the states we worked with became priority clients of these witnesses.

**LEGAL RESEARCH AND BRIEFING.** With the emphasis on law enforcement claims, **Hagens Berman Sobol Shapiro** attorneys built on their already considerable experience utilizing consumer statutes and became experts in consumer protection, antitrust and racketeering laws in the states the firm represented. Because many of these state statutes were patterned after and followed federal law, our expertise with the FTC Act, the Clayton and Sherman Acts, and federal RICO grew. In each state we represented, **Hagens Berman Sobol Shapiro** took the lead in opposing defendants' onslaught of motions to dismiss and, where applicable, motions for summary judgment. As the record reflects, we achieved a remarkable degree of success in these endeavors.



LIABILITY DOCUMENT DATABASE. **Hagens Berman Sobol Shapiro** helped initiate and coordinate the so-called multi-state document review project. This was instituted to ensure that all relevant documents were produced, reviewed and selected for use by the states in the Attorneys General actions. More than 30 million documents were reviewed under the firm's supervision by 12 lawyers from the firm and more than 40 assistant attorneys general. As a result of these efforts, we have compiled comprehensive liability documents that are readily searchable by employing a variety of search criteria and are easily accessible. In addition, having gone to trial against the industry, we organized the best or "hottest" liability documents in our trial exhibit notebooks.

DE-PRIVILEGING EXPERTISE. Some of the most damaging liability documents for the industry were and are improperly cloaked from discovery by false claims of attorney-client and work product privilege. Many of these documents were brought to light in the Minnesota litigation, but thousands remained. In a coordinated strategy employed across many of the states that **Hagens Berman Sobol Shapiro** represented, we continued the de-privileging of these important documents. This effort required countless hours in hearings with judges and special masters, in addition to extensive briefing.

A FOCUS ON TARGETING MINORS. In tandem with our general law enforcement approach, **Hagens Berman Sobol Shapiro** focused the state legal claims on the industry's deplorable practice of luring children to tobacco use. As part of this focus, in Arizona and Ohio we commissioned an expert survey of adolescents' perception of tobacco advertising in general and, more specifically, on the deception of RJR's Winston 'No Bull/No Additives' campaign. The survey data revealed that the vast majority of minors exposed to the campaign believed that the 'No Additives' slogan meant that the cigarette was either less addicting, safer or less harmful to health (when, of course, this was not true). This campaign was the target of a preliminary injunction motion in the Arizona case that was still pending when the states settled their cases. On March 3, 1998, the FTC announced it settled a claim it had subsequently filed on this issue based on our work in Arizona.

TESTING OUR TRIAL STRATEGY WITH FOCUS GROUP STUDIES. **Hagens Berman Sobol Shapiro** conducted numerous focus groups in different states, thus acquiring unparalleled experience with the reactions of potential jurors.

SERVING THE ELECTED CLIENT. **Hagens Berman Sobol Shapiro** was chosen, after competitive bidding, as counsel for 13 states, including those with Democratic and Republican leadership. The reason for our retention, in addition to excellent trial skills and complex litigation service, was our sensitivity to the needs of clients who were elected officials.

KEY ROLE IN THE NATIONAL SETTLEMENT NEGOTIATIONS. Steve Berman was heavily involved in the proposed June 20, 1997 national settlement and the November 1998 final state settlement that settled all of the state's cases for \$206 billion. As such, he has unparalleled experience in negotiating with tobacco industry lawyers and the tobacco companies' CEOs.

TRIAL EXPERIENCE. The trial of the Washington case was one of the largest trials conducted in the United States, lasting three months. Thousands of exhibits were offered into evidence and the case was presented using state-of-the-art technology.

## A Short Historical Perspective

(in alphabetical order)

**ALDUS LITIGATION.** The firm acted as co-lead counsel for shareholders in an action settled for payment of up to \$10.6 million to Aldus shareholders.

**EGGHEAD LITIGATION.** In two separate cases, the firm acted as lead counsel for shareholders injured as a result of misrepresentations made in connection with Egghead's initial public offering of common stock, and secondary trading in Egghead stock.

**FOODMAKER LITIGATION.** The firm acted as co-lead counsel after Foodmaker's stock declined in reaction to the Jack-in-the-Box poisoning outbreak. The discovery work done by the firm was utilized and copied by personal injury lawyers who recovered in excess of \$100 million from Foodmaker.

**IMMUNEX LITIGATION.** The firm acted as co-lead counsel on behalf of a class of purchasers of Immunex stock. A settlement of \$14 million was approved by the federal court.

**INTERMEC LITIGATION.** The firm acted as co-lead counsel for shareholders after Intermec stock dropped 30 percent in value over a two-quarter period as a result of a succession of overly optimistic earnings estimates. Our efforts netted a \$5.9 million settlement for the shareholders.

**LOUISIANA-PACIFIC SIDING LITIGATION.** The firm acted as co-lead counsel on a consumer case arising from the failure of a new type of hardboard siding used to clad homes. Over a million consumers are in the class. The case resulted in a landmark, highly favorable settlement that has resulted in compensation for homeowners across the country.

**MICHAEL MILKEN LITIGATION.** The firm, on behalf of beneficiaries of several Washington State public employee pension funds which are administered by the Washington State Investments Board ('WSIB'), brought a RICO and breach of fiduciary duty suit against noted junk bond king Michael Milken, and over forty individuals who were involved as principals or participants in the leveraged buyouts of Beatrice, Safeway, Pace, City and Motel Six. This case pitted the firm against some of America's most powerful individuals and companies. A settlement was reached and received final approval from the Court.

**MORRISON KNUDSEN LITIGATION ('MK').** MK was at the time the largest employer in Boise, Idaho. After a significant write off, **Hagens Berman Sobol Shapiro** filed a shareholder class action, alleging that MK's CEO, William Agee, and other officers, had misled the investors as to MK's true status. The lawsuit claimed that MK was concealing hundreds of millions in losses. In Boise, the public and even the Court were skeptical that this venerable local company could have misled investors. After bitterly fighting the suit, MK ousted Agee and admitted that it was facing hundreds of millions in losses and declared bankruptcy. **Hagens Berman Sobol Shapiro** was able to recover over \$63 million for investors, resulting in what is believed to be the largest settlement in the State of Idaho (except in the tobacco case).

**NORDSTROM LITIGATION.** The firm acted as co-lead counsel for shareholders claiming that the company had misrepresented its liabilities for labor in publicly filed documents distributed to the Investment Community. Steve Berman obtained a \$7.5 million settlement from the company and its inside directors.

**PIPER JAFFRAY.** This action was brought as a class action on behalf of purchasers of common shares of eight closed-end investment companies established, marketed and operated by the Piper Jaffray Companies, Inc., and various subsidiaries. These funds contained Mortgage-backed securities that were routinely referred to as 'AAA' or 'government securities' by defendants in an effort to convince investors

of their overall safety. Defendants ignored or misrepresented the effect that interest rate or market risks would have on these types of investments. In reality, these securities are extremely complex and intricate and are acutely sensitive to changes in market interest rates and are often used as part of an overall strategy to speculate on the course of market interest rates in the future. Unfortunately for Class members, the Defendants lost their gamble on interest rates using the shareholders' money. Market interest rates rose sharply throughout 1994, dealing a devastating blow to the speculative portfolios of the various closed-end funds. Due to the undisclosed risks that defendants undertook, the closed-end funds – and the Class members – suffered massive losses.

A settlement valued at over \$50 million was achieved.

**SPOKANE ASPHALT ANTITRUST LITIGATION.** Carl Hagens and Steve Berman represented independent asphalt pavers who had been excluded from the Spokane asphalt industry. As a result of the case, the Spokane paving industry is open to independent contractors.

**U.S. WEST LITIGATION.** The firm represented shareholders of U.S. West New Vector in a challenge to the proposed buyout of minority shareholders by U.S. West. As a result of this litigation, the proposed buyout was stayed, and a settlement was achieved that resulted in a \$63 million increase in the price of the buyout.

**WASHINGTON PUBLIC POWER SUPPLY SYSTEM SECURITIES LITIGATION.** Steve Berman and James Solimano represented bondholders and the bondholder trustee of WPPSS Nuclear Projects 4 and 5 bonds. Following the largest municipal bond default in history (\$2.25 billion), the trustee, joined by bondholders, brought one of the most complex and protracted securities fraud cases ever filed. After more than five years of intensive litigation, the trustee and the other plaintiffs recovered in excess of \$850 million in settlements from more than 100 defendants. The implementation of various settlement agreements continues and will be a firm matter.

**WASHINGTON STATE FERRY WORKERS WAGE LITIGATION.** The firm represented a class of on-call seamen who alleged that they were not paid for being 'on call' in violation of federal and state law. The case resulted in a rearrangement in work assignments and of the 'on call' system that has resulted in better working conditions.

**WPPSS COST SHARING LITIGATION.** The firm represented Chemical Bank, the trustee for WPPSS Projects 4 and 5 bondholders, in litigation against nearly 100 defendants. The bank recovered \$55 million in costs misallocated among the WPPSS nuclear projects.

# Securities Litigation

Securities litigation has been one of the cornerstones of **Hagens Berman Sobol Shapiro's** practice since the inception of our firm. We have recovered hundreds of millions of dollars for institutional and individual investors defrauded by unscrupulous management of publicly held corporations.

In light of recent cases, such as Enron, **Hagens Berman Sobol Shapiro's** work is even more well recognized as crucial to protecting the rights of investors.

**Hagens Berman Sobol Shapiro** provides unparalleled services to combat corporate fraud. Our attorneys are experts in a wide array of issues unique to specific industries. We also use highly experienced experts in a variety of fields as an integral part of the prosecution team.

According to the former Chairman of the SEC, Arthur Levitt, "... we are witnessing an erosion in the quality of earnings, and therefore the quality of financial reporting. Managing may be giving way to manipulation; Integrity may be losing out to illusion."<sup>1</sup>

We recognize that investing is, by nature, a speculative business involving a wide variety of risks. But no money manager or individual investor should be forced to endure undue risk as a result of misreported financial conditions. We vigorously pursue fraud recovery litigation that forces corporations to answer to the investors they have deceived.

Our firm has represented investors in nationwide class actions for securities violations against WPPSS, Boeing, Einstein-Noah Bagel, Boston Chicken, Exxon-Mobil, Oppenheimer, Morrison Knudsen, ProCyte, Wall Data, PriceCostco, MK Rail, Bonneville Pacific, Mercer International, NeoRx, Egghead and Omega Environmental.

We currently have securities actions in California, Colorado, Florida, Idaho, Michigan, Utah, Tennessee, Texas, Minnesota, New York, and Washington.

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<sup>1</sup> *The Numbers Game*, remarks by Arthur Levitt on September 28, 1998 at the NYU Center for Law and Business.

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## SERVICES PROVIDED TO INSTITUTIONAL INVESTORS

**Hagens Berman Sobol Shapiro** is a leading provider of specialized securities litigation services to public, private and Taft-Hartley pension funds. We offer proprietary and unparalleled asset protection and recovery services to both foreign and domestic institutions. Our institutional services provide participants with the ability to identify, investigate and react to potential wrongdoing by companies they invest in.

Our program enables clients to be proactive, not reactive. We update our clients on an ongoing basis regarding their exposure and advise them on their legal rights and potential remedies. We make a commitment to our institutional and pension fund clients to protect and defend all of their rights as shareholders and guardians of their beneficiaries' retirement funds.

When money managers suffer lost percentage points as a result of corporate deception, our litigation services allow them to recover a substantial percentage of those losses, increasing the money manager's performance. However, we realize that as a fiduciary, money managers may not have the ability or desire to risk funds on speculative litigation using typical hourly-rate law firms. Therefore, **Hagens Berman Sobol Shapiro** provides institutional investors with several methods of fraud recovery litigation services.

Depending on the size and facts of the case, we may bring individual action on behalf of the institutional investor. Another method is for the institutional investor to be the lead plaintiff in a securities class action against the offending company. **Hagens Berman Sobol Shapiro** helps clients decide which course of action is best for them, and is well-qualified to pursue either method of recovery.

## THE VALUE OF CLASS-ACTION LITIGATION

Many class-action cases are very successful, and provide meaningful recoveries to the class members. For example, the Morrison Knudsen and Oppenheimer Delta Partners litigations - both led by **Hagens Berman Sobol Shapiro** - obtained settlements of approximately 60 percent and 80 percent, respectively, of the largest estimates of possible losses for the class members. The Midisoft case, also directed by **Hagens Berman Sobol Shapiro**, obtained more than 50 percent of total damages. Many other recent cases, such as Waste Management and Cendant, have obtained hundreds of millions of dollars in settlements and recovered a large percentage of damages for injured shareholders.

## DUTIES OF A LEAD PLAINTIFF

As the lead plaintiff in a class action, the court requires that you will adequately and fairly represent the class. To perform these duties, the institution must be familiar with the litigation. This does not mean it must know every aspect of the litigation. **Hagens Berman Sobol Shapiro** will keep the institution informed of major events and this will satisfy its duty.

The institution may and should confer with us at any time it feels it is appropriate. The institution must also agree to vigorously prosecute the litigation. Meaning, you must hire lawyers experienced in class-action litigation. **Hagens Berman Sobol Shapiro** has national experience in class actions, and has vigorously prosecuted numerous securities fraud class-action cases, with combined recoveries in the hundreds of millions of dollars.

All costs in prosecuting a class action are advanced and paid by **Hagens Berman Sobol Shapiro**, and the institution is not responsible for their payment whether we are successful or unsuccessful.

In short, the institution has minimal time commitments and no financial responsibilities, but will be encouraged to provide its opinions and insights.

### **AN INSTITUTION'S PRESENCE CAN DRAMATICALLY AFFECT THE LITIGATION**

As lead plaintiff, an institution has a direct influence on the strategies and disposition of the case, thereby having a profound effect on the ultimate success of the litigation.

As lead plaintiff, the institution will be a key member of the decision-making team. It will be able to help decide if a contemplated settlement is too low or if it is reasonable under the circumstances. For institutions that have been unhappy with the returns from previous class-action lawsuits they have participated in, overseeing the process to ensure that they are happy with the ultimate result is a compelling reason to participate.

## Environmental Litigation

Environmental litigation on behalf of victims of toxic spills or pollution and other land use practices is also an increasing area of focus for **Hagens Berman Sobol Shapiro**. The following is a profile of some of our cases.

**KIVALINA GLOBAL WARMING LITIGATION.** Hagens Berman Sobol Shapiro is pursuing a case involving the disappearance of a village due to Global Warming. A tiny impoverished Alaskan village of Inupiat Eskimos is taking action against some of the world's largest greenhouse gas offenders, claiming contributions to global warming are leading to the destruction of their village and causing erosion to the land that will eventually put the entire community under water. HBSS, along with five law firms and two non-profit legal organizations, filed a lawsuit against industrial corporations that emit large quantities of greenhouse gases into the atmosphere. The lawsuit calls out nine oil companies and 14 electric power companies as named defendants. The lawsuit claims the defendants' actions are resulting in the destruction of protective ice, exposing the village to severe fall and winter storms that destroy the ground the village stands on. The U.S. Army Corps of Engineers estimates that relocating the village of Kivalina, population of 400, could cost between \$95 and \$400 million – an expense the community cannot afford.

**CHINOOK FERRY LITIGATION.** The firm represented a class of property owners who challenged Washington State Ferries' high-speed operation of a new generation of fast ferries in an environmentally sensitive area of Puget Sound. Two of the ferries at issue, the *Chinook* and *Snohomish*, caused environmental havoc and property damage, compelling the property owners to take action. After a successful preliminary trial, the trial court enjoined the operation of the ferries at high speed pending compliance with environmental laws, which was later overturned on appeal by the Washington Supreme Court. A SEPA study conducted in response to the suit confirmed the adverse environmental impacts of the fast ferry service. The trial court approved a \$4.4 million settlement that is among the most favorable in the annals of class litigation in the State of Washington.

**GRAND CANYON LITIGATION.** The firm represented the Sierra Club in a challenge to a Forest Service decision to allow commercial development on the southern edge of the Grand Canyon National Park. Recently the trial court enjoined the project.

Exxon Valdez Oil Spill  
Cleanup

Exxon Valdez Oil Spill



**EXXON VALDEZ OIL SPILL LITIGATION.** The firm represents various classes of claimants, including fisherman and businesses located in Prince William Sound and other impacted areas, who were damaged by the worst oil spill in United States history. A \$5 billion judgment was awarded by a federal court jury and a \$98 million settlement was achieved with Alyeska, the oil company consortium that owned the output of the pipeline. The Ninth Circuit Court of Appeals recently overturned the punitive damage award and indicated the district court should reconsider the amount, but not the issue of whether punitive damages were appropriate.

**KERR-MCGEE RADIATION CASE.** The firm represented a class action on behalf of residents of West Chicago, Illinois, who have been exposed to radioactive uranium tailings from a rare earth facility

operated by Kerr-McGee. The trial court has upheld plaintiff's claim, and Kerr-McGee unsuccessfully sought review in the 7<sup>th</sup> Circuit Court of Appeals. A medical monitoring settlement valued in excess of \$5 million has received court approval.

SEATAC LITIGATION. The firm represented homeowners who claimed that the operation of the Seattle-Tacoma Airport destroyed their property values. The case was the largest inverse condemnation case asserted against a governmental agency in the Pacific Northwest. After a jury trial, the case settled.

SKAGIT VALLEY FLOOD LITIGATION. The firm represented farmers, homeowners and businesses who claimed damages as a result of the 1990 flooding of this community. The case, which had been in litigation for ten years and involved a jury trial of over five months in Snohomish County, was the longest jury trial ever conducted in Snohomish County. Following the entry of 53 verdicts against Skagit County, the trial Court entered judgments exceeding \$6.3 million. Ultimately, the State Supreme Court reversed this judgment. Despite this reversal, the firm is proud of this representation and believes that the Supreme Court erred.

RIO TINTO. In a landmark case, the firm represents victims of Rio Tinto's mining operation on the island of Bougainville. To build the mine, Rio chemically defoliated, bulldozed and sluiced off an entire mountainside of rain forest. During the years of the mine's operations, billions of tons of toxic mine waste was generated and dumped onto the land and into pristine waters, filling major rivers with tailings, polluting a major bay dozens of miles away, and the Pacific Ocean as well. As a result of its flagrant disregard for the environment and the people of Bougainville, Rio dispossessed the people of Bougainville from their land, destroyed their culture and polluted their environment and lifestyle. Rio destroyed previously pristine rivers and land that provided substance and a way of life for the native people and went to the heart of their local culture. The pollution is so extensive that plaintiffs and members of the class have been exposed to toxic chemicals. In certain villages, the chemicals still remaining have caused the death and/or illness of residents.

Rio's actions on Bougainville were so egregious that they sparked an uprising designed to close the mine. When the uprising succeeded, Rio and the PNG government brought troops in to reopen the mine. Rio provided transport for these troops. After initial unsuccessful efforts, the PNG government, as the agent of or co-venturer of Rio and with the support and encouragement of Rio, instituted a military blockade of the island that lasted for almost ten years. The purpose of the military blockade was to coerce the Bougainville people into surrender so that the mine could be reopened. Both Rio and PNG made enormous profits from the mine and were anxious for it to operate, notwithstanding the resistance of the island's people. The blockade prevented medicine, clothing and other essential items from reaching the people of Bougainville. Hospitals were forced to close, women died needlessly in childbirth and young children died from easily preventable diseases. Rio's top manager of the Bougainville mine encouraged continuation of the blockade for the purpose of 'starving the bastards' out. This blockade directly caused the deaths of at least 10,000 people between 1990 and 1997. According to the Red Cross, the blockade killed more than 2,000 children in just its first two years of operation. By the time the war ended in 1999, 10% of the population of Bougainville, approximately 15,000 civilians, were killed.

The action alleges that Rio's conduct violated customary international law, including prohibitions against destruction of the right to life and health, and prohibitions against racial discrimination, and war crimes. Rio's conduct violated the settled standards for the protection of human rights and the environment recognized by customary international law and United States legal precedent. The plaintiffs seek redress under the federal Alien Tort Claims Act (28 U.S.C. § 1350).



Skagit Valley Flood



Dead Forest Vegetation as a Result of Raised Water Table Levels Near Old Kuneka



## The Partners



### STEVE W. BERMAN

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Mr. Berman helped to found the firm in 1993, and is the managing partner. He has served as lead or co-lead counsel in securities, consumer, products liability, antitrust, employment class actions, and complex litigations in the Northwest and throughout the country. Some of the high-profile matters Mr. Berman has prosecuted include the **Washington Public Power Supply System**, **Exxon Valdez Oil Spill**, **Michael Milken Litigation**, **Enron Litigation**, **Tobacco Litigation**, **Average Wholesale Price Litigation**, **McKesson Litigation** and the **Visa/MasterCard Litigation**.

Mr. Berman's successes include obtaining a settlement of \$92 million in the **Boeing Securities Litigation**, representing stock and bondholders in the **Bonneville Pacific Securities Litigation**, and gaining approval of a \$290 million settlement in the **Louisiana Pacific Siding Litigation**, the largest product liability settlement in Pacific Northwest history. In the **WPPSS Securities Litigation**, Mr. Berman represented bond purchasers in the largest securities trial in U.S. history. In addition to being a member of the trial team, the lead counsel designated him as a core group member alongside a group of class plaintiffs and **Chemical Bank** attorneys charged with prosecuting the case. The case resulted in a settlement exceeding \$850 million, the largest recovery in a securities class action at the time.

Mr. Berman's innovative approaches to litigation have earned him significant recognition. When beneficiaries of state employee pension funds refused to pursue sums from **Michael Milken's** misappropriation of warrants, Mr. Berman stepped forward, pioneering the Milken action and using a unique approach to recovery. As co-lead counsel in multi-state class actions against **Blue Cross**, he uncovered Blue Cross' breach of fiduciary duties owing to plan participants in the manner in which co-payments are calculated. His discovery led to Blue Cross being sued in dozens of states with lawyers throughout the country emulating his approach. Eventually the way in which co-pays are calculated has changed industry-wide resulting in billions of savings for consumers.

Steve is currently working on the **Schwab YieldPlus Litigation**, **McKesson-First Data Bank Litigation**, **Nexium Litigation**, **Average Wholesale Price Litigation**, **Lipitor Litigation**, as well as representing several states on drug pricing litigation (Arizona, Nevada, and Montana) and securities litigation (Ohio). He is also lead counsel in the **DRAM Antitrust Litigation** and the **Rio Tinto Litigation** and is actively involved in the firms Predatory Lending cases.

Perhaps most notable is Mr. Berman's role as a special assistant attorney general for the states of Washington, Arizona, Illinois, Indiana, New York, Alaska, Idaho, Ohio, Oregon, Nevada, Montana, Vermont, and Rhode Island in the landmark **Tobacco Litigation**.

A principal in the groundbreaking settlement with Liggett and the proposed national settlement, Mr. Berman was one of only two private attorneys acting as members of the negotiating team. He conceived the idea to use Liggett as the whistleblower and secured the cooperation of Bennet LeBow, Liggett's CEO, as well as insisting that Liggett waive all claims of attorney-client privilege. Mr. Berman also negotiated the settlement that required Liggett to admit what the industry has denied to this day: smoking causes cancer and heart disease; nicotine addicts; and the industry targets children. Liggett's admissions, the cooperation of LeBow, and the release of previously privileged documents were instrumental factors in driving the industry to settlement. Liggett's 'plea of guilty' added momentum to the 1997 proposed national settlement, which led to the eventual \$206 billion multi-state settlement in 1998.

The announcement of the final settlement found Mr. Berman in his ninth week of trial presenting the state of Washington's case to a jury. His successful handling of the bulk of the trial earned him great respect. Subsequently, some of Washington State's leading trial lawyers hired Mr. Berman to try a certified class action brought by union trust funds against tobacco. The book, *People v. Big Tobacco*, describes his role in the Tobacco Litigation.

Other notable actions led by Mr. Berman include the **Morrison Knudsen Securities Litigation**, **Contact Lens Disposable Antitrust Litigation** and **Piper Jaffray Closed-End Funds Litigation** in which he obtained a settlement valued at nearly \$60 million. Mr. Berman's cases have also involved corporate entities such as **Egghead**, **Foodmaker**, **SuperMac**, **Immunex**, **Digital Systems**, and **Aldus**.

More recently, **Microsoft** recognized Mr. Berman's experience and expertise when the company retained him to be part of the core national team representing the company in antitrust class actions arising from Judge Jackson's Findings of Fact in the Department of Justice antitrust case against the company.

In April 2000, the *National Law Journal* listed Mr. Berman as the top litigator in the state and, in June, named him as one of the 100 most powerful lawyers in the nation. In January 2001, *Seattle Magazine* featured him in an issue profiling the top lawyers in Seattle. In June 2006, the *National Law Journal* once again named Mr. Berman as one of the nation's 100 most influential lawyers in America. Mr. Berman was also named as a finalist for the Trial Lawyer of the Year award for 2006 by *The Trial Lawyers for Public Justice*.

Recently, Mr. Berman successfully tried consumer class actions against AstraZeneca and Bristol Myers Squibb, and leads the Average Wholesale Price Litigation (over \$200 million in settlements) and the McKesson Litigation (\$350 million in settlements).

Mr. Berman graduated from the University of Michigan in 1976 and earned his law degree from the University of Chicago Law School in 1980.

#### JENIPHR A. E. BRECKENRIDGE

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Ms. Breckenridge is a partner at Hagens Berman Sobol Shapiro where she has practiced law since its founding in 1993. Ms. Breckenridge's practice concentrates on securities fraud and consumer litigation. Ms. Breckenridge is involved with the firm's **Average Wholesale Price Litigation**. Other notable cases include leading the firm's efforts in the recently-settled **Raytheon Securities Litigation**, **Boeing Securities Litigation**, **Abbott Laboratories Litigation** and **Tobacco Litigation**.

In the Tobacco Litigation, Ms. Breckenridge spearheaded **Hagens Berman Sobol Shapiro's** effort to develop facts surrounding defendant British American Tobacco Industries and its subsidiaries, including Brown & Williamson and BATCo. Reviewing BAT documents held in a repository in Guildford, England, she explored issues of American court jurisdiction over BAT entities; BAT's participation in the worldwide industry conspiracy; and BAT and Brown & Williamson lawyer involvement in the conspiracy, as well as other issues related to liability.

Ms. Breckenridge earned her undergraduate degree from Georgetown University in political theory and economics. She graduated from the University of Maryland Law School, where she was the Notes and Comments editor of the *Maryland Law Review*.

## ELAINE T. BYSZEWSKI

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Ms. Byszewski is a partner at Hagens Berman Sobol Shapiro's Los Angeles office where she has worked since 2004. Her work has included consumer and employee protection suits against **Merck (Vioxx)**, **AstraZeneca Pharmaceuticals (Nexium)**, **Berkeley Nutraceuticals (Enzyte)**, **Solvay Pharmaceuticals (Estratest)**, **Apple Computers**, and **Costco Wholesale Corporation**, among others.

Prior to joining the firm, Ms. Byszewski focused her practice on public sector labor and employment litigation and counseling, including extensive work on a class action race discrimination case, a wrongful termination case and a disability discrimination case. During law school she worked in the trial division of the Attorney General of Massachusetts' office.

Among Ms. Byszewski's several publications are "Valuing Companion Animals in Wrongful Death Cases: A Survey of Current Court and Legislative Action and A Suggestion for Valuing Loss of Companionship" in *Animal Law Review* (2003), and "What's in the Wine? A History of FDA's Role" in *Food and Drug Law Journal* (2002).

Ms. Byszewski graduated *summa cum laude* from the University of Southern California in 1999 with a Bachelor of Science in public policy and management with a health care emphasis. She earned her law degree *cum laude* from Harvard Law School in 2002. She is admitted to practice law in the state of California.

## ROBERT B. CAREY

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Mr. Carey has been the managing partner at Hagens Berman Sobol Shapiro's Phoenix office since 2002. His practice includes handling numerous class-action lawsuits against a variety of organizations and companies - including the **Swift Truckers Litigation** and the **Average Wholesale Price Litigation**. He recently acted as co-lead counsel for the Hyundai Litigation, which settled for approximately \$100 million.

Mr. Carey's previous experience focused on personal injury, medical malpractice and various class-action cases. In addition to arguing several high-profile cases in state Supreme Courts and Courts of Appeals, he litigated multi-billion dollar claims by counties for damages stemming from tobacco-related illnesses and dozens of consumer and insurance class actions in various states. Mr. Carey also served as judge pro tempore in Maricopa County Superior Court and as special counsel for Hagens Berman Sobol Shapiro suits to recover Medicaid and statutory damages in the landmark public health litigation.

From 1990 to 1996, as Arizona's Chief Deputy Attorney General, Mr. Carey oversaw all major legal, policy, legislative, and political issues for the Arizona attorney general's office. He also obtained a \$4 billion divestiture, a landmark \$165 million antitrust settlement, and won numerous consumer and tort cases. Mr. Carey drafted and spearheaded passage of Arizona's law requiring the DNA testing of all sex offenders and instituted a penalty requiring that criminals pay the cost of victims' rights. He was also a principal draftsman of the first major overhaul of Arizona's criminal code, and drafted the bulk of the federal Prisoner Litigation Reform Act of 1995 for Senators Bob Dole and Jon Kyl, and authored the counterpart Arizona act that served as a model for other states and the federal act. His legislative experience began when he served as a former campaign staffer, intern, and staff member for U.S. Senator John McCain, during and after Senator McCain's first run for public office.

Recognized by the judges of the Superior Court of Arizona in Maricopa County for outstanding contributions to the justice system, Mr. Carey frequently presents at national conferences and teaches tort,

contract and public policy courses, most recently at the University of Colorado's graduate business school.

Mr. Carey earned his bachelor's degree from Arizona State University, and received his MBA and law degree from the University of Denver. He also attended Harvard University's John F. Kennedy School of Government, where he studied in the state and local government program.

#### ELIZABETH A. FEGAN

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Beth is a partner at Hagens Berman Sobol Shapiro's Chicago office where she has worked since 2004. Beth's practice includes a variety of complex commercial class action cases in the areas of antitrust, pharmaceutical litigation, insurance fraud, consumer protection and employment discrimination. Beth's recent successes include the pending settlement of a nationwide class action alleging sexual harassment on behalf of 16,000 current and former female employees of a commercial property brokerage firm. In addition to requiring changes to human resources policies and procedures, the innovative settlement affords class members the opportunity to participate in a stream-lined claims process that provides the potential for individual awards up to \$150,000 per class member.

Beth's current cases include the **Clear Channel Live Rock Concert Antitrust Litigation**, the **Baby Products Antitrust Litigation**, the **Midland Senior Annuities Fraud Litigation**, and the **American Equity Senior Annuities Fraud Litigation**.

Prior to joining the firm, Ms. Fegan was a partner at The Wexler Firm LLP in Chicago. Her legal work consisted of finance lending discrimination lawsuits, pharmaceutical and antitrust litigation, civil rights charges and suits, and auditing and accounting malpractice litigation. She also served as legal writing instructor at the Loyola University Chicago School of Law.

While previously practicing at Shefsky & Froelich, Ltd. in Chicago, Ms. Fegan served in several local government appointments and on a special master team in federal and state court. The local government appointments included positions as special assistant corporation counsel to the city of Chicago, the Chicago Park District and the Public Building Commission of Chicago.

Ms. Fegan received her law degree from Loyola University Chicago School of Law. While there, she was editor at large of the *Loyola Law Journal* in which she published "Home Rule Hits the Road in Illinois: American Telephone & Telegraph Company v. Village of Arlington Heights."



#### ERIN K. FLORY

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Mr. Flory is a partner at Hagens Berman Sobol Shapiro where he focuses on securities and class-action litigation. His writing and legal analysis have been vital to the firm's rise to national prominence, helping to establish the high standards that exemplify the **Hagens Berman Sobol Shapiro's** written court submissions.

Mr. Flory plays a prominent role in several securities cases, including **Schwab, Boeing, Boston Chicken, Einstein/Noah Bagel, Midcom, Wall Data, Immunex** and **Bonneville**.

Prior to joining the firm, Mr. Flory worked for a leading corporate defense firm, leaving in 1991 to represent the interests of injured investors, consumers, workers, and homeowners in their challenges to corporate misconduct. After obtaining his law degree, he clerked for Judge Thomas S. Zilly of the United

States District Court for the Western District of Washington and for the Washington State Court of Appeals.

Mr. Flory graduated *summa cum laude* and Phi Beta Kappa from the University of Washington in 1983 with a degree in economics. He earned his law degree from the University of Washington Law School, where he served as an executive editor of the *Washington Law Review*.

#### JEFFREY D. FRIEDMAN

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Mr. Friedman is a partner at Hagens Berman Sobol Shapiro's San Francisco office where he specializes in class actions against large corporations involving securities fraud, consumer protection and privacy rights violations and has litigated numerous cases on behalf of class members resulting in multi-million dollar settlements.

Mr. Friedman's current focus is on consumer protection and antitrust litigation, including *In re eBay Seller Antitrust Litigation*, a class action on behalf of all eBay sellers who claim eBay is monopolizing and attempting to monopolize the online auction and person-to-person payment system markets, as well as class actions against Apple Inc., Sprint Nextel, T-Mobile and Verizon Wireless for consumer protection violations.

Prior to joining the firm, Mr. Friedman worked with Lerach Coughlin Stoja Geller Rudman & Robbins, where he negotiated resolution of several multi-million dollar securities fraud and consumer actions, including an action against Dell, Inc. on behalf of nearly one million consumers, based on allegations involving Dell's bait-and-switch financing and sales practices.

Mr. Friedman's legal experience covers wide-ranging areas of corporate fraud and complex commercial transactions. From 1997-2000, Mr. Friedman was an Assistant United States Attorney in the Criminal Division of the United States Attorney's Office for the Central District of California (Los Angeles). As an AUSA, Mr. Friedman tried numerous federal cases and prosecuted matters involving investor, bank, and real estate fraud, tax evasion, narcotics trafficking, and money laundering. Prior to joining the U.S. Attorney's office, Mr. Friedman clerked for the Honorable Manuel L. Real, United States District Court Judge, Central District of California.

Mr. Friedman graduated with a Bachelor of Arts degree in political science from the University of Washington in 1991, where he was a member of the varsity baseball team. Mr. Friedman obtained his law degree, *magna cum laude*, from Santa Clara University School of Law in 1994, where he was on the Dean's list, an Emery School of Law Merit Scholarship Recipient, and a research assistant to the Dean of the law school. He is licensed to practice law in California and admitted in the Central and Northern Districts and the United States Court of Appeals for the Ninth Circuit.

#### LEE M. GORDON

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Mr. Gordon is a partner at Hagens Berman Sobol Shapiro's Los Angeles office where he focuses on complex class actions. His work includes unfair competition and deceptive business practice cases against pharmaceutical companies and investment companies, consumer class actions against product manufacturers and retailers, and employee protection class actions.

Prior to joining the firm, Mr. Gordon's practice covered a broad spectrum of complex litigation matters. He represented and advised clients in antitrust litigation, employment litigation, single-state and

nationwide class actions, breach of contract and breach of warranty litigation, intellectual property cases, real estate and land use disputes, and matters involving challenges to government regulations.

Mr. Gordon's employment law work included race discrimination, wrongful termination, disability discrimination, and compensation disputes. His class action work has included complex securities and unfair business practices litigation involving multi-million dollar claims against major public financial institutions and healthcare organizations. Recent cases include Costco Wholesale Corporation, Solvay Pharmaceuticals, Apple, Tremont Group Holdings and KPMG.

Mr. Gordon graduated *summa cum laude* from the University of California at Los Angeles with a bachelor's degree in Philosophy. In 1994, he earned his law degree from Harvard Law School, graduating *cum laude*. In 2002, he also received an MBA from the Anderson Graduate School of Management at UCLA, where he graduated with honors and received fellowship grants. Mr. Gordon is admitted to practice law in the state of California.

#### REED R. KATHREIN

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Mr. Kathrein is the managing partner of the Berkeley office of Hagens Berman Sobol Shapiro LLP.

After eleven years defending corporations, in 1988, Mr. Kathrein devoted his career to prosecuting securities class actions on behalf of investors and institutional investors. He has litigated over 100 securities fraud class actions. He worked behind the scenes in shaping the Private Securities Litigation Reform Act, the Securities Litigation Uniform Standards Act, and the Sarbanes-Oxley Act.

Mr. Kathrein is very active within the federal courts where the bulk of his practice centers. He is a Lawyer Representative to the Ninth Circuit Court of Appeals and a Lawyer Representative to the United States District Court for the Northern District of California. He chaired the Magistrate Judge Merit Selection Panel, USDC for the Northern District of California (2006-2008) and co-chaired the Securities Rules Advisory Committee, USDC for the Northern District of California (2004-2006).

Mr. Kathrein is also actively involved in many professional associations. He is currently an Executive Committee Member of the California State Bar Antitrust and Unfair Competition Section (term 2008-2011). He has served on the Board of Governors, Consumer Attorneys of California (1998-2002, 2005-2008); the Executive Committee of the National Association of Securities and Commercial Law Attorneys (NASCAT) (1991-2003); was Chairman, Private International Law Committee, Section on International Law and Practice, American Bar Association (1984-1988); as an ABA Advisor to the U.S. Secretary of State's Advisory Committee on Private International Law (1984-1989); as a Governing Council Member, International and Immigration Law Section, Illinois State Bar Association (1986-1988); Chairman, International and Foreign Law Committee, Chicago Bar Association (1983-1984); and Board Member and Vice-President of the International Business Council Mid-America.

Mr. Kathrein's practice often takes him beyond securities fraud to other areas where his expertise of class action litigation and unfair competition law is demanded. In 2006, Mr. Kathrein was consulted by the Electronic Frontier Foundation and associated as co-counsel to initiate the class action litigation relating to the NSA domestic wiretapping through AT&T. In 2009, Mr. Kathrein led a discussion at the request of the Samuelson Law, Technology & Public Policy Clinic at UC Berkeley to help companies, including Yahoo and Microsoft, law professors from Harvard, Berkeley, and New York Law School, as well as non-profit public policy organizations, such as the ACLU and the Center for Law and Democracy, understand options relating to the Google Book Search Class Action Settlement.

Mr. Kathrein is a member of the National Association of Public Pension Attorneys and the National Conference on Public Employee Retirement Systems. He has been a member of the Council of Institutional Investors and the National Association of State Retirement Administrators. He is a regular

public speaker on securities, class action and consumer law issues. Mr. Kathrein is a member of the bar in the States of Illinois since 1977, California since 1989 and Florida since 1978. He is admitted to practice in the United States District Courts for the Northern, Southern and Eastern Districts of California, Northern District of Illinois, Southern District of Florida, Western District of Michigan, Districts of Minnesota and Colorado, and the Sixth, Seventh, Eighth and Ninth Circuit Court of Appeals.



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Mr. Matt is a partner at Hagens Berman Sobol Shapiro where he has worked since its founding in 1993. Mr. Matt's practice focuses on multi-state and nationwide class actions and encompasses consumer, insurance, products, antitrust, environmental, employment, and labor issues. His ability to organize and develop a standardized approach to prosecuting individual class cases across many states involving the same defendants and similar factual and legal issues continues to be a key factor in the firm's success.

Mr. Matt's cases include the **Average Wholesale Price Litigation, Schwab YieldPlus Fund Securities Litigation, Ford and Nissan Accelerator Litigation, Washington State Ferry Litigation** and **Tobacco Litigation**. In the Tobacco Litigation, he assisted with client liaison responsibilities, working closely with assistant attorneys general in Oregon, Ohio, Arizona, Alaska, and New York, as well as assisting in briefing and arguing motions to dismiss. Working on various discovery issues, including discovery requests, briefing on discovery motions and appearances at discovery hearings, Mr. Matt also developed expert disclosure statements and prepared testimony for a variety of expert witnesses.

Mr. Matt's publications include co-authoring the comment, "Providing a Model Responsive to the Needs of Small Businesses at Formation: A Focus on Ex Ante Flexibility and Predictability" appearing in the *Oregon Law Review*.

Mr. Matt earned his bachelor's degree in finance from Indiana University, graduating with highest distinction. An associate editor of the University of Oregon School of Law's *Law Review*, he graduated with his law degree in 1992, after earning membership in the prestigious Order of the Coif.

DAVID P. MOODY

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Mr. Moody is a partner at Hagens Berman Sobol Shapiro where he has worked since 2006. He is a trial attorney with a passion for representing children, the disabled, elderly and incapacitated citizens. Raised in Olympia, Washington, Mr. Moody received his undergraduate degree from the University of Washington in 1990. After graduating from George Washington University School of Law in 1993, Mr. Moody joined the Seattle office of Gordon, Thomas, Honeywell where he became a partner in 1998. He left the firm in 2005.

Among his many cases on behalf of vulnerable citizens, Mr. Moody served as the lead trial attorney, obtaining the largest jury verdict ever upheld against the State of Washington (\$17.8 million); the lead trial attorney, securing the largest single-plaintiff settlement against the State of Washington, DSHS (\$8.8 million); the lead trial attorney, obtaining the largest single-plaintiff jury verdict on behalf of an incapacitated adult in Kitsap County, Washington (\$2.6 million); and the lead trial attorney, obtaining the largest single-plaintiff settlement on behalf of a developmentally disabled adult in eastern Washington (\$2.25 million) and incapacitated child (\$4.5 million) in Spokane County, Washington.

Mr. Moody is actively involved in advocacy for citizens with disabilities, is a member of the Arc of King County, and the Arc of Washington State.

## DAVID S. NALVEN

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Mr. Nalven is a partner at Hagens Berman Sobol Shapiro's Cambridge office where he has worked since 2004. His practice focuses on prosecution of multi-state and nationwide class actions involving the pharmaceutical and medical device industries, securities fraud, antitrust, and consumer protection.

Mr. Nalven has been appointed class counsel in the **Serostim Off-Label Marketing Litigation**, and serves as one of the lead counsel in the **TriCor Indirect Purchaser Antitrust Litigation**, and on the direct purchaser class executive committee in the **Ovcon Antitrust Litigation**. Mr. Nalven is currently prosecuting fraudulent marketing claims involving the drugs Actimmune, Nexium, Oxycontin, and Zyprexa. Mr. Nalven also has worked extensively on the nationwide **Average Wholesale Price Litigation** and in the representation of the State of Connecticut in multiple prescription drug pricing matters.

Prior to joining the firm, Mr. Nalven served as Chief of the Business and Labor Protection Bureau in the Massachusetts Attorney General's Office, where he oversaw a staff of more than 100 on all cases and initiatives involving healthcare fraud, insurance fraud, workplace offenses, and other civil and criminal business matters.

Mr. Nalven graduated *magna cum laude* from the University of Pennsylvania in 1980 with a bachelor's degree in English, and from New York University School of Law in 1985, where he was Senior Research Editor of the *Annual Survey of American Law*. After law school, Mr. Nalven served as a law clerk to the Honorable John R. Gibson of the United States Court of Appeals for the Eighth Circuit. Mr. Nalven is admitted to practice in Massachusetts and New York.

## EDWARD NOTARGIACOMO

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Mr. Notargiacomo is a partner at Hagens Berman Sobol Shapiro's Cambridge office where he has worked since 2002. He joined the firm to focus on complex consumer, commercial and antitrust litigation. Mr. Notargiacomo is involved in the **Average Wholesale Price Litigation, Neurontin Promotions Litigation, Wellbutrin SR Litigation, Flonase Litigation** and other class-action suits aimed at pharmaceutical companies who illegally attempt to deny market access to manufacturers of cheaper generic pharmaceuticals. Mr. Notargiacomo also heads up the firm's Smoke Alarms Litigation.

Mr. Notargiacomo's extensive experience in complex cases includes consumer class actions against predatory lenders and employment litigation against a major retail chain, as well as intense involvement in high-profile impact litigation against cigarette manufacturers, the firearms industry and pharmaceutical manufacturers.

Prior to joining the firm, he served as special assistant attorney general for Massachusetts in its suit against the tobacco industry. He also helped represent Rhode Island, New Hampshire and Maine in their suits against the tobacco industry. In another case, he represented the city of Boston in its suit against gun manufacturers and distributors in order to force them to take responsibility for some of the violence perpetrated with firearms that are negligently and illegally distributed in cities like Boston.

Mr. Notargiacomo received his bachelor's degree from Brown University in 1989. He earned his law degree with honors from Boston University in 1994 where he served on the *Boston University Public Interest Law Review*. He is admitted to practice in Massachusetts and in the U.S. District Court for the District of Massachusetts.



**CHRISTOPHER A. O'HARA****Direct Dial: (206) 268-9351****Email: chriso@hbsslw.com**

Mr. O'Hara is a partner at Hagens Berman Sobol Shapiro where he has worked since 1997. He practiced for nearly five years in the firm's Phoenix office before returning to the Seattle office, where he currently concentrates on antitrust, consumer, and pharmaceutical class actions.

Mr. O'Hara serves as plaintiffs' counsel in the third party payor **Zyprexa Litigation** as well as the consumer protection national class action against **Expedia**. An active member of the firm's Microsoft defense team, he negotiates claims administration policy and processing rules on behalf of Microsoft in twenty consumer class action state settlements around the country.

While in Phoenix, Mr. O'Hara deposed more than a dozen of big tobacco's expert witnesses, research scientists and marketing executives for the **Tobacco Litigation**, focusing predominantly on the Arizona case. He also defended the depositions of Arizona's national and local expert witness, while contributing to all aspects of discovery and motion practice. Mr. O'Hara played a leading role in the firm's successful defense of the state of Arizona against a claim brought by several Arizona Counties in the aftermath of the state's tobacco litigation.

Prior to joining the firm, Mr. O'Hara focused on property loss subrogation and professional liability defense at a Seattle-area law firm.

Mr. O'Hara earned his bachelor's degree in political science and French language and literature from the University of Washington in 1987. He subsequently graduated *cum laude* from Seattle University School of Law and is admitted to practice in state and federal courts in Arizona and Washington, as well as the United States Court of Appeals for the Ninth Circuit.

**GEORGE W. SAMPSON****Direct Dial: (206) 224-9345****Email: george@hbsslw.com**

Mr. Sampson is a partner at Hagens Berman Sobol Shapiro where he has worked since 1994. He joined the firm to focus on antitrust and consumer class actions, and served as co-lead counsel in the **Disposable Contact Lens Litigation** and the **Visa/MasterCard** debit card cases. He also helped develop antitrust claims in the **Tobacco Litigation**. As a Special Assistant Attorney General for the State of West Virginia, Mr. Sampson recently won a \$16.2 million settlement against Visa and Mastercard, which funded several sales tax holidays for West Virginia consumers.

Mr. Sampson's principal role at the firm is to assist expert witnesses in antitrust cases. He has done so in the Disposable Contact Lens, Visa/MasterCard, DRAM and SRAM cases.

Prior to joining the firm, Mr. Sampson served as chief of the Antitrust Bureau for the New York Attorney General's Office. Mr. Sampson oversaw a 22 person staff and managed case selection and investigation for all civil and criminal prosecutions. He also served as attorney general liaison to the federal-state Executive Working Group-Antitrust. His position as chief involved a heavy trial practice, primarily in federal courts and often in conjunction with several states.

During his 10 years with the Antitrust Bureau, Mr. Sampson's notable cases included winning a \$7.8 million jury verdict in a highway bid rigging trial, serving as lead counsel for New York and obtaining a \$30 million settlement in insurance antitrust litigation, and negotiating a \$15 million return to consumers in a resale price maintenance settlement with Nintendo.

Mr. Sampson earned his bachelor's degree in economics from Cornell University and graduated from New York University School of Law in 1977. A member of both the Washington and New York state bars, he sits on the Executive Committee of the Antitrust and Consumer Protection of the Washington State Bar Association and frequently speaks on antitrust issues. Mr. Sampson is admitted before the U.S. Supreme Court and numerous federal courts of appeal.

#### ANTHONY D. SHAPIRO

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Mr. Shapiro is a partner at Hagens Berman Sobol Shapiro where he concentrates on antitrust matters and general commercial disputes, and leads the firm's **Personal Injury Group**. His personal injury practice includes cases of wrongful death, brain injury, and catastrophic personal injury matters resulting from construction site, workplace and automobile accidents, as well as product liability.

Mr. Shapiro's work prosecuting plaintiffs' claims against the **Alyeska Pipeline Service Company** resulting from the 1989 **Exxon Valdez Oil Spill** ultimately resulted in a \$98 million settlement for plaintiffs. He has also played a prominent role in a number of notable antitrust class actions including **Brand Name Prescription Drug Antitrust Litigation, Carbon Dioxide Antitrust Litigation, Carpet Antitrust Litigation, Infant Formula Antitrust Litigation, Baby Food Antitrust Litigation, Scouring Pads Antitrust Litigation, Medical X-Ray Film Antitrust Litigation, High Fructose Corn Syrup Antitrust Litigation, Visa/MasterCard Antitrust Litigation, Commercial Tissue Products Antitrust Litigation, Flat Glass Antitrust Litigation, Lease Oil Antitrust Litigation, and Bromine Antitrust Litigation.**

Recently, Mr. Shapiro served as lead counsel in *In Re DRAM Antitrust Litigation* where, on behalf of a class of direct purchasers, he and others were able to secure in excess of \$325 million from domestic and foreign DRAM chip manufacturers. Currently, Mr. Shapiro serves on the plaintiffs executive committee in a number of prominent antitrust class actions including *In Re LCD Antitrust Litigation* and *In Re SRAM Antitrust Litigation*.

Prior to leading the firm's personal injury litigation practice, Mr. Shapiro honed his courtroom skills in the Washington state prosecuting attorney's office, where he represented the state in more than 50 serious felony jury trials, including some of the state's most difficult and high-profile cases. Following his position at the prosecuting attorney's office, he joined Schweppe Krug & Tausend, then Seattle's oldest law firm, where he used his extensive courtroom experience to serve personal injury clients. He subsequently founded Rohan Goldfarb & Shapiro, a firm focusing on personal injury cases as well as commercial litigation and antitrust work.

Very involved in issues concerning juvenile diabetes, Mr. Shapiro has served as a board member of the Western Washington chapter of the Juvenile Diabetes Foundation for four years. In 2004 the American Diabetes Association honored Mr. Shapiro as "Father of the Year," one of their highest honors.

Mr. Shapiro was given an AV rating by Martindale-Hubbell, the highest rating a lawyer can obtain, indicating a very high to preeminent legal ability and exceptional ethical standards as established by confidential opinions from members of the Bar. Mr. Shapiro is a frequent instructor at the National Institute of Trial Advocacy (NITA) and has taught Trial Practice at the University of Washington Law School since 2004.

Mr. Shapiro graduated from Colgate University with honors and earned his law degree from Georgetown University Law Center in 1982.





## THOMAS M. SOBOL

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Mr. Sobol is the managing partner of Hagens Berman Sobol Shapiro's Cambridge office, and handles numerous pharmaceutical and consumer class actions for the firm.

Mr. Sobol currently leads drug pricing litigation efforts against several pharmaceutical companies in order to remedy overcharges to consumers and other payors of brand name and generic drugs. Some current matters include the Average Wholesale Price Litigation, Zyprexa Litigation, Wellbutrin Antitrust Litigation and First DataBank Litigation. He is lead counsel for the Prescription Access Litigation (PAL) Project, the largest coalition of health care advocacy groups that have joined together to fight illegal, loophole-based overpricing by pharmaceutical companies. PAL has approximately 85 organizational members and is located in more than 30 states.

In the groundbreaking Tobacco Litigations, Mr. Sobol represented the states of Massachusetts, New Hampshire, and Rhode Island and served as one of the private counsel for Massachusetts and New Hampshire. These cases led to significant injunctive relief and monetary recovery in excess of \$10 billion to those states.

For many years, Mr. Sobol was a leader for the New England Shelter for Homeless Veterans (NESHV) in Boston, Massachusetts, and served as chairman of the board of its company, the Vietnam Veterans Workshop, Inc., from 1995 to 2002. The shelter is a national model for homeless services, and NESHV is one of the largest private organizations delivering services to homeless veteran families and other veterans in need.

Mr. Sobol is a leader in the Massachusetts legal and healthcare community, serving on the board of Health Law Advocates, Inc., a non-profit legal organization that assists in health access for the poor. In 2000, the *National Law Journal* named Mr. Sobol as one of Massachusetts' 10 leading litigators.

Mr. Sobol is a member of the bars of Massachusetts, Rhode Island, the U.S. District Court for Massachusetts and Rhode Island, and the United States Court of Appeals, First Circuit.

Mr. Sobol graduated *summa cum laude* from Clark University in Worcester, Massachusetts in 1980 and was elected to Phi Beta Kappa in 1979. He graduated from Boston University School of Law *cum laude* in 1983. Tom then served as a judicial clerk for then-Chief Justice Allan M. Hale of the Massachusetts Appeals Court from 1983 to 1984.

## CRAIG R. SPIEGEL

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Mr. Spiegel is a partner at Hagens Berman Sobol Shapiro where his practice primarily focuses on class actions in employee litigation. Recent cases include actions against **Abbott Laboratories** and the **Boeing Race Litigation**.

Prior to joining the firm, Mr. Spiegel served as co-counsel for plaintiffs in numerous class actions. As lead counsel for several hundred investors who lost substantial sums of money from investments with Property Mortgage Company, he obtained an \$8 million settlement. Mr. Spiegel also helped represent a class of investors that lost millions of dollars investing in the production of oil after the court certified a class based on his argument.

In litigation with AT&T, Mr. Spiegel's briefs and oral argument compelled the Ninth Circuit to reverse a summary judgment, obtaining a substantial sum for his client, a company that alleged that AT&T unlawfully changed its policies to drive the company out of business. In another notable case, he served as co-counsel for a family of three that was rendered homeless when a Santa Barbara businessman towed away their trailer, claiming it was on his land, reselling the vehicle and most of their possessions. He helped obtain a jury verdict of \$225,000 for the family, after another attorney had obtained a \$15,000 non-binding judicial arbitration award.

Mr. Spiegel graduated *summa cum laude* from St. Olaf College in 1975 and *cum laude* from Harvard Law School in 1979. Admitted to practice before several federal district and appellate courts, he is a member of the California, Illinois and Washington bars.

#### JEFFREY T. SPRUNG

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Mr. Sprung is a partner at Hagens Berman Sobol Shapiro where he has worked since 1994. Mr. Sprung specializes in government fraud suits brought under the False Claims Act, representing whistleblowers serving as "private Attorneys General."

Mr. Sprung has sued a variety of companies, including the Compaq Computer Corporation, which resulted in a large, multi-state settlement on behalf of computer users; contractors for the U.S. Department of Energy concerning accounting fraud at the largest nuclear clean-up site in Hanford, Washington; health care providers and pharmaceutical companies for Medicare and Medicaid fraud; and military contractors for procurement fraud

Mr. Sprung's expertise also includes prosecuting class actions for consumer fraud, employment discrimination and civil rights violations. He is extensively involved in race and gender employment discrimination class actions against The Boeing Company, and has handled class litigation arising from the use of slave and forced labor by Germany and Japan during World War II. He also worked on cases against foreign mining companies accused of destroying and contaminating indigenous people's land and committing human rights abuses.

Prior to joining the firm, Mr. Sprung was an Assistant U.S. Attorney in the Office of the U.S. Attorney for the District of Columbia, where he specialized in civil fraud matters. He won the first civil suit for mail, wire and bank fraud brought in the District of Columbia, as well as the first civil suit brought by the government to punish insider trading in the mortgage-backed securities market. He served on a U.S. presidential campaign in 1988, after working at a large law firm in Washington, D.C. where he started his legal career.

Mr. Sprung is very active in the legal community. He was editor and contributing author of a leading practitioners' guide on civil legal remedies in United States courts for hate crimes. He also speaks on the False Claims Act and international human rights to various law schools, including the University of Washington law school, and various trade groups. He is a member of the Washington State Bar Association, the Federal Bar Association, and the Association of Former Assistant U.S. Attorneys.

Mr. Sprung graduated *magna cum laude* and Order of the Coif from the University of Michigan in 1981 and received his law degree from the University of Chicago Law School in 1984. He is admitted to practice in the state of Washington and the District of Columbia, and he has appeared in numerous cases before United States district courts and courts of appeals.

## IVY ARAI TABBARA

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Ms. Tabbara is a partner at Hagens Berman Sobol Shapiro where she has worked since 2002. She specializes in class actions, including employment discrimination, consumer protection, antitrust, and environmental law.

Among her most recent cases, Ms. Tabbara worked on a \$1 billion dollar settlement for uninsured individuals against **Tenet Healthcare**. Currently, her work focuses on consumer protection cases, including **Mattel** and the **Thomas the Train** Lead Paint Litigation against RC2 and Learning Curve Brands. Ms. Tabbara is also working in class action suits against the Boeing Company for employment discrimination, and **Babies “R” Us** for antitrust violations.

Ms. Tabbara graduated *cum laude* from Princeton University. She subsequently earned her law degree from Georgetown University Law Center where she served on the *Georgetown International Environmental Law Review*. During law school, Ms. Tabbara also worked as a judicial extern for Judge Thomas S. Zilly of the United States District Court for the Western District of Washington. She is admitted to practice law in the state of Washington.

## ANDREW M. VOLK

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Mr. Volk is a partner at Hagens Berman Sobol Shapiro where he has worked since 1996.

Mr. Volk was extensively involved in the **Tobacco Litigation**. He wrote many of the major briefs on behalf of the states represented by the firm. In addition, he helped research and develop legal theories used in the action, and headed the successful attack on defendants’ claims that millions of documents were privileged.

More recently, Mr. Volk has worked on ERISA cases for breach of fiduciary duties, including claims on behalf of current and former employees of **Enron**, **IPALCO**, the **Montana Power Company**, and **General Motors**. Mr. Volk has also worked on a variety of consumer protection cases, including the current case against Expedia, as well as RICO and employment discrimination cases.

Prior to joining the firm, Mr. Volk taught legal writing and research at the University of Oregon School of Law. He also spent three years as a staff attorney at the Criminal Appeals Bureau of the Legal Aid Society in New York City.

Mr. Volk earned his undergraduate degree from Columbia University. He graduated *cum laude* from Cornell Law School in 1991 and served as an articles editor of the *Cornell International Law Journal*. He is admitted to practice in New York, Oregon and Washington.

TYLER S. WEAVER

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Mr. Weaver is a partner at Hagens Berman Sobol Shapiro where he has worked since 2001. He litigates in a wide variety of practice areas, with an emphasis on consumer litigation.

Mr. Weaver's litigation at the firm has included the Raytheon Litigation, which resulted in a \$39 million settlement on behalf of shareholders of Washington Group, Inc.; a \$2.2 million settlement on behalf of Washington consumers unlawfully charged collection fees by Diamond Parking; and representation of individuals wrongfully arrested during the 1999 WTO protests in Seattle, which resulted in a favorable jury verdict and settlements of more than \$1 million and extensive non-monetary relief. He has also been involved in consumer class actions concerning real estate transactions and nursing home abuses, antitrust litigation against Starbucks, and fiduciary duty litigation under ERISA (including the IPALCO and the GM ERISA litigation).

Mr. Weaver is admitted to practice in Washington and Oregon, and has made numerous appearances in United States district courts and appellate courts, as well as the trial and appellate courts of the State of Washington. Prior to joining the firm, Mr. Weaver clerked for two years for the Honorable Justin L. Quackenbush in the United States District Court for the Eastern District of Washington. He graduated *cum laude* from the University of Oregon Honors College in 1992 and received his law degree from the University of California, Berkeley School of Law (Boalt Hall) in 1996.

## Of Counsel

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Mr. Barth represents investors seeking to protect assets and recover investment losses from companies engaged in securities and accounting wrongdoing. Prior to joining HBSS, he was a Senior Consultant at a national financial firm specializing in expert witness testimony on accounting and financial issues.

Mr. Barth has performed the preliminary investigation and drafted the initial complaint in numerous high-profile securities fraud cases that have won large recoveries for his clients against companies such as Boeing, Einstein Noah Bagel Corp., Identix, Midcom Communications, Midisoft, Oppenheimer Delta Partners, Pepsi Puerto Rico Bottling Co., PriceCostco, Templeton Vietnam Opportunities Fund and Wall Data. These cases typically assert claims against the officers and directors of the corporate defendant, its outside auditors, and other responsible parties and involve sophisticated financial and accounting issues.

Mr. Barth graduated from Georgetown University Law Center, and from the University of Virginia with a B.S. in Accounting. Mr. Barth is a licensed Certified Public Accountant. He is admitted to practice in various state and federal courts throughout the country.

ARI Y. BROWN

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Mr. Brown is Of Counsel at Hagens Berman Sobol Shapiro where he has worked since 2008. His practice focuses on class actions involving consumer related claims.

Prior to joining the firm Mr. Brown's practice focused on representing people pursuing their rights as consumers and, in particular, as home mortgage borrowers. In the course of litigating cases involving predatory lending, Mr. Brown has helped establish significant legal precedent that has helped inform the law regarding consumer rights used throughout the country.

At HBSS Mr. Brown continues to represent home mortgage borrowers who were subjected to predatory practices at the hands of lenders, mortgage brokers, title insurers, and escrow companies. He is also pursuing claims on behalf of banking customers who were repeatedly charged overdraft fees on their checking accounts because of the way their banks manipulated their transactions.

Mr. Brown received his B.A. in History from Grinnell College in 1991 and his J.D., *magna cum laude*, from Seattle University School of Law in 1999. Before entering the practice of law, Mr. Brown served as a combat tank gunner in the Israeli Defense Force, worked with homeless youth in New York, and tended bar in some of America's finest establishments. He is admitted to practice in the Supreme Court of Washington, U.S. District Court for the Western and Eastern Districts of Washington, and the U.S. Court of Appeals for the Ninth Circuit.

## THOMAS E. LOESER

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Mr. Loeser is Of Counsel at Hagens Berman Sobol Shapiro where his practice focuses on class actions, consumer protection, false claims and government fraud, identity-theft and privacy, and intellectual property.

Mr. Loeser has successfully litigated class action lawsuits against mortgage lenders, appraisal management companies, title insurers, data processors, and a regional medical center.

Mr. Loeser has been trying cases in federal and state courts for ten years and has been lead counsel in numerous federal jury trials and has presented over a dozen cases to the Ninth Circuit Court of Appeals. As a federal prosecutor in Los Angeles, Mr. Loeser was a member of the Cyber and Intellectual Property Crimes Section and regularly appeared in the Central District trial courts and the Ninth Circuit Court of Appeals.

At HBSS, Mr. Loeser investigates and prosecutes cases against lenders, appraisal management companies, title insurers and escrow companies for profiteering and other fraud at the expense of borrowers and homeowners. He also applies his experience as a prosecutor to the investigation and prosecution of cases involving racketeering and government fraud and is currently prosecuting a case involving fraudulent billing of Medicare by several large New Jersey hospitals. Mr. Loeser recently settled a case involving the theft of personal information of over 400,000 customers of a national insurance company.

Mr. Loeser graduated with a degree in physics from Middlebury College in 1988. He earned an MBA, *cum laude*, from the University of Washington School of Business Administration in 1994 and was elected to *Beta Gamma Sigma*, the national business school honor society. He earned his law degree, *magna cum laude*, from Duke University School of Law in 1999, where he was elected to the *Order of the Coif*. Mr. Loeser is licensed to practice in Washington, California, and the District of Columbia. He is admitted in the District Courts for the Central, Southern and Northern District of California, and the Western District of Washington as well as the Ninth Circuit Court of Appeals.

## ROBERT F. LOPEZ

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Mr. Lopez is Of Counsel at Hagens Berman Sobol Shapiro where he has worked since 2004. He brings to the firm a broad range of legal experience including, complex commercial, franchise, and intellectual property, including trademark and trade-name, litigation; the law of trademark, trade name, and copyright; and commercial transactions.

Since joining the firm, Mr. Lopez has worked on teams representing institutions and consumers in nationwide class action lawsuits, including federal multi-district class action litigation, against several of the world's largest pharmaceutical manufacturers in the massive **Average Wholesale Price Litigation**, and against Amgen Inc. in a case entitled *In Re Epogen and Aranesp Off-Label Marketing and Sales Practices Litigation*. In addition, he has worked on class action litigation against DaimlerChrysler relating to product defects in its Neon automobiles, and in a proposed nationwide class action against Trex Company relating to defects in its decking products and violations of consumer protection and sales laws. He also has represented NCAA Division I walk-on football players in antitrust litigation against the NCAA. In addition, he has worked on *qui tam*, or whistleblower, matters during his tenure at HBSS.

Prior to joining the firm, Mr. Lopez was a founding member and owner of the Seattle firm Socius Law Group. His previous work included prosecuting and defending matters in the federal and state trial courts,



including the probate department of the state superior court, and also federal and state administrative tribunals, the federal bankruptcy court, and the federal and state courts of appeal.

Mr. Lopez graduated from Gonzaga University in 1986 with a bachelor's degree in English Literature. He received his law degree in 1991 from the University of Washington. He is admitted to practice in the state of Washington.

#### NICHOLAS STYANT-BROWNE

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Mr. Styant-Browne is Of Counsel at Hagens Berman Sobol Shapiro where he has practiced class-action and multi-plaintiff litigation since 2001. Recent projects include **Rio Tinto Litigation** for human rights and environmental abuses in respect of the Panguna mine on the Pacific island of Bougainville.

Prior to joining the firm, Mr. Styant-Browne was one of five senior partners at Australia's largest plaintiff law firm working on class actions, environmental litigation and antitrust litigation. He served as co-counsel on Australia's largest class action against a wholly owned subsidiary of Exxon, arising out of a gas plant explosion which shut down the gas supply to Melbourne and most of the State of Victoria for 10 days.

As lead counsel in a landmark case against BHP (now BHP Billiton), Mr. Styant-Browne's meticulous outlining of the environmental devastation caused by the Ok Tedi mine in Papua New Guinea helped force mining companies adopt stricter environmental standards in developing countries.

Mr. Styant-Browne's practice has involved several projects in the Pacific Rim, acting principally on behalf of the indigenous peoples of poor developing Pacific nations claiming environmental and human rights abuses. His successes and passion for the causes of indigenous peoples have led to him being retained by the national governments of Pacific States including Tuvalu and the Kingdom of Tonga.

#### RICHARD L. SULLIVAN

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Mr. Sullivan was previously a Senior Vice President in the Washington Group, a public affairs and business development firm. Prior to joining the Washington Group, Mr. Sullivan held various political positions, including serving as the National Finance Director and Deputy Finance Director for the Democratic National Committee (DNC) from 1994 through 1996. In this capacity, he served as a senior member of the 1996 Clinton/Gore Re-Election Campaign and worked with President Bill Clinton, Vice President Al Gore and senior members of the administration. From 1991 to 1993, Mr. Sullivan was National Fundraising Director for the Democratic Senatorial Campaign Committee (DSCC), serving under DSCC Chairs Senators Charles Robb and Bob Graham. From 1987 to 1991, he worked for House Majority Leader Richard Gephardt. He served as Special Assistant in the House Majority's Leader's office where he helped formulate strategic policy for the House Democratic Caucus and also served as liaison to Democratic business supporters. He also worked as a fundraiser on Congressman Gephardt's 1988 Presidential campaign.

Mr. Sullivan has held many volunteer leadership positions in the Democratic Party. He currently serves as a member of the Governor's Advisory Council and Advisor to the Chair of the Democratic Governor's Association; as a Member of the State of North Carolina Economic Development Board; a Member of Governor Bev Perdue's Business Roundtable; and as Finance Chair for the North Carolina Democratic Party. He served as Southern Finance Chair for the Hillary Clinton for President Campaign. He was one of six members of the Kerry-Edwards Fundraising Leadership Team (the top fundraisers for the Democratic ticket in the general election). Mr. Sullivan served as Finance Chairman of the Gephardt for President 2004 campaign. He was Co-Finance Chair of the DSCC in 2001, Chair of the DSCC's 2001

Kick-Off National Gala and DSCC Chairman for the 2000 Democratic National Convention. In addition, Mr. Sullivan served as Senior Fundraising Advisor to the Gore 2000 campaign. Under President Clinton, Richard served on the Permanent Normalization of Trade Relations (PNTR) White House advisory committee.

Mr. Sullivan received a B.A. degree with honors from the University of South Carolina and a J.D. from Georgetown University Law Center.

## The Associates

### LEONARD W. ARAGON

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Mr. Aragon is an associate at Hagens Berman Sobol Shapiro's Phoenix office. Prior to joining the firm, Leonard spent four years practicing in the areas of commercial litigation, election law and appellate advocacy at a Phoenix-based firm.

At his former firm, Mr. Aragon handled numerous initiative, referendum and redistricting matters, including representing the Arizona Independent Redistricting Commission in lawsuits related to Arizona's congressional and legislative redistricting following the 2000 census. Additionally, he represented candidates from all levels of state and federal government.

Mr. Aragon is committed to pro bono and community service. He has represented numerous pro bono clients in the areas of insurance, immigration, family, and contract law, and serves on the board of directors of EMPACT-SPC (one of Arizona's largest behavioral health organizations). He also recently served as the co-chair for a major Valley fundraiser benefiting children's charities.

Before attending college, Mr. Aragon was a scout for the 2/68 Armored Tank Battalion. During that time, he was awarded the Army Achievement Medal and several expert marksmanship badges.

Mr. Aragon graduated *summa cum laude* from Arizona State University in 1998 with degrees in History and Political Science. He received his law degree from Stanford Law School in 2001. He is a member of the State Bar of Arizona and is admitted to practice in Arizona and Colorado federal district court.

### LAUREN GUTH BARNES

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Mrs. Barnes is an associate at Hagens Berman Sobol Shapiro's Cambridge office where she has worked since 2003. Her work has involved consumer protection, product liability, personal injury, and RICO litigation against drug and medical device manufacturers, in complex commercial and class action litigation against Eli Lilly and Co., Guidant Corporation, Medtronic, Inc. and others. Mrs. Barnes served as the primary contact for day-to-day operations in the *State of Connecticut v. Eli Lilly and Co.* Zyprexa litigation, shepherding the case through discovery and summary judgment briefing. Mrs. Barnes has also overseen day-to-day operations in the firm's Zyprexa third party payor litigation, including the recent appellate briefing before the Second Circuit Court of Appeals.

Mrs. Barnes has been active in the fight against federal preemption of consumer rights, working to ensure consumers and third party payors maintain an ability to seek remedies when medical device and pharmaceutical makers violate consumer protection laws.

Prior to joining the firm, Mrs. Barnes worked with Conflict Management Group, a non-profit organization dedicated to promoting peaceful resolution of international disputes and teaching negotiation skills. During her association with the organization, Mrs. Barnes worked with members of the United Nations High Commissioner for Refugees on a pilot project in Bosnia-Herzegovina designed to ease tensions and encourage reconciliation. Mrs. Barnes helped edit a book developed out of the project – "Imagine Coexistence" – and contributed a chapter to it.

Mrs. Barnes graduated *cum laude* from Williams College in 1998 with a Bachelor of Arts degree in International Relations. She earned her law degree *cum laude* from Boston College Law School in 2005, where she served as Articles Editor for the Boston College Law Review. She is admitted to practice law in the Commonwealth of Massachusetts, the District of Massachusetts, and the Second Circuit Court of Appeals. Mrs. Barnes is active in the American Association for Justice, where she co-chairs the Law Students Committee, serves on several other committees, is on the Board of Governors for the New Lawyers Division, and is an officer in the AAJ Women Trial Lawyers Caucus. She also recently helped re-launch the Women's Caucus for the Massachusetts Academy of Trial Attorneys and maintains an active leadership role in that organization.

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Ms. Bass is an associate at Hagens Berman Sobol Shapiro's Phoenix office where she focuses on class action cases involving privacy rights, financial and consumer issues. Ms. Bass's experience includes civil matters, family law, personal injury, and criminal law. She enjoys preparing cases for trial, drafting briefs, arguing motions, deposing witnesses, and presenting the final product at hearings and trials.

During law school, Ms. Bass completed a fellowship in Suzhou, China, at the Summer Law Institute at the Kenneth Wang School of Law at Soochow University, focusing on international business transactions.

Outside of the office, she makes time to serve and assist local charities. Her most recent cause, Wills for Heroes, provides free real-estate planning legal services to first-responder personnel in Arizona.

Ms. Bass received her J.D. from St. John's University School of Law. She also has a bachelor's degree in justice studies from Arizona State University.

#### PETER E. BORKON

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Mr. Borkon is an associate at Hagens Berman Sobol Shapiro's San Francisco office where he has worked since 2007. His practice is focused on complex civil litigation, particularly securities and antitrust class actions and shareholder derivative suits. He is also an Adjunct Professor at the University of California Hastings College of the Law.

Mr. Borkon was a key team member in *In re Homestore Securities Litigation*, resulting in settlements valued at more than \$100 million. Mr. Borkon was also instrumental at drafting the complaint, defeating multiple motions to dismiss and motions for summary judgment.

Mr. Borkon recently served as the Co-Chair of the Board of Directors of the AIDS Legal Referral Panel and serves as a member of the Bay Area Lawyers for Individual Freedoms Judicial Review Committee. He was also a Steinberg Leadership Fellow with the Anti-Defamation League.

Mr. Borkon graduated from DePauw University in 1992 with a Bachelor of Arts degree. He earned his law degree from Southern Illinois University at Carbondale in 1996. Since that time, he has actively engaged in the practice of law at the trial and appellate levels. Mr. Borkon clerked for the Chief Judge of the Southern District of Illinois as well as for the Ninth Circuit Court of Appeals. Mr. Borkon is admitted to practice law in Illinois and California. He is also admitted to practice before all federal courts in the states of California and Illinois as well as the Supreme Court of the United States and the Eastern and Western Districts of Wisconsin and the District of Colorado.

**STEVE W. FIMMEL****Direct Dial: (206) 268-9362****Email: stevef@hbsslaw.com**

Mr. Fimmel is an associate at Hagens Berman Sobol Shapiro where he has worked since 2006, bringing over 13 years of experience working on high-value, document intensive cases. He worked for 5 years at Oles, Morrison, Rinker & Baker where he was a key member of the litigation team that won a judgment in Idaho Federal District Court involving claims exceeding \$400 million. The court sustained an unprecedented Termination for Default against the Lockheed-Martin Corporation for breach of contract to remediate a nuclear waste site at the Idaho National Engineering Laboratory.

Prior to his work at Oles, Morrison, Rinker & Baker, Mr. Fimmel was an associate for seven years representing Hanford Downwinders at the Hanford Litigation Office in Seattle. Prior to his work at the Hanford Litigation Office, he was a sports anchor and reporter for KHQ-TV, Spokane's NBC affiliate. Through his senior year at the University of Washington and while attending law school at Lewis & Clark in Portland, Mr. Fimmel was the sports play-by-play and color broadcaster for Seattle's KCTS-TV on Seattle Sounder and Washington Husky basketball telecasts.

Mr. Fimmel is admitted to the Washington State Bar, the Federal Court for the Eastern District of Washington, and the Ninth Circuit Court of Appeals.

**LISA M. HASSELMAN****Direct Dial: (206) 268-9363****Email: lisah@hbsslaw.com**

Ms. Hasselman is an associate at Hagens Berman Sobol Shapiro where she has worked since 2006. She focuses on class action litigation, and has been instrumental in the Bextra/Celebrex Consumer Fraud Litigation, including oversight of document review, drafting of pleadings, oversight of consumer discovery efforts and participation in mediation and settlement. Ms. Hasselman serves as co-director of HBSS Project Green which strives to measure and lessen the firm's environmental impact.

Prior to joining the firm, Ms. Hasselman was an associate at Danielson Harrigan Leyh & Tollefson in Seattle. While there, she participated in complex state and federal litigation.

Ms. Hasselman has served on the board of Chaya, a non-profit addressing domestic violence in local South Asian communities. She has volunteered for multiple local legal aid organizations including the Northwest Women's Law Center's Self Help Committee, the Refugee Immigrant Advocacy Project, the Public Interest Law Association, Immigrant Families Advocacy Project, Street Youth Legal Advocates of Washington and King County Bar Association's Neighborhood Legal Clinics.

Ms. Hasselman graduated from the University of Michigan in 1996 with a Bachelor of Arts, English and Cultural Anthropology. She earned her law degree from the University of Washington School of Law in 2001. After law school, she clerked for the Honorable Marlin J. Appelwick at the Washington State Court of Appeals.

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Ms. Josephson is an associate at Hagens Berman Sobol Shapiro's Cambridge office where she has worked since 2005. She brings broad experience in the areas of drug and device development, intellectual property law, and regulatory affairs.

Ms. Josephson's work at the firm involves litigation against pharmaceutical companies in the brand-name prescription drug industry based on alleged schemes to prevent the marketing of lower cost generic drugs to consumers. Her cases include *In re Tricor Purchaser Antitrust Litigation*, *In re Norvir Antitrust Litigation*, *Wellbutrin SR Antitrust Litigation* and *Wellbutrin XL Antitrust Litigation*.

Prior to joining the firm, Ms. Josephson served as intellectual property counsel where she counseled clients in domestic and international intellectual property portfolio development and protection. Her clients included start up and development stage companies, mid-sized corporations, and world class investigators in major academic institutions. Prior to her law career, Ms. Josephson was a polymer chemist, developing specialty paints, coatings, adhesives and polymer materials; later she obtained extensive experience in regulatory affairs and clinical affairs in the pharmaceutical and medical device industries. Additionally, Ms. Josephson is named as a co-inventor on several patent applications, the technologies of which are currently marketed or under development by various companies.

Ms. Josephson earned a Bachelor of Arts in Natural Science from St. Anselm College. She did advanced coursework in biotechnology, polymer chemistry, and food and drug law. She earned her law degree from Franklin Pierce Law Center. She is admitted to practice in Massachusetts, the District of Massachusetts, the Court of Appeals for the Federal Circuit, and the United States Patent and Trademark Office. She has lectured on the conflict of laws between trademark law and FDA law in drug labeling, and various topics in securing intellectual property rights for inventors and companies. Ms. Josephson also serves on the board of directors of *On The Rise*, a shelter and safe haven for women in crisis in Cambridge, MA, and *Healthcare Businesswomen's Association, Boston Chapter*, a global organization devoted to advancing women's careers.

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Mr. Kurowski is an associate at Hagens Berman Sobol Shapiro's Chicago office where he has worked since 2006. His work with the firm currently includes the *Actiq Sales & Marketing Practices Litigation*, the *Aurora Dairy Corporation Organic Milk Marketing & Sales Practices Litigation*, the *Bisphenol-A (BPA) Polycarbonate Plastic Products Liability Litigation* and the *Honda GL 1800 Gold Wing Wobble Litigation*.

Mr. Kurowski joined the firm after serving as a judicial clerk to two judges sitting with the U.S. District Court for the Northern District of Illinois. He received his undergraduate degree with honors from Loyola University Chicago in 2002. He subsequently earned his law degree *cum laude* from the John Marshall Law School in 2005. While in law school, Mr. Kurowski served as an editorial board member for the *John Marshall Law Review* and received an award for an appellate brief he submitted in connection with a national moot court competition. He also interned with the U.S. Department of Housing and Urban Development, U.S. Attorney's Office and for another judge sitting with the U.S. District Court for the Northern District of Illinois.

He is admitted to practice law in the state of Illinois as well as in the U.S. District Court for the Northern District of Illinois.

## JEFFREY A. LANG

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Mr. Lang is an associate at Hagens Berman Sobol Shapiro. Since joining the firm in 2005, he has worked on document intensive cases involving the firm's pharmaceutical, antitrust, and securities litigation.

Mr. Lang has several years of experience across a variety of practice areas. Prior to joining the firm, he was a special project attorney at Preston Gates Ellis, where he was involved in the Microsoft antitrust litigation. He also gained experience in land-use, SEPA, and zoning and building compliance through his positions with the Whalen & Company and the Law Offices of Dan Clawson.

Mr. Lang received his bachelor's degree from the University of Washington, and earned his law degree from the University of Puget Sound School of Law. He is admitted to practice in the state of Washington.

## BARBARA A. MAHONEY

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Ms. Mahoney is an associate at Hagens Berman Sobol Shapiro where she has worked since 2006. She brings broad experience in complex commercial litigation, including unlawful competition, antitrust, securities, trademark, CERCLA, RICO, FLSA as well as federal aviation and maritime law. Ms. Mahoney's work with the firm includes litigation against McKesson Corporation based on its alleged involvement in a scheme that raised the purchase price of over 400 brand-name prescription drugs. The lawsuit resulted in a proposed \$350 million class action settlement with McKesson.

Prior to joining the firm, Ms. Mahoney was an associate at Danielson Harrigan Leyh & Tollefson in Seattle. While there, she participated on every level in state and federal litigation actions including taking and defending depositions, drafting discovery requests, motions and mediation briefs and preparing for trials.

Ms. Mahoney was named a 2005 "Rising Star" by *Washington Law & Politics*. She enjoys soccer and running and is a former director of Rain City Soccer. Ms. Mahoney has volunteered at the Downtown Neighborhood Legal Clinic and is a Q Law mentor and a Cooperating Attorney with American Civil Liberties Union of Washington. With Justice Richard Sanders she co-authored *Restoration of Limited State Constitutional Government: A Dissenter's View*, 59 N.Y.U. ANN. SUR. AM. L. 269 (2003).

Ms. Mahoney graduated from the University of Washington School of Law in 2001. She also has a PhD in philosophy from the Universität Freiburg, where she graduated *magna cum laude* in 1993. As a result of her many years in Europe and teaching in the United States she is fluent in German and has a strong reading knowledge of French. After law school, Ms. Mahoney clerked for the Honorable Sandra Brown Armstrong of the Northern District of California and the Honorable Justice Richard B. Sanders of the Washington Supreme Court. Ms. Mahoney is admitted to practice law in the state of Washington, U.S. District Court for the Western District of Washington, U.S. District Court for the Eastern District of Washington, and the Ninth Circuit Court of Appeals.

## TIMOTHY P. MAHONEY

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Mr. Mahoney is an associate at Hagens Berman Sobol Shapiro's Chicago office where he has worked since 2006. He primarily works as part of a team prosecuting nationwide RICO and consumer fraud class actions against several insurance companies that target the elderly for the sale of indexed annuities, that, by design, can not perform as advertised. The cases include *American Equity Investment Life Insurance Company*, *EquiTrust Life Insurance Company*, *Midland National Life Insurance Company*, and *Aviva*. Since the filing and prosecution of these cases, the SEC classified indexed annuities as securities that prospectively will be subject to protective regulation including appropriate disclosures.

Prior to joining the firm, Mr. Mahoney practiced as Senior Counsel with Neal Gerber Eisenberg LLP in Chicago. At Neal Gerber, Mr. Mahoney was a key member of a team of lawyers attempting to thwart a Fortune 10 company's efforts to pass billions of dollars of its environmental and asbestos liabilities on to the re-insurers of the company's captive insurer by deceitfully re-domesticating the captive insurance company to Bermuda, only to declare it bankrupt to attempt to take advantage of Bermuda's creditor friendly liquidation scheme. While at Neal Gerber, Mr. Mahoney also litigated products liability, professional liability, insurance coverage and complex commercial matters. Mr. Mahoney has first and second chair jury and bench trial experience, and has argued before the Illinois Appellate Court.

Mr. Mahoney graduated from IIT Chicago-Kent College of Law in 1993. In 2001, he earned a Masters of Business Administration with concentrations in finance and eBusiness at Case Western Reserve University's Weatherhead School of Management. While in business school Mr. Mahoney worked at a start-up eBusiness company in Cleveland, Ohio, where his duties included identifying and negotiating with potential strategic partners. Mr. Mahoney is admitted to practice law in the state of Illinois, the Northern District of Illinois and before the Seventh Circuit Court of Appeals.

## ROBERT MCGILL

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Mr. McGill is an associate at Hagens Berman Sobol Shapiro where he focuses on antitrust litigation related to the pharmaceutical industry. Prior to joining the firm, Mr. McGill worked for the Boston firm of Sherin and Lodgen LLP as a litigation associate specializing in Complex Business Litigation and Professional Responsibility & Ethics.

Mr. McGill earned a bachelor's degree in Political Science/International Relations *cum laude* from the University of Massachusetts at Amherst, where he was named a Commonwealth Scholar. He earned his law degree *cum laude* from Boston College Law School, where he was a member of the law school's National Mock Trial and European Law Moot Court teams. He was awarded the school's Frederick N. Halstrom Award for Outstanding Work in Oral Advocacy for his work as an oralist. While in law school, Mr. McGill also studied European competition law at King's College School of Law – University of London. He is currently the instructor/coach of Boston College's European Law Moot Court team. He is a member of the Boston Bar Association and the American Bar Association's Litigation and Antitrust Sections.

Mr. McGill is admitted to practice in the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts.



**MARTIN D. MCLEAN****Direct Dial: (206) 268-9359****Email: martym@hbsslaw.com**

Mr. McLean is an associate at Hagens Berman Sobol Shapiro where he has worked since 2007.

Prior to joining the firm Mr. McLean represented Washington State employer's in complex regulatory and civil litigation matters focusing on employment law, WISHA/OSHA matters, industrial insurance claims and audits, and third party litigation arising from work place injuries.

Mr. McLean received a B.A. in Political Science, with honors, from DePaul University in 1997 and his J.D., cum laude, from Seattle University School of Law in 2002. He is admitted to practice in the Supreme Court of Washington as well as the Western and Eastern Districts of Washington.

**KRISTEN JOHNSON PARKER****Direct Dial: (617) 475-1961****Email: kristenjp@hbsslaw.com**

Ms. Parker is an associate at Hagens Berman Sobol Shapiro's Cambridge office where she has worked since 2007. Ms. Parker specializes in class action litigation related to pharmaceuticals and medical devices. Recently, Ms. Parker worked on the team responsible for the certification of a nationwide class of third party payors in the *In Re Zyprexa Litigation*. She currently focuses on consumer protection cases, including litigation concerning Actimmune, Vioxx, and artificial lumbar discs.

Ms. Parker graduated *cum laude* from Dartmouth College and earned her J.D. at Boston College Law School. During law school she was an oralist for the Phillip C. Jessup International Law Moot Court Team and a research assistant for projects relating to legal ethics and professional responsibility. Ms. Parker currently coaches the B.C. Law Jessup Moot Court Team, who has advanced to the International competition three years in a row.

Ms. Parker is admitted to the Massachusetts State Bar and is a member of the American Association for Justice and the Massachusetts Academy of Trial Attorneys.

**SHANA E. SCARLETT****Direct Dial: (510) 725-3032****Email: shanas@hbsslaw.com**

Ms. Scarlett is an associate at Hagens Berman Sobol Shapiro's San Francisco office where she specializes in the prosecution of class actions, including securities fraud, consumer protection and privacy rights violation. Among her most recent cases, she worked along side HBSS and co-counsel, Reed Kathrein, on a \$1 billion settlement with Tenet Healthcare. Ms. Scarlett's work at the firm is largely focused on antitrust and consumer class actions. She is one of the team of litigators on the *In re eBay Seller Antitrust Litigation*, alleging numerous violations of the Sherman Antitrust Act by online auction giant, eBay. She also has an ongoing and active role in several consumer protection matters against several wireless providers, including Verizon, T-Mobile and Sprint/Nextel alleging a variety of unlawful and unfair billing practices.

Ms. Scarlett has worked in the San Francisco area since 2001 and has specialized in litigating complex class actions. She participated in *In re National Security Agency Telecommunications Record Litigation*, and in particular the lead case, *Hepting, et al. v. AT&T, et al.*, defeating motions of several telecommunications companies and the Department of Justice.

Ms. Scarlett was also a member of the litigation team in *In re Sony BMG Audio Compact Disc Litigation*, where she helped plaintiffs to secure a multi-million dollar settlement for consumers and an agreement from Sony BMG to stop using harmful rootkit software that created a number of serious security, privacy and consumer protection issues on music CDs.

Ms. Scarlett graduated with a bachelor's degree from the University of British Columbia and received her law degree from Stanford Law School.

#### RONNIE SEIDEL SPIEGEL

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Ms. Spiegel is an associate at Hagens Berman Sobol Shapiro where she has worked since 2005.

Prior to joining the firm, Ms. Spiegel practiced at Spector Roseman Kodroff & Willis in Philadelphia where she managed the firm's North Carolina office. Ms. Spiegel has extensive complex litigation experience. She has worked on trial teams, developed case strategy, organized all aspects of discovery in large class action cases and has briefed and litigated numerous cases from filing through trial.

Ms. Spiegel focuses on antitrust litigation. Her case experience includes: *In re DRAM Antitrust Litigation*; *In re SRAM Antitrust Litigation*; *In re Brand Name Prescription Drugs Antitrust Litigation*; *In re NASDAQ Market-Makers Antitrust Litigation*; *In re Vitamins Antitrust Litigation*; *In re High Fructose Corn Syrup Antitrust Litigation*; *In re Commercial Tissue Paper Antitrust Litigation*; *In re Flat Glass Antitrust Litigation*; *In re Linerboard Antitrust Litigation*; *In re TFT-LCD (Flat Panel) Antitrust Litigation*; and *In re Hawaiian and Guamanian Cabotage Antitrust Litigation*.

Ms. Spiegel earned a Bachelor of Arts in International Relations from Boston University. She earned her law degree from Temple University's Beasley School of Law, where she was an editor of the *Temple Law Review*. She is admitted to practice in Washington and Pennsylvania as well as in federal court for the Eastern District of Pennsylvania and the Western District of Washington.

#### SHAYNE C. STEVENSON

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Mr. Stevenson is an associate at Hagens Berman Sobol Shapiro where he has worked since 2007. He is currently helping to spearhead the firm's False Claims Act whistleblower practice, with litigation in the Eastern District of New York challenging Pfizer's unlawful off-label marketing of Lipitor, in the District of New Jersey seeking to recover fraudulently obtained Medicare Outlier payments from various hospitals and in the prosecution of other *qui tam* actions still under seal.

He is also, along with Steve Berman, leading the multi-district litigation effort against the United States Postal Service for its violation of 800,000 employees' privacy rights under the Privacy Act, and in litigation against British Airways on behalf of a purported class of thousands of American travelers under the Montreal Convention. Mr. Stevenson has also joined the litigation effort against Rio Tinto mining conglomerate brought under the Alien Tort Statute for gross violations of human rights and environmental abuses in Papua New Guinea.

Mr. Stevenson graduated first in his class from Gonzaga University in 1996 (*summa cum laude*) with a Bachelor of Arts in Philosophy and Political Science. He was recognized as a Truman Scholar in 1995, was active in Habitat for Humanity and became a member of *Alpha Sigma Nu*. Mr. Stevenson graduated from Yale Law School in 2000. While at Yale, he was co-founder and director of the YLS Workers' Rights Project. While director, the Project drafted and filed a successful petition on behalf of thousands

of immigrant workers under the NAFTA labor side agreement (with the endorsement of the AFL-CIO, ACLU, and numerous other civil and labor rights groups). The Project also supported local labor organizing efforts, and collaborated with labor rights groups to fight against sweatshops in Manhattan and Brooklyn.

Additionally, he served as submissions editor of the *Yale Law and Policy Review*, participated in the Greenhaven Prison Project (a prisoner rehabilitation effort in New York), and represented tenants in New Haven against landlord abuse. He was also an intern in the U.S. Attorney's Office in Connecticut.

Mr. Stevenson then completed two federal clerkships. First as a law clerk to the Honorable Charles S. Haight, Jr., of the United States District Court for the Southern District of New York (2000-01); then as a law clerk for the Honorable Betty B. Fletcher, of the Ninth Circuit Court of Appeals (2001-02).

Following his clerkships, Mr. Stevenson developed his skills as a trial lawyer while working as a felony prosecutor in Seattle for over four years, successfully prosecuting hundreds of felony cases, including crimes of armed robbery, rape, murder, and assault in the first degree. He ended his tenure with an emphasis on the most egregious crimes of domestic violence.

He is admitted to practice in the State of Washington.

#### ANDREW ST. JOHN

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Mr. St. John is an associate at Hagens Berman Sobol Shapiro's Phoenix office where he has worked since 2004. Currently, he is involved in the firm's pharmaceutical litigation, insurance bad faith litigation, and several class actions.

Prior to, and during, his education Mr. St. John served in the United States military where he achieved the rank of sergeant. He was a crewman and gunner on an M1A1 Abrams main battle tank in two different armored battalions and an armored cavalry unit. His duties included being the unit retention NCO, demolitions/explosives expert, Sergeant of the Guard, and training NCO. Sergeant St. John earned expert pistol and rifle badges and was also awarded several medals and commendations for distinguished service.

Mr. St. John graduated *magna cum laude* with a Bachelor of Science in Psychology from Arizona State University. During his undergraduate education Mr. St. John was an intern in the Arizona Governor's Office during the 1998 legislative session.

Mr. St. John earned his law degree at the Sandra Day O'Connor School of Law, with High Pro Bono Distinction. While in law school he served as a staff writer for the *Arizona State Law Journal* and was an extern for both U.S. District Judge Paul G. Rosenblatt and the Arizona Supreme Court Staff Attorney's Office. Mr. St. John also represented many clients at the school's civil practice clinic.

Mr. St. John is a member of the State Bar of Arizona and is authorized to represent clients in Arizona and Colorado federal district courts.

#### GENESSA A. STOUT

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Ms. Stout is an associate at Hagens Berman Sobol Shapiro where she has worked since 2003. Her work has included the **Hungarian Gold Train Litigation, Bextra/Celebex, General Motors ERISA Litigation, and Countrywide ERISA Litigation.**

Prior to joining the firm, Ms. Stout worked in Beijing and Cheng Du, China teaching English and Science and developing cultural exchange programs between China, the United States, and the European Union.

Ms. Stout graduated *cum laude* from the University of Washington with a Bachelor of Arts degree in Speech Communications. She earned her law degree from Seattle University School of Law in 2006. While in law school Ms. Stout served as a staff editor for the *Seattle Journal for Social Justice* and served on the Juvenile Court Accountability Board. During law school Ms. Stout also interned for the Federal Trade Commission where she worked on the CAN SPAM Act and the Do Not Call Registry. She is admitted to practice law in the State of Washington.

#### AMY M. WILKINS

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Ms. Wilkins is an associate at Hagens Berman Sobol Shapiro's Phoenix office. She has focused her practice on consumer class actions and appellate work.

Ms. Wilkins has been involved in several product defect class actions. She has represented clients in disputes against major automakers alleging product defects, including a lawsuit against Hyundai alleging defective sub-frames in Hyundai Sonatas. She also represents clients in product defect disputes involving jet skis and snowmobiles. In addition, Ms. Wilkins is involved in a class action against Swift Transportation regarding payment of drivers.

Prior to joining the firm, Ms. Wilkins practiced commercial litigation for six years in Phoenix and Los Angeles, focusing on consumer and employment class actions, commercial contract disputes, wrongful competition cases, and employment disputes. She has also represented several pro bono clients, including an immigration client in a case pending before the Ninth Circuit.

Ms. Wilkins is vice-chair of the Arizona State Bar's Class Actions and Derivative Suits Committee.

Ms. Wilkins graduated *summa cum laude* from the University of Arizona in 1995 with a Bachelor of Arts in creative writing. Prior to law school, Ms. Wilkins worked as an editor and writer in the tourism and technology fields. She graduated *magna cum laude* from the James E. Rogers College of Law at the University of Arizona in 2001. In law school, Ms. Wilkins served as Editor-in-Chief of the *Arizona Law Review*, was an Ares Fellow (a teaching assistant for a first-year small section), and was awarded the law school's Outstanding Senior award at graduation. She is admitted to practice in Arizona and California.

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# A Perspective on our Performance from the Bench

Remarks from the Honorable Patti B. Saris, presiding over the AWP Litigation of which Hagens Berman Sobol Shapiro was lead trial counsel.

THE COURT: I wanted to express appreciation again to class counsel for taking this case. I believe these are the kinds of cases Federal Courts should do and are appropriate for class resolution. And while it's a huge burden in terms of time and resources, it's one of the things that the Multidistrict Litigation Court should appropriately do.

Perhaps one of the most telling references comes from the concluding comments of the Judge presiding over the State of Oregon's case against Big Tobacco.

MR. BERMAN: Nothing further, Your Honor.

THE COURT: Anything else for the record? Well, may I take just a couple more minutes of your time to say this has been an extraordinary experience from my perspective. We have a lot of emphasis in our profession these days about people complaining that lawyers are not professional, that they are not civil, they do things in the manner in which they practice that discredits the profession, and I wish those critics could have seen all of you in action.

This has been an extraordinary experience from my perspective. I cannot conceive of another case where there has been so much at stake, and all of you, from the outsiders to local counsel, have been extraordinarily responsible to resolve as much as you could and to bring to me only the issues that really needed rulings. I cannot tell you how much I appreciate all of your work in that regard, and I know that that was you, as individuals, doing the important thing because in a case of this magnitude, with local and regional and national and international levels of attorneys, it's very hard to connect with people.

I just hope some time before I stop during this wonderful year, I have another chance to see this kind of lawyering. *It's been stunning, and I really want to say that it's been a wonderful experience.*

So, Hallelujah.