

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: AQUEOUS FILM-FORMING FOAMS) Master Docket No.:
PRODUCTS LIABILITY LITIGATION) 2:18-mn-2873-RMG

CITY OF CAMDEN, et al.,)
) Civil Action No.:
) 2:24-cv-02321-RMG

Plaintiffs,

-vs-

TYCO FIRE PRODUCTS LP, individually and as)
successors in interest to The Ansul Company, and)
CHEMGUARD, INC.)
)

Defendant.

CITY OF CAMDEN, et al.,)
) Civil Action No.:
) 2:24-cv-03174-RMG

Plaintiffs,

-vs-

BASF CORPORATION, individually and as successor in)
interest to Ciba Inc.,)
)
)

Defendant.

CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES AND COSTS

Class Counsel, on behalf of all Plaintiffs’ counsel, the Preliminarily Approved Settlement Class and the Preliminarily Approved Class Representatives, City of Camden, California Water Service Company, City of Benwood, City of Brockton, City of Delray Beach, City of Freeport, City of Sioux Falls, City of South Shore, Coraopolis Water & Sewer Authority, Dalton Farms

Water System, Martinsburg Municipal Authority, Township of Verona, and Village of Bridgeport, respectfully submit this Motion for Attorneys' Fees and Costs.

For the reasons set forth in the accompanying memorandum of law, Class Counsel request that the Court approve the following award:

- 8% in attorneys' fees from the Tyco PWS Settlement for a Class Fee award in the amount of \$60,000,000;
- Reimbursement of costs from the Tyco PWS Settlement for a Class Costs award in the amount of \$7,329,757.06;
- 8% in attorneys' fees from the BASF PWS Settlement for a Class Fee award in the amount of \$25,320,000; and
- Reimbursement of costs from the BASF PWS Settlement for a Class Costs award in the amount of \$3,141,324.45.

Additionally, Class Counsel request's that the 8% attorneys' fee awards should be credited against any individual counsel's retainer fee, such that any private contract will be reduced by 8%, should be granted for the reasons set forth in the accompanying memorandum of law.

Dated: July 22, 2024

Respectfully submitted,

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Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with this Court's CM/ECF on this 22nd day of July, 2024 and was thus served electronically upon counsel of record.

/s/ Michael A. London

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 BASF CORPORATION, individually and as successor in)
 interest to Ciba Inc.,)
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)
 Defendant.

**[PROPOSED] ORDER GRANTING CLASS COUNSEL’S MOTION
FOR ATTORNEYS’ FEES AND COSTS**

For good cause appearing, Class Counsel’s Motion for Attorneys’ Fees and Costs and the requested award are hereby GRANTED as follows:

- 8% in attorneys’ fees from the Tyco PWS Settlement for a Class Fee award in the amount of \$60,000,000;

- Reimbursement of costs from the Tyco PWS Settlement for a Class Costs award in the amount of \$7,329,757.06;
- 8% in attorneys' fees from the BASF PWS Settlement for a Class Fee award in the amount of \$25,320,000; and
- Reimbursement of costs from the BASF PWS Settlement for a Class Costs award in the amount of \$3,141,324.45.

The 8% attorneys' fee award is to be credited against any individual counsel's retainer fee, such that any private contract will be reduced by 8%.

SO ORDERED.

Charleston, South Carolina, this ____ day of _____, 2024.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with this Court's CM/ECF on this 22nd day of July, 2024 and was thus served electronically upon counsel of record.

/s/ Michael A. London

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**CLASS COUNSEL’S MEMORANDUM IN SUPPORT OF THEIR MOTION FOR
ATTORNEYS’ FEES AND COSTS**

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I. INTRODUCTION

Drinking water consumed by the American public will become safer due to two additional successes in the ongoing efforts to secure settlement funds to treat PFAS contamination in water supplies nationwide. Plaintiffs' counsel first secured two historic settlement funds for Public Water Suppliers ("PWS")—\$1.185 billion from DuPont¹ and between \$10.5 and \$12.5 billion from the 3M Company ("3M")—in June 2023, which were both granted final approval by this Court.² Now, Plaintiffs' counsel have secured two additional settlements in the amounts of \$750 million ("Tyco Settlement Amount") from Tyco Fire Products LP ("Tyco") and \$316.5 million ("BASF Settlement Funds") from BASF Corporation ("BASF")—to further aid PWS in their efforts to provide PFAS-free water. After years of intensely adversarial litigation, Class Counsel now petition the Court for an award of attorneys' fees commensurate with the exceptional result they labored tirelessly for years to bring about. Class Counsel again request an award of only 8% of the combined total of the Tyco and BASF Settlement Amounts, or \$85,320,000 ("Class Fee"),³ plus reimbursement of expenses and costs ("Class Costs") in the amount of \$10,471,081.51.⁴ Class Counsel's fee request represents an amount well below the approximate 25% benchmark permissible under Fourth Circuit precedent and is appropriate given the enormity of the work performed to obtain these results.⁵

¹ DuPont includes The Chemours Company, The Chemours Company FC, LLC, DuPont de Nemours, Inc., Corteva, Inc., and E. I. DuPont de Nemours and Company n/k/a EIDP, Inc. (collectively herein, "DuPont").

² See 3M Final Approval Order and Opinion [ECF No. 4754]; see also DuPont Final Approval Order and Opinion [ECF No. 4471].

³ With the exception of the terms "Class Fee" and "Class Costs," which are defined herein, all other capitalized terms have the same definition as in the Class Action Settlement Agreements [ECF No. 4911-3] ("Tyco Settlement Agreement") and [ECF No. 5053-3] ("BASF Settlement Agreement").

⁴ Together, the Class Fee and Class Costs constitute the "Class Award."

⁵ See Diagram, *infra*.

Over the last five-plus years, Plaintiffs’ counsel—including Co-Lead Counsel, preliminarily-approved Class Counsel, the Plaintiffs’ Executive Committee (“PEC”), and the colloquially named Strike Force—have spent over 480,000 hours⁶ working on “intertwined” tasks that synergistically yielded the largest drinking water settlements in United States history.⁷ This colossal achievement was the result of a sustained and concerted effort directed against *all* Defendants, whose liability is undeniably intertwined and interrelated. Under the Court’s watchful oversight and various scheduling orders, Plaintiffs conducted common discovery against all Defendants simultaneously, defeated common defenses (*e.g.*, government contractor defense), traced the exchange of research and knowledge as between and amongst the Defendants, and engaged in other analyses that revealed the interplay among the various Defendants and the United States government.

These efforts were nothing short of exceptional. Every hour devoted to this litigation advanced the liability case against all Defendants; the cumulative time expended by Plaintiffs’ counsel to obtain the initial two PWS Settlements was necessarily common to the cause and indivisible across settlements with individual Defendants.⁸ At the time Plaintiffs’ counsel petitioned the Court for attorneys’ fees related to the landmark settlements involving both 3M and DuPont, they had already accumulated 431,158.9⁹ hours of common benefit work devoted to the resolution of the claims of all PWS, with the first trial focused primarily on 3M.¹⁰ Since then,

⁶ Declaration of John W. Perry, Jr. (“Perry Decl.”), attached hereto as Ex. A, at ¶¶ 20-21.

⁷ See Apr. 23, 2024, Fee Order and Opinion [ECF No. 4885] (“Fee Order”), at 6.

⁸ See Fee Order at 6 (noting the “interconnected relationship” of these cases).

⁹ Class Counsel’s Memorandum of Law in Support of their Motion for Attorneys’ Fees and Costs in the 3M PWS Settlement [ECF No. 4269-1] (“3M Fee Petition”), at 1; *see also*, Perry Decl., at ¶ 20.

¹⁰ As the Court will recall, the *Stuart* trial was focused primarily on 3M because 3M was responsible for approximately 90% of the combined PFOA and PFOS contamination of Stuart’s wells. See Declaration of Gary J. Douglas in Support of Class Counsel’s Motion for Final Approval of Class Settlement and for Final Certification of the Settlement Class [ECF No. 4273-21], at ¶ 6.

Plaintiffs' counsel have accumulated an additional 50,182.7 of common benefit time devoted to the continued prosecution of this MDL.¹¹

Thus, as Class Counsel previously indicated in their Motions for Attorneys' Fees and Costs associated with the DuPont and 3M PWS Settlements,¹² Class Counsel respectfully request that this Court view the settlements reached to date in the aggregate when analyzing the Class Fee—just as the Court approached the overall management of this case with all Defendants in concert, beginning with Science Day, through the government contractor defense briefing and argument, the first water provider bellwether process, right up until the eve of the first bellwether trial involving the City of Stuart, Florida. And, most recently, through the Telomer Water Provider Bellwether Program, as set forth in Case Management Orders (“CMOs”) 27-27H,¹³ which focused heavily on Telomer Defendants,¹⁴ including primarily Tyco and BASF (by design) and was crucial and instrumental to the successful negotiations of the Tyco and BASF PWS Settlements.

Courts regularly award percentage fees from a common fund in cases such as these, in amounts far greater than 8%. Given this Court's intimate familiarity with how cohesively this litigation was conducted, Class Counsel again ask the Court to approve an 8% Class Fee award in

¹¹ It is important to note that Plaintiffs' counsel, with the oversight of Special Master John Perry, have been careful to segregate from the current time submission now before the Court, all work devoted to the administration of the existing 3M and DuPont Settlements, which time will be the subject of a separate fee petition from the funds held back from those two settlements for this purpose. *See* Fee Order, at 8 (describing the filing date as the first Thursday in November, *i.e.*, November 7, 2024); *see also* Perry Decl., at ¶ 21.

¹² 3M Fee Petition, at 2; *see also* Class Counsel's Memorandum of Law in Support of their Motion for Attorneys' Fees and Costs for the DuPont PWS Settlement [ECF No. 3795-1] (“DuPont Fee Petition”), at 2.

¹³ CMO 27-27H [ECF Nos. 3665, 3892, 4089, 4108, 4275, 4464, 4829, 4878, 5007].

¹⁴ Telomer Defendants includes those Defendants whose AFFFs incorporate fluorosurfactants manufactured using the telomerization process (*e.g.*, Tyco), and fluorosurfactant manufacturers themselves who utilized the telomerization process to manufacture their fluorosurfactants (*e.g.*, BASF).

the context of the Tyco and BASF PWS Settlements,¹⁵ as it did for the 3M and DuPont Settlements.¹⁶ This is justified given that the hours and work collectively accumulated were equally important to achieving all PWS Settlements to date.

As discussed below, a thorough analysis of the *Barber* factors¹⁷ illustrates that the requested Class Fee is reasonable, especially given the daunting governmental contractor defense that loomed over this litigation like the sword of Damocles. Thanks to this Court's oversight, Plaintiffs' counsel skillfully faced and surmounted well-resourced defense counsel who energetically pressed their novel and difficult governmental immunity arguments, as well as other challenges at every turn. Notably, a jury trial was imminent prior to the settlements achieved with DuPont and 3M, which was set to take place beginning in June 2023.

More recently, significant trial pressure was likewise placed on both Defendants BASF and Tyco who faced a quickly approaching water provider trial originally slated for the Fall of 2024.¹⁸ With the situation fraught with adversity, Plaintiffs' counsel were obliged to rise to each occasion, sweating through thousands of hours of document review over the course of now more than five years of significant motion practice, contentious discovery, complex research, evidentiary presentations, and more. While this may have appeared seamless to the unknowing outside observer, it came about only through countless sleepless nights and exacting preparation by seasoned counsel whose ability matched their well-deserved reputations and judicial

¹⁵ Class Counsel believe an 8% Class Fee request is appropriate with respect to the Tyco and BASF PWS Settlements, and such request is consistent with legal precedent, but any future settlements will need to be analyzed separately, if, and when, they occur.

¹⁶ See Fee Order at 5, 12 (approving the percentage of fund approach and approving as "reasonable" an 8% award).

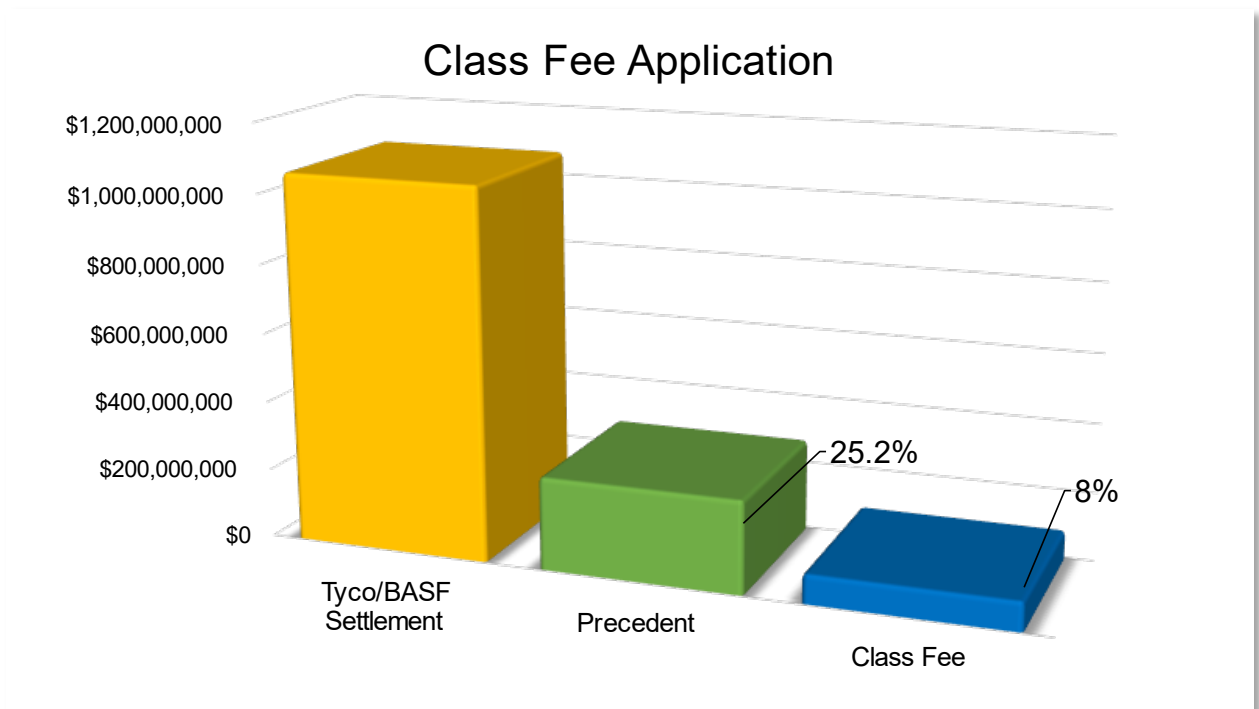
¹⁷ See generally Local Civil Rule 54.02(A) D.S.C., adopting *Barber v. Kimbrell's Inc.*, 577 F.2d 216, 226 n.28 (4th Cir. 1978).

¹⁸ CMO 27G, Telomer Bellwether Program [ECF No. 4878]. This date was later extended first to January 27, 2025, and then later to March 3, 2025. See CMOs 27H and 27I, respectively [ECF No. 5007 and 5362].

appointments. The result achieved for the Settlement Class Members—considering all the significant litigation risks that were ever-present and only overcome after two rounds of pre-trial bellwether work-up by Plaintiffs’ counsel, who went uncompensated for years as they labored on a contingent basis—is nothing short of exceptional. Where such extraordinary results are achieved, courts in similar cases do not hesitate to justly compensate counsel for their contributions.

As the diagram below depicts, the 8% fee request represents a small portion of the total combined Tyco and BASF PWS Settlements—and notably, the same percentage was approved by the Court as reasonable in the DuPont and 3M PWS Settlements—as well as representing a much lower percentage-method award than is supported by Fourth Circuit precedent.¹⁹

\$1.0665 Billion Total Settlement Amounts



¹⁹ Declaration of Brian T. Fitzpatrick, attached hereto as Ex. B (“Fitzpatrick Decl.”), at ¶ 2 (opining that 8% is lower than the norm and easily justified).

In addition to the request for 8% in attorneys' fees, Class Counsel likewise seek reimbursement of Class Costs in the amount of \$10,471,081.51, their total out-of-pocket costs expended to fund the prosecution of this litigation since August 30, 2023, to June 30, 2024, all of which contributed to the success of the Class's claims.²⁰ No incentive awards are being sought for the Class Representative Plaintiffs.

A comprehensive description of the massive scope and nature of the work performed by PEC firms and other common benefit attorneys, up to and including August 29, 2023, is thoroughly detailed in Class Counsel's memorandums in support of their Fee Petitions with respect to both the DuPont and 3M PWS Settlements and relevant supporting exhibits, which are incorporated by reference as if fully set forth herein.²¹ To avoid duplication, the instant petition focuses on both Tyco- and BASF-specific discovery and related efforts leading to these PWS Settlements, including most recently the work performed in the Telomer Bellwether Program. In addition to the extensive efforts detailed below, Plaintiffs' counsel support the instant motion with additional declarations, including the Declaration of Michael A. London ("London Decl."), which addresses the administration of this complex and multi-track MDL, and details the efforts related to the Telomer Defendants and specifically to Tyco and BASF; the Declaration of Scott Summy ("Summy Decl."), which describes the settlement process, its complex details, and the history of negotiations with Tyco and BASF; the Declaration of Gary J. Douglas ("Douglas Decl."), which details the substantive litigation efforts historically undertaken with respect to Defendants Tyco and BASF, as well as the more recent Telomer Bellwether Program contributions; the Declaration

²⁰ Perry Decl., at ¶ 24 (reporting total unreimbursed costs submitted to date of \$10,471,081.51); *see also* Fitzpatrick Decl., at ¶ 2 (noting that Plaintiffs' reimbursement request is well below average for class action litigation).

²¹ DuPont Fee Petition and relevant supporting declarations [ECF Nos. 3795-1, 3795-4, 3795-6 to 3795-9, 3795-11 to 3795-13]; *see also* 3M Fee Petition and relevant supporting declarations [ECF Nos. 4269-1, 4269-3, 4269-5 to 4269-12].

of Paul J. Napoli (“Napoli Decl.”), which details the work performed to defeat the government contractor immunity defense; and the Declaration of Joe Rice (“Rice Decl.”), which details the negotiations with Tyco and BASF. The supporting declarations are being filed concurrently herewith and are attached as Exs. C, D, E, F, and G, respectively.

All the efforts described in the new declarations, coupled with the efforts set forth in the prior Fee Petitions, combined to achieve these remarkable PWS Settlements, including those involving Tyco and BASF which, if finally approved, will bring significant additional benefits to the Settlement Class.

Finally, Class Counsel provide input from leading professionals to assist the Court in evaluating the reasonableness of Class Counsel’s fee request under the *Barber* standards, including the Declaration of Brian Fitzpatrick (“Fitzpatrick Decl.”), summarizing the legal framework governing fee awards; the Declaration of John Perry (“Perry Decl.”), attesting to the number of hours of work performed by PEC firms and other common benefit attorneys from August 30, 2023 through May 31, 2024²² and the expenses submitted by PEC firms through June 30, 2024,²³ and the Declaration of Steven J. Herman (“Herman Decl.”), regarding an appropriate hourly rate for attorney time in this MDL (for the purpose of a Lodestar cross-check, in the event the Court chooses to perform one), which are attached as Exs. B, A, and H, respectively.

The Tyco and BASF PWS settlements are the result of a years-long, multitrack effort by Plaintiffs’ counsel who expended hundreds of thousands of hours on multiple fronts, including litigation efforts, MDL case administration and settlement negotiations, without any guarantee of

²² Under CMO 3, common benefit reporting time is accounted for on a monthly basis. Class Counsel is using May 31, 2024, as the time reporting deadline for this fee petition because it is the last reporting deadline for which all relevant timekeepers reported time in a timely fashion.

²³ Class Counsel is using June 30, 2024, as the expense reporting deadline for this fee petition as law firms have submitted relevant expenses through this date.

a recovery. This three-pronged approach was necessary given the highly complex nature of this MDL involving so many defendants, and to meet the challenges and obstacles presented by this MDL, including, of course, litigating amid a global pandemic, and then subsequently in the midst of newly promulgated EPA regulations announcing the strictest drinking water standards in U.S. history.

All attorneys, working together towards the same goal, enhanced the efforts of the others, and their combined efforts, as described more fully below and in the supporting declarations, as well as in prior fee petitions, along with existing legal precedent, demonstrate that the requested 8% Class Fee of \$85,320,000.00 and \$10,471,081.51 in Class Costs is reasonable.

II. THE SETTLEMENTS

A. PROCEDURAL BACKGROUND

1. Tyco

On April 12, 2024, the Tyco Class Action Settlement Agreement was executed.²⁴ On June 13, 2024, the \$750 million proposed class settlement with Tyco was preliminarily approved.²⁵ The preliminarily approved settlement is for the Settlement Class consisting of:

Every Active Public Water System in the United States of America that has one or more Impacted Water Sources as of May 15, 2024.²⁶

In its Tyco Preliminary Approval Order, the Court noted “that it will likely be able to certify the proposed Settlement Class...”²⁷ Moreover, pursuant to the Tyco Preliminary Approval Order, the Court likewise instructed Class Counsel to file a motion for attorneys’ fees and/or litigation

²⁴ Summy Decl., at ¶ 18; *see also*, London Decl., at ¶ 28

²⁵ Preliminary Approval Order for Settlement Between Public Water Systems and Tyco [ECF No. 5147] (“Tyco Preliminary Approval Order” and/or “Tyco PAO”).

²⁶ *Id.* at ¶ 3.

²⁷ *Id.* at ¶ 5.

costs,²⁸ which now occasions this request for a reasonable Class Fee and Class Costs award in accordance with the methodology set forth in Section II.B.3 below.

2. BASF

The BASF Class Action Settlement was executed on May 20, 2024,²⁹ and on July 3, 2024, the \$316.5 million proposed class settlement with BASF was preliminarily approved.³⁰ The preliminarily approved BASF Settlement Class is defined identically to the Tyco Settlement Class, and includes:

Every Active Public Water System in the United States of America that has one or more Impacted Water Sources as of May 15, 2024.³¹

In its BASF Preliminary Approval Order, the Court noted “that it will likely be able to certify the Settlement Class...”³² Moreover, pursuant to the Preliminary Approval Order, the Court likewise instructed Class Counsel to file a motion for attorneys’ fees and/or litigation costs,³³ which now likewise occasions this request for a reasonable Class Fee and Class Costs from the BASF PWS Settlement in accordance with the methodology set forth in Section II.B.3 below.

3. Similarities of Settlements

Notably, the definitions of the preliminarily approved Settlement Classes for both the Tyco and BASF PWS Settlements are identical. Specifically, both include Settlement Classes for PWS that have *current* PFAS detections.³⁴ Both PWS Settlements require those detections to be present

²⁸ *Id.* at ¶ 27.

²⁹ Summy Decl., at ¶ 20; *see also*, London Decl., at ¶ 33.

³⁰ Preliminary Approval Order for Settlement Between Public Water Systems and BASF (“BASF Preliminary Approval Order” and/or “BASF PAO”) [ECF No. 5253], at ¶ 3.

³¹ *Id.*, at ¶ 3; *see also* BASF Settlement Agreement, at § 5.1.

³² BASF PAO, at ¶ 5.

³³ *Id.* at ¶ 26.

³⁴ Tyco PAO, at ¶ 3; *see also* BASF PAO, at ¶ 3 (emphasis added).

prior to May 15, 2024.³⁵ That these PWS settlements include only those PWS with current detections partially accounts for the settlement values as compared to the DuPont and 3M PWS Settlements, which in addition to including those PWS with current detections likewise included Phase Two claimants, i.e., PWS that did not yet have PFAS detections but that may have future detections.

B. MECHANISM OF PAYMENT

1. Tyco

Class Counsel respectfully request Tyco Class Fees and Class Costs, broken down as follows:

- Tyco Class Fee: \$60,000,000.00 (8% of the total Settlement Funds) to be awarded for attorneys' fees (e.g., for the legal work performed for the common benefit of all litigants, all of which helped achieve this impressive result); and
- Tyco Class Costs: \$7,329,757.06 to be awarded for reimbursement of costs (70% of total Class Costs requested of \$10,471,081.51—e.g., Tyco's proportional share, based on its settlement value's contribution to the total aggregate settlement value for the Tyco and BASF PWS Settlements combined, of out-of-pocket costs expended from August 30, 2023, to June 30, 2024 by PEC and Class Counsel for the common benefit of all litigants).

2. BASF

Class Counsel respectfully request BASF Class Fees and Class Costs, broken down as follows:

- BASF Class Fee: \$25,320,000.00 (8% of the total Settlement Funds) to be awarded for attorneys' fees (e.g., for the legal work performed for the common benefit of all litigants, all of which helped achieve this impressive result); and
- BASF Class Costs: \$3,141,324.45 to be awarded for reimbursement of costs (30% of total Class Costs requested of \$10,471,081.51—e.g., BASF's proportional share, based on its settlement value's contribution to the total aggregate settlement value for the Tyco and BASF PWS Settlements combined, of out-of-pocket costs

³⁵ *Id.*

expended from August 30, 2023, to June 30, 2024 by PEC and Class Counsel for the common benefit of all litigants).

3. Class Fee and Class Costs

Together, the Tyco and BASF Class Fee request totals \$85,320,000 (Tyco Class Fee of \$60,000,000 + BASF Class Fee of \$25,320,000—or alternatively, 8% of the combined total Settlement Funds (0.08*(\$750,000,000 + \$316,500,000))).

Class Counsel’s intention to submit this fee and cost reimbursement request was set forth in the DuPont and 3M Fee Petitions.³⁶ Of note, there was not a single objection filed as to this percentage and mechanism challenging either the DuPont or the 3M Fee Petitions; not a single objection regarding fees was lodged at the Final Fairness Hearing held on December 14, 2023; nor a single objection to the Court’s approval of such Motions.³⁷ This positive reaction by Class Members corroborates the reasonableness of this modest percentage award and reimbursement of expenses, especially when put into context of other comparable litigation awards.³⁸ Of note as well, the PEC previously approved this 8% Class Fee framework following an in-person meeting and vote of the PEC, without objection.³⁹ Moreover, on July 2, 2024, during a PEC-wide conference call, the PEC once again unanimously confirmed their support of an 8% fee request with respect to the Tyco and BASF PWS Settlements.⁴⁰

³⁶ DuPont and 3M Fee Petitions, at 2; *see also*, Declaration of Brian Fitzpatrick in Support of DuPont Fee Petition (“Fitzpatrick DuPont Fee Decl.”) [ECF 3795-5], at ¶ 23 (citing *In re Capacitors Antitrust Litig.*, No. 3:14-CV-03264-JD, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018) for the proposition that “[b]ecause the total work performed by counsel from inception of the case makes each settlement possible, courts typically base fee awards in subsequent settlements on all work performed in the case.”).

³⁷ London Decl., at ¶ 37.

³⁸ While this fee request is being made by Class Counsel, it is for the work performed over the course of the litigation by Lead Counsel, Class Counsel, PEC firms and other common benefit attorneys (collectively referred to as “Plaintiffs’ counsel” or “counsel”), as set forth in III.B, *infra*.

³⁹ Summy Decl., at ¶ 27.

⁴⁰ London Decl., at ¶ 37.

As explained in detail by Mr. Summy, Co-Lead Counsel analyzed and determined that resolution of this matter on a class-wide basis would be the optimal means of ensuring that all PWS had the opportunity to benefit from any proposed resolution.⁴¹ Pursuant to Rule 23 and the principles of the common benefit doctrine, counsel are entitled to seek a reasonable fee and out-of-pocket costs from the Settlement Amount. Class Counsel seek an 8% Class Fee here, as they did and as was approved from the DuPont and 3M PWS Settlements, both of which were granted final approval by this Court.

Just like in the DuPont and 3M Fee Petitions, the instant motion seeks the same percentage for Class Fees as was sought in those PWS Settlements and seeks reimbursement of Class Costs on the same proportionate basis approach, which means reimbursement of the remaining class costs expended through June 30, 2024, in the amount of \$10,471,081.51. Thereafter, additional fees and/or costs would be compensated from future judgments or settlements.⁴² More specifically, with regards to Class Costs, Class Counsel would seek to apportion the costs incurred between the Tyco and the BASF PWS Settlements in accordance with each Settlement's proportional contribution to the combined total of \$1.0665 billion (\$750 million + \$316.5 million). The Tyco PWS Settlement represents approximately 70% of the combined total, while the BASF PWS Settlement represents approximately 30%.

a. Class Fees and Class Costs Are Appropriate for a Class Action Settlement

CMO 3, which issued on April 26, 2019, contemplated a common benefit holdback for settlements in individual cases in the amount of 9% (6% for common benefit attorneys' fees and

⁴¹ Summy Decl., at ¶¶ 18-20.

⁴² Regarding private attorney-client agreements as to fees and costs, Class Counsel submits that those be paid in accordance with their private contract terms and the Class Fee will be deducted from the private attorneys' portion of any settlement funds.

3% for common benefit costs and expenses).⁴³ Notably, CMO 3 contemplated that its application would be “subject to modification depending on the future course of litigation.”⁴⁴ Due to the class action mechanism under which these resolutions were reached, CMO 3’s holdback should not apply to these settlements. Instead, CMO 3 should continue to apply in the context for which it was originally designed—namely, for individual or private case settlements⁴⁵—while here, Class Counsel’s reasonable request for a Class Fee and Class Costs should be granted due to certain additional distinguishing factors which must be considered. Rather than employ the MDL assessment applicable to individual case settlements under CMO 3, which is designed to prevent “free riders,”⁴⁶ the Class Fee and Class Costs requests spread the fee amongst *all* Class Members, *i.e.*, absent Class Members (some of whom are not represented by counsel) as well as the Class Representative Plaintiffs, as is appropriate in a class action settlement under FED. R. CIV. P. 23.

In addition, the current motion requests *less than* CMO 3’s 9% holdback, since the Class Fee request is only 8% and Class Counsel only seek reimbursement of proportional costs of \$10,471,081.51, which represent the still unreimbursed expenses since the Fee Order, *i.e.*, between August 30, 2023 (the cut-off date from Class Counsel’s previous request for Class Costs) and June 30, 2024 (the last reporting deadline for which all relevant timekeepers have submitted common

⁴³ CMO 3 [ECF No. 72], at ¶ 19.

⁴⁴ *Id.* at ¶ 21.

⁴⁵ Plaintiffs recognize that CMO 3 will likely apply in future individual or private case settlements. For example, if a cluster of personal injury or property damage cases were to settle with one lawyer (or small group of lawyers), as occurred in *Campbell v. Tyco Fire Prods., et al.*, 19-cv-00422 or *City of Stuart v. 3M, et al.*, 18-cv-3487, then the requirements of CMO 3 would likely apply.

⁴⁶ See *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977).

benefit expenses).⁴⁷ The Class Costs sought were expended to achieve the recovery in the Tyco and BASF PWS Settlements and have been certified by Special Master John Perry's office.⁴⁸

The PEC spent \$31,858,642.26 for all litigation expenses from the origin of the litigation, through June 30, 2024, of which \$21,387,560.75 has already been reimbursed through the DuPont and 3M PWS Settlements.⁴⁹ Time and expense reports were required to be submitted to the Court-appointed CPA, Mr. Jeremy Betsill.⁵⁰ Special Master John Perry and his office, with his partner Mr. Dan Balhoff, reviewed the submissions to ensure they complied with CMO 3. These professionals categorized the expenses as either Held Expenses or Shared Expenses.⁵¹ Mr. Perry confirmed that Plaintiffs' expenses have been received in accordance with CMO 3.⁵² Because the PEC intends to treat PWS Settlements as presenting a virtually unified common fund due to how the cases were jointly prosecuted against all Defendants and how the work was inextricably intertwined, Class Counsel intend to seek reimbursement of all costs from work performed to achieve such settlements from each PWS Settlement, as had been previewed in the 3M and DuPont Fee Petitions.⁵³ In addition to litigation costs, certain costs of providing notice to the class, and the

⁴⁷ Perry Decl., at ¶ 10.

⁴⁸ See generally Perry Decl.

⁴⁹ Fee Order, at 11, 14; see also, Perry Decl., at ¶ 23.

⁵⁰ CMO 3, at ¶ 12.d.

⁵¹ *Id.*, at ¶ 14; see also Perry Decl. at ¶¶ 23-25.

⁵² Perry Decl., at ¶ 9.

⁵³ DuPont and 3M Fee Petitions, at 2; see also Fitzpatrick DuPont Fee Decl., at ¶ 23. Courts are authorized to award payment of out-of-pocket costs expended to achieve a common benefit recovery or to advance the common goals of plaintiffs in MDL litigation. See *Sprague*, 307 U.S. at 166-67 (recognizing a federal court's equity power to award costs from a common fund); *Savani v. URS Pro. Sols. LLC*, 121 F. Supp. 3d 564, 576 (D.S.C. 2015) ("Reimbursement of reasonable costs and expenses to counsel who create a common fund is both necessary and routine"). "The prevailing view is that expenses are awarded in addition to the fee percentage." *Berry v. Wells Fargo & Co.*, No. 3:17-CV-00304-JFA, 2020 WL 9311859, at *15 (D.S.C. July 29, 2020) (citations omitted). Notably, CMO 3's holdback assessment serves the underlying purpose of the common fund doctrine: "avoid[ing] the unjust enrichment of those who would otherwise benefit from the fund without paying the litigation costs necessary to produce the fund." *Fickinger v. C.I. Planning Corp.*, 646 F. Supp. 622, 632 (E.D. Pa. 1986); see also *In re Diet Drugs*, 582 F.3d 524,

currently invoiced costs of the Notice Administrator, Escrow Agent, and Special Master, are to be taken from the QSF even before the Effective Date in accordance with the Settlement Agreements.⁵⁴ Should final approval be granted, future costs of the Notice Administrator, Escrow Agent and Special Master shall be paid directly from the QSF in accordance with the Settlement Agreements.⁵⁵

The Class Fee sought from the Tyco PWS Settlement is calculated as 8% of the Settlement Amount of \$750,000,000, for a total of \$60,000,000. Class Counsel respectfully seek disbursement of the requested Tyco Class Fee, if awarded, in the amount of \$60,000,000 after Tyco's last payment is made in mid-October 2024 and upon entry of a Court Order granting the instant request.⁵⁶

The Class Fee sought from the BASF PWS Settlement is calculated as 8% of the Settlement Funds of \$316,500,000, for a total of \$25,320,000.⁵⁷ Together, the Class Fee sought from both the Tyco and the BASF PWS Settlements is 8% of their combined gross totals of \$1,0665,000,000, for a total Class Fee in the amount of \$85,320,000. Assuming the Court approves the 8% Class Fee award, the chart below summarily depicts the requested Class Fee and disbursement schedule:

CLASS FEE REQUEST AND DISBURSEMENT		
EVENT	CLASS FEE AWARD	DESCRIPTION
Court Order granting Tyco Class Fee Award requested	\$60,000,000	Tyco PWS Settlement 8% Class Fee Award

550 n.52 (3rd Cir. 2009) (noting that fee awards in common fund cases include “[b]asic concerns for fairness and due process”). Coinciding with this principle, the equitable considerations addressing reimbursement of costs from a common fund created by virtue of a class action apply to ensure that all class members, whether or not represented by counsel, contribute to pay for the recovery.

⁵⁴ Tyco Settlement Agreement, at §§ 6.2-6.3, 6.12; BASF Settlement Agreement at § 6.1.1.

⁵⁵ *Id.*

⁵⁶ London Decl., at ¶¶ 40-42.

⁵⁷ London Decl., at ¶ 37.

Court Order granting BASF Class Fee Award requested	\$25,320,000	BASF PWS Settlement 8% Class Fee Award
TOTAL	\$85,320,000	

Finally, as noted above, while the Class Fee would be paid from the common fund, Class Counsel propose, in consultation with Plaintiffs' expert, that the Class Fee be treated like a common benefit assessment as was requested in the previous Fee Petitions, which also previewed Class Counsel's intent to request such an approach be applicable to future settlements such as these with Tyco and BASF.⁵⁸ Thus, the contingency fee set forth in represented Plaintiffs' individual contingency fee agreements would be reduced to account for the Class Fee of 8%. For example, a Class Member who hired a private lawyer on a 25% contingency agreement will have their contingency agreement reduced to 17% because the Class Fee will have already come off the top. The PEC uniformly agreed to this mechanism for the 3M and DuPont Settlements, and have again confirmed their endorsement of the same treatment for these Settlements. It is proposed that this procedure should therefore apply.

In sum, the total attorneys' fees being sought at this time from the Tyco PWS Settlement is \$60,000,000. The total attorneys' fees being sought at this time from the BASF PWS Settlement is \$25,320,000. When aggregated, the total Class Fee award requested from the Tyco and BASF PWS Settlements is \$85,320,000.

b. Class Fee and Class Costs Allocation and Administration

Pursuant to CMO 3, and in accordance with the Settlement Agreement, common benefit awards are to be deducted from any settlement monies paid by Defendants.⁵⁹ As noted above, the

⁵⁸ DuPont and 3M Fee Petitions, at 2 and 15 respectively.

⁵⁹ CMO 3; *see also* Tyco Settlement Agreement, at §§ 2.68, 3.1, 6, and BASF Settlement Agreement at §§ 2.16, 3.1, 6.

proposed Class Fee and Class Costs would be deducted the same way; namely, taken from the settlement fund itself. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). *See also* FED. R. CIV. P. 23(h).

The following chart delineates the calculation and transfer destinations of the funds to be paid from the Settlement Amount for the Class Fee and Class Costs:

	CALCULATION	AMOUNT	TRANSFERRED TO
Tyco and BASF PWS Settlement Funds			
A	Tyco total Settlement Funds	\$ 750 million	Tyco Qualified Settlement Fund
B	BASF total Settlement Funds	\$ 316.5 million	BASF Qualified Settlement Fund
C	Combined Tyco & BASF total Settlement Funds (A + B)	\$ 1.0665 billion	N/A
Plaintiff Costs			
D	Total costs expended between August 30, 2023, and June 30, 2024	\$ 10,471,081.51	N/A
E	Tyco proportion of combined total (A / C * 100)	~70%	MDL 2873 Expense QSF ⁶⁰
F	BASF proportion of combined total (B / C * 100)	~30%	MDL 2873 Expense QSF
Class Award Sought for the Tyco and BASF PWS Settlements			
G	Tyco Class Fee (8% of A)	\$ 60,000,000.00	MDL 2873 Fee Fund QSF ⁶¹
H	Tyco Class Costs requested (of D * E)	\$ 7,329,757.06	MDL 2873 Expense QSF
I	BASF Class Fee (8% of B)	\$ 25,320,000.00	MDL 2873 Fee Fund QSF
J	BASF Class Costs requested (D * F)	\$ 3,141,324.45	MDL 2873 Expense QSF

⁶⁰ The “MDL 2873 Expense QSF” refers to the previously established interest-bearing common benefit expense QSF, the MDL 2873 COMMON BENEFIT FEE – EXPENSE FUND Huntington Bank (Acc#: ... 9872).

⁶¹ The “MDL 2873 Fee Fund QSF” refers to the previously established interest-bearing common benefit fee QSF, the MDL 2873 COMMON BENEFIT FEE – FEE FUND Huntington Bank (Acc# ...9885).

Pursuant to the Tyco Settlement Agreement, Tyco is required to tender the Settlement Amount over time.⁶² Pursuant to the BASF Settlement Agreement, BASF is required to tender the Settlement Funds over two payments.⁶³ Further, in accordance with both MSAs and Plaintiffs' Motions for Preliminary Approval, Co-Lead Counsel moved for the establishment of a Qualified Settlement Fund ("QSF") for each PWS Settlement, as defined in both the Tyco and the BASF Settlement Agreements.⁶⁴ Such Motions were granted by the Court and the QSFs for each PWS Settlement were established.⁶⁵ In accordance with both MSAs, costs incurred by the Court-approved Claims Administrator, Notice Administrator, and Settlement Special Master are to be paid from the Settlement Funds throughout the course of the litigation.⁶⁶

Class Counsel propose to administer the Class Fee and Class Costs sought from the PWS Settlements as below. The Class Award would be deposited as follows:

- Tyco Class Fee: \$60,000,000.00 (8% of the gross settlement amount of \$750M) would be wired (upon the issuance of a Court Order granting the Tyco Class Fee request) to the Class Fee account/common benefit fee account: MDL 2873 COMMON BENEFIT FEE – FEE FUND Huntington Bank (Acc#: ...9885).
- Tyco Class Costs: \$ 7,329,757.06 (70% of total reimbursable MDL costs incurred between August 30, 2023, and June 30, 2024) would be wired to the Class Expense account/common benefit expense account: MDL 2873 COMMON BENEFIT FEE – EXPENSE FUND Huntington Bank (Acc#: ... 9872).
- BASF Class Fee: \$25,320,000.00 (8% of the gross settlement amount of \$316.5M) would be wired on March 1, 2025, to the Class Fee account/common benefit fee account: MDL 2873 COMMON BENEFIT FEE – FEE FUND Huntington Bank (Acc# ...9885).

⁶² Tyco Settlement Agreement, at Exhibit H.

⁶³ BASF Settlement Agreement, at § 6.1, detailing the Initial Payment of \$4 million, due within 10 Business Days after Preliminary Approval, or on July 15, 2024, whichever is later, as well as the final Second Payment of \$312.5 million, due on March 1, 2025.

⁶⁴ Tyco Settlement Agreement, at §§ 3.1, 6, as granted by ECF Nos. 3888, 3812, 3886, and 5147, respectively; BASF Settlement Agreement, at §§ 3.1, 6, 7, as granted by ECF No. 5253.

⁶⁵ *Id.*

⁶⁶ Tyco Settlement Agreement, at §§ 6.2-6.3, 6.12; BASF Settlement Agreement, at §§ 6.2-6.3, 7.12.

- BASF Class Costs: \$3,141,324.45 (30% of total reimbursable MDL costs incurred between August 30, 2023, and June 30, 2024) would be wired to the Class Expense account/common benefit expense account: MDL 2873 COMMON BENEFIT FEE – EXPENSE FUND Huntington Bank (Acc#: ...9872).

III. BACKGROUND AND OVERVIEW OF COMMON BENEFIT EFFORTS DIRECTED SPECIFICALLY TO DEFENDANTS BASF AND TYCO INCLUDING THE TELOMER BELLWETHER PROGRAM

A. A BRIEF HISTORY OF PRE-MDL LITIGATION AND EFFICIENCY OF THE MDL AND COUNSEL.

Plaintiffs' counsel's work in this MDL should be commended and compensated for the extraordinary skill and efficiency demonstrated therein, made possible by both counsel's institutional knowledge with respect to PFAS litigation specifically and their decades of experience in water contamination cases generally, as well as their ability to adapt to the challenging circumstances presented by a global pandemic, including carrying out discovery of a complex subject matter despite a nationwide lockdown. As the history below recounts, all of the *Barber* factors support Class Counsel's fee request. Counsel's expertise and commitment to the litigation allowed them to overcome a myriad of complex and novel questions of law and difficulties in proving factual culpability. The government contractor defense, which loomed as an existential threat from the inception of the litigation, tempered the expectations of lawyers viewing this litigation, and made the case undesirable to many. It was defeated through hard work and careful attention to detail by insightful, high-caliber lawyers who had the gumption and know-how to accomplish their mission. Plaintiffs' counsel's work was never made easy, due to the incredibly talented and resourced opposition attorneys, who regularly presented strong defenses and challenged virtually all of Plaintiffs' efforts, leaving no stone unturned given the magnitude of liability their clients had at stake. All these factors justify the award sought.

1. This Court Appointed Skilled Counsel with Institutional Knowledge of the Subject Matter Who Were Fully Capable of Performing Their Legal Services Efficiently.

Litigation involving per- and polyfluoroalkyl substances (“PFAS”) has been ongoing for nearly 25 years. This extensive history is part of what makes PFAS litigation unique. Early litigations acted as the catalyst⁶⁷ that led to the 2009 provisional Health Advisory Levels for PFOA and PFOS,⁶⁸ the 2016 Lifetime Health Advisory Level for PFOA and PFOS of 70 ppt (parts per trillion) combined,⁶⁹ the 2022 Interim Health Advisories,⁷⁰ and, finally, the enforceable National Primary Drinking Water Regulations (NPDWRs) that were proposed by EPA in March 2023 of 4 ppt for each PFOA and PFOS, then formally adopted and published in the Federal Register on April 26, 2024.⁷¹ The EPA has concluded that these regulatory actions “will prevent thousands of deaths and reduce tens of thousands of serious PFAS-attributable illnesses.”⁷²

Driven by a growing public awareness of PFAS contamination, brought to light, in part, as a result of high profile PFAS verdicts⁷³ and settlements,⁷⁴ public water systems and other entities

⁶⁷ Letter from Robert A. Bilott, Esq. to the United States Environmental Protection Agency, dated March 6, 2001, EPA01-00171880 (informing government officials including EPA that DuPont was emitting PFOA which “may pose an imminent and substantial threat to health or the environment”), relevant pages attached as Ex. K to the 3M Fee Petition [ECF No. 4269-13].

⁶⁸ EPA’s website, Health Advisories for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS), *available at*: <https://www.epa.gov/sites/default/files/2015-09/documents/pfoa-pfos-provisional.pdf>.

⁶⁹ EPA’s website, FACT SHEET, PFOA & PFOS Drinking Water Health Advisories, *available at*: https://www.epa.gov/sites/default/files/2016-05/documents/drinkingwaterhealthadvisories_pfoa_pfos_5_19_16.final_1.pdf.

⁷⁰ EPA’s website, Drinking Water Health Advisories for PFOA and PFOS, 2022 Interim Updated PFOS and PFOA Health Advisories, *available at*: <https://www.epa.gov/sdwa/drinking-water-health-advisories-pfoa-and-pfos>.

⁷¹ See April 26, 2024, Federal Register, Vol. 89, No. 82, *available at*: <https://www.govinfo.gov/app/details/FR-2024-04-26/context>.

⁷² *Id.*

⁷³ See e.g., *Vigneron v. E. I. DuPont de Nemours & Co.*, 13-cv-136 (S.D.O.H.) (plaintiff’s verdict in 2017 of \$2 million in compensatory damages and \$10.5 million in punitive damages).

⁷⁴ See e.g., approximately \$671 million-dollar settlement with DuPont in 2017 in the *In re E. I. DuPont de Nemours and Co. C8 Personal Injury Litig.*, (S.D.O.H.) (“C8 MDL”) (global resolution

began filing cases against a variety of PFAS and AFFF manufacturers.⁷⁵ As the number of AFFF-specific PFAS cases piled up in federal courts, a growing chorus for consolidating these disparate cases before the Judicial Panel on Multidistrict Litigation (“JPML”) ensued.⁷⁶ Consolidation served the best interests of individual clients, but also established a pathway to advance the prosecution of PFAS-related claims nationwide.

Discovery and expert efforts in this MDL benefitted from work conducted in PFAS litigation prior to the formation of the MDL.⁷⁷ Rather than duplicate existing discovery efforts that had previously been undertaken in PFAS cases outside of the AFFF MDL, Plaintiffs’ counsel devised novel ways to draw on that discovery in this AFFF MDL.

Similarly, legacy expert discovery from the C8 MDL benefitted this MDL. This is because many of the experts who provided testimony in that litigation likewise proffered expert opinions in this MDL and brought their prior PFAS knowledge to bear in this MDL.⁷⁸ Of course, the same is true for counsel in the C8 MDL who are also counsel in this case. Not surprisingly, much of that prior litigation was conducted by counsel who attained leadership positions in this MDL as well as lead critical committee and other litigation roles. The cumulative effect of this prior PFAS litigation, and the institutional knowledge garnered from it, was to make the prosecution of this case more efficient than it otherwise would have been, which undoubtedly saved thousands of hours of additional attorney time that would have been necessary had these prior efforts not been undertaken and then capitalized on.

of approximately 3500 cases alleging harm from PFOA exposure emitted from DuPont’s Washington Works plant).

⁷⁵ Declaration of Michael A. London, Esq. in Support of Class Counsel’s Motion for Attorneys Fees and Costs (“London 3M Fee Decl.”)[ECF No. 4269-5], at ¶14.

⁷⁶ *Id.* at ¶¶ 14-19.

⁷⁷ *Id.*

⁷⁸ The following disclosed Plaintiffs’ experts likewise served as experts in the C8 MDL: Dr. Michael Siegel, Dr. Barry Levy, Dr. David MacIntosh, Mr. Robert Johnson and Mr. Stephen Petty.

Other counsel also brought invaluable depth of experience in environmental litigation. For almost three decades, some of these attorneys have represented public water providers in cases against the manufacturers of chemical products whose release contaminated water supplies. These lawyers' fluency in the language of water system operation, contaminant treatment, and complex products liability litigation efficiently gave the PEC an appreciation of the claims and context that would otherwise have taken years to acquire. They also shared established relationships with leading environmental experts, who are well-versed in designing treatment systems for public water providers. And, critically, they contributed to the PEC's advanced understanding of water provider Plaintiffs, their damages, and how to structure a settlement that reflects these Plaintiffs' needs.

In sum, having knowledgeable and experienced counsel appointed by the Court to leadership roles clearly benefited the overall conduct of this litigation and accelerated its successful resolution.

2. Plaintiffs' Counsel Conducted Discovery on a Massive Scale Efficiently Despite a Global Pandemic.

Surprisingly, the global COVID-19 pandemic, horrific and life-altering in so many ways, created an opportunity for efficiency in time spent conducting common benefit work, and resulted in significant cost savings for the PEC and all Plaintiffs. Specifically, shortly after the pandemic and ensuing lockdown began, this Court issued one of the nation's first protocols for remote depositions, without which this litigation might have to come to a complete halt.⁷⁹ Although navigating largely uncharted waters in this regard, and as is described more fully below and in declarations in support of Plaintiffs' counsel's DuPont and 3M Fee Petitions, pursuant to CMO

⁷⁹ CMO 11, as amended by CMOs 11A-B, ("Remote Deposition Protocol")[ECF Nos. 680, 1173 and 1778]; *see also* ("London 3M Fee Decl.") at ¶¶ 45-47.

11, the PEC demonstrated an exceptional ability to effectively and efficiently conduct dozens of complex depositions remotely, which required the review of millions of pages of documents. CMO 11 provided a protocol that largely avoided any undue delays and enabled the PEC to prosecute the case expeditiously on behalf of the entire MDL despite the pandemic. It is indisputable that the remote format saved countless of hours of attorney time and extraordinary expense.⁸⁰

B. THE COMMON BENEFIT WORK UNDERTAKEN FROM THE ESTABLISHMENT OF THE AFFF MDL THROUGH MAY 31, 2024, DIRECTED SPECIFICALLY TO THE TELOMER DEFENDANTS SURMOUNTED A MYRIAD OF NOVEL AND DIFFICULT LEGAL QUESTIONS.

As discussed above, the totality of Plaintiffs' common benefit work from the inception of this MDL through August 29, 2023, has been thoroughly detailed in Plaintiffs' prior fee petitions and supporting declarations with respect to the 3M and DuPont PWS Settlements, which are fully incorporated by reference as if set forth fully herein.⁸¹ It is of the utmost importance, however, to underscore again that the liability efforts with respect to each Defendant has continuously helped make the liability case as against *all other* Defendants. There is such inextricable interplay between each Defendant's liability that it would be impossible to parse specific efforts that relate to only one Defendant and played no role in the larger overall liability picture. This has been true throughout the course of the MDL, including with respect to both Defendants Tyco and BASF, and has remained a constant truth.

As discussed in Plaintiffs' 3M and DuPont Fee Petitions, documents and other evidence produced by one Defendant often helped buttress the liability case as against another Defendant. For example, one 3M-produced phone report dated 2002 noted that Gregg Ublacker, who started with Tyco in 2014:

⁸⁰ London 3M Fee Decl., at ¶ 47.

⁸¹ See DuPont and 3M Fee Petitions, *generally*.

...was very well versed in the PFOS public file at the EPA. He knew of our children's blood report, the liver tumor statistics in our 2-year rat PFOS study, along with the 3 bladder cancers reported at Decatur and many other details. He indicated that he found the PFOS "story" very interesting from a professional view point and had "poured over" the CDs he had received from the EPA.

[Ublacker] indicated that he was concerned about the future information that would show some kind of health effects from PFOS.⁸²

However, despite having this purported concern as of 2002, Tyco continued to sell C8 chemistry in certain products through 2015.

Similarly, testimonial evidence elicited from one Defendant often shored up liability as against other Defendants and/or helped to illustrate the interplay of the liability as between other Defendants. By way of example, recent depositions taken of FED. R. CIV. 30(b)(6) witnesses of both Tyco and BASF demonstrate clearly that BASF's liability is fully woven into Tyco's liability fabric. Specifically, one Tyco FED. R. CIV. 30(b)(6) witness testified that prior to Chemguard purchasing Lodyne fluorosurfactants in 2003, Tyco/Ansul⁸³ primarily purchased only Lodyne fluorosurfactants from Ciba-Geigy ("Ciba"),^{84, 85} that Tyco/Ansul relied on Ciba to manufacture fluorosurfactants that would meet AFFF specifications, and that Ciba always had more knowledge than it with respect to the dangers and risks posed by fluorosurfactants.⁸⁶ Such testimony demonstrates that Ciba/BASF was a partner to Tyco/Ansul in bringing Tyco/Ansul's AFFFs to market, and played an integral role in the development of Tyco/Ansul's AFFF despite not being an AFFF manufacturer.

⁸² 3M_BELL01477954, attached hereto as Ex. I.

⁸³ Ansul was acquired by Tyco in 1990 and even today makes AFFF under the brand name Ansulite.

⁸⁴ BASF is successor in interest to Ciba-Geigy Corporation ("Ciba").

⁸⁵ Douglas Decl., at ¶ 17.

⁸⁶ *Id.*

Liability with respect to fluorosurfactant manufacturers like BASF/Ciba is also intertwined with the liability of producers of the raw materials who source the fluorosurfactant manufacturers. In this regard, and to come full circle, one BASF corporate designee recently testified that when 3M phased out of perfluorooctanyl chemistries in 2000, BASF/Ciba was almost exclusively purchasing its raw materials, primarily perfluoro-ethyl iodides, from DuPont.⁸⁷ BASF/Ciba would incorporate these raw materials into its Lodyne fluorosurfactants, which were intended to be used in AFFF⁸⁸—thus, further blurring the liability as between the different actors within the AFFF market channels.⁸⁹ Such similar relationships likewise exist between other manufacturers of raw materials, including Daikin, Clariant Corporation, AGC Chemicals and Archroma. In fact, even toll manufacturers⁹⁰ liability was similarly immersed with the other Defendants at every other level of the AFFF market.

Finally, the AFFF-industry group—the Fire Fighting Foam Coalition (“FFFC”)—acted as a collaborative mouthpiece and combined knowledge center for all Telomer Defendants, which further ensconced the Telomer Defendants’ liability with one another, illustrating how these Defendants’ liabilities were not separate and distinct but rather had to be considered collectively. As it pertains specifically to Tyco, its role in the FFFC made it a leader in disseminating the false narrative that telomer-based AFFF neither contained nor degraded to PFOA—a half-truth that permeated the FFFC narrative and helped keep the wool over the eyes of the EPA for over a decade with respect to the dangerous propensities of telomer-based AFFF.⁹¹ In short, the development of

⁸⁷ *Id.* at ¶ 16.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ A toll manufacturer is a manufacturer who manufactures large scale production of AFFF in accordance with the specific instructions of an AFFF manufacturer.

⁹¹ Douglas Decl., at ¶ 14.

both the science and liability evidence as it pertains to each of the various Defendants cannot reasonably be separated.⁹²

Exemplar Case Management/Leadership and Law & Briefing-Related Efforts Directed Specifically Towards Advancing the Telomer Bellwether Program

Throughout the pendency of this MDL, Co-Lead Counsel organized, coordinated, and oversaw the various committees, advocated on behalf of the PEC at each CMC, liaised with defense counsel to negotiate CMOs, advised all PEC and other counsel of litigation developments, and worked to establish the administrative protocols and foundational frameworks for the litigation.⁹³ Again, the totality of these efforts are extensively detailed in prior briefing; however, since that briefing, Co-Lead Counsel also additionally oversaw a number of recent CMOs directed at the advancement of the Telomer Bellwether Program, which was specifically intended to put trial pressure on the Telomer Defendants, including Tyco and BASF, with the hope of achieving resolution. Given these preliminarily approved settlements, these efforts have seemingly been a success.

During the July 14, 2023, Case Management Conference (“CMC”), the Court directed the parties to work-up a second round of water provider bellwether plaintiffs that specifically involved Telomer Defendants.⁹⁴ In carrying out this directive, right on the heels of the prior two historic settlements, and while in the throes of defending those settlements, Co-Lead Counsel negotiated and oversaw the September 13, 2023, entry of CMO 27, which established the parameters and protocols for the Telomer Bellwether Program. While the bellwether teams quickly sought to implement this governing Order, Co-Lead Counsel continued to modify and negotiate amendments to its scope and directives as the bellwether cases were being worked up.

⁹² *Id.*, at ¶¶ 9, 11; *see also*, Perry Decl., at ¶ 26.

⁹³ London Decl., at ¶11.

⁹⁴ Jul. 14 Hearing Transcript, at 44:14-20.

In total, following the entry of the initial CMO 27, Co-Lead Counsel met and conferred with defense counsel, negotiated, modified, extended and oversaw the entry of eight (8) amendments to CMO 27 alone,⁹⁵ as set forth below:

CMO No.	Description
27A ⁹⁶	Number of depositions in Telomer water provider Tier Two fact discovery
27B ⁹⁷	Telomer water provider Tier Two cases and number of depositions in Telomer water provider Tier Two fact discovery
27C ⁹⁸	Telomer water provider Tier Two Cases and number of depositions in Telomer water provider Tier Two fact discovery
27D ⁹⁹	Telomer AFFF Bellwether Program, selection of Tier Two cases
27E ¹⁰⁰	Telomer AFFF Bellwether Program
27F ¹⁰¹	Protocol regarding filing Rule 12(b)(1), (b)(2) AND/OR 12(b)(5) defenses in Telomer water provider Tier Two cases
27G ¹⁰²	Telomer AFFF Bellwether Program
27H ¹⁰³	Telomer AFFF Bellwether Program

Further, in connection with the implementation of the Telomer Bellwether Program, and because the parties were unable to agree, Co-Lead Counsel, the Strike Force (discussed below), and the Law & Briefing Committee¹⁰⁴ engaged in extensive briefing concerning the selection of

⁹⁵ Telomer AFFF Bellwether Program [ECF No. 3665].

⁹⁶ ECF No. 3892.

⁹⁷ ECF No. 4089.

⁹⁸ ECF No. 4108.

⁹⁹ ECF No. 4275.

¹⁰⁰ ECF No. 4464.

¹⁰¹ ECF No. 4829.

¹⁰² ECF No. 4878.

¹⁰³ ECF No. 5007.

¹⁰⁴ Co-chaired by Rebecca Newman of Douglas & London, Carla Burke Pickrel of Baron & Budd, Kevin Madonna of Kennedy Madonna, and Frederick Longer of Levin Sedran & Berman

the Tier Two bellwether candidates¹⁰⁵—the ultimate outcome of that briefing being the selection of *City of Watertown v. 3M Company et al.* (No. 2:21-cv-01104) and *Southeast Morris County Municipal Utilities Authority v. 3M Company et al.* (No. 2:22-cv-00199) as the two Tier Two telomer bellwether cases.¹⁰⁶

Finally, to assist the Court in administering this MDL, prior to August 29, 2023, Co-Lead Counsel advocated on behalf of the PEC at forty-five (45) CMCs, and prepared Joint Status Reports (“JSRs”) in advance of each conference.¹⁰⁷ Since August 29, 2023, Co-Lead Counsel has advocated at three (3) additional CMCs and, as is custom, prepared monthly JSRs.¹⁰⁸ As the Court is well aware, the monthly JSRs provided the Court and every litigant a detailed analysis of the discovery status of each Defendant, including the United States, an update on the total number of documents produced in the litigation with respect to Defendants and third-parties, the total number of depositions taken (expert and fact), a report on both related and unrelated PFAS cases pending outside of the MDL, a status report on bellwether efforts, an outline of any arising disputes between the parties, and a status report on Fact Sheet production.¹⁰⁹ More recently, the JSRs included the status of settlement efforts, as well as updates on the Kidde-Fenwal, Inc.’s (“Kidde”) bankruptcy proceedings. The benefits of preparing and presenting a JSR were plentiful. Not only did the regular gathering and reporting of information require Co-Lead Counsel to maintain open channels of communication on all fronts, but it also provided an efficient mechanism to keep the Court apprised of all litigation matters, both historically and in real time as they developed.¹¹⁰ Lastly, it

¹⁰⁵ Douglas Decl., at ¶ 24; *see also* Plaintiffs’ Telomer Bellwether Selections Briefing [ECF Nos. 4152, 4153, 4179 and 4187].

¹⁰⁶ CMO 27D [ECF No. 4275].

¹⁰⁷ London 3M Fee Decl., at ¶ 104.

¹⁰⁸ These three conferences occurred on October 31, 2023, April 25, 2024 CMC, and July 19, 2024 CMC.

¹⁰⁹ London 3M Fee Decl., at ¶¶ 43, 104-105.

¹¹⁰ *Id.*

provided the parties with a consistent mechanism to raise disputes related to discovery, bellwethers, case management, or anything litigation-related. The JSR process was an essential tool for the efficient management and advancement of this MDL.

Exemplar Strike Force and Science Committee-Related Efforts Directed Specifically to the Telomer Defendants That Assisted in the Resolution of Novel and Difficult Questions Raised in this MDL and Greatly Impacted the Results Obtained.

The Strike Force,¹¹¹ created in advance of the Court's Science Day, has been central and critical to the prosecution of this MDL because it was formed to oversee nearly all aspects of this MDL, including coordinating across all committees with respect to the overall liability picture, the briefing efforts, the bellwether efforts, the efforts to overcome the government contractor defense,¹¹² and trial preparation efforts.¹¹³ Its pivotal role has been, and continues to be, a centerpiece to the seamless interactions of the various litigating committees to ensure consistency among positions and arguments made by all Plaintiffs' counsel across all aspects of the litigation.

Historically, the Strike Force has worked in tandem with the Science Committee to develop the science necessary to prosecute the case, and with the Discovery Committee to establish liability

¹¹¹ The members of this core team, a/k/a the Strike Force, are also members of other PEC-appointed committees such as the Science Committee, Law & Briefing Committee, and Discovery Committee and included (and continue to include), Gary Douglas, Rebecca Newman, Lara Say, Tate Kunkle and Anne Accettella of Douglas & London; Neil McWilliams and Wesley Bowden of Levin Papantonio; Christina Cossich, Brandon Taylor and Phillip Cossich of Cossich, Sumich, Parsiola & Taylor, LLC; Scott Summy, Carla Burke Pickrel, and Celeste Evangelisti of Baron & Budd; and Frederick Longer of Levin, Sedran & Berman, among others at different times. *See* Douglas Decl., at ¶ 6 n.1.

¹¹² Of course, the monumental efforts of the Strike Force in connection with multiple committees in overcoming the government contractor defense has been laid out in chapter and verse in Plaintiffs' prior Fee Petitions and is likewise incorporated by reference herein. However, in it is important to underscore that Tyco and BASF as successor- in- interest to Ciba hold unique positions with respect to Plaintiffs' overcoming the government contractor defense given that it was a 1982 Tyco AFFF formulation incorporating Ciba's Lodyne fluorosurfactant that together formed the basis of Plaintiffs' argument that the AFFF military specification did not require the use of C8-based AFFF, but rather a C6-dominant AFFF could meet military specification and constituted a safer design. *See* Douglas Decl., at ¶ 13.

¹¹³ Douglas Decl., at ¶¶ 6-7.

with respect to each Defendant.¹¹⁴ This same paradigm has rung true in the Telomer Bellwether Program context where once again the Science Committee and Strike Force's efforts were met with significant challenges. The totality of the Strike Force's and the Science Committee's critical involvement in this MDL has been previously outlined in detail and is incorporated herein; however, certain recent efforts undertaken by members of each committee were directly targeted to shoring up general liability as against Defendants Tyco and BASF.

In this regard, Rule 30(b)(6) notices were served on both Defendants Tyco and BASF, which each designated two (2) witnesses in response to each of the 30(b)(6) notices of deposition.¹¹⁵ These notices sought critical information from each Defendant concerning, *inter alia*, the nature, extent, substance and timing of Defendants' knowledge of the chemical characteristics of PFOS, PFOA, PFOA precursors, and surfactants used in AFFF, the nature, extent, substance, and timing of any changes over time to any applicable industry standards that affected knowledge of potential hazards or risks, Defendants' membership in trade groups, the contents of training materials, and interactions with regulators.¹¹⁶

Important liability testimony elicited from these designees included, *inter alia*, that BASF as successor-in-interest to Ciba made no effort prior to 2003 to determine whether its Lodyne fluorosurfactant products for use in AFFF contained PFOA precursors, to ascertain whether PFOA was a possible carcinogen and/or to understand the degradation of the products.¹¹⁷ On the Tyco side, one designee made clear that although Tyco/Ansul knew that certain components of its AFFF were not biodegradable, it nonetheless told its customers that its AFFF was biodegradable.¹¹⁸

¹¹⁴ *Id.* at ¶ 6.

¹¹⁵ Of note, a fifth Fed. R. Civ. 30(b)(6) notice of deposition was likewise served on Defendant Buckeye, Inc. as part of these efforts and a witness produced in response to same.

¹¹⁶ Douglas Decl., at ¶¶ 14-15.

¹¹⁷ *Id.* at ¶ 15.

¹¹⁸ *Id.*

These additional pieces of evidence obtained during the Spring of 2024 assisted in placing maximum pressure on Defendants Tyco and BASF by making clear that Plaintiffs' liability case against them was strong. In total, an additional five (5) general liability witnesses' depositions were taken during the Spring of 2024.^{119, 120}

Similarly, the Strike Force worked cohesively with the Science Committee to prepare and/or update both case-specific and general liability expert reports for the Tier Two telomer bellwether cases. As set forth below, although expert reports have not been submitted with respect to the Tier Two telomer bellwether cases given the resolutions with Tyco and BASF, and attendant CMO 27 extensions,¹²¹ both Science Committee and Strike Force members spent hundreds of hours, meeting with experts, drafting expert reports and having integral meetings and discussions amongst counsel with regard to same.

Exemplar Discovery Committee and Bellwether Committee-Related Efforts that Greatly Impacted the Labor and Time Expended in this MDL Especially Given the Novel and Complex Nature of Such Discovery

Since the inception of this MDL, the PEC knew that discovery would be voluminous. Many factors contributed to this: (a) the 60-plus year history of evidence to review; (b) the vast number of Defendants named in Plaintiffs' various lawsuits; (c) the involvement of the United States and various of its agencies, including the Department of Defense ("DoD"), and the armed forces; and (d) the significant number of third parties whose evidence would be needed.¹²² Given this complexity, robust discovery has been a linchpin of this MDL and the Discovery Committee,

¹¹⁹ *Id.* at ¶ 15, n. 6 (noting four Tyco and BASF witnesses). As noted above, a Buckeye witness was likewise deposed. *See* n.116, *supra*.

¹²⁰ Of note, over the course of this MDL, the PEC conducted fifteen (15) depositions of Tyco/Chemguard witnesses and five (5) depositions of BASF witnesses. *See* Douglas Decl, at ¶ 12.

¹²¹ *See* CMOs 27H-27I (extending deadlines to serve telomer bellwether expert reports).

¹²² London 3M Fee Decl., ¶ 32.

in concert with the Strike Force, has left no stone unturned. Again, the historical aspects of these discovery efforts both with respect to general liability and bellwether discovery are set forth in the two prior fee petition briefings and incorporated herein.

However, in addition to the historical discovery, as discussed above, in the late Summer of 2023, a second round of water provider bellwethers was commenced, which focused specifically on identifying and prosecuting the Telomer Defendants, including specifically Defendants Tyco and BASF. Initially, the Strike Force and bellwether teams conducted a thorough investigation of all eligible pending cases in order to find those water provider cases the PEC was satisfied were sufficiently representative of the overall docket to be appropriate bellwether selections, and which involved AFFFs manufactured by Tyco and/or fluorosurfactants manufactured by BASF as successor in interest to Ciba.¹²³

On September 13, 2023, this Court entered CMO 27, the Telomer Bellwether Program, which adopted the parties' slate of four (4) representative Tier One bellwether cases.¹²⁴ Over the course of Tier One discovery, Plaintiffs' counsel, *inter alia*, reviewed and produced thousands of pages of documents for each Telomer bellwether candidate and defended four (4) case-specific depositions.¹²⁵ As noted above, following Tier Two discovery, and because the parties were unable to agree on which cases would move to Tier Two discovery, the parties submitted competing Tier Two slates to the Court.¹²⁶ On December, 19, 2023, the Court selected the *City of Watertown v. 3M Company et al.* and *Southeast Morris County Municipal Utilities Authority v. 3M Company et al.* as the two (2) Tier Two bellwether cases.¹²⁷

¹²³ Douglas Decl., at ¶ 19

¹²⁴ *Id.* at ¶ 20.

¹²⁵ *Id.* at ¶¶ 21-22.

¹²⁶ *Id.* at ¶¶ 23-24.

¹²⁷ CMO 27D.

Once these cases became the Tier Two bellwether selections, the bellwether teams spent the next approximately five (5) months on a fast-paced discovery schedule that included additional document productions from Plaintiffs, further review of Defendants' document productions and subpoena responses, preparing witnesses for depositions and defending same. In total during Tier Two discovery, Plaintiffs' counsel defended sixteen (16) additional case-specific depositions, and conducted the depositions of six (6) party and non-party witnesses.¹²⁸ Additionally, the Telomer bellwether teams conducted site visits to each bellwether site, visiting both their wells and wastewater sites.¹²⁹ Site visits also occurred at fire training facilities and airports in close proximity to Plaintiffs' wells where AFFF use was documented.¹³⁰ In concert with the Science Committee, the bellwether teams likewise conducted extensive PFAS field sampling in and around Plaintiffs' wells.¹³¹ Specifically, telomer isomer profiling was conducted in an effort to identify the manufacturer of the PFOA present in Plaintiffs' wells.¹³² Finally, as noted above, the bellwether teams also spent hundreds of hours preparing expert reports in connection with Science Committee, meeting with experts and amongst counsel in anticipation of the submission of expert reports.¹³³ Although these expert reports have not been tendered, significant efforts have been expended to develop them.

BASF and Tyco Specific Settlement Negotiation Details that Required Implementation of Novel Settlement Concepts and Greatly Impacted the Results Obtained.

While the Strike Force developed the liability case against the Telomer Defendants through the Telomer Bellwether Program, the Resolution Team (defined below) advanced settlement

¹²⁸ Douglas Dec., at ¶ 25.

¹²⁹ *Id.* at ¶ 26 .

¹³⁰ *Id.*

¹³¹ *Id.* at ¶¶ 19, 21.

¹³² *Id.* at ¶ 21.

¹³³ *Id.* at ¶ 27.

negotiations, which gained momentum as the 3M and DuPont Settlements went through the objections, opt out, appeal and Final Approval process.

As has been detailed in previous filings,¹³⁴ which Plaintiffs incorporate as if fully set forth herein, settlement discussions, and work geared toward facilitating any such discussions, developed incrementally over time. Although traction with the MDL Defendants was still a long way off, Scott Summy, along with Co-Lead Counsel, Michael London and Paul Napoli (the “Negotiation Team”) and PEC member Christina Cossich and her partner Phil Cossich (the “Resolution Team”), began developing potential settlement frameworks in the Spring of 2020,¹³⁵ including by collecting the most robust set of PFAS detection data in existence in order to form the basis of a damages model, which was then used in early presentations with the MDL Defendants and various stakeholders such as their insurers.¹³⁶ The PFAS detection dataset and damages model then helped the Negotiation Team craft potential Class definitions and to assess the scope of the Claims that would be released in any given resolution structure. The Resolution Team was hard at work developing the conceptual compensation model that was based on the PFAS dataset collected and the damages model, and which would ultimately become the Allocation Procedures that could govern any water provider settlement. The conceptual model and Allocation Procedures were developed iteratively, and the Resolution Team continuously stress-tested the model with simulations and improving it with PFAS detection data as such data became available.¹³⁷

¹³⁴ See generally, DuPont Fee Petition; see also, 3M Fee Petition.

¹³⁵ Summy Decl., at ¶ 9.

¹³⁶ Declaration of Scott Summy in Support of Class Counsel’s Motion for Attorneys Fees and Costs (“Summy 3M Fee Decl.”)[ECF No. 4269-6], at ¶¶ 11-14.

¹³⁷ Summy Decl., at ¶ 9.

These Allocation Procedures—along with concepts like Baseline Testing, the Supplemental and Special Needs Funds, and the Phase One versus Phase Two framework—were critical to the successes with the first two settling Defendants 3M and DuPont.¹³⁸ They would also prove to be seminal instruments for the negotiations with Tyco and BASF; the time and effort in developing them was well-spent, as their applicability was proven when they were able to form the basis of discussions with Tyco and BASF despite those negotiations ultimately resulting in a different Settlement Class definition.

Informal discussions with Tyco began in January of 2022.¹³⁹ Discussions with counsel for Tyco occurred in January, February, March, April and May of 2022,¹⁴⁰ some of these discussions included presentations based on the work of the Resolution Team.

Informal settlement discussions with BASF began in late August of 2022.¹⁴¹ Those meetings involved many of the same conceptual discussions as those taking place with Tyco, including about Settlement Class definition, relevant exclusions therefrom, scope of resolution and release, and damages.¹⁴² Much of the work being done with regards to the Tyco negotiations was also leveraged and utilized in the BASF negotiations. Both Tyco and BASF expressed that they were only interested in discussing settlement on a nationwide class basis.

Important developments in the Fall of 2022 then spurred discussions with Tyco to re-ignite after several months of relative quiet; namely, the denial of Defendants' motion for summary

¹³⁸ *Id.*; *see also*, Summy Decl., at ¶ 9 n.5.

¹³⁹ Summy Decl., at ¶ 13.

¹⁴⁰ Decl. of Scott Summy, Esq., In Support of Plaintiffs' Motion for Preliminary Approval of Class Settlement, for Certification of Settlement Class and For Permission to Disseminate Class Notice "Summy Tyco Prelim. App. Motion Decl.") [ECF No. 4911-4], at ¶ 10.

¹⁴¹ Summy Dec., at ¶ 13.

¹⁴² Decl. of Scott Summy, Esq., In Support of Plaintiffs' Motion for Preliminary Approval of Class Settlement, for Certification of Settlement Class and For Permission to Disseminate Class Notice "Summy BASF Prelim. App. Motion Decl.") [ECF No. 5053-4], at ¶ 10.

judgment on grounds of government contractor immunity defense on September 16, 2022,¹⁴³ and the appointment of Judge Layn Phillips (ret.) as mediator on October 26, 2022.¹⁴⁴ Additionally, trial preparations for the first PWS bellwether trial for the *City of Stuart* case were picking up in both speed and intensity, with a start date scheduled for June 5, 2023.¹⁴⁵ Under the oversight of Judge Phillips and his staff, the Negotiation Team met regularly with Tyco throughout the Spring of 2023 and monthly through August, with numerous and ongoing sessions occupying substantial time.¹⁴⁶

Discussions with both Tyco and BASF cooled as the *Stuart* trial date was approaching.¹⁴⁷ All parties were rapt with the developments surrounding that trial; most specifically, Tyco, which had been a Defendant in the *Stuart* case, was dismissed from the case approximately one month prior to the trial start date, due to the fact that the AFFF at issue in the City of Stuart's contamination was largely manufactured by 3M and National Foam.¹⁴⁸

The *Stuart* case was itself ultimately stayed given the announcements of the water provider settlements reached with 3M and DuPont.¹⁴⁹ Those settlements were granted preliminary approval by the Court in late August of 2023,¹⁵⁰ and throughout the Fall of 2023, the non-settling Defendants followed along with related developments, watching the flurry of activity generated by the Settlements¹⁵¹—including objections from State sovereigns and others, requiring extensive briefing and meet and confers to arrive at a negotiated solution for amendments to the Settlement

¹⁴³ Order and Opinion [ECF No. 2601]; *see also*, Summy Tyco Prelim. App. Motion Decl., at ¶ 19.

¹⁴⁴ CMO 2B [ECF No. 2658].

¹⁴⁵ CMO 19G [ECF No. 2887], at § VIII (confirming June 5, 2023 trial date).

¹⁴⁶ Summy Tyco Prelim. App. Motion Decl., at ¶ 17.

¹⁴⁷ Summy Decl., at ¶ 14; *see also*, London Decl., at ¶ 32.

¹⁴⁸ Summy Decl., at ¶ 14.

¹⁴⁹ *Id.*, at ¶ 15.

¹⁵⁰ DuPont PAO [ECF Nos. 3603]; *see also*, 3M PAO [ECF No. 3626].

¹⁵¹ London Decl., at ¶ 32.

Agreements, as well as a complex opt-out process and the issuance of multiple Joint Interpretive Guidance documents that were promulgated after lengthy and at times contentious collaboration between Class Counsel and counsel for the settling Defendants 3M and DuPont, as well as amongst various interested parties such as the State Attorneys General and would-be objectors.

As objections were litigated and defeated, and with final approval on the horizon, settlement discussions with both Tyco and BASF returned in early 2024.¹⁵² The DuPont PWS Settlement received final approval on February 8, 2024,¹⁵³ and negotiations with Tyco and BASF kicked off with renewed vigor.¹⁵⁴

Converging with the developments related to the 3M and DuPont PWS Settlements was the mounting trial pressure brought upon the Telomer Defendants, including Tyco and BASF, through the Telomer Bellwether Program, discussed *supra*. Plaintiffs—despite devoting significant time and energy to the settlement negotiations—were also putting non-stop pressure on Defendants, including through intense and condensed discovery, which included complex, multi-day field sampling events in and around the wells of each Tier 1 bellwether Plaintiff.¹⁵⁵ The review and production of thousands of pages of documents relating to each telomer bellwether plaintiff and hours of witness preparation for Tier 1 depositions alone.¹⁵⁶ Over the course of approximately five (5) months as discussed above, the Telomer Bellwether Program was on a fast-paced discovery schedule that included additional document productions from Plaintiffs, further review of Defendants' document production and subpoena responses, preparing witnesses for depositions and defending same.¹⁵⁷ In total during Tier Two discovery, Plaintiffs' counsel defended sixteen

¹⁵² *Id.*

¹⁵³ Order and Opinion [ECF No. 4471].

¹⁵⁴ London Decl., at ¶ 27.

¹⁵⁵ Douglas Decl., at ¶¶ 19, 21.

¹⁵⁶ *Id.* at ¶ 22.

¹⁵⁷ *Id.* at ¶ 25.

(16) additional case-specific depositions, and conducted the depositions of six (6) party and non-party witnesses.¹⁵⁸

Plaintiffs could not take their foot off the gas for even a moment; continuous and considerable pressure needed to be consistently applied reaching fever pitch even as the negotiations with BASF and Tyco were nearing conclusion.

Although Tyco and BASF were both interested in a national classwide resolution, they both had different appetites as to finality than had 3M or DuPont before them—specifically, they were interested in a more narrowly defined Settlement Class, and wanted to resolve only those claims by PWS that showed a current PFAS detection in their drinking water supplies.

Discussing and defining the scope of such a potential Settlement Class was not, however, a simple matter of disregarding any PWS that had been identified as a 3M or DuPont Phase Two eligible claimant, i.e., a Settlement Class Member without a current PFAS detection. In the relatively short span of time between the negotiations of the 3M and DuPont PWS Settlements and the negotiations with Tyco and BASF, the world as it pertains to PFAS in drinking water already looked quite different. On April 10, 2024, the EPA announced its newly enforceable drinking water standards—the lowest in U.S. history—of 4 ppt for PFOA and PFOS. These standards necessarily result in much more information about contaminated water providers becoming available. Additionally, many of the PWS that were eligible to participate in the 3M and DuPont PWS Settlements, administration for which was well under way in early 2024, were performing the required Baseline Testing and those results were being assessed by the parties when publicly available.¹⁵⁹

¹⁵⁸ *Id.*

¹⁵⁹ Summy Decl., at ¶ 19.

The parties worked incredibly hard to agree on a structure that would fairly compensate PWS with known PFAS detections by a cutoff date certain, which was no easy task given the uncertainty generated by the new regulatory framework and the rapidly shifting reality on the ground. The damages figure, as well as an appropriate cutoff date, were all hotly contested topics of discussion in the negotiations, almost to the very end.¹⁶⁰ Additionally, the Negotiation Team spent considerable time working through payment schedule considerations with defense counsel for Tyco and BASF.

Judge Phillips and his team continued to moderate multiple discussions with counsel for the parties to resolve the outstanding issues.¹⁶¹ With the help of Judge Phillips and his incredible team, the parties reached agreement on the remaining issues and executed the Settlement Agreement on April 12, 2024, for Tyco and on May 20, 2024, for BASF.¹⁶²

IV. LEGAL STANDARD AND ARGUMENT

A. CLASS COUNSEL HAVE EARNED A PERCENTAGE FEE AWARD OF 8% OF THE COMMON FUND.

Class Counsel who create a common fund are entitled to receive from it a reasonable fee. *See In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, No. 18-2873, 2021 WL 5822993, at *2 (D.S.C. Aug. 4, 2021) [“Campbell”]; *Boeing*, 444 U.S. at 478; FED. R. CIV. 23(h). “The common fund method is particularly appropriate where, as here, the settlement confers a substantial benefit on members of a class.”¹⁶³ The Fourth Circuit authorizes “two main methods for calculating the reasonableness of attorneys’ fees—the lodestar method and the percentage-of-recovery method.” *McAdams v. Robinson*, 26 F.4th 149, 162 (4th Cir. 2022). District courts have

¹⁶⁰ *Id.*, at ¶¶ 18-20; *see also, generally*, Rice Decl., at ¶¶ 14-18.

¹⁶¹ Summy Decl., at ¶¶ 29-31.

¹⁶² *Id.* at ¶¶ 18, 20.

¹⁶³ Fee Order at 5.

discretion to choose between the two methods based on their “judgment and the facts of the case.” *Id.* “The vast majority of courts use the percentage of recovery method, which is advantageous because it ties the attorneys’ award to the overall result achieved rather than the number of hours worked.” *In re Allura Fiber Cement Siding Litig.*, No. 19-2886, 2021 WL 2043531, at *4 (D.S.C. May 21, 2021).¹⁶⁴ This is especially true where, as here, Plaintiffs’ counsel prosecuted the case on a contingency fee basis with the risk of nonpayment. *See e.g., Brundle ex rel. Conestellis Employee Stock Ownership Plan v. Wilmington Tr., N.A.*, 919 F.3d 763, 785-86 (4th Cir. 2019) (noting that fees based on a percentage of the common fund “hold[s] beneficiaries of judgment responsible for compensating the counsel who obtained the judgment or settlement for them”). Not surprisingly, this Court applied the percentage of fund approach when awarding fees for the 3M and DuPont PWS Settlements.¹⁶⁵

To assess the reasonableness of a class fee, this Court employs the guiding principles announced in *Barber*, 577 F.2d at 226 n.28, which reprise the factors announced by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F. 2d 714 (5th Cir. 1974). *See Campbell*, 2021 WL 5822993, at *2. The District of South Carolina Local Rule 54.02(A) mandates the application of *Barber*’s principles to the percentage-fee method. These twelve guiding principles include: “(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney’s opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney’s

¹⁶⁴ *See also Berry v. Wells Fargo & Co.*, No. 17-304, 2020 WL 9311859, at *12 (D.S.C. July 29, 2020) (“Within the Fourth Circuit, district courts prefer the percentage method in common fund cases.”); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (“a reasonable fee is based on a percentage of the fund bestowed on the class.”). *See generally, In re Lumbar Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Prac. & Prods. Liab. Litig.*, 952 F.3d 471, 491 (4th Cir. 2020) (vacating fee award because it failed to apply CAFA’s coupon settlement provisions, 28 U.S.C. §1712).

¹⁶⁵ Fee Order at 5.

expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases." *Campbell*, 2021 WL 5822993, at *2 (citing *Barber, supra*).

Even at the megafund level (> \$100 million cases),¹⁶⁶ basic fee award principles still apply. *See, e.g., In re Enron Corp. Sec., Deriv. & ERISA Litig.*, 586 F. Supp. 2d 732, 754 (S.D. Tex. 2008) ("the megafund [\$1B+] rule is contrary to the Fifth Circuit's approach that the district court scrutinize each case for the particular facts that will determine what constitutes a reasonable fee award."). Each case must be evaluated pursuant to uniform standards to determine what constitutes a reasonable fee award.

As demonstrated both above and below, and through the various declarations filed in support hereof, the work performed by counsel to obtain this megafund settlement – on top of the landmark settlements involving 3M and DuPont—is, by definition, exceptional. The Supreme Court has defined "exceptional" in the patent realm as "simply one that stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case)." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014). Class Counsel's work continues to "stand out" under the *Barber* standards, which fully justify the requested 8% award.

¹⁶⁶ *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 737 (3d Cir. 2001) (referring to "large settlement cases" as "cases in which the common fund exceeded \$100 million."); *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 553 F. Supp. 2d 442, 480 (E.D. Pa. 2008), as corrected (Apr. 9, 2008), judgment entered, No. 99-20593, 2008 WL 2890878 (E.D. Pa. July 21, 2008), and aff'd sub nom. *In re Diet Drugs*, 582 F.3d 524 (3d Cir. 2009) (defining "super-mega-fund settlements," as "settlements of one billion dollars or more.").

B. THE PRINCIPLES GOVERNING THE DETERMINATION OF AN APPROPRIATE FEE AWARD UNDER *BARBER* SUPPORT THE PROPOSED 8% AWARD PLUS OUT-OF-POCKET COSTS.

1. The Time and Labor Required

In connection with the 3M and DuPont Fee Petitions, the PEC reported expending a collective 431,158.9 hours by approximately 40 law firms and 650 timekeepers (including partners/members, senior associates, associates, paralegals, and law clerks) from the beginning of this MDL through August 29, 2023.¹⁶⁷ This is an impressive number of hours, which would have been even larger but for the time saved due to the efficiencies of telephonic conferences and Zoom depositions, mediations and meetings, which proved to be effective virtual substitutes for in-person events.¹⁶⁸

Since then, the PEC has accumulated even more time prosecuting claims against the telomer manufacturers in anticipation of the Telomer Water Provider Bellwether trial, which necessarily included efforts against Tyco and BASF that led to these PWS Settlements. The PEC expended an additional 50,182.7 hours by more than 40 law firms law firms and 650 timekeepers between August 30, 2023, and May 31, 2024. Combined, these 481,341.6 hours reflect the tremendous effort put forth by the PEC to achieve yet another excellent result for the Settlement Class. This enormous collective effort of time and labor, as outlined above and detailed in the attached Declarations of Perry, Douglas, Summy, London, Napoli, Rice, both of the prior Fee Petitions and declarations in support thereof, “directly led to the results achieved here.”¹⁶⁹ The Court should confirm this factor supports the requested 8% fee award.

¹⁶⁷ Perry Decl., at ¶¶ 10, 20.

¹⁶⁸ London 3M Fee Decl., at ¶ 47.

¹⁶⁹ Fee Order at 10.

As set forth in the 3M and DuPont Fee Order, a lodestar crosscheck previously confirmed the reasonableness of the 8% fee request.¹⁷⁰ In particular, based on the prior 431,158.9 reported hours, and using an hourly blended rate of between \$725-\$825, the lodestar ranged between \$312,590,590,202.50 and \$355,706,092.50. This yielded a multiplier range of between 2.7 and 3.¹⁷¹ As before, the instant 8% fee request results in a multiplier below 3 without even including the additional 50,182.7 hours expended in this litigation since August 29, 2023 through May 31, 2024.¹⁷²

2. The Novelty and Difficulty of the Questions Involved

Throughout this litigation, the Court has repeatedly been reminded of the complex nature and uniqueness of this multidistrict, multi-party litigation.¹⁷³ In the context of the prior PWS Settlements, the Court specifically recognized “[t]he issues involved in this MDL are numerous and difficult, complicated by the large number of defendants sued,”¹⁷⁴ as a factor supporting approval of an 8% fee.¹⁷⁵ As part of its efforts, from the outset the PEC sought to establish liability stories with respect to each Defendant. This approach was critical because the liability of each Defendant in this case is inextricably intertwined with each of the other Defendants.¹⁷⁶ Moreover, many of the Defendants have unique positions in the AFFF market, Tyco and BASF included, which required the PEC to understand the varying AFFF market channels, including the

¹⁷⁰ *Id.* at 14.

¹⁷¹ *Id.*

¹⁷² Of note, and in full transparency, the additional 50,182.7 hours expended since August 29, 2023, include hours not only on PWS cases but also on other categories of work, including personal injury, Kidde bankruptcy and even State/Sovereign claims.

¹⁷³ London 3M Fee Decl., at ¶¶ 11-13.

¹⁷⁴ Fee Order at 10.

¹⁷⁵ *See also*, London Decl., at ¶ 12.

¹⁷⁶ Douglas Decl., at ¶¶ 9-10, 15-18; *see also*, London Decl., at ¶¶ 11-12; London 3M Fee Decl., at ¶¶ 91-94.

relationships between the Defendants. This litigation has also been difficult given the complex science involved.¹⁷⁷

At the outset of the MDL, the Defendants insisted that the government contractor defense announced in *Boyle v. v. United Technologies Corp.*, 487 U.S. 500 (1988), would prove to be a cross-cutting issue that would preclude the capacity of Plaintiffs to prosecute their claims.¹⁷⁸ Those predictions proved themselves fallible. The issue was originally scheduled to be resolved on just the first *Boyle* element—whether the MIL-Spec was “reasonably precise”—but after extensive briefing over the course of several months (November 2021 to January 2022), the Court determined that supplemental briefing covering the entire controversy was necessary to resolve the matter.¹⁷⁹ Over the next four months (April to June 2022), Plaintiffs responded to all of Defendants’ arguments with excellent briefing that established the fallacy of Defendants’ defense.¹⁸⁰ Plaintiffs proved that the Defendants’ novel application of the doctrine to this situation—where the government’s continued use of the product occurred notwithstanding its fundamental ignorance of the environmental defect presented by AFFF—was flawed. And the Court noted the excellence of the arguments presented by the Plaintiffs to counter Defendants’ elaborate efforts.¹⁸¹ Notably, discovery from Defendants Tyco and BASF played a crucial role in assisting Plaintiffs with overcoming the government contractor defense. Specifically, discovery against these two Defendants uncovered that two of Tyco’s AFFF formulations contained C6-dominant fluorosurfactants manufactured by Ciba that met the AFFF military specification, thereby

¹⁷⁷ Douglas Decl., at ¶ 6-7.

¹⁷⁸ Declaration of Gary J. Douglas in Support of Class Counsel’s Motion for Attorneys’ Fees and Costs (“Douglas 3M Fee Decl.”)[ECF No. 4269-7], at ¶ 21; *see also*, Napoli Decl., at ¶ 15.

¹⁷⁹ London 3M Fee Decl., at ¶¶ 71-73; *see also*, Douglas 3M Fee Decl., at ¶¶ 24-25.

¹⁸⁰ London 3M Fee Decl., at ¶¶ 72-73; *see also*, Douglas 3M Fee Decl., at ¶¶ 26-27.

¹⁸¹ *See e.g.*, March 25, 2022 H’ring Tr., at 2:22-24 (noting “first-rate briefs”); *see also*, July 8, 2022 H’ring Tr., at 11:8-10 (noting that briefing was “excellent”).

establishing that the AFFF manufacturers were not required to use C8-chemistry, i.e., PFOA and PFOS, in the manufacture of their AFFFs.¹⁸²

The challenges to Plaintiffs never ceased as Defendants continued to defend against the *Stuart* bellwether trial by asserting *Daubert* motion practice on Plaintiffs' experts and summary judgment motions.¹⁸³ These motions presented a variety of complex issues that again required assembling, in conjunction with the Strike Force, a top-notch briefing team capable of addressing the many detailed factual issues as well as the capacity to fend off the difficult legal questions presented.¹⁸⁴ These efforts successfully moved the case forward to trial and, ultimately, towards resolution.

At trial, significant litigation risks also likely would have presented themselves, which Plaintiff would have had to overcome. These include, *inter alia*, establishing that:

- The PFOA and/or PFOS in Plaintiff's drinking water wells emanated from Defendants' AFFF products, a process that requires the application of complex principles of environmental science, including a fate and transport analysis and chemical fingerprinting;
- It was foreseeable to each of the Defendants that the chemicals in their products would contaminate drinking water generally and, more specifically, the Plaintiff's public drinking wells;
- Which Defendants' PFOA specifically contaminated Plaintiff's drinking water wells;
- PFOA and PFOS are toxic to humans and that same was known by, and/or foreseeable to, the Defendants;
- That the levels of PFOA/PFOS in Plaintiff's drinking water and wells exceeded regulatory limits, and as a reasonably prudent water utility, Plaintiff was required to and did expend capital costs to construct treatment facilities to remove PFAS from its wells;

¹⁸² Douglas Decl., at ¶¶ 11-14.

¹⁸³ Douglas 3M Fee Decl., at ¶ 37; *see also* Declaration of Rebecca G. Newman in Support of Class Counsel's Motion for Attorneys' Fees and Costs ("Newman 3M Fee Decl.") [ECF No. 4269-11], at ¶¶ 18-19.

¹⁸⁴ Newman 3M Fee Decl., at ¶¶ 18-19.

- That the warnings and/or instructions affixed to Defendants' AFFF concentrates and/or fluorosurfactants failed to adequately warn and/or instruct firefighters on how to properly use, train with and/or dispose of AFFF;
- That despite knowledge of health risks associated with use, disposal and bioaccumulation of AFFF concentrates and/or fluorosurfactants, Defendants did not warn Plaintiff of same;
- That Defendants' AFFF concentrates and/or fluorosurfactants were defectively designed, and more specifically, that a safer alternative design existed that could have been utilized to make AFFF, which included the use of shorter chain fluorocarbons that do not contain nor degrade to PFOA or PFOS;
- That Plaintiff, as a user of AFFF, was not contributorily negligent with respect to the contamination of Plaintiff's drinking water wells with PFOA and/or PFOS;
- That the preponderance of the evidence established that Defendants conduct was unreasonable given their knowledge over time of the harms posed by PFOS and PFOA; and
- That Plaintiff established by clear and convincing evidence that Defendants acted with *intentional misconduct* and had actual knowledge of the wrongfulness of their conduct, or that there was a high probability of injury to the Plaintiff, and/or that Defendants were *grossly negligent* in that they acted with a conscious disregard and/or indifference to the life, safety, or rights of others entitling Plaintiff to punitive damages.

Defendants have consistently had ample defenses with able counsel zealously pressing every one of them.¹⁸⁵ And, of course, there are general risks of jury trials, relitigating of issues before the transferor court, and various state law arguments and defenses such as statutes of limitations and the like that were in the mix and posed a serious threat. The presence of these issues would have impacted all Defendants at trial, including Tyco and BASF. This justification satisfies the *Barber* factor.¹⁸⁶

The Court should confirm this factor favors a substantial fee award in this case.

¹⁸⁵ See generally, Douglas 3M Fee Decl., at ¶¶ 37-44.

¹⁸⁶ See Fee Order at 10-11.

3. The Skill Requisite to Perform the Legal Service Properly

The Court regularly witnessed the high quality of Plaintiffs' counsel's legal work, which conferred an exceptional benefit on the Class in the face of daunting litigation obstacles and highly sophisticated defense counsel. As the Court is aware, it is a formidable and complicated challenge to successfully prosecute a case like this. Moreover, the orderly and effective management of this massive MDL, with claims against numerous Defendants on behalf of thousands of claimants, presented challenges that many law firms and lawyers simply would not have been able to meet, even if they were willing to take on the litigation despite the high level of risk. Indeed, litigation of a case like this requires counsel highly trained in class action law and procedure, as well as in the specialized subject matters that these cases involve. Previously, this Court acknowledged that Plaintiffs' counsel possess these attributes and even complimented Plaintiffs' counsel as "some of the most qualified mass tort litigators in America."¹⁸⁷ The Court also applauded Plaintiffs' counsel's accomplishment, by noting, "only, highly qualified counsel could have navigated these issues."¹⁸⁸

Once again, the record before the Court establishes that the litigation involved a wide array of complex and novel challenges, which Plaintiffs' counsel met at every juncture based on their collective, extensive experience in complex and class action litigation. Trial preparation, bellwether efforts and settlement negotiations required a thorough understanding of the scientific, legal, and factual issues, as well as a sophisticated familiarity with how PWS operate and how to compensate them for their PFAS contamination. The Court should confirm that this *Barber* factor supports the requested fee.

4. The Preclusion of Other Employment by the Attorneys Due to Acceptance of the Case

¹⁸⁷ Fee Order at 11.

¹⁸⁸ *Id.*

Many members of the firms leading the common benefit effort on Plaintiffs' behalf, by necessity, had to forego other cases and potential fees. Many lawyers involved in the common benefit effort expended the vast majority, if not all, of their available time to the pursuit of this litigation for a period of now more than five years. Almost all Plaintiffs prosecuted this litigation entirely on a contingent fee basis and self-funded the litigation through PEC assessments. Meeting the immense time and expense demands of the case limited the ability of Class Counsel to work on numerous other matters, all without any guarantee that such a substantial investment of the many years' worth of time and effort would ever be reimbursed. This significant risk of nonpayment or underpayment warrants the requested fee.¹⁸⁹

Numerous cases recognize that contingent-fee risk is an important factor in determining the fee award. "In complex, multi-year class actions, the risks inherent in the litigation are immense and the risk of receiving little or no recovery is a major factor in awarding attorney fees." *In re LandAmerica 1031 Exchange Svcs.*, No. 2054, 2012 WL 5430841, at *4 (D.S.C. Nov. 7, 2012); *see also In re Continental Ill. Sec. Litig.*, 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent basis, plaintiffs' counsel must be compensated adequately for the risk of non-payment). Therefore, the Court should confirm that this factor favors the requested fee award.

5. The Customary Fee

Class action percentage fee recoveries in the amount of 30% are typical. *Campbell, supra*. In *LandAmerica*, Judge Anderson relied on a survey of common fund fees in the Fourth Circuit and elsewhere approving "percentage awards that ranged from 18% to 30%, inclusive of mega-fund recoveries that reached into the nine-figure range." *LandAmerica 1031 Exchange Svcs.*, 2012

¹⁸⁹ *See id.* (finding this factor satisfied for the reasons stated).

WL 5430841, at *4, citing *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D. Va. 2009). As Professor Fitzpatrick's Declaration makes clear, a review of every billion-dollar class action settlement demonstrates the average and median percentages for attorneys' fees awards were 9.3% and 13.7%, respectively.¹⁹⁰ Given these ranges in value, the amount requested in this water contamination case—8%—is eminently reasonable and well supported.¹⁹¹ This Court agreed that “the requested fee of 8%,” in light of the contingency presented by the litigation, “is reasonable.”¹⁹² The Court should confirm that this factor supports the percentage fee requested.

6. Whether the Fee Is Fixed or Contingent

Virtually all Plaintiffs' counsel undertook this litigation on a contingent-fee basis, assuming a substantial risk that the litigation would yield no recovery and leave them uncompensated. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See, e.g., LandAmerica, supra; Enron*, 586 F. Supp. 2d at 791. The time in which to evaluate the risk is *ex ante*, *i.e.*, as of the time suit was initiated, not with the benefit of hindsight. *See Harman v. Lyphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991). Where counsel face such substantial risks and recover significant compensation for their clients, courts find this factor to favor the fee applicant. *See LandAmerica*, 2012 WL 5430841, at *4; *Enron*, 586 F. Supp. 2d at 796. “Class Counsel ... worked for years with no payment, undertaking the risk of walking away with no fee at all. Such ‘burdens are relevant circumstances’ that support the requested award.” *Savani v. URS Pro. Sols. LLC*, No. 06-02805, 2014 WL 172503, at *5 (D.S.C. Jan. 15, 2014), quoting *Torrisi v. Tucson Elec. Power Co.*, 83

¹⁹⁰ Fitzpatrick Decl., at ¶ 7.

¹⁹¹ *Id.* at ¶¶ 2, 4, 7, 11.

¹⁹² Fee Order at 12.

F.3d 1370, 1377 (9th Cir.1993). This Court should confirm that “the contingent nature of the fee also weighs in favor of awarding the requested relief.”¹⁹³

7. Time Limitations Imposed by the Client or the Circumstances

This MDL was conducted during the height of the world-wide pandemic caused by COVID-19. In the face of logistical difficulties that COVID restrictions imposed on the parties, counsel and the Court, Class Counsel persevered and during this challenging period conducted enormous amounts of discovery, including document review and a multitude of significant depositions.¹⁹⁴ Under the aegis of this Court’s regularly held monthly status conferences and “hands-on” management to see that discovery was being conducted promptly and that the litigation was progressing at an appropriate rate, time was efficiently used, not squandered. Notwithstanding the impediments presented by the pandemic, the first bellwether trial was ready to present to a jury on June 5, 2023, within four and a half years of the Transfer Order that initiated this MDL. *See In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 357 F. Supp. 3d 1391 (U.S. Jud. Pan. Mult. Lit. 2018). At the same time, settlement negotiations had taken place over the course of two years, and those efforts were proceeding expeditiously, using the totality of time before trial to explore the prospects for resolution. Subsequently, the next bellwether trial was originally scheduled for Fall 2024,¹⁹⁵ and Plaintiffs’ counsel was hard at work preparing for such trial when the Tyco and BASF PWS Settlements were reached.

The fact that all these enormous efforts were performed “[d]espite the challenging circumstances and breadth of work to be done,”¹⁹⁶ counsel dedicated themselves to fulfilling their

¹⁹³ *Id.*

¹⁹⁴ *See* §§ III.A.2, III.B, *supra*.

¹⁹⁵ This date has since been extended to March 2025. *See* CMO 2I.

¹⁹⁶ Fee Order at 12.

obligations to their clients and to the Court. The Court should confirm this “time” factor favors the requested fee.

8. The Amount Involved and the Results Obtained

The eighth *Barber* factor—the amount involved and the results obtained—is entitled to arguably the most significant weight when, as in this case, the efforts of counsel were instrumental in realizing a high recovery on behalf of the Plaintiffs. Indeed, the Supreme Court and the Fourth Circuit have observed that “‘the most critical factor’ in determining the reasonableness of a fee award is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). *See also Brodziak v. Runyon*, 145 F.3d 194, 196 (4th Cir. 1998) (recognizing that the degree of overall success must be considered for all claims raised by the plaintiff). A settlement amount of \$750 million is clearly an outstanding result obtained for the class by Plaintiffs’ counsel. Similarly, a settlement amount of \$316.5 million is also an exceptional result. This is especially true for Defendants with limited market shares of the AFFF and fluorosurfactant markets. If outcome weighs as “the most critical” consideration, then surely the requested fee award should be deemed fair and appropriate.

As described above, the Tyco and BASF PWS Settlements provide significant economic value to PWS that have been damaged by Defendants’ products. These settlements not only benefit Class Members, but also the customers/ratepayers of these water authorities who need and depend upon clean water in their daily lives. In *Deepwater Horizon*, Judge Barbier noted that “[s]uccess is determined not only by the gross amount of the recovery but also by the number of individuals who benefit from the class settlement, the degree to which it provides them with full compensation for their injuries, and the extent to which the settlement benefits the public at large.” *In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on Apr. 20, 2010*, No. 2179, 2016

WL 6215974, at *18 (E.D. La. Oct. 25, 2016). Here, the Tyco and BASF Settlements will “provide timely relief” to thousands of public water systems “facing PFAS contamination.”¹⁹⁷

By any measure, these Settlements are outstanding results. This Court should confirm that this factor supports the requested fee award.

9. The Experience, Reputation, and Ability of the Attorneys

When this MDL litigation began, the Court underwent an arduous vetting and selection process to appoint experienced, reputable and able counsel to serve on the PEC.¹⁹⁸ Since then, because of the exceptional work-product performed, the Court has reappointed the PEC Members with twenty-eight (29) PEC firms being appointed for the 2024-2025 Term.¹⁹⁹ On August 22, 2023, the Court agreed to add a fourth Co-Lead Counsel to aid in the future prosecution of this MDL. Moreover, this Court appointed Class Counsel, which included both Co-Lead Counsel and additional counsel with specific class experience.

The PEC and common benefit attorneys prosecuting this MDL have far more experience both in PFAS litigation and in environmental law, by far, than any other law firms in the country, and the results and efficiency here demonstrate the impact of this prior experience.²⁰⁰ “A different group of lawyers may not have been able to achieve the same result.”²⁰¹ The Court should confirm this factor supports the fee request.

10. The “Undesirability” of the Case

The risks of taking on such a massive case with so many Defendants were daunting at the inception of this litigation. “Cases may be deemed ‘undesirable’ when the defendant is a large

¹⁹⁷ *Id.*

¹⁹⁸ *See generally* CMO 2 [ECF No. 48].

¹⁹⁹ CMO 29 [ECF No. 4904].

²⁰⁰ Herman Decl., at ¶¶ 8, 13.

²⁰¹ Fee Order at 11.

corporation with substantial resources, financial and otherwise, for a vigorous defense; and the legal and factual issues presented risks to recovery absent settlement. Where class counsel is a relatively small group of attorneys with limited resources pitted against ... [a larger entity] with access to enormous legal resources, the tenth factor weighs in favor of a substantial fee.” *Burford v. Cargill, Inc.*, No. 05-0283, 2012 WL 5471985, at *5 (W.D. La. Nov. 8, 2012) (citations omitted). Citing *Burford*, this Court ruled that “given the complexity of this matter” and “the substantial litigation costs incurred without any guarantee of recovery” that the matter was “‘undesirable’ under *Barber*.”²⁰² The Court should confirm that this factor also supports the requested percentage.

11. The Nature and Length of the Professional Relationship with the Client

This *Barber* factor was designed to consider those instances when “a lawyer in private practice may vary his fee for similar work in the light of the professional relationship of the client with his office.” *Johnson*, 488 F.2d at 719. “The meaning of this factor, however, and its effect on the calculation of a reasonable fee has always been unclear Courts applying the [*Barber*] factors typically state this particular standard is irrelevant or immaterial.” *Bruner v. Sprint/United Mgmt. Co.*, Nos. 08-2133-KHV, 08-2149-KHV, 2009 WL 2058762, at *9 (D. Kan. July 14, 2009).

Here, many counsel have longstanding client relations with their PWS clients, having represented them in other contamination cases. “To the extent relevant here, this factor weighs in favor of granting Class Counsel’s motion,” Fee Order at 12, because the long-standing relationships that certain counsel have with established clients served as an additional motivation for them to provide high-quality representation so as to maintain these ongoing client relationships. The Court should confirm that this factor “weighs in favor of the requested fee.” *Id.*

12. Awards in Similar Cases

²⁰² *Id.*

All but two of the *Barber* fee adjudication factors are abstract in that they do not purport to have any mathematical correlation to the computation of an appropriate percentage award. The final *Barber* factor provides guidance as to how to concretize abstract consideration of the other factors into a definitive percentage fee award. This factor prescribes consideration of “awards in similar cases.” *Barber*, 577 F.2d at 226 n.28. Such consideration is a dominant feature of contemporary percentage-of-funds fee adjudication.²⁰³

To aid the Court in making this evaluation, as noted above, Plaintiffs retained Mr. Fitzpatrick, a renowned academician in this area of the law, to review the *Barber* factors and analyze whether Class Counsel’s fee request is reasonable. He determined with respect to the factors relating to fee awards in other cases—that is, factors *five* (the customary fee) and *twelve* (awards in similar cases)—that counsel’s fee request here is below the norm.²⁰⁴ In fact, in this Circuit, this expert’s empirical study found that the mean and median percentage-method awards were around 25%²⁰⁵—far greater than what is being requested here. Moreover, this same study found that across all percentage method fee awards considered, the fee request herein is at very low end of the spectrum, as depicted in Figure 1, included in Mr. Fitzpatrick’s Declaration in Support of Class Counsel’s DuPont Fee Petition, which is incorporated herein (the red arrow depicts the fee request here).²⁰⁶ Using these same analyses in the prior PWS Settlements,²⁰⁷ Class Counsel “established that the fee award they request is on the smaller end,”²⁰⁸ so the Court went on to approve the 8% fee award.

²⁰³ See generally Fitzpatrick Decl.

²⁰⁴ Fitzpatrick Decl., at ¶¶ 2, 4, 7.

²⁰⁵ Fitzpatrick DuPont Fee Decl., at ¶ 14; see also Fitzpatrick Decl., at ¶ 7.

²⁰⁶ Fitzpatrick DuPont Fee Decl., at ¶¶ 14-15; see also Fitzpatrick Decl., at ¶¶ 2, 7.

²⁰⁷ Fitzpatrick Decl., at ¶ 7; see also Herman Decl., generally.

²⁰⁸ Fee Order at 13.

As demonstrated above, the requested fee percentage is well within the range of percentages that have been awarded in mega-fund cases and by courts in this Circuit. This Court should confirm that the “awards in similar cases” factor powerfully argues in support of the reasonableness of the 8% fee requested. As the other *Barber* factors fully endorse the requested fee, the fee requested should be awarded.

C. THE LODESTAR CROSS-CHECK CONFIRMS THAT CLASS COUNSEL’S FEE REQUEST IS REASONABLE

“The purpose of a lodestar cross-check is to determine whether a proposed fee award is excessive relative to the hours reportedly worked by counsel, or whether the fee is within some reasonable multiplier of the loadstar.”²⁰⁹ The first *Barber* principle (the time and labor expended) encourages this consideration. *See Allura*, 2021 WL 2043531, at *4. When undertaken as a “cross-check on the reasonableness of a percentage fee request,” the Court need not “exhaustively scrutinize the hours documented by counsel and the reasonableness of the claimed lodestar can be tested by the court’s familiarity with the case.” *Savani v. URS Professional Solutions LLC*, 121 F. Supp. 3d 564, 575–76 (D.S.C. 2015).²¹⁰ Indeed, the cross-check is applied in a “broad,” “rough,” “abbreviated,” “streamlined,” and “imprecise” way.²¹¹

²⁰⁹ *Id.* (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir. 2005)).

²¹⁰ *See also* Fee Order at 13-14.

²¹¹ Herman Decl. at ¶¶ 19, 75 (citing *Cantu-Guerrero v. Lumber Liquidators*, 952 F.3d 471, 482 n.7 (4th Cir. 2020) (a so-called “lodestar cross-check” is the comparison of a calculation of attorney’s fees using the percentage-of-recovery method to a “rough” or “imprecise” lodestar calculation); *In re Deepwater Horizon*, MDL No. 2179, Rec. Doc. 21849 [2016 U.S. Dist. LEXIS 147378] (E.D. La. Oct. 25, 2016) at p.30 (“the Court will perform an abbreviated lodestar analysis as a broad cross-check on the on the reasonableness of the fee arrived at by the percentage method”) and at p.39 (“the lodestar cross-check is a streamlined process, avoiding the detailed analysis that goes into a traditional lodestar examination”); *In re Vioxx*, 760 F.Supp.2d 640, 652 (E.D. La. 2010) (“The lodestar analysis is not undertaken to calculate a specific fee, but only to provide a broad cross check on the reasonableness of the fee arrived at by the percentage method”)).

To conduct the lodestar cross check, the Court multiplies the number of hours reasonably spent by a reasonable hourly rate.²¹² A “reasonable hourly rate” is determined by the “customary fee for services by experienced counsel in a case like this,” *Savani*, 121 F. Supp. 3d at 576, and “should be in line with the market rate for ‘similar services by lawyers of reasonably comparable skill, experience, and reputation,’” *Berry v. Wells Fargo & Company*, 2020 WL 9311859, at *14 (D.S.C. 2020).

Because the MDL procedure consolidates cases filed by lawyers who typically practice in varied and disparate jurisdictions, district courts often look to a “national rate” rather than the market rate of the locality where the MDL happens to be. In the *Transvaginal Mesh Litigation*, Judge Goodwin, sitting in the Southern District of West Virginia, observed that “these MDLs encompass law firms from across the country and are national in scope” and therefore: “When selecting an hourly rate for determining legal fees the court cannot consider just one market because ‘the relevant legal community’ is national in nature.”²¹³

Although some MDL litigation may involve more localized parties, justifying giving great weight to the local “market,” MDL 2873 reaches a national and international scope of Plaintiffs and Defendants and involves legal issues that turn on national security policy, national environmental regulations, nationwide contamination, nationwide and international product distribution, and universal health concerns. *See In re Actos (Pioglitazone) Prods. Liab. Litig.*, 274 F. Supp. 3d 485, 520 (W.D. La. 2017) (where “plaintiffs and plaintiffs’ counsel span the entire United States of America; the venue proper as to each individual claim spans the entire United

²¹² Fee Order at 13.

²¹³ Herman Decl., at ¶¶ 33-34 (citing *In re Cook Medical, Inc., Pelvic Repair Systems Prods. Liab. Litig.*, 365 F. Supp. 3d 685, 701 (S.D. W.Va. 2019)).

States, and the PSC, PEC, and Participating Counsel comprise attorneys whose practices span the entire United States,” the “relevant legal community [...] is national in nature.”).

The Fourth Circuit agrees with this approach. Although “[t]he relevant market for determining the prevailing rate is ordinarily the community in which the court where the action is prosecuted sits,” *National Wildlife Federation v. Hanson*, 859 F.2d 313, 317 (4th Cir.1988), “[i]n circumstances where it is reasonable to retain attorneys from other communities, however, the rates in those communities may also be considered.” *Rum Creek Coal Sales, Inc v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994); *Morris v. Bland*, 2015 WL 12910631, at *3 (D.S.C. 2015) (“Charleston is ordinarily the community that the Court would consider. However, because Plaintiff is a resident of York County, it was reasonable for her to obtain local counsel there, and the Court will consider the rates where counsel is located as well.”).²¹⁴

In the earlier PWS Settlements this Court applied a lodestar crosscheck to confirm the reasonableness of the 8% fee request.²¹⁵ The Court accepted the application of blended hourly rates of \$725-\$825 provided by Mr. Herman,²¹⁶ and applied those rates against the then existing cumulative time reported by Mr. Perry (431,158.9 hours),²¹⁷ to arrive at a lodestar ranging between \$312,590,202.50 and \$355,706,092.50. Because this lodestar merely required a lodestar multiplier ranging between 2.7 and 3, it easily fit within the precepts of the Fourth Circuit fee jurisprudence, and the Court was able to “confirm[] the reasonableness of the fee request.”²¹⁸

In the time elapsed since the first PWS fee petition, Class Counsel have expended an additional 50,182.7 hours, rendering a lodestar for the total cumulative work performed by Class

²¹⁴ *Id.* ¶ 35.

²¹⁵ Fitzpatrick Decl., at ¶ 9; Fee Order at 13-14.

²¹⁶ Declaration of Stephen J. Herman, Esq. [ECF No. 4269-12], at ¶ 11; Fee Order at 14.

²¹⁷ Declaration of John W. Perry, Jr. [ECF No. 4269-3], at ¶ 20; Fee Order at 14.

²¹⁸ Fee Order at 14.

Counsel (up to and including May 31, 2024) to range between \$348,972,660.00 and \$397,106,820.00, using the same blended hourly rates approved by Mr. Herman and in the Fee Order.²¹⁹ Employing a cross-check against this lodestar range again yields a multiplier range between approximately 2.56 and 2.92 depending on the blended rate employed ($\$348,972,660.00 \times 2.92 = \$1,019,000,167.20$ and $\$397,106,820.00 \times 2.567 = \$1,019,373,206.94$) akin to that previously accepted in the Fee Order.²²⁰ This cross-check confirms that the 8% requested fee award is reasonable and not excessive.

Indeed, even under the reasoning of the Fee Order, the current fee request is still reasonable even without taking into account the additional time expended up to May 31, 2024. By adopting a multiplier of “3,” the Fee Order necessarily accepted as reasonable a fee award of \$1,067,118,277.50 ($\$355,706,092.50 \times 3 = \$1,067,118,277.50$). Employing the same math to perform a new cross-check, the additional \$85,320,000 Class Fee requested here is presumptively reasonable since the additional fee, in addition to the prior fee awarded, still falls below the \$1,067,118,277.50 upper range of a “3” multiplier. The math follows. In the Fee Order, fees were awarded totaling \$934,800,000 ($\$94,800,000$ (DuPont) + $\$840,000,000$ (3M) = $\$934,800,000$). This allowed for an additional fee award in excess of \$132 million ($\$1,067,118,277.50 - \$934,800,000 = \$132,318,277.50$). Since the Tyco and BASF PWS Settlements request only \$85,320,000, there still exists room to recover an additional approximately \$46.9 million beyond the current fee request. And, of course, because the original lodestar supported a multiplier range between 2.7 and 3, the Court did not have to consider permissible multipliers in excess of “3.” As previously noted, courts have allowed a range from 1.0 to 6.2, which would also further increase

²¹⁹ As explained above, these additional hours do not include time devoted to administering the existing settlements, which recorded time will be the subject of a separate fee petition to recover from the funds held back to compensate for that specific work effort.

²²⁰ Fee Order at 14.

the allowance.²²¹ Since the current fee request of \$85,320,000 falls far below the allowance afforded by the previous cross-check using either the additional hours expended until May 31, 2024 or just the hours submitted in the 3M and DuPont Fee Petitions, employing a larger multiplier remains theoretical. The fact that the requested \$85,320,000 Tyco and BASF combined fee still falls below the “3” multiplier allowance again confirms the appropriateness of the already lower-than-normal fee request.²²² As always, even if additional settlements occur in this MDL, the Court can continue to do lodestar cross-check analyses, should it so choose, in order to.

As explained above, the Tyco and BASF settlements stemmed directly from work performed throughout the litigation in developing evidence and successful legal arguments against all Defendants. As a result, it is appropriate to calculate the lodestar and lodestar multiplier based not only on these two most recent settlements but also based on the prior DuPont and 3M settlements. As one court in the Fourth Circuit addressing this issue has explained, “[w]here a settlement is the result of successive cases or successive settlements within the same case, the proper method of performing a lodestar cross-check is to divide the total lodestar for the entire litigation campaign by the aggregate fees requested, including fee previously awarded.” *Binotti v. Duke University*, 1:20-cv-470, 2021 WL 5366877, at *3 (M.D. N.C. August 30, 2021). “[C]ourts typically base fee awards in subsequent settlements on all work performed in the case,” based on the reality—applicable here—that “the total work performed by counsel from inception of the case makes each settlement possible.” *In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018). Under this approach, when calculating fees, “courts typically calculate the lodestar multiplier by dividing (1) all past and requested fee awards by (2) all of counsel’s time from inception of the case.” *Id.*

²²¹ Fitzpatrick Decl., at ¶¶ 2, 9.

²²² *Id.*

Numerous other authorities are in accord. *See, e.g., Lobatz v. U.S. West Cellular of California*, 222 F.3d 1142, 1149-50 (9th Cir. 2000) (approving the district court’s use of “the total hours class counsel spent on the entire litigation” and rejecting an objector’s argument that the court should have focused solely on time spent subsequent to an earlier settlement); *In re Automotive Parts Antitrust Litig.*, 2020 WL 5653257, at *3 n.5 (E.D. Mich. Sept. 23, 2020) (“In calculating the lodestar for purposes of the cross-check, it would be impractical to compartmentalize and isolate the work that . . . Class Counsel did in any particular case at any particular time because all of their work assisted in achieving all of the settlements and has provided and will continue to provide a significant benefit to all of the . . . classes.”); *In re Transpacific Passenger Air Transportation Antitrust Litig.*, No. 07-5634, 2019 WL 6327363 at *6 (N.D. Cal. Nov. 26, 2019) (relying on *In re Capacitors* and holding that “[t]he Court will consider the lodestar ratio with respect to the cumulative lodestar—for simplicity and consistency, and in recognition of counsel’s work as a whole at this stage”); *Precision Assocs., Inc. v. Panalpina World Transp. (Holding) Ltd.*, No. 08-cv-42, 2015 WL 6964973, at *7 (E.D.N.Y. Nov. 10, 2015) (using total lodestar from outset of case and total settlement fund, including prior settlements).

This holistic approach to calculating fees in the context of successive settlements makes perfect sense from a policy standpoint. As one court has cogently stated: “[I]f an award of fees for a successive settlement were limited and calculated only on the basis of time and expenses incurred since the preceding settlement, counsel would have little or no incentive to vigorously or efficiently pursue litigation or settlement of claims with non-settling defendants . . . even though the remaining defendants might be equally as culpable or have greater culpability.” *In re Southeastern Milk Antitrust Litig.*, 2013 WL2155387, at *7 (E.D. Tenn. May 17, 2013). Moreover, this approach provides an infrastructure that can be used for all future settlements, thus avoiding the need for the

Court and the parties to reinvent the wheel in figuring out how to calculate fees for each subsequent settlement while still ensuring that the multiplier remains within an appropriate range.

D. PLAINTIFFS' COUNSEL ARE ENTITLED TO REIMBURSEMENT OF OUT-OF-POCKET COSTS

Class Counsel also request that the Court grant Plaintiffs' application for reimbursement of their out-of-pocket costs incurred in prosecuting this litigation for Class Members. As discussed above, Plaintiffs' costs in the amount of \$21,387,560.75 have already been reimbursed through the DuPont and 3M PWS Settlements.²²³ At present, Plaintiffs seek the totality of the unreimbursed costs to date, in the amount of \$10,471,081.51.²²⁴ Costs incurred in the prosecution of claims against the remaining non-settling defendants would be paid from subsequent settlements, if any.

As courts have recognized, "Class Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk of no recovery when the fee is contingent." *Beesley v. Int'l Paper Co.*, No. 3:06-CV-703-DRH-CJP, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014). This is certainly true where, as here, Plaintiffs' counsel only expended what was reasonably necessary to prosecute and resolve the case for the Class Members, and, as discussed above, with the remote protocols that were put in place in this MDL, significant expenses were saved. As such, Plaintiffs respectfully submit that the cost reimbursement sought here is reasonable and appropriate and should be reimbursed.²²⁵

V. CONCLUSION

For the reasons set forth above, Class Counsel respectfully request that this Court recognize the exceptional work performed to achieve this historic settlement with Tyco by awarding them:

²²³ Perry Decl., at ¶ 25.

²²⁴ Fitzpatrick, at ¶¶ 4, 10.

²²⁵ Fitzpatrick, at ¶ 10.

- 8% in fees of Tyco PWS Settlement (\$750 million), which equals \$60,000,000;
- 8% in fees of BASF PWS Settlement (\$316.5 million), which equals \$25,320,000; and
- Reimbursement of costs in the amount of \$10,471,081.51.

Further, for this class settlement, Class Counsel request that the Court direct the 8% fee award to be credited against any individual counsel's retainer fee such that any private contract will be reduced by 8%.

Dated: July 22, 2024

Respectfully submitted,

/s/ Michael A. London

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EXHIBIT

A

I, JOHN W. PERRY, JR., declare under penalty of perjury as follows:

1. I am over 18 years of age, I am competent to make this declaration, and I have personal knowledge of the matters and facts recited herein.¹

Nature of Involvement

2. As more fully detailed below, I am the Court-appointed Special Master tasked with review of plaintiffs' counsel's common benefit submissions. I have been assisted by my partner Daniel J. Balhoff in this regard. Mr. Balhoff has been heavily involved on a day-to-day basis in this matter, and I have relied upon him for much of the information supplied below.

Background and Qualifications

3. I attended Nicholls State University, where I graduated magna cum laude from the College of Business Administration in 1976. I then attended LSU Law School, where I was elected to the Moot Court Board. I graduated in 1978 and was later inducted into the Hall of Fame.

4. I served on both the Louisiana Association of Defense Counsel Board of Directors and the Louisiana Trial Lawyers Association Board of Governors. I am a member of many professional organizations, including the American College of Trial Lawyers. I previously taught as an Adjunct Professor of Law at LSU. The Louisiana Supreme Court appointed me to serve as a Judge Pro Tempore.

5. I have served as a court-appointed neutral and/or mediator in numerous complex cases, including at the Multidistrict litigation, federal, and state levels. The following is a partial list of these matters:

¹ For many of the representations below, I have relied in part upon information relayed to me by others, as referenced herein.

- *In re Combat Arms Earplug Products Liability Litigation*, MDL No. 2885 (N.D. Fla.)
- *In re: General Motors LLC Ignition Switch Litigation*, MDL No. 2543 (S.D.N.Y. J.P.M.L.) (mediator and Special Master)
- *In re: E. I. DuPont de Nemours and Company C-8 Personal Injury Litigation*, MDL No. 2433 (S.D. Oh. J.P.M.L.) (mediator)
- *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (E.D. La. J.P.M.L.) (Special Master and Court-Designated Neutral)
- *Elias Membreno, et al. v. 1031 Canal Investments, L.L.C. (Hard Rock Hotel Collapse)*, No. 2019-10819 (C.D.C La.) (Special Master)
- *In re: Smith & Nephew Birmingham Resurfacing (BHR) Hip Implant Products Liability Litigation*, MDL No. 2775 (D. Md. J.P.M.L.) (mediator)
- *In re: Aredia and Zometa Products Liability Litigation*, MDL No. 1760 (M.D. Tenn. J.P.M.L.) (mediator)
- *In re: Genetically Modified Rice Litigation*, MDL No. 1811 (E.D. Mo. J.P.M.L.) (mediator)
- *In re: FEMA Trailer Formaldehyde Products Liability Litigation*, MDL No. 1873 (E.D. La. J.P.M.L.) (mediator)
- *In re: Chinese-Manufactured Drywall Products Liability Litigation*, MDL No. 2047 (E.D. La. J.P.M.L.) (mediator and Special Master)
- *In re: Coloplast Corp. Pelvic Support Systems Products Liability Litigation (Vaginal Mesh)*, MDL No. 2387 (S.D.W.Va. J.P.M.L.) (mediator)

- *In re: Pradaxa (Dabigatran Etexilate) Products Liability Litigation*, MDL No. 2385 (S.D. Ill. J.P.M.L.) (mediator)
- *In re: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2100 (S.D. Ill. J.P.M.L.) (mediator)
- *Patrick Joseph Turner, et al. v. Murphy Oil USA, Inc. (Murphy Oil Spill)*, 05-4206 (E.D. La.) (mediator)
- *Kate Reid, et al. v. The Doe Run Resources Corporation*, 4:11-00044 (E.D. Mo.) (mediator)
- *Terral Evans, et al. v. TIN, et al. (Bogalusa Fish Kill)*, 2:11-0267 (E.D. La.) (mediator)
- *Mass Depakote Litigation*, 12-52, etc. (S.D. Ill.) (mediator)
- *Ian Pollard, et al. v. Remington Arms Co., et al.*, 4:13-00086 (W.D. Mo.) (mediator)
- *Medtronic Infuse Litigation* (multiple jurisdictions) (mediator)
- *In re: Vulcan Litigation – April 2001 Incidents*, 69,388 (La. 23rd J.D.C.) (Special Master)
- *Avandia Deceptive Marketing Litigation* (multiple jurisdictions) (mediator)
- *Jane Doe No. 1, et al. v. The Johns Hopkins Health System Corporation, d/b/a The Johns Hopkins Hospital, et al.*, 24-C-13-00141 (Md. Baltimore City Cir. Ct.) (mediator)

6. Among my assignments, I have reviewed attorney time and expenses and I have made recommendations concerning requests for attorneys' fees/expenses, including the aggregate amount, the division between common benefit fees/expenses and private contract fees/expenses, and the allocation of common benefit fees/expenses.

Submissions of Time and Expenses

7. On December 7, 2018, the United States Judicial Panel on Multidistrict Litigation transferred this matter to the District of South Carolina and assigned it to the Honorable Richard M. Gergel. RD 1.

8. On April 26, 2019, Judge Gergel entered Case Management Order No. 3 (“CMO 3”). RD 72. Relevant to my task as the Special Master, CMO 3 established the procedure for submitting common benefit time and expenses.

9. Pursuant to CMO 3, the firms began submitting time and expense information to Mr. Betsill in June 2019 (for all time and expenses incurred through May 31, 2019). The firms thereafter typically (but not always) submitted additional time and expenses on a monthly basis.

10. More than 40 firms and 650 timekeepers (including partners/members, senior associates, associates, paralegals, and law clerks) submitted time through May 31, 2024² and expenses through June 30, 2024 to Mr. Betsill.

My Appointment and Performance of Duties

11. On May 19, 2021, the Plaintiffs’ Executive Committee (“PEC”) filed an “Unopposed Motion to Appoint John W. Perry Jr. as Special Master.” RD 1615. Specifically, the PEC asked the Court to appoint me “to assist in the management and oversight of the Common Benefit time submitted by the PEC and associated plaintiffs’ counsel, including to assist the PEC in its yearly PEC re-application process.”

² Under CMO 3, common benefit reporting time is accounted for on a monthly basis. Class Counsel and this declaration use May 31, 2024, as the time reporting deadline for this fee petition because it is the last reporting deadline for which all relevant timekeepers have reported time in a timely manner.

12. On May 19, 2021, the Court entered Case Management Order No. 18 (“CMO 18”). RD 1618. CMO 18 “provide[d] the parties notice of [the Court’s] intent to appoint John W. Perry, Jr. as Special Master relating to the review of plaintiffs’ counsel’s Common Benefit Fund submissions.”

13. On June 8, 2021, the Court entered Case Management Order No. 18.A (“CMO 18.A”). RD 1686. Among other things, CMO 18.A provided that I “shall assist in the management and oversight of the Common Benefit Fund time and expense submissions provided by the PEC and associated with plaintiff’s counsel.”

14. On June 23, 2021, Mr. Balhoff, Jonathon Perry, and I³ participated in a telephone conference with Co-Lead Plaintiffs’ Counsel Michael London, Paul Napoli, and Scott Summy.

15. Co-Lead Counsel gave us an overview of the case and offered to put us in touch with Jeremy Betsill (the Court-Appointed CPA) so that we would have access to the time and expenses that had been submitted pursuant to CMO 3.

16. Mr. Betsill developed a portal so that we could access each firm’s monthly submissions pursuant to CMO 3. These typically included a detailed time spreadsheet, a detailed expense spreadsheet, and pdf backup of any expenses.

17. On June 23, 2021, Mr. Balhoff contacted Dustin Mire of Postlethwaite & Netterville (now Eisner Advisory Group), to enlist his assistance with management of the Betsill database.

18. Mr. Mire specializes in claims administration and consulting in class actions and mass torts. We have worked with Mr. Mire and his team on complex litigation projects for approximately 15 years.

³ Mr. Balhoff, Jonathon Perry, and I are partners in the same firm.

19. I previously executed declarations relating to the DuPont and 3M settlements. The most recent of these declarations totaled the hours and costs through August 29, 2023. It is my understanding that the Court considered these hours and costs (at least in part) in making its awards of attorneys' fees and costs with respect to the DuPont and 3M settlements. RD 4885.

CONCLUSIONS

Common benefit hours through May 31, 2024

20. Common benefit hours as of 8/29/2023: As of August 29, 2023, the reporting firms submitted **452,532.3** common benefit hours. The PEC and the firms thereafter determined that **21,373.4** of those hours should be withdrawn for various reasons, including not meeting the criteria of CMO 3. Co-Lead Counsel therefore instructed my office to remove those hours from consideration. After taking into account this reduction, Mr. Mire's team reports that, as of August 29, 2023, the firms had submitted **431,158.9** common benefit hours, which time was then used in the Lodestar cross check in Class Counsel's Motion for Attorneys' Fees and Costs. RD 4269, p.63. The Court granted Class Counsel's Motion, awarding an 8% Class Fee based on common benefit work performed through August 29, 2023, and awarding reimbursement of costs through that date. RD 4885.

21. Common benefit hours from 8/30/2023 to 5/31/2024: For the period from August 30, 2023 through May 31, 2024, the reporting firms submitted **64,741.0** common benefit hours. The PEC and the firms thereafter determined that **14,558.3** of those hours should be withdrawn for various reasons, including not meeting the criteria of CMO 3, and because some of the hours were incurred for ongoing administration for the 3M and DuPont settlements as anticipated by the Court in its Order and Opinion concerning common benefit fees and costs. RD 4885, p.8. Co-Lead Counsel therefore instructed my office to remove those hours from consideration. After taking

into account this reduction, Mr. Mire's team reports that, for the period from August 30, 2023 through May 31, 2024, the firms have submitted **50,182.7** common benefit hours.

Common benefit costs through June 30, 2024

22. To date, the reporting firms have submitted total (shared and held) costs in the amount of **\$31,858,642.26** from the origin of the litigation through June 30, 2024. Such submissions continue to undergo audit and review, and may be updated as appropriate.

23. Reimbursed common benefit costs: On October 15, 2023, Class Counsel filed their Motion for Attorneys' Fees and Costs from the DuPont settlement, requesting reimbursement of \$2,136,213.21, its proportional share of costs expended through August 22, 2023. RD 3795, at 2. On December 18, 2023, Class Counsel filed their Motion for Attorneys' Fees and Costs from the 3M settlement, requesting reimbursement of its proportional share of costs expended through August 29, 2023 in the amount of \$19,251,347.54. RD 4269, at 2. On April 23, 2024, the Court issued its Order granting both such motions and awarding costs in the amount of \$21,387,560.75. RD 4885, at 7-8.

24. Unreimbursed common benefit costs: For the period from August 30, 2023 through June 30, 2024, the total (shared and held) costs were **\$10,471,081.51**.

- For the period from August 30, 2023 through June 30, 2024, Mr. Betsill reports that the shared costs were **\$8,979,214.00**.
- For the period from August 30, 2023 through June 30, 2024, the firms submitted **\$1,491,867.51** in held costs.
- It is my understanding that Class Counsel intend to request that such unreimbursed costs, in the total amount of **\$10,471,081.51**, be apportioned

between Tyco (70%) and BASF (30%), representing their approximate share contribution to the combined total value of the two settlements.

25. The below depicts the common benefit costs previously requested and awarded, as well as the unreimbursed costs that form the basis of this present request:

	DuPont	3M	Total	Status
Reimbursed up through 8/29/2023	\$2,136,213.21	\$19,251,347.54	\$21,387,560.75	Requested (ECF Nos. 3795, 4269) and awarded (ECF No. 4885)
	Tyco	BASF	Total	Status
Unreimbursed up through 6/30/2024	\$7,329,757.06	\$3,141,324.45	\$10,471,081.51	Unreimbursed costs being requested

This MDL Involves the Litigation of Highly Interrelated Issues, and the Time and Expenses Inure to the Benefit of all Plaintiffs and Case Types

26. In reviewing the time and expenses, we considered segregating entries according to the relevant settling defendant. For instance, we considered preparing a report of how many hours were directed toward litigating or settling water provider claims against Tyco, BASF, or some other defendant, or toward personal injury claims, or CERCLA claims, etc. The pre-August 29, 2023 time and expenses (the subject of my previous declarations) included work directly related to DuPont and 3M, but it also contained work directly related to other defendants. Likewise, the time for the period from August 30, 2023 through May 31, 2024 and expenses for the period from August 30, 2023 through June 30, 2024 includes work directed to defendants other than Tyco and BASF (although it excludes, as discussed above, time or expenses spent on the ongoing administration of the 3M and DuPont settlements). After reviewing the time and expense submissions and discussing the matter with various counsel (including the Co-Leads), we have

determined that segregating the time and expenses would be impractical and, more importantly, not reflective of the way this MDL has been litigated. While some time and expenses can be segregated from the rest, a significant portion benefited the overall effort. Indeed, it is my opinion that the pre-August 29, 2023 efforts (the subject of my previous declarations) benefited not only the DuPont and 3M settlements; they also benefited all future litigation and settlements. Similarly, the more recent time and expenses have benefited not only the effort against Tyco and BASF, but also future litigation and settlements.

27. Along with Mr. Mire's team, we are auditing the participating firms' submissions (including their prior submissions) on a continuing basis, and we will continue to work with the firms and Mr. Betsill to correct any errors in the submissions.

28. We have reviewed time and expense submissions with the objective of presenting aggregate numbers to the Court (as was done in the above paragraphs). Based upon my experience as a neutral in complex litigation, and in light of the settlements achieved by the attorneys, I believe that the aggregate hours and costs appear reasonable in these circumstances. Moreover, the aggregate hours billed are certainly appropriate for Lodestar cross check purposes even though such hours will be analyzed in a different way for the purposes of allocation among firms at a later date.

29. However, in anticipation of any allocation among firms of these common benefit funds, my firm has started a robust and comprehensive audit of all of the newly submitted time by each firm. Moreover, for all newly submitted time, my firm has likewise requested that each firm that has submitted such time confirm the accuracy of its submissions to date. Finally, also as part of any allocation, my firm has begun to interview each firm that submitted common benefit time in order to assess the time and work performed.

30. I have served as a neutral in complex settlements that entail multiple defendants who settle at different times. Based on my assessment of the common benefit time and expenses involved in both the previous settlements with 3M and DuPont, as well as for these settlements with Tyco and BASF, it is clear that the work required to achieve these results was performed in a concerted fashion and in such a way that considered the interrelated nature of the many defendants involved. It is my understanding that Class Counsel seeks to have the Court analyze a Class Award request in light of the totality of the work performed – which was considerable and impressive – along with the totality of the outcomes secured, and I believe that to be a reasonable approach.

Dated: July 18, 2024

/s/ John W. Perry, Jr.
John W. Perry, Jr.

EXHIBIT

B

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

In re Aqueous Film-Forming Foams Products Liability Litigation

MDL No. 2873

DECLARATION OF BRIAN T. FITZPATRICK

INTRODUCTION

1. I filed declarations¹ in this litigation in support of class counsel's request for awards of 8% in fees plus expenses from the settlements they secured against the 3M and DuPont defendants, which relevant parts I incorporate by reference herein as if set forth fully herein. Class counsel is now seeking the same award of 8% in fees plus expenses from the settlements they secured against Tyco and BASF. Virtually everything I said in my 3M and DuPont declarations applies as well to this request. To be respectful of the Court's time, I will not repeat what I said in my earlier declarations and instead focus on any relevant differences between the 3M and DuPont requests and the instant one.

SUMMARY OF OPINIONS

2. I have been asked by class counsel to opine on whether the attorneys' fees and expenses they have requested here are reasonable in light of the empirical studies and research on economic incentives in class action litigation. To formulate my opinion, I reviewed a number of documents provided to me by class counsel and I have attached a list of these documents as Exhibit 1. As I explain, based on the empirical studies and research on economic incentives, my opinions

¹ Declaration of Brian T. Fitzpatrick in support of Class Counsel's fee request in DuPont [ECF No. 3795-5]; *see also*, Declaration of Brian T. Fitzpatrick in support of Class Counsel's Fee request in 3M [ECF No. 4269-4]

are as follows:

- As is the practice of most courts in class action litigation—including those awarding fees from very large settlements like these—the Court should use the percentage method rather the lodestar method to assess the fee request.
- No matter how you slice the data, the 8% fee request here is below the norm, and, therefore, easily justified by the percentage-method factors used in this Circuit.
- Although a lodestar crosscheck is not required, it shows that the fee requests in this litigation continue to be well within the range of multipliers in other large litigations, the very largest of which have spanned from 1.0 to 6.2.
- The expenses sought here are \$10,471,081.51, approximately 1% percent of the combined settlements. That number is well below average for class action litigation, including in the very largest class actions, and is therefore easy to justify as well.

CASE BACKGROUND

3. The two settlement classes here include, with minor exceptions, “[e]very Active Public Water System in the United States” that has already found PFAS in their water as of May 15, 2024. Tyco Settlement Agreement ¶ 5.1; BASF Settlement Agreement ¶ 5.1. The Tyco class will receive \$750 million in cash; the BASF class will receive \$316.5 million in cash. *See* Tyco Settlement Agreement ¶ 6.1; BASF Settlement Agreement ¶ 6.1. As in the previous settlements, none of these monies can revert back to Tyco or BASF. In exchange, class members will release their claims as described in ¶¶ 12.1 of the settlement agreements.

4. Class counsel are moving for an award of fees equal to 8% of the Tyco and BASF settlement funds² plus an award of expenses of \$10,471,081.51. As I explain below, both requests

² As in the previous settlements, if class members have retained their own counsel, the class fee will be taken

are, in my opinion, easy to justify in light of the empirical studies and research on economic incentives in class action litigation.

ASSESSMENT OF THE REQUEST FOR ATTORNEYS' FEES

Lodestar Versus Percentage Method

5. Everything I said in my previous declarations regarding the Court's choice between fee award methods applies here. In particular, because these settlements are also all cash and therefore can be easily valued, it is my opinion that the percentage method should be used. I will therefore proceed under that method.

Factors Under the Percentage Method

6. Everything I said in my previous declarations regarding application of the percentage-method factors from *Barber v. Kimbrell's Inc.*, 577 F.2d 216, 226 n.28 (4th Cir. 1978), *see* Local Rule 54.02(A), applies here as well, with the following exceptions:

The Factors on Data from Other Cases

7. This factor makes the fee requests here even easier to justify than in the previous settlements. It is true that the 8% requested here continues to be below average whether one looks at all class action settlements, where the average and median are around 25%, or only at bigger settlements, but the "bigger settlements" here are smaller than in they were in the previous cases. In particular, the previous settlements were all over \$1 billion, yet neither of the settlements here crosses that threshold. That makes the fees requested here even easier to justify: according to my empirical study, the mean and median fee awards for settlements of the size at issue here are

and credited out of their lawyers' percentage of the recovery rather than from their own net recovery. This is a common practice in MDL litigation, *see, e.g.*, William B. Rubenstein, 5 *Newberg on Class Actions* § 15:115 (6th ed.) ("In some cases, the common benefit fund is comprised exclusively of assessments upon the individually retained lawyers' contingent fees. In yet other cases, courts have ordered specific portions of the common benefit assessment to be paid by individual plaintiffs and portions by their lawyers' contingent fees."), and it avoids the need—which is very controversial in some circles—to "cap" the percentages in agreements with retained counsel.

between 12.9% and 19.5%, *well* above the 8% requested. See Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811, 839 (2010) (tbl. 11). Indeed, even if the settlements are combined into one, which would push it into the billion-dollar range, the fee requests are still below average. As I explained in my previous declarations, the average and median fee awards in billion-dollar cases are between 9.3% and 13.7%. Thus, no matter how you slice the data, the fees requested here are either below average or *well* below average.

The Factors on Risks Versus the Recovery

8. The risks and the recovery here look much like they did in the previous settlements. In particular, the risks are very similar and the recoveries are proportionate to the previous settlements given the defendants' estimated market share with respect to these classes. As such, these settlements continue to be more than justified by the risks the classes would get less or even nothing if they continued litigating.

Lodestar Crosscheck

9. In my previous declarations, I recommended that the Court conduct the lodestar crosscheck by aggregating fee awards and time as they accrue in this litigation. I recommended this course because it is difficult if not impossible to disaggregate the time spent against one MDL defendant from the time spent against other MDL defendants in a non-arbitrary fashion. I continue to recommend this course. Based on the latest information from class counsel, if the Court grants these fee requests, the aggregate lodestar multiplier would still be less than 3.0. As I noted in my previous declarations, that is well within the range of previous billion-dollar litigations, which have ranged between 1.0 and 6.2. Thus, there is still nothing about the lodestar multiplier that suggests that class counsel would reap a "windfall" if this fee request is granted.

ASSESSMENT OF THE REQUEST FOR EXPENSES

10. Class counsel have requested \$10,471,081 in expenses in connection with these settlements. These expenses are approximately one percent (1%) of the totaled settlement amounts, a number that is very modest compared to other settlements. Based on the data I set forth in my previous declarations, the request here would still be well below the typical class action expense-to-settlement ratio. Indeed, as Table 1 of my previous declarations showed, it would be low even among the very largest class actions. As such, in my opinion, the expenses requested here are well below the norm in previous cases.

CONCLUSION

11. For all these reasons, I believe the fees and expenses requested here are reasonable in light of the empirical studies and research on economic incentives in class action litigation.

July 21, 2024

Nashville, TN



Brian T. Fitzpatrick

Exhibit 1

Documents reviewed:

- Case Management Order No. 3 (MDL document 72, filed 4/26/19)
- Order and Opinion (denying summary judgment) (MDL document 2601, filed 9/16/22)
- DuPont de Nemours, Inc. Quarterly Report on Form 10-Q (June 30, 2023)
- Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Settlement, for Certification of Settlement Class and for Permission to Disseminate Class Notice (MDL document 3370-1, filed 7/3/23), and the exhibits attached thereto, including Settlement Agreement Between Public Water Systems and 3M Company (MDL document 3370-3, filed 7/3/23) ("Settlement Agreement")
- Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Settlement, for Certification of Settlement Class, and for Permission to Disseminate Class Notice (DuPont document 4, filed 7/10/23), and the exhibits attached thereto
- Class Action Complaint (DuPont document 7, filed 7/12/23)
- Class Action Complaint (3M document 2, filed 7/12/23)
- Consent Motion to Amend Exhibits to Motion for Preliminary Approval (DuPont document 30, filed 8/7/23)
- Order (granting preliminary approval) (MDL document 3603, filed 8/22/23)
- Consent Motion to Amend Exhibits to Motion for Preliminary Approval (MDL document 30, filed 8/28/23)
- Preliminary Approval Order for Settlement between Public Water Systems and 3M Company (MDL document 3626, filed 8/29/23)

- Joint Motion to Reconsider and Amend Preliminary Approval Order (DuPont document 35, filed 9/14/23)
- Order (modifying order granting preliminary approval) (DuPont document 36, filed 9/15/23)
- Consent Motion to Clarify Preliminarily Approved 3M Settlement Agreement (MDL document 3793, filed 10/13/23)
- Class Counsel's Motion for Attorneys' Fees and Costs and the exhibits attached thereto (MDL document 3795, filed 10/15/23)
- Class Counsel's Memorandum in Support of their Motion for Attorneys' Fees and Costs (MDL document 4269, filed 10/18/2023)
- Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Settlement, for Certification of Settlement Class, and for Permission to Disseminate Class Notice (MDL document 4911-1, filed 4/26/24), and the exhibits attached thereto
- Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Settlement, for Certification of Settlement Class, and for Permission to Disseminate Class Notice (MDL document 5053-1, filed 6/3/24), and the exhibits attached thereto
- Order (granting preliminary approval) (MDL document 5147, filed 6/13/24)
- Order (granting preliminary approval) (MDL document 5253, filed July 30, 2024)
- Class Counsel's Memorandum in Support of their Motion for Attorneys' Fees and Costs (filed herewith)

EXHIBIT

C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE: AQUEOUS FILM-FORMING FOAMS) Master Docket No.:
PRODUCTS LIABILITY LITIGATION) 2:18-mn-2873-RMG

CITY OF CAMDEN, et al.,)
Plaintiffs,) Civil Action No.:
) 2:24-cv-02321-RMG
)
-vs-)
)
TYCO FIRE PRODUCTS LP, individually and as)
successor in interest to The Ansul Company, and)
CHEMGUARD, INC.,)
Defendants.)

CITY OF CAMDEN, et al.,)
Plaintiffs,) Civil Action No.:
) 2:24-cv-03174-RMG
)
-vs-)
)
BASF CORPORATION, individually and as successor in)
interest to Ciba Inc.,)
)
Defendant.)

**DECLARATION OF MICHAEL A. LONDON, ESQ. IN SUPPORT OF CLASS
COUNSEL’S MOTION FOR ATTORNEYS’ FEES AND COSTS**

I, Michael A. London, Esq., pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. This Declaration is based upon my personal knowledge, and if called as a witness, I could and would testify competently to its contents. I submit this Declaration in support of Class Counsel’s Motion for Attorneys’ Fees and Costs.

PROFESSIONAL EXPERIENCE

2. I am a co-founding partner of the law firm Douglas & London, P.C. (“Douglas & London”). I am an attorney currently licensed in good standing to practice law in the States of New York and New Jersey. I am also admitted to practice law in the District of New Jersey, the Eastern and Southern Districts of New York and the United States Court of Federal Claims.

3. I presently serve as Court-appointed Co-Lead Counsel in the *In Re: Aqueous Film-Forming Foams Prods. Liab. Litig.* MDL (MDL 2873), together with Scott Summy and Paul Napoli, as appointed by Case Management Order (“CMO”) 2 and re-appointed annually by this Honorable Court (including most recently on April 25, 2024),¹ as well as with Joe Rice, as appointed by Order dated August 22, 2023.² I was further authorized by the Court in CMO 2-B to negotiate potential resolutions of cases within the Aqueous Film-Forming Foams (“AFFF”) MDL alongside Mr. Summy and Mr. Napoli. I was appointed Class Counsel for the Public Water System (“PWS”) Class Action Settlements reached with the DuPont entities and 3M (the “DuPont PWS Settlement” and the “3M PWS Settlement”), along with Mr. Summy, Mr. Napoli, Mr. Rice, and Elizabeth Fegan.³ Most recently, I was preliminarily approved as Class Counsel for the PWS Class Action Settlements reached with Tyco Fire Products LP and Chemguard, Inc. (collectively, “Tyco”) and with BASF Corporation (“BASF”).⁴

4. Douglas & London is a law firm devoted to representing consumers, municipalities, States and injured individuals in complex litigations, including in the mass tort, environmental, and class action context. And I have devoted my entire legal career to representing consumers and injury victims, primarily in the context of complex litigation involving mass torts, product

¹ ECF No. 4904.

² ECF No. 3602.

³ ECF Nos. 4543 and 4754, respectively.

⁴ ECF Nos. 5147 and 5253, respectively.

liability matters, environmental and class actions.

5. I have been appointed to, and have served on, numerous Plaintiffs' Steering Committees in national mass tort and complex litigations and have held leadership positions in some of the largest mass torts over the past 25 years. Some of my formal court-appointed lead or liaison positions have included the following:

- *Vice-Chair of Plaintiffs' Steering Committee – In re: Zyprexa Prods. Liab. Litig.*, MDL-1596, E.D.N.Y., Hon. Jack B. Weinstein (status: resolved, \$690 million settlement of approximately 8,000 claims);
- *Co-Lead Counsel – In re: Yasmin and Yaz (Drospirenone) Mktg. Sales Practices and Prods. Liab. Litig.*, MDL 2100, S.D. Ill., Hon. David R. Herndon (status: resolved over 18,000 claims for over \$2 billion through individual and mass semi-confidential settlements in federal and state courts);
- *Co-Lead Counsel and Liaison Counsel – In re: Bayer Corp. Combination Aspirin Prods. Mktg. and Sales Practice Litig.*, MDL 2023, E.D.N.Y., Hon. Brian M. Cogan (status: resolved, \$15 million class settlement);
- *Co-Lead Counsel – In re: Pradaxa (Dabigatran Etexilate) Prods. Liab. Litig.*, MDL 2385, S.D. Ill, Hon. David R. Herndon (status: resolved, \$650 million settlement of approximately 4,000 claims);
- *Liaison Counsel and Plaintiffs' Executive Committee Member – In re: Ortho Evra Prods. Liab. Litig.*, MDL 1742, N.D.O.H., Hon. David S. Katz (status: resolved, individual confidential settlements of approximately 3,000 claims in federal and state courts);
- *Co-Liaison Counsel – In re: Levaquin Litig.*, Case No. 286, Hon. Carol E. Higbee, N.J. Super. (Atlantic Cnty.) (status: resolved, individual confidential settlements of hundreds of claims in federal and state courts);
- *Co-Lead Counsel – In re: E.I. du Pont de Nemours and Co. C-8 Pers. Injury Litig.*, MDL 2433, S.D. Ohio, Hon. Edmund A. Sargus, Jr. (status: resolved, \$671 million settlement of approximately 3,600 claims followed by additional \$70 million plus settlement of newly diagnosed claims);
- *Co-Lead Counsel – In re: Invokana (Canagliflozin) Prods. Liab. Litig.*, MDL 2750, D.N.J. Hon. Brian Martinotti (status: resolved, individual confidential settlements of thousands of claims);
- *Chair-person of Plaintiff Executive Committee, In re: Testosterone Replacement Therapy Prods. Liab. Litig.*, MDL 2545, N.D. Ill., Hon. Matthew F. Kennelly (status: resolved);

- *Chair-person of Plaintiff Executive Committee, In re: Davol, Inc./ C.R. Bard, Inc. Polypropylene Hernia Mesh Prods. Liab. Litig.*, MDL 2846, S.D. Ohio, Hon. Edmund A. Sargus, Jr. (status: active); and
- *Co-Lead Counsel – In re: Hair Relaxer Mktg. Sales Practices and Prods. Liab. Litig.*, MDL 3060, N.D. Ill., Hon. Mary Rowland (status: active).⁵

6. Most recently, as detailed above, I have been appointed by this Court as Class Counsel for the DuPont and 3M PWS Settlements,⁶ and preliminarily approved as Class Counsel for the Tyco and BASF PWS Settlements.⁷

7. Prior to the AFFF MDL being formed, and as described in detail in previous submissions to this Court in support of the 3M and DuPont PWS Settlements,⁸ my law firm litigated cases involving one of the per- and polyfluoroalkyl substances (“PFAS”) at issue here – specifically, perfluorooctanoic acid (“PFOA”) – for more than five years as part of MDL 2433 (the “C-8 MDL”).

8. As the Court is aware, in the C-8 MDL, I served as Co-Lead Counsel of the Plaintiffs’ Steering Committee, and in that position, I was responsible for drafting, reviewing and/or revising virtually all of the CMOs, including but not limited to each scheduling order identifying the timelines and timeframes of both fact and expert discovery for every bellwether trial, and each of the forty (40) cancer cases that were prepared for trial. In addition, and as the Court is aware, Gary Douglas was trial counsel in each of the first three C-8/*Leach* injury cancer trials, all of which resulted in verdicts in favor of the plaintiff, and which led to the global personal injury settlement of \$671 million with DuPont on behalf of approximately 4,000 personal injury claimants.⁹

⁵ Over the course of my career, I have also been appointed to Plaintiffs’ Steering Committees in seven other MDLs.

⁶ ECF Nos. 4543 and 4754, respectively.

⁷ ECF Nos. 5147 and 5253, respectively.

⁸ *See, e.g.*, ECF No. 3795-6 (your undersigned’s Declaration in support of Class Counsel Motion for Attorneys’ Fees and Costs in the DuPont PWS Settlement (hereinafter, “DuPont Fee Mot.”)); *see also* ECF No. 4269-5 (your undersigned’s Declaration in support of Class Counsel Motion for Attorneys’ Fees and Costs in the 3M PWS Settlement (hereinafter, “3M Fee Mot.”)).

⁹ The first three C-8 trials, led by lead or co-lead trial counsel of Gary Douglas (*Bartlett v. E. I. du Pont de Nemours & Co.*, 13-cv-170 (S.D.O.H.); *Freeman v. E. I. du Pont de Nemours & Co.*, 13-cv-1103

9. As the Court is also aware, following the successful results in the C-8 MDL, and due to the increased regulation by the Environmental Protection Agency (“EPA”) brought on, in part, as a result of the C-8 litigation, interest in and information about PFAS continued to spread and grow. As such, prior to the AFFF MDL being formed, and given our unique experience with PFAS, my law firm was one of the first to investigate both AFFF contamination cases as well as cases involving PFAS contamination more broadly on behalf of Public Water Systems whose drinking water was contaminated with PFAS through no fault of their own.

10. Even prior to the Judicial Panel on Multidistrict Litigation (“JPML”) Transfer Order centralizing this MDL,¹⁰ I have consistently led Plaintiffs’ counsel’s organizational efforts in the earliest days of this litigation. Ultimately, and as set forth in more detail below, on March 20, 2019, I was Court-appointed Co-Lead Counsel of this MDL.¹¹ Because of my leadership roles from the beginning and continuing through the recent DuPont and 3M PWS Settlements and to present day, I have direct personal knowledge of, and will provide an overview of, the substantial work performed by the various lawyers on the PEC and Plaintiff committees – work that allowed us to continue to achieve the historic results in the Public Water System Settlements with two new defendants, Tyco and BASF.

11. Having served as the primary organizer of functions and work performed by the PEC throughout this litigation, negotiated the vast majority of the CMOs, overseen coordination of Plaintiffs’ discovery and overall litigation efforts against the Defendants, and participated in all settlement negotiations as permitted by the Court’s entry of CMO 2.B, I was also intimately involved in all aspects of the Tyco and BASF Settlements, and can attest that they are the result of the PEC’s

(S.D.O.H.); *Vigneron v. E. I. du Pont de Nemours & Co.*, 13-cv-136 (S.D.O.H.) all resulted in verdicts for plaintiffs, with the second and third trials resulting in significant seven and eight figure compensatory and punitive damage awards, respectively.

¹⁰ MDL Transfer Order No. 2873 (ECF No. 1).

¹¹ CMO 2 (ECF No. 3602).

ongoing approach to litigate the MDL cases holistically given a multitude of factors, including the establishment of general liability, the government contractor defense, the market segmentation between 3M and Telomer Defendants, including Tyco and BASF, and the general science of PFAS, including what was known and when it was known, with all of this being inextricably intertwined between all defendants in this MDL.

12. Much of the history of the establishment and litigation of this MDL is set forth in my previous declarations in support of Class Counsel’s motions for attorneys’ fees and costs in the DuPont and 3M PWS Settlements,¹² which are incorporated and adopted by reference as if more fully set forth herein. As such, this declaration will both briefly summarize those past herculean efforts which were sustained, concerted, and directed against all Defendants – much of which is undeniably intertwined and interrelated, and all of which has helped benefit and advance all aspects of this overall litigation – and I will also describe the efforts undertaken since the July 14, 2023 CMC, at which time the PEC, its leadership and members of the Strike Force were instructed to resume the litigation efforts in a full throttled manner.¹³ In sum, the non-stop continuous efforts of the past in this litigation continued in the same manner and carried over to Tyco and BASF resulting in the “next up” settlements at bar.

I. EXECUTIVE SUMMARY

13. Over the last five-plus years, the PEC devoted in total over 480,000 hours working on litigation efforts that led directly to the two largest drinking water settlements in U.S. history – those with 3M and DuPont reached in the summer of 2023.¹⁴ The Tyco and BASF Settlements

¹² See DuPont Fee Mot. (ECF No. 3795); 3M Fee Mot. (ECF No. 4269).

¹³ See DuPont Fee Mot. (ECF No. 3795-1), at 23 (describing the “Strike Force” team, which was established for the purpose of coordinating the efforts of all PEC committees, and citing the Declaration of Gary J. Douglas in support of DuPont Fee Mot. (ECF No. 3795-8), in which the Strike Force’s work is detailed further); see also July 14, 2023 CMC transcript, 44:14-46:21.

¹⁴ NPR Interview with Scott Summy, <https://www.npr.org/2023/06/23/1183964270/3m-reaches-10-3-billion-settlement-over-forever-chemicals-in-public-water-system> (last accessed July 19, 2024) (describing the settlements and characterizing their historic, unprecedented nature).

represent the continuation of efforts that began in advance of the JPML hearing that resulted in centralization of this MDL, which have been detailed to great degree in previous filings,¹⁵ and included the unrelenting pursuit of common discovery against all MDL defendants concurrently, as well as the far-from-certain defeating of the government contractor defense.¹⁶ Those efforts brought about not only the first PWS Settlements on the eve of trial in June 2023, but also paved the way significantly for the instant ones with Tyco and BASF as well.

14. As one of the Co-Lead Counsel and the person primarily responsible for organizing, assigning, overseeing, monitoring, and working with most of the teams and committees of lawyers, I can affirmatively state that virtually every hour devoted to this litigation advanced the liability case against all Defendants.¹⁷ At the time of Class Counsel's prior petitions for fees and costs, Plaintiffs' counsel had collectively spent over 431,000 hours of time on common benefit work on tasks that led directly to the resolution of the water provider claims with the first settling Defendants DuPont and 3M.¹⁸ Since that time, Plaintiffs' counsel has accumulated an additional 50,182.7 number of hours on common benefit work advancing the litigation.¹⁹ Indeed, this continued work pivoted seamlessly after the CMC in July of 2023, from trial preparation just a month earlier for the *City of Stuart*²⁰ and the parallel settlement negotiations with 3M and DuPont,

¹⁵ See DuPont Fee Mot. (ECF No. 3795); 3M Fee Mot. (ECF No. 4269); see also your undersigned's Declaration in support of both Fee Mot. (ECF Nos. 3795-6 and 4269-5) ("DuPont London Fee Dec." and "3M London Fee Dec.," respectively).

¹⁶ DuPont and 3M London Fee Decs., at ¶¶ 12, 69-73.

¹⁷ See Order and Opinion granting DuPont and 3M Fee Mot. (ECF No. 4885) ("Fee Order"), at 6-7 (noting the "interconnected relationship" of these cases).

¹⁸ 3M Fee Mot., at 1.

¹⁹ See Declaration of John Perry, at ¶ 21. It is important to note that Plaintiffs' counsel, with the oversight of Special Master John Perry, have been careful to segregate from the current time submission now before the Court, all work devoted to the administration of the existing 3M and DuPont PWS Settlements, which time will be the subject of a separate fee petition from the funds held back from those two settlements for this purpose. See Fee Order, at 8 (describing the filing date for such petition as the first Thursday in November, i.e., November 7, 2024).

²⁰ The *City of Stuart* trial was set to begin on June 4, 2023, and was adjourned on the literal eve of that start date when the 3M PWS Settlement was announced. As the Court will recall, the *Stuart* trial was

to then turning attention to the Telomer Defendants, including Tyco and BASF, and litigation against them through the Telomer Bellwether Program.²¹ The extensive work performed over the course of more than five (5) years was common to the cause, so the PEC was able to leverage that knowledge and work product in advancing the Telomer Defendants through an abbreviated discovery process and a far quicker trial date, bringing much of the same pressures that resulted in the first PWS Settlements to Tyco, BASF and the remaining Defendants.

15. This approach was supported by the Court's management of the cases and the way in which the MDL has been advanced and conducted. Discovery on over fifteen (15) defendants and against the United States government was always undertaken in a coordinated and concerted fashion, beginning with Master Discovery being served and Science Day, through government contractor defense briefing, and continuing throughout the advancement of discovery against key individual Defendants and the development of the Water Provider bellwether cases, both in the water provider context and now currently in the bellwether process for personal injury claims as well.²² As articulated in Class Counsel's previous DuPont and 3M Fee Mots., and as elaborated upon in the instant motion for fees and costs from the Tyco and BASF PWS Settlements, Class Counsel respectfully request that this Court view the work performed in achieving the settlements reached to date in the aggregate when analyzing the Class Fee, and determine whether the total

focused primarily on 3M because 3M was responsible for approximately 90% of the combined PFOA and PFOS contamination of the City of Stuart's wells. *See* Declaration of Gary J. Douglas in support of Class Counsel's Motion for Final Approval of 3M Class Settlement and for Final Certification of the 3M Settlement Class (ECF No. 4273-21), at ¶ 6.

²¹ "Telomer Defendants" are so named because they either utilize the telomerization process to manufacture fluorosurfactants for use in AFFF products and/or manufacture AFFF products that incorporate fluorosurfactants manufactured through the telomerization process. Tyco, BASF and other Telomer Defendants' liability is inextricably intertwined with all other MDL Defendants, but because many of the Telomer Defendants are (or were) AFFF market partners, there was added efficiency in litigating against such Defendants in a concerted manner throughout the Telomer Bellwether Program. *See e.g.*, CMO 27, *et seq.*

²² DuPont and 3M Fee Mots., at 2.

cumulative and aggregate work done to date supports the request for 8% attorneys' fees as reasonable, given the aggregate results achieved.

II. THE TYCO- AND BASF-SPECIFIC WORK SINCE AUGUST 2024

16. The efforts of Class Counsel and the PEC from 2018 through to the first PWS Settlements with 3M and DuPont have been extensively documented in previous filings,²³ and are incorporated by reference as if fully set forth herein. Further, in addition to your undersigned's Declaration, Declarations are also being submitted that address in more detail the following topics: (1) Settlement process (Declaration of Scott Summy); (2) the Telomer Bellwether Program and Trial Preparation (Declaration of Gary J. Douglas); (3) the Government Contractor Immunity defense (Declaration of Paul J. Napoli); and (4) the negotiations with Tyco and BASF (Declaration of Joe Rice).

17. On July 14, 2023, at the first Case Management Conference ("CMC") following the public announcements of the DuPont and 3M PWS Settlements, the Court *encouraged* the parties to address the remaining Telomer Defendants via a new bellwether process and expressed interest in a spring 2024 trial date, less than a year away.²⁴ The Court also tacitly acknowledged the interwoven nature of the litigation, discovery efforts, and the remaining Defendants' liability when contemplating the discovery that would be necessary for a Telomer Bellwether Program, confirming that "we've, obviously, done a lot of discovery already" and implying there was no need to "repeat and start over again."²⁵

18. With no rest for the weary, and while fending off objections to the two Classes,

²³ DuPont Fee Mot. (ECF No. 3795) and DuPont London Fee Dec. (ECF No. 3795-6); *see also* 3M Fee Mot. (ECF No. 4269) and 3M London Fee Dec. (ECF No. 4269-5).

²⁴ July 14, 2023 CMC transcript, 44:14-46:21 (at which the Court stated "I would like a spring of 2024 trial," and reminding Joe Petrosinelli, counsel for Tyco, that "you know, Tyco is a player and we need to have cases [with] Tyco and other telomer defendants, which are significant.").

²⁵ July 14, 2023 CMC transcript, 44:14-20, and 46:21.

defending the Class, tracking opt outs, and strengthening and organizing the administration of both the 3M and DuPont PWS Settlements – a full time job for most attorneys and law firms – your undersigned and a few others set about negotiating what would become CMO 27. This would set the parameters for a second round of water provider cases to be worked up as bellwether cases in what would come to be known as the Telomer Bellwether Program as the Court suggested. The parties would begin the process of reviewing and selecting representative cases, and the PEC’s Strike Force was back at work *before* Preliminary Approval was even granted in either the DuPont or the 3M PWS Settlement.²⁶

19. In selecting the representative cases to be included in the Telomer Bellwether Program, the PEC did so specifically with eye towards ensuring that both Tyco and BASF would be among the target Telomer Defendants in the Telomer Bellwether Program. Tyco manufactures AFFF using fluorosurfactants manufactured with the telomerization process. The fluorosurfactants that it incorporates into its AFFF was historically sourced largely from either BASF as successor-in-interest to Ciba-Geigy (“Ciba”), or later, from its sister company Chemguard. Both Ciba and Chemguard used telomerization to manufacture their fluorosurfactants. As between Tyco and BASF, Tyco was the first Telomer Defendant with whom Plaintiffs were able to reach an agreement, despite the settlement discussions commencing officially in early 2022.²⁷

20. CMO 27 was entered on September 13, 2023.²⁸ It was similar to CMO 13,²⁹ the initial and original water provider bellwether CMO. The Telomer Bellwether Program set forth in CMO 27 and subsequently expanded upon in CMO 27A-H³⁰ consisted of two tiers. Tier One

²⁶ See Declaration of Gary J. Douglas in support of Class Counsel’s instant Motion for Attorneys’ Fees and Costs in the Tyco and BASF PWS Settlements (“Douglas Tyco/BASF Fee Dec.”), at ¶ 21.

²⁷ London Tyco Prelim. Dec., at ¶ 14.

²⁸ ECF No. 3665.

²⁹ ECF No. 1049.

³⁰ ECF Nos. 3665, 3892, 4089, 4108, 4275, 4464, 4829, 4878, and 5007.

designated four (4) cases which would undergo initial discovery (a/k/a Tier One Discovery). The parties selected these cases by agreement after extensive meet and confers. These cases were the *Village of Farmingdale v. 3M Company et al.* (No. 2:19-cv-00564), the *City of Watertown v. 3M Company et al.* (No. 2:21-cv-01104), the *Southeast Morris County Municipal Utilities Authority v. 3M Company et al.* (No. 2:22-cv-00199), and the *Bakman Water Company v. 3M Company et al.* (No. 2:19-cv-02784).³¹

21. The parties conducted Tier One Discovery by doing written discovery and deposition discovery over the course of less than 3 months. Thereafter, unable to agree on two finalist cases to advance to Tier Two, the parties submitted competing proposals to the Court on December 5th, December 6th and December 7, 2023.³² CMO 27D was issued on December 19, 2023, whereby the Court selected the *City of Watertown* (“*Watertown*”) case and the *Southeast Morris County Municipal Utilities Authority* (“*SMCMUA*”) case for Tier Two work-up.³³

22. At breakneck speed – as its members have done throughout the litigation in many other contexts – the Strike Force began preparing for a September 23, 2024 trial date, as set forth in CMO 27E.³⁴ The unrelenting preparations within the Tier Two workup included continued robust discovery efforts, which included multi-day field sampling trips attended by not just counsel but both Plaintiff and Defendant experts, neighboring airport site investigations, visits to fire training centers, and of course inspections and testing of multiple wells.³⁵ The field trips yielded groundwater, soil and pore water sampling, garnering invaluable data and allowing the parties to

³¹ ECF No. 3665.

³² ECF Nos. 4152, 4153, 4179, 4187.

³³ ECF No. 4275.

³⁴ ECF No. 4464.

³⁵ See Plaintiffs’ Memorandum in Support of their Motion for Preliminary Approval of the Tyco PWS Settlement (ECF No. 4911-1) (“Tyco Prelim. Appr. Mot.”), at 9; see also Plaintiffs’ Memorandum in Support of their Motion for Preliminary Approval of the BASF PWS Settlement (ECF No. 5053-1) (“BASF Prelim. Appr. Mot.”), at 9.

advance workstreams spanning water provider, personal injury, property damage and other claims types.

23. Plaintiffs also served 39 number of third-party subpoenas through the Telomer Bellwether Program, resulting in approximately 1 million documents newly produced between the time of CMO No. 27's issuance on September 13, 2023 and present day. Those documents were all logged, reviewed, coded and assessed, which led to additional follow-up requests pursuant to the information being gleaned. In addition, over 2000 documents were produced as part of the CMO 27 bellwether process, totaling more than 36,000 pages.

24. Simultaneously, and on a heavily accelerated timeframe of approximately seventy-five (75) days,³⁶ over twenty-five (25) depositions of fact witnesses were conducted, resulting in further discovery demands, exchange of documents and ongoing dialogue with Defendants.

25. Tyco was a defendant in each of the original CMO 13 water provider bellwether cases, including the *City of Stuart* case which was ultimately selected for bellwether trial, due to begin on June 4, 2023 as mentioned above. However, Tyco was ultimately dismissed from the *City of Stuart* case³⁷ in light of the fact that the majority of the AFFF at issue was manufactured by 3M and then later by National Foam.³⁸

26. Discussions with Tyco's counsel about potential resolution had over the years been sporadic and informal. Although they began in early 2022, with a handful of in-person meetings and Zoom meetings,³⁹ they gained traction after the Court's appointment of Judge Layn

³⁶ See your undersigned's Declaration in support of Tyco Prelim. Appr. Mot. (ECF No. 4911-5) ("London Tyco Prelim. Dec."), at ¶ 19; see also, your undersigned's Declaration in support of BASF Prelim. Appr. Mot. (ECF No. 5053-5) ("London BASF Prelim. Dec."), at ¶ 18.

³⁷ *City of Stuart, Florida v. 3M et al.* (Case No. 2:18-cv-03487, ECF No. 284).

³⁸ See Declaration of Gary J. Douglas in Support of Class Counsel's Motion for Final Approval of 3M Class Settlement and for Final Certification of the Settlement Class (ECF No. 4273-21), at ¶ 6.

³⁹ London Tyco Prelim. Dec., at ¶ 15.

Phillips (ret) of Phillips ADR as mediator on October 26, 2022.⁴⁰ A mediation was held in December of 2022, attended by Tyco and its insurers, which helped kick off settlement discussions in earnest.⁴¹ Negotiations picked up pace throughout the Spring and Summer of 2023, with several meetings, both in-person and virtual via Zoom. Tyco was of course watching the *Stuart* trial closely, and observing the developments related to the 3M and DuPont PWS Settlements after those were announced publicly.

27. In February of 2024, the parties revisited the possibility of settlement,⁴² coinciding with the grant of Final Approval for the DuPont PWS Settlement on February 8, 2024.⁴³ Discussions picked up pace, with multiple in-person as well as Zoom meetings with the mediation team from Phillips ADR, as well as with countless telephone conferences between counsel for the parties.⁴⁴ Concurrently as negotiations were reaching fever pitch, the trial team – headed by Gary Douglas and comprised of many of the same PEC members as had been involved in the *Stuart* trial – was putting considerable litigation pressure on Tyco and others, including BASF, through the Telomer Bellwether Program, working through aggressive discovery pursuant to CMO 27A-G.⁴⁵

28. As it pertains to the settlement, the parties spent a large amount of time drafting and re-drafting and editing and re-editing the settlement related documents. Ultimately as the parties neared settlement, Ms. Philippa Ratzki, Esq., of Douglas & London, became the final liaison with Tyco's counsel to finalize all MSA-related documents. And, on April 12, 2024, the parties executed the Tyco PWS Settlement Agreement, securing \$750 million to resolve claims on behalf of water providers with a PFAS detection in one or more of their water sources as of May

⁴⁰ CMO 2B (ECF No. 2658).

⁴¹ London Tyco Prelim. Dec., at ¶ 21.

⁴² *Id.*

⁴³ ECF No. 4471.

⁴⁴ London Tyco Prelim. Dec., at ¶ 21.

⁴⁵ Douglas Tyco/BASF Fee Dec., at ¶¶ 20-28.

15, 2024.⁴⁶

29. As noted above, and importantly, the Tyco PWS Settlement differs from both the 3M and DuPont PWS Settlements. While Tyco made clear it would only settle PWS cases on a national class-wide basis, as did 3M and DuPont, the Tyco Settlement Class definition includes only those PWS with a current PFAS detection,⁴⁷ in contrast to both earlier settlements.⁴⁸ This difference required additional fact-finding, including an update of previously known PWS with detections pursuant to the newly available data resulting from the EPA's recently announced Maximum Contaminant Levels ("MCLs") and PFAS testing requirements under UCMR-5.⁴⁹ Plaintiffs worked closely with our experts to identify all potentially eligible Settlement Class Members, and to devise new Class Notice Lists based on same.⁵⁰

30. Meanwhile, and against this backdrop of both intense settlement negotiations with Tyco as well as the nearing of trial preparations in the Telomer Bellwether Program, discussions with BASF also were materializing.⁵¹ Not only was trial pressure mounting; equally important to the ultimate success of negotiations with Tyco and BASF was the fast-evolving regulatory

⁴⁶ See Tyco PWS Settlement Agreement (ECF No. 4911-3), at §§ 2.61, 5.1 and 6.1.

⁴⁷ *Id.* at § 5.1.

⁴⁸ See 3M PWS Settlement Agreement (ECF No. 3370-3), at § 5.1 (defining the Settlement Class as "Every Active Public Water System in the United States of America that (a) has one or more Impacted Water Sources as of the Settlement Date; or (b) does not have one or more Impacted Water Sources as of the Settlement Date, and (i) is required to test for certain PFAS under UCMR-5, or (ii) serves more than 3,300 people, according to SDWIS."); see also DuPont PWS Settlement Agreement (ECF No. 3392-2), at § 5.1 (defining the Settlement Class as "(a) All Public Water Systems in the United States of America that draw or otherwise collect from any Water Source that, on or before the Settlement Date, was tested or otherwise analyzed for PFAS and found to contain any PFAS at any level; and (b) All Public Water Systems in the United States of America that, as of the Settlement Date, are (i) subject to the monitoring rules set forth in UCMR 5 (*i.e.*, 'large' systems serving more than 10,000 people and 'small' systems serving between 3,300 and 10,000 people), or (ii) required under applicable federal or state law to test or otherwise analyze any of their Water Sources or the water they provide for PFAS before the UCMR 5 Deadline" – functionally equivalent to the 3M PWS Settlement Class definition.).

⁴⁹ See Declaration of Rob Hesse in support of Tyco Prelim. Appr. Mot. (ECF No. 4911-13), at 1-4; see also Declaration of Rob Hesse in support of BASF Prelim. Appr. Mot. (ECF No. 5053-13), at 1-4.

⁵⁰ *Id.*

⁵¹ London BASF Prelim. Dec. (ECF No. 5053-5), at ¶ 20.

framework. The EPA promulgated the lowest drinking water standards in history when it finalized the enforceable MCLs of 4 ppt for PFOA and PFOS in public drinking water on April 10, 2024.⁵² Plaintiffs sought to strategically capitalize on this convergence of factors; Defendants were given no quarter.

31. Informal discussions with BASF had taken place infrequently over the years, and began in earnest in late August 2022.⁵³ Co-Lead Counsel Scott Summy, Paul Napoli and I met with BASF's counsel in August, September, and twice in October of 2022.⁵⁴

32. Discussions with BASF then cooled until June 2023. The 3M and DuPont PWS Settlements were executed on June 22, 2023 and June 30, 2023, respectively, and talks with BASF resumed. In the fall of 2023, these talks increased in frequency and intensity, aided by Judge Phillips and his mediation team at Phillips ADR. The parties met approximately monthly from September to December 2023, and then more often beginning in February 2024.⁵⁵ Much as Tyco – along with all other non-settling MDL Defendants with water provider claims, surely – had been watching the *Stuart* trial developments and the 3M and DuPont PWS Settlements closely, BASF was also keenly tracking developments between Plaintiffs and Tyco. Following the theme of interwoven liability as has been discussed here and in other PEC briefings,⁵⁶ it was clear that Telomer Defendants were assessing their strategy holistically and in a coordinated fashion. The announcement of Tyco's settlement after execution of its Agreement on April 12, 2024, helped

⁵² EPA, Per- and Polyfluoroalkyl Substances (PFAS) Final PFAS National Primary Drinking Water Regulation, available at <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas> (last accessed July 19, 2024).

⁵³ London BASF Prelim. Dec. (ECF No. 5053-5), at ¶ 20.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *See generally* DuPont Fee Mot. (ECF No. 3795); 3M Fee Mot. (ECF No. 4269); *see also* DuPont and 3M London Fee Decs. (ECF Nos. 3795-6 and 4269-5, respectively); Class Counsel's Motion for Final Approval of the DuPont Class Settlement (ECF No. 4080) and supporting declarations; and Class Counsel's Motion for Final Approval of the 3M Class Settlement (ECF No. 4273) and supporting declarations.

spur discussions with BASF forward, and ultimately, to successful resolution. The parties met feverishly throughout April and May to finalize their agreement.⁵⁷

33. The BASF PWS Settlement Agreement was executed on May 20, 2024.⁵⁸ Like 3M, DuPont and now Tyco just weeks before it, BASF was adamant that it would only resolve water provider claims on a national class-wide basis.⁵⁹

34. The BASF Settlement Class is defined identically to that of Tyco and includes all active PWS with a PFAS detection in at least one of its water sources as of May 15, 2024.⁶⁰ Both settlements contain the same exclusions to the Class: namely, Non-Transient Non-Community Water Systems serving 3,300 or fewer people, Transient Non-Community Water Systems of any size, and systems owned by the federal or a State government are excluded.⁶¹ The identical Settlement Class definitions, along with other similarities between the Tyco and BASF deals that were able to be leveraged, allowed for maximum efficiency in executing the BASF Agreement.

35. Both agreements confer substantial benefit to the putative Settlement Class Members – including the preservation of potential claims for those PWS that have yet to detect PFAS in their water supplies. The Settlements provide significant compensation to help address the human health and natural resource threat of PFAS in water supplies.

36. The work performed by the plaintiffs' lawyers in this case (including primarily the Strike Force again, and the Settlement teams) was and continues to be ground-breaking in scope, depth, pace, and results.

⁵⁷ London BASF Prelim. Dec. (ECF No. 5053-5), at ¶¶ 20-22.

⁵⁸ BASF PWS Settlement Agreement (ECF No. 5053-3), at 1.

⁵⁹ London BASF Prelim. Dec. (ECF No. 5053-5), at ¶ 21.

⁶⁰ BASF PWS Settlement Agreement (ECF No. 5053-3), at § 5.1.

⁶¹ *Id.*; see also Tyco PWS Settlement Agreement (ECF No. 4911-3), at § 5.1.

III. PLAINTIFFS' APPLICATION FOR FEES

37. Just like in the 3M and DuPont Fee Mot., the instant motion seeks the same percentage for Class Fees as was previously sought – namely, 8% of the gross recovery – and seeks reimbursement of Class Costs on a proportionate basis. Specifically, the PEC and Class Counsel seek a Class Fee of 8% as to both the Tyco and BASF Settlements. This Class Fee percentage was discussed with the PEC and approved – without objection – following a PEC conducted vote on July 2, 2024. Further, there was not a single objection filed as to this percentage and mechanism after either the DuPont Fee Mot.⁶² was filed or the 3M Fee Mot.,⁶³ nor were there any objections at either Fairness Hearing. Finally, there were no appeals from the Court's final Order approving such fee request in either 3M or DuPont.⁶⁴ As such, Class Counsel respectfully request an award of 8%, or \$60 million for the Tyco PWS Settlement and \$25.32 million for the BASF PWS Settlement, for a total aggregated attorneys' fee award of \$85.32 million, as well as the reimbursement of costs.

38. The Class Fee request herein and its payment structure is similar that in the DuPont Fee Mot., but because there is no Phase Two component to either the Tyco or BASF PWS Settlement, it is slightly different. This is demonstrated in more detail below:

COMPUTING THE CLASS FEE REQUEST		
A	Tyco total payment	\$750,000,000.00
B	BASF total payment	\$316,500,000.00
C	Tyco Class Fee requested (8% of A)	\$60,000,000.00
D	BASF Class Fee requested (8% of B)	\$25,320,000.00
E	Combined Tyco and BASF Class Fee requested (C + D, or, 8% of A + B)	\$85,320,000.00

39. Pursuant to the Payment Schedule in the Tyco PWS Settlement Agreement,⁶⁵ Tyco deposited its First Payment in the amount of \$250 million into the Tyco Fire Products Qualified

⁶² ECF No. 3795-6.

⁶³ ECF No. 4269-5.

⁶⁴ ECF No. 4885.

⁶⁵ Tyco PWS Settlement Agreement (ECF No. 4911-3), at Exhibit H.

Settlement Fund (“TFP QSF”) established by Court Order⁶⁶ on June 21, 2024.⁶⁷ Thereafter, Tyco may make Interim Payment(s) as defined in its Payment Schedule, which depend on Insurance Payment(s) received by Tyco, if any.⁶⁸ Tyco is obligated to make its Last Payment, as defined in the Payment Schedule, on October 15, 2024, such that all payments total \$750 million.⁶⁹

40. Class Counsel respectfully requests that, should the Court grant its Class Fee of 8%, the Tyco Class Fee in the amount of \$60 million be payable and due upon the issuance of such Order. This payment would be made into the MDL 2873 Fee Fund QSF.⁷⁰

41. Pursuant to Section 6.1 of the BASF PWS Settlement Agreement, BASF agreed to pay or cause to be paid \$4 million on the later of ten (10) Business Days after Preliminary Approval, or on July 15, 2024 (BASF’s “Initial Payment”), and to pay or cause to be paid \$312.5 million on March 1, 2025 (BASF’s “Second Payment”).⁷¹ BASF’s Initial Payment in the amount of \$4 million was deposited into the QSF established for such purpose on July 18, 2024.⁷² Class Counsel respectfully requests that, should the Court see fit to grant its Class Fee of 8%, the BASF Class Fee be payable upon the issuance of such Order.

42. The requested disbursement schedule described above is demonstrated below:

⁶⁶ See Order granting Tyco Prelim. Appr. Mot. (ECF No. 5147), at ¶¶ 30, 35.

⁶⁷ See Huntington Bank statement for the TFP QSF, attached hereto as Exhibit 1.

⁶⁸ See Tyco PWS Settlement Agreement (ECF No. 4911-3), at Exhibit H (defining “Insurance Payment” as “cash recovery of greater than or equal to \$10,000,000 received by Tyco or the TFP QSF after the Settlement Date from any Tyco insurance carrier—whether by settlement or judgment—to pay claims for coverage of Released Claims.”).

⁶⁹ See *id.* (defining “Last Payment” as \$500 million, with adjustments if applicable based on Interim Payment(s), if any, as described in the Payment Schedule).

⁷⁰ See ECF No. 5295 (confirming the QSF status of two previously established interest-bearing common benefit accounts).

⁷¹ BASF PWS Settlement Agreement, at § 6.1.

⁷² See Huntington Bank statement for the BASF QSF, attached hereto as Exhibit 2.

CLASS FEE REQUESTS		
EVENT	CLASS FEE AWARD	DESCRIPTION
Court Order granting Tyco Class Fee Award requested	\$60,000,000	Tyco PWS Settlement 8% Class Fee Award
Court Order granting BASF Class Fee Award requested	\$25,320,000	BASF PWS Settlement 8% Class Fee Award

43. Finally, Class Counsel seek reimbursement of costs from the Tyco and BASF Settlements in the aggregate amount of \$10,471,081.51 (“Class Costs Award”).⁷³ In addition to litigation costs, certain costs of providing notice to the Class, and the currently invoiced costs of the Notice Administrator, Escrow Agent and Special Master, are to be taken from the QSF even before the Effective Date in accordance with both the Tyco and the BASF Settlement Agreements.⁷⁴

44. As was the case with the previous requests for costs in the 3M and DuPont PWS Settlement Agreements,⁷⁵ Class Counsel seek to apportion the total Class Cost Award requested across the Tyco and BASF PWS Settlements in a *pro rata* fashion according to each total settlement’s contribution to the aggregate settlement value. Because the settlement funds are to be held in separate accounts, pursuant to the QSFs established in connection with each respective Settlement Agreement,⁷⁶ the Class Cost Award, if granted, will need to be taken from both QSFs.

45. Accordingly, Class Counsel respectfully seek reimbursement of costs from the Tyco PWS Settlement in the amount of \$7,329,757.06, or 70% of the total costs requested, representing Tyco’s approximate proportionate contribution to the combined settlement proceeds.

⁷³ See Declaration of John Perry in support of Class Counsel’s instant Motion for Attorneys’ Fees and Costs in the Tyco and BASF PWS Settlements.

⁷⁴ Tyco PWS Settlement Agreement (ECF No. 4911-3), at § 6.2; BASF PWS Settlement Agreement (ECF No. 5053-3), at § 6.1.

⁷⁵ DuPont Fee Mot. (ECF No. 3795), at 9-13; *see also* 3M Fee Mot. (ECF No. 4269), at 8-10.

⁷⁶ See Order granting Tyco Prelim. Appr. Mot. (ECF No. 5147), at ¶ 35; *see also* Order granting BASF Prelim. Appr. Mot. (ECF No. 5253), at ¶ 34.

Class Counsel also respectfully seek reimbursement of costs from the BASF PWS Settlement in the amount of \$3,141,324.45, or 30% of the total costs requested, which represents BASF's approximate proportion contribution to the combined settlement proceeds. Such request and apportionment is demonstrated below:

APPORTIONING THE CLASS COST REQUEST		
A	Tyco total payment	\$750,000,000.00
B	BASF total payment	\$316,500,000.00
C	Combined Tyco and BASF settlement proceeds (A + B)	\$1,066,500,000.00
D	Total costs requested	\$10,471,081.51
E	Tyco approximate contribution to combined settlement proceeds (A ÷ C, rounded)	70%
F	BASF approximate contribution to combined settlement proceeds (B ÷ C, rounded)	30%
G	Tyco Class Cost request (D * E)	\$7,329,757.06
H	BASF Class Cost request (D * F)	\$3,141,324.45

IV. CONCLUSION

The complexity involved in litigating AFFF PFAS cases is extremely challenging, but in this MDL, it has been matched by the skill, sophistication, tenacity and creativity of the legal professionals performing nearly around-the-clock work to bring about these – and hopefully other – favorable outcomes for class members and plaintiffs alike. Class Counsel, the PEC, and the various leadership committees have nimbly and to great success so far litigated against these AFFF defendants in an MDL comprised of myriad and varied types of claims: from water provider claims, to personal injury claims, to property damage claims, to state/sovereign claims, to medical monitoring claims; with so much of the of the massive workload being inextricably intertwined to so many aspects of the case overall. As I stated in a previous declaration, it remains your undersigned's view, and that of many in the legal profession, that there has never been an MDL of

this size, scope and complexity – nor has there ever been a result like those brought about by the nearly nonstop work to date over 5.5 years. Within weeks of historic settlements against 3M and DuPont, the PEC and its core litigation team, the Strike Force, was back at work developing the Telomer Water Provider Bellwether cases. Next, the PEC re-staffed its trial team, and Mr. Douglas and many from the prior *Stuart* trial team dove back into trial preparation. And along with this, the settlement team, with the invaluable assistance of Judge Phillips and his mediation team, were meeting consistently with Tyco and BASF. The PEC and its members and sub-committees have stayed unified, focused, committed and dedicated, sacrificing both personal commitments and other professional opportunities for the continued advancement of plaintiffs’ claims in this MDL, all with no guarantee of success. I respectfully submit that the Class Fee and Class Cost Award requested is reasonable in light of the extraordinary achievements of the Tyco and BASF PWS Settlements.

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

Executed on this 19th day of July, 2024.



Michael A. London, Esq.
Douglas & London, P.C.
59 Maiden Lane, 6th Floor
New York, New York 10038

Exhibit 1

HUNTINGTON NATIONAL BANK
 41 SOUTH HIGH STREET
 COLUMBUS, OH 43216

Huntington Private Bank

ACCOUNT NUMBER: [REDACTED]
 STATEMENT PERIOD: JUNE 01, 2024 THROUGH JUNE 30, 2024



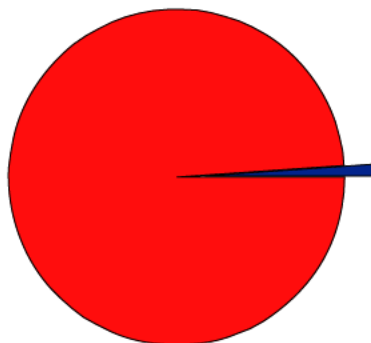
HUNTINGTON NATIONAL BANK
 NATIONAL SETTLEMENT FUND TEAM
 ATTENTION: MELISSA VILLAIN, SVP
 ONE ROCKEFELLER PLAZA
 TENTH FLOOR
 NEW YORK, NY 10020

ACCOUNT NAME:	PWS-3 PFAS WATER PROVIDER SETTLEMENT TRUST
ACCOUNT NUMBER:	[REDACTED]
ADMINISTRATIVE OFFICER:	SUSAN BRIZENDINE 614-331-9804 SUSAN.BRIZENDINE@HUNTINGTON.COM
INVESTMENT OFFICER:	CORP TR DOC GOV INV
INVESTMENT OBJECTIVE:	HUNTINGTON HAS NO INV AUTHORITY

ACCOUNT SUMMARY

	THIS PERIOD	YEAR TO DATE	REALIZED CAPITAL GAINS / LOSSES	
			THIS PERIOD	YEAR TO DATE
BEGINNING MARKET VALUE	0.00	0.00		
OTHER CASH RECEIPTS	250,000,000.00	250,000,000.00		
DISBURSEMENTS AND FEES	320,497.20-	320,497.20-		
CHANGE IN VALUE	207,494.16	207,494.16	TOTAL GAINS / LOSSES	0.00
ENDING MARKET VALUE	249,886,996.96	249,886,996.96		0.00

ASSET ALLOCATION SUMMARY



	MARKET VALUE	PERCENT
CASH & CASH EQUIVALENTS	2,684,936.96	1.1%
FIXED INCOME	247,202,060.00	98.9%
Total	249,886,996.96	100.0%

Huntington Private Bank

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ACCOUNT NUMBER: [REDACTED]

STATEMENT PERIOD: JUNE 01, 2024 THROUGH JUNE 30, 2024

PORTFOLIO DETAIL

QUANTITY	DESCRIPTION	MARKET VALUE	YIELD TO MKT	COST BASIS
CASH & CASH EQUIVALENTS				
2,684,936.960	38142B500 GOLDMAN SACHS GS FINANCIAL SQ TREASURY INSTRUMENTS INST	2,684,936.96	5.16	2,684,936.96
TOTAL	CASH & CASH EQUIVALENTS	2,684,936.96	5.16	2,684,936.96
FIXED INCOME				
248,000,000.000	912797KQ9 TREASURY BILL 0% 07/23/2024	247,202,060.00	0.00	246,994,565.84
TOTAL	FIXED INCOME	247,202,060.00	0.00	246,994,565.84
GRAND TOTAL ASSETS		249,886,996.96	0.06	249,679,502.80

TRANSACTION DETAIL

DATE	QUANTITY	DESCRIPTION	TRANSACTION TYPE	CASH	COST BASIS
06/01/24		BEGINNING BALANCE		0.00	0.00
06/21/24		FEDERAL WIRE RECEIVED FROM TFP QSF LLC SETTLEMENT DEPOSIT	CASH RCVD	250,000,000.00	
06/25/24	248,000,000.000	912797KQ9 PURCHASED 248,000,000 UNITS TREASURY BILL 0% 07/23/2024 ON 06/21/2024 AT 0.9959 THRU GOLDMAN SACHS AND CO.	BUY	246,994,565.84-	246,994,565.84
06/26/24		WIRE TRANSFER-VIA FED WIRE TO ANGEION GROUP LLC PER INSTRUCTIONS DTD 06/26/2024	DISBURSEMENT	320,497.20-	
06/30/24	2,684,936.960	38142B500 NET DEPOSIT GOLDMAN SACHS GS FINANCIAL SQ TREASURY INSTRUMENTS INST	NET CASH MGMT	2,684,936.96-	2,684,936.96
06/30/24		61747C525 NET ACTIVITY MORGAN STANLEY INSTITUTIONAL LIQUIDITY FUNDS- TREASURY SECURITIES PORTFOLIO	NET CASH MGMT		
06/30/24		ENDING BALANCE		0.00	249,679,502.80

Huntington Private Bank

PAGE 3

ACCOUNT NUMBER: [REDACTED]

STATEMENT PERIOD: JUNE 01, 2024 THROUGH JUNE 30, 2024

If your investment objective has changed or you would like to discuss your overall investment strategy, please contact your Portfolio Manager to discuss next steps.

Investment Objective Descriptions

Maximum Growth

Investors seek significant growth opportunity with potential for extensive short-term volatility in the portfolio. Their risk tolerance is high and typically 100% invested in equities.

Growth

Investors seek to grow their portfolio with no immediate need for income generation while accepting potential for short-term volatility. Their risk tolerance is typically high.

Moderate Growth

Investors seek to achieve moderate returns while accepting some short-term volatility with a slight bias towards growth versus income. Their risk tolerance is typically medium.

Balanced

Investors seek to achieve moderate returns while accepting some short-term volatility. They desire an even balance between growth and income with a medium risk tolerance.

Moderate Income

Investors seek to achieve moderate returns while accepting some short-term volatility with a slight bias toward income versus growth. Their risk tolerance is typically medium.

Conservative

Investors seek to generate income from their investments with slight potential for growth. They are willing to accept lower returns in order to avoid short-term volatility with a low risk tolerance.

Maximum Income

Investors seek maximum income generation with no bias towards growth and a desire to preserve their principal. Their risk tolerance is low and typically 100% invested in fixed income.

Stability of Principal

Investors seek to avoid all risk to their principal value. Their risk tolerance is low to none and typically 100% invested in cash or cash equivalents.

Asset Allocation Ranges

	Equity	Fixed Income	Cash
Maximum Growth	70-100%	0-15%	0-15%
Growth	65-95%	5-35%	0-15%
Moderate Growth	45-75%	25-55%	0-15%
Balanced	35-65%	35-65%	0-15%
Moderate Income	25-55%	45-75%	0-15%
Conservative	5-35%	65-95%	0-15%
Maximum Income	0-15%	70-100%	0-15%
Stability of Principal	0-10%	0-100%	0-100%

Huntington Private Bank

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ACCOUNT NUMBER: [REDACTED]

STATEMENT PERIOD: JUNE 01, 2024 THROUGH JUNE 30, 2024

LEGAL DISCLOSURES PLEASE READ CAREFULLY

When permitted by law, The Huntington National Bank ("Huntington") may receive compensation in exchange for certain services (e.g. administrative services) we provide to various mutual funds which may be held in the Account.

This compensation is paid to us either directly from the mutual fund or its affiliates or through Huntington's clearing broker and will not reduce the compensation Huntington is entitled to receive from the Account. Compensation earned varies by mutual fund. The fees paid by mutual funds are described in the prospectuses and the statements of additional information for the respective mutual funds. The fees are expenses of the mutual funds and are reflected in the investment returns which are quoted net of all expenses.

Huntington may receive research and services and other indirect soft dollar compensation from certain broker-dealers.

Soft dollar arrangements are when an investment adviser receives products and services, other than execution of trades, from a broker in return for utilizing that broker for client security transactions. These products and services may include research reports, financial models, access to corporate executives and industry or sector analysts and access to research conferences, etc., and are purchased with brokerage commissions (or mark-ups or mark-downs in the case of permitted riskless principal transactions by dealers). When we receive credits for client commissions to then obtain research reports, industry reviews and similar products and services, Huntington receives a benefit because we do not have to produce or pay for those products or services. However, those products and services are used to provide services to you and our managed accounts. We have adopted processes and procedures for entering into and monitoring soft dollar arrangements to manage any conflict of interest and ensure our use of soft dollars is consistent with our duty to seek best execution for you. Huntington also determines, in good faith, that the compensation paid for soft dollar products and services is reasonable in relation to the value of the research and brokerage received. When Huntington selects brokers, we consider, among other factors, whether a broker has furnished statistical, research or other information or services which enhance our investment research and management capability for our clients' accounts. Huntington may agree to a commission that exceeds the commission which another broker would have charged for effecting the transaction, but only if we determine in good faith that the commission charged was reasonable in relation to the value of both the brokerage and research services provided viewed in terms of both your account and all of our managed accounts.

Huntington provides cash management services, which sweep uninvested cash into a designated money market or similar fund.

Third-party money market funds may be used for the temporary investment of cash. Information regarding money market funds is available in the funds' prospectuses. Also available for this purpose are bank deposit products (such as the Huntington Conservative Deposit Account). Bank deposit products are interest-bearing accounts with Huntington, which are insured up to the applicable FDIC limit and Huntington may be required to set aside collateral to secure that portion of an account balance in excess of the applicable FDIC limit. The interest rate may change periodically. There are no fees associated with an investment in a bank deposit product. There are no prospectuses associated with these bank deposit products. Huntington will benefit from these deposits in much the same way that it benefits by receiving deposits generally, that is, by receiving the benefit of the spread between the interest rate it pays on deposits and the interest rate it receives on loans and investments. This spread is known as the "net interest margin".

Special Provisions for accounts that qualify for pass-through insurance.

If your account utilizes a bank deposit account (such as the Huntington Conservative Deposit Account) for cash management services, and that account holds funds on behalf of others, those persons are sometimes referred to as the beneficial owner(s) of the funds in the account (for example you are acting as an agent, nominee, guardian, executor, custodian or funds held in some other capacity). Those beneficial owners may be eligible for "pass-through" insurance from the FDIC. This means the account could qualify for more than the standard maximum deposit insurance amount (currently \$250,000 per depositor in the same ownership right and capacity). Your account has transactional features as defined in Section 370.2(j) of the FDIC's Rules and Regulations at <https://www.fdic.gov/regulations/laws/rules/2000-9200.html#fdic2000part370.2>. Accordingly, you as the account holder must be able to provide a record of the interests of the beneficial owner(s) in accordance with the FDIC's requirements as specified below.

The FDIC has published a guide that describes the process to follow and the information you will need to provide in the event we fail. In addition, the FDIC published an Addendum to the guide, section VIII, which is a good resource to understand the FDIC's alternative recordkeeping requirements for pass-through insurance. The Addendum sets forth the expectations of the FDIC to demonstrate eligibility for pass-through insurance coverage of any deposit accounts, including those with transactional features. The Addendum will provide information regarding the records you should keep on the beneficial owners of the funds, identifying information for those owners, and the format in which to provide the records to the FDIC upon our failure. You must be able to provide this information within 24 hours after the appointment of the FDIC as receiver in order to receive payment for the insured amount of pass-through deposit insurance coverage as soon as possible. That information can be accessed on the FDIC's website at <https://www.fdic.gov/deposit/deposits/brokers/part-370-appendix.html>. You have an opportunity to validate the capability to deliver the required information in the appropriate format so that a timely calculation of deposit insurance coverage can be made, and if you would like to do so, please contact us.

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ACCOUNT NUMBER: [REDACTED]

STATEMENT PERIOD: JUNE 01, 2024 THROUGH JUNE 30, 2024

You agree to cooperate fully with us and the FDIC in connection with determining the insured status of funds in such accounts at any time. In the event of our failure, you agree to provide the FDIC with the information described above in the required format within 24 hours of that event. As soon as the FDIC is appointed, a hold may be placed on your account so that the FDIC can conduct the deposit insurance determination; that hold will not be released until the FDIC determines that you have provided the necessary data to enable the FDIC to calculate the deposit insurance. You understand and agree that your failure to provide the necessary data to the FDIC may result in a delay in receipt of insured funds and legal claims against you from the beneficial owners of the funds in the account. If you do not provide the required data, your account may be held or frozen until the information is received, which could delay when the beneficial owners would receive funds. Notwithstanding other provisions in any agreement with us, this provision survives after the FDIC is appointed as our receiver, and the FDIC is considered a third party beneficiary of this section.

Note, by using your account, you agree to the terms in this provision, even if this negative consent conflicts with any other agreement you have with us. You may choose to close your account if you do not wish to consent.

Class Action Settlement Charges:

Huntington files class action claims on behalf of holders for open and closed accounts upon receipt of a notice of litigation. A fee may be assessed from the settlement received to defray associated processing costs incurred.

Investment of Fiduciary Funds in Syndicate Securities:

Unless prohibited by law or the governing instrument, Huntington may, in its fiduciary capacity, purchase bonds or other securities from a licensed securities dealer that are underwritten or otherwise distributed by Huntington or by a syndicate that includes Huntington or an affiliate of Huntington.

Market values and estimated income figures are not guaranteed but do come from reliable sources.

For securities traded on a major exchange, market values are priced as of the statement date as provided by various pricing services. The method and frequency of pricing assets not traded on major exchanges varies depending on the type of asset; therefore, the price shown on your statement may not be a current value as of the statement date.

Trading Costs

Trading costs are the costs of buying and selling marketable securities. Trading costs include commissions, slippage and bid/ask spread.

If your account is governed by the laws of the State of Florida:

This report details activity in your account. Please contact your administrative officer with any questions you have about matters covered in this report. Pursuant to Florida law, we are hereby advising you that, should you find it necessary, you have six (6) months from the date of receipt of this report to commence a judicial proceeding regarding matters disclosed in this report.

If your account is governed by the laws of the State of Indiana:

This report details activity in your account. Please contact your administrative officer with any questions you have about matters covered in this report. Pursuant to Indiana law, we are hereby advising you that, should you find it necessary, you have three (3) years from the date of receipt of this report to commence a judicial proceeding regarding matters disclosed in this report.

If your account is governed by the laws of the State of Michigan:

This report details activity in your account. Please contact your administrative officer with any questions you have about matters covered in this report. Pursuant to Michigan law, we are hereby advising you that, should you find it necessary, you have one (1) year from the date of issuance of this report to commence a judicial proceeding regarding matters disclosed in this report.

If your account is governed by the laws of the State of Ohio:

This report details activity in your account. Please contact your administrative officer with any questions you have about the matters covered in this report. Pursuant to Ohio law, we are hereby advising you that, should you find it necessary, you have two (2) years from the date of issuance of this report to commence a judicial proceeding regarding matters disclosed within this report.

If your account is governed by the laws of the State of Pennsylvania:

This report details activity in your account. Please contact your administrative officer with any questions you have about the matters covered in this report. Pursuant to Pennsylvania law, we are hereby advising you that, should you find it necessary, you have thirty (30) months from the date of issuance of this report to commence a judicial proceeding regarding matters disclosed within this report.

If your account is governed by the laws of the State of West Virginia:

This report details activity in your account. Please contact your administrative officer with any questions you have about matters covered in this report. Pursuant to West Virginia law, we are hereby advising you that, should you find it necessary, you have one (1) year from the date of issuance of this report to commence a judicial proceeding regarding matters disclosed in this report.

Huntington Private Bank

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ACCOUNT NUMBER: [REDACTED]

STATEMENT PERIOD: JUNE 01, 2024 THROUGH JUNE 30, 2024

For trusts governed by laws of other states, please consult with counsel of your choice regarding the period of time you may have to commence a proceeding against the trustee for a claim of breach of trust with respect to any matter disclosed within the report.

Non-Deposit Trust and Investment Products are:

NOT A DEPOSIT * NOT FDIC INSURED * NOT GUARANTEED BY THE BANK * NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY * MAY LOSE VALUE

Trust and investment management services are provided by The Huntington National Bank, a national bank with fiduciary powers. The Huntington National Bank is a wholly owned subsidiary of Huntington Bancshares Incorporated.

Huntington Private Bank is a team of professionals dedicated to delivering a full range of wealth and financial services. The team is comprised of Private Bankers, who offer premium banking solutions; Wealth and Investment Management professionals, who provide, among other services, trust and estate administration and portfolio management from The Huntington National Bank; and licensed investment representatives of Huntington Financial Advisors, which offers securities and investment advisory services.

Both The Huntington National Bank and Huntington Financial Advisors are wholly-owned subsidiaries of Huntington Bancshares Incorporated. Bank deposit products are offered by The Huntington National Bank, Member FDIC. Huntington, the Huntington logo, Huntington Private Bank and Huntington Financial Advisors are federally registered service marks of Huntington Bancshares Incorporated.
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Exhibit 2



Posted Transactions
 [REDACTED] - PWS-4 PFAS WATER
 7/19/2024
 Settled Balances

POSTINGDATE	TRANSACTIONDESCRIPTION	TICKER	CUSIP	NETCASH	PRINCIPALCASH	INCOMECASH	TAXCOST	UNITS
07/05/2024	Beginning Balance			\$0.00	\$0.00	\$0.00	\$0.00	0.00
07/18/2024	FEDERAL WIRE RECEIVED FROM BASF CORPORATION US01 NATIONAL			\$4,000,000.00	\$4,000,000.00	\$0.00	\$0.00	0.00
07/18/2024	DEPOSIT GOLDMAN SACHS GS FINANCIAL SQ TREASURY		38142B500	-\$4,000,000.00	-\$4,000,000.00	\$0.00	\$4,000,000.00	4,000,000.00
07/19/2024	PURCHASED 1,000,000 UNITS TREASURY BILL 0% 08/20/2024 ON		912797KY2	-\$995,334.22	-\$995,334.22	\$0.00	\$995,334.22	1,000,000.00
07/19/2024	WITHDRAWAL GOLDMAN SACHS GS FINANCIAL SQ TREASURY		38142B500	\$995,334.22	\$995,334.22	\$0.00	-\$995,334.22	-995,334.22
07/19/2024	Ending Balance			\$0.00	\$0.00	\$0.00	\$0.00	0.00

EXHIBIT

D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE: AQUEOUS FILM-FORMING FOAMS) Master Docket No.:
PRODUCTS LIABILITY LITIGATION) 2:18-mn-2873-RMG

CITY OF CAMDEN, et al.,)
Plaintiffs,) Civil Action No.:
) 2:24-cv-02321-RMG
)
-vs-)
)
TYCO FIRE PRODUCTS LP, individually and as)
successor in interest to The Ansul Company, and)
CHEMGUARD, INC.,)
Defendants.)

CITY OF CAMDEN, et al.,)
Plaintiffs,) Civil Action No.:
) 2:24-cv-03174-RMG
)
-vs-)
)
BASF CORPORATION, individually and as successor in)
interest to Ciba Inc.,)
Defendant.)

**DECLARATION OF SCOTT SUMMY, ESQ. IN SUPPORT OF CLASS COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND COSTS**

I, Scott Summy, declare as follows:

1. I am an attorney licensed to practice in all courts in the States of Texas, North Carolina, and New York, and admitted to this Court *pro hac vice*. I make this Declaration in support of Class Counsel's Motion for Attorneys' Fees and Costs.

2. This Declaration specifically describes the scope of work that went into Plaintiffs' negotiations and ultimately two settlements for Public Water Systems ("PWS") with Tyco Fire Products LP ("Tyco") and BASF Corporation ("BASF"), as well as the work that was involved in securing Preliminary Approval and other post-settlement tasks. I have personal knowledge of the following facts, and if called as a witness, I could and would testify competently to them.

PROFESSIONAL EXPERIENCE

3. I am a Shareholder in the law firm of Baron & Budd, P.C. I have led my Firm's Environmental Litigation Practice Group ("Group") since 2002.

4. Since that time, my Group has primarily represented public water suppliers whose Water Sources are contaminated with chemical substances. We have represented water suppliers of all sizes, including large water suppliers who operate hundreds of groundwater wells and surface water systems that draw water from large open bodies of water. Through our work for water suppliers for over twenty years, we have developed a sophisticated understanding of their operations, and we have worked with engineering and scientific experts to understand how contaminants affect Public Water Systems and what kinds of equipment and techniques are necessary to reduce or remove those contaminants from Public Water Systems ("PWS").

5. In the course of that work, I have also accrued significant experience in serving as lead counsel and/or class counsel in complex environmental litigation cases. For more than 20 years, I have represented numerous public entities and individuals in environmental tort cases that are substantively similar to the two Class Actions that have been settled and are now the subject of the instant motion for fees and costs. Rather than rely on statutory environmental claims that seek compensation from the entity that used or released the product regardless of that entity's knowledge of the harm, many of our cases have invoked traditional products liability and other tort causes of action against manufacturers

of chemicals that have contaminated public and private water supplies, property, or other natural resources that belong to public entities and/or individuals. Few other firms had implemented this strategy to impose liability on the ultimate tortfeasor who knew of its products' dangers and never told the downstream handlers, customers, and users. This type of litigation has resulted in billions of dollars in recoveries for my clients. Some of the most significant cases, in which I had a leadership role, include the following:

- a. *City of Long Beach v. Monsanto Co.*, No. 16-3493 (C.D.Cal. 2022). I am currently serving as Lead Class Counsel for a nationwide class of approximately 2,500 public entities who discharge stormwater into waterbodies declared "impaired" due to high levels of PCBs. We stated products liability and negligence claims against Monsanto as the primary manufacturer of PCBs in the United States for selling those products with knowledge of their dangers. I negotiated a class settlement after almost seven years of individually litigating several cities' cases against Monsanto in five federal courts in four states. Under the terms of the settlement, Monsanto agreed to pay \$550,000,000 in class benefits to be distributed among class members and to pay separately \$98,000,000 in costs and attorneys' fees.
- b. *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in Gulf of Mexico on April 20, 2010*, MDL 2179, (E.D. La.). I oversaw the representation of 36 public entities and over 1,000 commercial businesses and individuals impacted by the oil spill in direct representation by the Group. I was appointed by the MDL Court to the Plaintiffs' Executive Committee and the Plaintiffs' Steering Committee. I was also appointed by the Court as Co-Class Counsel as part of the massive resolution of these cases. My Group's direct representation clients recovered over \$100 million. Also, the

Class benefits paid to date exceed \$14 billion. The BP Class Settlement has been recognized as one of the largest, successful, and multi-faceted settlements in American history. The Class included all persons in a four-state area that were impacted by the spill.

- c. *In re: Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, MDL 1358, (S.D.N.Y.). Over the last two decades, I have represented approximately 200 public entities and hundreds of individuals across the country in litigation against the major oil companies who made the decision to add MTBE to gasoline. Many of these cases were transferred to the MDL, while others were litigated in state courts across the country. I was appointed by the MDL Court as Co-Lead Counsel and served in that function. I also was appointed by the MDL Court to serve on the Plaintiffs' Steering Committee. I was also Lead Counsel in many state court actions where I represented both public entities and individuals. These environmental cases brought product liability allegations against the oil companies. These cases were successfully resolved, and hundreds of millions were recovered for our clients.
- d. *City of Greenville, et al. v. Syngenta Crop Protection, et al.*, No. 10-cv-188- JPG-PMF, (S.D. Ill.). I served as Co-Lead Counsel representing 36 public entities in products liability litigation against the maker of Atrazine, a popular weedkiller, for extensive contamination of public drinking water wells. We originally filed the cases in Illinois, but after several years of litigation, we resolved the cases in a nationwide class settlement, and I was appointed Co- Lead Class Counsel. The Settlement paid \$105 million to over 1,000 public entities.
- e. *California North Bay Fire Cases*, JCCP No. 4955, Superior Court of the State of

California, County of San Francisco; Southern California Fire Cases, JCCP No. 4965, Superior Court of the State of California, County of Los Angeles; *Woolsey Fire Cases*, JCCP No. 5000, Superior Court of the State of California, County of Los Angeles. My Group has represented over 20 public entities in litigation against California Utilities for the devastating wildfires in 2015, 2017, and 2018. Our team has alleged that the fires were caused by the utilities' failure to recognize the new normal caused by Climate Change. These are very complex environmental cases. I was appointed as Co-Lead Counsel for the public entities in several state consolidated JCCPs. I was heavily involved in settlement negotiations. We reached a settlement for \$1 billion for the Northern California entities. We reached a settlement of \$360 million on behalf of the Southern California entities.

- f. *TCP Cases*, JCCP No. 4435, Superior Court of the State of California, County of San Bernardino. I served as Co-Lead Counsel in representing nearly a dozen public entities in a California JCCP in products liability actions against the manufacturers of agricultural chemical 1,2,3-TCP, which caused environmental contamination to public drinking water wells. These cases have been litigated over the last 8 years and have resulted in settlements totaling over \$200 million.

MY PARTICIPATION IN THIS PFAS LITIGATION

6. In the 2017-2018 period, several of our public water clients became concerned about new per- and poly-fluorinated chemicals ("PFAS") including PFOA and PFOS that were detected in their water systems. Given our experience with these cases, and our litigation of a PFOA case in 2009-10, our firm agreed to investigate the potential sources of PFAS contamination and research potential legal remedies that could provide relief to these clients. Based on that investigation, the firm believed it was viable to bring tort claims (products liability, negligence, nuisance, and trespass) against

the manufacturers of aqueous film-forming foam (“AFFF”) made with PFAS.

7. The firm initially filed cases on behalf of clients in Florida and Massachusetts, but they were then transferred to this Court following the Judicial Panel of Multidistrict Litigation’s establishment of MDL 2873 for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.¹ Since that time, the firm has filed nearly 200 similar PFAS cases that have been transferred to MDL 2873.

8. On March 20, 2019, the Court appointed me as Co-Lead Counsel for MDL 2873 along with Michael A. London and Paul Napoli.² I have also recently been appointed Class Counsel for the 3M and DuPont PWS settlements, and preliminarily approved as Class Counsel for the Tyco and BASF PWS settlements. Given my leadership positions, I have personally participated in nearly every aspect of the litigation in this MDL.

ESTABLISHMENT OF SETTLEMENT TEAM AND NEGOTIATION TEAM

9. As has been extensively detailed in previous submissions to the Court, I originally began to develop a framework for potential settlement of the water provider cases in the Spring of 2020.³ My Co-Leads and I—the “Negotiation Team”—worked extremely closely with the “Resolution Team,” which included PEC member Christina Cossich and her partner Phil Cossich.⁴ The work that went into collecting PFAS detection data nationwide, creating the damages model and PowerPoint presentations explaining the model, using the master dataset to contemplate different Settlement Class definitions and stress-test a variety of potential resolution structures, to then creating the conceptual

¹ *In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 357 F.Supp.3d 1391, 1392 (JPML 2018).

² *See* CMO 2.

³ *See* your undersigned’s Declaration in support of Class Counsel’s Motion for Attorneys’ Fees and Costs in the 3M Settlement (ECF 4269-6) (“Summy 3M Fee Dec.”), at ¶ 9.

⁴ *Id.*

model and drafting the Allocation Procedures is all discussed in detail in prior filings with the Court,⁵ and incorporated as if fully set forth herein.

10. Because the Resolution Team's work began before any MDL Defendants had expressed true interest in discussing settlement, it was conducted at all times with the goal of putting together a framework that could be both comprehensive enough to address the widespread contamination caused by AFFF affecting thousands of Public Water Systems and tens of millions of Americans—while also remaining flexible enough to be able to accommodate different scopes of resolution, to be determined and negotiated pursuant to Defendants' appetites for finality and ability to pay.

SETTLEMENT DISCUSSIONS WITH TYCO AND BASF

11. Much like the litigation efforts, settlement discussions with not just Tyco and BASF, but previously settling Defendants 3M and DuPont, along with other as-of-yet non-settling MDL Defendants, were pursued in a multifaceted fashion and concurrently, such that all discussions informed all other such discussions. Plaintiffs' knowledge—and specifically, that of the Negotiation and Resolution Teams, as well as of the Strike Force, whose members were focused primarily on the advancement of litigation efforts—grew with each settlement talk, even when informal, and continuously built upon the information being gleaned, whether from settlement efforts or discovery or bellwether work-up and trial preparation.

12. Informal settlement discussions began with DuPont in the Spring of 2020 and with 3M in April 2021, as those two Defendants held the lion's share of AFFF-related liability.⁶ These helped

⁵ See generally, Plaintiffs' Motions for Preliminary Approval of the 3M, DuPont, Tyco and BASF Settlements, and supporting declarations (ECFs 3370, 3392, 4911 and 5053, respectively); see also Plaintiffs' Motions for Final Approval of the 3M and DuPont Settlements, and supporting declarations (ECFs 4273 and 4080, respectively).

⁶ See Class Counsel's Motion for Attorneys' Fees and Costs in the 3M Settlement (ECF 4269) ("3M

inform the development of the damages model, the presentations, conceptual model, and the Allocation Procedures, which were continuously tweaked, reworked, and updated pursuant to new information becoming available. Simultaneously, as detailed extensively in both Michael London and Gary Douglas's declarations in support of the 3M and DuPont Fee Petitions,⁷ Plaintiffs' counsel was aggressively litigating against the water provider Defendants. On August 11, 2021, the Court issued Case Management Order ("CMO") 19 setting the schedule for the first water provider bellwether.⁸ Shortly thereafter, on October 13, 2021, the Court entered its Order selecting three (3) the Tier Two water provider bellwether cases.⁹ Finally, on September 23, 2022, the Court issued its Order designating the *City of Stuart v. 3M, et al.* (Case No. 2:18-cv-3487-RMG) as the first water provider bellwether trial, and set the start date for trial for June 5, 2023.¹⁰

13. Against this backdrop of increasingly intense trial preparation and ongoing litigation, settlement discussions began to gain traction. Informal discussions began with Tyco in January of 2022,¹¹ and with BASF in August of 2022.¹² These intensified following the Court's appointment of Judge Layn Phillips (ret.) on October 26, 2022.¹³ Additionally, the Court issued a decision denying Defendants' motion for summary judgment on the basis of the government contractor immunity

Fee Brief"), at 31, n.106; *see also* Class Counsel's Motion for Attorneys' Fees and Costs in the DuPont Settlement (ECF 3795) ("DuPont Fee Brief"), at 28, n.106.

⁷ *See* Declarations of Michael London in Support of 3M and DuPont Fee Briefs (ECFs 4269-5 and 3795-6, respectively) ("London 3M Fee Dec." and "London DuPont Fee Dec.," respectively); *see also* Declarations of Gary J. Douglas in Support of 3M and DuPont Fee Briefs (ECFs 4269-7 and 3795-8, respectively) ("Douglas 3M Fee Dec." and "Douglas DuPont Fee Dec.," respectively).

⁸ ECF 1844.

⁹ ECF 1931.

¹⁰ ECF 2613.

¹¹ *See* your undersigned's Declaration in Support of Plaintiffs' Motion for Preliminary Approval of the Tyco Settlement (ECF 4911-4) ("Summy Tyco Dec."), at ¶ 9-10.

¹² *See* your undersigned's Declaration in Support of Plaintiffs' Motion for Preliminary Approval of the BASF Settlement (ECF 5053-4) ("Summy BASF Dec."), at ¶ 9-10.

¹³ ECF 2658.

defense, bringing further pressure upon Defendants.¹⁴

14. As the *Stuart* trial date approached, settlement discussions cooled with Tyco and BASF. Tyco was a named Defendant in *Stuart*, but approximately one month prior to the commencement of trial, they were dismissed from the case due to the AFFF in question having been identified as manufactured by 3M and later, National Foam. Such a turn of events bolstered certain of Tyco's arguments with regards to the difficulty in identifying their AFFF products and could have derailed the progress made towards a potential resolution.

15. The *Stuart* trial was ultimately stayed in light of the 3M and DuPont Settlements, and the parties set about motion practice supporting these Settlements and fending off objections. Notwithstanding that work, the process of addressing the remaining claims against *non-settling* water provider Defendants began almost immediately; at the July 14, 2023 Court Management Conference, Plaintiffs were instructed to contemplate a telomer bellwether process,¹⁵ and on September 13, 2023, CMO 27 set forth the framework for such process.

16. CMO 27—along with its amendments, 27A-H—set a breakneck pace for bellwether work-up, and Plaintiffs gamely rose to the challenge, as detailed in the Declaration of Gary Douglas (“Douglas Dec.”), attached to this Fee Petition as Exhibit E.

17. As the Spring 2024 telomer bellwether trial date approached, the 3M and DuPont Settlements were also making their way towards final approval.¹⁶ Settlement discussions with Tyco and BASF began again in February of 2024, aided by Judge Phillips and his mediation team at Phillips

¹⁴ ECF 2601.

¹⁵ July 14, 2023 CMC Transcript, at 44:14-46:21.

¹⁶ The DuPont and 3M Settlements were granted final approval by the Court on February 8, 2024 (ECF 4471), and March 29, 2024 (ECF 4754), respectively.

ADR.¹⁷ The Negotiation Team met with each Defendant regularly in February, March and April of 2024, and the discussions with one helped inform the Team's strategy with regards to the other.

18. After dozens of meetings—both in-person and virtual—and multiple drafting sessions, the Tyco Settlement Agreement was executed on April 12, 2024.¹⁸ The Settlement Class definition differed from that of 3M and DuPont's Settlements;¹⁹ namely, although Tyco had confirmed it would only consider resolution on a national classwide basis, it was willing to resolve only claims on behalf of Public Water Systems with current PFAS detections, rather than for all Public Water Systems who may or may not have current PFAS detections, as was the case in the 3M and DuPont Settlements.

19. Despite leverage from the previous Agreements, the fact that a foundational issue like the definition of the Settlement Class was newly in play complicated negotiations. Due in part to the Baseline Testing requirements in the 3M and DuPont Settlements, as well as in large part to the looming likelihood of an enforceable EPA regulation for drinking water (ultimately promulgated on April 10, 2024),²⁰ in early 2024 the parties had much more PFAS detection data at their disposal than had been available during the negotiations for the first two water provider Settlements. This spurred the need for updated damages models and additional investigation into newly identifiable putative Class Members, all of which work then featured prominently in settlement discussions.

20. The announcement of the Tyco Settlement helped push the discussions with BASF forward. BASF, like Tyco, was only interested in a national classwide settlement for Public Water Systems with current PFAS detections. The BASF Settlement Agreement was executed on May 20,

¹⁷ Summy Tyco Dec., at ¶ 17; *see also* Summy BASF Dec., at ¶ 17.

¹⁸ Tyco Settlement Agreement (ECF 4911-3), at 1.

¹⁹ *Id.* at § 5.1.

²⁰ EPA, Per- and Polyfluoroalkyl Substances (PFAS) Final PFAS National Primary Drinking Water Regulation, available at <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas> (last accessed July 19, 2024).

2024.²¹

POST-SETTLEMENT WORK

21. The City of Camden class action complaint against Tyco was filed on April 22, 2024,²² followed shortly by Plaintiffs' Motion for Preliminary Approval of Class Settlement, for Certification of Settlement Class and for Permission to Disseminate Class Notice, filed on April 26, 2024.²³

22. On May 10, 2024, two MDL Defendants, Deepwater Chemicals, Inc. and Chemicals Incorporated, responded to Plaintiffs' Preliminary Approval motion, seeking clarification of the Tyco Settlement Agreement or in the alternative, objecting to such Settlement.²⁴ They argued for a wholly unsupported enlargement of the scope of the "Releasing Parties" term, and Plaintiffs—specifically, the briefing members of the Strike Force—set about responding, including through several meet and confers with defense counsel for Tyco. On May 17, 2024, Plaintiffs filed their reply.²⁵

23. BASF filings were soon to follow. On May 23, 2024, the City of Camden class action complaint against BASF was filed.²⁶ On June 3, 2024, Plaintiffs filed their Motion for Preliminary Approval of the BASF Class Settlement, for Certification of Settlement Class and for Permission to Disseminate Class Notice.²⁷ The Court granted preliminary approval to the Tyco Settlement Agreement on June 13, 2024,²⁸ and to the BASF Settlement Agreement on July 3, 2024.²⁹

24. Members of the PEC have worked tirelessly to coordinate the administration of the Tyco and BASF Settlements, including promulgating new educational materials for potential Settlement Class

²¹ BASF Settlement Agreement (ECF 5053-3), at 1.

²² Case No. 2:24-cv-02321 (ECF 1).

²³ ECF 4911.

²⁴ ECF 4974.

²⁵ ECF 5003.

²⁶ Case No. 2:24-cv-03174 (ECF 1).

²⁷ ECF 5053.

²⁸ ECF 5147.

²⁹ ECF 5253.

Members (and, specifically, advising of the differences between the two prior Settlements with 3M and DuPont, and these Settlements with Tyco and BASF), coordinating with Court-appointed neutrals, working with experts to derive updated Class Notice lists as well as to create and publish Estimated Allocation Range Tables for the Settlements, which provide estimated awards on a per-Water Source basis using flow rates and PFAS scores, and assisting the Claims Administrator and his team by brainstorming ideas for Claims portal build-out and efficient management of same.

25. Additionally, new to the Tyco and BASF Settlements was the inclusion of an Opt Out Administrator.³⁰ Plaintiffs generally, and the Negotiation Team specifically, were able to capitalize on our experience from the 3M and DuPont Settlements, and in settlement negotiations with Tyco and BASF, decided to streamline the opt out process. Edward Bell of Rubris, Inc., was selected as the Opt Out Administrator, and preliminarily approved by the Court to serve in such role.³¹ His team worked closely with members of the Strike Force to design the Opt Out portal, which required dozens of meetings over the course of the past few months.

WORK WITH EXPERTS ON FEE STRUCTURE

26. Over the last year, the Negotiation Team/Co-Leads have worked closely with renowned fee experts to design a fee structure that fairly treats the multitude of lawyers that have devoted their lives to these cases and these Class Members. Many hours of calls were conducted with the fee experts describing the settlement in detail. It is only after many hours of consultation that the fee structure being proposed was developed with the assistance of the legal experts.³²

³⁰ Tyco and BASF Settlement Agreements, at ¶¶ 8.5 – 8.6.7.

³¹ Tyco Preliminary Approval Order (ECF 5110), at ¶ 34; BASF Preliminary Approval Order (ECF 5253), at ¶ 33.

³² *See generally* Declarations of Brian Fitzpatrick in support of DuPont and 3M Fee Petitions (3795-5), and Declaration of Brian Fitzpatrick in support of the instant Tyco and BASF Fee Petition, attached as Exhibit B.

PEC APPROVAL OF THE FEE STRUCTURE

27. As discussed in previous Fee Petitions, on September 21, 2023, the PEC convened an in-person meeting in Miami following the grant of preliminary approval to the 3M and DuPont Settlements.³³ During that meeting, the PEC members took a vote, and unanimously supported the structure—8% attorneys’ fees and reimbursement of common benefit costs expended—that was requested and ultimately granted in those Settlements.³⁴

28. On July 2, 2024, following preliminary approval of the Tyco Settlement, the PEC held a conference call, during which the Class Fee award requested in the instant motion was discussed, voted upon, and once again, unanimously supported.³⁵

CONCLUSION

29. The Tyco and BASF Settlements are the latest in a growing line of successes in the ongoing legal battle over the largest threat to drinking water in the planet’s history. Such an achievement was possible only because of the confluence of work by highly-skilled attorneys on the Resolution Team, Negotiation Team, and the Strike Force trial team members—all of which was necessary to first achieve the historic 3M and DuPont Settlements, without which these additional Settlements would not have been possible. They are the result of hundreds of thousands of hours of work by many, including the PEC and many of its related Committees.³⁶ The skill, dedication and sacrifice of many lawyers who worked on this settlement cannot be overstated. Many lawyers surrendered time with other cases and with their families to accomplish historical results that will provide much needed funds to Class Members who in turn will provide safe drinking water to millions

³³ See Declaration of Michael London (“London Dec.”), attached to this Fee Petition as Exhibit C, at ¶ 37.

³⁴ ECF 4885.

³⁵ London Dec., at ¶ 37.

³⁶ See generally London Dec.

of Americans. The 3M and DuPont Settlements have been hailed as two of the most important settlements in American history, and the Tyco and BASF Settlements presently at issue continue that same seminal path. Clean drinking water benefits young and old, in this generation and in those to come; in light of the remarkable achievements to date, and the tireless and passionate advocacy it took to secure them, Class Counsel respectfully submit that the Class Fee requested is reasonable.

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

Executed this 19th day of July 2024, at Dallas, Texas.

A handwritten signature in black ink, reading "Scott Summy", written in a cursive style. The signature is positioned above a horizontal line.

Scott Summy
Baron & Budd, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219

EXHIBIT

E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE: AQUEOUS FILM-FORMING FOAMS) Master Docket No.:
PRODUCTS LIABILITY LITIGATION) 2:18-mn-2873-RMG

CITY OF CAMDEN, et al.,) Civil Action No.:
) 2:24-cv-02321-RMG

Plaintiffs,

-vs-

TYCO FIRE PRODUCTS LP, individually and as)
successors in interest to The Ansul Company, and)
CHEMGUARD, INC.)

Defendant.

CITY OF CAMDEN, et al.,) Civil Action No.:
) 2:24-cv-03174-RMG

Plaintiffs,

-vs-

BASF CORPORATION, individually and as successor in)
interest to Ciba Inc.)

Defendant.

**DECLARATION OF GARY J. DOUGLAS IN SUPPORT OF CLASS COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND COSTS**

I, Gary J. Douglas, Esq., pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. This Declaration is based upon my personal knowledge, and if called as a witness, I could testify competently to its contents. I submit this Declaration in support of Plaintiffs' Motion for Attorneys' Fees and Costs, which is being filed concurrently herewith.

Declarant's Professional Background

2. I am a co-founding partner of the law firm Douglas & London, P.C. ("Douglas & London") with primary offices located at 59 Maiden Lane, 6th Floor, New York, New York 10038.

3. I am licensed to practice law in the State of New York, in the United States District Courts for the Southern and Eastern Districts of New York, and the State of Pennsylvania.

4. Over the course of my three-plus decades as an attorney, I have tried hundreds of cases, including as lead trial counsel in some of the most significant mass tort litigation over the last several decades, the results of which have assisted in the recovery of billions of dollars in settlements. Some of the more notable cases I have tried include individual product liability cases, such as one of the very first cases to be successfully tried against the tobacco industry (at the time it was only the third such plaintiffs' verdict in the nation and the first in the State of New York) (*Frankson, et al., v. Brown & Williamson Tobacco Corp., et al.*, Case No. 24915/00 (N.Y.S.)), and the trials of many other mass tort cases including both pharmaceutical and medical device MDL bellwethers, such as the first successful plaintiffs' verdict in the *Fosamax* litigation (*In re Fosamax Prods. Liab. Litig.*, MDL No. 1789); the first successful plaintiffs' verdict in the *Xarelto* litigation (*In Re: Xarelto Prods. Liab. Litig.*, Case No. 160503416); the first successful plaintiffs' verdict in the nation against an automobile manufacturer for a defective airbag (*Lyzetto Crespo, et al. v.*

DaimlerChrysler Corp., Case No. 97-cv-8246 (S.D.N.Y)); and, more recently, serving as Co-lead trial counsel in the first *three* PFAS cases ever to go successfully to verdict on behalf of individual plaintiffs (*In re: E. I. du Pont de Nemours & Co. C-8 Personal Injury Litig.*, MDL No. 2433).

5. Given my years of experience as a trial lawyer, and success in PFAS litigation particularly, I was appointed Co-Chair of the Science Committee by the Plaintiffs' Executive Committee ("PEC") in MDL No. 2873, along with Scott Summy of Baron & Budd, P.C., Christina Cossich of Cossich, Sumich, Parsiola & Taylor, and Robert Bilott of Taft, Stettinius & Hollister, and ultimately also was selected to serve as Lead Trial Counsel for the *City of Stuart, Florida v. 3M Co., et al.* bellwether trial, which was slated to be the first bellwether trial in MDL 2873, and the first telomer bellwether case had it gone to trial prior to resolution.

6. From virtually the inception of this MDL, I, along with a core team of lawyers referred to colloquially and internally as the "Strike Force,"¹ were tasked with the responsibility of developing the complex science indispensable to the prosecution of the case and the liability case against each of the primary defendants. That charge has continued throughout the prosecution of the telomer bellwether process that has now resulted in the settlements that are the subject of this motion and Declaration. Having been so directly involved in the prosecution of the aforementioned liability case, your declarant can therefore attest to the work described herein from personal knowledge and as a result of my direct participation and/or supervision of those efforts.

7. In order to carry out my charge, I, along with the Strike Force

¹ This core team, a/k/a the Strike Force, was made up of members of other PEC-appointed committees such as the Science Committee and Law & Briefing Committee, and included (and continues to include), your declarant, Scott Summy, Neil McWilliams, Wesley Bowden, Christina Cossich, Philip Cossich, Rebecca Newman, Frederick Longer, Carla Burke Pickrel, Tate Kunkle, Lara Say, Celeste Evangelisti, Anne Accettella, Brandon Taylor, among others, at different times.

and others, held regularly scheduled calls and/or meetings, often on a daily basis (sometimes several a day), or at a minimum on a weekly basis. Our efforts in this regard began at the inception of the MDL with preparation for the PEC's Science Day presentation originally scheduled for September 2019, and continued for over four years, up to and including the preparation of the first bellwether case and subsequently the work and preparation for the first telomer bellwether cases described more fully herein. As the Court knows, preparation for the *Stuart* trial continued until literally the eve of that trial when counsel was advised to stand down at approximately 8:00 pm on Sunday June 4, 2023, the evening before jury selection was scheduled to begin, in order to allow settlement discussions to proceed. However, up until that point, the Strike Force's work encompassed countless meetings with witnesses, experts, and consulting scientists; preparation and review of expert reports; depositions; trial preparation; dispositive motion practice for the first bellwether trial case; bellwether selection and discovery; extensive government contractor defense discovery and briefing in which I personally participated and ultimately served as co-lead for the oral argument; and oversight of every aspect of the entire trial preparation process for *Stuart* until the very eve of jury selection.² Leaving no rest for the weary, and as is more fully described below, and almost immediately following the announcement of the 3M and DuPont PWS Settlements, I, along with the Strike Force, began the selection process and discovery and preparation for trial of the telomer bellwethers.

8. As the Court is aware, the totality of the work leading up to the 3M and DuPont

² The work of the Strike Force in no way encompasses the entirety or magnitude of the work performed by the dozens of other common benefit lawyers who committed hundreds of thousands of combined hours indispensable to the prosecution of the case. These efforts include the over 100 document reviewers who reviewed and coded millions of pages of documents to provide valuable support for the work of leadership, the PEC members, and Co-Lead Counsel themselves.

PWS Settlements is thoroughly detailed in your declarant's prior Declarations in support of both the DuPont and 3M fee petitions as well as the underlying memorandums and additional supporting declarations in support of those fee petitions, all of which is incorporated by reference as if set forth fully herein.³ Those efforts and the framework of the 3M and DuPont PWS Settlements themselves are the foundational components that have allowed both the Tyco and BASF PWS Settlements to now come to fruition.

9. It is also critical to re-emphasize that all of the efforts up to the eve of the *Stuart* trial through to preliminary approval of both the BASF and Tyco settlements, like the totality of the work undertaken throughout this MDL, is so inextricably intertwined that it is virtually impossible to parse out specific efforts related to each defendant.⁴ The testimony and evidence supporting liability of any one defendant almost always relates in some way to the liability of another. Documents and other evidence produced by one defendant often helped to buttress the liability as against another.

10. In order to avoid redundancy, I have chosen to incorporate by reference the description of all of the work that led to the 3M and DuPont PWS Settlements contained in my prior declarations. Therefore, in this declaration I will:

- a. highlight the work conducted prior to the DuPont and 3M PWS Settlements that were *specific* to and critical in establishing the liability story that led to the Tyco and BASF PWS Settlements; and

³ Class Counsel's Memorandum in Support of their Motion for Attorneys' Fees and Costs and relevant supporting declarations [ECF Nos. 3795-1, 3795-4, 3795-6 to 3795-9, 3795-11 to 3795-13]; *see also*, Class Counsel's Memorandum in Support of their Motion for Attorneys' Fees and Costs and relevant supporting declarations [ECF Nos. 4269-1, 4269-3, 4269-5 to 4269-12].

⁴ *See* April 23, 2024, Fee Order and Opinion, at 6 [ECF No. 4885](noting "the interconnected relationship of the discovery obtained by Plaintiffs in this MDL as between all Defendants").

- b. provide a description of the *additional* work that occurred *subsequent* to the DuPont and 3M PWS Settlements, and more specifically the work that occurred during the prosecution of the telomer bellwether process beginning last fall and resulting in the Tyco and BASF PWS Settlements.

Critical Discovery Efforts Specific to Tyco and BASF

11. While it is essential to reiterate the inter-related relationship between defendants, it is also important to highlight some of the Tyco- and BASF-specific discovery efforts conducted historically throughout this MDL that helped both to overcome the government contractor defense as well as establish affirmative liability as against these two defendants, and to detail the more recent discovery efforts as against these two defendants.

12. Over the course of the litigation, the PEC conducted fifteen (15) depositions of Tyco/Chemguard witnesses and five (5) depositions of BASF witnesses, illustrating the importance of these defendants in this litigation and the robust discovery taken against them in order to establish their liability.

13. As it pertains to overcoming the government contractor defense, discovery against both Tyco and BASF had a unique position in assisting Plaintiffs in that such discovery unearthed the fact that two of Tyco's AFFF formulations, manufactured as early as 1982, namely, AFC-5 and AFC-5A ("AFC-5 products"), contained C6-dominant fluorosurfactants that met the United States' AFFF military specification. Importantly, these C6-dominant fluorosurfactants were branded under the Lodyne family of surfactants manufactured by Ciba-Geigy ("Ciba").⁵ These critical pieces of Tyco and Ciba (BASF) discovery assisted Plaintiffs in establishing that not only

⁵ Defendant BASF Corp. is the successor in interest to Ciba-Geigy and thus the manufacturer of the Lodyne family of products, prior to the sale of the Lodyne business to Chemguard, Inc. in 2003.

could AFFF manufacturers use C6-dominant fluorosurfactants in their AFFF formulations, rather than the more dangerous C8s (i.e., PFOA and PFOS), but that such C6 formulations also met military specifications as early as 1982. This evidence was crucial to both overcoming the government contractor defense as well as establishing that a safer alternative design existed that AFFF and fluorosurfactant manufacturers could have used to manufacture their AFFFs or component parts rather than the more dangerous C8-dominant fluorosurfactants. This early discovery against these two defendants was central to establishing this pivotal evidence in support of Plaintiffs' case.

14. Discovery related to Tyco's role in the Fire Fighting Foam Coalition ("FFFC"), as well as its continued misrepresentation to customers concerning the presence of PFOA precursors in its AFFFs and their potential to degrade into PFOA, also helped buttress liability against this defendant. Specifically, discovery with respect to Tyco revealed its central role in leading the telomer industry in deceiving the government and its agencies, such as the DoD and the EPA, about the potential toxicity of telomer based foams, and even more fundamentally, misrepresenting that its AFFFs did not have the potential to degrade to PFOA.

15. More recently, in the Spring of 2024, additional Tyco and BASF 30(b)(6) witness depositions were taken,⁶ which helped shore up the liability story as against each defendant individually, and further underscore the interplay between the liability as between all defendants. By way of example, as it pertains to liability as against BASF specifically, one BASF corporate designee testified that Ciba made no effort prior to 2003 to determine whether Lodyne products

⁶ One Fed. R. Civ. 30(b)(6) notice of deposition was served on each Tyco and BASF in the Spring of 2024, with each defendant producing two (2) witnesses in response to each notice for a total of four (4) witnesses being deposed.

contained PFOA precursors,⁷ whether PFOA was a possible carcinogen,⁸ and/or attempted to understand the degradation of the products.⁹ Similarly, a Tyco corporate designee testified that since the 1970s, Ansul/Tyco told its customers that its AFFF was biodegradable despite always being aware that a component part of the AFFF would never degrade.¹⁰

16. As it pertains to the inter-related nature of the defendants, BASF's Rule 30(b)(6) witness testified that in 2000, when 3M announced its exit from the C8-chemistry market, Ciba was almost exclusively buying its raw materials, primarily perfluoro ethyl iodides, from DuPont to incorporate into its Lodyne fluorosurfactants intended to be used in AFFF,¹¹ thus further blurring the liability as between the different actors within the AFFF market chain.

17. With respect to recent Tyco discovery demonstrating Tyco's interrelated nature to other AFFF defendants, Tyco's Rule 30(b)(6) witness testified that Ansul, acquired by Tyco in 1990 and which sold and is currently selling AFFF under the brand "Ansolite," preferred Lodyne fluorosurfactants manufactured first by Ciba and then by Chemguard from the 1970s through 2009,¹² that such fluorosurfactants were the one of choice for Tyco/Ansol AFFF products,¹³ that they relied on Ciba to manufacture fluorosurfactants that would meet AFFF specifications,¹⁴ and that Ciba was always more knowledgeable about those fluorosurfactants.¹⁵

⁷ Dep. Tr. of BASF Fed. R. Civ. P. 30(b)(6) witness Ted Deisenroth, dated Mar. 21, 2024, attached hereto as Exhibit 1, at 52:22-53:5; 222:2-223:6.

⁸ *Id.* at 58:7-59:18.

⁹ *Id.* at 72:20-73:9.

¹⁰ Dep. Tr. of Tyco Fed. R. Civ. P. 30(b)(6) witness Mitch Hubert, dated Mar. 29, 2024, attached hereto as Exhibit 2, at 75:19-76:4.

¹¹ Dep. Tr. of Ted Deisenroth at 55:1-56:19; 62:2-63:7; 64:10-19; 138:14-139:3; 151:8-14; 272:11-16; 279:16-20.

¹² Dep. Tr. of Mitch Hubert at 53:16-54:3; 55:17-56:15.

¹³ *Id.* at 245:20-246:2; 315:8-11; 316:2-22.

¹⁴ *Id.* at 59:19-60:5; 96:18-23.

¹⁵ *Id.* at 61:2-4.

18. As demonstrated above and based on my knowledge of the litigation as a whole, it continues to be clear that the evidence with respect to one defendant is patently intertwined with another, such that the work of the PEC cannot and should not be disaggregated, defendant by defendant.

The PEC's Work During Telomer Bellwether Program Beginning in Fall 2023

19. Since the time of the 3M and DuPont fee petitions, significant telomer defendant-specific efforts have been more recently undertaken that were not previously detailed in any fee petition. Specifically, during the Summer 2023, your undersigned and the telomer bellwether teams vetted dozens of potential telomer bellwether candidates to identify relevant telomer AFFF products that may have impacted water provider bellwether candidates. This was an exhaustive screening process that involved the detailed review of sampling data from hundreds of potential locations, internal discussions, meetings with clients and counsel, and expert consultations leading to the selection of the initial four (4) Tier 1 Telomer Water Provider cases.

20. On September 13, 2023, this Court entered CMO 27,¹⁶ the Telomer Bellwether Program, which adopted the parties' recommendation that the following four (4) cases be designated as the Tier 1 Telomer Water Provider cases:

1. *Village of Farmingdale v. 3M Company et al.*, (No. 2:19-cv-00564);
2. *City of Watertown v. 3M Company et al.*, (No. 2:21-cv-01104);
3. *Southeast Morris County Municipal Utilities Authority v. 3M Company et al.*, (No. 2:22-cv-00199);
4. *Bakman Water Company v. 3M Company et al.*, (No. 2:19-cv-02784).¹⁷

21. Once the Tier 1 Telomer Water Provider cases were selected, the Telomer

¹⁶ CMO 27 [ECF No. 3665].

¹⁷ CMO 27, at 2.

bellwether teams embarked on a relentless discovery process. Your undersigned, the Science Committee, expert team, and telomer bellwether teams conducted complex and significant multi-day PFAS field sampling events at the wells of each Tier 1 bellwether Plaintiff and in areas surrounding those wells. As the Court will likely recall, isomer profiling is critical in identifying the percentage of PFOA contamination in the water at each of the bellwether sites attributable to each defendant by identifying and quantifying branched and linear isomers was conducted with respect to each of the bellwethers. This method, spearheaded by Ms. Cossich of Cossich, Sumich, Pariola & Taylor, L.L.C., and Mr. McWilliams of Levin Papantonio, is akin to finding the fingerprints at a crime scene and involved complex calculations, science, and methodology, including a complex validation process that ultimately passed the strict standards of *Daubert*.¹⁸

22. Additionally, your undersigned, along with others, held regular strategy meetings and expert consultations to facilitate an expeditious and effective prosecution of these cases. This portion of the bellwether process also involved review and production of thousands of pages of documents specific to each telomer bellwether plaintiff and hours and hours of witness preparation for Tier 1 depositions. Over the course of Tier 1 discovery, four (4) case-specific depositions were defended by plaintiffs' counsel.

23. After Tier 1 discovery was complete, your undersigned, the telomer bellwether teams, the Science Committee, and the Strike Force, along with leadership, undertook the detailed task of selecting the final two (2) cases to move forward to the Tier 2 phase of discovery. After Plaintiffs internally selected their preferred Tier 2 bellwether choices, the parties met and conferred with respect to which cases should move to Tier 2 discovery. However, the parties came to an impasse and were not able to agree on which two (2) of the four (4) cases should move to Tier 2.

¹⁸ May 5, 2023, *Daubert* Order [ECF No. 3059].

24. Because the parties were unable to agree on which of the four (4) Tier 1 bellwether cases should move to Tier 2 discovery, the parties briefed the issue.¹⁹ On December 19, 2023, following such briefing, the Court selected the following two (2) cases for Tier Two Discovery:

1. *City of Watertown v. 3M Company et al.*, (No. 2:21-cv-01104); and
2. *Southeast Morris County Municipal Utilities Authority v. 3M Company et al.*, (No. 2:22-cv-00199).²⁰

25. Over the course of approximately the following five (5) months, the telomer bellwether teams plunged deeper into the discovery process for these two (2) cases. This involved additional document review and productions from the Plaintiffs, further review of defendants' productions and discovery responses, countless meet-and-confers concerning purported discovery deficiencies, and dozens of third-party subpoenas, whose responses required review, follow-up, and ultimate production to the defendants. Along the same lines, the bellwether teams reviewed third-party productions served by the defendants. Your undersigned, along with the telomer bellwether teams, spent hundreds of hours reviewing potential exhibits and preparing witnesses for deposition, prepared for and conducted six (6) party and non-party depositions, and ultimately defended an additional sixteen (16) case-specific telomer bellwether depositions.²¹

26. Additionally, the telomer bellwether teams conducted site visits for both cases in preparation for expert reports and likely motion practice. Moreover, in addition to site visits at each bellwether Plaintiff facility, including their wells and wastewater sites, site visits were also undertaken at surrounding facilities where AFFF releases were documented. Specifically, with respect to *Southeast Morris County Municipal Utilities Authority*, site visits also occurred at a fire

¹⁹ See Plaintiffs' Telomer Bellwether Selections Briefing [ECF Nos. 4152, 4153, 4179 and 4187].

²⁰ CMO 27D.

²¹ These were in *addition* to the two (2) Tyco and two (2) BASF witnesses the PEC deposed in the Spring of 2024, noted above.

training academy located near certain of Plaintiff's wells in addition to a neighboring airport where AFFF releases were also documented and were likewise in close proximity to certain of Plaintiff's water supplies. In *City of Watertown v. 3M Company et al.*, in addition to the inspection of the Plaintiff's water treatment plant and well fields, joint site visits were conducted at two fire department facilities, the regional airport, and the municipal landfill. Plaintiffs also undertook independent site visits to adjacent industrial facilities where AFFF may have been sold, purchased, used or stored. These site visits required significant coordination with experts, counsel, and the third-party owners of the sites.

27. Although both Tyco and BASF PWS Settlements occurred prior to the submission of any of Plaintiffs' expert reports, Plaintiffs nonetheless were deep into the process of preparing both case-specific expert reports and general liability expert reports, which involved hundreds of hours of work by both the Science Committee and the telomer bellwether teams to prepare this second round of expert reports, including meeting with experts and multi-day meetings and discussions amongst counsel.

28. Finally, all this preliminary work was prelude to the telomer bellwether trial anticipated by CMO 27, for which I was the designated trial counsel on behalf of the Plaintiffs. Unquestionably, the likelihood of that trial, as well as the strength of the evidence myself and other members of the team were assembling, weighed mightily on the parties' assessment of liability in their settlement discussions.

Conclusion

29. With respect to the efforts above, your undersigned again personally participated in and bore witness to the highest level of professional skill and services that contributed to the progression of this litigation. This work of each of the Science, Bellwether, Expert, Law and

Briefing Committees, and Strike Force once again involved complex litigation-shaping issues that touched upon nearly every aspect of the litigation from the inception to the preliminary approval of each of these settlements.

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

Executed this 19th day of July 2024, at New York, New York.



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Exhibit 1

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: AQUEOUS)
FILM-FORMING FOAMS)
(AFFF) PRODUCTS) MDL NO.
LIABILITY LITIGATION) 2:18-mn-2873-RMG
-----)
THIS DOCUMENT RELATES)
TO ALL CASES)

THURSDAY, MARCH 21, 2024

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

- - -

Remote videotaped deposition of
30(b)(6) designee of BASF Corporation, Ted
Deisenroth, held remotely at the location of
the witness in New York City, New York,
commencing at 9:05 a.m. Eastern, on the above
date, before Carrie A. Campbell, Registered
Diplomate Reporter, Certified Realtime
Reporter, Illinois, California & Texas
Certified Shorthand Reporter, Missouri,
Kansas, Louisiana & New Jersey Certified
Court Reporter.

- - -

Job No. 6582007-1

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Q. Did it undertake any effort to ascertain whether they were, in fact, precursors?

A. No. Up to the sale of the business in 2003.

[REDACTED]

1 Q. And what was the purpose of the
2 meeting in 2000 with DuPont?

3 A. Okay. So when the announcement
4 was made by 3M in 2000 that they're pulling
5 out of using PFOS, we were -- again, for the
6 Lodyne surfactant products, we were buying
7 telomer B from DuPont, converting that to a
8 mercaptan.

9 Q. Okay.

10 A. And then we were using --
11 DuPont was our supplier. So we wanted to
12 know what the current situation was.

13 Q. So --

14 A. That's why we called this
15 meeting.

16 Q. Have you completed your answer?

17 A. Sorry?

18 Q. Have you completed your answer?

19 A. Yes.

20 Q. In May of 2000, 3M announced it
21 was pulling out of the perfluorooctanyl
22 chemistry.

23 Is that right?

24 A. It was -- if I understand
25 correctly, they were pulling out of the just

1 mentioned PFOS, if I remember correctly.

2 Q. Okay. Do you know if they also
3 stopped manufacturing PFOA at the same time?

4 A. No.

5 Q. You just simply don't know, or
6 you have no recollection?

7 A. I don't -- I don't recall. I
8 remember the emphasis -- the emphasis was on
9 PFOS.

10 Q. Okay. And that is the first
11 time in your recollection that Ciba started
12 to look into whether its Lodyne surfactants
13 were considered PFOA precursors, would
14 degrade into PFOA.

15 Is that right?

16 A. No. At that announcement, we
17 wanted to find more information. That's why
18 we -- back to the original question -- was
19 why we called this meeting with DuPont.

20 [REDACTED]

1

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Q. Up until 2003, did Ciba consider PFOA to be a possible carcinogen?

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9

A. Up to the sale, no.

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Q. Did it make any effort to determine whether PFOA was a possible carcinogen up to 2003?

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A. I don't see why there would be a reason to do that. We don't have PFOA in any of our Lodyne products for surfactants. There's no evidence at all that our products were going to PFOA, so I don't understand why we would do that.

19

20

21

Q. My question is, did Ciba make any effort to determine whether PFOA was a possible carcinogen up to 2003?

22

A. Repeat that again, please.

23

24

25

Q. Did Ciba make any effort to determine whether PFOA was a possible carcinogen before 2003?

1 A. There's no reason to do that.

2 Q. Is the answer to my question
3 then no?

4 A. No, the answer is, there's no
5 reason to do that.

6 Q. Are you refusing to answer my
7 question?

8 MR. HOLIAN: Well, go ahead.

9 THE WITNESS: No. There is no
10 reason to do it.

11 QUESTIONS BY MR. BOWDEN:

12 Q. If there is no reason to do it,
13 did Ciba make any effort to do so?

14 A. To my -- no.

15 Q. So Ciba did not make an effort
16 to determine whether PFOA was a possible
17 carcinogen?

18 A. Right.

19 [REDACTED]

1

2 Q. And Ciba purchased its starting
3 materials for its Lodyne products from DuPont
4 and other sources.

5

 Is that correct?

6

 A. From my recollection, it's
7 primarily DuPont.

8

 Q. And the product that it
9 purchased from DuPont is not the product that
10 Ciba sold for use in AFFF formulations.

11

 Is that right?

12

 A. That's correct.

13

 Q. There were changes that Ciba
14 made to the compound.

15

 Correct?

16

 A. That's correct.

17

 Q. And the compound that you
18 purchased from DuPont and others as your
19 starting material, it was chosen specifically
20 for its innate chemical properties.

21

 Is that correct?

22

 A. I mean, you mention others.
23 Again, as I mentioned, it's primarily DuPont.

24

 Q. Who else would have been --

25

{audio interruption}?

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MR. HOLIAN: Objection to form.
Scope.

You can answer in your personal
capacity.

THE WITNESS: Yeah. So what I
understood, it was almost exclusively
DuPont.

[REDACTED]

1

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

10

A. Again, I'm saying -- again, I worked at Ciba from 1988 to 2003. And my understanding -- I worked in the production plant -- the products primarily came from DuPont.

11

12

13

14

15

Q. Okay. You mentioned before that the products you purchased from DuPont were primarily ethyl iodides.

16

17

18

Did I hear you correctly?

19

A. That's correct.

20

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

1 what those products degraded into?

2 MR. HOLIAN: Objection to form.

3 Scope.

4 QUESTIONS BY MR. BOWDEN:

5 Q. You can answer.

6 A. I don't know.

7 Q. You're not prepared to answer
8 that question today?

9 A. No.

10 [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

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Q. All right. Before we broke, I asked if Ciba had ever conducted a study to determine the risk of Lodyne surfactants converting to PFOA.

Do I understand you that up until the time period that you reviewed for prepping for this deposition, you didn't see evidence of that? That was your answer.

Do you mean by 2003?

A. Could you repeat the question again, please, sir?

Q. Sure.

The question I gave you --

A. Right.

Q. -- and the answer you provided --

A. Right.

Q. -- I'm looking for the time period I didn't ask.

"Has Ciba ever conducted a study to determine the risk of Lodyne surfactants converting into PFOA?"

Your counsel objected.

You responded, "Up to the time

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q. Okay. So my question for you
12 then is, prior to 2003, did Ciba use
13 perfluorooctanyl chemicals in its surfactants
14 intended for use in AFFF?

15 A. It used perfluorooctyl ethyl
16 mercaptans.

17 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit 2

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING)
FOAMS (AFFF) PRODUCTS) MDL. NO.
LIABILITY LITIGATION) 2:18-mn-2873-RMG
-----)
THIS DOCUMENTS RELATES)
TO ALL CASES)
-----)

VIDEOTAPED DEPOSITION OF MITCH HUBERT

FRIDAY, MARCH 29, 2024

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

- - -

Remote videotaped deposition of DEFENDANT
TYCO FIRE PRODUCTS LP and CHEMGUARD, INC. by and
through MITCH HUBERT, held remotely at the location of
the witness, commencing at approximately 9:03 a.m.,
Eastern Standard Time, on the above date, before
Juliana F. Zajicek, Registered Professional Reporter,
Certified Shorthand Reporter and Certified Realtime
Reporter.

- - -

GOLKOW LITIGATION SERVICES
877.370.3377 ph | 917.591.5672 fax
Deps@golkow.com

1 fair to say?

2 A. That is fair to say.

3 Q. There were some that were specifically
4 formulated to be used that were freeze-resistant, for
5 example, is that fair?

6 A. Yes, that's correct.

7 Q. There were others that were specifically
8 formulated to be alcohol-resistant. Is that also
9 fair?

10 A. Well, a combination of alcohols or
11 hydrocarbons, so they're kind of a dual-use agent.

12 Q. Okay. And there were also some that were
13 specially blended to have a specific viscosity in
14 mind; is that fair to say?

15 A. That's correct.

16 Q. Okay. And throughout this time period,
17 from the 1970s up until 2009, was Ansul's
18 fluorochemical of choice the Lodyne brand of
19 fluorochemicals?

20 A. Ansul had an exclusivity agreement with
21 Ciba-Geigy, or Ciba Specialty Chemicals -- they
22 changed names throughout the years -- and -- and that
23 exclusivity ended prior to me leaving Ansul, Tyco in
24 2009. But I don't remember exactly when that

1 exclusivity ran out, but certainly the vast majority
2 of our products were -- were formulated with
3 Ciba-Geigy-based materials.

4 Q. And we are going to cover that in a little
5 bit more detail later today.

6 A. Okay.

7 Q. But I want to ask you now, were there
8 other companies that Tyco purchased fluorochemicals
9 from up until the 2009 -- 2009 timeframe?

10 A. Yes, there were -- yes, there were other
11 companies.

12 Q. Can you tell me what those companies were?

13 A. Chemguard was one of the companies and
14 Chemours/DuPont, early on it was DuPont, and then
15 it -- it got spun off and was then called Chemours, so
16 basically two other companies besides Ciba-Geigy.

17 Q. Did you ever purchase fluorochemicals from
18 a company called Dynax?

19 A. Yes. Very close to the end of my career
20 at Ansul, we also did use some Dynax products.

21 Q. And those Dynax products also went into
22 your AFFF formulations?

23 A. Some of them, yes.

24 Q. Did you ever purchase raw materials, in

1 other words, fluorotelomer iodides to make your own
2 fluorochemicals at Ansul?

3 A. No, we never did while I was there.

4 Q. Okay. When did you leave?

5 A. I left in 2009. I'm not exactly sure
6 which month, but yeah.

7 Q. Okay. When you had left, had Chemguard
8 been brought in as a company underneath the Tyco Ansul
9 umbrella?

10 A. They had not at that point.

11 Q. Okay. So in the 2000 period, 2003 to
12 2009, is it your understanding that Ansul was using
13 fluorochemicals produced by Chemguard?

14 A. We did use some Chemguard-produced
15 fluorochemicals, again, toward the end of my career at
16 Ansul.

17 Q. Is it also your understanding that
18 Chemguard purchased the Lodyne brand of
19 fluorochemicals from Ciba in 2003?

20 A. I don't know the exact year, but, yes,
21 they did -- they did procure the -- the Lodyne brand
22 materials from Ciba.

23 Q. And then in 2009, Tyco acquired Chemguard
24 and the Lodyne brand of fluorosurfactants, is that

1 correct?

2 MR. MONTGOMERY: Objection; form.

3 BY THE WITNESS:

4 A. Yeah, I don't know the exact year, so.

5 I'm sure that -- I'm sure those dates are available,

6 but I don't -- I don't know the exact year.

7 BY MR. BOWDEN:

8 Q. The point I'm driving at, and what I want
9 to make sure that I understand clearly, is that from
10 the 1970s up until 2009, the fluorochemicals of choice
11 for Ansul were the Lodyne brand of products. Is that
12 fair to say?

13 A. They were the primary supplier and -- and
14 I guess you would say, yes, they were our -- they were
15 our fluorosurfactant of choice.

16 Q. Okay. Fair enough.

17 Now, I want to ask you a couple of
18 questions just about how AFFF is typically used. AFFF
19 agents are used to extinguish fires. We've already
20 covered that, right?

21 A. Yes, predominantly liquid pool fires,
22 Class B type fires.

23 Q. And are they an effective means of
24 extinguishing fires?

1 would be used for training, right?

2 A. We understood that, yes.

3 Q. And is the fact that it would be -- the
4 AFFF agents would be used for training, was that
5 shared with your fluorosurfactant suppliers such as
6 Ciba?

7 A. I believe -- well, I don't know that we
8 necessarily shared it, but I -- I'm -- I'm pretty sure
9 that they were aware that those regulations existed.
10 I -- I can't speak for them, unfortunately.

11 Q. Well, and I'm not asking about
12 regulations, and I'm not asking you to speak for them.
13 What I am asking is about the personal conversations
14 that Ansul had with Ciba.

15 Let's just start with the basics. Ansul
16 and Ciba worked very closely together to bring
17 Ansulite products to market; is that fair to say?

18 A. That's fair to say.

19 Q. Ansul relied upon Ciba to help them
20 formulate the fluorochemicals that were going to be
21 used in AFFF to meet certain performance requirements.
22 Is that fair to say?

23 A. Yes, that's correct also.

24 Q. And Ansul relied upon Ciba to specially

1 formulate fluorosurfactants to meet those performance
2 requirements, things like burnback resistance, for
3 example. Is that fair to say?

4 A. Yes, that's correct. That was part of
5 their mission in supplying us fluorosurfactants.

6 Q. And in addition to just supplying
7 fluorosurfactants, folks like Dr. Kleiner and Dr. Jho
8 also assisted Ansul in the selection of the solvents
9 that they were going to use in their AFFF agents, is
10 that fair?

11 A. Oftentimes they did assist, yes.

12 Q. And the purpose behind that, Ansul's
13 understanding, was that Ciba wanted to make sure that
14 Ansul was producing a product that would work,
15 correct?

16 A. Well, I don't know what Ciba's goal in --
17 in it was, but, yeah, I mean, certainly both parties
18 had an interest in -- in bringing to market a product
19 that would -- would function as it was supposed to in
20 the marketplace.

21 Q. Sure. It's a business and it was in the
22 business at least in part to sell AFFF, and the way
23 you sell AFFF is to make sure that it works for its
24 intended use, is that fair?

1 A. That's fair to say, yes.

2 Q. Okay. And who was more knowledgeable
3 about fluorochemicals, Tyco or Ciba?

4 A. Ciba was more knowledgeable.

5 Q. Okay. And from day one, from the
6 beginning of Tyco's participation in the AFFF market,
7 Tyco was aware that its AFFF agents were going to be
8 used in the environment; is that fair to say?

9 A. Going to be used where? I'm sorry.

10 Q. In the environment?

11 A. Yes.

12 MR. MONTGOMERY: Objection; form.

13 BY THE WITNESS:

14 A. Yes.

15 BY MR. BOWDEN:

16 Q. Okay.

17 MR. BOWDEN: Evan, if you would, let's please
18 call up -- pull up P1.DL1158. We'll mark this as
19 Exhibit No. 2.

20 (WHEREUPON, a certain document was
21 marked Mitch Hubert Deposition
22 Exhibit No. 2, for identification, as
23 of 03/29/2024.)

24 MR. BOWDEN: Let's go to PDF Page 2, please,

1 component within the -- the final product, is that
2 fair?

3 A. Yes. In the overall biodegradation, yes.

4 Q. And if you wanted to represent to an end
5 consumer, a customer, for example, the biodegradation
6 of a product, it would be appropriate to share with
7 them if the company knew that there was a component
8 within that product that didn't biodegrade, correct?

9 MR. MONTGOMERY: Objection; form.

10 BY THE WITNESS:

11 A. Yeah, I -- that one -- that one gets a
12 little bit difficult to answer because if somebody
13 were to ask me -- ask us, does this product
14 biodegrade, and we had conducted standardized test
15 procedures that were designed to determine whether or
16 not the product should be called biodegradable or not,
17 that's where I would turn.

18 BY MR. BOWDEN:

19 Q. I understand. And I think that's what
20 Ansul actually did do, is they consistently told
21 customers since the 1970s that their AFFF products
22 were biodegradable; is that fair to say?

23 A. That is correct.

24 Q. But it's also true to say that since the

1 1970s, Ansul was aware that there was a component
2 within their AFFF that would not biodegrade, namely,
3 that perfluoroalkyl tail, correct?

4 A. That's correct.

5 Q. Okay. Let's continue on here. It says:

6 "There will be -- there will in all
7 probability be a trade-off" -- I'm sorry, Mr. Hubert.
8 I'm going to ask them to stop for just a second.

9 THE VIDEOGRAPHER: I'm sorry, do you want to go
10 off the record?

11 THE WITNESS: We lost Attorney Bowden, I think.
12 BY MR. BOWDEN:

13 Q. I'm sorry, Mr. Hubert. They're taking
14 advantage of the office being closed today to I guess
15 do a deep cleaning of our carpets outside.

16 A. Oh, okay.

17 Q. I've asked them to come back.

18 Find my place here.

19 All right. So I want to get back to our
20 document here. I'll just restart this. It says in
21 our document:

22 "There will in all probability be a
23 trade-off between biological impact and physiochemical
24 characteristics."

1 identified was the US Government, right?

2 A. That's correct.

3 Q. But in order to be a qualified seller to
4 the government, you had to meet that military
5 specification performance requirements, is that right?

6 A. That's correct.

7 Q. And Ansul, in fact, did develop a product
8 that met those military performance specifications,
9 right?

10 A. That's correct.

11 Q. Were you personally involved in the
12 development of that product?

13 A. I was not involved in the -- in the very
14 first product that was -- that was qualified because
15 it was during that timeframe that I was away from the
16 company for a couple of years. But, yes, I was
17 involved in everything beyond that.

18 Q. Okay. But beyond you personally,
19 testifying on behalf of Ansul, the fluorosurfactants
20 that Ansul used to meet the military specification
21 performance requirements were Lodyne surfactants, is
22 that correct?

23 A. That is correct.

24 Q. Okay. And that first -- very first

1 Q. But that distribution favored C8, right?

2 A. That is correct.

3 Q. Okay. And you can also see here there is
4 Lodyne S-100 listed at the top, S-103A, K90'90M, K8186
5 and it goes around the page.

6 Do you generally recognize these to be
7 Lodyne fluorochemicals that were used in Ansulite AFFF
8 agents?

9 A. Some of them I don't recognize, but the
10 majority of them I do.

11 Q. Okay. Do you believe that this is an
12 Ansul document?

13 A. If you're telling me it is and it was
14 produced by -- by Ansul, I'm assuming that it -- that
15 it is. However, I don't know if these were data that
16 were presented to Ansul by Ciba-Geigy, for example.

17 Q. Okay.

18 A. Because, again, I don't recognize some of
19 the -- some of those fluorochemicals.

20 Q. Is it your understanding that in the 2001,
21 2002 time period that Ansul would have been using
22 almost exclusively Lodyne fluorochemicals for making
23 its AFFF agents?

24 A. I suspect in that timeframe that we were

1 buying the -- the majority of our products were indeed
2 Lodyne.

3 Q. Okay. And would you also expect that the
4 majority of the fluorosurfactants you were purchasing
5 from Ciba to include some C8 homolog distribution?

6 A. Yes, there were certainly some C8 homolog
7 distribution.

8 Q. And Ansul didn't phaseout the use of C8
9 homologs, at least through 2009 when you departed, is
10 that right?

11 A. That is correct. To my knowledge, there
12 was no active project to specifically try to eliminate
13 C8 and higher homologs.

14 Q. Okay.

15 MR. BOWDEN: Let's just take that document down,
16 Evan.

17 BY MR. BOWDEN:

18 Q. Let's go to -- we'll mark as Exhibit
19 No. 10 AFFFTC0097973.

20 (WHEREUPON, a certain document was
21 marked Mitch Hubert Deposition
22 Exhibit No. 10, for identification,
23 as of 03/29/2024.)

24 BY MR. BOWDEN:

1 Q. Okay. Okay. And, well, do you agree with
2 that?

3 A. Do I agree with what I have written here?

4 Q. No, what -- what I just said, that you
5 were not referencing Dr. Kleiner as an employee or a
6 source of information from Ciba in 2000?

7 A. Yes, that's a fair statement.

8 Q. Okay. And you testified earlier that the
9 Ansul formulations were originally based on Lodyne
10 fluorosurfactants sold by Ciba-Geigy, correct?

11 A. That's correct.

12 Q. I am having a computer problem here.
13 Can you still hear me?

14 A. Yeah.

15 MS. RIES: Okay. All I have is a blank screen
16 and no ability to navigate it or click on anything.
17 Can we take five, allow me to log out and log back in.
18 I may have to get IT to help me.

19 THE VIDEOGRAPHER: We are going to go off the
20 record at 3:41 p.m.

21 (WHEREUPON, a recess was had
22 from 3:41 to 3:48 p.m.)

23 THE VIDEOGRAPHER: We are back on the record.
24 The time is 3:48 p.m.

1 BY MS. RIES:

2 Q. Okay. Mr. Hubert, returning from a quick
3 break, you testified earlier that the Ansul
4 formulations were originally based on Lodyne
5 fluorosurfactants sold by Ciba-Geigy, correct?

6 A. That is correct.

7 Q. And you testified that Ansul also
8 purchased some fluorosurfactants from Dynax towards
9 the end of your career at Ansul?

10 A. Yes, they did.

11 Q. Okay. You recall that Ciba sold its
12 fluorosurfactant business for the Lodyne
13 fluorosurfactants to Chemguard in 2003?

14 A. I'm not sure of the exact date, but that
15 sounds reasonable.

16 Q. Okay. And do you recall that after that
17 time, after Ciba sold its fluorosurfactant business
18 for Lodyne to Chemguard, Chemguard continued to make
19 versions of the Lodyne products?

20 A. Who did, Ciba?

21 Q. Chemguard.

22 A. Oh, Chemguard, yes, absolutely.

23 Q. Okay. And also after that time, Ansul
24 asked Dynax to begin making duplicates or copycat

EXHIBIT

F

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE: AQUEOUS FILM-FORMING FOAMS) Master Docket No.:
PRODUCTS LIABILITY LITIGATION) 2:18-mn-2873-RMG
)
)

CITY OF CAMDEN, et al.,) Civil Action No.:
) 2:24-cv-02321-RMG
)
Plaintiffs,)
)

-vs-

TYCO FIRE PRODUCTS LP, individually and as)
successor in interest to The Ansul Company, and)
CHEMGUARD, INC.,)
)
Defendants.)
)

CITY OF CAMDEN, et al.,) Civil Action No.:
) 2:24-cv-03174-RMG
)
Plaintiffs,)
)

-vs-

BASF CORPORATION, individually and as successor in)
interest to Ciba Inc.,)
)
Defendant.)
)

**DECLARATION OF PAUL J. NAPOLI IN SUPPORT OF CLASS COUNSEL’S
REQUEST FOR ATTORNEYS’ FEES AND COSTS**

I, Paul J. Napoli, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I make this declaration in support of Class Counsel’s Request for Attorneys’ Fees and Costs in the above-referenced matter. I have personal knowledge of the following facts, and if called as a witness, I could and would testify competently to them. I also incorporate and adopt by

reference as if more fully set forth herein the declarations I previously submitted as Class Counsel in support of the Public Water System (“PWS”) Class Action Settlements reached with the DuPont entities (the “DuPont PWS Settlement”) and 3M Company (the “3M PWS Settlement”).¹ For the sake of efficiency, here I will discuss the work described in those prior declarations only to the extent it also proved critical to bringing about the PWS Class Action Settlements with Tyco² (the “Tyco PWS Settlement”) and BASF³ (the “BASF PWS Settlement”) that are the focus of this declaration. Further, this declaration will discuss the additional work undertaken by my firm and others since the 3M and DuPont PWS Settlements that led to present resolutions reached with Tyco and BASF.

I. MY QUALIFICATIONS AND EXPERIENCE

2. I am an attorney with an L.L.M. in Environmental Law from Lewis and Clark Law School, licensed to practice in all courts in the States of New York, Bar of District of Columbia and Illinois, as well as the United States District Courts for the Eastern, Southern, Western and Northern Districts of New York; the United States District Courts for the Eastern District of Michigan, the Eastern District of Missouri, the Northern District of Illinois, the Southern District of Illinois, and the District of Colorado; the United States Courts of Appeals for the Second and Third Circuits; and the United States Supreme Court.

3. I am a Senior Partner in the law firm of Napoli Shkolnik, where I lead the firm’s Environmental Department. I have a significant amount of experience serving in leadership

¹ Decl. Paul J. Napoli in Support of Class Counsel’s Request for Attorneys’ Fees and Costs, Dkt. No. 3795-9 (“Napoli DuPont Decl.”); Decl. Paul J. Napoli in Support of Class Counsel’s Request for Attorneys’ Fees and Costs, Dkt. No. 4269-8 (Dec. 18, 2023) (“Napoli 3M Decl.”).

² For purposes of this declaration, “Tyco” collectively refers to Defendants Tyco Fire Products LP and Chemguard, Inc.

³ For purposes of this declaration, “BASF” refers to Defendant BASF Corporation.

positions in complex environmental and mass tort litigation cases, including representing numerous public entities and individuals in environmental tort cases like those included in this MDL. I have been appointed as lead or liaison counsel, and have served on, and overseen lawyers in my offices who have been on, numerous Plaintiffs' Steering Committees in national mass tort and complex litigations, and have held Court-appointed leadership positions in some of the largest mass torts over the past 25 years, including:

a. Plaintiff's Co-Liaison Counsel for *In re: World Trade Center Disaster Site Litigation, 21 MC 100* (AKH) settled in the U.S. District Court for the Southern District of New York by Judge Alvin K. Hellerstein.

b. Plaintiffs' Discovery Committee for *In re: MTBE (Methyl Tertiary Butyl Ether) Products Liability Litigation (MDL-1358)*, United States District Court for the Southern District of New York (Judge Shira Scheindlin) on Environmental Contamination of Municipal Water Supplies of MTBE by Petroleum Refiners and Retailers.

c. Liaison Counsel in the Colorado PFOA / PFOS Toxic Tort Litigation (*Bell, et al. v. The 3M Company, et al.*, No. 1:16-cv-02351-RBJ) by Judge R. Brooke Jackson of the United States District Court for the District of Colorado.

d. Co-Lead Counsel for the FTCA Flint Plaintiffs in *In Re: FTCA Flint Water Litigation*, Civil No. 4:17-cv-11218 (E.D. Michigan).

e. Plaintiffs' Liaison Counsel in the *In Re West Virginia Opioid Litigation* (Civil Action No. 17-C-248) by Judge David W. Hummel, Jr. of the Second Judicial Circuit Court, Division 2 of Marshall County, West Virginia.

f. Co-Lead Counsel in the *In Re: New York Opioid Cost Recovery Litigation* by Justice Jerry Garguilo of the Supreme Court of the State of New York for Suffolk County.

g. New York Court Appointed Member of the Plaintiff's Steering Committee for *In Re: Rezulin Products Liability Litigation* (removed from the US market 3/21/2000).

h. Appointed by the Supreme Court of the State of New York as a Liaison Counsel for the New York State Consolidated Diet Drug Litigation: *In re: Diet Drug (Phentermine, fenfluramine, dexfenfluramine) Products Liability Litigation*.

4. At Napoli Shkolnik, our Environmental Department team specializes in representing public water providers affected by chemical contamination of their water sources. The staff of these departments, many of whom hold advanced degrees in environmental law, is 100% dedicated to plaintiffs' environmental litigation. Over the years, we have advocated for water suppliers of varying sizes, from those managing extensive groundwater wells and expansive surface water systems to smaller suppliers. With over 25 years of experience in this field, we have cultivated an in-depth knowledge of water supplier operations. Collaborating closely with municipal clients, scientific and engineering experts, we have gained insights into the impact of contaminants on Public Water Systems (PWS) and the tools and methodologies required to mitigate or eliminate such pollutants. In addition to representing municipalities, public bodies, and individuals in environmental cases, I have been personally involved in numerous multiple party complex litigation matters involving thousands of plaintiffs, and dozens of defendants. The expertise I have gained through this experience greatly assisted our team in developing the vast amount of evidence in this case, which involved extensive documentation and data.

5. My expertise extends to playing pivotal roles as lead or class counsel in intricate environmental litigation cases. For over 25 years, I have stood as the legal representative for numerous public bodies and individuals in environmental tort cases, many of which closely parallel the settled class actions at issue here. Instead of solely pursuing statutory environmental claims that hold an entity accountable, irrespective of its awareness of the potential harm, we often employ traditional product liability and other tort approaches. These strategies target chemical manufacturers responsible for contaminating public and private water resources, land, or other public-owned natural assets. Unlike most firms, our approach zeroes in on those manufacturers who were aware of the risks their products posed but failed to alert downstream stakeholders. Such litigations under my guidance have secured billions in compensation for our clients. Some landmark cases in which I played a prominent role are listed below:

a. \$600 Million Settlement in the Flint Water Litigation: The Flint, Michigan water crisis began in 2014 when the city's drinking water source was switched to the Flint River, leading to lead contamination due to inadequate water treatment. This change exposed residents to dangerous levels of lead, resulting in numerous health issues, especially among children. The crisis also unveiled layers of governmental negligence, mismanagement, and lack of transparency, sparking national outrage and leading to several legal actions and public health interventions.

b. In re: Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig., MDL 1358, (S.D.N.Y.) centered on the widespread contamination of groundwater by MTBE, a gasoline additive. Used to enhance octane levels and reduce carbon monoxide and ozone levels caused by auto emissions, MTBE was found to be a potential human carcinogen that can quickly contaminate groundwater. Numerous lawsuits were consolidated in the

Southern District of New York (S.D.N.Y.) against gasoline producers and refiners, alleging they were aware of MTBE's environmental risks but continued its use and failed to warn the public.

c. \$712.5 million settlement of injuries sustained by rescue and recovery workers at Ground Zero from toxic dust which pertained to injuries sustained by rescue and recovery workers at Ground Zero following the September 11th terrorist attacks. These workers were exposed to toxic dust and debris during their efforts at the World Trade Center site. The lawsuit alleged that the city of New York and its contractors failed to adequately protect these workers from hazardous conditions, resulting in various health issues. After prolonged litigation, a settlement was reached to compensate the affected workers for their injuries and health complications.

6. Experience in these cases, particularly involving Ground Zero, the Flint water crisis, and the MTBE groundwater contamination, was invaluable background for the AFFF litigation. The Flint case required development of a deep understanding of public health crises, community advocacy, and the intricacies of water contamination litigation. The MTBE case involved large-scale environmental damage, especially in the context of contamination and its long-term impact on communities. Both the MTBE and the Ground Zero litigation provided insight into navigating bureaucratic hurdles, crafting compelling arguments against governmental bodies, and understanding the intricacies of large-scale environmental and health-related claims. Additionally, familiarity with extensive discovery processes in these prior cases helped guide efficient evidence-gathering and strategy formulation in the AFFF Litigation.

II. ENTRY INTO AFFF AND PFAS LITIGATION AND APPOINTMENTS AS CO-LEAD AND CLASS COUNSEL

7. As this Court is aware, my and my firm's involvement in litigation related to AFFF and PFAS significantly predates the formation of this MDL. That history is summarized in the prior declarations I submitted in support of the 3M and DuPont PWS Settlements, and I expressly incorporate those discussions as if more fully set forth herein. Of note for purposes of this declaration, however, is the work my firm performed before the formation of the MDL in a set of actions filed against Tyco in the fall of 2016 in the United States District Court for the District of Colorado. As the Court will recall, those actions were brought on behalf of proposed medical monitoring and property damage classes, along with individual personal injury plaintiffs, and sought damages for PFAS contamination of the water in and around El Paso County, Colorado, because of AFFF use.

8. After addressing multiple motions to dismiss filed by the defendant AFFF manufacturers, including Tyco, my firm undertook extensive discovery that resulted in the production of millions of pages of documents and the completion of more than a dozen depositions. Included in that discovery were productions from Tyco totaling 71,012 documents and 224,045 pages, which were later reproduced in this MDL, giving Plaintiffs a substantial head start on discovery in these proceedings. Further, as this Court recognized, these early productions in the Colorado cases benefited Plaintiffs' discovery efforts against not only against Tyco but other defendants by providing "ideas about what to ask for and how that information is organized and what seems to be better than others."⁴

⁴ May 17, 2019 Status Conference Tr. 48:16-24.

9. As the Court is aware, my colleagues and I also litigated water district cases before the formation of the AFFF MDL, including one for a public water system from New York. On February 21, 2018, my firm filed an action on behalf of Hampton Bays Water District (“HBWD”) in the New York Supreme Court (Suffolk County) under index number 603477/2018. That action concerned the contamination of HBWD’s water source with PFAS as a result of AFFF usage and was brought against a core set of AFFF manufacturing defendants that included Tyco.

10. Following removal of HBWD’s case to the United States District Court for the Eastern District of New York, the defendants filed a joint motion to dismiss on August 13, 2018. My office filed an opposition on behalf of HBWD on September 28, 2018. While the parties briefed motions to dismiss, we also negotiated over various discovery matters, and filed competing written proposals to the Court.

11. On October 1, 2018, defendants filed a motion to stay proceedings pending decision of the Judicial Panel on Multidistrict Litigation (“JPML”) on whether to transfer the case into an MDL, which the court granted on October 15, 2018. On November 29, 2018, I appeared before the JPML and advocated for the establishment of this MDL. On December 7, 2018, the JPML issued its decision limiting this MDL to actions alleging injury from PFAS exposure via AFFF AFFF and relocating those actions to the District of South Carolina for coordinated pretrial proceedings.

12. On March 20, 2019, the Court entered Case Management Order (“CMO”) No. 2 appointing me, Scott Summy, and Michael London to serve as Plaintiffs’ Co-Lead Counsel in *In re Aqueous Film Forming Foams Product Liability Litigation*, MDL No. 2873 (D.S.C.) (the “AFFF MDL” or “this MDL”), a position all three of us continue to hold and have been re-

appointed to annually in the years since (most recently on April 25, 2024).⁵ As described in my prior declarations for the 3M and DuPont PWS settlements, CMO No. 2 collectively charged me and my Co-Leads with managing and advancing virtually all aspects of the litigation on behalf of all Plaintiffs, including organizing and overseeing work allocated to, and performed by, the Plaintiffs' Executive Committee ("PEC"). More recently, this Court appointed Joe Rice to serve as a fourth Co-Lead for Plaintiffs by Order dated August 22, 2023.⁶

13. On October 26, 2022, the Court appointed me and my Co-Leads⁷ to serve as Settlement Counsel for all Plaintiffs in this MDL.⁸ In that capacity, I have since been appointed to serve as Class Counsel for the 3M and DuPont PWS Settlements alongside Mr. Summy, Mr. London, Mr. Rice, and Elizabeth Fegan.⁹ Along with that same group, I have also been provisionally appointed to serve as Class Counsel for the present PWS Class Action Settlements with Tyco and BASF.¹⁰

III. EFFORTS TO OPPOSE THE TELOMER DEFENDANTS' GOVERNMENT CONTRACTOR DEFENSE

14. Consistent with the declarations I submitted in support of Class Counsels' fee applications for the 3M and DuPont PWS Settlements, I attempt in this section to summarize the robust and incredibly important work undertaken by Class Counsel to oppose the Telomer

⁵ Dkt. No. 4904.

⁶ Dkt. No. 3602.

⁷ Except where noted, references to "my Co-Leads" means Michael London from Douglas & London P.C. and Scott Summy from Baron & Budd LLP.

⁸ Dkt. No. 2658.

⁹ See Dkt. Nos. 4543-1 at ¶ 4 (appointment as Class Counsel for DuPont PWS Settlement) & 4754-1 at ¶ 4 (appointment as Class Counsel for 3M PWS Settlement).

¹⁰ See Dkt. Nos. 5147 at ¶ 7 (provisional appointment at Class Counsel for Tyco PWS Settlement) & 5253 at ¶ 7 (provisional appointment at Class Counsel for BASF PWS Settlement).

Defendants’ government contractor defense. I have personal knowledge of these matters not only as Co-Lead Counsel for all Plaintiffs in this MDL but also as the PEC’s designated discovery liaison for the Government. In those capacities, I can definitively state that virtually every hour the PEC has devoted to issues related to the government contractor defense has advanced the liability case against all Defendants, including Tyco and BASF. And while neither the discussion that follows here nor the corresponding discussions in my prior declarations—which I expressly incorporate as fully set forth herein—can account for all of the work Class Counsel performed on this issue, they are meant to demonstrate the enormity of Class Counsel’s collective efforts in this area and the critical role those efforts played in advancing Plaintiffs’ claims against all Defendants in this MDL, including Tyco and BASF.

A. **Efforts to Obtain Critical Discovery from the Government Pertinent to the Telomer Defendants’ Government Contractor Defense**

15. At the very first status conference held in this MDL, the Court emphasized to the parties that Defendants’ government contractor defense was a critical issue that could have “a very significant impact on the shape of the litigation.”¹¹ For this reason, the Court advised the parties that it was an issue that needed to be addressed early in the case, while still affording the parties the opportunity to conduct “robust discovery.”¹² This sense of urgency from the Court was largely the result of the manufacturer Defendants’ decision early in this MDL to position their government contractor defense as some sort of “get out of jail free card” for all their improper conduct related to the sale and marketing of AFFF and its component parts. For this reason, one of Class Counsel’s

¹¹ February 25, 2019 Status Conference Tr. 39:10-41:3.

¹² *Id.*

primary areas of focus early on in this MDL was evaluating the factual basis for this defense and developing the PEC's arguments in response.

16. As discussed in my prior declarations, the Government initially resisted the parties' efforts to obtain discovery relevant to the government contractor defense, claiming at one point that "sovereign immunity gives the government the right to do it on its own terms."¹³ But in July 2019, the Government substituted in Christina M. Falk, Assistant Director of the Environmental Torts Section of the United States Department of Justice ("DOJ"), to serve as its counsel, which roughly coincided with my appointment to serve as the PEC's Government discovery liaison. As referenced in my prior declarations, in recognition of the critical role that discovery from the Government would play in opposing Defendants' government contractor defense, my first priority as the PEC's discovery liaison was to establish a cooperative and productive relationship with the Government's lead attorney, Ms. Falk.

17. As detailed in my prior declarations, in the months that followed my appointment as the PEC's Government discovery liaison, I represented the PEC in negotiations with DOJ and the Defense Coordinating Counsel ("DCC") on a variety of Government-related discovery issues, including the search terms the Government should use to produce responsive ESI, and how DOJ should prioritize productions from the various agencies that had received document requests. These negotiations ultimately resulted in agreements with DOJ to produce transcripts and expert reports from a related litigation in December 2019, and on the search terms the Government would use for its document productions in January 2020. But while I was able to overcome DOJ's initial resistance to providing discovery in this MDL, concerns over the pace at which the Government

¹³ April 5, 2019 Status Conference Tr. 60:18-20.

was providing responsive discovery persisted as the parties entered 2020, and only intensified with the onset of the COVID-19 pandemic in March 2020, which worsened limitations on the Government's staffing and resources. This eventually led DOJ to propose staging Government discovery to begin solely with the production of materials relevant to the government contractor defense and certain jurisdictional defenses DOJ planned to raise in the small number of cases naming the Government as a defendant.

18. As mentioned in my prior declarations, I quickly communicated the PEC's support for the Government's staging proposal, explaining to the Court in the parties' June 2020 Joint Status Report ("JSR") that "this prioritization is imperative to keep discovery moving so that these threshold issues [i.e., the government contractor defense] can be resolved."¹⁴ This was in stark contrast to the DCC, which prolonged negotiations over the Government's staging proposal for almost three months before reaching agreement with DOJ on September 1, 2020. In the end, DOJ produced close to 390,000 documents totaling more than 6.7 million pages as part of its Stage 1 discovery production, which it informed the parties was substantially complete in February 2022.¹⁵

19. As my prior declarations discuss, as the COVID-19 pandemic dragged into the summer of 2020, I began to consider other ways to expedite discovery on the government contractor defense and eventually approached Ms. Falk about the possibility of the PEC propounding a set of Requests for Admission ("RFAs") on the Government, which I believed could be used to narrow the areas of dispute amongst the parties concerning the government contractor defense, thereby reducing the Government's overall discovery burden with respect to those issues. After confirming that Ms. Falk was receptive to the proposal, my firm proceeded to draft a set of

¹⁴ June 5, 2020 JSR at 15.

¹⁵ February 24, 2022 JSR at 27.

five (5) RFAs focusing on issues involving the specifications the military used to procure AFFF (the “AFFF MilSpec”), which were served on the Government on July 6, 2020.

20. On July 13, 2020, DOJ served responses to the PEC’s RFAs that included several critical admissions from the Government on issues pertinent to Defendants’ government contractor defense. Specifically, the Government admitted in those responses that (1) the AFFF MilSpec was a “performance specification” that was intended to “give the manufacturers the greatest flexibility as to how they would meet the AFFF MilSpec’s requirements and to promote competition both on performance and price”; and (2) the AFFF MilSpec “never required that AFFF contain PFOA or PFOS.”¹⁶ These responses proved to be a pivotal moment in the litigation, as they locked the Government into a set of positions favorable to the PEC before even a single Government witness had been deposed. In fact, the Court later relied on these responses to support its finding that “the MilSpec did not specify the use of a particular formula or the use of C8 chemistry.”¹⁷ The responses also served as a failsafe once the parties started deposing Government witnesses, allowing the PEC to be more aggressive in eliciting testimony from those witnesses on issues related to the AFFF MilSpec.

B. Retention and Development of Patent Expert to Rebut Claims that the Government Patented AFFF in the 1960s

21. In April 2020, my firm, on behalf of the PEC, retained Patrick D. Lowder, a registered United States Patent Attorney with a Ph.D. in organic chemistry, to serve as an expert in this highly specific field. As discussed in my prior declarations, Mr. Lowder’s retention proved critical to the PEC’s efforts to oppose Defendants’ government contractor defense, as he helped

¹⁶ July 13, 2020 DOJ RFA Responses at 3.

¹⁷ Dkt. No. 2601 at 11.

us understand the difference between method patents and composition patents, a key distinction that the PEC would later rely on to refute the DCC's interpretation of the NRL Patent. Mr. Lowder also suggested obtaining the USPTO's complete file on the NRL Patent, which revealed that NRL's original application sought a composition patent for certain AFFF formulations and their component fluorosurfactants. Critically, the file showed that the USPTO had rejected NRL's patent application precisely because Defendant 3M Company ("3M") already owned the patents for the component fluorosurfactants, which was completely at odds with the DCC's attempt to use the NRL Patent as evidence that NRL was the principal developer of AFFF.

22. In addition to helping navigate these types of complex patent-related issues, the PEC also relied on Mr. Lowder's expertise in organic chemistry to help develop key arguments concerning the AFFF MilSpec. Specifically, Mr. Lowder assessed the AFFF MilSpec's use of the term "fluorocarbon surfactant" and whether that language was reasonably precise, ultimately concluding it was not because the term refers to a large family of chemicals comprising thousands of members. Both this opinion and his opinions concerning the NRL Patent were later memorialized in a declaration that the PEC submitted in support of its briefing on the government contractor defense.¹⁸

23. The importance of Mr. Lowder's work and opinions was apparent at the oral argument the Court later held on the motions for summary judgment Defendants filed based on the government contractor defense. Specifically, the Court questioned defense counsel about Patrick Lowder's assertion in his declaration that, as used in the AFFF MilSpec, the term "fluorocarbon surfactant" encompassed thousands of different compounds.¹⁹ After they failed to

¹⁸ See Dkt. No. 2063-2.

¹⁹ August 19, 2022 Tr. 10:20-11:22.

refute that assertion, the Court bluntly informed the parties that it had concluded the AFFF MilSpec was not a “reasonably precise” specification. *Id.*

C. Efforts to Develop Facts Relevant to the Government Contractor Defense and Prepare for and Take Depositions of Key Government Witnesses

24. As set forth in my prior declarations, another critical project I oversaw as the PEC’s Government discovery liaison was assembling a group from the three Co-Lead firms to investigate and draft a detailed dossier summarizing and analyzing the documents the Government and defendant manufacturers had produced in discovery relevant to the government contractor defense. As those declarations detail, this group spent several months reviewing and summarizing thousands of documents produced in discovery, exchanged numerous drafts of the dossier, and held meetings on close to a dozen occasions to discuss their respective findings. The immense amount of time and effort the group put into this project ultimately paid off, however, as the dossier proved to be a foundational resource for the PEC when the parties turned their attention to depositions and briefing focusing on the government contractor defense.

25. Following months of resistance from the DCC, the PEC made the decision in March 2021 to kick off deposition discovery on the government contractor defense. Relying on the work described above, PEC leadership considered and discussed a number of potential deponents on issues relevant to the government contractor defense, eventually leading to the PEC serving notices of deposition on DOJ for five Government witnesses. Within days, the DCC followed suit by serving notices on DOJ for its own set of Government witnesses. In the end, the parties took seven depositions of Government witnesses, the last of which was completed on October 7, 2021. In total, these depositions accounted for 3,305 transcript pages of testimony and 237 deposition exhibits. But even that undersells the extensive preparation that went into taking these depositions, which—with one exception—were all taken by attorneys from the three Co-Lead firms.

26. This extensive preparation was reflected in the depositions themselves, which, from the beginning, were an unmitigated success for the PEC in its efforts to oppose the government contractor defense. For example, during the very first deposition of a Government witness in this case, Gary Douglas elicited testimony from Robert Darwin that “it was up to each manufacturer to come up with his own magic witch’s brew to meet the performance requirements” of the AFFF MilSpec.²⁰ Likewise, Mr. Douglas elicited testimony from John Farley during his deposition that AFFF manufacturers treated their formulations as proprietary information and that it was not until 2000 that he learned PFOS was used in 3M’s AFFF.²¹ The Court later relied on this testimony in denying Defendants’ motions for partial summary judgment on the government contractor defense.²²

D. Briefing the PEC’s Opposition to Defendants’ Motion for Summary Judgment Based on the Government Contractor Defense

27. As mentioned in my prior declarations, as depositions of Government witnesses began, the PEC and DCC also entered negotiations on a protocol and schedule for briefing motions that Defendants planned to file seeking partial summary judgment based on the government contractor defense. These negotiations were once again led by me and my Co-Leads and eventually resulted in CMO No. 16, entered by the Court on April 15, 2021.²³ Consistent with the protocol and schedule set forth in CMO No. 16, the parties’ briefing on the government contractor defense began in earnest on November 5, 2021, with Defendants filing a single omnibus brief addressing just the first element of the defense that focused on whether the Government approved

²⁰ Darwin Tr. 46:17-47:2.

²¹ Farley Tr. 89:15-24.

²² Dkt. No. 2601 at 11, 13.

²³ See Dkt. No. 1521.

“reasonably precise specifications” for MilSpec AFFF.²⁴ Once filed, the three Co-Lead firms took the lead on reviewing and analyzing the Defendants’ opening brief before turning to researching, drafting, and compiling the necessary support for Plaintiffs’ opposition brief, which was filed on December 22, 2021.²⁵ On January 28, 2022, Defendants filed an omnibus reply brief responding to the arguments.²⁶

28. As my prior declarations explain, shortly after an aborted attempt to hold oral argument on Defendants’ motion in March 2022, the Court informed the parties that based on its review of the existing briefing on that motion, it had determined supplemental briefing was needed from the parties on the remaining two elements of the government contractor defense.²⁷ In doing so, the Court left it to the parties to determine the schedule and protocol for submitting the supplemental briefing, with me and my Co-Leads once again leading negotiations on behalf of the PEC that resulted in CMO No. 16.D, which the Court entered on April 7, 2022.²⁸ At the Court’s instruction, CMO No. 16.D allowed two categories of Defendants to file supplemental briefs in support of Defendants’ previously-filed motion for summary judgment. The first category consisted solely of 3M, while the second category was comprised of five telomer AFFF manufacturers (the “Telomer AFFF Defendants”) and included both Tyco Fire Products LP and Chemguard, Inc.²⁹

²⁴ Dkt. No. 1965-1.

²⁵ Dkt. No. 2063.

²⁶ Dkt. Nos. 2063 & 2141.

²⁷ *See* Dkt. No. 2247.

²⁸ Dkt. No. 2280.

²⁹ *Id.*

29. On May 13, 2022, those defendants filed their opening supplemental briefs on the two remaining elements of the government contractor defense.³⁰ Like before, the three Co-Lead firms, along with other PEC members such as those that make up the “Strike Force” as described in prior Court submissions,³¹ took the lead on reviewing and analyzing the AFFF manufacturer Defendants’ opening briefs before turning to researching, drafting, and compiling the necessary support for Plaintiffs’ omnibus opposition brief. As part of these efforts, one project undertaken by my firm was continuing an investigation we had started years earlier into the conduct of the Fire Fighting Foam Coalition (“FFFC”), an industry group organized by the Telomer AFFF Defendants in the early 2000s following 3M’s exit from the market. This project uncovered documents that later proved to be among the most critical evidence supporting the Court’s denial of the Telomer AFFF Defendants’ motion for summary judgment. In fact, the Court devoted an entire paragraph in its opinion to one of the documents,³² which it later relied on to conclude a material factual dispute existed concerning “whether the government’s decision to continue using telomer AFFF was with full knowledge of its properties and dangers and whether the FFFC misled the EPA and how this adversely impacted the regulatory process.”³³

30. The referenced FFFC documents were incorporated into the opposition brief the PEC filed on June 17, 2022, which 3M and Telomer AFFF Defendants responded to via reply briefs filed on July 1, 2022.³⁴ Prior to the completion of the supplemental briefing, the Court

³⁰ Dkt. Nos. 2346-1, 2347 & 2348.

³¹ Dkt. No. 4269-7. The “Strike Force” team is comprised of members of the PEC who have been appointed to PEC committees, and who came together organically to help coordinate and synthesize the varied work streams being performed by the various committees.

³² Dkt. No. 2601 at 26-27.

³³ *Id.* at 29.

³⁴ Dkt. Nos. 2409, 2437 & 2438.

scheduled oral argument on Defendants’ motions for partial summary judgment on August 19, 2022. The three Co-Lead firms thereafter engaged in extensive preparation for the argument, which was led by Mr. Douglas and my Co-Lead, Scott Summy from Baron & Budd. This preparation, as well as the immense time and effort that leadership put into the briefing itself, resulted in a resounding success when the Court issued its order denying Defendants’ motions on September 15, 2022.

31. Although addressed in my prior declarations, it bears repeating that from the time this MDL was created, Defendants placed significant stock in the government contractor defense early, going so far as to suggest at the first status conference in this MDL that it would provide “absolute immunity” for “somewhere around 80 to 90 percent” of the claims brought against the AFFF manufacturers.³⁵ It was only through the efforts described above, which were both led and primarily undertaken by the three Co-Lead firms, that Plaintiffs were able to get past the defense at the summary judgment stage, clearing the way for cases in this MDL to proceed to trial.

IV. EFFORTS TO COLLECT AND ANALYZE MARKET SHARE DATA RELATING TO AFFF AND ITS COMPONENTS

32. Another area of the case that my firm and the other Class Counsel helped advance was investigating and evaluating the various defendants’ shares of market for AFFF and its components. As explained in my prior declarations, one challenge that Plaintiffs have collectively faced in pursuing resolutions in this case is identifying the specific AFFF products responsible for the contamination underlying Plaintiffs’ respective claims. This is particularly challenging for Defendants like Tyco and BASF that manufactured telomer-based AFFF and the components used in telomer-based AFFF (collectively, the “Telomer AFFF/Component Defendants”), respectively,

³⁵ February 15, 2019 Tr. 36:12-20.

as those Defendants all utilized the telomerization manufacturing process to produce AFFF products that could potentially degrade to PFOA in the environment.³⁶

33. Recognizing that a different approach was needed to apportion liability amongst the Telomer AFFF/Component Defendants, my Co-Leads and I began to discuss in early 2020 the prospect of investigating and evaluating the liability of the non-3M manufacturer Defendants based on their respective share of one of four relevant product markets: (1) the market for finished, telomer-based AFFF products; (2) the market for the telomer-based fluorosurfactants used to formulate AFFF products; (3) the market for the telomer intermediates used to formulate the fluorosurfactants used in telomer-based AFFF; and (4) the market for toll manufacturing services related to the production of telomer-based fluorosurfactants used in telomer-based AFFF.

34. As discussed in my prior declarations, I then led efforts in April 2020 to organize a new working group with the PEC to begin carrying out this work, which was comprised mainly of individuals from the Class Counsel firms. Once established, this new working group initially focused on two projects. The first was identifying and retaining one or more consulting experts to assist with the group's investigation and evaluation of the relevant product markets. Within weeks we had retained someone and began meeting with them to formulate a plan for gathering the information needed to evaluate the product markets at issue. The working group then shifted to its second area of focus early on, which was searching, reviewing, and analyzing the discovery produced by the various manufacturer Defendants to collect any data that could be used to help evaluate their share of the relevant product markets. This investigation took several months and

³⁶ This distinguishes those Defendants from 3M, which not only used a different manufacturing process for its AFFF but was the only AFFF manufacturer to utilize PFOS-based fluorosurfactants, such that the mere presence of PFOS alone is typically sufficient to demonstrate the use of a 3M product.

revealed a substantial discrepancy between the data available to analyze market share for AFFF manufacturers like Tyco versus the data available for the manufacturers of the fluorosurfactant and telomer intermediate components used in that AFFF, with the latter generally being far less robust, if it existed at all.

35. To help address the data gaps that existed for many of the fluorosurfactant and telomer intermediate manufacturer Defendants—including BASF—my firm took on responsibility for drafting and negotiating a new Defense Fact Sheet (“DFS”) for those manufacturers, requiring basic information on which products they sold for use in AFFF and how much of each product they sold over time. My firm then led the negotiations with those Defendants—who called themselves the Non-Manufacturer Defendant Group—which began in early November 2020, and later culminated in the Court’s entry of CMO No. 5.D on February 4, 2021, requiring that Defendants who were not AFFF manufacturers submit a completed version of the new DFS (i) within 20 days if a current Defendant, and (ii) within 98 days of joining the MDL for any later added Defendants.³⁷ We also led negotiations with some members of the Non-Manufacturer Defendant Group over deficiencies in the information and data they provided in the DFS, which in some cases required them to supplement their responses.

36. In addition to the new DFS, another way that the working group tried to supplement the existing information we had for some defendants on market share was through Rule 30(b)(6) depositions. My firm helped prepare a template notice for such depositions and my partner, Andrew Croner, was tasked with taking the deposition focusing on BASF Corporation’s AFFF-related sales and market share. Both my firm and the other Class Counsel also drafted memos

³⁷ Dkt. No. 1152.

analyzing specific MDL Defendants' market share and helped create a detailed matrix analyzing the markets for fluorosurfactants and telomer intermediates used in AFFF based on the information and data those Defendants provided in their CMO 5.D fact sheets.

V. EFFORTS TO ADVANCE CLAIMS AGAINST KIDDE DEFENDANTS IN MDL AND BANKRUPTCY PROCEEDINGS

37. My firm has also had a significant role in advancing Plaintiffs' claims against the Kidde Defendants³⁸—in particular, Kidde-Fenwal, Inc. and Carrier Global Corporation—which proved significant to the negotiations and eventual resolutions reached with Tyco and BASF when Kidde-Fenwal, Inc. filed for bankruptcy, increasing the potential exposure and incentive to reach a resolution for the remaining telomer AFFF Defendants like Tyco and BASF. As explained in my prior declarations, the Kidde Defendants' liability arises from its ownership and operation of the National Foam AFFF business between 2000 and 2013. As a result of numerous corporate transactions involving the National Foam AFFF business, however, a question that persisted for several years in this MDL was which of the Kidde Defendants still held liabilities for that business and for the time period prior to 2013 that those liabilities covered.

38. In May 2021, the PEC began making progress in resolving this question, starting with a Rule 30(b)(6) deposition of Carrier Global Corporation taken by one of my partners, Andrew Croner. In that deposition, Mr. Croner elicited testimony establishing that Carrier Global Corporation assumed pre-2013 liabilities for the National Foam AFFF business that were previously held by United Technologies Corporation—which had acquired the Kidde group of businesses in 2005—as part of an April 2020 spin off transaction undertaken by UTC in connection with a planned merger with Raytheon Corporation.

³⁸ The term “Kidde Defendants” collectively refers to Kidde-Fenwal, Inc., Kidde PLC, Inc., United Technologies Corporation, UTC Fire & Security Americas, Inc., and Carrier Global Corporation.

39. Even after the Rule 30(b)(6) deposition of Carrier, however, questions remained about the extent of the pre-2013 liabilities assumed by the Kidde Defendants and whether any of those liabilities were retained by prior owners and operators of the National Foam AFFF business. Beginning in June 2022, my firm was enlisted to lead a small team of PEC lawyers tasked with researching and analyzing the corporate history of the National Foam AFFF business to track the liabilities associated with that business over the course of more than 90 years and through a dozen acquisition and sale transactions.

40. The work described above culminated in a Rule 30(b)(6) deposition of the Kidde Defendants in September 2022, which, like Carrier’s Rule 30(b)(6) deposition, was taken by Mr. Croner. Once again, Mr. Croner elicited critical testimony establishing that no pre-2013 liabilities had been retained by the prior owners/operators of the National Foam AFFF business and that all of those liabilities were instead held by Kidde-Fenwal, Inc. Importantly, this testimony cleared the way for Plaintiffs to pursue claims against Kidde-Fenwal, Inc. for PFAS contamination allegedly caused by National Foam AFFF products manufactured prior to 2013.

41. This testimony also contributed, however, to Kidde-Fenwal, Inc.’s decision on May 14, 2023, to file a Chapter 11 petition for bankruptcy in the United States District Court for the District of Delaware that identified as the “Debtor’s primary liabilities” those “liabilities related to the AFFF litigation.”³⁹

42. As a result of this bankruptcy—and the automatic stay it imposed—all litigation efforts against the Kidde Defendants were brought to a halt, removing a major telomer co-

³⁹ Decl. of James A. Mesterharm in Support of Chapter 11 Petition and First Day Pleadings, ¶ 40 (ECF No. 31), *In re: Kidde-Fenwal, Inc.*, 23-10638 (Bankr. D. Del.).

Defendant from any future bellwether trials involving Tyco and BASF, thereby increasing the pressure on those Defendants to resolve their respective liabilities in this MDL.

VI. OTHER EFFORTS SPECIFIC TO TYCO AND BASF THAT CONTRIBUTED TO THE PRESENT SETTLEMENTS

43. In addition to the broader work described above, my firm and the other Class Counsel worked on discrete projects that specifically focused on advancing potential resolutions with Tyco and BASF. Here, I focus on the three such projects my firm led that helped advance the PEC's settlement prospects with Tyco and BASF.

A. Negotiating the First Settlement Reached in this MDL with Tyco on Behalf of Residents of Marinette, WI

1. In late December 2020, our firm reached agreement with Tyco/Chemguard on a settlement to resolve property damage and medical monitoring claims on behalf of a class of residents of Marinette, Wisconsin impacted by PFAS contamination from a Tyco/Chemguard facility used for decades to manufacture AFFF. Following a series of amendments to the settlement agreement, the Court granted preliminary and then final approval of the settlement on January 5, 2021, and August 4, 2021, respectively. As the first settlement of any kind in this MDL, our firm's work in negotiating the settlement with Tyco and then successfully navigating that settlement through the approval process represented a landmark achievement in this MDL. In addition, it opened a broader settlement dialogue with Tyco and its counsel that directly contributed to Class Counsel's successful negotiation of the Tyco PWS Settlement.

B. Leading the PEC's Efforts to Analyze the Insurance Coverage Potentially Available to Tyco and BASF

44. In March 2021, me and my Co-Leads recognized a need to collect and analyze the insurance coverage available to certain MDL Defendants in order to help advance potential settlement discussions. This included Tyco and BASF, both of which were identified as priority Defendants for purposes of this project. In short order, my firm was tasked with reviewing and

identifying any deficiencies in the production of insurance policies and related documents from those defendants, which existed for both Tyco and BASF at the start of the project. As a result, my firm sent several deficiency letters and met and conferred with Tyco and BASF on multiple occasions, efforts that eventually helped address most, if not all, of the deficiencies identified.

45. Additionally, once Tyco and BASF addressed the deficiencies in their respective productions of insurance materials, my firm helped prepare detailed spreadsheets that summarized the relevant policies and their terms for each Defendant and provided an overall assessment of the potential coverage available to them. Not only did this provide crucial background for me and my Co-Leads entering mediations with Tyco and BASF but it also prompted my firm to file state court actions against the relevant insurers to help get them involved in discussions that could potentially advance settlement discussions.

C. Leading the PEC's Discovery Efforts Against BASF

46. In April 2020, our firm was tasked with leading the PEC's efforts to obtain discovery from BASF, about whom little was known at the time since they had only recently been pulled into the MDL proceedings. That same month, my firm drafted and served interrogatories and document requests on BASF, before shifting our focus to negotiating appropriate search terms and a schedule for substantial completion of their document productions, as well as organizing and establishing a protocol for reviewing documents produced by these defendants on a rolling basis. As a result of these efforts, BASF substantially completed its discovery production in January 2022, which totaled 14,741 documents and 196,801 pages for BASF.

47. In addition to document discovery, my firm also took two 30(b)(6) depositions of BASF that were crucial to the PEC's ability to establish its liability in this MDL. One of those depositions was discussed earlier in this declaration and focused on obtaining information and testimony that could be used to establish BASF's share of the component market for AFFF

fluorosurfactants during the relevant period. The more significant of those depositions, however, was taken in April 2021 by my partner, Andrew Croner, and focused on BASF's corporate history and assumption of AFFF-related liabilities. During that deposition, Mr. Croner was able to establish that—despite having never manufactured AFFF or any of its components—BASF assumed *all* pre-2003 litigation and environmental liabilities associated with the Lodyne-brand fluorosurfactants used in telomer AFFF when the company acquired Ciba Corporation via stock purchase in 2009.⁴⁰

D. Contributions to the Telomer AFFF Water Supplier Program

48. As the Court is aware, following the public announcements of the 3M and DuPont PWS Settlements in June 2023, my Co-Leads (which now included Mr. Rice) and I quickly shifted our focus to addressing the remaining Telomer AFFF/Component Defendants via a new bellwether process. After helping negotiate a proposed CMO with the DCC that set forth the protocol and schedule for this process, the PEC turned its attention to identifying representative cases to propose including the bellwether pool. As with the first bellwether track established in this MDL, we worked with the other Co-Lead firms to develop an internal form for PEC members to complete with information that could be used to evaluate whether their water supplier cases should be considered for inclusion in the bellwether pool. The PEC's screening process for this second bellwether process was even more intense than the first, however, as each candidate needed to be thoroughly vetted to ensure there was evidence supporting the use of telomer AFFF products at the relevant sites. As a result, the Tier One discovery pool for this bellwether process only included four cases, one of which was a case our firm filed on behalf of the Village of Farmingdale located in Nassau, New York.

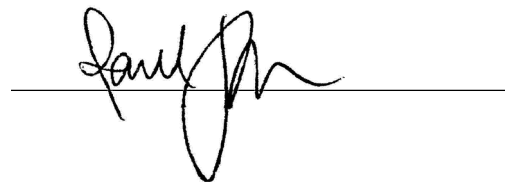
⁴⁰ See Munsell Tr. 101:10-103:17.

49. Once selected, our firm was tasked with shepherding the Farmingdale case through the Tier One discovery process, which required responding to discovery requests and deficiency letters served by the DCC, collecting and producing more than 46,000 documents responsive to the DCC's request, and preparing for and defending a Rule 30(b)(6) deposition of the Village of Farmingdale. Further, while the Farmingdale case was not selected to advance to the second phase of the bellwether process, my firm was involved in the review and evaluation process to select the cases that did advance and will remain involved in some aspects the preparation of those cases for trial.

50. The Tyco and BASF PWS Settlements would simply not have been possible without the intense and extensive work performed since the inception of this MDL, including as described above the work needed to defeat the government contractor defense, as well as the work that went into the bellwether workup for the Telomer AFFF/Component Defendants.

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

Executed this 19th day of July 2024

A handwritten signature in black ink, appearing to read "Paul J. [unclear]", is written over a solid horizontal line. The signature is cursive and somewhat stylized.

EXHIBIT

G

Attorneys' Fees and Costs related to the Tyco and BASF settlements that have recently been provided Preliminary Approval by this Court.

2. This Declaration is being provided specifically to describe the scope of work that went into the negotiations and ultimately resolution that led to the two settlements for Public Water Systems ("PWS") with Tyco Fire Products LP ("Tyco") and BASF Corporation ("BASF"). Included is the work that was involved in coordinating with other members of the Plaintiffs' Executive Committee ("PEC") related to Tyco and BASF, the Preliminary Approval process, and post-settlement tasks up to this time. I have personal knowledge of the following facts, and if called as a witness, I could and would testify competently to them.

PROFESSIONAL EXPERIENCE

3. I am a Member of Motley Rice LLC with its principal place of business in Charleston County, South Carolina.
4. As an attorney since 1979 I have concentrated my practice on complex civil litigation. I have been extensively involved in national litigation including Asbestos, Tobacco, *In re: Oil Spill by the Oil Rig, "Deepwater Horizon" In the Gulf of Mexico*, on April 20, 2010, MDL No. 2179 (E.D. La.), *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.), and *In Re: National Prescription Opiate Litigation*, MDL No. 2804 (N. D. Oh.), among other matters. For the last 25 years I have concentrated my focus on resolution of complex civil litigation.

5. I have significant experience in serving as lead counsel, negotiating counsel, and/or class counsel in complex litigation cases, including environmental. Cases include the following:

- a. Asbestos Litigation. I have had clients appointed by the Bankruptcy Trustee in over twenty Asbestos Trusts to serve on the Unsecured Creditors' Committee. In most situations, as their counsel, I have led the negotiations that resulted in resolution of those Bankruptcies and created over \$20 billion in funds for asbestos victims.
- b. National Tobacco Litigation. In conjunction with my partner, Ron Motley, I was extensively involved in the National Tobacco Litigation. In 1996 and 1997 I participated in the negotiations that led to the attempted Congressional resolution. Subsequently, in 1997 and 1998, I was Lead Negotiating Counsel for the State Attorneys General in reaching the National Tobacco Master Settlement that has paid States over \$200 billion and continues to function today.
- c. *In re: Oil Spill by the Oil Rig, "Deepwater Horizon" In the Gulf of Mexico*, on April 20, 2010, MDL No. 2179 (E.D. La.). I oversaw the negotiation of economic loss claims, including property damages, for a Class of victims, commercial businesses, and individuals, impacted by the oil spill. I was appointed by the MDL Court to the Plaintiffs' Steering Committee. The Class benefits paid to date exceed \$14 billion. The BP Class Settlement has been recognized as one of the largest, successful, and multi-faceted settlements in American history. The Class included all persons in a four-state area that were impacted by economic losses by the spill.

- d. *In Re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.). I served on the MDL Plaintiffs’ Steering Committee and as Lead Negotiating Counsel for the victims of the Volkswagen emissions defeat device that led to a recall of hundreds of thousands of vehicles, and damages for their owners.
 - e. *In Re: National Prescription Opiate Litigation*, MDL No. 2804 (N. D. Oh.). I currently serve as one of three Co-Leads in the Opioid MDL pending before the Honorable Dan Polster. I also serve as Chair of the Negotiating Committee for that MDL, which has to-date entered settlements in excess of \$50 billion for Opioid Abatement.
6. On August 22, 2023, the Court appointed me as Co-Lead Counsel in MDL 2873, subsequently as one of the Class Counsel in the Dupont and the 3M Class Settlements, and more recently as one of the preliminarily approved Class Counsel in the Tyco and BASF Class Settlements. In the summer of 2023 after being appointed I spent considerable time with the existing Co-Leads, as well as with Fred Thompson and David Hoyle of my office doing a deep dive into the status of the litigation. I spent extensive time studying the Dupont and 3M Settlements. I met with Private Water System clients to discuss the pros and cons of the Settlements, and the alternatives. Since that time, I have been extensively involved in Leadership of the MDL, including meeting with the proposed Class Representatives in the Tyco Settlement, and many of the expert witnesses. Prior to being appointed as Class Counsel in the MDL I had general conversations with Joseph Petrosinelli, who was representing Tyco, about the AFFF litigation. I had previously worked with Mr. Petrosinelli in other complex civil litigation.

THE NEGOTIATIONS WITH TYCO AND BASF

7. The negotiations with Tyco and BASF have previously been provided in the Declaration in Support of Preliminary Approval of the settlements. Below I focus only on the Motion for Attorneys' Fees and Costs.
8. As the Court is aware, this is a continuing litigation. Obviously, the work that was done by Class Counsel in 3M and DuPont (Co-Lead Counsel and the members of the PEC), has been previously documented with the Court. While that work was used extensively in proceeding with Tyco and BASF in negotiations, much work was done directly related to Tyco and BASF prior to reaching these settlements, including work in the on-going bellwether process, as well as the negotiations.
9. When I was appointed by the Court to be Co-Lead Counsel in this litigation, I began to familiarize myself with the litigation. While I immediately concentrated on 3M and DuPont, I also began spending time investigating the liability and responsibility of Tyco, BASF, and other AFFF defendants.
10. I learned that informal settlement discussions began with DuPont in the spring of 2020, and 3M shortly thereafter. I learned that Tyco and BASF had been having conversations in early 2022 with then Co-Lead Counsel. These discussions were sidelined somewhat by the 3M and DuPont settlements and the settlement process, which the parties watched anxiously for the Court's reaction to the settlements as well as the clients' approval process.
11. In early 2024 settlement discussions with Tyco and BASF began again, and that led to meetings with the mediators starting back up in February 2024.

12. Co-Lead Counsel and their Negotiation Team met with each defendant regularly through February, March, and April, of 2024, and had separate meetings among themselves to inform the negotiating strategy with regard to not only Tyco and BASF, but other remaining defendants.
13. After multiple meetings, both in person and virtual, we worked through the settlement drafts and in early April we reached final agreement-in-principle with Tyco that was later documented by the Tyco Settlement Agreement executed on April 12, 2024.
14. There are differences between the 3M and DuPont settlements and the settlement reached with Tyco. As the Court noted, the settlement only resolves claims on behalf of water providers whose systems have current PFAS detections, rather than on behalf of all PWS who may or may not have current PFAS detections, a principal difference between 3M and DuPont.
15. Adjusting these terms and working out the ramifications of this significant shift brought complications to the negotiations, including in-depth discussions about baseline testing requirements and results, anticipated EPA regulations, and adjustments to damages models, all requiring additional work specific to Tyco and BASF by Co-Leads and the Negotiation Team.
16. The damages models that had been previously approved by the Court in the 3M and DuPont settlements have received widespread approval and acceptance by the PWS, therefore following that model for Tyco and BASF appeared to be supported by Class Members, and was confirmed to be supported by the PEC when put to a vote on July 2, 2024, during a PEC conference call.

17. The negotiations with BASF intensified after the announcement of the Tyco settlement, and BASF only wanted to resolve claims on behalf of water providers with current PFAS detections as well. Using the work done in 3M, DuPont, and now Tyco, we were able to reach agreement with BASF, and the BASF settlement was executed in late May of 2024.
18. The Court is aware of the post-settlement work and the motions practice specific to the Tyco and BASF settlements. One significant administrative change was to implement the use of an Opt Out Administrator in these settlements streamline the opt out process and facilitate reconciliation across the parties' record keeping with respect to opt outs. Proposed Class Counsel believed that this change would, and will, be a positive impact on the opt out process. The Opt Out portal should simplify the process and allow the parties and Court-appointed neutrals to provide the Court with much more direct information.

FEE STRUCTURE WORK WITH EXPERTS AND PEC APPROVAL

19. Over the last eighteen months there has been significant work done with the PEC to have more PEC members involved in discussions related to settlements, strategy, and fees and costs management. With the cooperation of the PEC at multiple in-person meetings held in Miami and Charleston, we have increased the efficiency and cooperative work of the PEC. We have received full support from the PEC on these settlements, as well as on the fee structure that has been provided, that now has been used in 3M and DuPont. We seek permission from the Court to follow the same eight percent (8%) fee and reimbursement of common benefit costs expended approach as was followed in the 3M and DuPont settlements in Tyco and BASF.

CONCLUSION

20. As to my experience in MDLs, Class Actions, and fee determinations, I believe the achievements of the Tyco and BASF settlements, following closely on the achievement of the 3M and DuPont settlements, was another significant move toward the resolution of PWS claims. The details concerning the depositions, documents produced, and hours spent can be found in the declaration filed by Michael London on behalf of Co-Leads.
21. I personally observed the dedication and time spent by many lawyers and staff who worked on these settlements, and their willingness to make themselves available seven days a week as necessary to provide input and information. As in any settlement, there was significant time required, as well as inconveniences suffered. If called to testify, I would testify that the request of an eight percent (8%) fee from the Tyco and BASF settlements, and reimbursement of the out-of-pocket expenditures, is reasonable, fair, and equitable. As preliminarily approved Class Counsel, and as Co-Lead Counsel, I respectfully submit that this Motion for Attorneys' Fees and Costs should be approved by the Court. I further believe that moving forward, these two settlements on behalf of PWS can and will be used as a springboard to begin addressing other categories of injuries and claims currently before the Court in this MDL.

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

Executed this 19th day of July 2024, at Mount Pleasant, Charleston County, South Carolina.



JOSEPH F. RICE

Motley Rice LLC
28 Bridgeside Boulevard
Mount Pleasant, South Carolina 29464

EXHIBIT

H

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE: AQUEOUS FILM-FORMING FOAMS) Master Docket No.:
PRODUCTS LIABILITY LITIGATION) 2:18-mn-2873-RMG

CITY OF CAMDEN, et al.,) Civil Action No.:
) 2:24-cv-02321-RMG

Plaintiffs,

-vs-

TYCO FIRE PRODUCTS LP, individually and as)
successors in interest to The Ansul Company, and)
CHEMGUARD, INC.)

Defendant.

CITY OF CAMDEN, et al.,) Civil Action No.:
) 2:24-cv-03174-RMG

Plaintiffs,

-vs-

BASF CORPORATION, individually and as successor in)
interest to Ciba Inc.,)

Defendant.

DECLARATION OF STEPHEN J. HERMAN, ESQ.

I, the undersigned,

STEPHEN J. HERMAN

respectfully declare, under penalty of perjury, that the following are true and correct to the best of my knowledge, information, recollection, and belief:

1. I am licensed to practice law in the State of Louisiana, the United States District Courts for the Middle, Eastern and Western Districts of Louisiana, the U.S. Fifth Circuit, Second Circuit, Ninth Circuit, and Eleventh Circuit Courts of Appeal, and the U.S. Supreme Court. I am also licensed to practice in the State of Arizona.

2. Among other things, I:
 - teach the Complex Litigation: Advanced Civil Procedure course at Tulane Law School;
 - teach an Advanced Torts Seminar on Class Actions at Loyola Law School;
 - am a fellow of the International Academy of Trial Lawyers (IATL) and a member of the American Law Institute (ALI);
 - served as one of two court-appointed Liaison Counsel for Plaintiffs, Lead Class Counsel for Plaintiffs, and Chairs of the Fee Committee, in the BP Oil Spill Litigation, *In re Deepwater Horizon*, MDL No. 2179;
 - served as one of several court-appointed Settlement Class Counsel for the Taishan Class Settlement in the *Chinese Drywall Litigation*, MDL No. 2047;
 - have authored and co-authored several law review articles regarding the responsibilities of common benefit attorneys in MDLs and the determination of common benefit fees;¹
 - was named one of the Top Attorney Fee Experts in Class Actions by the National Association of Legal Fee Analysis (NALFA) in 2018;
 - serve as the current Chair of the Class Action Section of the LSBA;
 - serve on the standing LSBA Rules of Professional Conduct Committee;
 - am a Past President of the Louisiana Association for Justice (formerly the Louisiana Trial Lawyers Association), the National Civil Justice Institute (formerly the Pound Civil Justice Institute), and the Civil Justice Foundation, as well as the current President of the New Orleans Bar Association, and a long-standing member of the Board of Governors of the American Association for Justice (formerly the Association of Trial Lawyers of America);
 - previously served as a Lawyer Chair for one of the Louisiana Attorney Disciplinary Board Hearing Committees;
 - was appointed to serve on the Louisiana Supreme Court Committee on Rules of Professional Conduct for Class Actions, Mass Torts and Complex Litigation;

¹ See “Duties Owed by Appointed Counsel to MDL Litigants Whom They Do Not Formally Represent,” Loyola Law Review, Vol. 64, p.1 (Spring 2018); “Layers of Lawyers: Parsing the Complexities of Claimant Representation in Mass Tort MDLs,” co-authored with Lynn A. Baker, Lewis & Clark Law Review, Vol.24, Issue No.2, p.469 (Spring 2020); “Percentage Fee Awards in Common Fund Cases,” co-authored with Russ M. Herman, Tulane Law Review, Vol. 74, Nos. 5-6, p.2033 (June 2000).

- am frequently asked to write, speak, and provide expert opinion and advice regarding class actions, complex litigation, legal ethics and professionalism, and attorneys' fees.

A full resume is attached hereto and incorporated herewith as ADDENDUM A.

3. I was originally retained by Class Counsel with respect to the DuPont and 3M Settlements in the above-captioned MDL to provide the Court with information and opinions based upon my own personal experience, knowledge and expertise, regarding their request for an award of reasonable class counsel fees – and, in particular, the way in which an appropriate national hourly rate can, and in my opinion should, be employed in any “cross-check” for reasonableness of the requested percentage-of-benefit fee.² Class Counsel have now asked me to submit a similar declaration in connection with the proposed Tyco and BASF settlements.
4. In submitting this declaration, I am mindful and respectful of the Court’s role as the expert on the law in this case. It is not my intent to simply suggest legal opinions or conclusions. It is my hope, rather, that the Court might benefit from viewing the relevant legal principles and precedent through the lens of someone engaged in active practice within the legal community, with factual knowledge about the legal market, and personal experience in the litigation and management of mass, class, and MDL cases. It is in this spirit that I offer the information and observations that follow herein, in the hope it might be helpful to the Court in reaching a fair and just determination.
5. I am being compensated at a rate of \$950/hr.
6. The materials considered and relied upon are cited throughout the Declaration and/or listed in ADDENDUM B.

SUMMARY OF OPINION

7. While not generally required, some courts may employ a “lodestar”-type “cross-check” in evaluating the overall reasonableness of a percentage-of-benefit class counsel or other common benefit fee. In a complex MDL of this nature, which is national in scope and requires the commitment of many plaintiffs’ firms working together from across the country, it is appropriate to use a national blended rate in the event that such a lodestar-type cross-check is performed.
8. The attorneys appointed to MDL leadership generally, and the Plaintiff Executive Committee Members involved in this case in particular,³ have high levels of knowledge,

² See DUPONT DECLARATION, Rec. Doc. 3795-10, No. 2:18-mn-2873, signed on October 13, 2023 and filed on October 15, 2023, and 3M DECLARATION, Rec. Doc. 4269-12, No. 2:18-mn-2873, signed on November 30, 2023 and filed on December 18, 2023.

³ In this particular MDL, the Plaintiff Executive Committee (PEC) includes firms that are not only highly experienced and respected in complex and environmental litigation generally, but are also among the relatively few firms with specialized experience in these particular types of water system contamination cases.

skill, experience, and reputation, as compared with the ordinary attorney whose hourly rates are likely to be reflected in averages from general survey data or prior awards in run-of-the-mill statutory fee-shifting cases.

9. In addition, Multi-District Litigation of this nature is much more difficult, expensive, lengthy and complex than a single-plaintiff civil rights, employment benefits, or consumer fraud case.
10. An obvious indication of reasonable and appropriate hourly rates in this litigation would be the hourly rates that are, in fact, being paid to attorneys compensated on an hourly basis in connection with AFFF Litigation. (Economically speaking, the hourly rates for common benefit attorneys should be considerably higher, as they are advancing their own costs, and accepting, at the very least, multi-year delays in payment, along with the contingent risk of non-collectability. However, these factors are, in my view, properly accounted for in the multiplier, as opposed to the base “lodestar” rate.)
11. Taking the relevant *Johnson / Barber* factors into account, a blended rate in the range of \$725 - \$825 per hour for cross-check purposes here is supported by the following points: the hourly rates being billed by the firms defending the litigation; the hourly rates being billed by lawyers working for the creditors’ committee in AFFF-related bankruptcy proceedings; the hourly rates which have been approved for these and other class action attorneys in other class actions; and the blended rates that have been approved in large complex MDLs, including the blended hourly cross-check rates that were previously approved in this MDL in connection with the DuPont and 3M Settlements.⁴

Background and Overview of Legal Principles

12. Over the past thirty years, I and other members of my firm have participated in numerous putative class actions, certified class actions, Federal MDLs, and State Court consolidated proceedings.
13. In connection with these proceedings, and otherwise, I have worked with many of the nation’s leading MDL, class action, and other complex litigation firms, including many of the lawyers and firms involved in the AFFF Litigation.⁵ (And, with respect to those

⁴ ORDER AND OPINION, *In re AFFF*, No.18-2873, Rec. Doc. 4885 (D.S.C. April 23, 2024) at p.14 [also available at 2024 WL 1739709, at *8].

⁵ While I am familiar with virtually all of the PEC firms through the American Association of Justice and other organizations, I personally worked with Mr. Summy in the *BP Oil Spill* MDL and other lawyers from Baron & Budd in both the *Chinese Drywall* MDL and *BP*; I worked closely with Mr. Rice in the *BP Oil Spill* MDL and have worked with lawyers from Motley Rice in several MDLs and complex cases throughout my career; I have worked with lawyers from Levin Papantonio in the *BP Oil Spill* MDL, the *Chinese Drywall* MDL, and several other cases; I have worked with Levin Sedran Berman lawyers in the *Propulsid* MDL, the *Vioxx* MDL, the *Chinese Drywall* MDL, the *BP Oil Spill* MDL, the *Tylenol* MDL, and numerous other cases; I worked with Weitz & Luxenberg in the *BP Oil Spill* MDL and the *Roundup* Litigation; I have served on the NCA Board with Carl Solomon, and we have taught together at AAJ Deposition Colleges; Ms. Pearson and I served together as Officers of the National Civil Justice Institute; my firm worked with Gary Douglas and the Douglas & London firm in the *Xarelto* Litigation; and I know both Phil and Christina Cossich well: Mr. Cossich and I served together as Presidents of the Louisiana Association of Justice and I worked with both him and Christina in the *BP Oil Spill* MDL.

specific Plaintiff Executive Committee members, I know them to be highly skilled, experienced, and dedicated attorneys, who enjoy the highest of reputations among firms throughout the country in complex, class action, MDL, and environmental litigation.)

14. In several situations, the attorneys agreed or were required to submit contemporaneous time records to a lead firm, accountant, special master, or administrative committee over the course of the litigation, on a periodic basis. And, in many but not all of these cases, the firms were asked or required to submit their hourly rates.
15. In cases where the plaintiffs were ultimately successful, class counsel and/or other common benefit fees were overwhelmingly, if not exclusively, awarded on a percentage-of-fund or percentage-of-benefit basis.
16. Nevertheless, in many of these situations, time records were agreed or required to be submitted (if they had not been previously) for either a lodestar-type “cross-check” and/or for internal allocation purposes (*i.e.* the division of an aggregate class or other common benefit fee award between and among the participating common benefit firms).
17. This appears consistent with the prevailing practice among District Courts within the Fourth Circuit.⁶
18. One of the main advantages in applying the percentage-of-benefit method is that it avoids a time-consuming and detailed review and evaluation by the Court of voluminous time records.⁷

⁶ “Courts have increasingly favored the percentage method for calculating attorneys’ fees in common fund cases.” Kay Co. v. Equitable, 749 F.Supp.2d 455, 462 (S.D.W.Va. 2010) (*citing* MANUAL FOR COMPLEX LITIGATION (Fourth) §14.121 at 187; THIRD CIRCUIT TASK FORCE REPORT, *Selection of Class Counsel*, 208 F.R.D. 340, 355 (Jan. 15, 2002)). At the same time, many courts within the Fourth Circuit have incorporated a “lodestar cross-check” into their review of a percentage-based attorney fee. Kay, 749 F.Supp.2d at 463; *see also, e.g., Unger v. Furman Univ.*, No.21-379, 2021 U.S.Dist.LEXIS 249549 (D.S.C. Dec. 3, 2021) (“many courts apply both the percentage-of-the-fund and the lodestar methods as a ‘cross-check’ to ensure that the award is fair and reasonable”); Mullinax v. Parker Sewer & Fire Subdistrict, No.12-1405, 2014 U.S.Dist.LEXIS 199340 (D.S.C. March 11, 2014) (although the Fourth Circuit has not issued any definitive guidance about which methodology is preferred for awarding or approving attorney’s fees in class action cases, “numerous district courts within the Fourth Circuit have used the percentage of the fund method, and many have also employed the lodestar cross-check”); DeWitt v. Darlington County, No.11-740, 2013 U.S.Dist.LEXIS 172624 (D.S.C. Dec. 6, 2013) (numerous district courts within the Fourth Circuit have used the percentage of the fund method, many with a “cross-check,” and judges in the District of South Carolina have used the percentage-of-the-fund framework with a modified lodestar cross-check). *See also, e.g., Cantu-Guerrero v. Lumber Liquidators*, 952 F.3d 471, 482 n.7 (4th Cir. 2020) (“*Lumber Liquidators I*”) (describing the “lodestar cross-check” in the context of a CAFA ‘coupon’ case decision).

⁷ *See, e.g.,* HERMAN, Percentage-of-Benefit Fee Awards in Common Fund Cases, 74 Tul.L.Rev. 2033, 2038-2039 (June 2000); *citing*, THIRD CIRCUIT TASK FORCE, *Court Awarded Attorney Fees: Report of the Third Circuit Task Force*, 108 F.R.D. 237, 246-249 (1985); Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1268-70 (D.C.Cir. 1993).

19. Therefore, when a cross-check on the reasonableness of a percentage fee request is undertaken, the lodestar-type methodology is only applied in a “broad,” “rough,” “abbreviated,” “streamlined” and “imprecise” way.⁸
20. Finally, and relatedly, it is important to recognize that the approved rates (and multipliers) in these cross-check decisions tend to skew low. The Court is not generally being asked to determine “*the*” reasonable rate or multiplier, or a reasonable *range* of rates and multipliers, or the *highest* reasonable rate or multiplier; rather, the question for the Court is simply whether a percentage-of-benefit fee request is reasonable in light of the hours expended, the work performed, the risks assumed, and other relevant factors.
21. In the *BP Oil Spill Litigation*, for example, BP agreed to pay a sum certain in common benefit fees well before it was known how many hours would ultimately be expended or the eventual size of the recovery / benefit / fund. Indeed, Judge Barbier himself comments that “the fees sought here are not only reasonable, they are arguably below what class counsel could have reasonably requested.”⁹

⁸ See, e.g., *Lumber Liquidators I*, *supra*, 952 F.3d at 482 n.7 (a so-called “lodestar cross-check” is the comparison of a calculation of attorney’s fees using the percentage-of-recovery method to a “rough” or “imprecise” lodestar calculation); see also, e.g., *In re Deepwater Horizon*, MDL No. 2179, Rec. Doc. 21849 [2016 U.S. Dist. LEXIS 147378] (E.D.La. Oct. 25, 2016) at p.30 (“the Court will perform an abbreviated lodestar analysis as a broad cross-check on the on the reasonableness of the fee arrived at by the percentage method”) and at p.39 (“the loadstar cross-check is a streamlined process, avoiding the detailed analysis that goes into a traditional lodestar examination”); *In re Vioxx*, 760 F.Supp.2d 640, 652 (E.D.La. 2010) (“The lodestar analysis is not undertaken to calculate a specific fee, but only to provide a broad cross check on the reasonableness of the fee arrived at by the percentage method”).

⁹ *In re Deepwater Horizon*, MDL No. 2179, Rec. Doc. 21849 [2016 U.S. Dist. LEXIS 147378] (E.D.La. Oct. 25, 2016) at p.39. See also, e.g., p.40, fn.14 (noting that (1) According to the 2014 National Law Journal Survey, the average nationwide rate was \$604 for partners and \$370 for associates. (2) The State of Louisiana reportedly paid its outside counsel in the BP MDL \$600 per hour. (3) Professor Miller, BP’s expert in support of settlement approval, reported in 2014 median rates between \$810-\$980 for partners in bankruptcy matters. (4) In 2011, Kirkland & Ellis, BP’s Lead Trial Counsel, reported in a bankruptcy proceeding rates of \$580-995 for partners and \$340-995 for other attorneys).

A National Blended Rate for MDL Attorneys

22. Billing rates can be “blended” both in the sense that the billing rates of partners, special counsel, associates, paralegals and other relevant time-keepers have been blended together into a single hourly rate, and/or in the sense that billing rates have been blended across multiple firms and/or multiple jurisdictions into a single rate or set of rates.¹⁰
23. In several of the MDLs in which I have been involved, the Court, in applying a lodestar-type “cross-check,” utilized and applied a national blended rate, such that the hours of all time-keepers in the MDL, irrespective of firm, practice level, or geographical location, were blended together into one single rate.¹¹
24. Based on my experience, this makes a lot of sense.
25. A few of the firms engaged in plaintiff MDL practice have performed a sufficient amount of commercial, corporate and/or defense work to have established standard hourly billing rates. In addition, some of the more prominent class action firms have had their fees formally accepted in enough judicial proceedings that they can be said to have established hourly rates. (Which may also be true of a handful of firms that engage in substantial litigation under fee-shifting statutes, like ERISA or Civil Rights cases.) But many of the plaintiff firms who contribute to the common benefit effort in MDLs work overwhelmingly under percentage contingency fee contracts with their clients, and essentially have no standard or established hourly rates.
26. As we observed in the *BP Oil Spill Litigation*:
- “ ... many of the petitioning Common Benefit Attorneys typically work on a contingency fee basis, and have no established hourly rates. The hourly business that some of the Common Benefit Firms do have is generally limited, or sporadic; the applicable rates vary widely by the type of matter, and by geography; and would typically arise in family law, or real estate, or small business commercial matters, or other one-off disputes, which are not very

¹⁰ As the Court discusses in *Rite Aid*, for example: “The lodestar multiplier equals the proposed fee award divided by the product of the total hours worked by class counsel and blended billing rates that approximate the fee structure of all the attorneys who worked on the matter.” And further: “We read the Court of Appeals’ approval of ‘blended rates’ in conjunction with its recognizing that the lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. A traditional lodestar calculation would require the court to monetize the value of the work that each lawyer expends on a case (by multiplying the number of hours that she worked by her hourly rate) and then to arrive at the ‘lodestar’ by summing the values of each lawyer’s contribution. This sort of ‘bean-counting’ becomes unnecessary if the court approximates the lodestar by simply multiplying an appropriate ‘blended rate’ and the total number of hours worked by all class counsel. Our error in *Rite Aid II* occurred in ‘blending’ only the rates of the most senior attorneys when we should have ‘blended’ the rates of all attorneys.” *In re Rite Aid*, 362 F.Supp.2d 587, 589 and n.1 (E.D.Pa. 2005). [*Note* that it is my understanding that, in many securities and/or consumer class action cases, lead class counsel only blend the rates of law firm partners, of counsel/special counsel, and associates, while submitting the time and rates of paralegals, law clerks and/or contract reviewers separately. Obviously, in those cases, the “blended” attorney rate is going to be higher than cases like this, where paralegal and staff attorney or law clerk rates are also being blended into the single hourly rate for cross-check purposes.]

¹¹ See, e.g., *Deepwater Horizon*, Rec. Doc. 21849, at p.40; *Vioxx*, 760 F.Supp.2d at 660.

comparable to this type of high-stakes complex litigation. While some of the Common Benefit Firms have had specific rates submitted and approved in previous class actions, the experience of some of those attorneys has been fairly isolated, and/or occurred in the relatively distant past. And even the rates of more established class action firms tend to vary somewhat according to the type of litigation, the firm's role in the litigation, and, where blended, the rates of the other firms who were participating in the litigation alongside them. Therefore, the Fee Committee did not attempt to solicit or present what might be claimed to be the Common Benefit Attorneys' individual or average blended hourly 'rate.' We have, instead, looked to publicly available information regarding hourly billing rates throughout the country, as well as rates which have been approved for plaintiff attorneys working on comparable complex litigation.”¹²

27. Nor does it really make sense to tie the relevant rate to the jurisdiction in which the transferee court just happens to be sitting.
28. Neither the benefit nor the percentage-of-benefit is dependent on the geographical location of the transferee court, and the approval of a requested percentage as “reasonable” does not generally vary in class action or MDL cases according to the venue where the court is sitting.¹³
29. Nor, for the most part, are the individually retained attorneys hired to represent litigants in the case determined by the District chosen by the JPML.
30. While certainly some attorneys are chosen based on the Transferee District, the representation of most MDL Defendants is, in my experience, orchestrated and in substantial part conducted by national firms, whose lawyers generally work in and/or travel to the extent necessary from large cities, with generally high hourly rates.

¹² FEE PETITION, *In re Deepwater Horizon*, MDL No. 2179, Rec. Doc. 21098 (E.D.La. filed July 21, 2016), at pp.108-109. (And this approach was essentially accepted and adopted by the Court. See *Deepwater Horizon*, MDL No. 2179, Rec. Doc. 21849 (E.D.La. Oct. 25, 2016) at p.40 and fn.14.) Although not specifically cited in our papers, nor explicitly relied upon by the Court, I had made a similar observation in a co-authored law review article in 2000. See HERMAN, 74 Tul.L.Rev. at 2040 (“One flaw, in this respect, is the lodestar method’s use of the attorney’s customary billing rates, despite the fact that a great number of class actions and other complex cases are handled by plaintiffs’ attorneys who commonly work on a contingent percentage-of-benefit basis and have no customary hourly rate. A similar flaw is the use of the attorney’s customary rate in the attorney’s geographical area. In many complex cases, attorneys from all over the country are working together on a ‘national’ group of claims. According to the *Lindy* method, a big city lawyer who played a peripheral role in the litigation might be awarded a larger fee than a small-town plaintiffs’ attorney who was essential to the successful resolution of the case. Also, under the *Lindy* method, a defense attorney with a customarily high hourly rate who has no experience in handling a consumer class action would be entitled to a larger attorney’s fee than an experienced contingency fee lawyer who could have resolved the case more quickly and efficiently with a greater recovery for the class”); see also REPORT OF THE THIRD CIRCUIT TASK FORCE, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 247 (1985) (“many plaintiffs’ lawyers who seek fees usually work on the basis of contingent fee arrangements and do not have a ‘customary’ or ‘normal’ billing rate”).

¹³ In the U.S. Ninth Circuit, the Court has established a “benchmark” fee of 25% in successful class actions, which could have some effect on a common benefit award in that Circuit. (The Seventh Circuit also uses a sliding scale of percentage benchmarks and risk factors.) But in MDLs like this one, the basis of comparison for percentage-of-benefit common benefit fees generally tends to be the percentages awarded in other MDLs, irrespective of where the lawyers, the litigants, or even the MDL Transferee Court are located.

For example, the Lead Attorneys for Tyco are Joseph Petrosinelli and Liam Montgomery from Williams & Connolly's Washington DC office,¹⁴ along with other Williams & Connolly attorneys, including Jacqueline Liat Rome and Jessica Pahl, in DC. The PACER Docket reflects that Tyco has also been represented in the MDL by additional law firms from Washington DC and Chicago, along with Duffy & Young in Charleston and Nelson Mullins Riley & Scarborough in Columbia, SC.

BASF is represented by Matthew Holian, John Wellschlager and Jessica Wilson of DLA Piper, in Boston, MA.¹⁵

Other Defendants are represented by Norris McLaughlin in New York; Norris McLaughlin in New Jersey; Smith Anderson in Raleigh; Goldberg Segalla in New York and New Jersey; Day Pitney in Boston and Hartford; Sullivan & Cromwell in New York; Sullivan & Cromwell in Washington DC; Kazmarek Mowrey in Birmingham and Atlanta; Parker Poe in Raleigh and Charlotte as well as Charleston; Crowell & Moring in Washington DC; Allen Glaessner in San Francisco; Sidley Austin in Chicago; Arnold & Porter in Washington DC; Kilpatrick Townsend & Stockton in Atlanta; Orrick in New York; Morgan Lewis in Los Angeles and San Francisco; Dechert in New York; Hogan Lovells in Houston; Cozen O'Connor in Los Angeles; Gordon & Rees in Seattle; Resnick & Louis in Scottsdale; Bernstein Shur in Portland, Maine; Jones Day in New York; King & Spaulding in Los Angeles; Baker & Hostetler in Houston and Washington DC; Bryan Cave in St. Louis; Freeman Mathis & Gary in Boston and Philadelphia; Hinshaw & Culbertson from Boston; Greenberg Traurig in Philadelphia; Shook Hardy in Kansas City; Bartlit Beck in Chicago; and Gloor Law Group from Chicago.¹⁶

The Court initially appointed a Defense Coordinating Committee including lawyers with Williams & Connolly in Washington DC, Mayer Brown in Chicago, Sive Paget & Riesel in New York City, and from the Department of Justice in Washington DC, as well as lawyers from Charleston and Columbia SC, with Lead Defense Counsel from Chicago and Washington DC.¹⁷ Additional Sub-Group Defense Counsel were appointed from Philadelphia, Little Rock, Washington DC, Miami, and Kansas City.¹⁸

¹⁴ See, e.g., CLASS ACTION SETTLEMENT AGREEMENT, *Camden v. Tyco, et al.*, No.24-2321 (D.S.C. dated and filed April 22, 2024) at p. 10, ¶2.71 (defining Tyco's Counsel) and p.41, ¶13.15 (Notice to Parties) (directing that copies be provided to Joseph G. Petrosinelli and Liam J. Montgomery at Williams Connolly in Washington D.C.).

¹⁵ See, e.g., CLASS ACTION SETTLEMENT AGREEMENT, *Camden v. BASF, et al.*, No.24-3174 (D.S.C. dated and filed May 23, 2024) at p. 2, ¶2.6 (defining BASF's Counsel) and p.39, ¶13.15 (Notice to Parties) (directing that copies be provided to Matthew A. Holian at DLA Piper LLP (US) in Boston, MA).

¹⁶ See Official Docket for the United States District Court for the District of South Carolina Case No. 2:18-mn-02873-RMG (as of July 10, 2024).

¹⁷ See CASE MANAGEMENT ORDER NO. 2, No.18-2873, Rec. Doc. 48 (D.S.C. March 20, 2019) ¶¶ 19, 21.

¹⁸ See CASE MANAGEMENT ORDER NO. 10, No.18-2873, Rec. Doc. 529 (D.S.C. March 23, 2020) ¶¶ 8-14. See also, generally CASE MANAGEMENT ORDER NO. 15, No.18-2873, Rec. Doc. 1358 (D.S.C. March 24, 2021) ¶¶ 7-9 and CASE MANAGEMENT ORDER NO. 24, No.18-2873, Rec. Doc. 2259 (D.S.C. March 30, 2022) ¶¶ 7-9) (see also CASE MANAGEMENT ORDER NO. 15.A, No.18-2873, Rec. Doc. 1858 (D.S.C. Aug. 16, 2021).

31. Similarly, the plaintiffs' lawyers performing common benefit work are not dependent on the venue of transferee court, but come from offices located all across the country.¹⁹ In this particular case, for example, Lead Counsel have their primary offices located in Dallas, New York City, and Puerto Rico, as well as Charleston, while the Plaintiffs' Executive Committee is made up of lawyers and firms from Philadelphia, Washington DC, Denver, Cleveland, Houston, Wisconsin, San Francisco, Hurley NY, Pensacola, Nashville, Miami, Belle Chasse LA, Birmingham, and Minneapolis, as well as Charleston, Mt. Pleasant, and Columbia SC.²⁰ Additionally appointed Co-Class Counsel for the DuPont and 3M Settlements is located in Chicago.²¹
32. These practical considerations are reflected in the caselaw.
33. For example, in the *Transvaginal Mesh Litigation*, Judge Goodwin, sitting in the Southern District of West Virginia, observed that "these MDLs encompass law firms from across the country and are national in scope" and therefore: "When selecting an hourly rate for determining legal fees the court cannot consider just one market because 'the relevant legal community' is one national in nature."²²
34. The U.S. Second Circuit Court of Appeals had recognized in *Agent Orange* that "the use of national hourly rates in exceptional multiparty cases of national scope, where dozens of non-local counsel are involved, appears to be the best available method of ensuring adherence to the principles of the lodestar analysis."²³ Judge Fallon, in the *Vioxx* MDL, used an average of the rates that were reported by the common benefit attorneys. Although recognizing that billing rates vary among legal markets, the Court found that "the attorneys come from states across the country. Thus a more national rate is the appropriate pole star to guide the Court."²⁴ This approach has also been followed, not only by Judge Goodwin in *Transvaginal Mesh*, but also by Judge Barbier in the *BP Oil Spill Litigation* and by Judge Doherty in the *Actos Litigation*.²⁵

¹⁹ The one notable exception is the appointment of Liaison Counsel. But even "Lead Counsel" are frequently appointed from outside the MDL Court's jurisdiction.

²⁰ See CASE MANAGEMENT ORDER NO. 2, No.18-2873, Rec. Doc. 48 (D.S.C. March 20, 2019) ¶¶2-4, and CASE MANAGEMENT ORDER NO. 3, No.18-2873, Rec. Doc. 72 (D.S.C. April 26, 2019) ¶6. See also CASE MANAGEMENT ORDER NO. 10, No.18-2873, Rec. Doc. 529 (D.S.C. March 23, 2020) ¶¶3-7; CASE MANAGEMENT ORDER NO. 10.A, No.18-2873, Rec. Doc. 536 (D.S.C. March 30, 2020); CASE MANAGEMENT ORDER NO. 14, No.18-2873, Rec. Doc. 1112 (D.S.C. Jan. 15, 2021); CASE MANAGEMENT ORDER NO. 15, No.18-2873, Rec. Doc. 1358 (D.S.C. March 24, 2021) ¶¶ 4-6; CASE MANAGEMENT ORDER NO. 24, No.18-2873, Rec. Doc. 2259 (D.S.C. March 30, 2022) ¶¶ 4-6.

²¹ See DuPont and 3M PRELIMINARY APPROVAL ORDERS, No.18-2873, Rec. Docs. 3603 and 3626 (D.S.C. Aug. 22, 2023 and Aug. 29, 2023) at pp. 4-5 ¶7 and at pp.12-13 §V(b).

²² In re Cook Medical, Inc., Pelvic Repair Systems Products Liability Litigation, 365 F.Supp.3d 685, 701 (S.D.W.Va. 2019).

²³ In re Agent Orange Prod. Liab. Litig., 818 F.2d 226, 232 (2d Cir. 1987).

²⁴ Vioxx, supra, 760 F.Supp.2d at 660. See also FALLON, *Common Benefit Fees in Multidistrict Litigation*, 74 La.L.Rev. 371, 383 (2014) ("When the attorneys come from all parts of the country, as is often the case, it is appropriate to use some average of the various rates").

²⁵ See Deepwater Horizon, supra, Rec. Doc. 21849 (Oct. 25, 2016) at p.40 (citing *Vioxx*); In re Actos, 274 F.Supp.3d 485, 521 (W.D.La. 2017) ("In reality, with an MDL, the 'relevant legal community' is, in fact, as the Honorable Eldon Fallon noted in *Vioxx* ... a national collective.... Therefore, this Court is of the opinion a broader view of what constitutes the 'relevant legal community' when dealing with an MDL of this size is appropriate to address a lodestar evaluation").

35. Fourth Circuit caselaw also recognizes that the specialized nature and complexity of a case may make it appropriate to look to the prevailing rates in other communities.²⁶ While those decisions sometimes ask whether it was reasonable or necessary for the litigant to have selected an attorney from outside the community in order to prosecute the case successfully, that type of consideration makes little sense within the context of an MDL.
36. No one doubts that there were and are attorneys within the District qualified to represent the plaintiffs in complex litigation (including some of the very common benefit attorneys and firms involved), but it would place the plaintiffs, collectively, at an extreme disadvantage if they could only draw from attorneys located within a Transferee District.
37. In order to successfully prosecute a case of this magnitude and complexity, the talents and resources of many law firms are necessary. In my experience, this is only accomplished by drawing on a diverse group of firms who can offer different levels of personal and financial commitment, across multiple areas of specialization and expertise, who can collectively afford to engage in a sustained, protracted, and at times all-consuming effort. Over the course of an MDL, different firms, and their attorneys, tend to get called away, from time to time, due to other personal and professional commitments. At those times, other lawyers and firms will have to step up. And it is difficult to predict at the outset who exactly will be necessary or available over the course of the litigation. There are only a limited number of firms around the country that have the specialized knowledge of complex and environmental law, the ability to commit their resources, and the willingness to invest their time, money and efforts into such a large and difficult case. The likelihood of finding such lawyers and firms within one judicial District is small to non-existent.

²⁶ See, e.g., Rum Creek Coal Sales, Inc v. Caperton, 31 F.3d 169, 175 (4th Cir. 1994); National Wildlife Federation v. Hanson, 859 F.2d 313, 317 (4th Cir.1988); Nutramax Laboratories, Inc. v. Manna Pro Products, No.16-1255, 2017 U.S.Dist.LEXIS 57964, 2017 WL 1371080 at *3 (D.S.C. 2017); Phillips v. Triad Guar. Inc., No.09-71, 2016 U.S.Dist.LEXIS 60950, 2016 WL 2636289 (M.D.N.C. May 9, 2016) (although Lead Counsel’s hourly rates are much higher than the hourly rates generally charged in this jurisdiction, “they are within the range of reasonableness for PSLRA cases, where the market for class action attorneys is nationwide and populated by very experienced attorneys with excellent credentials”); see also, e.g., McCurlley v. Flowers Foods, Inc., No.16-0194, 2018 U.S.Dist.LEXIS 226234 at *4 (D.S.C. Sept. 10, 2018) (“Class counsel representing the Class here has extensive, national class action experience. In addition, Defendants are part of a national corporation and the issues involved here are part of Defendants’ national operation. Under the circumstances of this case and the material implications to Defendants’ business model, class counsels’ rates are reasonably applied here”). [The undersigned previously directed the Court to a decision from the Middle District of Florida applying a national rate when evaluating a fee request by “perhaps the only consumer class action firm in Orlando,” explaining that “in complex consumer class actions, the ‘market rate’ derives less from an attorney’s physical location than from her actual competitors – wherever they may be.” ORDER, Anthony Sos v. State Farm, No.17-0890, Rec. Doc. 256 (M.D.Fla. March 19, 2021) (citing Jeffboat LLC v. Dir., OWCP, 553 F.3d 487, 491 (7th Cir. 2009) (reading “community” to imply a “community of practitioners” rather than the “local market area” and suggesting that the geographic scope may sometimes need to be expanded “particularly when ... the subject matter of the litigation is one where the attorneys practicing it are highly specialized and the market for legal services in that area is a national market”). The Court should be aware that the district court’s decision was reversed by the Eleventh Circuit in this regard. See Sos v. State Farm, No.21-1169, 2023 WL 5608014 at **21-22 (11th Cir. Aug. 30, 2023). At the same time, the *Sos* case is a single action, litigated by one set of counsel, within one venue, as opposed to a nationwide MDL of actions and lawyers from all over the country. Even in a single class action, moreover, the district court’s approach better comports with my knowledge of and experience in the legal market, and is more consistent with the Fourth Circuit caselaw *supra*.] See also, e.g., Linnins v. HAECO, No.16-486, 2018 WL 5312193 at *3 (quoting Rum Creek Coal Sales v. Caperton, 31 F.3d 169, 175, 179 (4th Cir. 1994) for the proposition that “where it is reasonable to retain attorneys from other communities, ... the rates in those communities may also be considered,” particularly “when the complexity and specialized nature of a case may mean that no attorney, with the required skills, is available locally”).

38. Indeed, MDL Transferee Judges are encouraged to appoint Steering Committees with geographical diversity.²⁷
39. The MDL transfer under 28 U.S.C. §1407 is for administrative and procedural purposes, and is not intended to alter substantive rights.²⁸
40. Neither the MDL litigants nor their attorneys select the venue.
41. Many of the attorneys representing MDL plaintiffs (and defendants) are hired before the MDL is established or the transferee court is selected.
42. Moreover, it is appropriate, if not necessary, to hire counsel in the various Transferor Districts, in the event that the matter is not resolved in the MDL and needs to be remanded back to the Transferor District – or some other appropriate District – for trial.
43. As Judge Doherty observed in the *Actos Litigation*:

“ ... in an MDL, there are as many separate counsel as there are separate claims, and each claim retains its own independent procedural vehicle, and identity, as well as its own home venue for resolution – the location and venue of the MDL court being only temporary in time, and limited in scope

“ ... in MDLs the venue *for resolution of each case* remains the venue of original filing for that case. There is no *collective venue* but for the *temporary* venue of the court, *temporarily* empowered to handle *pretrial* matters, with ultimate resolution to occur in the original court of proper venue, unless previously terminated within the MDL

“Thus, with an MDL, there is no inherent requirement that the transferee district(s) be the situs of the conduct complained of, nor the district where any party is located, nor where any counsel is located, nor where any acts might have occurred, nor where the work should or might be done. In fact, as a practical matter, often no party is a resident of the district selected for the MDL court, and it is not at all unusual that none of the counsel serving for the common benefit is from the location of the MDL court, nor is any of the

²⁷ This tends to be true even in “mass disaster” type MDLs that would seem to be geographically limited. In the *BP Oil Spill Litigation*, for example, many of the Steering Committee members were appointed from the affected Gulf Coast area; but the Committee also included Lieff Cabraser from San Francisco, Weitz & Luxenburg from New York, Baron & Budd from Dallas, Motley Rice from Charleston, and Jeffrey Briet from Virginia; additional common benefit attorneys contributed to the effort from places like Boston, New York, Philadelphia, Portland, Norfolk and Kentucky. *See, e.g.*, FEE COMMITTEE RECOMMENDATION, *Deepwater Horizon*, No.10-2179, Rec. Doc. 22628 (E.D.La. filed April 11, 2017). In the recent East Palestine Train Derailment Matter, which would seem to be fairly localized, the Court appointed a Steering Committee that includes lawyers from Nashville, Charleston, New York, Philadelphia, Puerto Rico, and Pensacola, among other places, with Co-Lead Counsel from Denver, San Francisco, and New York. *See, e.g.*, ORDER, *Feezle, et al v. Norfolk Southern*, No.23-0242, Rec. Doc. 28 (N.D.Ohio April 5, 2023).

²⁸ *See generally* *Lexecon Inc. v. Milberg Weiss*, 523 U.S. 26 (1998); *see also, e.g.*, *Axline v. 3M Co.*, 8 F.4th 667, 674 (8th Cir. 2021) (even when a lawsuit is directly filed into an MDL, the “forum” for purposes of substantive law analysis remains the State where the action originated).

discovery or pretrial work performed in that venue. Indeed, the selection of the MDL judge and court location historically has had little to do with the location of the defendant or the location of the plaintiffs, or where original venue is proper for the many cases involved – venue being suspended by the statute – rather, that selection is made by the panel with an eye to ‘the convenience of the parties and witnesses’ and to the ‘just and efficient conduct’ of such actions, and historically has keyed more to the capability of the judge and the judge’s court’s ability to handle such a large collective of cases, and practical considerations such as ease of transportation for the expected out of state counsel, witnesses, and parties when working in a given court. Thus, to tie the allowable fee *for out of state counsel* representing clients *in individual suits filed throughout the country and destined to be resolved in courts throughout the country* to the fees prevalent in the locality of the court selected to handle the temporary collective, does not support or display the same logic as with class actions. Rather, such a requirement in an MDL, in fact, could have unintended negative and harmful consequences, by having the locations which might support a higher hourly rate being favored by counsel over locations which might reflect a lower hourly rate, and act to bypass courts which might be well suited to the task at hand and bypass a judge who might be highly capable, and thus, handicap the sought judicial efficiency. Requiring common benefit fees in MDLs to be determined by the typical hourly rates charged *in the locality of the transferee court – which might have little if any connection or relationship to the parties, the counsel, the claims made, or proper venue of the many cases involved* – does not hold the same compelling logic as it does with a class action

“While this MDL court is located in Lafayette, Louisiana, only a portion of the work in the MDL was performed by attorneys in the physical area of Lafayette, Louisiana and that work, for the most part, was tied directly to participation in Court matters. Rather, the legal community of the attorneys who prosecuted the MDL, quite literally, spans the nation, conducting work across the nation and outside the United States, for the collective benefit of cases properly filed across the nation, and destined, by statute, to be returned to and resolved in courts located across the nation. While the legal community of Lafayette, Louisiana is no less skilled or professional than those of, perhaps, San Francisco or New York, in an MDL of this nature, the differing local rates that might prevail in San Francisco or New York or in Lafayette, Louisiana should not by themselves determine the rates of counsel from all across the nation who did work for the benefit of cases from across the nation, destined to be resolved in courts across the nation. To use the typical hourly rates charged in the area which happens to be where the selected and temporary MDL Court sits – which, again, almost always is not where all of the parties reside, or where the majority of counsel practice, or the proper venue for every member case – such as here, Lafayette, Louisiana, to calculate the lodestar, again, clearly lacks the compelling logic found in a class action and as noted, would result in an arbitrary determination, higher or lower than

that which should be proper for compensation, either for the time expended, or for the caliber of work produced. Again, MDLs, by their statutory creation, represent a *temporary collective of cases from across the nation*, pursued by a *nationwide collective* of counsel, who engage in a *national practice*, for the common benefit of a *collection of nationwide claimants*.²⁹

44. In this particular MDL, these considerations are even more compelling, given the significant challenges presented by the COVID-19 pandemic. Many of the proceedings, as I understand it, had to be conducted remotely, from the attorneys' own offices or homes.^{30, 31}

“Lodestar” Rates Generally

45. The premise of the lodestar method is that “the reasonable value of an attorney’s time should be based upon the price that time normally commands in the marketplace in which it is offered.”³² Some courts start from the proposition that the rate the lawyer in question actually demands and is paid is reasonable within that marketplace for that case. And/or the court may look to average rates that are generally known, or published, or otherwise understood for attorneys practicing in the area. And/or the court may look to rates that have been previously reported or approved within that District.³³
46. Hence, the reported and approved rates in one-off, single-plaintiff, run-of-the-mill fee-shifting cases often tend to be “baked into,” if not explicitly relied on, in common benefit cases.

²⁹ *Actos*, *supra*, 274 F.Supp.3d at 517 and 519-521 (emphasis in original).

³⁰ *See, e.g.*, CASE MANAGEMENT ORDER NO. 11 (Remote Depositions), No.18-2873, Rec. Doc. 680 (D.S.C. June 19, 2020); CASE MANAGEMENT ORDER NO. 11A, No.18-2873, Rec. Doc. 1173 (D.S.C. Feb. 8, 2021); *and* CASE MANAGEMENT ORDER NO. 11B, No.18-2873, Rec. Doc. 1778 (D.S.C. July 15, 2021).

³¹ This is in sharp contrast to the *BP Oil Spill* MDL, for example, where a physical War Room / Document Depository was staffed in New Orleans full-time by common benefit attorneys, and virtually all of the depositions were conducted in New Orleans. (And yet nevertheless a national blended rate was applied.)

³² *See* THIRD CIRCUIT TASK FORCE, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 244 (1985). *See also, e.g.*, *Perdue v. Kenny A.*, 559 U.S. 542, 551 (2010) (“the lodestar method produces an award that *roughly* approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case”).

³³ *See, e.g.*, *Rum Creek Coal Sales v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994) (The hourly rate included in an attorney’s fee is fact intensive and is best guided by what attorneys earn from paying clients for similar services in similar circumstances. “While evidence of fees paid to attorneys of comparable skill in similar circumstances is relevant, so too is the rate actually charged by the petitioning attorneys when it is shown that they have collected those rates in the past from the client”) (*citing* *Gusman v. Unisys Corp.*, 986 F.2d 1146 (7th Cir. 1993) (recognizing that attorney’s actual billing rate provides a “starting point” for purposes of establishing a prevailing market rate)); *see also, e.g.*, *Muzikowski v. Paramount Pictures*, 477 F.3d 899, 909-910 (7th Cir. 2007) (“the attorney’s actual billing rate for comparable work is presumptively appropriate to use as the market rate.... If the court is unable to determine the attorney's true billing rate ... (because he maintains a contingent fee or public interest practice, for example)” the court should “look to the next best evidence - the rate charged by lawyers in the community of reasonably comparable skill, experience, and reputation”).

47. In my opinion (and as implicitly and/or explicitly experienced and/or expressed by several of the courts who have been faced with these fee requests), it is challenging to apply such precedent in the context of an MDL, as:
- i. Common benefit attorneys are not hired; they are appointed by the Court. There is, in essence, no “market” for common benefit attorneys. At least in the sense that you could determine what their time normally commands by looking at their retainer agreements with their own clients. For one thing, the overwhelming majority of those contracts are going to be based on a percentage of recovery, not an hourly rate. But, perhaps more importantly, the attorney in question is not being hired to be the client’s “Lead Counsel” or “Liaison Counsel” or “Plaintiffs’ Executive Committee” member or other common benefit attorney; he or she is simply being hired to represent that litigant with respect to his or her own individual case.³⁴
 - ii. The attorneys involved in these cases generally (and the PEC Members in this case in particular) have much more knowledge, skill, experience, and reputation than the ordinary lawyer practicing in their geographical area. In this particular MDL, for example, the PEC includes firms that are not only highly experienced and respected in complex and environmental litigation generally, but are among the relatively few firms with specialized experience in these particular types of water system contamination cases.³⁵ Both Rule 1.5(a) and the *Johnson / Barber* Factors explicitly use this as a basis in assessing the reasonableness of an attorney’s fee.³⁶ And,

³⁴ To the extent there can be said to be a “market” for common benefit attorneys, it is driven overwhelmingly by an anticipated percentage-of-benefit, and not an hourly-based fee. The hours, if factored at all, only tend to provide a rough or approximate “cross-check” on the percentage.

³⁵ See generally MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL (*Tyco*) Rec. Doc. 4911-1 in Master Docket No. 18-mn-2873 (D.S.C. filed April 26, 2024) at pp.33-35, and MEMO IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL (*BASF*) Rec. Doc. 5053-1 in No. 18-2873 (D.S.C. filed June 3, 2024) at pp.33-35; DECLARATIONS OF SCOTT SUMMY, Rec. Docs. 4911-4 and 5053-4 (April 24, 2024 and May 30, 2024) ¶¶ 6-16; DECLARATIONS OF MICHAEL LONDON, Rec. Docs. 4911-5 and 5053-5 (April 25, 2024 and May 30, 2024) ¶¶ 3-12; DECLARATIONS OF PAUL NAPOLI, Rec. Docs. 4911-6 and 5053-6 (April 26, 2024 and May 30, 2024) ¶¶ 4-8; DECLARATIONS OF JOSEPH RICE, Rec. Docs. 4911-7 and 5053-7 (April 24, 2024 and May 31, 2024) ¶¶ 6-7; see also, e.g., MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL, *Camden v. DuPont*, No.23-3230, Rec. Doc. 4 (D.S.C. filed July 10, 2023) at pp.40-41; DECLARATION OF SCOTT SUMMY, Rec. Doc. 4-3 (signed July 9, 2023 and filed July 10, 2023) ¶¶ 4-5; DECLARATION OF MICHAEL LONDON, Rec. Doc. 4-4 (July 10, 2023) ¶¶ 7-15; DECLARATION OF PAUL NAPOLI, Rec. Doc. 4-5 (July 10, 2023) ¶¶ 3-7; DECLARATION OF ELIZABETH FEGAN, Rec. Doc. 4-7 (signed July 8, 2023 and filed July 10, 2023) ¶¶ 9-10.

³⁶ See ABA MODEL RULE OF PROFESSIONAL CONDUCT 1.5(a)(7) (“the experience, reputation, and ability of the lawyer or lawyers performing the services”); *Barber v. Kimbrell’s Inc.*, 577 F.2d 216, 226 n.28 (4th Cir. 1978) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974) and adopting the so-called *Johnson* Factors, including “the experience, reputation, and ability of the attorney”).

iii. Multi-District Litigation of this nature is typically much more difficult, expensive, lengthy and complex than a single-plaintiff civil rights, employment benefits or statutory fraud case. Which is also an important consideration under Rule 1.5 and *Johnson / Barber*.³⁷

48. In arriving at an appropriate rate for MDL work,³⁸ therefore, the overriding considerations are “the customary fee for *like work*” and “attorneys’ fees awards in *similar cases*.”³⁹
49. As originally conceived, the factors that relate to the skill and experience of counsel and the complexity and difficulty of the litigation were intended to be reflected in the rate, while the factors relating to risk and results were intended to be reflected in the multiplier.⁴⁰
50. In practice, however, some courts would simply use an average or other accepted or reported rate for the locality as the “lodestar” rate, and then apply the *Johnson / Barber* factors to arrive at the multiplier.
51. When the court elects to perform a “cross-check,” the *Johnson / Barber* factors are often applied methodically in arriving at the appropriate percentage, followed by a straightforward and perfunctory cross-check. In other cases, some or all of the *Johnson / Barber* factors may be discussed in arriving at the rate, but then not specifically addressed in connection with the multiplier. Or some or all of the factors may be discussed in

³⁷ See, e.g., ABA MODEL RULE 1.5(a)(1) (“the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly”); (a)(2) (“the likelihood ... that the acceptance of the particular employment will preclude other employment by the lawyer”); (a)(4) (“the amount involved”); and (a)(5) (“the time limitations imposed ... by the circumstances”); *Barber*, 577 F.2d at 226 n.28 (and *Johnson*, 488 F.2d at 717-719) ((2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney’s opportunity costs in pressing the instant litigation; (7) the time limitations imposed; and (8) the amount in controversy).

³⁸ Note that, throughout this declaration, I tend to speak of MDLs and class actions somewhat interchangeably. Certainly there are similar, if not identical, legal underpinnings to the common fund and common benefit doctrines which inform the courts’ awards of class counsel and/or other common benefit fees in both types of cases. At the same time, however, the courts tend to approach the fee petition and approval process in consumer class actions and “mass tort” type MDLs somewhat differently. (In part because the leadership structures in securities and/or consumer class actions tend to be a lot more streamlined, and in part because of the presence in mass tort MDLs of numerous individually retained counsel who are representing the MDL plaintiffs alongside the steering committee.) In the larger complex MDLs, however, the approaches tend to overlap, particularly where, as here, “mass actions” are settled as class actions.

³⁹ See *Barber*, 577 F.2d at 226 n.28 and *Johnson*, 488 F.2d at 717-719 Factors Nos. 5 and 12 (emphasis supplied).

⁴⁰ See generally THIRD CIRCUIT TASK FORCE, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 243 (1985) (“Hourly rates may vary according to the status of the attorney who performed the work (that is, the attorney’s experience, reputation, practice, qualifications, and similar factors) or the nature of the services provided. This multiplication of the number of compensable hours by the reasonable hourly rate was said to constitute the ‘lodestar’ of the court’s fee determination. The ‘lodestar’ then could be increased or decreased based upon the contingent nature or risk in the particular case involved and the quality of the attorney’s work. An increase or decrease of the lodestar amount is referred to as a ‘multiplier’”; see also, e.g., *Lumber Liquidators I*, 952 F.3d at 482 n.7 (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305- 306 (3d Cir. 2005) (“The lodestar award is calculated by multiplying the number of hours reasonably worked on a client’s case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys. The multiplier is a device that attempts to account for the contingent nature or risk involved in a particular case and the quality of the attorneys’ work”). See also, e.g., *In re Facebook*, No.21-15553, 2022 WL 822923, 2022 U.S.App.LEXIS 6935 (9th Cir. March 17, 2022) (“Lodestar multipliers tend to increase as the size of the class’s fund increases and are reasonable based on the risks trial would have presented”).

connection with the multiplier, but not in connection with the “lodestar” rate itself. Or some or all of the factors are discussed in connection in arriving at the rate, and then some or all of the same or different factors are discussed in connection with the multiplier.

52. Of course, the Court has broad discretion and flexibility in making these determinations. But the reported or approved “lodestar” rates sometimes tend to vary based on which of the *Johnson / Barber* factors are or are not considered.

**A Blended Hourly Rate in the Range of \$725 - \$825 / hr.
For Cross-Check Purposes Is Supported by a Totality of the Circumstances in This Case**

53. In this MDL, the Tyco and BASF settlements are the product of hard-fought, protracted litigation, proceeding along multiple tracks, and made even more challenging by the COVID-19 pandemic. The PEC developed and introduced a Science Day presentation for the Court just months after the commencement of the litigation. Over a two-year-plus discovery period, substantial document production by all defendants and the Department of Justice occurred, followed by depositions of defense witnesses and Federal employees regarding the merits of the parties’ claims and defenses; and, thereafter, following exhaustive briefing, supplemental briefing, and an evidentiary hearing, the Court rejected the defendants’ Government Contractor Defense. At the same time, the PEC coordinated and completed a bellwether pre-trial process, including fact discovery, expert development and preparation, *Daubert* briefing, the submission of a comprehensive and trial-ready core exhibit list, evidentiary objections, coordination of live witnesses for trial and preparation of their respective direct examinations, the preparation of opening statements, and the briefing of motions *in limine*. Over 215 depositions were conducted, and many were “cut” for trial presentation. Over 5 million documents – nearly 50 million pages – were reviewed. Summary judgment motions were briefed. The PEC had to parse the statutory and regulatory history, and follow a complex set of corporate and successor liability issues, which necessarily required a coordinated and comprehensive litigation strategy, since so much of the MDL defendants’ liability was entangled and interwoven, and so many of the issues were interrelated. Landmark settlements were reached, approved, and are now being implemented with respect to DuPont and 3M. Drawing on that experience, combined with Tyco- and BASF-specific work product, the proposed settlements now at issue were negotiated, executed, and preliminarily approved. With respect to Tyco and BASF in particular, I understand that a second water provider bellwether process, this time specific to the Telomer Defendants, was directed by the Court to begin in July of 2023, and involved intense preparation for a trial that was initially scheduled for Spring 2024 and then moved to the Fall of 2024. The Telomer bellwether process involved significant work by the PEC, and placed considerable pressure on Tyco and BASF; the work performed on the bellwether cases was undoubtedly instrumental in securing the proposed settlements now before the Court. While the PEC believed, and still believes, in

the case, the litigation was and remains risky. And even assuming clear liability, the time and expense of providing causation and damages for the class members is a monumental undertaking, with potential bankruptcy or other insolvency risks, and the need (absent resolution) for years of in-court testimony and other proceedings, together with likely appeals – and all of the attendant delays.⁴¹

54. With respect to an appropriate hourly rate in this litigation for cross-check purposes, an obvious indication of reasonable and appropriate rates would be the hourly rates that are, in fact, being paid to attorneys compensated on an hourly basis in connection with AFFF Litigation.⁴² (Economically speaking, the hourly rates for common benefit attorneys should be considerably higher, as they are advancing their own costs, and accepting, at the very least, multi-year delays in payment, along with the contingent risk of non-collectability. However, these factors are, in my view, properly accounted for in the multiplier, as opposed to the base “lodestar” rate.)
55. While the actual rates being charged by defense counsel are not generally made available to plaintiffs, such rates can be drawn from publicly available sources, such as the fee

⁴¹ See generally MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL (*Tyco*) Rec. Doc. 4911-1 in Master Docket No. 18-mn-2873 (D.S.C. filed April 26, 2024) at pp.5-12, 30-37, and MEMO IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL (*BASF*) Rec. Doc. 5053-1 in No. 18-2873 (D.S.C. filed June 3, 2024) at pp.5-12, 29-36; DECLARATIONS OF SCOTT SUMMY, Rec. Docs. 4911-4 and 5053-4 (April 24, 2024 and May 30, 2024); DECLARATIONS OF MICHAEL LONDON, Rec. Docs. 4911-5 and 5053-5 (April 25, 2024 and May 30, 2024); DECLARATIONS OF PAUL NAPOLI, Rec. Docs. 4911-6 and 5053-6 (April 26, 2024 and May 30, 2024); DECLARATIONS OF JOSEPH RICE, Rec. Docs. 4911-7 and 5053-7 (April 24, 2024 and May 31, 2024); see also, e.g., MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL, *Camden v. DuPont*, No.23-3230, Rec. Doc. 4 (D.S.C. filed July 10, 2023) at pp.7-9, 36-38, and 42-47; DECLARATION OF SCOTT SUMMY, Rec. Doc. 4-3 (signed July 9, 2023 and filed July 10, 2023); DECLARATION OF MICHAEL LONDON, Rec. Doc. 4-4 (July 10, 2023); DECLARATION OF PAUL NAPOLI, Rec. Doc. 4-5 (July 10, 2023); DECLARATION OF ELIZABETH FEGAN, Rec. Doc. 4-7 (signed July 8, 2023 and filed July 10, 2023); DECLARATION OF LAYN PHILLIPS, Rec. Doc. 4-6 (signed July 9, 2023 and filed July 10, 2023).

⁴² See, e.g., *Chrapliwy v. Uniroyal*, 670 F.2d 760, 768 n.18 (7th Cir. 1982) (“The rates charged by the defendant’s attorneys provide a useful guide to rates customarily charged in this type of case”). Although this approach was rejected by the U.S. Fifth Circuit in a fee-shifting case, Judge Dennis persuasively suggests that “the *Perdue* Court’s comment that ‘the lodestar method produces an award that roughly approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case,’ does indicate to me that the hourly rates or total fees charged by defense counsel are relevant to the question of what is a reasonable hourly rate or total fee for a prevailing plaintiff’s counsel.” *McClain v. Lufkin Industries*, 649 F.3d 374, 388 (5th Cir. 2011) (Dennis, J., dissenting) (citing *Perdue*, *supra*, 559 U.S. at 551 (emphasis in original), and *Chrapliwy*, *supra*, 670 F.2d at 768 n.18). Notably, in the *McClain* case, *supra*, defense counsel’s compensation was only 2.63% higher than the fee awarded to plaintiffs, which, the Fifth Circuit majority concedes, would seem to fall within a “rough approximation” of the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case. *McClain*, *supra*, 649 F.3d at 384. I suspect, moreover, that we do not typically see a comparison of rates in lodestar decisions – not because, as the majority suggests, there is a logical incomparability between the tasks and roles of counsel, but because courts generally want to avoid disputes over the extent to which defense counsel billing records should be protected as competitively sensitive and/or privileged. See also, e.g., ORDER AND REASONS, *In re Deepwater Horizon*, MDL No. 2179, Rec. Doc. 21849 (E.D.La. Oct. 25, 2016) at p.40 fn.14 (citing hourly rates paid to counsel in the litigation as additional support for the blended rate). It is also my recollection that the Special Master asked defense counsel to submit their hourly rates *in camera* in *Scott v. American Tobacco* (see ADDENDUM A at pp.10 and 11). See also, e.g., *McCurley*, *supra*, No.16-0194, 2018 U.S. Dist. LEXIS 226234 at *4 (D.S.C. Sept. 10, 2018) (“Defendants are part of a national corporation and the issues involved here are part of Defendants’ national operation. Under the circumstances of this case and the material implications to Defendants’ business model, class counsels’ rates are reasonably applied here”).

petitions that many of these firms submit into the record in connection with Bankruptcy proceedings.

56. For example, Bloomberg Law recently collected and made available rates that were reported in connection with Bankruptcy filings, including the rates reported by DuPont Settlement Counsel Kirkland & Ellis and 3M Counsel Mayer Brown.⁴³ The rates that were reported fell into ranges of:

	2022	2023
Partner Rates	\$975 - \$2,100	\$1,100 - \$2,250
Associate Rates	\$610 - \$1,325	\$665 - \$1,400
[Blended Average]	[\$1,252.50]	[1,353.75]

The Kirkland & Ellis rates were reported as:

	2022	2023
Partner Rates (highest)	\$1,995	\$2,245
Associate Rates (highest)	\$1,245	\$1,395

The Mayer Brown rates were reported as:

	2022	2023
Partner Rates (highest)	\$1,635	\$1,940
Associate Rates (highest)	\$970	\$1,075

57. These numbers are high, given the absence of paralegal / law clerk rates, as well as an apparent focus on the rates at the higher ends of each range.⁴⁴
58. A more fulsome picture can be observed by looking at, for example, the *JC Penny* Bankruptcy filings, which contain more comprehensive defense counsel rates. In June of 2020, for example, Kirkland & Ellis was reporting the following rates:⁴⁵

Partner rates	\$1,075 - \$1,845
Of Counsel rates	\$625 - \$1,845
Associate rates	\$610 - \$1,165
Paralegal rates	\$245 - \$460
[Blended Average]	[\$983.75]

⁴³ Source: Bloomberg Law analysis of Bankruptcy Dockets. (See “Rising Rates Are Law Firms’ Salve Amid Layoffs, Pay Cuts” by Roy Strom, *Bloomberg Law* (Jan. 19, 2023) (found at <https://news.bloomberglaw.com/business-and-practice/rising-rates-are-law-firms-salve-as-layoffs-and-pay-cuts-surge> as of Sept. 26, 2023)) (attached as ADDENDUM F).

⁴⁴ And, of course, the rates paid to Bankruptcy attorneys may be slightly higher than the rates paid to other litigators within the firm.

⁴⁵ DEBTOR’S APPLICATION FOR RETENTION OF KIRKLAND & ELLIS, *In re J.C. Penny Co.*, No.20- 20182, Rec. Doc. 684 (S.D.Tex. Bankruptcy filed June 11, 2020) p.6, ¶13.

59. More recently, Kirkland advise the Court in various proceedings that its hourly rates were going up in 2024 to as much as \$2,465 per hour. Specifically: ⁴⁶

Partner rates	\$1,195 - \$2,465
Of Counsel rates	\$820 - \$2,245
Associate rates	\$745 - \$1,495
Paralegal rates	\$325 - \$625
[Blended Average]	[\$1,239.38]

60. Rates can also be gleaned from registrations regarding the representation of foreign nationals under the Foreign Agents Registration Act, (22 U.S.C. §§ 611, *et seq.*). For example, in a series of filings from 2019 to 2021, BASF counsel, DLA Piper, disclosed the following hourly rates: ⁴⁷

Partner rates	\$990 - \$1,335
Of Counsel rates	\$895
Senior Counsel rates	\$750

61. Similarly, in a separate fee application submitted by DLA Piper, the firm submitted, and the Court approved, the following rates: ⁴⁸

Partner rates	\$848 - \$1,219
Senior Counsel rates	\$1,325 - \$1,364
Associate rates	\$560 - \$808
Paralegal rates	\$150 - \$398
Investigation / E-Discovery Specialists	\$330 - \$655
[Blended Average]	[\$765.70]

⁴⁶ See SECOND SUPPLEMENTAL DECLARATION OF PATRICK NASH, *In re Yellow Corporation*, No.23-11069, Rec. Doc. 1373 (Del. Bankruptcy Dec. 14, 2023) at ¶5; SUPPLEMENTAL DECLARATION OF STEVEN SERAJEDDINI, *In re WeWork Inc.*, No. 23-19865, Rec. Doc. 445 (D.N.J. Bankruptcy Dec. 14, 2023) at ¶5; FIRST SUPPLEMENTAL DECLARATION OF JOSHUA SUSSBERG, *In re Rite Aid Corp.*, No. 23-18993, Rec. Doc. 1089 (D.N.J. Bankruptcy Dec. 14, 2023) at ¶6.

⁴⁷ LETTER FROM RICHARD NEWCOMB TO VUSAL ASLANOV (Sept. 12, 2019) at pp.1-2 (submitted with FARA REGISTRATION No. 3712 (Oct. 9, 2019)); LETTER FROM DAVID PAYMEN TO ELAN COHEN (June 3, 2021) at p.1 (submitted with FARA REGISTRATION No. 3712 (Aug. 10, 2021)); LETTER FROM ELIZABETH GATELY TO JAFAR HASSAN (Sept. 20, 2021) at p.1 (submitted with FARA REGISTRATION No. 3712 (Sept. 30, 2021)). See also, e.g., Conmed Corp. v. Fed. Ins. Co., No.23-766, 2024 WL 2976604 (N.D.N.Y. June 13, 2024) (reflecting that DLA Piper was hired at rates of \$459 - \$1,056 [median \$762.50] per hour to defend a landlord dispute in Georgia).

⁴⁸ NTAA v. Nordstrom, No.21-398, 2024 WL 1723524 at *4 and Appendix A (C.D.Cal. April 19, 2024) (citing Netlist v. Samsung, 341 F.R.D. 650, 675 (C.D.Cal. 2022) (finding rates ranging \$1,160 to \$1,370 for Gibson Dunn partners reasonable); Hope Med. Enterprises v. Fagrion Compounding Serv., No.19-07748, 2022 WL 826903 at *3 (C.D.Cal. Mar. 14, 2022) (finding rates of \$870 to \$1,295 for King & Spaulding partners and counsel reasonable); AK Futures v. Smoke Tokes, No.21-1061, 2022 WL 3574280 at *2 (C.D.Cal. Jan. 13, 2022) (finding partner rate of \$1,137.50 reasonable); Netlist, 341 F.R.D. at 675 (finding Gibson Dunn associate rates ranging from \$845 to \$1,060 reasonable); Hope Med. Enterprises, 2022 WL 826903 at *3 (finding rates of \$565 to \$985 for King & Spaulding associates reasonable); AK Futures, 2022 WL 3574280 at **1-2 (finding rates ranging from \$590.63 to \$962.50 reasonable for associates); AK Futures, 2022 WL 3574280 at **1-2 (finding \$393.75 to be a reasonable hourly rate for a paralegal with over two decades of experience); Perfect 10 v. Giganews, 2015 WL 1746484 at *15 (C.D.Cal. Mar. 24, 2015) (finding support staff rates of \$240 to \$290 reasonable, and \$345 for a paralegal with over two decades of experience)).

62. Tyco counsel, Williams & Connolly, in a 2019 FARA registration, disclosed rates of \$965, \$965, \$620, and \$535 per hour for the Attorneys working on the file, plus \$225-\$375 for Paralegals, \$255-\$315 for Law Clerks, and \$305-\$560 for other Litigation Support and Research Personnel.⁴⁹
63. Consistently, in connection with a motion for sanctions in the *Generic Pharmaceutical Pricing* MDL, a Williams & Connolly attorney working on the litigation reported a customary rate of \$850 per hour.⁵⁰
64. Back in 2016, the *Wall Street Journal* reported the following rates for Partners and Of Counsel at some of the top U.S. law firms (including several firms representing Defendants in this MDL):⁵¹

Prokauer Rose	\$925 - 1,475
Ropes & Gray	\$895 - \$1,450
Kirkland & Ellis	\$875 - \$1,445
Skadden Arps	\$935 - \$1,425
Akin Gump	\$725 - \$1,425
Paul Hastings	\$875 - \$1,325
Jones Day	\$600 - \$1,300
Morrison & Foerster	\$825 - \$1,290

65. It was also more recently reported that, in Houston and Dallas, Kirkland & Ellis partners were billing as much as \$1,797 - \$2,225 per hour, and that one of the Weil Gotshall partners was billing as much as \$1,895.⁵²
66. In connection with the LTL (*i.e.* Johnson & Johnson Talc) Bankruptcy, Hogan Lovells filed a Declaration revealing the following rates:⁵³

Partner Rates	\$950 - \$2,465
Counsel Rates	\$910 - \$1,735
Associate Rates	\$605 - \$1,055
Paralegal Rates	\$275 - \$550
[Blended Average]	[\$1,068.12]

⁴⁹ LETTER FROM DAVID AUFHAUSER TO MICHAEL DENOMA, dated Aug. 13, 2019) at p.2 (submitted with FARA REGISTRATION NO. 6711 (Aug. 23, 2019)).

⁵⁰ See *In re Generic Pharmaceuticals Pricing Antitrust Lit.*, 571 F.Supp.3d 400, 405 (E.D.Pa. 2021).

⁵¹ “Legal Fees Cross New Mark: \$1,500 an Hour” by Sara Randazzo, *Wall Street Journal* (Feb. 9, 2016) (available at <https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708>).

⁵² See “Texas Lawyers Hit \$2,000 an Hour” by Mark Curriden, *The Texas Lawbook* (Sept. 25, 2023) (<https://texaslawbook.net/texas-lawyers-hit-2000-an-hour/>).

⁵³ See CERTIFICATION OF NEAL KUMAR KAYTAL, *In re LTL Management*, No.21-30589, Rec. Doc. 2240-1 (D.N.J. Bankruptcy May 4, 2022) at p.2 ¶5.

Other pleadings filed in the Bankruptcy reflect Partner and Of Counsel rates of:⁵⁴

Jones Day	\$1,000 - \$1,450
Skadden Arps	\$900 - \$1,875
Weil Gotshal	\$1,150 - \$1,795
Orrick	\$805 - \$1,750

67. A second telling set of numbers are the hourly rates actually being billed by lawyers representing the Unsecured Creditors' Committee in the Bankruptcy of Kidde-Fenwal, Inc., an AFFF MDL Defendant.⁵⁵

Partners	Associates	Paralegals	Law Clerks	[Blended Average]
\$1,325 - \$1,895	\$875	\$595	\$495	[893.75]

68. These lawyers are representing the same group of litigants against one of the same defendants under what would appear to be much less complex and challenging circumstances.⁵⁶
69. A third set of relevant numbers are the rates that have been approved by other courts in similar complex class action proceedings.
70. In one recent class action, for example, Chief Judge Rose of the Southern District of Iowa, in approving a one-third percentage-of-benefit award under a lodestar cross-check, observed that “the hourly rate of \$800 per hour is in-line with the rates of major law firms throughout the country and courts have approved similar rates.”⁵⁷
71. Fourth, we can look at previous MDLs in which blended rates have been approved.

⁵⁴ See OBJECTION OF THE TRUSTEE TO RETENTION OF HOGAN LOVELLS, *In re LTL Management*, No.21-30589, Rec. Doc. 2324 (D.N.J. Bankruptcy May 4, 2022) at p.6 ¶23. [The retention of Hogan Lovells was, in fact, approved. See ORDER AUTHORIZING RETENTION OF HOGAN LOVELLS, Rec. Doc. 2508 (June 15, 2022).]

⁵⁵ See FEE APPLICATION, *In re Kidde-Fenwal*, No.23-10638, Rec. Doc. 392 (D.Del. Bankruptcy filed Sept. 1, 2023).

⁵⁶ In addition, Sullivan & Cromwell, which represents a defendant in this MDL, also serves as counsel for the Debtor in the Kidde-Fenwal Bankruptcy, with rates of:

Partners	Associates	Paralegals / Analysts / IT	[Blended Rate]
\$1,695 - \$2,375	\$850 - \$1,450	\$450 - \$650	[81,245]

See THIRTEENTH MONTHLY FEE STATEMENT OF SULLIVAN & CROMWELL, *In re Kidde-Fenwal, Inc.*, No.23-10638, Rec. Doc. 1300 (Del. Bankruptcy filed June 28, 2024), at pp.2-3.

⁵⁷ *PHT Holding II v. North America Life & Health*, No.18-00368, 2023 WL 8522980 at **7-8 (S.D.Iowa Nov. 30, 2023) (noting that the partners in class counsel's firm would be compensated in an amount equivalent to around \$800 per hour, which “is sharply lower than the median standard billing rate for equity partners of \$1,463 per hour, as reflected by a nationwide survey of top 50 law firms nationwide” (citing DECLARATION OF SETH ARD, Rec. Doc. 312-2 (Oct. 16, 2023), at ¶27 (“In a nationwide survey of AmLaw 50 law firms performed by PwC Product Sales, LLC and issued in June 2023, the median standard billing rate for equity partners was \$1,463, the first quartile standard billing rate was \$1,655, and the third quartile standard billing rate was \$1,371. The same survey indicates that the median standard billing rate for associates was \$933, the first quartile standard billing rate was \$1,018, and the third quartile standard billing rate was \$838”)).

72. Earlier this year, in the *Family Dollar* MDL, the Court approved, for cross-check purposes, attorney billing rates averaging \$877.50 per hour, while in *CPAP*, the MDL Court approved a blended hourly rate of \$767.25 per hour for cross-check purposes.⁵⁸
73. In *NFL Concussion*, as another example, the Court used a blended rate of \$623.05/hour as a cross-check against a percentage-of-benefit fee award.⁵⁹
74. While some blended rates utilized for cross-check purposes have been lower,⁶⁰ it is my view that a reasonably higher range of blended rates can and should be accepted.
75. First, as noted *supra*, the lodestar-type cross-check is only supposed to be a “rough” approximation, and, at least in my opinion, tends to skew low.
76. Secondly, as outlined *supra*, the blended rates of law firms who are defending these MDLs appear to be significantly higher.
77. Third, the blended rates are built, at least in part, upon average surveyed rate data and/or hourly rates that have been approved in run-of-the-mill statutory fee-shifting cases, and not high stakes complex litigation performed by highly reputable, skillful, and experienced litigators.⁶¹
78. For example, Professor Rubenstein recently examined the specific cases used to develop the Fitzpatrick Matrix,⁶² and found that the hourly rates in the eight class action cases were

⁵⁸ See *In re Family Dollar Pest Infestation Lit.*, MDL No. 3032, 2024 WL 2806477 at *2 (W.D.Tenn. May 31, 2024) and *In re Phillips Recalled CPAP Lit.*, MDL No. 3014, 2024 WL 1810190 at *12 (W.D.Pa. April 25, 2024). Similarly, in a consolidated set of privacy class actions in the Eastern District of Wisconsin, the Court, in performing a lodestar cross-check against a percentage-of-benefit award, similarly approved a blended rate of \$767 per hour. While noting a couple of concerns, “the Court will not wade too far into these issues, as Plaintiffs’ attorneys will allocate any fee award among themselves and so can sort out the appropriate compensation for each billing attorney.” *In re Advocate Aurora*, No.22-1253, 2024 WL 3357730 at *14 and *19 (E.D.Wis. July 10, 2024).

⁵⁹ See, e.g., *In re NFL Players’ Concussion Injury Litig.*, No.12-02323, 2018 WL 1635648 at *9 (E.D. Pa. April 5, 2018) (approving blended rate of \$623.05/ hour for all common benefit counsel). See also, e.g., OPINION, *NFL Concussion Injury Litig.*, No.12-02323, Rec. Doc. 10019 (E.D. Pa. May 24, 2018), pp.20-21 (approving lodestar for the Lead Counsel firm of \$861.28/hr).

⁶⁰ See, e.g., *Cantu-Guerrero v. Lumber Liquidators*, 27 F.4th 291, 300 (4th Cir. 2022) (“*Lumber Liquidators IP*”) (accepting a blended rate of \$524/hour from 2018); ORDER, *In re Volkswagen*, No.15-2672, Rec. Doc. 3053 [2017 WL 1047834] (N.D.Cal. Mar. 17, 2017) at p.8 (accepting a blended average hourly rate of \$529/hour in 2017); *Deepwater Horizon*, *supra*, Rec. Doc. 21849 (approving an average/blended rate of \$450 in 2016); *Vioxx*, *supra*, 760 F.Supp.2d at 660 (approving an average/blended rate of \$443.29 in 2010); *In re Enron*, 586 F.Supp.2d 732, 779-780 (S.D.Tex. 2008) (approving an average/blended hourly rate of \$456 in 2008).

⁶¹ In some cases, they have also been based, in whole or in part, on “rates” that were reported by the participating common benefit firms themselves, which, from a reliability standpoint, suffer from some of the issues outlined in Paragraphs 25-26 and 47 *supra*.

⁶² The development and use of the so-called “Fitzpatrick Matrix” is defined and described in ADDENDUM C at fn.8, and the Matrix is attached as ADDENDUM E.

- 43.98% higher than the hourly rates in the seventy-four routine fee-shifting cases.⁶³
79. Finally, and perhaps most significantly, we have seen hourly rates steadily increase over the past two decades, and particularly among top-level litigators involved in complex and difficult litigation.
 80. The primary work in the *BP Oil Spill Litigation*, for example, was performed between 2010 and 2015, with the highest concentration of efforts from 2010 to 2013.
 81. This AFFF litigation, as I understand it, did not even commence until 2018,⁶⁴ two years after the *BP Oil Spill Litigation* Approval Order was entered, and five-to-eight years after much of the *BP* work was performed.
 82. Based on my knowledge, understanding and experience, lawyer rates have materially increased since the *BP Oil Spill Litigation* (2010-2016), and certainly since *Vioxx* (2004-2010), to say nothing of *Enron* (2001-2008). (And, indeed, it is my opinion that the *BP* rate is low, not only because of the reasons discussed in Paragraph 21 *supra*, but also by simple virtue of the fact that it reflects no material increase from the *Vioxx* rate, entered six years earlier, and is even lower than the *Enron* rate, eight years prior.)
 83. The Laffey Matrix,⁶⁵ at the same time, reflects that rates increased by approximately 18% between 2001 when *Enron* started and 2004 when *Vioxx* started, and then increased another 23-24% by the time *BP* started in 2010, another 25-26% by 2018 when this case started, and then approximately 18% since that time.⁶⁶
 84. The Fitzpatrick Matrix similarly reflects a steady increase in standard legal billing rates of over 67% from 2013 to 2023.⁶⁷

⁶³ DECLARATION OF WILLIAM B. RUBENSTEIN, *National Veterans Legal Services v. United States*, No.16-745, Rec. Doc. 160-2 (D.D.C. filed Oct. 3, 2023) at pp.15-16 ¶¶21-22; *see also, e.g.*, SUPPLEMENTAL DECLARATION OF BRIAN FITZPATRICK, *National Veterans Legal Services v. United States*, No.16-745, Rec. Doc. 160-1 (D.D.C. filed Oct. 3, 2023) at p.3 ¶6 (“The Matrix was created using a trove of data from all manner of complex cases and all manner of lawyers; the data includes individual employment- discrimination cases, FOIA cases, and Fair Debt Collection Practices Act cases, among many others. The numbers in the Matrix fall in the *middle* of this data”).

⁶⁴ It is worth noting that, while the PFAS Litigation broadly commenced in 2018, the MDL was not established until December, and the PEC was not appointed until March of 2019. *See* TRANSFER ORDER, *In re Aqueous Film-Forming Foams*, MDL No. 2873, Rec. Doc. 239 (J.P.M.L. Dec. 7, 2018) *and* CMO 2, No.18-2873, Rec. Doc. 48 (D.S.C. March 20, 2019).

⁶⁵ The development and use of the so-called “Laffey Matrix” is defined and described in ADDENDUM C at fn.8 (*see also generally* p.2 and fn.5), and the Matrix is attached as ADDENDUM D.

⁶⁶ The Supreme Court has suggested that, when a case extends over a multi-year period, the use of current rates is “an appropriate adjustment for delay in payment.” *Missouri v. Jenkins*, 491 U.S. 274, 283– 284 (1989).

⁶⁷ Specifically, the rates for paralegals and law clerks increased by 69%. The rates for lawyers in practice for only two years increased by 93%. The rates for lawyers in practice for ten years increased by 68%. The rates for lawyers in practice for twenty years increased by 56%. And the rates for lawyers in practice for thirty years increased by 51%. (These five rate increases average out to 67.4%.) *See* ADDENDUM E.

85. Taking the *NFL Concussion* decision as an example, the \$623.05/hour rate from 2018 would be \$735.20/hour with an 18% increase.
86. As another example, lead class counsel in the *Phen-Fen Litigation* also serves on the PEC in this MDL. In seeking a supplemental fee award, the Court recently approved hourly rates of \$850/hour, while noting that, when taking inflation into account, the previously approved rates of \$750/hour would be \$950/hour today.⁶⁸
87. Most notably, the Court has approved blended hourly rates of \$725-\$825 in this very MDL while conducting a lodestar cross-check in connection with the DuPont and 3M settlements.⁶⁹
88. Based on the foregoing, I believe that a blended rate in the range of \$725-\$825/hour is supported by the hourly rates being billed by the firms defending the litigation; the hourly rates being billed by the lawyers working for the creditors' committee in AFFF-related bankruptcy proceedings; the hourly rates which have been approved for these and other class action attorneys in other class actions; the blended rates that have been approved in large complex MDLs (including this MDL); and the general inflation of hourly rates across the legal market, particularly in complex and high stakes litigation.
89. Additional Hourly Rate Information and Analysis that might be helpful and/or relevant is provided for the Court's reference in ADDENDUM C.

Additional Hours for Settlement Implementation and Administration

90. When a class or other "global" settlement is approved in one of these large mass tort MDLs or other similar proceedings, class counsel (and/or other common benefit attorneys) are generally called upon to expend numerous additional hours in connection with settlement implementation and administration.
91. In the *BP Oil Spill* MDL, for example, class counsel spent voluminous hours in settlement implementation and administration.⁷⁰ While that situation was somewhat atypical, class counsel are generally called upon to assist class members with claims; to answer questions; to respond to inquiries from the Claims Administrator and/or the Court, and to address any disputes with the Defendants over interpretation; to monitor the qualified settlement funds and administrative expenses; and to assist class members and the Claims Administrators in resolving factual and/or interpretive discrepancies. In the *Citizens* class action,⁷¹ the

⁶⁸ In re Diet Drugs, MDL No. 1203, Case No. 99-20593, 2024 WL 945307 at *4 (E.D.Pa. March 4, 2024).

⁶⁹ See ORDER AND OPINION, *In re AFFF*, No.18-2873, Rec. Doc. 4885 (D.S.C. April 23, 2024) at p.14 [also available at 2024 WL 1739709, at *8].

⁷⁰ See, e.g., DECLARATION OF STEPHEN J. HERMAN AND JAMES PARKERSON ROY, *In re Deepwater Horizon*, MDL No. 2179, Rec. Doc. 21098-1 (July 14, 2016), at pp.20-27, ¶¶ 68-88; PETITION FOR REIMBURSEMENT OF EXPENSES AND COLLECTIVE COMMON BENEFIT FEE AWARD, Rec. Doc. 21098 (July 21, 2016), at pp.53-63; and In re Deepwater Horizon, MDL No. 2179, Rec. Doc. 21849 [2016 U.S.Dist.LEXIS 147378] (E.D.La. Oct. 25, 2016) at pp.15-21.

⁷¹ See Oubre v. Louisiana Citizens Fair Plan, No.2011-0097 (La. 12/16/2011), 79 So.3d 987.

Vioxx settlement,⁷² and the settlement with Knauf in the *Chinese Drywall* litigation,⁷³ the PSC / class counsel spent a lot of time assisting the class members, their individually-retained counsel, and the Court, with settlement implementation and administration. But even in fairly straight-forward distributions, like the *Chinese Drywall* Taishan settlement,⁷⁴ or *McGowan*,⁷⁵ there are always questions and issues that arise.

92. Notably, the Tyco and BASF settlements define the Settlement Class differently than do the 3M or DuPont settlements, and therefore additional education and ongoing support will be needed even despite any efficiencies gained from the earlier water provider settlements.
93. Hence, it is my opinion that the Court should take into consideration, should the Court choose to perform a “cross-check,” that the hours expended to-date are likely going to be substantially less than the total hours expended by the PEC and other common benefit attorneys in connection with the settled BASF and Tyco claims.⁷⁶

⁷² See *Vioxx*, supra, 760 F.Supp.2d 640 (E.D.La. 2010).

⁷³ See *Chinese Drywall*, No.09-7628, 2012 WL 92498, 2012 U.S.Dist.LEXIS 5223 (E.D.La. Jan. 10, 2012).

⁷⁴ See *Chinese Drywall*, 424 F.Supp.3d 456 (E.D.La. 2020).

⁷⁵ See *Fairway v. McGowan Enterprises*, No.16-3782, Rec. Doc. 60 (E.D.La. March 20, 2018).

⁷⁶ See, e.g., ORDER, *In re Volkswagen*, No.15-2672, Rec. Doc. 3053 [2017 WL 1047834] (N.D.Cal. Mar. 17, 2017) at p.8 (granting fee request reserving “an additional 21,000 hours” for post-settlement work); *Reyes v. Bakery & Confectionery Union*, 281 F.Supp.3d 833, 853, 856–57 (N.D.Cal. 2017) (including estimated hours for “future work” related to, *inter alia*, “managing class members’ claims”). See also, e.g., *Sewell v. Bovis Lend Lease, Inc.*, No.09-6548, 2012 U.S.Dist.LEXIS 53556, 2012 WL 1320124 at *13 (S.D.N.Y. April 20, 2012) (*citing Bellifemine v. Sanofi*, 2010 U.S.Dist.LEXIS 79679, 2010 WL 3119374, at *6 (S.D.N.Y. Aug. 6, 2010)) (“where class counsel will be required to spend significant additional time on this litigation in connection with implementing and monitoring the settlement, the multiplier will actually be significantly lower because the award includes not only time spent prior to the award, but after in enforcing the settlement”).

ADDENDA

The following Addenda are attached hereto and incorporated herewith:

- A. Current Resume
- B. Documents Reviewed and Considered
- C. Additional Rate Information and Analysis
- D. Laffey Matrix
- E. Fitzpatrick Matrix
- F. Bloomberg Law Rate Information
- G. Excerpts From ELM 2022 Real Rate Report

I declare, under penalty of perjury, that the above and foregoing is true and correct to the best of my knowledge, information, and belief.

This 17th day July, 2024.



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PERSONAL

Born, in New Orleans, Louisiana, on November 22, 1968.
Married, in 1994, to the Honorable Karen Kirshbom Herman, Louisiana Fourth Circuit Court of Appeal.
Children: Alexandra Rae Herman, 25, and Harris Andrew Herman, 21.

EDUCATION

Isidore Newman School Board of Regents Scholar, 1987. National Merit Letter of Commendation, 1986.	New Orleans, LA
Dartmouth College Bachelor of Arts, 1991. GPA, Overall: 3.3; Major (English): 3.6. Third Honor Group, 1989-1990. Citation of Excellence in the Study of Milton, 1990. Citation of Excellence in the Study of Shakespeare, 1990. Winner of the Elenor Frost Playwriting Competition, 1991.	Hanover, NH
Tulane University School of Law Juris Doctor, <i>Magna Cum Laude</i> , 1994. GPA: 3.52; Class Rank: Top Ten Percent. <i>Order of the Coif</i> .	New Orleans, LA

EMPLOYMENT

Fishman Haygood, LLP Special Counsel, 2024 -	New Orleans, LA
Herman, Herman & Katz, LLC Associate, 1995-2001. Partner, 2002-2023.	New Orleans, LA
Herman Mathis Casey Kitchens & Gerel, LLP Associate, 1999-2001. Partner, 2002-2023.	Atlanta, GA
Justice Harry T. Lemmon, Louisiana Supreme Court Judicial Clerk, 1994-1995.	New Orleans, LA
Democratic Senatorial Campaign Committee Paid Intern, 1989.	Washington, DC

ACADEMIC POSITIONS

Tulane University Law School Adjunct Professor of Law, Advanced Civil Procedure: Complex Litigation, 2009 -	New Orleans, LA
Loyola University School of Law Adjunct Professor, Advanced Torts Seminar on Class Actions, 2005 -	New Orleans, LA

PROFESSIONAL APPOINTMENTS

American Law Institute, Member, 2023 -
Louisiana Attorney Disciplinary Board
Hearing Committee Member, 4th and 5th Circuits, 2008-2010.
Lawyer Chairman, Hearing Committee 56, 2010 -2013.

PROFESSIONAL APPOINTMENTS (cont.)

Southeast Louisiana Legal Services, Board of Directors, 2009-2011.

Louisiana State Law Institute, Code of Civil Procedure Committee, Sub-Committee on Multi-District Litigation, 2009.

Louisiana Attorney Fee Review Board, 2014-2015.

Louisiana Supreme Court Committee on Rules of Professional Conduct for Class Actions, Mass Torts and Complex Litigation, 2015-

LSBA Rules of Professional Conduct Committee, 2016 -

LSBA Receivership Panel, 2019 -

ADMISSIONS TO PRACTICE

State of Louisiana, Supreme Court and all inferior courts, 1994.

State of Arizona, 2023.

United States District Courts, Eastern, Western, and Middle Districts of Louisiana, 1995.

U.S. Fifth Circuit Court of Appeals, 1995.

U.S. Ninth Circuit Court of Appeals, 2004.

U.S. Second Circuit Court of Appeals, 2009.

U.S. Eleventh Circuit Court of Appeals, 2020.

U.S. Supreme Court, 2007.

BAR AND TRIAL LAWYER ASSOCIATIONS

International Academy of Trial Lawyers.

Fellow, 2015 -

American Bar Association, 1994 -

Patron Fellow, American Bar Foundation.

Member, Labor and Employment Section, 2004-2017.

Member, Tort Trial and Insurance Practice Section, 2014 -

Member, Litigation Section, 2015 -

American Association for Justice, (formerly ATLA), 1995 -

Executive Committee, 2011-2012.

Board of Governors, 2014 -

Distinguished Service Awards, 2021, 2023.

Harry Philo Award, 2018.

State Delegate, Louisiana, 2007-2013.

Chair, AAJ State Delegates, 2011-2012.

National College of Advocacy (NCA) Board of Trustees, 2011-2017, 2019-2024.

AAJ Endowment Board, 2010 -

Secretary, 2022.

Wiedemann-Wysocki Award, 2001, 2011.

Heavy Lifting Award, 2012.

Above and Beyond Award, 2019.

Amicus Curiae Committee, 2008 -

Chair, 2019 -

Chair, AI Task Force, 2023 -

Legal Affairs Committee, 2016 -

“Fellow” - National College of Advocacy.

Co-Chair, Gulf Oil Spill Litigation Group, 2010-2018.

Co-Chair, Chinese Drywall Litigation Group, 2009-2011.

Co-Chair, Dialysis Products Litigation Group, 2012.

ATLA Press Advisory Board, 1999-2002, 2007-2010.

AAJ PAC Eagle / M-Club.

Leaders’ Forum Member.

Keyperson Committee, 1996 -

Constitutional Litigation Committee, 1997 -

Preemption Task Force, 2008 -

Rule 23 Working Group, 2014 -

BAR AND TRIAL LAWYER ASSOCIATIONS (cont.)

30(b)(6) Working Group, 2017 -
MDL Working Group, 2018 -
Member, Commercial Law Section, 1996 -
Member, Insurance Law Section, 1996 -
Member, Admiralty Section, 2010 -
Member, Product Liability Section, 2014 -
Member, Jury Bias Litigation Group, 2015 -
Member, Class Action Litigation Group, 2009 -
Member, Tobacco Litigation Group, 1996 -
Member, Health Care Finance Litigation Group, 1998 -
Member, Electronic Discovery Litigation Group, 2004 -

Louisiana State Bar Association, 1994 -

Rules of Professional Conduct Committee, 2016 -
Chair, Class Action Section, 2022 -
Fellow, Louisiana Bar Foundation.
Receivership Panel, 2019 -
Cuba Task Force, 2016-2017.

Louisiana Association for Justice, (formerly LTLA), 1995 -

President, 2014-2015.
Stalwart Award, 2017.
Executive Committee, 2011-2017.
Amicus Curiae Committee, 1999 -
Chair, 2017 -
Chair, Maritime Section, 2012-2013.
Chair, Law Office Technology Section, 2006-2007.
Board of Governors, 2004-2017.
Council of Directors, 2006-2017.
AAJ State Delegate, 2007-2013.
President's Advisory Board, 1996-1997, 1999-2000.
Constitutional Litigation Committee, 1996 -
Key Contacts Committee, 1997 -
Speakers Bureau, 1999 -

National Civil Justice Institute (formerly Pound Civil Justice Institute).

President, 2020-2021.
Board of Trustees, 2015-2022.

New Orleans Bar Association.

President, 2023 -
Board of Trustees, 2018 -
Inn of Court, 2019 -

Civil Justice Foundation.

President, 2003-2004.
Board of Trustees, 1999-2012.
President's Award, 2001.

Public Justice, (formerly TLPJ).

Executive Committee, 2015-2016, 2017-2018.
Board of Trustees, 2010-2022.
Emeritus Board, 2022 -
Membership Committee Co-Chair, 2008-2009.
Louisiana State Network Coordinator, 2000-2012.

Litigation Counsel of America.

Senior Fellow, 2016 -
Fellow, 2007-2016.

Federal Bar Association, New Orleans Chapter.

Board of Trustees, 2018-2023.
Fellow, Federal Bar Association Foundation.

Bar Association of the Fifth Federal Circuit.

Association of Professional Responsibility Lawyers.

BAR AND TRIAL LAWYER ASSOCIATIONS (cont.)

Attorney Information Exchange Group (AIEG) (2013-2023)

Academy of New Orleans Trial Lawyers.

National Association of Legal Fee Analysis (NALFA) (member 2018-2020)

Nation's Top Attorney Fee Experts: Assessing Fees in Class Actions, 2018.

Out-of-State Member of the **Mississippi Trial Lawyers Association**, **Consumer Attorneys of California**, the **Illinois Trial Lawyers Association**, the **Arkansas Trial Lawyers Association**, the **Arizona Association for Justice**, and the **Wyoming Trial Lawyers Association**.

Injury Board.

PUBLICATIONS

America and the Law: Challenges for the 21st Century, Austin & Winfield, 1998, (revised edition, Gravier House Press, 1999).

“Duties Owed by Appointed Counsel to MDL Litigants Whom They Do Not Formally Represent” Loyola Law Review, Vol. 64, p.1 (Spring 2018).*

“Layers of Lawyers: Parsing the Complexities of Claimant Representation in Mass Tort MDLs,” co-authored with Lynn A. Baker, Lewis & Clark Law Review, Vol.24, Issue No.2, p.469 (Spring 2020).**

“HMO Litigation” Tort Litigation: Preparation and Tactics - 2000 and Beyond (West 2003).

“Spoliation of Evidence” Civil Trial Practice: Winning Techniques of Successful Trial Attorneys (Lawyers & Judges Publishing, 2000), revised and reprinted in, Aircraft Accident Reconstruction and Litigation (Lawyers & Judges Publishing, 2003).

“Percentage Fee Awards in Common Fund Cases” Tulane Law Review Vol. 74, Nos. 5-6, p.2033 (June 2000).

“Back to Basics – Briefing and Arguing Motions” TRIAL Magazine (Oct. 2019) p.18, and, reprinted in revised and edited form, as: “Tips for Briefing and Arguing Motions” Louisiana Advocates (Nov. 2019) p.9.

Contributing Author, “Lead Counsel Duties” Standards and Best Practices for Large and Mass Tort MDLs (Bolch Judicial Institute, Duke Law School) (September 2018).

Editorial Board, Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 (Duke Law School Center for Judicial Studies) (August 2018).

Contributing Author, “Procedures and Standards for Objections and Settlement of Objections Under Rule 23(e)(5)” Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 (Duke Law School Center for Judicial Studies) (August 2018).

“Evidence Preservation and Spoliation” TRIAL Magazine, September 2005, p.50.

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“Federal Preemption: *Geier* and Its Implications” Louisiana Advocates Vol.XVI, No.1, p.8 (Jan. 2001).

“The Use and Abuse of Privilege in Discovery” Australian Products Liability Reporter, Vol. 10, No.5 (June 1999).

“Understanding Spoliation of Evidence” TRIAL Magazine March 2001, p.45.

Review of *In Defense of Tort Law*, TRIAL Magazine November 2001, p.86.

“Proposed Changes to Rule 23: Consulting with Practicing Attorneys” Sidebar Vol. 3, No. 2, p.7 (Spring 2002), reprinted in, The Federal Lawyer Vol. 49, No.8, p.14 (Sept. 2002).

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“*Roark v. Humana*: What This New Decision Means for Your Medical Malpractice Cases Involving HMOs” Louisiana Advocates Vol. XVIII, No. 1, p.8 (Jan. 2003).

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“Being a Savvy Blogger” Louisiana Advocates (July 2007), p.12.

“How to Maximize the Advantages of E-Mail and Eliminate the Risks” Louisiana Advocates (August 2007), p.6.

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- “How I Spent My Summer Vacations (and Still Remember the Lessons Learned)” Louisiana Advocates Vol. XXX, No.6 (June 2015).
- “The Long Arc of Justice” Louisiana Advocates Vol. XXX, No.8 (Aug. 2015).
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* Cited and quoted with approval in Casey v. Denton, No.17-521, 2018 WL 4205153 (S.D.Ill. Sept. 4, 2018).

** Cited in Clopton & Rave, MDL in the States, 115 Nw.U.L.Rev. 1649, 1651 n.3 (2021).

SPEECHES AND PAPERS

- “Removal by Preemption Under the *Avco* Exception...” Litigation at Sunrise, 1996 ATLA Annual Convention, Boston, Massachusetts, July 23, 1996.
- “Spoliation of Evidence and Related Topics” Yours to Choose Seminar, LTLA, New Orleans, Louisiana, December 28, 1996.
- “The Use and Abuse of Privilege in Discovery” Litigation at Sunrise, 1998 ATLA Annual Convention, Washington D.C., July 1998, and Yours to Choose Seminar, LTLA, Baton Rouge, Louisiana, December 30, 1998.
- “Force-Placed Insurance: Banks’ Failure to Disclose” Last Chance Seminar, LTLA, New Orleans, Louisiana, December 18, 1998.
- “HMO Litigation” Winter Ski Seminar, LTLA, Aspen, Colorado, March 6, 2000, and Last Chance Seminar, Winning With the Masters, LTLA, New Orleans, Louisiana, Dec. 14, 2000.
- “Class Action Litigation Against HMOs” 2001 ATLA Annual Convention, Montreal, Canada, July 17, 2001.
- “Managing Complex Litigation for the Louisiana Paralegal” Institute for Paralegal Education, New Orleans, Louisiana, July 9, 1999.
- “Subrogation and Loss Recovery in Louisiana” National Business Institute, New Orleans, Louisiana, March 24, 2000.
- “Can We ‘Import’ Better Law in Personal Injury Cases?” LTLA Spring CLE Retreat, Orlando, Florida, March 31, 2002.
- “Case Evaluation and Other Pre-Filing Considerations” Tobacco Litigation Group, ATLA Annual Convention, Atlanta, Georgia, July 21, 2002.
- “Proving Fraud in Tobacco Cases” ATLA Annual Convention, Atlanta, Georgia, July 21, 2002.
- “Preparing and Taking Depositions for Use at Trial” STLA, New Orleans, Louisiana, February 28, 2003, and LTLA *A La Carte* Seminar, New Orleans, Louisiana, December 30, 2004.
- “Trial and Post-Trial Motions: The Plaintiff’s Perspective” National Business Institute, New Orleans, Louisiana, June 20, 2003.
- “A Practical Framework for Class Action Litigation” ABA National Institute on Class Actions, San Francisco, California, Oct. 24, 2003, and Washington, D.C., Nov. 7, 2003.
- “Identifying Spoliation of Evidence Issues and Related Issues Surrounding the Preservation and Discovery of Electronic Data” National Business Institute, New Orleans, LA, March 30, 2004, and Lafayette, LA, December 2, 2004.
- “Civil Discovery Sanctions” Dealing with Destruction: Preservation and Spoliation of Electronic Data and Other Evidence in Louisiana, National Business Institute, New Orleans, LA, March 30, 2004, and Lafayette, LA, December 2, 2004.
- “Plaintiff’s Personal Injury from Start to Finish” National Business Institute, New Orleans, Louisiana, November 30, 2004, and New Orleans, Louisiana, June 30, 2006.
- “Litigating the Class Action Suit in Louisiana” National Business Institute, New Orleans, Louisiana, January 7, 2005.
- “Proposed Changes to the Federal Rules” Electronic Discovery Teleseminar, May 10, 2005, and, ATLA Annual Convention, Toronto, Canada, July 25, 2005.
- “Recent Decisions Affecting E-Discovery” E-Discovery: Get Ready to Apply the New FRCP Changes, National Business Institute, New Orleans, Louisiana, December 20, 2006.
- “E-Discovery Procedures and Compliance with the New Rules” E-Discovery: Get Ready to Apply the New FRCP Changes, National Business Institute, New Orleans, Louisiana, December 20, 2006.
- “Conducting Forensic Analysis” E-Discovery: Get Ready to Apply the New FRCP Changes, National Business Institute, New Orleans, Louisiana, December 20, 2006.
- “E-Discovery Under the New Rules” LTLA *A La Carte* Seminar, New Orleans, Louisiana, December 29, 2006.
- “The E-Discovery Amendments to the Federal Rules: Panel Discussion - E-Discovery Practical Considerations” Federal Bar Association, New Orleans Chapter, February 2, 2007.

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- “The E-Discovery Amendments to the Federal Rules: Panel Discussion - E-Discovery Ethics”
Federal Bar Association, New Orleans Chapter, February 2, 2007.
- “Class Action Reforms Post CAFA: Leverage the Reforms and Emerging Trends” Strafford Publications,
CLE Teleconference, March 20, 2007.
- “Electronic Evidence Symposium: New Rules, E-Discovery, Spoliation & Sanctions” New Orleans Bar Association,
2007 Bench Bar Conference, Point Clear, Alabama, March 30, 2007.
- “Personal Injury Cases: Calculating and Proving Damages” National Business Institute, New Orleans, LA, October 16, 2007.
- “Vioxx Litigation: History, Overview and Navigating Through the Settlement Process” AAJ Weekend With the Stars,
New York, NY, December 8, 2007.
- “E-Discovery: Applying the New FRCP Changes” National Business Institute, New Orleans, LA, Dec. 13, 2007.
- “Rethinking Depositions: Discovery vs. Trial” LAJ CLE A La Carte, Baton Rouge, LA, December 27, 2007.
- “E-Discovery: A Changing Landscape - Practical & Legal Perspectives” SeminarWeb, January 16, 2008.
- “Approaches to Defense Expert Depositions - Technique & Style” AAJ Mid-Winter Convention, Puerto Rico, January 26, 2008.
- “E-Discovery Workshop” National Disability Rights Network Annual Conference, New Orleans, LA, June 4, 2008.
- “San Diego Fire Cases” Litigation at Sunrise, AAJ Annual Convention, Philadelphia, PA, July 16, 2008.
- “E-Discovery: The Paralegal’s Role and Ethical Considerations” AAJ Annual Convention, Philadelphia, PA, July 16, 2008.
- “Preparation of Expert Testimony” National Business Institute, New Orleans, LA, October 30, 2008.
- “Avoiding Common Ethical Pitfalls” Building Your Civil Trial Skills, National Business Institute, New Orleans, LA, Dec. 18, 2008.
- “Documentary Evidence” Personal Injury Trials: Getting the Most out of Your Evidence, National Business Institute,
New Orleans, LA, April 29, 2009.
- “Electronic Evidence” Personal Injury Trials: Getting the Most out of Your Evidence, National Business Institute, New Orleans, LA,
April 29, 2009.
- “Ethics and Professionalism” AAJ Jazz Fest Seminar, New Orleans, LA, May 3, 2009.
- “12 Lessons in Litigation” Web 2.0 and The Trial Bar, InjuryBoard.com, St. Petersburg, FL, June 5, 2009.
- Moderator, Chinese Drywall Litigation Seminar, AAJ, New Orleans, Louisiana, August 11, 2009.
- “Re-Thinking Experts” LAJ Post-Legislative Retreat, Carmel, CA, June 30, 2009, LAJ Last Chance Seminar, New Orleans, LA,
December 10, 2009, and, LAJ CLE a la Carte, Baton Rouge, LA, December 30, 2009.
- “Re-Thinking Experts” SeminarWeb! Live, December 17, 2009.
- “Avoiding Common Ethical Pitfalls” Building Your Civil Trial Skills, National Business Institute, New Orleans, LA, Dec. 18, 2009.
- “Evaluating Class Actions: How Do You Know When You Have One?” LAJ CLE a la Carte, New Orleans, LA, December 30, 2009.
- “Predatory Lending and Sub-Prime Class Actions” AAJ Mid-Winter Convention, Maui, Hawaii, January 30, 2010.
- “Coast Guard / MMS Hearings” Gulf Coast Oil Spill Symposium, LSBA, New Orleans, LA, May 25, 2010.
- Moderator, Gulf Coast Oil Spill Litigation Teleseminar, AAJ, June 2, 2010.
- “Chinese Drywall Litigation” LSBA Summer School for Lawyers, Sandestin, Florida, June 7, 2010.
- “12 Lessons in Litigation” LAJ Post-Legislative Retreat, Carmel, CA, June 29, 2010, (invited) (submitted paper) (could not attend).
- Moderator, Chinese Drywall Litigation Program, AAJ, Vancouver, British Columbia, July 14, 2010.
- Status of BP Claims Facility and Escrow Fund, Gulf Coast Oil Spill Litigation Group Program. Vancouver, British Columbia,
July 16, 2010.
- Update on MDL Issues and Litigation in the Eastern District of Louisiana, Gulf Coast Oil Spill, Vancouver, British Columbia,
July 16, 2010.
- “Oil Pollution Act of 1990: An Overview” Gulf Coast Oil Spill Litigation Group Program. Vancouver, British Columbia, July 16, 2010.
- Oil Spill Litigation Panel Discussion: Liability, Punitive Damages, Environmental Issues, etc., HB Litigation Conference,
Miami, Florida, November 4, 2010.
- “Class Actions and Mass Torts” Avoyelles Parish Bar Association, Marksville, Louisiana, November 5, 2010.
- “Ethical Issues in Litigation” SeminarWeb! Live, November 8, 2010.
- “Ethics and Professionalism” Last Chance Seminar, Louisiana Association for Justice, New Orleans, Louisiana, December 9, 2010.

SPEECHES AND PAPERS (cont.)

- “Ethics and Professionalism” CLE a la Carte, Louisiana Association for Justice, New Orleans and Baton Rouge, Louisiana, December 30, 2010.
- “Ethics and Professionalism in Litigation” AAJ Annual Convention, San Francisco, California, July 2013.
- “The BP Oil / *Deepwater Horizon* Oil Spill Litigation: An Overview” Louisiana State Bar Association 20th Annual Admiralty Symposium, New Orleans, Louisiana - September 20, 2013.
- Faculty, Essentials of Civil Litigation AAJ Trial Advocacy College, Tulane Law School, New Orleans, Louisiana, October 7-10, 2013.
- “Multi-District Litigation” National Association of Women Judges, New Orleans, Louisiana, October 11, 2013.
- “Ethical Questions Raised by the BP Oil Spill Litigation” 22nd Annual Admiralty and Maritime Law Conference, South Texas College of Law, Houston, Texas, October 18, 2013.
- “BP / Deepwater Horizon Oil Spill Litigation” Louisiana Judicial Conference, Evidence and Procedure Seminar, New Orleans, Louisiana, February 20, 2014.
- “Ethical and Professional Issues in MDLs” LSBA Annual MDL Conference, New Orleans, Louisiana, March 14, 2014.
- ““Legalnomics”: Lessons from the Field of Behavioral Economics About Perception and Decision-Making for Trial Lawyers” LAJ a la Carte, New Orleans and Baton Rouge, Louisiana, December 29-30, 2014, and Mississippi Association for Justice Annual Convention, June 12, 2015.
- “When the Levee Breaks – Resolving Complex Claims: Lesson of the Deepwater Horizon, Katrina, and More” ABA Section of Litigation, Annual Conference, New Orleans, Louisiana, April 15, 2015.
- “E-Discovery: It’s Not Just for Big Civil Suits in Federal Court Anymore” NOBA Bench-Bar Conference, Point Clear, April 17, 2015.
- “Ethical and Professional Questions in Mass Tort Cases” LSBA Summer School for Lawyers, Sandestin, Florida, June 10, 2015.
- “Telling Our Story: The Trial Lawyer’s Journey” LAJ Post-Legislative Retreat, Carmel, California, June 22, 2015, and AAJ Weekend with the Stars, New York, New York, December 12, 2015.
- Faculty Moderator, Pound Civil Justice Institute 2015 Forum for State Appellate Court Judges, “Contracting Transparency: Public Courts, Privatizing Processes, and Democratic Practices” and “Judicial Transparency in the 21st Century”, Montreal, Canada, July 11, 2015.
- “Sidestepping Some of the *Daubert* Landmines” AAJ Annual Convention, Montreal, Canada, July 14, 2015.
- “Unsettling Issues with Mass Tort Settlements” ABA Annual Convention, Chicago, Illinois, July 31, 2015.
- Stephen J. Herman and James Bilsborrow, “Much Ado About Nothing: The So-Called ‘No-Injury Class’” August 18, 2015.
- “Class Actions, Mass Torts and Potential Changes to Rule 23” NOBA Bench-Bar Conference, Point Clear, March 10, 2016.
- “Attacks on the Judiciary” LSBA Summer School for Lawyers and Judges, Sandestin, Florida, June 6, 2016.
- “Procedure & Tactics in Complex Appellate Proceedings: A Case Study” Texas State Bar, Advanced Civil Appellate Practice, Austin, Texas, September 8, 2016.
- “Ethics – Important Recent Developments that Impact Litigators on Both Sides of the ‘V’” LSBA 23rd Annual Admiralty Symposium, New Orleans, Louisiana, September 16, 2013.
- Duke Law Center for Judicial Studies MDL Conference, Panel 1: Extent of Co-Lead Counsel’s and PSC’s Fiduciary Responsibility to All Plaintiffs, Washington, DC, October 27, 2016.
- “Federal State Coordination: Peacefully Co-existing in Parallel Universes” LSBA 16th Annual Class Action / Complex Litigation Symposium, New Orleans, Louisiana, November 11, 2016.
- Moderator, “Pros/Cons of State MDLs: Complex Litigation Rules of Professional Responsibility” LSBA 16th Annual Class Action / Complex Litigation Symposium, New Orleans, Louisiana, November 11, 2016.
- “Managing Complex Litigation” NOBA Masters of the Courtroom, New Orleans, Louisiana, December 15, 2016.
- “Fool Me Once, Shame on You (and Other Thoughts on Professionalism)” NOBA Procrastinators’ Program, New Orleans, Louisiana, December 28, 2016.
- “A Conversation on Intergenerational Professionalism” NOBA Bench-Bar Conference, Point Clear, Alabama, April 2, 2017.
- “Litigating the Disaster Case” ABA Business Section, New Orleans, Louisiana, April 6, 2017.
- “Defense Perspective” AAJ Future of Class Actions Conference, Nashville, Tennessee, May 11, 2017.
- “Duties Owed by Appointed Counsel to MDL Litigants Whom They Do Not Formally Represent” AAJ Mass Torts Best Practices Seminar, Boston, MA, July 21, 2017.
- “Handling Complex Litigation” EDLA First Biennial Bench and Bar Conference, September 28, 2017.

SPEECHES AND PAPERS (cont.)

- “Duties Owed by Appointed Counsel to MDL Litigants Whom They Do Not Formally Represent” LSBA 17th Annual Class Action/Complex Litigation Symposium, New Orleans, LA, November 10, 2017.
- Faculty, AAJ Advanced Deposition College, New Orleans, LA, January 2018.
- “Social Media as Evidence” LAJ / La. Judicial College Evidence & Procedure Seminar, New Orleans, Louisiana, March 16, 2018.
- Duke Law Center for Judicial Studies MDL Conference, Panel 3: Standards in Determining Optimum Number of PSC Members and Amounts of Common Benefit Fund, Atlanta, Georgia, April 26, 2018.
- “Emerging Issues in Civil Litigation” George Mason University Law & Economics Center 12th Annual Judicial Symposium on Civil Justice Issues, Arlington, Virginia, May 21, 2018.
- Panel: Update on La. Supreme Court Committee on Ethical Rules in Complex Litigation and Multi-District Litigation, LSBA Summer School for Lawyers, Sandestin, Florida, June 5, 2018.
- “Ethics of Class Action Settlements” AAJ Annual Convention, Denver, Colorado, July 8, 2018.
- “Punitive Damages After *Batterton*, *Tabingo*, and *McBride*: What’s Next?” LAJ High Stakes on High Seas, New Orleans, Louisiana, August 17, 2018, and LSBA 25th Annual Admiralty Symposium, New Orleans, Louisiana, September 14, 2018.
- Program Coordinator / Moderator, LSBA Personal Injury Seminar, September 7, 2018.
- Faculty, AAJ Mass Tort Deposition College, New Orleans, Louisiana, October 24-26, 2018.
- “The ‘Take No Prisoners’ Deposition” AAJ Mass Tort Deposition College, New Orleans, Louisiana, October 24, 2018.
- “So, You Settled the Case: Now What?” AAJ Class Action Seminar, New York, NY, December 6, 2018.
- “Ethics” NOBA Procrastinators’ Program, New Orleans, LA, December 19, 2018.
- “Four Hot Spots to Avoid Legal Malpractice” AAJ Mid-Winter Convention, Miami, FL, February 5, 2019.
- “Current Landscape of Punitive Damages under Maritime Law” ABA Admiralty and Maritime Law Conference, New Orleans, LA, March 23, 2019.
- “Bet the Company Litigation: Are We Really Going to Trial?” LSBA Annual Convention, Sandestin, FL, June 3, 2019, and, New Orleans, LA, December 12, 2019.
- “Why Knowing Admiralty Law is Important to Your Practice” Melvin Belli Seminar, San Diego, CA, July 26, 2019.
- “Ethical Issues in Class Action Litigation” AAJ Annual Convention, San Diego, CA, July 28, 2019.
- “Ethical Issues Facing Litigators” LSBA, Lafayette, LA, Sept. 5, 2019, and New Orleans, LA, Sept. 20, 2019.
- “Layers of Lawyers in MDLs: Parsing the Complexities of Claimant Representation in Mass Tort MDLs” Lewis & Clark Symposium on Class Actions, Mass Torts, and MDLs: The Next 50 Years” Portland, Oregon, Nov. 1, 2019.
- “Fee Disputes: Intersection of Ethical Rules and Contract Law” Avoyelles Parish Bar CLE, Marksville, LA, November 8, 2019.
- “Thoughts on Professionalism” New Orleans Bar Association, Nov. 26, 2019.
- “Ethics: Survey of Recent Cases and Advisory Opinions” New Orleans Bar Association, November 26, 2019, and, Louisiana State Bar Association, New Orleans, LA, Dec. 11, 2019.
- Program Coordinator / Moderator, LSBA Personal Injury Seminar, December 4, 2019.
- “Next Big Thing(s) – What Are the New Class Actions to Watch For?” AAJ Class Action Seminar, New York, NY, December 5, 2019.
- “E-Discovery from the Plaintiff’s View” New Orleans Bar Association, December 12, 2019.
- “A Trial Lawyer’s Journey” Winning With the Masters, LAJ, New Orleans, LA, December 12, 2019, and, Western Trial Lawyers Association, Jackson Hole, WY, March 6, 2020 (invited) *
- “Legal Ethics in Maritime Cases” Admiralty Law Institute, Tulane University Law School, New Orleans, LA, March 13, 2020.
- “Financing Litigation: Views from the Bench and Bar” NOBA Bench-Bar Conference, Point Clear, AL, March 22, 2020 (invited) *
- “Bet the Company Litigation: Are We Really Going to Trial?” LSBA Annual Convention, Sandestin, FL, June 8, 2020 (invited) *
- “Masters of Disaster: What 9/11, Hurricane Katrina, and Northern California Fires Taught Us That Can Help You with Your Case During and After the COVID Crisis” San Francisco Trial Lawyers Association, SeminarWeb, June 22, 2020.
- “Ethical Issues Facing Litigators” Louisiana State Bar Association, New Orleans, LA, June 19, 2020 (invited) *
- “Difficult Depositions: Ethical Issues and Strategies” AAJ Annual Convention, Washington, DC, July 14, 2020.
- “Whether to Pursue an MDL, and, if so, Issues Affecting What Court to Recommend to the JPML” Baylor Law School Complex Litigation Program, August 4, 2020.

SPEECHES AND PAPERS (cont.)

“Plaintiff Perspective on Common Benefit Orders” Baylor Law School Complex Litigation Program, August 13, 2020.

“How to Get the Most out of Lay Witnesses” FBA Federal Practice Series, New Orleans, LA, August 20, 2020.

“Implications for Civil Litigation and the Courts in a Post-Pandemic World” COVID and the Courts Symposium, sponsored by the Civil Justice Research Initiative at Berkeley Law School and RAND, September 24, 2020.

“Case Management” Mass Tort MDL Certification Program, Bolch Judicial Institute, Duke University, Nov. 9, 2020.

“Ethics: Update of Recent Decisions” New Orleans Bar Association, Nov. 17, 2020.

“Thoughts on Professionalism” New Orleans Bar Association, Nov. 17, 2020.

“Evaluation, Preparation, Research and Background Checks on Plaintiff and Defense Experts” New Lawyers Bootcamp, AAJ, April 12, 2021.

“Difficult Depositions: Ethical Issues and Strategies” Arkansas Trial Lawyers Association, Little Rock, AR, April 31, 2021.

“Bet the Company Litigation: Are We Really Going to Trial?” LSBA Annual Convention, Sandestin, FL, June 6, 2021.

“What Will Be the New Normal?” AAJ Annual Convention, Las Vegas, NV, July 14, 2021.

“Where Are We With Punitive Damages?” LSBA Annual Admiralty Symposium, Sept. 17, 2021.

“Attorneys’ Fees in Class Actions” Strafford Publications, October 14, 2021.

“Getting Older: How Perspective in Practicing Law Changes” InjuryBoard Summit, Dove Mountain, AZ, Nov. 5, 2021.

“*Daubert* Update” AAJ Mid-Winter Convention, Desert Springs, CA, Feb. 14, 2022.

FBA Civil Rights Program, Mock Appellate Argument in *Students for Fair Admissions v. Harvard College* case, February 22, 2022.

“Ethics Update” New Orleans Bar Association, Nov. 30, 2021.

“Professionalism: What Not to Do” New Orleans Bar Association, Nov. 30, 2021.

“Let’s Try This Case!” So You Want to Be a Personal Injury Lawyer, LSBA, Dec. 14, 2021.

“Reflections on Getting Older: Changes in the Profession” New Orleans Bar Association, Dec. 23, 2021.

“The Trial Lawyer’s Journey: Reflections on Changes in the Profession” Academy of New Orleans Trial Lawyers, Jan. 19, 2022.

“Should the Shipowners Act of 1851 be Repealed, Modified or Untouched?” Shipowners Limitation of Liability Symposium, Loyola Maritime Law Journal, New Orleans, LA, Feb. 18, 2022.

“Confidentiality Orders and Secrecy Agreements” Virtual Coffee Hour, Mass. Academy of Trial Lawyers, March 18, 2022.

“Litigation Management” Harris Martin MDL Conference: The Current Mass Tort Landscape – Infant Formula, Philips CPAP, Hernia Mesh, and More, New Orleans, LA, March 30, 2022.

“Witness Preparation” AAJ New Lawyers Boot Camp, Vail, CO, May 27, 2022.

“The Show Must Go On: Learning From Your Mistakes” AAJ New Lawyers Boot Camp, Vail, CO, May 28, 2022.

“Ethics Update” Mississippi Association of Justice Annual Convention, New Orleans, LA, June 23, 2022.

“Seller Liability” AAJ Annual Convention, Product Liability Section CLE, Seattle, WA, July 18, 2022.

“The Road Ahead: Recent Law on Trucking Cases - Updates from the Court” LAJ Fall Conference, Sept. 23, 2022.

“Finding the Right Balance Between Your Own Clients and the Greater Demands of the Profession” InjuryBoard Summit, Cliff House, Maine, October 24, 2022.

“Legal Ethics: Top Mistakes in Everyday Practice” FBA Webinar, November 9, 2022.

“Getting Older: Changes in the Profession” New Orleans Bar Association, December 9, 2022.

“Difficult Depositions: Ethics and Strategies” LAJ Last Chance, New Orleans, LA, December 10, 2022.

“Vetting and Preparing Your Expert to Survive *Daubert*” NOBA Masters of the Courtroom, New Orleans, LA, Dec. 15, 2022.

“A Trial Lawyer’s Journey - Thoughts on the Profession” Tennessee Trial Lawyers Association, Jan. 14, 2023.

Howard Twigg Memorial Lecture on Legal Professionalism, Phoenix, Arizona, Feb. 6, 2023.

Ethics Panel, “View on Financing Litigation”, NOBA Bench-Bar Conference, Point Clear, AL, March 26, 2023.

Faculty, AAJ Deposition College, Washington, DC, April 13-15, 2023.

“Fee Issues in Class Actions” George Washington Law Conference on Resolving Mass Torts in Different Forums, Washington, DC, April 27, 2023.

SPEECHES AND PAPERS (cont.)

- “What We Are Talking About When We Are Talking About ‘Class Actions’: Two Recent Examples: The Hard Rock Collapse and the Dean Nursing Home Cases” LSBA Summer School for Lawyers and Judges, Sandestin, FL, June 6, 2023.
- “Settlement Considerations and Issues: Fee Charges, Experts Tied Up, and Failure to Produce Trial Package” AAJ Mass Torts Seminar, Philadelphia, Pennsylvania, July 14, 2023.
- “Working Together: By Force and/or By Choice - The Challenges, Advantages and Disadvantages of Working with Other Firms” InjuryBoard Summit, Big Sky, Montana, October 14, 2023.
- “Legal Ethics and Professionalism: A Survey of Recent Developments and Decisions” New Orleans Bar Association, November 9, 2023, and Last Chance CLE, Louisiana Association for Justice, New Orleans, Louisiana, December 7, 2023.
- “Ethical Issues in Class Actions” American Association for Justice Webinar, December 5, 2023.
- “Class Counsel Fee Awards: Navigating Increased Judicial Scrutiny” Strafford Webinars, January 11, 2024.
- “Ethics for Using ChatGPT/AI in Your Practice” AAJ Mid-Winter Convention, Austin, Texas, February 12, 2024.
- “*Deepwater Horizon* / BP Oil Spill Litigation” Joint Presentation of Tulane Law School and Tulane Business School, April 4, 2024.
- “Judicial Independence: Lessons from the BP Oil Spill Litigation” ABOTA Southeast Chapter Conference, New Orleans, Louisiana, April 29, 2024.
- “Ethical Rules for Using Generative AI in Your Practice” Louisiana Association for Justice / SeminarWeb, May 14, 2024, and Wyoming Trial Lawyers Association, Cody, Wyoming, June 14, 2024.
- “Artificial Intelligence, Judges, and Legal Ethics” NCJI Annual Forum for State Appellate Court Judges, Nashville, Tennessee, July 20, 2024 (invited).
- “Ethical Issues in Class Actions” Class Action Section, AAJ Annual Convention, Nashville, Tennessee, July 21, 2024 (invited).
- “Emerging Issues in Legal Ethics” LSBA / Gilsbar, New Orleans, Louisiana, September 13, 2024 (invited).

* Postponed or Cancelled Due to the Covid-19 Coronavirus Crisis.

REPORTED CASES

- Alliance for Affordable Energy vs. New Orleans City Council, No. 96-0700 (La. 7/2/96), 677 So.2d 424.
- O’Reilly and Griffith vs. Brodie, et al and PMIC, 975 S.W.2d 57 (Tex. App. 4th Dist. - San Antonio 1998), *review denied*, (Aug. 25, 1998); and, 42 *ATLA Law Reporter* 264 (Sept. 1999).
- Marchesani v. Pellerin-Milnor, 248 F.3d 423 (5th Cir. 2001), *and*, 269 F.3d 481 (5th Cir. 2001); and, *ATLA Law Reporter*, Vol. 46, p.240 (Sept. 2003), and *Louisiana Advocates* Vol.XVIII, No.4 (April 2003) p.14.
- Scott v. American Tobacco, No. 01-2498 (La. 9/25/01), 795 So.2d 1176, *and*, No. 02-2449 (La. 11/15/02), 830 So.2d 294, *and*, No. 2004-2095 (La. App. 4th Cir. 2/7/07), 949 So.2d 1266, *writ denied*, 973 So.2d 740 (La. 2008), *cert. denied*, 128 S.Ct. 2908 (2008), *and*, *later proceeding*, No. 2009-0461 (La. App. 4th Cir. 4/23/2010), 36 So.3d 1046, *writ denied*, 44 So.3d 686 (La. 2010), *cert. denied*, 131 S.Ct. 3057 (2011).
- Schultz v. Texaco Inc., 127 F.Supp.2d 443 (S.D.N.Y. 2001), *and*, 308 F.Supp.2d 289 (S.D.N.Y. 2004), *and*, 2009 WL 455163 (S.D.N.Y. Feb. 24, 2009).
- Oubre / Orrill v. Louisiana Citizens Fair Plan, No. 09-0566 (La. App. 4th Cir. 12/09/09), 26 So.3d 994, *and*, No. 2009-0888 (La. App. 4th Cir. 4/21/2010), 38 So.3d 457, *writ denied*, 45 So.3d 1035 (La. 2010); *and*, No. 2011-0097 (La. 12/16/2011), 79 So.3d 987.
- In re Oil Spill by the Oil Rig Deepwater Horizon, 808 F.Supp.2d 943 (E.D.La. 2011) (“B1 Order”); *and*, 910 F.Supp.2d 891 (E.D.La. 2012), *aff’d*, 739 F.3d 790 (5th Cir. 2014) (“*Deepwater Horizon II*”), *cert. denied*, 135 S.Ct. 754 (2014); 744 F.3d 370 (5th Cir. 2014) (“*Deepwater Horizon III*”); 785 F.3d 986 (5th Cir. 2015) (“*Rule 79 Decision*”); 785 F.3d 1003 (5th Cir. 2015) (“*Non-Profits Decision*”); 793 F.3d 479 (5th Cir. 2015) (“*Data Access Appeal*”); 858 F.3d 298 (5th Cir. 2017) (“*495 Appeal*”); *and*, 295 F.R.D. 112 (E.D.La. 2013) (approval of Medical Benefits Settlement); *and*, 21 F.Supp.3d 657 (E.D.La. 2014) (“Phase One Trial Findings and Conclusions”).
- In re Harrier Trust, No. 2018-1467 (La. 2/18/2019), 263 So.3d 884.
- Frego v. Settlement Class Counsel, 16 F.4th 1181 (5th Cir. 2021).
- Martin v. LCMC Health Holdings, Inc., No.23-411, 2023 WL 4540547 (E.D.La. July 5, 2023), *stay denied*, 2023 WL 5173791 (E.D.La. Aug. 11, 2023), *affirmed*, 101 F.4th 410 (5th Cir. 2024).
- Alicea v. Activelaf, No.2016-1818 (La. 10/19/2016), 218 So.3d 1001 (and *Duhon v. Activelaf d/b/a SkyZone*, 2016 WL 6123820) (*amicus curiae*).

REPORTED CASES (cont.)

Maggio v. Parker, No.2017-1112 (La. 6/27/2018), 250 So.3d 874 (*amicus curiae*).

Martin v. Thomas, No.2021-1490 (La. 6/29/2022), 346 So.3d 238 (*amicus curiae*).

George v. Progressive Waste Solutions, No.2022-01068 (La. 12/9/22) (*amicus curiae*).

Wightman v. Ameritas Life Ins. Co., No.2022-00364 (La. 10/21/22), 351 So.3d 690 (*amicus curiae*).

Bulot v. Intracoastal Tubular, No. 00-2161 (La. 2/9/01), 778 So.2d 583 (*amicus curiae*).

Dumas v. Angus Chemical, No. 97-2356 (La. 11/14/97), 702 So.2d 1386.

Sommers v. State Farm, No. 99-2586 (La. App. 4th Cir. 5/3/00), 764 So.2d 87.

Andrews v. TransUnion Corp., No. 2004-2158 (La. App. 4th Cir. 8/17/2005), 917 So.2d 463, *writ denied*, 926 So.2d 495 (La. 4/17/06), and MDL No. 1350; *Louisiana Advocates*, Vol.XXIV, No.5 (May 2009), p.14.

Bratcher v. National Standard Life, 365 F.3d 408 (5th Cir. 2004), *cert. denied*, 125 S.Ct. 277 (2004).

Bauer v. Dean Morris, 2011 WL 3924963 (E.D.La. Sept. 7, 2011).

Schafer v. State Farm, 507 F.Supp.2d 587 (E.D.La. 2007), *and*, 2008 WL 131225 (E.D.La. Jan 10, 2008).

Moeckel v. Caremark Inc., 385 F.Supp.2d 668 (M.D. Tenn. 2005).

In re Managed Care Litigation, 150 F.Supp.2d 1330 (S.D.Fla. 2001).

Lakeland Anesthesia v. Aetna U.S. Healthcare, 2000 U.S. Dist LEXIS 8540 (E.D.La. June 15, 2000), *Andrews Managed Care Litigation Reporter*, Vol.I, Issue 13 (July 17, 2000) p.12.

Mays v. National Bank of Commerce, 1998 U.S. Dist. LEXIS 20698 (N.Dist. Miss. Nov. 20, 1998), *aff'd* No. 99-60167 (5th Cir. April 11, 2000).

Jones v. Hyatt, No. 94-2194 (La. App. 4th Cir. 9/25/96), 681 So.2d 381 (appeal counsel).

Delcambre v. Blood Systems, Inc., No. 2004-0561 (La. 1/19/05), 893 So.2d 23 (*amicus curiae*).

VERDICTS, DECISIONS, REPORTED SETTLEMENTS AND AWARDS

Scott v. American Tobacco, et al, Civil District Court for the Parish of Orleans, State of Louisiana, No. 96-8461, July 28, 2003, (Jury verdict in Phase I trial for class of Louisiana smokers finding tobacco industry liable for fraud, conspiracy, and intentional torts, and responsible for the establishment of a court-supervised medical monitoring and/or cessation program), and, May 21, 2004 (Jury verdict in Phase II in the amount of \$591 Million for 10-year comprehensive court-supervised smoking cessation program), *aff'd, in part*, No. 2004-2095 (La. App. 4th Cir. 2/7/07) (upholding award of \$279 Million fund to Class for 10-year cessation program), *on subsequent appeal*, No. 2009-0461 (La. App. 4th Cir. 4/23/2010), 36 So.3d 1046 (ordering Defendants to deposit \$241 Million, plus interest, into the Registry of the Court), *writ denied*, 44 So.3d 686 (La. 2010), *cert. denied*, 131 S.Ct. 3057 (2011) (Member of Trial Team, Philip Morris Team, and co-Lead of Briefing Team).

In re Oil Spill by the Oil Rig Deepwater Horizon, 21 F.Supp.3d 657 (E.D.La. 2014) (Phase One Trial Findings & Conclusions that BP was guilty of gross negligence and reckless and willful misconduct) (Co-Liaison Counsel for Plaintiffs and member of the Trial Team).

In re Oil Spill by the Oil Rig Deepwater Horizon, 910 F.Supp.2d 891 (E.D.La. 2012), *aff'd*, 739 F.3d 790 (5th Cir. 2014), *rehearing en banc denied*, 756 F.3d 320 (5th Cir. 2014), *cert. denied*, 135 S.Ct. 734 (2014) (approving BP Economic & Property Damages Class Settlement), *and*, 295 F.R.D. 112 (E.D.La. 2013) (approving BP Medical Benefits Class Settlement) (Settlements in Excess of \$12.9 Billion) (Co-Lead Class Counsel), *and*, No.10-2179, Rec. Doc. 22252 (E.D.La. Feb. 15, 2017), *aff'd*, 934 F.3d 434 (5th Cir. 2019) (approving Distribution Model for \$1.25 Billion Halliburton/Transocean Class Settlements) (Co-Lead Class Counsel).

Hernandez v. Knauf, No.09-6050, 2010 WL 1710434, *In re Chinese-Manufactured Drywall Products Liability Litigation*, MDL No. 2047 (E.D.La. April 27, 2010) (awarding over \$164,000 in remediation and other damages, plus interest, costs, and reasonable attorneys' fees, in first bellwether trial, holding that all drywall, insulation, entire electrical system, HVAC system and copper plumbing must be removed) (Co-Lead Trial Counsel).

In re Chinese-Manufactured Drywall Products Liability Litigation, 424 F.Supp.3d 456 (E.D.La. 2020) (approving class settlement of \$248 Million against Chinese Manufacturers) (Settlement Class Counsel); (*see also*, Amorin v. Taishan, 861 Fed.Appx. 730 (11th Cir. 2021) (affirming common benefit fee award)); (*see also*, Frego v. Settlement Class Counsel, 16 F.4th 1181 (5th Cir. 2021) (dismissing appeal by individual classmembers)).

Marchesani v. Pellerin-Milnor, 248 F.3d 423 (5th Cir. 2001), *and*, 269 F.3d 481 (5th Cir. 2001), *and*, *Louisiana Advocates* Vol.XVIII, No.4 (April 2003) p.14, *and* *ATLA Law Reporter*, Vol. 46, p.240 (Sept. 2003) (\$3.375 million settlement).

Turner v. Angelo Iafrate, et al, No. 596-274 (La. 24th JDC), *Louisiana Advocates*, Vol.XXI, No.10, p.15 (Oct. 2006), *and*, *AAJ Law Reporter*, Vol.L, No.6 (Aug. 2007) (\$4.5 million settlement).

VERDICTS, DECISIONS, REPORTED SETTLEMENTS AND AWARDS (cont.)

- Niven v. Boston Old Colony, et al., 24th JDC, State of Louisiana, No.373-299, December 28, 1998, (judgment of \$529,027.02 for plaintiff against La. DOTD - total damages \$5,290,270.20), *rev'd*, No. 99-783 (La. App. 5th Cir. 1/25/2000).
- Schultz v. Stoner, et al., 127 F.Supp.2d 443 (S.D.N.Y. 2001), *and*, 308 F.Supp.2d 289 (S.D.N.Y. 2004), *and*, 2009 WL 455163 (S.D.N.Y. Feb. 24, 2009) (summary judgment granted in favor of mis-classified employees' right to benefits under the Texaco pension plans).
- Oubre v. Louisiana Citizens Fair Plan, No. 2011-0097 (La. 12/16/2011), 79 So.3d 987 (affirming class judgment of \$92.8 Million).
- Fairway v. McGowan Enterprises, Inc., No. 16-3782, Rec. Doc. 60 (E.D.La. March 20, 2018) (successfully resolving TCPA claims thru approved class settlement on behalf of Defendant, McGowan Enterprises).
- In re: Vioxx Prod. Liab. Lit., MDL No. 1657 (E.D.La.), *Louisiana Advocates*, Vol.XXIII, No.1 (Jan. 2008) (\$4.85 Billion Settlement Fund) (Co-Chair of Sales & Marketing Committee, Insurance Committee, Member of Drafting Team for PNC).
- Andrews v. TransUnion Corp., No. 2004-2158 (La. App. 4th Cir. 8/17/2005), 917 So.2d 463, *writ denied*, 926 So.2d 495 (La. 4/17/06), and MDL No. 1350, *Louisiana Advocates*, Vol.XXIV, No.5 (May 2009), p.14 (\$75 million settlement fund and significant additional in-kind relief).
- DeGarmo v. Healthcare Recoveries, Inc., No. 5:94cv14 (N.D.W.Va. 2001), 45 *ATLA Law Reporter* 180 (June 2002), and *Louisiana Advocates*, Vol.XVI, No.9, p.10 (Sept. 2001) (\$3 million settlement for class of policyholders for unlawful subrogation practices).
- Galuzska v. Rosamond and GEICO, No.618-435 (La. 24th JDC), *Louisiana Advocates*, Vol.XXIII, No.6 (June 2008) (\$925,000 settlement in auto case).
- Marberry v. Sears, 15th JDC, State of Louisiana, No.96-3244, December 7, 1998, (judgment of \$195,054.96 for plaintiff).
- Kettles v. Hartford Life, 1998 U.S. Dist. LEXIS 12899 (E.D.La. Aug. 14, 1998) (summary judgment for plaintiff awarding over \$80,000 in disability benefits).

EXPERT TESTIMONY

- Mitchell v. Freese, Civil Action No. 61C11:16-CV-00023, Circuit Court, Rankin County, Mississippi (report August 24, 2017) (testimony, arbitration proceeding, November 15, 2017) (ethical and professional duties to clients and co-counsel in mass tort cases).
- U.S. ex. rel. Boogaerts v. Vascular Access Centers, No. 17-2786, United States District Court for the Eastern District of Louisiana (declaration submitted on November 2, 2018 in support of fee petition for prevailing relator in *qui tam* case).
- Holmes v. Pigg, No. 2007-2803, Civil District Court, Parish of Orleans, State of Louisiana (deposition September 20, 2011) (legal malpractice liability arising out of an ERISA case).
- Cressy v. Lewis, No. 2017-2704, Civil District Court, Parish of Orleans, State of Louisiana (report October 14, 2019) (alleged malpractice liability in product liability case).
- Hampton v. Hampton, No. 775-881, 24th Judicial District Court, State of Louisiana (preliminary report of questions and impressions re fee request of adversary party).
- Bayou Come Sinkhole Litigation: LaBarre v. Occidental, No.33796, 23rd Judicial District Court, State of Louisiana, (report July 7, 2020 in support of AIG's Reconventional Demand on Texas Brine's claim for reimbursement of costs and attorneys' fees, and report August 10, 2020 relating to Texas Brine's Third-Party claims for costs and fees against Zurich and AIG) (deposition June 29, 2021) (affidavit July 17, 2021) (tendered, accepted, and testified as expert in complex litigation and professional ethics, including the submission, review and approval of litigation expenses and fees, April 27, 2022); Pontchartrain Natural Gas, et al v. Texas Brine, No.34,265, 23rd Judicial District Court, State of Louisiana, (report May 10, 2023 relating to Texas Brine's third-party claims for costs and attorneys' fees against AIG) (deposition June 27, 2023); LaBarre (report April 12, 2024 in support of Zurich's Opposition to Texas Brine's Motion to Quantify Attorneys' Fees) (deposition April 17, 2024) (tendered, accepted, and testified as expert in complex litigation and professional ethics, including the submission, review and approval of litigation expenses and fees, April 24, 2024); LaBarre (report June 21, 2024, relating to Texas Brine's claims for costs and fees relating to Arbitration, Document Review, and post-2019 LaBarre and Marchand invoices).
- Cantu v. Gray Ins. Co., No.745-245, 24th Judicial District Court, State of Louisiana (report submitted Jan. 15, 2021 in fee dispute between former counsel and subsequent counsel for plaintiff on intervention) (deposition Jan. 22, 2021).
- PG&E Fire Victims Trust, Bankruptcy Case No. 19-30088 (declaration submitted on February 15, 2021 in support of reimbursement of attorneys' fees to Fire Victim Trust Claimants represented by Singleton Schreiber McKenzie & Scott, LLP).
- Roundup Products Liability Litigation, MDL No. 2741 (N.D. Cal.) (declaration submitted in opposition to Proposed Ramirez Class Settlement) [Rec. Doc. 12682-6] (Feb. 25, 2021).
- Curley v. Andrews, No.19-2102, Court of Common Pleas, Allegheny County, Pennsylvania (report submitted on May 24, 2021 in legal malpractice case).
- Crosby v. Waits Emmett Popp & Teich, No. 2019-1609, Civil District Court for the Parish of Orleans, State of Louisiana (report submitted on June 11, 2021 in legal malpractice case) (deposition October 15, 2021) (affidavit Nov. 12, 2021) (testimony at hearing on exception, Nov. 7, 2022, and on Daubert motions, Sept. 22, 2023 (qualified by Court on standard of care)).

EXPERT TESTIMONY (cont.)

Gangi Shrimp Company vs. Michael A. Britt, et al, No.771-620, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana (report submitted on August 9, 2021 in legal and accounting malpractice case).

Anderson v. Bob Dean Jr., et al, No.820-839, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana (affidavit in support of objectors' opposition to proposed class settlement, Sept. 5, 2022).

Foreman v. Whitmore, et al, No.19-09407, Civil District Court for the Parish of Orleans, State of Louisiana (report submitted January 5, 2023 on behalf of defendants in legal malpractice claim arising out of underlying auto accident case).

Rogers v. Bivalacqua, et al, No.2019-686, Civil District Court for the Parish of Orleans, State of Louisiana (affidavit and report May 10, 2023 on behalf of plaintiff in legal malpractice case arising out of business transaction).

In re Reilly-Benton Bankruptcy, No.17-12870, United States Bankruptcy Court for the Eastern District of Louisiana (declaration May 10, 2023 on behalf of asbestos victim creditors regarding the sufficiency of notice of proposed insurance settlement).

In re Aqueous Film-Forming Foam ("PFAS"), MDL No. 2873, No.18-02873, Rec. Doc. 3795-10 (D.S.C. signed Oct. 13, 2023, filed Oct. 15, 2023) (declaration in support of class counsel / common benefit fees in connection with DuPont Class Settlement), and Rec. Doc. 4269-12 (D.S.C. signed Nov. 30, 2023, filed Dec. 18, 2023, in connection with 3M Settlement).¹

OTHER ACTIVITIES, APPEARANCES, APPOINTMENTS, RECOGNITION, AND AWARDS

A/V Rated, Martindale-Hubbell.

Finalist, Trial Lawyer of the Year Award, TLPJ, 2005.

Leadership in the Law Recipient, *New Orleans CityBusiness*, 2010, 2017, 2018.
Admitted to the Hall of Fame, 2018.

Louisiana Appleseed, Board of Trustees, 2018-2023.

Top 500 Lawyers in America, *Lawdragon*, 2013, 2018, 2020.
500 Leading Plaintiff Consumer Lawyers, 2021.

Best Lawyers in America, 2012 -
Recognized in areas of Appellate Practice, Mass Tort/Class Actions, Product Liability, and Personal Injury Litigation as of 2023.
"Lawyer of the Year" in the area of Product Liability Litigation, in New Orleans, by Best Lawyers, 2016.
"Lawyer of the Year" in the areas of Product Liability Litigation and Personal Injury Litigation, in New Orleans, by Best Lawyers, 2023.

"Superlawyer" in the area of Class Actions and Mass Torts, 2007 -

Top 100 Trial Lawyers, National Trial Lawyers Association, 2008 -

Million Dollar Advocates Forum.

Appointed Plaintiffs' Co-Liaison Counsel / Co-Lead Class Counsel, *In re: Deepwater Horizon*,
MDL No. 2179, Civil Action No. 2:10-md-02179, USDC for the Eastern District of Louisiana.

Appointed to the Plaintiffs' Steering Committee, *In re: Express Scripts Pharmacy Benefits Management Litigation*,
MDL No. 1672, Civil Action No. 4:05-md-01672-SNL, USDC for the Eastern District of Missouri.

Appointed to the Plaintiffs' Executive Committee, *In re: Cox Set-Top Box Antitrust Litigation*,
MDL No. 2048, Civil Action No. 5:09-ml-02048-C, USDC for the Western District of Oklahoma.

Appointed to the Plaintiffs' Executive Committee, *In re: Budeprion XL Marketing and Sales Litigation*,
MDL No. 2107, Civil Action No. 09-md-2107, USDC for the Eastern District of Pennsylvania.

Appointed Settlement Class Counsel, *In re Chinese Drywall Litigation*, MDL No. 2047
(re Class Settlement with Taishan Defendants, 2019).

Curator *Ad Hoc*, *Boomco LLC vs. Ambassador Inn Properties, et al*, CDC No. 98-21208, Parish of Orleans, State of Louisiana.

Receiver, *In re P. Michael Doherty Breeden, III*, No.2020-OB-00315, appointed by Chief Judge, CDC, Parish of Orleans.

Receiver, *In re LaRue Haigler, III*, No.2023-B-00446, appointed by Chief Judge, CDC, Parish of Orleans.

Chair, "Juries, Voir Dire, *Batson*, and Beyond: Achieving Fairness in Civil Jury Trials" Pound Institute for Civil Justice, July 17, 2021.

Chair, LSBA Complex Litigation Symposium, New Orleans, Louisiana, Nov. 8, 2024.

Host Committee, Fifth Circuit Judicial Conference, New Orleans, Louisiana, April 19-22, 1998.

¹ See ORDER AND OPINION, *In re AFFF*, No.18-2873, Rec. Doc. 4885 (D.S.C. April 23, 2024) (approving common benefit fees as requested).

OTHER ACTIVITIES, APPEARANCES, APPOINTMENTS, RECOGNITION, AND AWARDS (cont.)

Moderator, “Dangerous Secrets: Confronting Confidentiality in Our Public Courts” sponsored by AAJ and the Pound Institute, October 13, 2020.

Moderator, “Preparing and Trying a Case in a Covid and Tribal Environment”, AAJ Annual Convention, Las Vegas, NV, July 14, 2021.

Moderator, “Winning With the Masters” Last Chance Seminar, LTLA, New Orleans, Louisiana, December 19, 1998.

Moderator, “Winning With the Masters” Last Chance Seminar, LTLA, New Orleans, Louisiana, December 14, 2000.

Welcome, ATLA Jazz Fest Seminar, New Orleans, Louisiana, May 1, 2003.

Guest Appearance, *It's the Law* “Challenges for the 21st Century” New Orleans Bar Association, March 15, 1999.

Guest Appearance, *Bev Smith Show* “Is Tobacco Litigation Good For America?” American Urban Radio Network, June 8, 2000;
The Morning Show “Are Tobacco Lawsuits Good For America?” KRLV Radio, June 9, 2000;
On the Air with Mike Bung “Tobacco Litigation and Challenges for the 21st Century” 1540 AM, June 15, 2000.

Guest Lecturer, “The Nuremberg Trials” Touro Synagogue Religious School, April 2003.

Judge, ATLA Student Trial Advocacy Competition, Finals, New Orleans, Louisiana, March 26, 1999.

Associate Member, Louisiana Injured Employees Union Education Fund, 1999-2003.

Board of Directors, Touro Synagogue Brotherhood, 1998-2000.

Top Individual Fundraiser, Susan G. Komen Race for the Cure, Oct. 25, 2014.

Advocacy Award, Breastoration, (Cancer Association of Greater New Orleans), 2019.

Member, Mystery Writers Association, 1999-2019.

Author of three self-published novels: The Gordian Knot (Gravier House Press 1998), The Sign of Four (Gravier House Press 1998), and A Day in the Life of Timothy Stone (Gravier House Press 1999), a fourth book, called Broken Lighthouse (Gravier House Press 2021), and a two-act play, Shots Across the Bow (Gravier House Press 2021), as well as non-traditional “history” called Parables of Joy (from *Leave It to Psmith!* by P.G. Wodehouse) (Gravier House Press 2022).

Maintains Website / Blawg regarding Legal, Literary and Other Issues, including updates of What’s New in the Courts, including What’s New in Products Liability, Class Actions, Legal Ethics and Professionalism, ERISA Litigation, and Electronic Discovery and Spoliation, at: www.gravierhouse.com.

Documents Reviewed and Considered

1. Official Docket for the United States District Court for the District of South Carolina Case No. 2:18-mn-02873-RMG (as of July 10, 2024).
2. CMO No. 1 (Jan. 2, 2019)
3. CMO No. 2 (March 20, 2019)
4. CMO No. 3 (April 26, 2019)
5. CMO No. 4 (May 20, 2019)
6. CMO No. 5 (Aug. 7, 2019)
7. CMO No. 6 (Oct. 4, 2019)
8. CMO No. 7 (Nov. 1, 2019)
9. CMO No. 8 (Nov. 1, 2019)
10. CMO No. 5B (March 18, 2020)
11. CMO No. 9 (March 18, 2020)
12. CMO No. 10 (March 23, 2020)
13. CMO No. 10A (March 30, 2020)
14. CMO No. 5A (April 30, 2020)
15. CMO No. 11 (June 19, 2020)
16. CMO No. 12 (Sept. 3, 2020)
17. CMO No. 13 (Dec. 28, 2020)
18. CMO No. 14 (Jan. 15, 2021)
19. CMO No. 11A (Feb. 8, 2021)
20. CMO No. 15 (March 24, 2021)
21. CMO No. 16 (April 15, 2021)
22. CMO No. 17 (May 12, 2021)
23. CMO No. 18 (May 19, 2021)
24. CMO No. 18A (June 8, 2021)
25. CMO No. 11B (July 15, 2021)
26. CMO No. 19 (Aug. 11, 2021)
27. CMO No. 15.A (Aug. 16, 2021)

28. CMO No. 20 (Nov. 23, 2021)
29. CMO No. 21 (Dec. 2, 2021)
30. CMO No. 22 (Feb. 14, 2022)
31. CMO No. 23 (Feb. 24, 2022)
32. CMO No. 2.B (Oct. 26, 2022)
33. CMO No. 25 (April 24, 2023)
34. CMO No. 26 (May 5, 2023)
35. CLASS ACTION COMPLAINT, *City of Camden, et al v. E.I. DuPont, et al*, No.23-3230, Rec. Doc. 7 (D.S.C. July 12, 2023).
36. CLASS ACTION COMPLAINT, *City of Camden, et al v. 3M Company*, No.23-3147, Rec. Doc. 2 (D.S.C. July 12, 2023).
37. CLASS ACTION SETTLEMENT AGREEMENT, *Camden v. DuPont*, No.23-3230, Rec. Doc. 4-2 (D.S.C. dated June 3, 2023, filed July 10, 2023) (and, as amended, on August 7, 2023, Rec. Doc. 30-1).
38. SETTLEMENT AGREEMENT BETWEEN PUBLIC WATER SYSTEMS AND 3M COMPANY, *Camden v. 3M*, No.23-3147, Rec. Doc. 10-3 (D.S.C. signed June 22, 2023, filed July 3, 2023) (and, as amended, on August 28, 2023).
39. PRELIMINARY APPROVAL ORDER, *Camden v. DuPont*, No.18-2873, Rec. Doc. 3603 (D.S.C. Aug. 22, 2023).
40. PRELIMINARY APPROVAL ORDER, *Camden v. 3M*, No.18-2873, Rec. Doc. 3626 (D.S.C. Aug. 29, 2023).
41. www.PFASWaterSettlement.com, including, particularly:
 - . DuPont Class Notice (Long Form)
 - . 3M Class Notice (Long Form)
 - . DuPont Summary Notice (Short Form)
 - . 3M Summary Notice (Short Form)
 - . Frequently Asked Questions (DuPont)
 - . Frequently Asked Questions (3M)
 - . DuPont Allocation Process ¹

¹ No.18-2873, Rec. Doc. 3393-2 at p.76.

- . 3M Allocation Procedures
- . DuPont Public Water System Settlement Claims Form (and Addendum X)
- . DuPont Public Water System Settlement Supplemental Claims Form
- . DuPont Public Water System Settlement Special Needs Claims Form
- . DuPont Public Water System Settlement Testing Compensation Claims Form
- . 3M Public Water System Settlement Phase One Claims Form
- . 3M Public Water System Settlement Phase Two Claims Form
- . 3M Public Water System Settlement Claims Form - Addendum X
- . 3M Water System Settlement Phase One Supplemental Claims Form
- . 3M Water System Settlement Phase Two Supplemental Claims Form
- . 3M Public Water System Settlement Phase One Special Needs Claims Form
- . 3M Public Water System Settlement Phase Two Special Needs Claims Form
- . 3M Public Water System Settlement Testing Compensation Claims Form
- . DuPont Estimated Allocation Range Table
- . 3M Estimated Allocation Range Table
- . PWS Registration User Guide
- . Duo Multi-Factor Authentication User Guide

42. ORDER AND OPINION (re Government Contractor Defense) [Rec Doc 2601] (Sept. 16, 2022)

43. MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL, *Camden v. DuPont*, No.23-3230, Rec. Doc. 4 (D.S.C. filed July 10, 2023), including:

- . Declaration of Scott Summy, Rec. Doc. 4-3 (signed July 9, 2023 and filed July 10, 2023)
- . Declaration of Michael London, Rec. Doc. 4-4 (July 10, 2023)
- . Declaration of Paul Napoli, Rec. Doc. 4-5 (July 10, 2023)
- . Declaration of Layn Phillips, Rec. Doc. 4-6 (signed July 9, 2023 and filed July 10, 2023)
- . Declaration of Elizabeth Fegan, Rec. Doc. 4-7 (signed July 8, 2023 and filed July 10, 2023)

44. MOTION AND MEMORANDUM IN SUPPORT OF PRELIMINARY APPROVAL, *Camden v. 3M*, No.18-2873, Rec. Docs. 3370 and 3370-1 (D.S.C. filed July 3, 2023).

45. ORDER AND REASONS (Aggregate Common Benefit Fee and Costs Award), *In re Deepwater Horizon*, MDL No. 2179, Rec. Doc. 21849 [2016 U.S.Dist.LEXIS 147378] (E.D.La. Oct. 25, 2016).
46. The Laffey Matrix (<http://www.laffeymatrix.com/see.html>) (as of Oct. 5, 2023)
47. The Fitzpatrick Matrix (2013-2021)
48. Bloomberg Law analysis of Bankruptcy Dockets. (See “Rising Rates Are Law Firms’ Salve Amid Layoffs, Pay Cuts” by Roy Strom, Bloomberg Law (Jan. 19, 2023) (found at <https://news.bloomberglaw.com/business-and-practice/rising-rates-are-law-firms-salve-as-layoffs-and-pay-cuts-surge> as of Sept. 26, 2023))
49. ELM Solutions 2022 Real Rate Report (Walters Kluwer)
50. DECLARATION OF RICHARD M. PEARL, *City of Long Beach v. Monsanto*, No.16-3493, Rec. Doc. 300-6 (June 24, 2022).
51. DECLARATION OF MARK MAO, *Brown, et al v. Google*, No.20-3664, Rec. Docs. 597 and 597-1 (N.D.Cal. June 3, 2022).
52. DECLARATION OF BRADLEY J. EDWARDS, *Doe v. Deutsche Bank*, No.22-10018, Rec. Doc. 105 (S.D.N.Y. Sept. 15, 2023).
53. DECLARATION OF SIGRID S. MCCAWLEY, *Doe v. Deutsche Bank*, No.22-10018, Rec. Doc. 106 (S.D.N.Y. Sept. 15, 2023).
54. CERTIFICATION OF NEAL KUMAR KATYAL, *In re LTL Management*, No.21-30589, Rec. Doc. 2240-1 (D.N.J. Bankruptcy May 4, 2022).
55. OBJECTION OF THE TRUSTEE TO RETENTION OF HOGAN LOVELLS, *In re LTL Management*, No.21-30589, Rec. Doc. 2324 (D.N.J. Bankruptcy May 4, 2022).
56. ORDER AUTHORIZING RETENTION OF HOGAN LOVELLS, *In re LTL Management*, No.21-30589, Rec. Doc. 2508 (June 15, 2022).
57. DECLARATION OF VINCENT SERRA, *Commissioner of Public Works v. Costco*, No.21-0042, Rec. Doc. 123-3 (D.S.C. signed Dec. 7, 2021 and filed Dec. 13, 2021).
58. ORDER AND OPINION, *Commissioner of Public Works v. Costco*, No.21-0042, Rec. Doc. 133 (D.S.C. Jan. 24, 2022).
59. FEE APPLICATION, *In re Kidde-Fenwal*, No.23-10638, Rec. Doc. 392 (D.Del. Bankruptcy filed Sept. 1, 2023).
60. DECLARATION OF ROBERT KLONOFF, *In re Juul Labs*, No.19-2913, Rec. Doc. 4056-2 (N.D.Cal. June 23, 2023).

61. “Will Billing Rates for Elite Firms Rise More in 2020?” by Samantha Stokes, The American Lawyer (July 30, 2020) (found at <https://www.law.com/americanlawyer/2020/07/30/will-billing-rates-for-elite-firms-rise-more-in-2020/> as of Oct. 6, 2023).
62. DEBTOR’S APPLICATION FOR RETENTION OF KIRKLAND & ELLIS, *In re J.C. Penny Co.*, No.20-20182, Rec. Doc. 684 (S.D.Tex. Bankruptcy filed June 11, 2020).
63. ORDER AUTHORIZING RETENTION OF KIRKLAND & ELLIS, *In re J.C. Penny Co.*, No.20-20182, Rec. Doc. 962 (S.D.Tex. Bankruptcy July 2, 2020).
64. THIRD MONTHLY FEE STATEMENT, *In re J.C. Penny Co.*, No.20-20182, Rec. Doc. 2180 (S.D.Tex. Bankruptcy filed Dec. 14, 2020).
65. “Legal Fees Cross New Mark: \$1,500 an Hour” by Sara Randazzo, Wall Street Journal (Feb. 9, 2016) (available at <https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708>)
66. “Texas Lawyers Hit \$2,000 an Hour” by Mark Curriden, The Texas Lawbook (Sept. 25, 2023) (<https://texaslawbook.net/texas-lawyers-hit-2000-an-hour/>)
67. DECLARATION OF JOHN C. COFFEE, JR., *In re Enron*, No.01-3624, Rec. Doc. 5821 (S.D.Tex. filed Jan. 4, 2008).
68. DECLARATION OF WILLIAM B. RUBENSTEIN, *National Veterans Legal Services v. United States*, No.16-745, Rec. Doc. 160-2 (D.D.C. filed Oct. 3, 2023).
69. SUPPLEMENTAL DECLARATION OF BRIAN FITZPATRICK, *National Veterans Legal Services v. United States*, No.16-745, Rec. Doc. 160-1 (D.D.C. filed Oct. 3, 2023).
70. DECLARATION OF WILLIAM B. RUBENSTEIN, *In re Twitter*, No.16-5314, Rec. Doc. 662-7 (N.D.Cal. filed Oct. 13, 2022).
71. DECLARATION OF BRIAN T. FITZPATRICK, *In re Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2873, Rec. Doc. 3795-5, filed in Master Docket No. 18-mn-02873 (D.S.C. signed Oct. 15, 2023 and filed Oct. 15, 2023).
72. ORDER AND OPINION [approving *DuPont* Settlement], Rec. Doc. 4471 in Master Docket No. 18-mn-02873 (D.S.C. Feb. 8, 2024).²
73. ORDER AND OPINION [approving *3M* Settlement], Rec. Doc. 4754 in Master Docket No. 18-mn-02873 (D.S.C. March 29, 2024).
74. ORDER AND OPINION [approving Class Counsel Fees], No.18-mn-02873, Rec. Doc. 4885 (D.S.C. April 23, 2024).³
75. MOTION FOR PRELIMINARY APPROVAL, *Camden v. Tyco Fire Products*, No.24-02321, Rec. Doc. 4911 in Master Docket No. 18-mn-02873 (D.S.C. April 26, 2024), including:

. Memorandum in Support, Rec. Doc. 4911-1

² Also available at: 2024 WL 489326.

³ Also available at: 2024 WL 1739709.

- . Proposed Preliminary Approval Order, Rec. Doc. 4911-2
- . Settlement Agreement, Rec. Doc. 4911-3, including:
 - . Allocation Process
 - . Claims Forms
 - . Escrow Agreement
 - . Proposed Class Notice
 - . Proposed Notice Plan
 - . Summary Notice
 - . Payment Schedule
 - . Opt-Out Form
 - . List of Bellwether Plaintiffs
 - . Letter from Releasing Party
 - . Form Dismissals
 - . Required Participation Thresholds (confidential)
 - . Joint Interpretive Guidance Memorandum on Interrelating Drinking Water Systems
 - . Joint Interpretive Guidance Memorandum on Entities that Own and/or Operate Multiple Systems
 - . Joint Interpretive Guidance Memorandum on Federally Recognized Indian Tribes
 - . Joint Interpretive Guidance Memorandum on Certain Release Issues
- . Scott Summy Declaration, Rec. Doc. 4911-4
- . Michael London Declaration, Rec. Doc. 4911-5
- . Paul Napoli Declaration, Rec. Doc. 4911-6
- . Joe Rice Declaration, Rec. Doc. 4911-7
- . Layne Phillips Declaration, Rec. Doc. 4911-8
- . Weisbrot Declaration, Rec. Doc. 4911-9
- . Mire Declaration, Rec. Doc. 4911-10
- . Bell Declaration, Rec. Doc. 4911-11
- . Garretson Declaration, Rec. Doc. 4911-12
- . Hess Declaration, Rec. Doc. 4911-13

- . Trapp Declaration, Rec. Doc. 4911-14
- . Chavan Declaration, Rec. Doc. 4911-15
- . Mitzel Declaration, Rec. Doc. 4911-16

76. PRELIMINARY APPROVAL ORDER, *Camden v. Tyco Fire Products*, No.24-02321, Rec. Doc. 5147 in Master Docket No. 18-mn-02873 (D.S.C. June 13, 2024).

77. MOTION FOR PRELIMINARY APPROVAL, *Camden v. BASF Corporation*, No.24-03174, Rec. Doc. 5053 in Master Docket No. 18-mn-02873 (D.S.C. June 3, 2024), including:

- . Memorandum in Support, Rec. Doc. 5053-1
- . Proposed Preliminary Approval Order, Rec. Doc. 5053-2
- . Settlement Agreement, Rec. Doc. 5053-3, including:
 - . Allocation Process
 - . Claims Forms
 - . Escrow Agreement
 - . Proposed Class Notice
 - . Proposed Notice Plan
 - . Summary Notice
 - . Opt-Out Form
 - . List of Bellwether Plaintiffs
 - . Letter from Releasing Party
 - . Form Dismissals
 - . Required Participation Thresholds (confidential)
 - . Joint Interpretive Guidance Memorandum on Interrelating Drinking Water Systems
 - . Joint Interpretive Guidance Memorandum on Entities that Own and/or Operate Multiple Systems
 - . Joint Interpretive Guidance Memorandum on Federally Recognized Indian Tribes
 - . Joint Interpretive Guidance Memorandum on Certain Release Issues
- . Scott Summy Declaration, Rec. Doc. 5053-4
- . Michael London Declaration, Rec. Doc. 5053-5
- . Paul Napoli Declaration, Rec. Doc. 5053-6

- . Joe Rice Declaration, Rec. Doc. 5053-7
 - . Layne Phillips Declaration, Rec. Doc. 5053-8
 - . Weisbrot Declaration, Rec. Doc. 5053-9
 - . Mire Declaration, Rec. Doc. 5053-10
 - . Bell Declaration, Rec. Doc. 5053-11
 - . Garretson Declaration, Rec. Doc. 5053-12
 - . Hess Declaration, Rec. Doc. 5053-13
 - . Trapp Declaration, Rec. Doc. 5053-14
 - . Chavan Declaration, Rec. Doc. 5053-15
 - . Mitzel Declaration, Rec. Doc. 5053-16
78. PRELIMINARY APPROVAL ORDER, *Camden v. BASF Corporation*, No.24-03174, Rec. Doc. 5253 in Master Docket No. 18-mn-02873 (D.S.C. July 3, 2024).
79. THIRTEENTH MONTHLY FEE STATEMENT OF SULLIVAN & CROMWELL, *In re Kidde-Fenwal, Inc.*, No.23-10638, Rec. Doc. 1300 (Del. Bankruptcy filed June 28, 2024), at pp.2-3.
80. SEVENTEENTH MONTHLY FEE STATEMENT OF SULLIVAN & CROMWELL, *In re FTX Trading, Ltd.*, No.22-11068, Rec. Doc. 12927 (Del. Bankruptcy filed April 26, 2024), at pp.3-8.
81. PLAINTIFFS OPENING BRIEF IN SUPPORT FOR APPLICATION FOR FEES AND EXPENSES, *Tornetta v. Musk*, No. No. 2018-0408 (Del. Chancery March 1, 2024), at p.38; supported by AFFIDAVIT OF PROFESSOR ETHAN YALE, *Tornetta v. Musk*, No. No. 2018-0408 (Del. Chancery March 1, 2024), at ¶4, and JOINT DECLARATION OF LUCIAN BEBCHUK AND ROBERT J. JACKSON, JR., *Tornetta v. Musk*, No. No. 2018-0408 (Del. Chancery March 1, 2024) at ¶12.
82. SECOND SUPPLEMENTAL DECLARATION OF PATRICK NASH, *In re Yellow Corporation*, No.23-11069, Rec. Doc. 1373 (Del. Bankruptcy Dec. 14, 2023) at ¶5.
83. SUPPLEMENTAL DECLARATION OF STEVEN SERAJEDDINI, *In re WeWork Inc.*, No. 23-19865, Rec. Doc. 445 (D.N.J. Bankruptcy Dec. 14, 2023) at ¶5.
84. FIRST SUPPLEMENTAL DECLARATION OF JOSHUA SUSSBERG, *In re Rite Aid Corp.*, No. 23-18993, Rec. Doc. 1089 (D.N.J. Bankruptcy Dec. 14, 2023) at ¶6.
85. FARA REGISTRATION NO. 6876 (June 3, 2022) (including LETTER FROM JONATHAN GIMBLETT TO ANDRIY PASHTUKHOV, dated May 19, 2022).
86. FARA REGISTRATION NO. 6711 (Aug. 23, 2019) (including LETTER FROM DAVID AUFHAUSER TO MICHAEL DENOMA, dated Aug. 13, 2019).
87. FARA REGISTRATION NO. 3712 (Oct. 9, 2019) (including LETTER FROM RICHARD NEWCOMB TO VUSAL ASLANOV, dated Sept. 12, 2019).

88. FARA REGISTRATION NO. 3712 (Aug. 10, 2021) (including LETTER FROM DAVID PAYMEN TO ELAN COHEN, dated June 3, 2021).

89. FARA REGISTRATION NO. 3712 (Sept. 30, 2021) (including LETTER FROM ELIZABETH GATELY TO JAFAR HASSAN, dated Sept. 20, 2021).

90. DECLARATION OF SETH ARD, *PHT Holding II v. North America for Life & Health*, No.18-00368, Rec. Doc. 312-2 (S.D.Iowa filed Oct. 16, 2023).

91. DECLARATION OF ANNA HROM, *Thomas v. Moreland*, No.18-0800, Rec. Doc. 93-1 (D.D.C. filed May 4, 2021).

Additional Rate Information and Analysis

In the *Juul* MDL,¹ the average billing rates for each category of time-keepers were recently reported as:

Partners	Of Counsel	Associates	Staff /Contract Attys	Paralegals/Staff
\$819	\$775	\$501	\$351 / \$371	\$324

The highest rates among the five highest-billing timekeepers at the co-lead law firms were:

Partners	Of Counsel	Associates	Staff and Contract Attys
\$1,100	\$750	\$750	\$475

In the *Volkswagen Clean Diesel* MDL, the Court, in 2017, accepted class counsel's hourly fees at rates as high as \$1,600 for partners and \$790 for associates.²

In *Commissioners of Public Works v. Costco*,³ this Court approved, in 2022:

Partners	Of Counsel	Staff Attorneys	Associates	Paralegals
\$895 - \$1,325	\$1,175	\$425	\$400 - \$450	\$275 - \$350

The mean rates reported by ELM for all lawyers (irrespective of skill, reputation, experience, or the type of case) have increased from \$705/hr. for Partners in 2020, to \$749/hr. in 2022; for

¹ See DECLARATION OF ROBERT KLONOFF, *In re Juul Labs*, No.19-2913, Rec. Doc. 4056-2 (N.D.Cal. June 23, 2023), at p.26, ¶47 and p.55, ¶92. The Court also rejected an objection to the rates charged for document review, noting that: "Staff attorney rates approved in this District routinely exceed \$400/hour, materially similar to the averaged amount." *In re JUUL*, MDL No. 2913, 2023 WL 11820531 at *4 (N.D.Cal. Dec. 18, 2023). The Court also noted, based on information provided by Class Counsel, that: For 97% of partner hours, rates range from \$275–\$1,200; for over 96.5% of senior counsel hours, rates range from \$475–\$1,000; for over 93.5% of associate hours, rates range from \$175–\$800; for over 92.5% of contract or staff attorney hours, rates range from \$100–\$500; and for over 88% of paralegal hours, rates range from \$75–\$425. *In re JUUL*, 2023 WL 11820531 at *4 fn.6.

² See ORDER, *In re Volkswagen*, No.15-2672, Rec. Doc. 3053 [2017 WL 1047834] (N.D.Cal. Mar. 17, 2017) at p.8 ("The blended average hourly billing rate is \$529 per hour for all work performed and projected, with billing rates ranging from \$275 to \$1600 for partners, \$150 to \$790 for associates, and \$80 to \$490 for paralegals").

³ See Exhibit A to the DECLARATION OF VINCENT SERRA, filed in *Commissioner of Public Works v. Costco*, No.21-0042, Rec. Doc. 123-3, at 5 (D.S.C. signed Dec. 7, 2021 and filed Dec. 13, 2021), approved in: ORDER AND OPINION, No.21-0042, Rec. Doc. 133 (D.S.C. Jan. 24, 2022) at p.14.

Associates from \$503 in 2020 to \$546 in 2022; and for Paralegals from \$232 in 2020 to \$247 in 2022.⁴

The current Laffey Matrix⁵ rates produce a blended rate of \$654.33 / hr.⁶

- In *Allura*, Judge Norton accepted rates for class counsel that were conservatively based on adjusted Laffey Matrix rates, (which the Court found comparable to the rates charged in South Carolina), despite the fact that the case was national in scope and required construction and product defect class action specialists from across the country who typically charge higher rates.⁷
- The customary rates of Tyco counsel, Williams & Connelly, are higher than those reflected on the LSI-Adjusted Laffey Matrix.⁸

⁴ See ELM SOLUTIONS 2022 REAL RATE REPORT (Walters Kluwer), p.9. The Report also (at p.124) reflects rates for Environmental lawyers practicing in New York, Los Angeles and Washington DC:

City	Level	2020	2021	2022
Los Angeles	Partner	\$557	\$568	\$753
New York	Partner	\$590	\$656	\$616
	Associate	\$432	\$502	\$382
Washington DC	Partner	\$744	\$745	\$812
	Associate	\$475	\$543	\$567

(Excerpts from the ELM 2022 Report are attached as ADDENDUM G)

⁵ See <http://www.laffeymatrix.com/see.html> (as of July 10, 2024) (attached as ADDENDUM D). The Fourth Circuit has noted that the Laffey Matrix is a useful starting point to determine fees, at least with respect to services performed by attorneys located in the DC area, (*Newport News Shipbuilding and Dry Dock Co. v. Holiday*, 591 F.3d 219 (4th Cir. 2009); *Grissom v. Mills Corp.*, 549 F.3d 313, 322 (4th Cir. 2008)), and District Courts within the Fourth Circuit have relied upon the Matrix as a basis for the approval of fees. See, e.g., *In re Allura Cement Siding Lit.*, No.19-2886, 2021 U.S.Dist.LEXIS 96931, 2021 WL 2043531 (D.S.C. May 21, 2021); *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 575- 576 (E.D.Va. Sept. 29, 2016) (citing *In re NeuStar*, No.14-885, 2015 U.S.Dist.LEXIS 165320, 2015 WL 8484438, at fn.6 (E.D.Va. Dec. 8, 2015)).

⁶ See ADDENDUM D.

⁷ *In re Allura Cement Siding Lit.*, No.19-2886, 2021 U.S.Dist.LEXIS 96931, 2021 WL 2043531 (D.S.C. May 21, 2021).

⁸ See DECLARATION OF ANNA HROM, *Thomas v. Moreland*, No.18-0800, Rec. Doc. 93-1 (D.D.C. filed May 4, 2021) at ¶12.

The Fitzpatrick Matrix's⁹ most recent rates, from 2023, produce a blended rate of approximately \$655 / hr.¹⁰

One of the Lead Counsel Firms in this MDL was recently involved in a series of public entity PCB contamination cases with other class action / MDL firms, achieving a class settlement in the Central District of California. Approving a percentage-of-benefit fee request with a lodestar-type cross-check, the Court accepted class counsel rates of:¹¹

Partner	\$1,000 - \$1,100
Associate	\$500 - \$900
Staff Attorney	\$395
Paralegal	\$250

⁹ As the District of Columbia Circuit explains in *DL v. D.C.*, 924 F.3d 585, 589-590 (D.C.Cir. 2019), the Laffey Matrix was originally developed to standardized fee schedule, derived originally from the survey of the billing rates of Washington DC attorneys engaged in an active litigation practice in Federal Court. The U.S. Attorney's Office maintained one version of the matrix, relying on the original 1983 base data updated through a Bureau of Labor Statistics inflation index that tracks regional price increases. Some plaintiffs' attorneys argued that this index failed to capture the true rate of inflationary change and began advancing a version of the 1989 Laffey data updated with a different Bureau of Labor Statistics index called the Legal Services Index (LSI), which estimates price increases for the legal market nationwide. In 2015, the Government started to replace the Laffey datasets by using the annual Survey of Law Firm Economics, published by ALM Legal Intelligence (ALM), in conjunction with the *National Law Journal*. Following the *DL v. DC* decision in 2019, the U.S. Attorney's Office created a new matrix, known as the "Fitzpatrick Matrix". As described in EXPLANATORY NOTE 5: "The data for this matrix was gathered from the dockets of cases litigated in the U.S. District Court for the District of Columbia using the following search in Bloomberg Law: keywords ('motion n/5 fees AND attorney!' under 'Dockets Only') + filing type ('brief,' 'motion,' or 'order') + date ('May 31, 2013 – May 31, 2020' under 'Entries (Docket Key Only)')." For matters in which a prevailing party agrees to payment pursuant to the Fitzpatrick Matrix, the U.S. Attorney's Office for the District of Columbia will not request that a prevailing party offer the additional evidence in support of his or her billing rate. As Professor Fitzpatrick himself makes clear: "The Matrix is a settlement tool, designed to minimize fee disputes with the Department. In particular, the Matrix contemplates that parties will use non-Matrix rates when warranted; the Department simply agreed not to oppose any fee-shifting request based on the rates in the Matrix." SUPPLEMENTAL DECLARATION OF BRIAN FITZPATRICK, *National Veterans Legal Services v. United States*, No.16-745, Rec. Doc. 160-1 (D.D.C. filed Oct. 3, 2023) at pp.2-3 ¶5 (citing EXPLANATORY NOTES 3 and 10). The Fitzpatrick Matrix is submitted herewith as ADDENDUM E.

¹⁰ Taking the 2023 rates for Paralegals, 3-Year Attorneys, 6-Year Attorneys, 9-Year Attorneys, 12-Year Attorneys, 15-Year Attorneys, 18-Year Attorneys, 21-Year Attorneys, 24-Year Attorneys, 27-Year Attorneys, 30-Year Attorneys, and 33-Year Attorneys, the average is \$655.33/hr. See ADDENDUM E.

¹¹ See ORDER RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT, *City of Long Beach v. Monsanto*, No.16-3493, Rec. Doc. 311 (C.D.Cal. Nov. 19, 2022), at p.26; and Exhibit B to the DECLARATION OF RICHARD M. PEARL, Rec. Doc. 300-6 (June 24, 2022).

In support, fee expert Richard Pearl related information from the *Southern California Gas Leak Litigation*, in which the Superior Court of Los Angeles approved rates of:^{12, 13}

25+ Years	\$975 - \$1,200
5 – 25 Years	\$510 - \$1,045
Staff Attys / 1-5 Yrs	\$395 - \$550

-and-¹⁴

Partners / Of Counsel / Special Counsel	\$600 - \$1,200
Associates	\$370 - \$650
Paralegals / Law Clerks	\$185 - \$420

Mr. Pearl also notes that: In 2021, Munger, Tolles & Olson billed a 31-year attorney at \$1,725 per hour and a 12-year attorney at \$995 per hour. In 2019, Pearson Simon & Warshaw, a plaintiff class action firm, billed attorneys with 23-38 years of experience at \$1,150 per hour; and that rates have generally increased at least 10-12% since 2019.¹⁵

As another example, the Eastern District of Pennsylvania recently approved a proposed blended rate of \$653 per hour, citing to a 2018 decision approving a blended rate of \$685/hr, and a 2021 decision approving a blended rate of \$756 per hour.¹⁶

¹² See DECLARATION OF RICHARD M. PEARL, *City of Long Beach v. Monsanto*, No.16-3493, Rec. Doc. 300-6 (June 24, 2022), at ¶16.

¹³ As noted in Footnote 10 to the Declaration, many class counsel in securities and/or consumer cases only blend the law firm partner, of counsel/special counsel, and associate rates, while submitting paralegal, law clerk, and staff or contract attorney rates separately. Where, as here, all of these rates are being combined together into one blended rate, that number is obviously going to be lower.

¹⁴ Some of the firms broke down their rates primarily according to their years in practice, while other firms broke down primarily by Partners, Associates, etc.

¹⁵ See DECLARATION OF RICHARD M. PEARL, *City of Long Beach v. Monsanto*, No.16-3493, Rec. Doc. 300-6 (June 24, 2022), at ¶17.

¹⁶ *In re WaWa Data Security Lit.*, No.19-6019, 2024 WL 1557366 at *20 (E.D.Pa. April 9, 2024) (citing *Sweda v. Univ. of Pa.*, No.16-4329, 2021 WL 5907947 at *7 (E.D.Pa. Dec. 14, 2021) (approving class action fee award with blended hourly rate of \$756); *Pfeifer v. Wawa, Inc.*, No.16-497, 2018 WL 4203880 at *14 (E.D.Pa. Aug. 31, 2018) (approving class action fee award with “blended hourly rate of approximately \$685”).

In *Hayes v. Magnachip Semiconductor*, the Northern District of California approved a blended rate of \$600 per hour for a Lead Class Counsel in 2016,¹⁷ and in *Coleman v. Newsom*, the Eastern District of California approved a blended rate of \$775 per hour for a law firm appointed as a neutral expert in 2019.¹⁸ In the Central District of California, earlier this year, the Court approved the following rates in a class action for purposes of awarding fees under the traditional Lodestar method:¹⁹

Partner Rates	\$850 - \$1,200
Associate Rates	\$500 - \$777
Paralegal Rates	\$239 - \$275

In a class action pending in the District of Minnesota, the Court recently approved a percentage-of-benefit award, in which the cross-check hourly rates were approved at \$950 and \$750 per hour for Partners, and \$375 for Associates.²⁰

Performing a lodestar cross-check against a percentage-of-benefit award for class counsel in the District of New Jersey, the Court recognized reasonable billing rates ranging from \$450 per hour for Associates to \$1,125 per hour for Partners.²¹

¹⁷ See Hayes v. Magnachip, No.14-01160, 2016 WL 6902856, 2016 U.S. Dist. LEXIS 162120 (N.D. Cal. Nov. 21, 2016). (Note that only the rates of the Pomerantz firm, and not all firms, were “blended”)

¹⁸ See Coleman v. Newsom, No.90-0520, 2019 WL 525093, 2019 U.S. Dist. LEXIS 22028 (E.D. Cal. Feb. 11, 2019).

¹⁹ See In re Ring LLC Privacy Litigation, No.19-10899, 2024 WL 2849578 at *5 (C.D. Cal. May 28, 2024).

²⁰ See Feldman v. Star Tribune, No.22-1731, 2024 WL 3026556 at *7 (D. Minn. June 17, 2024).

²¹ See Holden v. Guardian Analytics, No.23-2115, 2024 WL 2845392 at *12 (D.N.J. June 5, 2024).

Although the ultimate Fourth Circuit *Lumber Liquidators* MDL decision accepting a blended rate of \$524/hr was handed down in 2022,²² the rate was actually originally accepted by the District Court in 2018, while looking to the *Vienna Metro* Matrix rates, which had been established all the way back in 2011.²³

The Middle District of North Carolina, in 2023, accepted billing rates of up to \$700/hr for several of the attorneys working on a class action, while noting that “other courts in this District have accepted rates of \$700 per hour for attorneys in particularly complex cases.”²⁴

In *McCurley*, Judge Childs approved attorney rates ranging from \$300 - \$850 / hr. in 2018.²⁵

²² See *Cantu-Guerrero v. Lumber Liquidators*, 27 F.4th 291, 300 (4th Cir. 2022) (“*Lumber Liquidators II*”). Initially, in *Lumber Liquidators*, a percentage-of-benefit award of 28%, in the amount of \$10.08 million, was awarded, on November 15, 2018. In conducting a cross-check, the District Court used a blended rate of \$524/hr, which resulted in a Lodestar of \$12.5 million, and hence supported the reasonableness of the percentage-based award. (Indeed, the District Court noted that the “negative multiplier” was “much smaller than multipliers which have been found reasonable in similar cases. See, e.g., *Jones v. Dominion Res. Servs.*, 601 F.Supp.2d 756, 766 (S.D.W.Va. 2009) (collecting cases) (‘Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys’ fee’)”] That fee award was vacated and remanded by the Fourth Circuit for further consideration in light of CAFA’s coupon settlement provisions. *Lumber Liquidators I*, 952 F.3d 471, 491-492 (4th Cir. 2020). On remand, the District Court applied the pure Lodestar method, rather than a percentage-of-benefit, and awarded the same \$10.08 million that had been originally requested. Again, the award was supported by a \$524/hr blended rate, which, (after the deduction of several hours from the rough cross-check numbers), generated a Lodestar of \$12.2 million. *Lumber Liquidators*, No.15-2627, 2020 WL 5757504, 2020 U.S. Dist. LEXIS 181103 (E.D.Va. Sept. 4, 2020). Which was affirmed by the Fourth Circuit. *Lumber Liquidators II*, *supra*, 27 F.4th at 300-301.

²³ See *Lumber Liquidators*, *supra*, 2020 U.S. Dist. LEXIS 181103 at *76 (“the requested average billing rate of approximately \$524 per hour results, which is in accordance with, and does not exceed the billing rates provided in, the *Vienna* matrix, reveals an aggregate lodestar of nearly \$12.2 million which exceeds the \$10.08 million award requested”). This Matrix, which Courts have followed in the Eastern District of Virginia, reflects the following hourly rates from 2011:

Year of Experience	Paralegal	1-3	4-7	8-10	11-19	20+
Hourly Rate	\$130-350	\$250-435	\$350-600	\$465-770	\$520-770	\$505-820

See *Vienna Metro LLC v. Pulte Home Corp.*, No.10-0002, 2011 U.S. Dist. LEXIS 168240 (E.D.Va. Aug. 24, 2011).

²⁴ *Johnson v. Palms Associates*, 2023 WL 5276348 (M.D.N.C. Aug. 16, 2023) (citing *Linnins v. HAECO*, No.16-486, 2018 WL 5312193 at *3 (approving attorney’s fees of \$650 and \$700 per hour, and quoting *Rum Creek Coal Sales v. Caperton*, 31 F.3d 169, 175, 179 (4th Cir. 1994) for the proposition, accepted in the Fourth Circuit, that “where it is reasonable to retain attorneys from other communities, ... the rates in those communities may also be considered”, particularly “when the complexity and specialized nature of a case may mean that no attorney, with the required skills, is available locally”).

²⁵ *McCurley v. Flowers Foods, Inc.*, No.16-0194, 2018 U.S. Dist. LEXIS 226234 (D.S.C. Sept. 10, 2018).

In *Phillips*, Judge Tilley in the Middle District of North Carolina approved, in 2016:²⁶

Partner	\$640 - \$880
Associate	\$375 - \$550

In *NeuStar*, Judge Cacheris in the Eastern District of Virginia approved the following rates in 2015:²⁷

Partner	\$800 - \$975
Associate	\$420 - \$700
Paralegal	\$260 - \$310

In *Savani*, Judge Childs relied on a range of \$500 - \$650 / hr., supported by Professor John Freeman, in approving a class fee request under a Lodestar-type cross-check.²⁸

In addition to accepting an MDL-wide blended rate of \$623.05 in *NFL Concussion*, the Court separately approved a blended rate of \$861.28 for the Lead Counsel Firm.²⁹

In 2021, the blended rates for successful class counsel in the Northern District of California ranged from \$455 - \$850, with a median of \$617.³⁰

More recently, that Court approved class counsel fees of:³¹

Partners	\$975 - \$1,195
Associate	\$400 - \$850
Paralegal	\$225 - \$300

²⁶ *Phillips v. Triad Guar. Inc.*, No.09-71, 2016 U.S.Dist.LEXIS 60950, 2016 WL 2636289 (M.D.N.C. May 9, 2016).

²⁷ *In re NeuStar*, No.14-885, 2015 U.S.Dist.LEXIS 165320, 2015 WL 8484438 (E.D.Va. Dec. 8, 2015).

²⁸ *Savani v. URS Professional Solutions*, 121 F.Supp.3d 564, 575–576 (D.S.C. 2015).

²⁹ See OPINION, *NFL Concussion Injury Litig.*, No.12-02323, Rec. Doc. 10019 (E.D. Pa. May 24, 2018), pp.20-21 (approving lodestar for the Lead Counsel firm of \$18,124,869.10, based on 21,044 hours – an effective firm rate of \$861.28/hr).

³⁰ DECLARATION OF WILLIAM B. RUBENSTEIN, *In re Twitter*, No.16-5314, Rec. Doc. 662-7 (N.D.Cal. filed Oct. 13, 2022) at p.26 ¶34.

³¹ See EXHIBIT B to DECLARATION OF DANIEL GIRARD, *In re PFA Insurance Marketing Lit.*, No.18-3771, Rec. Doc. 367-3 (N.D.Cal. filed Aug. 21, 2023). The Court agreed that these billing rates were in line with prevailing rates in the district for personnel of comparable experience, skill, and reputation. *In re PFA Insurance Marketing Lit.*, No.18-3771, 2024 WL 1145209 at **24-25 (N.D.Cal. Feb. 5, 2024) (citing *Fleming v. Impax Labs*, No.16-6557, 2022 WL 2789496 at *9 (N.D. Cal. July 15, 2022) (finding rates ranging from \$760 to \$1,325 for partners, \$895 to \$1,150 for counsel, and \$175 to \$520 for associates to be reasonable)).

In 2020, a fee request, approved in pertinent part, in connection with a sanctions order, reflected:³²

Partner Rates	\$725 - \$1,950
Associate Rates	\$75 - \$950
Paralegal Rates	\$225 - \$380

In a different case, one of the same firms, along with a second firm, filed a fee petition in connection with the proposed settlement of a class action, reflecting:³³

Partner Rates	\$1,080 - \$2,110
Associate Rates	\$650 - \$860
Staff Attorney Rates	\$430 - \$500
Paralegal Rates	\$150 - \$380

In the derivative litigation over Elon Musk's compensation plan from Tesla, the successful class action firms sought a percentage-of-benefit fee. Their filings, however, revealed their standard blended "lodestar" billing rates as follows:³⁴

Bernstein Litowitz	\$651
Friedman Oster & Tetjel	\$718.90
Andrews & Springer	\$711.20

The fee petition was also supported by declarations from three expert law professors who were being paid their customary rates of:³⁵

Yale	\$1,050
Bebchuck	\$1,850
Jackson	\$1,850
Support Staff	\$875

³² See Exhibit A to the DECLARATION OF MARK MAO, *Brown, et al v. Google*, No.20-3664, Rec. Doc. 597-1 (N.D.Cal. June 3, 2022) and Order Approving Fees, *Brown v. Google*, 2022 WL 2789897, 2022 U.S.Dist.LEXIS 125738 (N.D.Cal. July 15, 2022).

³³ See DECLARATION OF BRADLEY J. EDWARDS and DECLARATION OF SIGRID S. MCCAWLEY, *Doe v. Deutsche Bank*, No.22-10018, Rec. Docs. 105 and 106 (S.D.N.Y. Sept. 15, 2023).

³⁴ See PLAINTIFFS OPENING BRIEF IN SUPPORT FOR APPLICATION FOR FEES AND EXPENSES, *Tornetta v. Musk*, No. No. 2018-0408 (Del. Chancery March 1, 2024), at p.38.

³⁵ See AFFIDAVIT OF PROFESSOR ETHAN YALE, *Tornetta v. Musk*, No. No. 2018-0408 (Del. Chancery March 1, 2024), at ¶4, and JOINT DECLARATION OF LUCIAN BEBCHUK AND ROBERT J. JACKSON, JR., *Tornetta v. Musk*, No. No. 2018-0408 (Del. Chancery March 1, 2024)at ¶12.

Judge Robart, in the Western District of Washington, recently approved a Partner rate of \$850 per hour and a Paralegal rate of \$180 per hour for BASF counsel, DLA Piper, which rates were lower than the fees that were actually charged by DLA Piper to the plaintiff.³⁶

In addition to the rates billed and approved by Sullivan & Cromwell in the *Kidde-Fenwal* Bankruptcy, filings in the *FTX* Bankruptcy reflect a Blended Rate of \$1,377.99 per hour, with several partners billing as much as \$2,375 per hour.³⁷

Covington & Burling, in 2022, submitted a FARA Registration in conjunction with its retainer by SCM Consulting, in which the firm represented that its hourly rates ranged from \$640 for Junior Associates to \$2,500 for Senior Partners. The rates for Legal Assistants ranged from \$305 - \$595 per hour.³⁸

³⁶ See Promedev v. Wilson, No.22-1063, 2024 WL 3043415 at *6 (W.D.Wash. June 18, 2024) (“the court finds that these rates are consistent with the rates charged in this District by attorneys of similar skill, experience, and reputation”).

³⁷ See, e.g., SEVENTEENTH MONTHLY FEE STATEMENT OF SULLIVAN & CROMWELL, *In re FTX Trading, Ltd.*, No.22-11068, Rec. Doc. 12927 (Del. Bankruptcy filed April 26, 2024), at pp.3-8.

³⁸ LETTER FROM JONATHAN GIMBLETT TO ANDRIY PASHTUKHOV, dated May 19, 2022, at p.1 (submitted with FARA REGISTRATION NO. 6876 (June 3, 2022)).

LAFFEY MATRIX

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Year	Adjustmt Factor**	Paralegal/ Law Clerk	Years Out of Law School *				
			1-3	4-7	8-10	11-19	20 +
6/01/23- 5/31/24	1.059295	\$239	\$437	\$538	\$777	\$878	\$1057
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375

6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363
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The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., DL v. District of Columbia, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $\frac{1}{2}$ Years Out of Law School $\frac{1}{2}$ is calculated from June 1 of each year, when most law students graduate. $\frac{1}{2}$ 1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $\frac{1}{2}$ 4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $\frac{1}{2}$ 1-3" from June 1, 1996 until May 31, 1999, would move into tier $\frac{1}{2}$ 4-7" on June 1, 1999, and tier $\frac{1}{2}$ 8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

THE FITZPATRICK MATRIX

Hourly Rates (\$) for Legal Fees for Complex Federal Litigation in the District of Columbia

Years Exp. / Billing Yr.	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
35+	535	563	591	619	647	675	703	731	736	760	807
34	534	562	590	618	646	674	702	729	734	758	805
33	532	560	588	616	644	672	700	728	733	757	804
32	530	558	586	614	642	670	698	726	730	754	801
31	527	555	583	611	639	667	695	723	728	752	799
30	524	552	580	608	636	664	692	720	725	749	795
29	521	549	577	605	633	661	689	717	721	745	791
28	517	545	573	601	629	657	685	713	717	741	787
27	512	540	568	596	624	652	680	708	713	736	782
26	508	536	564	592	620	648	676	704	708	731	776
25	502	530	558	586	614	642	670	698	703	726	771
24	497	525	553	581	609	637	665	693	697	720	765
23	491	519	547	575	603	630	658	686	691	714	758
22	484	512	540	568	596	624	652	680	684	707	751
21	477	505	533	561	589	617	645	673	677	699	742
20	470	498	526	553	581	609	637	665	670	692	735
19	462	490	518	546	574	602	630	658	662	684	726
18	453	481	509	537	565	593	621	649	653	675	717
17	445	473	500	528	556	584	612	640	645	666	707
16	435	463	491	519	547	575	603	631	635	656	697
15	426	454	482	510	538	566	593	621	626	647	687
14	416	443	471	499	527	555	583	611	615	635	674
13	405	433	461	489	517	545	573	601	605	625	664
12	394	422	450	478	506	534	562	590	594	614	652
11	382	410	438	466	494	522	550	578	582	601	638
10	371	399	427	455	483	510	538	566	570	589	625
9	358	386	414	442	470	498	526	554	558	576	612
8	345	373	401	429	457	485	513	541	545	563	598
7	332	360	388	416	444	472	500	528	532	550	584
6	319	347	375	403	431	458	486	514	518	535	568
5	305	332	360	388	416	444	472	500	504	521	553
4	290	318	346	374	402	430	458	486	489	505	536
3	275	303	331	359	387	415	443	471	474	490	520
2	260	287	315	343	371	399	427	455	458	473	502
1	244	272	300	328	356	384	412	439	442	457	485
0	227	255	283	311	339	367	395	423	426	440	467
P*	130	140	150	160	169	179	189	199	200	207	220

* = Paralegals/Law Clerks

Addendum E

Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared to assist with resolving requests for attorney's fees in complex civil cases in District of Columbia federal courts handled by the Civil Division of the United States Attorney's Office for the District of Columbia. It has been developed to provide "a reliable assessment of fees charged for complex federal litigation in the District [of Columbia]," as the United States Court of Appeals for the District of Columbia Circuit urged. *DL v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, nor has it been adopted by other Department of Justice components.
2. The matrix is intended for use in cases in which a fee-shifting statute permits the prevailing party to recover "reasonable" attorney's fees. *E.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b). A "reasonable fee" is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). The matrix is not intended for use in cases in which the hourly rate is limited by statute. *E.g.*, 28 U.S.C. § 2412(d).
3. For matters in which a prevailing party agrees to payment pursuant to this fee matrix, the United States Attorney's Office will not request that a prevailing party offer the additional evidence that the law otherwise requires. *See, e.g., Eley v. District of Columbia*, 793 F.3d 97, 104 (D.C. Cir. 2015) (quoting *Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995) (requiring "evidence that [the] 'requested rates are in line with those prevailing in the community for similar services'")).
4. The years in the column on the left refer to an attorney's years of experience practicing law. Normally, an attorney's experience will be calculated based on the number of years since an attorney graduated from law school. If the year of law school graduation is unavailable, the year of bar passage should be used instead. Thus, an attorney who graduated from law school in the same year as the work for which compensation is sought has 0 years of experience. For all work beginning on January 1 of the calendar year following graduation (or bar admission), the attorney will have 1 year of experience. (For example, an attorney who graduated from law school on May 30 will have 0 years of experience until December 31 of that same calendar year. As of January 1, all work charged will be computed as performed by an attorney with 1 year of experience.) Adjustments may be necessary if an attorney did not follow a typical career progression or was effectively performing law clerk work. *See, e.g., EPIC v. Dep't of Homeland Sec.*, 999 F. Supp. 2d 61, 70-71 (D.D.C. 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate).
5. The data for this matrix was gathered from the dockets of cases litigated in the U.S. District Court for the District of Columbia using the following search in July 2020 in Bloomberg Law: keywords ("motion n/5 fees AND attorney!") + filing type ("brief," "motion," or "order") + date ("May 31, 2013 – May 31, 2020" under "Entries (Docket and Documents)"). This returned a list of 781 cases. Of those, cases were excluded if there was no motion for fees filed, the motions for fees lacked necessary information, or the motions involved fees not based on hourly rates, involved rates explicitly or implicitly based on an existing fee matrix, involved rates explicitly or implicitly subject to statutory fee caps (e.g., cases subject to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)), or used lower rates prescribed by case law (e.g., *Eley*, 793 F.3d at 105 (Individuals with Disabilities in Education Act

cases)). After these excisions, 86 cases, many of which included data for multiple billers (and 2 of which only provided hourly rate data for paralegals), remained.

6. The cases used to generate this matrix constitute complex federal litigation—which caselaw establishes as encompassing a broad range of matters tried in federal court. *E.g.*, *Reed v. District of Columbia*, 843 F.3d 517, 527-29 (D.C. Cir. 2016) (Tatel, J., concurring) (noting that cases arising under the Freedom of Information Act, Title VII, the Americans with Disabilities Act, Constitutional Amendments, antitrust statutes, and others have been deemed complex, and even “relatively small” cases can constitute complex federal litigation, as they too require “specialized legal skills” and can involve “complex organizations,” such as “large companies”); *Miller v. Holzmann*, 575 F. Supp. 2d 2, 14-16, 17 (D.D.C. 2008) (prevailing market rates for complex federal litigation should be determined by looking to “a diverse range of cases”). That the attorneys handling these cases asked the court to award the specified rates itself demonstrates that the rates were “adequate to attract competent counsel, [while] not produc[ing] windfalls to attorneys.” *West v. Potter*, 717 F.3d 1030, 1033 (D.C. Cir. 2013) (quoting *Blum v. Stenson*, 465 U.S. 886, 897 (1984)). As a consequence, the resulting analysis yields the “prevailing market rate[] in the relevant community” for complex litigation undertaken in federal courts in the District of Columbia. *See Blum*, 465 U.S. at 895.
7. From these 86 complex federal cases, the following information was recorded for 2013 and beyond: hourly rate, the calendar year the rate was charged, and the number of years the lawyer was out of law school when the rate was charged (or, if law school graduation year was unavailable, years since bar passage), as defined above. If the graduation or bar passage year was not stated in a motion or its exhibits, then the lawyer’s biography was researched on the internet. Although preexisting fee matrices for the District of Columbia provide for mid-year rate changes, very few lawyers in the data submitted rates that changed within a calendar year. For this reason, the matrix was modeled using one rate for each calendar year. On the occasions when a lawyer expressed an hourly rate as a range or indicated the rate had increased during the year, the midpoint of the two rates was recorded for that lawyer-year.
8. The matrix of attorney rates is based on 675 lawyer-year data points (one data point for each year in which a lawyer charged an hourly rate) from 419 unique lawyers from 84 unique cases. The lawyer-year data points spanned from years 2013 to 2020, from \$100 to \$1250, and from less than one year of experience to 58 years.
9. Paralegal/law clerk rates were also recorded. The following titles in the fee motions were included in the paralegal/law clerk data: law clerk, legal assistant, paralegal, senior legal assistant, senior paralegal, and student clerk. The paralegal/law clerk row is based on 108 paralegal-year data points from 42 unique cases. They spanned from 2013 to 2019 and from \$60 to \$290. (It is unclear how many unique persons are in the 108 data points because paralegals were not always identified by name.)
10. The matrix was created with separate regressions for the lawyer data and the paralegal data. For the paralegal data, simple linear least-squares regression was used with the dependent variable hourly rate and the independent variable the year the rate was charged subtracted from 2013; years were

combined into one variable and subtracted from 2013 rather than modeled as separate indicator variables to constrain annual inflation to a constant, positive number. The resulting regression formula was $\text{rate} = 129.8789 + 9.902107 * (\text{year}-2013)$. For the lawyer data, least-squares regression was used with the dependent variable hourly rate and independent variables the year the rate was charged and the number of years of experience of the lawyer when the rate was charged. The year the rate was charged was subtracted from 2013 and modeled linearly as with the paralegal data. The number of years out of law school (or since year of bar passage) was modeled with both linear and squared terms, as is common in labor economics to account for non-linear wage growth (e.g., faster growth earlier in one's career than at the end of one's career). See, e.g., Jacob Mincer, *Schooling, Experience, and Earnings* (1974). The resulting regression formula was $\text{rate} = 227.319 + 16.54492 * \text{experience} - 0.2216217 * \text{experience}^2 + 27.97634 * (\text{year}-2013)$. Regressions were also run with log transformed rates and with a random-effect model (to account for several lawyers appearing more than once in the data), but both alternatives resulted in mostly lower rates than those reflected here; in order to minimize fee disputes, these models were therefore rejected in favor of the more generous untransformed, fixed-effect model. Rates from one case comprised 20% of the data; the regression was also run without that case, but the resulting rates were mostly lower and therefore rejected, again to minimize fee disputes.

11. The data collected for this matrix runs through 2020. To generate rates for 2021 and subsequent years, an inflation adjustment (rounded to the nearest whole dollar) was added. The United States Attorney's Office determined that, because courts and many parties have employed the legal services index of the Consumer Price Index to adjust attorney hourly rates for inflation, this matrix will do likewise. E.g., *Salazar v. District of Columbia*, 809 F.3d 58, 64-65 (D.C. Cir. 2015); *Eley*, 793 F.3d at 101-02; *DL*, 924 F.3d at 589-90.
12. This matrix was researched and prepared by Brian Fitzpatrick, the Milton R. Underwood Chair in Free Enterprise and Professor of Law at Vanderbilt Law School, with the help of his students.
13. This matrix and an alternative, preexisting matrix were extensively examined, and, based on that analysis, this matrix was the one selected for computation of the hourly rates for the attorneys' fees awarded in *J.T. v. District of Columbia*, Civ. A. No. 19-0989, 2023 WL 355940 (D.D.C. Jan. 23, 2023) (Howell, C.J.).

Addendum F

From Bloomberg Law analysis of Bankruptcy Dockets

(See “Rising Rates Are Law Firms’ Salve Amid Layoffs, Pay Cuts” by Roy Strom, Bloomberg Law (Jan. 19, 2023) (found at <https://news.bloomberglaw.com/business-and-practice/rising-rates-are-law-firms-salve-as-layoffs-and-pay-cuts-surge> as of Sept. 26, 2023))

Law firms were expected to raise rates around 8% on average this year, and many appear to be following through.

Firm	Top-Paid Partner New	Top-Paid Partner Old	% Change
Mayer Brown	\$1,940	\$1,635	18.7%
Cole Schotz	\$1,200	\$1,050	14.3%
Ice Miller	\$1,110	\$975	13.8%
Kirkland & Ellis	\$2,245	\$1,995	12.5%
Akin Gump	\$2,145	\$1,995	7.5%
Latham & Watkins	\$2,230	\$2,075	7.5%
Weil Gotshal	\$2,095	\$1,950	7.4%
Paul Weiss	\$2,175	\$2,025	7.4%
Paul Hastings	\$2,075	\$1,935	7.2%
Brown Rudnick	\$2,250	\$2,100	7.1%
Freshfields	\$1,995	\$1,925	3.6%
Average			9.7%

Source: Bloomberg Law analysis of bankruptcy dockets.

Note: Some rates are "firm-wide," while others pertain only to an individual bankruptcy matter.

Associate Rates Rising

Law firms have told bankruptcy courts their associates will cost 9% more on average in 2023.

Firm	Top-Paid Associate New	Top-Paid Associate Old	% Change
Akin Gump	\$1,250	\$1,045	19.6%
Weil Gotshal	\$1,345	\$1,200	12.1%
Kirkland & Ellis	\$1,395	\$1,245	12.0%
Mayer Brown	\$1,075	\$970	10.8%
Ice Miller	\$665	\$610	9.0%
Cole Schotz	\$730	\$670	9.0%
Paul Weiss	\$1,380	\$1,280	7.8%
Latham & Watkins	\$1,400	\$1,300	7.7%
Paul Hastings	\$1,320	\$1,230	7.3%
Freshfields	\$1,375	\$1,325	3.8%
Brown Rudnick	\$975	\$975	0.0%
Average			9.0%

Source: Bloomberg Law analysis of bankruptcy dockets

Note: Some rates are "firm-wide," while others pertain only to an individual bankruptcy matter.



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2022 Real Rate Report[®]

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Addendum G



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Report Use Considerations

2022 Real Rate Report

- Examines law firm rates over time
- Identifies rates by location, experience, firm size, areas of expertise, industry, and timekeeper role (i.e., partner, associate, and paralegal)
- Itemizes variables that drive rates up or down

All the analyses included in the report derive from the actual rates charged by law firm professionals as recorded on invoices submitted and approved for payment.

Examining real, approved rate information, along with the ranges of those rates and their changes over time, highlights the role these variables play in driving aggregate legal cost and income. The analyses can energize questions for both corporate clients and law firm principals.

Clients might ask whether they are paying the right amount for different types of legal services, while law firm principals might ask whether they are charging the right amount for legal services and whether to modify their pricing approach.

Some key factors¹ that drive rates²:

Attorney location - Lawyers in urban and major metropolitan areas tend to charge more when compared with lawyers in rural areas or small towns.

Litigation complexity - The cost of representation will be higher if the case is particularly complex or time-consuming; for example, if there are a large number of documents to review, many witnesses to depose, and numerous procedural steps, the case is likely to cost more (regardless of other factors like the lawyer's level of experience).

Years of experience and reputation - A more experienced, higher-profile lawyer is often going to charge more, but absorbing this higher cost at the outset may make more sense than hiring a less expensive lawyer who will likely take time and billable hours to come up to speed on unfamiliar legal and procedural issues.

Overhead - The costs associated with the firm's support network (paralegals, clerks, and assistants), document preparation, consultants, research, and other expenses.

Firm size - The rates can increase if the firm is large and has various timekeeper roles at the firm. For example, the cost to work with an associate or partner at a larger firm will be higher compared to a firm that has one to two associates and a paralegal.

¹ David Goguen, J.D., University of San Francisco School of Law (2020) Guide to Legal Services Billing Retrieved from: <https://www.lawyers.com/legal-info/research/guide-to-legal-services-billing-rates.html>

² Source: 2018 RRR. Factor order validated in multiple analyses since 2010

Section I: High-Level Data Cuts**Partners, Associates, and Paralegals**

By Role

2022 - Real Rates

Trend Analysis - Mean

Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Partner	10592	\$430	\$653	\$969	\$749	\$738	\$705
Associate	9930	\$329	\$485	\$703	\$546	\$541	\$503
Paralegal	4215	\$150	\$225	\$325	\$247	\$244	\$232

Section III: Practice Area Analysis**Environmental**

By City

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

City	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Los Angeles CA	Partner	11	\$515	\$550	\$663	\$753	\$568	\$557
New York NY	Partner	27	\$414	\$525	\$616	\$616	\$656	\$590
	Associate	26	\$298	\$340	\$400	\$382	\$502	\$432
Washington DC	Partner	14	\$660	\$803	\$957	\$812	\$745	\$744
	Associate	18	\$400	\$565	\$695	\$567	\$543	\$475

Section IV: In-Depth Analysis for Select US Cities

Boston MA
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Commercial	More Than 1,000 Lawyers	Associate	14	\$695	\$818	\$977	\$831	\$787	\$767
Corporate: Other	51-200 Lawyers	Associate	16	\$301	\$450	\$586	\$447	\$455	\$455
	More Than 1,000 Lawyers	Partner	15	\$818	\$902	\$1,033	\$961	\$1,035	\$831
Finance and Securities: Investments and Other Financial Instruments	501-1,000 Lawyers	Partner	15	\$1,016	\$1,230	\$1,506	\$1,226	\$1,134	\$998
		Associate	13	\$526	\$645	\$698	\$680	\$654	\$635
	More Than 1,000 Lawyers	Partner	13	\$1,118	\$1,300	\$1,498	\$1,313	\$1,189	\$1,085
		Associate	32	\$650	\$775	\$1,000	\$817	\$799	\$725
Insurance Defense: Other	51-200 Lawyers	Partner	14	\$220	\$278	\$400	\$470	\$484	\$521
Insurance Defense: Property Damage	51-200 Lawyers	Partner	12	\$219	\$220	\$325	\$266	\$270	\$251
Intellectual Property: Patents	201-500 Lawyers	Partner	13	\$550	\$737	\$861	\$709	\$725	\$687

Section IV: In-Depth Analysis for Select US Cities

Chicago IL

By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Commercial	201-500 Lawyers	Partner	20	\$453	\$706	\$1,025	\$766	\$707	\$692
		Associate	30	\$330	\$462	\$578	\$497	\$458	\$470
	501-1,000 Lawyers	Partner	24	\$703	\$772	\$978	\$839	\$771	\$736
		Associate	36	\$585	\$705	\$871	\$721	\$689	\$698
		Partner	42	\$904	\$1,096	\$1,390	\$1,141	\$1,028	\$1,082
		Associate	36	\$585	\$705	\$871	\$721	\$689	\$698
Corporate: Mergers, Acquisitions and Divestitures	More Than 1,000 Lawyers	Partner	12	\$1,157	\$1,306	\$1,522	\$1,307	\$942	\$1,032
		Associate	18	\$601	\$782	\$955	\$790	\$553	\$748
Corporate: Other	201-500 Lawyers	Partner	54	\$712	\$902	\$1,023	\$884	\$847	\$833
		Associate	77	\$487	\$573	\$732	\$592	\$545	\$567
	501-1,000 Lawyers	Partner	22	\$765	\$970	\$1,135	\$979	\$890	\$785
		Associate	13	\$503	\$535	\$669	\$606	\$525	\$525
	More Than 1,000 Lawyers	Partner	103	\$760	\$925	\$1,280	\$1,035	\$1,021	\$983
		Associate	87	\$520	\$648	\$728	\$648	\$589	\$602
Corporate: Regulatory and Compliance	201-500 Lawyers	Partner	15	\$584	\$835	\$953	\$792	\$747	\$771
	More Than 1,000 Lawyers	Partner	30	\$823	\$1,027	\$1,124	\$999	\$884	\$898
		Associate	26	\$404	\$651	\$758	\$616	\$648	\$657
Corporate: Tax	More Than 1,000 Lawyers	Partner	30	\$920	\$1,030	\$1,225	\$1,050	\$1,036	\$1,021

Section IV: In-Depth Analysis for Select US Cities

Chicago IL

By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Corporate: Tax	More Than 1,000 Lawyers	Associate	13	\$601	\$692	\$856	\$708	\$716	\$644
Employment and Labor: Compensation and Benefits	More Than 1,000 Lawyers	Partner	11	\$733	\$870	\$1,213	\$988	\$1,012	\$813
Employment and Labor: Discrimination, Retaliation and Harassment / EEO	501-1,000 Lawyers	Associate	12	\$310	\$333	\$384	\$344	\$379	\$338
Employment and Labor: Other	201-500 Lawyers	Partner	12	\$376	\$520	\$971	\$662	\$596	\$665
	501-1,000 Lawyers	Partner	29	\$475	\$561	\$725	\$596	\$555	\$553
		Associate	24	\$339	\$387	\$465	\$422	\$372	\$391
	More Than 1,000 Lawyers	Partner	20	\$627	\$720	\$953	\$866	\$892	\$808
		Associate	20	\$413	\$530	\$617	\$552	\$594	\$555
Finance and Securities: Investments and Other Financial Instruments	501-1,000 Lawyers	Associate	16	\$548	\$592	\$740	\$636	\$598	\$548
Finance and Securities: Loans and Financing	201-500 Lawyers	Associate	11	\$512	\$560	\$627	\$574	\$553	\$459
	501-1,000 Lawyers	Partner	14	\$825	\$945	\$1,079	\$977	\$963	\$916
		Associate	11	\$552	\$600	\$762	\$666	\$678	\$599
	More Than 1,000 Lawyers	Partner	73	\$1,173	\$1,295	\$1,544	\$1,348	\$1,273	\$1,220
		Associate	69	\$715	\$851	\$995	\$854	\$819	\$730
Insurance Defense: Other	50 Lawyers or Fewer	Partner	42	\$245	\$300	\$335	\$291	\$282	\$268
	51-200 Lawyers	Partner	14	\$193	\$195	\$228	\$209	\$229	\$231
Insurance Defense: Property Damage	50 Lawyers or Fewer	Partner	38	\$265	\$290	\$327	\$284	\$274	\$269

Section IV: In-Depth Analysis for Select US Cities

Chicago IL

By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Insurance Defense: Property Damage	50 Lawyers or Fewer	Associate	32	\$215	\$248	\$268	\$229	\$205	\$215
Intellectual Property: Patents	51-200 Lawyers	Partner	14	\$428	\$493	\$548	\$480	\$485	\$473

Section IV: In-Depth Analysis for Select US Cities

Los Angeles CA
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020	
Commercial	501-1,000 Lawyers	Partner	22	\$729	\$866	\$992	\$889	\$801	\$777	
		Associate	34	\$619	\$740	\$842	\$727	\$648	\$568	
	More Than 1,000 Lawyers	Partner	32	\$881	\$1,058	\$1,199	\$1,054	\$1,073	\$1,110	
		Associate	49	\$611	\$845	\$1,030	\$828	\$796	\$787	
Corporate: Mergers, Acquisitions and Divestitures	More Than 1,000 Lawyers	Associate	22	\$486	\$486	\$643	\$587	\$588	\$540	
Corporate: Other	50 Lawyers or Fewer	Partner	13	\$396	\$428	\$574	\$478	\$424	\$442	
	51-200 Lawyers	Partner	25	\$525	\$645	\$743	\$676	\$711	\$728	
	201-500 Lawyers	Partner	29	\$582	\$747	\$912	\$757	\$731	\$715	
		Associate	24	\$412	\$500	\$660	\$538	\$489	\$474	
	501-1,000 Lawyers	Partner	35	\$659	\$830	\$1,139	\$929	\$870	\$870	
		Associate	35	\$550	\$743	\$856	\$729	\$676	\$652	
	More Than 1,000 Lawyers	Partner	74	\$965	\$1,220	\$1,370	\$1,183	\$1,120	\$1,051	
		Associate	91	\$615	\$745	\$944	\$781	\$783	\$745	
	Corporate: Regulatory and Compliance	501-1,000 Lawyers	Partner	13	\$795	\$910	\$1,103	\$965	\$881	\$875
			Associate	15	\$468	\$550	\$715	\$600	\$608	\$634
More Than 1,000 Lawyers		Partner	28	\$877	\$1,080	\$1,224	\$1,083	\$993	\$1,003	
		Associate	41	\$610	\$775	\$945	\$763	\$719	\$732	

Section IV: In-Depth Analysis for Select US Cities

Los Angeles CA
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Employment and Labor: Other	501-1,000 Lawyers	Partner	33	\$567	\$677	\$870	\$748	\$653	\$612
		Associate	32	\$325	\$380	\$525	\$459	\$479	\$471
	More Than 1,000 Lawyers	Partner	25	\$705	\$935	\$1,068	\$928	\$838	\$827
		Associate	12	\$398	\$426	\$537	\$501	\$561	\$608
Finance and Securities: Investments and Other Financial Instruments	501-1,000 Lawyers	Partner	13	\$676	\$950	\$1,037	\$999	\$842	\$798
	More Than 1,000 Lawyers	Partner	40	\$1,210	\$1,309	\$1,434	\$1,332	\$1,283	\$1,236
		Associate	76	\$845	\$1,017	\$1,135	\$992	\$958	\$882
Finance and Securities: Loans and Financing	50 Lawyers or Fewer	Associate	15	\$265	\$285	\$434	\$344	\$394	\$367
	201-500 Lawyers	Associate	11	\$500	\$540	\$638	\$563	\$417	\$344
	501-1,000 Lawyers	Associate	13	\$550	\$645	\$930	\$689	\$683	\$614
Insurance Defense: Auto and Transportation	50 Lawyers or Fewer	Partner	22	\$250	\$250	\$265	\$280	\$238	\$239
Insurance Defense: Other	50 Lawyers or Fewer	Partner	30	\$249	\$252	\$265	\$274	\$317	\$431
		Associate	46	\$215	\$225	\$235	\$220	\$211	\$204
	51-200 Lawyers	Partner	17	\$230	\$250	\$265	\$283	\$247	\$266
		Associate	20	\$170	\$170	\$200	\$190	\$195	\$196
Intellectual Property: Patents	More Than 1,000 Lawyers	Partner	11	\$982	\$1,046	\$1,209	\$1,128	\$1,077	\$1,025
		Associate	38	\$670	\$765	\$891	\$771	\$722	\$638

Section IV: In-Depth Analysis for Select US Cities

New York NY
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Bankruptcy and Collections	50 Lawyers or Fewer	Partner	11	\$333	\$390	\$450	\$411	\$402	\$394
	201-500 Lawyers	Partner	15	\$414	\$604	\$668	\$589	\$555	\$519
		Associate	15	\$300	\$334	\$412	\$365	\$350	\$338
Commercial	50 Lawyers or Fewer	Partner	17	\$330	\$458	\$535	\$486	\$449	\$515
	201-500 Lawyers	Partner	28	\$525	\$609	\$790	\$680	\$773	\$764
		Associate	21	\$378	\$428	\$486	\$438	\$494	\$522
	501-1,000 Lawyers	Partner	72	\$993	\$1,414	\$1,725	\$1,347	\$1,240	\$1,320
		Associate	96	\$565	\$870	\$1,086	\$819	\$613	\$760
	More Than 1,000 Lawyers	Partner	45	\$1,149	\$1,331	\$1,558	\$1,346	\$1,266	\$1,209
Associate		39	\$646	\$826	\$1,023	\$827	\$799	\$777	
Corporate: Antitrust and Competition	501-1,000 Lawyers	Associate	37	\$597	\$721	\$968	\$783	\$791	\$727
Corporate: Governance	501-1,000 Lawyers	Partner	37	\$1,457	\$1,560	\$1,731	\$1,560	\$1,482	\$1,380
		Associate	53	\$623	\$868	\$1,046	\$840	\$749	\$725
	More Than 1,000 Lawyers	Associate	12	\$564	\$640	\$787	\$686	\$650	\$654
Corporate: Mergers, Acquisitions and Divestitures	501-1,000 Lawyers	Partner	52	\$1,410	\$1,650	\$1,698	\$1,556	\$1,393	\$1,309
		Associate	116	\$723	\$955	\$1,160	\$929	\$799	\$736
	More Than 1,000 Lawyers	Partner	43	\$1,350	\$1,650	\$1,757	\$1,521	\$1,499	\$1,290

Section IV: In-Depth Analysis for Select US Cities

New York NY
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Corporate: Mergers, Acquisitions and Divestitures	More Than 1,000 Lawyers	Associate	80	\$649	\$917	\$1,130	\$899	\$926	\$834
Corporate: Other	50 Lawyers or Fewer	Partner	40	\$368	\$515	\$611	\$490	\$528	\$499
		Associate	29	\$235	\$350	\$375	\$317	\$360	\$344
	51-200 Lawyers	Partner	36	\$450	\$583	\$705	\$617	\$642	\$597
	201-500 Lawyers	Partner	64	\$560	\$894	\$1,147	\$919	\$795	\$853
		Associate	52	\$355	\$522	\$694	\$574	\$498	\$517
	501-1,000 Lawyers	Partner	183	\$1,271	\$1,515	\$1,744	\$1,436	\$1,286	\$1,230
		Associate	226	\$701	\$855	\$1,100	\$875	\$776	\$727
	More Than 1,000 Lawyers	Partner	140	\$1,210	\$1,550	\$1,720	\$1,454	\$1,302	\$1,252
		Associate	198	\$667	\$875	\$1,105	\$882	\$837	\$808
	Corporate: Partnerships and Joint Ventures	501-1,000 Lawyers	Partner	41	\$1,341	\$1,564	\$1,760	\$1,516	\$1,267
Associate			71	\$713	\$970	\$1,182	\$927	\$821	\$788
Corporate: Regulatory and Compliance	51-200 Lawyers	Partner	11	\$474	\$604	\$720	\$593	\$558	\$660
		Associate	15	\$454	\$640	\$684	\$678	\$443	\$464
	201-500 Lawyers	Partner	19	\$638	\$694	\$880	\$777	\$712	\$812
		Associate	15	\$396	\$513	\$638	\$616	\$483	\$426
	501-1,000 Lawyers	Partner	48	\$928	\$1,335	\$1,560	\$1,294	\$1,204	\$1,185

Section IV: In-Depth Analysis for Select US Cities

New York NY
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Corporate: Regulatory and Compliance	501-1,000 Lawyers	Associate	59	\$500	\$747	\$926	\$768	\$784	\$721
	More Than 1,000 Lawyers	Partner	28	\$884	\$1,170	\$1,386	\$1,165	\$1,064	\$1,034
		Associate	36	\$570	\$725	\$760	\$701	\$704	\$681
Corporate: Tax	501-1,000 Lawyers	Partner	16	\$927	\$1,225	\$1,568	\$1,235	\$1,106	\$1,146
	More Than 1,000 Lawyers	Partner	30	\$1,000	\$1,210	\$1,553	\$1,243	\$1,220	\$1,179
		Associate	28	\$690	\$879	\$1,003	\$945	\$857	\$797
Employment and Labor: Discrimination, Retaliation and Harassment / EEO	More Than 1,000 Lawyers	Associate	11	\$385	\$390	\$487	\$430	\$444	\$416
Employment and Labor: Other	201-500 Lawyers	Partner	33	\$450	\$493	\$689	\$621	\$585	\$651
	501-1,000 Lawyers	Partner	81	\$472	\$573	\$891	\$751	\$688	\$663
		Associate	54	\$325	\$440	\$635	\$538	\$542	\$469
	More Than 1,000 Lawyers	Partner	23	\$700	\$918	\$1,090	\$975	\$920	\$951
		Associate	28	\$450	\$498	\$685	\$629	\$531	\$634
Environmental	51-200 Lawyers	Partner	12	\$348	\$455	\$519	\$443	\$450	\$444
Finance and Securities: Debt/Equity Offerings	501-1,000 Lawyers	Partner	31	\$1,269	\$1,650	\$1,734	\$1,448	\$1,220	\$1,159
		Associate	30	\$713	\$955	\$1,178	\$927	\$685	\$674
	More Than 1,000 Lawyers	Partner	15	\$1,067	\$1,332	\$1,810	\$1,368	\$883	\$1,072
		Associate	29	\$438	\$621	\$1,108	\$754	\$597	\$662

Section IV: In-Depth Analysis for Select US Cities

New York NY
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Finance and Securities: Investments and Other Financial Instruments	51-200 Lawyers	Partner	13	\$650	\$749	\$894	\$799	\$844	\$848
		Associate	20	\$500	\$614	\$736	\$620	\$558	\$582
	201-500 Lawyers	Partner	36	\$1,109	\$1,111	\$1,111	\$1,090	\$1,034	\$963
		Associate	127	\$1,070	\$1,405	\$1,766	\$1,413	\$1,396	\$1,282
	501-1,000 Lawyers	Partner	127	\$1,070	\$1,405	\$1,766	\$1,413	\$1,396	\$1,282
		Associate	227	\$685	\$835	\$1,095	\$881	\$894	\$793
More Than 1,000 Lawyers	Partner	73	\$950	\$1,229	\$1,605	\$1,269	\$1,266	\$1,155	
	Associate	68	\$531	\$782	\$972	\$769	\$748	\$679	
Finance and Securities: Loans and Financing	50 Lawyers or Fewer	Partner	14	\$627	\$806	\$890	\$798	\$686	\$592
		Associate	90	\$633	\$760	\$950	\$748	\$745	\$750
	201-500 Lawyers	Partner	58	\$1,200	\$1,475	\$1,620	\$1,342	\$1,309	\$1,222
		Associate	104	\$735	\$955	\$1,119	\$917	\$864	\$776
	501-1,000 Lawyers	Partner	83	\$1,170	\$1,520	\$1,759	\$1,462	\$1,362	\$1,277
		Associate	129	\$750	\$940	\$1,108	\$934	\$922	\$873
More Than 1,000 Lawyers	Partner	100	\$1,268	\$1,479	\$1,675	\$1,441	\$1,398	\$1,352	
	Associate	129	\$750	\$940	\$1,108	\$934	\$922	\$873	
Finance and Securities: SEC Filings and Financial Reporting	501-1,000 Lawyers	Partner	15	\$1,692	\$1,737	\$1,786	\$1,648	\$1,491	\$1,378
Finance and Securities: Securities and Banking Regulations	201-500 Lawyers	Partner	15	\$1,078	\$1,365	\$1,505	\$1,245	\$999	\$1,184
		Associate	17	\$323	\$531	\$650	\$556	\$492	\$626

Section IV: In-Depth Analysis for Select US Cities

New York NY
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Finance and Securities: Securities and Banking Regulations	501-1,000 Lawyers	Partner	14	\$1,125	\$1,330	\$1,397	\$1,270	\$1,286	\$1,201
Insurance Defense: Auto and Transportation	51-200 Lawyers	Partner	15	\$178	\$185	\$220	\$195	\$187	\$176
		Associate	11	\$160	\$165	\$180	\$169	\$163	\$154
Insurance Defense: Other	50 Lawyers or Fewer	Partner	30	\$217	\$250	\$285	\$277	\$273	\$262
		Associate	22	\$185	\$195	\$230	\$235	\$214	\$183
	51-200 Lawyers	Partner	38	\$198	\$225	\$281	\$249	\$244	\$247
		Associate	25	\$175	\$180	\$209	\$197	\$202	\$182
	201-500 Lawyers	Partner	22	\$208	\$240	\$356	\$330	\$268	\$295
		Associate	13	\$195	\$270	\$526	\$370	\$294	\$299
Insurance Defense: Personal Injury/Wrongful Death	50 Lawyers or Fewer	Associate	36	\$157	\$160	\$169	\$160	\$160	\$152
Insurance Defense: Property Damage	50 Lawyers or Fewer	Partner	30	\$175	\$195	\$213	\$206	\$203	\$180
		Associate	21	\$150	\$160	\$165	\$168	\$163	\$149
	51-200 Lawyers	Partner	34	\$190	\$210	\$315	\$252	\$270	\$255
Intellectual Property: Patents	501-1,000 Lawyers	Partner	16	\$912	\$952	\$1,165	\$988	\$930	\$962
		Associate	22	\$523	\$599	\$877	\$661	\$588	\$601
	More Than 1,000 Lawyers	Partner	15	\$895	\$1,046	\$1,210	\$1,045	\$1,066	\$997
		Associate	20	\$739	\$820	\$915	\$801	\$743	\$686

Section IV: In-Depth Analysis for Select US Cities

New York NY
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Miscellaneous: General Advice & Counsel	More Than 1,000 Lawyers	Partner	11	\$1,550	\$1,695	\$1,875	\$1,684	\$1,585	\$1,427
Real Estate: Other	501-1,000 Lawyers	Associate	14	\$503	\$614	\$713	\$643	\$623	\$655

Section IV: In-Depth Analysis for Select US Cities

Philadelphia PA
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Bankruptcy and Collections	201-500 Lawyers	Partner	18	\$495	\$564	\$650	\$568	\$524	\$541
		Associate	17	\$300	\$375	\$485	\$393	\$311	\$304
Commercial	51-200 Lawyers	Partner	22	\$675	\$960	\$1,096	\$867	\$678	\$628
		Associate	16	\$373	\$425	\$486	\$446	\$390	\$347
	201-500 Lawyers	Partner	39	\$625	\$732	\$826	\$740	\$627	\$619
		Associate	48	\$407	\$437	\$503	\$447	\$357	\$348
	501-1,000 Lawyers	Partner	24	\$564	\$728	\$891	\$789	\$742	\$752
	More Than 1,000 Lawyers	Partner	13	\$864	\$945	\$1,285	\$1,049	\$919	\$921
		Associate	19	\$485	\$624	\$829	\$683	\$638	\$586
	Corporate: Other	51-200 Lawyers	Partner	31	\$588	\$732	\$918	\$736	\$779
Associate			31	\$389	\$425	\$500	\$439	\$429	\$410
201-500 Lawyers		Partner	27	\$560	\$650	\$860	\$710	\$642	\$669
		Associate	30	\$396	\$428	\$455	\$431	\$374	\$342
501-1,000 Lawyers		Partner	26	\$652	\$719	\$935	\$777	\$794	\$803
		Associate	19	\$409	\$488	\$535	\$466	\$433	\$476
More Than 1,000 Lawyers		Partner	50	\$818	\$895	\$1,033	\$962	\$925	\$908
		Associate	49	\$444	\$530	\$568	\$553	\$530	\$523

Section IV: In-Depth Analysis for Select US Cities

Philadelphia PA
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Corporate: Regulatory and Compliance	501-1,000 Lawyers	Associate	11	\$325	\$468	\$781	\$605	\$427	\$452
	More Than 1,000 Lawyers	Partner	19	\$688	\$830	\$891	\$804	\$847	\$783
Employment and Labor: Other	501-1,000 Lawyers	Partner	19	\$525	\$585	\$640	\$594	\$598	\$603
Insurance Defense: Auto and Transportation	50 Lawyers or Fewer	Partner	39	\$178	\$185	\$200	\$186	\$181	\$182
		Associate	40	\$170	\$170	\$200	\$178	\$169	\$158
Insurance Defense: Other	50 Lawyers or Fewer	Partner	52	\$185	\$200	\$224	\$204	\$196	\$182
		Associate	50	\$170	\$175	\$200	\$180	\$169	\$162
	51-200 Lawyers	Partner	21	\$175	\$180	\$200	\$192	\$200	\$233
		Associate	15	\$160	\$163	\$186	\$170	\$161	\$166
	201-500 Lawyers	Partner	33	\$185	\$210	\$240	\$219	\$223	\$224
		Associate	16	\$183	\$195	\$200	\$191	\$187	\$197
Insurance Defense: Property Damage	50 Lawyers or Fewer	Partner	33	\$180	\$194	\$200	\$194	\$191	\$191
		Associate	34	\$171	\$180	\$187	\$178	\$172	\$174
	51-200 Lawyers	Partner	11	\$180	\$199	\$210	\$210	\$222	\$231
		Associate	11	\$173	\$180	\$220	\$198	\$199	\$181
Intellectual Property: Patents	201-500 Lawyers	Associate	13	\$365	\$420	\$450	\$423	\$352	\$322
	501-1,000 Lawyers	Partner	12	\$660	\$760	\$825	\$785	\$660	\$730

Section IV: In-Depth Analysis for Select US Cities

San Francisco CA
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Commercial	51-200 Lawyers	Partner	11	\$420	\$500	\$720	\$602	\$562	\$633
	501-1,000 Lawyers	Partner	18	\$694	\$945	\$1,050	\$936	\$873	\$922
		Associate	14	\$356	\$480	\$738	\$561	\$518	\$403
Corporate: Mergers, Acquisitions and Divestitures	More Than 1,000 Lawyers	Partner	14	\$868	\$868	\$1,007	\$931	\$933	\$955
Corporate: Other	501-1,000 Lawyers	Partner	21	\$795	\$961	\$1,125	\$994	\$894	\$871
		Associate	12	\$662	\$829	\$1,014	\$808	\$716	\$592
	More Than 1,000 Lawyers	Partner	12	\$958	\$1,080	\$1,194	\$1,102	\$1,039	\$926
Corporate: Regulatory and Compliance	501-1,000 Lawyers	Partner	16	\$693	\$760	\$974	\$849	\$783	\$863
Employment and Labor: Other	501-1,000 Lawyers	Partner	18	\$486	\$585	\$636	\$594	\$608	\$560
	More Than 1,000 Lawyers	Partner	11	\$790	\$833	\$914	\$847	\$809	\$890
Finance and Securities: Investments and Other Financial Instruments	501-1,000 Lawyers	Associate	13	\$620	\$780	\$890	\$755	\$745	\$753
Insurance Defense: Other	50 Lawyers or Fewer	Partner	26	\$205	\$250	\$265	\$245	\$236	\$248
	201-500 Lawyers	Partner	41	\$255	\$280	\$285	\$331	\$356	\$397
Intellectual Property: Patents	501-1,000 Lawyers	Partner	11	\$978	\$1,266	\$1,383	\$1,177	\$1,040	\$1,075

Section IV: In-Depth Analysis for Select US Cities

Washington DC
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Commercial	201-500 Lawyers	Partner	39	\$749	\$820	\$1,026	\$882	\$778	\$717
		Associate	39	\$463	\$545	\$693	\$576	\$521	\$476
	501-1,000 Lawyers	Partner	50	\$712	\$850	\$1,150	\$972	\$873	\$911
	More Than 1,000 Lawyers	Partner	39	\$955	\$1,065	\$1,375	\$1,156	\$1,016	\$997
		Associate	27	\$634	\$837	\$1,046	\$842	\$698	\$643
	Corporate: Mergers, Acquisitions and Divestitures	201-500 Lawyers	Partner	11	\$611	\$751	\$988	\$803	\$780
More Than 1,000 Lawyers		Partner	22	\$1,061	\$1,286	\$1,369	\$1,224	\$1,142	\$1,010
		Associate	27	\$655	\$785	\$835	\$776	\$756	\$632
Corporate: Other	50 Lawyers or Fewer	Partner	25	\$495	\$618	\$761	\$606	\$585	\$583
		Associate	16	\$350	\$417	\$697	\$497	\$461	\$537
	51-200 Lawyers	Partner	29	\$752	\$826	\$884	\$821	\$839	\$798
	201-500 Lawyers	Partner	78	\$740	\$868	\$1,008	\$888	\$806	\$751
		Associate	64	\$453	\$562	\$680	\$577	\$550	\$478
	501-1,000 Lawyers	Partner	136	\$925	\$950	\$999	\$975	\$941	\$910
		Associate	182	\$670	\$695	\$695	\$668	\$650	\$581
	More Than 1,000 Lawyers	Partner	142	\$885	\$1,082	\$1,274	\$1,101	\$1,024	\$976
		Associate	117	\$536	\$703	\$915	\$751	\$702	\$641

Section IV: In-Depth Analysis for Select US Cities

Washington DC
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Trend Analysis - Mean

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020	
Corporate: Regulatory and Compliance	51-200 Lawyers	Partner	30	\$589	\$835	\$931	\$780	\$808	\$831	
		Associate	30	\$395	\$455	\$590	\$489	\$501	\$505	
	201-500 Lawyers	Partner	44	\$706	\$797	\$907	\$812	\$752	\$714	
		Associate	41	\$476	\$553	\$672	\$573	\$541	\$498	
	501-1,000 Lawyers	Partner	128	\$856	\$950	\$1,112	\$979	\$975	\$933	
		Associate	143	\$561	\$646	\$717	\$659	\$621	\$595	
	More Than 1,000 Lawyers	Partner	76	\$935	\$1,108	\$1,274	\$1,101	\$1,014	\$991	
		Associate	79	\$503	\$647	\$824	\$669	\$651	\$615	
	Corporate: Tax	More Than 1,000 Lawyers	Partner	32	\$1,040	\$1,187	\$1,437	\$1,221	\$1,198	\$1,069
			Associate	38	\$529	\$780	\$1,036	\$825	\$739	\$715
Employment and Labor: Other	201-500 Lawyers	Partner	14	\$544	\$735	\$763	\$693	\$712	\$639	
	501-1,000 Lawyers	Partner	24	\$498	\$662	\$1,065	\$814	\$800	\$739	
		Associate	13	\$414	\$435	\$629	\$500	\$464	\$463	
	More Than 1,000 Lawyers	Partner	29	\$616	\$783	\$845	\$796	\$715	\$811	
		Associate	13	\$480	\$538	\$615	\$583	\$467	\$536	
	Finance and Securities: Investments and Other Financial Instruments	501-1,000 Lawyers	Partner	28	\$986	\$1,148	\$1,371	\$1,187	\$1,051	\$1,054
More Than 1,000 Lawyers		Partner	23	\$982	\$1,178	\$1,375	\$1,184	\$1,200	\$1,036	

Section IV: In-Depth Analysis for Select US Cities

Washington DC
By Practice Area and Firm Size

2022 — Real Rates for Associate and Partner

Practice Area	Firm Size	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Finance and Securities: Loans and Financing	201-500 Lawyers	Partner	12	\$726	\$1,125	\$1,295	\$1,013	\$854	\$854
		Associate	14	\$400	\$512	\$650	\$582	\$528	\$498
Intellectual Property: Patents	201-500 Lawyers	Partner	18	\$904	\$989	\$1,032	\$931	\$901	\$730
	501-1,000 Lawyers	Partner	36	\$872	\$950	\$1,121	\$1,002	\$986	\$917
		Associate	37	\$689	\$740	\$1,003	\$776	\$690	\$649
	More Than 1,000 Lawyers	Partner	14	\$898	\$988	\$1,279	\$1,081	\$1,006	\$890
Associate		20	\$697	\$775	\$841	\$757	\$658	\$614	
Miscellaneous: General Advice & Counsel	More Than 1,000 Lawyers	Partner	12	\$1,321	\$1,400	\$1,496	\$1,394	\$1,260	\$1,162

Appendix: Data Methodology

Invoice Information

Data in Wolters Kluwer ELM Solutions' reference database and the 2022 Real Rate Report were taken from invoice line-item entries contained in invoices received and approved by participating companies.

Invoice data were received in the Legal Electronic Data Exchange Standard (LEDES) format (LEDES.org). The following information was extracted from those invoices and their line items:

- Law firm (which exists as a random number in the ELM Solutions reference database)
- Timekeeper ID (which exists as a random number in the ELM Solutions reference database)
- Matter ID (which exists as a random number in the ELM Solutions reference database)
- Timekeeper's position (role) within the law firm (partner, associate, paralegal, etc.)
- Uniform Task-Based Management System Code Set, Task Codes, and Activity Codes (UTBMS.com)
- Date of service
- Hours billed
- Hourly rate billed
- Fees billed

Non-Invoice Information

To capture practice area details, the matter ID within each invoice was associated with matter profiles containing areas of work in the systems of each company. The areas of work were then systematically categorized into legal practice areas. Normalization of practice areas was done based on company mappings to system-level practice areas available in the ELM Solutions system and by naming convention.

The majority of analyses included in this report have been mapped to one of 11 practice areas, further divided into sub-areas and litigation/non-litigation (for more information on practice areas and sub-areas, please refer to pages 232-234).

To capture location and jurisdiction details, law firms and timekeepers were systematically mapped to the existing profiles within ELM Solutions systems, as well as with publicly available data sources for further validation and normalization. Where city location information is provided, it includes any address within that city's defined Core-Based Statistical Area (CBSA) as defined by the Office of Management and Budget (OMB). The CBSAs are urban centers with populations of 10,000 or more and include all adjacent counties that are economically integrated with that urban center.

Where the analyses focus on partners, associates, and paralegals, the underlying data occasionally included some sub-roles, such as "senior partner" or "junior associate." In such instances, those timekeeper sub-roles were placed within the broader partner, associate, and paralegal segments.

Demographics regarding law firm size, location, and lawyer years of experience were augmented by incorporating publicly available information.

Appendix: Data Methodology

A Note on US Cities

Throughout the report, we have used city names to refer to CBSA and consistently used the principal city in the CBSA to refer to the entire area. The following are the shorthand city names used in this report and the corresponding CBSA designations, as defined by the OMB.

Principal City	CBSA Name
Akron, OH	Akron, OH
Albany, NY	Albany-Schenectady-Troy, NY
Albuquerque, NM	Albuquerque, NM
Atlanta, GA	Atlanta-Sandy Springs-Alpharetta, GA
Austin, TX	Austin-Round Rock-Georgetown, TX
Baltimore, MD	Baltimore-Columbia-Towson, MD
Baton Rouge, LA	Baton Rouge, LA
Birmingham, AL	Birmingham-Hoover, AL
Boise City, ID	Boise City, ID
Boston, MA	Boston-Cambridge-Newton, MA-NH
Bridgeport, CT	Bridgeport-Stamford-Norwalk, CT
Buffalo, NY	Buffalo-Cheektowaga, NY
Burlington, VT	Burlington-South Burlington, VT
Charleston, SC	Charleston-North Charleston, SC
Charleston, WV	Charleston, WV
Charlotte, NC	Charlotte-Concord-Gastonia, NC-SC
Chicago, IL	Chicago-Naperville-Elgin, IL-IN-WI
Cincinnati, OH	Cincinnati, OH-KY-IN
Cleveland, OH	Cleveland-Elyria, OH
Columbia, SC	Columbia, SC
Columbus, OH	Columbus, OH
Dallas, TX	Dallas-Fort Worth-Arlington, TX
Dayton, OH	Dayton-Kettering, OH
Denver, CO	Denver-Aurora-Lakewood, CO
Detroit, MI	Detroit-Warren-Dearborn, MI
Fresno, CA	Fresno, CA
Grand Rapids, MI	Grand Rapids-Kentwood, MI
Greenville, SC	Greenville-Anderson, SC
Harrisburg, PA	Harrisburg-Carlisle, PA

Appendix: Data Methodology

A Note on US Cities

Principal City	CBSA Name
Hartford, CT	Hartford-East Hartford-Middletown, CT
Honolulu, HI	Urban Honolulu HI
Houston, TX	Houston-The Woodlands-Sugar Land, TX
Indianapolis, IN	Indianapolis-Carmel-Anderson, IN
Jackson, MS	Jackson, MS
Jacksonville, FL	Jacksonville, FL
Kansas City, MO	Kansas City, MO-KS
Lafayette, LA	Lafayette, LA
Las Vegas, NV	Las Vegas-Henderson-Paradise, NV
Lexington, KY	Lexington-Fayette, KY
Little Rock, AR	Little Rock-North Little Rock-Conway, AR
Los Angeles, CA	Los Angeles-Long Beach-Anaheim, CA
Louisville, KY	Louisville/Jefferson County, KY-IN
Madison, WI	Madison, WI
Memphis, TN	Memphis-Forrest City, TN-MS-AR
Miami, FL	Miami-Fort Lauderdale-Pompano Beach, FL
Milwaukee, WI	Milwaukee-Waukesha, WI
Minneapolis, MN	Minneapolis-St. Paul-Bloomington, MN-WI
Nashville, TN	Nashville-Davidson-Murfreesboro-Franklin, TN
New Haven, CT	New Haven-Milford, CT
New Orleans, LA	New Orleans-Metairie, LA
New York, NY	New York-Newark-Jersey City, NY-NJ-PA
Oklahoma City, OK	Oklahoma City, OK
Omaha, NE	Omaha-Council Bluffs, NE-IA
Orlando, FL	Orlando-Kissimmee-Sanford, FL
Philadelphia, PA	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
Phoenix, AZ	Phoenix-Mesa-Chandler, AZ
Pittsburgh, PA	Pittsburgh, PA
Portland, ME	Portland-South Portland, ME
Portland, OR	Portland-Vancouver-Hillsboro, OR-WA
Providence, RI	Providence-Warwick, RI-MA
Raleigh, NC	Raleigh-Cary, NC
Reno, NV	Reno-Carson City-Fernley, NV

Appendix: Data Methodology

A Note on US Cities

Principal City	CBSA Name
Richmond, VA	Richmond, VA
Rochester, NY	Rochester, NY
Sacramento, CA	Sacramento-Roseville-Folsom, CA
Salt Lake City, UT	Salt Lake City, UT
San Diego, CA	San Diego-Chula Vista-Carlsbad, CA
San Francisco, CA	San Francisco-Oakland-Berkeley, CA
San Jose, CA	San Jose-Sunnyvale-Santa Clara, CA
San Juan, PR	San Juan-Bayamon-Caguas, PR
Savannah, GA	Savannah, GA
Seattle, WA	Seattle-Tacoma-Bellevue, WA
St. Louis, MO	St. Louis, MO-IL
Syracuse, NY	Syracuse, NY
Tallahassee, FL	Tallahassee, FL
Tampa, FL	Tampa-St. Petersburg-Clearwater, FL
Toledo, OH	Toledo, OH
Trenton, NJ	Trenton-Princeton, NJ
Tulsa, OK	Tulsa, OK
Washington, DC	Washington-Arlington-Alexandria, DC-VA-MD-WV
Wheeling, WV	Wheeling, WV-OH

Appendix: Data Methodology

Anonymization of the Dataset

Prior to inclusion in the ELM Solutions reference database, we systematically scrubbed the data of any information that would identify a particular matter, company, law firm, invoice, or timekeeper (individual). To ensure relationships necessary for analysis, those variables were assigned randomly generated numbers. To maintain data integrity and allow for proper analysis, these numbers are linked across data tables to enforce their associations.

To further ensure anonymity and confidentiality:

- The information is published in such a manner as to make it reasonably impervious to reverse analysis should some attempt be made to determine what data might pertain to any company, law firm, timekeeper, invoice, or matter.
- The 2022 Real Rate Report will not reveal which ELM Solutions client or clients are included or excluded in its analyses.
- Clients are not and will not be informed as to whether their data are included within a particular facet of analysis.
- No textual description of any legal work performed by any individual exists in the ELM Solutions reference database.

A Note on Insurance Litigation

We aim to provide a point of comparison for companies purchasing law firm services. To improve comparability, we removed data related to insurance company defense litigation for all analyses unless noted otherwise. Insurance litigation tends to be less expensive than other types of litigation, as it is typically more repetitive and less complex.

“Real Rate” Definition

The information in this report consists of data taken from client invoices submitted by law firms for work performed from 2018 through 2022. All invoices were submitted through the ELM Solutions billing systems.

The analyses contained in this report are derived from aggregating hours, fees, and rates submitted as line items on those invoices. For a line item to qualify for inclusion in this report, it had to undergo multiple and rigorous testing processes to ensure its validity.

For example, for a rate to be loaded to the ELM Solutions reference database and used in this report, it must have been part of an invoice line entry in which all of the following items were included:

- Name of the biller
- Role of the biller
- Date of activity
- Hourly rate charged
- Time charged
- UTBMS code associated with the time charged
- Total amount charged for the activity

In addition, each line item’s hourly rate was validated against its “real rate” (calculated by dividing the total amount charged for the activity by the time charged). Any line items with an hourly rate that did not align closely with the real rate were not loaded to the reference database.

Real Rate = Line-Item Total/Line-Item Hours (Units)
Example: \$4,000/10 Hours = Real Rate of \$400

Adjustments the client made to line-item amounts after submission are not factored into the dataset. These types of adjustments may impact the effective rate paid by the client to the law firm but do not reflect the real rate billed.

Appendix: Data Methodology

In short, the real rate is the rate appearing on an approved invoice at the invoice line-item level.

Aggregations of data taken from millions of these line-item-level invoice entries are the core of the information analyzed.

A Note on Negotiated Rates and Billing

Practices law firms can generally follow vary for submitting “negotiated” rates on invoices. Firms may submit the negotiated rate as the hourly rate identified on the invoice line item, insert a vendor line-item adjustment to ensure compliance, or provide a vendor invoice level adjustment to bring the total amount of the fees into compliance with agreed-on discounts. Although the former two are considered part of the real rate calculation, the latter can be problematic. It is not directly linked to a line item, and therefore, to determine the rate, it should not be assumed that the adjustment is related to a specific line item. Invoice-level adjustments may represent a credit or some other type of adjustment placed on the invoice. To ensure these types of adjustments would not adversely impact the analysis contained within the 2022 Real Rate Report, the team reviewed the population of invoices and line items to determine what the deviation of the real rate might be based on inclusion or exclusion. The analysis demonstrated that the variance was not significant (less than 1%).

As such, we decided not to include the vendor-level adjustments in the report.

Types of Matters Included in the Analysis

Matters within the ELM Solutions system are associated with areas of work described and defined by ELM Solutions clients. Those areas of work were analyzed and systematically categorized into legal practice areas. Normalization of practice areas was supported by mappings to system-level practice areas available in the ELM Solutions system and by naming convention.

All data included within this report have been mapped to a corresponding practice area. The majority of our analyses focus on the following 12 practice areas:

- Bankruptcy and Collections
- Commercial
- Corporate
- Employment and Labor
- Environmental
- Finance and Securities
- General Liability
- Government Relations
- Insurance Defense
- Intellectual Property
- Marketing and Advertising
- Real Estate

Within each client’s areas of work, sub-areas are often identified. The lists that follow identify client areas of work and, within those areas, the sub-areas underneath each practice area. Often, the same sub-area appears within different practice areas. For example, the sub-area “General/Other” when listed under “Commercial and Contracts” refers to general work provided regarding commercial and contracts matters. When listed under the “Employment and Labor” practice area, the same sub-area refers to work provided on employment and labor. Where applicable and practicable, each area and sub-area has been further subdivided into litigation and non-litigation work for granular analysis.

Appendix: Data Methodology

Bankruptcy and Collections

Chapter 11
Collections

General/Other
Workouts and Restructuring

Commercial (Commercial Transactions and Agreements)

Contract Breach or Dispute
General, Drafting, and Review
General/Other

Corporate¹

Antitrust and Competition
Corporate Development
General/Other
Governance
Information and Technology
Mergers, Acquisitions, and Divestitures

Partnerships and Joint Ventures
Regulatory and Compliance
Tax
Treasury
White Collar/Fraud/Abuse

Employment and Labor

ADA
Agreements
Compensation and Benefits
Discrimination, Retaliation, and Harassment/EEO
Employee Dishonesty/Misconduct
ERISA

General/Other
Immigration
Union Relations and Negotiations/NLRB
Wages, Tips, and Overtime
Wrongful Termination

Environmental

General/Other
Health and Safety

Superfund
Waste/Remediation

Finance and Securities

Commercial Loans and Financing
Debt/Equity Offerings
Fiduciary Services
General/Other

Investments and Other Financial Instruments
Loans and Financing
SEC Filings and Financial Reporting
Securities and Banking Regulations

General Liability

Asbestos/Mesothelioma
Auto and Transportation
Consumer Related Claims
Crime, Dishonesty and Fraud
General/Other

Personal Injury/Wrongful Death
Premises
Product and Product Liability
Property Damage
Toxic Tort

¹ All references to "Corporate: General/Other" in the Real Rate Report are the aggregation of all Corporate sub-areas excluding the Mergers, Acquisitions, and Divestitures sub-area and the Regulatory and Compliance sub-area.

Appendix: Data Methodology

Government Relations

General/Other
Lobbying and Relations

Insurance Defense

Auto and Transportation
General/Other
Personal Injury/Wrongful Death
Product and Product Liability
Professional Liability
Property Damage
Toxic Tort

Intellectual Property²

General/Other
Licensing
Patents
Trademarks

Marketing and Advertising

General/Other

Real Estate

Construction/Development
Easement and Right of Way
General/Other
Land Use/Zoning/Restrictive Covenants
Landlord/Tenant Issues
Leasing
Property/Land Acquisition or Disposition
Titles

² All references to “Intellectual Property: General/Other” in the Real Rate Report are the aggregation of all Intellectual Property sub-areas excluding the Patents and Trademarks sub-areas.



ELM Solutions

About Wolters Kluwer ELM Solutions

Wolters Kluwer ELM Solutions is the market-leading global provider of enterprise legal spend and matter management, contract lifecycle management, and legal analytics solutions. We provide a comprehensive suite of tools that address the growing needs of corporate legal operations departments to increase operational efficiency and reduce costs. Corporate legal and insurance claims departments trust our innovative technology and end-to-end customer experience to drive world-class business outcomes. Wolters Kluwer ELM Solutions was named a leader in both the IDC MarketScape: Worldwide Enterprise Legal Spend Management 2020 Vendor Assessment and IDC MarketScape: Worldwide Enterprise Matter Management 2020 Vendor Assessment. The award-winning products include Passport®, one of the highest rated ELM solutions in the latest Hyperion MarketView™ Legal Market Intelligence Report; TyMetrix® 360°, the industry’s leading SaaS-based e-billing and matter management solution; CLM Matrix, named a “strong performer” in the 2019 Q1 CLM Forrester Wave report; and the LegalVIEW® portfolio of legal analytics solutions based upon the industry’s largest and most comprehensive legal spend database, with more than \$155 billion in invoices.

EXHIBIT

I

Phone Report – May 31, 2002

Dan Hakes

I talked with Gregg Ublacker, the Director of EHS at Appleton Papers today. He and I were asked to talk by our respective businesses after Appleton Papers refused to accept the last order of FC-834 used in carbonless papers.

Gregg explained that he came to Appleton Papers from Kimberly-Clark in October of 2001. He was very well versed in the PFOS public file at the EPA. He knew of our children's blood report, the liver tumor statistics of our 2-year rat PFOS study, along with the 3 bladder cancers reported at Decatur and many other details. He indicated he found the PFOS "story" very interesting from a professional view point and had "poured over" the CDs he had received from the EPA.

I indicated to Gregg that there was no health and safety reasons for not using the last order of FC-834 as no health problems can be associated with the low levels of PFOS found in either the general population or in 3M production workers. He indicated that he was concerned about future information that would show some kind of health effects from PFOS. I indicated there have been over 700 studies submitted to the public docket at the EPA and the current risk assessment, done by 3M and outside experts, have not found any health effects from the low levels of PFOS found in the blood. I told him that PFOS probably has more information available than 99% of industrial chemicals and that only one additional major study, a bird study, on PFOS was still outstanding.

He was also concerned that the product can become aerosolized during the "knife blading" in their facilities. I again raised the point that 3M workers have been documented as having the highest level of PFOS levels in their blood but no health effects have been found. I asked if any blood monitoring or industrial hygiene air sampling had been done to document employee exposure at Appleton and he indicated he did not have any. But he said it was just easier to not use the product than to wonder if in the future there would be any possible health issues.

I offered the fact that an updated risk assessment will be in the EPA docket about the end of July in case he wanted to review it. He thanked me and told me he would call if he had any additional questions.

I do not feel I convinced him to change his assessment of the use of FC-834 but I may have opened the door for him to at least review the data one more time knowing other reviews have not found any health effects at the part-per-billion levels, or parts-per-million in the case of 3M workers.