

**IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE WHEATON FRANCISCAN
ERISA LITIGATION

Case No. 16-cv-04232

Honorable Gary Feinerman

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT**

Plaintiffs Bruce Bowen, Cheryl Mueller, and Diann Curtis ("Named Plaintiffs"), by and through their attorneys, respectfully move the Court for an Order: (1) preliminarily approving the Class Action Settlement Agreement ("Settlement" or "Settlement Agreement") between the Parties; (2) preliminarily certifying the proposed Settlement Class pursuant to Federal Rules of Civil Procedure 23(b)(1) and/or 23(b)(2); (3) approving the form and method of Class Notice; and (4) setting a date and time for a hearing (the "Fairness Hearing") for consideration of final approval of the Settlement, of payment of attorneys' fees and expenses, and of a potential Incentive Award to certain Plaintiffs.

Wherefore, for the foregoing reasons, Named Plaintiffs respectfully request that the Court grant their Unopposed Motion for Preliminary Approval of Settlement Agreement.

Dated: September 1, 2017

By: /s/ Carol V. Gilden

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Interim Co-Lead Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2017, I electronically filed the foregoing with the Clerk of the Court using ECF, who in turn sent notice to all counsel of record.

Dated: September 1, 2017

/s/ Julia Horwitz

Julia Horwitz

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

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Plaintiffs Bruce Bowen, Cheryl Mueller, and Diann M. Curtis (“Plaintiffs” or “Named Plaintiffs”), by and through their attorneys, respectfully move the Court for an Order: (1) preliminarily approving the Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”)¹ attached hereto as Exhibit 1;² (2) preliminarily certifying the proposed Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2); (3) approving the form and method of Class Notice; and (4) setting a date and time for a hearing (the “Fairness Hearing”) for consideration of final approval of the Settlement, payment of attorneys’ fees and expenses, and grant of incentive awards to the three named Plaintiffs. While Defendants do not oppose the relief sought in this Preliminary Approval Motion, they do not agree with all averments stated in this Memorandum.

I. INTRODUCTION

This Settlement resolves the claims of Plaintiffs in this case against all Defendants. The Complaint alleges that the non-profit healthcare system Wheaton Franciscan Services, Inc. (“Wheaton”) and Ascension Health, the company that acquired Wheaton’s healthcare subsidiaries in Southeast Wisconsin and became the “sponsor” of the Wheaton Franciscan Retirement Plan (“the Plan”) in March 2016, denied ERISA³ protections to the participants and beneficiaries of the Plan by incorrectly claiming that the Plan qualifies as an ERISA-exempt “church plan.” See 29 U.S.C. § 1002(33); Complaint – Class Action, Dkt. No. 1 (“Complaint”).

¹ A copy of the Settlement Agreement is attached as Exhibit 1 to this Unopposed Motion for Preliminary Approval of Settlement Agreement (“Preliminary Approval Motion”). Capitalized terms not otherwise defined in this memorandum shall have the same meaning ascribed to them in the Settlement Agreement.

² All references to “Exhibit” or “Ex.” are to the exhibits attached to this Preliminary Approval Motion and filed concurrently herewith.

³ “ERISA” is a reference to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.*

This Settlement was reached after arm's-length negotiations with a mediator and represents an excellent result for the proposed Settlement Class of participants and beneficiaries of the Plan. Under the Settlement, Ascension Health hereby guarantees the payment of the first Twenty-Nine Million Five Hundred Thousand Dollars (\$29,500,000) of benefits that are distributable from the Plan to Settlement Class Members in the event trust assets attributable to the Plan become insufficient to pay such benefits (the "Plan Benefit Guarantee"). This obligation will continue for as long as the Plan is sponsored by any of the Releasees, as defined in the Class Action Settlement Agreement, and, should a corporate transaction occur where Plan assets and liabilities covering Settlement Class Members transfer to a successor, Ascension Health shall cause the successor to honor Ascension Health's commitments under the Plan Benefit Guarantee. Ex. 1 §§ 7.1.1-4. Moreover, Plan participants will receive notice on an annual basis about the funding status of the Plan and their accrued retirement benefits. This annual notice will include, among other information, a summary of the Plan's funding arrangements, a summary of the Plan's expenses, a statement of the Plan's liabilities and assets, and summary information about the Plan's total income.

II. BACKGROUND

A. Procedural History and Settlement Negotiations

On April 11, 2016, Plaintiff Curtis filed a putative class action complaint in this Court against Wheaton and various individual defendants, alleging violations of ERISA. ECF No. 1. On June 28, 2016, Plaintiffs Bowen and Mueller filed a separate putative class action complaint against Wheaton, Ascension Health, and various other defendants (collectively, the

“Defendants”) alleging violations of ERISA. Complaint, 16-6782, ECF No. 1.⁴ Plaintiffs Bowen and Mueller were and are still represented by Cohen Milstein Sellers & Toll, PLLC and Keller Rohrback L.L.P. (collectively, “Class Counsel”). Both complaints allege that Defendants denied ERISA protections to the participants and beneficiaries of the Plan, a defined benefit pension plan sponsored by Wheaton and Ascension Health, by incorrectly claiming that the Plan qualifies as an ERISA-exempt “church plan.” See 29 U.S.C. § 1002(33). The complaints further allege that asserting this exemption caused Defendants to deny Plan participants the protections of ERISA. These include, among other violations: underfunding the Plan by over \$134.5 million; impermissibly requiring participants to complete five years of service before participants became fully vested in their accrued benefits; decreasing accrued benefits by several amendments to the Plan in violation of ERISA’s anti-cutback provisions; and failing to furnish Plaintiffs or any member of the class with required statements and reports. Compl. ¶¶ 120, 129, 137, 169, 177; see also *id.* ¶¶ 332-52. On July 8, 2016, the two cases were designated as “related,” and on January 4, 2017, this Court consolidated the two cases for all purposes. ECF Nos. 44, 77.

Also on January 4, 2017, this Court stayed the consolidated case pending the Supreme Court’s resolution of *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017) (“*Advocate*”). Decl. of Julie G. Reiser (“Reiser Decl.”) ¶ 2. During this stay, on February 9, 2017, the parties attended a mediation session in hopes of resolving the case. *Id.* ¶ 3. The parties appeared before nationally-renowned mediator Robert A. Meyer, Esq., of JAMS in Los Angeles, California. *Id.* ¶ 4. Mr. Meyer has substantial experience mediating cases involving ERISA and retirement plan issues, including cases involving the church plan exemption. *Id.*; see also Ex. 1

⁴ Throughout this memorandum, the “Complaint” will refer to Plaintiffs Bowen and Mueller’s Complaint, filed on June 28, 2016, as case number 16-6782, which this Court designated as the operative Complaint. See ECF No. 77.

§§ 2.7, 10.1.1. Although the matter was not resolved at the February 9, 2017 mediation, the parties made progress and agreed to continue pursuing a settlement agreement. Reiser Decl. ¶ 6. During the stay, the parties remained actively engaged in settlement negotiations and organized a second in-person meeting with Mr. Meyer. *Id.* The Court granted the parties' request to postpone an upcoming status conference, so that the parties could attempt to bring the matter to a final resolution during the second meeting with the mediator. *Id.* ¶ 10.

During the course of the parties' negotiations, Class Counsel worked with the Named Plaintiffs to investigate the facts, circumstances, and legal issues associated with the allegations and defenses in the action. *Id.* ¶ 7. This investigation included, *inter alia*: (a) inspecting, reviewing, and analyzing documents produced by or otherwise relating to Defendants, the Plan, and the administration and funding of the Plan; (b) researching the applicable law with respect to the claims asserted in this case and the possible defenses thereto; and (c) researching and analyzing governmental and other publicly-available sources concerning the Defendants, the Plan, and the industry. *Id.*; *see also* Ex. 1 at § 5.1.4.

On June 5, 2017, the Supreme Court issued its opinion in *Advocate Health Care*, holding that pension plans need not be established by churches in order to qualify as ERISA-exempt church plans, if they otherwise met the requirements to be church plans. Following the Supreme Court's ruling, and after months of negotiations, the parties finally reached an agreement in principle to settle the case. Reiser Decl. ¶ 9. On August 11, the parties signed a Term Sheet containing the preliminary terms resolving this matter. *Id.* ¶ 11. The Settlement Agreement now before the Court, Ex. 1, is a comprehensive agreement based on the Term Sheet. *Id.* ¶ 12. It was executed by all parties on September 1, 2017. *Id.* The Settlement is the result of lengthy arm's-length negotiations between the parties. *Id.* The process was thorough, adversarial, and

professional. *Id.*

B. Overview of the Settlement Agreement

The following summarizes the principal terms of the Settlement. *See* Ex. 1.

1. Settlement Consideration

Under the Settlement Agreement, Ascension Health guarantees the payment of the first \$29,500,000 of benefits that are distributable from the Plan to Settlement Class Members in the event trust assets attributable to the Plan become insufficient to pay such benefits (the “Plan Benefit Guarantee”). Ex. 1 at § 7.1.2. Ascension Health’s obligation under the Plan Benefit Guarantee shall continue for as long as the Plan is sponsored by any of the Releasees. *Id.* Should a corporate transaction occur where Plan assets and liabilities covering Settlement Class Members transfer to a successor, Ascension Health shall cause the successor to honor Ascension Health’s commitments under the Plan Benefit Guarantee. *Id.* § 7.1.3. Any of the Releasees may satisfy Ascension Health’s obligation under the Plan Benefit Guarantee by making contributions to the Plan Trust that in the aggregate total \$25,000,000. *Id.* § 7.1.4. However, in its discretion, Ascension Health may make additional contributions to the Plan at any time. *Id.*

2. Non-Monetary Equitable Consideration

The Settlement establishes, for the life of the Plan, equitable provisions that mimic certain provisions of ERISA concerning plan administration, summary plan descriptions, notices, and the Plan’s claim review procedure. *Id.* § 8.3. As a result of this provision, Plan participants will receive notice on an annual basis about the funding status of the Plan and the retirement benefits that they have accrued. *Id.* §§ 8.3.3-4. This annual notice will include, among other information, a summary of the Plan’s funding arrangements, a summary of the Plan’s expenses, a statement of the Plan’s liabilities and assets, information about the increase or decrease in net plan assets for the year, and summary information about the Plan’s total income. *Id.* § 8.3.3.

Under the terms of the Settlement Agreement, Ascension Health also guarantees that, for a period of seven and one-half years after the Effective Date, if the Plan is merged or consolidated with another plan, participants and beneficiaries who are Settlement Class members will be entitled to the same or a greater Accrued Benefit post-merger or after a consolidation event as they enjoyed before the merger or consolidation. Ex. 1 at § 8.1. Likewise, for the next seven and one-half years, Ascension Health guarantees that no amendment or termination of the Plan will result in a reduction of a Settlement Class member's Accrued Benefit. *Id.* § 8.2.

3. Class

The Settlement contemplates that the Court will certify a non-opt-out class under Federal Rule of Civil Procedure 23(b)(1) or (b)(2). Ex. 1 at § 2.2.2. The Settlement Class is defined as: "All persons who, as of July 31, 2017, are former and/or current Plan participants, whether vested or non-vested, and their beneficiaries." *Id.* at § 1.24.

4. Released Claims

The Settlement Agreement provides for releases by and among Plaintiffs, Defendants, and certain other non-parties related to the litigation. *Id.* § 3. The persons to be released by Plaintiffs are defined as the "Releasees" and are enumerated at § 1.22 of the Settlement Agreement. The Releasees will be released from the "Released Claims," which generally include all claims that could have been asserted by Plaintiffs, arising under federal or state law, related to the sponsorship, funding, maintenance, operation or termination of, or distributions from, the Plan. *Id.* § 3.1. Plaintiffs, the Settlement Class, and Class Counsel will be released from claims relating to the institution and prosecution of this case. *Id.* § 3.2.

5. Notice

The draft [Proposed] Preliminary Approval Order, attached as Exhibit 2, provides for the following notices: (a) a mailed Class Notice, to be mailed to the last known address of members

of the Settlement Class; and (b) internet publication of the Settlement Agreement and Class Notice at cohenmilstein.com/wheaton-settlement and <http://www.kellersettlements.com>. Ex. 1 § 2.2.3-4. Ascension will pay the cost of notice to the Settlement Class. *See* Ex. 2 (Preliminary Approval Order), Ex. 3 (Draft Class Notice); *see also* Settlement Agreement § 7.2.

6. Attorneys' Fees

Class Counsel will seek district court approval to receive an award of reasonable out-of-pocket expenses, and attorneys' fees. Ex. 1 § 7.1.5. Class Counsel also intend to ask the Court to award incentive fees to the Named Plaintiffs of \$10,000 each, in light of their substantial contributions to the litigation, including: collecting and producing documents; maintaining regular contact with Class Counsel; reviewing and approving the Complaint, staying abreast of settlement negotiations; and advising on the settlement of this litigation. *Id.*; Reiser Decl. ¶¶ 7, 8. The Settlement Class shall be notified of these details in the Class Notice. *See* Ex. 3. Class Counsel will seek no more than \$2,250,000 in total for the award of attorneys' fees, expenses and incentive payments. Ex. 1 § 7.1.5. Ascension Health will cause any such award to be paid ***in addition to*** the other monetary terms set forth in the Settlement Agreement. *Id.*

C. Reasons for the Settlement

Plaintiffs have entered into the Settlement with an understanding of the strengths and weaknesses of their claims. This understanding is based on: (1) the dialog in multiple mediation sessions; (2) investigation and research; (3) the likelihood that Plaintiffs would prevail at trial; (4) the range of possible recovery; and (5) the substantial complexity, expense, and duration of litigation necessary to prosecute these actions through trial, post-trial motions, and likely appeal, and the significant uncertainties in predicting the outcome of this complex litigation. *See* Reiser Decl. ¶¶ 4, 7, 9, 13, 19. Having undertaken this analysis, Class Counsel and Plaintiffs have

concluded that the Settlement is fair, reasonable, and adequate, and should be presented to the Court for approval. *Id.* ¶ 19.

III. DISCUSSION

A. The Standards for Preliminary Approval

Rule 23(e) of the Federal Rules of Civil Procedure governs settlements of class action lawsuits. It provides that “the claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” Fed. R. Civ. P. 23(e). Approval under Rule 23(e) involves a two-step process: first, a “preliminary approval” order; and second, after notice of the proposed settlement has been provided to the class and a hearing has been held to consider the fairness, reasonableness, and adequacy of the proposed settlement, a “final approval” order or judgment.⁵ See MANUAL FOR COMPLEX LITIGATION § 13.14 (4th ed. 2016). Before a class action may be dismissed or compromised, notice of the proposed dismissal or compromise must be given to class members in the manner directed by the court, a hearing must be held, and judicial approval must be obtained. Fed. R. Civ. P. 23(e).

In determining whether to *preliminarily* approve a settlement, the Court is not charged with engaging in the rigorous analysis of the Settlement Agreement required for *final* approval, but rather conducts a preliminary review to “ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” *Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*, *Felsen v. Andreas*, 134 F.3d 873 (7th Cir. 1998). As a prominent treatise explains:

At the stage of preliminary approval, the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval.... In evaluating a settlement for preliminary approval, the court determines whether the proposed settlement discloses grounds

⁵ A [Proposed] Order and Final Judgment is attached as Exhibit 4 to this memorandum.

to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.... After a preliminary determination as to the fairness of a proposed settlement, the court must direct notice to class members and hold a final fairness hearing before formally approving the settlement.

David F. Herr, ANNOTATED MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.662 (2012); see also *Ledford v. City of Highland Park*, No. 00 C 4212, 2000 WL 1053967, at *2 (N.D. Ill. July 31, 2000) (“The . . . question is whether the proposed consent order falls within the range of reasonableness such that it can preliminarily be found to be a fair settlement.”). This low threshold acknowledges that the final approval hearing is the stage at which courts “adduce all information necessary to enable [them] intelligently to rule on whether the proposed settlement is ‘fair, reasonable, and adequate.’” *Armstrong*, 616 F.2d at 314 (citing MANUAL FOR COMPLEX LITIGATION (rev’d ed.) § 1.46, at 57).⁶ At preliminary approval, a court’s role does not entail “resolving the merits of the controversy or making a precise determination of the parties’ respective legal rights.” *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985) (collecting cases). A settlement does necessarily require a judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of the compromise with the likely rewards of litigation.” *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir.

⁶ At the Final Approval Hearing, the Court has the discretion under Rule 23(e) to finally approve the Settlement if the Court finds it to be fair, adequate, and reasonable to the Class. The Seventh Circuit has set forth an eight-factor test to determine the fairness of a class action settlement: (1) the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement; (2) the defendant’s ability to pay; (3) the complexity, length and expense of further litigation; (4) the degree of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of the proceedings and the amount of discovery completed. See *Armstrong*, 616 F.2d at 314 (quoting 3B Moore’s Federal Practice ¶ 23.80[4] at 23-521 (2d ed. 1978)); see also *Hispanics United of DuPage Co. v. Village of Addison, Ill.*, 988 F. Supp. 1130, 1149-50 (N.D. Ill. 1997); *Scholes v. Stone, McGuire & Benjamin*, 839 F. Supp. 1314 (N.D. Ill. 1993).

1994) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 424-25 (1968)). An evaluation of the costs and benefits of settlement must also be tempered by the recognition that any compromise involves concessions on the part of all of the settling parties. Indeed, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Comm’n of the City and Cty. of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted).

Finally, it is well-established that there is an overriding public interest in settling litigation, and this is particularly true in class actions. See *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) (“Federal courts naturally favor the settlement of class action litigation.”); see also *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (discussing the “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”). In *Goldsmith v. Tech. Solutions Co.*, No. 92 C 4374, 1995 WL 17009594 (N.D. Ill. Oct. 10, 1995), Judge Guzman recognized:

[T]he federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement.

Id. at *1 (citations and quotation marks omitted); see also *Hispanics United*, 988 F. Supp. at 1149 (“Compromise is particularly appropriate in complex class actions.”).

B. This Settlement Is Within the Range of Reasonableness Justifying Preliminary Approval

Applying these principles, the Settlement Agreement easily meets the “range of reasonableness” test for preliminary approval, particularly in light of the strong public policy in favor of settling class actions. The Settlement Agreement presents a strong case for sending out notice and proceeding with a final fairness hearing: it takes into account the risks of litigation in light of the Supreme Court’s ruling in *Advocate Health Care*; it was reached after extended and

contentious negotiations involving the parties and their counsel, assisted by a skilled mediator; it provides valuable guarantees and informational benefits to the Settlement Class; it proposes reasonable limits on attorney compensation and class representative incentive fees; and it does not prefer any Settlement Class members over others.

1. The Settlement Provides Certain Relief and Eliminates the Uncertainty of Prevailing on the Merits

The Complaint alleges that Defendants violated ERISA by, among other things, underfunding the Plan by at least \$134.5 million. While the case has been pending and in light of a favorable investing environment, this level of underfunding has been substantially reduced.⁷ In light of the reduction in underfunding levels, the Settlement Agreement provides for funding when triggered by an actual shortfall that prevents the trust fund from paying benefits. The \$29,500,000 guarantee and the \$25 million buyout option provided for in the Settlement Agreement will benefit the class members should the trust fund be unable to pay their Plan benefits. Ex. 1 § 7.1.1-2, 4. Moreover, the Settlement Agreement ensures that this guarantee will survive a corporate transaction in which Plan assets and liabilities covering Settlement Class Members transfer to a successor, by requiring Ascension Health to cause the successor to honor the guarantee. *Id.* § 7.1.3. This Settlement thus eliminates at least \$25 million of risk to participants for the life of the Plan, while mitigating the risks and uncertainty of litigation.

This risk mitigation is particularly significant in light of the fact that the United States Supreme Court recently ruled on an important issue in this case—namely, that pension plans need not be established by churches in order to qualify as ERISA-exempt church plans, as long as they meet all other qualifications for the exemption. *Advocate Health Care Network v.*

⁷ See, e.g., Nelson D. Schwartz, *Wall Street, Climbing Sharply, Skips Washington's 'Soap Opera'*, N.Y. TIMES, Aug. 2, 2017, <http://nyti.ms/2u1VTHI>.

Stapleton, 137 S. Ct. 1652, 1663 (2017). Though Plaintiff advances other strong arguments and theories not reached by the Supreme Court, Plaintiff's case arguably was negatively impacted by the Supreme Court's decision. This Settlement is particularly favorable for the proposed class, in light of this uncertain and high-stakes backdrop. *See* Reiser Decl. ¶¶ 2, 9, 19.

Moreover, the Settlement establishes, for the life of the Plan, equitable provisions that mimic certain provisions of ERISA. Ex. 1, § 8.3.1. For instance, Plan participants will receive notice on an annual basis about the funding status of the Plan and the retirement benefits that they have accrued. *Id.* This annual notice will include, among other information, a summary of the Plan's funding arrangements, a summary of the Plan's expenses, a statement of the Plan's liabilities and assets, information about the increase or decrease in net plan assets for the year, and summary information about the Plan's total income. *Id.*

2. **Class Counsel Endorse the Settlement**

Courts recognize that the opinion of experienced counsel supporting a settlement is entitled to considerable weight. *See, e.g., In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at *12 (N.D. Ill. Feb. 29, 2016); *Armstrong*, 616 F.2d at 325 (In determining the fairness of a class settlement, "the court is entitled to rely heavily on the opinion of competent counsel."). Here, Class Counsel—two law firms that are nationally recognized for their expertise in employee benefits law and church plan litigation—believe that this Settlement is fair, reasonable, and adequate in light of the circumstances in this case. Reiser Decl. ¶¶ 13, 19.

Their conclusion is the product of extensive, informed, arm's-length negotiations. *Id.* ¶ 12. The parties' negotiations were overseen by an experienced mediator, Robert Meyer, who has mediated many ERISA and retirement plan cases, including cases contesting the

applicability of the church plan exemption. *Id.* ¶ 4. Class Counsel relied on Mr. Meyer's proposal for achieving settlement after considering all relevant factors. *Id.* ¶ 11.

Finally, it is well-recognized that named plaintiffs are entitled to an incentive fee to induce them to participate in the lawsuit. *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041-42 (N.D. Ill. 2011) (collecting cases) (noting the mean incentive fee is approximately \$16,000). Such enhancements compensate class representatives for their time, effort, and willingness to play an active role if the parties continued litigating through trial. *Id.*; *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 503 (N.D. Ill. 2015). Here, each of the Named Plaintiffs made substantial contributions to the litigation, including: collecting and producing documents; maintaining regular contact with Class Counsel; reviewing and approving the Complaint; staying abreast of settlement negotiations; and advising on the settlement of this litigation. Reiser Decl. ¶ 8. These actions provided great benefit to the members of the Settlement Class and thus the requested awards to Named Plaintiffs are appropriate. *See id.*

At this juncture, the Court need not consider the ultimate question: whether the proposed Settlement is fair, reasonable, and adequate. However, preliminary consideration of factors considered by courts in this Circuit in granting final approval lends support to Plaintiffs' belief that this settlement is well "within the range of possible approval." *Armstrong*, 616 F.2d at 310. For this and all the foregoing reasons, the Settlement deserves the Court's preliminary approval.

C. The Proposed Class Satisfies the Requirements for Certification Pursuant to Rule 23 of the Federal Rules of Civil Procedure

Plaintiffs request that the Court preliminarily certify the Class for settlement purposes only, under Federal Rule of Civil Procedure 23(a) and 23(b)(1) and/or (2). As set forth above, the

Class is defined as “All persons who, as of July 31, 2017, are former and/or current Plan participants, whether vested or non-vested, and their beneficiaries.” Ex. 1 § 1.24. Plaintiffs also move the Court to preliminarily appoint Cohen Milstein Sellers & Toll PLLC and Keller Rohrback L.L.P. as Class Counsel.

1. Provisional Certification of the Settlement Class is Appropriate

A settlement class must meet the requirements for class certification under Rule 23(a) (numerosity, commonality, typicality, and adequacy). *In re: Sears, Roebuck & Co.*, 2016 WL 772785, at *8. These requirements are readily satisfied here.

Numerosity. The first requirement, numerosity, “is typically satisfied where there are at least forty members of a putative class.” *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 491 (N.D. Ill. 2015), *appeal dismissed* (Jan. 27, 2016), *appeal dismissed* (Feb. 1, 2016), *appeal dismissed* (Feb. 3, 2016). *See also, e.g., Flanagan v. Allstate Ins. Co.*, 242 F.R.D. 421, 427 (N.D. Ill.), *modified*, 242 F.R.D. 434 (N.D. Ill. 2007) (“permissive joinder is usually deemed impractical where the class members number 40 or more”). Here, Plaintiffs allege that the Plan had approximately 17,000 participants. Compl. ¶ 20. As all of the participants and beneficiaries are members of the Class, the Class is so numerous that joinder of all members is impracticable.

Commonality. The commonality requirement set forth in Rule 23(a)(2) requires that a proposed class action raise “questions of law or fact common to the class.” *See Barragan v. Evanger’s Dog & Cat Food Co. Inc.*, 259 F.R.D. 330, 334 (N.D. Ill. 2009) (“Commonality requires that there be at least one question of law or fact common to the class.”) (quoting *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992)). The common questions of law and fact include, for example, (1) whether the Plan is subject to ERISA, and, if so; (2) whether the fiduciaries of the Plan have failed to administer and failed to enforce the funding obligations of the Plan in accordance with ERISA. *Brieger v. Tellabs, Inc.*, 245 F.R.D. 345, 349 (N.D. Ill.

2007) (finding that “because plaintiffs’ claims derive from defendants’ actions (or inactions) with respect to the Plan, plaintiffs have demonstrated that their claims involve a common nucleus of operative fact” and therefore that the putative ERISA class met the commonality requirement).

Typicality. Moreover, Plaintiffs’ claims are typical of Class Members’ claims because all claims are based on Defendants’ alleged wrongful conduct and all members of the Class were similarly affected by such conduct. The requirement of typicality is therefore satisfied. *See Rosario*, 963 F.2d at 1018 (“[A] plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory.”) (internal quotation marks omitted); *see also Brieger*, 245 F.R.D. at 349 (finding that typicality is met where a putative ERISA class “seek[s] relief on behalf of the plan . . . for alleged fiduciary violations as to the Plan”).

Adequacy. Rule 23 also “requires that the representative parties fairly and adequately represent the class. A class is not fairly and adequately represented if class members have antagonistic or conflicting claims.” *Id.* Here, Plaintiffs Bowen, Mueller, and Curtis, as the proposed class representatives, are adequate, as their claims are typical of the claims of the other members of the Class. Their claims, like the claims of the other Class members, arise from the same event, practice and/or course of conduct—namely, Defendants’ failure to maintain the Plan in accordance with ERISA. Plaintiffs’ claims are also typical because all Class members are similarly affected by Defendants’ conduct, and all Class members seek the same relief on behalf of the plan. *Brieger*, 245 F.R.D. at 356 (where a putative ERISA class “bring[s] claims on behalf of the Plan, not for individual relief . . . there is no inherent conflict between the claims of the named plaintiffs and those of the putative class” and the named plaintiffs satisfy the “adequacy” requirement).

2. **The Class Satisfies the Requirements of Rule 23(b)(1) and (b)(2)**

a. **Rule 23(b)(1): Individual Actions Would Create Inconsistent Adjudications or Be Dispositive of the Interests of Absent Members**

A class may be certified under Federal Rule of Civil Procedure 23(b)(1) if, in addition to meeting the requirements of Federal Rule of Civil Procedure 23(a), the prosecution of separate actions by individual class members would create the risk of inconsistent adjudications, which would create incompatible standards of conduct for the defendant, or would as a practical matter be dispositive of the interest of absent members. Fed. R. Civ. P. 23(b)(1)(A) and (B).

There is a clear risk of inconsistent adjudication and incompatible standards here: in the absence of certification, two participants could bring identical actions and achieve different results, with one court holding that the Plan is an ERISA-regulated plan and the other holding that it is not. *See, e.g., Neil v. Zell*, 275 F.R.D. 256, 267 (N.D. Ill. 2011) (“ERISA class actions are commonly certified under either or both subsections of 23(b)(1) because recovery for a breach of the fiduciary duty owed to an ERISA plan, as is the predominant claim here, will inure to the plan as a whole, and because defendant-fiduciaries are entitled to consistent rulings regarding operation of the plan. Essentially, in an ERISA action in which relief is being sought on behalf of the plan as a whole (as it is here), a plaintiff’s victory would necessarily settle the issue for all other prospective plaintiffs.”). Courts in this District have certified classes under Federal Rule of Civil Procedure 23(b)(1) in ERISA cases for those very reasons. *Id.* (“Numerous ERISA actions in this district have been certified under 23(b)(1).”) (collecting cases).

Moreover, the Advisory Committee Notes on Rule 23 specifically acknowledge that actions which “charge[] a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class of . . . beneficiaries”—*i.e.*, an action like the present action—“should ordinarily be conducted as class actions” under Rule 23(b)(1)(B). *See* Fed. R. Civ. P. 23(b)(1)(B) advisory committee’s note to 1966 amendment. As a result, certification of the proposed class under Rule 23(b)(1) is appropriate in this ERISA action.

b. **Rule 23(b)(2): Defendants Have Acted on Grounds Generally Applicable to the Class and Relief for the Class as a Whole Is Appropriate**

A class may be certified under Federal Rule of Civil Procedure 23(b)(2) if “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]” Fed. R. Civ. P. 23(b)(2). Here, Plaintiffs allege that Defendants failed to comply with ERISA on a Plan-wide basis. Specifically, Plaintiffs allege that Defendants underfunded the Plan, impermissibly required participants to complete five years of service before participants became fully vested in their accrued benefits, decreased accrued benefits by several amendments to the Plan in violation of ERISA’s anti-cutback provisions, and failed to furnish Plaintiffs or any member of the class with required statements and reports. Compl. ¶¶ 120, 129, 137, 169, 177; *see also id.* ¶¶ 332-52.

Although Defendants deny each allegation of the Complaint and contend that defenses exist for every claim, each of Plaintiffs’ allegations, if proven, would harm the entire class as a group. This is further underscored by the fact that Plaintiffs not only seek to represent themselves and all others similarly situated, but also seek to represent the Plan itself. As a result, certification of the proposed class under Rule 23(b)(2) is also appropriate in this ERISA action.

D. Rule 23(g) Is Satisfied

Federal Rule of Civil Procedure 23(g) requires that the Court examine the capabilities and resources of class counsel. This Court has already assessed, in detail, the claims brought in this action and the time and effort Class Counsel has already expended in connection with this litigation. *See* Order, ECF No. 77, at 2. Moreover, Class Counsel are among the leading litigators of ERISA actions on behalf of plaintiffs, and possess unparalleled expertise in the specific types of ERISA claims brought in this lawsuit. Reiser Decl. ¶¶ 13-15. Class Counsel thus satisfy the requirements of Rule 23(g).

E. The Proposed Notice Plan Satisfies the Due Process Requirements of Rule 23

In order to satisfy due process considerations, and pursuant to Rule 23(c)(2), notice to class members must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank Tr. Co.*, 339 U.S. 306, 314 (1950) (citations omitted). Here, the proposed Class Notice describes the Settlement in plain English; the considerations that caused Plaintiffs and Class Counsel to conclude that the Settlement is fair and adequate; the maximum attorneys’ fees and expenses and incentive fees for the named Plaintiffs that may be sought; the procedure for objecting to the Settlement; and the date and place of the Fairness Hearing.

With the Court’s approval, the Class Notice will be mailed to each member of the Settlement Class, no later than 60 days prior to the Fairness Hearing. Last known addresses of the members of the Class are available from the Plan’s record-keepers. In addition, the Settlement Agreement and Class Notice will be published online at www.kellersettlements.com and www.cohenmilsten.com/wheaton-settlement. These proposed forms of notice will fairly apprise members of the Class of the Settlement Agreement and their options with respect thereto, and therefore fully satisfy due process requirements. See NEWBERG ON CLASS ACTIONS, Vol. 3, §§ 8:12, 8:15, 8:28, 8:33 (5th ed. 2014). Similar notice plans in ERISA settlements have been approved. *Griffith v. Providence Health & Servs*, 2:14-cv-01720 (W.D. Wash. 2014); *Boyd v. Coventry Health Care, Inc.*, 299 F.R.D. 451, 457 (D. Md. 2017).

F. Proposed Schedule

The parties have agreed to the following set of deadlines, the specific dates of which will be determined after the Court enters the Preliminary Approval Order and sets a Fairness Hearing date:

Event	Time for Compliance
Deadline for CAFA Notice	10 days after entry of the Preliminary Approval Order
Deadline for Mailing of Class Notice and Posting Class Notice to Website	30 days after entry of the Preliminary Approval Order
Deadline for Filing Plaintiffs' Motion for Final Approval, Attorneys' Fees and Expenses, and Incentive Fees for Plaintiffs	46 days prior to the Proposed Fairness Hearing
Deadline for the Settlement Class to Comment upon or Object to the Proposed Settlement	28 days prior to the Proposed Fairness Hearing
Deadline for Filing Plaintiffs' Reply in Support of Motion for Final Approval, Attorneys' Fees and Expenses, and Incentive Fees for Plaintiffs, and for the Parties to Respond to Any Comments or Objections	7 days prior to the Proposed Fairness Hearing
Proposed Fairness Hearing	On or after January 16, 2018 ⁸

IV. CONCLUSION

Class Counsel respectfully request that the Court grant Plaintiffs' motion and (i) enter the proposed Preliminary Approval Order, which provides for notice to the Class as described herein, and (ii) set a Fairness Hearing, along with deadlines for Plaintiffs to (a) file and serve the motion for award of attorneys' fees and expenses and for Incentive Fees for the Plaintiffs; and (b) file their motion for final approval of the proposed Settlement.

Dated: September 1, 2017

Respectfully submitted,

/s/ Carol V. Gilden

COHEN MILSTEIN SELLERS & TOLL PLLC
Carol V. Gilden
Illinois Bar No.: 6185530

⁸ Pursuant to the U.S. Class Action Fairness Act of 2005, 28 U.S.C. § 1715(d), the date of the Fairness Hearing must be at least 90 days after notices are served on the appropriate state and federal officials.

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Interim Co-Lead Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2017, I electronically filed the above with the Clerk of the Court using the ECF, which in turn sent notice to all counsel of record.

Dated: September 1, 2017

/s/ Julia Horwitz

Julia Horwitz

Exhibit 1

BenefitsLink.com

In re: Wheaton Franciscan ERISA Litigation
Settlement Agreement
September 1, 2017

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: Wheaton Franciscan ERISA	)	
Litigation	)	Civil Action No.: 1:16-cv-04232
	)	
	)	

CLASS ACTION SETTLEMENT AGREEMENT

This CLASS ACTION SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into by and between Plaintiffs as defined in § 1.18 below, on the one hand, and Defendants, as defined in § 1.11 below, on the other. Plaintiffs and Defendants are referred to collectively in this Settlement Agreement as the “Parties.” Capitalized terms and phrases have the meanings provided in § 1 below or as specified elsewhere in this Settlement Agreement.

1. DEFINITIONS

1.1. “*Accrued Benefit*” shall mean: the amount of the normal form of benefit determined in accordance with the terms and conditions of the Plan in effect as of the Effective Date of the Settlement Agreement, and shall not include, among other things, optional forms of benefits or procedural provisions of the Plan.

1.2. “*Action*” shall mean: the consolidated class actions *Curtis v. Wheaton Franciscan Services Inc.*, No. 1:16-cv-04232 (“*Curtis*”), and *Bowen v. Wheaton Franciscan Services, Inc.*, No. 1:16-cv-06782 (“*Bowen*”), both pending in the United States District Court for the Northern District of Illinois, which were consolidated by order of the Court on January 4, 2017.

1.3. “*Ascension Health*” shall mean: Defendant Ascension Health, a Missouri non-profit corporation.

1.4. “*Ascension Health Alliance*” shall mean: Defendant Ascension Health Alliance, a Missouri non-profit corporation.

1.5. “*Church Plan*” shall mean: a plan which meets the definition of a “Church Plan” under ERISA § 3(33), 29 U.S.C. § 1002(33), and is thus exempt from the provisions of Title I and Title IV of ERISA.

1.6. “*Class Counsel*” shall mean: Cohen Milstein Sellers & Toll, PLLC and Keller Rohrback L.L.P.

1.7. “*Class Notice*” shall have the meaning provided in § 2.2.1.

1.8. “*Class Settlement Amount*” shall have the meaning set forth in § 7.1.1.

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- 1.9. “*Complaint*” shall mean: collectively, the Class Action Complaints filed in *Bowen* on June 28, 2016 and in *Curtis* on April 11, 2016.
- 1.10. “*Court*” shall mean: The United States District Court for the Northern District of Illinois.
- 1.11. “*Defendants*” shall mean: Wheaton Franciscan Services, Inc., D/B/A Wheaton Franciscan Healthcare, an Illinois Non-Profit Corporation, Wheaton Board Benefit Plans Committee, the Operations Committee of the Board of Directors of Wheaton Franciscan Services, Inc., Members of the Operations Committee, Wheaton Franciscan System Retirement Plan Committee, John and Jane Does 1-20, Members of The Wheaton Board Benefit Plans Committee, Ascension Health, a Missouri Non-Profit Corporation, Ascension Health Alliance, D/B/A Ascension, a Missouri Non-Profit Corporation, Ascension Health Pension Committee, John and Jane Does 21-40, Members of the Ascension Health Pension Committee, Each an Individual, and John And Jane Does 41-60, Each An Individual , inclusive.
- 1.12. “*Effective Date of Settlement*” shall mean: the date on which all of the conditions to settlement set forth in § 2 of this Settlement Agreement have been fully satisfied or waived and the Settlement shall have become Final.
- 1.13. “*ERISA*” shall mean: the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder.
- 1.14. “*Final*” shall mean: with respect to any judicial ruling or order in the Action, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari, or any other proceedings for review (“*Review Proceeding*”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and completed disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.
- 1.15. “*Final Approval Order*” shall have the meaning set forth in § 2.2.5(a), below.
- 1.16. “*Incentive Awards*” shall mean: any monetary amounts awarded by the Court in recognition of the assistance of any Plaintiff(s) and/or Named Plaintiff in the prosecution of the Action and payable pursuant to § 7.1.5, below.
- 1.17. “*Person*” shall mean: an individual, partnership, corporation, or any other form of organization.
- 1.18. “*Plaintiffs*” and “*Named Plaintiffs*” shall mean: Bruce Bowen, Cheryl Mueller, and Diann M. Curtis.
- 1.19. “*Plaintiffs’ Counsel*” shall mean: collectively, Class Counsel, Kessler Topaz Meltzer & Check, LLP, and The Collins Law Firm, P.C.
- 1.20. “*Plan*” shall mean: the Wheaton Franciscan System Retirement Plan.

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- 1.21. “*Plan Trust*” shall mean: the trust that holds and distributes the assets of the Plan.
- 1.22. “*Released Claims*” shall have the meaning provided in § 3.1.
- 1.23. “*Releasees*” shall mean: All Defendants, any and all entities that are a part of and/or affiliated with Wheaton Franciscan Services, Inc. or Ascension Health Alliance (including but not limited to any current or former direct or indirect parent or subsidiary corporations), and/or their employees, agents, directors, members, and insurers, including the individual defendants.
- 1.24. “*Settlement*” shall mean: the settlement to be consummated under this Settlement Agreement pursuant to the Final Approval Order.
- 1.25. “*Settlement Class*” shall mean: All persons who, as of July 31, 2017, are former and/or current Plan participants, whether vested or non-vested, and their beneficiaries.
- 1.26. “*Successor-In-Interest*” or “*Successor*” shall mean: a Person’s estate, legal representatives, heirs, successors or assigns, and any other Person who can make a legal claim by or through such Person.
- 1.27. “*Term Sheet*” shall mean: the document entitled “Wheaton Franciscan Settlement Term Sheet” dated August 10, 2017, and executed by Defendants’ counsel on August 10, 2017, and by Class Counsel on August 11, 2017.
- 1.28. “*Wheaton*” shall mean: Defendant Wheaton Franciscan Services, Inc., an Illinois nonprofit corporation.

2. CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE SETTLEMENT

2.1. *Effectiveness of This Settlement Agreement.* This Settlement Agreement shall not become binding unless and until each and every one of the following conditions in §§ 2.2 through 2.7 shall have been satisfied.

2.2. *Court Approval.* The Settlement contemplated under this Settlement Agreement shall have been approved by the Court, as provided for in this § 2.2. The Parties agree jointly to recommend to the Court that it approve the terms of this Settlement Agreement and the Settlement contemplated hereunder. The Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement, and any other steps or efforts which may become necessary by order of the Court (unless such order modifies the terms of this Settlement Agreement) or otherwise, to carry out this Settlement Agreement, including the following:

2.2.1 *Motion for Preliminary Approval of Settlement and of Notices.* The Court shall have approved the preliminary motion to be filed by Plaintiffs on or before September 1, 2017 (“Preliminary Motion”) by issuing an order in substantially the same form as that attached hereto as Exhibit 1 (the “Preliminary Approval Order”), including the class notice approved by the Court (the “Class Notice”):

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- (a) Preliminarily approving this Settlement Agreement;
- (b) Directing the time and manner of the Class Notice; and
- (c) Finding that: (i) the proposed form of Class Notice fairly and adequately: (A) describes the terms and effect of this Settlement Agreement and of the Settlement, (B) gives notice to the Settlement Class of the time and place of the hearing of the motion for final approval of this Settlement Agreement, and (C) describes how the recipients of the Class Notice may object to approval of this Settlement Agreement; and (ii) the proposed manner of communicating the Class Notice to the members of the Settlement Class is the best notice practicable under the circumstances.

2.2.2 Class Certification.

(a) The Court shall have certified the Action as a non-opt out class action for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23(b)(1) and/or (b)(2), with Named Plaintiffs as the named Settlement Class representative, Cohen Milstein Sellers & Toll, PLLC and Keller Rohrbach, L.L.P. as Class Counsel, and with the “Settlement Class” as defined above.

(b) As a condition of settlement, the Parties agree to stipulate to certification of the Action as a non-opt out class action, and the Class as a non-opt-out class, for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23(b)(1) and/or (b)(2), on the foregoing terms. If the Settlement does not become Final, then no Settlement Class will be deemed to have been certified by or as a result of this Settlement Agreement, and the Action will for all purposes revert to its status as of the day immediately prior to the date on which the Term Sheet was executed.

2.2.3 Issuance of Class Notice. On the date and in the manner set by the Court in its Preliminary Approval Order, Defendants will cause notice of the Preliminary Approval Order to be delivered to the Settlement Class in the form and manner approved by the Court. The Parties shall confer in good faith with regard to the form of the Class Notice in an effort to utilize cost effective forms of notice. The Parties agree, and the Preliminary Approval Order attached hereto as Exhibit 1 shall provide, that the last known addresses for members of the Settlement Class in the possession of the Plan’s current record-keeper will suffice for all purposes in connection with this Settlement, including, without limitation, the mailing of the Class Notice. Ascension Health will pay the cost of notice to the Settlement Class.

2.2.4 Internet/Publication of Class Notice. Class Counsel also shall have given notice by publication of the Settlement Agreement and Class Notice on their firms’ websites.

2.2.5 The Fairness Hearing.

- (a) On the date set by the Court in its Preliminary Approval Order, the Parties shall participate in the hearing (the “Fairness Hearing”), during or after

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which the Court will determine by order (the “Final Approval Order”) whether: (i) this Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court; (ii) final judgment approving this Settlement Agreement should be entered (“Judgment”); (iii) the Settlement Class should be certified as a mandatory non-opt-out class meeting the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23; (iv) the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Class Notice to members of the Settlement Class; (v) the requirements of the Class Action Fairness Act have been satisfied; (vi) to award Incentive Award(s) and if so, the amount; and (vii) to award attorneys’ fees and further expenses and, if so, the amounts.

- (b) The Parties covenant and agree that they will reasonably cooperate with one another in obtaining an acceptable Final Approval Order at the Fairness Hearing and will not do anything inconsistent with obtaining such a Final Approval Order.

2.2.6 *Motion for Final Approval of Class Action Settlement.* On the date set by the Court in its Preliminary Approval Order, Plaintiffs shall have filed a motion (the “Final Approval Motion”) for a Final Approval Order. The Final Approval Motion shall seek the Court’s finding that the Final Approval Order is a final judgment disposing of all claims and all Parties.

2.3. *Finality of Final Approval Order.* The Final Approval Order shall have become Final, as defined in § 1.14 of this Settlement Agreement.

2.4. *Compliance with the Class Action Fairness Act.* The Court shall have determined that Defendants complied with the Class Action Fairness Act of 2005 (“CAFA”) and its notice requirements by providing appropriate federal and state officials with information about the Settlement.

2.5. *Dismissal of Action.* The Action shall have been dismissed with prejudice as against Defendants on the Effective Date of Settlement.

2.6. *No Termination.* The Settlement shall not have terminated pursuant to § 9, below.

2.7. *Establishment of Effective Date of Settlement.* If Plaintiffs and Defendants disagree as to whether each and every condition set forth in § 2 has been satisfied, they shall promptly confer in good faith and, if unable to resolve their differences within five (5) business days thereafter, shall present their disputes for determination to Robert M. Meyer, the Parties’ mediator, who shall make a final determination regarding the Effective Date of the Settlement and whether all the conditions set forth in § 2 have been satisfied. No portion of the Class Settlement Amount shall be disbursed in the event of such a dispute, pending the mediator’s ruling. Disbursement shall thereafter be made pursuant to the Court’s order.

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3. RELEASES AND COVENANT NOT TO SUE

3.1. *Released Claims.* Released Claims shall mean any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, expenses and costs under federal or state laws arising out of the allegations of the Complaint that were brought or could have been brought as of the date of the Settlement Agreement, including any current or prospective challenge to the "church plan" status of the Plans, whether or not such claims are accrued, whether already acquired or subsequently acquired, whether known or unknown, in law or equity, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim, or otherwise.

3.1.1 For Settlement Class members only, Released Claims are not intended to include the release of any of the following:

- (a) Any rights or duties arising out of the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement;
- (b) Individual claims for relief seeking benefits under state law under the Plan document;
- (c) Claims related to any other plan that is merged or consolidated with the Wheaton Franciscan System Retirement Plan after the execution date of this Term Sheet;
- (d) Any claim arising under ERISA with respect to any event occurring after: the Internal Revenue Service issues a written ruling that the Plan does not qualify as a church plan; pursuant to IRC § 410(d), an election is made on behalf of the Plan resulting in the Plan's coverage by the ERISA provisions specified in IRC § 410(d); the Roman Catholic Church disassociates itself from the Plan's Sponsor; or an amendment to ERISA is enacted and becomes effective as a law of the United States eliminating the Church Plan exemption.

3.2. *Release by Named Plaintiffs and Settlement Class.* Subject to § 9 below, upon the Effective Date of Settlement, Named Plaintiffs on behalf of themselves and on behalf of the Settlement Class absolutely and unconditionally release and forever discharge the Releasees from any and all Released Claims that Plaintiffs or the Settlement Class have. The Settlement Class covenants and agrees: (i) not to file against any of the Releasees any claim based on, related to, or arising from any Released Claim; and (ii) that the foregoing covenants and agreements shall be a complete defense to any such claim against any Releasee.

3.3. *Waiver of California Civil Code § 1542.* Plaintiffs, on behalf of themselves and on behalf of the Settlement Class, hereby expressly waive and relinquish, to the fullest extent permitted by law and equity, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

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3.4. *Defendants' Releases of Named Plaintiffs, the Settlement Class, and Plaintiffs' Counsel.* Subject to § 9 below, upon the Effective Date of Settlement, Defendants absolutely and unconditionally release and forever discharge the Named Plaintiffs, the Settlement Class and Plaintiffs' Counsel from any and all claims relating to the institution or prosecution of the Action.

3.5. *Releasees' Release of Other Releasees.* Subject to § 9 below, upon the Effective Date of Settlement, each of the Releasees also releases each of the other Releasees from any and all claims which were asserted in the Complaint or any pleading which would have been required to be filed in the Action or that would be barred by principles of res judicata or collateral estoppel had the claims asserted in the Complaint or any such other pleading in the Action been fully litigated and resulted in a Final judgment or order.

4. COVENANTS

Named Plaintiffs, on their own behalf and on behalf of the members of the Settlement Class, and Defendants, hereby covenant as follows:

4.1. *Non-Disparagement.* The Parties, their counsel, and their agents shall refrain from making derogatory or disparaging comments as to the Settlement Agreement, Plaintiffs, Plaintiffs' Counsel, any Releasee, Defendants, the Plan, and/or Defendants' Counsel.

4.2. *Plan Status.* Nothing herein shall be construed as an agreement that the Plan is not properly treated as a Church Plan or that the Plan is subject to ERISA. Similarly, nothing herein shall be construed as an agreement that the Plan is properly treated as a Church Plan or that the Plan is not subject to ERISA.

5. REPRESENTATIONS AND WARRANTIES

5.1. *Parties' Representations and Warranties.*

5.1.1 Named Plaintiffs represent and warrant that they have not assigned or otherwise transferred any interest in any Released Claims against any Releasee, and further covenant that they will not assign or otherwise transfer any interest in any Released Claims.

5.1.2 Named Plaintiffs represent and warrant, on behalf of themselves and the Settlement Class, that they shall have no surviving claim or cause of action against any of the Releasees for the Released Claims against them.

5.1.3 The Parties, and each of them, represent and warrant that they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations among their counsel; in executing this Settlement Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently-selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

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and each Party assumes the risk of and unconditionally waives any and all claims or defenses arising out of any alleged mistake as to facts or law.

5.1.4 The Parties, and each of them, represent and warrant that they have carefully read the contents of this Settlement Agreement; they have made such investigation of the facts and law pertaining to this Settlement Agreement and all of the matters pertaining thereto as they deem necessary; and this Settlement Agreement is executed freely by each Person executing it on behalf of each of the Parties.

5.2. *Signatories' Representations and Warranties.* Each individual executing this Settlement Agreement on behalf of any other Person hereby personally represents and warrants to the other Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that such individual represents or purports to represent.

6. NO ADMISSION OF LIABILITY

Defendants deny any and all allegations of wrongdoing made in the Complaint. Defendants aver that the Plan has been and continues to be properly administered as a Church Plan, as defined in Internal Revenue Code Section 414(e) and ERISA § 3(33). This Settlement is not evidence of liability of any type.

7. SETTLEMENT CONSIDERATION

7.1. *The Class Settlement Amount*

7.1.1 The "*Class Settlement Amount*" shall consist of Ascension Health's \$29,500,000 Plan Benefit Guarantee, as defined in §§ 7.1.2, 7.1.3, and 7.1.4.

7.1.2 *Assurance of Payment of \$29.5 Million in Benefits if Plan Assets Become Insufficient.* Subject only to § 7.1.3 hereof, for as long as the Plan is sponsored by any of the Releasees, Ascension Health hereby guarantees the payment of the first Twenty-Nine Million Five Hundred Thousand Dollars (\$29,500,000) of benefits that are distributable from the Plan to Settlement Class Members in the event trust assets attributable to the Plan become insufficient to pay such benefits (the "Plan Benefit Guarantee").

7.1.3 *Ascension Health's Obligations Upon Transfer of Plan Assets and Liabilities to Successor.* Should a corporate transaction occur where Plan assets and liabilities covering Settlement Class Members transfer to a successor, Ascension Health shall cause the successor to honor Ascension Health's commitments under the Plan Benefit Guarantee.

7.1.4 *Accelerated Satisfaction of Ascension Health's Obligation Under Plan Benefit Guarantee.* Any of the Releasees, in their sole discretion, may satisfy Ascension Health's obligation under the Plan Benefit Guarantee, at any time after the Effective Date of the Settlement, by making contributions to the Plan Trust that in the aggregate total Twenty-Five Million Dollars (\$25,000,000). For the avoidance of doubt, nothing in this paragraph prevents

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Ascension Health or any of the Releasees from making additional contributions to the Plan at any time.

7.1.5 *Payment to Plaintiffs' Counsel.* Defendants will not oppose Plaintiffs' application to the Court for an award of reasonable attorney fees, out of pocket expenses, and Incentive Award(s) (together, the "Fee Award"). The Fee Award requested by Plaintiffs and awarded by the Court shall not exceed Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000.00) (the "Maximum Total Fee"). Any such Fee Award will be at the sole discretion of the Court. Ascension Health will cause the Fee Award to be paid in addition to the consideration described in §§ 7.1.1 through 7.1.4 of this Settlement Agreement. Defendants will pay Plaintiffs' Counsel the Maximum Total Fee or any lesser amount as ordered by the Court in its discretion within four weeks after the Court's entry of the Order and Final Judgment, notwithstanding the existence of any timely-filed objections thereto, potential for appeal therefrom, or any collateral attack on the Settlement or any part thereof, subject to the obligation of Plaintiffs' Counsel to make appropriate refunds or repayments to Ascension Health plus accrued interest (based on the one year Treasury constant maturity rate) within ten calendar days, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or expense award is reduced or reversed.

7.1.6 *Application for Fees, Expenses, and an Incentive Award for Plaintiffs.* Class Counsel shall petition the Court for the Fee Award on the date set by the Court in its Preliminary Approval Order. Releasees expressly agree not to contest or take any position with respect to any application for the Fee Award that does not exceed the Maximum Total Fee, and acknowledge that these matters are left to the sound discretion of the Court. The procedure for and the allowance or disallowance of any application for the Fee Award that does not exceed the Maximum Total Fee are matters separate and apart from the Settlement and shall be requested to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to the Fee Award, or any appeal from any order relating thereto, or any reversal or modification thereof, shall have no effect on the Settlement and shall not operate to, or be grounds to, terminate or cancel the Settlement Agreement or to affect or delay the finality of the Final Approval Order or Judgment.

7.2. *Cost of Notice.* Ascension Health will pay the cost of notice to the Settlement Class.

8. AGREED UPON PLAN PROVISIONS.

8.1. *Plan Mergers.* For a period of seven and one-half years after the Effective Date, if the Plan is merged or consolidated with another plan, participants and beneficiaries who are Settlement Class members will be entitled to the same or a greater Accrued Benefit post-merger or after a consolidation event as they enjoyed before the merger or consolidation.

8.2. *Plan Amendment and Termination.* Ascension Health retains the right to amend or terminate the Plan at any time; provided that, for seven and one-half years after the Effective

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Date, no amendment or termination will result in a reduction of a Settlement Class member's Accrued Benefit.

8.3. *Plan Administration.* The Plan Administrator will establish procedures concerning Plan administration and notices, as set forth below. Reporting and disclosure to Plan participants and/or beneficiaries may be accomplished via electronic distribution. Should a participant request a reporting and disclosure document described below in hard copy, Ascension Health will furnish, or cause to be furnished, such a document in hard copy within a reasonable time.

8.3.1 *Plan Documents.* To the extent such provisions are not already found within the Plan documents, the Plan documents shall: (a) designate a named fiduciary; (b) provide the procedure for establishing and carrying out the current funding policy and method; (c) describe a procedure for allocation of administrative responsibilities; (d) provide a procedure for plan amendments and identify the persons with authority to make such amendments; (e) specify the basis on which payments are made to and from the Plan; and (f) provide a joint and survivor annuity, if this form of benefit is provided currently by the Plan.

8.3.2 *Summary Plan Descriptions (SPDs).* The Plan Administrator or its designee shall prepare a summary plan description ("SPD") which may be in the same form and manner as it is now produced and/or written. The SPD shall be distributed electronically within four (4) months of the date that the Final Approval Order becomes Final; will exclude any mention of ERISA or information about ERISA rights; and will include information about the Plan's church plan status, including that the Plan's benefits are not insured by the Pension Benefit Guaranty Corporation. The SPD will make it clear that the Plan is a church plan. The SPD will not comply with ERISA §102. The SPDs shall be furnished to current participants and beneficiaries as described in § 8.3. If a participant sends a written request for an SPD, an SPD will be provided in hard copy at the expense of the participant.

8.3.3 *Annual Summaries.* The Plan will distribute its Annual Summary in the manner described in § 8.3, above, not later than the next October 1 following the end of each Plan year, containing at least the following information: (i) Plan name(s) and EIN; (ii) Plan years covered by the summary; (iii) summary of funding arrangements; (iv) summary of Plan's expenses; (v) information as to the number of participants at year end; (vi) summary of the value of net assets at beginning and end of each year; (vii) a statement of the Plan's assets and liabilities; (viii) summary information as to the increase and/or decrease in net Plan assets annually; (ix) summary information as to the Plan's total income; and (x) a statement of assets and liabilities consistent with Ascension Health's methodologies.

8.3.4 *Pension Benefit Statements.* Ascension Health will distribute pension benefit statements in the manner described in §8.3 to all participants and beneficiaries in the form determined by the Plan annually.

8.3.5 *Current Benefit Values.* The Plan will respond to requests from participants for current benefit values information within 30 days after receiving a written request from a

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participant. However, the Plan may unilaterally extend its deadline to respond by an additional 30 days, by providing written notice to the participant.

8.3.6 *Plan's Claim Review Procedure.* The Plan's claim review procedure, which shall be included as a part of the Summary Plan Description, shall state: (a) the identity of the person or entity to whom a claim should be addressed; (b) the time period for filing a claim; (c) the information that must be provided in support of a claim; (d) if a claim is denied, in whole or in part, the person or entity to whom an appeal should be sent; (e) the time period for filing a claim appeal; (f) the information the claimant may provide in support of an appeal; and (g) any statute of limitations periods for filing a benefits related claim.

9. TERMINATION OF THE SETTLEMENT AGREEMENT

9.1. *Automatic Termination.* This Settlement Agreement shall automatically terminate, and thereupon become null and void, in the following circumstances:

9.1.1 If the Court declines to approve the Settlement, and if such order declining approval has become Final, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the date that any such order becomes Final; provided, however, that if the Court declines to approve the Settlement for any reason, the Parties shall negotiate in good faith to cure any deficiency identified by the Court; and further provided that, if necessary to cure any such deficiency, Class Counsel shall re-submit within a reasonable time the Preliminary or Final Approval Motion with an additional or substitute member of the Settlement Class as a named Class Representative.

9.1.2 If the Court issues an order in the Action modifying the Settlement Agreement, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Court or by the Parties, then, provided that no Review Proceeding is then pending from such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the order referenced in this § 9.1.2.

9.1.3 If the Seventh Circuit reverses the District Court's order approving the Settlement, and if within ninety-one (91) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Seventh Circuit or by the Parties, then, provided that no Review Proceeding is then pending from such ruling, this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the ninety-first day after issuance of the Seventh Circuit order referenced in this § 9.1.3.

9.1.4 If the Supreme Court of the United States reverses or remands a Seventh Circuit order approving the Settlement, and if within thirty-one (31) days after the date of any such ruling the Parties have not agreed in writing to proceed with all or part of the Settlement Agreement as modified by the Supreme Court or by the Parties, then this Settlement Agreement

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shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the Supreme Court order referenced in this § 9.1.4.

9.1.5 If a Review Proceeding is pending of an order declining to approve the Settlement Agreement or modifying this Settlement Agreement, this Settlement Agreement shall not be terminated until Final resolution or dismissal of any such Review Proceeding, except by written agreement of the Parties.

9.2. *Consequences of Termination of the Settlement Agreement.* If the Settlement Agreement is terminated and rendered null and void for any reason, the following shall occur:

9.2.1 The Action shall for all purposes with respect to the Parties revert to its status as of the day immediately prior to the execution of the Term Sheet.

9.2.2 All Releases given or executed pursuant to the Settlement Agreement shall be null and void; none of the terms of the Settlement Agreement shall be effective or enforceable; neither the fact nor the terms of the Settlement Agreement shall be offered or received in evidence in the Actions or in any other action or proceeding for any purpose, except in an action or proceeding arising under this Settlement Agreement.

9.2.3 If attorney's fees have been paid to Class Counsel, within ten days of the date that all parties agree to be the termination date of the Settlement Agreement, Class Counsel will refund or repay Ascension Health the paid attorney's fees, plus accrued interest (based on the one year Treasury constant maturity rate).

10. MISCELLANEOUS PROVISIONS

10.1. *Jurisdiction.* The Court shall retain jurisdiction over all Parties, the Settlement Class, the Action, and this Settlement Agreement to resolve any dispute that may arise regarding this Settlement Agreement or the orders and notice referenced in § 2 above, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement, and no Party shall oppose the reopening and reinstatement of the Action on the Court's active docket for the purposes of effecting this § 10.1.

10.1.1 Robert Meyer, mediator in the Action, will act as the final arbiter of any disagreements as to language and confirmatory discovery regarding the Settlement Agreement.

10.2. *No Limitation of Remedies.* In the event that the Defendants breach this Settlement Agreement, Plaintiffs will continue to have any and all remedies for such breach. In the event that Plaintiffs or the Settlement Class breach this Settlement Agreement, Defendants will continue to have any and all remedies for such breach.

10.3. *Governing Law.* This Settlement Agreement shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case Missouri law will apply without regard to conflict of law principles.

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10.4. *Severability.* The provisions of this Settlement Agreement are not severable.

10.5. *Amendment.* Before entry of a Final Approval Order, any common law to the contrary notwithstanding, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of a Final Approval Order, any common law to the contrary notwithstanding, the Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Parties, and approved by Court Order.

10.6. *Waiver.* The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach of this Settlement Agreement, whether prior, subsequent, or contemporaneous with this Settlement Agreement.

10.7. *Construction.* None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against a drafter.

10.8. *Principles of Interpretation.* The following principles of interpretation apply to this Settlement Agreement:

10.8.1 *Headings.* The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.

10.8.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.

10.8.3 *Gender.* Definitions apply to the masculine, feminine, and neuter genders of each term defined.

10.8.4 *References to a Person.* References to a Person are also to the Person's permitted successors and assigns.

10.8.5 *Terms of Inclusion.* Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

10.9. *Further Assurances.* Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.

10.10. *Survival.* All representations, warranties and covenants set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.

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10.11. *Notices.* Any notice, demand, or other communication under this Settlement Agreement (other than notices to members of the Settlement Class) shall be in writing and shall be deemed duly given if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

A. IF TO NAMED PLAINTIFFS:

Karen L. Handorf
Michelle C. Yau
Julie G. Reiser
Julia Horwitz
COHEN MILSTEIN SELLERS & TOLL, PLLC
1100 New York Ave., NW, Suite 500 West
Washington, DC 20005
Fax: (202) 408-4699

Lynn Lincoln Sarko
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Fax: (206) 623-3384

Ron Kilgard
Christopher Graver
KELLER ROHRBACK L.L.P.
3101 North Central Ave., Suite 1400
Phoenix, AZ 85012
Fax: (602) 248-2822

B. IF TO DEFENDANTS:

Joseph Impicciche
General Counsel
Ascension Health Alliance
101 S. Hanley Road, Suite 450
St. Louis, MO 63105
Fax: (314) 480-6130

With a copy to:
Howard Shapiro
Stacey C.S. Cerrone
PROSKAUER ROSE LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70112
Fax: (504) 310-2022

In re: Wheaton Franciscan ERISA Litigation
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Any Party may change the address at which it is to receive notice by written notice delivered to the other Parties in the manner described above.

10.12. *Entire Agreement.* This Settlement Agreement contains the entire agreement among the Parties relating to the settlement of the Action. It specifically supersedes any settlement terms or settlement agreements relating to Defendants that were previously agreed upon orally or in writing by any of the Parties, including the terms of the Term Sheet and any and all discussions, representations, warranties, or the like prior to the Effective Date of Settlement.

10.13. *Counterparts.* This Settlement Agreement may be executed by exchange of faxed or emailed executed signature pages, and any signature transmitted by facsimile for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

10.14. *Binding Effect.* This Settlement Agreement binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors and Successors-in-Interest.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

In re: Wheaton Franciscan ERISA Litigation
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September 1, 2017

FOR NAMED PLAINTIFFS AND THE SETTLEMENT CLASS

Dated this 1st day of September, 2017.

By: 

Karen L. Handorf
Michelle C. Yau
Julie G. Reiser
Julia Horwitz
COHEN MILSTEIN SELLERS & TOLL, PLLC
1100 New York Ave., NW, Suite 500 West
Washington, DC 20005

Lynn Lincoln Sarko
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Fax: (206) 623-3384

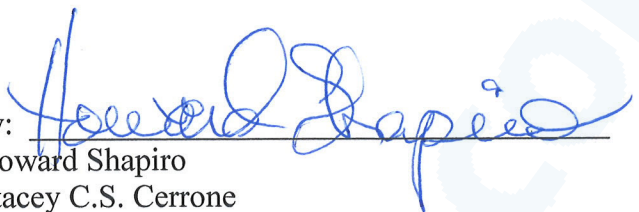
Ron Kilgard
Christopher Graver
KELLER ROHRBACK L.L.P.
3101 North Central Ave., Suite 1400
Phoenix, AZ 85012
Fax: (602) 248-2822

Class Counsel

In re: Wheaton Franciscan ERISA Litigation
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FOR ALL DEFENDANTS

Dated this 1st day of September, 2017.

By: 

Howard Shapiro
Stacey C.S. Cerrone
PROSKAUER ROSE LLP
650 Poydras Street, Suite 1800
New Orleans, LA 0130
Fax: (504) 310-2022

Attorneys for Defendants

Exhibit 2

BenefitsLink.com

**IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE WHEATON FRANCISCAN
ERISA LITIGATION

Case No. 16-cv-04232

Honorable Gary Feinerman

**[PROPOSED] ORDER PRELIMINARILY APPROVING THE SETTLEMENT,
CERTIFYING THE CLASS, APPROVING NOTICE TO THE CLASS, AND
SCHEDULING FINAL APPROVAL HEARING**

This litigation involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq. (“ERISA”), set forth in Plaintiffs’ Class Action Complaint, dated June 28, 2016, with respect to the Wheaton Franciscan System Retirement Plan (the “Plan”).¹

Presented to the Court for preliminary approval is a Settlement of the litigation as against all Defendants. The terms of the Settlement are set forth in the Class Action Settlement Agreement (the “Settlement” or “Settlement Agreement”), executed by counsel on September 1, 2017, on behalf of all of the Plaintiffs and Defendants (the “Parties”). Plaintiffs have filed an Unopposed Motion for Preliminary Approval of Settlement Agreement (“Preliminary Approval Motion”), pursuant to which the Court has considered the Settlement to determine, among other things, whether to approve preliminarily the Settlement, certify preliminarily a Settlement Class, authorize the dissemination of Class Notice to members of the Settlement Class, and set a date

¹ This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used herein shall have the same meanings as set forth in the Settlement Agreement unless set forth differently herein. The terms of the Settlement are fully incorporated in this Judgment as if set forth fully herein.

and time for the Fairness Hearing. Upon reviewing the Settlement Agreement, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. Class Findings. The Court preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met as to the “Settlement Class” defined below, in that:

A. The Court preliminarily finds that the Settlement Class is ascertainable from records kept with respect to the Plan and from other objective criteria, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable. Rule 23(a)(1) is satisfied.

B. The Court preliminarily finds that there are one or more questions of fact and/or law common to the Settlement Class. Rule 23(a)(2) is satisfied.

C. The Court preliminarily finds that Bruce Bowen’s, Cheryl Mueller’s, and Diann M. Curtis’ (the “Named Plaintiffs”) claims are typical of the claims of the Settlement Class. Rule 23(a)(3) is satisfied.

D. The Court preliminarily finds that the Named Plaintiffs will fairly and adequately protect the interests of the Settlement Class in that: (i) the Named Plaintiffs’ interests and the nature of claims alleged are consistent with those of the members of the Settlement Class; (ii) there appear to be no conflicts between or among the Named Plaintiffs and the Settlement Class; and (iii) the Named Plaintiffs and the members of the Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated ERISA class actions. Rule 23(a)(4) is satisfied.

E. The Court preliminarily finds that the prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual class members that would establish incompatible standards of conduct for Defendants; or (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests. Rule 23(b)(1) is satisfied.

F. Alternatively, the prerequisites of Rule 23(b)(2) have been satisfied, since Defendants have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole.

G. The Court preliminarily finds that Cohen Milstein Sellers & Toll PLLC and Keller Rohrback L.L.P. ("Class Counsel") are capable of fairly and adequately representing the interests of the Settlement Class. Class Counsel have done extensive work identifying or investigating potential claims in the action, and during a several-month-long mediation process, have consulted with professionals and considered detailed, confidential financial analyses of Defendants' financial condition. Class Counsel are experienced in handling class actions, other complex litigation, and claims of the type asserted in this Action. Class Counsel are knowledgeable about the applicable law, and have committed the necessary resources to represent the Settlement Class. Rule 23(g) is satisfied.

2. Class Certification. Based on the findings set forth above, the Court preliminarily certifies the following class under Federal Rules of Civil Procedure 23(b)(1) and/or (b)(2) and 23(e) in this litigation (the “Settlement Class”):

All persons who, as of July 31, 2017, are former and/or current Plan participants, whether vested or non-vested, and their beneficiaries.

The Court preliminarily appoints Bruce Bowen, Cheryl Mueller, and Diann M. Curtis, the Named Plaintiffs, as the class representatives for the Settlement Class, and Cohen Milstein Sellers & Toll PLLC and Keller Rohrback L.L.P. as Class Counsel for the Settlement Class.

3. Preliminary Findings Regarding Proposed Settlement. The Court preliminarily finds that:

A. The proposed Settlement resulted from informed, extensive arm’s-length negotiations that took place over multiple months and were facilitated by a third-party mediator, Robert A. Meyer, Esq.;

B. Class Counsel has concluded that the proposed Settlement is fair, reasonable, and adequate; and

C. The proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class.

4. Final Fairness Hearing. A hearing is scheduled for _____, 2017, at _____.m. (the “Fairness Hearing”) to determine, among other things:

A. Whether the Settlement should be approved as fair, reasonable, and adequate;

B. Whether the Complaint should be dismissed with prejudice pursuant to the terms of the Settlement Agreement;

C. Whether the notice to the class provided for by the Settlement Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear

at the Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

D. Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement; and

E. Whether the application for payment of attorneys' fees and expenses to Class Counsel, and for Incentive Payment Awards to Named Plaintiffs should be approved.

5. Class Notice Program. The proposed Notice Program consists of (a) a mailed notice ("Summary Notice," attached as Exhibit 3 to Plaintiffs' Preliminary Approval Motion), sent to the last known address of members of the Settlement Class and (b) an internet publication of the Settlement Agreement and long format Class Notice ("Class Notice," attached as Exhibit 4 to Plaintiffs' Preliminary Approval Motion) at www.cohenmilstein.com/wheaton-settlement and www.kellersettlements.com. With respect to such Notice Program, the Court finds that such Program fairly and adequately:

A. Describes the terms and effect of the Settlement Agreement;

B. Notifies the Settlement Class that Class Counsel's attorneys' fees and expenses, and any Incentive Payment Awards to Named Plaintiffs, will be paid according to §§ 7.1.6-7 of the Settlement Agreement;

C. Gives notice to the Settlement Class of the time and place of the Fairness Hearing;

D. Advises members of the Settlement Class that they do not have the right to opt out of the Settlement Class;

E. Advises members of the Settlement Class of the binding effect of a judgment on members of the Settlement Class; and

F. Describes how the recipients of the Class Notice may object to any of the relief requested. The Court directs that:

i. No later than 30 days after entry of this Preliminary Approval Order, the Summary Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, shall be sent to each Person within the Settlement Class who can be identified by the Plan's current record-keeper. Such notice shall be in a form that the Parties have deemed to be cost effective, sent to the last known address for members of the Settlement Class. Defendants will pay the cost for notice to the Settlement Class as part of the settlement administration.

ii. No later than 30 days after entry of the Preliminary Approval Order, Class Counsel shall cause the Settlement Agreement and the long-format Class Notice to be published on the websites identified in the Class Notice.

iii. At or before the Fairness Hearing, Class Counsel shall file with the Court a proof of timely compliance with the foregoing Notice Program mailing and publication requirements.

iv. By no later than 46 days prior to the Fairness Hearing, Class Counsel shall file motions for final approval of the Settlement, attorneys' fees and expenses, and Incentive Payment Awards to the Named Plaintiffs.

v. By 7 days prior to the Fairness Hearing, Class Counsel shall file a reply in support of the motions for final approval of the Settlement, attorneys' fees and expenses, and Incentive Payment Awards to the Named Plaintiffs; the Parties must also respond to any comments or objections to the Settlement.

6. Objections to Settlement. Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the application for payment of attorneys' fees and expenses, or to the application for Incentive Payment Awards for the Named Plaintiffs, may timely file an Objection in writing no later than 28 days prior to the Fairness Hearing. All written objections and supporting papers must: (1) clearly identify the case name and number "*In Re Wheaton Franciscan ERISA Litigation*, Case No. 16-cv-04232;" (2) be filed with the Court and

postmarked and mailed or faxed to Class Counsel and Defendants' Counsel at the addresses below on or before 28 days prior to the Proposed Fairness Hearing; (3) set forth the objector's full name, current address, and telephone number; (4) set forth a statement of the position the objector wishes to assert, including the factual and legal grounds for the position; (5) set forth the names and a summary of testimony of any witnesses that the objector might want to call in connection with the Objection; (6) provide copies of all documents that the objector wishes to submit in support of his/her position; (7) provide the name(s), address(es) and phone number(s) of any attorney(s) representing the objector; (8) state the name, court, and docket number of any class action litigation in which the objector and/or his/her attorney(s) has previously appeared as an objector or provided legal assistance with respect to an objection; and (9) include the objector's signature.

The addresses for filing objections with the Court and service on counsel are as follows:

To the Court:

Clerk of the Court
United States District Court
Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604
Re: *In Re Wheaton Franciscan ERISA Litigation*, Case No. 16-cv-04232

To Class Counsel:

Karen L. Handorf
Michelle C. Yau
Julie Goldsmith Reiser
Julia Horwitz
COHEN MILSTEIN SELLERS & TOLL, PLLC
1100 New York Ave., NW, Suite 500 West
Washington, DC 20005
Fax: (202) 408-4699

Carol V. Gilden
COHEN MILSTEIN SELLERS & TOLL, PLLC
190 LaSalle Street
Suite 1705
Chicago, IL 60603
Fax: (312) 357-0369

Lynn Lincoln Sarko
Laura R. Gerber

KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Fax: (206) 623-3384

Ron Kilgard
Chris Graver
KELLER ROHRBACK L.L.P.
3101 North Central Ave., Suite 1400
Phoenix, AZ 85012
Fax: (602) 248-2822

To Defendants' Counsel:

Howard Shapiro
Stacey C.S. Cerrone
PROSKAUER ROSE, LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70130
Fax: (504) 310-2022

Edward C. Young
PROSKAUER ROSE, LLP
70 W. Madison St., Suite 3800
Chicago, IL 60602
Fax: (312) 962-3551

If an objector hires an attorney to represent him or her for the purposes of making such objection pursuant to this paragraph, the attorney must both effect service of a notice of appearance on counsel listed above and file it with the Court by no later than 28 days prior to the Fairness Hearing. Any member of the Settlement Class or other Person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

7. Appearance at Fairness Hearing. Any objector who files and serves a timely, written objection in accordance with paragraph 6 above, may also appear at the Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their

attorneys intending to appear at the Fairness Hearing must effect service of a notice of intention to appear setting forth, among other things, the name, address, and telephone number of the objector (and, if applicable, the name, address, and telephone number of the objector's attorney) on Class Counsel and on the Defendants' counsel (at the addresses set out above). The objector must also file the notice of intention to appear with the Court by no later than 28 days prior to the Fairness Hearing. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

8. Notice Expenses. The expenses of printing and mailing all notices required hereby shall be paid by the Plan as provided in § 7.2 of the Settlement Agreement.

9. Service of Papers. Defendants' counsel and Class Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

10. Termination of Settlement. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is terminated in accordance with the Settlement Agreement. In such event, § 9.1 of the Settlement Agreement shall govern the rights of the parties.

11. Use of Order. In the event this Order becomes of no force or effect, it shall not be construed or used as an admission, concession, or declaration by or against the Defendants, the Named Plaintiffs or the Settlement Class.

12. Continuance of Hearing. The Court may continue the Fairness Hearing without further written notice.

DATED this ____ day of ____, 2017

Judge Gary Feinerman
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF ILLINOIS

Exhibit 3

BenefitsLink.com

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

IN RE WHEATON FRANCISCAN
ERISA LITIGATION

Case No. 16-cv-04232

Honorable Gary Feinerman

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION, FINAL APPROVAL
HEARING, AND MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF
LITIGATION EXPENSES**

This notice ("Notice") advises you of a proposed settlement (the "Settlement") of a class action lawsuit brought by Plaintiffs Bruce Bowen, Cheryl Mueller, and Diann Curtis (the "Named Plaintiffs") on behalf of themselves, the Wheaton Franciscan System Retirement Plan ("Plan"), and as representatives of the Settlement Class against Defendants (defined below). Plaintiffs allege that the non-profit healthcare system Wheaton Franciscan Services, Inc. ("Wheaton") and Ascension Health, the company that acquired Wheaton's healthcare subsidiaries in Southeast Wisconsin and became the "sponsor" of the Plan in March 2016, breached their fiduciary duties and violated the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), with respect to the Plan. You are receiving this Notice because you may be a participant, or a beneficiary of a participant, in the Plan.

**PLEASE READ THIS NOTICE CAREFULLY.
A FEDERAL COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION.
YOU HAVE NOT BEEN SUED.**

As described in more detail below, this Settlement is made in compromise of claims made by Plaintiffs, for themselves and on behalf of all others similarly situated, against Defendants in the litigation (the "Action"). Plaintiffs claim that the Plan was improperly operated by Wheaton as a "church plan" exempt from the requirements imposed by ERISA. Plaintiffs claim that, among other violations, Wheaton and Ascension Health underfunded the Plan by over \$134.5 million; impermissibly required participants to complete five years of service before participants became fully vested in their accrued benefits; failed to furnish Plaintiffs or any member of the class with a Pension Benefit Statement, Summary Annual Reports, Notification of Failure to Meet Minimum Funding, or Funding Notices; caused the Plan to award benefits to employees in later years of service at a rate disproportionately higher than the rate for employees in earlier years of service, in violation of ERISA's anti-backloading requirements; decreased accrued benefits by amendment of the Plan in violation

Questions? Visit

www.cohenmilstein.com/wheaton-settlement or www.kellerssettlements.com

**DO NOT CALL THE COURT
as they cannot answer your questions.**

of ERISA's anti-cutback provisions; and failed to notify participants of a significant reduction in the rates of future benefit accruals from 2009 onward. Defendants deny all of these claims.

Named Plaintiffs, on behalf of themselves and the Class, have agreed to settle all Released Claims (as defined in the Settlement Agreement) against Defendants and other Released Parties (as defined in the Settlement Agreement) in exchange for, among other terms, a guarantee that, for as long as the Plan is sponsored by any of the Released Parties, Ascension Health will guarantee the payment of the first \$29,500,000 (twenty-nine million, five hundred thousand dollars) of benefits that are distributable from the Plan to Settlement Class Members in the event trust assets attributable to the Plan become insufficient to pay such benefits. The Settlement also provides that Ascension Health may buy out this guarantee obligation by making an aggregate total of \$25,000,000 (twenty-five million dollars) in contributions to the Plan's trust. Because the Plan is a defined benefit pension plan and not a defined contribution plan with individual accounts, like a 403(b) plan or 401(k) plan, ***the cash amount, if any, will be contributed to the Plan as a whole, rather than to individual Plan participants and beneficiaries. Your pension benefit will not increase as a result of the Settlement.*** Additionally, the Settlement provides significant non-monetary equitable consideration, in that current participants in the Plan will receive certain ERISA-like financial and administrative protections for the next seven and one-half years.

This Settlement applies to all persons who, as of July 31, 2017, are former and/or current Plan participants, whether vested or non-vested, and their beneficiaries.

The Court in charge of the case still has to decide whether to approve the Settlement. The payments and other settlement terms described above will be made only if the Court approves the Settlement and that approval is upheld if there are any appeals. This process is explained in greater detail below.

Your legal rights are affected if you are a member of the Settlement Class whether or not you act. "Settlement Class" means: All persons who, as of July 31, 2017, are former and/or current Plan participants, whether vested or non-vested, and their beneficiaries.

Identification of Key Terms: This Notice contains summary information with respect to the Settlement. The terms and conditions of the Settlement are set forth in the Class Action Settlement Agreement (the "Settlement Agreement"). The Settlement Agreement, and additional information with respect to this lawsuit and the Settlement, are available at www.cohenmilstein.com/wheaton-settlement and www.kellersettlements.com.

Reasons for the Settlement: The Settlement resolves all claims in the Action against Defendants regarding the Plan. The Parties agree that the Settlement is not, and should not be construed as, an admission of any fault, liability or wrongdoing whatsoever by any of the Defendants, who continue to deny any and all of the allegations of the Complaint. The Named

Plaintiffs and Class Counsel (identified below) believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. The Named Plaintiffs and Class Counsel believe that the Settlement provides greater protection for the benefits to be paid to all Settlement Class members under the Plan as compared to the risks, costs and delays of proceeding with this litigation against Defendants.

Identification of Claims Administrator and Class Counsel: Any initial questions regarding the Settlement should be directed to [ADMINISTRATOR TBD] at [PHONE NUMBER TBD].

Class Counsel is available also to respond to questions. Please contact: Julie Goldsmith Reiser or Julia Horwitz, Cohen Milstein Sellers & Toll, PLLC, 1100 New York Avenue, N.W., Suite 500, West Tower, Washington, D.C. 20005. Class Counsel has established a toll-free number, 1-888-238-2105, if you have questions or comments. Class Counsel may also be contacted via e-mail at WheatonFranciscanSettlement@cohenmilstein.com. Please do not contact the Court. The Court personnel will not be able to answer your questions.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.

ACTIONS YOU MAY TAKE IN THE SETTLEMENT	
NO ACTION IS NECESSARY.	If the Settlement is approved by the Court and you are a member of the Settlement Class, you do not need to do anything.
YOU CAN OBJECT NO LATER THAN _____, 2017. WRITTEN OBJECTIONS MUST BE FILED WITH THE COURT BY THIS DATE.	If you wish to object to any part of the Settlement, you can write to the Court and explain why you do not like the Settlement.
YOU CAN GO TO THE HEARING ON _____, 2018 AT _____.m. CST BY FILING A NOTICE OF INTENTION TO APPEAR NO LATER THAN _____, 2017	If you have submitted a written objection to the Court, you can ask to speak in Court about the fairness of the Settlement. You may enter your appearance in Court through an attorney if you so desire.

Questions? Visit

www.cohenmilstein.com/wheaton-settlement or www.kellersettlements.com

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as they cannot answer your questions.**

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Questions? Visit

www.cohenmilstein.com/wheaton-settlement or www.kellersettlements.com

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This litigation (the “Action”) was filed in federal district court in Illinois against Wheaton, Ascension Health, and the various other defendants named in the complaint (collectively, the “Defendants”). The Named Plaintiffs and Defendants collectively are referred to herein as the “Parties.”

A copy of the Complaint and other documents relevant to this Settlement, including the comprehensive Settlement Agreement, are available at www.cohenmilstein.com/wheaton-settlement and www.kellersettlements.com.

SUMMARY OF SETTLEMENT

The Settlement provides for a guarantee that, as long as the Plan is sponsored by any of the Released Parties, as defined in the Settlement Agreement, Ascension Health will guarantee the payment of the first \$29,500,000 of (twenty-nine million, five hundred thousand dollars) of benefits that are distributable from the Plan to Settlement Class Members in the event trust assets attributable to the Plan become insufficient to pay such benefits. The Settlement also provides that Ascension Health may buy out this guarantee obligation by making an aggregate total of \$25,000,000 (twenty-five million dollars) in contributions to the Plan’s trust.

Additionally, the Settlement provides significant non-monetary equitable consideration, in that current participants in the Plan will receive certain ERISA-like reporting, disclosure, and administrative protections. Notably, Plan participants will receive notice on an annual basis about the funding status of the Plan and the retirement benefits that they have accrued. This annual notice will include, among other information, a summary of the Plan’s funding arrangements, a summary of the Plan’s expenses, a statement of the Plan’s liabilities and assets, information about the increase or decrease in net plan assets for the year, and summary information about the Plan’s total income.

Attorneys’ Fees and Expenses: Court-appointed Class Counsel will file a motion for an award of attorneys’ fees, expenses, and incentive awards for Named Plaintiffs that will be considered by the Court at the Final Approval Hearing. Class Counsel will apply for a total award not exceed Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) (the “Maximum Total Fee”). Any such award will be at the sole discretion of the Court. Any Court-awarded fees, expenses, and incentive awards will be paid by Ascension Health, and will be paid ***in addition to*** the guarantee and other provisions of the Settlement.

This Settlement represents the best possible monetary result that could be achieved for the Class in light of the significant risks Plaintiffs faced in the Action. As with any litigation, the Parties would face an uncertain outcome if the case were to continue. Continued litigation of this case against the Defendants may result in a judgment or verdict greater or less than the recovery under the Settlement Agreement, or in no recovery at all. Throughout the litigation, Plaintiffs and

Defendants have disagreed on both liability and damages. Defendants, among other things, maintain that the Plan has been and continues to be properly administered as a Church Plan under the Plan's terms and as defined in ERISA § 3(33), and is exempt from coverage under ERISA. Defendants deny any and all liability to the Plaintiff, members of the Settlement Class and the Plan, deny any and all allegations of wrongdoing, and believe they will prevail in this case if it is litigated to conclusion.

Named Plaintiffs and Class Counsel, among other things, (1) have conducted an extensive investigation into the facts, circumstances, and legal issues associated with the allegations made in the Action; (2) believe, based on the risks of the litigation, the time necessary to achieve a complete resolution through litigation, the complexity of the claims set forth in the Complaint, and the benefits accruing to the Plan participants and beneficiaries under the Settlement, that the Settlement will provide a benefit to the Settlement Class, and that, when this benefit is weighed against the risks of continuing the prosecution of the Action, the Settlement represents a reasonable, fair, and adequate resolution of the claims of the Settlement Class; and (3) believe that the Settlement will provide the Settlement Class with additional protections for their retirement benefits they may not have received if the cases had been litigated to a conclusion.

The Parties have taken into account the uncertainty and risks inherent in this litigation, particularly its complex nature, and have concluded that it is desirable that the Action be fully and finally settled on the terms and conditions set forth in the Settlement Agreement.

Please visit www.cohenmilstein.com/wheaton-settlement or www.kellersettlements.com if you have additional questions.

BASIC INFORMATION

1. Why did I get this Notice package?

Either you or someone in your family may have been a Plan participant, or a beneficiary of a participant, whether vested or non-vested, as of July 31, 2017. The Court has directed that this Notice be sent to you because, as a potential member of the Settlement Class, you have a right to know about the proposed Settlement with Defendants before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and all related objections and appeals are favorably resolved, Ascension Health will guarantee the payment of the first \$29,500,000 of (twenty-nine million, five hundred thousand dollars) of benefits that are distributable from the Plan to Settlement Class Members in the event trust assets attributable to the Plan become insufficient to pay such benefits. The Settlement also provides that Ascension Health may buy out this guarantee obligation by making an aggregate total of \$25,000,000 (twenty-five million dollars) in contributions to the Plan's trust. In addition, the Settlement

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provides that Plan participants will receive notice on an annual basis about the funding status of the Plan and the retirement benefits that they have accrued. This annual notice will include, among other information, a summary of the Plan's funding arrangements, a summary of the Plan's expenses, a statement of the Plan's liabilities and assets, information about the increase or decrease in net plan assets for the year, and summary information about the Plan's total income.

This Notice explains the Action, the Settlement, and your legal rights. The purpose of this Notice is to inform you of a hearing (the "Fairness Hearing") to be held by the Court to consider the fairness, reasonableness and adequacy of the proposed Settlement, and to consider the application of Class Counsel for their attorneys' fees and reimbursement of litigation expenses as well as an application for an incentive fee to the Named Plaintiffs.

The Fairness Hearing will be held at ____, 2018 at ____ .m. before the Honorable Gary Feinerman in the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, IL 60604, to determine:

- (a) Whether the Settlement should be approved as fair, reasonable, and adequate and should be approved by the Court;
- (b) Whether final judgment approving the Settlement Agreement should be entered;
- (c) Whether the Settlement Class should be certified as a mandatory non-opt-out class meeting the applicable requirements for a settlement class imposed by Federal Rule of Civil Procedure 23;
- (d) Whether the requirements of Federal Rule of Civil Procedure 23 and due process have been satisfied in connection with the distribution of the Class Notice to members of the Settlement Class;
- (e) Whether the requirements of the Class Action Fairness Act have been satisfied;
- (f) Whether to award incentive fees to the Named Plaintiffs and if so, the amount; and
- (g) Whether to award attorneys' fees and litigation expenses to Class Counsel and other attorneys who represent members of the Settlement Class and if so, the amounts.

The issuance of this Notice is not an expression of the Court's opinion on the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, the Settlement provisions will become effective after all related appeals, if any, are favorably resolved. It is always uncertain whether such appeals can be

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favorably resolved, and resolving them can take time, perhaps more than a year. Please be patient.

2. How do I know whether I am part of the Settlement?

The Court has certified the Action as a class action. You are a member of the Settlement Class if, as of July 31, 2017, you were a former and/or current Plan participant, whether vested or non-vested, or the beneficiary of such a participant.

3. What does the Settlement provide?

The Settlement provides that, for as long as the Plan is sponsored by any of the Released Parties, Ascension Health will guarantee the payment of the first \$29,500,000 of benefits that are distributable from the Plan to Settlement Class Members in the event trust assets attributable to the Plan become insufficient to pay such benefits. Should a corporate transaction occur where Plan assets and liabilities covering Settlement Class Members transfer to a successor, Ascension Health will cause the successor to honor this commitment. Ascension Health or any of the Released Parties may buy out the guarantee obligation at any time by making contributions to the Plan's trust that in the aggregate total \$25,000,000.

The Settlement includes equitable provisions which mimic certain provisions of ERISA concerning plan administration, summary plan descriptions, notices (annual summaries, pension benefits statements, current benefit values), and the Plan's claim review procedure. The Settlement Agreement also provides that for seven and one-half years, any amendment or termination of the Plan cannot reduce participants' accrued benefits. Likewise, for the next seven and one-half years, if the Plan is ever merged with or into another plan, participants will be entitled to the same or greater benefits than they were before the merger.

The above description of the operation of the Settlement is only a summary. The governing provisions are set forth in the Settlement Agreement, which may be obtained at www.cohenmilstein.com/wheaton-settlement or www.kellersettlements.com.

4. What is the lawsuit about? What has happened so far?

On April 11, 2016, Plaintiff Curtis filed a putative class action complaint in this Court against Wheaton and various individual defendants, alleging violations of ERISA. ECF No. 1. On June 28, 2016, Plaintiffs Bowen and Mueller filed a separate putative class action complaint against Wheaton, Ascension Health, and various other defendants (collectively, the "Defendants") alleging violations of ERISA. Both complaints allege that Defendants denied ERISA protections to the participants and beneficiaries of the Plan, a defined benefit pension plan sponsored by Wheaton and, subsequently, Ascension Health, by incorrectly claiming that the Plan qualifies as an ERISA-exempt "church plan." The complaints further allege that

asserting this exemption caused Defendants to deny Plan participants the protections of ERISA. These include, among other violations: underfunding the Plan by over \$134.5 million; impermissibly requiring participants to complete five years of service before participants became fully vested in their accrued benefits, failing to furnish Plaintiffs or any member of the class with a Pension Benefit Statement, Summary Annual Reports, Notification of Failure to Meet Minimum Funding, or Funding Notices, causing the Plan to award benefits to employees in later years of service at a rate disproportionately higher than the rate for employees in earlier years of service, in violation of ERISA's anti-backloading requirements, decreasing accrued benefits by amendment of the Plan in violation of ERISA's anti-cutback provisions, and failing to notify participants of a significant reduction in the rates of future benefit accruals from 2009 onward. Defendants deny all of these allegations. On July 8, 2016, the two cases were designated as "related," and on January 4, 2017, this Court consolidated the two cases for all purposes and appointed Cohen Milstein and Keller Rohrback as Interim Co-Lead Counsel.

The Parties first engaged in settlement discussions in February 2017. At the same time as the Parties negotiated this Settlement, the United States Supreme Court was considering a similar church plan case which addressed whether, as Plaintiffs alleged here, a church plan must be established by a church in order to qualify as an ERISA-exempt church plan. The Supreme Court held argument in that case on March 27, 2017, and a decision from the Supreme Court was pending until June of 2017. Therefore, the interpretation of the ERISA church plan provision – specifically, whether a church plan claiming an exemption from ERISA must be established by a church – was uncertain when the Parties began negotiating the Settlement.

On June 5, 2017, the Supreme Court issued its decision, holding that pension plans need not be established by churches in order to qualify as ERISA-exempt church plans, though they still had to satisfy other conditions. While Plaintiffs advance other strong arguments and theories not decided by the Supreme Court's opinion, it nevertheless is true that Plaintiffs' case was negatively impacted by that decision. Nevertheless, in spite of the Supreme Court's decision, the Parties continued to negotiate settlement, and ultimately came to an agreement following a second mediation session on June 27, 2017.

The Settlement is the product of intensive, arm's-length negotiations between Class Counsel and Defendants' Counsel, with the assistance of an experienced third-party mediator.

5. Why is this case a class action?

In a class action, one or more plaintiffs, called "named plaintiffs," sue on behalf of people who have similar claims. All of the individuals on whose behalf the Named Plaintiffs in this Action are suing are "Class Members," and they are also referred to in this Notice as members of the Settlement Class. The Court resolves the issues for all Class Members. The Honorable Gary Feinerman, United States District Judge, is presiding over this case.

6. Why is there a Settlement?

Under the proposed Settlement, the Court will not decide the merits of the case in favor of either the Plaintiffs or the Defendants. By agreeing to a Settlement, both the Plaintiffs and the Defendants avoid the costs, risks, and delays of litigating the Action. In this case particularly, the risks of ongoing litigation involved the consequences of the Supreme Court's ruling that church plans need not be established by churches in order to qualify as ERISA-exempt plans.

This Settlement is the product of extensive arm's-length negotiations between Class Counsel and the Defendants' Counsel, including utilizing the services of an experienced mediator. Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate, and in the best interest of the Class.

7. How will the Settlement be distributed?

Because the Plan is a defined benefit pension plan and not a defined contribution plan with individual accounts, like a 403(b) plan or 401(k) plan, ***the guaranty, if ever paid in the future, will be contributed to the Plan's trust fund as a whole, rather than to individual Plan participants and beneficiaries. Your pension benefit will not increase as a result of the Settlement.*** You will remain entitled to the benefit you have accrued pursuant to the Plan's terms for the next seven and one half years. The Settlement also provides significant non-monetary equitable consideration, in that current participants in the Plan will receive certain ERISA-like administrative protections.

Members of the Settlement Class do not need to do anything in order to obtain the benefits and protections provided by the Settlement in this case.

8. What rights am I giving up in the Settlement?

If the Settlement is approved, the Court will enter a judgment. This judgment will fully, finally, and forever release, relinquish, and discharge any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, expenses and costs under federal or state laws arising out of the allegations of the Complaint that were brought or could have been brought as of the date of the Settlement Agreement, including any current or prospective challenge to the "church plan" status of the Plans, whether or not such claims are accrued, whether already acquired or subsequently acquired, whether known or unknown, in law or equity, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim, or otherwise.

For Settlement Class members only, Released Claims are not intended to include the release of any of the following: (a) Any rights or duties arising out of the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement; (b) Individual claims

for relief seeking benefits under state law under the Plan document; (c) Claims related to any other plan that is merged or consolidated with the Plan after August 11, 2017; (d) Any claim arising under ERISA with respect to any event occurring after: the Internal Revenue Service issues a written ruling that the Plan does not qualify as a church plan; pursuant to IRC § 410(d), an election is made on behalf of the Plan resulting in the Plan's coverage by the ERISA provisions specified in IRC § 410(d); the Roman Catholic Church disassociates itself from the Plan's Sponsor; or an amendment to ERISA is enacted and becomes effective as a law of the United States eliminating the Church Plan exemption.

9. Can I exclude myself from the Settlement?

You do not have the right to exclude yourself from the Settlement. For settlement purposes, the Action was certified under Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) (non-opt-out class) because the Court determined the requirements of that rule were satisfied. Thus, it is not possible for any of the members of the Settlement Class to exclude themselves from the Settlement. As a member of the Settlement Class, you will be bound by any judgments or orders that are entered in the Action for all claims that were or could have been asserted in the Action against Defendants or are otherwise included in the release under the Settlement.

Although members of the Settlement Class cannot opt-out of the Settlement, they can object to the Settlement and ask the Court not to approve the Settlement.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in the case?

The law firms of Cohen Milstein Sellers & Toll, PLLC, and Keller Rohrback L.L.P represent the Named Plaintiffs and the Settlement Class ("Class Counsel"). You will **not** be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Prior to the Fairness Hearing, Class Counsel will apply for an award of attorneys' fees and expenses, and incentive awards for the Named Plaintiffs. The total amount that Class Counsel will seek for fees, expenses, and incentive awards will not exceed \$2.25 million. This amount will be paid entirely by Defendants. Any payment of attorneys' fees, expenses, and incentive awards to Named Plaintiffs will not reduce the amount of the guarantee or the amount of the buy-out.

To date, Class Counsel has not received any payment for their services in prosecuting this Action on behalf of the Settlement Class, nor have Class Counsel been reimbursed for their out-of-pocket expenses. The fee requested by Class Counsel would compensate all of Plaintiffs' counsel for their efforts in achieving the Settlement for the benefit of the Settlement Class and for their risk in undertaking this representation on a contingency basis. The Court will determine the actual amount of the award.

OBJECTING TO THE SETTLEMENT

12. How do I tell the Court if I don't like the Settlement?

Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the application for payment of attorneys' fees and expenses, or to the application for an incentive fee for the Named Plaintiffs, may file an Objection in writing. All written objections and supporting papers must: (1) clearly identify the case name and number "*In re: Wheaton Franciscan ERISA Litigation*, Case No. 16-cv-04232;" (2) be filed with the Court and either postmarked and mailed or faxed to Class Counsel and Defendants' Counsel at the addresses below on or before twenty-eight (28) days before the Fairness Hearing; (3) set forth your full name, current address, and telephone number; (4) set forth a statement of the position you wish to assert, including the factual and legal grounds for the position; (5) set forth the names and a summary of testimony of any witnesses that you might want to call in connection with the Objection; (6) provide copies of all documents that you wish to submit in support of his/her position; (7) provide the name(s), address(es) and phone number(s) of any attorney(s) representing you; (8) state the name, court, and docket number of any class action litigation in which you and/or your attorney(s) has previously appeared as an objector or provided legal assistance with respect to an objection; and (9) include your signature.

The addresses for filing objections with the Court and service on counsel are listed below. **Your written objection must be filed with the Court, and mailed or faxed to the counsel listed below by no later than _____, 2017:**

File with the Clerk of the Court:

Clerk of the Court
United States District Court
Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604

Questions? Visit

www.cohenmilstein.com/wheaton-settlement or www.kellersettlements.com

**DO NOT CALL THE COURT
as they cannot answer your questions.**

And, by the same date, serve copies of all such papers by mail or fax to each of the following:

CLASS COUNSEL:

Lynn Lincoln Sarko
Laura R. Gerber
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Fax: (206) 623-3384

Carol V. Gilden
COHEN MILSTEIN SELLERS & TOLL
PLLC
190 South LaSalle Street, Suite 1705
Chicago, IL 60603
Fax: (312) 357-0369

Ron Kilgard
Chris Graver
KELLER ROHRBACK L.L.P.
3101 North Central Avenue, Suite 1400
Phoenix, AZ 85012
Fax: (602) 248-2822

Karen L. Handorf
Michelle C. Yau
Julie Goldsmith Reiser
Julia Horwitz
COHEN MILSTEIN SELLERS & TOLL
PLLC
1100 New York Avenue, N.W., Fifth Floor
Washington, D.C. 20005
Fax: (202) 408-4699

DEFENDANTS' COUNSEL:

Howard Shapiro
Stacey C.S. Cerrone
PROSKAUER ROSE, LLP
650 Poydras Street, Suite 1800
New Orleans, LA 70130
Fax: (504) 310-2022

Edward C. Young
PROSKAUER ROSE, LLP
Three First National Plaza
70 West Madison, Suite 3800
Chicago, IL 60602
Fax: (312) 962-3551

UNLESS OTHERWISE ORDERED BY THE COURT, ANY MEMBER OF THE SETTLEMENT CLASS WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT AND THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES AND AN INCENTIVE FEE TO THE NAMED PLAINTIFFS.

THE COURT'S FAIRNESS HEARING

13. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at _____, 2018, at _____.m., CST, at the United States District Court for the United States District Court, Northern District of Illinois, 219 South Dearborn Street, Chicago, IL 60604, Courtroom 2125.

IF YOU DO NOT WISH TO OBJECT TO THE PROPOSED SETTLEMENT OR THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES AND INCENTIVE FEES TO THE NAMED PLAINTIFFS, YOU NEED NOT ATTEND THE FAIRNESS HEARING.

At the hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the Settlement. The Court will also rule on the motions for attorneys' fees and expenses and an incentive fee to the Named Plaintiffs. We do not know how long these decisions will take.

14. Do I have to come to the hearing?

Class Counsel will answer questions Judge Feinerman may have. You are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, it will be before the Court when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You may also have your own lawyer attend the Fairness Hearing at your expense, but such attendance is not necessary.

15. May I speak at the hearing?

If you are a member of the Settlement Class and you have filed a timely objection, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *In re: Wheaton Franciscan ERISA Litigation*, Case No. 16-cv-04232." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be served on the attorneys listed above, postmarked and mailed or sent via facsimile no later than _____, 2017, and must be filed with the Clerk of the Court, postmarked no later than _____, 2017.

The Fairness Hearing may be delayed by the Court without further notice to the Class. If you wish to attend the Fairness Hearing, you should confirm the date and time with a member of Class Counsel.

IF YOU DO NOTHING

16. What happens if I do nothing at all?

If you do nothing and you are a Class Member, you will participate in the Settlement as described above in this Notice if the Settlement is approved.

GETTING MORE INFORMATION

17. How do I get more information?

This Notice summarizes the proposed Settlement. Full details of the Settlement are set forth in the Settlement Agreement. You may obtain a paper copy of the Settlement Agreement by making a written request to a member of Class Counsel listed above under item 12. Copies of the Settlement Agreement, as well as the motion seeking preliminary approval of the Settlement Agreement, and the Preliminary Approval Order, may also be viewed at www.cohenmilstein.com/wheaton-settlement or www.kellersettlements.com.

DATED

By Order of the Court

Hon. Gary Feinerman
United State District Judge
Northern District of Illinois

Questions? Visit

www.cohenmilstein.com/wheaton-settlement or www.kellersettlements.com

**DO NOT CALL THE COURT
as they cannot answer your questions.**

Exhibit 4

BenefitsLink.com

**IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE WHEATON FRANCISCAN
ERISA LITIGATION

Case No. 16-cv-04232

Honorable Gary Feinerman

[PROPOSED] ORDER AND FINAL JUDGMENT

This litigation involves the claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.* (“ERISA”), set forth in Plaintiffs’ Class Action Complaint dated June 28, 2016, with respect to the Wheaton Franciscan System Retirement Plan (the “Plan”).¹ The Parties entered into a Class Action Settlement Agreement dated September 1, 2017, which was filed on September 1, 2017 (“Settlement” or “Settlement Agreement”).

The Court previously entered an Order Preliminarily Approving the Class Action Settlement Agreement (“Preliminary Approval Order”) dated _____, 2017, preliminarily certifying the putative class in this Action for settlement purposes, ordering a Class Notice to be mailed and published on the internet, scheduling a Fairness Hearing for _____, 2017, at _____ .m., and providing the members of the Settlement Class with an opportunity to object to the proposed settlement.

This Court held a Fairness Hearing on _____, 2017, at _____ .m., to determine whether to give final approval to the proposed settlement.

Due and adequate notice having been given to the Settlement Class as required in the Order, and the Court having considered the Settlement Agreement, all papers filed and

¹ This Final Judgment incorporates by reference the definitions in the Settlement Agreement, and all terms used herein shall have the same meanings as set forth in the Settlement Agreement unless set forth differently herein. The terms of the Settlement are fully incorporated in this Judgment as if set forth fully herein.

proceedings held herein, and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Court has jurisdiction over the subject matter of this Action and all Parties to the Action, including all members of the Settlement Class.

2. The Class this Court previously certified preliminarily in its Preliminary Approval Order is hereby finally certified for settlement purposes under Federal Rule of Civil Procedure 23(b)(1) and/or (b)(2). The Class consists of:

All persons who, as of July 31, 2017, are former and/or current Plan participants, whether vested or non-vested, and their beneficiaries.

3. The Court finds that the Settlement Class meets all requirements of Federal Rules of Civil Procedure 23(a) for certification of the class claims alleged in the Complaint, including (a) numerosity; (b) commonality; (c) typicality; and (d) adequacy of the class representatives and Class Counsel.

4. Additionally, the prerequisites of Rule 23(b)(1) have been satisfied, since the prosecution of separate actions by individual members of the Settlement Class would create a risk of (i) inconsistent or varying adjudication which would establish incompatible standards of conduct for Defendants; and (ii) adjudications with respect to individual Settlement Class members, which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

5. Alternatively, the prerequisites of Rule 23(b)(2) have been satisfied, since Defendants have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole.

6. Pursuant to Federal Rule of Civil Procedure 23(a), the Court finds that Plaintiffs Bruce Bowen, Cheryl Mueller, and Diann Curtis are members of the Settlement Class, their

claims are typical of those of the Settlement Class and they fairly and adequately protected the interests of the Settlement Class throughout the proceedings in this Action. Accordingly, the Court hereby appoints Bruce Bowen, Cheryl Mueller, and Diann Curtis as Settlement Class representatives.

7. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1), the Court finds that Class Counsel have fairly and adequately represented the Settlement Class for purposes of entering into and implementing the Settlement, and thus, hereby appoints Cohen Milstein Sellers & Toll PLLC and Keller Rohrback L.L.P., as Class Counsel to represent the members of the Settlement Class.

8. The appointment of Class Counsel and the appointment of the Named Plaintiffs as Settlement Class representatives are fully and finally confirmed.

9. The Court directed that Class Notice be given pursuant to the Notice Program proposed by the Parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-appointed Notice Program: (1) On or about ____, 2017, Class Counsel posted the Settlement Agreement and long-format Class Notice to the Settlement websites: www.cohenmilstein.com/wheaton-settlement and www.kellersettlements.com; and (2) on or about ____, 2017, the Settlement Administrator, [TBD], mailed approximately ____ copies of the Summary Notice of Class Action Settlement to members of the Settlement Class.

10. The Class Notice advised members of the Settlement Class of: the terms of the Settlement; the Fairness Hearing and the right to appear at such Fairness Hearing; the inability to opt out of the Settlement Class; the right to object to the Settlement, including the right to object to the Settlement or the application for an award of attorneys' fees and reimbursement of expenses; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, on the Settlement Class, including the scope of the Released Claims described in § 3.1 of the Settlement Agreement.

11. The Notice Program met all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, the United States Constitution, 28 U.S.C. § 1715, and any

other applicable law. The Court further finds that the Notice Program approved by the Court complied fully with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”), and that it constituted the best practicable notice under the circumstances. The Court further finds that the form of notice was concise, clear, and in plain, easily understood language, and was reasonably calculated to apprise of the pendency of the Action, the claims, issues and defenses of the Settlement Class, the definition of the Settlement Class certified, the right to object to the proposed Settlement, the right to appear at the Final Fairness Hearing, through counsel if desired, and the binding effect of a judgment on members of the Settlement Class, including the scope of the Released Claims described in § 3.1 of the Settlement Agreement.

12. The Court finds after the Fairness Hearing, and based upon all submissions of the Parties and interested persons, that the Parties’ proposed Settlement is fair, reasonable, and adequate. The Court also finds that the proposed Settlement is consistent with and in compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, and the United States Constitution, and other applicable law. In so finding, the Court has considered and found that:

a) The Settlement provides for significant financial benefit to the Plan and provides substantial financial and procedural protections for payment of Plan benefits to the Settlement Class.

b) The terms and provisions of the Settlement were entered into by experienced counsel and only after extensive, arm’s-length negotiations conducted in good faith and with the assistance of an experienced third party mediator, Mr. Robert A. Meyer, Esq. The Settlement is not the result of collusion.

c) The negotiations were supported by a robust investigation before commencement of the Action; the production and review of confidential documents protected by Fed. R. Evid. 408 during mediation discovery; and the U.S. Supreme Court’s decision on statutory issues in this case. The absence of formal discovery in this case in no way undermines the integrity of the Settlement given the extensive

investigation that has occurred as a result of proceedings thus far.

d) Approval of the Settlement will result in substantial savings of time, money and effort for the Court and the Parties, and will further the interests of justice. Defendants denied and continue to deny Plaintiffs' claims and allegations, and raised various factual and legal arguments in support of their vigorous defense in this Action.

Accordingly, the Settlement shall be and it hereby is approved.

13. All members of the Settlement Class are bound by this Judgment and by the terms of the Settlement, including the scope of the Released Claims described in § 3.1 of the Settlement Agreement.

14. This Settlement, this Judgment, and/or the fact of Settlement do not constitute an admission by any of the Parties of any liability, wrongdoing, or violation of law, damages or lack thereof, or of the validity or invalidity of any claim or defense asserted in the Action. If the Settlement Agreement is not upheld on appeal, or is otherwise terminated for any reason, the Settlement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission by any party of any fact, matter, or position of law; and all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

15. "Releasees" shall mean all Defendants, and any and all entities that are a part of and/or affiliated with Wheaton Franciscan Services, Inc. or Ascension Health Alliance (including but not limited to any current or former direct or indirect parent or subsidiary corporations), and/or their employees, agents, directors, members, and insurers, including the individual defendants.

16. "Released Claims" shall mean any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, expenses and costs arising out

of the allegations of the Complaint, or otherwise, in connection with the sponsorship, funding, maintenance, operation or termination of, or distributions from, the Plan, that were brought or could have been brought under federal law or state law as of the date of the Settlement Agreement by any member of the Settlement Class, including any current or prospective challenge to the “church plan” status of the Plan.

17. Released Claims shall not include the release of any obligation under the Settlement Agreement, individual claims for relief seeking benefits under state law under the Plan document, claims related to any other plan that is merged or consolidated with the Wheaton Franciscan System Retirement Plan after August 11, 2017, or any prospective claim arising under ERISA with respect to any event occurring after: the Internal Revenue Service issues a written ruling that the Plan does not qualify as a church plan; pursuant to IRC § 410(d), an election is made on behalf of the Plan resulting in the Plan’s coverage by the ERISA provisions specified in IRC § 410(d); the Roman Catholic Church disassociates itself from the Plan’s Sponsor; or an amendment to ERISA is enacted and becomes effective as a law of the United States eliminating the Church Plan exemption.

18. It is further ordered that as of the Effective Date of the Settlement Agreement Plaintiffs on behalf of themselves and on behalf of the Settlement Class absolutely and unconditionally release and forever discharge the Releasees from any and all Released Claims that the Plaintiffs or the Settlement Class have, as defined in the Settlement Agreement. The Settlement Class covenants and agrees: (i) not to file against any of the Releasees any claim based on, related to, or arising from any Released Claim; and (ii) that the foregoing covenants and agreements shall be a complete defense to any such claim against any Releasee.

19. It is further ordered that as of the Effective Date of the Settlement Agreement, Defendants absolutely and unconditionally release and forever discharge the Plaintiffs, the Settlement Class, and Class Counsel from any and all claims relating to the institution or prosecution of the Action.

20. It is further ordered that as of the Effective Date of the Settlement Agreement, each of the Releasees also releases each of the other Releasees from any and all Claims which were asserted in the Complaint or any pleading which would have been required to be filed in the Action or that would be barred by principles of res judicata or collateral estoppel had the claims asserted in the Complaint or any such other pleading in the Action been fully litigated and resulted in a Final judgment or order.

21. Class Counsel is hereby awarded attorneys' fees pursuant to Federal Rule of Civil Procedure 23(h), in the amount of \$_____ which the Court finds to be fair and reasonable, and \$_____ in reimbursement of Class Counsel's reasonable expenses incurred in prosecuting the Action. The attorneys' fees and expenses so awarded shall be paid by Defendants, pursuant to the terms of the Settlement Agreement. All fees and expenses paid to Class Counsel shall be paid pursuant to the timing requirements described in the Settlement Agreement.

22. Named Plaintiffs Bruce Bowen, Cheryl Mueller, and Diann Curtis are hereby awarded Incentive Payment Awards in the amount of \$_____ each, which the Court finds to be fair and reasonable. The Incentive Payment Awards shall be paid by Defendants pursuant to the terms of the Settlement Agreement.

23. The Court retains jurisdiction over the implementation, administration and enforcement of this Judgment and the Settlement, and all matters ancillary thereto.

24. The Court hereby dismisses with prejudice the Action and all Released Claims identified in § 3.1 of the Settlement against each and all Released Parties and without costs to any of the Parties as against the others, except to the extent any costs are included in the Court's award of expenses in paragraph 21 hereof.

25. The Court finds that no reason exists for delay in ordering final judgment, and the Clerk is hereby directed to enter this Judgment forthwith.

DATED this ____ day of _____, 2017.

Judge Gary Feinerman
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF ILLINOIS

**IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE WHEATON FRANCISCAN
FRANCISCAN ERISA LITIGATION

Case No. 16-cv-04232

Honorable Gary Feinerman

**DECLARATION OF JULIE GOLDSMITH REISER IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT**

I, Julie Goldsmith Reiser, declare under penalty of perjury under the laws of the United States of America:

1. I am a Partner with the law firm of Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") and a member in good standing of the bar of the District of Columbia. I represent Plaintiffs¹ and the proposed Settlement Class in the above-captioned action. I have personal knowledge of the facts set forth below and, if called as witness, I could and would testify competently thereto.

2. On January 4, 2017, this Court stayed the above-captioned case pending the Supreme Court's resolution of *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017), concerning an issue that was also raised in this case.

3. During this stay, the parties began engaging in settlement negotiations, and attended an initial in-person mediation session on February 9, 2017.

4. The Settlement negotiations were extensive and took place over the course of several months. These negotiations were overseen by a third-party JAMS mediator, Robert A.

¹ Capitalized terms not otherwise defined in this Declaration shall have the same meaning ascribed to them in the Class Action Settlement Agreement. A copy of the Settlement Agreement is attached as Exhibit 1 to Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement Agreement ("Preliminary Approval Motion").

Meyer, Esq. Mr. Meyer has substantial experience mediating cases involving ERISA and retirement plan issues, including cases involving the church plan exemption.

5. The settlement negotiations included two in-person mediation sessions in Los Angeles, California, as well as numerous calls and meetings. Both Class Counsel and Defendants' Counsel provided the mediator with their respective confidential mediation statements and also exchanged multiple proposals and counter-proposals with each other concerning potential settlement terms. The mediator was in constant contact with the parties both orally and in writing.

6. Although the matter was not resolved at the February 9, 2017 mediation, the parties made progress and agreed to continue pursuing a settlement agreement. During the stay, the parties remained actively engaged in settlement negotiations and organized a second in-person meeting with Mr. Meyer.

7. During the course of the parties' negotiations, Class Counsel worked with the Named Plaintiffs to investigate the facts, circumstances, and legal issues associated with the allegations and defenses in the action. This investigation included, *inter alia*: (a) inspecting, reviewing, and analyzing documents produced by or otherwise relating to Defendants, the Plan, and the administration and funding of the Plan; (b) researching the applicable law with respect to the claims asserted in this case and the possible defenses thereto; and (c) researching and analyzing governmental and other publicly-available sources concerning Defendants, the Plan, and the industry.

8. Throughout the course of the litigation and during parties' negotiations, the Named Plaintiffs collected and produced documents, reviewed and approved the Complaint and other major filings, maintained regular contact with Class Counsel, stayed abreast of settlement

negotiations, and advised on the settlement of this litigation.

9. On June 5, 2017, the Supreme Court issued its opinion in *Advocate Health Care*, holding that pension plans need not be established by churches in order to qualify as ERISA-exempt church plans, if they otherwise meet the requirements to be church plans.

10. On June 22, 2017, the Court granted the parties' request to postpone an upcoming status conference so that the parties could attend a second mediation session on June 27, 2017.

11. Following this second mediation session, with Mr. Meyer's assistance and after considering all relevant factors, the parties reached an agreement in principle to settle the case. On August 11, 2017, the parties signed a Term Sheet containing the preliminary terms resolving this matter.

12. The Settlement Agreement now before the Court, Exhibit 1 to Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement Agreement, is a comprehensive agreement based on the Term Sheet. It was executed by all parties on September 1, 2017. The Settlement is the result of lengthy arm's-length negotiations between the parties. The process was thorough, adversarial, and professional.

13. The two law firms appointed as Interim Co-Lead Class Counsel and representing the Plaintiffs and proposed Settlement Class in this case—Cohen Milstein and Keller Rohrback, L.L.P. ("Keller Rohrback")—are well-versed in class action litigation, are among the leading litigators of ERISA actions on behalf of plaintiffs, possess specific and extensive experience litigating the ERISA "church plan" exemption, and have in-depth knowledge of the unique legal and factual issues in this case.

14. Cohen Milstein and Keller Rohrback have been litigating church plan cases since 2010. See *Thorkelson v. Publ'g House of the Evangelical Lutheran Church in Am.*, No. 10-1712

(D. Minn. filed Apr. 21, 2010).

15. Cohen Milstein and Keller Rohrback served as co-lead counsel in *Advocate Health Care Network v. Stapleton*, the Supreme Court case mentioned in paragraph 2 above.

16. In addition to *Advocate Health Care*, Cohen Milstein and Keller Rohrback serve, or have served, as co-counsel in roughly 20 cases pending across the country involving claims by other hospital systems that their plans qualify as “church plans.”

17. A true and correct copy of the firm resume detailing the experience of Cohen Milstein in ERISA cases and church plan cases is attached hereto as Exhibit A.

18. A true and correct copy of the firm resume detailing the experience of Keller Rohrback in ERISA cases and church plan cases is attached hereto as Exhibit B.

19. Based on their experience, and the facts of this case, and the Supreme Court’s ruling in *Advocate Health Care*, Class Counsel have concluded that the Settlement is fair, reasonable, and adequate.

20. A draft of the [Proposed] Order and Final Judgment for this case is attached to the Memorandum in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of the Settlement Agreement as Exhibit 4.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of September, 2017, in Washington, D.C.

By: s/ Julie Goldsmith Reiser
Julie Goldsmith Reiser

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on September 1, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Julia Horwitz

EXHIBIT A

COHENMILSTEIN

COHENMILSTEIN

COHEN MILSTEIN SELLERS & TOLL PLLC

For decades, Cohen Milstein Sellers & Toll PLLC has represented individuals, small businesses, institutional investors, and employees in many of the major class action cases litigated in the United States for violations of the antitrust, securities, consumer protection, civil rights/discrimination, ERISA, employment, and human rights laws. Cohen Milstein is also at the forefront of numerous innovative legal actions that are expanding the quality and availability of legal recourse for aggrieved individuals and businesses both domestic and international. Over its history, Cohen Milstein has obtained many landmark judgments and settlements for individuals and businesses in the United States and abroad.

COHEN MILSTEIN'S EMPLOYEE BENEFITS PRACTICE

The Employee Retirement Income Security Act ("ERISA") governs the conduct of private (non-governmental) employers who sponsor employee benefit plans and persons who manage those plans and control their assets. ERISA imposes duties on persons influencing or controlling plan investments, sets minimum standards in the design of certain employee benefit plans, makes enforceable benefit promises made by employers (including those made through the purchase of insurance) and makes enforceable the standards of conduct and plan design imposed by ERISA itself. Persons involved in the management of plans and the control of their assets, often including the employer or designated corporate officers must act in the best interest of the employees covered by the plan and their beneficiaries, not in the interest of the employer, with respect to managing the retirement or other benefit plan. ERISA Plans include traditional pension plans, 401(k) plans, employee stock ownership plans ("ESOPs"), health and other employee benefits.

Cohen Milstein's Employee Benefits Appellate Practice is dedicated to representing participants, beneficiaries or entities representing the interests of employees, retirees, plan participants or beneficiaries in ERISA cases on appeal. In the appropriate case, Cohen Milstein is willing to engage in appellate representation on a contingency fee basis or engage in representation on a deferred payment arrangement.

The following cases are a representative sample of the types of cases litigated by Cohen Milstein's Employee Benefits practice group:

PENSION PLANS

- New York Life - The Firm represented a class of current and former employees of the New York Life Insurance Company alleging that New York Life violated ERISA and RICO by engaging in self-dealing and investing the assets of the pension and 401(k) plans of its employees and agents in New York Life's own inappropriate and underperforming retail mutual funds.
- SBC Communications - The Firm represented employees who received an early retirement window pension and alleges that SBC violated ERISA by miscalculating the pension benefits for thousands of employees.
- Fujitsu - The Firm represented former employees of Fujitsu of America or its subsidiaries who were laid off with more than three years of service alleging that Fujitsu violated ERISA by adopting a plan

provision changing the plan's vesting schedule in violation of a provision of ERISA that prohibits the involuntary application of such changes to employees with more than three years of service under the plan.

401(K) RETIREMENT PLANS

Building on Cohen Milstein's extensive experience of the Securities Fraud/Investor Protection practice area, the firm also represents employees who purchased overvalued employer stock through employer-sponsored 401(k) retirement plans. In these cases, the firm represents employees alleging breach of fiduciary duties in order to hold employers and the plan fiduciaries accountable for misrepresentations which artificially inflated the value of the employer stock purchased through their 401(k) plans. While these employees may also have claims under the securities fraud laws, ERISA provides employees with significant additional rights and remedies to recover losses in employer stock lost through a 401(k) retirement plan.

EMPLOYEE STOCK OWNERSHIP PLANS (ESOPS)

- Azon Corporation Employee Stock Ownership Plan - The Firm represented a class of current and former employees of Azon alleging breach of fiduciary duties against the Trustee, HSBC Bank, and other fiduciaries who permitted insiders at the company to sell their holdings in the Company for more than fair market value. Since and as a result of this transaction, Azon has gone bankrupt and the assets of the Azon ESOP have become worthless.
- Tharaldson Motels Inc. Employee Stock Ownership Plan - The Firm represents former employees of Tharaldson alleging breach of fiduciary duties against the Trustee, Gary Tharaldson, and other fiduciaries who permitted Gary Tharaldson and his family to sell their stock in the Company for more than fair market value in two self-dealing transactions which were designed primarily for the benefit of Gary Tharaldson and his family and not the employees of the Company who participated in the Plan.

OTHER EMPLOYEE BENEFITS

- FFIC - The Firm represented a class of disabled now former Fireman's Fund employees who were terminated as a result of the adoption of a policy by Fireman's Fund Insurance Company to terminate the employment status of disabled employees who are unable to return to work.
- ILGWU - The Firm represents a class of retired members of the ILGWU who are challenging the transfer of ILGWU Death Benefit Fund assets to the ILGWU in violation of the terms of the Plan term.
- BellSouth - The Firm represents a class of retirees against BellSouth Corporation and AT&T Inc. regarding the BellSouth Telephone Concession promised to employees after they retire or provided to retirees living outside of an area served by BellSouth ("Out-of-Area Telephone Concession").
-

AMICUS AND OTHER ERISA ADVICE

Cohen Milstein's Employee Benefits practice group has represented entities as amicus and provided advice on ERISA issues. For example, we have represented the following entities in filing amicus briefs:

- The Pension Rights Center as amicus curiae before the United States Supreme Court supporting the petitioners on the merits in *Tibble v. Edison International*, No. 13-550 (filed Dec. 9, 2014), arguing that 401(k) plan fiduciaries must monitor the fees charged by plan investments on a periodic basis, and that

participants can sue to require fiduciaries to replace overpriced investment options in 401(k) plans more than six years after the investment options were initially added to the plan.

- National Association of Insurance Commissioners as amicus before the United States Supreme Court in *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355 (2002) a case involving the scope of ERISA preemption of state insurance laws. See Brief of the National Association of Insurance Commissioners As Amicus Curiae In Support of Respondents, 2001 WL 1673395 (filed Nov. 7, 2001).
- The Pension Rights Center as amicus before the United States Supreme Court supporting certiorari in *Harley v. 3M Company*, 537 U.S. 1106 (2003) involving the issue of whether plan participants may sue to recover losses to overfunded defined benefit plans caused by a breach of fiduciary duty. See Brief of the Pension Rights Center as Amicus Curiae in Support of Petitioners, 2002 WL 32133446 (filed Nov. 14, 2002).
- The Firm has also served as counsel for Independent Fiduciaries in connection with the evaluation of proposed settlements of litigation involving pension plans.

In addition the Firm has provided advice to the AFL-CIO in connection with ERISA preemption issues raised by state health care legislation, provided expert services on ERISA legal issues, and provided representation to a Trust Fund investigating claims for fiduciary breaches by its service providers.

Some of the firm's most recent significant ERISA cases include:

- Improperly Classified "Church Plan" Litigation. Cohen Milstein has taken a groundbreaking approach to complaints of hospitals with church affiliations violating the Employee Retirement Income Security Act. The U.S. Supreme Court said in December that it will review appellate decisions the firm has won in the Third, Seventh and Ninth Circuits against New Jersey's Saint Peter's Healthcare System, Illinois-based Advocate Healthcare Network and Dignity Health in California that found their retirement plans cannot be exempted from ERISA requirements as "church plans" under the law. In the Dignity Health case, the putative class claims that the nonprofit hospital chain underfunded its retirement plans by more than \$1.2 billion and failed to provide proper notification to class members or the secretary of labor.
- Jeld-Wen Employee Stock Ownership & Retirement Plan Litigation (No. 1:12-cv-1207, United States District Court District of Oregon). The Settlement required Defendants and JELD-WEN to provide both monetary and non-monetary relief to Class Members. The monetary relief required Defendants to pay \$15.5 million to the Class which was distributed to class members through their JELD-WEN ESOP account.
- Severstal Wheeling, Inc. Retirement Plan Litigation (No. 15-2725, United States Court of Appeals for the Second Circuit). A bench trial was held before the Honorable Laura Taylor Swain from July 8th through July 22, 2014. The Court issued a trial decision on August 10, 2015 finding that Defendants breached their fiduciary duties to the two Severstal Plans while they served as investment manager for those Plans in 2008 and until May 19, 2009 and entered judgment of more than \$15 million in favor of Plaintiffs. The district court decision was affirmed by the Circuit Court on August 30, 2016.
- In re Beacon Associates Litigation (No. 09-cv-0777, United States District Court for the Southern District of New York). Class action settlement of \$219 million for trustees and participants in ERISA-covered employee benefit plans whose assets were lost through investments made on their behalf by Beacon Associates LLC I & II in the investment schemes of Bernard Madoff.
- Tuten v. United Airlines, Inc. (No. 1:12-cv-01561, United States District Court for the District of Colorado). This case his lawsuit alleged that United Airlines, Inc. failed to make contributions to its pilots' accounts into the United pension plan for periods of military leave based on each pilot's 12-

month average earnings before the period of military leave, as required by USERRA. A settlement with United Airlines, Inc. which required payment of \$6.15 million plus non-monetary prospective relief was reached on August 14, 2013.

Cohen Milstein's Awards & Recognition

In 2017, Law360 selects Cohen Milstein as a Competition Practice Group of the Year and a Class Action Practice Group of the Year.

In 2016, Law360 Names Cohen Milstein's Richard A. Koffman a Competition Law MVP.

In 2016, Cohen Milstein Partner Martha Geer was selected as a 2016 North Carolina Leaders in the Law Honoree.

In 2016, the Washington Lawyers' Committee for Civil Rights and Urban Affairs named Cohen Milstein Sellers & Toll a recipient of its 2016 Outstanding Achievement Award.

In 2016, for the eighth consecutive year, Cohen Milstein was recognized by The Legal 500 as one of the leading plaintiff class action antitrust firms in the United States.

In 2016, Agnieszka Fryszman, Joel Laitman, Chris Lometti, Kit Pierson, Joe Sellers and Steve Toll were named to the 2016 Lawdragon 500 Leading Lawyers in America. As one of the most elite distinctions in the legal profession, the annual Lawdragon 500 recognizes the 'best of the best' of the 1.2 million members of the U.S. legal profession.

In 2016, Law360 named Cohen Milstein Partner Julie Goldsmith Reiser one of the 25 Most Influential Women in Securities Law.

In 2016, Cohen Milstein is named to the National Law Journal's "Plaintiffs Hot List" for the fifth time in six years.

In 2016, Law360 names Cohen Milstein as one of the top firms for female attorneys.

In 2015, Law360 selects Cohen Milstein as the sole plaintiff firm to be selected in two "Practice Groups of the Year" categories and one of only five class action firms recognized.

In 2015, Cohen Milstein was named an Elite Trial Lawyer Firm by the National Law Journal for the second year in a row.

In 2015, Cohen Milstein Partner Steven J. Toll named a Law360 MVP in Securities Law.

In 2015, Cohen Milstein is selected as a "Most Feared Plaintiffs Firm" by Law360 for the third year in a row.

In 2015, Partner Richard Koffman was named, for the fifth consecutive year, in the Legal 500 United States "Leading Lawyers" list under the category of "Litigation - Mass Tort and Class Action: Plaintiff Representation - Antitrust".

In 2015, Cohen Milstein Attorney Jeffrey Dubner was named a National Law Journal D.C. Rising Star.

In 2015, five Cohen Milstein Attorneys were named to the 2016 The Best Lawyers in America® list.

In 2015, Cohen Milstein's Denver office was named "Antitrust Law Firm of the Year – Colorado" by Global Law Experts.

In 2015, Partners Theodore J. Leopold and Leslie M. Kroeger and Of Counsel Attorney Stephan A. LeClainche were selected to the 2015 Florida Super Lawyers list and Adam J. Langino was selected to the Florida Rising Stars list.

In 2015, Cohen Milstein attorneys R. Joseph Barton, Andrew Friedman, Agnieszka Fryszman, Karen Handorf, Kit A. Pierson, Julie Reiser, Joseph M. Sellers, Daniel A. Small, Daniel S. Sommers, Steven J. Toll and Christine E. Webber were selected as Washington DC Super Lawyers.

In 2015, Cohen Milstein attorneys Laura Alexander, Monya Bunch, S. Douglas Bunch, Joshua S. Devore, Jeffrey Dubner, Johanna Hickman, Kalpana Kotagal, Emmy Levens, and David Young were selected as Washington DC Rising Stars by Super Lawyers.

In 2015, for the fourth time in five years, Cohen Milstein was selected to the *National Law Journal* **Plaintiffs' Hot List**

In 2015, Cohen Milstein Partner Carol V. Gilden was selected as "Pension Funds Litigation Attorney of the Year in Illinois" for the second year in a row by the Corporate INTL Legal Awards.

In 2014, Cohen Milstein's Antitrust Practice was selected as a Practice Group of the Year by Law360.

In 2014, Cohen Milstein Partner Kit Pierson was selected as an MVP by Law360.

In 2014, Cohen Milstein was named a "**Most Feared Plaintiffs Firm**" by Law360 for the second year in a row.

In 2014, Cohen Milstein was selected as an **Elite Trial Lawyer** firm by the National Law Journal.

Cohen Milstein Partners Steven J. Toll, Joseph M. Sellers, Kit A. Pierson, and Agnieszka M. Fryszman Selected to the **2014 Lawdragon 500**.

Joseph M. Sellers, Theodore J. Leopold, and Leslie M. Kroeger Make "**Best Lawyers**" List" for 2015.

Released in 2014, the 2013 SCAS 50 Report on Total Securities Class Action Settlements once again ranked Cohen Milstein as a top firm.

In 2014, Theodore J. Leopold, a partner at Cohen Milstein, was been selected to the Top 100 Miami Florida Super Lawyers list. Partner Leslie M. Kroeger was selected to the **2014 Florida Super Lawyers** list and Diana L. Martin was selected to the **Florida Rising Stars** list.

In 2014, Cohen Milstein attorneys Leslie M. Kroeger and Adam J. Langino were both recognized in the 2014 edition of **Florida Trend's Florida Legal Elite™**. Kroeger is recognized as Legal Elite and Langino is listed as an Up-and-Comer.

In 2014, Cohen Milstein was selected to the selected to the **National Law Journal's Midsize Hot List**.

In 2014, Cohen Milstein was recognized as a "**Highly Recommended Washington, DC Litigation Firm**" by Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Firms and Attorneys.

In 2014, Cohen Milstein was ranked as a **Leading Plaintiff Class Action Antitrust Firm in the United States by the Legal 500** for the sixth year in a row.

In 2014, Partner Richard Koffman was named, for the fourth consecutive year, in the Legal 500 United States "**Leading Lawyers**" list under the category of "Litigation - Mass Tort and Class Action: Plaintiff Representation - Antitrust".

In 2014, Cohen Milstein attorneys Christopher Cormier, Agnieszka Fryszman, Julie Goldsmith Reiser, Joseph Sellers, Daniel Sommers, and Steven Toll were recognized as **Local Litigation Stars** by Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Firms and Attorneys.

In 2014, Cohen Milstein attorneys R. Joseph Barton, Andrew Friedman, Agnieszka Fryszman, Karen Handorf, Kit A. Pierson, Julie Reiser, Joseph M. Sellers, Daniel A. Small, Daniel S. Sommers, Steven J. Toll and Christine E. Webber were selected as **Washington DC Super Lawyers**.

In 2014, Cohen Milstein attorneys Laura Alexander, Monya Bunch, S. Douglas Bunch, Joshua S. Devore, Jeffrey Dubner, Johanna Hickman, Joshua Kolsky, Kalpana Kotagal, Emmy Levens, Michelle Yau and David Young were selected as **Washington DC Rising Stars** by Super Lawyers.

In 2014, Cohen Milstein Partner Carol V. Gilden was selected as the Illinois Pension Fund Attorney of the Year.

In 2014, Best Lawyers named Cohen Milstein Partner Joseph Sellers D.C. Litigation - Labor & Employment Lawyer of the Year.

In 2013, for the third-year in a row, Cohen Milstein was selected to the *National Law Journal* **Plaintiffs' Hot List**.

In 2013, Cohen Milstein was named a "**Most Feared Plaintiffs Firm**" by Law360.

In 2013, Cohen Milstein was ranked as a Leading Plaintiff Class Action Antitrust Firm in the United States by the Legal 500 for the fifth year in a row.

In 2013, Cohen Milstein attorneys Joseph Barton, Andrew Friedman, Agnieszka Fryszman, Karen Handorf, Kit A. Pierson, Julie G. Reiser, Joseph M. Sellers, Daniel A. Small, Daniel S. Sommers, Steven J. Toll, and Christine E. Webber were selected as **Washington DC Super Lawyers**.

In 2013, Cohen Milstein attorneys Joshua Devore and Michelle Yau were selected as **Washington DC Rising Stars** by Super Lawyers.

In 2013, Cohen Milstein Partner Carol V. Gilden was selected as a **2013 Illinois Super Lawyer**. She has been selected every year since 2005.

In 2012, for the second-year in a row, Cohen Milstein was selected to the *National Law Journal* **Plaintiffs' Hot List**.

In 2012, Cohen Milstein was the recipient of the Judith M. Conti Pro Bono Law Firm of the Year Award from the Employment Justice Center.

In 2012, Cohen Milstein was recognized as a "Highly Recommended Washington, DC Litigation Firm" by Benchmark Plaintiff: The Definitive Guide to America's Leading Plaintiff Firms and Attorneys.

In 2012, Cohen Milstein was ranked as a top firm by the 2011 SCAS Report on Total Securities Class Action Settlements.

In 2012, Cohen Milstein was ranked as a Leading Plaintiff Class Action Antitrust Firm in the United States by the Legal 500 for the fourth year in a row.

In 2012, Partner Joseph M. Sellers was selected as a **Washington DC Super Lawyer**. Mr. Sellers was also selected for this prestigious award in 2007, 2008, 2009, 2010, and 2012.

In 2012, Partner Steven J. Toll was selected as a **Washington DC Super Lawyer**. Mr. Toll was also selected for this prestigious award in 2007, 2009, 2010, and 2011.

In 2012, Partner Daniel S. Sommers was selected as a **Washington DC Super Lawyer**. Mr. Sommers was also selected for this prestigious award in 2011.

In 2012, Partner Christine E. Webber was selected as a **Washington DC Super Lawyer**. Ms. Webber was also selected for this prestigious award in 2007.

In 2012, Partner Agnieszka M. Fryszman was selected as a **Washington DC Super Lawyer**.

In 2012, Partner Kit A. Pierson was selected as a **Washington DC Super Lawyer**.

In 2012, Partner Carol V. Gilden was selected as an **Illinois Super Lawyer**. Ms. Gilden was also selected for this prestigious award in 2005, 2006, 2007, 2008, 2009, 2010, and 2011.

In 2011, Cohen Milstein was selected to the *National Law Journal* **Plaintiffs' Hot List**.

In 2011, Partner Joseph M. Sellers was selected as a "**Visionary**" by *The National Law Journal*.

In 2011, Partner J. Douglas Richards, Of Counsel Joel Laitman, and Of Counsel Christopher Lometti were selected as **New York - Metro Super Lawyers**.

In 2011, Partner Joseph M. Sellers and the *Keepseagle v. Vilsack* team were selected as a finalist for the **2011 Trial Lawyer of the Year Award** from the Public Justice Foundation.

In 2011, **Cohen Milstein was ranked as a Leading Plaintiff Class Action Antitrust Firm in the United States** by the Legal 500 for the third year in a row.

In 2011, Partners Steven Toll, Joseph Sellers, and Daniel Sommers were selected as **Washington DC Super Lawyers**. Partner J. Douglas Richards, Of Counsel Joel Laitman and Christopher Lometti were selected as **New York - Metro Super Lawyers**. Partner Carol Gilden was selected as an **Illinois Super Lawyer**.

In 2011, Cohen Milstein was a recipient of *The National Law Journal's Pro Bono Award*. The Firm was named one of the "six firms that best reflect the pro bono tradition."

In 2010, Partner Joseph M. Sellers was selected as one of "**The Decade's Most Influential Lawyers**" by *The National Law Journal*.

In 2010, Partner Steven J. Toll was named one of Law360's "**Most Admired Attorneys**".

In 2010, Partner Andrew N. Friedman was selected as a **Washington DC Super Lawyer**.

In 2010, Partner Agnieszka M. Fryszman was selected as a finalist for the **Trial Lawyer of the Year Award** from the Public Justice Foundation.

In 2010, Partners Joseph M. Sellers and Agnieszka M. Fryszman were both selected as one of the **Lawdragon 500 Leading Lawyers in America**.

In 2010, Cohen Milstein was once again ranked as a **Leading Plaintiff Class Action Antitrust Firm in the United States** by the Legal 500.

In 2009, Partner Steven J. Toll was named a **Top Attorney in Corporate Litigation for Securities Litigation** by Super Lawyers.

In 2009, Partners Joseph M. Sellers and Christine E. Webber were named as **Top Washington Lawyers** by the Washingtonian Magazine.

In 2009, Cohen Milstein was recognized as **one of the top 50 law offices in Washington D.C. for diversity efforts**.

In 2009, Cohen Milstein was nominated for the prestigious **Class Action Law Firm of the Year** award by Global Pensions magazine for the third year in a row.

Cohen Milstein ranked as a **2009 Leading Plaintiff Class Action Antitrust Firm in the United States** by *The Legal500*.

The **2008 SCAS Report on Total Securities Class Action Settlements** ranked Cohen Milstein as a top firm for the second year in a row.

In 2008, Cohen Milstein was nominated for the prestigious **Class Action Law Firm of the Year** award by Global Pensions magazine for the second year in a row.

In 2008, Managing Partner Steven J. Toll was named one of Lawdragon's **100 Lawyers You Need to Know in Securities Litigation**.

Attorney Profiles – Partners

Karen L. Handorf

Karen L. Handorf is a Partner at Cohen Milstein, and chair of the Firm's Employee Benefits (ERISA) Practice Group. She joined the Firm in 2007, following a distinguished career in government service, litigating ERISA cases in federal appellate and district courts. In her role as head of the Employee Benefits Practice, Ms. Handorf represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases in the district courts and on appeal.

Ms. Handorf is involved in litigation and appeals involving a broad range of employee benefits issues including church plans. In *Kaplan v. St. Peter's Healthcare System*, she represents a class of 2,800 participants in an alleged church plan, a case in which the Court of Appeals upheld the rights of St. Peter's pension fund participants to a fully funded pension plan. In addition, she currently leads a team of litigators in a series of church plan lawsuits alleging that health care systems wrongfully claim their benefit plans are exempt from ERISA's protection. Ms. Handorf is overseeing and developing these cases.

Prior to joining Cohen Milstein, Ms. Handorf was an attorney for the U.S. Department of Labor (DOL), where she litigated ERISA cases in federal appellate and district courts for 25 years. While at the DOL, she played a major role in formulating the Government's position on ERISA issues expressed in amicus briefs filed by the Solicitor General in the United States Supreme Court.

She began her ERISA career as a trial attorney in the Plan Benefits Security Division (PBSD), where she litigated actions brought by the Secretary of Labor for violations of the fiduciary standards of ERISA and handled appellate matters. In 1989, she was appointed Counsel for Decentralized and Special Litigation responsible for supervising the DOL's ERISA appellate litigation, district court litigation brought by regional offices of the Solicitor of Labor and administrative litigation involving the civil penalty provisions of ERISA. At the DOL, Ms. Handorf established and supervised PBSD's amicus brief writing program, which addressed a wide range of novel and difficult ERISA issues in both state and federal court. In 2001, she was appointed Deputy Associate Solicitor of PBSD. As the Deputy Associate Solicitor, she was responsible for overseeing litigation brought by the Secretary of Labor and legal advice provided to the Employee Benefit Security Administration, which administers Title I of ERISA. In 2005, she returned to her position as supervisor of the ERISA appellate and amicus brief writing program, serving as Counsel for Appellate and Special Litigation.

Currently, Ms. Handorf is litigating a series of church plan cases, including:

- Saint Peter's Healthcare System Church Plan Litigation: Cohen Milstein is co-lead counsel in *Kaplan v. St. Peter's Healthcare System* alleging that the defendants wrongfully claim their pension plan is exempt from ERISA protection. Ms. Handorf argued the case before the U.S. Court of Appeals for the Third Circuit, which unanimously ruled that St. Peter's pension plan does not qualify as a "church plan." The Third Circuit further noted that as of 2012, religiously affiliated hospitals accounted for seven of the nation's 10 largest nonprofit healthcare systems and that to construe the church plan exemption to apply to such hospitals would defeat the purpose of ERISA. The ruling is likely to set the tone for other church plan litigation.

Her past successes include:

- Goodyear Litigation: Ms. Handorf represented a class of 30,000 Goodyear union retirees in Redington v. Goodyear (N.D. Ohio), in which Cohen Milstein obtained approval of a class action settlement between the retirees, Goodyear and the United Steel Workers, resulting in the establishment of a \$1 billion trust through which retiree health care benefits will be provided in the future.

Ms. Handorf is a recipient of the Department of Labor Distinguished Career Service Award, and received Exceptional Achievement Awards for her work on ERISA 401(k) plan remedies, the amicus brief in the Enron litigation, retiree health care, the amicus program in general, the appellate brief in the Department's Tower litigation, termination annuities litigation and multiple employer welfare arrangement (MEWAs) litigation.

Ms. Handorf has been recognized for her expertise by her colleagues in the ERISA bar, who named her a Fellow of the American College of Employee Benefits Counsel. She is a frequent speaker on ERISA issues for the ABA, various bar associations and private seminars, and serves as plaintiffs' co-chair of preemption subcommittee of the Employee Benefits Committee of the ABA's Labor Section. In 2016, she was named to the *Best Lawyers in America*.

Ms. Handorf attended the University of Wisconsin-River Falls, where she received a B.S. in Speech and History, and earned her law degree from the University of Wisconsin Law School.

Carol V. Gilden

Carol V. Gilden is a Partner in the Securities Litigation & Investor Protection Practice Group at Cohen Milstein. She represents public pension funds, Taft-Hartley pension and health and welfare funds, and other institutional investors in securities class actions, transaction and derivative litigation, and individual actions, as well as in foreign securities litigation. She also litigates other types of complex litigation matters and class action cases in state and federal courts nationwide.

Ms. Gilden began her career at the Securities and Exchange Commission (SEC), in the Enforcement Division, spending five years investigating and litigating cases involving securities fraud. Prior to joining Cohen Milstein in 2007, Ms. Gilden served as the head of the securities class action practice at a prominent mid-sized Chicago law firm and the vice chair of its class action department. Ms. Gilden's guiding principle is that those who commit fraud on the financial markets should be held accountable. She is a strong advocate for investors and pension funds who have been defrauded by deceptive practices that permeate the financial markets. Her special focus is on complex litigation calling for strategic thinking, tenacity and the ability to persevere through the many stages of litigation. Over the course of her 30-year career in the profession, she has successfully litigated and worked on cases that have resulted in aggregate recoveries in excess of several billion dollars for investors.

Ms. Gilden is an accomplished litigator, with extensive experience handling all phases in a case, including investigative, motion practice (lead plaintiff motions, motions to dismiss, class certification and summary judgment), discovery (fact and expert), oral argument, appeal, and settlement negotiations. She has been lead and co-lead counsel in many notable matters, including the *MF Global* litigation (\$90 million settlement), a precedent-setting case in which the U.S. Court of Appeals for the Second Circuit sided with the plaintiffs and held that companies cannot make false or misleading statements in their offering documents, and then hide behind risk disclosures related to those facts in their attempt to escape liability. *The National Law Journal* singled out Ms. Gilden's work on the case in connection with its selection of Cohen Milstein as a Hot Plaintiffs' Firm for that year.

Another notable case in which Ms. Gilden served as lead counsel, the *IntraLinks* Litigation, was one of the first securities class actions to be certified following the Supreme Court's decision in *Halliburton II*. That case was successfully resolved for \$14 million. Other recent cases that she has led and which have been successfully resolved, include the *Huron Securities* Litigation (\$40 million settlement), the *ITT Securities Litigation* (\$16.96 million settlement) and *In re RehabCare Group, Inc. Shareholders Litigation*, where Ms. Gilden was co-lead counsel and settled the case for a cash payment to shareholders and significant deal reforms including enhanced disclosures and an amended merger agreement.

Ms. Gilden has been on the Executive Committee of other high-profile cases, including the *Global Crossing Securities Litigation* (settlements of \$448 million) and the *Merrill Lynch Analyst* cases (\$125 million settlement), as well as on the litigation team of the *Waste Management Litigation* (\$220 million settlement). Under her leadership, her former firm was an active member of the litigation teams in the *AOL Time Warner Securities litigation* (\$2.5 billion settlement), *CMS Securities Litigation* (\$200 million settlement) and the *Salomon Analyst Litigation/In re AT&T* (\$75 million settlement). Further, Ms. Gilden was lead counsel in an opt-out securities litigation action in connection with the McKesson/HBOC merger, *Pacha, et al. v. McKesson Corporation, et al.*, which settled for a substantial, confidential sum.

Ms. Gilden has earned the trust of her clients who know she will go to the mat for them, from start to finish in their cases. She draws respect from colleagues as well as adversaries who perennially have placed her in the highest ranks of the profession, including being named an Illinois Super Lawyer repeatedly over the last 10 years, "Pension Fund Attorney of the Year, Illinois" by the Global Corporate International Magazine in 2014 and 2015 and being recognized for Excellence in Law by the Worldwide Registry. In 2016, she was recognized by the Women in Wealth Awards as a winner in the category of "Best in Securities Litigation Law - Illinois & Excellence Award for Investor Protection Law." Ms. Gilden also has an AV Preeminent™ rating from Martindale-Hubbell. She has been featured on the cover of the *Chicago Lawyer* in connection with a feature article on securities class actions. She is a much sought-after speaker at legal and pension fund conferences and has been frequently quoted in the national media on market scandals, recent developments and trends in securities law and high profile securities fraud cases.

Ms. Gilden is currently representing the Chicago Public School Teachers' Pension Fund, along with other institutions, in a high profile lawsuit charging 12 Wall Street banks with conspiring to engineer and maintain a collusive and anti-competitive stranglehold over the market for interest rate swaps in violation of the antitrust laws—an action that harms investors in one of the world's biggest financial markets. She also is representing the Cleveland Bakers and Teamsters Pension and Health and Welfare Funds and other institutions in another, high profile antitrust action alleging that two dozen financial institutions with an inside role at the auction for United States Treasuries conspired to manipulate yields and prices to their own benefit.

In addition, Ms. Gilden serves as co-lead counsel in *City of Chicago v. Hotels.com, et al*, a high-profile and much-watched lawsuit in Cook County Circuit Court, alleging that online travel companies, Expedia, Hotels.com, Orbitz, Priceline and Travelocity failed to properly remit hotel taxes to the City of Chicago for hotel bookings. Ms. Gilden has argued and won numerous motions at the trial level on behalf of the City of Chicago, including the parties' cross motions for summary judgment, which involved six days of argument on liability and another half day of argument on damages. Settlements have been obtained from three of the four defendant groups. A judgment has been entered in the case on behalf of the City of Chicago for approximately \$29 million against the remaining defendant group, Expedia. The case is currently on appeal.

Ms. Gilden served as the first (and to this day, only) woman President of the National Association of Shareholder and Consumer Attorneys, the preeminent trade association for securities class action attorneys,

as well as the organization's first woman Treasurer. As President of NASCAT, Ms. Gilden made repeated visits to Capitol Hill advocating for strong investor protection. . She also engaged in outreach to the institutional investor community on needed reforms to reverse the erosion of investor rights. Under Ms. Gilden's leadership, NASCAT also filed amicus briefs in connection with major securities cases before the Supreme Court and other courts. Prior to becoming President, she served as the President-Elect. She continues to serve on NASCAT's Executive Committee.

Ms. Gilden was selected to serve on the Corporate Governance and Markets Advisory Councils to the Board of Directors for the Council for Institutional Investors (CII) during 2013-2015. CII is a nonprofit association of pension and other employee benefits funds, endowments and foundations and a voice for effective corporate governance and strong shareholder rights.

Ms. Gilden regularly lectures at legal conferences around the country on securities litigation and class action law, and is a frequent speaker at institutional investor conferences and symposiums regarding securities law developments, shareholder rights and regulatory reform. She has authored and co-authored numerous scholarly articles and course materials on securities fraud cases, class actions, derivative litigation and related topics.

Ms. Gilden attended the University of Illinois, earning a B.S. in Business Administration, and received her J.D. from Chicago-Kent College of Law, where she graduated with honors and was a member of the *Chicago-Kent Law Review*.

Julie Goldsmith Reiser

Julie Goldsmith Reiser is a Partner at Cohen Milstein, and a member of the Securities Litigation Investor Protection Practice Group. Ms. Reiser's practice focuses on representing public pension plans and other institutional investors in high-stakes securities litigation.

Known for her hands-on approach, strong advocacy and critical thinking, Ms. Reiser has led litigation teams in several complex class actions, including a \$500 million settlement related to Countrywide's issuance of mortgage-backed securities ("MBS") and the Fifth Circuit affirmation of an investor class in the BP securities fraud litigation stemming from the 2010 Deepwater Horizon oil spill, which settled for \$175 million. In those cases, Ms. Reiser's clients have benefited from her oral and written advocacy, her judgment, and her tenacious work on their behalf. As a result of those and other successes, Ms. Reiser has been recognized as one of the top 25 Influential Women in Securities Law by *Law360*.

Ms. Reiser demonstrates a keen understanding of complex financial and economic issues. She is known for bringing an interactive and cooperative approach to litigation teams, a style that has generated remarkable results for the classes she represents.

Currently, Ms. Reiser is litigating the following notable matters:

In re BP Securities Litigation: Ms. Reiser represented the New York State Common Retirement Fund as co-lead plaintiff in a securities class action filed in 2010, alleging that BP injured investors by intentionally downplaying the severity of the Deepwater Horizon oil spill and preventing investors from learning the magnitude of the disaster. Ms. Reiser took the lead in all aspects of this litigation: case development, motion practice, oversight and implementation of discovery strategies, depositions, expert discovery and argument. After successfully arguing for class certification to the district court, Ms. Reiser presented plaintiffs' defense of that court's

decision to the Fifth Circuit U.S. Court of Appeals, which affirmed the class. The case settled for \$175 million a few weeks before trial was set to begin.

In re Valeant Pharmaceuticals International, Inc. Third-Party Payor Litigation: Ms. Reiser represents a putative class of third-party payors arising from a scheme perpetrated by Valeant, its top executives, and co-conspirators at affiliated specialty pharmacies to shield the Company's drugs from competition, fraudulently inflate the prices of its products, and artificially boost sales at the expense of third party payors.

St. Peter's Health care System Church Plan Litigation: Cohen Milstein is counsel to a class of defined benefit participants in Kaplan v. St. Peter's Healthcare System, which allege that the hospital's plan is not a church plan and thus the class is entitled to ERISA's protections. In district court, Cohen Milstein succeeded in showing that only a church may establish a church plan and thus St. Peter's Healthcare System is not entitled to exemption from ERISA. Cohen Milstein then prevailed in the Third Circuit, which affirmed the district court's holdings. This case and two others decided unanimously in participants' favor by the Seventh and Ninth Circuits, are being reviewed by the Supreme Court this term. Using this same theory of liability, Ms. Reiser is currently litigating actions against many other healthcare systems that are improperly claiming to be exempt from ERISA.

Ms. Reiser's successes include:

Countrywide Mortgage Backed Securities Litigation: Ms. Reiser represented the Iowa, Oregon and Orange County public retirement systems in class action litigation related to Countrywide's issuance of mortgage-backed securities, which culminated in a landmark \$500 million settlement. Over the course of the litigation, Ms. Reiser argued on investors' behalf at the motion to dismiss stage. She also handled various arguments related to discovery disputes, and oversaw merits and expert discovery. She took a majority of the fact depositions and was recognized for having teased a number of salient points from witnesses during the depositions. Ms. Reiser also took the lead in working with experts to maximize damages.

Policemen's Annuity and Benefit Fund of the City of Chicago, et al. v. Bank of America, NA, et al.: Ms. Reiser developed and litigated this novel class action, challenging trustee inaction in preventing investor losses. She represented the Arkansas Public Employees Retirement System, IPERS and Chicago Laborers in the case, which settled for \$69 million. Ms. Reiser worked with plaintiffs' statistician to develop a sampling methodology for testing whether mortgages were underwritten properly and with plaintiffs' economist in the bid for class certification and approach to damages. At the final hearing, Judge Katherine B. Forrest commended the investors' legal team: "This is a very, very good result for the plaintiffs ... [and] is something of which plaintiff counsel can be proud."

In addition, Ms. Reiser has represented plaintiffs in employment cases. In *Wade v. Kroger* (W.D. Ky.), she represented African American employees who received a \$16 million settlement to resolve claims that the retailer Kroger had discriminated against them in pay and promotions. She was also involved in *Beck v. The Boeing Co.* (W. D. Wash.), a case alleging sex discrimination in compensation and promotions that settled for \$72.5 million.

Ms. Reiser is a noted speaker, often called on to discuss important issues such as the class standing doctrine.

Ms. Reiser is the author of "Pre-Dispute Arbitration Clauses: Taking the Alternative Out of Dispute Resolution," *Bloomberg BNA, Class Action Litigation Report*, December 11, 2015. Ms. Reiser was named a 2016 winner of the Burton Awards, placing her among the "finest law firm writers" in the nation. After its

publication, Paul Bland, Executive Director of Public Justice wrote: "This is invaluable advocacy that takes industry-side advocacy and exposes its flaws and failings. I'm very glad to see this kind of very high quality advocacy and critical thinking."

Ms. Reiser also is the co-author of "Omnicare: Negligence is the New Strict Liability When Pleading Omissions Under the Securities Act," *Bloomberg BNA, Corporate Law & Accountability Report*, April 10, 2015; the author of "Dodd Frank's Protections for Senior Citizens: An Important, Yet Insufficient Step," *University of Cincinnati Law Review*, Volume 81, Issue 2, May 30, 2013; "Why Courts Should Favor Certification of MBS Actions," *ABA Securities Litigation Journal*, Volume 22, Number 1, Fall 2011; and the co-author of "The Misapplication of American Pipe Tolling Principles," *ABA Securities Litigation Journal*, Volume 21, Number 2, Winter 2011. She also co-authored Opt-Outs: Making Private Enforcement of the Securities Laws Even Better, featured in the Winter/Spring 2008 edition of the *ABA's Class Action and Derivative Suit Committee Newsletter* and Companies in the Cross Hairs: When Plaintiffs Lawyers Choose Their Targets, They Look for These Employment Practices, *The Legal Times*, February 21, 2005.

Ms. Reiser attended Vassar College, graduating with honors, and earned her J.D. at the University of Virginia School of Law. She has served as a board member at Seattle Works and the Pacific Northwest Ballet.

Michelle C. Yau

Michelle C. Yau is a Partner at Cohen Milstein, and a member of the Firm's Employee Benefits (ERISA) Practice Group. In her role, Ms. Yau represents the interests of employees, retirees, plan participants or beneficiaries in ERISA cases. Her practice specializes in ERISA cases involving complex financial transactions or actuarial issues. Ms. Yau brings to her practice government experience enforcing labor statutes and a grasp of complex financial instruments gained from her training as a financial analyst. Drawing on those experiences, she is able to fulfill her passion for protecting pension plan participants.

Ms. Yau litigated some of the most significant ERISA lawsuits to emerge from the Madoff Ponzi scheme. In *re* Beacon Assoc. Litig., she represented a multi-plan class of participants, beneficiaries and fiduciaries, which settled along with other consolidated cases for \$219 million in 2013, representing 70% of the Class members' out-of-pocket losses. The judge praised the settlement, describing the outcome as "extraordinary" and the praising the "hard work" done by plaintiffs' counsel, including Cohen Milstein. In *re* Austin Capital Mgmt. Litig., which was settled by the Department of Labor on the ERISA class on very favorable terms, Ms. Yau alleged that Madoff's returns, based on his advertised investment strategy, were mathematically impossible, a fact Austin Capital ought to have recognized well before the fraud was revealed.

Prior to joining Cohen Milstein in 2007, Ms. Yau was an Honors Program Attorney at the Department of Labor where she enforced and administered of a variety of labor statutes. Before law school, she worked as a financial analyst at Goldman, Sachs & Co. in the Financial Institutions Group of the Investment Banking Division.

Ms. Yau is presently litigating a series of church plan lawsuits alleging that health care systems wrongfully claim their benefit plans are exempt from ERISA's protection. She oversees the day-to-day management of these cases, including coordinating all the aspects of the litigation.

Currently, Ms. Yau is representing clients in the following notable matters:

- St. Peter's Health care System Church Plan Litigation: Cohen Milstein is counsel to a class of defined benefit participants in Kaplan v. St. Peter's Healthcare System, which allege that the hospital's plan is not a church plan and thus the class is entitled to ERISA's protections. In district court, Cohen Milstein succeeded in showing that only a church may establish a church plan and thus St. Peter's Healthcare System is not entitled to exemption from ERISA. Cohen Milstein then prevailed in the Third Circuit, which affirmed the district court's holdings.
- St. Anthony Medical Center Church Plan Litigation: Cohen Milstein is counsel to a class of defined benefit participants in Owens et al. v. St. Anthony Medical Center et al., which allege that the Medical Center violated numerous provisions of ERISA by improperly operating the plan as exempt from ERISA's protections. As a result the class of participants suffered cutbacks as much as 40% of their promised benefits.
- Trinity Church Plan Litigation: Cohen Milstein is counsel to a class of defined benefit participants in Lann et al. v. Trinity Health, which allege that the hospital's plan is not a church plan and thus the class is entitled to ERISA's protections,
- Advocate Health Care Church Plan Litigation: Cohen Milstein, along with Keller Rohrbach, is counsel to a class of defined benefit participants in Stapleton et al. v. Advocate Health Care Network and Facilities et al., which allege that the hospital's plan is not a church plan and thus the class is entitled to ERISA's protections. In district court, counsel succeeded in showing that only a church may establish a church plan and thus Advocate is not entitled to exemption from ERISA. Plaintiffs then prevailed in the Seventh Circuit, which affirmed the district court's holdings.
- U.S. Bancorp Pension Plan Litigation: Cohen Milstein is counsel to a class of pension plan participants alleging that the plan's managers engaged in a risky, imprudent investment strategy by investing 100% of its assets in stocks, thus causing the plan to lose more than \$1 billion during the collapse of the equities market in 2008. Ms. Yau developed the litigation and is overseeing all aspects of the litigation.

Ms. Yau has litigated the following case successfully:

- Merrill Lynch ERISA Litigation: Cohen Milstein served as interim co-lead counsel in a class action alleging that fiduciaries of the Merrill Lynch retirement plans imprudently purchased and held inflated Merrill employer stock for the retirement accounts of the Companies' employees. The litigation was resolved for \$75 million. Ms. Yau was engaged in all aspects of the litigation.
- Madoff Ponzi Scheme Litigation: Cohen Milstein represented a multi-plan class of participants, beneficiaries and fiduciaries in re Beacon Assoc. Litig. The \$219 million settlement in 2013 represented 70% of the Class members' out-of-pocket losses. Ms. Yau was engaged in all aspects of the litigation.
- Weyerhaeuser Pension Plan Litigation: Cohen Milstein was lead counsel in a lawsuit alleging that the Weyerhaeuser Company caused its Defined Benefit Retirement Plans to engage in a risky investment strategy involving alternative investments and derivatives, causing the Plans' master trust to become underfunded. A settlement was reached for injunctive relief on behalf of Plans' participants and beneficiaries. Ms. Yau was engaged in all aspects of the litigation.

Ms. Yau received her law degree from Harvard Law School in 2003, where she was awarded several public interest fellowships, including the Heyman Fellowship for academic excellence and a demonstrated commitment to federal public service. Ms. Yau graduated Phi Beta Kappa with a B.A. in Mathematics from the University of Virginia. Ms. Yau was also selected as an Echols Scholar and awarded the Student Council Scholarship for leadership, academic achievement and community service. Law360 named Ms. Yau a Rising Star Under 40.

Attorney Profiles – Of Counsel & Associates

Mary J. Bortscheller

Mary J. Bortscheller is an Associate at Cohen Milstein, and a member of the Firm's Employee Benefits Practice Group. In that role, Ms. Bortscheller represents the interests of employees, retirees, and plan participants and beneficiaries in ERISA cases in the district court and on appeal. Ms. Bortscheller is a strong, hands-on, strategic litigator, thoroughly versed in the complexities of ERISA law.

At present, Ms. Bortscheller is engaged in litigating a number of so-called "church plan" lawsuits. These cutting-edge legal cases assert that many non-profit health care systems in the United States wrongfully claim their benefit plans are exempt from ERISA regulation under the church plan exemption. Currently, Cohen Milstein serves as lead or co-lead counsel in 12 separate cases in various jurisdictions throughout the U.S.

Ms. Bortscheller is currently litigating the following matters:

- Trinity Health Corporation Church Plan Litigation: Cohen Milstein is co-lead counsel in Lann v. Trinity Health Corp., a lawsuit alleging that Trinity is violating numerous provisions of ERISA while wrongfully claiming that its defined benefit pension plan is exempt from ERISA because it is a church plan. Ms. Bortscheller is Lead Associate in the case, engaged in all aspects of the litigation including motions practice, discovery, the mediation process and finalizing the settlement. The case is ongoing.
- Catholic Health East Church Plan Litigation: Cohen Milstein is co-counsel in Chavies v. Catholic Health East, alleging that the health care system wrongfully claims its defined benefit pension plan is exempt from ERISA as a church plan. As the Lead Associate on this case, Ms. Bortscheller works on all aspects of the lawsuit, including fact and expert discovery, the mediation process and in finalizing the settlement. The case is ongoing.
- U.S. Bancorp Pension Plan Litigation: Cohen Milstein is co-lead counsel to an interim class of pension plan participants alleging that the plan's managers engaged in a risky, imprudent investment strategy by investing almost 100% of its assets in stocks, thus causing the plan to lose more than \$1 billion during the collapse of the equities market in 2008. As Lead Associate on the case, Ms. Bortscheller is involved in all aspects of the litigation, including the initial case investigation and drafting of the complaint, motions practice, discovery and the appellate process. The case is ongoing.

In addition to her ERISA case work, Ms. Bortscheller represents, pro bono, unaccompanied minor clients in immigration proceedings. Prior to joining Cohen Milstein in 2013, Ms. Bortscheller practiced at a boutique commercial litigation firm based in Chicago, where she represented plaintiffs in antitrust and qui tam matters, as well as defendants in general commercial litigation.

Ms. Bortscheller graduated from Gustavus Adolphus College with a B.A., *cum laude*, in Political Science, and received her J.D., *cum laude*, from American University, Washington College of Law. During law school, she served as Features Editor and Senior Editor of Sustainable Development Law & Policy and was a staff member of the American University International Law Review. Ms. Bortscheller served as a judicial intern with the United States District Court for the District of Minnesota.

Before attending law school, Ms. Bortscheller served in the United States Peace Corps teaching English as a foreign language in Sichuan Province, China. Following law school, she was a volunteer for the Chicago Legal Clinic, Inc.'s Foreclosure Defense Project.

Jamie Bowers

Jamie Bowers is an Associate at Cohen Milstein and a member of the Firm's Employee Benefits Practice Group. In her role, Ms. Bowers represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to joining Cohen Milstein, Ms. Bowers served as a judicial law clerk for the Honorable Gary R. Jones at the United States District Court for the Northern District of Florida, Gainesville Division. In this role she dealt with a variety of issues arising under federal law, including initial criminal appearances, plea changes, writs of habeas corpus, prisoner litigation, employment litigation, personal injury litigation, civil rights litigation, mass torts litigation, social security disability, and various matters under the Federal Rules of Civil and Criminal Procedure.

Ms. Bowers attended Duke University, graduating with a B.A. in Environmental Science in 2011. She earned her J.D. from Georgetown University Law Center in 2014. During law school, Ms. Bowers served on the Executive Board as the Administrative Editor of the *Georgetown Environmental Law Review*.

Ms. Bowers is the author of *Environmental Justice Implications of the Current Hydraulic Fracturing Regulatory Regime*, 32 Mich. Env. L. Jour. 93 (2013).

Julia Horwitz

Julia Horwitz is an Associate at Cohen Milstein and a member of the Firm's Employee Benefits Practice Group. In her role, Ms. Horwitz represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to joining Cohen Milstein, Ms. Horwitz served as a law clerk for the Honorable Mary Ellen Coster Williams at the United States Court of Federal Claims. She worked at the Electronic Privacy Information Center in DC from 2012-2015, first as an Open Government Coordinator and Counsel, and then as the Director of the Consumer Privacy Project. Ms. Horwitz also was an Adjunct Professor at Georgetown Law School for a semester in 2013.

Ms. Horwitz attended Brown University, graduating with a B.A. in English, *magna cum laude*, in 2008. She earned her J.D. from the University of Chicago Law School in 2012. During law school, Ms. Horwitz was a staff member on the Edwin F. Mandel Legal Aid Clinic Employment Discrimination Project.

Scott Lempert

Scott M. Lempert is Of Counsel at Cohen Milstein and a member of the firm's Employee Benefits (ERISA) Practice Group. He joined the firm in 2016 and represents the interests of employees, retirees, and plan participants and beneficiaries in ERISA cases in the district court and on appeal.

Mr. Lempert is currently engaged in litigating a number of so-called “church plan” lawsuits. These cutting-edge legal cases assert that many non-profit health care systems in the United States wrongfully claim their benefit plans are exempt from ERISA regulation under the church plan exemption. Currently, Cohen Milstein serves as lead or co-lead counsel in 12 separate cases in various jurisdictions throughout the U.S.

Mr. Lempert has over 20 years of experience litigating complex commercial class actions on behalf of employees, retirees and consumers in retiree benefits, employment, consumer protection and antitrust matters. Prior to joining Cohen Milstein he worked on many high-profile matters, including:

- *In re: Unisys Corp. Retiree Medical Benefits ERISA Litig.* – a series of cases involving representation of thousands of retirees, both as class actions and individually, seeking restoration of lifetime retiree medical benefits unlawfully terminated after retirement. These cases successfully achieved multiple settlements and court judgments providing lifetime retiree medical benefits for some and a continuing stream of payments to pay for medical benefits for other retirees.
- *Raetsch v. Lucent Technologies* – 36 million dollar settlement involving unlawful transfer of excess defined benefit pension funds to an account to pay for retiree medical benefits.
- *Mehling v. New York Life Insurance Co.* – 14 million dollar settlement challenging excessive fees charged to New York Life employees and the company’s pension plan for Plan assets invested in New York Life owned mutual funds.
- *Stagi v. National R.R. Passenger Corp.* – Gender discrimination class action alleging unlawful disparate impact on female union employees resulting from enforcement of an Amtrak employee policy that blocked union employees from promotion to management. Settlement provided Amtrak employees compensation for denial of opportunities for promotion and the striking of the unlawful employment policy.

Mr. Lempert graduated Phi Beta Kappa from the University of Delaware with a B.A., *magna cum laude*, in Psychology, and received his J.D., from the University of Pennsylvania Law School. During law school, he served as Vice President of the Law School Government and was a Morris Fellow.

Julie S. Selesnick

Julie S. Selesnick is Of Counsel at Cohen Milstein and a member of the firm's Employee Benefits (ERISA) Practice Group. She joined the firm in 2017 and represents the interests of employees, retirees, and plan participants and beneficiaries in ERISA cases in the district court and on appeal.

Ms. Selesnick has represented a wide variety of clients on both sides of the aisle, in mediation, arbitration, and in state and federal courts throughout the country. Prior to joining Cohen Milstein, Ms. Selesnick was an attorney at Zuckerman Spaeder LLP. She also was a partner and trial attorney at Jackson & Campbell P.C.

Ms. Selesnick is an accomplished writer and has written hundreds of legal articles and blog posts, as well as non-legal articles and blog posts. She has also ghost-written hundreds of pages of content on legal websites throughout the country.

Ms. Selesnick graduated Phi Beta Kappa and Pi Sigma Alpha from the San Diego State University with a B.A., *cum laude*, and received her J.D., from the George Washington University School of Law, Order of the Coif.

EXHIBIT B



ERISA LITIGATION

ABOUT KELLER ROHRBACK



Devoted to Justice

"[Keller Rohrback] has performed an important public service in this action and has done so efficiently and with integrity...[Keller Rohrback] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions..." *In re WorldCom, Inc. ERISA Litigation*, No. 02-4816 (S.D.N.Y.) (Cote, J.).

Keller Rohrback's lawyers excel by being prepared and persuasive. It's a simple formula that combines our strengths: outstanding writing and courtroom skills, together with unparalleled passion and integrity. We have recovered billions of dollars for our clients, and have served as lead counsel in many prominent cases. Our lawyers are widely recognized as leaders in their fields who have dedicated their careers to combating corporate fraud and misconduct. We have the talent as well as the financial resources to litigate against Fortune 500 companies—and do so every day.

Who We Are

Keller Rohrback's Complex Litigation Group has a national reputation as the go-to plaintiff's firm for large-scale, complex individual and class action cases. We represent employees and retirees, public and private investors, businesses, governments, and individuals in a wide range of actions, including fiduciary breach, securities fraud, manipulation, and other illegal practices relating to financial services and products, ERISA, antitrust, whistleblower, environmental, and product liability cases. Our approach is straightforward—we represent clients who have been harmed by conduct that is wrong, and we litigate with passion and integrity to obtain the best results possible. Every case is different, but we win for the same reason: we are persuasive. When you hire us, you hire smart, creative lawyers who are skilled in the courtroom and in negotiations.

Founded in 1919, Keller Rohrback's seventy-three attorneys and 100 staff members are based in six offices across the country in Seattle, Oakland, Santa Barbara, Phoenix, New York, and Ronan. Over the past century, our firm has built a distinguished reputation by providing top-notch representation. We offer exceptional service and a comprehensive understanding of federal and state law nationwide. We also are well known for our abilities to collaborate with co-counsel to achieve outstanding results—essential skills in large-scale cases in which several firms represent plaintiffs. We pride ourselves on our reputation for working smartly with opposing counsel, and we are comfortable and experienced in coordinating high-stakes cases with simultaneous state and federal government investigations.

We have won verdicts in state and federal courts throughout the nation and have obtained judgments and settlements on behalf of clients in excess of eighteen billion dollars. Courts around the country have praised our work, and we are regularly appointed lead counsel in nationally prominent class action cases. Our work has had far-reaching impacts for our clients in a variety of settings and industries, creating a better, more accountable society.





EMPLOYEE BENEFITS

ATTORNEYS

Lynn Lincoln Sarko
Laurie Ashton
Gretchen Freeman Cappio
T. David Copley
Alison Gafney
Laura R. Gerber
Matthew Gerend
Gary Gotto
Benjamin Gould
Christopher Graver
Amy N. L. Hanson
Dean N. Kawamoto
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David Ko
Tanya Korkhov
Cari Campen Laufenberg
Elizabeth A. Leland
Jeffrey Lewis
Derek Loeser
Ian Mensher
Gretchen Obrist
David Preminger
Erin Riley
Karin B. Swope
Havila C. Unrein
Amy Williams-Derry

Keller Rohrback L.L.P. is a pioneer in litigation under the Employee Retirement Income Security Act of 1974 (ERISA), recovering to date over two billion dollars of retirement and other benefits for our clients. And this is not merely a matter of money, as important as that is. Keller Rohrback's lawyers have worked tirelessly to shape ERISA law, so that the statute protects the interests of participants and beneficiaries, rather than their employers and service providers. We have seen time and again fiduciaries attempt to use ERISA to thwart participants' interests, whether in the design of 401(k) plans, the structuring of Employee Stock Ownership Plans (ESOPs), the investments in defined benefit plans, or the attempt to read ERISA's exceptions broadly to favor the employers' and service providers' interests, not the participants' interests. We have successfully opposed all these efforts in scores of cases.

Keller Rohrback attorneys have done this since the statute was enacted in 1974. In that year, David Preminger, of our New York office, wrote two of the first scholarly articles on ERISA. Jeff Lewis, across the country and now in our Oakland office, began practice the year after ERISA was adopted and has been representing plaintiffs in pension and other benefit matters ever since. He is also the co-chair of the Board of Senior Editors of Employee Benefits Law, the major ERISA practitioner's treatise, used daily by benefits lawyers throughout the country. David and Jeff are only two of our ERISA lawyers, albeit the most senior. We have a very deep bench in ERISA matters. Lawyers at Keller Rohrback have testified before Congress, served as editors of numerous employee benefits books and manuals, and written scholarly ERISA articles, amicus briefs, and comments to regulatory agencies overseeing ERISA plans. We frequently are invited to make presentations at national legal education seminars regarding employee benefit class actions and ERISA. We have also served as fiduciaries and mediators.

We are involved in all aspects of ERISA litigation, from administrative reviews to district court trials to circuit court appeals to handling cases and filing amicus briefs in the U.S. Supreme Court. We are proud of our history, but we don't rest on our laurels, we listen carefully to employees' stories and craft cases that enforce ERISA's longstanding duties—which are the highest known to the law.

Attorneys at Keller Rohrback have pioneered application of ERISA to the evolving manifestations of waste and abuse affecting retirement savings nationwide. For example, Gary Gotto and Ron Kilgard brought the first successful defined contribution company stock case, *Whetman v. IKON Office Solutions*, spawning an entire area of litigation that resulted in billions of dollars being recovered around the country for employees and their retirement plans. Keller Rohrback's Managing Partner and Complex Litigation Group Leader, Lynn Sarko, along with Derek Loeser, Erin Riley, and many others, pushed this area of the law forward with the *WorldCom* and *Enron* ERISA class actions—the latter of which resulted in the largest settlement in such a case, at over \$264 million. More recently, we have led the charge with private ESOP, church plan, and our 401k plan cases challenging excessive and conflicted fees. We have even represented public employees in successfully striking down as unconstitutional cut-backs to their retirement benefits.

EMPLOYEE BENEFITS



Keller Rohrback is routinely appointed lead or co-lead counsel in major employee benefit class actions. Our work in this complex and rapidly developing area has been praised by our clients, our co-counsel, and federal courts throughout the country. Keller Rohrback has excelled in managing complex employee benefits cases by developing a deep understanding of employee benefits law and by drawing on our attorneys' experience in numerous related practice areas, including securities, accounting, corporate, insurance coverage, bankruptcy, financial institution regulation, mergers and acquisitions, contracts, employment law, executive compensation, professional malpractice, constitutional law, and class action law.

We are proud to represent employees in connection with their retirement and other benefits. The following pages summarize the breadth of our expertise and experience in these areas.





EMPLOYEE BENEFITS

PENSION PLANS

Congress enacted ERISA in light of several highly publicized failures of private pension plans which left long-term employees at the end of their careers without their promised benefits. ERISA “seek[s] to ensure that employees will not be left empty-handed once employers have guaranteed them certain benefits.” *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). Attorneys at Keller Rohrbach have filed numerous cases on behalf of ERISA plan participants in order to make sure that the fiduciaries manage the plans’ assets prudently and that pensioners and their beneficiaries receive the benefits that they were promised. Keller Rohrbach further supports ERISA pension plan participants and beneficiaries through writing amicus briefs related to pension issues. *E.g.*, Brief for The Pension Rights Center as Amicus Curiae in Support of Respondent, *Spokeo, Inc. v. Robins*, No. 13-1339 (U.S.); Brief for the Pension Rights Center as Amicus Curiae in Support of Petitioner, *Pundt v. Verizon Communications, Inc.*, No. 15-785 (U.S.).



REPRESENTATIVE CASES

Mertens v. Kaiser Steel Retirement Plan, 829 F. Supp. 1158 (N.D. Cal.)

A firm attorney served as co-counsel for a putative class of retirees of Kaiser Steel whose benefits were drastically reduced when the plan was terminated in an underfunded position. Plaintiff alleged that following an outside takeover of Kaiser, the company systematically underfunded the company’s pension plan so that the new owners could instead take profits from the company. The lawsuit also alleged that the Kaiser retirement plan’s actuaries also contributed to the underfunding by committing malpractice. The court held that the malpractice claims against the actuaries were not preempted by ERISA. The case ultimately settled, resulting in the payments of millions of dollars to the class members.

Canseco v. Construction Laborers Pension Trust, 93 F.3d 600 (9th Cir.)

A firm attorney served as co-counsel for a class of pension plan retirees in a case challenging the plan’s failure to pay retroactive benefits to retirees who were eligible for full benefits under the plan, but did not immediately apply for their benefits. The U.S. court of appeals’ opinion reversed the district court’s judgment for defendants and resulted in the payment of millions of dollars in retroactive benefits to class members. The case also established the principle that it is an abuse of discretion for a plan fiduciary to interpret a plan contrary to its plain meaning.

McDaniel v. National Shopmen Pension Fund, 889 F.2d 804 (9th Cir.)

A firm attorney served as co-counsel for a class of pension plan participants in a case challenging the plan’s reduction in vested benefits based on the fact that their employer had withdrawn from the plan. The Ninth Circuit held that the reduction was improper and benefits were restored to the participants.

Cleary v. Retirement Plan for Employees of Northern Montana Hospital, No. 16-00061 (D. Mont.)

Keller Rohrbach brought this class action on behalf of the participants in, and/or beneficiaries of, the Retirement Plan for Employees of Northern Montana Hospital. The complaint alleges that the members of these classes have been, or will be denied, certain retirement benefits to which they are entitled under the terms of the Plan and/or ERISA with respect to vesting and accrual of benefits. The complaint also alleges that Defendants failed to comply with ERISA’s rules for claims procedures.

EMPLOYEE BENEFITS



PENSION PLANS

Johnston v. Dow Employees' Pension Plan, No. 14-10427 (E.D. Mich.)

Keller Rohrback serves as co-counsel in this lawsuit brought on behalf of a putative class of former employees of The Dow Chemical Company who spent part of their careers at the Dow-affiliate DuPont Dow Elastomers (DDE). The complaint alleges that after this group of employees returned to Dow from DDE, Dow changed the formula for calculating benefits for former DDE employees under its defined benefit plan, leaving many in this group with a reduced benefit.

Judy Hunter v. Berkshire Hathaway, Inc., No. 14-663 (N.D. Tex.)

Keller Rohrback serves as Co-Lead Counsel in this class action filed on behalf of the participants and beneficiaries of two ERISA plans: a pension plan and a 401(k) plan. The complaint alleges that despite explicit plan language prohibiting the reduction of future benefits, the corporate parent company caused its subsidiary to reduce those benefits. The trial court initially granted Berkshire Hathaway's motion to dismiss, but on appeal Keller Rohrback persuaded the United States Court of Appeals for the Fifth Circuit to reverse and remand. The case is currently headed towards trial.

Fletcher v. ConvergeX, No. 13-9150 (S.D.N.Y.)

Keller Rohrback serves as co-counsel in this lawsuit filed in the Southern District of New York that alleges Defendants violated ERISA by "double-charging" for transition management and brokerage services. Defendants funneled trade orders to an offshore subsidiary broker located in Bermuda, which created a "spread" between the actual price and the reported price by adding mark-ups/mark downs. While the reported price was confirmed with customers, the actual prices were undisclosed and unauthorized additional compensation. After the trial court mistakenly dismissed the case, the United States Court of Appeals for the Second Circuit reversed and reinstated plaintiffs' claims.

Monper v. Boeing, No. 13-1569 (W.D. Wash.)

Keller Rohrback served as Counsel in this lawsuit that alleged Defendants violated ERISA by misrepresenting to plaintiffs that their pension benefit accruals would not change if they transferred their work locations from California to Washington.

In re Bakery & Confectionery Union & Industry Int'l Pension Fund Pension Plan, No. 11-1471 (S.D.N.Y.)

Keller Rohrback and co-counsel filed this action alleging that an amendment to the Bakery & Confectionery Union & Industrial Pension Fund Pension Plan violated ERISA's anti-cutback provisions. Plaintiffs prevailed at both the district court and appellate levels, and Defendants implemented adjustments to reinstate the benefits due to eligible employees.

Palmason v. Weyerhaeuser, No. 11-695 (W.D. Wash.)

Keller Rohrback and co-counsel filed this action alleging that Weyerhaeuser and other fiduciaries caused its pension plan to engage in a risky investment strategy involving alternative investments and derivatives, causing the Plans' master trust to become underfunded. A settlement was reached for injunctive relief on behalf of the Plans' participants and beneficiaries.

Buus v. WaMu Pension Plan, No. 07-903 (W.D. Wash.)

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of Washington Mutual's defined benefit pension plan whose benefit accrual was frozen under the existing pension formula and replaced with a new "cash balance plan" accrual system that reduced the rate of future benefit accrual. The complaint alleged that participants were not given proper notice of these reductions. In conjunction with Washington Mutual's bankruptcy proceedings, a settlement of \$20 million was approved.



EMPLOYEE BENEFITS

PENSION PLANS: CHURCH PLANS

For certain employees participating in pension plans, ERISA does *not* apply. If a plan is not subject to ERISA, there is no federal law requiring a sponsor to keep funding the plan or requiring participants to get timely and accurate information about the plan, and there is no pension benefit insurance through the Pension Benefit Guaranty Corporation (PBGC) if the plan can't make payments. One of the few kinds of plans exempt from ERISA is the "church plan." For years, Keller Rohrback has been representing employees in federal lawsuits against large healthcare companies that claim their pension plans are "church plans." The employees in the plans all work for large healthcare organizations, hospital systems, and their affiliates.



These healthcare organizations are non-profit corporations, but they often have assets on par with Fortune 100 companies.

The lawsuits ask the courts to determine that these pension plans are not "church plans" at all, force the employers to properly fund the plans, and give their employees the safety and security of ERISA protections.

REPRESENTATIVE CASES

Griffith v. Providence Health & Services, No. 14-1720 (W.D. Wash.)

Keller Rohrback serves as co-counsel in this lawsuit that alleges Defendants' claim that the Providence Health pension plan is exempt from ERISA's protections because it is a "church plan" is improper because Providence Health is not a church, and the plan was not established by a church. In 2017, the Court granted final approval of a class settlement in the amount of \$351.9 million, which includes a payment of \$350 million to the Plan and a guarantee that the Plan's trust will have sufficient assets to pay benefits as they come due; and additional administrative protections and other equitable relief for plan participants.

Lann v. Trinity Health Corp., No. 14-02237 (D. Md.)

Keller Rohrback serves as Co-Lead Counsel in this lawsuit that alleges Defendants' claim that the Trinity Health pension plan is exempt from ERISA's protections because it is a "church plan" is improper because, among other things, Trinity Health is not a church, and the Trinity Health pension plan was not established by a church. The Court granted preliminary approval of a settlement providing for equitable relief, plus payment of over \$76 million.

Hodges v. Bon Secours Health System, Inc., No. 16-1079 (D. Md.)

Keller Rohrback serves as co-counsel in this lawsuit that alleges Defendants' claim that the seven defined benefit pension plans of Bon Secours Health System, Inc. were exempt from ERISA's protections because they were "church plan(s)" was improper because Bon Secours is not a church, and the plans were not established by a church. The Court granted preliminary approval of a class settlement in the amount of over \$98 million, which includes payments of \$14 million per year to the plans for fiscal years 2017 through 2023; and additional administrative protections and other equitable relief for the plans' participants.

EMPLOYEE BENEFITS



PENSION PLANS: CHURCH PLANS

OTHER CURRENT CHURCH PLAN CASES

Medina v. Catholic Health Initiatives, No. 13-1249 (D. Colo.)

Owens v. Saint Anthony Medical Center, Inc., No. 14-4068 (N.D. Ill.)

Carver v. Presence Health Network, No. 15-2905 (N.D. Ill.)

Feather v. SSM Health, No. 16-393 (S.D. Ill.)

Jewett v. Franciscan Alliance, Inc., No. 16-4589 (N.D. Ill.)

Smith v. OSF Healthcare System, No. 16-467 (S.D. Ill.)

Whaley v. Mercy Health, No. 16-518 (S.D. Ohio)

Sanzone v. Mercy Health, No. 16-478 (W.D. Okla.)

Garbaccio v. St. Joseph's Hospital and Medical Center, No. 16-2740 (D.N.J.)

Holcomb v. Hospital Sisters Health System, No. 16-3282 (C.D. Ill.)

EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: COMPANY STOCK & PUBLIC ESOPs

ERISA sets minimum standards for the management of employer-sponsored retirement and health benefit plans.

Workers and retirees across America depend on their company-sponsored benefit plans to provide them with health insurance and financial security after retirement. Keller Rohrback is a pioneer in ensuring that ERISA's fiduciary duties of prudence and loyalty apply to all plan investment options, including company stock. Ensuring fiduciary responsibility over company stock funds is of paramount importance, given that an employee's livelihood is also tied to the well-being of their employer—thus, if an employer's stock collapses, employees can lose their jobs at the same time that their retirement savings is decimated.

Keller Rohrback's work in this area resulted in numerous pivotal judicial opinions. *E.g.*, *In re WorldCom, Inc.*, 263 F. Supp. 2d 745 (S.D.N.Y.); *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 284 F. Supp. 2d 511 (S.D. Tex.); and *In re Syncor ERISA Litig.*, 516 F.3d 1095 (9th Cir.). Additionally, Keller Rohrback has further supported this area of law through presentations at ERISA conferences, as well as amicus briefs. *E.g.*, Brief for Law Professors as Amici Curiae in Support of the Respondents, *Fifth Third Bancorp v. Dudenhoefter*, No. 12-751 (U.S.).

REPRESENTATIVE CASES

Whetman v. IKON Office Solutions, Inc., MDL No. 1318 (E.D. Pa.).

The wave of 401(k) company stock cases began with *Whetman v. IKON Office Solutions, Inc.* In a first-of-its-kind complaint, we alleged that company stock was an imprudent investment for the plan, that the fiduciaries of the plan failed to provide complete and accurate information concerning company stock to the participants, and that they failed to address their conflicts of interest. This case resulted in ground-breaking opinions in the ERISA 401(k) area of law on motions to dismiss, class certification, approval of securities settlements with a carve-out for ERISA claims, and approval of ERISA settlements providing a total recovery to the Plans of \$111 million.

In re Enron Corp. ERISA Litigation, MDL No. 02-1446 (S.D. Tex.)

Keller Rohrback served as Co-Lead Counsel in this class action. After groundbreaking motions to dismiss decisions, and several years of discovery, Keller Rohrback negotiated five separate settlements with different groups of defendants, resulting in recoveries of over \$264 million for the class.

In re WorldCom, Inc. ERISA Litigation, No. 02-4816 (S.D.N.Y.)

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of the WorldCom 401(k) Salary Savings Plan who invested in WorldCom stock. Settlements providing for injunctive relief and payments of over \$48 million to the plan were approved by Judge Denise Cote.

In re Lucent Technologies, Inc. ERISA Litigation, No. 01-3491 (D.N.J.)

Keller Rohrback served as Co-Lead Counsel in this class action brought on behalf of participants and beneficiaries of the Lucent defined contribution plans who invested in Lucent stock. A settlement providing injunctive relief and the payment of \$69 million to the plan was approved by Judge Joel Pisano.

EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: COMPANY STOCK & PUBLIC ESOPs

In re AIG ERISA Litigation, No. 04-09387 (S.D.N.Y.) and In re AIG ERISA Litigation II, No. 08-05722 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in these two class actions on behalf of participants and beneficiaries of the AIG 401(k) retirement plans who invested in AIG stock. A settlement providing for the payment of \$25 million to the plans was approved by Judge Kevin T. Duffy in *AIG I*, and a settlement providing for the payment of \$40 million to the plans was approved by Judge Laura Swain in *AIG II*.

In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, No. 07-10268 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this class action on behalf of participants and beneficiaries of Merrill Lynch's defined contribution plans who invested in Merrill Lynch stock. A settlement providing injunctive relief and a payment of \$75 million to the plans was approved by Judge Jed S. Rakoff.

Alvidres v. Countrywide Financial Corp., No. 07-5810 (C.D. Cal.)

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of the Countrywide 401(k) plan who invested in Countrywide stock. A settlement providing for injunctive relief and the payment of \$55 million to the plan was approved by Judge John F. Walter.

In re Washington Mutual, Inc. ERISA Litigation, No. 07-1874 (W.D. Wash.)

Keller Rohrback served as Co-Lead Counsel in this ERISA breach of fiduciary duty class action brought on behalf of participants and beneficiaries in the company's retirement plans who invested in Washington Mutual stock. Judge Marsha J. Pechman granted final approval of a \$49 million settlement in the ERISA action.

In re Global Crossing, Ltd. ERISA Litigation, No. 02-7453 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this class action on behalf of participants and beneficiaries of the Global Crossing defined contribution plans who invested in Global Crossing stock. A settlement providing injunctive relief and a payment of \$79 million to the plan was approved by Judge Gerard Lynch.



EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: PRIVATE ESOPs

An ESOP is a tax-qualified defined contribution employee benefit plan governed by ERISA. ESOPs are intended to invest primarily in the stock of the ESOP participant's employer. Keller Rohrback is a national leader in ESOP cases, and has substantial experience representing ESOPs in breach of fiduciary actions against trustees who approve or permit transactions that favor corporate interests to the detriment of the ESOP despite having a fiduciary duty to act in the ESOP's best interests. Keller Rohrback's attorneys have achieved many notable successes for their ESOP clients, including obtaining seven-figure judgments at trial, and recovering millions of dollars in settlements.

REPRESENTATIVE CASES

Schwartz v. Cook, No. 15-3347 (N.D. Cal.)

Keller Rohrback represents a participant in the Buckles-Smith Electric Company ESOP in this lawsuit that alleges that the ESOP's fiduciaries caused Buckles-Smith to redeem the ESOP's shares in that company for less than they were worth, thereby benefitting the remaining shareholders (including the ESOP's fiduciaries) at the expense of the ESOP. The case preliminary settled and is currently awaiting final approval.

Rader v. Bruister, No. 13-1081 (S.D. Miss.)

This case alleges breach of fiduciary duty and prohibited transactions in connection with the purchase by the Bruister Company ESOP of shares from its founder. We obtained a judgment for approximately \$6.5 million after a lengthy bench trial. Defendants appealed the judgment, and the Fifth Circuit affirmed. The Fifth Circuit also affirmed the award of attorneys' fees. Collection actions are proceeding on the existing judgment.

Wagner v. Stiefel Labs., Inc., No. 12-3234 (N.D. Ga.)

Keller Rohrback served as counsel for several ESOP plan participants in this lawsuit that alleged Defendants directed and approved the repurchase of Stiefel Labs., Inc. stock from ESOP participants and the ESOP at a fraction of the actual fair market value of Stiefel stock, allowing Defendants to reap a substantially higher portion of the proceeds in a subsequent \$3.6 billion sale of the company to GlaxoSmithKline. The case was resolved pursuant to a confidential settlement prior to trial.

Wool v. Sitrick, No. 10-2741 (C.D. Cal.)

Keller Rohrback served as Lead Counsel in this ESOP valuation action brought on behalf of participants and beneficiaries in the company's ESOP against Defendants who repurchased shares from the ESOP at a price significantly below fair market value. A settlement providing a payment \$6.25 million settlement was approved by Judge Jacqueline Nguyen.

Johnson v. Couturier, No. 05-2046 (E.D. Cal.)

Keller Rohrback obtained a major victory for participants of the Noll Manufacturing Co. ESOP against Defendants who awarded themselves grossly excessive compensation at the expense of the ESOP. In a seminal case frequently cited in ESOP litigation by courts across the country, the Ninth Circuit affirmed a preliminary injunction by the district court which prohibited an ESOP plan sponsor from paying litigation costs to indemnify the ESOP's trustees. *Johnson v. Couturier*, 572 F.3d 1067 (9th Cir.).

Hans v. Tharaldson, No. 05-115 (D.N.D.)

Keller Rohrback served as Lead Counsel for the then-current employees in an ESOP valuation action that alleged the ESOP paid an excessive price for their shares in a transaction approved by Defendants. A settlement providing for a \$15 million settlement fund, including a \$4 million cash payment to all current and former participants and beneficiaries of the ESOP, and an \$11 million credit against the principal owed by the ESOP to the company was approved by Chief Judge Ralph Erikson.

EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: EXCESSIVE & IMPROPER FEES

Precious retirement savings—particularly in defined contribution or 401(k) plans—are vulnerable to being whittled away by fees associated with investment products. There are as many types of fees as investment products available to retirement plans. Many fees are hidden or undisclosed. Some fees are paid directly by participants, while others are levied indirectly as kickbacks from one service provider or fiduciary to another. In many cases, these fees are charged for improper purposes—to enrich plan fiduciaries or service providers at the expense of hard-working Americans. High fees over time can slash retiree balances by a third, or more. No matter who pays or collects excessive fees or conflicted fees, ERISA provides robust protections and remedies. Specifically, ERISA prohibits fiduciaries from self-dealing and any conduct that puts their own interests—or the interests of their affiliates or third parties—above those of the plan participants to whom they owe fiduciary duties.



Keller Rohrback has successfully litigated ERISA class actions challenging excessive and conflicted fees. Our attorneys have challenged investments that contain many layers of securities and insurance products—and many layers of fees. We have pursued on a class action basis not only claims against multiple entities responsible for the fees charged to participants in a single plan, but also uniform fees charged by service providers to thousands of plans using common investment products.

Keller Rohrback has been selected by federal courts to serve as lead or co-lead counsel in class action cases challenging excessive and self-dealing fees. We have written articles and presented on these topics, and we authored an amicus brief in the first ERISA excessive fee case to reach the U.S. Supreme Court. See Brief for Law Professors as Amici Curiae in Support of the Petitioners, *Tibble, et al. v. Edison International, et al.*, No. 13-550 (U.S.).

REPRESENTATIVE CASES

Braden v. Wal-Mart Stores, Inc., No. 08-3109 (W.D. Mo.)

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of Wal-Mart's 401(k) plan who invested in retail class mutual funds that charged excessive fees to participants and paid hidden fees to the plan's trustee and recordkeeper, Merrill Lynch. The complaint alleged that the revenue sharing and the other fees were excessive in light of the size of the plan, and that these fees were not properly disclosed. Keller Rohrback's attorneys secured the *first appellate victory* in a fee case of this kind when they obtained an order from the Eighth Circuit reversing dismissal and articulating the pleading standard for process-based breaches of ERISA, see *Braden v. Wal-Mart*, 588 F.3d 585 (2009). A settlement that included \$13.5 million along with injunctive relief was approved by Judge Gary A. Fenner.

EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: EXCESSIVE & IMPROPER FEES

Santomenno v. Transamerica Life Insurance Company, No. 12-2782 (C.D. Cal.)

This class action was filed on behalf of participants or beneficiaries of many 401(k) plans to whom Transamerica Life Insurance Company provided fiduciary services through one of its group annuity contracts. The complaint alleges that Defendants extracted impermissible fees from the annuity contracts issued to 401(k) plans created for small- and mid-sized businesses through the use of add-on or wrapper fees. The Court issued an order denying Defendants' motions to dismiss the ERISA claims because Transamerica was a fiduciary with regard to its fees, and also certified two classes of participants with claims for prohibited transactions and breaches of loyalty and prudence who are in thousands of different ERISA plans that use Transamerica's annuity contracts.

Beach v. JPMorgan Chase Bank, No. 17-563 (S.D.N.Y.)

Plaintiffs allege that JPMorgan Chase Bank (Chase) breached its fiduciary duties to the participants and beneficiaries of the JPMorgan Chase 401(k) Savings Plan (Plan) in violation of ERISA by, among other things, failing to prudently and loyally manage the Plan's assets by selecting and retaining unduly expensive Core Funds and Target Date Funds as investment options in the Plan and by engaging in prohibited transactions as a result of conflicts of interest.

Teets v. Great-West Life & Annuity Insurance Company, No. 14-2330 (D. Colo.)

Keller Rohrback serves as co-counsel in this lawsuit brought on behalf of a putative class of participants in defined contribution 401(k) plans who invested their plan assets in a GIC sponsored by Great-West. The complaint alleges that Great-West breached its fiduciary duties by failing to act solely in the interest of plan participants. Although Great-West purports to "guarantee" a credited rate of return, this guarantee is illusory because Great-West reserves the right to—and has—reset this rate on a periodic basis, passing the risk of investment performance on to plan participants. Meanwhile, by setting this credited rate artificially low, Great-West retains as profit substantial portions of the investment yield earned on plan assets invested through the GIC.

In re Regions Morgan Keegan ERISA Litigation, No. 08-2192 (W.D. Tenn.)

Keller Rohrback served as Co-Lead Class Counsel in this ERISA breach of fiduciary duty class action on behalf of participants and beneficiaries in the company's retirement plans as well as customer plans for which Regions served as a fiduciary. A settlement providing injunctive relief and a payment of \$22.7 million was approved by Judge Samuel H. Mays, Jr .

EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: IMPRUDENT INVESTMENTS

Many times ERISA plans end up in high-risk or other patently imprudent investments due to breaches by the plans' fiduciaries. Depending on the structure of the investment, fiduciaries may have been incentivized by the fees that could be generated to invest plan assets in investments that are simply unacceptably risky for ERISA plans. Keller Rohrback has successfully litigated and resolved numerous cases challenging fiduciaries' imprudent investment of plan assets in high risk investment strategies.

REPRESENTATIVE CASES

Kayes v. Pacific Lumber Co., 51 F.3d 1449 (9th Cir.)

A firm attorney served as co-counsel for a class of retirees and employees of Pacific Lumber Co. The complaint alleged that defendants' selection of Executive Life Insurance Company to provide annuities to pension plan participants (upon termination of the plan) violated ERISA's fiduciary standards. The Ninth Circuit decision upheld plaintiffs' standing to pursue the claims, affirmed the lower court finding that defendant corporate officers were fiduciaries, and broadly defined term "plan asset" for purposes of ERISA's prohibited transaction provisions. On remand, the case settled, resulting in the payment of approximately \$7 million to the class.

Madoff Direct & Feeder Fund Litigation: Hartman v. Ivy Asset Management LLC, No. 09-8278 (S.D.N.Y.)

Keller Rohrback successfully litigated this direct action on behalf of the trustees of seventeen employee benefit plans damaged by the Madoff Ponzi scheme. The action alleged that Ivy Asset Management and J.P. Jeanneret Associates, Inc. breached their fiduciary duties under ERISA by causing the plans to be invested directly or indirectly in Madoff funds. Keller Rohrback obtained a settlement of over \$219 million in this case and related actions, including claims brought by the United States Secretary of Labor and the New York Attorney General.

In re State Street Bank and Trust Co. ERISA Litigation, No. 07-08488 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this ERISA case brought on behalf of participants and beneficiaries in a class of retirement plans that had invested in State Street's fixed income bond funds. Plaintiffs alleged that State Street, investment manager of the bond funds, had imprudently invested the purportedly conservative funds in high-risk and/or highly leveraged financial instruments tied to mortgage-backed securities. A settlement providing a payment of \$89.75 million was approved by Judge Richard J. Holwell.

EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: FOREIGN CURRENCY TRADING

Foreign exchange is a necessary component of all international investment transactions, yet the foreign exchange market is one of the least transparent and least regulated of the international markets. The large banks and other financial institutions that make up this market act as market-makers and trade currencies amongst each other in this \$5.3 trillion-a-day market. The lack of regulation in the marketplace makes it easy for the banks to manipulate transactions and the rates at which they are effected to the banks' advantage—at the expense of their clients. Keller Rohrbach's practice has encompassed a range of foreign exchange trading abuses faced by both institutional investors and participants and beneficiaries of retirement plans.

REPRESENTATIVE CASES

Farrell v. JPMorgan Chase & Co., No. 16-2627 (S.D.N.Y.) / *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-7789 (S.D.N.Y.)

The complaint alleges that JPMorgan Chase, who sponsored collective investment trusts or provided asset management in connection with foreign investments requiring securities exchange, engaged in a world-wide foreign currency manipulation scheme spanning a decade. The complaint also alleges that JPMorgan is therefore a fiduciary to hundreds of ERISA plans affected by this scheme. The multi-bank scheme is subject to antitrust and commodities act claims as well. Numerous banks, including JPMorgan, have settled the related price-fixing case for approximately \$2 billion thus far. Keller Rohrbach is currently serving as ERISA Allocation Counsel with regard to these partial settlements.

Andover Cos. Emp. Savings & Profit Sharing Plan v. State Street Bank & Trust Co., No. 12-11698 (D. Mass.)

This complaint was filed on behalf of a class of all qualified ERISA plans, and their participants, beneficiaries, and named fiduciaries, who suffered losses as a result of State Street Bank and Trust Company's alleged deceptive acts and practices concerning hidden charges for foreign currency exchange transactions between 1998 and 2009. Plaintiffs allege that State Street improperly marked up or marked down currency transactions, and engaged in ERISA prohibited transactions when it failed to disclose fully the details of the foreign currency transactions it was undertaking on behalf of the Plans. A settlement of \$300 million was approved on behalf of the consumer claims and the ERISA claims by Judge Mark L. Wolf.

Bank of New York Mellon Corp. Forex Transactions Litigation, No. 12-2335 (S.D.N.Y.)

Keller Rohrbach served as counsel in this foreign currency exchange transaction class action, representing qualified ERISA participants and beneficiaries on behalf of their respective plans. Judge Lewis A. Kaplan granted final approval of a global resolution of the private and governmental enforcement actions against BNY Mellon in which \$504 million will be paid back to BNY Mellon customers (and \$335 million of which is directly attributable to the class litigation).



EMPLOYEE BENEFITS

WELFARE PLANS

In addition to retirement plans, ERISA also governs how employee health care plans are administered. ERISA creates fiduciary responsibilities for those who manage and control health plans, requires that plans provide participants with accurate plan information, and gives plan participants the right to sue for benefits and breaches of fiduciary duty. Therefore, health care plans must be operated in compliance with ERISA's particular standards that were designed to protect the interests of employees, retirees, and other plan beneficiaries, such as family members.

REPRESENTATIVE CASES

Dobson v. Hartford Financial Services Group, Inc., 389 F. 3d 386 (2d Cir.)

A firm attorney served as co-counsel for a putative class of participants in ERISA-covered long-term disability plans challenging Hartford's failure to pay interest on retroactive payments it made to disabled participants after those participants were successful in using the plan's internal review procedure and obtaining reversals of claim denials. The district court granted the named plaintiff's claims on one of his legal theories, but denied class certification and rejected other claims. The court of appeals reversed in these latter respects. After remand and further proceedings in both the district and appeals court, the case settled. The settlement provided for future payment of interest on claims where appeals were favorably decided and for some retroactive payments.

Boss v. CVS Health Corp. et al., No. 17-1823 (D.N.J.)

Keller Rohrback brought a class action lawsuit against the nation's three largest pharmacy benefit managers (PBMs), Express Scripts, OptumRx, and CVS Caremark, and three major insulin manufacturers, Sanofi-Aventis, Novo Nordisk, and Eli Lilly, who produce the widely-prescribed analog insulins: Lantus, Apidra, Levemir, Humalog, and Novolog. The complaint alleges that the PBMs conspired with insulin manufacturers to artificially inflate the price of insulin through rebates and incentives for their own collective benefit. Plaintiffs allege that the PBMs, by engaging in a price-inflating scheme and failing to act solely in the interest of ERISA plan participants, breached their fiduciary duties of loyalty and committed prohibited transactions. Plaintiffs seek both monetary and injunctive relief on behalf of health plan participants and beneficiaries, as well as uninsured consumers.

Fellgren v. UnitedHealthcare, No. 16-3914 (D. Minn.)

Keller Rohrback filed this case against UnitedHealth, several affiliates, and its subsidiary Pharmacy Benefit Manager (PBM) OptumRx in connection with a "Clawback Scheme" in which the PBM charges participants and beneficiaries of health plans copayments or coinsurance at the pharmacy counter that exceed either the negotiated price of the drug or the retail cash price of the drug, and keeps the difference, in violation of the terms of the health plans at issue. The Fellgren matter involves both ERISA and non-ERISA plans, so the claims are for ERISA fiduciary breaches and prohibited transactions, as well as violations of RICO, state consumer statutes, and other common law rules.

In re Express Scripts / Anthem ERISA Litigation, No. 16-3399 (S.D.N.Y.)

Keller Rohrback serves as interim Co-Lead Counsel in this class action filed on behalf of all participants and beneficiaries of Anthem-insured ERISA plans and self-insured ERISA plans against both Anthem and Express Scripts, Inc. (ESI) for breaches of fiduciary duty and prohibited transactions under ERISA. ESI serves as the exclusive Pharmacy Benefit Manager (PBM) to Anthem-insured plans under a ten-year agreement, and the claims arise out of Defendants' practice of overcharging the class for pharmaceutical drugs.

EMPLOYEE BENEFITS



WELFARE PLANS

In re Cigna Corp. PBM Litigation, No. 16-1702 (D. Conn.)

Keller Rohrback serves on the Plaintiffs' Executive Committee in this ERISA and RICO case against Cigna, its affiliates, and its primary external Pharmacy Benefit Manager (PBM) OptumRx. Plaintiffs here allege that Cigna and its PBMs engage in a "Clawback Scheme" where patients are overcharged for their prescription medications above and beyond the negotiated price of the drug or the retail cash price of the drug charged to someone without health insurance, while Defendants keep the overcharges.

In re Humana PBM Litigation, No. 16-0706 (W.D. Ky.)

Humana uses its in-house Pharmacy Benefit Manager (PBM) Humana Pharmacy Solutions, as well as Argus Health Systems, to engage in a "Clawback Scheme" where patients are overcharged for their prescription medications above and beyond the negotiated price of the drug or the retail cash price of the drug charged to someone without health insurance, while Defendants keep the overcharges. Given Humana's significant presence in the Medicare plan market, the claims here are pursuant to RICO and state consumer laws, as well as common law theories. Humana also provides health plans governed by ERISA.

Gates v. United Health, No. 11-3487 (S.D.N.Y.)

Keller Rohrback served as counsel in this lawsuit that alleged Defendants violated ERISA through use of an "estimating policy" which caused Medicare eligible participants and beneficiaries to be paid lower benefits than required by the plan in which they participate for services provided by out-of-network providers. Following an initial dismissal, Keller Rohrback successfully appealed to the Second Circuit Court of Appeals, and the district court then agreed with Plaintiff.

Turpin v. Consolidated Coal Company, No. 99-1886 (W.D. Pa.)

A firm attorney served as co-counsel for plaintiff in a case alleging that a Blue Cross entity's use of computer-generated Explanation of Benefits (EOB) forms violated ERISA regulations guaranteeing plan participants a full and fair review of their claims. The class action settlement resulted in significant changes to the forms, including detailed information as to how participants could appeal claim denials and reform of the forms' denial codes so that they were more understandable to the class members.

ERISA APPELLATE PRACTICE



ERISA appeals require specialized skills and experience, and Keller Rohrback has a seasoned appellate team that includes award-winning brief writers and outstanding oral advocates. Our ERISA appellate expertise is particularly important in large cases, including complex class actions. Keller Rohrback has the experience and talent to handle any issue that arises involving interlocutory appeals and will work to ensure that any judgment or settlement is affirmed on appeal.

REPRESENTATIVE CASES

Fletcher v. ConvergeX Group, L.L.C., No. 13-9150, 2017 WL 549025 (2d Cir.)

Keller Rohrback serves as co-counsel in this lawsuit filed in the Southern District of New York that alleges Defendants violated ERISA by “double-charging” for transition management and brokerage services. After the trial court mistakenly dismissed the case, the Second Circuit reversed and reinstated plaintiffs’ claims.

Hunter v. Berkshire Hathaway Inc., 829 F.3d 357 (5th Cir.)

Keller Rohrback represented retirement plan participants against Acme Brick Company and its sole owner, Berkshire Hathaway Inc., to enforce Berkshire Hathaway’s promise, when it acquired Acme, not to cause Acme to reduce retirement plan benefits. At Keller Rohrback’s urging, the Fifth Circuit determined that Berkshire Hathaway could be liable for that promise and reversed the trial court’s dismissal of claims against Berkshire Hathaway.

Rader v. Bruister, 823 F.3d 250 (5th Cir.)

Keller Rohrback obtained a judgment for approximately \$6.5 million after a lengthy bench trial on ERISA breach of fiduciary duty and prohibited transaction claims. Defendants appealed the judgment, and the Fifth Circuit affirmed. The Fifth Circuit also affirmed the award of attorneys’ fees. Collection actions are proceeding on the existing judgment.

Alcantara v. Bakery & Confectionary Union, 751 F.3d 71 (2d Cir.)

Keller Rohrback successfully defended the trial court’s decision and judgment that Defendants had unlawfully reduced pension benefits.

Wurtz v. Rawlings Co., 761 F.3d 232 (2d Cir.)

Keller Rohrback filed an amicus brief on behalf of the New York State Trial Lawyers Association, arguing that ERISA did not preempt a New York state law. The Second Circuit agreed with the position advanced by Keller Rohrback and adopted the reasoning and even some of the language of its amicus brief.

Gates v. UnitedHealth Group Inc., 561 F. App’x 73 (2d Cir.)

Keller Rohrback persuaded the Second Circuit to reverse the district court’s dismissal of our client’s claims for medical coverage.

Braden v. Wal-Mart Stores, Inc., 588 F.3d 585 (8th Cir.)

Keller Rohrback represented a class of Wal-Mart employees who alleged that Wal-Mart’s 401(k) plan charged them excessive fees and convinced the Eighth Circuit to reverse the trial court and reinstate the employees’ claims.

ERISA APPELLATE PRACTICE



Johnson v. Couturier, 572 F.3d 1067 (9th Cir.)

Keller Rohrback obtained a major victory for participants of an ESOP after Defendants awarded themselves grossly excessive compensation at the expense of the ESOP. On appeal, the Ninth Circuit affirmed a preliminary injunction by the district court which prohibited an ESOP plan sponsor from paying litigation costs to indemnify the ESOP's trustees. The opinion is frequently cited in ESOP litigation by courts across the country.

In re Syncor ERISA Litigation, 516 F.3d 1095 (9th Cir.)

Keller Rohrback represented a group of workers who alleged that their employer had violated the law by investing their retirement savings in the employer's stock. Keller Rohrback convinced the Ninth Circuit to reverse the dismissal of the trial court and reinstate the workers' claims.

Tatum v. RJR Pension Investment Committee, 392 F.3d 636 (4th Cir.) and 761 F.3d 346 (4th Cir.)

Attorney Jeff Lewis persuaded the Fourth Circuit to affirm the trial court's decisions that fiduciaries of the R.J. Reynolds 401(k) plan breached their fiduciary duties and that the breaching fiduciaries bore the burden of proof with respect to loss causation. Mr. Lewis further successfully persuaded the Fourth Circuit that the trial court applied an incorrect legal standard in concluding that the breach did not cause the plan's losses.



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PRACTICE EMPHASIS

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- Appeals
- Class Actions
- Constitutional Law
- Commodities and Futures Contracts
- Consumer Protection
- Data Breach
- Employment Law
- Environmental Litigation
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Institutional Investors
- Intellectual Property
- International Law
- Mass Personal Injury
- Medical Negligence
- Securities
- State and Local Government
- Whistleblower

Lynn Lincoln Sarko is a master strategist and litigator who leads Keller Rohrback's nationally recognized Complex Litigation Group. One of the nation's top attorneys in complex litigation, Lynn does not just help clients win – he helps them win what they want. Through smart, efficient strategy and tailored, creative problem solving, Lynn and his team accomplish the best outcomes while minimizing costs and maximizing value.

Lynn's diverse experience enables him to think outside the box to resolve complex cases. He regularly interacts with international business interests, representing sovereign nations and institutional clients seeking to recover investment losses caused by financial fraud and other malfeasance. He is currently involved in several matters involving complex derivatives and specialty investment products. Lynn is the driving force behind Keller Rohrback's membership with the Sovereign Wealth Fund Institute, a global organization of leading asset managers and service providers engaged in the public investor community. He represents clients with regard to regulatory investigations and issues involving state and federal supervisory agencies and has litigated actions involving several of the nation's largest accounting and investment firms.

Lynn has led the firm's securities and retirement fund practice for over 25 years and regularly serves as lead counsel in multiparty individual and class action cases involving ERISA, antitrust, securities, breach of fiduciary duty, and other investment fraud issues. Other law firms often hire him as settlement counsel in these and other complex cases because of his reputation as a skilled negotiator. His successes in this area include multimillion dollar settlements in the IKON, Anicom, Scientific-Atlanta, United Companies Financial Corp., and Apple securities fraud and derivative cases and the Enron, WorldCom, Global Crossing, Health South, Delphi, Washington Mutual, Countrywide, Lucent, Merrill Lynch, and Xerox consolidated pension and retirement plan cases.

Courts and professional organizations have honored Lynn for his work on financial, fiduciary duty, consumer and numerous other high profile public cases. After serving as trial counsel in the Exxon Valdez Oil Spill case, which resulted in a \$5 billion punitive damages verdict, Lynn was appointed by the court as Administrator for all funds recovered. He prosecuted the Microsoft civil antitrust case, Vitamin price-fixing cases, the MDL Fen/Phen Diet Drug Litigation, and notable public service lawsuits such as Erickson v. Bartell Drug Co., which established a woman's right to prescription contraceptive health coverage.

Prior to joining Keller Rohrback, Lynn was an Assistant United States Attorney for the District of Columbia, Criminal Division, an associate at the Washington, D.C. office of Arnold & Porter, and law clerk to the Honorable Jerome Farris, United States Court of Appeals for the Ninth Circuit, in Seattle. He has been the managing partner of Keller Rohrback since 1991.

Lynn appears in federal courts from coast to coast, maintaining an active national litigation practice. He regularly counsels and represents consumers, employees, and businesses who have suffered harm resulting from the improper disclosure of proprietary, personal, health, and other protected information.

KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.

EDUCATION

University of Wisconsin

B.B.A., 1977

University of Wisconsin

M.B.A., 1978, *Beta Alpha Psi*

University of Wisconsin

J.D., 1981, *Order of the Coif*; Editor-in-Chief, *Wisconsin Law Review*; Salmon Dalberg Award (outstanding graduate)

BAR & COURT ADMISSIONS

1981, Wisconsin

1983, District of Columbia

1986, Washington

HONORS & AWARDS

Super Lawyers List, Washington Law & Politics, 1999-2013

Avvo Top Tax Lawyer, Washington CEO Magazine, 2008

Trial Lawyer of the Year, 1995

Salmon Dalberg Award, 1981

PROFESSIONAL & CIVIC INVOLVEMENT

American Bar Association, *Member*

Bar Association of The District of Columbia, *Member*

Federal Bar Association, *Member*

King County Bar Association, *Member*

State Bar of Wisconsin, *Member*

Trial Lawyers for Public Justice, *Member*

Washington State Bar Association, *Member*

Washington State Trial Lawyers Association, *Member*

American Association for Justice, *Member*

Social Venture Partners of Santa Barbara, Founding Partner

The Association of Trial Lawyers of America, *Member*

American Academy of Trial Counsel, *Fellow*

Editorial Board, *Washington State Securities Law Deskbook* (scheduled for publication in 2012)

SELECTED PUBLICATIONS

Thomson/West Webinar, "Stock Drop and Roll: Key Supreme Court Rulings and New Standards in ERISA 'Stock Drop' Cases," July 24, 2014

14th Annual Pension Law, Governance and Solvency Conference, 2013

Canadian Institute's 14th Annual Advanced Forum on Pension Law, Governance and Solvency, 2013

ERISA Litigation & Regulatory Compliance Congress, 2013

American Conference Institute's 6th National Forum on ERISA Litigation, 2013

25th Annual ERISA Litigation Conference, 2012

American Conference Institute's 5th National Forum on ERISA Litigation, 2012

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- Employee Benefits and Retirement Security
- Fiduciary Breach
- International Law

EDUCATION

University of California, San Diego

B.A., 1987, Economics

Arizona State University College of Law

J.D., 1990, Order of the Coif; Member, *Arizona State Law Journal*, 1988-1990; Note and Comment Editor, *Arizona State Law Journal*, 1989-1990; Student Instructor, Legal Research and Writing, 1989-1990.

Laurie Ashton is Of Counsel to Keller Rohrback. Prior to becoming Of Counsel, she was a partner in the Phoenix affiliate of Keller Rohrback. Early in her career, as an Adjunct Professor, she taught semester courses in Lawyering Theory and Practice and Advanced Business Reorganizations. She also served as a law clerk for the Honorable Charles G. Case, U.S. Bankruptcy Court, for the District of Arizona for two years.

In complex litigation, Laurie was the lead attorney for Keller Rohrback in a series of successful groundwater contamination suits brought in 1996 against multiple international defendants concerning chemical releases spanning over 60 years. She was also the lead attorney for Keller Rohrback in an ERISA class action suit on behalf of over 21,000 employees who lost a material percentage of their retirement assets at the hands of fiduciaries who maintained the investment of those assets in their own declining company stock—a case that was, at its time, amongst the largest of its kind in the nation. Laurie has led or been a member of the team leading numerous high profile business reorganizations, including a case in which the Court confirmed a reorganization plan over the objection of the international life insurance company's feasibility expert, based on Laurie's cross examination.

Laurie has been active in the State Bar of Arizona where she served on the Ethics Committee for six years. She was also the coauthor of a textbook on limited liability companies and partnerships, published by West, and is AV rated by Martindale.

An important part of Laurie's international work involves the domestic and international legal implications of treaty obligations and breaches. She is lead counsel for The Republic of the Marshall Islands in its federal court treaty breach suit against the United States, and a member of the international legal team representing the Marshall Islands in three cases pending at the International Court of Justice in The Hague, against the United Kingdom, India and Pakistan. For this work, Laurie is part of the legal team that the International Peace Bureau has nominated, along with the former Foreign Minister of the Marshall Islands, for the 2016 Nobel Peace Prize.

Laurie is frequently interviewed and has been cited by Reuters, Newsweek, Fox News, Huffington Post, Slate Magazine, Radio New Zealand, Radio Australia, and others. She currently serves as a Trustee of the Santa Barbara Foundation, a member of the Human Rights Watch Committee in Santa Barbara, and as a Director of the Global Justice Center in New York, which advances human rights pursuit to various international laws, including the Geneva and Genocide Conventions, as well as customary international law.

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L A W O F F I C E S ♦ L . L . P .

BAR & COURT ADMISSIONS

1990, Arizona

1999, Colorado

2007, Washington, D.C.

2013, Eastern District of Michigan

Sixth Circuit Court of Appeals

Ninth Circuit Court of Appeals

Tenth Circuit Court of Appeals

U.S. Supreme Court

Speaker, United Nations 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons; Panel, *Marshall Islands Nuclear Zero Lawsuits*

Speaker, Humanity House, The Hague, "*Legal Obligations for Nuclear Disarmament*," March 2016.

Speaker, Bertha Von-Suttner Master Class, The Peace Palace, The Hague, "*Forward Into Light, The Barbarization of the Sky*."

PROFESSIONAL & CIVIC INVOLVEMENT

State Bar of Arizona, *Member*

Colorado Bar Association, *Member*

Washington, D.C. Bar Association, *Member*

Adjunct Professor of Law, *Advanced Chapter 11*, Arizona State University, 1996

Adjunct Professor of Law, *Lawyering Theory & Practice*, Arizona State University, 1997

Committee on the Rules of Professional Conduct ("Ethics Committee"), State Bar of Arizona, *Member*, 1997-2003

Court Appointed Special Advocate, King County, 2007-2009

Santa Barbara Foundation, *Trustee*

Global Justice Center, New York, *Director*

Human Rights Watch Committee, Santa Barbara, *Member*

PUBLICATIONS & PRESENTATIONS

Author, Case Note, *Arizona Mortgage and Deed of Trust Anti-Deficiency Statutes: The Underlying Obligation on a Note Secured By Residential Real Property After Baker v. Gardner*, 21 Ariz. St. L.J. 465, 470 (1989).

Co-Author, *Arizona Legal Forms: Limited Liability Companies and Partnerships* (1996-2004).

Guest Lecturer, Harvard Law School, 1997, 1999, 2001-2002.

Guest Lecturer, Stanford Law School, 2003.

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LAW OFFICES ♦ L. L. P.



ALISON GAFFNEY

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agaffney@kellerrohrback.com

PRACTICE EMPHASIS

- Class Actions
- Consumer & Data Privacy Protection
- Employee Benefits & Retirement Security

EDUCATION

Swarthmore College

B.A., 2002, Linguistics and Languages (Spanish & Mandarin Chinese); McCabe Scholar

University of California, San Diego

M.A., 2007, Latin American Studies (International Migration)

University of Washington School of Law

J.D., 2012

Alison Gaffney leaves no stone unturned. A member of Keller Rohrbach's nationally recognized Complex Litigation Group, Alison is a thorough researcher and a quick study no matter the factual context. At Keller Rohrbach, Alison has devoted her time to representing employees and consumers in a variety of class action and individual claims. She represents pension plan participants challenging hospital conglomerates' claimed "church plans" status in *Holcomb v. Hospital Sisters Health System* (C.D. Illinois) and *Carver v. Presence Health Network* (N.D. Illinois). In *Dolins v. Continental Casualty Company* (N.D. Illinois), Alison represents a putative class of employees in their ERISA breach claim. Alison also represents consumers in a class action case currently pending before the United States Court of Appeals for the Ninth Circuit regarding the prescription drug Cymbalta, and serves as counsel in *Kessler v. Samsung Electronics America, Inc.* (E.D. Wisconsin), a class action involving alleged defects in Samsung's S7 series smartphones.

Prior to law school, Alison completed a master's degree focused on international migration, and during law school, she represented clients in deportation proceedings through the law school's Immigration Law Clinic and with the Northwest Immigrant Rights Project, where she continues to volunteer. As a pro bono attorney, Alison has had the privilege of representing individuals from many countries, including Mexico, Venezuela, Rwanda, and Kenya.

When she is not fighting for her clients, Alison is busy keeping up with her two young and energetic sons, scrambling with The Mountaineers, and generally enjoying the beauty of the Pacific Northwest.

BAR & COURT ADMISSIONS

2012, Washington

2013, U.S. District Court for the Western District of Washington

2015, U.S. District Court for the Eastern District of Washington

2016, U.S. District Court for the Central District of Illinois

2013, U.S. Court of Appeals for the Second Circuit

2014, U.S. Court of Appeals for the Ninth Circuit

2016, U.S. District Court for the Eastern District of Wisconsin

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L A W O F F I C E S ♦ L . L . P .

PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Mother Attorneys Mentoring Association of Seattle
(MAMAS), *Member*

Northwest Immigrant Rights Project, *Pro Bono Attorney*

LANGUAGES

Spanish

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LAURA R. GERBER

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PRACTICE EMPHASIS

- Consumer Protection
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products & Services
- Institutional Investors
- Whistleblower

EDUCATION

Goshen College

B.A., 1994, History, Economics

University of Washington School of Law

J.D., 2003

Evans School of Public Affairs, University of Washington

M.P.A., 2003

Laura R. Gerber is a strong advocate for her clients. From her early years in a whistleblower protection organization, to her current practice litigating against some of America's largest corporations, Laura has built her career as an advocate on behalf of both employees and customers of large corporations. Laura represents her clients with skill, tact and diplomacy. As a result, Laura's clients trust her to listen carefully, keep them informed, provide excellent legal advice, and to diligently pursue their interests in litigation against powerful defendants.

For over a decade, Laura has practiced in Keller Rohrback's Complex Litigation Group where she has developed a diverse practice with a focus on holding banks and other institutions accountable to their customers and employees. She has experience litigating mutual fund excessive fee cases, Ponzi scheme cases, breach of contract and breach of fiduciary duty cases, Employee Retirement Income Security Act ("ERISA") cases, and consumer protection class actions. Laura's strategic persistence in complex cases has led to impressive results with certain of her clients receiving substantial individual recoveries.

While in law school, Laura concurrently received a Master's degree in Public Administration and was a member of the Moot Court Honor Board.

BAR & COURT ADMISSIONS

2004, Washington
2006, U.S. District Court for the Eastern District of Washington
2006, U.S. District Court for the Western District of Washington
2010, U.S. District Court for the Northern District of Illinois
2013, U.S. District Court for the District of Colorado
2016, U.S. District Court for the Southern District of Illinois
2016, U.S. District Court for the Eastern District of Missouri
2016, U.S. District Court for the Northern District of Ohio
2016, U.S. District Court for the Western District of Oklahoma
2006, U.S. Court of Appeals for the Ninth Circuit Court
2014, U.S. Court of Appeals for the Sixth Circuit Court
2015, U.S. Court of Appeals for the Tenth Circuit Court

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2009, 2013.

KELLER ROHRBACK

L A W O F F I C E S ♦ L . L . P .

PROFESSIONAL & CIVIC INVOLVEMENT

Washington Appleseed, Board of Directors, *2012-present*

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

Mother Attorney Mentoring Association (MAMAS), *Member*

PUBLICATIONS & PRESENTATIONS

Speaker, American Conference Institute's 8th National Forum on ERISA Litigation, October 2014, (New Trends in Church Plan Litigation).

L. Gerber and R. Giovarelli, *Land Reform and Land Markets in Eastern Europe*, Food and Agriculture Organization of the United Nations (2005).

David Weissbrodt, Penny Parker, Laura Gerber, Muria Kruger, Joe W. (Chip) Pitts III, *A Review of the Fifty-Fourth Session of the Sub-Commission on the Promotion and Protection of Human Rights*, 21 NETH Q. HUM. RTS. 291 (2003)

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MATTHEW GEREND

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PRACTICE EMPHASIS

- Class Action
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Securities

EDUCATION

University of Wisconsin

B.A., with distinction, 2005,
Political Science, Phi Beta Kappa

Georgetown University Law Center

J.D., *cum laude*, 2010; Executive
Articles Editor, *Georgetown Journal
on Poverty Law and Policy*

Matthew Gerend practices in the firm's nationally recognized Complex Litigation Group, representing employees and other investors in litigation to enforce securities laws and the Employee Income Retirement Security Act ("ERISA"). Matt has represented plaintiffs in federal courts across the country to redress harms stemming from breaches of fiduciary duties, investment fraud, and other misconduct that threatens employees' retirement security.

Matt became interested in the laws protecting retirement and pension benefits as a clerk with AARP Foundation Litigation, where he helped draft a number of amicus curiae briefs filed in the U.S. Supreme Court and U.S. Courts of Appeals regarding the proper interpretation and implementation of ERISA. During law school, Matt also worked as an intern with the Community Development Project at the Lawyers' Committee for Civil Rights Under Law. Matt believes that lawyers have a unique ability to effect social change, an ethic that has guided his work representing individuals and investors against those engaged in divisive and fraudulent practices.

BAR & COURT ADMISSIONS

2010, Washington
2011, U.S. District Court for the Western District of Washington
2012, U.S. Court of Appeals for the Third Circuit
2013, U.S. District Court for the Eastern District of Michigan
2014, U.S. Court of Appeals for the Sixth Circuit
2014, U.S. Court of Appeals for the Ninth Circuit
2015, U.S. Court of Appeals for the Seventh Circuit
2015, U.S. District Court for the District of Colorado

PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers – Washington*, 2014, 2015.

PUBLICATIONS & PRESENTATIONS

Contributing Author, *Zanglein et. al., ERISA Litigation* (Bloomberg BNA 2015).
Deborah M. Austin and Matthew M. Gerend, *The Scope and Potential of Section 3 as Currently Implemented*, 19 J. Affordable Housing & Commun. Dev. L. 89 (2009).

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CHRISTOPHER GRAVER

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PRACTICE EMPHASIS

- Business Litigation
- Bankruptcy and Creditors' Rights

EDUCATION

St. John's College

B.A., 1976

University of New Mexico

J.D., *magna cum laude*, 1990
Order of the Coif

Chris is a member of Keller Rohrback's Complex Litigation and

Bankruptcy Groups, representing debtors, creditors, Court-appointed committees, and asset purchasers in Chapter 11 reorganization proceedings and out-of-court workouts. Chris also has wide-ranging experience in complex commercial litigation from corporate restructuring to matters of breach of fiduciary duty, commercial bankruptcy, commercial real estate, contracts, patent infringement, and environmental insurance coverage.

Together with colleagues he has represented clients as diverse as the committee of victims of clergy sexual abuse in the Chapter 11 reorganization of a Catholic diocese, a developer restructuring a portfolio of real property interests nationwide, and a national company acquiring a competitor's assets in a bankruptcy-court-approved sale in California.

A graduate of the great books liberal arts program at St. Johns' College in Santa Fe, Chris earned his law degree from the University of New Mexico Law School *magna cum laude* in 1990. While his practice is centered in the Southwest, Chris represents clients in federal courts coast to coast.

BAR & COURT ADMISSIONS

Arizona, 1990

United States District Court for the District of Arizona, 1990

United States Bankruptcy Appellate Panel of the Ninth Circuit

United States Court of Appeals for the Ninth Circuit

PROFESSIONAL & CIVIC INVOLVEMENT

American Bankruptcy Institute, *Member*

Arizona State Bar Association, *Member*

Maricopa County Bar Association, *Member*

PUBLICATIONS & PRESENTATIONS

"Confirming the Catholics: The Diocese of Tucson Experience, Norton Bankruptcy Law Advisor," 2005.

"Representing the Tort Claimants' Committee in the Chapter 11 Case Filed by the Roman Catholic Diocese of Tucson, prepared for the National Conference of Bankruptcy Judges," 2005.

"Decoding the Code," *AzBusiness Magazine*, 2005.

Speaker, Maricopa County Bar Association presentation, *New Bankruptcy Code: Changing the Way Creditors are Treated*, 2006.

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RON KILGARD

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PRACTICE EMPHASIS

- Appeals
- Antitrust & Trade Regulation
- Class Action
- Constitutional Law
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products & Services

EDUCATION

Harvard College B.A., 1973,
History

Harvard Divinity School M.T.S.,
1975, Old Testament

**Arizona State University College
of Law** J.D., 1979, Editor-in
Chief, *Arizona State Law Journal*,
Armstrong Award (outstanding
graduate)

Ron Kilgard is a seasoned lawyer who understands that yesterday's rule changes are just as important as the landmark cases decided decades ago. Ron has 35 years of experience in civil litigation. He knows that the substantive law changes slowly (at least most of the time!). However, the relevant rules and judges' individual practices change almost daily, and they vary enormously from jurisdiction to jurisdiction and judge to judge. Balancing all of this is, for Ron, one of the many challenges and pleasures of law practice.

Ron's practice is focused primarily on commercial and financial matters. For the last 17 years, he has extensively litigated pension plan class actions, involving both plans regulated by the Employee Retirement Income Security Act ("ERISA") and non-ERISA plans such as public plans and so-called "church plans." Ron helped Keller Rohrback pioneer company stock ERISA litigation in the late 1990s and early 2000s, and he was part of the team that obtained settlements of over \$265 million (in cash) in the Enron 401(k) litigation. In 2017, after six years of litigation, Ron prevailed in an action challenging as unconstitutional the cutbacks to the pensions of Arizona state court judges.

Ron is a Phoenix native. He clerked for the Honorable Mary M. Schroeder, U. S. Court of Appeals for the Ninth Circuit, in 1979-80 and has practiced in Phoenix ever since. He was one of the lawyers who formed the Phoenix affiliate of Keller Rohrback L.L.P. in November 2002. When not practicing law, he enjoys reading on the porch of his 1915 house with his Golden Retriever.

HONORS & AWARDS

Best Lawyers in America, 2017, ERISA practice.

PROFESSIONAL & CIVIC INVOLVEMENT

State Bar of Arizona, *Member*

District of Columbia Bar, *Member*

New York State Bar Association, *Member*

National Immigrant Justice Center, *Pro Bono Counsel*

KELLER ROHRBACK

L A W O F F I C E S ♦ L . L . P .

BAR & COURT ADMISSIONS

1979, Arizona Supreme Court
1979, U.S. District Court for the District of Arizona
1982, U.S. Court of Appeals for the Ninth Circuit
1995, U.S. Supreme Court
2005, U.S. Court of Appeals for the Second Circuit
2005, U.S. Court of Appeals for the Fifth Circuit
2007, U.S. District Court for the Eastern District of Michigan
2009, District of Columbia Court of Appeals
2010, U.S. Court of Appeals for the Fourth Circuit
2010, U.S. District Court for the District of North Dakota
2011, New York Supreme Court, Appellate Division
2012, U.S. District Court for the Southern District of New York
2013, U.S. District Court for the District of Colorado
2013, U.S. Court of Appeals for the Eighth Circuit
2014, U.S. Court of Appeals for the Sixth Circuit
2014, U.S. Court of Appeals for the Third Circuit
2015, U.S. Court of Appeals for the Seventh Circuit
2015, U.S. Court of Appeals for the Tenth Circuit
2016, U.S. District Court for the Southern District of Illinois
2016, U.S. District Court for the Western District of Oklahoma
2016, U.S. District Court for the Eastern District of Missouri
2016, U.S. District Court of the Central District of Illinois
2016, U.S. District Court of the Northern District of Indiana

PUBLICATIONS & PRESENTATIONS

Speaker, ABA Seminar, After Enron, 2006
Speaker, Chicago Bar Association, Company Stock Litigation, 2006
Speaker, West LegalWorks ERISA Litigation Conference, 2007
Speaker, National Center for Employee Ownership, *Fiduciary Implications of Company Stock Lawsuits*, 2012 and 2013
Speaker, American Conference Institute, *New Developments in Church Plan Litigation*, 2015-2017

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ERIN RILEY

CONTACT INFO

1201 Third Avenue, Suite 3200
Seattle, WA 98101
(206) 623-1900
eriley@KellerRohrback.com

PRACTICE EMPHASIS

- Appeals
- Class Actions
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Securities

EDUCATION

Gonzaga University

B.A., *cum laude*, 1992, French & History

University of Wisconsin Law School

J.D., *cum laude*, 2000, Wisconsin Law Review

Erin Riley knows that strong relationships are key in complex cases.

Erin was a summer associate at Keller Rohrback in 1999, and joined Keller Rohrback's complex litigation group in 2000.

Since the Fall of 2001, her practice has focused on representing employees and retirees in ERISA actions involving defined contribution, defined benefit, and health benefit plans. She has successfully litigated a number of ERISA breach of fiduciary duty cases including cases filed against Washington Mutual, Merrill Lynch and WorldCom. Erin has worked on ERISA-related articles and amicus briefs, and has spoken at ERISA-related conferences. She is a former Plaintiffs' Co-Chair of the Civil Procedure Subcommittee for the ABA Employee Benefits Committee, and is currently a senior editor of the Employee Benefits Law (BNA) treatise.

She earned her J.D. from the University of Wisconsin, where she served as an editor of the Wisconsin Law Review. She received her undergraduate degree from Gonzaga University.

When not at work, Erin enjoys spending time with her family and friends.

BAR & COURT ADMISSIONS

2000, Wisconsin
2000, Washington

PROFESSIONAL & CIVIC INVOLVEMENT

Wisconsin State Bar Association, *Member*

King County Bar Association, *Member*

Washington State Bar Association, *Member*

Civil Procedure Sub-Committee for the ABA Employee Benefits Committee, *Plaintiffs' Co-Chair*, 2012 – 2016

Employee Benefits Law (BNA), Chapter Editor, 2012 – 2016

Employee Benefits Law (BNA), Senior Editor, 2016 - present

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers – Washington*, 2009

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ARTICLES & PRESENTATIONS

Panelist, ABA Section of Labor and Employment Law, Employee Benefits Committee – Mid-Winter Meeting, Austin, TX, 2017 (How to Get the Class Action Settlement Your Client Needs).

Quoted in Jacklyn Wille, "Ninth Circuit Adopts Pro-Worker Pension Framework," *Pension & Benefits Daily*, Bloomberg BNA (Apr. 22, 2016) (www.bna.com).

"Amgen Inc. v. Harris: What is the Status of ERISA Company Stock Cases Post-Amgen," ABA Employee Benefits Committee Newsletter, Spring, 2016.

Speaker, ACI ERISA Litigation, Chicago, IL, 2016 (Supreme Court Roundup).

Panelist, ABA Section of Labor and Employment Law, Employee Benefits Committee – Mid-Winter Meeting, Las Vegas, NV, 2016 (mock mediation).

Quoted in Andrea L. Ben-Yosef, "Class Action Suits on Plan Fees Steam Ahead," *Pension & Benefits Blog*, Bloomberg BNA (Feb. 10, 2016) (www.bna.com).

Br. of Amicus Curiae of Pension Rights Center in Supp. of Petition, *Pundt v. Verizon Communications*, No. 15-785 (U.S. 2016).

Br. of Amicus Curiae AARP and National Employment Lawyers Association in Supp. of Pls.-Appellees, *Whitley v. BP, P.L.C.*, No. 15-20282 (5th Cir. Oct. 28, 2015).

Br. of The Pension Rights Center as Amicus Curiae in Supp. of Resp't, *Spokeo, Inc. v. Robins*, No. 13-1339 (U.S. Sept. 4, 2015).

Lynn L. Sarko, Erin M. Riley, and Gretchen S. Obrist, Brief for Law Professors as Amici Curiae in Support of the Petitioners, *Tibble, et al. v. Edison International, et al.*, No. 13-550 (U.S. 2014).

Quoted in Jacklyn Wille, "High Court to Address Statute of Limitations for Suits Challenging Retirement Plan Fees," *Pension & Benefits Daily*, Bloomberg BNA (Oct. 3, 2014) (www.bna.com).

Speaker, Western Pension & Benefits Council – 2014 Spring Seminar, Seattle, WA, 2014 (What's New in Fiduciary Litigation?).

Erin M. Riley and Gretchen S. Obrist, Contributors, "Attorneys Reflect on 40 Years of ERISA's Biggest Court Rulings" *Pension & Benefits Daily*, Bloomberg BNA, discussing *CIGNA Corp. v. Amara*, 131 S.Ct. 1866, 50 EBC 2569 (U.S. 2011) (95 PBD, 5/17/11; 38 BPR 990, 5/24/11) (<http://www.bna.com>)

Erin M. Riley and Gretchen S. Obrist, "The Impact of Fifth Third Bancorp v. Dudenhoeffer: Finally, a Court Gets it Right!" *Pension & Benefits Daily*, Bloomberg BNA (154 PBD, 8/11/2014) (<http://www.bna.com>).

Lynn L. Sarko and Erin M. Riley, Brief for Law Professors as Amici Curiae in Support of the Respondents, *Fifth Third Bancorp v. Dudenhoeffer*, No. 12-751 (U.S. March 5, 2014).

"Erin M. Riley Explores the Pro-Plaintiff Aspects of the Citigroup Ruling", ERISA Litigation Tracker: Litigator Q&A, Bloomberg BNA (Dec. 1, 2011). Reproduced with permission from ERISA Litigation Tracker Litigator Q & A (Dec. 5, 2011). Copyright 2011 by The Bureau of National Affairs, Inc. (800-372-1033)

Sarah H. Kimberly, Erin M. Riley, "Court Declines to Limit Damages in *Neil v. Zell*", ABA Employee Benefits Committee Newsletter (Spring, 2011).

Derek W. Loeser, Erin M. Riley and Benjamin Gould, "2010 ERISA Employer Stock Cases: The Good, the Bad, and the In-Between Plaintiffs' Perspective", Bureau of National Affairs, Inc. (Jan. 28, 2011).

Derek W. Loeser and Erin M. Riley, "The Case Against the Presumption of Prudence", Bureau of National Affairs, Inc. (Sept. 10, 2010).

KELLER ROHRBACK

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HAVILA UNREIN

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Ronan, MT 59864

406.281.7231

hunrein@KellerRohrback.com

PRACTICE EMPHASIS

- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Environmental Contamination
- Fiduciary Breach
- Financial Products and Services
- Mass Personal Injury
- Securities
- Whistleblower

EDUCATION

Dartmouth College

B.A., *magna cum laude*, 2003,
Russian Area Studies

University of Washington School of Law

J.D./LL.M. (Tax), *with honors*, 2008

Havila Unrein gives her clients a voice in the legal system. Havila practices in Keller Rohrback's nationally recognized Complex Litigation Group, where she is dedicated to helping clients who have been harmed by others engaged in fraud, cutting corners, and abuses of power.

Havila made significant contributions to *Hartman et al. v. Ivy Asset Management et al.*, a case involving fiduciary breach related to Madoff investments that resulted in a \$219 million settlement with consolidated cases. She currently represents plaintiffs in multiple cases alleging violations of the Employee Retirement Income Security Act of 1974 ("ERISA") by healthcare institutions attempting to claim exempt "church plan" status under ERISA.

During law school, Havila provided tax and business advice to low-income entrepreneurs and high-tech start-ups as a student in the Entrepreneurial Law Clinic. She also served as an extern to the Honorable Stephanie Joannides of the Anchorage Superior Court. Prior to law school, Havila worked and studied abroad in Russia, Azerbaijan, and the Czech Republic.

BAR & COURT ADMISSIONS

2008, Washington

2009, U.S. District Court for the Western District of Washington

2012, Montana

2012, U.S. Court of Appeals for the Ninth Circuit

2012, U.S. District Court for the District of Montana

2013, California

2013, U.S. District Court for the District of Colorado

2013, U.S. District Court for the Central District of California

2013, U.S. District Court for the Eastern District of California

2013, U.S. District Court for the Northern District of California

2013, U.S. District Court for the Southern District of California

2014, U.S. Court of Appeals for the Sixth Circuit

PROFESSIONAL & CIVIC INVOLVEMENT

California State Bar Association, *Member*

Santa Barbara County Bar Association, *Member*

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Montana State Bar Association, *Member*

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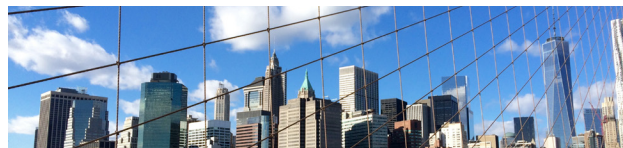
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Santa Barbara, CA 93101
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NEW YORK

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New York, NY 10036
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OAKLAND

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300 Lakeside Drive, Suite 1000
Oakland, CA 94612
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RONAN

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