

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

KENISHA BRANTLEY and GREG
BRANTLEY, On Behalf of Themselves and
All Others Similarly Situated,

Plaintiffs,

vs.

REPUBLIC MORTGAGE INSURANCE
COMPANY,

Defendant.

CIVIL ACTION NO. 2:04-CV-00805-PMD

**SUPPLEMENTAL MEMORANDUM OF
LAW IN SUPPORT OF PLAINTIFFS'
REQUEST FOR AWARD OF FEES AND
COSTS AND FOR INCENTIVE AWARDS
FOR CLASS REPRESENTATIVES**

Plaintiffs have previously filed their motion for award of fees and costs in the above matter, and submit this supplemental memorandum in support of their request for award of fees and costs, and for incentive awards for the class representatives herein. Plaintiffs' counsel have submitted with this supplemental memorandum a Declaration by lead class counsel setting forth facts in support of their request for such awards.

As stated in a previously filed memorandum in this case, although there is no definitive standard for award of fees in a common fund class action case, the preferred method is the percentage-of-the-fund method. The Fourth Circuit has noted that the percentage-of-the-fund method is "less cumbersome to apply than the lodestar computation" while also "reducing the incentive for plaintiffs' attorneys to over-litigate or 'churn' cases..." *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 787 (E.D. Va. 2001).

The motion and memorandum filed by Plaintiffs for final approval demonstrate that the common fund of benefits made available to the class herein total approximately \$2,500,000.00.

Based on such calculation, the requested fees of \$460,000.00 represent only 18% of the common fund. The Fourth Circuit has established that “[a]n award of fees in the range of 30% of the fund has been held to be reasonable.” *Kidrick v. ABC Television & Appliance Rental*, No. 3:97CV69, 1999 WL 1027050, at *2 (N.D. W. Va. 1999). Thus, the requested fee herein is well within the range of what is considered a reasonable fee in such cases.

The Declaration of lead class counsel also demonstrates that the total actual lodestar in this case is approximately \$400,000.00. Where courts utilize the percentage of common fund approach in determining reasonableness of fees, some courts refer to the lodestar in order to “cross-check” the percentage approach. Even where the lodestar approach is used, the lodestar amount may be increased based on such factors as the nature of the case, the market for such legal services, the result achieved, and whether the case has been handled from the beginning on a contingency fee basis. *In re Microstrategy, Inc.*, 172 F. Supp. 2d at 786.

In the instant case, the total fee requested amounts to an extremely modest multiplier of 1.15. This further demonstrates the reasonableness of the fee requested, particularly considering the fact that the case involved FCRA issues of first impression, that the results of the settlement essentially achieved the purposes of the underlying statute, and that the case was handled by all Plaintiffs’ counsel on a contingency fee basis.

Thus, under either the percentage-of-the-common-fund approach, or the lodestar approach, the requested fees of \$460,000.00, an amount to which the Defendant has no objection and to which no Class Member objected, should be awarded herein by the Court.

Further, the Declaration of undersigned counsel states that the total costs expended by Plaintiffs’ counsel in this matter total \$15,689.57. The settlement agreement provides that Plaintiffs’ counsel may seek up to \$20,000.00 in costs from the Court. Plaintiffs request an award

of \$15,689.57, within the amount agreed to by the parties.

Finally, the settlement agreement provides that Plaintiffs may seek an incentive award of \$1,500.00 for Mr. and Mrs. Brantley, Plaintiffs and Class Representatives in this case. As the Declaration of lead counsel demonstrates, the Brantleys performed their services as class representatives with exemplary conduct. They kept themselves informed as to the progress of the case, participated in discovery (including the taking of their depositions), and rendered advice during the negotiations in order to fulfill their fiduciary obligations to the Class. An award of only \$1,500.00, agreed to by Defendant and to which no Class Member objected, is indeed a modest request, and it is respectfully requested that the Court award such amount in its Final Order.

SIGNATURE ON NEXT PAGE

By: s/ Charles J. Bridgmon

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

KENISHA BRANTLEY and,
GREG BRANTLEY,
On Behalf Of Themselves
And All Others Similarly Situated,

CASE NO. 2:04-CV-00805-PMD

DECLARATION OF TERRY A.
SMILJANICH IN SUPPORT OF MOTION
FOR FINAL APPROVAL AND MOTION
FOR AWARD OF ATTORNEYS' FEES,
COSTS, AND INCENTIVE AWARDS
FOR CLASS REPRESENTATIVES

Plaintiffs,

vs.

REPUBLIC MORTGAGE INSURANCE
COMPANY,

Defendant.

**DECLARATION OF TERRY A. SMILJANICH IN SUPPORT OF
MOTION FOR FINAL APPROVAL, AND MOTION FOR AWARD OF ATTORNEYS'
FEES, COSTS AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES**

I, Terry A. Smiljanich, declare as follows:

1. I am a partner in the Tampa law firm of James, Hoyer, Newcomer & Smiljanich, P.A. and am a member in good standing of the Florida Bar. I am admitted to practice in all federal courts in Florida, am admitted to the Fourth Circuit Court of Appeals, and have been admitted pro hac vice in this Court and in many other federal courts throughout the country. A copy of my qualifications and my firm's qualifications are attached hereto as Exhibit "A."

2. I have served as lead counsel in the above matter since its inception in March, 2004. Douglas Bowdoin of the law firm of Douglas Bowdoin P.A., has served as co-counsel throughout the litigation. T. English McCutchen, Charles J. Bridgmon, and others in the firm of McCutchen Blanton Johnson & Barnette, LLP have served as co-counsel and local counsel

throughout the litigation, as has J.P. Strom, Jr. and Mario Pacella of Strom Law Firm, LLC.

3. My firm has kept detailed time records of all work performed throughout this litigation, and such records reveal that my firm has spent 860 hours in legal services to our clients, with a resulting lodestar of \$331,238.00. I estimate that an additional 25 hours in legal services and an additional lodestar of \$11,250 will be spent by my firm and co-counsel in bringing all matters herein to a close. This lodestar is based on current hourly rates of the firm as follows: a. Terry Smiljanich as Shareholder, \$550; b. Kathleen Knight and Jill Bowman as Partners, \$500; c. Tamra Givens as Senior Associate, \$400; d. Jonathan Cohen as Junior Associate, \$350; Larry Dougherty as Investigator, \$200.

4. The firm of McCutchen Blanton Johnson & Barnette, LLP, has also kept detailed time records, and has spent 135.35 hours in legal services, with a resulting lodestar of \$41,322.50.

5. The firm of Douglas Bowdoin P.A. has kept detailed time records , and has spent 21.1 hours in legal services , with a resulting lodestar of \$10,550.00.

6. The total estimated lodestar of all counsel in this case is \$394,360.50.

7. All costs expended by counsel in this case total \$15,689.57.

8. In this case, legal work for the client consisted primarily of drafting pleadings, research of pertinent legal issues, conferences with clients and co-counsel, conferences with opposing counsel, drafting discovery and reviewing discovery responses provided by Defendant, responding to discovery submitted by Defendant, responding to defenses raised by Defendant, including a motion to arbitrate and motion to dismiss, drafting appellate briefs and preparing for and attending oral arguments before the Fourth Circuit Court of Appeals, preparing for and

deposing corporate witnesses, preparing for and attending depositions of the clients, researching and preparing briefing on a motion for class certification, attending court hearings, negotiating a class settlement and the drafting of settlement documents, travel to and from South Carolina associated with depositions, conferences, and hearings, and researching and preparing pleadings for final approval of the settlement.

9. Based on the settlement benefits made available to class members, including the value of a tri-merge report with FICO score, brochure, available cash payments, class notice, costs of administration, and fees and costs to be paid by Defendant, the total value of the available benefits to the class herein is approximately \$2,500,000. The fees requested by class counsel represent 18% of the available benefits. Compared to the total lodestar of all counsel, the fees requested amount to a multiplier of only 1.15.

10. The settlement agreement provides that, subject to Court approval, the plaintiffs in this case, Greg and Kenisha Brantley, will be paid a total of \$1,500 in recognition of their services as class representatives in this matter. Throughout the litigation, the Brantleys were in frequent communication with me and other members of my firm, spent time in consultation with me in preparation for their depositions, produced documents in response to requests from Defendant, and were both deposed in Charleston, South Carolina by counsel for Defendant. The Brantleys were also involved in the settlement negotiations and provided valuable advice to counsel during such negotiations. The Brantleys performed their duties as class representatives with excellence. The payment of the requested amount of \$1,500 is modest compared to the time spent by the Brantleys as class representatives in this case.

4/18/07
DATE

T. A. Smiljanich
TERRY A. SMILJANICH

EXHIBIT A

JAMES, HOYER, NEWCOMER & SMILJANICH, P.A.
ATTORNEYS AT LAW

Jill H. Bowman
Christopher C. Casper
Jonathan B. Cohen
Christa L. Collins
Mark S. Fistos
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FIRM BIOGRAPHY

James, Hoyer, Newcomer, & Smiljanich P.A., was formed in January 1993. Since its inception the firm has been actively engaged in complex, consumer-related litigation on behalf of defrauded consumers. Notably, beginning in 1993, the firm successfully litigated the class action suit of *Horton et al. v. Metropolitan Life Insurance Company*, Case No. 93-1849-CIV-T-23A, in the United States District Court for the Middle District of Florida. This was the first class action lawsuit brought against a life insurance company for deceptive market conduct in the sale of life insurance. Since then, the firm has been involved in more than forty additional class action lawsuits involving similar conduct.

The firm has been involved as lead or co-counsel in more than eighty class action law suits on a nationwide basis. In each of these suits, the firm has represented a class of plaintiffs who alleged a fraudulent scheme conducted against consumers. This has included deceptive sales practices, discriminatory pricing, product liability, and deceptive banking and credit card practices. The firm has represented many relators in *qui tam* actions for frauds against the government. In addition, the firm has represented many individuals who have been victimized by fraudulent conduct of corporations.

Our lawyers and staff are experienced in complex litigation involving insurance coverage, class actions, mass torts, civil rights and products liability. Many of our lawyers began their careers as prosecutors, law enforcement officers or FBI agents. Our firm employs veterans of the civil and criminal divisions of the United States Department of Justice as well as a former Assistant Director of the FBI. We are also supported by a staff of eight investigators. Our investigators have decades of experience involving complex cases and have investigated matters throughout the world.

Our firm has been involved in the settlement of cases with a combined value of more than \$2 billion. This unique range of expertise has resulted in a nationwide practice. Biographies of the firm's attorneys and investigators are set out below.

PARTNERS

BILL JAMES (Retired), born St. Louis, Missouri, October 16, 1932; admitted to bar, 1957, Missouri; 1958, U.S. District Court, Eastern District of Missouri; 1966, Florida; 1969, U.S. District Court, Middle District of Florida; 1970, U.S. Court of Appeals, Fifth Circuit. *Education*: Amherst College; Kansas State College; Washington University (A.B., 1955; J.D., 1957). Commissioner, Justice Administrative Commission, 1985-1992. Secretary, Treasurer, Florida Prosecuting Attorneys Association, 1988. Committee Member, Florida Standard Jury Instructions in Criminal Cases, 1985-1993. Assistant U.S. Attorney, Eastern District of Missouri, 1960-1961. Chief Assistant U.S. Attorney, Tampa Division, Middle District of Florida, 1970-1978. Trial Attorney, Organized Crime Section, U.S. Department of Justice, 1978-1984. State Attorney, 13th Judicial Circuit, Tampa, Florida, 1985-1993. *Member*: Hillsborough County Bar Association; The Florida Bar; The Missouri Bar; Ferguson-White Inn of Court.

W. CHRISTIAN HOYER, born Metuchen, New Jersey, April 4, 1945; admitted to bar, 1973, Florida and U.S. District Court, Middle District of Florida; 1975, U.S. Supreme Court. *Education*: Rider College (B.S. Economics, 1970); University of Florida (J.D., with honors, 1973). Trustee Scholar, Rider College. Recipient Milam Case Comment Award, University of Florida. Executive Editor, University of Florida Law Review, 1972-1973. Law Clerk, U.S. District Judge Ben Krentzman, 1973-1975. Author, "Corps of Engineers Dredge and Fill Jurisdiction Under Siege," 26 U. Fla. L. Rev. 19 (1973). Assistant U.S. Attorney, Tampa, Florida 1975-1980. Trial Attorney, U.S. Justice Department Strike Force on Organized Crime, 1980-1984. Chief Assistant State Attorney, Tampa, 1985-1992. Chairman, Hillsborough County Justice Committee, 1988-1992. Chairman, Hillsborough County Justice Information Steering Committee, 1987-1992. Member, Judicial Nominating Commission, 13th Judicial Circuit, 1986-1990. *Member*: Hillsborough County Bar Association (Vice Chairman, Trial Lawyers Section, 1990-1991); The Florida Bar (Member, Grievance Committee, 1985-1990).

JUDY SCHROPP HOYER, born Havre de Grace, Maryland, November 6, 1949; admitted to bar, 1976, Florida; 1977, U.S. District Court, Middle District of Florida; 1980 U.S. Supreme Court. *Education*: Mary Washington College; George Mason University (B.A., cum laude, 1973); Stetson University (J.D., 1976). Executive Editor, Law Review, 1975-1976. Who's Who. Recipient, Florida Bar Achievement Award. Governor, Fifth Circuit, American Bar Association Law Student Division. Author, "Cross Examination & Impeachment," Criminal Trial Practice in Florida, The Florida Bar C.L.E. (2nd Ed. 1991); Labor Law Review Note, The Florida Bar Journal, 1975. Assistant State Attorney, 1976-1977 and 1985-1993. Assistant U.S. Attorney, 1977-1985. Special Counsel to the Florida Legislature on Sexual Harassment Hearings, 1991. *Member*: Hillsborough County Bar Association, Trial Lawyers Section, 1991 to present, Chairman, 1997-1998; Trial By Jury (Chairman, 1991-1995); Hillsborough Association for Women Lawyers; Ferguson-White American Inns of Court (Master, 1987 to present; Counsel to the Inn 1991-1998; President-Elect 1998-1999; President 1999-2000; Master Emeritus 2001).

JOHN R. NEWCOMER, JR., born Clearwater, Florida, June 24, 1947; admitted to bar,

1972, Florida; 1973, U.S. District Court, Middle District of Florida; 1981, U.S. Court of Appeals, Eleventh Circuit; and 1977, U.S. Court of Appeals, Fifth Circuit. *Education*: University of Florida (B.S.B.A., 1969); Florida State University (J.D., with honors, 1972); Legal Advocacy Program, University of South Florida (1974-1976); Florida Academy of Trial Lawyers 1979-1992 (Presidents Club 1992); American Arbitration Association, Panel of Uninsured Motorist Claims (1986-1992); Associate-Yado, Keel & Nelson, P.A. (1972-1978); Partner-Yado, Keel, Nelson, Casper, Bergmann & Newcomer, P.A. (1978-1993); Partner-James, Hoyer & Newcomer, P.A. (1993 to present); *Member*: Hillsborough County Bar Association (Member, Elder Law Section, 1992-1993); The Florida Bar (Member, Grievance Committee, 1997); Arbitration Panel, U.S. District Court, Middle District of Florida (1985 to present); National Academy of Elder Law Lawyers.

TERRY A. SMILJANICH, born Tampa, Florida, March 1, 1947; admitted to bar, 1972, Florida and U.S. District Court, Middle District of Florida; 1981, U.S. District Court, Southern District of Florida and U.S. Court of Appeals, 11th Circuit. *Education*: University of Florida (B.A., 1969; J.D., 1972). Phi Beta Kappa; Phi Kappa Phi; Phi Alpha Delta. Executive Editor, University of Florida Law Review, 1971-1972. Law Clerk, Hon. Ben Krentzman, U.S. District Court, Middle District of Florida. 1972-1974. Assistant United States Attorney, 1974-1977. Associate Senate Counsel, Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition (Iran/Contra), United States Senate, 1987. *Member*: The Florida Bar. [Capt. U.S. Army Reserve, 1972-1981]. (Board Certified Civil Trial Lawyer, Florida Bar Board of Legal Specialization and Education).

JOHN A. YANCHUNIS, born Columbus, Ohio, 1955; admitted to bar, 1980, Texas; 1981, Florida; U.S. District Court, Southern District of Texas; U.S. District Court, Middle District of Florida; U.S. Court of Appeals, Fifth, Seventh, Ninth and Eleventh Circuits; and United States Supreme Court, 2000. *Education*: University of Florida (B.A., 1976); South Texas College of Law (J.D., magna cum laude, 1980). Florida Blue Key, Omicron Delta Kappa, Phi Alpha Delta. Member, Order of the Lytae. Technical Editor and Associate Editor-in-Chief, South Texas Law Journal. Law Clerk to Judge Carl O. Bue, Jr., U.S. District Court, Southern District of Texas, 1980-1982. *Member*: St. Petersburg (Member, Executive Committee, 1996 to 1998; 2003 to 2005) and Federal Bar Associations; The Florida Bar (Member: Board of Governors of The Florida Bar, 1999 to 2003; member of the Board of Governors of Young Lawyers Division of The Florida Bar, 1988-1992; Public Relations Committee, 1989-1990; Continuing Legal Education Committee, 1991-1992; Standing Committee on Unlicensed Practice of Law, Member, 1990, Vice Chairperson, 1994-1995, Chairperson, 1995-1997, Unlicensed Practice of Law Committee, 6A Circuit, Member, 1985, Chairperson, 1986-1995; Unlicensed Practice of Law Committee, 6B Circuit, Chairperson, 1995; Chairperson, 1995; Professionalism Committee, 1991-1993; Simplified Forms, 1997 to-1998, Vice Chairperson 1998-1999; Ethics Committee, 1997-1999; The Florida Bar Foundation Committee (Member of the Board of Directors, 2003 to 2006); The Florida Board of Bar Examiners Member, 1997 to 2002); The Florida Bar's Multijurisdictional Practice of Law Commission, Chair 2002 to 2005; State Bar of Texas, Pro Bono College, 2005.

CHRISTA L. COLLINS, born Mt. Gilead, Ohio, November 6, 1958; admitted to bar, 1983, Florida; 1984 U.S. District Court, Middle District of Florida; 1985, U.S. Court of Appeals, and

Eleventh Circuit. *Education*: Malone College (B.A., magna cum laude, 1979); Stetson University (J.D. cum laude, 1983). Phi Alpha Delta. Member, 1981-1982 and Associate Editor, 1982-1983, Stetson Law Review. Co-Author: "The Impact of Attorneys Attitudes Toward Pro Bono Public Efforts on Behalf of the Mentally Disabled," 12 Stetson Law Review 395, 1983. Teaching Assistant, Legal Research and Writing, Stetson University College of Law, 1982-1983. *Member*: St. Petersburg Bar Association; The Florida Bar; Pinellas County Trial Lawyers Association.

CHRISTOPHER C. CASPER, born Tampa, Florida, August 27, 1968. *Education*: Awarded Bachelor of Arts degree in English from Georgetown University, 1990. Juris Doctor degree with honors, University of Florida College of Law, December 1994. Interned for Rosemary Barkett, Chief Justice of the Florida Supreme Court, summer 1993. Admitted to the Florida Bar, United States District Court for the Middle District of Florida, and United States Court of Appeals for the Eleventh Circuit, 1995. *Member*: Hillsborough County Bar Association, Trial Lawyers Section Board of Directors 1996-2004, Chairman 2004-2005. Federal Bar Association, Tampa Bay Chapter, Board 1999-2004, Membership Chair 1999-2000, Civil Co-Chair 2000-2004. Association of Trial Lawyers of America 2002-2004. Federalist Society 1998-2004.

MARK S. FISTOS, born St. Petersburg, Florida, August 27, 1960; admitted to bar, 1991, Florida. U.S. District Courts: Middle and Northern Districts of Florida. *Education*: Florida State University (B.A., Magna Cum Laude, Phi Beta Kappa, Phi Kappa Phi, French 1985). Inaugural Recipient, Ada Belle Winthrop-King Scholarship (L'Institut catholique, Paris, France, 1985-1986). Florida State University (M.A./J.D., Joint Degree in Law and International Affairs, 1991). Assistant Attorney General, Economic Crimes Litigation Unit, Office of the Florida Attorney General, 1991-2001. Economic Crimes Division, Employee of the Year, 1999. Author, "Per Se Violations of the Florida Deceptive and Unfair Trade Practice Act," Florida Bar CLE Manual, June 2001. "State Enforcement of the Florida Deceptive and Unfair Trade Practices Act," Florida Bar CLE Manual, January 2000. Co-Author, "State Enforcement of the Florida Deceptive and Unfair Trade Practices Act," Florida Bar CLE Manual, September 1993, "Per Se Violations of the Florida Deceptive and Unfair Trade Practices Act," Florida Bar Journal, 76 Fla. Bar J. 62. *Member*: Consumer Protection Law Committee, The Florida Bar.

JILL H. BOWMAN, born St. Petersburg, Florida, January 18, 1970; admitted to Bar 1995, Florida; U.S. District Court, Middle District of Florida, 1996; U.S. District Court, Northern District of Florida, 2001; U.S. District Court, Southern District of Florida, 2001; Federal Circuit Court of Appeals, 1997; Eleventh Circuit Court of Appeals, 1997. *Education*: University of Central Florida (B.A., summa cum laude, 1992); Stetson University College of Law (J.D., magna cum laude, 1995); *Member*: St. Petersburg Bar Association, 1996; appointed by the Florida Supreme Court to serve as a Member of the Florida Bar UPL Committee for the Sixth Judicial Circuit, 1999; appointed as a Member of the Florida Bar Ethics Committee, 2003.

J. ANDREW MEYER, born Deland, Florida, January 6, 1970; admitted to bar, 1995, Florida and U.S. District Court for the Middle District of Florida; 1996, New Jersey; 2000, U.S.

District Courts for the Northern and Southern District of Florida; 2001, U.S. Court of Appeals, 11th Circuit. *Education*: University of Florida (B.A., *high honors*, 1991; J.D., 1995). Phi Beta Kappa. *Experience*: Associate, Law firm of Earle and Earle. 1995-1998. Office of the Attorney General, State of Florida, Criminal Appeals Bureau. 1998. Second District Court of Appeal, Senior Staff Attorney. 1998. Law Clerk, Hon. Chris W. Altenbernd, Second District Court of Appeal. 1998-2000. Associate and Partner, Carlton Fields, P.A. 2000-2004. *Member*: American Bar Association, The Florida Bar (Chair, UPL Committee for the Sixth Judicial Circuit). *Awards*: Community Law Program's Newcomer Award, 1998; Carlton Fields' William Reece Smith, Jr. Pro Bono Award, 2001.

ASSOCIATES

JONATHAN B. COHEN, born Albany, New York, October 9, 1973; admitted to bar, 2006, Florida. *Education*: Indiana University at Bloomington (B.A. in Journalism with concentration in Fine Arts, 1996); Stetson University College of Law (J.D., 2005); Received highest grade in Consumer Protection (2004); Intern for State Attorney's Office (Economic Crimes Unit), Thirteenth Judicial Circuit, Hillsborough County (2004); Intern for Hon. David A. Demers, Sixth Judicial Circuit Court of Florida (2004); Research Assistant for Professor Mark D. Bauer (2004-2005). *Member*: The Florida Bar.

TAMRA CARSTEN GIVENS, born Miami, Florida, July 13, 1978; admitted to bar, 2003, Florida. *Education*: University of Florida (B.S., Psychology, with honors, 2000; J.D., cum laude, 2003). *Member*: U.S. District Court, Middle District of Florida, 2003; U.S. District Court, Southern District of Florida, 2006; United States Court of Appeals, Eleventh Circuit, 2003; United States Court of Appeals, Third Circuit, 2006; United States Court of Appeals, Ninth Circuit, 2006; Florida Law Review, 2001-2003. *Author*: "Constitutional Law: Narrowing the Scope of the Fourth Amendment," 54 Fla. L. Rev. 567 (2002). Intern for Justice Harry Lee Anstead, Florida Supreme Court, 2002.

NICOLE C. MAYER, born South Weymouth, Massachusetts, February 26, 1979; admitted to bar, 2005, Florida. *Education*: University of Florida (B.S., Advertising, with honors, 2002); Stetson University College of Law (J.D., 2004); Marketing Editor, *Stetson Law Review*; Member of Phi Delta Phi, Phi Theta Kappa, and Golden Key National Honor Societies; Intern for Hon. Elizabeth A. Kovachevich, United States District Court for the Middle District of Florida, Tampa Division (2004); Associate, Sponsler, Bennett, Jacobs & Cristal, P.A. (2005-2006).

JESSE LEE RAY, born Pittsburgh, Pennsylvania, December 3, 1975; admitted to the bar, 2004, Florida. *Education*: Montgomery County Community College (1996); University of Maryland, College Park (B.A., Criminal Justice, Magna Cum Laude, 2000); Georgetown Law (J.D. 2004). Co-author "Spoliation of Evidence: An Overview and Practical Suggestions", *The Construction Lawyer*, Vol. 24, Num. 1, p.31 (Winter, 2004); Corporal, U.S. Marine Corps, Reserves (1994-2000). *Member*: The Florida Bar.

ELAINE SCUDIERI STROMGREN, born San Juan, Puerto Rico, April 29, 1974; admitted to bar, 2000, Florida. *Education*: University of Florida (B.S., Zoology, with high honors, 1996; J.D., with high honors, 2000). Phi Beta Kappa; Phi Alpha Delta. Recipient Book Award, Criminal Law. *Member*: Prosecution Clinic, Eighth Judicial Circuit, Florida, 2000. Law Clerk, Hon. Maurice V. Guinta, Eighth Judicial Circuit Judge, 1999.

OF COUNSEL

DAVID T. HENNIGER, born Cuyahoga Falls, Ohio, December 12, 1936; admitted to the Florida Bar, 1965; U.S. Supreme Court, 1971; Court of Appeals, Eleventh Circuit, 1981. *Education*: St. Petersburg Junior College (A.A. 1957); Florida Southern College, Salutatorian (B.S. summa cum

laude, 1959); Stetson University College of Law, Valedictorian (J.D., cum laude, 1965). Selected to Who's Who in American Law in 1989, Who's Who in the Southeast, 1990 and Who's Who in America, 46th Edition. Biography, Men of Achievement, International Biographical, Cambridge, England, Fifteenth Edition. International Man of the Year 1992/1993, International Biographical Center, Cambridge, England. Authored "When Does The Statute of Limitations Run," Florida Bar Journal, December 1972; Chapter 13, "Best Evidence Rules, Evidence in Florida," Florida Bar Continuing Legal Education, 1971; Chapter 8, "Best Evidence Rule, Evidence in Florida, 2nd Edition," Florida Bar Continuing Legal Education, 3rd Edition, Evidence in Florida, Chapter Author: "Selected Commercial Torts," Basic Commercial Litigation, 1989, Florida Bar Continuing Legal Education. Board Certified Trial Lawyer, certified by The Florida Bar Board of Certification (1983-1993) and the National Board of Trial Advocacy (Emeritus 1993). *Member*: The Florida Bar, St. Petersburg and American Bar Associations.

INVESTIGATORS

BARBARA J. MADDEN, born Haverhill, Mass., June 26, 1955. *Education*: University of Florida (B.S. with honors, Journalism & Mass Communications, 1977). *Experience*: Special Agent of the Federal Bureau of Investigation (1983-2005); Supervisor of Health Care Fraud Squad (2000-2003) and CyberCrime Squad (2003-2005); reporter and bureau chief for The Stuart/Port St. Lucie News (1980-83); producer/traffic coordinator, WTVX-TV (1978-80); public relations coordinator, St. Lucie Association for Retarded Citizens (1977-78); reporter, The Daily Commercial (1973-74).

FRANK C. MARTELLI, born Philadelphia, Pennsylvania, August 19, 1949. *Education*: Police Academy, St. Leo College, 1973; 25 years in Law Enforcement including Hillsborough County Sheriff's Office, Tampa, Florida; Detective for 16 years, specializing in White Collar and Computer Crime investigations.

ALLEN H. McCREIGHT, born Meridian, Mississippi, November 8, 1939; admitted to bar, 1964, Mississippi; 1964, U.S. District Court, Northern District of Mississippi; 1972 U.S. Supreme Court; member Mississippi State Bar (inactive) and American Bar Association since 1964. *Education*: University of Mississippi (B.B.A., 1961; LLB 1964). Previous employment: Federal Bureau of Investigation, May 1964 to February 1995. Began career as Special Agent and advanced through various supervisory and executive management positions, including Assistant Director, which is one of top 18 executive positions in the FBI. Retired in 1995 after serving six years as Special Agent in Charge of FBI Tampa, which covers all of Central Florida. Attended Federal Executive Institute, Charlottesville, VA; graduate of FBI Senior Executive Program and National Executive Institute (involves select FBI executives and top executives from law enforcement agencies throughout the nation and internationally).

MICHAEL D. MIHOK, born Dennison, Ohio, December 5, 1944. U.S. Air Force, 1962-1966. *Education*: Old Dominion University, Norfolk, Virginia (B.A. 1971). Former Special Agent of the Federal Bureau of Investigation (1971-2002). Expertise in White Collar Crime fraud investigations.

ROBERT NORTH, born New York, New York, November 12, 1950. *Education:* University of Bridgeport, Bridgeport, Connecticut (B.A. Broadcast Journalism, 1978). *Experience:* Formally a television journalist; WDHO-TV, Toledo, Ohio, 1978; government and political reporter for WKRC-TV, Cincinnati, Ohio, 1979; investigative reporter, WFLA-TV, Tampa, Florida, 1983; assistant news director, WJTV-TV, Jackson, Mississippi.

JAMES ROSS, born Beverly, Massachusetts, March 26, 1953. *Education:* Northeastern University, Boston Massachusetts, (B.A. 1976). Certified Fraud Examiner (CFE) credential earned 1999. *Experience:* Seven years in the Economic Crimes Division for Florida Attorney General Bob Butterworth, investigating cases against banks, insurance companies, publishing and funeral homes; eight years with The Tampa Tribune Capitol Bureau investigating government corruption, politics and organized crime. Early career includes investigative reporting assignments in Massachusetts, New Hampshire and Maine and an assistant editor position with a statewide business magazine. Investigative interests also includes integrating computer databases and other technological tools into individual investigations.

LENNY SAVINO, born Queens, New York, November 12, 1951. *Education:* St. John's University (B.A. History, 1973; M.A. with honors, American History, 1977). Columbia University Graduate School of Journalism (M.S. with honors, print journalism, 1996). *Experience:* Nassau County (N.Y.) Police Department, 1973-1997, retired as a Detective Lieutenant; Tampa Tribune, Cops & Courts Team Leader & Projects Reporter, 2002-2006; Knight Ridder Washington Bureau, National Correspondent covering the Justice Department, 2000-2002; Orlando Sentinel, Cops & Courts Reporter 1997-2000.

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Class Actions in which James, Hoyer, Newcomer, and Smiljanich, P.A.
Has Been Either Lead or Co-counsel:

Lifsey v. Ross, Civil Action No. 97-1832-CIV-T-23C, United States District Court, Middle District of Florida.

Glenn A. Hawkins and Nedra J. Hawkins, On Behalf of Themselves and Others Similarly Situated vs. Aid Association for Lutherans, Civil Action No: 2:00CV1327, United States District Court, Eastern District of Wisconsin.

Keith Snell and Teresa M. Snell, On Behalf of Themselves and All Others, Similarly Situated, vs Allianz Life Insurance Company of North America, North American Life and Casualty Company and Fidelity Union Life Insurance Company, Case No. 97-2784-RLE - Class Action, United States District Court, District of Minnesota.

Suzette Moody, etc., vs. American General Life & Accident Insurance Company, et al., Case No. 97-1525, In the Court of Common Pleas, Lucas County, Ohio.

Harry J. Manners, Jr., et al. vs. American General Life Insurance Company and AGC Life Insurance Company, Case No. 3-98-0266, United States District Court, Middle District of Tennessee, Nashville Division.

Dale Bachman, Individually and On Behalf of a Class of Persons Similarly Situated, vs. Equitable Life Assurance Society of the United States, Civil Action No. 96-1225-CIV-T-24B, United States District Court, Middle District of Florida, Tampa Division.

Brenda G. Elkins and Jerry Bedenbaugh, Individually and On Behalf of a Class of Persons Similarly Situated, vs. Equitable Life Insurance Company of Iowa, Equitable of Iowa Companies, and Equitable American Insurance Company, Civil Action No. 96-296-CIV-T-17B, United States District Court, Middle District of Florida, Tampa Division.

Ruby M. Dunn, Phillip A. Sollami, Jr., Paula D. Wise, Eric D. Hagen, and Edward M. Abroms, Individually and on Behalf of All Others Similarly Situated, vs. The Franklin Life Insurance Company, Case No. 97-L-250, State of Illinois, In the Circuit Court of the Third Judicial Circuit, Madison County.

Dale L. Baker, Sr. and Patricia A. Baker, Sheila D. Magofna, Howard G. Humberger, Patick W. Berteau and April L. Berteau, James A. Volkman and Rebecca J. Volkman, on Behalf of Themselves and All Others Similarly Situated, vs. The Franklin Life Insurance Company, Case No: 98-119-CIV-T-26B, United States District Court, Middle District of Florida, Tampa Division.

In re: General American Life Insurance Company Sales Practices Litigation, MDL Docket No. 4:97MDL 1179 CDP, United States District Court, Eastern District of Missouri.

*In re **Great Southern Life Insurance Company Sales Practices Litigation***, Ginsberg Action: 3:98-CV-1249-X, McGraw Action: 3:98-CV-1617-X, Mann Action: 3:98-CV-1618-X, Massey Action: 3:98-CV-1619-X, In the United States District Court For the Northern District of Texas, Dallas Division.

*Lesa Benacquisto vs. **IDS Life Insurance Company***, File Number DC CT 96-018477, State of Minnesota, County of Hennepin, District Court, Fourth Judicial District.

*George W. Snyder and Gail L. Wolcott v. **Jackson National Life Insurance Company**, and Robert Goldstein*, Case No. 00-1008, Division H, In the Circuit Court in and for Hillsborough County, Florida, Civil Division.

*Richard Duhaime, James W. Yoder, Donna M. Yoder, Theodore A. Peck, John Sullivan and Clarissa Sullivan, On Behalf of Themselves and All Others Similarly Situated, vs. **John Hancock Mutual Life Insurance Company**, John Hancock Variable Life Insurance Company, and John Hancock Distributors, Inc.*, Case No: 96-10706-RGS, United States District Court, District of Massachusetts.

*Robert Dean Ulmer, Michael B. Lunsford, Donald L. Yingling, vs. **Life Insurance Company of North America (LINA), Connecticut General Corporation (CGC) and CIGNA Corporation (CIGNA)***, Case No. 8:00-CIV-665-T-24(E), United States District Court, Middle District of Florida, Tampa Division.

*Peggy Greenberg and Pamela Rossmann, Individually and on Behalf of All Others Similarly Situated vs. **The Life Insurance Company of Virginia***, Case No. C-1-97-416, United States District Court, Southern District of Ohio, Western Division.

*Irwin Applebaum as Trustee for the Irwin Applebaum Revocable Trust, Selma Sadie Applebaum, Maryann Casey, Barbara Garing, Raymond Garing, Bettye J. O'Neal, and Harley Stuhr, On Behalf of Themselves and All Others Similarly Situated, vs. **LifeUSA Insurance Company and Allianz Life Insurance Company of North America***, Civ. No. 8:00-CV-1045-T-17E, Class Action, United States District Court, Middle District of Florida, Tampa Division.

*Richard H. Blanke vs. **Lincoln National Corporation, Security Connecticut Life Insurance Company, Lincoln National Life Insurance Company and Wayne W. Wolfe***, Civil Jury Case No: 0512048, 24th Judicial District Court for the Parish of Jefferson, State of Louisiana.

*In re: **Lutheran Brotherhood Variable Insurance Products Co. Sales Practices Litigation***, Case No: 99-MD-1309 (PAM/JGL) United States District Court, District of Minnesota.

*Horton et al. v. **Metropolitan Life Insurance Company***, Case No. 93-1849-CIV-T-23A , in the United States District Court for the Middle District of Florida.

In Re Metropolitan Life Insurance Company Sales Practices Litigation, C.A. No: 96-0795, C.A.96-0038, C.A. 95-1426, C.A. 96-0436, C.A.96-0051, In the United States District Court, For the Western District of Pennsylvania.

Paul A. Goshen, On Behalf of Himself and All Others Similarly Situated, vs. The Mutual Life Insurance Company of New York and MONY Life Insurance Company of America, Index No. 95-600466, Supreme Court of the State of New York, County of New York.

In re New England Mutual Life Insurance Company Sales Practices Litigation, D. MASS. C.A. NO. 1:96-11534-REK, United States District Court For the District of Massachusetts.

Annie Hirsh, Issac L. Hayes, and Sammie L. Epps, on Behalf of Themselves and All Others Similarly Situated, vs. Physicians Mutual Insurance Company, and Physicians Life Insurance Company, Case No: 2:00-CV-39PG, In the United States District Court, Southern District of Mississippi, Hattiesburg Division.

Jerry D. Grove, Leo Willick and Sidney Gilbert, on Behalf of Themselves and All Others Similarly Situated, vs. Principal Mutual Life Insurance Company, Case No: 4-97-CV-90224, Class Action, In the United States District Court, For the Southern District of Iowa, Central Division.

Eloise Bomber, On Behalf of Herself and All Others Similarly Situated vs. Reliastar Life Insurance Company, Case No. 8:01-CV-907-T-27MSS, United States District Court, Middle District of Florida, Tampa Division.

Randy W. Lee, Sandra F. Lee, Elba Kolster and Meyer Silverstein on Behalf of Themselves and All Others Similarly Situated, vs. USLIFE Corporation, the Old Line Life Insurance Company of America, All American Life Insurance Company and The United States Life Insurance Company in the City of New York, Case No: 1:97CV-55-M, United States District Court, Western District of Kentucky.

James Stock, et al. vs. United Liberty Life Ins. Co., Case No. CV00-06-117, In The Common Pleas Court, Butler County, Ohio.

Thomas E. Rector, Fred Caroque and Antoinette M. Caroque On Behalf of Themselves and All Others Similarly Situated, vs. The Western and Southern Life Insurance Company, and Western-Southern Life Assurance Company, Case No. 98-667-CIV-T-26B, Class Action, United States District Court Middle District of Florida, Tampa Division.

Joseph F. Kreidler, et al., vs. Western-Southern Life Assurance Co., Case No. 95-CV-157, Court of Common Pleas, Erie County, Ohio.

Scott Swope, et al. v. The Thompson Corporation and West Group, Case No. 19-C5-02-8564; First Judicial District Court, Dakota County, Minnesota.

Alberta E. Richardson, et al. vs. Carson Products Company and Johnson Products Co., Inc., Case

No. 00-01713, Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida.

Leola McNeil, et al. vs. American General Life & Accident Insurance Company, et al., Case No. 3-99-1157, United States District Court, Middle District of Tennessee.

James Williams, et al. vs. United Insurance Company of America, et al., Case No. 01-920, Circuit Court of Jefferson County, Alabama, Bessemer Division.

Glenda Carnegie, et al. vs. Mutual Savings Life Insurance Company, Case No. CV-99-S-3292-NE, United States District Court, Northern District of Alabama, Northeastern Division.

In re: Industrial Life Insurance Litigation, MDL 1371 (Rosebud Montgomery, et al. vs. Life Insurance Company of Georgia Industrial Life Insurance Litigation, Case No. 1:99-CV-252 MMP, United States District Court, Northern District of Florida, Gainesville Division).

In re: Riscorp Securities Litigation, Case No. 96-2374-CIV-T-23A, Middle District of Florida.

Andrew Taworski v. The American Franklin Life Insurance Company, American General Equity Services Corporation, f/k/a Franklin Financial Services Corporation, Case No. 2002L0195, Seventh Judicial Circuit, Sangamon County, State of Illinois.

Manuel Fernandez v. American Express Company and American Express Publishing Corporation, Case No. 01-0026381, Thirteenth Judicial Circuit, Hillsborough County, State of Florida.

Sharon Hicks v. Oxmoor House, Inc., Case No. CV034-752, Circuit Court of Jefferson County, Alabama.

In re: Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation, (Kathi R. Levitov v. Sulzer Orthopedics, Inc. and Sulzer Medica, Ltd.) Case No. 1:01-CV-9000, MDL Docket No. 1404, United States District Court, Northern District of Ohio, Eastern Division.

In re: Baycol Products Litigation, Case No. 01-2386, MDL No. 1431, United States District Court, District of Minnesota.

Melissa Dukes and Thomas J. Dolan v. Hewlett-Packard Company, Case No. CV-2002-270, Circuit Court of Phillips County, Arkansas.

In re Allstate Insurance Company Under Writing and Rating Practices Litigation, Case Number MDL Docket No. 3:02-md-1457, United States District Court for the Middle District of Tennessee, Nashville Division.

Marissa Craft, Brigitte Thompson v. Sprint Corporation, Case No. 4:02-cv-183-RH, United States District Court, Northern District of Florida, Tallahassee Division.

Scott P. Swope v. The Thomson Corporation and West Group, Case No. 19-C5-02-8564, State of Minnesota District Court, County of Dakota, First Judicial District.