

EXPERT REPORT OF DANIEL R. FISCHER

I. QUALIFICATIONS

1. I am President of Compass Lexecon, a consulting firm that specializes in the application of economics to a variety of legal and regulatory issues. I am also the Lee and Brena Freeman Professor of Law and Business Emeritus at The University of Chicago Law School. I served previously as Dean of The University of Chicago Law School, Director of the Law and Economics Program at The University of Chicago, and as Professor of Law and Business at The University of Chicago Graduate School of Business, the Kellogg School of Management at Northwestern University, and at the Northwestern University Law School.

2. Both my research and my teaching have concerned the economics of corporate law and financial markets. I have published approximately fifty articles in leading legal and economics journals and am coauthor, with Judge Frank Easterbrook of the Seventh Circuit Court of Appeals, of the book *The Economic Structure of Corporate Law* (Harvard University Press). Courts of all levels, including the Supreme Court of the United States, have cited my articles as authoritative. My curriculum vitae, which contains a list of my publications, is attached hereto as Appendix 1.

3. I have served as a consultant or advisor on economic issues to, among others, the United States Department of Justice, the United States Securities and Exchange Commission, the National Association of Securities Dealers, the New York Stock Exchange, the Chicago Board of Trade, the Chicago Board Options Exchange, the Chicago Mercantile Exchange, the New York Mercantile Exchange, the United States Department of Labor, the

Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Federal Housing Finance Agency, and the Federal Trade Commission.

4. I am a member of the American Economic Association and the American Finance Association. I am also a member of the Board of Governors of the Becker Friedman Institute at the University of Chicago. I am a former Advisor to the Corporate Governance Project at Harvard University, a former member of the Board of Directors of the Center for the Study of the Economy and the State at The University of Chicago, and former Chairman of the American Association of Law Schools' Section on Law and Economics.

5. I have testified as an expert witness in multiple proceedings in federal and state courts across the country, as detailed in Appendix 1. In 2013, I testified on behalf of The Bank of New York Mellon on the reasonableness and adequacy of a settlement of claims held by 530 RMBS trusts with Countrywide, Bank of America and related entities.¹ In 2014, I advised seven trustees on whether they should accept a proposed settlement with JPMorgan Chase & Co. (the "JPM Settlement").² I provided an expert report advising the trustees on whether they should accept the JPM Settlement on behalf of each of 330 RMBS trusts and a supplemental report advising them on whether they should accept it on behalf of each "Supporting Loan Group" in the 330 RMBS Trusts.³ The trustees relied upon my analysis in accepting the JPM

1. In the Matter of the Application of the Bank of New York Mellon, Supreme Court of the State of New York: Trial Term Part 39, September 9 and 10, 2013, pp. 3475-3791.

2. See the Expert Report of Daniel R. Fischel (the "Fischel JPM Report") available at http://www.rmbstrusteesettlement.com/Expert_Report_of_Daniel_R_Fischel.pdf.

3. See the Fischel JPM Report and the Supplemental Report of Daniel R. Fischel, available at http://www.rmbstrusteesettlement.com/Supp_Expert_Report_of_Daniel_R_Fischel_July_26_2014.pdf. The

Settlement for Supporting Loan Groups in 319 trusts.⁴ They then asked the New York State Supreme Court to approve the settlement for those 319 trusts. I testified about the analysis underlying my recommendations in 2016 and the court cited my analysis in finding that the trustees exercised their discretionary power reasonably and in good faith in accepting the JPM Settlement.⁵

II. BACKGROUND AND SUMMARY OF CONCLUSIONS

6. My general understanding of the relevant factual background is as follows. Deutsche Bank National Trust Company (the “Trustee”) is the trustee for 127 trusts (the “Trusts”, including 99 residential mortgage-securitization trusts (the “Primary Trusts”).⁶ The Primary Trusts were created, sponsored and/or serviced by Washington Mutual Bank its subsidiaries, their predecessors in interest (collectively “WMB”) and their affiliates including Washington Mutual Mortgage Securities Corporation (“WMMSC” and collectively with WMB,

(...continued)

loans owned by an RMBS trust are often divided into “Supporting Loan Groups” (or “SLGs”). In such trusts, the more senior Certificates typically have primary rights to the cash flows from only one SLG but are entitled to receive cash flows from other SLGs after the Certificates with primary rights to that SLG have been paid.

4. Decision, In the matter of the application of U.S. Bank National Association et al., Petitioners, against Federal Home Loan Bank of Boston et al. Respondents, Supreme Court of the State of New York, County of New York -- Part 60, Index Number 652382/2014 dated August 12, 2016 (the “JPM Decision”), at 3, 12 & 23.
5. *See, e.g.*, JPM Decision pp. 23 & 29-30.
6. Verified Petition of Deutsche Bank National Trust Company, solely as Trustee for the Trusts listed on Exhibits 1-A and 1-B, for instructions regarding the internal affairs of the Trusts, In the matter of Certain Trusts created, sponsored and/or serviced by Washington Mutual Bank and certain subsidiaries and affiliates, Superior Court of the State of California, County of Orange, Probate Division, dated December 12, 2016, (“Petition”) at 1 & Exhibit 1-A.

“WaMu”).⁷ The remaining 28 Trusts (the “Secondary Trusts”) do not directly own mortgage loans, but rather hold beneficial interests in the Primary Trusts.⁸

7. The Primary Trusts acquired portfolios of residential mortgages (the “Mortgage Loans”) from an entity known as a “Depositor” who typically acquired the Mortgage Loans from another entity, referred to as the “Seller.”⁹ WMB, WMMSC and/or other affiliates of WMB served as the Depositor and/or Seller for all but two of the Primary Trusts and, through a series of assignments and other agreements, indirectly undertook responsibilities substantially similar to those of a Depositor or Seller for the remaining two Trusts.¹⁰

8. The funds to pay for the Mortgage Loans were raised by selling certificates (the “Certificates”) to investors (“Certificateholders”). The Certificates provide rights to the cash flows (e.g. principal and interest payments) generated by the Mortgage Loans. Collecting debt service payments on the Mortgage Loans is the responsibility of the “Servicer.”¹¹ Once per month, the Servicer remits the collected payments to the Trustee, who then distributes the remitted funds to the Certificateholders.¹² When a borrower cannot make payments, the Servicer may engage in remedial activities including foreclosing and liquidating the collateral or,

7. Petition ¶ 3.

8. Petition ¶ 4.

9. Petition, Exhibit 5: Amended Complaint, Deutsche Bank National Trust Company as Trustee for the Trusts listed in Exhibits 1-A and 1-B, Plaintiff v. Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank et al., United States District Court for the District of Columbia, Case No.: 09-CV-1656-RMC dated September 8, 2010, (the “Amended Complaint”) ¶ 28.

10. Petition ¶ 15 & Amended Complaint ¶ 28.

11. Petition ¶ 16.

12. Petition ¶ 16.

under certain conditions, modifying the terms of the mortgage.¹³ A Trust may also have a Master Servicer whose responsibilities include aggregation of monthly servicer reports and remittances (when there are multiple servicers) and oversight of the performance of the Servicers under the terms of their respective servicing agreements. WMB or WMMSC was appointed as either the Servicer or Master Servicer for the Mortgage Loans included in each of the Trusts.¹⁴ On September 25, 2008, JPMorgan Chase Bank N.A. (“JPMC”) assumed the servicing and master servicing rights and obligations of WMB.¹⁵

9. The duties and responsibilities of the various parties to the Primary Trusts are set forth in various agreements (the “Governing Documents”).¹⁶ These documents contain representations, warranties and covenants concerning the nature, characteristics, history and quality of the Mortgage Loans and mortgage loan files sold to, and deposited in, the Primary Trusts (the “Representations and Warranties”).¹⁷ WMB and/or WMMSC made Representations and Warranties for each Primary Trust.¹⁸ If WaMu discovers, or is notified of, a breach of a representation or warranty that has a material and adverse effect on the value of any mortgage loan in a Primary Trust or the interests of the Certificateholders therein (a “Material Breach”),

13. Petition ¶ 16.

14. Petition ¶ 16.

15. Amended Complaint ¶¶ 11 & 38.

16. Petition Note 1 & ¶ 16.

17. Petition ¶ 17.

18. Petition ¶ 17.

the Governing Documents require WaMu to cure the defect or repurchase the loan at a specified repurchase price (the “Repurchase Obligation”).¹⁹

10. The Governing Documents impose other requirements. Among other things, they require WaMu, as Seller, Depositor and/or Servicer, to give prompt written notice to the Trustee upon discovery or notice of any Material Breach (the “Notice Obligation”).²⁰ They also require the Servicer “to provide the Trustee and other parties with access to all records maintained by [WaMu, its successors and successors in interest] in respect of [WaMu, its successors and successors in interest]’s rights and obligations under the Governing Documents, including information about the mortgage loans and the mortgage loan files, and access to officers of [WaMu, its successors and successors in interest] responsible for such obligations (the ‘Access Rights’).”²¹

11. On September 25, 2008, the Office for Thrift Supervision shut down WMB and appointed the FDIC as receiver.²² I understand that when the FDIC takes a bank into Receivership, it acts in a legal capacity as the FDIC-Receiver (the “FDIC-Receiver”). The FDIC-Receiver markets the assets of a failed institution, liquidates them, and distributes the proceeds to the institution’s creditors.²³ On the same day the FDIC was appointed Receiver for WMB,

19. Amended Complaint ¶ 53. I understand that WaMu typically had the opportunity to substitute a loan in lieu of repurchase for a specified period of time but that this period has lapsed for all Trusts.

20. Amended Complaint ¶ 49.

21. Amended Complaint ¶¶ 13 & 58.

22. Petition ¶ 18.

23. FDIC Resolutions Handbook, revised December 23, 2014 available at https://www.fdic.gov/about/freedom/drr_handbook.pdf#nameddest=Ch1 at 26 (“A Receivership is designed

JPMC entered into a Purchase and Assumption Agreement with the FDIC (the “P&A Agreement”), under which JPMC agreed to purchase certain of WMB’s assets and assume certain of WMB’s liabilities.²⁴ In connection with this transaction, JPMC acquired the stock of WMMSC.²⁵

12. On December 30, 2008, the Trustee filed a proof of claim with the FDIC regarding WaMu on behalf of the Trusts and the Trustee (the “Proof of Claim”).²⁶ The Trustee alleged Material Breaches of the Representations and Warranties that WaMu made with respect to Mortgage Loans (the “Rep and Warranty Claims”) and that WaMu had not serviced certain Mortgage Loans held by the Trusts in accordance with the Governing Documents (the “Servicing Claims,” and collectively with the Rep and Warranty Claims, the “Claims”).²⁷ The filing of the Proof of Claim tolled any applicable statute of limitations regarding claims against the receivership estate of WMB (the “Receivership Estate”).²⁸

13. After the FDIC did not respond, the Trustee commenced an action against the FDIC-Receiver in the United States District Court of the District of Columbia (the

(...continued)

to market the assets of a failed institution, liquidate them, and distribute the proceeds to the institution’s creditors.”).

24. Petition ¶ 19.

25. Petition ¶ 19.

26. Petition ¶ 21.

27. Petition ¶ 21.

28. Petition ¶ 21.

“Action”).²⁹ The FDIC-Receiver responded by claiming that JPMC or WMMSC was liable for the Claims.³⁰ The Trustee then amended its complaint in the Action. In the Amended Complaint, the Trustee sued WaMu and its successors and successors in interest, whoever they are adjudicated to be.³¹ The Trustee alleged “[i]n sum: (i) WaMu breached the Representations and Warranties, which breaches had a material and adverse effect on the value of the mortgage loans in the Trusts or the interests of the Trusts therein; (ii) WaMu discovered and/or had notice of those breaches, which triggered WaMu’s Notice and Repurchase Obligations; (iii) WaMu breached its Notice and Repurchase Obligations; and (iv) WaMu breached and continues to breach its obligations in respect of the Trustee’s Access Rights.”³² The FDIC-Receiver and JPMC then filed cross motions for summary judgment asking the court to decide “which defendant—JPMC or the FDIC[-Receiver]—is responsible for WaMu’s repurchase liabilities.”³³

14. In June 2015, the United States District Court for the District of Columbia (the “District Court”) ruled on these motions (the “Summary Judgment Ruling”).³⁴ I understand the Summary Judgment Ruling means that WMMSC is responsible for the representations and warranties it made to the Trusts, and the FDIC-Receiver is responsible for the representations and warranties made by WMB (subject to defenses such as the Statute of Limitations). The

29. Petition ¶ 22.

30. Petition ¶ 22.

31. Petition ¶ 22 & Amended Complaint ¶ 13.

32. Amended Complaint ¶ 84.

33. Amended Memorandum Opinion, United States District Court for the District of Columbia, Deutsche Bank National Trust Company, Plaintiff v. Federal Deposit Insurance Corporation, et al. dated June 17, 2015 (“Opinion”) pp. 1-2 & 8.

34. Petition ¶ 33.

FDIC-Receiver and the Trustee appealed the Summary Judgment Ruling on November 16, 2015 and November 20, 2015 respectively.³⁵

15. On August 19, 2016, the Trustee, the FDIC and JPMC entered a settlement agreement (the “Settlement Agreement”), and the Trustee entered a second agreement with JPMC and WMMSC (the “Trustee-JPMorgan Agreement”).³⁶ The Settlement Agreement is conditioned on approval of the Trustee-JPMorgan Agreement, therefore I view them both as one “Proposed Settlement.”³⁷ Under the Proposed Settlement, the Trustee, in its capacity as trustee of the Primary Trusts, releases the FDIC-Corporate (i.e. the FDIC in its role as a bank supervisor and insurer), the FDIC-Receiver, the Receivership Estate, JPMC, WMMSC and all of JPMC’s and WMMSC’s past and present parents, subsidiaries and affiliates from:

- All claims asserted in the Action,
- All claims arising from allegations by the Trustee “that certain Mortgage Loans held by the Trusts were contributed or sold to the Trusts in breach of representations and warranties contained in the Governing Agreements (the ‘Rep and Warranty Claims’) and that certain Mortgage Loans held by the Trusts were not serviced in accordance with the Governing Agreements (the ‘Servicing Claims’)” and
- “all claims, demands, liabilities, losses, debts, costs, expenses, obligations, defaults or events of default, damages, rights, causes of action of any kind or nature whatsoever, whether asserted or unasserted, known or unknown, suspected or

35. Petition ¶ 34.

36. Petition ¶¶ 58-59, Exhibit 25 (the Settlement Agreement) at 1 & Exhibit 27 (the Trustee-JPMorgan Agreement) at 1. The FDIC entered the Settlement Agreement both in its capacity as receiver for WMB and in its corporate capacity. Settlement Agreement at 1.

37. Petition: Exhibit 25 (i.e. the Settlement Agreement) §§ 1.04 & 2.01 (Providing that provisions of the Settlement Agreement releasing JPMC, the FDIC-Corporate, the FDIC-Receiver and the Receivership Estate, awarding an allowed claim to the Trustee and providing for payment to JPMC are all conditioned on a non-appealable judgment that the Settlement Agreement and the Trustee-JPMorgan Agreement are binding on the Trusts).

unsuspected, fixed or contingent, in contract, tort, or otherwise, secured or unsecured, accrued or unaccrued, whether direct or derivative, arising under law or equity, that any Trusts Releasor may have ever had prior to the Agreement Date, may have at the Agreement Date, or after the Agreement Date, in each case against any FDIC Releasee [or JPMorgan Releasee] that arose or arise under or out of, or were or are based upon or relate to, any Governing Agreement or the contribution, sale or delivery of any Mortgage Loan to any Trust, ...”^{38, 39}

In exchange for these releases, the Trustee will be deemed to have an allowed general unsecured creditor claim in the Receivership Estate of \$3,006,929,660, for the benefit of the Primary Trusts, JPMC will implement certain servicing improvements (the “Subservicing Protocol”), the FDIC-Receiver agrees to pay JPMC \$645 million from the Receivership Estate, and JPMC and WMMS release the FDIC-Corporate, the FDIC-Receiver and the Receivership Estate from “all claims ... that have been or could have been brought that relate to WMB or the [Receivership Estate] ...”⁴⁰ The Settlement Agreement does not specify a method to allocate the cash that the

38. Settlement Agreement at p. 1 & §§ 3.03 and Trustee-JPMorgan Agreement at p. 1 & §§ 3.02. The Proposed Settlement generally carves out claims that arise after August 19, 2016 if they are based on servicing of the Mortgage Loans. Settlement Agreement at 1 and Trustee-JPMorgan Agreement §§ 3.09 (“The releases granted to the JPMorgan Releasees under this Trustee-JPMorgan Agreement do not include claims-including claims arising out of breaches of the obligations to service Mortgage Loans pursuant to the standards set forth in the Governing Agreements and this Trustee-JPMorgan Agreement-that arise after the Agreement Date and are based, in whole or in part on any actions, inactions, or practices of the any JPMorgan Releasee as to the servicing of the Mortgage Loans held by the related Trusts; provided, however, that as of the Agreement Date the Trustee covenants not to assert, and as of the Effective Date they release, any future claim for breach of the Governing Agreements based upon the implementation of the practices set forth in the Subservicing Protocol or resulting from any foreclosure delays on Mortgage Loans that as of the Effective Date are already in the process of foreclosure. In addition, the releases granted to the JPMorgan Releasees in this Trustee-JPMorgan Agreement do not include claims, if any, for any existing obligations any JPMorgan Releasee has in the ordinary course as servicer under the Governing Agreements to account or remit funds for individual Mortgage Loans to a particular Trust or to prepare and timely provide any report it is obligated to provide under the Governing Agreements, or to prepare tax-related information.”).

39. Trust Releasors are defined in the Settlement Agreement as “the Trusts, the Trustee, any successor to the Trustee for any Trust, and any Person claiming by, through or on behalf of any Trust (including any Investor, or group of Investors, claiming to act derivatively for any Trust)”.

40. Settlement Agreement at 1 (stating the Trustee is acting “solely in its capacity as Trustee” of the Primary

Trustee will receive from the Receivership Estate in satisfaction of its general unsecured creditor claim (the “Settlement Payment”).

16. On December 12, 2016, the Trustee filed the Petition. The Petition requests that the court enter an order (the “Approval Order”), among other things:

- “Determining that the Trustee acted reasonably and in good faith within the bounds of its discretion in entering into the [Proposed] Settlement;”
- “Declaring that the [Proposed] Settlement and each of the documents pursuant to which it was effectuated – the Settlement Agreement and the Trustee-JPMorgan Agreement – is binding on the Trusts.”⁴¹

17. In the Petition the Trustee proposed to first use the Settlement Payment to reimburse Trusts for fees and expenses incurred in the Action and then allocate it pro rata among the Primary Trusts by their “net losses” as a percentage of the aggregate “net losses” suffered by the Trusts.⁴² I understand that by “net losses” the Trustee means the expected lifetime losses on the Mortgage Loans held by the Trust and I adopt this meaning throughout my report. While the Secondary Trusts do not own Mortgage Loans, they may receive a portion of the Settlement Payment via distributions on Certificates they own that were issued by the Primary Trusts. The Petition asks the Court to issue a second order (the “Allocation Order”):

(...continued)

Trusts), §§ 3.01, 3.02, 3.03 & 3.04 and Trustee-JPMorgan Agreement §§ 2.01.

41. Petition pp. 28-29.

42. Petition ¶ 67.

- “directing that the Settlement Proceeds be allocated among the Trusts and among the classes of securities issued by each Trust based on the Net Loss Percentage [i.e. the Trust’s net losses as a percentage of net losses for all Trusts] or based on such other methodology as this Court approves.”⁴³

18. I was retained by counsel for the Trustee to form an independent opinion of “whether the [Proposed] Settlement is a reasonable resolution of the Action” and “whether an allocation methodology based on losses is reasonable here.”^{44, 45} I have been assisted by Compass Lexecon’s professional staff. Appendix 2 lists the materials we relied upon in preparing this report. Based on this review and analysis, I have concluded that the Settlement is a reasonable resolution of the Action and an allocation methodology based on net losses is reasonable in the context of this case.⁴⁶

19. In the remainder of this report I explain the basis for these conclusions. I first explain my analysis of the reasonableness and adequacy of the Proposed Settlement and then my analysis of basing the allocation methodology on net losses.

III. THE ECONOMICS OF THE SETTLEMENT DECISION

A. General Principles

20. At the outset, I want to emphasize that the context of my report is evaluating the reasonableness and adequacy of a proposed settlement. Any settlement by

43. Petition pp. 28-29.

44. Petition ¶¶ 66 & 69.

45. Compass Lexecon bills for my time at a rate of \$1,500 per hour. My compensation is not contingent on the outcome of this matter.

46. I reserve the right to review and consider any additional information that becomes available subsequent to the filing of my report.

definition involves a proposed resolution of a dispute at some stage short of a final disposition. Because only limited information is available, it is often impossible to identify what a reasonable and adequate settlement would be, even within a fairly wide range. That is particularly true in a case such as this one, where there are many unresolved legal and factual issues that are likely to have a significant effect on the Trusts' recovery if the Proposed Settlement is not accepted.⁴⁷

21. A party faced with a proposed settlement always has the ability to reject the offer in the hope of getting a more favorable outcome at a later stage in the proceedings. This will frequently be the right strategy, as is obvious, because many proposed settlements are rejected. But the reverse is also true, because rejecting a proposed settlement based on the possibility of obtaining a better outcome after further information gathering and investigation is not costless. Most obvious are the direct costs in resources spent in further fact finding and legal wrangling, and time loss necessitated by rejecting a settlement and extending the proceeding. Less obvious, but potentially more important, is that there is no guarantee that an additional expenditure of resources and time will produce a more favorable outcome – it may produce the opposite result. In such a case, the decision to reject a proposed settlement and engage in additional information gathering and investigation produces the dual bad outcome of wasted time and money only to get a worse outcome as a result.

22. The logical economic rule for deciding whether to accept a proposed settlement is easy to state in principle: a settlement should be accepted if the expected net present

47. See, *infra* § III & IV.

value of the proposed settlement exceeds that of rejecting the offer.⁴⁸ The expected net present value of a choice is the sum of the series of costs and benefits that might flow from that choice in the future, discounted to take into account that a payment today is worth more than the same payment in the future, and weighted by the probability that a particular set of costs and benefits will occur. In cases where enough information is available to reliably estimate the probability, costs and benefits of all possible outcomes, a litigation risk assessment can be purely mathematical: it would involve building a decision tree encompassing all of the major variables in the dispute, attaching dollar values and probabilities to each branch in the tree, and computing an overall weighted average across all of the potential scenarios.

23. A plaintiff choosing to accept a proposed settlement exchanges one set of potential outcomes for another. By settling now, a known consideration will be received, but there could be uncertainty about the value of the consideration if, as here, it includes items other than cash. By rejecting the proposed settlement, there is an even more diverse set of potential outcomes. Future developments may reduce the greatest possible recovery below the likely costs of continued litigation, putting the plaintiff in a position where it is rational to simply abandon the litigation. Even if the plaintiff can pursue litigation through trial or settlement, it might receive an amount in excess of that in the proposed settlement plus the costs of further litigation,

48. The riskiness of the expected cash flows might also be appropriate to consider. In other words, if litigation is expected with equal likelihood to result in an award of \$1 million or zero, it could make sense for a risk-averse plaintiff to accept a settlement that is less than \$500,000. Such risk aversion may tend to be less important for large institutions that engage in many investments and disputes, for which such risk might be more diversifiable.

but the plaintiff might receive less, or nothing at all, in the event of adverse decisions by judges or juries or an inability of the defendant to pay any judgment.

24. In many contexts, a purely mathematical litigation risk assessment will not be possible because the probability, costs and benefits of all possible outcomes that could have a substantial impact on the results cannot be estimated reliably. This is particularly likely when there is a wide spectrum of legal, factual and other factors, each with unknown outcomes, that may affect the costs of litigation, the ultimate amount received by the plaintiff and the time it will take to resolve the dispute. Therefore, individual settlement decisions often will have to be made by decision makers who apply their business judgment using proxies or qualitative factors to conduct their analysis because precise quantitative determinations are not feasible. The present case is precisely such a context.

B. The Consideration Offered by the Proposed Settlement

25. Under the Proposed Settlement, the Trusts would receive an allowed general unsecured creditor claim in the Receivership Estate of \$3,006,929,660 (the “Trustee Allowed Claim”).⁴⁹ As I explain below, and illustrate in Exhibit A, the value of the Trustee Allowed Claim depends on the value of the Receivership Estate and the claims on the Receivership Estate that are senior, or *pari passu*, with the Trustee Allowed Claim.

49. Petition ¶ 58.

26. As of April 13, 2017, the most recently available information indicated that the Receivership Estate had cash and investments valued at \$2,762,851,000.⁵⁰ I understand that, if the Proposed Settlement is approved, the only claims on the Receivership Estate that will be senior to the Trustee Allowed Claim are a \$7 million expense claim owned by the FDIC-Receiver and the \$645 million payment to JPMC discussed *supra*.⁵¹ Therefore, if there is not a substantial change in the value of the Receivership Estate, it would have approximately \$2.1 billion after paying JPMC and the FDIC-Receiver.

27. I further understand that, if the Proposed Settlement is approved, the only claims that will be *pari passu* with the Trustee Allowed Claim are those belonging to the holders of senior notes issued by Washington Mutual Bank (the “Senior Debt”) and general creditor claims. Exhibit A shows that the balance of WMB’s Senior Debt is approximately \$6 billion and there are \$19,249,000 in general creditor claims. Therefore, the Trustee Allowed Claim will entitle the Trusts to approximately one third of the Receivership Estate after payments are made to JPMC and the FDIC-Receiver.⁵² Exhibit A shows this is approximately \$697 million in cash.

50. Washington Mutual Receivership Balance Sheet for the Period December 31, 2016, last accessed on April 13, 2017 at <https://closedbanks.fdic.gov/drrip/Ext/BalDetails/10015> (“Balance Sheet”). The Balance Sheet also reports receivables valued at \$401,000. Because I do not know if the Receivership Estate will be able to recover these receivables, and their amount is so small, I do not include them.

51. *See, supra* ¶ 15.

52. \$3 Billion divided by (\$3 billion plus \$6 billion) = 1/3

28. The Proposed Settlement also requires JPMC to implement the Subservicing Protocol.⁵³ However, I do not know whether JPMC would implement the Subservicing Protocol for any Primary Trust even if the Proposed Settlement is rejected.⁵⁴ In addition, I do not have any estimate of its benefit to the Trusts. Therefore, for the purposes of my analysis, I do not ascribe any value to the Subservicing Protocol, however I note that certain Certificateholders urged the Trustee to require the Subservicing Protocol in the Proposed Settlement.⁵⁵

C. The Claims in the Current Context

29. The Proposed Settlement releases claims by all of the Primary Trusts and does not allow any Trust to opt out. It also allows the Trustee to take differences between Trusts into account in the allocation methodology. Therefore, to analyze the reasonableness and adequacy of the Proposed Settlement, I evaluate the total consideration it offers for all of the Primary Trusts relative to the likely outcome for all of the Primary Trusts if the Proposed Settlement is rejected.

30. The Proposed Settlement releases claims related to servicing.⁵⁶ I understand that the only servicing claims that have been asserted in the Action relate to an alleged failure to provide notification of Material Breaches and a failure to comply with requests

53. Trustee-JPMorgan Agreement §§ 2.01.

54. I understand the Subservicing Protocol has not yet been implemented for any Mortgage Loans.

55. Petition ¶ 61 (“...the Trustee has been urged by certain Certificateholders to require [the Subservicing Protocol’s] implementation with respect to the Trusts in any settlement of the Action.”).

56. Settlement Agreement at 1 and §§ 3.03 and Trustee-JPMorgan Agreement at 1 and §§ 3.02.

from the Trustee to provide information so the Trustee can enforce claims for Material Breaches. While it is possible that other servicing related claims could be asserted in the future, I have no way of assessing their value because they have not been articulated. Therefore, I do not consider these other, hypothetical, servicing related claims.

IV. THE PROPOSED SETTLEMENT IS A REASONABLE RESOLUTION OF THE ACTION

31. I find that the Proposed Settlement is a reasonable resolution to the Action for the following reasons. First, the value of the Primary Trusts' Claims is uncertain and rejecting the Proposed Settlement could lead to a long and costly delay in any recovery by the Primary Trusts. Second, the recovery for the Primary Trusts under the Proposed Settlement is in line with settlements of similar claims by trustees for other RMBS trusts. Third, Certificateholders have been notified of the Proposed Settlement and have been asked for their comments but they have not expressed opposition to it. Finally, our analysis of the market reaction to the Proposed Settlement did not find evidence it was lower than expected by market participants. I explain these reasons below.

32. In analyzing the Proposed Settlement, it will be useful in certain cases to divide the Primary Trusts into two groups: those to which WMMSC made representations and warranties (the "WMMSC Trusts") and the remaining Trusts (the "WMB Trusts"), because there are significant differences in the factors that will determine the outcome, if the Proposed Settlement is rejected, for these sets of Trusts. In particular, the WMB Trusts' recovery is likely to be limited by the Receivership Estate's assets and other liabilities for the following reasons. I understand that, under the Summary Judgment Ruling, the WMB Trusts can only bring Rep and Warranty Claims, and Claims for Servicing relating to conduct prior to JPMC's assumption of

servicing, against the Receivership Estate. Therefore, if the Trustee prevailed in litigation on these claims, it would receive a claim on the Receivership Estate for the amount awarded rather than cash. Moreover, I understand that damages for the WMB Trusts' Claims, that are related to servicing after JPMC's assumption of servicing, would be limited by the Receivership Estate's ability to pay because 1) these claims are limited to an alleged failure to provide notification of, and information relating to, Material Breaches, and 2) claims that Mortgage Loans in the WMB Trusts must be repurchased due to Material Breaches would be asserted against the Receivership Estate.⁵⁷ In contrast, the recovery by the WMMSC Trusts, if the Proposed Settlement is rejected, will depend on the Trustee's ability to pursue their Claims, WMMSC's ability to pay and the Trustee's ability to reach JPMC on the WMMSC Trusts' Claims if WMMSC cannot pay any judgment awarded the Trustee on behalf of the WMMSC Trusts.⁵⁸

A. There is Uncertainty About the Value of the Primary Trusts' Claims and a Substantial Risk that Rejecting the Proposed Settlement Would Lead to a Long and Costly Delay in any Recovery.

1. Uncertainty and Delay Related to the Material Breach Rate

33. To prepare for litigation relating to the Action, the Trustee commissioned an analysis of the expected lifetime losses on the Mortgage Loans and the extent of Material Breaches associated with them.⁵⁹ This analysis included a loan file review of a statistically

57. As discussed *supra*, while it is possible that other servicing related claims could be asserted in the future, I have no way of assessing their value because they have not been articulated. See *supra* ¶ 30. Therefore, I do not consider these other, hypothetical, servicing related claims. See *supra* ¶ 30.

58. See *supra* ¶ 14 & 30 & *infra* ¶¶ 40-42.

59. Petition ¶ 39.

significant sample of 1,000 Mortgage Loans and found potential damages related to Material Breaches to be consistent with the range provided in the Proof of Claim (i.e. \$6.764 to \$10.246 billion).⁶⁰ However, there is substantial uncertainty about the prevalence of Material Breaches that would be found by a court (the “Material Breach Rate”) and recent cases indicate that determining which Mortgage Loans have Material Breaches would generate substantial costs and delay. During this period the assets of both the WMB Trusts and the Receivership Estate, which would be the primary source of recovery for the WMB Trusts, would be dissipated by litigation.⁶¹

34. There is uncertainty about the extent to which a court would find that the Mortgage Loans have Material Breaches. In prior RMBS cases, different sides have reached radically different conclusions about the extent of Material Breaches. For example, in a similar case involving the Lehman estate, RMBS trustees (the “Lehman Trustees”) purported to identify Material Breaches in 94,564 loans and submitted them for repurchase to the plan administrator of the Lehman Estate (the “Plan Administrator”).⁶² The Plan Administrator rejected claims on 67% of the loans and claimed another 32% had insufficient documentation for review.⁶³

60. Petition ¶¶ 38-42.

61. *See supra* ¶ 32 & *infra* ¶ 37.

62. U.S. Bankruptcy Court, Southern District of New York, In re: Lehman Brothers Holdings Inc., et al., Debtors Case No. 08-13555 (SCC), Order Establishing a Protocol to Resolve Claims Filed by Trustees on Behalf of Certain Issuers of Residential Mortgage Backed Securities (and Exhibit A thereto), December 29, 2014 (Docket # 47569 available from <http://dm.epiq11.com/#/case/LBH/dockets>) (“Protocol Order”) & Status Report of RMBS Trustees, filed September 9, 2016 (“Lehman Status Report”) at 2 (in the same case).

63. Lehman Status Report at 3. This case is discussed further *infra* ¶ 36.

35. Litigation is also likely to lead to a long and costly delay in any recovery for the Trusts. The FDIC has taken the position that no payments will be made from the Receivership Estate until all of the Trusts' and JPMC's indemnity claims against the Receivership Estate and the FDIC-Receiver are resolved.⁶⁴ JPMC has argued that the Trustee "must demonstrate loan-specific breaches of representations and warranties, loan-specific materiality, and loan-specific adversity."⁶⁵ The experience involving the Lehman estate indicates that resolving the Trusts' Claims on a loan by loan basis would create a long delay in any recovery by the Trusts.

36. At the end of 2014, the bankruptcy court ordered the Lehman Trustees to prove their claims on a loan by loan basis.⁶⁶ Disagreement on the results of loan file reviews was anticipated; the court specified a multi-stage process where 1) the Lehman Trustees reunderwrite the loans and submit repurchase claims; 2) the Plan Administrator evaluates each claim and either grants it or explains why it is not doing so; if the Plan Administrator grants the claim, it either approves the repurchase price or revises it; 3) if the Plan Administrator rejects a claim or the repurchase price proposed by the Lehman Trustees, the Lehman Trustees have the right to respond to the Plan Administrator and negotiate a mutually acceptable claim amount; 4) if negotiations fail, the Plan Administrator will submit the disputed claims to a non-binding dispute

64. Petition ¶ 55.

65. United States Court for the District of Columbia, *Deutsche Bank National Trust Company v. Federal Deposit Insurance Corporation*, Case No. 1:09-cv-1656 (RMC) Memorandum of Points and Authorities in Support of JPMorgan Chase Bank, N.A. and Washington Mutual Securities Corporation's Motion to Dismiss and Motion for Partial Summary Judgment ("JPM Points") at 13

66. Protocol Order.

resolution procedure where the Lehman Trustees and the Plan Administrator will be able to explain their views to a claims facilitator who will render a non-binding decision; the Plan Administrator can also submit categories of issues or disputes to the procedure; and 5) if either the Lehman Trustees or the Plan Administrator object to the claims facilitator's decision, the dispute shall remain subject to further objections by the Plan Administrator and allowance by the bankruptcy court.⁶⁷ The Lehman Trustees only completed stage one of the protocol on May 31, 2016, over a year after it was ordered by the court.⁶⁸ The Plan Administrator completed stage 2 of the protocol approximately three months later.⁶⁹ As discussed *supra*, Lehman rejected claims on 67% of the loans and claimed another 32% had insufficient documentation for review.⁷⁰

37. If the Proposed Settlement is rejected and the Trustee is required to prove claims on a loan by loan basis, the Trustee would need to reunderwrite each loan to recover on it. Like the loan file review undertaken by the Lehman Trustees, such a loan file review would take a significant amount of time and could deplete the WMB Trusts.⁷¹ There are over 130,000 loans

67. Protocol Order Exhibit A.

68. Lehman Status Report at 2.

69. Lehman Status Report at 3.

70. *See supra*, ¶ 34. On March 17, 2017, Lehman, and a group of investors in the trusts at issue in that litigation, proposed a settlement to the Lehman Trustees whereby the Lehman Trustees' claim would be determined in an estimation proceeding pursuant to section 502(c) of the bankruptcy code. U.S. Bankruptcy Court, Southern District of New York, In re: Lehman Brothers Holdings Inc., et al., Debtors Case No. 08-13555 (SCC), Motion for Entry of Order Approving Notice Procedures with Respect to Proposed RMBS Settlement Agreement, filed March 22, 2017 ¶ 2 & 3.

71. I understand the Trustee's source of indemnity for the WMMSC Trusts is not from the Trusts but rather from the Master Servicer, JPMC, which is adverse in the Action; thus any litigation on behalf of the WMMSC Trusts would need to be funded by Certificateholders. Moreover, there is no assurance the WMB Trusts could recover their full litigation expenses from the Receivership Estate.

in the WMB Trusts that have already realized losses over \$5,000.⁷² The Trustee “believes that loan file reviews of the quality needed to support litigated claims would cost not less than \$1,000 per loan.”⁷³ Therefore reunderwriting just the Mortgage Loans with losses over \$5,000 would likely cost over \$130 million. Disagreements over whether a Material Breach exists would create additional delay and costs, particularly if such disagreements cannot be resolved by mediators working in parallel and need to be resolved by a court.

2. Uncertainty About the Amount the Receivership Estate Could Pay the WMB Trusts

38. The amount available from the Receivership Estate is likely to affect the amount the WMB Trusts recover if the Proposed Settlement is rejected for the following reason. As discussed *supra*, I understand that, under the Summary Judgment Ruling, the WMB Trusts can only bring Rep and Warranty Claims, and Claims for Servicing relating to conduct prior to JPMC’s assumption of servicing, against the Receivership Estate.⁷⁴ While the Summary Judgment Ruling is on appeal, it would be difficult to overturn and, even if the appeal were successful, proceedings on any remand would be in front of the same judge.⁷⁵

72. Compass Lexecon calculations.

73. Petition Note 10.

74. *See supra*, ¶ 32.

75. Petition ¶ 47 (“Given the nature of the Summary Judgment Ruling, it would have been difficult to overturn, and even if the appeal were successful, proceedings on any remand based upon a contested issue of fact would be in front of the same judge.”). Moreover, it is questionable whether the Trustee would be able to pursue the appeal if the FDIC withdrew, something that could happen if, for example, the FDIC believed withdrawing its appeal was necessary to reach a settlement with JPMC that avoids costs to the Deposit Insurance Fund. *Id.* ¶ 47 (“Moreover, under precedential rulings of the Court of Appeals for the DC Circuit, it was questionable whether the Trustee – as a non-party to the P&A Agreement – would be found to have standing to pursue the appeal or other issues concerning the interpretation of the P&A Agreement,

39. The amount available from the Receivership Estate, if the Proposed Settlement is rejected, is uncertain for multiple reasons. Litigation would force the Receivership Estate to incur costs to defend itself, which would deplete the Receivership Estate.⁷⁶ In addition, JPMC has asserted indemnity claims against the Receivership Estate and FDIC-Corporate that exceed the assets of the Receivership Estate.⁷⁷ Without the Proposed Settlement, JPMC's indemnity claims will not be resolved. The FDIC-Receiver took the position that JPMC's indemnity claims would have priority over the Trusts' Claims.⁷⁸ If JPMC were awarded an amount exceeding the assets of the Receivership Estate on its indemnity claims and the FDIC-Receiver treated this award as senior to the WMB Trusts' claims, the WMB Trusts would not be able to recover anything on their Rep and Warranty Claims or their Claims relating to servicing before JPMC's assumption of servicing.⁷⁹

(...continued)

particularly if the FDIC and JPMC settled their dispute in a manner adverse to the interests of the Trusts.”).

76. Petition ¶ 50.

77. Petition ¶ 25. (“JPMC asserted substantial claims against both the Receivership Estate and FDIC-Corporate under the Indemnity Provision (the “Indemnity Claims”). ... The Trustee understands that JPMC was seeking to recover an amount in excess of the assets of the Receivership Estate on the Indemnity Claims.”).

78. Petition ¶ 26. (“The FDIC-Receiver took the position that should it be found liable on any of JPMC's indemnity claims, under the P&A Agreement, those claims would be satisfied as administrative expenses and thus before the claims of general unsecured creditors. Thus, according to the FDIC-Receiver, any Indemnity Claims established by JPMC would be priority administrative obligations of the Receivership Estate such that they would be paid in full ahead of any general unsecured Claims, including those of the Trustee.”).

79. *See supra* ¶ 38 & Petition ¶ 25 (“Thus, if proven or materially agreed to by the FDIC in settlement, the Indemnity Claims could have reduced the value of any claims the Trustee had against the Receivership Estate potentially to zero.”).

3. Uncertainty About Whether the Trustee Would be Able to Pursue Claims on Behalf of the WMMSC Trusts if the Proposed Settlement is Rejected

40. There is also uncertainty about whether the Trustee would be able to pursue claims on behalf of the WMMSC Trusts. I understand that the Trustee is not required to expend or risk its own funds and its indemnity for fees and expenses is not from the WMMSC Trusts but rather from the Master Servicer, JPMC, which is adverse in the Action, thus any litigation would need to be funded by WMMSC Certificateholders. Therefore, there is a substantial risk that the WMMSC Trusts' Claims could not be pursued unless WMMSC Certificateholders agreed to pay the cost of doing so.

41. There are a number of reasons why a group of WMMSC Certificateholders might not step up to finance the WMMSC Trusts' litigation. First, pursuing claims often requires a substantial investment of resources and success is not certain. Moreover, WMMSC Certificateholders who do not finance the litigation may benefit on the same terms as those who do, if the pursuit of claims is successful. For example, the settlement between Countrywide, Bank of America and 530 RMBS Trusts (the "Countrywide Settlement") required investors holding more than \$40 billion of the certificates (the "Countrywide Negotiators") to spend more than six months negotiating.⁸⁰ However, the Countrywide Negotiators will only receive a fraction of the consideration to be paid because they only own a fraction of the

80. "The Institutional Investors' Statement of Support for the Settlement," filed May 3, 2013 at 3 & 16-17 ("Collectively, [the investors who negotiated the Proposed Countrywide Settlement] held more than \$40 billion of securities issued by the settled Trusts. ... The settlement took more than six months, nearly two dozen meetings and nearly daily phone conferences to negotiate. ... The negotiations involved counsel, experts, and internal business personnel from all parties with deep subject matter experience. The parties negotiated and circulated more than 25 drafts of the Settlement Agreement and countless provisions under discussion.")

outstanding certificates.⁸¹ And the consideration in the Countrywide Settlement will be allocated to the Countrywide Negotiators on the same terms as it is allocated to all other holders of the certificates at issue in that settlement.

42. Costs of pursuing claims can be even higher when settlement is not possible and the certificateholders have to finance litigation. Even if the WMMSC Trusts are not required to prove their claims on a loan by loan basis, I understand that litigation of their claims is likely to require additional work from experts to design samples of loans, reunderwrite sampled loans, extrapolate the results of the reunderwriting to the population of loans at issue and respond to similar analyses by the opposing side, as well as teams of attorneys to respond to dispositive motions and other procedural hurdles that must be surmounted in order to get to trial.⁸² In addition, litigation can require years to resolve, creating the risk that any group of WMMSC Certificateholders that does form to finance litigation will fall apart before a recovery can be achieved.

81. The Consideration in the Countrywide Settlement consisted of a cash payment, servicing improvements and a remedy for missing documents. The cash payment is to be allocated to Trusts based on their estimated lifetime losses. See Countrywide Settlement Agreement, Sections 3, 5 and 6. Available at <http://www.cwrmbsssettlement.com/docs/Exh%20B.pdf>. (the “Countrywide Agreement”).

82. Although the Trustee performed a review of a statistically significant sample of 1,000 Mortgage Loans to prepare for litigation, I understand this sample was based on all of the 99 Trusts rather than focusing on the WMMSC Trusts. *See supra* ¶ 33 and Petition ¶ 42.

4. Statute of Limitations

43. Finally, the Statute of Limitations creates additional uncertainty for many Trusts. WMMSC and JPMC have argued that Rep and Warranty Claims for 74 of the Trusts, including all of the WMMSC Trusts, are barred by the Statute of Limitations.⁸³

B. Comparable Settlements

44. A common approach to evaluating the adequacy of a proposed settlement is to compare it to other recent settlements of similar claims. Reviewing these settlements can be informative because they reflect others' litigation risk analyses of similar issues. Such comparisons need to be undertaken with caution, however, because it is typically impossible to find other cases where the facts, relative strength of claims and defenses, and applicable law are identical.

45. We first compare the Proposed Settlement to other settlements that are similar in that they follow the housing crisis and release representations, warranties and servicing claims held by a large number of RMBS Trusts ("Other Large Trustee Settlements"). Because none of the Other Large Trustee Settlements involved WaMu, we next review the two settlements (one only proposed but never implemented and the other completed) that involve WaMu RMBS trusts. Wherever possible, we identify the characteristics that differentiate the

83. Petition ¶ 65 and JP Morgan, Memorandum of Points and Authorities, November 22, 2010, pp. 25-26. The Trustee responded by arguing, among other things, that the Claims did not begin to accrue upon the date of Securitization, but only later when there was a failure to repurchase the Mortgage Loans. Petition ¶ 65. However, in another RMBS case, the New York Court of Appeals rejected this argument and agreed with JPMC that the Statute of Limitations accrues as of the date of securitization. *Id.*

other settlements from the circumstances here and the directional impact those differences have on the expected value of the claims in this case.

46. We compare the settlements based on the consideration as a percentage of estimated lifetime losses on the loans held by the RMBS trusts at issue (as noted *supra*, the Petition refers to estimated lifetime losses as “net losses.”).^{84, 85} We use estimates of lifetime losses, rather than estimates of damages, because the Other Large Trustee Settlements took place before litigation even began, so there is too little information to estimate damages reliably.⁸⁶ Lifetime losses are superior to other measures, such as the original principal balance of the trusts, because they reflect harm from the potential misconduct on which claims are being released (e.g. Material Breaches and breaches of the Governing Agreements related to servicing). However, lifetime losses are not equivalent to damages because they may also include losses on loans where none of the released claims would apply. The ratio of settlement consideration to estimated lifetime losses has been used by industry analysts and others to evaluate Other Large Trustee Settlements.⁸⁷

47. We measure consideration differently for the WMB Trusts and the WMMSC Trusts. As discussed *supra*, I understand that, 1) if the Trustee prevailed in litigation

84. The one exception is our comparison of the Proposed Settlement to an earlier negotiated settlement of the same claims. *See infra* ¶ 58. Because the same claims are involved, we directly compare the consideration.

85. *See supra* ¶ 17.

86. *See, e.g.* Fischel JPM Report ¶ 34 and Petition, Supreme Court of the State of New York, County of New York, In the matter of the application of The Bank of New York Mellon, Index No. 651786/2011, ¶¶ 6-10.

87. *See, e.g.* “JPM settlements: Implications for non-agency,” Barclays, November 22, 2013 at 1 & 3; “Mortgage Market Comment – Citi announces settlement on 68 trusts for 1.125B,” Credit Suisse, April 7, 2014; “Analyzing the \$1.125 billion Citigroup settlement deal,” Deutsche Bank, April 9, 2014; and “Resi Credit Insights, Citi Settlement Implications,” Morgan Stanley, April 8, 2014.

on the WMB Trusts' Rep and Warranty Claims and claims related to servicing prior to the JPMC's assumption of servicing, the Trustee would receive a claim on the Receivership Estate rather than a specific dollar amount and 2) any recovery related to servicing after JPMC's assumption of servicing would be determined by the amount that would have been recovered from the Receivership Estate but for JPMC's alleged wrongdoing.⁸⁸ Therefore, we measure the consideration the WMB Trusts would receive in the Proposed Settlement as the size of the claim they would receive on the Receivership Estate. In contrast, the WMMSC Trusts would receive the entire judgment they were awarded if WMMSC had sufficient assets to pay it or if the WMMSC Trusts could reach JPMC on their claims.⁸⁹ Therefore we measure the consideration they would receive as the cash I expect them to receive under the Proposed Settlement.

48. Exhibit B shows that the Settlement Payment is sufficient to 1) reimburse the WMB Trusts for 100% of the costs they incurred in the Action (the Trustee proposes to reimburse Trusts for the costs incurred in the Action before making other distributions of the Settlement Payment; I understand these costs are approximately \$70 million);⁹⁰ 2) give the WMMSC Trusts cash equal to approximately 11.9% of their estimated lifetime losses and 3) give the WMB Trusts a cash amount equivalent to the value of a claim on the Receivership

88. See *supra* ¶ 32 & 38.

89. See *supra* ¶ 32.

90. Petition ¶ 67. I understand the WMB Trusts have funded the Action because the Trustee's indemnity for fees and expenses relating to the WMMSC Trusts is from the Master Servicer, JPMC, which is adverse in the Action.

Estate set at 11.9% of the WMB Trusts' estimated lifetime losses.⁹¹ While I understand that this approach differs from the allocation proposed for consideration of the court in the Petition, for the purposes of comparing the Proposed Settlement to Other Large Trustee Settlements, I use 11.9% as the estimate of the ratio of the consideration offered here to estimated lifetime losses on the Primary Trusts. I find that 11.9% is substantially above the recovery in Other Large Trustee Settlements with JPMorgan, Citigroup and ResCap and within the range we estimate for the settlement between the Trustee for the Countrywide Trusts, Bank of America and Countrywide.

1. Other Large Trustee Settlements

49. Exhibit C shows the Proposed Settlement is close to the top of the range of Other Large Trustee Settlements. Because there are differences between the Proposed Settlement and the Other Large Trustee Settlements, we next compare the Proposed Settlement to each of the Other Large Trustee Settlements.

50. Exhibit C shows that 11.9% is at the upper end of the range for the Countrywide Settlement when the value of the Servicing Improvements and Document Remedy are not included and at the lower end of the range when they are included.⁹² As noted *supra*, I assigned no value to the Subservicing Protocol here, due to a lack of information.⁹³

91. If no reimbursement is provided for costs incurred in the Action, then the Settlement Payment is sufficient to give the WMMSC Trusts cash equal to approximately 13.2% of their estimated lifetime losses and the WMB Trusts a cash amount equivalent to the value of a claim on the Receivership Estate set at 13.2% of the WMB Trusts' estimated lifetime losses. Compass Lexecon calculations.

92. We considered whether the loans sold to the Trusts have more Material Breaches than those sold to the trusts involved in the Countrywide Settlement. To investigate this, we analyzed whether loans in the Trusts were

51. The Proposed Settlement is similar to the Countrywide Settlement in that it releases claims related to representations, warranties and servicing.⁹⁴ I am not aware of any concern that the claims being released by the Countrywide Settlement would have been barred by the statute of limitations. Therefore, the Countrywide Settlement supports the reasonableness of the Proposed Settlements even if it is unlikely that the Trusts' Claims would be barred by the Statute of Limitations. I next discuss the differences between the Proposed Settlement and the Countrywide Settlement.

52. First, the Proposed Settlement was negotiated approximately five years after the Countrywide Settlement.⁹⁵ Therefore, there is now less uncertainty about future losses than there was when the Countrywide Settlement was negotiated because, with the passage of time, a larger percentage of the losses have been realized (while expected losses may have been higher when the Countrywide Settlement was negotiated, we already control for this by comparing Settlements as a percent of expected losses rather than by absolute dollar amount).

(...continued)

more likely to default, after controlling for disclosed characteristics and macroeconomic conditions, than the loans involved in the Countrywide Settlement (because one would expect a higher Material Breach Rate to generate a higher default rate, all else equal). We found the difference between the default rate for the loans sold to the Trusts versus those in the Countrywide Settlement, was not statistically significant. Therefore I do not draw any conclusion about the relative default rates of loans sold to the Trusts versus those in the Countrywide Settlement.

93. *See, supra* ¶ 28.

94. Settlement Agreement between the Bank of New York Mellon, Bank of America Corporation BAC Home Loans Servicing, LP, Countrywide Financial Corporation and Countrywide Home Loans, Inc., §§ 9(a). As Exhibit C notes, the Proposed Settlement releases claims related to documentation. *See* Settlement Agreement at §§ 3.03 (ff) and Trustee-JPMorgan Agreement at §§ 3.02 (z) (ff).

95. Settlement Agreement between the Bank of New York Mellon, Bank of America Corporation BAC Home Loans Servicing, LP, Countrywide Financial Corporation and Countrywide Home Loans, Inc. at 48 (showing this settlement agreement is dated June 28, 2011).

This uncertainty would be likely to increase the Countywide Settlement if Bank of America and Countrywide were more risk averse than the Bank of New York Mellon and the investors in the Countrywide Trusts who negotiated the Countrywide Settlement, and to reduce it if Bank of America and Countrywide were less risk averse.

53. Second, at the time the Countrywide Settlement was negotiated, Countrywide's ability to pay a judgment was uncertain,⁹⁶ and there was significant legal uncertainty about whether the Countrywide Trusts could reach Bank of America.⁹⁷ This contrasts with the WMB Trusts, where the size of the claim they could be awarded is essentially unlimited (a very high claim would simply mean they receive almost all of the Receivership Estate after more senior creditors were paid).⁹⁸ This suggests the WMB Trusts could be awarded a larger claim in litigation than the dollar amount the Countrywide Trusts received, all else equal. However, as I explain below, evidence from JPM and Citigroup Settlements, where I am not aware of any uncertainty about the ability to pay a judgment, suggests the opposite.

96. Institutional Investors Statement in Support of Settlement and Consolidated Response to Settlement Objections, dated October 31, 2011 ¶ 41 (“The Countrywide-affiliated Mortgage Sellers are deeply insolvent. The financial press is rife with speculation concerning when Bank of America will place them in bankruptcy.”)

97. See, e.g., Addendum of Exhibits cited in the Bank of New York Mellon's Consolidated Response to Objections, in the matter of the application of The Bank of New York Mellon (as Trustee) vs. Walnut Place LLC et al, US District Court, SDNY, case no. 11-cv-5988 (WHP), Exhibit D-2 (“Daines Corporate Separateness Opinion”), at 38 (“While the ultimate outcome is a difficult question, turning on unknown facts and developing law, in the end, I believe that a successor liability case would be difficult to win unless the Transactions materially reduced the value of the legacy Countrywide subsidiaries. It is simply too hard to explain why BAC should be liable – and a fundamental rule of corporate transactions set aside – if the Transactions caused no harm to Investors.”).

98. The WMMSC Trusts might face a similar issue if they pursued claims against WMMSC but I have not been provided with information on WMMSC's other liabilities or its assets or the ability of the Trustee to reach JPMC on their claims.

54. Exhibit C shows recovery in the JPM Settlement is substantially less than 11.9%. Like the Proposed Settlement, the JPM Settlement released representations, warranties and servicing claims, included a subservicing protocol, and some Supporting Loan Groups covered by the JPM Settlement could have had their claims barred by the statute of limitations.⁹⁹ However, approximately 97% of eligible Supporting Loan Groups accepted the JPM settlement, including approximately 96% of Supporting Loan Groups where the Trustees were advised that repurchase claims were unlikely to be time barred.¹⁰⁰ Therefore, this settlement supports the Proposed Settlement even if it is unlikely that the Trusts' Claims would be barred by the statute of limitations.¹⁰¹ A difference with the Proposed Settlement is that trustees were able to opt out

99. Exhibit C and Fischel JPM Report ¶¶ 123 - 126.

100. Compass Lexecon calculations, Supplemental Expert Report of Daniel R. Fischel dated July 26, 2014, Exhibit D-1 (showing Supporting Loan Groups where claims are likely to be time barred), NOTICE REGARDING MODIFICATION OF PROPOSED SETTLEMENT AGREEMENT (AS DEFINED HEREIN) FROM JPMORGAN (AS DEFINED HEREIN), ACCEPTANCE AND NON-ACCEPTANCE OF MODIFIED PROPOSED SETTLEMENT AGREEMENT (AS DEFINED HEREIN) AS TO CERTAIN RMBS TRUSTS AND LOAN GROUPS AND EXTENSION OF ACCEPTANCE DATE AND TOLLING AGREEMENT AS TO CERTAIN RMBS TRUSTS AND LOAN GROUPS, dated August 1, 2014, available at http://www.rmbstrusteesettlement.com/docs/08_01_2014_Notice_to_Holders.pdf & NOTICE REGARDING ACCEPTANCE AND NON-ACCEPTANCE OF MODIFIED PROPOSED SETTLEMENT AGREEMENT (AS DEFINED HEREIN) AS TO CERTAIN RESIDENTIAL MORTGAGE-BACKED SECURITIZATION TRUSTS AND LOAN GROUPS IDENTIFIED IN EXHIBIT A HERETO (EACH AN "EXTENDED ACCEPTANCE DATE TRUST" AND COLLECTIVELY, "EXTENDED ACCEPTANCE DATE TRUSTS") FOR WHICH THE EXTENDED ACCEPTANCE DATE RMBS TRUSTEES (AS DEFINED HEREIN) RESPECTIVELY SERVE AS TRUSTEE, SEPARATE TRUSTEE, AND/OR SUCCESSOR TRUSTEE. Dated October 1, 2014, available at http://www.rmbstrusteesettlement.com/docs/Oct.1_Notice.pdf.

101. We considered whether the Proposed Settlement was higher than the JPM Settlement because the loans sold to the Trusts have more Material Breaches than those sold to the trusts involved in the JPM Settlement. To investigate this, we analyzed whether loans in the Trusts were more likely to default, after controlling for disclosed characteristics and macroeconomic conditions, than the loans involved in the JPM Settlement (because one would expect a higher Material Breach Rate to generate a higher default rate, all else equal). We found the difference between the default rate for the loans sold to the Trusts versus those in the JPM Settlement, was not statistically significant. Therefore I do not draw any conclusion about the relative default rates of loans sold to the Trusts versus those in the JPM Settlement.

of the JPM Settlement for specific Supporting Loan Groups.¹⁰²

55. Exhibit C shows that the Citigroup Settlement also offered a recovery substantially lower than 11.9%. This settlement did not release servicing claims and does not contain any provisions to improve servicing. As in the JPM Settlement, I am not aware of any concerns about the ability to recover a judgment from the potential defendant (here Citigroup). Like the JPM Settlement, the Citigroup Settlement allowed Trustees to opt out on behalf of specific Supporting Loan Groups, and the trustees were advised that some Supporting Loan Groups could have their claims barred by the Statute of Limitations if the settlement was not accepted.¹⁰³ Approximately 97% of eligible Supporting Loan Groups accepted the Citi settlement, including approximately 92% of Supporting Loan Groups where the Trustees were advised that repurchase claims were unlikely to be time barred.¹⁰⁴ Therefore, this settlement

102. Proposed JPM Settlement Agreement Section 2.07.

103. Expert Report of Bradford Cornell dated December 3, 2014 ¶¶ 42-45.

104. Compass Lexecon calculations, NOTICE REGARDING ACCEPTANCE AND NON-ACCEPTANCE OF THE MODIFIED PROPOSED SETTLEMENT AGREEMENT DATED AS OF APRIL 7, 2014 AND AS MODIFIED (THE “MODIFIED PROPOSED SETTLEMENT AGREEMENT”) FROM CITIGROUP INC. AND ITS DIRECT AND INDIRECT SUBSIDIARIES (“CITIGROUP”), dated December 19, 2014, available at http://www.citigrouprmbssettlement.com/pdflib/Notice_to_Holders_re_Acceptance_and_Non-Acceptance_of_the_Modified_Proposed_Settlement_Agreement.pdf, NOTICE REGARDING ACCEPTANCE OF THE SETTLEMENT AGREEMENT ON BEHALF OF THE EXTENDED ACCEPTANCE LOAN GROUPS, dated December 31, 2014, available at http://www.citigrouprmbssettlement.com/pdflib/Notice_dated_December_31,_2014_Regarding_the_Acceptance_of_the_Settlement_Agreement_on_behalf_of_the_Extended_Acceptance_Loan_Groups.pdf and Exhibit E to Supplement to Expert Report of Bradford Cornell, dated December 16, 2014, available at http://www.citigrouprmbssettlement.com/pdflib/Supplement_to_the_Expert_Report_of_Bradford_Cornell.pdf

supports the Proposed Settlement even if it is unlikely that the Trusts' Claims would be barred by the Statute of Limitations.¹⁰⁵

56. Finally, Exhibit C shows that the claim awarded by the Proposed Settlement is larger than claim awarded in the ResCap Settlement.¹⁰⁶ This settlement also released claims for representations, warranties and servicing.¹⁰⁷ However, the two settlements are not comparable in an important way. The ResCap Settlement includes a large number of trusts that ResCap did not sponsor or make representations and warranties to.¹⁰⁸ Because of this difference, the ResCap Settlement is of limited value in assessing the Proposed Settlement.

2. Other Settlements involving WaMu RMBS Trusts

57. I am aware of one case where data is available on the amount JPMorgan was willing to pay to settle claims relating to loans securitized by WaMu. In October 2013,

105. We considered whether the Proposed Settlement was higher than the Citigroup Settlement because the loans sold to the Trusts have more Material Breaches than those sold to the trusts involved in the Citigroup Settlement. To investigate this, we analyzed whether loans in the Trusts were more likely to default, after controlling for disclosed characteristics and macroeconomic conditions, than the loans involved in the Citigroup Settlement (because one would expect a higher Material Breach Rate to generate a higher default rate, all else equal). We found the difference between the default rate for the loans sold to the Trusts versus those in the Citigroup Settlement, was not statistically significant. Therefore I do not draw any conclusion about the relative default rates of loans sold to the Trusts versus those in the Citigroup Settlement.

106. My estimate of the recovery in the ResCap Settlement here differs from my estimate in the Fischel JPM Report. I use the claim amount here because ResCap was in bankruptcy, whereas I used an estimate of the cash amount the ResCap Trusts would receive in the Fischel JPM Report. Fischel JPM Report Exhibit D. I discounted the importance of the ResCap Settlement in the Fischel JPM Report because ResCap was in bankruptcy whereas JPM was not. Fischel JPM Report ¶ 42.

107. ResCap Findings of Fact ¶ 104.

108. ResCap Findings of Fact ¶ 104 (stating the ResCap Settlement provides for release of claims by approximately 1,100 RMBS Trusts) & Direct Examination of Frank Sillman, In re: Residential Capital LLC, et. al., Case No. 12-12020 (MG) ("Sillman Direct") ¶ 14 (stating the ResCap Settlement covers 573 Trusts sponsored by the Debtors (396 sponsored in or before 2004 and 177 prior to 2004) and 130 Trusts not sponsored by the Debtors that have asserted representation and warranty claims on the basis that a Debtor sold some portion of the underlying mortgage loans.). $1,100 - 573 - 130 = 397$.

JPMorgan agreed to pay \$4 billion to settle securities claims on RMBS purchased by Fannie Mae and Freddie Mac.¹⁰⁹ The settlement agreement stated that “JPMorgan has determined that it is prepared to pay ... \$1,153,056,060 in settlement of claims asserted against the WaMu/Long Beach Legacy Defendants ...”¹¹⁰ Analysts at Morgan Stanley contemporaneously estimated this was approximately 58% of estimated lifetime losses on the WaMu securities that were at issue.¹¹¹

58. While JPMorgan’s settlement with the FHFA might seem to suggest that JPMorgan would be willing to pay the WMMSC Trusts more than they are currently receiving to avoid litigation, the FHFA brought its claims under securities laws, including Section 11 of the Securities Act, rather than pursuant to the Governing Agreements.¹¹² Under Section 11, any material and adverse misstatement can trigger liability for all losses on a security subject to an affirmative causation defense. In addition, I understand that after the Summary Judgment Ruling a group of Certificateholders were prepared to accept a settlement that, among other things, gave all of the Primary Trusts a claim on the Receivership Estate of approximately \$2.28 billion in exchange for releasing the Primary Trusts’ Claims against the Receivership Estate,

109. Bloomberg, “JPMorgan to Pay \$5.1 Billion to Settle Mortgage Claims,” October 26, 2013.

110. Settlement Agreement and Release entered into as of October 25, 2013 between the FHFA et al. and JP Morgan Chase & Co. et al. at 2.

111. Morgan Stanley, “J.P. Morgan Chase & Co., Litigation Headwinds Abating, Underlying Strength Intact,” October 28, 2013, Exhibit 3 at p. 5.

112. FEDERAL HOUSING FINANCE AGENCY, AS CONSERVATOR FOR THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION, Plaintiff, against JPMORGAN CHASE & CO.; et al., AMENDED COMPLAINT, dated June 13, 2012 (“FHFA Amended Complaint”) ¶ 1. FHFA also brought securities claims under the state laws of Virginia and the District of Columbia. *Id.* at 1.

WMMSC and JPMC. This is substantially lower than the \$3 billion claim the Primary Trusts would receive under the Proposed Settlement.^{113, 114}

C. CERTIFICATEHOLDERS HAVE NOT EXPRESSED OPPOSITION TO THE PROPOSED SETTLEMENT

59. The lack of opposition to the Proposed Settlement from Certificateholders is supportive of its reasonableness and adequacy. Certificateholders have the greatest incentive to evaluate the Proposed Settlement because they will ultimately receive a share of the Settlement Payment if the Proposed Settlement is approved and, in the alternative, bear the costs and reap the benefits if the Proposed Settlement is rejected. In addition, as I explain below, Certificateholders were provided with information on the Claims and the Proposed Settlement, the Trustee requested their comments and it is inexpensive for them to provide comments to the Trustee.

60. Certificateholders received information on the Proposed Settlement. On October 17, 2012, the Trustee provided a report on the litigation related to the Action and provided internet links that Certificateholders could use to obtain the Amended Complaint and the record of Senate Hearings on WMB where additional factual allegations about WMB's origination and securitization practices came to light.¹¹⁵ The Trustee provided updates on the litigation and, on August 19, 2016, notified Certificateholders of the Proposed Settlement,

113. *See supra*, ¶ 15.

114. I understand that the Trustee does not have access to all of the terms of this unconsummated settlement.

115. Petition, Exhibit 18: Deutsche Bank National Trust Company, Report Regarding Status of Litigation to Enforce Certain Trust Claims, October 17, 2012 at 3.

provided them with the Settlement Agreement and the Trustee-JPMorgan Settlement and stated that it “welcomes communications from all [Certificateholders] regarding the [Certificates].”¹¹⁶ The Trustee provided its email address and asked Certificateholders to contact it by email if they had any question or comment with respect to the notice.¹¹⁷ The Trustee provided further information on the Proposed Settlement on December 22, 2016 when it sent the Certificateholders a notice that included the Petition and informed the Certificateholders that the Trustee had set up a website with further information related to the Proposed Settlement including all of the exhibits to the Petition.¹¹⁸ The notice on December 22, 2016 asked Certificateholders to provide the Trustee with information on their holdings “[t]o facilitate direct communication between the Trustee and [Certificateholders] ...” and informed them that they could be heard on Petition at a hearing on May 9, 2017.¹¹⁹

61. As of April, 25, 2017, no Certificateholder has expressed opposition to the Proposed Settlement.¹²⁰ Because the Trustee has disclosed its view that the Proposed Settlement should be approved, I view the current lack of objections to be a weak indication of support for the Proposed Settlement.¹²¹

116. Notice to Certificateholders dated August 19, 2016 (“Notice”) pp. 2-3, Exhibits B & C.

117. Notice at 3.

118. Notice to Certificateholders dated December 22, 2016 and <http://www.globic.com/wamurmbssettlement>.

119. Notice to Certificateholders dated December 22, 2016 at 2.

120. One Certificateholder made a recommendation on the method that should be used to allocate the Settlement Payment. Letter from Sheila A. Sadighi to John M. Rosenthal dated October 24, 2016.

121. Petition ¶ 64.

D. THE MARKET REACTION TO THE PROPOSED SETTLEMENT

62. Another way to test the reasonableness and adequacy of the Proposed Settlement is to analyze the reaction of market participants to information about its disclosure. Prior to the disclosure of the Proposed Settlement, the Amended Complaint and the Summary Judgment Ruling were publically available.¹²² Thus, information on the Action was available to market participants, including analysts and market commentators covering JPMC's parent, JPMorgan ("JPM") and the RMBS market, who discussed the Trusts' Claims.¹²³ Information about other settlements by RMBS Trustees, discussed above, was also available publicly.¹²⁴ Because this information was publicly available at the time the Proposed Settlement was announced, how market participants reacted to the announcement of the Proposed Settlement provides information about the market's judgment on whether it was reasonable and adequate.

1. JPM Stock Price Reaction

63. As discussed *supra*, any recovery by the WMMSC Trusts would likely be paid by WMMSC or its parent JPMC.¹²⁵ Therefore, if the Proposed Settlement was lower than

122. Deutsche Bank National Trust Company, Report Regarding Status of Litigation to Enforce Certain Trust Claims, October 17, 2012 at 3 ("A copy of the First Amended Complaint is available through the federal court system's PACER database at <https://ecf.dcd.uscourts.gov/>.").

123. See, e.g., J.M. Goldberg, B. Morton, M. Kesselhaut and E. Koysman, "JPMorgan Chase & Co., 2016 10-Q Review: Outlook Unch'd, RPL Lower, No DoJ Libor Actions," Barclay's, August 4, 2016 at 17 & 19-20; "Judge limits JPMorgan's liability for soured WaMu mortgages," Reuters, June 3, 2015; "Split liability for WaMu Claim," Structured Credit Investor, June 4, 2015.

124. See, e.g., "JPM settlements: Implications for non-agency," Barclays, November 22, 2013 at 1 & 3; "Mortgage Market Comment – Citi announces settlement on 68 trusts for 1.125B," Credit Suisse, April 7, 2014; "Analyzing the \$1.125 billion Citigroup settlement deal," Deutsche Bank, April 9, 2014; and "Resi Credit Insights, Citi Settlement Implications," Morgan Stanley, April 8, 2014.

125. See *supra* ¶ 32.

market participants expected, I would expect this to have a positive impact on JPM's stock price.¹²⁶

64. On August 19, 2016, the Trustee disclosed the Proposed Settlement and it was reported after the markets closed on the same day.¹²⁷ Therefore, we analyzed the market's reaction to the disclosure of the Proposed Settlement by reviewing analyst reports, market commentary and changes in JPM's stock price.¹²⁸

65. We analyzed the reaction of JPM's stock price to the disclosure of the Proposed Settlement using an event study, a technique that is widely used in finance.¹²⁹ It is standard practice in event studies to take into account the effect of market factors on stock price returns. This is typically done by using regression analysis to estimate the historical relationship between changes in a company's stock price and changes in the performance of a market index (and possibly an industry index), using the historical relationship and the actual performance of the index(es) on the day in question to calculate a "predicted return," and subtracting the

126. During the calendar year prior to August 19, 2016: 1) JPM stock was actively traded on the New York Stock Exchange, with average weekly share turnover of 2.2 percent; 2) each month, between 26 and 30 analysts provided estimates of the Company's fiscal year 2015 earnings, and Thomson Financial lists 365 analyst reports on the Company; and 3) JPM filed Forms S-3 and regular public filings with the SEC. Therefore, it is reasonable to presume that market participants followed the stock closely and took the Settlement into account in valuing JPM's stock.

127. Notice and "JPMorgan settles with FDIC, Deutsche Bank in WaMu case," Reuters, August 19, 2016 at 17:42. I understand the terms of the Proposed Settlement were not disclosed before August 19, 2016.

128. CRSP 1962 US Stock and Indexes Database ©2016 The University of Chicago on behalf of its Center for Research in Security Prices (CRSP®) at Chicago Booth. We reviewed publicly available analyst reports on JPM collected by Thomson Financial, Reuters Knowledge, CapitalIQ, and FactSet. We believe there are additional analyst reports on JPM that are not available to us.

129. See, e.g., A.C. MacKinlay, "Event Studies in Economics and Finance," 35 *Journal of Economic Literature* (March 1997), 13-39.

predicted return from the actual return to derive a “residual return” (sometimes referred to as an “abnormal return” or “market-adjusted return”). In this case, we estimated the relationship between JPM’s return and returns on the S&P 500 Index and a value-weighted portfolio of the firms in the KBW Bank Index (excluding JPM) during the one-year period prior to the disclosure of the Proposed Settlement.¹³⁰

66. When performing event studies, the conventional practice in finance is to test the “null hypothesis” that the residual return is zero against either the alternative hypothesis that the residual return is different from zero, or the alternative hypothesis that the residual has a particular sign (i.e., it is positive, or it is negative).¹³¹ If the null hypothesis cannot be rejected at conventional levels of significance, then the residual returns are not considered to be statistically significant, i.e., they are not considered to be significantly different from zero. Under these circumstances, one concludes that the observed stock return on a particular date can be explained by the independent variable(s) considered in the estimation model.

67. In event studies, the statistical significance of the residual returns is typically assessed by calculating a standardized measure of the size of the residual return known

130. In its most recent annual reports, JPM compared its stock price performance to that of the S&P 500 Index, the S&P Financial Index, and the KBW Bank Index. See JPM Annual Report for the Year Ended December 31, 2014 at 63 and JPM Annual Report for the Year Ended December 31, 2015 at 67. We chose to use the KBW Bank Index as the proxy for industry movements because when combined with the S&P 500 Index, the coefficient of determination from the regression analysis was greater than when we used the S&P Financial Index as the industry proxy.

131. See, e.g., J.Y. Campbell, A.W. Lo, & A.C. MacKinlay, *The Econometrics of Financial Markets*, (Princeton University Press, 1997), at 160-66; A.C. MacKinlay, “Event Studies in Economics and Finance,” 35 *Journal of Economic Literature* (March 1997), 13-39; G.W. Schwert, “Using Financial Data to Measure Effects of Regulation,” 24 *The Journal of Law and Economics* (1981) 121-58; D.R. Fischel, “Use of Modern Finance Theory in Securities Fraud Cases Involving Actively Traded Securities,” 38 *The Business Lawyer* (1982), 1-20, at 19.

as a “t-statistic.”¹³² A t-statistic with an absolute value of 1.96 or greater denotes statistical significance at the 5 percent level of significance (a conventional level at which such assessments are made) in a “two-tailed” test of statistical significance (i.e., testing for significance regardless of whether the residual return is positive or negative).¹³³ A t-statistic with an absolute value of 1.65 or greater denotes statistical significance at the 5 percent level of significance in a “one-tailed” test of statistical significance (i.e., testing for significance where the residual return has a particular sign).¹³⁴ In this case, we conducted a two-tailed test of whether the residual returns following the disclosure of the Proposed Settlement were statistically significant to analyze the market’s reaction to this disclosure.

68. We analyzed the returns on JPM’s stock price over August 19, 2016 (the day of the disclosure) and the following day because we do not know if the Notice came out during trading hours.¹³⁵ The results are reported in Exhibit D. The raw returns on August 19 and

132. See, e.g., A.C. MacKinlay, “Event Studies in Economics and Finance,” 35 *Journal of Economic Literature* (March 1997), 13-39; G.W. Schwert, “Using Financial Data to Measure Effects of Regulation,” 24 *The Journal of Law and Economics* (1981), 121- 58; D.R. Fischel, “Use of Modern Finance Theory in Securities Fraud Cases Involving Actively Traded Securities,” 38 *The Business Lawyer* (1982), 1-20, at 18-19.

133. See, e.g., W. Mendenhall, J.E. Reinmuth & R.J. Beaver, *Statistics for Management and Economics* (Duxbury Press, 1993), at 345-46 & 368-69.

134. *Id.*

135. Many studies by financial economists have focused on a one or two-day “event window” to analyze changes in stock prices in response to new information. See, e.g., B. Cornell & R.G. Morgan, “Using Finance Theory to Measure Damages in Fraud on the Market Cases,” 37 *UCLA Law Review* 883 (1990), at 906 (“an observation window of a day or two is long enough”); J. Macey, G. Miller, M. Mitchell & J. Netter, “Lessons from Financial Economics: Materiality, Reliance, and Extending the Reach of *Basic v. Levinson*,” 77 *Virginia Law Review* 1017 (1991), at 1031 (“When computing a stock return due to an event, financial economists often define the event period as the two-day period consisting of the announcement day and the following day”); J.C. Alexander, “The Value of Bad News in Securities Class Actions,” 41 *UCLA Law Review* 1421 (1994), at 1433, n. 34 (“Usually the event study covers a two-day period to allow the market to assimilate the disclosure”); and J. Campbell, A. Lo & A.C. MacKinlay, *The Econometrics of Financial Markets*, (Chapter

August 22 (the next trading day) were -0.14% and -0.09% and our event study finds that the residual return on August 19 was -0.34% percent with a t-statistic of -0.65, which is not statistically significant. Further, the two-day cumulative residual return beginning on this date was -0.46% percent with a t-statistic of -0.62, which is also not statistically significant.

2. Price Reaction of the Certificates

69. Just as a lower than expected Proposed Settlement would be expected to be reflected in a positive movement in JPM's stock price, it would also be expected to reduce market prices of the Certificates. It is difficult to measure any such effect, however, because only isolated data are available on actual trading in the Certificates.¹³⁶ Consequently, as in the Fischel JPM Report, we analyzed "matrix prices," which are estimated values for fixed-income securities.¹³⁷

(...continued)

4) Princeton University Press (1997), at 151 ("In practice, the event window is often expanded to two days, the day of the announcement and the day after the announcement").

136. We attempted to obtain price data from Empirasign Strategies LLC, which describes its ABS/MBS Trade Database as: "the largest real-time database of all structured product market activity in the US and EU." See <https://www.empirasign.com/>. However, Empirasign informed us that, over the period from one month before the August 19, 2016 disclosure of the Proposed Settlement to one month thereafter, its database had prices from more than one transaction available for only 11 of the 1,404 Certificates issued by the Trusts. We further understand that for each of these 11 Certificates, Empirasign had data on no more than 3 transactions during this two month period.
137. JPM Fischel Report ¶¶ 67-72. We obtained matrix prices derived by Interactive Data Pricing and Reference Data LLC, a division of IDC (Interactive Data Corporation). See "U.S. Asset-Backed Securities, Evaluation Methodology," Interactive Data Pricing and Reference Data LLC, for a description of IDC's methodology ("As a general approach, Interactive Data obtains and applies: Available direct market color (trades, covers, bids, offers and price talk) along with market color for similar bonds and ABSs in general (including indices and market research); Prepayment/Default projections based on historical statistics of the underlying collateral and current market data; 15:00 or 16:00 (Eastern Time) benchmarks (U.S. Treasury curve, swap curve, etc.) ...).

70. The matrix prices typically show virtually no reaction to the August 19, 2016 disclosure over one- and two-day windows;¹³⁸ however, because trading is limited, it may be appropriate to look at a longer period to capture price movements attributable to the Settlement announcements. Accordingly, we analyzed price returns over the one-month period following the August 19, 2016 disclosure using the same methodology as in the Fischel JPM Report.¹³⁹

71. We analyzed returns for each combination of vintage and collateral (e.g. Trusts designated as subprime of the 2005 vintage). We attempted to control for the influence of market factors during the one month period over which we examined price returns by netting out returns on certificates issued by similar RMBS Trusts.¹⁴⁰ We found the mean and median returns (both raw and net of market) for the Trusts at issue were generally positive¹⁴¹ suggesting that the

138. The price change is less than 1% for over 98% of the Certificates analyzed.

139. As in my analysis of the JPM Settlement, we aggregated the Certificates to the Trust level by calculating average prices weighted by the unpaid principal balance (“UPB”) for the available Certificates issued by each Trust and then calculated the percentage change, or “return,” in these UPB-weighted prices for each Trust over the month after the disclosure. Fischel JPM Report ¶¶ 66-72.

140. We could not find RMBS indexes that captured the characteristics of the Certificates issued by each Trust, so we calculated UPB-weighted average returns for trusts in the Countywide Settlement (the “Countrywide Trusts”) as proxies for overall price changes. Specifically, we first used the same method described above to create UPB-weighted average prices for the Countrywide Trusts using matrix prices. To account for the particular characteristics of each Trust, we next created benchmark returns over the month after the disclosure for each of the Trusts by calculating UPB-weighted average returns over the same period for Countrywide Trusts of the same vintage and collateral, e.g., subprime collateral of 2006 vintage. In an attempt to only use Countrywide Trusts for which we had the most complete data, we did not include in the benchmark returns any trust that had matrix price data for less than 50 percent of its UPB. Finally, we subtracted the benchmark returns from the returns of each of the corresponding Trusts over the one month period to create “net-of-market” returns. This is the same approach we used in our evaluation of the JPM Settlement. Fischel JPM Report ¶ 70.

141. The only exceptions were vintage 2000 Subprime Trusts for raw returns and vintage 2004 Alt A Trusts for net-of-market returns. Compass Lexecon Calculations.

Proposed Settlement was received favorably by Certificateholders. However, these price data must be interpreted with caution because the minimum return in each collateral/vintage pair is often negative and we are working with matrix prices rather than transaction prices.

3. Analyst Commentary

72. We also looked for commentary by Wall Street analysts. However, we did not find any analyst reports that predicted the settlement amount for the Action and we only found one analyst report in response to the Proposed Settlement. Analysts at Bank of America Merrill Lynch discussed the Proposed Settlement and estimated the amount each Trust would receive (assuming the allocation would be pro rata based on lifetime losses) but did not opine on the merits of the Proposed Settlement.^{142, 143}

V. AN ALLOCATION METHODOLOGY BASED ON NET LOSSES IS REASONABLE IN THE CONTEXT OF THIS CASE

73. A reasonable allocation of a settlement in an ideal world should reflect the relative value of the claims of each Trust. The value of a Trust's claim depends on the likelihood of its success, the amount of damages that would be awarded if the claim was successful, and the ability of defendants to pay. However, precisely assessing the value of each claim can be very

142. See, C. Flangan and H. Talwar, "Non-agency Alert, It's time for WaMu Settlement" Bank of America Merrill Lynch, August 23, 2016 ("Last Friday, JP Morgan (JPM), Deutsche bank (DB) as RMBS trustee, and FDIC (as Receiver) entered into a settlement that resolves the long-disputed rep and warranty (R&W) related claims on Washington Mutual (WaMu) RMBS. The settlement paves the way for RMBS bondholders to receive R&W related payouts on their WaMu bonds and the aggregate payout is expected to be about \$695mn.").

143. In the Fischel JPM Report, I discussed analyst commentary about a possible settlement of the claims belonging to both the Trusts here and the trusts addressed by the JPM Settlement. I do not consider these analyst reports here because they were issued before the Summary Judgment Ruling which I expect would change analyst expectations about the amount JPM would pay. Fischel JPM Report ¶ 73 and *supra* ¶ 14.

costly and create substantial delay because it would require an assessment of multiple factual and legal issues, including the Material Breach Rate for each Trust, when Rep and Warranty Claims begin to accrue for the purposes of the relevant statute of limitations, the amount likely to be awarded JPMC on its indemnity claims against the Receivership Estate, the maximum amount that WMMSC would be able to pay and whether the Trusts could reach JPMC if that amount was less than any judgment.¹⁴⁴ At the extreme it would require a series of minitrials for each Trust, or if claims had to be adjudicated on a loan by loan basis, a series of minitrials for each contested loan.¹⁴⁵

74. Therefore, a reasonable allocation must strike a balance between the benefits and costs of precision. This has been widely noted by legal commentators and has been true in practice as well.¹⁴⁶ For example, a widely cited paper noted that “[a]llocation plans used in class actions inevitably involve some degree of damage averaging” (*i.e.* ignoring or

144. WMMSC and JPMC argued the statute of limitations should be evaluated under the laws of Delaware and New York. Petition ¶ 65. Disagreement about which state’s law to apply to determine whether claims are time barred would create additional uncertainty.

145. *See, e.g.*, Jonathan Macey and Geoffrey Miller, (2009), Judicial Review of Class Action Settlements, *Journal of Legal Analysis* 167-205 at 177 (“Another tradeoff is between accuracy of result and cost of procedure. If a judge engages in extensive scrutiny of class settlements — conducts week-long settlement hearings, hears testimony from fact and expert witnesses, demands production of documents, permits objectors to conduct discovery and present an adversarial case — the result might increase the accuracy of decisions. However, these procedures are costly. At the limit the hearing would be little different than a trial on the merits, thus obviating the efficiencies inherent in settlement.”).

146. *See, e.g.*, Jonathan Macey and Geoffrey Miller, (2009), Judicial Review of Class Action Settlements, *Journal of Legal Analysis* 167-205 at 177.

minimizing the importance of some differences between claims that could or would affect their expected value at trial).¹⁴⁷

75. An allocation methodology based on net losses is reasonable in the context of this case. As discussed *supra*, net losses reflect harm from the potential misconduct on which claims are being released.¹⁴⁸ However, in contrast to damages, they can generally be estimated using historical data on loan performance, and industry standard software to predict future losses.¹⁴⁹ Net losses have been consistently used in Other Large Trustee Settlements to allocate settlement payments. For example, the allocations in the Countrywide and Citigroup Settlement were pro rata based on net losses.^{150, 151}

147. See, e.g., Charles Silver and Lynn Baker (1998), I Cut, You Choose: The Role of Plaintiffs' Counsel in Allocating Settlement Proceeds, *Virginia Law Review* 1465-1540 at 1481. See also, American Law Institute (2010): Principles of the Law: Aggregate Litigation at 48 ("Ideally, the amount of compensation a claimant received should reflect the merits of the claim itself, including the likelihood that the claimant would prevail at trial and the amount the claimant would win. Meeting this standard in an aggregate proceeding would ensure horizontal equity (similarly situated claimants receive similar amounts) and vertical equity (more deserving claimants receive larger payments than less deserving ones)... In practice, the ideal is rarely achieved. Rough justice is normal in aggregate proceedings. In these cases, settlements usually involve an element of "damages averaging," which occurs when an allocation plan ignores some features of claims that might reasonably be expected to influence claimants' expected recoveries at trial. For example, a mass-tort settlement might pay smokers and nonsmokers the same amounts, even though smokers have shorter life expectancies. In the limit, the administrative cost of apportioning payments may warrant a share-and-share-alike plan that treats all claimants equally.").

148. See *supra*, ¶ 46. As explained *supra* ¶ 17, I understand that by "net losses" the Trustee means the expected lifetime losses on the Mortgage Loans held by the Trust.

149. See, e.g. JPM Fischel Report ¶¶ 78-85. Although the Trustee found that potential damages for the Trusts as a whole are consistent with the estimated range of \$6.764 billion to \$10.246 billion, I understand this analysis was not done at a Trust level so it cannot be used for the allocation. Petition ¶¶ 38-41.

150. Verified Petition, In the matter of the application of The Bank of New York Mellon, Supreme Court of the State of New York, County of New York, Index No. 651786/2011, ¶ 39 ("The allocations will be driven by the amount of net losses in each of the Trusts") & Petition, In the matter of the application of U.S. Bank National Association et al., Supreme Court of the State of New York, County of New York, Index No. 653902/2014, ¶¶ 36-37 ("Each Trust's and/or Loan Group's proportional share will be based on that Trust's and/or Loan Group's pro rata share of the losses suffered by all Trusts and/or Loan Groups covered by the

76. Allocation methods based on net losses are also flexible enough to account for differences between trusts if this is warranted. The allocation in the ResCap Settlement was based on net losses but estimates of Material Breach Rates were also taken into account.¹⁵² The allocation in the JPM Settlement was pro rata based on net losses except that in calculating net losses for each Supporting Loan Group, losses attributable to loans from certain originators in certain trusts were reduced by 90 percent.¹⁵³

77. Regardless of how the allocation is implemented, I believe it is reasonable for the Trustee to first use the Settlement Payment to reimburse each Trust for 100% of the fees and expenses it incurred in the Action. The Action made the Proposed Settlement possible. Moreover, failing to first make the Trusts whole for the expenses they incurred in the Action could discourage Trustees in the future from using trust funds to pursue meritorious actions that

(...continued)

Settlement Agreement.”).

151. There was ambiguity about how the Trustee should apply certain “write up” provisions in the Countrywide Settlement which required judicial instruction. In the Matter of the Application of The Bank of New York Mellon, Index No. 150973/2016, Supreme Court of the State of New York, County of New York, Verified Petition, filed February 5, 2016, ¶ 17. I understand the Proposed Settlement avoids this issue by giving the Trustee discretion to design the allocation method.
152. ResCap Findings of Fact ¶ 115 (“The Revised Claim Allocation Methodology provided for RMBS Representation and Warranty Claims to be allocated pro rata based on differences among the RMBS Trusts with respect to (i) losses and (ii) the incidence of breaches of representations and warranties, as revealed by loan sampling and statistical work to be performed by Duff & Phelps.”).
153. RMBS Trust Settlement Agreement between JPMorgan Chase & Co. authorized Investment Advisors and Investors, dated November 15, 2013, §§ 3.05 (“November 15, 2013 Agreement”). Although the November 15, 2013 Agreement was modified prior to being accepted by the relevant trustees, this provision was not changed. *Compare* §§ 3.05 of the November 15, 2013 Agreement to §§ 3.05 of RMBS Trust Settlement Agreement between JPMorgan Chase & Co. authorized Investment Advisors and Investors and Accepting Trustees, modified as of July 29, 2014.

are expected to recover more than their expenses out of concern that the trusts funding the litigation might not recoup their expenses.



Daniel R. Fischel

April 26, 2017

DANIEL R. FISCHEL

April 2017

Business Address:

Compass Lexecon
332 South Michigan Avenue
Chicago, Illinois 60604
Tel: 312-322-0209
dfischel@compasslexecon.com

PROFESSIONAL EXPERIENCE

Lee and Brena Freeman Professor of Law and Business, University of Chicago Law School (7/89 – 12/2005, emeritus as of 1/1/2006); Dean of Law School (1/99 – 2/01); Professor of Law, University of Chicago Law School (1/84 - present); Visiting Professor of Law, University of Chicago Law School (7/82 - 6/83).

Professor of Law and Business, Northwestern University School of Law (1/1/2006 – 5/2011).

Professor, Kellogg School of Management (courtesy appointment, 1/1/2006 – 5/2011).

Jack N. Pritzker Distinguished Visiting Professor of Law, Northwestern University School of Law (6/02-6/03).

Professor of Law and Business, University of Chicago Graduate School of Business (7/87 - 6/90).

Director, Law and Economics Program, University of Chicago (1/84 - 6/91).

Assistant Professor of Law, Northwestern University School of Law (6/80 - 6/81); Associate Professor of Law, Northwestern University School of Law (6/81 - 6/82); promoted to full professor in 6/82.

Attorney with Levy and Erens, Chicago, Illinois (7/79 - 6/80).

Law Clerk for Associate Justice Potter Stewart of the United States Supreme Court (1978 - 1979).

Law Clerk for Judge Thomas E. Fairchild, Chief Judge of the Seventh Circuit Court of Appeals (1977 - 1978).

CONSULTING EXPERIENCE

President and Chairman, Compass Lexecon (formerly Lexecon).

AREAS OF SPECIALIZATION

Corporate Finance, Corporate Control Transactions, Corporations, Financial Institutions, Regulation of Financial Markets, Regulation of Investments, Economic Analysis of Law.

PUBLICATIONS

Payback: The Conspiracy to Destroy Michael Milken and His Financial Revolution, Harper Business (1995).

The Economic Structure of Corporate Law, Harvard University Press (1991) (with Frank H. Easterbrook).

ARTICLES

The Use of Trading Models to Estimate Aggregate Damages in Securities Fraud Litigation: An Update, Briefly... Perspectives on Legislation, Regulation, and Litigation, Vol. 10, No. 3 (National Legal Center for the Public Interest, 2006) (with David J. Ross and Michael A. Keable).

The Hewlett-Packard Merger: A Case Study, in The New Investor Relations, Expert Perspectives on The State Of The Art (Bloomberg Press Princeton, 2004) (with Kenneth R. Cone, Gregory J. Pelnar and David J. Ross).

Market Evidence in Corporate Law, 69 U. Chi. L. Rev. 941 (2002).

Multidisciplinary Practice, The Business Lawyer, Vol. 55, (May 2000).

Government Liability for Breach of Contract, American L. & Econ. Rev. V1 N1/2 313 (1999) (with Alan Sykes).

Lawyers and Confidentiality, 65 U. Chi. L. Rev. 1 (1998).

The Law and Economics of Vanishing Premium Life Insurance, 22 Del. J. Corp. Law 1 (1997) (with Robert S. Stillman).

Clustering and Competition in Asset Markets, 20 J. Law & Econ. 23 (1997) (with Sanford J. Grossman, Merton H. Miller, Kenneth R. Cone and David J. Ross).

Corporate Crime, 25 J. Legal Studies 319 (1996) (with Alan O. Sykes).

The Use of Trading Models to Estimate Aggregate Damages in Securities Fraud Litigation: A Proposal for Change, in Securities Class Actions: Abuses and Remedies (The National Legal Center for the Public Interest, 1994) (with David J. Ross).

Civil Rico After Reves: An Economic Commentary, 1993 Sup. Ct. Rev. 157 (with Alan O. Sykes).

Contract and Fiduciary Duty, 36 J. Law & Econ. 425 (1993) (with Frank H. Easterbrook).

Should the Law Prohibit "Manipulation" in Financial Markets?, 105 Harv. L. Rev. 503 (1991) (with David J. Ross).

Efficient Capital Markets, the Crash, and the Fraud on the Market Theory, 74 Cornell L. Rev. 907 (1989).

The Corporate Contract, 89 Colum. L. Rev. 1416 (1989) (with Frank H. Easterbrook); also published in Corporate Law and Economic Analysis (Cambridge University Press 1990) (Lucian Bebchuk ed.).

The Economics of Lender Liability, 99 Yale L. J. 131 (1989).

Should One Agency Regulate Financial Markets, in Black Monday and the Future of Financial Markets (R. Kormendi, R. Kamphuis & J. W. H. Watson, ed.) (Dow Jones-Irwin Inc., 1988).

ERISA's Fundamental Contradiction: The Exclusive Benefit Rule, 55 U. Chi. L. Rev. 1105 (1988) (with John H. Langbein).

From MITE to CTS: Takeovers, the Williams Act and the Commerce Clause, 1987 Sup. Ct. Rev. 47.

The Regulation of Banks and Bank Holding Companies, 73 Va. L. Rev. 301 (1987) (with Andrew M. Rosenfield and Robert S. Stillman).

The Regulation of Accounting: Some Economic Issues, 52 Brooklyn L. Rev. 1051 (1987).

Organized Exchanges and the Regulation of Dual Class Common Stock, 54 U. Chi. L. Rev. 119 (1987).

Comparable Worth and Discrimination in Labor Markets, 53 U. Chi. L. Rev. 891 (1986) (with Edward P. Lazear).

Comparable Worth: A Rejoinder, 53 U. Chi. L. Rev. 950 (1986) (with Edward P. Lazear).

Close Corporations and Agency Costs, 38 Stan. L. Rev. 271 (1986) (with Frank H. Easterbrook).

The Role of Liability Rules and the Derivative Suit in Corporate Law: A Theoretical and Empirical Analysis, 71 Corn. L. Rev. 261 (1986) (with Michael Bradley).

Regulatory Conflict and Entry Regulation of New Futures Contracts, 59 J. Bus. S85 (1985).

Optimal Damages in Securities Cases, 52 U. Chi. L. Rev. 611 (1985) (with Frank H. Easterbrook).

The Business Judgment Rule and the Trans Union Case, 40 Bus. Law. 1437 (1985).

Insider Trading and Investment Analysts: An Economic Analysis of Dirks v. SEC, 13 Hofstra L. Rev. 127 (1984).

Limited Liability and the Corporation, 52 U. Chi. L. Rev. 89 (1985) (with Frank H. Easterbrook).

Labor Markets and Labor Law Compared with Capital Markets and Corporate Law, 51 U. Chi. L. Rev. 1061 (1984).

Customer Protection in Futures and Securities Markets, 4 J. Futures Markets 273 (1984) (with Sanford J. Grossman).

Mandatory Disclosure and the Protection of Investors, 70 Va. L. Rev. 669 (1984) (with Frank H. Easterbrook).

The Appraisal Remedy In Corporate Law, 1983 Am. Bar Found. Res. J. 875.

The Regulation of Insider Trading, 35 Stan. L. Rev. 857 (1983) (with Dennis W. Carlton).

Voting in Corporate Law, 26 J. Law & Econ. 395 (1983) (with Frank H. Easterbrook).

Auctions and Sunk Costs in Tender Offers, 35 Stan. L. Rev. 1 (1982) (with Frank H. Easterbrook).

The Corporate Governance Movement, 35 Vand. L. Rev. 1259 (1982).

Use of Modern Finance Theory in Securities Fraud Cases Involving Actively Traded Securities, 38 Bus. Law 1 (1982).

Antitrust Suits By Targets of Tender Offers, 80 Mich. L. Rev. 1155 (May 1982) (with Frank H. Easterbrook).

Corporate Control Transactions, 91 Yale L. J. 698 (1982) (with Frank H. Easterbrook).

The "Race to the Bottom" Revisited: Reflections on Recent Developments in Delaware Corporation Law, 76 Nw. Univ. L. Rev. 913 (1982).

Takeover Bids, Defensive Tactics and Shareholders' Welfare, 36 Bus. Law 1733 (1981) (with Frank H. Easterbrook).

The Law and Economics of Dividend Policy, 67 Va. L. Rev. 699 (1981).

The Proper Role of a Target's Management in Responding to a Tender Offer, 94 Harv. L. Rev. 1161 (1981) (with Frank H. Easterbrook) (awarded prize by Emory University for best paper written in law and economics for the year 1981).

Secondary Liability Under Section 10(b) of the Securities Act of 1934, 69 California L. Rev. 80 (1981).

Efficient Capital Market Theory, the Market for Corporation Control, and the Regulation of Cash Tender Offers, 57 Tex. L. Rev. 1 (1978); reprinted in K. Scott and R. Posner ed., Economic Perspectives on Corporation Law and Securities Regulation (Little Brown 1980).

Antitrust Liability for Attempts to Influence Government Action: The Basis and Limits of the Noerr-Pennington Doctrine, 45 U. Chi. L. Rev. 80 (1977).

Comment, The Demand and Standing Requirements in Stockholder Derivation Actions, 44 U. Chi. L. Rev. 168 (1977).

Comment, The Use of Government Judgments in Private Antitrust Litigation: Clayton Act Section 5(a), Collateral Estoppel, and Jury Trial, 43 U. Chi. L. Rev. 338 (1976).

EDUCATION

University of Chicago Law School, Chicago, Illinois; J.D. 1977, cum laude; Order of the Coif; Comment Editor, Vol. 44, University of Chicago Law Review; Approximately top 1% of the Class. Awarded Casper Platt Award for best paper written by a student of the University of Chicago Law School; awarded Jerome N. Frank Prize for excellence in legal writing while a member of the University of Chicago Law Review, 1975 - 1977. Studied law and economics with Richard Posner and other members of the faculty.

Brown University, Providence, Rhode Island; M.A. 1974 in American History.

Cornell University, Ithaca, New York; major-American History; minor-Economics; B.A. 1972.

TESTIMONY

Deposition of Daniel R. Fischel In Re: Alere-Abbott Merger Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 12963-VCG (April 4, 2017).

Testimony of Daniel R. Fischel In Re: Appraisal of AOL Inc., In the Court of Chancery of the State of Delaware, Consol C.A. No. 11204-VCG (March 20, 2017).

Deposition of Daniel R. Fischel In Re: City of Daytona Beach Policy and Fire Pension Fund, et al vs. Examworks Group, Inc., et al., In the Court of Chancery of the State of Delaware, C.A. No. 12481-VCL (February 22, 2017).

Deposition of Daniel R. Fischel In Re: Appraisal of AOL Inc., In the Court of Chancery of the State of Delaware, Consol C.A. No. 11204-VCG (February 14 and 15, 2017).

Deposition of Daniel R. Fischel In Re: Motors Liquidation Company, f/k/a General Motors Corporation, et al., Debtors, United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No.:09-50026 (MG) and Motors Liquidation Company Avoidance Action Trust, et al vs. JPMorgan Chase Bank, N.A., et al., United States Bankruptcy Court, Southern District of New York, Case No.: 09-00504 (MG) (January 31, 2017).

Deposition of Daniel R. Fischel In Re: Syngenta Litigation, In the State of Minnesota District Court, County of Hennepin Fourth Judicial District, Court File No. 27-CV-15-3785 and In Re: Syngenta AG MIR 162 Corn Litigation, In the United States District Court for the District of Kansas, Case No. 2:14-md-2591-JWL-JPO (January 20, 2017).

Testimony of Daniel R. Fischel In the Matter of Motiva Enterprises LLC vs. Bechtel Corporation, Jacobs Engineering Group, Inc. and Bechtel-Jacobs CEP Port Arthur Joint Venture, International Institute for Conflict Prevention and Resolution (October 20, 2016).

Deposition of Daniel R. Fischel in Beaver County Employees Retirement Fund, et al., vs. Cyan, Inc., et al., Superior Court of the State of California, County of San Francisco, Lead Case No. CGC-14-538355 (Consolidated with No. CGC-14-539008) (October 11, 2016).

Deposition of Daniel R. Fischel In Re: Paragon Offshore PLC, et al, Debtors, In the United States Bankruptcy Court, District of Delaware, Case No. 16-10386 (September 23, 2016).

Deposition of Daniel R. Fischel In the Matter of Motiva Enterprises LLC vs. Bechtel Corporation, Jacobs Engineering Group, Inc. and Bechtel-Jacobs CEP Port Arthur Joint Venture, International Institute for Conflict Prevention and Resolution (August 25, 2016).

Deposition of Daniel R. Fischel In Re: Syngenta AG MIR162 Corn Litigation, In the United States District Court for the District of Kansas; Case No. 2;14-MD-02591-JWL-JPO and In Re: Syngenta Litigation, In the State of Minnesota District Court, County of Hennepin, Fourth Judicial District, Case No. 27-CV-15-385 (August 11, 2016).

Appendix 1

- 8 -

Deposition of Daniel R. Fischel in The Western and Southern Life Insurance Company vs. The Bank of New York Mellon, Court of Common Pleas, Hamilton County, Ohio, Case No. A 1302490 (July 27, 2016).

Testimony of Daniel R. Fischel in Herbalife, Ltd., vs. KPMG LLP, Non-Administered Arbitration of the International Institute for Conflict Prevention and Resolution, CPR Case No. 1100076998 (May 19, 2016).

Testimony of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. vs. Benefit Street Partners, et al., In the District Court of Bexar County, Texas, Cause No. 2016 CI 04006 (May 17, 2016).

Deposition of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. vs. Benefit Street Partners, et al., In the District Court of Bexar County, Texas, Cause No. 2016 CI 04006 (May 12, 2016).

Testimony of Daniel R. Fischel in U.S. Commodity Futures Trading Commission v. Igor B. Oystacher and 3 Red Trading, LLC, In the United States District Court for the Northern District of Illinois, Eastern Division, Docket No. 15 C 9196 (May 6, 2016).

Testimony of Daniel R. Fischel in Merion Capital LP and Merion Capital II, LP vs. Lender Processing Services, Inc., In the Court of Chancery of the State of Delaware, C.A. No. 9320-VCL (May 4 and 5, 2016).

Testimony of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. v. Benefit Street Partners LLC, et al., In the District Court of Bexar County, Texas, 285th Judicial District, Cause No. 2016-CI 04006 (April 5, 2016).

Deposition of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. v. Benefit Street Partners LLC, et al., In the District Court of Bexar County, Texas, 285th Judicial District, Cause No. 2016-CI 04006 (April 2, 2016).

Deposition of Daniel R. Fischel in Herbalife Ltd. vs. KPMG LLP, Non-Administered Arbitration of the International Institute for Conflict Prevention and Resolution, CPR Case No. 1100076998 (March 31, 2016).

Deposition of Daniel R. Fischel in U.S. Commodity Futures Trading Commission v. Igor B. Oystacher and 3 Red Trading, LLC, In the United States District Court, Northern District of Illinois, Eastern Division, No. 15-cv-09196 (March 25, 2016).

Deposition of Daniel R. Fischel in Merion Capital LP and Merion Capital II, LP vs. Lender Processing Services, Inc., In the Court of Chancery of the State of Delaware, C.A. No. 9320-VCL (March 15, 2016).

Deposition of Daniel R. Fischel in Lawrence E. Jaffe Pension Plan, On Behalf of Itself and All Others Similarly Situated v. Household International, Inc., et al., In the United States District Court, Northern District of Illinois Eastern Division, Lead Case No. 02-C-5893 (February 24, 2016).

Deposition of Daniel R. Fischel in Robert E. Morley, Jr. and REM Holdings 3, LLC vs. Square, Inc., Jack Dorsey, and James McKelvey, Jr., United States District Court for the Eastern

District of Missouri, Eastern Division, Civil Action No. 14-CV-00172-SNLJ (February 19, 2016).

Testimony of Daniel R. Fischel In the Matter of the Application of U.S. Bank National Association, The Bank of New York Mellon, et al., Supreme Court of the State of New York, County of New York, Index No. 652382/2014 (January 20 and 21, 2016).

Testimony of Daniel R. Fischel in Sangeeth Peruri v. Ameriprise Financial, Inc., et al, American Arbitration Association Case No. 01-15-0002-3991 (December 7, 2015).

Deposition of Daniel R. Fischel In the Matter of the Application of U.S. Bank National Association, The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., et al, In the Supreme Court of the State of New York, County of New York, Index No. 652382/2014 (December 3, 2015).

Testimony of Daniel R. Fischel in Securities and Exchange Commission v. Arkadiy Dubovoy, et al, In the United States District Court for the District of New Jersey, Civil Case No. 15-cv-6076-MCA (October 8, 2015).

Deposition of Daniel R. Fischel in Steven A. Stender, Harold Silver and Infinity Clark Street Operating, L.L.C., on behalf of themselves and all others similarly situated v. Archstone-Smith Operating Trust, et al., in the United States District Court for the District of Colorado, Case No. 07-CV-02503-WJM-MJW (July 24, 2015).

Testimony of Daniel R. Fischel In Re: Determination of Royalty Rates and Terms for Ephemeral Recording and Digital Performance of Sound Recordings (Web IV), in the United States Copyright Royalty Judges, The Library of Congress, Docket No. 14-CRB-0001-WR (2016-2020) (May 21 and 22, 2015).

Deposition of Daniel R. Fischel In Re: Determination of Royalty Rates and Terms for Ephemeral Recording and Digital Performance of Sound Recordings (Web IV), in the United States Copyright Royalty Judges, The Library of Congress, Docket No. 14-CRB-0001-WR (2016-2020) (April 1, 2015).

Deposition of Daniel R. Fischel in MacDermid, Incorporated vs. Cookson Group, PLC, Cookson Electronics and Enthone, Inc., in the Superior Court, Judicial District of Waterbury, Docket No. UWY-CV-12-6016356-S (January 21, 2015)

Testimony of Daniel R. Fischel in the Securities and Exchange Commission vs. Samuel E. Wyly and Donald R. Miller, Jr., in his capacity as the Independent Executor of the Will and Estate of Charles J. Wyly, Jr., in the United States District Court, Southern District of New York, 10 Civ. 5760 (SAS) (November 17, 2014).

Deposition of Daniel R. Fischel In Re: Activision Blizzard, Inc. Stockholder Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 8885-VCL (October 17, 2014).

Testimony of Daniel R. Fischel in Hugh M. Caperton, Harman Development Corporation, Harman Mining Corporation, and Sovereign Coal Sales, Inc. v. A.T. Massey Coal Company, Inc., In the Circuit Court for Buchanan County, Case No. 027CL10000771-00 (May 20 and 21, 2014).

Appendix 1

- 10 -

Deposition of Daniel R. Fischel in Center Partners, Ltd., et al v. Urban Shopping Centers, L.P., et al., In the Circuit Court of Cook County, Illinois, County Department, Law Division, Case No. 04 L 012194 (April 24, 2014).

Deposition of Daniel R. Fischel in Third Point LLC v. William F. Ruprecht, et al and Sotheby's, In the Court of Chancery of the State of Delaware, C.A. No. 9469-VCP (April 19, 2014).

Deposition of Daniel R. Fischel in Hugh M. Caperton, Harman Development Corporation, Harman Mining Corporation, and Sovereign Coal Sales, Inc. v. A.T. Massey Coal Company, Inc., In the Circuit Court for Buchanan County, Case No. 027CL10000771-00 (March 14, 2014).

Deposition of Daniel R. Fischel in Corre Opportunities Fund, LP, Zazove Associates LLC, DJD Group LLLP, First Derivative Traders LP, and Kevan A. Fight vs. Emmis Communications Corporation, United States District Court, Southern District of Indiana, Indianapolis Division, Case No. 1:12-cv-0491-SEB-TAB (October 4, 2013).

Testimony of Daniel R. Fischel In the Matter of the Application of The Bank of New York Mellon, (As Trustee Under Various Pooling and Servicing Agreements and Indenture Trustee under various indentures), Petitioner, for an order, pursuant to CPLR §7701, seeking judicial instructions and approval of a proposed settlement, Index No. 651786/11, Supreme Court of the State of New York, County of New York: Trial Term Part 39 (September 9 and 10, 2013).

Testimony of Daniel R. Fischel In Re: September 11 Litigation, Case No. 21 MC 97 (AKH), United States District Court for the Southern District of New York, (July 16, 2013)

Deposition of Daniel R. Fischel in Cantor Fitzgerald & Co., et al v. American Airlines, Inc., et al, Case No. 21 MC 101 (AKH), 04 CV 7318 (AKH), United States District Court, Southern District of New York (July 1, 2013).

Deposition of Daniel R. Fischel In Re: Pfizer Inc. Securities Litigation, Case No. 04 Civ. 9866 (RO) In The United States District Court for the Southern District of New York (June 28, 2013).

Testimony of Daniel R. Fischel in William T. Esrey, Julie C. Esrey, Ronald T. LeMay and Casondra C. Lemay v. Ernst & Young LLP Arbitration, Case No. 13 107 Y 02332 11 (May 29, 2013).

Deposition of Daniel R. Fischel in Christine Bauer-Ramazani and Carolyn B. Duffy, on behalf of themselves and all other similarly situated v. Teachers Insurance and Annuity Association of America – College Retirement and Equities Fund (TIAA-CREF), et al., in the United States District Court, District of Vermont, Docket No. 1:09-cv-190 (May 21, 2013).

Deposition of Daniel R. Fischel In Re: Google Inc. Class C Shareholder Litigation, In the Court of Chancery of the State of Delaware, Case No. 7469CS (May 17, 2013).

Deposition of Daniel R. Fischel In the Matter of the application of The Bank of New York Mellon (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), et al., Supreme Court of the State of New York, County of New York, Index No. 651786/2011 (May 9, 2013).

Appendix 1

- 11 -

Deposition of Daniel R. Fischel in William T. Esrey, Julie C. Esrey, Ronald T. Lemay, and Casondra C. Lemay v. Ernst & Young, L.L.P., Before the American Arbitration Association, Case No. 1234 (May 7, 2013).

Deposition of Daniel R. Fischel in Archer Well Company, Inc. v. GW Holdings LLC and Wexford Capital LP, in the United States District Court, Southern District of New York, ECF Case No. 1 1:12-cv-06762-JSR (April 5, 2013).

Testimony of Daniel R. Fischel in Meso Scale Diagnostics, LLC , Meso Scale Technologies, LLC v. Roche Diagnostics GmbH, et al., In the Court of Chancery of the State of Delaware, Civil Action No. 5589-VCP (February 27, 2013).

Deposition of Daniel R. Fischel in Center Partners, Ltd. et al v. Urban Shopping Centers, L.P., et al, Circuit Court of Cook County, Illinois, No. 04 L 012194 (February 6 and 7, 2013).

Deposition of Daniel R. Fischel In Re: September 11 Litigation, United States District Court, Southern District of New York, Civil Action No. 21 MC 101 (AKH) (January 11, 2013).

Deposition of Daniel R. Fischel in Meso Scale Diagnostics, LLC, Meso Scale Technologies, LLC v. Roche Diagnostics GmbH, et al., In the Court of Chancery of the State of Delaware, Case No: 5589-VCP (November 12, 2012).

Testimony of Daniel R. Fischel in Stuart Bederman, et al. v. Archstone, f/k/a Archstone-Smith Operating Trust, Arbitration before the Honorable Bruce W. Kauffman (October 17, 2012).

Deposition of Daniel R. Fischel in David E. Brown, et al. v. Authentec, Inc. et al., In the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida, Civil Division, Case No. 05-2012-CA-57589 (September 18, 2012).

Deposition of Daniel R. Fischel in Stuart Bederman, et al. v. Archstone, f/k/a Archstone-Smith Operating Trust, Arbitration before the Honorable Bruce W. Kauffman (September 14, 2012).

Testimony of Daniel R. Fischel in Tronox, Incorporated, et al., v. Kerr-McGee Corporation, et al., United States Bankruptcy Court, Southern District of New York, Adversary Proceeding No. 09-10098(ALG) (August 7, 8 and 9, 2012).

Deposition of Daniel R. Fischel In re McAfee, Inc. Shareholder Litigation, Superior Court of the State of California, County of Santa Clara, Lead Case No. 1:10-cv-180413 (August 2, 2012).

Testimony of Daniel R. Fischel in Kraft Foods Global, Inc., v. Starbucks Corporation, Arbitration Before JAMS, Arbitration No. 1340008345 (July 31, 2012).

Deposition of Daniel R. Fischel in Altana Pharma AG, and Wyeth v. Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries, Ltd., In the United States District Court, District of New Jersey, Consolidated Civil Action Nos. 04-2355 (JLL)(CCC), 05-1966 (JLL)(CCC), 05-3920 (JLL)(CCC) and 05-3672 (JLL)(CCC) (June 1, 2012).

Deposition of Daniel R. Fischel in Kraft Foods Global, Inc. v. Starbucks Corporation, Arbitration before JAMS, Arbitration No. 1340008345 (May 15, 2012).

Appendix 1

- 12 -

Deposition of Daniel R. Fischel in Capital One Financial Corporation v. John A. Kanas and John Bohlsen, In the United States District Court for the Eastern District of Virginia, Alexandria Division, Civil Action No. 1:11-cv-750 (LO/TRJ) (May 10, 2012).

Deposition of Daniel R. Fischel In Re: Pfizer Inc. Securities Litigation, In the United States District Court, Southern District of New York, Case 1:04-cv-09866-LTS-HBP (May 3, 2012).

Deposition of Daniel R. Fischel in Willie R. Pittman, Susan B. Seales and Stephen T. Selzer vs. J. Coley Clark, Moneygram International, Inc., et al., In the Court of Chancery of the State of Delaware, C.A. No. 6387-VCL (April 26, 2012).

Deposition of Daniel R. Fischel in Chona Allison, et al v. CRC Insurance Services, Inc., In the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 10-3313 (March 14 and 15, 2012).

Deposition of Daniel R. Fischel In Re: Tronox Incorporated, et al., Debtors, In the United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No. 09-10156 (ALG) (February 24, 2012).

Testimony of Daniel R. Fischel In Re: BankAtlantic Bancorp, Inc. Litigation, In the Court of Chancery of the State of Delaware, Consolidated Civil Action No. 7068-VCL (January 27 and 30, 2012).

Deposition of Daniel R. Fischel in Hildene Capital Management, LLC et al v. BankAtlantic Bancorp, Inc., et al, In the Court of Chancery of the State of Delaware, C.A. No. 7068-VCL (January 19, 2012).

Deposition of Daniel R. Fischel in Advanced Analogic Technologies, Incorporated v. Skyworks Solutions, Inc. and Powerco Acquisition Corp., In the Court of Chancery of the State of Delaware, Arbitration No. 005-A-CS (November 18, 2011).

Testimony of Daniel R. Fischel in Prudential Retirement Insurance and Annuity Company v. State Street Bank and Trust Company and State Street Global Advisors, Inc., United States District Court, Southern District of New York, Case No. 07-CV-8488 (October 13, 2011).

Deposition of Daniel R. Fischel In re: Inkeepers USA Trust, et al v. Cerberus Series Four Holdings, LLC., et al, United States Bankruptcy Court, Southern District of New York, Case No. 10-13800 (SCC) (October 5, 2011).

Deposition of Daniel R. Fischel in Mary K. Jones, et al v. Pfizer, Inc., et al, United States District Court, Southern District of New York, Civil Action No. 10-cv-03864 (AKH) ECF (October 4, 2011).

Testimony of Daniel R. Fischel in Marina Del Rey Country Club Apartments, et al. vs. Archstone and Archstone Multifamily Series I Trust, Ruby/Archstone Arbitration (August 30, 2011).

Deposition of Daniel R. Fischel in Maher Terminals, LLC v. The Port Authority of New York and New Jersey, Before the Federal Maritime Commission, FMC Docket No. 08-03 (August 25, 2011).

Appendix 1

- 13 -

Testimony of Daniel R. Fischel in Securities and Exchange Commission v. Joseph P. Nacchio, Robert S. Woodruff, Afshin Mohebbi, James J. Kozlowski and Frank T. Noyes, United States District Court for the District of Colorado, Civil Action No. 05-cv-480-MSK-CBS (August 16, 2011).

Affidavit of Daniel R. Fischel in Glenhill Capital LP, et al v. Porsche Automobil Holding, SE, f/k/a Dr. Ing. h.c. F. Porsche AG, Supreme Court of the State of New York, County of New York, Index Number 650678/2011 (August 15, 2011).

Deposition of Daniel R. Fischel in Fairfax Financial Holdings Limited and Crum & Forster Holdings Corp. v. S.A.C. Capital Management, LLC, et al., Superior Court of New Jersey, Law Division: Morris County, Docket No. MRS-L-2032-06 (July 27, 2011).

Deposition of Daniel R. Fischel In re: Lyondell Chemical Company, et al v. Leonard Blavatnik, et al., United States Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 09-10023 – (REG) (Jointly Administered) (July 25, 2011).

Deposition of Daniel R. Fischel In Re Constar Int'l Inc. Securities Litigation, United States District Court, Eastern District of Pennsylvania, Master File No. 03cv05020 (June 28, 2011).

Affidavit of Daniel R. Fischel In Re Massey Energy Co. Derivative and Class Action Litigation, In The Court of Chancery of the State of Delaware, C.A. No. 5430-VCS (May 20, 2011).

Deposition of Daniel R. Fischel in Marina Del Rey Country Club, et al v. Archstone and Archstone Multifamily Series I Trust, Ruby/Archstone Arbitration (May 9, 2011).

Testimony of Daniel R. Fischel in The Dow Chemical Company v. Petrochemical Industries Company (K.S.C.), International Chamber of Commerce, International Court of Arbitration, ICC Case No. 16127/JEM/MLK (April 7, 2011).

Testimony of Daniel R. Fischel In Re: Tribune Company, et al., Debtors, In the United States Bankruptcy Court for the District of Delaware, Chapter 11, Case No. 08-13141 (KJC) (March 10, 2011).

Deposition of Daniel R. Fischel In Re: Tribune Company, et al., Debtors, In the United States Bankruptcy Court for the District of Delaware, Chapter 11, Case No. 08-13141 (KJC) (March 2, 2011).

Deposition of Daniel F. Fischel In Re: Genetically Modified Rice Litigation, In the United States District Court for the Eastern District of Missouri, Eastern Division, Case No. 4:06 MD 1811 CDP (February 15, 2011).

Deposition of Daniel R. Fischel in Riceland Food, Inc. v. Bayer Cropscience LP, et al, In the United States District Court, Eastern District of Missouri, Eastern Division, Case No. 4:09-cv-00433 CDP (January 18, 2011).

Deposition of Daniel R. Fischel In Re: Genetically-Modified Rice Litigation, In the United States District Court for the Eastern District of Missouri, Case No. 4:06-MD-1811 (November 11, 12, 2010).

Appendix 1

- 14 -

Deposition of Daniel R. Fischel in Coleen Witmer, Individually, and on Behalf of All Others Similarly Situated v. Dynegey Inc., In the District Court of Harris County, Texas, 234th Judicial District (November 6, 2010).

Testimony of Daniel R. Fischel in Terra Firma (GP) 2 Investments Limited v. Citigroup Inc., United States District Court for the Southern District of New York, No. 1:09-CV-10459 (JSR) (November 2, 2010).

Testimony of Daniel R. Fischel in Terra Firma (GP) 2 Investments Limited v. Citigroup Inc., United States District Court for the Southern District of New York, No. 1:09-CV-10459 (JSR) (October 22, 2010).

Testimony of Daniel R. Fischel in Air Products and Chemicals, Inc. v. Airgas, Inc., Peter McCausland, et al, In the Court of Chancery of the State of Delaware, C.A. No. 5249-CC (October 5, 2010).

Deposition of Daniel R. Fischel in Air Products and Chemicals, Inc. v. Airgas, Inc., Peter McCausland, et al, In the Court of Chancery of the State of Delaware, C.A. No. 5249-CC (September 8, 2010).

Deposition of Daniel R. Fischel in Terra Firma (GP) 2 Investments Limited v. Citigroup Inc., United States District Court for the Southern District of New York, No. 1:09-CV-10459 (JSR) (July 28, 2010).

Deposition of Daniel R. Fischel in Citadel Investment Group, L.L.C. et al v. Mikhail Malyshev and Jace Kohlmeier, In the American Arbitration Association, Case No. AAA No. 51 166 00969 09 (July 13, 2010).

Testimony of Daniel R. Fischel In Re: United States of America v. Joseph P. Nacchio, in the United States District Court for the District of Colorado, Case No. 05-CR-00545-EWN (June 23, 2010).

Deposition of Daniel R. Fischel in Cantor Fitzgerald Securities, Cantor Fitzgerald & Co., Cantor Fitzgerald Partners v. The Port Authority of New York and New Jersey, in the Supreme Court of the State of New York, County of New York, Case No. 105447/94 (June 4, 2010).

Deposition of Daniel R. Fischel in Alaska Retirement Management Board on behalf of State of Alaska Public Employees' Retirement System and State of Alaska Teachers' Retirement System v. Mercer (US), Inc., Mercer Human Resources Consulting, Inc., and William M. Mercer, Inc., in The Superior Court for the State of Alaska, First Judicial District at Juneau, Case No. 1JU-07-974CI (April 29, 2010).

Deposition of Daniel R. Fischel In Re: ACS Shareholders Litigation, in The Court of Chancery of the State of Delaware, Consolidated Case No. 4940-VCP (April 26, 2010).

Testimony of Daniel R. Fischel in Securities and Exchange Commission v. Carl W. Jasper, in the United States District Court for the Northern District of California, San Jose Division, Case No. C-07-06122-JW (April 16, 2010).

Deposition of Daniel R. Fischel in Prudential Retirement Insurance and Annuity Company v. State Street Bank and Trust Company and State Street Global Advisors, Inc., in the United States District Court, Southern District of New York, Case No. 07 CIV 8488 (April 9, 2010).

Appendix 1

- 15 -

Deposition of Daniel R. Fischel In re: Lyondell Chemical Company, et al., Debtors. Official Committee of Unsecured Creditors, on behalf of the Debtors' Estates v. Citibank, N.A., et al., in the United States Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 09-10023 – (RED) (December 2, 2009).

Deposition of Daniel R. Fischel in Securities and Exchange Commission v. Carl W. Jasper, In the United States District Court, Northern District of California, San Jose Division, Case No. CV 07-6122 (HRL) (October 22, 2009).

Testimony of Daniel R. Fischel in Ventas, Inc. v. HCP, Inc., In the United States District Court of the Western District of Kentucky at Louisville, Civil Action No. 3:07-cv-00238-JGH (September 2, 2009).

Deposition of Daniel R. Fischel in Frank K. Cooper Real Estate #1, Inc., et al vs. Cendant Corporation f/k/a Hospitality Franchise Systems and Century 21 Real Estate Corporation, Superior Court of New Jersey, Law Division: Morris County, Docket No. MRS-L-377-02 (August 10, 2009).

Deposition of Daniel R. Fischel in Ventas, Inc. v. HCP, Inc., In the United States District Court of the Western District of Kentucky at Louisville, Civil Action No. 3:07-cv-00238-JGH (August 3, 2009).

Deposition of Daniel R. Fischel in U.S. Commodity Futures Trading Commission v. Amaranth Advisors, L.L.C., Amaranth Advisors (Calgary) and Brian Hunter, in the United States District Court, Southern District of New York, Case No. 07 CIV 6682 (July 8, 2009).

Declaration and Expert Surrebutal Report of Daniel R. Fischel in Ventas, Inc. v. HCP, Inc., In The United States District Court for the Western District of Kentucky at Louisville, Case No. 3:07-CV-00238-JGH (June 22, 2009).

Testimony of Daniel R. Fischel in NRG Energy, Inc. v. Exelon Corporation and Exelon Exchange Corporation, in the United States District Court, Southern District of New York, Case No. 09-CV-2448 (JGK) (DFE), (June 3, 2009).

Deposition of Daniel R. Fischel In Re: Delphi Corporation v. Appaloosa Management L.P., et al., In the United States Bankruptcy Court, Southern District of New York; Chapter 11, Case No. 05-44481(RDD) (Jointly administered), (June 2, 2009).

Deposition of Daniel R. Fischel in NRG Energy, Inc. v. Exelon Corporation and Exelon Exchange Corporation, in the United States District Court, Southern District of New York, Case No. 09-CV-2448 (JGK) (DFE), (May 31, 2009).

Deposition of Daniel R. Fischel in e-Bay Domestic Holdings, Inc. v. Craig Newmark and James Buckmaster and Craigslist, Inc., in the Court of Chancery of the State of Delaware, Case No. 3705-CC (May 29, 2009)

Testimony of Daniel R. Fischel In Re: Lawrence E. Jaffe Pension Plan, et al v. Household International, Inc., et al, in the United States District Court for the Northern District of Illinois, Eastern Division, No. 02-C-5893 (April 16, 20, 28 and 29, 2009).

- Deposition of Daniel R. Fischel In Re: Rohm and Haas Company v. The Dow Chemical Company and Ramses Acquisition Corp., In the Court of Chancery of the State of Delaware, C.A. No. 4309-CC (March 4, 2009).
- Deposition of Daniel R. Fischel In the Matter of Hoffman, et al. v. American Express Travel Related Services Company, Inc., et al., in the Superior Court of the State of California, in and for the County of Alameda, Case No. 2001-022881 (January 15, 2009).
- Deposition of Daniel R. Fischel In Re: TyCom Ltd. Securities Litigation, in the United States District Court, District of New Hampshire, Docket No. 03-CV-1352 (September 22, 2008).
- Deposition of Daniel R. Fischel In Re: Hexion Specialty Chemicals, Inc., et al v. Huntsman Corp., in the Court of Chancery of the State of Delaware, Civil Action No. 3841-VCL (September 4, 2008).
- Deposition of Daniel R. Fischel In Re: Stone Energy Corp. Securities Litigation, in the United States District Court, Western District of Louisiana, Lafayette-Opelousas Division, Civil Action No. 6:05CV2088 (LEAD) (July 16, 2008).
- Deposition of Daniel R. Fischel In Re: Initial Public Offering Securities Litigation, in the United States District Court, Southern District of New York, Master File No. 21 MC 92 (SAS) (April 3 and 4, 2008).
- Deposition of Daniel R. Fischel In Re: Lawrence E. Jaffe Pension Plan, et al v. Household International, Inc., et al, in the United States District Court for the Northern District of Illinois, Eastern Division, No. 02-C-5893 (March 21, 2008).
- Deposition of Daniel R. Fischel In Re: IAC/InteractiveCorp and Barry Diller v. Liberty Media Corporation, in the Court of Chancery of the State of Delaware in and for New Castle County, Consolidated Case Number 3486-VCL (February 29, 2008).
- Testimony of Daniel R. Fischel In Re: Immunicon Corporation v. Veridex LLC, before the American Arbitration Association (Commercial Arbitration Rules), Case Number 50 180T 00192 07 (January 17, 2008).
- Deposition of Daniel R. Fischel In Re: Unitedglobalcom Shareholders Litigation, in the Court of Chancery of the State of Delaware in and for New Castle County, Consolidated C.A. No. 1012-N (November 19, 2007).
- Deposition of Daniel R. Fischel In Re: Cendant Corporation Litigation, in the United States District Court for the District of New Jersey, Master File No. 98-1664 (WHW) (November 15, 2007).
- Deposition of Daniel R. Fischel In Re: Cendant Corporation Litigation, in the United States District Court for the District of New Jersey, Master File No. 98-1664 (WHW) (October 16, 2007).
- Deposition of Daniel R. Fischel In Re Schering-Plough Corporation Securities Litigation, in the United States District Court for the District of New Jersey, Master File No. 01-CV-0829 (KSH/RJH) (October 12, 2007).

Appendix 1

- 17 -

Deposition of Daniel R. Fischel In Re: Carpenters Health & Welfare Fund, et al. vs. The Coca-Cola Company, in the United States District Court, Northern District of Georgia, Atlanta Division, File No. 1:00-CV-2838-WBH (Consolidated) (September 26, 2007).

Deposition of Daniel R. Fischel In Re: Parker Freeland, et al., vs. Iridium World Communications, Ltd., et al., in the United States District Court for the District of Columbia, Civil Action No. 99-1002 (August 7, 2007).

Deposition of Daniel R. Fischel In Re: Chuck Ginsburg v. Philadelphia Stock Exchange, Inc., et al., In the Court of Chancery of the State of Delaware in and for New Castle County, C.A. No. 2202-N (June 12, 2007).

Testimony of Daniel R. Fischel In Re: Holcombe T. Green and HTG Corp. v. McKesson, Inc., et al., In the Superior Court for the County of Fulton, State of Georgia, Civil Action File No. 2002-CV-48407 (June 5, 2007).

Affidavit of Daniel R. Fischel In Re: Lear Corporation Shareholders Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 2728-VCS (May 30, 2007).

Affidavit of Daniel R. Fischel In Re: Aeroflex, Inc. Shareholder Litigation, in the Supreme Court of the State of New York, County of Nassau: Commercial Division, Index No. 07-003943 (May 23, 2007).

Deposition of Daniel R. Fischel In Re: Holcombe T. Green and HTG Corp. v. McKesson, Inc., HBO & Company, Albert Bergonzi, and Jay Gilbertson, in the Superior Court for the County of Fulton, State of Georgia, Civil Action File No. 2002W48407 (May 21, 2007).

Deposition of Daniel R. Fischel In Re: Adelphia Communications Corp. v. Deloitte & Touche LLP, et al., in the Court of Common Pleas, Philadelphia County, Pennsylvania, Case No. 000598 (May 3 and 4, 2007).

Testimony of Daniel R. Fischel In Re: United States of America v. Joseph P. Nacchio, in the United States District Court for the District of Colorado, Case No. 05-CR-00545-EWN (April 9, 2007).

Deposition of Daniel R. Fischel In Re: MK Resources Company Shareholders Litigation, in the Court of Chancery for the State of Delaware in and for New Castle County, C.A. No. 1692-N (February 22, 2007).

Deposition of Daniel R. Fischel In Re: Starr International Company, Inc. v. American International Group, Inc., In the United States District Court, Southern District of New York, Case No. 05 CV 6283 (January 26, 2007).

Written testimony of Daniel R. Fischel In Re: Verizon Communications Inc. and Verizon Services Corp. v. Christopher G. Pizzirani, In the United States District Court for the Eastern District of Pennsylvania, Case No. 2:06-cv-04645-MK (November 6, 2006).

Testimony of Daniel R. Fischel In Re: Northeast Savings, F.A. v. United States of America, In The United States Claims Court, Case No. 92-550 C (November 2 and 9, 2006).

Testimony of Daniel R. Fischel In Re: United States of America v. Sanjay Kumar and Stephen Richards, United States District Court, Eastern District of New York, 04 Civ. 4104 (ILG) (October 25, 2006).

Affidavit of Daniel R. Fischel In Re: Lionel I. Brazen and Nancy Hammerslough, et al v. Tyco International Ltd., et al., In the Circuit Court of Cook County, Illinois County Department, Chancery Division, No. 02 CH 11837 (September 18, 2006).

Deposition of Daniel R. Fischel In Re: Tele-Communications, Inc. Shareholders Litigation, in the Court of Chancery of the State of Delaware in and for New Castle County, Consolidated C.A. No. 16470 (September 15, 2006).

Affidavit of Daniel R. Fischel In Re: United States of America v. Sanjay Kumar and Stephen Richards, United States District Court, Eastern District of New York, 04 Civ. 4104 (ILG) (September 8, 2006).

Deposition of Daniel R. Fischel In Re: James Gilbert v. McKesson Corporation, et al., in the State Court of Fulton County, State of Georgia, Civil Action File No. 02VS032502C (September 7, 2006).

Supplemental Declaration of Daniel R. Fischel In Re: United States of America v. Jeffrey K. Skilling, in the United States District Court, Southern District of Texas, Houston Division, Crim. No. H-04-25 (Lake, J.) (August 25, 2006).

Affidavit of Daniel R. Fischel In Re: United States of America v. Sanjay Kumar and Stephen Richards, United States District Court, Eastern District of New York, 04 Civ. 4104 (ILG) (August 22, 2006).

Declaration of Daniel R. Fischel In Re: United States of America v. Jeffrey K. Skilling, in the United States District Court, Southern District of Texas, Houston Division, Crim. No. H-04-25 (Lake, J.) (August 3, 2006).

Deposition of Daniel R. Fischel In Re: Enron Corporation Securities Litigation, in the United States District Court, Southern District of Texas, Houston Division, Case Number: H-01-3624 (May 24, 2006).

Testimony of Daniel R. Fischel In Re: Guidant Corporation Shareholders Derivative Litigation, in the United States District Court, Southern District of Indiana, Indianapolis Division, Master Derivative Docket No. 1:03-CV-955-SEB-WTL (January 20, 2006).

Testimony of Daniel R. Fischel In Re. Hideji Jumbo Tanaka v. Cerberus Far East Management, L.L.C., et al., AAA Case No. 50 T 116 00284 03, (December 15, 2005).

Deposition of Daniel R. Fischel In Re: McKesson HBOC, Inc. Securities Litigation, in the United States District Court for the Northern District of California, No. C-99-20743-RMW (August 16, 2005).

Testimony of Daniel R. Fischel In the Matter of Visconsi Companies Ltd., et al. and Lehman Brothers, et al., National Association of Securities Dealers Department of Arbitration, Grievance No. 03-07606 (July 26, 2005).

Appendix 1

- 19 -

Testimony of Daniel R. Fischel in re: John P. Crowley, as Receiver of Ambassador Insurance Company v. Doris June Chait, et al., in the United States District Court for the District of New Jersey, Case No. 85-2441 (HAA) (July 21 and 22, 2005).

Deposition of Daniel R. Fischel In re: Electronic Data Systems Corporation Securities Litigation, in the United States District Court for the Eastern District of Texas, Tyler Division, Case No. 6:03-MD-1512 (July 20, 2005).

Testimony of Daniel R. Fischel in re: United States of America v. Philip Morris, Inc., et al, in the United States District Court for the District of Columbia, Case No. 1:99CV02496 (May 26 and 27, 2005).

Deposition of Daniel R. Fischel in re: Cordis Corporation v. Boston Scientific Corporation, et ano, in the United States District Court for the District of Delaware, Case No. 03-027-SLR (May 25, 2005).

Deposition of Daniel R. Fischel in re: United States of America v. Philip Morris, Inc., et al, in the United States District Court for the District of Columbia, Case No. 1:99CV02496 (May 16, 2005).

Testimony of Daniel R. Fischel in re: Drury Industries, Inc. v. Drury Properties, Inc., in the First Judicial District Court of the State of Nevada in and for Carson City, Nevada (April 6 and 7, 2005).

Deposition of Daniel R. Fischel in re: Jerry R. Summers and George T. Lenormand, et al v. UAL Corporation ESOP Committee, Marty Torres, Barry Wilson, Doug Walsh, Ira Levy, Don Clements, Craig Musa, and State Street Bank and Trust Company, in the United States District Court for the North District of Illinois, Eastern Division, No. 03 C 1537 (March 9, 2005).

Deposition of Daniel R. Fischel in re: Drury Industries, Inc. v. Drury Properties, Inc., in the First Judicial District Court of the State of Nevada in and for Carson City, Nevada (March 7 and 10, 2005).

Testimony of Daniel R. Fischel In the Matter of Fyffes PLC v. DCC PLC, S&L Investments Limited, James Flavin and Lotus Green Limited, in The High Court, Dublin, Ireland (2002 No. 1183P) (February 1 and 2, 2005).

Deposition of Daniel R. Fischel In the Matter of the Arbitration between The Canada Life Assurance Company and The Guardian Life Insurance Company of America (January 12, 2005).

Deposition of Daniel R. Fischel In Re: IDT Corporation vs. Telefonica, S.A., et al, in the United States District Court, District of New Jersey, Civil Action No. 01-CV 471 (December 14, 2004).

Deposition of Daniel R. Fischel In Re: DQE, Inc. Securities Litigation, in the United States District Court, Western District of Pennsylvania, Master File No. 01-1851 (December 7, 2004)

Testimony of Daniel R. Fischel In Re United States of America v. Daniel Bayly, James A Brown, Robert S. Furst, Daniel O. Boyle, William R. Fuhs and Sheila K. Kahanek, in the United

Appendix 1

- 20 -

States District Court of Southern Texas Houston Division, Case No. H-CR-03-363 (November 4, 2004).

Testimony of Daniel R. Fischel In the Matter of the Arbitration Between The Canada Life Assurance Company, Petitioner v. Caisse Centrale De Reassurance, Respondent, (November 2, 2004).

Testimony of Daniel R. Fischel In Re Yankee Atomic Electric Company, Connecticut Yankee Atomic Power Company, and Maine Yankee Atomic Power Company v. The United States, in the United States Court of Federal Claims, Case Nos. 98-126C, 98-154C and 98-474C (August 9, 2004).

Affidavit of Daniel R. Fischel In Re Oracle Corp. Derivative Litigation, in the Court of the Chancery of the State of Delaware In and For New Castle County, Consolidated Civil Action No. 18751 (June 8, 2004).

Deposition of Daniel R. Fischel in re: Reading International, Inc., et al v. Regal Entertainment Group, et al. (Delaware Chancery Court) (May 30, 2004) .

Affidavit of Daniel R. Fischel in re: Reading International, Inc., et al v. Regal Entertainment Group, et al. (Delaware Chancery Court) (May 28, 2004) .

Deposition of Daniel R. Fischel in re: Northeast Savings, F.A. v. United States of America, in the United States Claims Court, Case No. 92-550-C (May 4, 5 and 6, 2004).

Deposition of Daniel R. Fischel in re: Tyson Foods, Inc. Securities Litigation, in the United States District Court for the District of Delaware, Civil Action No. 01-425-SLR (March 18, 2004).

Testimony of Daniel R. Fischel Re: In the Matter of Coram Healthcare Corp. and Coram, Inc., Debtors, In the United States Bankruptcy Court for the District of Delaware, Case No. 00-3299 Through 00-3300 (MFW) (March 4, 2004).

Testimony of Daniel R. Fischel in Tracinda Corporation v. DaimlerChrysler AG, et al, in the United States District Court for the District of Delaware, Civil Action No. 00-984 (February 11, 2004).

Deposition of Daniel R. Fischel in Gerald K. Smith, as Plan Trustee for and on behalf of the Estates of Boston Chicken, Inc., et al. v. Arthur Anderson LLP, et al., in the United States District Court for the Northern District of Illinois, Case Nos. CIV-01-218-PHX-PGR, CIV-01-246-PHX-EHC, CIV-02-1162-PHX-PGR, CIV-02-1248-PHX-PGR (Consolidated) (October 29 and 30, 2003).

Deposition of Daniel R. Fischel in Irene Abrams, on behalf of herself and all others similarly situated v. Van Kampen Funds, Inc., Van Kampen Investment Advisory Corp., Van Kampen Prime Rate Income Trust, Howard Tiffen, Richard F. Powers III, Stephen L. Boyd, Dennis J. McDonnell and Jeffrey W. Maillet, in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 01-C-7538 (October 21, 2003).

Deposition of Daniel R. Fischel Re: In the Matter of Coram Healthcare Corp. and Coram, Inc., Debtors, In the United States Bankruptcy Court for the District of Delaware, Case No. 00-3299 Through 00-3300 (MFW) (October 13, 2003).

Testimony of Daniel R. Fischel in Transcore Holdings, Inc. v. Rocky Mountain Mezzanine Fund II, LP; Hanifen Imhoff Mezzanine Fund, LP; Moramerica Capital Corporation; and NDSBIC, LP and W. Trent Ates and Fred H. Rayner, In Re: Jams Arbitration, Case No. 1410003193 (September 24, 2003).

Deposition of Daniel R. Fischel in Transcore Holdings, Inc. v. Rocky Mountain Mezzanine Fund II, LP; Hanifen Imhoff Mezzanine Fund, LP; Moramerica Capital Corporation; and NDSBIC, LP and W. Trent Ates and Fred H. Rayner, In Re: Jams Arbitration, Case No. 1410003193 (May 13, 2003).

Deposition of Daniel R. Fischel in AT&T Broadband Management Corporation v. CSG Systems, Inc., American Arbitration Association No. 77 181 00159 02 VSS (April 9, 2003).

Deposition of Daniel R. Fischel In Re: DaimlerChrysler AG Securities Litigation, in the United States District Court for the District of Delaware, Civil Action No. 00-993-JJF (February 11 and 12, 2003).

Deposition of Daniel R. Fischel in David T. Bard, Commissioner of Banking and Insurance for the State of Vermont, as Receiver for Ambassador Insurance Company v. Arnold Chait, et al, in the United States District Court for the District of New Jersey, Civil Action No. 85-2441 (December 12, 2002).

Testimony of Daniel R. Fischel in MHC Financing Limited Partnership, et al vs. City of San Rafael, et al, in the United States District Court, Northern District of California, Case No. C 00-3785 VRW (November 6, 2002).

Deposition of Daniel R. Fischel in MHC Financing Limited Partnership, et al vs. City of San Rafael, et al, in the United States District Court, Northern District of California, Case No. C 00-3785 VRW (October 16, 2002).

Deposition of Daniel R. Fischel in Maine Yankee Atomic Power Company v. United States of America, In the United States Court of Federal Claims, Case No. 98-474 C (October 8 and 9, 2002).

Testimony of Daniel R. Fischel in California Federal Bank, FSB v. The United States of America, In the United States Court of Federal Claims, Case No. 92-138C (September 20 and 23, 2002).

Deposition of Daniel R. Fischel in Maine Yankee Atomic Power Company v. United States of America, In the United States Court of Federal Claims, Case No. 98-474 C (September 4 and 6, 2002).

Deposition of Daniel R. Fischel In the Matter of RDM Sports Group, Inc., et al v. Smith, Gambrell, Russell, L.L.P.; et al, In the United States Bankruptcy Court for the Northern District of Georgia, Newnan Division, Case No. 00-1065 (May 14 and 15, 2002).

Deposition of Daniel R. Fischel in Walter B. Hewlett, individually and as Trustee of the William R. Hewlett Revocable Trust, and Edwin E. van Bronkhorst as Co-Trustee of the William R. Hewlett Revocable Trust v. Hewlett-Packard Company, in the Court of the Chancery of the State of Delaware in and for New Castle County (April 24, 2002).

Deposition of Daniel R. Fischel in California Federal Bank, FSB, v. The United States of America, in the United States District Court of Federal Claims, Case No. 92-138C (April 16 and 17, 2002).

Deposition of Daniel R. Fischel In Re: Computer Associates Class Action Securities Litigation, in the United States District Court, Eastern District of New York, File No. 98-CV-4839 (TPC) (MLO) (March 19 and 20, 2002).

Deposition of Daniel R. Fischel in United States of America v. David Blech, In the United States District Court, Southern District of New York, Case No. S1 97 Cr. 402 (KTD) (February 13, 2002).

Testimony of Daniel R. Fischel Re: In the Matter of Coram Healthcare Corp. and Coram, Inc., Debtors, In the United States Bankruptcy Court for the District of Delaware, Case No. 00-3299 Through 00-3300 (MFW) (December 14, 2001).

Deposition of Daniel R. Fischel in Re: Sunbeam Securities Litigation, In the United States District Court, Southern District of Florida, Miami Division, Case No. 98-8258-CIV – Middlebrooks (December 4, 5 and 6, 2001).

Affidavit of Daniel R. Fischel in Re: Jack M. Webb, Special Deputy Receiver For American Eagle Insurance Company v. Elvis Mason, Mason Best Company, L.P., Don D. Hutson, American Eagle Group, Inc., Marion Phillip Guthrie, Frederick G. Anderson, George F. Cass, Richard M. Kurz, Patricia S. Pickard, Arthur Andersen & Co., L.L.P., and Towers, Perrin Forester & Crosby, Inc., D/B/A Tillinghast, In the District Court of Travis County, Texas, 201st Judicial District, Cause No. 99-08253 (September 7, 2001).

Declaration of Daniel R. Fischel Re: In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities: Before the Federal Communications Commission, Washington DC, GN Docket No. 00-185, (Declaration with K. Arrow, G. Becker, D. Carlton, R. Gertner, J. Kalt, H. Sider, and Gustavo Bamberger) (July 24, 2001).

Declaration of Daniel R. Fischel in Re: Walter Green, on behalf of himself and all others similarly situated v. Merck-Medco Managed Care, L.L.C., United States District Court, Southern District of New York, Civil Action No. 99 CIV 0847 (CLB) (June 18, 2001).

Testimony of Daniel R. Fischel in Re: Tyson Foods, Inc. and Lasso Acquisition Corporation v. IBP, Inc., Delaware Chancery Court, (May 25, 2001).

Deposition of Daniel R. Fischel in Re: Tyson Foods, Inc. and Lasso Acquisition Corporation v. IBP, Inc., Delaware Chancery Court, (May 10, 2001).

Deposition of Daniel R. Fischel in Re: Myron Weiner, Nicholas Sitnycky, Ronald Anderson and Robert Furman on behalf of themselves and all others similarly situated v. The Quaker Oats Company and William D. Smithburg, United States District Court, Northern District of Illinois, Case No. 98 C 3123, (January 24, 2001).

Deposition of Daniel R. Fischel in Re: Retsky Family Limited Partnership v. Price Waterhouse, LLP, United States District Court, Northern District of Illinois, Eastern Division, No. 97 C 7694, (October 31, 2000).

Appendix 1

- 23 -

Joint Affidavit of Daniel R. Fischel and David J. Ross in Re: Floyd D. Wilson, for himself and all others similarly situated v. Massachusetts Mutual Life Insurance Company, in the First Judicial District Court, County of Santa Fe, State of New Mexico, No. D0101 CV-98-02814 (August 4, 2000).

Affidavit of Daniel R. Fischel in Re: T. Rowe Price Recovery Fund, L.P., and Carl Marks Management Co., L.P., individually and derivatively on behalf of Seaman Furniture Co., Inc. v. James Rubin, M.D. Sass Associates, Inc., Resurgence Asset Management, L.L.C., M.D. Sass Corporation Resurgence Partners, L.P., M.D. Sass Corporate Resurgence International, Ltd., Robert Symington, Byron Haney, Alan Rosenberg, Steven H. Halper, and Peter McGeough and Seaman Furniture Co., Inc., In the Court of Chancery of the State of Delaware in and for New Castle County, C.A. No. 18013, (June 7, 2000).

Testimony of Daniel R. Fischel in Re: Bank United of Texas, FSB, et al., v. United States of America, United States Court of Federal Claims, Case Number 95-437C, (October 12 and 14, 1999).

Deposition of Daniel R. Fischel in Re: Bank United of Texas, FSB, et al., v. United States of America, United States Court of Federal Claims, Case Number 95-437C, (September, 26, 1999; July 10, 1999; and June 16, 17, 1999),

Testimony of Daniel R. Fischel in Re: C. Robert Suess, et al., v. The United States, United States Court of Federal Claims, No. 90- 981C (May 17, 1999).

Testimony of Daniel R. Fischel in Re: Lexecon, Inc. v. Milberg Weiss Bershad Specthrie & Lerach, et al. in the United States District Court, Northern District of Illinois Eastern Division, Case No. 92 C 7768 (March 8, 9, 10 and 15, 1999).

Testimony of Daniel R. Fischel in Re: California Federal Bank v. United States, in the United States Court of Federal Claims, Case Number 92-138C, (February 4 and 11, 1999).

Deposition of Daniel R. Fischel in Re: California Federal Bank v. United States, in the United States Court of Federal Claims, Case Number 92-138C, (February 6, 1999; January 27 and 30, 1999).

Deposition of Daniel R. Fischel in Re: C. Robert Suess, et al., v. The United States, United States Court of Federal Claims, No. 90- 981C (October 27 and 28, 1998).

Deposition of Daniel R. Fischel in Re: Connector Service Corporation v. Jeffrey Briggs, United States District Court, Northern District of Illinois, Eastern Division, No. 97-C-7088 (August 28, 1998).

Deposition of Daniel R. Fischel in Re: Statesman Savings Holding Corp., et al. v. United States of America, United States Court of Federal Claims, Case No. 90-773C, (May 4, 1998 and February 12, 1998).

Testimony of Daniel R. Fischel in Re: Glendale Federal Bank FSB v. United States of America, United States Court of Federal Claims, No. 90-772C, (March 24, 25 and 26, 1998; September 2, 3, 4, 5, 8, 9, 10, 11, 12, 24, 25, 26 and 27, 1997; October 7, 9, 16, 17, 30 and 31, 1997; December 8, 9 and 10, 1997).

Appendix 1

- 24 -

- Affidavit of Daniel R. Fischel and David J. Ross in Re: Publicis Communication v. True North Communications Inc., et al., United States District Court, Northern District of Illinois, Eastern Division, Case No. 97-C-8263, (December 7, 1997).
- Deposition of Daniel R. Fischel in Re: Glendale Federal Bank FSB v. United States of America, United States Court of Federal Claims, No. 90-772C, (August 27 and 28, 1997).
- Testimony of Daniel R. Fischel in Re: AUSA Life Insurance Company, et al. v. Ernst & Young, in the United States District Court, Southern District of New York, Master File No. 94 CIV. 3116 (CLB) (July 7 and 8, 1997).
- Deposition of Daniel R. Fischel in Re: Santa's Best, f/k/a National Rennoc, an Illinois general partnership, and Tinsel/Ruff Group Limited Partnership, an Illinois limited partnership v. Rennoc Limited Partnership, a New Jersey limited partnership, v. Tinsel/Ruff Group Limited Partnership, an Illinois limited partnership, in the Circuit Court of Cook, Illinois County Department - Chancery Division, No. 95 CH 12160, (June 17, 1997).
- Arbitration of Daniel R. Fischel in Re: Lerner v. Goldman Sachs, et. al., Before the American Arbitration Association, 75-136-00090-94 (April 10, 1997).
- Affidavit of Daniel R. Fischel in Re: Hilton Hotels Corporation and HLT Corporation v. ITT Corporation, United States District Court, District of Nevada, CV-S-97-00095-PMP (RLH) (March 24, 1997).
- Deposition of Daniel R. Fischel in Re: Glendale Federal Bank, FSB v. United States of America, Washington, D.C., Case No. 90-772C, (March 19, 1997; January 30 and 31, 1997).
- Deposition of Daniel R. Fischel in Re: Statesman Savings Holding Corporation v. United States of America, Washington, D.C., Case No. 90-773-C, (February 19 and 20, 1997).
- Testimony of Daniel R. Fischel in Re: Westcap Enterprises, Inc. and Westcap Corporation, Debtor; in the United States Bankruptcy Court, for the Southern District of Texas, Houston Division, Houston, Texas; Case No. 96-43191-H2-11, (November 1996).
- Testimony of Daniel R. Fischel in Re: United States of America v. Robert R. Krilich, in the United States District Court, Northern District of Illinois, Eastern Division, No. 94 CR 419, (August 20, 1996 and July 15, 1996)
- Deposition of Daniel R. Fischel in Re: McMahan & Company, Frole, Revy Investment Co., Inc. and Wechsler & Krumholz, Inc. v. Wherehouse Entertainment, Inc., Louis A. Kwiker, George A. Smith, Michael T. O'Kane, Lawrence K. Harris, et al., United States District Court, Southern District of New York, Index No. 88 Civ. 0321 (SS) (AJP), (July 16, 1996 and June 10, 1996).
- Deposition of Daniel R. Fischel in Re: Joseph W. and Helen B. Teague, Steven Allen Barker, Rita Strahowski, Swanee Beck, and Lifetime Partners of PTL, as representatives of a nationwide class consisting of 150,129 Lifetime Partners and of 27,839 persons who have partially paid for Lifetime Partnerships v. James O. Bakker, in the United States District Court for the Western District of North Carolina, Civil Action No. 3:87CV514, (June 28, 1996).

Deposition of Daniel R. Fischel in Re: Snapple Beverage Corporation Securities Litigation, in the United States District Court, Eastern District of New York, Master File No. CV 94-3647 (May 30, 1996).

Testimony of Daniel R. Fischel in Re: Chuck Quackenbush, Insurance Commissioner of the State of California, in his capacity as Trustee of Mission Insurance Company Trust, et al. v. Borg-Warner Corporation, Borg Warner Equities Corporation, Borg-Warner Insurance Service, Inc., et al., for the Superior Court of the State of California, for the County of Los Angeles, No. C688487 (April 18, 1996).

Deposition of Daniel R. Fischel in Re: Chuck Quackenbush, Insurance commissioner of the State of California, in his capacity as Trustee of Mission Insurance Company Trust, et al. v. Borg-Warner Corporation, Borg Warner Equities Corporation, Borg-Warner Insurance Service, Inc., et al., for the Superior Court of the State of California, for the County of Los Angeles, No. C688487 (April 17, 1996).

Deposition of Daniel R. Fischel in Re: Household Commercial Financial Services, Inc. a citizen of the states of Delaware and Illinois v. Julius Trump, a citizen of the State of Florida, Edmond Trump, a citizen of the state of Florida, James M. Jacobson, a citizen of the State of New York, and Parker, Chapin, Flattau & Klimpl, a citizen of the states of New York and New Jersey, in the United States District Court, for the Northern District of Illinois Eastern Division, 92 C 5010 (February 1, 1996).

Deposition of Daniel R. Fischel in Re: JWP, Inc. Securities Litigation, in the United States District Court, Southern District of New York, Master File No. 92 Civ. 5815 (CLB); AUSA Life Insurance Company, et al. v. Ernst & Young, in the United States District Court, Southern District of New York, Master File No. 94 Civ. 3116 (CLB) (November 30, 1995; November 9, 1995; October 18 and 19, 1995; September 28, 1995).

Deposition of Daniel R. Fischel in Re: City of Houston Municipal Employees Pension System, a Texas association v. PaineWebber Group Inc., et al., in the United States District Court, Eastern District of Missouri, Eastern Division, No. 4:94CV0073CAS (November 15 and 16, 1995).

Testimony of Daniel R. Fischel In Re: American Continental Corporation/Lincoln Savings & Loan Securities Litigation - Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach and Kevin P. Roddy, in the United States District Court , District of Arizona, Civ-93-1087-PHX-JMR (July 25 and 26, 1995).

Deposition of Daniel R. Fischel in Re: Keith C. Bogard, et al., v. National Community Bank Inc., et al., in the United States District Court, District of New Jersey, No. 90-5-32 (HAA) (December 20, 1994).

Deposition of Daniel R. Fischel in Re: Harvey Rosen, Ben Rogers and Julie Rogers v. Deloitte & Touche, Elias Zinn, Julius Zinn, Dennis Lamm, and Ronald Begnaud, in the 268th Judicial District Court, of Fort Bend County, Texas, Cause No. 84-482 (November 9, 1994).

Testimony of Daniel R. Fischel in Re: PPM America, Inc., et al. v. Marriott Corporation et al., in the United States District Court, for the District of Maryland, Civil Docket No. H-92-3068 (October 12, 1994).

Appendix 1

- 26 -

Deposition of Daniel R. Fischel in Re: Browning-Ferris Industries, Inc., Securities Litigation, United States District Court, for the Southern District of Texas, Houston Division, Civil Action H-903477 (September 1, 1994).

Testimony of Daniel R. Fischel in Re: Computer Associates International Inc. Securities Litigation, United States District Court, Eastern District of New York, CV-90-2398 (JBW) (May 26 and 27, 1994).

Deposition of Daniel R. Fischel in Re: PPM America, Inc., et al. v. Marriott Corporation et al., United States District, for the District of Maryland, H-92-3068 (May 10, 1994 and March 8, 1994).

Deposition of Daniel R. Fischel in Re: Securities and Exchange Commission v. Shared Medical Systems Corporation, R. James Macaleer, James C. Kelly and Clyde M. Hyde, United States District Court, for the Eastern District of Pennsylvania, Civil Action - Law: No. 91-CV-6549 (February 22, 1994).

Testimony of Daniel R. Fischel in Re: Peter M. Schultz and Pamela A. Schultz v. Rhode Island Hospital Trust National Bank, N.A., et al., United States District Court, District of Massachusetts, Civil Action No. 88-2870-T (February 16, 1994).

Deposition of Daniel R. Fischel in Re: Henry T. Endo, et al. v. John M. Albertine, et al., United States District Court, Northern District of Illinois, Eastern Division, No. 88 C 1815 (November 11 and 12, 1993; October 28, 1993).

Deposition of Daniel R. Fischel in Re: Computer Associates International Inc. Securities Litigation, United States District Court, Eastern District of New York, CV 90-2398 (JBW) (November 2, 1993 and February 4, 1993).

Affidavit of Daniel R. Fischel in Re: Peter M. Schultz and Pamela A. Schultz v. Rhode Island Hospital Trust National Bank, N.A. et al., United States District Court, District of Massachusetts, Civil Action No. SS-2870-T (October 28, 1993).

Deposition of Daniel R. Fischel in Re: Alpheus John Goddard, III, etc. v. Continental Bank N.A., etc., State of Illinois, County of Cook, Circuit Court of Cook County, County Department-Chancery Division, No. 89 CH 1081 (September 10, 1993).

Deposition of Daniel R. Fischel in Re: Taxable Municipal Bond Section "G" Securities Litigation, United States District Court, Eastern District of Louisiana, MDL No. 863 (September 2, 1993).

Reply Affidavit of Daniel R. Fischel in Re: Columbia Securities Litigation, United States District Court Southern District of New York, 89 Civ. 6821 (LBS) (August 30, 1993).

Affidavit of Daniel R. Fischel in Re: Consumers Gas & Oil, Inc. v. Farmland Industries, Inc., et al., United States District Court, for the District of Colorado, Civil Action No. 92-F-1394 (August 26, 1993).

Declaration of Daniel R. Fischel in Re. Equitec Rollup Litigation, United States District Court for the Northern District of California, Master file No. C90 2064 CAL (July 28, 1993).

Appendix 1

- 27 -

Deposition of Daniel R. Fischel in Re: United Telecommunications, Inc. Securities Litigation, United States District Court for the District of Kansas, No. 90-2251-0 (July 22, 1993, April 21 and 22, 1993).

Deposition of Daniel R. Fischel in Re: Consumers Gas & Oil, Inc., a Colorado farm cooperative in liquidation, on behalf of itself and others similarly situated v. Farmland Industries, Inc., a Kansas farm cooperative, et al., United States District Court, District of Colorado, 92-F-1394 (June 18, 1993).

Deposition of Daniel R. Fischel in Re: Rosalind Wells v. HBO & Company, United States District Court, Northern District of Georgia, Atlanta Division, 8-87-CV-657A (JTC) (June 10, 1993 and May 24, 1993).

Deposition of Daniel R. Fischel in Re: Equitec Rollup Litigation, United States District Court, Northern District of California, No. C-90-2064 CAL (June 2 and 3, 1993).

Supplemental Declaration of Daniel R. Fischel in Re: Oracle Securities Litigation, United States District Court, Northern District of California, Master File No. C 90 0931 VRW (May 20, 1993).

Affidavit of Daniel R. Fischel and Kenneth R. Cone in Re: Raymond P. Hayden, et al. v. Jeffrey L. Feldman, et al., United States District Court, Southern District of New York No. 88 Civ. 8048 (JES) (May 12, 1993).

Testimony of Daniel R. Fischel in Re: Melridge, Inc., Securities Litigation, United States District Court for the District of Oregon, CV No. 87-1426-FR (May 4 and 5, 1993).

Declaration of Daniel R. Fischel in Re: Oracle Securities Litigation, United States District Court, Northern District of California, Master File No. C 90 0931 VRW (April 20, 1993).

Deposition of Daniel R. Fischel in Re: Gillette Securities Litigation, United States District Court, District of Massachusetts, No. 88-1858-K (April 1, 1993).

Affidavit of Daniel R. Fischel in Re: Columbia Securities Litigation, United States District Court, Southern District of New York, 89 Civ. 6821 (LBS) (March 25, 1993).

Deposition of Daniel R. Fischel in Re: Westinghouse Securities Litigation, United States District Court, Western District of Pennsylvania, CV No. 91 354 (March 23, 1993).

Declaration of Daniel R. Fischel in Re: Oracle Securities Litigation, United States District Court, Northern District of California, Master File No. C 90-0931 VRW (March 22, 1993).

Deposition of Daniel R. Fischel in Re: Kroy, Inc., a Minnesota corporation et al. v. Bankers Trust New York Corporation, et al., Superior Court of the State of Arizona in and for the County of Maricopa, No. CV 89-35680 (March 18, 1993).

Appendix 1

- 28 -

Deposition of Daniel R. Fischel in Re: Amos M. Ames, Helen M. Ames, Robert F. Bourke, Louise L. Bourke, Leo E. Corr, April C. Corr, Wence M. Horak, Ruth Horak, Robert T. Freas, Maurita Freas, Bruce Fink, Jr., William H. Jones, Candace A. Jones, Richard Paul, William L. Paul, Carole Paul, Steven J. Paul, Best Power Technology, Incorporated, and Best Power Technology Sales Corporation, in the State of Wisconsin, Circuit Court, Juneau County, Consolidated Case Nos. 92-CV-31, 92-CV-32 (January 26, 1993).

Deposition of Daniel R. Fischel in Re: Federal Express Corporation Shareholder Litigation, in the United States District Court, Western District of Tennessee, Master File No. 90-2359-4B (December 3, 1992).

Deposition of Daniel R. Fischel in Re: Raymond Snyder, Individually and on behalf of all those similarly situated v. Oneok, Inc., et al., in the United States District Court, Northern District of Oklahoma, Civil Action No. 88 C 1500 E (October 15 and 16, 1992).

Deposition of Daniel R. Fischel in Re: Melridge, Inc. Securities Litigation, Consolidated Actions, United States District Court, District of Oregon, Master File No. CV87-1426-JU and Nos. 387-06589-P11, 88-05-JU, 88-221-JU, 88-0699-PA, 88-1266-JU (September 17, 1992; July 25 and 26, 1991).

Deposition of Daniel R. Fischel in Re: Maxus Corporate Company v. Kidder, Peabody & Co. Incorporated, Martin A. Siegel and Ivan F. Boesky, in the District Court Dallas County, Texas, 298th Judicial District, No. 87-15583-M (September 11, 1992; August 18 and 19, 1992).

Deposition of Daniel R. Fischel in Re: Jennifer A. Florin and Alan L. Mundt, on behalf of themselves and all others similarly situated v. Wesray Capital Corp., Citizens and Southern Trust Company, a subsidiary of Citizens and Southern Corporation, Robert K. Barton, Leonard S. Gaby, Allen G. Laco, Robert A. Magnusson, Anthony A. Saliture, Harlan B. Smith, Thomas F. Stutzman, Raymond G. Chambers, Frank E. Richardson, E. Burke Ross, Jr., William E. Simon and Frank W. Walsh, Jr., in the United States District Court, Western District of Wisconsin, Civil Action No. 91C-0948 (August 12, 1992).

Deposition of Daniel R. Fischel in Re: Pearl Newman, Shanna Lehmann & Athanasios Tsivelekidis, on their own behalf and on behalf of all other persons similarly situated v. On-Line Software International, Inc. Jack M. Berdy, John C. Crocker, Richard A. Granger, Richard R. Holtmeier, Michael S. Juceam, Edward J. Siegel, Howard P. Sorgen and Richard Ward, United States District Court, District of New Jersey, Consolidated Civil Action Nos. 88-3247, 88-3411 (July 28 and 29, 1992).

Deposition of Daniel R. Fischel in Re: Crazy Eddie Securities Litigation, Oppenheimer-Palmieri Fund, I.P., et al. v. Peat Marwick Main & Co., et al., United States District Court for the Eastern District of New York, 87 Civ. 0033 (EHN), 88 Civ. 3481 (EHN) (June 11, 1992; March 26 and 27, 1992).

Testimony of Daniel R. Fischel in Re: American Continental Corporation/Lincoln Savings and Loan Securities Litigation, in the United States District Court, for the District of Arizona MDL Docket No. 834 (June 4, 1992; May 26, 27 and 28, 1992).

Testimony of Daniel R. Fischel in Re: State of West Virginia v. Morgan Stanley & Co. Incorporated, in the Circuit Court of Kanawha County, State of West Virginia, Civil Action No. 89-C-3700 (April 27, 1992).

Appendix 1

- 29 -

Affidavit of Daniel R. Fischel in Re: William Steiner, on behalf of himself and all others similarly situated v. Tektronix, Inc., et al., in the United States District Court, District Court of Oregon, Civil No. 90-587-JO (March 23, 1992).

Deposition of Daniel R. Fischel in Re: Martin Kaplan and Selma Kaplan, on Behalf of Themselves and All Others Similarly Situated v. VICORP Restaurants, Inc., Charles R. Frederickson, Robert S. Benson, Emerson B. Kendall, Robert T. Marto and Johyn C. Hoyt, United States District Court, District of Colorado, Civil Action No. 90-C-2182 (February 11, 1992).

Deposition of Daniel R. Fischel in Re: Interco Incorporated v. Wasserstein, Perella & Co., Inc., United States District Court, Eastern District of Missouri, Eastern Division, No. 91-0151-C-6 (February 3, 1992 and December 12, 1991).

Statement of Daniel R. Fischel in Re: Far West Federal Bank, S.B., et al. v. Director, Office of Thrift Supervision, et al., United States District Court for the District of Oregon, Civil Action No. 90-103 PA (February 3, 1992).

Deposition of Daniel R. Fischel in Re: Capital Bank of California v. Morgan Stanley & Co., Incorporated, United States District Court, Central District of California, No. 91-1650-R (January 24, 1992).

Deposition of Daniel R. Fischel in Re: Trinity Ventures, et al. v. Federal Deposit Insurance Corporation, in its own capacity and as successor to the Federal Savings and Loan Insurance Corporation, United States District Court, for the District of Oregon, No. 90-103-PA (January 6, 1992).

Deposition of Daniel R. Fischel in Re: First Republicbank Securities Litigation, United States District Court, Northern District of Texas, Dallas Division, Civil Action No. 3-88-0641-H (January 2, and 3, 1992; November 26, 1991).

Deposition of Daniel R. Fischel in Re: State of West Virginia v. Morgan Stanley & Co. Incorporated; Salomon Brothers Inc.; and Goldman Sachs & Co., in the Circuit Court of Kanawha County, State of West Virginia, Civil Action No. 89-C-3700 (December 19 and 20, 1991).

Deposition of Daniel R. Fischel in Re: The Regina Company, Inc. Securities Litigation, United States District Court, District of New Jersey, Civil Action No. 88-4149 (HAA) (October 31, 1991).

Affidavit of Daniel R. Fischel in Re: Gillette Securities Litigation, United States District Court, District of Massachusetts, Civil Action No. 88-1858-K (October 7 1991).

Deposition of Daniel R. Fischel in Re: Capital Maritime Corporation v. Amfels, Inc., Far East Levingston Shipbuilding Ltd., John B. Allison and Patrick A. McDermid, United States District Court for the Southern District of Texas Houston Division, C.A. No. H-90-3417 (September 12, 1991).

Appendix 1

- 30 -

Deposition of Daniel R. Fischel in Re: Thomas J. Caldarone, Jr. v. Isidore Brown, et al., and John E. Washburn, et al. v. Isidore Brown, et al., United States District Court, Northern District of Illinois, Eastern Division, Docket Nos. 80 C 6251 and 81 C 1475 (August 28, 29, and 30, 1991).

Testimony of Daniel R. Fischel in Re: Apple Securities Litigation, United States District Court, Northern District of California, Northern Division, Docket No. C-84-20148 (May 20 and 21, 1991).

Testimony of Daniel R. Fischel in Re: The Stuart-James Co., Inc., et al. Litigation, United States of America before the Securities & Exchange Commission, in Denver, Colorado, Administrative Proceeding File No. 3-7164 (May 6, 1991).

Deposition of Daniel R. Fischel in Re: Jennie Farber on behalf of herself and all others similarly situated v. Public Service Company of New Mexico; Jerry D. Geist; John P. Bundrant and Albert J. Robison, United States District Court for the District of New Mexico, CIV 89-456 JB WWD (April 17 and 18, 1991).

Affidavit of Daniel R. Fischel in Re: Moise Katz, Frederick Rand, Elias Weissman, Richard D. Morgan, Marion R. Morgan and Mortimer Schulman v. Raymond A. Hay, United States District Court, Southern District of New York, No. 86 Civ. 5640 (JES) (March 29, 1991).

Deposition of Daniel R. Fischel in Re: Standard Chartered PLC., a United Kingdom corporation, et al. v. Price Waterhouse, a general partnership, Superior Court of the State of Arizona, in and for the County of Maricopa, CV 88-34414 (March 13 and 14, 1991).

Affidavit of Daniel R. Fischel in Re: United States of America v. AVX Corporation, and Commonwealth of Massachusetts v. AVX Corporation, United States District Court, District of Massachusetts, Civil Action Nos. 83-3882-Y and 83-3899-Y (January 29, 1991).

Deposition of Daniel R. Fischel in Re: Apple Computer Securities, United States District Court Northern District of California, San Jose Division, No. C-84-20148 (a) JW (December 13 and 14, 1990).

Deposition of Daniel R. Fischel in Re: Polycast Technology Corporation, and Uniroyal Plastics Acquisition Corp. v. Uniroyal, Inc., et al., United States District Court Southern District of New York, No. 87 Civ. 3297 (December 6, 1990 and November 28, 1990).

Deposition of Daniel R. Fischel in Re: Ellen Rudd, on behalf of herself and all others similarly situated, and Mayer Corporation on behalf of themselves, and all others similarly situated, and Louis Brandt, and Israel Baker, Jay R. Kuhne, Pininfarina Corp., and American Transfer Co., on behalf of themselves and all others similarly situated v. Kirk Kerkorian, et al., Superior Court of the State of California, County of Los Angeles, Nos. CA 000980, CA 000981, CA 001017, CA 620279 (June 21, 1990).

Testimony of Daniel R. Fischel in Re: City of San Jose v. Paine, Webber, Jackson & Curtis, Incorporated, et al., and related counter- and Third-Party Claims, United States District Court, Northern District, No. C-84-20601 RPA (May 23 and 24, 1990).

Appendix 1

- 31 -

Deposition of Daniel R. Fischel in Re: City of San Jose v. Paine, Webber, Jackson & Curtis, Incorporated, et al., and related counter- and Third-Party Claims, United States District Court, Northern District, No. C-84-20601 RPA (May 22, 1990), No. RPA 84-20601 (November 16, 1989 and September 8, 1989).

Testimony of Daniel R. Fischel in Re: Kulicke and Soffa Industries, Inc. Securities Litigation, United States District Court for the Eastern District of Pennsylvania, No. 86-1656 (March 20 and 21, 1990).

Deposition of Daniel R. Fischel in Re: Kulicke and Soffa Industries, Inc. Securities Litigation, United States District Court for the Eastern District of Pennsylvania, No. 86-1656 (March 9, 1990; December 19 and 21, 1989).

Affidavit of Daniel R. Fischel in Re: Viacom International Inc. v. Carl C. Icahn, et al., v. Ralph M. Baruch, et al., United States District Court, Southern District of New York, No. 86 Civ. 4215 (RPP) (March 8, 1990).

Deposition of Daniel R. Fischel in Re: Technical Equities Coordination Litigation, Superior Court of the State of California for the County of Santa Clara, Master File No. 1991, Santa Clara County Superior No. 600306 (March 1, 1990).

Deposition of Daniel R. Fischel in Re: Amalgamated Clothing and Textile Workers Union, AFL-CIO, et al. v. David A. Murdock, et al., United States District court for the Central District of California, No. CV-86-6410 IH (February 8, 1990).

Deposition of Daniel R. Fischel in Re: Connecticut National Life Insurance Company, et al. v. Peter A. Sprecher and Laventhol & Horwath, United States District Court, Central District of California, No. CV 87-1945 WJR (Tx) (January 30, 1990).

Deposition of Daniel R. Fischel in Re: Consolidated Capital Securities Litigation, United States District Court, Northern District of California, No. C-85-7332 AJZ (January 22, 1990).

Declaration of Daniel R. Fischel in Re Plaintiffs' Damages in Re: Liquidity Fund, et al. v. Southmark Corporation, et al. in the Superior Court of the State of California for the County of San Mateo, No. 332435 (January 18, 1990).

Deposition of Daniel R. Fischel in Re: Norman Kamerman, Shirley Brown, Edward Rosen, Lexim Investors Corp., and Dohsa Anstalt, on behalf of themselves and all others similarly situated, and Barnett Stepak v. Saul Steinberg, Reliance Group Holdings, Inc., Reliance Group, Inc., Reliance Financial Services corp., and Reliance Insurance Company, United States District Court, Southern District of New York, No. 84 Civ. 4440 (September 13, 1989).

Affidavit of Daniel R. Fischel in Re: Edward A. Taylor, et al. v. A. O. Smith Corporation et al., Circuit Court for Lincoln County, Tennessee, No. 098-84 (August 11, 1989).

Deposition of Daniel R. Fischel in Re: Container Products Inc. v. Pace Industries, United States District Court, Southern District of New York, No. 88-CIV. 3549 (KMW) (July 19, 1989).

Deposition of Daniel R. Fischel in Re: Joseph B. Moorman, et al. v. Southmark Corporation, et al., Liquidity Fund, et al. v. Southmark Corporation, et al., Superior Court of the State of California for the County of San Mateo, Nos. 322135 and 332435 (July 11, 1989).

Appendix 1

- 32 -

- Testimony of Daniel R. Fischel in Re: Tessie Wolfson, et al. v. Frederick S. Hammer, and Meritor Financial Group, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8471 (June 20, 1989).
- Deposition of Daniel R. Fischel in Re: Richard J. Heckmann, et al. v. C. L. Ahmanson, et al., and Consolidated Cases, Superior Court of the State of California for the County of Los Angeles, Nos. CA000851 and C642081 (June 8, 1989).
- Deposition of Daniel R. Fischel in Re: Tessie Wolfson, et al. v. Frederick S. Hammer, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8472 (May 11, 1989).
- Testimony of Daniel R. Fischel in Re: Tessie Wolfson, et al. v. Frederick S. Hammer, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8472 (April 13, 1989).
- Deposition of Daniel R. Fischel in Re: National Union Fire Insurance Company of Pittsburgh, PA v. Wells Fargo Bank, N.A., District Court of Harris County, Texas, 125th Judicial District, No. 88-49246 (April 10 and 11, 1989).
- Deposition of Daniel R. Fischel in Re: Susan Rothenberg, as Custodian for Stephen J. Rothenberg v. Charles E. Hurwitz, United Financial Corporation, United Savings Association of Texas, et al., United States District Court for the Southern District of Texas, Houston Division, Civil Action No. H-86-1435 (March 30, 1989).
- Deposition of Daniel R. Fischel in Re: Jose Nodar, et al. v. William Weksel, Albert Bromberg, Henry B. Turner, IV, Frank L. Bryant, Leo Kuperschmid, Bennett S. Lebow, Ernst & Whinney and Oppenheimer & Co., Inc., United States District Court, Southern District of New York, No. 84 Civ. 3870 (VLB) and consolidation case No. 84 Civ. 5132 (VLB) (December 15 and 16, 1988).
- Deposition of Daniel R. Fischel in Re: William Steiner, et al. v. Whittaker Corporation, et al., Superior Court of the State of California for the County of Los Angeles, No. CA000817 (December 7, 1988).
- Deposition of Daniel R. Fischel in Re: Arnold I. Laven, et al. v. Western Union Corporation, et al., United States District Court for the District, Western District of Washington, MDL No. 551 (August 30 and 31, 1988).
- Deposition of Daniel R. Fischel in Re: Washington Public Power Supply System Securities Litigation, United States District Court, Western District of Washington, MDL No. 551 (August 16 and 22, 1988).
- Affidavit of Daniel R. Fischel in Re: District Business Conduct Committee for District No. 3 v. Blinder, Robinson & Company Inc., et al., National Association of Securities Dealers, Inc. National Business Conduct Committee, Complaint No. DEN-666 (July 21, 1988).
- Deposition of Daniel R. Fischel in Re: Joseph Seidman, et al. v. Stauffer Chemical Company, et al., United States District Court for the District of Connecticut, No. B 84-543 (TFGD) (June 10, 1988 and May 5, 1987).

Appendix 1

- 33 -

Deposition of Daniel R. Fischel in Re: Edlin Cattle Co., Inc., and James Edlin v. A. O. Smith Harvestore Products, Inc., et al., United States District Court for the Northern District of Texas, Amarillo Division, No. CA-2-86-0122 (May 12, 1988).

Deposition of Daniel R. Fischel in Re: MicroPro Securities Litigation, United States District Court for the Northern District of California, No. C-85-7428-EFL (A) (May 2, 1988).

Affidavit of Daniel R. Fischel in Re: Pizza Time Theatre Securities Litigation, United States District Court for the Northern District of California, Civil File No. 84-20048-(A)-RPA (March 25, 1988).

Affidavit of Daniel R. Fischel and Robert A. Sherwin in Re: First National Bank of Louisville v. Brooks Farms, and George C. Brooks, et al., Third-Party Plaintiffs v. A. O. Smith Corporation, et al., Circuit Court for Maury County, Tennessee, No. 2058 (March 3, 1988).

Testimony of Daniel R. Fischel in Re: Nucorp Energy Securities Litigation, United States District Court for the Southern District of California, M.D.L. 514 (March 15, 16, 17, and 18, 1988).

Deposition of Daniel R. Fischel in Re: Nucorp Energy Securities Litigation, United States District Court for the Southern District of California, M.D.L. 514 (January 27, 1988).

Deposition of Daniel R. Fischel in Re: Anheuser-Busch Companies, Inc. v. W. Paul Thayer, et al., United States District Court for the Northern District of Texas, Dallas Division, No. CA-3-85-0794-R (January 21, 1988; December 4, 1987; and November 5, 1987).

Testimony of Daniel R. Fischel in Re: Securities and Exchange Commission v. First City Finance Corporation Ltd., and Marc Belzberg, United States District Court for the District of Columbia, Civil Action No. 86-2240 (December 18, 1987).

Testimony of Daniel R. Fischel in Re: The Irvine Company v. Athalie Irvine Smith and Athalie R. Clarke, Trustee, State of Michigan Circuit Court for the county of Oakland, Civil Action No. 8327011-CZ (December 14, 15, and 16, 1987).

Deposition of Daniel R. Fischel in Re: Securities and Exchange Commission v. First City Finance Corporation, Ltd. and Marc Belzberg, United States District Court for the District of Columbia, Civil Action No. 86-2240 (December 11, 1987).

Affidavit of Daniel R. Fischel in Re: Gerald D. Broder and Constance D. Broder v. Alphonse H. Bellac and William B. Weinberger v. Combustion Equipment Associates, Inc., et al., and William B. Weinberger v. Coopers & Lybrand, United States District Court for the Southern District of New York, 80 CIV 6175 (CES) 80 CIV 6839 (CES) 84 CIV 8217 (CES) (July 22, 1987).

Deposition of Daniel R. Fischel in Re: The Irvine Company v. Athalie Irvine Smith and Athalie R. Clarke, Trustee, State of Michigan, Circuit Court for the County of Oakland, Civil Action No. 83270011-CZ (June 1, 1987).

Deposition of Daniel R. Fischel in Re: Fortune Systems Securities Litigation, United States District for the Northern District of California, Master File No. 83-3348A-WHO (May 7, 1987).

Appendix 1

- 34 -

Deposition of Daniel R. Fischel in Re: Victor Technologies Securities Litigation, United States District Court for the Northern District of California, Master File No. C-83-3906(A)-RFP (FW) (January 8, 1987 and October 30, 1986).

Reply Declaration of Daniel R. Fischel in Support of the Motion by the Activision Defendants for Summary Judgment in Re: Activision Securities Litigation, United States District Court for the Northern District of California, Master File No. C-83-4639(A)-MHP (October 27, 1986).

Testimony of Daniel R. Fischel in Re: NVHomes, L.P. v. Ryan Homes, Inc.; and Ryan Homes, Inc. v. NVHomes, L.P., et al., United States District Court for the Western District of Pennsylvania, Civil Action No. 86-2139 (October 24, 1986).

Supplemental Affidavit of Daniel R. Fischel in Re: NVHomes, L.P. v. Ryan Homes, Inc.; and Ryan Homes, Inc. v. NVHomes, L.P. and NVAcquisition L.P., et al., United States District Court the Western District of Pennsylvania, Civil Action No. 86-2139 (October 24, 1986).

Affidavit of Daniel R. Fischel in Support of the Motion by the Activision Defendants for Summary Judgment in Re: Activision Securities Litigation, United States District Court for the Northern District of California, Master File No. C-86-2139 (October 20, 1986).

Declaration of Daniel R. Fischel in Support of the Motion by the Activision Defendants for Summary Judgment in Re: Activision Securities Litigation, United States District Court for the Northern District of California, Master File No. C-83-4639(A)-MHP (October 2, 1986).

Affidavit in Support of Defendants Motion for Summary Judgment in Re: MCorp Securities Litigation, United States Court for the Southern District of Texas, Civil Action No. H-85-5894 (September 25, 1986).

Deposition of Daniel R. Fischel in Re: Activision Securities Litigation, United States District Court for the Northern District of California, No. C 83 4639 (August 18 and 19, 1986).

Deposition of Daniel R. Fischel in Re: John Mancino v. James A. McMaqhan, et al., United States District Court for the Northern District of California, Civil No. C-84-0407-TEH (August 14, 1986).

Testimony of Daniel R. Fischel in Re: Charles W. Leigh, et al. and George Johnson, et al. v. Clyde William Engle, et al., United States District Court for the Northern District of Illinois, Eastern Division, Case No. 78 C 3799 (August 1, 1986).

Reply Affidavit of Daniel R. Fischel in Re: The Amalgamated Sugar Company v. NL Industries, United States District Court for the Southern District of New York, 86 Civ. 5010 (VLB) (July 28, 1986).

Affidavit of Daniel R. Fischel in Re: The Amalgamated Sugar Company v. NL Industries, United States District Court for the Southern District of New York, 86 Civ. 5010 (VLB) (July 18, 1986).

Deposition of Daniel R. Fischel in Re: Charles W. Leigh, et al. and George Johnson, et al. v. Clyde William Engle, et al., United States District Court for the Northern District of Illinois, Eastern Division, Case No. 78 C 3799 (July 1, 1986).

Appendix 1

- 35 -

Deposition of Daniel R. Fischel in Re: Seafirst Corporation v. William M. Jenkins, et al.; and Seafirst Corporation v. John R. Boyd, et al., United States District Court for the Western District of Washington at Seattle, Case No. C83-771R (February 27, 1986).

Deposition of Daniel R. Fischel in Re: Kreindler v. Sambo's Restaurants, Inc., United States District Court for the Southern District of New York, Case No. 79 Civ. 4538 (December 17, 1985).

Affidavit of Daniel R. Fischel in Re: United States of America v. S. Richmond Dole and Clark J. Matthews II (March 19, 1985).

Deposition of Daniel R. Fischel in Re: Craig T. McFarland, et al. v. Memorex Corporation, United States District Court for the Northern District of California, No. C 79-2926-WAI, C 79-2007-WAI, C 79-241-WAI (February 26, 1985; January 29 and 30, 1985).

Testimony of Daniel R. Fischel in Re: Robert J. Lawrence v. Grumman Corp. Pension Plan, et al., United States District Court for the Eastern District of New York, No. CV-81-3530 (December 19, 1983).

Testimony of Daniel R. Fishel in Re: Telvest, Inc. v. Junie L. Bradshaw, et al. and American Furniture Company, United States District Court, for the Eastern District of Virginia Richmond Division, No. CA-79-0722-R (December 4, 1981).

OTHER ACTIVITIES

Member, American Economic Association, American Finance Association.

Member of the Board of Overseers of the Becker-Friedman Institute at the University of Chicago.

Former Advisor to the Harvard Program on Corporate Governance at Harvard University.

Former Member, Board of Directors, Center for the Study of the Economy and the State.

Former Member, Mid-America Institute Task Force on Stock Market Collapse.

Have acted as a consultant and/or advisor to the New York Stock Exchange, the National Association of Securities Dealers, the Chicago Board of Trade, the Chicago Board Options Exchange, the Chicago Mercantile Exchange, the New York Mercantile Exchange, the Federal Trade Commission, the Department of Labor, the Securities and Exchange Commission, the Canadian Securities and Exchange Commission, the United States Department of Justice, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Federal Housing Finance Agency, and the Office of Thrift Supervision.

Referee, Journal of Financial Economics, Journal of Law and Economics, Journal of Legal Studies.

Participant and speaker at multiple conferences on the Economics of Corporate, Securities and Commodities Law and the Regulation of Financial Markets.

Former Chairman, American Association of Law Schools' Section on Law and Economics.

Appendix 2 Materials Relied Upon

Academic Articles and Books

A.C. MacKinlay, "Event Studies in Economics and Finance," 35 <i>Journal of Economic Literature</i> (March 1997)
J.Y. Campbell, A.W. Lo, & A.C. MacKinlay, <i>The Econometrics of Financial Markets</i> , (Princeton University Press, 1997)
G.W. Schwert, "Using Financial Data to Measure Effects of Regulation," 24 <i>The Journal of Law and Economics</i> (1981)
D.R. Fischel, "Use of Modern Finance Theory in Securities Fraud Cases Involving Actively Traded Securities," 38 <i>The Business Lawyer</i> (1982)
W. Mendenhall, J.E. Reinmuth & R.J. Beaver, <i>Statistics for Management and Economics</i> (Duxbury Press, 1993)
B. Cornell & R.G. Morgan, "Using Finance Theory to Measure Damages in Fraud on the Market Cases," 37 <i>UCLA Law Review</i> 883 (1990)
J. Macey, G. Miller, M. Mitchell & J. Netter, "Lessons from Financial Economics: Materiality, Reliance, and Extending the Reach of <i>Basic v. Levinson</i> ," 77 <i>Virginia Law Review</i> 1017 (1991)
J.C. Alexander, "The Value of Bad News in Securities Class Actions," 41 <i>UCLA Law Review</i> 1421 (1994)
J. Campbell, A. Lo & A.C. MacKinlay, <i>The Econometrics of Financial Markets</i> , (Chapter 4) Princeton University Press (1997)
Jonathan Macey and Geoffrey Miller, "Judicial Review of Class Action Settlements," <i>Journal of Legal Analysis</i> (2009)
Charles Silver and Lynn Baker, "I Cut, You Choose: The Role of Plaintiffs' Counsel in Allocating Settlement Proceeds," <i>Virginia Law Review</i> (1998)
"Principles of the Law: Aggregate Litigation," American Law Institute (2010)

Case Documents and Legal Filings

In the Matter of the Application of the Bank of New York Mellon, September 9 and 10, 2013 (Supreme Court of the State of New York: Trial Term Part 39)
Opinion, In the Matter of the Application of US Bank National Association, et al., August 12, 2016 (Supreme Court of the State of New York: Civil Term Part 60, Index No. 652382/14)
Decision, In the Matter of the Application of U.S. Bank National Association, et al., Petitioners, against Federal Home Loan Bank of Boston, et al., Respondents, August 12, 2016 (Supreme Court of the State of New York, New York County, Index No. 652382/2014)
Transcript, In the Matter of the Application of US Bank National Association, et al., January 20 and 21, 2016 (Supreme Court of the State of New York: Civil Term Part 60, Index No. 652382/14)
Verified Petition of Deutsche Bank National Trust Company, Solely as Trustee for the Trusts Listed on Exhibits 1-A and 1-B, for Instructions Regarding the Internal Affairs of the Trusts, In the matter of Certain Trusts Created, Sponsored and/or Serviced by Washington Mutual Bank and Certain Subsidiaries and Affiliates, December 12, 2016 (Superior Court of the State of California, County of Orange, Probate Division)
Amended Complaint, Deutsche Bank National Trust Company as Trustee for the Trusts listed in Exhibits 1-A and 1-B v. Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank, et al., September 8, 2010 (United States District Court for the District of Columbia, Case No.: 09-CV-1656-RMC)
Amended Memorandum Opinion, Deutsche Bank National Trust Company v. Federal Deposit Insurance Corporation, et al., June 17, 2015 (United States District Court, District of Columbia, Civil Action No. 09-1656 (RMC))

Appendix 2
Materials Relied Upon

Settlement Agreement, by and among (i) Deutsche Bank National Trust Company, solely in its capacity as trustee of the residential mortgage-backed securities trusts identified on Exhibit A hereto; (ii) JPMorgan Chase Bank, N.A. ("JPMC") and Washington Mutual Mortgage Securities Corporation ("WMMSC," and, together with JPMC, "JPMorgan"); and (iii) the Federal Deposit Insurance Corporation in both its capacity as receiver for Washington Mutual Bank (the "FDIC-Receiver") and in its corporate capacity ("FDICCorporate" and, together with the FDIC-Receiver, the "FDIC"), August 19, 2016
Trustee-JPMorgan Agreement, by and among (i) Deutsche Bank National Trust Company, in its capacity as trustee of certain residential mortgage-backed securities trusts identified in Exhibit A hereto, and (ii) JPMorgan Chase Bank, N.A. ("JPMC") and Washington Mutual Mortgage Securities Corporation ("WMMSC," and, together with JPMC, "JPMorgan"), August 19, 2016
Order Establishing a Protocol to Resolve Claims Filed by Trustees on Behalf of Certain Issuers of Residential Mortgage-Backed Securities, In re: Lehman Brothers Holdings Inc., et al., December 29, 2014 (U.S. Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 08-13555 (SCC))
Status Report of RMBS Trustees in Connection with the Order Establishing a Protocol to Resolve Claims Filed by Trustees on Behalf of Certain Issuers of Residential Mortgage-Backed Securities, In re: Lehman Brothers Holdings Inc., et al., September 9, 2016 (U.S. Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 08-13555 (SCC))
Memorandum of Points and Authorities in Support of JPMorgan Chase Bank, N.A. and Washington Mutual Securities Corporation's Motion to Dismiss and Motion for Partial Summary Judgment, Deutsche Bank National Trust Company, as Trustee for the Trusts listed in Exhibits 1-A and 1-B v. Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank, et al., November 22, 2010 (United States District Court, District of Columbia, Case No. 1:09-cv-1656 (RMC))
The Institutional Investors' Statement in Support of the Settlement, In the Matter of the Application of The Bank of New York Mellon (as Trustee), May 3, 2013 (Supreme Court of the State of New York, County of New York: IA Part 39, Index No. 651786-2011)
Settlement Agreement between the Bank of New York Mellon, Bank of America Corporation BAC Home Loans Servicing, LP, Countrywide Financial Corporation and Countrywide Home Loans, Inc. dated June 28, 2011
Verified Petition, In the Matter of the Application of The Bank of New York Mellon (as Trustee), June 29, 2011 (Supreme Court of the State of New York, County of New York, Index No. 651786/2011)
Institutional Investors' Statement in Support of Settlement and Consolidated Response to Settlement Objections, In the Matter of the Application of The Bank of New York Mellon (as Trustee), et al., v. Walnut Place LLC, et al., October 31, 2011 (United States District Court, Southern District of New York, Case 1:11-cv-05988-WHP)
Addendum of Exhibits Cited in the Bank of New York Mellon's Consolidated Response to Objections, In the Matter of the Application of The Bank of New York Mellon (as Trustee), et al., v. Walnut Place LLC, et al., October 31, 2011 (United States District Court, Southern District of New York, Case 1:11-cv-05988-WHP)
RMBS Trust Settlement Agreement between JPMorgan Chase & Co., authorized Investment Advisors and Investors and Accepting Trustees, dated November 15, 2013
Notice Regarding Modification of Proposed Settlement Agreement (as Defined Herein) from JPMorgan (as Defined Herein), Acceptance and Non-Acceptance of Modified Proposed Settlement Agreement (as Defined Herein) as to Certain RMBS Trusts and Loan Groups and Extension of Acceptance Date and Tolling Agreement as to Certain RMBS Trusts and Loan Groups, August 1, 2014
Notice Regarding Acceptance and Non-Acceptance of Modified Proposed Settlement Agreement (as Defined Herein) as to Certain Residential Mortgage-Backed Securitization Trusts and Loan Groups Identified in Exhibit A Hereto (each an "Extended Acceptance Date Trust" and Collectively, "Extended Acceptance Date Trusts") for Which the Extended Acceptance Date RMBS Trustees (as Defined Herein) Respectively Serve as Trustee, Separate Trustee, and/or Successor Trustee, October 1, 2014

Appendix 2
Materials Relied Upon

Notice Regarding Acceptance and Non-Acceptance of the Modified Proposed Settlement Agreement Dated as of April 7, 2014 and as Modified (the "Modified Proposed Settlement Agreement") from Citigroup Inc. and Its Direct and Indirect Subsidiaries ("Citigroup"), December 19, 2014
Notice Regarding Acceptance of the Settlement Agreement on Behalf of the Extended Acceptance Loan Groups, December 31, 2014
Findings of Fact, In re: Residential Capital, LLC, et al., December 11, 2013 (United States Bankruptcy Court, Southern District of New York, Case No. 12-12020 (MG))
Direct Examination of Frank Sillman, In re: Residential Capital LLC, et al., November 12, 2013 (United States Bankruptcy Court, Southern District of New York, Case No. 12-12020 (MG))
Settlement Agreement and Release, between Federal Housing Finance Agency, et al., and JPMorgan Chase & Co., et al., October 25, 2013 (United States District Court, Southern District of New York, Case No. 121 CIV. 6188 (DLC))
Amended Complaint, Federal Housing Finance Agency, as Conservator for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation v. JPMorgan Chase and Co., et al., June 13, 2012 (United States District Court, Southern District of New York, Case 1:11-cv-06188-DLC)
RMBS Trust Settlement Agreement, between Citigroup, Inc. and Institutional Investors, April 7, 2014
Verified Petition, In the Matter of the Application of The Bank of New York Mellon (as Trustee), February 5, 2016 (Supreme Court of the State of New York, County of New York, Index No. 150973/2016)
Letter from Sheila A. Sadighi to John M. Rosenthal, re: Deutsche Bank National Trust Company v. Federal Deposit Insurance Corporation et al., No. 1:09-cv-01656-RMC, dated October 24, 2016
Transcript of Minutes of Proceedings, In the matter of The Bank of New York Mellon (as Trustee), June 7, 2013 (Supreme Court of the State of New York, County of New York, Index No. 651786/2011)
Transcript of Minutes of Proceedings, In the matter of The Bank of New York Mellon (as Trustee), June 11, 2013 (Supreme Court of the State of New York, County of New York, Index No. 651786/2011)
Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors, In re: Residential Capital, LLC, et al., December 11, 2013 (United States Bankruptcy Court, Southern District of New York, Case No. 12-12020 (MG))
Time-Sensitive Notice Regarding a Proposed Settlement Between Residential Capital, LLC, et al., and the Settlement Trusts, August 22, 2012
Voluntary Petition of Bankruptcy, Residential Capital, LLC, May 14, 2012 (United States Bankruptcy Court, Southern District of New York, Case No. 12-12020 (MG))
Settlement Agreement, between Residential Capital, LLC and Institutional Investors, May 13, 2012 (United States Bankruptcy Court, Southern District of New York, Case No. 12-12020 (MG))
"Report Regarding Status of Litigation to Enforce Certain Trust Claims," Deutsche Bank National Trust Company, October 17, 2012
"Notice to WaMu Securities Holders Regarding Eighth Update on Litigation Against the Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank, JPMorgan Chase, N.A., and Washington Mutual Mortgage Securities Corporation (the "Litigation"); and Notice of Entry into Settlement Agreement," Deutsche Bank National Trust Company, August 19, 2016
"Informational Notice Regarding the Hearing Date for Trust Instructional Proceeding For the Trusts Listed on Exhibits 1-A and 1-B ("Trusts") and Update on Settlement Concerning Litigation Against the Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank, JPMorgan Chase, N.A., and Washington Mortgage Securities Corporation (the "Litigation"), Deutsche Bank National Trust Company, December 22, 2016
Petition, In the Matter of the Application of U.S. Bank National Association et al., December 21, 2014 (Supreme Court of the State of New York, County of New York, Index No. 653902/2014)

Appendix 2 Materials Relied Upon

RMBS Trust Settlement Agreement between JPMorgan Chase & Co., authorized Investment Advisors and Investors and Accepting Trustees, modified as of July 29, 2014

News Articles

Clea Benson and Dawn Kopecki, "JPMorgan to Pay \$5.1 Billion to Settle Mortgage Claims," Bloomberg, October 26, 2013
Jonathan Stempel, "Judge Limits JPMorgan's Liability for Soured WaMu Mortgages," Reuters, June 3, 2015
"Split Liability for WaMu Claim," Structured Credit Investor, June 4, 2015
"JPMorgan Settles with FDIC, Deutsche Bank in WaMu Case," Reuters, August 19, 2016
Karen Freifeld, "JPMorgan Chase to Pay \$4.5 Billion in Mortgage Security Deal," Reuters, November 15, 2013

Analyst Reports

Barclays, "Securitized Products Research, JPM settlements: Implications for Non-Agency," November 22, 2013
Credit Suisse, "Mortgage Market Comment – Citi Announces Settlement on 68 Trusts for 1.125B," April 7, 2014
Deutsche Bank, "The Outlook: In MBS and Securitized Products, Analyzing the \$1.125 billion Citigroup Settlement Deal," April 9, 2014
Morgan Stanley, "Resi Credit Insights, Citi Settlement Implications," April 8, 2014
Morgan Stanley, "J.P.Morgan Chase & Co., Litigation Headwinds Abating, Underlying Strength Intact," October 28, 2013
Barclays, "JPMorgan Chase & Co., 2016 10-Q Review: Outlook Unch'd, RPL Lower, No DoJ Libor Actions," August 4, 2016
Morgan Stanley, "J.P.Morgan Chase & Co., Settlement with Private Bond Investors a Positive Catalyst," November 18, 2013
Credit Suisse, "JPMorgan Chase & Co., JPM Settles with DOJ, Nearly \$10BN of Reserves Left; Maintain Outperform," November 19, 2013
Barclays, "JPM Settlements: Implications for Non-Agency," November 22, 2013
Credit Suisse, "Mortgage Market Comment – Citi Announces Settlement on 68 Trusts for \$1.125B," April 7, 2014
Deutsche Bank, "The Outlook In MBS and Securitized Products, Analyzing the \$1.125 Billion Citigroup Settlement Deal," April 9, 2014
Bank of America Merrill Lynch, "Non-Agency Alert, It's Time for WaMu Settlement," August 23, 2016
Barclays, "Securitized Products, Citi Proposes \$1.125bn R&W Settlement," April 7, 2014

Expert Reports

Expert Report of Daniel R. Fischel dated July 17, 2014, available at http://www.rmbstrusteesettlement.com/Expert_Report_of_Daniel_R_Fischel.pdf .
Supplemental Report of Daniel R. Fischel dated July 26, 2014, available at http://www.rmbstrusteesettlement.com/Supp_Expert_Report_of_Daniel_R_Fischel_July_26_2014.pdf
Expert Report of Bradford Cornell dated December 3, 2014
Expert Report of Philip R. Burnaman, II dated March 14, 2013

SEC Filings

Annual Report, JPMorgan Chase & Co., for the Year Ended December 31, 2014
Annual Report, JPMorgan Chase & Co., for the Year Ended December 31, 2015

Appendix 2 Materials Relied Upon

Press Releases

"FHFA Announces \$5.1 Billion in Settlements with J.P. Morgan Chase & Co.," Federal Housing Finance Agency, October 25, 2013
"Bank of America Announces Agreement on Legacy Countrywide Mortgage Repurchase and Servicing Claims," Bank of America Press Release, June 29, 2011
"18 Institutional Investors in RMBS Issued By Citigroup Announce Binding Offer By Citigroup To Four RMBS Trustees To Settle Mortgage Repurchase Claims for 68 RMBS Trusts," Gibbs & Bruns LLP Press Release, April 7, 2014

Other Data and Documents

FDIC Resolutions Handbook, revised December 23, 2014 available at https://www.fdic.gov/about/freedom/drr_handbook.pdf#nameddest=Ch1
Washington Mutual Bank, Receivership Balance Sheet for the Period as of December 31, 2016, last accessed on March 7, 2017 at https://closedbanks.fdic.gov/drrip/Ext/BalDetails/10015
Settlement of Claims Concerning Trusts Created, Sponsored, or Serviced by Washington Mutual Bank, http://www.globic.com/wamurmbssettlement
Excel Version of (1) Amended Exhibit 16 (Final Version of the RMBS Trust Claims Schedule to the Plan) and (2) Annex to Exhibit 3 (Representative Share Schedules to the RMBS Claims Trust Agreement)," accessed at http://www.rescaprmbssettlement.com/docs/FiledResCapSchedules.xlsx on May 27, 2014
CRSP 1962 US Stock and Indexes Database ©2016 The University of Chicago on behalf of its Center for Research in Security Prices (CRSP®) at Chicago Booth
Thomson Financial
Reuters Knowledge
CapitalIQ
Factset

All other documents and data cited in the report, exhibits, and appendices.

Exhibit A

Value of the Trustee Allowed Claim

Value of Receivership Estate

Value of Receivership Estate as of 12/31/16	2,762,851,000	[A]
 <u>Claims on Estate</u>		
Claims Senior to the Trusts' Claim		
FDIC-Receiver Claim	-7,000,000	[B]
Payment to JPMC	<u>-645,000,000</u>	[C]
Value of Receivership Estate After More Senior Claims	2,110,851,000	[D]=[A]+[B]+[C]
 Claim Amount Per Proposed Settlement	 3,006,929,660	 [E]
 Other Parri Passu Claims		
General Creditor	19,249,000	[F]
Senior Debt Holder	<u>6,077,557,000</u>	[G]
Total Other Parri Passu Claims	6,096,806,000	[H]=[F]+[G]
 Total Parri Passu Claims	 9,103,735,660	 [I]=[E]+[H]
 Claim Amount as % of Total Parri Passu Claims	 33.03%	 [J]=[E]/[I]
 Cash Amount Expected to be Received by the Trusts	 697,206,149	 [K]=[D]*[J]

Sources:

[A] Washington Mutual Bank - Receivership Balance Sheet Summary

[B] Report ¶ 26.

[C] Petition ¶ 58.

[E] Petition ¶ 58.

[F] Washington Mutual Bank - Receivership Balance Sheet Summary

[G] Washington Mutual Bank - Receivership Balance Sheet Summary

Note:

Washington Mutual Bank - Receivership Balance Sheet Summary accessed on 4/13/17 and available at <https://closedbanks.fdic.gov/drrip/Ext/BalDetails/10015>

Exhibit B
Consideration as a Percentage of Lifetime Losses
(\$ Millions)

WMB Trusts Estimated Actual and Future Losses	\$17,399.00	[A]
WMMSC Trusts Estimated Actual and Future Losses	<u>\$1,237.00</u>	[B]
Total	\$18,636.00	[C]=[A]+[B]
Allowed Claim Per Proposed Settlement	\$3,006.93	[D]
Estimated Cash Value of Claim	\$697.21	[E]
Reimbursement of Fees and Expenses Incurred by the Trusts in the Action	<u>\$70.00</u>	[F]
Total Estimated Cash Value of Claim After Reimbursement	\$627.21	[G]=[E]-[F]
Less 11.9% of Losses on WMMSC Trusts	<u>\$147.19</u>	[H]=[B]*11.9%
Cash Amount to WMB Trusts	\$480.02	[I]=[G]-[H]
Ratio of Allowed Claim to Cash Value of Claim	4.31	[J]=[D]/[E]
Claim With Value Equivalent to Cash Amount to WMB Trusts	\$2,070.25	[K]=[I]*[J]
Percentage Recovery of WMB trusts (Based on Claim Dollars)	11.9%	[L]=[K]/[A]

Sources:

[A] Petition ¶ 40.

[B] Petition ¶ 40.

[D] Petition ¶ 58.

[E] Report Exhibit A.

[F] Report ¶ 48

Exhibit C
Recent Settlements with RMBS Trustees Involving a Large Number of Trusts
(\$ Amounts in Billions)

Settlement	Number of Trusts	Settlement Covers	Cash Consideration or Allowed Claim	Other Settlement Components	Value of Other Settlement Components	Expected Lifetime Losses	Settlement Ratios		Analyst Estimates of Cash Consideration as % of Expected Lifetime Losses			
							Cash or Consideration / (Expected Lifetime Losses)	(Cash or Consideration + Value of Other Settlement Components) / Expected Lifetime Losses	Barclays	Credit Suisse	Deutsche Bank	Morgan Stanley
							[H] = [D] / [G] *	[I] = ([D] + [F]) / [G] *				
[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H] = [D] / [G] *	[I] = ([D] + [F]) / [G] *	[J]	[K]	[L]	[M]
[1] Proposed Settlement	99	Representations and Warranties; Documentation; Servicing	\$3.0	Subservicing Protocol	0	\$18.636	11.9%	11.9%				
[2] Countrywide Settlement	530	Representations and Warranties; Documentation; Servicing	\$8.5	Servicing Improvements; Document Remedy	\$2.5-\$3.1	\$67.75-107.8	7.9% - 12.5%	10.2%-17.1%	10.8%	9.5%	10.2%	9.2%
[3] JPM Settlement	330	Representations and Warranties; Documentation; Servicing	\$4.5	Subservicing Protocol	\$0.031	\$63.928	7.0%	7.1%	7.2%	6.5%	6.8%	6.2%
[4] Citigroup Settlement	68	Representations and Warranties; Document Deficiencies	\$1.125	None	N/A	\$13.486	8.3%	8.3%	7.9%	8.0%	8.2%	7.3%
[5] ResCap Settlement	1,100	Representations and Warranties; Documentation; Servicing	\$7.3	None	N/A	\$105.393	6.9%	6.9%	N/A	N/A	N/A	N/A

* This method is used for settlements other than the Proposed Settlement. The settlement ratio for the Proposed Settlement is calculated in Exhibit B.

Notes and Sources:

This table includes other trustee settlements that are similar in that they follow the housing crisis and release representations, warranties and servicing claims held by a large number of RMBS Trusts.

[1][A] Petition ¶ 58.

[1][B] Petition ¶ 3.

[1][C] See Report ¶ 15 referencing Settlement Agreement at p. 1 & §§ 3.03 and Trustee-JPMorgan Agreement at p. 1 & §§ 3.02 & Report Note 94.

[1][D] Petition ¶ 58.

[1][E] Petition ¶ 61.

[1][F] Petition ¶ 28.

[1][G] Petition ¶ 40.

[1][H] See Exhibit B.

[1][I] See Exhibit B.

[2][A] This settlement covered claims on 530 Countrywide-issued RMBS trusts for which BNY Mellon serves as Trustee. See Bank of America Press Release "Bank of America Announces Agreement on Legacy Countrywide Mortgage Repurchase And Servicing Claims" dated June 29, 2011.

[2][B] See Bank of America Press Release "Bank of America Announces Agreement on Legacy Countrywide Mortgage Repurchase And Servicing Claims" dated June 29, 2011.

[2][C] See "Settlement Agreement" dated June 28, 2011 at 32-33.

[2][D] See "Settlement Agreement" dated June 28, 2011 at 9. The settlement agreement included payment for costs and expenses incurred by trustees, as well as attorneys' fees of \$85 million. These amounts are excluded from the cash settlement amount. See Settlement Agreement at Exhibit C (letter re: Pooling and Servicing Agreements and Sale and Servicing Agreements dated June 28, 2011, at 1-2), and Exhibit F ("Fee Schedule for Institutional Investors"

[2][E] See "Settlement Agreement" dated June 28, 2011 at 14-28, 28-31.

[2][F] See "Expert Report of Philip R. Burnaman, II In the matter of The Bank of New York Mellon as Trustee," No. 651786/2011 (Sup. Ct., N.Y. County) dated March 14, 2013 at 8.

- [2][G] Expected lifetime losses are drawn from contemporaneous estimates by Bank of America (\$67.75 billion) and the Institutional Investors (\$107.8 billion). See Transcript of Minutes of Proceedings In the matter of The Bank of New York Mellon as Trustee, No. 651786/2011 (Sup. Ct., N.Y. County) dated June 7, 2013 at 609-10 (for the Certificateholders' estimate) and the transcript of the same proceedings, dated June 11, 2013 pp. 974, 1033-4, 1043 & 1046 (for Bank of America's estimate).
- [2][H] The settlement as a fraction of lifetime losses is computed as follows: $7.9\% = 8.5 / 107.8$; $12.5\% = 8.5/67.75$.
- [2][I] The total settlement value as a fraction of lifetime losses is computed as follows: $10.2\% = (8.5+2.5)/107.8$; $17.1\% = (8.5+3.1)/67.75$.
- [2][J] See Bordia, Sandeep, Jasraj Vaidya, Dennis Lee, Harkaran Talwar, and Tejvansh Thakral. "JPM Settlements: Implications for non-agency." Barclays Securitized Products Research, November 22, 2013, at 1.
- [2][K] See Firestein, Marc and Mahesh Swaminathan. "Mortgage Market Comment: Citi announces settlement on 68 trusts for \$1.125B." Credit Suisse Fixed Income Research, April 7 2014, at 1.
- [2][L] See Shen, Ying and Richard Mele. "Analyzing the \$1.125 billion Citigroup settlement deal." The Outlook: In MBS and Securitized Products, Deutsche Bank Securities Inc., April 9, 2014, at 1.
- [2][M] See Egan, James, Vishwanath Tirupattur, and Jose Cambronero. "Citi Settlement Implications," Morgan Stanley Resi Credit Insights, April 8 2014, at 2. Estimated losses are as of November 2013, when the JPM settlement was first announced. *Id.*
- [3][A] This proposed settlement covered representation and warranty, servicing, and documentation claims against JPMorgan entities in connection with 330 RMBS Trusts. See "RMBS Trust Settlement Agreement" dated November 15, 2013 at 1, 9 and Exhibit A to JPM Settlement Agreement.
- [3][B] See Freifeld, Karen. "JPMorgan Chase to pay \$4.5 billion in mortgage security deal." Reuters, November 15, 2013.
- [3][C] See "RMBS Trust Settlement Agreement" dated November 15, 2013 at 9-10.
- [3][D] See Expert Report of Daniel R. Fischel regarding the JPM Settlement (dated July 17, 2014) at Exhibit D. The settlement also provides for reimbursement of trustee evaluation expenses incurred to evaluate the settlement, claims, and terms, as well as those incurred in conjunction with any judicial instruction proceeding, as well as attorneys' fees of \$66 million. These amounts are not included in the cash amount. See "RMBS Trust Settlement Agreement" dated November 15, 2013 at 8 & 16.
- [3][E] See "RMBS Trust Settlement Agreement" dated November 15, 2013 at 9.
- [3][F] See Expert Report of Daniel R. Fischel regarding the JPM Settlement (dated July 17, 2014) ¶¶ 90-94 & Exhibit D.
- [3][G] See Expert Report of Daniel R. Fischel regarding the JPM Settlement (dated July 17, 2014) at Exhibit D.
- [3][J] See Bordia, Sandeep, Jasraj Vaidya, Dennis Lee, Harkaran Talwar, and Tejvansh Thakral. "JPM Settlements: Implications for non-agency." Barclays Securitized Products Research, November 22, 2013, at 1.
- [3][K] See Firestein, Marc and Mahesh Swaminathan. "Mortgage Market Comment: Citi announces settlement on 68 trusts for \$1.125B." Credit Suisse Fixed Income Research, April 7 2014 at 1.
- [3][L] See Shen, Ying and Richard Mele. "Analyzing the \$1.125 billion Citigroup settlement deal." The Outlook: In MBS and Securitized Products, Deutsche Bank Securities Inc., April 9, 2014 at 1.
- [3][M] See Egan, James, Vishwanath Tirupattur, and Jose Cambronero. "Citi Settlement Implications," Morgan Stanley Resi Credit Insights, April 8 2014, at 2. Estimated losses are as of November 2013, when the JPM settlement was first announced. *Id.*
- [4][A] See Gibbs & Bruns LLP Press Release "18 Institutional Investors in RMBS Issued By Citigroup Announce Binding Offer By Citigroup To Four RMBS Trustees To Settle Mortgage Repurchase Claims for 68 RMBS Trusts" dated April 7, 2014.
- [4][B] See "18 Institutional Investors in RMBS Issued by Citigroup Announce Binding Offer by Citigroup to Four RMBS Trustees to Settle Mortgage Repurchase Claims for 68 RMBS Trusts." Gibbs & Bruns LLP Press Release dated April 7, 2014.
- [4][C] See "RMBS Trust Settlement Agreement" dated April 7, 2014, at 8-9.
- [4][D] See "RMBS Trust Settlement Agreement" dated April 7, 2014, at 8. The settlement also included reimbursement of attorneys' fees of \$41 million, as well as reasonable costs, fees, and expenses incurred by Trustees. These amounts are not included in the cash total. *Id.*, at 7 & 13.
- [4][E] See "RMBS Trust Settlement Agreement" dated April 7, 2014.
- [4][G] See Expert Report of Daniel R. Fischel regarding the JPM Settlement (dated July 17, 2014) at Exhibit D.
- [4][J] See Bordia, Sandeep, Jasraj Vaidya, Dennis Lee, Harkaran Talwar, and Tejvansh Thakral. "Citi Proposes \$1.125bn R&W Settlement." Barclays Securitization Research, April 7, 2014, at 1.
- [4][K] See Firestein, Marc and Mahesh Swaminathan. "Mortgage Market Comment: Citi announces settlement on 68 trusts for \$1.125B." Credit Suisse Fixed Income Research, April 7, 2014 at 1.
- [4][L] See Shen, Ying and Richard Mele. "Analyzing the \$1.125 billion Citigroup settlement deal." The Outlook: In MBS and Securitized Products, Deutsche Bank Securities Inc., April 9, 2014 at 1.
- [4][M] See Egan, James, Vishwanath Tirupattur, and Jose Cambronero. "Citi Settlement Implications," Morgan Stanley Resi Credit Insights, April 8, 2014, at 2. Estimated losses are as of April 8, 2014. *Id.*
- [5][A] The ResCap settlement was approved on December 11, 2013 under a Plan of Bankruptcy. See Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors, In re: Residential Capital, LLC, et al., Debtors, dated December 11, 2013 at 35. The approved plan covered "approximately 1,100 RMBS trusts." See Findings of Fact In re: Residential Capital, LLC, et al., Debtors, dated December 11, 2013 ("Findings of Fact"), at ¶ 98. As of March 31, 2014, 1,097 Trusts had filed claims under the settlement. See "Excel Version of (1) Amended Exhibit 16 (Final Version of the RMBS Trust Claims Schedule to the Plan) and (2) Annex to Exhibit 3 (Representative Share Schedules to the RMBS Claims Trust Agreement)," accessed at <http://www.rescaprmbssettlement.com/docs/FiledResCapSchedules.xlsx> on May 27, 2014. The approved settlement was an amended version of the original ResCap settlement announced on May 13, 2012, which covered only 392 trusts. See "Time-Sensitive Notice Regarding a Proposed Settlement Between Residential Capital, LLC, et al., and the Settlement Trusts," dated August 22, 2012 at 2; Findings of Fact, at ¶ 101. ResCap filed for bankruptcy on May 14, 2012, just one day following the original settlement. See Residential Capital, LLC's Voluntary Petition filed in United States Bankruptcy Court in the Southern District of New York, May 14, 2012.
- [5][B] See Findings of Fact In re: Residential Capital, LLC, et al., Debtors, dated December 11, 2013 ("Findings of Fact"), at ¶ 98.
- [5][C] See "RMBS Trust Settlement Agreement" dated May 13, 2012 at 7 and Findings of Fact, at ¶104.
- [5][D] Approximately 1,100 Trusts received an allowed claim of \$7.3 billion under the settlement See "Findings of Fact" dated December 11, 2013, at ¶104.
- [5][E] See "RMBS Trust Settlement Agreement" dated May 13, 2012.
- [5][G] See Expert Report of Daniel R. Fischel regarding the JPM Settlement dated July 17, 2014, at Exhibit D. 30 deals were not included in the calculation because data on them was not available. *Id.* An expert for ResCap, Frank Sillman, estimated that the sum of "Lifetime Losses for Non-Wrapped Debtor-Sponsored Trusts", "Lifetime Losses for Non-Wrapped Bonds Within Wrapped Debtor-Sponsored Trusts" and "lifetime losses for the Debtor-sold loans in the non-Debtor-sponsored trusts" ranged from \$42.4 billion to \$43.2 billion. Sillman Direct ¶¶ 25, 33 & 42. Wrapped indicates payments on some of the trust's certificates were insured by a third party. Because Mr. Sillman's methodology for estimating lifetime losses differs from the method used here, his estimate is not comparable to our estimates of expected lifetime losses. If his estimate were used, the Settlement Ratio for the ResCap Settlement would range from 16.9% (i.e. 7.3 / 43.2) to 17.2% (i.e. 7.3 / 42.4).

Exhibit D
JP Morgan Chase & Co.
Stock Price Reaction to Disclosure of the Proposed Settlement

Stock Price		Actual Return			Residuals and t-Statistics		
Reaction Date	Event	Day 0	Day +1	2-day	Day 0	Day +1	2-day
08/19/16	The Trustee disclosed the Proposed Settlement.	-0.14%	-0.09%	-0.23%	-0.34%	-0.12%	-0.46%
					-0.65	-0.22	-0.62

Notes: Residual returns are from the regression of JP Morgan's stock returns on the S&P 500 Index and a value-weighted portfolio of firms in the KBW Bank Index estimated over the one year period prior to the stock price reaction date.

Residuals and t-statistics in bold exceed the absolute value of 1.65 which denotes statistical significance at the 95% level in a one-tailed test.

Sources: CRSP 1962 US Stock and Indexes Database ©2016 The University of Chicago on behalf of its Center for Research in Security Prices (CRSP®) at Chicago Booth