

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

PHT HOLDING II LLC, on behalf of itself and all others similarly situated,)	
)	Civil Action No. 18-CV-00368
Plaintiff,)	Honorable Stephanie M. Rose
)	Honorable Helen C. Adams
vs.)	
)	DECLARATION OF SETH ARD
NORTH AMERICAN COMPANY FOR)	IN SUPPORT OF PLAINTIFF’S
LIFE AND HEALTH INSURANCE,)	MOTION FOR FINAL
)	APPROVAL OF CLASS
Defendant.)	ACTION SETTLEMENT
)	

I, Seth Ard, declare as follows:

1. I submit this declaration in support of Plaintiff’s Motion for Final Approval of Class Action Settlement.

2. I am a partner at the law firm of Susman Godfrey L.L.P. (“SG” or “Class Counsel”), which is counsel for Plaintiff and the Court-appointed Class Counsel in this Action. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

3. Susman Godfrey has significant experience with insurance litigation and class actions, including cost of insurance (“COI”) class actions and settlements thereof. *See Exhibit 1.* Susman Godfrey has been appointed sole Class Counsel in numerous cases seeking recovery of COI overcharges against insurers, including cases involving Phoenix Life Insurance Company, Security Life of Denver Insurance Company, Genworth Life Insurance & Annuity Company, Voya Retirement Insurance and Annuity Company, Lincoln Life & Annuity Company of New York,

AXA Equitable Life Insurance Company, ReliaStar Life Insurance Company, John Hancock Life Insurance Company (U.S.A.), and PHL Variable Insurance Company.¹

4. My firm’s results in such cases have been lauded by federal judges as “superb,” *Fleisher v. Phoenix Life Ins. Co.*, No. 11 Civ. 8405 (S.D.N.Y. Sep. 24, 2015), Dkt. 319 at 3:9-11; “the best settlement pound for pound for the class I’ve ever seen,” *id.*; and “quite extraordinary,” *37 Besen Parkway, LLC v. John Hancock Life Insurance Co.*, 15-cv-9924 (PGG), Dkt. 164 at 20:10 (S.D.N.Y. Apr. 18, 2019). I also closely follow other class actions involving life insurance, particularly COI class actions. I am thus intimately familiar with the terms of settlement in these types of cases, how to evaluate the relative strengths and weaknesses in such cases, and what a successful result looks like.

5. The Court preliminarily approved the settlement in this action on August 25, 2023. Dkt. 310.

6. This case was originally filed over five years ago on October 30, 2018. Fact discovery lasted until March 4, 2021, with supplemental discovery obligations under Federal Rule of Civil Procedure 26(e) continuing thereafter. Class Counsel and its experts analyzed over 17,600 documents spanning more than 115,000 pages, which included extensive actuarial tables, policy-level data reflecting the historical credits and deductions to the account value of all Class

¹ The following is a non-exhaustive list of COI cases in which Susman Godfrey has been found to be “adequate” class counsel: *Fleisher v. Phoenix Life Ins. Co.*, 2013 WL 12224042, at *12 (S.D.N.Y. July 12, 2013); *Vida Longevity Fund, LP v. Lincoln Life & Annuity Co. of N.Y.*, 2022 WL 986071, at *5 (S.D.N.Y. Mar. 31, 2022); *Advance Tr. & Life Escrow Servs., LTA v. Sec. Life of Denver Ins. Co.*, 2021 WL 62339, at *9 (D. Colo. Jan. 6, 2021); *Hanks v. Lincoln Life & Annuity Co. of N.Y.*, 330 F.R.D. 374, 387 (S.D.N.Y. 2019); *Advance Tr. & Life Escrow Servs., LTA v. ReliaStar Life Ins. Co.*, 2022 WL 911739, at *11 (D. Minn. Mar. 29, 2022); *Advance Tr. & Life Escrow Servs., LTA v. N. Am. Co. for Life & Health Ins.*, 592 F. Supp. 3d 790, 809-10 (S.D. Iowa 2022); and *37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, 15 Civ. 9924 (S.D.N.Y. Nov. 1, 2018), Dkt. 139 ¶¶ 7-8.

Members' policies, and thousands of complex spreadsheets. In total, Plaintiff issued 39 requests for production, 25 interrogatories, and 3 requests for admission, and Defendant issued 29 requests for production and 17 interrogatories. Plaintiff also issued subpoenas to North American's parent and sister companies. Class Counsel engaged in numerous rounds of meet and confers with respect to these discovery requests, including extended negotiations over search terms, custodians, privilege logs, and other issues. Class Counsel's diligence was rewarded, as it uncovered key documents on liability issues during the discovery process. *See* Dkt. 231 (MSJ Res) at 22–23, 37.

7. Class Counsel also secured access to Milliman's MG-ALFA actuarial software, which was used by North American to model its corporate loss reserves and other financials and was essential to allow Plaintiff's experts to opine on the impropriety of North American's failure to decrease its COIs despite improved mortality.

8. Class Counsel took 6 highly technical fact depositions (one of which took place over three days). Through these depositions, which included testimony from North American's corporate representatives under Federal Rule of Civil Procedure 30(b)(6), Plaintiff obtained key admissions that it deployed to support class certification, overcome summary judgment, and win key motions *in limine*, which created significant risk for North American at trial. Class Counsel also defended two depositions of corporate representatives and prepared for and participated in the deposition of the original owner of Plaintiff's policy.

9. This Action involved significant expert analyses and reporting. Plaintiff produced expert reports from the following experts: actuarial expert Howard Zail and damages expert Robert Mills. Plaintiff produced opening expert reports from Zail and Mills on June 6, 2022. In response, North American designated actuarial expert Jack Gibson and financial expert Craig Merrill. North American produced reports from its experts on July 22, 2022. On September 9, 2022, Plaintiff

produced rebuttal reports from Zail and Mills. North American then served sur-rebuttal reports from Gibson and Merrill on October 26, 2022, and October 31, 2022, respectively. All four experts were deposed. After receiving updated policyholder data, Plaintiff's experts produced supplemental reports on May 18, 2023. In response to the Court's order excluding certain opinions by Merrill and the updated policyholder data, North American's experts produced supplemental reports on May 31, 2023. Zail and Mills produced supplemental rebuttal reports on June 5, 2023. Collectively, the parties produced eighteen expert reports that totaled approximately 583 pages, with thousands of pages of exhibits and appendices. Class Counsel also retained a consulting expert, who provided invaluable assistance to Plaintiff and the Class. Plaintiff's litigation and consulting experts engaged in extensive analyses of North American's models, data and documents produced in the Action.

10. The parties engaged in extensive motion practice in this Action. On March 22, 2022, after over 200 pages of briefing (and over 40,000 pages of exhibits), the Court certified a nationwide class "consisting of all current and former owners of Classic Term UL I or II issued or insured by North American Company for Life & Health Insurance, or its predecessors, during the Class Period." Dkt. 148 at 29. As part of its class certification submission, Class Counsel provided over 50 pages of comprehensive surveys marshaling the law across the nationwide class on state rules of contract interpretation and statute of limitations and synthesized that law into a manageable approach for trial. Dkt. 92-5-8 & 92-10. The Court found that this analysis overcame the shortcoming in *Taylor v. Midland Nat'l Life Ins. Co.*, Case No. 4:16-cv-00140-SMR- HCA, 2019 WL 7500238 (S.D. Iowa May 3, 2019), another case involving a challenge to COI charges, where the plaintiff failed to submit an "extensive analysis of state law variations' to carry his burden of demonstrating compliance with Rule 23(b)(3)" resulting in the denial of class

certification and supported a finding here that common questions of fact and law predominated. Dkt. 148-25–26 (citing *Taylor*, 2019 WL 7500238, at *7). In appointing Susman Godfrey as class counsel, the Court noted that Susman Godfrey has “extensive experience litigating class actions, including class actions very similar to this case” and had already expended “[s]ubstantial time, years in fact, investigating potential claims in this case during discovery.” Dkt. 148 at 28–29.

11. In opposition to Plaintiff’s motion for class certification, Defendant filed motions to exclude Plaintiff’s experts. Dkt. Nos. 117, 119. Class Counsel opposed these motions, including submitting rebuttal declarations by Zail and Mills. Dkts. 132, 133, 134-1, 134-3. In its order denying North American’s motions to exclude, the Court refused to adopt North American’s attempt to “resurrect the long-buried theory-of-the-pleadings doctrine” by arguing that Zail’s opinions must be excluded; rejected North American’s incorrect claim that Mills’ opinions should be excluded because his models were inconsistent with models he has prepared in other COI cases; and dismissed North American’s other attacks as relating to merits or credibility issues, not the admissibility of the testimony. Dkt. 148 at 9-18.

12. At class certification, North American made its first of three attempts to offer testimony from previously undisclosed witnesses in violation of Rule 26(a). Specifically, North American submitted declarations from four undisclosed agent witnesses to inject individualized issues of contract interpretation. Dkts. 116-32, 116-33, 116-34. 116-55. Class Counsel moved to strike these declarations, arguing that despite knowing from the outset of the case that it might rely on agent witnesses and a direct disavowal by its corporate representative of any knowledge of communications with agents, North American engaged in “litigation by ambush” by not disclosing such witnesses until after the close of discovery causing prejudice and harm to Plaintiff. Dkt. 128. Agreeing with Class Counsel, the Court rejected North American’s self-serving attempts to justify

its belated disclosure of these witnesses and concluded that exclusion of these witnesses was appropriate. Dkt. 148 at 9 (“None of these declarations may be used as evidence in this case.”).

13. On April 14, 2022, North American filed a “Motion to Clarify or Modify the Court’s Order Striking the Declarations of Four Insurance Agents [Dkt. 148].” Dkt. 154. North American sought “clarification that the agents’ testimony should be admissible for trial and other post-class certification proceedings.” *Id.* Plaintiff filed its opposition on April 27, 2022, Dkt. 157, and North American filed its reply on May 4, 2022. Dkt. 158. On December 5, 2022, the Court denied the motion. Dkt. 221. The Court stated that “North American presents no newly discovered evidence, nor errors of law or fact” and rejected North American’s argument that it could use the agent declarations for impeachment. *Id.* at 8–10 (“It argues that it wishes to use the agent declarations as impeachment but, as Advance Trust points out, it is unclear what witnesses the agents would impeach.”).

14. Following class certification, the Court approved Class Counsel’s proposed notice plan and appointed JND Legal Administration LLC (“JND”) as the Notice Administrator. Dkt. 188 at 2. Class Members were given notice by first-class mail and were given a 45-day window in which to opt out. Dkt. 156-2 ¶¶ 13 & 16; Dkt. 188. JND also set up a website with information in a long form notice, as well as a toll-free number that Class Members could call. Dkt. 156-2 ¶¶ 14–15. JND received 7 requests from Class Members to opt out of the class during the opt-out period. It is my opinion that JND adequately discharged its duties in its role as the Notice Administrator.

15. On September 16, 2022, North filed a “Motion for an Order to Show Cause Why the Court Should Not Appoint a Neutral Expert under FRE 706.” Dkt. 175. Class Counsel filed an opposition on October 14, 2023, arguing that the appointment of a Rule 706 expert was unnecessary, would delay trial, and would confuse the jury. Dkt. 183. Class Counsel further argued

that “[i]dentifying an expert that is truly ‘neutral’ will therefore be critical, but likely impossible” because “most actuaries are tied to the insurance industry.” *Id.* North American filed its reply on October 21, 2023. Dkt. 189. On December 5, 2023, the Court denied North American’s motion, stating that “[t]he Court agrees with Advance Trust that this is not an ‘extraordinary case’ requiring a Rule 706 expert.” Dkt. 221 at 2–8.

16. On November 18, 2022, North American moved for summary judgment arguing, among other things, that Plaintiff cannot demonstrate genuine issues of fact exist demonstrating breach of contract, that the case is barred by statute of limitations and laches and that Plaintiff’s claim is barred by fraud. Dkt. 201; Dkt. 210. On January 31, 2023, Plaintiff filed its opposition to summary judgment. Dkt. 227; Dkt. 231. After full briefing by the parties, encompassing over 150 pages of briefing (and over 1000 pages of exhibits), the Court denied North American’s motion for summary judgment against the Plaintiff. Dkt. 294. Agreeing with Plaintiff, the Court found that the policy provisions at issue were ambiguous. *Id.* at 22 (“PHT’s interpretation of ‘based on’ is not unreasonable and the proper interpretation of ‘based on’ contained in the COI rate provision is ambiguous.”); *id.* at 23 (“The COI rate provision of the Class Policies is ambiguous and PHT has offered a reasonable interpretation of it.”). The Court also held that whether North American breached the contract was a question of fact for the jury. *Id.* at 24. The Court further rejected North American’s affirmative defenses that Plaintiff’s claims were barred by fraud and statute of limitations. *Id.* at 35 (“North American’s fraud defense is barred by the incontestability clause.”); *Id.* at 28 (“Put simply, PHT’s claim for breach of contract did not accrue years ago.”). The Court found that summary judgment was not proper on North American’s affirmative defense of laches. *Id.* at 29.

17. At summary judgment, North American submitted declarations from two previously undisclosed witnesses. Dkts. 201-4, 201-5. Class Counsel moved to strike these two declarations, arguing that North American again, without justification, failed to disclose witnesses in violation of Rule 26. The Court agreed, holding that “[i]t is clear that North American has violated Rule 26” and “exclusion in the proper remedy.” Dkt. 294 at 61–62.

18. Both parties filed *Daubert* motions to exclude the other party’s experts. Dkts. 193, 194, 195-1, 199, 200. The parties submitted over 150 pages of briefing and over 1200 pages of exhibits and appendices in connection with the *Daubert* motions. The Court denied North American’s motion to exclude Plaintiff’s experts. Dkt. 294 at 53 & 57. The Court, however, granted Plaintiff’s motion in part, prohibiting “[Craig] Merrill from offering testimony or opinions on actuarial matters.” *Id.* at 44. This was a core component of Merrill’s proposed expert testimony.

19. Class Counsel conducted a professionally administered full-day mock trial in Des Moines on April 13, 2023 with over two dozen mock jurors from the local community.

20. The Court initially set a trial date for June 12, 2023, but due to the Court’s trial schedule reset the trial date to June 20, 2023. Dkts. 250, 260. After the Court denied North American’s late-breaking requests for a continuance and to extend the discovery period, Dkts. 260, 286, the parties prepared intensely for trial, including readying trial examinations, deposition designations, exhibit lists, witness lists, stipulations, jury instructions, verdict forms, and the proposed joint pretrial order (which the parties revised substantially following the Court’s ruling on summary judgment and *Daubert* motions). Dkts. 276, 278, 279, 280, 281, 282, 297, 298, 299, 303.

21. The parties briefed a total of 15 motions *in limine* and filed more than 30 pages of single-spaced briefing on hotly contested jury instructions relating to *contra proferentem*, statute

of limitations, laches, and damages. Dkts. 252, 253, 263, 266, 281-2, 292, 293, 297-2. For a third time, North American tried to circumvent Rule 26 by listing four previously undisclosed witnesses on its trial exhibit list. Plaintiff filed a motion *in limine* to exclude these witnesses from trial. Finding Plaintiff's motion had merit, the Court refused to permit three of the witnesses to testify and limited the testimony of the fourth witness to verifying certain extracted data is true and correct. Dkt. 296 at 2.

22. During the final pretrial conference on June 16, 2023, the Court granted Plaintiff's request for certain preliminary jury instructions and stated the Court would adopt Plaintiff's proposed final jury instructions on *contra proferentem* and laches. Dkts. 306, 308 at 12:12–13, 31:14–21.

23. The parties held an in-person mediation session on December 9, 2022 in Corona Del Mar, California, with mediators Hon. Layn R. Phillips, Jeffrey Mishkin, and Clay Cogman of Phillips ADR. As part of the mediation process, the parties exchanged lengthy mediation statements, several settlement offers and counteroffers as well as the summary judgment and *Daubert* briefing filed with the Court, and updated damages estimates for the case. The parties had sharply different views about virtually all issues, including class certification, merits, damages, and what could be argued to the jury. The parties were unable to reach an agreement but continued to work through six months of extensive mediator-facilitated settlement negotiations as trial approached. The parties ultimately executed a term sheet with trial less than 72 hours away, with the assistance of Judge Phillips' office. These negotiations were hard-fought and conducted at arm's length by highly qualified and experienced counsel. Those negotiations were fruitful only after the parties had extensively litigated key issues in the case and were days from trial.

24. As detailed above, Class Counsel was very well informed of all material facts. This case had long advanced past class certification and summary judgment; full expert reports had been completed and trial preparation had begun. Throughout this case, Class Counsel took steps to ensure that we had all the necessary information to advocate for a fair, adequate, and reasonable settlement that serves the best interests of the Class. The settlement negotiations were hard fought and non-collusive. It is my unequivocal opinion that the Settlement is fair, adequate, and reasonable, and reflects a tremendous result for the Class, particularly given the risks faced at trial. This risk of a lower-than-expected recovery is aptly illustrated in a recent COI class action trial in *Meek v. Kansas City Life Insurance Co.*, No. 19-CV-472 (W.D. Mo.), where the class sought \$18 million in damages. Despite prevailing on liability, and having had a class certified in the case, that class ultimately recovered less than six percent of the alleged overcharges after the jury awarded just \$5 million, which was further reduced to just \$900,000 after the court granted partial decertification post-trial. *See* Dkt. 309-4, *Meek* 4/28/2023 Tr. at 69:9-; Dkt. 309-5, *Meek* Dkt. 311 (verdict form); Dkt. 309-6, *Meek* Dkt. 329 (Order (1) Granting Defendant’s Motion to Partially Decertify Class, (2) Dismissing Count V Without Prejudice, and (3) Directing that Judgment be Entered).

25. The principal terms of the Settlement are as follows:

- **CASH:** \$59 million in cash payments for terminated policies and cash credits to accumulation values for in-force policies. This is not a claims-made settlement. Checks will be mailed directly to class members and cash credits will be deposited directly in policy accounts, and settlement funds do not revert to North American to keep for itself.
- **VALIDITY STIPULATION AND STOLI WAIVER:** An agreement that North American not to challenge the validity and enforceability of policies on the grounds of lack of an insurable interest, stranger originated life insurance (“STOLI”), or misrepresentation.

26. The cash portion of the Settlement alone, is, in Class Counsel's view, exceptional: It represents over 36.2% of the Class's maximum damages model; over 107% of the overcharges under Mr. Gibson's multiplicative approach, and over 160 times the damages if the jury found that FMI had been assumed at pricing, but otherwise agreed with Plaintiff and its experts on all other issues.

27. The non-monetary benefits provide additional, real value to the Class. The Validity Stipulation ensures that policyowners will receive their policy benefits at maturity (assuming appropriate premiums are paid and death benefit submissions are made), and prevents North American from undermining the value of the Settlement by challenging the validity of Class Policies on STOLI grounds. This is a real concern given that North American attempted to functionally invalidate Plaintiff's own policy despite the two-year non-contestability clause. *See* Dkt. 294 at 29–35. Attached as **Exhibit 2** is the report of James Rouse, who has over twenty-five years of experience in the life insurance industry. Mr. Rouse is the Co-Founder of Demeter Investments Limited and Demeter Capital Limited, which specialize in the longevity market, including U.S. universal and variable universal life insurance policies. Mr. Rouse values the non-monetary relief at approximately \$2.3 million. *See* Rouse Report at pp. 1, 6. The Rouse Report calculates the value of non-monetary relief for all 18,592 policies in the original certified Class. The difference in value for the 18,583 policies in the Final Settlement Class is *de minimis*. The total gross settlement value, combining the non-monetary and monetary benefits, is \$61.3 million.

28. Class Counsel also negotiated an unusually narrow release. Unlike most other COI settlements, the Class is releasing North American for historical overcharges only, and every Class Member retains the right to pursue all claims arising from COI charges imposed after the Final Approval Date.

29. The Releases are also equitable, as they treat all Class Members equally and do not affect apportionment of damages.

30. Class Counsel proposed a plan of allocation in connection with Plaintiff's Motion for Preliminary Approval. *See* Dkt. 309-8 (Plan of Allocation). This plan was developed in conjunction with Plaintiff's expert Robert Mills, who has significant experience developing such plans for COI litigation. This distribution plan treats all Final Class Members equitably because it distributes settlement proceeds on a *pro rata* basis using each Final Class Member's share of overcharges as applicable for each policy. The COI overcharges represent the difference between the COI charges North American actually assessed on the policies and the amount it would have assessed but for the failure to decrease the COIs consistent with its expectations of future mortality. Checks will be mailed directly to members of the Class whose policies have terminated, using the addresses in North American's files, while members of the Class with in-force policies will receive cash credits directly to the accumulation values of their policy accounts, and with no possibility of reversion to North American to keep any funds for itself. The cash payments and cash credits are automatic and do not require Final Class Members to submit a claim form.

31. There are a total of 18,583 policies in the Class (after accounting for the nine (9) opt-outs). Assuming the requested attorneys' fees (\$19,666,666.67), costs (\$1.7 million), and service award (\$25,000) are awarded, the Net Settlement Fund is \$37,608,333.33 (before interest). The average cash payment per policy is over \$2,000 if all amounts requested herein are approved, meaning that this is the average cash payment from the cash fund net of fees, expenses, and service award.

32. In Class Counsel's experience, this is an outstanding recovery, particularly given the complexity of COI cases, the conflicting expert testimony on technical actuarial issues that a jury would be required to weigh, and the inherent uncertainties of litigation.

33. SG worked this case on a fully contingent fee basis. SG frequently takes high-stakes, non-class commercial cases on a contingent fee basis (e.g., patent, legal malpractice, antitrust, etc.). In cases where the firm is advancing expenses, like this one, the firm typically negotiates contingent fee arrangements starting at 40% of the gross sum recovered, which increases to 45% of the gross sum recovered for a settlement that occurs after the 60th day preceding a trial, plus reimbursement of expenses. Highly sophisticated parties and institutions routinely agree to these standard market terms. The requested fee of 1/3 of the gross settlement value of the cash and accumulation credit components viewed in isolation is a substantially lower percentage than what SG would receive under its standard contingency agreement entered into in a competitive market.

34. The schedule below is a summary reflecting the amount of time spent by the SG attorneys and professional support staff who were involved in this litigation, and the lodestar calculation using 2023 billing rates or equivalent 2023 billing rates for an attorney or paralegal who left the firm prior to 2023. The following schedule was prepared from time records regularly prepared and maintained by SG, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of related expenses are excluded from the below and not reflected. Hours worked by summer associates and a few attorneys and staff who provided occasional "spot project" support at various points in the case also have been excluded and are not reflected below.

Attorneys	Current Rate	Hours	Value
Adamson, Michael (Associate) ²	\$775.00	23.80	\$18,445.00
Ard, Seth (Partner)	\$1,200.00	478.10	\$573,720.00
Bridgman, Glenn (Partner)	\$800.00	2,584.10	\$2,067,280.00
Brightman, Michael (Associate)	\$650.00	31.30	\$20,345.00
Bundy, Daniel (Staff Attorney)	\$350.00	10.60	\$3,710.00
Caforio, Bryan J. (Partner)	\$925.00	17.00	\$15,725.00
Daegele, Monica (Associate)	\$600.00	106.50	\$63,900.00
Fenwick, Samantha (Staff Attorney)	\$400.00	76.20	\$30,480.00
Josephs, Halley (Partner)	\$800.00	351.10	\$280,880.00
Kaminsky, Alex (Staff Attorney)	\$400.00	57.80	\$23,120.00
Kirkpatrick, Ryan C. (Partner)	\$1,000.00	540.40	\$540,400.00
Krsulich, Lora (Associate)	\$775.00	271.40	\$210,335.00
Nath, Rohit (Partner)	\$800.00	44.50	\$35,600.00
O'Brien, Mary (Staff Attorney)	\$350.00	385.60	\$134,960.00
Pachman, Krysta K. (Partner)	\$800.00	655.10	\$524,080.00
Page, Kim (Of Counsel)	\$800.00	358.50	\$286,800.00
Sargent, Edgar G. (Partner)	\$800.00	70.80	\$56,640.00
Savage, Zachary B. (Partner)	\$800.00	7.20	\$5,760.00
Sklaver, Steven G. (Partner)	\$1,300.00	606.90	\$788,970.00
Spear, Nicholas (Partner)	\$800.00	1,331.50	\$1,065,200.00
Stemkovsky, Alex (Staff Attorney)	\$525.00	23.20	\$12,180.00
Waite, Hannah (Associate)	\$775.00	475.20	\$368,280.00
Paralegals	Current Rate	Hours	Value
Polanco, Rodney	\$350.00	348.50	\$121,975.00
Loaiza, Nicholas (Case Assistant)	\$150.00	1.10	\$165.00
Grand Total		8,856.40	\$7,248,950.00

35. The total number of hours expended on this litigation by SG attorneys and paralegals through September 30, 2023, is 8,856.40 hours. The total lodestar value of these hours, derived by multiplying each SG professional's hours by his or her current hourly rate, is

² Glenn Bridgman and Nicholas Spear began working on this matter as associates. Mr. Bridgman was elected to the SG partnership in December 2021 and Mr. Spear in December 2022.

\$7,248,950. SG also retained local counsel to assist on this matter, Hopkins & Huebner P.C. (“H&H” or “Local Counsel”). H&H attorneys and paralegals spent 778.8 hours on this matter through August 31, 2023, excluding hours worked by a few attorneys and staff who provided occasional “spot project” support at various points in the case, representing a lodestar of \$271,100. *See Declaration of Chandler Surrency (Dkt. 312-3)*. Together, the total number of hours expended on this litigation by Class Counsel and Local Counsel through September 29, 2023, is 9,635.2 hours, representing a total lodestar value of \$7,520,050.

36. All time spent litigating this matter was reasonably necessary and appropriate to prosecute this Action, and the results achieved further confirm that the time spent on the case was proportionate to the amount at stake. The hourly rates for SG’s attorneys and professional support staff are the firm’s standard hourly rates. The hourly rates of Class Counsel’s attorneys range from \$400 to \$1,300.

37. In a nationwide survey of AmLaw 50 law firms performed by PwC Product Sales, LLC and issued in June 2023, the median standard billing rate for equity partners was \$1,463, the first quartile standard billing rate was \$1,655, and the third quartile standard billing rate was \$1,371. The same survey indicates that the median standard billing rate for associates was \$933, the first quartile standard billing rate was \$1,018, and the third quartile standard billing rate was \$838.

38. Here, seven of the SG partners working on this matter have billing rates of \$800—below the median standard billing rate for *associates*. Moreover, all of them bill at rates below the 2022 median standard billing rate for equity partners. And the billing rates of the associates who have worked on this case are significantly below the 2022 median standard billing rate for associates.

39. Based on the reported total lodestar of \$7,520,050, the requested award of \$19,666,666.67 yields a multiplier of 2.61. That multiplier will only decrease as SG and H&H invest additional attorney time into preparing to move for final approval, managing Class Member inquiries about the settlement, and administering the Settlement, if the settlement receives final approval from the Court.

40. As categorized and shown in the below schedule, SG advanced a total of \$1,785,634.28 in un-reimbursed expenses (not including settlement administration expenses) in connection with the prosecution of this case. H&H has further advanced \$1,094.05 in expenses, totaling to \$1,786,728.33. These expenses were reasonably necessary to the prosecution of this case and are of the type SG normally incurs in litigation. Expert and consultant expenses are by far the largest category below (\$1,480,337.89):

Expense Category	Amount
Deposition Expenses/Witness Fees/Client Charges	\$ 68,129.16
Document Review Hardware/Hosting	\$ 38,183.95
Experts/Consultants	\$ 1,480,337.89
Filing/Service/Court Reporter Fees/Transcripts	\$ 16,644.62
Mediation Fees and Expenses	\$ 22,500.00
Photocopies/Reproduction	\$ 9,377.07
Research Expenses	\$ 32,116.54
Secretarial Overtime	\$ 1,818.60
Telephone/Postage	\$ 71.67
Travels/Meals/Hotel/Transportation	\$ 67,961.85
Trial and Trial Prep	\$ 48,492.93
GRAND TOTAL	\$ 1,785,634.28

41. The amount of expenses incurred by Settlement Administrator JND Legal Administration (“JND”) is \$63,253.27 through September 30, 2023, and JND estimates that its

remaining Settlement Administration Expenses will be approximately \$75,000 to \$90,000, including work in connection with benefit distribution and administration completion.

42. Class Representative PHT Holding II LLC (“PHT”) has been significantly involved in this Action.

43. PHT was substituted in for Advance Trust & Life Escrow Services, LTA (“ATLES”) as a Class Representative on March 3, 2023. *See* Dkts. 246–47. The reason for the substitution was that ATLES transferred its ownership interest in the policy at issue to PHT. *See* Dkt. 251. Since that time, PHT has been actively involved in the litigation, including in the lead up to trial. PHT became familiar with the documentation and took over for ATLES pre-settlement and engaged in significant efforts, on short turnaround, to facilitate a favorable resolution of this matter for the Class, including collecting additional documents, sitting for an additional 30(b)(6) deposition, and preparing for examination at trial.

44. A settlement notice that was sent to the Class informed them that Class Counsel would move the Court for an award of attorneys’ fees up to “Class Counsel will move for attorneys’ fees not to exceed 33 1/3% of the value of all benefits provided by this Settlement to the Final Class Members, provided that all Class Counsel Fees and Expenses and all Settlement Administration Expenses, combined, will not exceed \$21,366,666.67.” The notice further stated that “Class Counsel will also seek a Service Award up to \$25,000 for Plaintiff for its service as the representative on behalf of the Class.” Class Counsel’s “Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Service Award” was filed on October 16, 2023 (Dkt. 312) and posted on the website that JND set up for this action.

45. The settlement notice also informed the Class Members that they could object to any term of the Settlement. As of October 30, 2023, two objections on behalf of three class

members were emailed to Class Counsel. The first objection, on behalf of two class members who own policy L011808340 and policy L011808350, stated that current policyholders would only benefit if they cashed out their policies before they died. But under the settlement, current policyholders are paid in credits to their accumulation value, which provides multiple benefits to current policyholders, including the opportunity to pay less premiums out of pocket as a result of the credit. For policy L011808340, the owner had paid premiums of \$525.50 per quarter for many years. The net premium is \$509.73 after the policy's 3% premium charge is deducted. The estimated accumulation value increase for this policy is \$3,323.32, which is equivalent to 6.5 quarterly net premium payments that, as a result of the Settlement, if approved, the owner no longer has to pay. For policy L011808350, the owner has paid premiums of \$332.50 per quarter for many years. The net premium is \$322.52 after the policy's 3% premium charge is deducted. The estimated accumulation value increase for this policy is \$1,478.09, which is equivalent to 4.5 quarterly net premium payments that, as a result of the Settlement, if approved, the owner no longer has to pay. I spoke with the objector who owns policy L011808340 on October 6, 2023, and clarified these factual points. In response, the objector stated that he would "retract my objection to the settlement." By letter to the Clerk dated October 13, 2023, attached as **Exhibit 3**, the objector (and his spouse, also a class member, who owns policy L011808350) withdrew the objection to the Settlement. *See* Dkt. 311.

46. The second objection, on behalf of one class member who owns policy L011971780, stated that class members lacked information necessary to agree to a settlement. The objection requested information regarding the total amount of North American's overcharges and the estimated settlement value of the class member's claim. My colleague Glenn Bridgman, also a partner at Susman Godfrey, spoke with the objector on November 2, 2023 and provided the

requested information regarding total overcharges and the value of his claim. The estimated accumulation value increase for this policy is over \$9,200. In response, the objector stated that he would withdraw the objection to the Settlement. By email to Mr. Bridgman dated November 8, 2023, attached as **Exhibit 4**, the objector withdrew his objection to the Settlement.

47. No payment or other consideration was provided (or requested) in connection with these Class Members' withdrawal of their objections.

48. Attached as **Exhibit 5** is a declaration provided by North American's counsel stating that North American provided notice pursuant to the Class Action Fairness Act.

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

Dated: November 13, 2023

/s/ Seth Ard
Seth Ard

Exhibit 1



Insurance

Susman Godfrey has a long history of litigating and winning significant insurance matters on both sides of the “v.” For plaintiffs, this includes representing insureds, policy owners, and businesses in national class actions, life insurance disputes and business interruption matters against some of the nation’s largest insurers. For the insurance industry, this includes defending companies such as ACE Limited and ACE Bermuda (now Chubb), Equitas, and the members of the London Insurance Market against millions of dollars of potential exposure when litigation arises.

Representative Experience

Insurance Class Actions

- ***Leonard et al. v. John Hancock Life Insurance Co. of New York et al.*** Secured a settlement valued at \$143 million, before fees and expenses, including a cash fund of over \$93 million and an agreement by John Hancock Life Insurance Company not to impose a higher cost of insurance rate scale for 5 years (even in the face of a worldwide pandemic), on behalf of a class of approximately 1,200 policyholders who alleged that Hancock breached the terms of their respective life insurance policies and overcharged them for life insurance. When granting final approval, the Court held that the settlement provided an “absolutely extraordinary” recovery rate for the class, and lauded Susman Godfrey’s “extraordinary work.”
- ***Helen Hanks v. Voya Retirement Insurance and Annuity Company.*** Negotiated settlement worth \$118 million, before fees and expenses, including a cash fund of over \$92 million and an agreement by Voya not to impose a higher rate scale for 5 years, on behalf of a certified class of 46,000+ policyholders over allegations that Voya improperly raised cost-of-insurance charges. Over the course of litigation, the team from Susman Godfrey secured certification of the nationwide class and defeated summary judgment. The Court recognized the quality of the work, stating: “I want to commend you all for the work done on the pretrial order and motions in limine . . . I’m very happy to have you as lawyers appearing before me.”
- ***37 Bensen Parkway v. John Hancock Life Insurance Company.*** Secured a \$91.25 million settlement all-cash, non-reversionary settlement (before fees and expenses) for insurance policy owners against

John Hancock Life Insurance Company. The Honorable Paul Gardephe described the settlement as a “quite extraordinary . . . result achieved on behalf of the class.”

- ***Fleisher v. Phoenix Life Insurance.*** Served as lead counsel to plaintiffs in a case that challenged Phoenix Life Insurance Company’s and PHL Variable Insurance Company’s decision to raise the cost of insurance (“COI”) nationwide on life insurance policy owners. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final pretrial conference—less than two months before trial with terms that included: a \$48.5 million cash fund (\$34 million after fees and expenses), a COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval hearing, the Court concluded: “I want to say publicly that I think this is an excellent settlement. I think this is a superb—this may be the best settlement pound for pound for the class that I’ve ever seen.”
- ***Brach Family Foundation et al. v. AXA Equitable Life Insurance.*** Serving as lead counsel in a case challenging AXA’s decision to raise cost of insurance rates on life insurance policies nationwide, and alleging that AXA made misrepresentations to policyholders in its insurance illustrations leading up to the cost of insurance increase. The Court certified two nationwide classes, one for policy-based claims and one for misrepresentation-based claims.
- ***Hanks et al. v. The Lincoln Life & Annuity Company of New York, et al.*** Serving as lead counsel in a case challenging Voya Life Insurance Company’s decision to raise cost of insurance rates on life insurance policies nationwide. The Court certified a nationwide breach of contract class.
- ***In re Lincoln National COI Litigation.*** Serving as co-interim-lead counsel in two cases challenging Lincoln National’s decision to raise cost of insurance rates nationwide.
- ***Brighton Trustees et al. v. Genworth Life and Annuity Insurance Company.*** Serving as interim lead class counsel in a case challenging Genworth’s decision to raise cost of insurance rates nationwide.
- ***AvMed Inc. et al. v. BrownGreer, US Bancorp, and John Does.*** Represented a group of more than forty health plans (who between them comprise more than 70% of the US market for private health insurance) asserting healthcare reimbursement liens against claimants to the \$4.85 billion Vioxx compensation fund. Susman Godfrey reached a groundbreaking settlement with the Vioxx Plaintiffs’ Steering Committee, guaranteeing them certain payouts on their liens covering participating plaintiffs. *American Lawyer* magazine featured this settlement in the “Big Suits” column at the time of this decision.

Life Insurance

- ***The Lincoln Life and Annuity Company of New York v. Berck***; and ***Berck v. The Lincoln Life and Annuity Company of New York***. Won a reversal in a \$20 million life settlement rescission lawsuit against Lincoln Life & Annuity Company of New York as trial and appellate counsel for a group of investors. Lincoln's lawsuit was based on allegations that the insurance policies lacked an insurable interest because they were procured by third-parties for investment purposes and because there was net worth and other misrepresentations in the applications. The appellate court ordered that the trial court enter judgment in favor of the trust affirmed the trial court victory that Lincoln's fraud claim was time barred because the policies were incontestable. The \$20 million policy matured before the trial court entered judgment in favor of the policy owner. We then sued the insurance carrier to effectuate payment of the \$20 million policy. The case was the feature cover story in the publication, *California Lawyer*, at the time of this decision.
- ***The Lincoln Life and Annuity Company of New York v. Janis and Berck***. Represented Jonathan Berck, as Trustee of the Rosamond Janis Insurance Trust, in a \$5 million rescission claim brought by the Lincoln Life and Annuity Company of New York for alleged violations of New York's insurable interest laws and other "STOLI" (stranger originated life insurance) related claims. In this matter summary judgment was granted in favor of our client.
- ***In re James V. Cotter, Living Trust, Ellen Marie Cotter, Margaret Cotter, Petitioners, v. James J. Cotter, Jr., Respondent***. Achieved a successful verdict invalidating a will on grounds of both undue influence and incapacity in this trust and estates case in Los Angeles Superior Court.

Other Significant Insurance Cases

- ***Universal Cable Productions v. Atlantic Specialty Insurance***. Represented Universal Cable Productions (UCP)—a subsidiary of NBC Universal—in its dispute with insurance carrier, Atlantic, which claims it was not required to provide coverage when Hamas bombing forced UCP to relocate filming of the TV miniseries "Dig" out of Jerusalem. After a successful appeal to the Ninth Circuit by Susman Godfrey on the scope of the exclusions, UCP then received a full win in the district court which found in its favor on all remaining liability issues. The case—which was set for trial on the amount of damages Atlantic owed to UCP for the relocation, whether Atlantic's denial of coverage was done in bad faith and the amount of punitive damages owed to UCP—was settled favorably on the eve of trial.
- ***Alley Theater v. Hanover Insurance***. Secured a partial summary judgment win for Houston's historic Alley Theatre in an insurance coverage lawsuit the firm handled pro bono. The suit claimed the theatre

was not properly reimbursed by Hanover Insurance Company for claims related to business interruption losses sustained during Hurricane Harvey. The firm later scored its second victory for the theater when they settled the final piece of the litigation—terms of this settlement are confidential.

- **Insurance Litigation for Walmart.** Lead counsel for Walmart on insurance coverage claims against certain of its insurers, regarding the settlement of claims arising out of an accident on the NJ Turnpike that injured comedian Tracy Morgan and others.
- **LyondellBasell v. Allianz Insurance.** Secured a confidential recovery (ultimately disclosed in an SEC filing as more than \$100 million) for LyondellBassell Industries in a London arbitration over business interruption losses arising from Hurricane Ike. Lyondell sought coverage for losses caused by a hurricane, but faced a \$200 million deductible self-insured retention, which the insurers claimed exceeded any losses. We handled all coverage, accounting, and engineering issues (which included significant damage to refinery equipment and delays to turnaround construction projects). The case settled on the eve of the final evidentiary hearing after we won key disputes regarding certain insurance coverage and claim quantification issues.
- **Confidential Private Transportation Company Litigation.** Hired to represent a private transportation company against its insurer for bad-faith failure to settle. The firm was engaged after a South Texas jury returned a \$25+ million verdict on personal injury claims against our client, far in excess of the insurance policy limits. The matter was resolved without the need to file a lawsuit, and without the client paying anything out of pocket on the verdict.
- **Sabre v. The Insurance Company of the State of Pennsylvania.** Hired months before trial to represent the worldwide travel technology leader in a \$100 million insurance coverage dispute. Successfully settled the case on the eve of trial.
- **Aetna v. Ace Bermuda.** Represented Ace Bermuda Insurance (now part of Chubb) in a \$25 million coverage claim brought by the bankruptcy estate of Boston Chicken in bankruptcy court in Phoenix, Arizona. The case raised novel issues of bankruptcy procedure, international law, and the enforcement of arbitration agreements involving a bankruptcy trustee.
- **London Insurance Market Asbestos Cases.** Defended insurance groups in the London Insurance Market including Equitas, a Lloyds of London runoff company, in litigation regarding asbestos insurance coverage, including bankruptcy adversary proceedings regarding Dresser Industries, a Halliburton subsidiary; Babcock & Wilcox Co., a McDermott International subsidiary; and Pittsburgh Corning Corp., a PPG Industries subsidiary. The firm tried the Babcock & Wilcox matter to the bench for many weeks and won. In both the Dresser Industries and the Babcock & Wilcox matters, our team ultimately achieved settlements for the London Market at very large discounts from the exposed policy limits, saving the firm's clients hundreds of millions of dollars. Pittsburgh Corning ultimately

withdrew the bankruptcy plan to which our clients were objecting.

- ***City of Houston v. Hertz***. Won a no liability verdict for The Hertz Corporation in a high-profile jury trial in which the plaintiff alleged violations of state insurance licensing laws and unfair and deceptive practices. In less than an hour of deliberations, the jury found for Hertz on all issues and rejected plaintiff's claims for attorneys' fees.



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Overview

Named one of *Lawdragon's* 500 Leading Lawyers since 2020, a recipient of the California Lawyer Attorneys of the Year award in 2017 and selected as "Top Plaintiff Lawyers in all of California" in 2016 and 2017 by *The Daily Journal*; Steven Sklaver has secured substantial litigation victories for both plaintiffs and defendants. For plaintiffs, Sklaver was lead counsel for a certified class of insurance policy owners, helping them achieve what the Court in the Southern District of New York described as "the best settlement pound for pound for the class that I've ever seen." You can read the Court's statement in full [here](#). You can also read more about the case in The Deal's profile on the litigation [here](#). Sklaver was also lead trial and appellate counsel for investors against an insurance company that resulted in a complete victory and full payout of a \$20 million life insurance policy. A copy of the appellate court decision is available [here](#). To listen to Sklaver's appellate oral argument, click [here](#). That matter was the feature cover story of the [April 2012 California Lawyer](#).

Sklaver also represents the former members of the legendary rock group The Turtles in *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.* (C.D. Cal.) in a certified class action lawsuit against Sirius XM that settled less than 48 hours before the jury trial was scheduled to begin. Sirius XM agreed to pay at least \$25.5 million (over \$16 million after fees and expenses) and royalties under a 10-year license that is valued up to \$62 million (over \$41 million after fees and expenses) as compensation for publicly performing without a license Pre-1972 sound recordings. The settlement was [approved by the Court](#), and has received widespread media coverage from publications such as [The New York Times](#), [Billboard](#), [The Hollywood Reporter](#), [Law360](#), [Rolling Stone](#), [Variety](#), [Reuters](#) and [Managing IP](#).

Within six months after the Sirius XM class action settled, so did Sklaver's [copyright class action](#) brought on behalf of artists owed mechanical royalties for compositions made available by Spotify, the leader in digital music

streaming. [Spotify agreed to a class action settlement valued at over \\$112 million](#) (over \$95 million after fees and expenses), a settlement for which the district court granted final approval and remains subject to a pending appeal. You can read more about this matter in [Billboard](#).

Sklaver's many significant and widely covered class action results in 2016 helped secure Susman Godfrey's recognition as *Law360*'s "Class Action Group of the Year" in early 2017. You can read that article announcing the award [here](#).

For defendants, Sklaver has handled numerous employment class actions across the country. He served, along with the Managing Partner of Susman Godfrey, as trial counsel for Wal-Mart, the world's largest retailer, trying a large employment class action in California. He also successfully defended and defeated class certification in numerous, substantial wage and hour matters for Alta-Dena Certified Dairy, LLC, dairy producers for Dean Foods, one of the leading food and beverage companies in the United States. Copies of the pro-employer decisions are available [here](#), [here](#), and [here](#).

Sklaver has tried complex commercial and class action disputes — including jury trials and bench trials in federal and state court, as well as arbitrations. Sklaver graduated cum laude from Dartmouth College, magna cum laude and Order of the Coif from Northwestern University School of Law, and clerked for Judge David Ebel on the United States Court of Appeals for the Tenth Circuit. Sklaver also won the National Debate Tournament for Dartmouth College, and is just one of four individuals in debate history to win three national championships at the high school and collegiate level. From 2010-2022, Sklaver has been recognized every year as a "Super Lawyer" in Southern California, awarded to no more than the top 5% of the lawyers in the state of California (*Law & Politics Magazine*, Thomson Reuters).

Sklaver currently serves on the Board of Directors for the Western Center on Law & Poverty. Sklaver was also previously selected as a Ninth Circuit Judicial Conference Lawyer Representative.

Experience

- Judge Approves \$25 Million Settlement to End Lawsuit Over Genworth's Cost of Insurance Increase
- Susman Godfrey and Gradstein & Marzano Secure \$43.45 Million Settlement with Spotify in Copyright Class Action
- Gradstein & Marzano and Susman Godfrey Secure Settlement Valued at Up to \$99 Million Settlement for The Turtles And Other Owners of Pre-1972 Sound Recordings in Class Action Against Sirius XM Radio
- U.S. Consumers and Businesses Obtain a \$193.8 Million Settlement with Denso in Auto Parts Price-fixing Multidistrict Class Action

- [Susman Godfrey Wins Summary Judgment in \\$5 Million Life Settlement Rescission Lawsuit](#)
- [Susman Godfrey L.L.P. Wins Reversal in \\$20 Million Life Settlement Rescission Lawsuit](#)
- [Susman Godfrey Wins Summary Judgment in \\$5 Million Life Settlement Rescission Lawsuit](#)

Notable Representations

Class Actions

- **Copyright Infringement:** Sklaver serves as co-lead counsel with the Gradstein & Marzano firm representing Flo & Eddie (the founding members of 70's music group, The Turtles) along with a class of owners of pre-1972 sound recordings for copyright violations by music provider Sirius XM. The day before trial was to commence before a California jury in federal court in late 2016, Flo & Eddie reached a landmark settlement with Sirius XM on behalf of the class in a deal potentially worth \$99 million. The Court granted [final approval of the settlement](#) in May 2017. Click [here](#) for more. Sklaver with his co-leads were recently named "California Lawyer Attorneys of the Year" by *The Daily Journal* for their outstanding legal work on this case.
- In May 2017, Sklaver, as co-lead counsel with Gradstein Marzano, secured a deal valued at \$112 million to settle a class-action lawsuit with Spotify brought on behalf of music copyright owners. The suit alleged that Spotify made music available online without securing mechanical rights from the tracks' composers. Under the terms of the deal, Spotify will pay songwriters \$43.45 million for past royalties, as well as commit to pay ongoing royalties that are valued at \$63 million. Read more about the case [here](#) and see [Billboards coverage of it here](#).
- **Insurance:** In a seminal insurance class action filed in the Southern District of New York, resolved in September 2015, Mr. Sklaver served as lead counsel in a case that challenged Phoenix Life Insurance Company's and PHL Variable Insurance Company's decision to raise the cost of insurance ("COI") nationwide on life insurance policy owners. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final Pretrial Conference — less than two months before trial. Settlement terms included: \$48.5 million cash fund (\$34 million after fees and expenses), COI freeze through 2020, and a covenant by Phoenix not to challenge the policies, worth \$9 billion in face value, when the policies mature on the grounds of lack of insurable interest or misrepresentations in the application. At the final approval hearing, the Court concluded, "***I want to say publicly that I think this is an excellent settlement. I think this is a superb – this may be the best settlement pound for pound for the class that I've ever seen.***" You can read the statement in full on

page 3 [here](#). You can also read more about the case in *The Deal*'s feature on the matter [here](#).

- **Antitrust:** *In In re Automotive Parts Antitrust Litigation*. In the largest price-fixing cartel ever brought to light, Mr. Sklaver and a team of Susman Godfrey lawyers run a massive MDL litigation in which the firm serves as co-lead counsel for a class of consumer plaintiffs in multidistrict price-fixing cases pending in a Detroit, Michigan federal court. The actions, alleging anti-competitive conduct, were brought by indirect purchasers of component parts included in over 20 million automobiles, and involve parts such as wire harnesses, instrument panel clusters, fuel senders, heater control panels and alternators. The Department of Justice has imposed fines exceeding \$2.6 billion pursuant to guilty plea agreements with some of the defendants, and its investigation is still ongoing. The Susman Godfrey team together with its co-lead counsel has defeated multiple motions to dismiss. Settlements have been reached with a certain defendants for a combined \$620 million thus far. Final settlement (after fees and expenses) has not yet been determined. The case remains ongoing against the remaining defendants.

Life Settlements

- Represented Jonathan Berck, as Trustee of the Rosamond Janis Insurance Trust in a \$5 million rescission claim brought by the Lincoln Life and Annuity Company of New York for alleged violations of New York's insurable interest laws and other "STOLI" (stranger originated life insurance) related claims. RESULT: Summary judgment granted in favor of my client. A copy of the summary judgment order is available [here](#).
- Won reversal in a \$20 million life settlement rescission lawsuit against Lincoln Life & Annuity Company of New York. Lincoln's lawsuit was based on allegations that the insurance policies lacked an insurable interest because they were procured by third-parties for investment purposes and because there were net worth and other misrepresentations in the applications. The appellate court ordered that the trial court enter judgment in favor of the trust. The appellate court also affirmed our trial court victory that Lincoln's fraud claim was time barred because the policies were incontestable. The case is *Lincoln Life & Annuity Co. of New York v. Jonathan Berck, as Trustee of the Jack Teren Insurance Trust*, Court of Appeal Case No. D056373 (Cal. Ct. App. May 17, 2011). A copy of the appellate court decision is available [here](#). The *Teren* case was the feature, cover story of the [April 2012 California Lawyer](#).
- Represents investors, trusts, trustees, brokers, and insureds in life settlement and STOLI litigation across the country against insurance companies seeking to rescind policies with face values worth more than \$125 million. Mr. Sklaver is also a frequent speaker and commentator on life settlement and STOLI litigation, in both [trade publications](#) and [conferences](#).

Financial Fraud

- Represented Royal Standard Minerals, which was the plaintiff in a federal securities lawsuit against a “group” of more than ten dissident shareholders for failing to file Schedule 13-D disclosures. RESULT: Preliminary injunction granted and final judgment entered that, among other things, required for three years the votes of all shares owned by any of the defendants to be voted as directed by the Board of Directors of my client.
- Represented plaintiff who held millions of WorldCom shares as an opt-out to the class in In re WorldCom Securities Litig. RESULT: Settled on confidential terms.
- Represented plaintiff Accredited Home Lenders in a TRO and breach of contract action over a wrongful default declared by Wachovia in a credit re-purchase agreement. RESULT: The case was resolved favorably, following the entry of a TRO.
- Represented Walter Hewlett in his challenge to the Hewlett-Packard/Compaq merger. In preparation for that trial, Mr. Sklaver deposed Compaq’s former CEO Michael Capellas about his famous handwritten journal note which, describing the merger, stated “at our course and speed we will fail.” Mr. Capellas was right.

Employment

- Represented one of the world’s largest retailers in the defense of a four month long jury trial, wage and hour class action pending in California. One of the world’s largest retailers appointed Susman Godfrey L.L.P. to be its national trial counsel for wage and hour litigation.

Antitrust

- Lead day-to-day lawyer for the class in White, et al. v. NCAA, a certified, antitrust class action alleging that the NCAA violated the federal antitrust laws by restricting amounts of athletic based financial aid. ESPN Magazine coverage of the lawsuit may be found [here](#). RESULT: The NCAA settled and paid an additional \$218 million for use by current student-athletes to cover the costs of attending college, paid \$10 million to cover educational and professional development expenses for former student-athletes, and enacted new legislation to permit Division I institutions to provide year-round comprehensive health insurance to student-athletes.

Entertainment

- Represented NAACP image award winner Morris Taylor “Buddy” Sheffield in his breach of contract lawsuit against ABC Cable Networks Group

regarding the creation of Hannah Montana. RESULT: Defendant settled less than four weeks before trial.

Pro Bono

- Appointed to represent Carl Petersen, who was charged by the United States Attorney's Office with being a felon in possession of a firearm — a charge that carries a five-year prison sentence and an 89% conviction rate. RESULT: Acquittal. Jury deliberation lasted less than four hours. Appointed by the United States Court of Appeals for the Tenth Circuit as appellate counsel in five cases, including: United States v. Petersen; United States v. Blaze (specifically noting Mr. Sklaver's "good workmanship"); and Sorrentino v. IRS (appointed as amicus curiae by and for the Court)

Honors & Distinctions

- *Lawdragon* 500 Leading Litigator ([2022](#), [2023](#))
- Firm Representative for Elite Trial Lawyers – Insurance Litigation, *National Law Journal* ([2023](#), ALM)
- Litigation Star, Benchmark Litigation (2022, Euromoney)
- Recommended Lawyer – Litigation – Labor and Employment, Best Lawyers in American (2020 – 2024, Woodward White, Inc.)
- Southern California California Super Lawyer (2010 – 2023, Thomson Reuters)
- *Lawdragon* 500 Leading Lawyers in America ([2020](#), [2021](#), [2022](#), [2023](#))
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers ([2019](#), [2020](#), [2021](#), [2022](#), [2023](#))
- Outstanding Antitrust Litigation Achievement in Private Law Practice by the American Antitrust Institute (2019) for work on *In re: Automotive Parts Antitrust Litigation*.
- California's Lawyer Attorneys of the Year in 2017 by *The Daily Journal*. Click [here](#) for a photo of Sklaver, along with co-counsel, receiving the award.
- Top 30 Plaintiff Lawyers in all of California in 2016 by *The Daily Journal*
- Southern California "Super Lawyers" awarded to no more than the top 5% of the lawyers in the state of California (2010 – 2021, *Law & Politics Magazine*, Thomson Reuters)
- Northwestern Law Review member and editor
- National Debate Tournament (NDT) collegiate championship winner

Clerkships

susmangodfrey.com

Honorable David M. Ebel, United States Court of Appeals for the Tenth Circuit

Education

Northwestern University School of Law (J.D., magna cum laude)

- Order of the Coif

Dartmouth College (B.A., cum laude)

Admissions

Bar Admissions

- Colorado
 - California
 - Illinois
-

Court Admissions

- United States Supreme Court
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Tenth Circuit
- U.S. District Court for the Central District of Colorado
- U.S. District Court for the Eastern District of Colorado
- U.S. District Court for the Northern District of Colorado
- U.S. District Court for the Southern District of Colorado
- U.S. District Court for the Western District of Colorado

Leadership & Professional Memberships

- Board of Directors, Western Center on Law & Poverty



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Overview

Seth Ard, a partner in Susman Godfrey's New York office and a member of the firm's Executive Committee, has secured substantial litigation victories for both plaintiffs and defendants. For plaintiffs, Ard was co-lead counsel for a certified class of insurance policy owners, helping them achieve what the Court in the Southern District of New York described as "the best settlement pound for pound for the class that I've ever seen." For defendants, Ard has obtained take-nothing judgments for NASDAQ and Dorfman Pacific in contract and intellectual property actions seeking tens of millions of dollars. Since 2019, Mr. Ard has been named one of the country's Leading Plaintiff Financial Lawyers by Lawdragon.

Before joining the firm, Mr. Ard clerked for the Honorable Shira A. Scheindlin of the United States District Court for the Southern District of New York, and for the Honorable Rosemary S. Pooler of the United States Court of Appeals for the Second Circuit. Mr. Ard graduated magna cum laude from Harvard Law School and completed his undergraduate work first in his class with a perfect GPA from Michigan State University, with dual degrees in philosophy and French literature. For the past three years, Ard has been recognized as a "Rising Star" in New York by Super Lawyers magazine.

Experience

- Judge Approves \$25 Million Settlement to End Lawsuit Over Genworth's Cost of Insurance Increase
- Susman Godfrey L.L.P. and Hausfeld LLP Secure \$240 Million Deutsche Bank LIBOR Settlement
- Susman Godfrey LLP and Hausfeld LLP Secure \$130 Million Citibank LIBOR Settlement
- Susman Godfrey Secures \$120 Million Barclays LIBOR Settlement, Game-Changing Agreement from Bank to Cooperate in Ongoing Litigation

Notable Representations

Representative Matters

- ***In re LIBOR-Based Financial Instruments Litigation (SDNY)*** Along with Bill Carmody, Marc Seltzer, and Arun Subramanian, Ard serves as co-lead counsel for the class of over-the-counter purchasers of LIBOR-based instruments, directly representing Yale University and the Mayor and City Council of Baltimore as named plaintiffs. We reached a \$120 million settlement with Barclays, and pursue claims against the rest of the 16 LIBOR panel banks.
- ***In re Municipal Derivatives Litigation (SDNY)*** Along with Bill Carmody and Marc Seltzer, Ard serves as co-lead counsel to a class of municipalities suing 10 large banks and broker for rigging municipal auctions. On behalf of the class and class counsel, Ard argued final approval and fee application motions approving cash settlements in excess of \$100 million, as well as several key discovery motions against defendants and the DOJ that paved the way for those settlements.
- ***Fleisher et al. v. Phoenix Life Insurance Company (SDNY)*** Along with Steven Sklaver and Frances Lewis, Ard served as class counsel in a seminal action challenging 2 cost of insurance increases by Pheonix. After winning class certification and defeating two motions for class decertification and a motion for summary judgment, the case settled the day of the final Pretrial Conference in a settlement valued by the Court at over \$140 million. Judge Colleen McMahon praised Susman Godfrey's settlement of the case as "an excellent, excellent result for the class," which "may be the best settlement pound for pound for the class that I've ever seen."
- ***Globus Medical v. Bonutti Skeletal (EDPA)*** Along with Jacob Buchdahl and Arun Subramanian, Ard represents defendant Bonutti Skeletal in patent litigation brought by Globus Medical. Ard successfully argued a partial motion to dismiss the patent complaint, defeating claims of indirect infringement, vicarious liability and punitive damages.
- ***Sentius v. Microsoft (NDCA)*** Along with Max Tribble and Vineet Bhatia, Ard represented plaintiff Sentius in a patent infringement suit against Microsoft. A few weeks before trial, Ard successfully argued a Daubert motion that sought to exclude plaintiff's survey expert. The case settled on highly favorable terms within 24 hours of that motion being denied. Previously, Ard had successfully argued an early summary judgment motion and supplemental claim construction, both of which would have gutted plaintiff's claims.
- ***Jefferies v. NASDAQ Arbitration (New York)*** Along with Steve Susman and Steve Morrissey, Ard represented NASDAQ and its affiliate IDCG in an arbitration in New York. The plaintiff, Jefferies & Co., sought tens of millions of dollars in damages based on a claim that it was fraudulently

induced to clear interest rate swaps through the IDCG clearinghouse. After a one week arbitration trial in the fall of 2012, at which Ard put on NASDAQ's expert and crossed Jefferies' expert, the Panel issued a decision in January 2013 denying all of Jefferies' claims and awarding no damages. The arbitrators were former Judge Layn Phillips, Judge Vaughn R. Walker, and Judge Abraham D. Sofaer.

- ***GMA v. Dorfman Pacific (SDNY)*** Along with Bill Carmody and Jacob Buchdahl, Ard obtained a complete defense victory on summary judgment in a trademark infringement dispute before Judge Forrest in SDNY. We were hired after the close of discovery and after our client had suffered significant discovery sanctions that threatened to undermine its defense. We were able to overturn those sanctions, reopen discovery and obtain key admissions during a deposition of Plaintiff's CEO, and win on summary judgment (without argument and based on briefing done by Ard).
- ***Washington Mutual Bankruptcy (Bkrcty. Del.)*** Along with Parker Folse, Edgar Sargent, and Justin Nelson, Ard represented the Official Committee of Equity Holders in Washington Mutual, Inc. at two trials contesting \$7 billion reorganization plans that would have wiped out shareholders stemming from the largest bank failure in American financial history. Both plans were supported by the debtor and all major creditors. After the first trial, at which Ard put on the Equity Committee's expert and crossed the debtor's expert, the Judge denied the plan of reorganization. The debtors and creditors negotiated a new reorganization plan that again would have wiped out shareholders. After the second trial, at which Ard put on the Equity Committee's expert, crossed the debtor's expert, and conducted a full-day cross examination of hedge fund Appaloosa Management that held over \$1 billion in creditor claims and that was accused of insider trading, the Court again denied the plan of reorganization, finding that the Equity Committee stated a viable claim of insider trading against the hedge funds. The Equity Committee then negotiated with the debtor and certain key creditors a resolution that provided shareholders with 95 percent of the post-bankruptcy WaMu plus other assets in a package worth hundreds of millions of dollars – an outstanding result especially given that when we were appointed counsel, the debtor tried to disband the equity committee on the ground that equity was “hopelessly out of the money” without any chance of recovery.
- ***Lincoln Life v. LPC Holdings (Supreme Court Onandaga, New York)*** Along with Steven Sklaver and Arun Subramanian, Ard represented an insurance trust in STOLI litigation against an insurance company seeking to rescind a life insurance policy with a face value of \$20 million. After Ard argued and won a hotly contested motion to compel in which the Court threatened to revoke the pro hoc license of opposing counsel, Lincoln settled the case on very favorable terms.

Honors & Distinctions

- *Lawdragon* 500 Leading Litigator ([2022](#), [2023](#))
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers ([2019](#), [2020](#), [2021](#), [2022](#), [2023](#))
- New York Super Lawyer ([2022](#), [2023](#), Thomson Reuters)
- New York Rising Star (2013-2018, Thomson Reuters)
- Teaching and Research Assistant for Professor Arthur Miller (Harvard Law School)
- Teaching Assistant for Professor Jon Hanson (Harvard Law School)
- Editorial Board, Harvard Civil Rights/Civil Liberties Law Review

Clerkships

Honorable Shira A. Scheindlin, United States District Court for the Southern District of New York, 2008-2009

Honorable Rosemary S. Pooler, United States Court of Appeals for the Second Circuit, 2007-2008

Education

Harvard Law School (J.D., magna cum laude, 2007)

Northwestern University (M.A., A.B.D., Philosophy, , 2003)

Michigan State University (B.A., Philosophy & French Literature, first in class, Highest Honors, 1997)

Admissions

Bar Admissions

- New York

Languages

French



Ryan Kirkpatrick

Partner

New York

(212) 336-8330

rkirkpatrick@susmangodfrey.com

Overview

Ryan Kirkpatrick rejoins Susman Godfrey after spending four years as General Counsel and Senior Managing Director of McCourt Global, an alternative asset management firm. In that role, Ryan served as head of the New York office where he oversaw all legal affairs of the firm and its business verticals, including a \$1 billion commercial real estate development joint venture, MG Sports & Media (which owns the LA Marathon and co-owns Global Champions Tour and Global Champions League), and MG Capital (owner of a private direct lender and registered investment adviser).

Ryan's experience at McCourt equipped him with a deep understanding of how to successfully manage and direct a wide variety of multi-national legal matters. Ryan obtained or negotiated billions of dollars in judgments, settlements, and transactions while at McCourt. Working on both the plaintiff and defense sides, Ryan also developed a deep understanding of and how to successfully leverage litigation (and the threat of it) to accomplish financial and business objectives while at the same time managing and mitigating the financial and operational costs of litigation to a business. For example, while serving as director of Global Champions League, Ryan initiated an EU competition law action against Fédération Equestre Internationale, the international governing body for equestrian sports. After obtaining a landmark preliminary injunction that was upheld by the Brussels Court of Appeals—and has implications for all international sports federations—Ryan helped negotiate a highly favorable settlement with the FEI. As of 2017, Global Champions League has now sold/licensed 18 team franchises and holds 15 events around the world. This use of EU competition law to effect worldwide relief for a client was reminiscent of one of Ryan's first cases at Susman Godfrey, where he and Steve Susman guided start-up mainframe manufacturer Platform Solutions, Inc. to a \$200 million buy-out by IBM following years of contentious

of antitrust, patent infringement, and copyright infringement proceedings in both the Southern District of New York and the European Commission.

Ryan was first elected to the Susman Godfrey partnership in 2011. At the time, he was representing Frank McCourt and the Los Angeles Dodgers in connection with Mr. McCourt's highly-publicized divorce and the team's bankruptcy. This three-year representation culminated in a favorable settlement of the divorce, the sale of the Dodgers to Guggenheim Partners for \$2.15 billion—the highest amount ever paid for a professional sports franchise—and the formation of a \$550 million joint venture with affiliates of Guggenheim Partners. Ryan has been interviewed and quoted by numerous media outlets regarding the case, including the Wall Street Journal, Bloomberg News, the Los Angeles Time, ESPN, the National Law Journal, the Associated Press, KABC, and KTLA. Shortly following the sale, Mr. McCourt asked Ryan to help lead McCourt Global.

Ryan was named among *Lawdragon's* 500 Leading Litigators in America in 2022 and 2023. Prior to his time at Susman Godfrey, Kirkpatrick clerked for the Hon. Ruggero J. Aldisert of the US Court of Appeals for the Third Circuit.

Experience

- Judge Approves \$25 Million Settlement to End Lawsuit Over Genworth's Cost of Insurance Increase
- Court Approves \$16,500,000 Settlement in Securities Class Action Brought by Susman Godfrey Against Dendreon

Notable Representations

Representative Cases

- During his previous tenure at Susman Godfrey, Kirkpatrick led numerous successful litigation matters in a variety of legal areas including intellectual property, insurance, securities, antitrust and class actions. For example,
- Successfully represented various hedge funds investing in "stranger-owned life insurance," including obtaining complete defense victory for a hedge fund in a case in which an insurer sued to rescind a \$20 million life insurance policy for alleged fraud and lack of an insurable interest, and initiating a class action against an insurer relating to cost of insurance increases that resulted in a settlement valued at \$134 million.
- Obtained a \$45 million damages judgment on behalf of Masimo Corporation in an antitrust case against Tyco Healthcare involving pulse oximetry products, which judgment was upheld by the Ninth Circuit on appeal, with the client receiving a net recovery of approximately \$27 million.
- Defeated class certification of a putative wage and hour class action brought against a subsidiary of Dean Foods.

- Obtained a \$16.5 million settlement for a group of investors in Seattle-based Dendreon Corporation in a case alleging securities fraud and insider trading, with the class receiving approximately \$12 million.
- Guided start-up mainframe manufacturer Platform Solutions, Inc. to a \$200 million buy-out by IBM following years of contentious of antitrust, patent infringement, and copyright infringement proceedings in both the Southern District of New York and the European Commission.
- Represented Frank McCourt and the Los Angeles Dodgers in connection with Mr. McCourt's highly-publicized divorce and the team's bankruptcy. This three-year representation culminated in a favorable settlement of the divorce, the sale of the Dodgers to Guggenheim Partners for \$2.15 billion—the highest amount ever paid for a professional sports franchise—and the formation of a \$550 million joint venture with affiliates of Guggenheim Partners.

Clerkships

Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit, 2005-2006

Education

UCLA School of Law (J.D., Order of the Coif, 2005)

Yale University (B.A., Political Science, , 2001)

Admissions

Bar Admissions

- New York
- California
- District of Columbia

Court Admissions

- U.S. District Court for Central District of California
- U.S. District Court for the Northern District of California
- U.S. Court of Appeals for the Seventh Circuit
- U.S. District Court for the Eastern District of Texas



Krysta Kauble Pachman

Partner

Los Angeles

(310) 789-3100

kpachman@susmangodfrey.com

Overview

Krysta Pachman represents plaintiffs and defendants in high-stakes commercial litigation, including class actions, patent cases, trademark & copyright matters, and other disputes. Ms. Pachman has a track record of obtaining trial wins, favorable settlements and arbitration victories for her clients, who range from small businesses and individuals to Fortune 500 companies.

“

“Krysta absorbed a lot of technical information, digested it, and helped the team understand the challenges with our case. [She] developed and recommended strategies and stood [her] ground when the other side and their expert tried to bully [her]. Krysta’s professionalism and skill was essential to the outcome we received from the panel.”

Denise M. Buffington, Director, Federal Regulatory Affairs & Corporate Counsel, Kansas City Power & Light Company

In 2021 Ms. Pachman was appointed to serve as co-lead counsel in the Blackbaud Data Breach Class Action. She will lead a class action brought over a data breach involving cloud management software firm Blackbaud. Ms. Pachman represents a class of plaintiffs who are suing Blackbaud for negligence, as well as violations of California’s Consumer Privacy Act and other state law statutes. The leadership team is being hailed as ‘most diverse leadership team ever’ in data breach class action.

In the landmark copyright action, *Ferrick, et al. v. Spotify USA*, Ms. Pachman was an integral part of a trial team that secured a settlement valued at more than \$100 million dollars, including a \$43.45 million cash settlement fund and an agreement to pay future royalties to settle a class-action lawsuit with

Spotify brought on behalf of music copyright owners. This case made national news, receiving press from *Billboard*, *Forbes*, and *Reuters*.

Ms. Pachman was also part of a team that secured a \$40 million settlement for a class of derivatives traders in *Timber Hill v. Pershing Square Capital Management, L.P., et al.* Timber Hill alleged Defendants violated federal securities laws through their illicit insider trading and front-running scheme that damaged Timber Hill and other investors by artificially deflating the value of options and equity forwards traded by Timber Hill and Class Members. This is the largest ever stand-alone options settlement and the largest ever Section 20A options settlement.

Ms. Pachman played a key role in *Schulein, et al. v. Petroleum Development Corp.*, representing a class of more than 7,000 limited partners who invested in 12 oil and gas limited partnerships, who alleged the defendants made false and misleading statements and omitted material information regarding the value of the assets held by the partnerships in proxy statements used to solicit votes in favor of mergers that caused the investors to be cashed out of their investments. Ms. Pachman took key depositions, wrote the opposition to defendants' motion for summary judgment, and wrote the successful opposition to defendants' motion to decertify the class. The case was settled for \$37.5 million in March 2015, with the class receiving approximately \$24 million.

Ms. Pachman also represented Kansas City Power & Light Company (KCPL) in a high-stakes renewable energy arbitration. During arbitration she delivered the opening statement, cross-examined the other side's expert, presented fact and expert witnesses, handled depositions, managed expert reports, and wrote the pre-and post-hearing briefs. The panel unanimously ruled in KCPL's favor.

Ms. Pachman currently serves as counsel for one of the largest-ever certified consumer classes, which encompasses nearly all U.S. cellular phone purchasers, all of whom have been impacted by Qualcomm's anti-competitive conduct. This complex case straddles the intersection of antitrust and technology and involves Qualcomm's monopoly in the cellular modem chip market to extract supra-competitive licensing fees on its intellectual property. Ms. Pachman briefed and successfully obtained class certification for the group – synthesizing hundreds of pages of expert analyses, voluminous fact evidence, and case law spanning complex antitrust and intellectual property issues. In 2018, the Court granted class certification in a 66-page order finding “substantial,” “strong” and “compelling” evidence to support the certification. Click [here](#) for the certification order.

For these wins and more, in 2022 Pachman was recognized as a Top Woman Lawyer in California by *The Daily Journal*. In 2021, she was named a Rising Star of the Plaintiffs Bar by *National Law Journal's* Elite Trial Lawyers (ALM) and one of the Top 40 Lawyers Under 40 by the Daily Journal (Daily Journal

Corp.). *The Recorder* named her a [California Trailblazer](#) in 2020 (ALM), and *Best Lawyers* called her “[One to Watch, Commercial Litigation](#)” (2021, Woodward White, Inc.).

Prior to joining Susman Godfrey, Ms. Pachman served as a Law Clerk to the Honorable Philip S. Gutierrez in the U.S. District Court for the Central District of California. She also serves on the Board of Governors for the Women Lawyers’ Association of Los Angeles and serves on the Board of the Association of Business Trial Lawyers.

Experience

- Susman Godfrey and Gradstein & Marzano Secure \$43.45 Million Settlement with Spotify in Copyright Class Action
- Susman Godfrey Obtains \$37.5 Million for Investors in Oil & Gas in Limited Partnerships

Notable Representations

Ongoing Matters

- ***In Re Blackbaud, Inc., Customer Data Security Breach Litigation***. Appointed co-lead counsel in this multi-district litigation, which relates to a massive data breach. Blackbaud, a cloud computing provider, maintains consumer data on behalf of thousands of non-profit corporations, hospitals, and educational institutions. The complaint alleges that Blackbaud did not maintain adequate security measures, which led to a ransomware attack. The stolen data included bank account information, social security numbers, health care data, usernames, and/or passwords.
- ***Jane Doe v. MindGeek USA Incorporated et al.*** Filed a class action against PornHub and its parent company, MindGeek, alleging MindGeek has violated federal sex trafficking and child pornography laws by knowingly posting, enabling the posting of and profiting from thousands of pornographic videos featuring persons under the age of 18. In September 2021, the court denied PornHub’s motion to dismiss this matter, allowing the case to move forward. [Read more](#).
- ***In re Qualcomm Antitrust Litigation***. Serve as counsel for one of the largest-ever certified consumer classes, which encompasses nearly all U.S. cellular phone purchasers, all of whom have been impacted by Qualcomm’s anti-competitive conduct. This complex case straddles the intersection of antitrust and technology and involves Qualcomm’s monopoly in the cellular modem chip market to extract supra-competitive licensing fees on its intellectual property. Ms. Pachman has played a crucial role in this matter – from taking depositions of key Qualcomm C-level executives and high-ranking Apple third-party witnesses to working with and defending the depositions of antitrust, pass through and licensing experts to representing class members in discovery. Most critically, Ms.

Pachman briefed and successfully obtained class certification for the group – synthesizing hundreds of pages of expert analyses, voluminous fact evidence, and case law spanning complex antitrust and intellectual property issues. In 2018, the Court granted class certification in a 66-page order finding “substantial,” “strong” and “compelling” evidence to support the certification. Click [here](#) for the certification order.

Wins

- ***Timber Hill v. Pershing Square Capital Management, L.P., et al.*** Secured a \$40 million settlement for a class of derivatives traders in *Timber Hill v. Pershing Square Capital Management, L.P., et al.* Timber Hill alleged Defendants violated federal securities laws through their illicit insider trading and front-running scheme that damaged Timber Hill and other investors by artificially deflating the value of options and equity forwards traded by Timber Hill and Class Members. This is the largest ever stand-alone options settlement and the largest ever Section 20A options settlement.
- ***Ferrick et al. v. Spotify USA***. Secured both a \$43.45 million cash fund and an agreement to pay future royalties to settle a copyright class-action lawsuit with Spotify brought on behalf of music copyright owners. This ground-breaking case gained national media attention, receiving press from *Billboard*, *Forbes*, and *Reuters*. Fees and expenses have not yet been determined.
- ***General Motors LLC Ignition Switch Litigation***. Represented plaintiffs in this massive class action against General Motors, hundreds of suits were consolidated into a federal multidistrict litigation in New York over an ignition switch defect in GM vehicles, which causes the engine to switch off during use and disable the car’s air bags. Pachman worked with a team of Susman Godfrey lawyers on the sixth personal injury bellwether case, which settled favorably on eve of trial. This case received substantial press from outlets such as *The Wall Street Journal*.
- ***Lithium Ion Batteries Antitrust Litigation***. Defended more than twenty depositions in this nationwide antitrust class action brought against the world’s largest manufacturers of lithium ion batteries, which power virtually every laptop computer, cell phone, smartphone, digital music player (e.g., iPods), tablet device (e.g., iPads), digital camera and camcorder, and cordless power tool used today. The suit alleges that the defendants engaged in a long-running conspiracy over more than a decade to unlawfully fix, raise and stabilize prices of lithium ion batteries.
- ***ZiiLabs v. Apple and Samsung***. Represented ZiiLabs, a subsidiary of the Singapore-based media company Creative Technologies, Ltd. ZiiLabs brought claims for patent infringement of its patents related to graphics processing technology developed originally by 3DLabs. Pachman took and defended key depositions in this matter, prepared and argued key motions in *limine*, defeated summary judgment and successfully opposed

Daubert motions. The case settled on the eve of trial after Apple had taken a license.

- ***Sentius v. Microsoft.*** Represented Sentius against Microsoft in a patent infringement suit involving automated database technology. Pachman handled the Daubert motions in this matter. The case settled on highly favorable terms within 24 hours of the court issuing orders on those motions.
- ***Schulein, et al. v. Petroleum Development Corp., et al.*** Represented plaintiffs in this class action litigation in Santa Ana federal court on behalf of more than 7,000 limited partners who invested in 12 oil and gas limited partnerships. Plaintiffs alleged the defendants made false and misleading statements and omitted material information regarding the value of the assets held by the partnerships in proxy statements used to solicit votes in favor of mergers that caused the investors to be cashed out of their investments. On the eve of trial, after three years of hard fought litigation – and following the court's denial of defendants' class decertification motion, which Pachman wrote, and denial of defendants' partial motions for summary judgment, also written by Pachman — the case was settled for \$37.5 million, with the class receiving approximately \$24 million.
- ***Taylor v. Shippers Transport Express.*** Served as counsel to Shippers Transport Express and SSA Marine in a misclassification case. Susman Godfrey was retained to assist with trial preparation, and the case settled on favorable terms just before trial.
- ***Westmoor v. Ganga.*** Represented Westmoor in this copyright and trademark infringement suit in the Central District of California. Pachman briefed cross-motions for summary judgment in this case, which settled on favorable terms shortly after motion for summary judgment briefing.

Honors & Distinctions

- Top 250 Women in Litigation, Benchmark Litigation ([2023](#), Euromoney)
- 40 and Under Hot List, Benchmark Litigation ([2020](#), [2021](#), [2022](#), [2023](#) Euromoney)
- Lawdragon 500X – The Next Generation of Leading Lawyers ([2023](#))
- Class Action Litigation Rising Star, Law360 ([2023](#))
- Rising Star of the Plaintiff's Bar, *National Law Journal* ([2023](#), ALM)
- *Lawdragon* 500 Leading Litigator ([2022](#), [2023](#))
- Top Woman Lawyer, *Daily Journal* (2022, Daily Journal Corp.)
- Future Star, Benchmark Litigation ([2022](#), [2023](#) Euromoney)
- *Lawdragon* 500 Leading Plaintiff Financial Lawyers ([2021](#), [2022](#), [2023](#))
- One to Watch, Commercial Litigation *Best Lawyers* ([2021](#), [2022](#), [2023](#), [2024](#) Woodward White, Inc.)
- Top 40 Under 40, *Daily Journal* (2021, Daily Journal Corp.)
- Rising Star of the Plaintiffs Bar, *National Law Journal's* Elite Trial Lawyers ([2021](#), [2023](#) ALM)
- California Trailblazer, *The Recorder* (2020, ALM)
- Recommended Lawyer, Dispute Resolution: General Commercial Disputes, The Legal 500, ([2019](#), Legal 500)
- Next Generation Woman Leader in Tech Law, *The Recorder* (2018, ALM)
- Southern California Rising Star, *Super Lawyers* (2017, 2018, 2019, 2020, 2021, 2022, 2023; Thomson Reuters)
- UCLA Law Review, Chief Comments Editor, Vol. 58

Clerkships

Honorable Philip S. Gutierrez, United States District Court for the Central District of California

Education

UCLA School of Law (J.D.,)

Northwestern University (B.A., Political Science and Communication Studies, magna cum laude)

Admissions

Bar Admissions

- California

*Leadership &
Professional
Memberships*

- Board of Governors, Women Lawyers Association of Los Angeles



Glenn Bridgman

Partner

Los Angeles

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Overview

Glenn Bridgman is a trusted resource, valued trial lawyer, and relied upon legal counsel to his clients and colleagues. Glenn, who has recovered over one billion dollars for his clients, represents both plaintiffs and defendants in high stakes commercial litigation, trying cases successfully across practice areas and industries such as insurance, antitrust, intellectual property, securities, malpractice and breach of contract.

Glenn has been recognized as a California Lawyer Attorney of the Year by *The Daily Journal*, a California Trailblazer by *The Recorder*, and a Rising Star in Insurance Litigation by *Law360*. He is also recognized as a Rising Star in General Commercial Litigation by *The Legal 500*.

WINS

In the insurance sector alone, Glenn has secured over \$500 million for policy holders in class actions against some of the country's largest insurers. In a six-month time span Glenn secured three settlements totaling in the hundreds of millions for plaintiffs in breach of contract class actions against insurance industry titans AXA, North American and American General Life Insurance Company. In *37 Besen Parkway v. John Hancock Life Insurance Co.*, Glenn helped secure a \$91.25 million settlement for insurance policy owners who alleged breach of contract against John Hancock Life Insurance Company. Judge Paul Gardephe described the settlement as a "quite extraordinary." Glenn was quoted about the case and the enormous result in an article by *Law360*. In addition, in *TVPX ARS, Inc. v. Genworth Life and Annuity Insurance Company*, Glenn took over the case when it was on appeal and persuaded the Eleventh Circuit Court of Appeals to vacate a district court's injunction restraining a breach of contract action against Genworth. The

opinion can be read [here](#) and you can listen to Glenn's argument before the court [here](#) (start at 3:15).

Glenn's litigation savvy is not limited to insurance matters. Glenn is well-versed in all types of high stakes litigation. He has:

- Defeated preliminary injunction and secured dismissal while defending Pzena LLC in a breach of contract action alleging breach of LLC agreement. [Read more](#) (subscription required);
- Successfully represented Jasmin Solar Pty Ltd. in its breach of contract action against a Chinese equipment supplier. After the solar company suffered defeats with prior counsel, Glenn took over the appeal at the Second Circuit. His briefing persuaded the appellate court to not only overturn the district court's previous order confirming the arbitration award, but also to vacate entire judgment against Jasmin;
- Defeated a trademark-infringement preliminary injunction sought against one of the world's largest technology companies;
- Litigated the LIBOR OTC class action currently pending in the Southern District of New York, which has already produced almost \$700 million in settlements (fees and expenses not yet determined) and a certified class against additional defendants;
- Secured favorable settlements on behalf of, among other clients, a large telecommunications company, lease-financing companies, and defrauded individual entrepreneurs in both federal and state court; and
- Represented automotive dealership software company in defense of antitrust claim seeking hundreds of millions of dollars of damages.

PRO BONO AND BACKGROUND

Glenn maintains an active pro bono practice. He currently represents a tenant advocacy group helping defend the constitutionality of eviction protections for renters enacted by the City of Oakland and Alameda County in the wake of the COVID-19 pandemic. The *Daily Journal* and *Law360* profiled Glenn and his colleagues for their work in this area. He was also awarded *Daily Journal's* prestigious [California Lawyer Attorney of the Year](#) award for his work on these timely and significant matters.

Glenn attended Yale Law School where he was the Notes Editor for the Yale Law Journal and served the Jerome N. Frank Legal Services Organization as both a Board Member and the Clinic Director. Glenn also received the William K.S. Wang Prize for Excellence in Corporate Law, the Thomas I. Emerson Prize for Best Paper on Legislation, and the C. LaRue Munson Prize for Excellence in the Presentation of a Clinical Case. Glenn also directed the Yale Landlord Tenant Clinic.

Before attending law school, Glenn was a Peace Corps Volunteer in rural Bulgaria. Before starting his practice at Susman Godfrey, Glenn clerked for

Chief Judge Robert A. Katzmann of the Second Circuit Court of Appeals and Judge Christina A. Snyder of the Central District of California.

Experience

- Susman Godfrey L.L.P. and Hausfeld LLP Secure \$240 Million Deutsche Bank LIBOR Settlement
- Susman Godfrey LLP and Hausfeld LLP Secure \$130 Million Citibank LIBOR Settlement

Notable Representations

Insurance Litigation

- ***In re AXA Equitable Life Insurance Company COI Litigation (S.D.N.Y.)*** Secured a \$307.5 million deal for a putative class of plaintiffs who challenged AXA's 2016 hike of cost on insurance rates on hundreds of elderly insureds, claiming AXA unfairly increased the cost of insurance for certain flexible-premium universal life insurance policies.
- ***37 Besen Parkway LLC v. John Hancock Life Insurance Co. (S.D.N.Y.)***. Secured a \$91.25 million all-cash, non-reversionary settlement for insurance policy owners in this certified class action against John Hancock Life Insurance Co. Glenn's efforts over the course of two and a half years led to a successful settlement at mediation before Judge Theodore H. Katz (Ret.). Glenn was quoted about the case and the enormous result for the Class in [this article](#) by *Law360*.
- ***PHT Holdings II LLC v. North American Company for Life and Health Insurance (S.D. Iowa)***. Resolved major insurance breach of contract class action on behalf of a class of policy holders against North American Insurance Company. The case was settled on the eve of trial.
- ***LSIMC LLC v. American General Life Insurance Co.*** Settled class action against Amgen for relief valued at \$55 million for a class of policy holders who alleged that Amgen increased their insurance rates against contractual terms (net amount after fees and expenses not yet determined).
- ***TVPX ARS, Inc., v. Genworth Life and Annuity Insurance Company (E.D. Va.)*** Represented life settlement fund, TVPX, in their breach of contract action against Genworth Insurance Company. After Genworth secured an injunction based on a 2004 settlement of a prior case, Glenn took over the appellate argument before the Eleventh Circuit Court of Appeals and persuaded the Eleventh Circuit to vacate the district court's injunction. The opinion can be read [here](#) and you can listen to Glenn's argument before the court [here](#) (start at 3:15).
- ***Helen Hanks on behalf of herself and all others similarly situated, vs. The Lincoln Life & Annuity Company of New York; Voya Retirement Insurance and Annuity Company (S.D.N.Y.)***. Litigated an insurance

matter against Voya Life Insurance Company, which successfully resolved for relief valued at over \$92.5 million.

Business Disputes

- ***Rama Krishna et al. v. Pzena Investment Management Inc. (Delaware Court of Chancery)***. Defeated preliminary injunction and secured dismissal while defending Pzena LLC in a breach of contract action alleging breach of LLC agreement. [Read more](#) (subscription required).
 - ***Winthrop Resources v. Prospect ECHN***. Secured affirmative summary judgment in breach of a lease contract on behalf of longterm Susman Godfrey client Winthrop Resources Corporation. The Court rejected Prospect's motion for summary judgment seeking return of previously paid rent, and awarded Winthrop every penny it sought.
 - ***Jasmin Solar Pty Ltd. V. Chinese Equipment Supplier (2nd)***. Represented Australian solar energy company, Jasmin Solar Pty Ltd., in their breach of contract action against a Chinese equipment supplier. After suffering defeats with prior counsel before both an arbitrator and the district court, Glenn and a team from Susman Godfrey took over the case at the Second Circuit Court of Appeals, and persuaded the Second Circuit to not only overturn the district court's previous order confirming arbitration award, but also to vacate entire judgment against Jasmin.
 - **Malpractice Action**. Represented major construction entrepreneur in successfully-resolved malpractice action against his conflicted former law firm.
 - ***In Re: James V. Cotter, Living Trust, Ellen Marie Cotter, Margaret Cotter, Petitioners, vs. James J. Cotter, Jr., Respondent***. Achieved a successful verdict invalidating a will on grounds of both undue influence and incapacity in this trust and estates case in Los Angeles Superior Court. At trial, Glenn examined witnesses and delivered closing argument on the successful undue influence claim.
 - Currently representing chemical manufacturing company in confidential arbitration alleging that our customer breached their exclusive supply agreement.
-

Intellectual Property

- **Confidential Patent Infringement Matter on Behalf of Bitdefender**. Defended cybersecurity company, Bitdefender, in patent action filed by a well-known non-practicing entity. Glenn took the lead on the damages portion of the case and handled Daubert briefing seeking to exclude plaintiffs' entire damages case, briefing which shortly preceded a favorable settlement of the entire matter.

- **Confidential Trademark Dispute on behalf of Amazon.** Defended online retail giant, Amazon, in a complex trademark dispute. After defeating plaintiff's request for a preliminary injunction, the case settled confidentially on favorable terms.
-

Antitrust

- ***In Re: LIBOR-Based Financial Instruments Antitrust Litigation (S.D.N.Y.)***. Served as co-lead counsel to a certified class of 16 plaintiffs, including cities, pension funds and others known as the "OTC" investors, who sued a number of investment banks for conspiring with rivals to rig LIBOR. The team has helped nearly \$700 million in settlements for the class against defendant banks. The class was certified in 2018 by the court, the only class in the coordinated LIBOR litigation to receive class certification.
- **Confidential Auto Dealership Antitrust Matter.** Represented automotive dealership software company in defense of antitrust claim seeking hundreds of millions of dollars of damages.

Honors & Distinctions

- Lawdragon 500X – The Next Generation of Leading Lawyers (2023)
- California Lawyer Attorney of the Year, *Daily Journal* (2023)
- Rising Star, Southern California (2023, Thomson Reuters)
- Rising Star in General Commercial Litigation, *The Legal 500* (2020)
- Rising Star – Insurance, *Law360* (2019)
- California Trailblazer, *The Recorder* (ALM, 2019)

Clerkships

Chief Judge Robert A. Katzmann, United States Court of Appeals for the Second Circuit, 2014-2015

Honorable Christina A. Snyder, United States District Court for the Central District of California, 2013-2014

Admissions

Bar Admissions

- California

Leadership & Professional Memberships

- Fellow of the American Bar Association
- Los Angeles County Bar Association
- Association of Business Trial Lawyers Los Angeles



Nick Spear

Partner

Los Angeles

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Overview

Nick Spear litigates high-stakes and high-profile matters across the United States, representing both plaintiffs and defendants and regularly facing-off against industry titans. Spear has tried cases in federal courts, state courts, and arbitrations across a variety of legal areas including false claims, insurance, securities, real property, breach of contract, personal injury, intellectual property, and employment. Spear's cases have been covered by the *Los Angeles Times*, the *Associated Press*, and numerous industry publications.

Named a California Lawyer Attorney of the Year by *The Daily Journal* in 2023, a Rising Star of the Plaintiffs Bar by *National Law Journal's* Elite Trial Lawyers, a Litigation Trailblazer by *National Law Journal* (ALM), and a Southern California Super Lawyers Rising Star (Thomson Reuters) in 2021 and 2022, Spear plays a central role in his cases, regularly leading deposition efforts that elicit critical information, writing persuasive motions and briefs, and winning crucial arguments in court. Spear frequently argues and succeeds against lawyers with decades more experience, including successfully opposing a demurrer argued by a former United States Attorney.

LANDMARK LITIGATION

In *State of California v. Cellco Partnership*, Spear served as co-lead counsel to some of the largest government entities in California—including the University of California system, the California State University System, and the County of Los Angeles—in a ground-breaking California False Claims Act lawsuit against several major wireless carriers. The carriers were alleged to have fraudulently overbilled their government customers for wireless services by failing to provide contractually required “lowest cost available” service. Spear played a key role in the matter, leading efforts to pursue the offensive case against AT&T. In total, the four telecommunications giants—AT&T,

Verizon, Sprint, and T-Mobile—agreed pay \$175 million to the government plaintiffs in California and Nevada, including over \$50 million from AT&T alone (net settlement after fees and expenses not yet determined). These record-setting settlements are among the largest of their kind in California. Read more in the [Los Angeles Times](#)' coverage.

Spear is at the forefront of protecting policyholders from improper insurance charges by many of the nation's largest insurers, including Voya, Lincoln Life, North American, Genworth, Phoenix, and John Hancock. In *Helen Hanks v. Lincoln Life & Annuity Company of New York*, Spear secured a settlement valued at over \$118 million (before fees and expenses), which included a \$92.5 million non-reversionary cash settlement fund, for thousands of insurance policy owners against Voya Retirement Insurance and Annuity Company over allegations that Voya improperly raised policyholders' cost-of-insurance charges. In *37 Besen Parkway LLC v. John Hancock Life Insurance Co*, Spear helped secure a \$91.25 million all-cash, non-reversionary settlement for insurance policy owners against John Hancock Life Insurance Co over allegations that Hancock breached the life insurance contracts of the class (before fees and expenses). Read more [here](#) (subscription required). Spear now represents a certified class of insurance policyowners in *Advance Trust & Life Escrow Services, LTA v. North American Company for Life and Health Insurance* over allegations that North American has overcharged universal life insurance policyowners

Spear also tries cases at the cutting edge of law and technology, including representing the Lead Plaintiff in a putative securities class action alleging that the cryptocurrency XRP is an unregistered security.

Spear maintains an active pro bono practice. He currently represents a tenant advocacy group helping defend the constitutionality of eviction protections for renters enacted by the City of Oakland and Alameda County in the wake of the COVID-19 pandemic. The [Daily Journal](#) profiled Spear and his colleagues for their work in this area. You can also read more about it in [San Francisco Chronicle's](#) coverage and in [Law360](#) (subscription required).

COMMUNITY LEADERSHIP

Spear is actively involved in the community. He is an [officer](#) on the Executive Committee of the Barristers/Young Attorneys section of the Los Angeles County Bar Association (LACBA), which represents the interests of thousands of early-career attorneys across Los Angeles county. Spear is the President-Elect and will serve as President during the 2023–24 term. In addition, Spear is on the LACBA [Executive Committee](#) and [Board of Trustees](#), as well as the Bench and Bar Committee.

Spear is also on the [Advisory Board](#) of the Western Center on Law and Poverty where he has helped raise thousands of dollars to support Western Center's mission to protect California's most vulnerable citizens. Spear has also spent more than a decade as a staff member for the American Legion's

California Boys' State program, one of the nation's premier governmental education programs for high school students, and currently serves as one of the program's Legal and Elections counselors. Spear also sits on the Board of Directors of the California Boys & Girls State Foundation.

BACKGROUND

Before joining the firm, Spear served as law clerk to the Honorable Andrew D. Hurwitz of the United States Court of Appeals for the Ninth Circuit and to the Honorable Philip S. Gutierrez of United States District Court for the Central District of California.

Spear earned his JD from University of Chicago Law School where he graduated order of the coif and with high honors, and his Bachelor of Arts degree from UCLA, where he graduated *cum laude* and Phi Beta Kappa.

Experience

- Verizon, AT&T Agree to Pay \$116 Million in California and \$11 Million in Nevada to Settle Whistleblower Cases

Honors & Distinctions

- Lawdragon 500X – The Next Generation of Leading Lawyers (2023)
- California Lawyer Attorney of the Year, *Daily Journal* (2023)
- Recommended Lawyer, Energy Litigation: Oil & Gas, The Legal 500 (2022, Legalease)
- Litigation Trailblazer, *National Law Journal's* Elite Trial Lawyers (2021, ALM)
- Rising Star of the Plaintiffs Bar, *National Law Journal's* Elite Trial Lawyers (2021, ALM)
- Southern California Rising Star, Super Lawyers (2021, 2022, 2023 Thomson Reuters)
- Comments Editor, *The University of Chicago Law Review*
- Order of the Coif, University of Chicago Law School
- Kirkland & Ellis Scholar, University of Chicago Law School
- The Ann Watson Barber Outstanding Service Award, University of Chicago Law School
- The Thomas R. Mulroy Prize for Excellence in Appellate Advocacy and Oral Argument, University of Chicago Law School
- Phi Beta Kappa, UCLA

Clerkships

Honorable Andrew D. Hurwitz, United States Court of Appeals for the Ninth Circuit

Honorable Philip S. Gutierrez, United States District Court for the Central District of California

Admissions

Bar Admissions

- California
-

Court Admissions

- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for Central District of California
- U.S. District Court for the Eastern District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California

Leadership & Professional Memberships

- American Bar Association
- American Bar Foundation, Fellow
- Association of Business Trial Lawyers
- California Lawyers Association
- Federal Bar Association
- Judge Paul R. Michel Intellectual Property American Inn of Court
- Los Angeles County Bar Association, Executive Committee



Halley Josephs

Partner

Los Angeles

(310) 789-3100

hjosephs@susmangodfrey.com

Overview

Halley Josephs is an accomplished trial lawyer and trusted adviser who represents clients in complex business disputes and high-stakes litigation. Her experience covers a wide range of practice areas, such as breach of contract, consumer protection, intellectual property, and False Claims Act litigation. She regularly advocates for clients before state and federal courts around the country, including in California, New York, the District of Columbia, Colorado, Oklahoma, Pennsylvania, and Texas. Beyond her active trial court practice, she has argued appeals in the Third and Ninth Circuits.

Ms. Josephs' recent notable representations include:

- Securing a \$16 million deal to resolve a whistleblower lawsuit alleging that Walgreens, Stephen L. LaFrance Holdings Inc. and several companies that were part of USA Drug, a regional pharmacy chain, knowingly overbilled Medicare Part D, Medicaid and other government health programs millions of dollars by unlawfully charging more for generic drugs than the customary prices paid by individuals without prescription drug insurance. Ms. Josephs successfully opposed multiple motions to dismiss in this case. Read about the district court's opinion denying defendants' motions to dismiss [here](#). [Read more](#).
- Defending Uber Technologies, Inc. in the "[Tech Trial of the Century](#)," in which Waymo (the self-driving car subsidiary of Google's parent company, Alphabet Inc.) claimed more than \$2 billion in damages for alleged trade secret theft. Susman Godfrey was hired by Uber only months before the jury trial in the Northern District of California was scheduled to begin. Susman Godfrey's team successfully argued for the exclusion of Waymo's expert damages opinions, and the case settled during the first week of trial.
- Representing universal life insurance policyholders in [In re AXA Equitable Life Insurance Company Litigation](#), a breach of contract and consumer protection class action lawsuit pending in the Southern District of New York that challenges increases to cost-of-insurance charges for certain

flexible-premium life insurance policies covering elderly insureds. In 2020, Ms. Josephs and her team secured class certification of breach-of-contract claims and claims under New York General Business Law § 349 and New York Insurance Law § 4226.

- Representing a major sports agency in a confidential arbitration concerning the departure of agents to a competing agency.
- Arguing and winning an appeal before the U.S. Court of Appeals for the Third Circuit in *Plavin v. Group Health Inc.*, where Ms. Josephs represents a retired NYPD officer, the named plaintiff for a putative class of hundreds of thousands of NYC employees and retirees, alleging the employees' health insurer violated New York's consumer protection laws. You can listen to her oral argument [here](#) and read the Court's opinion [here](#).
- Representing an international aviation financing and leasing company in actions seeking to recover more than \$40 million in damages from various lessees. Ms. Josephs led mediations which resulted in confidential settlements in several of the actions.

Ms. Josephs also dedicates a significant portion of her docket to pro bono matters. She currently represents SAJE, ACCE Action, and CES, tenant advocacy groups, as intervenors to help defend the constitutionality of eviction moratoria enacted in the wake of the COVID-19 pandemic by the City of Los Angeles and County of San Diego. In February 2022, Ms. Josephs argued an appeal before the Ninth Circuit on behalf of ACCE Action, urging the court to affirm the denial of a preliminary injunction targeting the County of San Diego's expired eviction ordinance. Click [here](#) to watch her argument. The *Daily Journal* and *Law360* profiled Josephs and her colleagues for their work in this area.

Ms. Josephs joined Susman Godfrey after clerking for Judge Patty Shwartz of the U.S. Court of Appeals for the Third Circuit and Judge Anita B. Brody of the U.S. District Court for the Eastern District of Pennsylvania. She earned her J.D. from Yale Law School and graduated Phi Beta Kappa and with distinction from the University of Virginia.

Experience

- Two Appellate Wins in One Week for Susman Godfrey Associates
- Walgreens, Stephen L. LaFrance Holdings Co. and Other Pharmacies in the USA Drug Chain Agree to Pay \$16 Million to Settle Whistleblower Lawsuit Alleging Overbilling of Government Health Programs

Honors & Distinctions

- Lawdragon 500X – The Next Generation of Leading Lawyers ([2023](#))
- [Top Woman Lawyer](#), *Daily Journal* (2023, Daily Journal Corp.)
- [California Lawyer Attorney of the Year](#), *Daily Journal* (2023, Daily Journal Corp.)
- Southern California Rising Star, Super Lawyers ([2023](#), Thomson Reuters)
- [Rising Stars of the Plaintiffs Bar](#), *National Law Journal's* Elite Trial Lawyers (2022, ALM)
- Recipient of [National Impact Case of the Year Award](#) by Benchmark Litigation (2019)
- Coker Fellow, Torts, Professor Douglas Kysar
- Teaching Assistant to the Honorable Stefan R. Underhill (D. Conn.), Complex Civil Litigation
- Articles Editor, *Yale Journal on Regulation*
- Phi Beta Kappa
- Raven Society

Clerkships

Honorable Patty Shwartz, United States Court of Appeals for the Third Circuit

Honorable Anita B. Brody, United States District Court for the Eastern District of Pennsylvania

Education

Yale Law School (J.D., , 2014)

The University of Virginia (B.A., with distinction, 2011)

- Phi Beta Kappa

Admissions

Bar Admissions

- California
 - New York
-

Court Admissions

- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Southern District of New York

Exhibit 2

Report On the Value of the Non-Monetary Benefits Achieved in the Class Action Settlement with North American Company for Life and Health Insurance (the “Report”)

Executive Summary

This Report presents that a reasonable estimate of the value of the Non-Monetary Benefits secured for the benefit of the Settlement Class, is the following:

Commitment	Value
Validity Confirmation	\$ 2.3m
Total	\$ 2.3m

For this Report “Settlement Class” is assumed as the 18592 policies identified in the file of policy data provided by Class Counsel.

Scope

Demeter was retained for settlement purposes by counsel for the plaintiff in connection with a class action against North American Company for Life and Health Insurance (“North American”) in order to value the non-monetary benefits contained in the settlement agreement in connection with its forthcoming motion for final approval of the settlement.

This Report provides an estimate of the value of the following commitment from North American with respect to the Settlement Class.

- **Validity Confirmation.** An agreement by North American not to challenge or rescind any policies on lack of insurable interest or fraud grounds or based on misrepresentations in the policy application. This promise lasts in perpetuity.

General Approach and Data Considered

A reasonable and fair approach to measure the value of the Non-Monetary Benefits to the Class is a present value of the expected cost of the promises— *i.e.*, the cost of providing the benefit.

The discount rate applied to the calculations is representative of life insurance industry projects. A discount rate of 5% has been used. This is discussed in Section 1.5.

The calculations of the benefits’ value are made by using future projections of the cashflows of the policies. The projections are performed both with and without the promise, and the value of the benefits is taken as the present value of the difference between the two projections.

The future projections require a modelling of the future mortality benefits of the policies.

North American has provided its own expectations of mortality for the Settlement Class— this has been used to project future death benefits.

An industry report from the Society of Actuaries has been used to set assumptions as to lapse rates to project future death benefits.

Data has been provided containing details of policies that were in force on 31 March 2023.

The calculations in this Report assume that the Non-Monetary Benefits start on 1 January, 2024. Therefore, it was necessary to update the Settlement Class from 31 March, 2023 to 31 December, 2023. For this purpose of the Report the calculations have assumed a certain rate of lapse as described in section 1.2 and maturities consistent with North American's mortality assumptions to project the policies from March 31, 2023 to the start date.

Approach for Valuing the Validity Confirmation

The Validity Confirmation is an agreement by North American not to challenge or rescind any policies on lack of insurable interest or fraud grounds or based on misrepresentations in the policy application.

Defendant shall forever be barred from taking and shall not take any legal action (including asserting as an affirmative defense or counterclaim) that seeks to void, rescind, cancel, have declared void, or seek to deny coverage under or deny a death claim for any Final Class Member on a Classic Term UL policy because of an alleged lack of valid insurable interest or as stranger originated life insurance ("STOLI") under any applicable law or equitable principles, except as set forth below. The covenant set forth in this paragraph is solely prospective, and it does not apply to any actions taken by Defendant in the past. Nothing contained in this Agreement shall otherwise restrict Defendant from: (i) following its normal procedures and any applicable legal requirements regarding claims processing, including but not limited to confirming the death of the insured; determining the proper beneficiary to whom payment should be made in accordance with applicable laws, the terms of the policy, and policy specific documents filed with Defendant; and investigating and responding to competing claims for death benefits; (ii) enforcing contract terms and applicable laws with respect to misstatements regarding the age, gender, or smoking status of the insured or with respect to any other misrepresentation allegedly made on or related to the application for, or otherwise made in applying for, an insurance policy; (iii) in the event any Final Class Member initiates after the Final Approval Date a legal proceeding concerning any Released Claim, asserting any affirmative defenses or counterclaim in such litigation; or (iv) complying with any court order, law or regulatory requirements or requests. The Settlement Class policies have been in force for more than 2 years and are all outside of their contestable periods. This means the risk for a policy holder of a contest to a death claim for reasons such as suicide or inaccuracy in medical statements has now passed. As a result, absent trivial issues such as a failure to present a death certificate, fraud or lack of insurable interest now present the main reasons why North American would not pay a death benefit claim.

The calculation of the value of the Validity Confirmation was performed as the present value of the difference between two projections:

- Base case mortality and lapse rate assumptions, and a risk of a challenge to the death benefit payment.
- Base case mortality and lapse rate assumptions, and no risk of a challenge to the death benefit payment.

In providing the Validity Confirmation, North American is forgoing the ability to challenge and resist death benefit claims in the future for the Settlement Class. In order to provide a valuation of the Validity Confirmation, the following were estimated:

- timing of the future claims for death benefits for the Settlement Class;
- the probability that North American could successfully resist a claim; and
- the amount of payout that North American would have saved in the event of successfully resisting a claim that North American is now forgoing (and that is therefore a benefit going to the Class).

The timing of the future claims was projected using North America's mortality assumptions and the lapse assumptions described in Section 1.2. The Validity Confirmation has no end date and therefore projections were extended for 40 years – after the likely last policy maturity in the Settlement Class.

The present value of the death benefit claims was calculated by discounting at 5%.

Values are shown in Section 2.

Section 1 – Projection Assumptions

Death Benefits for the Settlement Class were projected 40 years into the future.

The projections make use of the following assumptions.

1.1 Mortality

North American provided “cash flow testing” mortality assumptions as of 2021, with the following variables:

- Product (Classic Term UL I or Classic Term UL 2)
- Sex (Male or Female)
- Underwriting Class (Preferred, Standard or Smoker)
- Size (Split into 5 bands)

The mortality rates are select and ultimate with 20 year select period.

1.2 Lapse

The projection takes place over the next 40 years. The policies have already been in force for some time.

The most recent persistency study from the Society of actuaries was accessed at:

<https://www.soa.org/resources/research-reports/2019/2009-13-us-ind-life-persistency-update/>

The policy year 30+ lapse rates by face amount for Universal Life policies was used¹.

That lapse rate is 3% per annum.

1.3 Taxes

The personal rates of taxation that might apply to individual policy holders could differ substantially from one holder to another. So, for purposes of this Report, all calculations of the value of the Non-Monetary Benefits are gross of taxes.

1.4 Contest Success Probability and Pay-out Rates of Resisted Claims

Data from market aggregate figures provides information about how often carriers resist a death claim:

Year	Disputes Settled (\$millions)	Amount Paid (\$millions)	Amount Denied (\$millions)	Incurred Claims (\$billions)	Denied / Incurred Ratio
2015	829.1	206.5	622.5	73.5	0.85%
2016	805.9	153.8	652.0	74.8	0.87%
2017	812.2	247.9	564.3	77.0	0.73%
2018	855.8	110.4	745.4	78.4	0.95%
2019	868.8	303.0	565.8	79.8	0.71%
2020	669.1	320.5	348.6	92.0	0.38%
2021	568.7	219.3	349.4	103.3	0.34%
Total	5409.6	1561.4	3848.0	577.1	0.67%

Source: ACLI tabulations of NAIC data.

The last few years have seen a resurgence of STOLI litigation.² By making this settlement, North American is forging the option to take part of this wave of new STOLI litigation and instead provides payment certainty on the policies and thus value to the Settlement Class. Also new in this trend has been an increase in success rates where some carriers have been able to convince courts to permit the retention of some or all the premiums received.

¹ See cell G36 on tab 'Universal Life'

<https://www.soa.org/49ca32/globalassets/assets/files/resources/research-report/2019/2009-13-us-ind-life-persistence-excel.xlsx>

² See, e.g., *Pacific Life Ins. Co. v. Wells Fargo Bank, N.A.*, C.A. No. 8:21-cv-737 (PJM) (D. Md.), *Columbus Life Ins. Co. v. Wilmington Trust, N.A.*, C.A. No. 20-735-MN-JLH (D. Del); *Sun Life Assurance Co. of Canada v. Bank of Utah*, Case No. 21-CV-3973-LMM (N.D. Ga.).

For these reasons, it is reasonable for settlement purposes to use the aggregate market rate data to provide the settings for the model scenario that includes risk of a challenge to payment of death benefit. The data above suggests the following estimates:

- Probability of resisting claim = $\$5,409.6 \text{ m} / \$577.1 \text{ bn} = 0.94\%$
- Pay-out amount for resisted claim = $\$1,561.4\text{m} / \$5,409.6 \text{ m} = 28.9\%$

1.5 Discount Rates

Finding the value today of the Non-Monetary Benefits provided by the Settlement, requires use of a present value calculation of the future cash flows, which requires use of a certain discount rate.

The owners of the portfolio are likely to fall into two disparate groups.

- Individuals who are currently receiving low rates of interest on their bank deposits, and who rarely use discounting to assess the value of a project.
- Life settlement funds who target high returns on capital and who are typically earning 8-9% returns on capital.

A large amount of the policies in the portfolio display characteristics of individual ownership, with few of the policies being owned by investors.

This Report uses a 5 percent discount rate for which represents a blended average of the low rates of return expected by individuals and the higher rates being earned by life settlement funds. 5 percent is closer to the individual point of view, this reflects their majority ownership.

1.6 Reinsurance

Reinsurance is excluded from all the calculations in this Report. Reinsurance is not relevant to calculating the settlement value that policyholders would obtain from the Non-Monetary Benefits.

Section 2 - Results

2.1 Validity Confirmation Valuation

In providing the Validity Confirmation, North American is forgoing the ability to challenge and resist death benefit claims in the future for Settlement Class. The value of the Validity Confirmation was determined by a probability weighted net present value calculation using the assumptions set forth above.

The data provided for the Settlement Class death benefits, and account balances was projected for the period from January 1 2024 to maturity. The projection includes the future probability of lapsing a policy, starting at January 1 2024 using the lapse rate assumption. The starting balance of death benefits was given in the in-force data as of 31 March, 2023 and rolled to January 1 2024 using the mortality and lapse rate assumptions.

The mortality assumptions were used to generate forward Qx, i.e., mortality rates, for each Class Policy and build a set of future survival probabilities starting at January 1 2024. The

future death benefits of the policies were projected using the probability of lapse and death for each month.

For the without Validity Confirmation scenario, the death benefits were reduced for a probability of being contested of 0.94 % and a payout ratio of 28.9 %.

Estimates of legal expenses incurred in resisting policies were not considered.

The results of each life insurance policy in the Settlement Class were then aggregated and discounted to reach the estimated value of the Validity Confirmation.

PV of future death benefits without Validity Confirmation = \$343.4 m

PV of future death benefits with Validity Confirmation = \$345.7 m

Value of Validity Confirmation = \$2.3 m

Conclusion

Using the methodology and assumptions set forth above the values of the COI Rate Freeze and the Validity Confirmation are set forth in the table below.

Commitment	Value \$
Validity Confirmation	\$ 2.3 m
Total	\$ 2.3 m

I have performed a qualitative review of these results and believe that they are a reasonable calculation of the value of the Non-Monetary Benefits.



James Rouse

November 8, 2023

Exhibit 3

Clerk of the Court

U.S. District Court Southern District of Iowa
123 East Walnut Street Suite 300
Des Moines, IA 50309

October 13, 2023

Via: Certified Mail

Re: *PHT Holding II LLC v. North American Company for Life and Health Insurance*, Case No. 4:18-cv-00368-SMR-HCA

To whom it may concern,

After further explanation from Class Counsel about the benefits of the settlement, we withdraw our objection submitted on October 2, 2023.

Thank you.

Alan Martin



Katherine Lee Bowman



Alan Martin, 4235 N Winchester Ave. Chicago, IL 60613
Phone: 312-933-5383 Email: alanmartin1@comcast.net
N.A. Company for Life and Health Insurance
Classic Term UL II Policy # LO11808340

Katherine Lee Bowman, 4235 N Winchester Ave. Chicago, IL 60613
Phone: 312-371-3254 Email: kbowmanre@aol.com
N.A. Company for Life and Health Insurance
Classic Term UL II Policy # LO11808350

CC via email to Class Counsel and Counsel for Defendant

RECEIVED
OCT 23 2023
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

Alan Martin
4235 N Winchester Ave.
Chicago, IL 60613

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Clerk of the Court
U.S. District Court Southern District of Iowa
123 East Walnut Street, Suite 300
Des Moines, IA 50309



Exhibit 4

Glenn Bridgman

From: Robert Hively [REDACTED]
Sent: Wednesday, November 8, 2023 10:11 AM
To: Glenn Bridgman
Subject: "TO: Glenn Bridgman"

EXTERNAL Email


Open my shared note:



TO: Glenn Bridgman
Notes

Sent from my iPad

TO: Glenn Bridgman
1900 Avenue of the Stars 1400
Los Angeles, CA 90067

FROM: Robert L Hively MD


RE: North American Company Class Action Lawsuit

Mr. Bridgman I am currently out of town but I wanted you to know I am officially withdrawing my objection in the above class action lawsuit.

Robert L Hively MD

November 8, 2023

Exhibit 5

American's records, along with the estimated number of class policies owned by class members residing in such state, the number of policies owned by all class members, and the estimated proportionate share of the claims to settlement benefits of those class members residing in such state to the entire settlement.

3. I received tracking confirmations that each such CAFA Notice was delivered.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on November 13, 2023, in San Francisco, California.

A handwritten signature in black ink, appearing to read "Tania Rice", written over a horizontal line.

Tania Rice