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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Jesus Caballero,  
  
Plaintiff,

v.

Economy Preferred Insurance Company, et  
al.,  
  
Defendants.

Nos. CV-22-02023-PHX-MTL  
CV-22-01820-PHX-MTL  
CV-24-01267-PHX-MTL  
CV-24-01270-PHX-MTL

[Consolidated]

**PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES, EXPENSES  
AND SERVICE AWARDS**

(Honorable Michael T. Liburdi)

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## I. INTRODUCTION

In the face of determined opposition from the insurance industry and complex challenges engineering claims that could be adjudicated on a classwide basis under Federal Rule of Civil Procedure 23, Class Counsel undertook this litigation to enforce statutory rights for those seriously injured or killed in auto accidents by uninsured (UM) and underinsured (UIM) tortfeasors. All the Settlement Class Members had exhausted the single (unstacked) limits of UM/UIM coverage under their insurance policies, but none of them received additional benefits Plaintiffs contended they were entitled to under the UM/UIM coverage of other vehicles on their policies. Focusing on the data-driven expected payouts of *contract* benefits, rather than the predicted values of the underlying personal injury tort claims, Class Counsel developed a model for calculating classwide damages based on reliable and established statistical methods for calculating the aggregate value of insurance settlements for the Settlement Class up to the proper stacked policy limits.

After prevailing at the Arizona Supreme Court on a contested issue of Arizona insurance law that goes to the crux of this case, Class Counsel has negotiated a settlement that will provide a \$11,600,000.00 common fund for the Settlement Class. The common fund provides each Class Member approximately 128% of the benefits they would have received had their claims been adjusted under the stacked policy limits. This settlement is also a part of Class Counsel's broader litigation campaign ensuring that Arizona insureds receive the full benefits owed under the contract and reforming the way insurers handle and pay UM/UIM claims.

Because of the substantial risks of litigating statutory and insurance issues, the need to navigate class certification issues, and the excellent recovery for the Settlement Class, Plaintiffs respectfully request from the common fund: (1) an award of attorney's fees in the amount of 30% of the monetary benefits conferred upon the Class, which equals \$3,480,000; (2) expenses fronted by Class Counsel in litigating this matter of

1 \$79,136.03; and (3) service awards for Plaintiffs of \$7,500 each based on their  
 2 contributions and efforts.

3 The fees requested are warranted under the percentage-of-the-fund methodology,  
 4 which is the preferred methodology of the Ninth Circuit in cases such as this one where  
 5 there is a common fund created for the class, the parties settled after conducting critical  
 6 discovery but before class certification, and the case is part of a broader litigation  
 7 campaign. Additionally, the 30% requested is in line with the standard contingency fee  
 8 rates for plaintiff attorneys who specialize in insurance issues. This Motion is supported  
 9 by the Declaration of Robert B. Carey (“Carey Decl.”), attached hereto.

## 10 **II. THE WORK UNDERTAKEN BY PLAINTIFFS**

### 11 **A. Plaintiffs’ Counsel initiated related litigation on the same issues in this case.**

12 In October 2021, Judge Susan Bolton ruled in favor of the insured plaintiff in  
 13 *Heaton v. Metropolitan Group Property & Casualty Co.*, holding that Arizona law  
 14 required stacking of UM and UIM motorist coverages within a multi-vehicle policy under  
 15 A.R.S. § 20-259.01(H), where the insurer did not provide the insured an opportunity to  
 16 elect which vehicle’s coverage was applicable to the claim. *Heaton v. Metro. Grp. Prop.*  
 17 *& Cas. Ins. Co.*, No. CV-21-00442-PHX-SRB, 2021 WL 6805629, at \*8 (D. Ariz. Oct.  
 18 19, 2021). Under that ruling, an insured could collect up to the policy limits on each  
 19 insured vehicle covered by the policy if they were not provided the opportunity to elect  
 20 the applicable vehicle’s coverage. *Id.* The *Heaton* case was later settled and there was no  
 21 appeal of Judge Bolton’s decision. Evan Goldstein, a member of Plaintiffs’ counsel here,  
 22 was attorney of record in the landmark *Heaton* case. *See generally id.*

23 In April 2022, Class Counsel Hagens Berman filed *Franklin v. CSAA General*  
 24 *Insurance Co.*, No. CV-22-00540-PHX-JJT, alleging the same theory against CSAA.  
 25 *Franklin* was one of over twelve cases filed by Hagens Berman and/or its co-counsel  
 26 here, the Slavicek Law Firm, during the 2022–2023 timeframe alleging the same theory  
 27 of liability, including cases against Allstate, Liberty Mutual, Safeco, Travelers, American  
 28



Family, Amica, Pekin Insurance, and Farmers Insurance Group entities. Dkt. 108 at 2 n.2.<sup>1</sup>

This case against Defendants is the consolidation of four of those suits. Proposed Class Counsel spent significant time and resources investigating *Franklin* and these related cases with the intention of coordinating litigation efforts across the cases. Dkt. 108-2 ¶ 3.

Because of Class Counsel's effort in litigating these cases, and ultimate success in *Franklin*, *Franklin* became a standard-bearer for the parallel cases because it begat an Arizona Supreme Court ruling affecting all others. Citing the multiplicity of pending suits that presented the same UM/UIM stacking question, this Court certified two questions to the Arizona Supreme Court in *Franklin*:

(1) Does A.R.S. § 20-259.01 mandate that a single policy insuring multiple vehicles provides different underinsured motorist (UIM) coverages for each vehicle, or a single UIM coverage that applies to multiple vehicles?

(2) Does A.R.S. § 20-259.01(B) bar an insured from receiving UIM coverage from the policy in an amount greater than the bodily injury liability limits of the policy?

*Franklin v. CSAA Gen. Ins. Co.*, No. CV-22-00540-PHX-JJT, 2022 WL 16631090, at \*1, 2–3 (D. Ariz. Nov. 2, 2022).

On February 21, 2023, Class Counsel filed *Franklin*'s Supplemental Brief Regarding Certified Questions with the Arizona Supreme Court. Dkt. 108-2 ¶ 4. The defendant in *Franklin* similarly filed a supplemental brief that same day. *Id.* ¶ 5. In response to that briefing, four insurance companies and two insurance groups filed a total of five amicus briefs in support of CSAA, totaling seventy-four pages of briefing. *Id.* ¶ 6. Defendant Economy Preferred was one of the insurance companies that filed an amicus

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<sup>1</sup> While the Slavicek Law Firm initially operated independently in filing several cases, it later agreed to coordinate litigation efforts with Hagens Berman and its co-counsel to ensure the focus was on achieving the best result for Arizona insureds, rather than disputes among the firms prosecuting the cases.

1 brief in the *Franklin* matter. *Id.*. Hagens Berman filed a combined response to all five  
 2 amicus briefs, which consisted of thirty-eight pages of additional briefing. *Id.* ¶ 7. The  
 3 Slavicek Law Firm, co-counsel in this case, filed a separate amicus brief. *Id.* ¶ 8. The  
 4 Arizona Supreme Court held oral argument on the certified questions on April 18, 2023.  
 5 *Id.* ¶ 9. John DeStefano of Hagens Berman argued those certified questions before the  
 6 court. *Id.* ¶ 10.

7 On July 28, 2023, the Arizona Supreme Court answered the certified questions in  
 8 favor of plaintiff:

9 We hold that § 20-259.01 mandates that a single policy  
 10 insuring multiple vehicles provides different UIM coverages  
 11 for each vehicle. Notwithstanding creative policy drafting  
 12 intended to evade statutory requirements—including technical  
 13 definitions of coverages and extensive limitation of liability  
 14 clauses—insurers seeking to prevent insureds from stacking  
 15 UIM coverages under a single, multi-vehicle policy must  
 16 employ subsection (H)’s sole prescribed method for limiting  
 17 stacking. We also hold that § 20-259.01(B), by its plain  
 18 language and non-stacking function, does not bar an insured  
 19 from receiving UIM coverage from the policy in an amount  
 20 greater than the bodily injury or death liability limits of the  
 21 policy.

22 *Franklin v. CSAA Gen. Ins. Co.*, 255 Ariz. 409, 532 P.3d 1145, 1146–47 (2023). The  
 23 court explained that although the text of A.R.S. § 20-259.01 is “ambiguous, . . . the  
 24 statute’s history and purpose clearly indicate that multi-vehicle policies provide separate  
 25 UIM coverages for each vehicle.” *Id.* at 1148. The court found that subsection (H)  
 26 provides “the sole means by which insurers may limit UIM/UM stacking” and “to limit  
 27 stacking under subsection (H), insurers must (1) expressly and plainly limit stacking in  
 28 the policy and (2) satisfy the notice requirement informing the insured of their ‘right to  
 select one policy or coverage’ either in the policy itself or in writing to the insured within  
 thirty days after the insurer is notified of the accident.” *Id.* at 1148, 1151 (quoting A.R.S.  
 § 20-259.01(H)). The court concluded:

In answering the certified questions, we hold that (1) § 20-  
 259.01’s text, history, and purpose provide that an insured

covered by a multi-vehicle policy has necessarily “purchased” multiple UIM coverages for each vehicle under subsection (H); thus, rather than employing singular definitions of “coverage” in their policies, insurers must comply with the statute’s requirements to prevent insureds from intra-policy stacking; and (2) § 20-259.01(B) does not limit UIM coverage.

*Id.* at 1153.

**B. Class Counsel started this case when its success was uncertain.**

While *Franklin* was pending but before this Court certified questions to the Arizona Supreme Court—Plaintiffs Caballero and Creasman filed their actions in Maricopa County Superior Court. Notice of Removal, *Caballero v. Economy Preferred Insurance Company*, CV2-22-012824 Dkt. 1-3 (D. Ariz. Nov. 28, 2022); Notice of Removal, *Creasman v. Farmers Casualty Insurance Company*, 2:22-cv-01820 Dkt. 1-3 (D. Ariz. Oct. 24, 2022). Like the plaintiff in *Franklin*, the Plaintiffs’ claims relate to stacking UM and UIM coverage. Plaintiff Caballero alleges that he was injured in a collision on June 6, 2020, that his injuries led to medical expenses in excess of \$850,000, and that the non-party at fault was underinsured. Compl., *Caballero*, 2:22-cv-02023 Dkt. 1-3 (“*Caballero* Compl.”) ¶¶ 7–12. At the time of the collision, Caballero was an insured under an Economy Preferred policy insuring four vehicles, with UM coverage of \$15,000 per person and an aggregate limit of \$30,000 per collision. *Id.* ¶ 18. On November 20, 2020, Caballero submitted a claim to Economy Preferred for UIM benefits on the Economy Preferred policy. *Id.* ¶ 28. Economy Preferred paid Caballero \$15,000—the policy limits on one of the vehicles—but did not pay any claims for coverage on the other three vehicles. *Id.* ¶¶ 29-30.

Similarly, Plaintiff Creasman alleges that he was injured in a collision on August 20, 2016, that his injuries led to medical expenses in excess of \$500,000, and that the non-party at fault was underinsured. Second Amended Compl., *Creasman*, 22-cv-01820 Dkt. 30 (“*Creasman* Compl.”) ¶¶ 7–14. At the time of the collision, Creasman held a Farmers policy insuring four vehicles, with UM coverage of \$500,000 per person and an

1 aggregate limit of \$500,000 per collision. *Id.* ¶ 14. On January 8, 2019, Creasman  
 2 submitted a claim to Farmers for UIM benefits on the Farmers policy. *Id.* ¶ 21. Farmers  
 3 paid Creasman \$500,000—the policy limits on one of the vehicles—but did not pay any  
 4 claims for coverage on the other three vehicles. *Id.* ¶¶ 22-23.

5 After the Arizona Supreme Court issued its decision in *Franklin*, Plaintiffs  
 6 Wilhelm and Luna filed their actions in the Arizona District Court. Plaintiff Wilhelm  
 7 alleges that she was injured in a collision on August 13, 2021, that her injuries led to  
 8 medical expenses in excess of \$435,000, and that the non-party at fault was underinsured.  
 9 First Amended Compl., 2:24-cv-1270-PHX Dkt. 9 (“*Wilhelm* Compl.”) ¶¶ 22-28. At the  
 10 time of the collision, Wilhelm held an Economy Premier policy insuring five vehicles,  
 11 with UM coverage of \$100,000 per person and an aggregate limit of \$300,000 per  
 12 collision. *Id.* ¶ 29. On September 16, 2022, Wilhelm submitted a claim to Economy  
 13 Premier for UIM benefits on the Economy Premier policy. *Id.* ¶ 33. Economy Premier  
 14 informed Plaintiff Wilhelm that only \$100,000 in coverage was available—the policy  
 15 limits on one of the vehicles—but did not inform her of her right to recover additional  
 16 monies on the other four vehicles. *Id.* ¶¶ 34-35. Plaintiff Luna alleges that he was injured  
 17 in a collision on October 29, 2020, that his injuries led to medical expenses in excess of  
 18 \$25,000, and that the non-party at fault was underinsured. Compl., *Luna*, 2:24-cv-01267  
 19 Dkt. 1 (“*Luna* Compl.”) ¶¶ 22-28. At the time of the collision, Luna held a Farmers  
 20 Group policy insuring two vehicles, with UM coverage of \$25,000 per person and an  
 21 aggregate limit of \$50,000 per collision. *Id.* ¶ 29. On January 8, 2019, Luna submitted a  
 22 claim to Farmers Group for UIM benefits on the Farmers Group policy. *Id.* ¶ 34. Farmers  
 23 Group paid Luna \$25,000—the policy limits on one of the vehicles—but did not pay any  
 24 claims for coverage on the other covered vehicle. *Id.* ¶ 36.

25 The Plaintiffs all brought claims for breach of contract and breach of the implied  
 26 covenant of good faith and fair dealing, seeking declaratory relief, direct and  
 27 consequential damages, and punitive damages. *Caballero* Compl. ¶¶ 44–64; *Creasman*  
 28 Compl. ¶¶ 39-77; *Wilhelm* Compl. ¶¶ 75-90; *Luna* Compl. ¶¶ 85-100. The Plaintiffs

generally sought to certify nearly identical classes of similarly situated individuals under Arizona Rule of Civil Procedure 23(b)(2) and (b)(3): (1) insureds with UM claims under an Arizona policy issued by one of the Farmers Defendants that insured more than one vehicle who were paid the UM policy limits on one vehicle on the policy, but where the Farmers Defendants either failed or refused to pay UM benefits on any other vehicles on the policy; and (2) insureds with UIM claims under an Arizona policy issued by one of the Farmers Defendants that insured more than one vehicle who were paid the UIM policy limits on one vehicle on the policy, but where the Farmers Defendants either failed or refused to pay UIM benefits on any other vehicles on the policy. *Caballero* Compl. ¶¶ 121–122; *Creasman* Compl. ¶¶ 107-108; *Wilhelm* Compl. ¶ 64, 70-71; *Luna* Compl. ¶¶ 72-73.

The parties engaged in significant discovery. In the *Caballero* matter, Plaintiff issued fifteen requests for production, twenty-three interrogatories to Economy Preferred, and one request for admission. Dkt. 108-2 ¶ 11. Economy Preferred issued nine requests for production and eight interrogatories to Plaintiff Caballero. *Id.* ¶ 12. As part of this discovery, Economy Preferred produced over 800 documents totaling over 10,000 pages—including policy forms, claims handling practices and procedures, internal correspondence regarding compliance, and claim file documents—which the undersigned counsel has reviewed. *Id.* ¶ 13. Plaintiff Caballero also issued a Rule 30(b)(6) deposition notice and deposed two corporate witnesses for Economy Preferred on topics ranging across Economy Preferred’s claims handling practices, its policy language, its understanding of the duties of insurers in Arizona, and the structure and availability of insurance claim-related data maintained by Economy Preferred in the ordinary course of its insurance business. *Id.* ¶ 14. Plaintiff also deposed Economy Preferred’s claim adjuster who handled evaluation and payment for Plaintiff’s UM/UIM claim. *Id.* ¶ 15. And in *Creasman*, Plaintiff issued, and Farmers Casualty answered, 22 interrogatories, 15 Requests for Admission, and 44 Requests for Production. *Id.* ¶ 16. Plaintiff Creasman also noticed and was preparing to take a Rule 30(b)(6) deposition and two fact witness

depositions before the parties agreed to mediate as set forth in more detail below. *Id.* ¶ 17. Each of the Farmers Defendants has produced extensive data regarding the claims of putative class members and claim payments in other UM/UIM and bodily injury claims. *Id.* ¶ 19. Plaintiffs' counsel and their damages expert reviewed and developed a damages model from this data. *Id.*

Plaintiffs also undertook substantial expert discovery. Dkt. 108-2 ¶ 20. Starting with the *Caballero* matter, a damages and statistics expert analyzed the claim-related data and produced an expert report setting forth Plaintiff Caballero's damages methodology, which was disclosed to Economy Preferred in accordance with the case schedule. *Id.* ¶ 21. An expert on insurance standards and practices also analyzed the evidence in this case and produced an expert report in support of Plaintiff Caballero's allegations that the bad faith claim could be proven on a classwide basis, using common evidence. *Id.* ¶ 22. This report was disclosed to Economy Preferred in accordance with the case schedule. *Id.* ¶ 23.<sup>2</sup>

Over several days, Plaintiff Caballero and Economy Preferred participated in settlement discussions with the assistance of respected mediator the Hon. Wayne Andersen (ret.). *Id.* ¶ 24. The parties negotiated over the amount of a common fund and on May 24, 2024, the parties were able to agree on the key terms of a settlement. *Id.* ¶ 25. The parties filed a Notice of Settlement that day. Dkt. 77. The parties then entered into the final Settlement Agreement on August 14, 2024. Dkt. 86-1 (*Caballero* Agreement). Plaintiff Caballero then moved for preliminary approval of the settlement and Economy Preferred filed a notice of non-opposition. Dkts. 86-88. While the *Caballero* Preliminary Approval Motion was pending, the same counsel held a full-day mediation session on September 11, 2024, in an attempt to reach an agreement on a potential class-wide resolution in *Wilhelm*, *Creasman*, and *Luna*. Dkt. 108-2 ¶ 26. On that day, the parties to

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<sup>2</sup> Plaintiffs Creasman, Wilhelm, and Luna retained an expert to perform a nearly identical analysis with data provided in those cases. That information was used to facilitate the settlement discussions.

1 all three actions came to an agreement in principle that would resolve all four actions. *Id.*  
 2 ¶ 27. Because of this global settlement, the parties jointly moved to vacate the *Caballero*  
 3 preliminary fairness hearing, which the Court vacated. Dkts. 90-91.

4 While the parties negotiated in good faith, they moved to transfer *Creasman*,  
 5 *Wilhelm*, and *Luna* before this Court and consolidate the actions; the parties' motions  
 6 were granted. Dkts. 92-94, 100. The Court also held a status conference, where it ordered  
 7 the *Caballero* Motion for Preliminary Approval withdrawn. Dkt. 100. On November 27,  
 8 2024, the Parties entered into the Settlement Agreement and agreed to settle all four  
 9 actions for \$11,600,000. Dkt. 108-1. That same day Plaintiffs filed a Consolidated  
 10 Motion for Preliminary Approval, which the Court granted on December 13, 2024. Dkts.  
 11 108, 109.

### 12 III. ARGUMENT

13 Plaintiffs respectfully request an award of \$3,480,000 in attorney's fees—equal to  
 14 30% of the \$11.6 million common fund. Class Counsel's fee request falls within the usual  
 15 range recognized in the Ninth Circuit in common fund cases. *Benson v. DoubleDown*  
 16 *Interactive, LLC*, No. 18-CV-0525-RSL, 2023 WL 3761929, at \*2 (W.D. Wash. June 1,  
 17 2023) (finding awards of 20-33% consistent with the Ninth Circuit's benchmark of 25%  
 18 (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002))). Class  
 19 Counsel's requested fee is justified in light of the exceptional relief achieved on behalf of  
 20 the class (128% of the estimated damages), the high degree of risk born by Class  
 21 Counsel, the significant efforts expended by Class Counsel in this litigation, and the  
 22 parallel *Franklin* action, which has now become the standard-bearer for how insurance  
 23 companies must handle claims for stacked UM/UIM coverage in Arizona, and the  
 24 prevailing and widely known rate for contingency fees in the contingency insurance  
 25 litigation context (40%).<sup>3</sup> Carey Decl. ¶ 9.

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27 <sup>3</sup> Class Counsel recently had a final fairness hearing in another stacking case, *Dale v.*  
 28 *Travelers Property Casualty Insurance Co.*, Case No. CV-22-01659-PHX-SPL. There a



1 Plaintiffs also request additional reimbursement of expenses incurred in  
 2 connection with this litigation of \$79,136.03. Finally, Plaintiffs request that this Court  
 3 grant service awards of \$7,500 to plaintiffs Jesus Caballero, Charles Creasman, Richard  
 4 Luna, and Brynley Wilhelm.

5 **A. Class Counsel’s eligibility and entitlement to fees.**

6 The Supreme Court has explained that “a litigant or a lawyer who recovers a  
 7 common fund for the benefit of persons other than himself or his client is entitled to a  
 8 reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S.  
 9 472, 478 (1980); *see also Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003) (same).  
 10 “The doctrine rests on the perception that persons who obtain the benefit of a lawsuit  
 11 without contributing to its cost are unjustly enriched at the successful litigant’s expense.  
 12 Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity  
 13 by assessing attorney’s fees against the entire fund, thus spreading fees proportionately  
 14 among those benefited by the suit.” *Boeing*, 444 U.S. at 478 (citation omitted). As  
 15 described above, this case was brought under Federal Rule of Civil Procedure 23 as a  
 16 class action. The parties settled the case for a common fund of \$11.6 million, which the  
 17 Court preliminarily approved. Dkt. 109. As ordered by the Court, Class Counsel is  
 18 entitled to recover fees.

19 **B. The Court can and should adopt alternative procedures to Local Rule 54.2.**

20 While this Motion complies with LRCiv 54.2, not all the procedures in that rule  
 21 are applicable, and Class Counsel requests that the Court modify the requirements for this  
 22 common fund resolution, so that the interests of the class and its attorneys are aligned and  
 23 recognized by the Court. *Cf.* Brian T. Fitzpatrick, *The Conservative Case for Class*  
 24 *Actions* at 93 (2019) (finding the lodestar method in class cases incentivizes lawyers “to  
 25

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26 class member attended the final fairness hearing and let Class Counsel know how pleased  
 27 he was with the settlement and the fee request, noting that he was assessed a fee of over  
 28 40% by his lawyer that handled the original case, who only obtained coverage for only  
 one of five insured vehicles. Carey Decl. ¶ 10.



1 be indifferent as to how much the class recovery and to want to drag cases out more to  
 2 build up more lodestar”). Local Rule 54.2(a) provides that “the procedures set forth in  
 3 this Local Rule apply” “if the court does not establish other procedures for determining  
 4 such fees.” To recognize the uniqueness of this common fund recovery in a coordinated,  
 5 broad-based (and contingent) effort, Class Counsel requests the Court slightly modify the  
 6 procedures here to embrace the Ninth Circuit’s preference for the percentage-of-recovery  
 7 method of awarding fees in such cases. Specifically, Class Counsel requests that the  
 8 Court recognize an itemized statement under Local Rule 54.2(e) is not necessary.  
 9 Plaintiffs will include—so that the Court may consider the extent of the efforts for this  
 10 specific group of Defendants—their total and projected fees to date. But they request  
 11 leave not to submit an itemized statement of fees. The purpose of the percentage-of-the-  
 12 fund method is to reduce “the burden on the courts that a complex lodestar calculation  
 13 requires,” and instead allows courts “to focus on showing that a fund conferring benefits  
 14 on a class was created through the efforts of plaintiffs’ counsel.” *In re Apple Inc. Device*  
 15 *Performance Litig.*, No. 5:18-MD-02827-EJD, 2021 WL 1022866, at \*2 (N.D. Cal. Mar.  
 16 17, 2021) (citations omitted). If the Court deems it necessary to perform an itemized  
 17 cross-check, Class Counsel requests leave to supplement this Motion. Carey Decl. ¶ 33.

18 Other requirements of LRCiv 54.2 are similarly inapplicable here. For example,  
 19 LRCiv 54.2(d)(1) requires a statement of consultation that “the parties have been unable  
 20 to satisfactorily resolve all disputed issues related to the attorneys’ fees.” But fees  
 21 awarded in a class case are not a fee shift, but a requirement that the class pay its  
 22 attorneys for the time they spent working on their behalf. *See* 5 Newberg and Rubenstein  
 23 on Class Actions § 15:53 (6th ed.) (“Under the “common fund” doctrine, a lawyer  
 24 responsible for creating a common fund that benefits a group of litigants is entitled to a  
 25 fee from the fund.” A common fund is often mischaracterized “as an exception to the  
 26 American Rule that prevailing litigants are responsible for paying their own attorney’s  
 27 fees. But that is not an entirely accurate portrayal because in common fund cases the  
 28 prevailing litigants are, indeed, paying their own attorney’s fees—that is, the

1 beneficiaries of the fund pay fees out of the fund that they received.”). Only a court can  
 2 determine what that fee should be—the defendant and class representative cannot reach  
 3 an agreement about what that fee should be. *See Boeing Co. v. Van Gemert*, 444 U.S.  
 4 472, 478 (1980) (“Jurisdiction over the fund involved in the litigation allows a court to  
 5 prevent this inequity by assessing attorney’s fees against the entire fund, thus spreading  
 6 fees proportionately among those benefited by the suit.”).

7 Last, another judge in this District recently found in another stacking settlement  
 8 that the requirements of LRCiv 54.2 are mandatory—specifically the requirement of  
 9 attaching all billing records—citing two cases. *Dale v. Travelers Property Casualty*  
 10 *Insurance Co.*, Case No. CV-22-01659-PHX-SPL, Order, Apr. 2, 2025. Plaintiffs  
 11 respectfully disagree that they are mandatory as the text of the Rule allows the Court to  
 12 adopt different procedures. As shown above, not all the requirements of the Rule are  
 13 applicable to class cases or common funds. In addition, neither of the cited cases were  
 14 common funds but cases where one party was requesting a fee shift, which necessitates  
 15 the requirement for the billing records. Here, Plaintiffs provide the aggregate lodestar,  
 16 which supports the requested percentage-of-the-fund recovery. Carey Decl. ¶ 14.

17 In *Aviva USA Corp. v. Vazirani*, No. CV 11-0369-PHX-JAT, 2013 WL 4430921,  
 18 at \*1 (D. Ariz. Aug. 16, 2013), aff’d, 632 F. App’x 885 (9th Cir. 2015), defendants were  
 19 seeking permissive attorneys’ fees under the Lanham Act. There, the court found that  
 20 some defendants did not “adequately describe the services rendered so that ‘the  
 21 reasonableness of the charge can be evaluated.’” *Id.* at 7. Other defendants failed to  
 22 include a statement of consultation, a memorandum in support of the motion, and an  
 23 insufficient itemized fee statement. *Id.* at \*7. Citing *Societe Civile Succession Richard*  
 24 *Guino v. Beseder Inc.*, No. CV 0301310-PHX-MHM, 2007 WL 3238703, at \*7 (D. Ariz.  
 25 Oct. 31, 2007), the court found the requirements of LRCiv 54.2 were mandatory, not  
 26 advisory. *Id.* In *Societe Civile*, the plaintiff sought permissive fees under the Copyright  
 27 Act. *Societe Civile Succession Richard Guino*, 2007 WL 3238703, at \*7. One of the  
 28 biggest concerns the court had was the plaintiff’s failure to file a statement of

consultation, finding “[t]hese requirements are not advisory, but are mandatory to support an award of attorneys’ fees and non-taxable costs.” *Id.* at \*7–8. Where one party is seeking fees from another party, it makes sense that consultation or an itemized fee statement would be mandatory. Particularly since the other party needs to assess the reasonableness of the request and to ensure that the request is targeted to claims that allow a fee shift. None of those concerns are present in a class case. Here, consultation is not possible, and the reasonableness of the award is not based on the lodestar but what percentage of the fund should be awarded to Class Counsel. The lodestar is at best a cross-check, which as described below, can be done without an itemized fee statement using the aggregate amount. Class Counsel requests that the Court slightly modify the requirements of LRCiv 54.2.

**C. Class Counsel’s fee request is reasonable.**

An award of reasonable attorneys’ fees from the common fund compensates Class Counsel for vigorously litigating this action on behalf of Arizona insureds who did not receive their promised contractual benefits.

**1. The percentage of the fund method is the favored method for determining Class Counsel’s fee award.**

“Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The percentage of the common fund method “is most used ‘where the defendants provide monetary compensation to the plaintiffs’ and class benefit is easy to quantify.” *Saliba v. KS Statebank Corp.*, No. CV-20-00503-PHX-JAT, 2021 WL 4775105, at \*5 (D. Ariz. Oct. 13, 2021) (quoting *In re Hyundai*, 926 F.3d 539, 570 (9th Cir. 2019)); *see also Sample v. CenturyLink Commc’ns LLC*, No. CV-16-00624-TUC-NVW, 2019 WL 13252618, at \*2 (D. Ariz. Mar. 18, 2019) (“The percentage-of-recovery method is favored in common-fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.” (citation omitted));

1 *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at \*5  
 2 (N.D. Cal. Aug. 17, 2018) (“By tying the award to the recovery of the Class, Class  
 3 Counsel’s interests are aligned with the Class, and Class Counsel are incentivized to  
 4 achieve the best possible result.”); Theodore Eisenberg et al., *Attorneys’ Fees in Class*  
 5 *Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 963 (2017) (“EMG Study”) (finding in an  
 6 empirical study of attorneys’ fees in class action settlements that from 2009–2013, the  
 7 lodestar method was rarely used, but courts frequently used the percentage method with a  
 8 lodestar check); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and*  
 9 *Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 832 (2010) (finding that the lodestar  
 10 method is used only in 12% of class actions, usually where fees are paid pursuant to a  
 11 fee-shifting statute, or the relief is injunctive). *Cf. Kim v. Allison*, 8 F.4th 1170, 1181 (9th  
 12 Cir. 2021) (lodestar method “is especially appropriate in class actions where the relief  
 13 sought—and obtained—is ... primarily injunctive.” (citation omitted)). The percentage-  
 14 of-the fund method is the most beneficial to Class Members because it aligns the interests  
 15 of the class with those of class counsel. Brian T. Fitzpatrick, *Do Class Action Lawyers*  
 16 *Make Too Little?*, 158 U. Pa. L. Rev. 2043, 2052 (2010). In other words, under the  
 17 percentage-of-the-fund method, counsel is incentivized to negotiate a larger recovery for  
 18 the class. *Id.* And there is no incentive for attorneys to “drag cases on,” as there is with  
 19 the lodestar method. *Id.*

20 Other courts in this circuit have found that applying the lodestar method to  
 21 common fund cases does not achieve proportionality, predictability, or protection of the  
 22 class. *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989). The lodestar  
 23 method is also problematic because it “encourages abuses such as unjustified work and  
 24 protracting the litigation.” *Id.* And the lodestar method “adds to the work load [sic] of  
 25 already overworked district courts.” *Id.*

26 While courts in the Ninth Circuit can utilize a lodestar cross-check against a  
 27 percentage-of-the-recovery award, *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d  
 28 934, 949 (9th Cir. 2015), they are not required to do so. *Farrell v. Bank of Am. Corp.*,

1 N.A., 827 F. App'x 628, 631 (9th Cir. 2020). And courts in the Ninth Circuit have  
 2 declined to perform a lodestar cross-check under circumstances that require such a  
 3 departure, such as this case. *See Benson*, 2023 WL 3761929, at \*2 (not requiring a cross  
 4 check where counsel “prosecuted a line of several class actions against well-funded  
 5 corporations, and pursued an entirely novel legal theory”).

6 **2. A 30% award is reasonable under a percentage-of-the-fund analysis.**

7 When awarding a reasonable common fund fee award in the Ninth Circuit, courts  
 8 generally start with the 25% benchmark and adjust upward or downward depending on  
 9 six factors:

- 10 (1) The extent to which class counsel achieved exceptional results for the class;
- 11 (2) Whether the case was risky for class counsel;
- 12 (3) Whether counsel’s performance generated benefits beyond the cash fund;
- 13 (4) The market rate for the particular field of law (in some circumstances);
- 14 (5) The burdens class counsel experienced while litigating the case (e.g., cost,  
 15 duration, foregoing other work); and
- 16 (6) Whether the case was handled on a contingency basis.

17 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 949, 954–55. Additionally, courts  
 18 may take into account class counsel’s efforts across multiple related cases where they are  
 19 all part of a broader litigation campaign when considering whether to apply the  
 20 percentage-of-the-fund method. *See Benson*, 2023 WL 3761929, at \* 2 (prosecuting a  
 21 line of several class actions against well-funded corporations). Each factor supports Class  
 22 Counsel’s request for a total fee award of 30% of the common fund. *See In re Activision*,  
 23 723 F. Supp. at 1378 (finding that “absent extraordinary circumstances” attorneys should  
 24 be compensated 30% of the award in common fund class actions).

25 **a. Class Counsel achieved excellent results for the Class.**

26 “The touchstone for determining the reasonableness of attorneys’ fees in a class  
 27 action is the benefit to the class.” *Lowery v. Rhapsody Int’l, Inc.*, 75 F.4th 985, 988 (9th  
 28

1 Cir. 2023). In a common fund case in which class counsel seek an award as a percentage  
 2 of the fund, “this task is fairly effortless. The district court can assess the relative value of  
 3 the attorneys’ fees and the class relief simply by comparing the amount of cash paid to  
 4 the attorneys with the amount of cash paid to the class. The more valuable the class  
 5 recovery, the greater the fees award.” *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1178  
 6 (9th Cir. 2013).

7 Here, recovery of \$11.6 million for the class exceeds amounts other courts in the  
 8 Ninth Circuit have deemed “excellent.” *In re Lithium Ion Batteries Antitrust Litig.*, No.  
 9 No. 13MD02420YGRDMR, 2020 WL 7264559, at \*20 (N.D. Cal. Dec. 10, 2020)  
 10 (describing a recovery of 11.7% of actual damages as an “excellent” result and awarding  
 11 class counsel approximately 30% of the settlement fund); *In re: Cathode Ray Tube (CRT)*  
 12 *Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 3648478, at \*7 & n.19 (N.D. Cal. July 7,  
 13 2016) (approving fees requested where the class received a weighted mean recovery of  
 14 19% of actual damages). Class Counsel worked with a highly qualified economist and  
 15 statistician to project the value of the UM/UIM insurance benefits owed to the Settlement  
 16 Class. Dkt. 108-2 ¶¶ 19-22, 30–33. As described below in section III(B)(1)(c), this  
 17 calculation was developed based on Class Counsel’s extensive experience with insurance  
 18 litigation to address the risks usually associated with certifying damages classes  
 19 involving personal injuries by highlighting that the damages in this case are a function of  
 20 a limited range of **contract** benefits that can be modeled based on historical settlement  
 21 amounts. Their expert valued the benefits at \$9.094 million, based upon the insurance  
 22 company’s own claim data, analysis of the distribution of past UM/UIM settlement  
 23 values from Defendants’ files, and independently developed models of censored  
 24 settlement values. *Id.* With Plaintiffs’ threat of interest and punitive damages awards, the  
 25 parties settled for \$11.6 million, giving the Class 128% of their projected benefits. Even  
 26 after paying Class Counsel 30% of the settlement fund, paying for costs, paying the  
 27 Settlement Administrator, and paying incentive awards, the Class will receive at least  
 28

1 \$7.72 million—split among 166 Class Members—a solid, and arguably more than full  
2 recovery, as measured against the estimated benefits due to them.<sup>4</sup>

3 The result Class Counsel has achieved on behalf of the class, 128% of estimated  
4 actual damages, supports awarding the amount requested. *In re Lithium Ion Batteries*  
5 *Antitrust Litig.*, 2020 WL 7264559, at \*20.

6 **b. Class Counsel’s performance generated benefits beyond the**  
7 **Settlement fund.**

8 Defendants changed how they process UM/UIM claims because of this lawsuit.  
9 They have changed their policy language, provide their insureds with the proper notice,  
10 and allow their insureds to select which coverage will apply to their UM/UIM claims,  
11 which can lead to financial advantages. *See, e.g., Vizcaino*, 290 F.3d at 1049 (litigation  
12 caused defendant to change its employee benefit practices); *Larsen v. Trader Joe’s Co.*,  
13 No. 11-CV-05188-WHO, 2014 WL 3404531, at \*9 (N.D. Cal. July 11, 2014) (Trader  
14 Joe’s stopped using the label at issue because of the litigation). The economic value of  
15 this case to consumers goes far beyond the amount paid into the common fund itself. For  
16 example, this case established the right to stacked benefits for the length of any existing  
17 policies, providing significant benefits for certain claims.<sup>5</sup> And this case enhances the  
18 value of each Class Member’s policy. This is a rare result as only 25% of class action  
19 settlements include non-monetary benefits like those achieved here. Fitzpatrick,  
20 *Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal  
21 Stud. at 824. This factor weighs in favor of Class Counsel’s requested award.

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24 <sup>4</sup> Plaintiffs’ Motion for Preliminary Approval stated that there were 172 Class  
25 Members. Once Class Counsel performed the allocation, it was determined that six of the  
26 individuals previously identified had been paid stacked limits and were not part of the  
Class.

27 <sup>5</sup> While the amount of this benefit is speculative, it is feasible that Travelers’ insureds  
28 netted an additional benefit equal to approximately 10-20% of the total common fund in  
additional stacking payments on existing policies.



**c. This case posed significant risks and challenges.**

Class Counsel initiated and litigated this case before there was any certainty by an Arizona state court that Plaintiffs' interpretation of A.R.S. § 20-259.01 was correct or that insurers in Arizona were processing their UM/UIM claims incorrectly. Indeed, Subsection H has been in place since 1997, yet Class Counsel was the first to challenge Arizona insurers on this scale. Before filing their first stacking case in this broader litigation campaign, Class Counsel spent hundreds of hours investigating policy language and forms, reviewing the legislative history of the statute, and refining their complaint. Those efforts are apparent on the face of the complaint, which sets forth Arizona's extensive caselaw wrestling with the meaning of the statute and Subsection H. Dkt. 1-3 ¶¶ 33-36.

Multiple insurance companies and groups, including Defendants, opposed Class Counsel's efforts to recover stacked coverage for insureds in Arizona. Class Counsel responded to all of those groups in a highly contested argument in front of the Arizona Supreme Court and prevailed. Additionally, Defendants in this case were represented by highly respected and competent counsel. While Plaintiff maintains that Arizona law on the present stacking question was clearly foreshadowed by existing precedent and the plain text of the statute, Defendants were expected to fiercely oppose any recovery of interest and punitive damages beyond what the policy itself provided. And even as to the recovery of insurance benefits themselves, the course of discovery and briefing would hinge on many aspects of Court discretion and the inherent uncertainties involved with the testimony of witnesses, the availability of documentary evidence, and the complexities of the factfinding process including any jury trial and any resulting appeal on the merits.

Moreover, counsel's risks in litigating a class action of this magnitude are significant. The jury trial process is inherently risky, and Plaintiffs would face aggressive factual and legal opposition to his claims of bad faith on the part of Defendants and the amount of damages appropriate in the case. Even assuming complete victory on the



1 merits—which is never a guarantee—Class Counsel would face aggressive opposition to  
2 the certification of any class, let alone a multimillion-dollar damages class. Defendants  
3 would be expected to assert challenges to class certification based on limitations periods  
4 and the fact that some Class Members signed releases. *E.g.* Dkt. 7 at 13 ¶¶ 6, 9–10. In  
5 addition, this case involves claims arising out of tortious personal injury situations, giving  
6 rise to a perception that these contract claims cannot be certified as a class because of the  
7 individualized factors the antecedent tort claims must take into account. Defendants in  
8 these cases have generally contended that individualized issues regarding the UM/UIM  
9 claims of the class would predominate over common issues and that damages cannot be  
10 modeled on a classwide basis. Carey Decl. ¶ 11. Defendants have also opposed  
11 certification of any declaration or injunction-only class on similar grounds. *Id.*

12 Class Counsel’s extensive experience with first-party insurance class claims  
13 enabled them to show the insurers that these claims were based on contract obligations  
14 (and tortious bad faith under the contract), where liability was based on undisputed  
15 actions that did not implicate the valuation of the tort claim, using an aggregate statistical  
16 estimate of settlement data that showed what the insurer would have settled the claims for  
17 the class for under the proper stacked policy limits. Class Counsel developed a damages  
18 model based on expert testimony relating to historical settlements using reliable statistical  
19 tools, along with medical expenses and lost wages. Due to the delay after the insurer’s  
20 various breaches, insureds had no way to go back in time to develop evidence of what  
21 they could have produced to justify their claims. Yet, settlement data from the insurers  
22 together with common statistical tools for this very type of data gap can produce a  
23 reliable, reasonable estimate of what the insurer would have paid to class members in the  
24 aggregate had proper limits been applied. Accordingly, Plaintiffs believe that classwide  
25 proof of liability and a classwide damages model can be presented that readily meet the  
26 requirements of Rule 23, but even upon such a finding Defendants would be expected to  
27 seek a lengthy and costly appeal under Rule 23(f), delaying the recovery of benefits for  
28 the class by many months if not years.

**d. Class Counsel’s litigation on a contingency basis supports the fee request.**

The Ninth Circuit has held that a fair fee award must include consideration of the contingent nature of the fee. *Online DVD*, 779 F.3d at 954-55 & n.14; *Vizcaino*, 290 F.3d at 1050. And it is well-established that attorneys who take on the risk of a contingency case should be compensated for the risk they assume “of not being paid at all.” *Steiner v. Am. Broad. Co.*, 248 F. App’x 780, 782 n.2 (9th Cir. 2007); *see also Vizcaino*, 290 F.3d at 1051; *Ching v. Siemens Indus.*, No. 11-CV-04838-MEJ, 2014 WL 2926210, at \*8 (N.D. Cal. June 27, 2014) (“the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work.”).

Here, the contingent nature of Class Counsel’s engagement—in a case that was extremely risky given its complexity and magnitude, as described above—incentivized counsel to achieve excellent results for the Settlement Class. Class Counsel did absolutely everything it could to maximize the Settlement Class’s recovery and settled once it had an Arizona Supreme Court decision that supported their position.

**e. The market rate for class action lawyers with the experience of Class Counsel supports the 30% fee request.**

“Where evidence exists, such as here, about the percentage fee to which some plaintiffs agreed *ex ante*, that evidence may be probative of the fee award’s reasonableness.” *Vizcaino*, 290 F.3d at 1050. The “prosecution and management of a . . . class action requires unique legal skills and abilities.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (citations omitted). “The importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee.” *Id.* Many of the insureds here were previously represented by counsel but those attorneys did not secure their clients the full UM/UIM benefits. It is well known that private counsel entering into a

contingent fee agreement for these types of cases (particularly insurance bad faith in the context of an automobile injury) routinely request and receive a fee of 40% of the gross recovery. Carey Decl. ¶ 9. *see Jensen v. First Tr. Corp.*, No. CV 05–3124 ABC (CTX), 2008 WL 11338161, at \*13 n.15 (C.D. Cal. June 9, 2008) (“If this were non-representative litigation, the customary fee arrangement would likely be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery”); *In re M.D.C. Holdings Sec. Litig.*, No. CV89-0090 E (M), 1990 WL 454747, at \*7 (S.D. Cal. Aug. 30, 1990) (“In private contingent litigation, fee contracts have traditionally ranged between 30% and 40% of the total recovery.”). Class Members here are receiving elite representation with a 10% discount from market without having to expend the time and effort to investigate and retain an attorney who is familiar with the basis for this claim. Courts in this District and the Ninth Circuit routinely award class counsel fees ranging between 28–33%. *Vizcaino*, 290 F.3d at 1046, 1050 (approving award of 28% of \$96 million common fund); *Andrews v. Plains All Am. Pipeline L.P.*, No. CV154113PSGJEMX, 2022 WL 4453864, at \*4 (C.D. Cal. Sept. 20, 2022) (approving 32% fee award); *In re Syngenta AG MIR 162 Corn*, 357 F. Supp. 3d at 1115 (awarding a 33.333% fee award); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (awarding 33% of the \$12 million common fund); *Saliba*, 2021 WL 4775105, at \*7 (awarding attorneys’ fees totaling 28% of the common fund); *Avila v. LifeLock Inc.*, No. 2:15-CV-01398-SRB, 2020 WL 4362394, at \*1 (D. Ariz. July 27, 2020) (awarding 30% of the settlement fund); *In re Activision Sec. Litig.*, 723 F. Supp. at 1378 (attorneys should be compensated 30% of the award in common fund class actions).

**f. The burdens Class Counsel faced support the fee request.**

Class Counsel has and will continue to devote substantial time to this litigation—spending over 1,550 hours on these four consolidated cases alone for a lodestar of \$1,158,550.00—foregoing significant amounts of other work to litigate this case. Carey Decl. ¶¶ 14, 35. And Class Counsel spent almost 1,000 hours billing to Hagen’s Berman’s general stacking matter, for a lodestar of over \$600,000, on work which

benefited all related cases. *Id.* ¶¶ 17–18. Class Counsel also anticipates spending another 550 plus hours and \$330,000 to finalize this case as described below. *Id.* ¶ 15. In launching this litigation, Class Counsel engaged in extensive efforts to research Arizona law, conform theories of liability to the requisites of Rule 23, understand the relevant intersections with state-law regulations, develop a damages model that Plaintiffs believe will support a classwide award, manage relationships and expectations among clients, hire experts, obtain and analyze relevant damages data, and pursue a protracted, months’-long mediation process to its conclusion. Class Counsel expended this time with no guarantee of success, prepared to pursue this case without payment through trial and appeal if necessary.

Moreover, Class Counsel’s efforts here were part of a broader litigation campaign challenging the previously common practice of failing to pay stacked benefits when they are owed under Arizona law. Class Counsel spent hundreds of hours developing their theory before even filing their first complaint in this litigation campaign. And they used their knowledge of available and necessary discovery in other cases to inform and refine their discovery efforts here. This ensured that Plaintiffs received the information necessary to succeed at class certification and on the merits in the most efficient and streamlined manner. Class Counsel’s work on more than thirteen related actions, which made each litigation more efficient, should be considered favorably here. *See Benson*, 2023 WL 3761929, at \*2. Plaintiffs’ counsel has also incurred and advanced substantial costs associated with experts and the mediation process, costs which were necessarily at risk given the contingent nature of any cost recovery in this litigation.

**3. While a lodestar cross-check is not necessary, such a cross-check confirms the reasonableness of the requested fees.**

A lodestar cross-check is not required in the Ninth Circuit, especially in a case such as this one, where the settlement was achieved quickly, and the case was part of a broader litigation campaign. *See Farrell v. Bank of America Corp., N.A.*, 827 F. App’x 628, 630 (9th Cir. 2020) (observing that the Ninth Circuit has found the lodestar

crosscheck to be “inapplicable or unhelpful in certain specific situations”); *Benson*, 2023 WL 3761929, at \*2 (not applying cross check where counsel litigated a line of cases). In situations such as this one, Courts in this Circuit have emphasized work performed in related cases where that work benefitted the instant class action, forgoing a strict lodestar approach. *See, e.g., Thomas v. Dun & Bradstreet Credibility Corp.*, No. CV1503194BROGJSX, 2017 WL 11633508, at \*22 (C.D. Cal. Mar. 22, 2017). Additionally, District courts in the Ninth Circuit often forgo the lodestar cross-check “where plaintiff’s counsel achieves a significant result through an early settlement.” *Rankin v. Am. Greetings, Inc.*, 2011 WL 13239039, at \*2 (E.D. Cal. July 6, 2011); *accord Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at \*15 (N.D. Cal. Jan. 26, 2007) (forgoing cross-check where case was settled early and provided the class a “significant benefit”), *aff’d*, 331 F. App’x 452 (9th Cir. 2009). The settlement here was achieved less than one year after the Arizona Supreme Court’s favorable decision in *Franklin*. The lodestar crosscheck carries with it all the problems of the pure lodestar method. Namely, it incentivizes lawyers “to be indifferent as to how much the class recovery and to want to drag cases out more to build up more lodestar.” Brian T. Fitzpatrick, *The Conservative Case for Class Actions* at 93 (2019). A consumer in the marketplace who was unable to monitor their attorney would never elect to compensate an attorney using the lodestar method. *Id.* at 92 (citing Steven Shavell, *Foundations of Economic Analysis of Law* 402-03 (2014)). Thus, if the Court wishes to act as a rational absent class member would, it should not engage in the cross-check. *Id.*; Fitzpatrick, 89 Fordham L. Rev. at 1167.

But even if the Court does perform a lodestar cross-check, it would show the requested fee is reasonable, particularly when viewed in the context of the work Class Counsel has done to benefit class members in interrelated cases, in particular through their efforts in *Franklin*, which, in conjunction with *Heaton*, paved the way for class recovery. And Class Counsel has billed thousands of hours to both the *Franklin* matter, which led to the settlement in this case, and a general billing number for all stacking

1 cases that would not be strictly billed to any one case, but that benefitted all stacking  
2 matters brought by Class Counsel.

3 Class Counsel's current lodestar on this case is \$1,158,550.00 (for a total of  
4 1,550.1 billable hours). Carey Decl. ¶ 14. The requested fee award of 30% of the  
5 common fund, or \$3.48 million, represents a maximum multiplier of 3.00 for the fees  
6 billed to date. *Id.* In addition, Class Counsel anticipates spending an additional \$330,000  
7 (or approximately 550 hours of work across attorneys, paralegals, and law clerks) to  
8 finish the briefing in this case, reach out to the Class Members as needed and respond to  
9 Class Member inquiries, help negotiate and resolve certain statutory liens, draft any  
10 additional pleadings, including the motion for final approval, prepare for and attend the  
11 final approval hearing, and assist with final distribution. Carey Decl. ¶ 15. This will bring  
12 the total lodestar for this case to \$1,488,550.00. *Id.* With the additional anticipated fees of  
13 \$330,000, the multiplier drops to 2.33. *Id.* Class Counsel also anticipates spending up to  
14 an additional \$300,000 if they need to litigate what to do with any unclaimed funds and  
15 defend the Settlement on appeal. *Id.* ¶ 16. If such work has to be done, it could increase  
16 the fees to \$1,788,550.00 and reduce the multiplier to 1.94. *Id.*

17 More importantly, Class Counsel's current and anticipated lodestar does not  
18 reflect all the work that was done to obtain the settlement in this case, which would  
19 reduce the multiplier further if considered. As Class Counsel has brought multiple related  
20 actions, Class Counsel also billed 969 hours to their general stacking matter number,  
21 totaling \$627,455.50, which includes time spent researching and developing the legal  
22 theories for this case, developing a damages model, and responding to the multitude of  
23 amicus briefs filed in the *Franklin* matter at the Arizona Supreme Court—work which  
24 directly benefitted this Settlement Class. Carey Decl. ¶ 17. Again, before even filing their  
25 first case in this campaign, Class Counsel spent nearly a thousand hours reviewing the  
26 legislative history and Arizona caselaw on Subsection H, refining their legal arguments  
27 and developing their theories; these efforts are reflected in the 969 hours of general time.  
28 *Id.* Even if the Court only credits Class Counsel with 25% of Class Counsel's general



1 fund, that would increase the total fees to a range between \$1,315,386.88 (the current  
 2 lodestar plus 25% of the general stacking time), for a multiplier of 2.64. *Id.* ¶ 18. The  
 3 total lodestar in this case could be as high as \$1,945,416.88, which includes the time  
 4 billed to date, 25% of the general fund, projected time to finish the case, and projected  
 5 time if there are unclaimed funds and/or an appeal, which would result in a multiplier of  
 6 1.79. *Id.* ¶ 19. Multipliers between 1.79 and 3.00 are well within or even below the range  
 7 of similar settlements. *E.g.*, *Vizcaino*, 2901 F.3d at 1051 (approving fee request that  
 8 resulted in a 3.65 multiplier); *Zwicky v. Diamond Resorts Inc.*, No. CV-20-02322-PHX-  
 9 DJH, 2024 WL 1717553, at \*6 (D. Ariz. Apr. 22, 2024) (approved “lodestar multiplier of  
 10 less than 3.88” and finding “courts in this Circuit have found that ‘[m]ultipliers in the 3–4  
 11 range are common in lodestar awards for lengthy and complex class action litigation”  
 12 (citations omitted)); *Perez v. Rash Curtis & Assocs.*, No. 4:16-CV-03396-YGR, 2021 WL  
 13 4503314, at \*5 (N.D. Cal. Oct. 1, 2021) (approving a 4.8 multiplier); *Steinfeld v.*  
 14 *Discover Fin. Servs.*, No. C 12-01118 JSW, 2014 WL 1309692, at \*2 (N.D. Cal. Mar. 31,  
 15 2014) (approving fee that resulted in a 3.5 multiplier).

16 Class Counsel’s rates are also within “the prevailing market rates in the relevant  
 17 community.” *Van Skike v. Dir., Off. of Workers’ Comp. Programs*, 557 F.3d 1041, 1046  
 18 (9th Cir. 2009) (citation omitted). Hagens Berman’s Class Counsel’s rates mostly range  
 19 from \$575 to \$850 an hour, with the sole exception of Robert Carey being billed out at  
 20 \$1,250 an hour. Carey Decl. ¶¶ 20–26. Hagens Berman’s paralegal rates are \$275–\$350  
 21 an hour, billing \$350 an hour for two highly skilled senior paralegals with decades of  
 22 experience. *Id.* ¶¶ 20, 27. Hagens Berman is a leading class action firm with significant  
 23 experience in litigating and settling class actions, including consumer class actions  
 24 against insurance companies, further justifying the requested award. *Id.* ¶¶ 4–8. Robert  
 25 Carey and John DeStefano have significant experience in litigating insurance class  
 26 actions in particular, and they were the driving force behind this case, including drafting  
 27 the complaint, developing the theories, conducting discovery, and negotiating a  
 28 settlement. *Id.* ¶¶ 4-8, 22-24. In addition to Robert Carey’s class action experience, he

1 acted as the chairman of the State Bar’s Class Actions and Derivative Suits Committee  
 2 and is one of only two Arizona attorneys recognized among the Lawdragon 500 Leading  
 3 Lawyers in America. *Id.* ¶ 22. Mr. Carey taught the class actions class at Sandra Day  
 4 O’Connor College of Law for ten years, and Mr. DeStefano has taught that same class as  
 5 a full adjunct professor for two years. *Id.* ¶¶ 22, 24. Michella Kras has significant class  
 6 action experience, and she specifically played a key role in drafting settlement documents  
 7 and approval papers. *Id.* ¶ 25. Tory Beardsley also has significant experience litigating  
 8 class actions, is a part of the firm’s insurance group, and provided support in this case at  
 9 all stages of the litigation, including researching the legislative history of the key statute,  
 10 discovery, and mediation. *Id.* ¶ 26.

11 Co-counsel at the Slavicek Law Firm are personal injury lawyers with extensive  
 12 experience litigating UM/UIM claims. *Id.* ¶ 28. Justin Henry has been practicing in this  
 13 area for fifteen years and worked alongside Hagens Berman to develop and litigate these  
 14 stacking cases at all stages, including researching the actions, drafting complaints,  
 15 assisting with discovery, and mediation. *Id.* ¶ 29. The Slavicek Law Firm bills its  
 16 attorneys out at \$700 to \$900 an hour and bills its paralegals at \$150 per hour. *Id.* ¶ 30.

17 Similarly, co-counsel at Goldstein Woods are among the most experienced and  
 18 skilled practitioners in the complex insurance litigation field. Goldstein Woods is a  
 19 preeminent firm litigating insurance claims in Arizona. *Id.* ¶ 31. Evan Goldstein was lead  
 20 counsel in the seminal case *Heaton v. Metro. Grp. Prop. & Cas. Ins. Co.*, No. CV-21-  
 21 00442-PHX-SRB, 2021 WL 6805629, at \*5 (D. Ariz. Oct. 19, 2021), where Judge Susan  
 22 Bolton first interpreted how UM/UIM claims should be paid under A.R.S. §20-259.01(H).  
 23 *Heaton* was the precursor for the Arizona Supreme Court’s ruling on stacking in  
 24 *Franklin*, 255 Ariz. at 412-23. *Id.* Goldstein Woods bills its partners out at \$750 an hour  
 25 and bills its paralegals out at \$250 an hour. *Id.* ¶ 32.

26 Courts in this District have found Hagens Berman’s rates to be within the  
 27 prevailing market rates and have approved similar rates in other class cases. *E.g., In re*  
 28 *Banner Health Data Breach Litig.*, No. 2:16-CV-02696-SRB, 2020 WL 12574227, at \*6



(D. Ariz. Apr. 21, 2020) (finding “that Class Counsel’s hourly rates are reasonable and in line with the prevailing rates in the community for complex class action litigation,” including Hagens Berman); *In re Lifelock, Inc. Mktg. & Sales Pracs. Litig.*, No. MDL 08-1977-MHM, 2010 WL 3715138, at \*9 (D. Ariz. Aug. 31, 2010) (“In the instant case, the Court finds that Class Counsel’s rates are the competitive hourly rates in their respective legal communities for litigating cases of this sort—complex consumer class action.”). As recently as February 2024, this District has approved Hagens Berman’s rates as reasonable. Carey Decl. ¶ 38 (approving fee award in *In re Theranos, Inc. Litigation*, including Hagens Berman and Mr. Carey’s fees). And in common fund cases, “[t]he Ninth Circuit has instructed that because the amount of fees is often open to dispute and because the parties [have] compromise[ed] to avoid further disputes, the district court need not inquire into the reasonableness of fees with the same level of scrutiny as when the amount of fees is litigated.” *Zwicky*, 2024 WL 1717553, at \*5 (quoting *Wood v. Ionatron, Inc.*, 2009 WL 10673479, at \*5 (D. Ariz. Sept. 28, 2009)).

**4. Class Counsel’s fee request is reasonable applying the factors outlined in the Local Rules.**

The Local Rules of this District require that in addressing the reasonableness of a fee award, Class Counsel address the following factors:

- (A) The time and labor required by counsel;
- (B) The novelty and difficulty of the questions presented;
- (C) The skill requisite to perform the legal service properly;
- (D) The preclusion of other employment by counsel because of the acceptance of the action;
- (E) The customary fee charged in matters of the type involved;
- (F) Whether the fee contracted between the attorney and the client is fixed or contingent;

- (G) Any time limitations imposed by the client or the circumstances;
- (H) The amount of money, or the value of the rights, involved, and the results obtained;
- (I) The experience, reputation and ability of counsel;
- (J) The “undesirability” of the case;
- (K) The nature and length of the professional relationship between the attorney and the client;
- (L) Awards in similar actions; and
- (M) Any other matters deemed appropriate under the circumstances.

LR 54.2(c)(3).

While not all the factors in LR 54.2(c) apply to common funds—and Plaintiffs have already addressed most of these factors—Plaintiffs will address each factor briefly.

The time and labor required by Class Counsel is included in the lodestar cross-check in Section III(B)(3) above, and describes the time and labor required by Class Counsel. The novelty and difficulty of the questions are addressed in Section III(B)(1)(c) and (f)—Class Counsel brought a case involving complex issues of insurance law and class certification and succeeded in recovering for the class. The skill requisite to perform the work is similarly addressed throughout this motion: This case required knowledge of both consumer class action and insurance law, which Class Counsel has. Additionally, it required sophisticated appellate work by an experienced appellate attorney on Class Counsel’s team. Carey Decl. ¶ 24.

As addressed above, Class Counsel had to forgo other work to bring this case (and the related cases). *Id.* ¶ 35. The customary fee charged in these types of cases is only partially relevant. Class cases do not charge a set fee, but an award of 25-33% of a common fund case is typical in this district. And a fee agreement in breach of contract/insurance bad faith case would typically be a contingent fee of 40%. Carey Decl.

¶ 9. The fee contract is inherently contingent—Plaintiffs entered into a Rights and Responsibilities Agreement that leaves the fee award to the Court, as it is the Court that determines what the Settlement Class should pay to Class Counsel out of the recovery. *Id.*

¶ 39. Here there is no time limitation imposed by the client or the circumstances. As described above, the amount of money in this case is significant and each Class Member will receive a large recovery. And Class Counsel obtained excellent results for the Settlement Class. As described above, Class Counsel are highly experienced and reputable counsel. The undesirability of the case is touched on above: Other Arizona lawyers had not taken up this issue. Class Counsel took an issue that had not been decided and obtained an Arizona Supreme Court decision in the insureds’ favor. The length and nature of the attorney-client relationship is not relevant in a common fund case where the attorneys represent the class as a whole. Last, Class Counsel has already addressed what courts award in similar cases in Section III(B)(1)(e) above. The requested fees are reasonable.

**D. Class Counsel requests reimbursement of reasonable out-of-pocket expenses incidental and necessary to the effective representation of the Class.**

Plaintiffs request reimbursement of out-of-pocket expenses of \$79,136.03. Carey Decl. ¶ 34. Courts reimburse attorneys prosecuting class claims on a contingent basis for “reasonable expenses that would typically be billed to paying clients in non-contingency matters, i.e., costs incidental and necessary to the effective representation of the Class.” *In re Capacitors Antitrust Litig.*, No. 3:14-CV-03264-JD, 2018 WL 4790575, at \*6 (N.D. Cal. Sept. 21, 2018) (citations omitted, cleaned up). “Under the common fund doctrine, plaintiffs’ counsel should receive reimbursement of all reasonable out-of-pocket expenses and costs in prosecution of the claims and in obtaining a settlement.” *Id.* (citing cases and listing expenses).

The total expenses for which Plaintiffs seek reimbursement are broken down by category in the supporting declaration. Carey Decl. ¶ 34. Class Counsel funded all litigation expenses. *Id.* The largest categories of expenses were the mediation at \$10,400,

1 experts/consultants at \$49,317.65, and depositions costs of \$11,721.75. *Id.* The requested  
 2 costs are necessary and reasonable to prosecute this case and were made for the benefit of  
 3 the Settlement Class. *Id.*

4 **E. Plaintiffs request that the Class Representatives be awarded reasonable  
 5 service awards to compensate them for their time and dedication to this case.**

6 Plaintiffs request service awards for the class representatives in the amount of  
 7 \$7,500 to Jesus Caballero, Charles Creasman, Brynley Wilhelm, and Richard Luna.  
 8 Service “awards are fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*,  
 9 563 F.3d 948, 958 (9th Cir. 2009). In the Ninth Circuit, service awards “compensate class  
 10 representatives for work done on behalf of the class, to make up for financial or  
 11 reputational risk undertaken in bringing the action, and, sometimes, to recognize their  
 12 willingness to act as a private attorney general.” *Id.* at 958–59. Courts may approve  
 13 service awards based on the risk to the class representative, the time and effort spent, the  
 14 duration, and the personal benefit (or lack thereof) as a result of the litigation. *E.g.*, *Van*  
 15 *Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). “In the Ninth  
 16 Circuit, an incentive award of \$5,000 is ‘presumptively reasonable,’” and may be  
 17 adjusted up or down depending on effort. *Sonoma Sol LLLP v. Truck Ins. Exch.*, No. CV-  
 18 20-00069-PHX-DJH, 2021 WL 5238711, at \*6 (D. Ariz. Nov. 9, 2021) (citations  
 19 omitted). Here, a slightly higher award is reasonable. Plaintiffs have been actively  
 20 involved in this litigation and without their willingness to come forward and prosecute  
 21 the action, the Settlement Class Members would have received nothing for their injuries.  
 22 Plaintiffs spent significant time assisting Class Counsel in investigating and prosecuting  
 23 this action. Carey Decl. ¶ 36. Plaintiffs assisted with drafting their factual allegations in  
 24 the Complaint, responded to discovery where served, and were involved in the settlement  
 25 process. *Id.* Plaintiffs also gave up what they could have recovered in individual actions,  
 26 which could have been higher had they proceeded to verdict, to litigate this case and  
 27 reach a settlement that benefits others like him. *Id.* ¶ 37. Given Plaintiffs’ efforts and the  
 28 significant amount the Class Members will receive, an award of \$7,500 is reasonable. *See*

1 *Julian v. Swift Transportation Co. Inc.*, No. CV-16-00576-PHX-ROS, 2020 WL  
2 6063293, at \*3 (D. Ariz. Oct. 14, 2020) (finding award of \$15,000 reasonable where  
3 plaintiff traveled to Phoenix for his deposition and considering amounts other class  
4 members would receive).

5 **F. The Class received adequate notice of Class Counsel's fee application.**

6 Class Counsel has provided the Class sufficient notice of the requested fees and  
7 the opportunity to review and evaluate this fee request before the deadline for objections.  
8 *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010). The  
9 class notice advised Settlement Class Members that Class Counsel will ask the Court for  
10 attorneys' fees based on their services in this litigation, not to exceed 30% of the  
11 Settlement Fund, reimbursement of costs, and up to \$7,500 (for a total of \$30,000) as a  
12 service award for the Plaintiffs serving as Class Representatives Dkt. 108-3 at 6. This  
13 Motion is being provided on the settlement website thirty days before the deadline for  
14 requests for exclusion or objections to the settlement. Dkts. 109 ¶ 12, 113.

15 **IV. CONCLUSION**

16 For the foregoing reasons, Plaintiffs respectfully request an award of  
17 \$3,480,000.00 in attorneys' fees, reimbursement of expenses incurred totaling  
18 \$79,136.03, and service awards to class representatives Jesus Caballero, Charles  
19 Creasman, Richard Luna and Brynley Wilhelm of 7,500.00 each.  
20  
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27  
28

1 Dated: April 7, 2025

Respectfully submitted by,

2 HAGENS BERMAN SOBOL SHAPIRO LLP

3 By: s/ Robert B. Carey

4 Robert B. Carey

5 John M. DeStefano

6 Michella A. Kras

7 THE SLAVICEK LAW FIRM

8 Brett L. Slavicek

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*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Jesus Caballero,  
Plaintiff,

v.

Economy Preferred Insurance Company, et  
al.,

Defendants.

Nos. CV-22-02023-PHX-MTL  
CV-22-01820-PHX-MTL  
CV-24-01267-PHX-MTL  
CV-24-01270-PHX-MTL

[Consolidated]

**DECLARATION OF ROBERT B.  
CAREY IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
ATTORNEYS' FEES, EXPENSES  
AND SERVICE AWARDS**

(Assigned to the Honorable Michael T.  
Liburdi)

1 I, Robert B. Carey, do hereby declare under penalty of perjury, pursuant to 28  
2 U.S.C. § 1746, that the following is true and correct:

3 1. I am an attorney admitted in this litigation, the Phoenix Managing Partner of  
4 the law firm Hagens Berman Sobol Shapiro LLP (“Hagens Berman”), and counsel of  
5 record for the Plaintiffs in *Caballero v. Economy Preferred Insurance Company*, 2:22-cv-  
6 02023-PHX-MTL, and its consolidated cases *Creasman v. Farmers Casualty Insurance*  
7 *Company*, 2:22-cv-01820-PHX-MTL, *Luna v. Farmers Group Property and Casualty*  
8 *Insurance Co.*, CV-24-01267-PHX-MTL, and *Wilhelm v. Economy Premier Insurance*  
9 *Co.*, CV-24-1270-PHX-MTL. I could and would competently testify to the matters stated  
10 in this declaration based on my personal knowledge or discussions with counsel in my  
11 firm.<sup>1</sup>

12 2. On December 13, 2024, this Court appointed Robert Carey of Hagens  
13 Berman to serve as Class Counsel for the Settlement Class (“Class Counsel”) (Dkt. 109).

14 3. I am a partner at Hagens Berman. I submit this declaration in support of  
15 Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards.

16 4. Hagens Berman is among the most experienced and skilled practitioners in  
17 the complex class-action litigation field and has a long and successful track record in such  
18 cases. Hagens Berman is a nationally recognized law firm, with offices in Seattle,  
19 Berkeley, Boston, Chicago, Los Angeles, New York, Phoenix, San Diego, London,  
20 England, and Paris, France. We have been consistently rated by the National Law Journal  
21 as one of the top ten plaintiffs’ firms in the country. The firm has extensive experience  
22 litigating complex class actions involving product liability, tort, antitrust, consumer fraud,  
23 insurance, securities, investment fraud, employment, environmental, and ERISA claims.  
24 Hagens Berman has been approved by courts to serve as class counsel in hundreds of class  
25 actions, including cases in this District. Hagens Berman’s willingness and ability to  
26

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27 <sup>1</sup> Local Rule 54.2(d)(1) requires a statement of consultation. Such a statement of  
28 consultation is not necessary here as the parties have already agreed that Plaintiffs may  
seek up to 30% of the common fund as part of the Settlement Agreement, and because it is  
the Court that determines what reasonable fee the Settlement Class should pay.



1 prosecute complex cases such as this was undoubtedly a factor that encouraged  
 2 Defendants to engage in settlement discussions, and added valuable leverage in the  
 3 negotiations, ultimately resulting in the recovery for the Class. Hagens Berman Firm  
 4 Resume (Exhibit 1).

5 5. My firm and I have significant experience prosecuting consumer class  
 6 actions against insurance companies. Besides this case, we are lead counsel by agreement  
 7 on the following early cases filed in the District of Arizona which involve stacking of  
 8 insurance claims similar to the claims made in this case:

- 9
- 10 • *Dorazio v. Allstate Fire and Cas. Ins. Co.*, CV-23-00017-PHX-KML
- 11 • *Doyle v. Pekin Ins. Co.*, CV-22-00638-PHX-JJT
- 12 • *Franklin v. CSAA Gen. Ins. Co.*, CV-22-00540-PHX-JJT
- 13 • *Hacker v. American Family Mut. Ins. Co.*, CV-22-01936-PHX-DLR
- 14 • *Loughran v. MIC General Ins. Corp.*, CV-23-00108-PHX-DJH
- 15 • *Miller v. Trumbull Ins. Co.*, CV-22-01545-PHX-JJT
- 16 • *Nutt v. Nationwide Ins. Co. of Am., et al.*, CV-24-02228-PHX-ROS
- 17 • *Whitehead v. Amica Mut. Ins. Co.*, CV-22-01978-PHX-DJH

18 6. My firm was appointed interim lead class counsel for the following cases in  
 19 the District of Arizona which involve stacking of insurance claims similar to the claims  
 20 made in this case:

- 21 • *Lopez v. Liberty Mut. Personal Ins. Co.*, CV-23-00629-PHX-DLR
- 22 • *Moshier v. Safeco*, CV-23-00225-PHX-DLR
- 23 • *Haenfler v. Safeco*, CV-23-00822-PHX-DLR (Consolidated with  
 24 *Moshier*)

25 7. My firm and I are lead counsel or co-lead counsel, or appointed class  
 26 counsel, on other putative class actions in other courts, for example:

- 27 • *Gunn v. CNA Financial Corp.*, No. 18-cv-03314 (N.D. Ill.)
- 28 • *Brown, et al. v. Continental Cas. Co.*, No. 21-cv-02349 (N.D. Ill.)
- *Cheslow v. Continental Cas. Co.*, No. 21cv-04010 (N. D. Ill.)
- *Boaden, et al. v. Continental Cas. Co.*, No. 23-cv-01477 (N.D. Ill.)
- *Koskan, et al. v. Continental Cas. Co.*, No. 23-cv-01941 (N.D. Ill.)

- *Sieving v. Continental Cas. Co.*, No. 20-cv-015127 (N.D. Ill.)
- (long-term care insurance)
- *Davidson v. United Services Automobile Assn.*, No. 20-cv-00527-JWH-MAA (C.D. Calif.) (homeowner insurance)
- *Sundquist v. Allstate Ins. Co., et al.*, No. 24-cv-00719-JLT-HBK (E.D. Calif.) (UM/UIM benefits)
- *Lewis, et al. v. Gov't Employees Ins. Co.*, No. 18-cv-05111-RMB-JMS (D.N.J.) (collision insurance)
- *Farmers Covid-19 Business Cases*, No. JCCP5125 (Calif. Super. Ct., Los Angeles Cty.) (Business interruption insurance; appointed by the Court as lead class counsel for the California version of an MDL, called a JCCP.)
- *In Re: Kia Hyundai Vehicle Theft Litig.*, No. 8:22-ml-03052-JVS-KES (C.D. Calif.) (comprehensive/subrogation case; Hagens Berman appointed class counsel).
- *Main Street America Protection Ins. Co. v. Stockdale*, No. CV2023-012840 (Ariz. Super. Ct., Maricopa Cty.); *Main Street America Protection Ins. Co. v. Barton*, No. CV2023-014644 (Ariz. Super. Ct., Maricopa Cty.) (consolidated with *Stockdale*) (claims involving stacking issues similar to claims in *Miller*)

8. In addition, I have litigated throughout the United States dozens of class-based first-party claims of all types, including no-fault, comprehensive, collision, med-pay, UM/UIM, property damage for auto, homeowners, medical and disability, and long-term care, as well as over a hundred high-value individual claims of this type.

9. It is well known that private counsel entering into a contingent fee agreement for these types of breach of contract/ insurance bad faith cases, in the context of an automobile injury, routinely request and receive a fee of 40% of the gross recovery.

10. I recently argued a final fairness hearing in another stacking case, *Dale v. Travelers Property Casualty Insurance Co.*, Case No. CV-22-01659-PHX-SPL. There a class member attended the final fairness hearing and let me know how pleased he was with the settlement and the fee request, noting that he was assessed a fee of over 40% by his lawyer that handled the original case, who only obtained coverage for only one of five insured vehicles.

1           11. Defendants in the stacking cases have generally contended that  
2 individualized issues regarding the UM/UIM claims of the class would predominate over  
3 common issues and that damages cannot be modeled on a classwide basis. Defendants  
4 have also opposed certification of any declaration or injunction-only class on similar  
5 grounds.

6           12. My firm kept detailed records regarding the amount of time spent by  
7 attorneys and staff working on this matter, and the lodestar calculation is based on my  
8 firm's current billing rates. The information was prepared from contemporaneous, daily  
9 time records regularly prepared and maintained by my firm in the ordinary course of  
10 business.

11           13. Co-counsel has provided their detailed time records to me, tracking all tasks  
12 performed, hours billed, and fees charged.

13           14. Class Counsel has and will continue to devote substantial time to this  
14 litigation. To date it has spent 1,550.1 hours on cases against these Defendants, for a  
15 lodestar of \$1,158,550.00. The requested fee award of 30% of the common fund, or \$3.48  
16 million, represents a maximum multiplier of 3.00 for the fees billed to date.

17           15. In addition to its current lodestar on this case, I estimate Class Counsel will  
18 expend approximately \$330,000, or 550 hours, to finish this case, which includes: 100  
19 hours of attorney time to deal with medical liens, totaling approximately \$75,000 in fees;  
20 50 hours of paralegal time to deal with medical liens, totaling approximately \$17,500; 200  
21 hours of attorney time to finalize all of the briefing and prepare for and attend the final  
22 fairness hearing, totaling \$150,000; 50 hours of attorney time to assist with client  
23 communications, totaling \$37,500; and 50 hours of paralegal time to deal with client  
24 communications, totaling \$17,500. This will bring the total lodestar for this case,  
25 including all work billed to date, to \$1,488,550.00. With the additional anticipated fees of  
26 \$330,000, the multiplier drops to 2.33.

27           16. Based on my experience in dealing with unclaimed funds and appeals after a  
28 class action settlement, I estimate Class Counsel would expend up to \$300,000 if such

1 issues arise. If such work has to be done, it will increase the fees to \$1,788,550.00 and  
2 reduce the multiplier to 1.94. I do not know what the probability of such actions are, but  
3 the adjusted value should be considered.

4 17. Class Counsel has brought multiple related actions, and billed 969 hours to  
5 their general stacking matter number, totaling \$627,455.50, which includes time spent  
6 researching and developing the legal theories for this case, developing a damages model,  
7 and responding to the multitude of amicus briefs filed in the *Franklin* matter at the  
8 Arizona Supreme Court—work which directly benefited this Settlement Class

9 18. Even if the Court only credits Class Counsel with 25% of their general fund,  
10 that would increase the total lodestar to \$1,315,386.88 (the current lodestar plus 25% of  
11 the general stacking time), for a multiplier of 2.64.

12 19. The total lodestar in this case could be as high as \$1,945,416.88, which  
13 includes the time billed to date, 25% of the general fund, projected time to finish the case,  
14 and projected time if there are unclaimed funds and/or an appeal, which would result in a  
15 multiplier of 1.79.

16 20. My firm's current hourly rates for the attorneys who worked on this matter  
17 range from \$800 to \$1,250 for partners, \$575 for associates, and \$300 to \$375 per hour for  
18 paralegals.

19 21. These rates are consistent with the hourly rates submitted by my firm to  
20 state and federal courts in other class action litigations across the country. The firm's  
21 hourly rates are set based on a periodic review of rates charged by firms performing  
22 comparable work and/or rates regularly submitted to other courts as the basis for the  
23 contingent fee awards in comparably complex class actions, including a review of both  
24 plaintiff and defense firm rates for complex litigation. Different Timekeepers within the  
25 same employment category (e.g., partners, associates, paralegals, etc.) may have different  
26 rates based on a variety of factors, including years of practice, years at the firm, years in  
27 their current position (e.g., years as a partner), relevant experience, and relative expertise.

22. I have practiced in Arizona since 1987, which includes service as a Maricopa County Superior Court Judge Pro Tem (handling both tort and contract trials), adjunct faculty at Arizona State University, Sandra Day O'Connor College of Law (teaching class actions), Chief Deputy Arizona Attorney General, and as chairman of the State Bar's Class Actions and Derivative Suits Committee. I am one of two Arizona attorneys recognized by inclusion among the Lawdragon 500 Leading Lawyers in America.

23. On the Arizona stacking cases, I have acted as lead counsel across the Arizona UM/UIM stacking class actions pending in this district, including litigation and settlement of the instant claims against Hartford entities. I was involved in all aspects of the parallel *Trent v. Hartford* case as well as the development of the *Franklin v. CSAA* matter itself, developing the claims, drafting and reviewing key pleadings, filing those actions, and litigating the certified questions before the Arizona Supreme Court. Within weeks of the Supreme Court's ruling in *Franklin*, it was agreed that I would also serve as lead counsel in this Dale proceeding as well. Since that time, I have worked with damages experts and on damages models, led mediations, led the negotiations on the settlement and its terms, and led the drafting and review of all settlement documents. I also have been leading the efforts to communicate with class members and resolve all medical lien issues. I am currently billed out at \$1,250 an hour.

24. John DeStefano is a partner in the Phoenix office of Hagens Berman. He has been involved with class litigation throughout his 17-year career, including class action proceedings occurring during his clerkships at the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Court for the District of Arizona. Upon entering private practice at Snell & Wilmer, Mr. DeStefano was extensively involved with the defense of several class actions arising out of the foreclosure crisis and consolidated by the Judicial Panel on Multidistrict Litigation in the District of Arizona. Over the course of his 11 years at Hagens Berman, Mr. DeStefano has developed a specialty in insurance class litigation and appellate representation across the country. He has served as an adjunct professor co-

1 teaching the Class Actions class at Arizona State University Sandra Day O'Connor law  
2 school for two years and is listed among the Lawdragon 500 Leading Plaintiff Consumer  
3 Lawyers. He has worked intensively with me, Robert Carey, at every stage of this  
4 litigation including development of the claims, drafting of pleadings, coordination of  
5 parallel actions, development of damages models, preparation of mediation briefs,  
6 participating in mediation, and participating in the negotiation of the settlement terms now  
7 before the Court. Mr. DeStefano also argued the *Franklin* matter on behalf of injured  
8 insureds before the Arizona Supreme Court, leading to the determination of statutory  
9 questions central to this case. Mr. DeStefano is billed out at \$800 an hour.

10 25. Michella Kras is a partner who has been practicing for over twenty years  
11 and who has been with Hagens Berman for eleven years. She has significant experience in  
12 class actions, litigating nationwide class actions in multiple federal districts. She has  
13 experience in drafting and negotiating settlement and approval documents in class action  
14 cases, most recently in a \$95 million settlement with Apple. Ms. Kras handled a large part  
15 of the settlement process, including drafting and negotiating the settlement agreement,  
16 notice, motion for preliminary approval, proposed orders, and motion for attorneys' fees.  
17 She also worked closely with Epiq to coordinate notice and class member  
18 communications, including working with law clerks to assist with the efforts to contact  
19 class members and resolve lien issues. Ms. Kras is billed out at \$850 an hour.

20 26. Tory Beardsley is an associate with experience litigating class insurance  
21 cases across the nation. She assisted in drafting and refining the discovery requests served  
22 on Defendants. She also assisted in preparing Plaintiffs' presentation for mediation. Ms.  
23 Beardsley also assisted in researching and reviewing the legislative history of A.R.S. § 20-  
24 259.01(H), the key statute at issue in this case. Ms. Beardsley is billed out at \$575 an  
25 hour.

26 27. The two paralegals who worked on this matter, Cindy Johnson and Beth  
27 Gibson, are highly skilled senior paralegals, both with decades of experience. Each are  
28 billed out at \$350 an hour.

28. Co-counsel at the Slavicek Law Firm are personally injury lawyers with extensive experience litigating UM/UIM claims.

29. Justin Henry has been practicing in this area for fifteen years and worked alongside Hagens Berman to develop and litigate these stacking cases at all stages, including researching the actions, drafting complaints, assisting with discovery, and assisting with mediation.

30. The Slavicek Law Firm bills its attorneys out at \$700 to \$900 an hour and bills its paralegals at \$150 per hour.

31. Goldstein Woods are among the most experienced and skilled practitioners in the complex insurance litigation field. Goldstein Woods is a preeminent firm litigating insurance claims in Arizona. Evan Goldstein was lead counsel in the seminal case *Heaton v. Metro. Grp. Prop. & Cas. Ins. Co.*, No. CV-21-00442-PHX-SRB, 2021 WL 6805629, at \*5 (D. Ariz. Oct. 19, 2021), where Judge Susan Bolton first interpreted how UM/UIM claims should be paid under A.R.S. §20-259.01(H). *Heaton* was the precursor for the Arizona Supreme Court's ruling on stacking in *Franklin*. 255 Ariz. at 412-23.

32. Goldstein Woods bills its partners out at \$750 an hour and bills its paralegals out at \$250 an hour.

33. My firm's and co-counsel's detailed time records describing the work performed are available to the Court for in camera review if requested.

34. Plaintiffs' counsel has funded \$75,236.04 in litigation expenses in the case, as summarized in the following tables, which are necessary and reasonable to prosecute this case and were made for the benefit of the Settlement Class:

EXPENSE CATEGORY	TOTAL
Court Fees/Filing Fees	1,552.78
Experts/Consultants	49,317.65
In-House Copying/Printing	787.81



Mediation	10,400.50
Medical Records	1,034.25
Online Research/Westlaw	3,641.05
Service of Process	624.25
Zoom Conference	15.99
Depositions	11,721.75
Parking	40.00
<b>TOTAL</b>	<b>\$79,136.03</b>

35. Hagens Berman has forgone a significant amount of other work to litigate this case.

36. Plaintiffs spent significant time assisting Class Counsel in investigating and prosecuting this action. Plaintiffs assisted with drafting their factual allegations in the Complaint, and was involved in the settlement process, including an all-day, in person mediation.

37. Plaintiffs also gave up what they could have recovered in an individual action, which could have been higher had they proceeded to verdict, to litigate this case and reach a settlement that benefits others like them.

38. Hagens Berman's and my billing rates were recently approved as reasonable by the Honorable David G. Campbell, in *In re Theranos, Inc. Litigation*, Case No. 2:16-cv-2138-DGC (D. Ariz. Feb. 6, 2024). While a copy of that opinion is not available on Westlaw, a link to the Final Order and Judgment is available here:  
<https://www.theranoslawsuit.com/admin/api/connectedapps.cms.extensions/asset?id=ecad7b5f-6b93-42c8-92c0-564912e2dc86&languageId=1033&inline=true>.

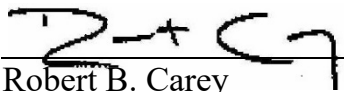
39. As required by Local Rule 54.2(d)(2), attached hereto are copies of the Rights and Responsibilities Agreements Hagens Berman entered into with Plaintiffs Jose Caballero, Charles Creasman, Richard Luna and Brynley Wilhelm. (Exhibits 2-5). The

1 Rights and Responsibilities Agreements do not set a fee but leave that determination to the  
2 Court.

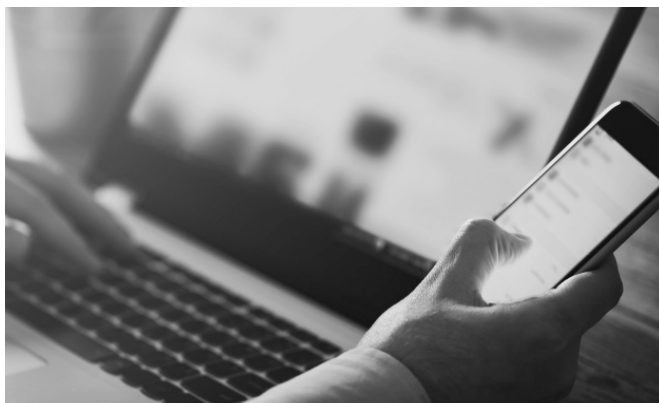
3 I declare under penalty of perjury of the laws of the United States that the  
4 foregoing is true and correct.

5 DATED: April 7, 2025

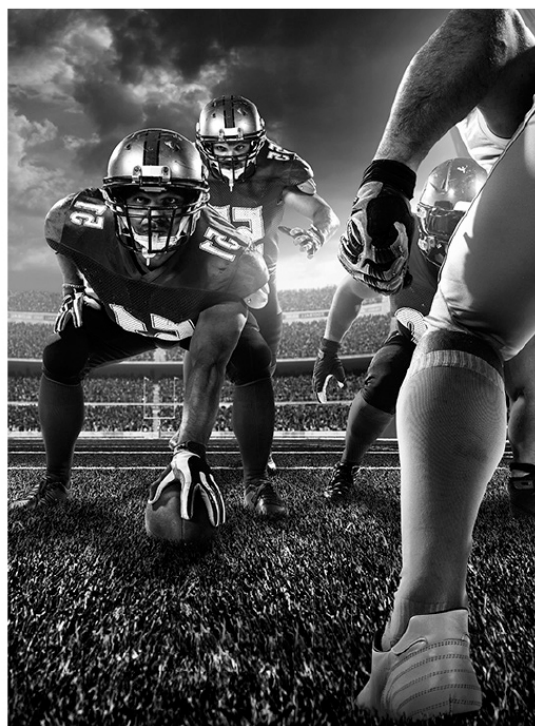
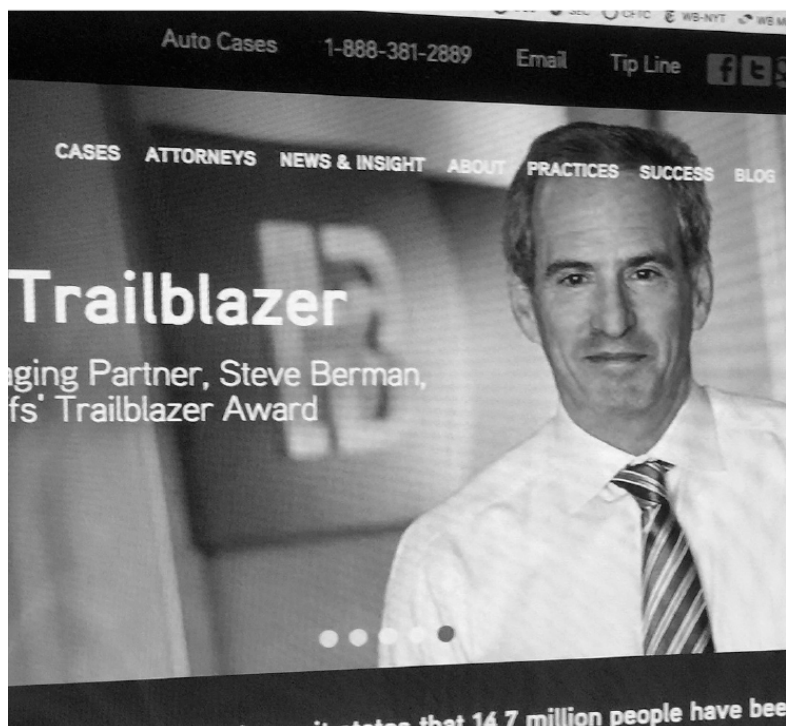
6 HAGENS BERMAN SOBOL SHAPIRO LLP

7  
8 By:   
9 Robert B. Carey

# EXHIBIT 1



## HAGENS BERMAN



Hagens Berman is a national leader in class-action litigation driven by an international team of legal powerhouses. With a tenacious spirit, we are motivated to make a positive difference in people's lives.

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## INTRODUCTION

## The Firm

Hagens Berman Sobol Shapiro LLP was founded in 1993 with one purpose: to help victims with claims of fraud and negligence that adversely impact a broad group. Through the firm's focus on class-action litigation and other complex, multi-party cases, it fights for those seeking representation against wrongdoing and fraud. As the firm grew, it expanded its scope while staying true to its mission of taking on important cases that implicate the public interest and the greater good. We represent plaintiffs including consumers, inventors, investors, workers, the environment, governments, whistleblowers and others.

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**We are one of the nation's leading class-action law firms and have earned an international reputation for excellence and innovation in ground-breaking litigation against large corporations.**

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### OUR FOCUS

Our focus is to represent plaintiffs in [antitrust](#), [consumer fraud](#), [employment](#), [environmental](#), [intellectual property](#), product liability, [securities and investment fraud](#), [sexual harassment](#), tort and [whistleblower law](#) cases. Our firm is particularly skilled at managing multistate and nationwide class actions through an organized, coordinated approach. Our skilled team implements an efficient and aggressive prosecutorial strategy to place maximum pressure on defendants.

### WE WIN

We believe excellence stems from a commitment to try each case, vigorously represent the best interests of our clients and obtain maximum recovery. Our opponents know we are determined and tenacious. They respect our skills and recognize our track record of achieving top results for those who need it most.

### WHAT MAKES US DIFFERENT

We are driven to return to the class every possible portion of its damages — our track record proves it. While many class action or individual plaintiff cases result in large legal fees and no meaningful outcome for the client or class, Hagens Berman finds ways to return real value to the victims of corporate fraud and malfeasance through damages and real change.

### AN INTERNATIONAL REACH

Our firm offers clients an international scope of practice. We have flourished through our core network of U.S. offices, and with a global expansion, Hagens Berman has grown geographically to where our eyes have always been: trends of fraud, negligence and wrongdoing taking form anywhere in the world. The firm now does business through endeavors in London and Amsterdam. Our reach is not limited to the cities where we maintain offices. We have cases pending in several countries and have a vested interest in fighting global instances of oppression and injustice.



INTRODUCTION

## Locations

### SEATTLE

1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
T 206-623-7292  
F 206-623-0594

### CHICAGO

455 N. Cityfront Plaza Drive, Suite 2410  
Chicago, IL 60611  
T 708-628-4949  
F 708-628-4950

### PHOENIX

11 West Jefferson Street, Suite 1000  
Phoenix, AZ 85003  
T 602-840-5900  
F 602-840-3012

### BERKELEY

715 Hearst Avenue, Suite 300  
Berkeley, CA 94710  
T 510-725-3000  
F 510-725-3001

### LOS ANGELES

301 North Lake Avenue, Suite 920  
Pasadena, CA 91101  
T 213-330-7150  
F 213-330-7152

### SAN DIEGO

533 F Street  
Suite 207  
San Diego, CA 92101  
T 619-929-3340

### BOSTON

1 Faneuil Hall Square, 5th Floor  
Boston, MA 02109  
T 617-482-3700  
F 617-482-3003

### NEW YORK

594 Dean Street, Suite 24  
Brooklyn, NY 11238  
T 212-752-5455  
F 917-210-3980

### LONDON

Hagens Berman UK LLP  
125 Old Broad Street  
London, EC2N 1AR  
T 0203 150 1445

## INTRODUCTION

### Quotes

“[A] clear choice emerges. That choice is the Hagens Berman firm.”

— *U.S. District Court for the Northern District of California, In re Optical Disk Drive Products Antitrust Litigation* (Appointing the firm lead counsel in the case which would later usher in \$205 million in settlements.)

“Landmark consumer cases are business as usual for Steve Berman.”

— *The National Law Journal*, naming Steve Berman one of the 100 most influential attorneys in the nation for the third time in a row

“Berman is considered one of the nation’s top class action lawyers.”

— *Associated Press*

“unprecedented success in the antitrust field”

— *California Magistrate Judge Nathanael M. Cousins*  
*A July 2015 order awarding attorneys’ fees in student-athlete name and likeness litigation*

“All right, I think I can conclude on the basis with my five years with you all, watching this litigation progress and seeing it wind to a conclusion, that the results are exceptional... You did an exceptionally good job at organizing and managing the case...”

— *U.S. District Court for the Northern District of California, In re Dynamic Random Access Memory Antitrust Litigation* (Hagens Berman was co-lead counsel and helped achieve the \$406 million class settlement.)

“aggressive and independent advocacy”

— *Hon. Thomas M. Durkin in an order appointing Hagens Berman as interim class counsel in In re Broiler Chicken Antitrust Litigation*

“Class counsel has consistently demonstrated extraordinary skill and effort.”

— *Hon. James Selna, Central District of California, In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation*, (The firm was appointed co-lead counsel without submitting to lead the case, and later achieved what was then the largest settlement in history brought against an automaker – \$1.6 billion.)

“...I have never worked with such professional, decent counsel.”

— *Hon. Dennis M. Cavanaugh, United States District Judge (Retired), Transcript Of Proceedings Fairness Hearing for In re Mercedes-Benz Emissions Litigation*, (Hagens Berman helped secure a \$700 million settlement for class members and served as interim class counsel.)

“...the track record of Hagens Berman[‘s] Steve Berman is...impressive, having racked... a \$1.6 billion settlement in the Toyota Unintended

Acceleration Litigation and a substantial number of really outstanding big-ticket results.”

— Hon. Milton I. Shadur, Senior U.S. District Judge, naming Hagens Berman interim class counsel in Stericycle Pricing MDL (Hagens Berman served as lead counsel and secured a \$295 million settlement.)

“...when you get good lawyers this is what happens; you get these cases resolved.”

— Hon. Dennis M. Cavanaugh, United States District Judge (Retired), Proceedings Fairness Hearing for In re Mercedes-Benz Emissions Litigation

“...Class counsel have devoted considerable time and resources to this litigation...”

— Hon. Dennis M. Cavanaugh, United States District Judge (Retired), Proceedings Fairness Hearing for In re Mercedes-Benz Emissions Litigation

“...This result...puts significant money into the pockets of all of the class members, is an excellent result. ...I’ve also looked at the skill and quality of counsel and the quality of the work... and find that to have been at a high level.”

— Hon. Beth Labson Freeman, United States District Judge, Final Approval of Settlement Hearing for Dean Sheikh et al v. Tesla, Inc.

“...respective clients certainly got their money’s worth with these attorneys and the work that they did on their behalf. ...Plaintiffs did an excellent job on behalf of their clients in this case.”

— Hon. Dennis M. Cavanaugh, United States District Judge (Retired)  
Proceedings Fairness Hearing for In re Mercedes-Benz Emissions Litigation

“Class Member reaction to the Mercedes Settlement is overwhelmingly positive.”

— Hon. Dennis M. Cavanaugh (Ret.) Special Master, In re Mercedes-Benz Emissions Litigation

“I will reiterate that class counsel has demonstrated over many years, superior experience and capability in handling class actions of this sort.”

— Hon. Beth Labson Freeman, United States District Judge, Final Approval of Settlement Hearing for Dean Sheikh et al v. Tesla, Inc.

“Not only did they work hard and do what was appropriate under the circumstances; their behavior was exemplary throughout. They were fair and firm. There were no pushovers involved here.”

— Hon. Dennis M. Cavanaugh, United States District Judge (Retired), Proceedings Fairness Hearing for In re Mercedes-Benz Emissions Litigation

## INTRODUCTION

## Victories & Settlements

Since its founding, the firm has secured settlements valued at more than \$320 billion on behalf of class members in large-scale complex litigation.

### \$260 BILLION

#### STATE TOBACCO LITIGATION

Hagens Berman represented 13 states prosecuting major actions against Big Tobacco. The settlement led to a multistate settlement requiring the tobacco companies to pay the states and submit to advertising and marketing restrictions. It was the largest civil settlement in history.

### \$25 BILLION

#### VISA CHECK/MASTERMONEY ANTITRUST LITIGATION

The firm served as co-lead counsel in what was then the largest antitrust settlement in history. The class-action lawsuit alleged that Visa and MasterCard engaged in an anticompetitive scheme to monopolize the debit card services market and charge merchants artificially inflated interchange fees by tying merchant acceptance of their debit card services, Visa Check and MasterMoney, to merchant acceptance of their credit card services. Settlements secured categories of relief that court decisions valued at as much as \$25-87 billion.

### \$14.7 BILLION

#### VOLKSWAGEN EMISSIONS LITIGATION

Hagens Berman was named a member of the plaintiffs' steering committee and part of the settlement negotiating team in this monumental case that culminated in the largest automotive settlement in history. The firm was the first law firm to file against Volkswagen regarding its Dieselgate emissions-cheating scandal.

### \$1.6 BILLION

#### TOYOTA UNINTENDED ACCELERATION LITIGATION

Hagens Berman served as co-lead counsel and secured what was then the largest automotive settlement in history in this class action that recovered \$1.6 billion for vehicle owners.

### \$1.6 BILLION

#### VOLKSWAGEN FRANCHISE DEALERS LITIGATION

The firm served as lead counsel representing VW franchise dealers in this lawsuit related to VW's Dieselgate scandal. The settlement recovered nearly full damages for the class.

### \$1.45 BILLION

#### MERACORD

The firm secured a default judgment on behalf of consumers for a useless debt-settlement conspiracy, following years of plaintiff victories in the case. Hagens Berman filed its lawsuit in 2011, on behalf of consumers nationwide, claiming the company violated Washington law and the federal Racketeer Influenced and Corrupt Organizations Act.

### \$1.3 BILLION

#### HYUNDAI KIA THETA II GDI FIRE HAZARD LITIGATION I

Hagens Berman is co-lead counsel in this case accusing automakers of selling vehicles with failure-prone engines that could sometimes catch fire. The case is still pending litigation pertaining to other affected models.

### \$700 MILLION

#### MERCEDES BLUETEC EMISSIONS LITIGATION

A monumental settlement was reached on behalf of owners of Mercedes vehicles affected by Daimler's emissions cheating. The case was initially filed and researched by Hagens Berman, based on the firm's independent vehicle testing, and the firm served as co-lead counsel. The consumer settlement followed a \$1.5 billion settlement between Mercedes and the U.S. Justice Department and California Air Resources Board. The settlement includes an \$875 million civil penalty for violating the Clean Air Act.

**\$700 MILLION****WASHINGTON PUBLIC POWER SUPPLY SYSTEM (WPPSS) SECURITIES LITIGATION**

Hagens Berman represented bondholders and the trustee in a class action stemming from the failure of two nuclear projects. Plaintiffs were awarded a \$700 million settlement.

**\$568 MILLION****APPLE E-BOOKS ANTITRUST LITIGATION**

Hagens Berman served as co-lead counsel against Apple and five of the nation's largest publishing companies and secured a combined \$568 million settlement, returning class members nearly twice their losses in recovery, following the firm's victory over Apple after it appealed the case to the U.S. Supreme Court.

**\$535 MILLION****CHINA MEDIAEXPRESS HOLDINGS, INC. SECURITIES LITIGATION**

Hagens Berman, which served as lead counsel in the case, alleged on behalf of a class of investors that China MediaExpress Holdings made false and misleading statements, including misrepresentations about its revenues, the number of buses in its network and the nature of its business relationships. The lawsuit resulted in relief for investors valued at \$535 million.

**\$470 MILLION****LCD ANTITRUST LITIGATION**

Hagens Berman served as a member of the Executive Committee representing consumers in multi-district litigation. Total settlements exceeded \$470 million.

**\$453 MILLION****GLUMETZA ANTITRUST LITIGATION**

The court denied summary judgment and paved the way for trial in this litigation against brand and generic manufacturers of the diabetes drug Glumetza. Hagens Berman served as co-lead counsel for the direct purchaser class. U.S. District Judge William Alsup approved \$453.85 million in settlements resolving direct purchasers' allegations. The result was the largest antitrust recovery to receive final approval in 2022.

**\$406 MILLION****DRAM ANTITRUST LITIGATION**

The firm was co-lead counsel in this antitrust case which settled for \$406 million in favor of purchasers of dynamic random access memory chips.

**\$385 MILLION****SUBOXONE ANTITRUST LITIGATION**

Hagens Berman was co-lead counsel in this pharmaceutical antitrust class action alleging defendants violated federal antitrust laws by delaying generic competition for its blockbuster opioid addiction medicine, Suboxone.

**\$383.5 MILLION****DAVITA HEALTHCARE PERSONAL INJURY LITIGATION**

A Denver jury awarded a monumental \$383.5 million verdict to families of three patients who died after receiving dialysis treatments at DaVita clinics.

**\$340 MILLION****RANBAXY INC.**

Hagens Berman served as co-lead counsel representing Meijer Inc. and Meijer Distribution Inc. in a class-action lawsuit against drugmaker Ranbaxy. The lawsuit alleged it recklessly stuffed the generic drug approval queues with grossly inadequate applications and deceiving the FDA into granting tentative approvals to lock in statutory exclusivities to which Ranbaxy was not entitled. Ranbaxy then excluded competition at the expense of U.S. drug purchasers. The settlement was part of a \$485 million settlement for all plaintiffs. The result was the second largest antitrust recovery to receive final approval in 2022.

**\$338 MILLION****AVERAGE WHOLESALE PRICE DRUG LITIGATION**

Hagens Berman was lead counsel in this ground-breaking drug pricing case against the world's largest pharmaceutical companies, resulting in a victory at trial. The court approved a total of \$338 million in settlements.

**\$325 MILLION****NEURONTIN PFIZER LITIGATION**

The firm brought suit against Pfizer and its subsidiary, Parke-Davis, accusing the companies of a fraudulent scheme to market and sell the drug Neurontin for a variety of "off-label" uses for which it is not approved or medically efficacious.

**\$307 MILLION****ECODIESEL EMISSIONS CHEATING LITIGATION**

The firm achieved a settlement on behalf of owners of EcoDiesel Dodge 1500 and Jeep Grand Cherokee vehicles in response to Fiat Chrysler's emissions-cheating. Under the settlement, class members who repair their vehicles and submit a claim will receive \$3,075. The total value of the deal is estimated at \$307 million, granted all owners submit a valid claim.

**\$300 MILLION****HYUNDAI/KIA HYDRAULIC ELECTRONIC CONTROL UNIT (HECU) FIRE HAZARD**

Approximately three million Hyundai and Kia vehicles nationwide were affected by a dangerous defect in the hydraulic and electronic control units (HECU), also known as anti-lock brake (ABS) modules which posed a risk of non-collision engine fires. Conservatively, plaintiffs' experts valued the settlement achieved by Hagens Berman as co-class counsel in the range of \$326 million to \$652 million.

**\$295 MILLION****STERICYCLE, STERI-SAFE LITIGATION**

Hagens Berman served as lead counsel representing small businesses including veterinary clinics, medical clinics and labs in a class-action lawsuit alleging Stericycle's billing practices and accounting software violated consumer laws and constituted breach of contract.

**\$255 MILLION****HYUNDAI & KIA FUEL ECONOMY LITIGATION**

Hagens Berman filed a class-action lawsuit on behalf of consumers alleging Hyundai and Kia overstated fuel economy for many vehicles they sold in the United States.

**\$250 MILLION****ENRON ERISA LITIGATION**

Hagens Berman was co-lead counsel in this ERISA litigation, which recovered in excess of \$250 million, the largest ERISA settlement in history.

**\$250 MILLION****BOFA COUNTRYWIDE APPRAISAL RICO**

Hagens Berman served as co-lead counsel in a nationwide class-action lawsuit against Bank of America, Countrywide Financial and appraisal firm LandSafe Inc. on behalf of a class of home buyers accusing the suit's defendants of carrying out a series of phony appraisals in an attempt to secure more loans.

**\$235 MILLION****CHARLES SCHWAB SECURITIES LITIGATION**

The firm was lead counsel in this action alleging fraud in the management of the Schwab YieldPlus mutual fund. A \$235 million class settlement was approved by the court.

**\$234 MILLION****AEQUITAS CAPITAL MANAGEMENT**

The firm settled this case on behalf of 1,600 investors of the now-defunct Aequitas companies. It is believed to be the largest securities settlement in Oregon history.

**\$218 MILLION****JP MORGAN MADOFF**

Hagens Berman settled this case on behalf of Bernard L. Madoff investors in a suit filed against JPMorgan Chase Bank, its parents, subsidiaries and affiliates. The settlement against JPMorgan involved three simultaneous, separately negotiated settlements totaling more than \$2.2 billion.

**\$215 MILLION****USC, DR. GEORGE TYNDALL SEXUAL ABUSE AND HARASSMENT**

The firm served as co-lead counsel and secured a \$215 million settlement on behalf of a class of thousands of survivors of sexual assault against the University of Southern California and its Dr. George Tyndall, the full-time gynecologist at USC's student health clinic.

**\$212 MILLION****TOYOTA, LEXUS DENSO FUEL PUMP DEFECT**

Hagens Berman represented consumers in a lawsuit alleging that Toyota Motor Corp. sold vehicles with faulty engines made by Denso International America Inc. The defect left vehicle owners at risk of spontaneous vehicle shutdown, engine stall and other safety risks that increased the likelihood of a crash or injury. The settlement brought relief to more than 3.3 million vehicle owners.

**\$208 MILLION****NCAA SCHOLARSHIP CAP ANTITRUST LITIGATION**

Hagens Berman was co-lead counsel in the damages portion of this historic antitrust class action claiming the NCAA unlawfully capped the value of athletic scholarships. In a historic ruling, the U.S. Supreme Court unanimously upheld a trial victory regarding the injunctive portion of the case securing monumental improvements for college athletes, and forever changing college sports. Steve Berman served as trial counsel.

**\$205 MILLION****OPTICAL DISC DRIVES (ODD) ANTITRUST LITIGATION**

Hagens Berman served as lead counsel on behalf of consumers in a lawsuit filed against Philips, Pioneer and others for artificially inflating the price of ODDs.

**\$200 MILLION****NEW ENGLAND COMPOUNDING PHARMACY MENINGITIS OUTBREAK LITIGATION**

Hagens Berman attorneys served as lead counsel for the plaintiffs' steering committee on behalf of plaintiff-victims of the 2012 fungal meningitis outbreak that led to more than 64 deaths and hundreds of joint infection cases.

**\$181 MILLION****BROILER CHICKEN ANTITRUST LITIGATION**

Hagens Berman serves as interim class counsel in a case against Tyson, Purdue and 16 other chicken producers for allegedly conspiring to stabilize chicken prices by reducing production. The firm continues to litigate the case against remaining defendants.

**\$169 MILLION****ANIMATION WORKERS**

Hagens Berman was co-lead counsel for a class of approximately 10,000 animators and other artistic workers in an antitrust class action against Pixar, DreamWorks, The Walt Disney Company, Sony and others for allegedly conspiring to restrain competition and suppress industry wages. A \$169 million settlement resulted in a payment of more than \$13,000 per class member.

**\$150 MILLION****FLONASE ANTITRUST LITIGATION**

Hagens Berman was co-lead counsel representing purchasers in this case alleging GlaxoSmithKline filed petitions to prevent the emergence of generic competitors to its drug Flonase to overcharge consumers and purchasers of the drug, which would have been priced lower had a generic competitor been allowed to come to market.

**\$150 MILLION****LUPRON CONSUMER LITIGATION**

Hagens Berman served as co-lead counsel on behalf of consumers and third-party payors who purchased the drug Lupron. Under the terms of the settlement, TAP Pharmaceuticals paid \$150 million on behalf of all defendants.

**\$125 MILLION****PHARMACEUTICAL AWP LITIGATION**

Hagens Berman was lead counsel against 11 pharmaceutical companies, including Abbott Laboratories and Watson Pharmaceuticals, resulting in multiple settlements between 2006 and 2012. Defendants agreed to pay \$125 million in a nationwide settlement for intentionally inflating reports of the average wholesale prices (AWP) on certain prescription medications.

**\$123.4 MILLION****EXPEDIA LITIGATION**

Hagens Berman led this class action arising from bundled “taxes and service fees” that Expedia collects when its consumers book hotel reservations. Plaintiffs alleged that by collecting exorbitant fees as a flat percentage of the room rates, Expedia violated both the Washington Consumer Protection Act and its contractual commitment to charge as service fees only “costs incurred in servicing” a given reservation.

**\$120 MILLION****GENERAL MOTORS**

Hagens Berman represented owners of GM-branded vehicles as co-lead counsel in a national class-action lawsuit seeking compensation, statutory penalties and punitive damages against GM on behalf of owners of millions of vehicles affected by alleged safety defects and recalls. The court granted final approval to a \$120 million settlement on behalf of affected GM vehicle owners on Dec. 18, 2020. Under the settlement, a trust controlled by creditors in GM’s 2009 bankruptcy contributed up to \$50 million.

**\$120 MILLION****LOESTRIN ANTITRUST LITIGATION**

Hagens Berman served as interim co-lead counsel for the certified class of direct purchasers. The parties reached a proposed settlement shortly before trial.

**\$113 MILLION****BATTERIES ANTITRUST LITIGATION**

Hagens Berman served as co-lead counsel and secured a settlement in this class-action lawsuit against some of the largest electronics manufacturers for allegedly illegally fixing the price of lithium-ion batteries, pushing costs higher for consumers.

**\$108 MILLION****FIAT CHRYSLER LOW OIL PRESSURE**

As co-lead counsel, Hagens Berman represented a class of owners of Fiat Chrysler vehicles allegedly prone to spontaneous shut off when oil pressure is low. A federal judge approved a settlement valued at \$108 million comprised of comprehensive relief including extended warranties, software upgrades, free testing and repairs and repair reimbursements.



**\$100 MILLION****APPLE IOS APP STORE LITIGATION**

In this lawsuit against Apple, the firm served as interim lead counsel in this matter and represented U.S. iOS developers against the tech giant. The suit accused Apple of monopolizing distribution services for iOS apps and in-app digital products, allegedly resulting in commission overcharges. Apple agreed to pay \$100 million and make developer-friendly changes to its App Store policy.

**\$100 MILLION****OPPENHEIMER CORE BOND AND CHAMPION INCOME FUNDS LITIGATION**

Hagens Berman obtained settlements in two cases alleging that various Oppenheimer entities and certain individual defendants made materially false or misleading statements and omissions to the investing public regarding the investment profile and objectives of the two funds.

**\$100 MILLION****TENET HEALTHCARE**

Hagens Berman achieved a settlement on behalf of uninsured patients who received care at Tenet facilities nationwide, alleging that the patients were charged excessive prices at 114 hospitals owned and operated by Tenet Healthcare. The suit claimed that Tenet took advantage of the uninsured and working poor who did not have the economic leverage to negotiate lower rates, while giving discounts to HMO's and other large payers.

**\$100 MILLION****TREMONT LITIGATION**

The firm filed a class action on behalf of investors alleging the company and others grossly neglected fiduciary duties by turning capital over to Bernard Madoff Investment Securities.

**\$98 MILLION****PROGRAF ANTITRUST LITIGATION**

Hagens Berman served as court-appointed co-lead class counsel representing a class of direct purchasers of Prograf. The antitrust lawsuit alleges that Astellas violated antitrust laws by filing a petition with the FDA as a means of delaying entry of a generic version of Prograf, a drug used to prevent organ rejection by kidney, liver, heart and lung transplant patients.

**\$95 MILLION****APPLECARE**

This class action secured compensation for iPhone and iPad owners who bought AppleCare or AppleCare+ coverage. The suit accused Apple of using inferior, refurbished or used parts in device replacements, despite promising to provide consumers with a device "equivalent to new in performance and reliability," and Hagens Berman reached a settlement with the tech giant in April 2022, resolving these claims.

**\$94 MILLION****CELEBREX ANTITRUST LITIGATION**

Hagens Berman litigated claims on behalf of a certified class of direct purchasers alleging Pfizer obtained reissuance of a follow-on patent by defrauding the Patent and Trademark Office. The case settled just weeks before trial.

**\$92.5 MILLION****BOEING SECURITIES LITIGATION**

Boeing and Hagens Berman agreed to a settlement to this shareholder suit filed in November 1997 by Hagens Berman. The settlement, the then second largest awarded in the Northwest, affected tens of thousands of Boeing common stock shareholders.

**\$90 MILLION****GOOGLE PLAY STORE APP DEVELOPERS**

The firm filed a class action on behalf of Android app developers for violating antitrust laws by allegedly illegally monopolizing markets for Android app distribution and in-app payment processing. A \$90 million settlement has been preliminarily approved.

# PRACTICE AREAS

## PRACTICE AREAS

**Antitrust**

Hagens Berman works to preserve fair trade and healthy marketplace competition by protecting consumers and businesses from price-fixing, market allocation agreements, monopolistic schemes and other trade restraints. The firm's lawyers have earned an enviable reputation as experts in this often confusing and combative area of commercial litigation in which we have recovered nearly \$30 billion in settlements for our clients. Our attorneys have a deep understanding of legal and economic issues within the marketplace, allowing us to employ groundbreaking market theories that shed light on restrictive anti-competitive practices. Our cases have returned more than \$320 billion across all practice areas.

Hagens Berman represents millions of class members in high-profile class-action lawsuits and takes on major antitrust litigation to improve market conditions for consumers, businesses and investors. We have represented plaintiffs in markets as diverse as college sports, app development, debit and credit card services, personal computer components, electric and gas power, airlines and internet services, and we have prevailed against some of the world's largest corporations. The firm has also taken on wage-fixing antitrust agreements in various industries including animation, food production and aerospace engineering.

The firm's antitrust cases span the reaches of anticompetitive behavior, impacting even the realm of college sports. In the Keller and O'Bannon cases, the firm represented college athletes against the NCAA and Electronic Arts Inc. claiming the companies illegally use college football and basketball players' names and likenesses in video games without permission or consent from the player. In those matters, the firm secured a total \$60 million in settlements, and checks went out to about 15,000 players, some up to \$7,600, with a median around \$1,100.

Hagens Berman has also brought about significant changes already to the NCAA's policies and procedures regulating payments. In NCAA Grants-in-Aid Scholarships Litigation, the firm brought an antitrust class action against the NCAA on behalf of college athletes, claiming that the NCAA had violated the law when it kept the class from being able to receive compensation provided by schools or conferences for athletic services other than cash. Following a \$208 million settlement in the damages portion of the case — an almost 100% recovery of single damages — the Supreme Court upheld the favorable opinion of the Ninth Circuit in a 9-0 ruling regarding injunctive relief. Justice Kavanaugh's opinion further underscored the massive win for plaintiffs and the ruling's ongoing effects: "The NCAA couches its arguments for not paying student athletes in innocuous labels. But the labels cannot disguise the reality: The NCAA's business model would be flatly illegal in almost any other industry in America," pushing for further scrutiny of the NCAA's regulations. After the ruling, the NCAA relaxed some of the name, image and likeness (NIL) restrictions and the market for NIL revenues exploded reaching almost \$5 billion this year. Few antitrust decisions have been so transformative.

The firm continues its work litigating against the NCAA regarding name, image and likeness (NIL) rights. Currently Hagens Berman is co-lead counsel in *House v. NCAA*, which challenges current restrictions on athletes NIL rights and seeks damages for lost NIL opportunities. In *House*, plaintiffs seek a share of the golden goose, namely, NCAA and conference

broadcast and licensing revenues. So far, the firm has cleared two monumental hurdles in the lawsuit receiving class certification status for both the injunctive and damages portions of the case, for classes representing more than 184,000 college athletes.

The firm has also generated substantial recoveries on behalf of health plans and consumers in antitrust cases involving pharmaceutical companies abusing patent rights to block generic drugs from coming to market. Hagens Berman's settlements accounted for 35% of total U.S. antitrust settlements that reached final approval in 2022, including the two largest antitrust recoveries to receive final approval, [In re Glumetza Antitrust Litigation](#) (\$453.85 million settlement) and [In re Ranbaxy Generic Drug Application Antitrust Litigation](#) (\$340 million settlement). Hagens Berman has served as lead or co-lead counsel in landmark antitrust litigation in many matters, including Paxil Direct Purchaser Litigation (\$100 million), Relafen Antitrust Litigation (\$75 million), Tricor Indirect Purchaser Antitrust Litigation (\$65.7 million), and Augmentin Antitrust Litigation (\$29 million).

Representative antitrust successes include:

#### **VISA CHECK/MASTERMONEY ANTITRUST LITIGATION**

Hagens Berman was co-lead counsel in this landmark antitrust case involving Visa and Mastercard. The case alleged the credit card giants engaged in anticompetitive practices to monopolize the debit card services market and impose artificially inflated interchange fees on merchants. The court valued the settlement between \$25 billion and \$87 billion, making it the largest antitrust settlement in U.S. history at the time.

**RESULT:** \$3.05 billion settlement and injunctive relief valued at more than \$23 billion

#### **APPLE E-BOOKS LITIGATION**

With state attorneys general, the firm served as lead counsel to secure a settlement with publishing companies that conspired with Apple to fix e-book prices. The firm then took on Apple for its part in the price-fixing conspiracy. In the final stage, the U.S. Supreme Court denied appeal from Apple, bringing the consumer payback amount to more than twice the amount of losses suffered by the class of e-book purchasers. This represents one of the most successful recoveries in any antitrust lawsuit in the country.

**RESULT:** \$568 million in total settlements

#### **LG PHILIPS AND TOSHIBA LCD ANTITRUST LITIGATION**

Hagens Berman filed a class action against more than 20 manufacturers of TFT LCD products, including LG Philips and Toshiba, claiming the companies engaged in a conspiracy to fix, raise, maintain and stabilize the price of electronic products and devices. After years of representing consumers in multi-district litigation, the case against Toshiba went to trial. In 2012, Toshiba was found guilty of price-fixing and settled.

**RESULT:** \$470 million in total settlements

#### **DYNAMIC RANDOM ACCESS MEMORY (DRAM) ANTITRUST LITIGATION**

The suit claimed DRAM (Dynamic Random Access Memory) manufacturers secretly agreed to reduce the supply of DRAM, a necessary component in a wide variety of electronics, which artificially raised prices. The class included equipment manufacturers, franchise distributors and purchasers.

**RESULT:** \$406 million settlement

#### **OPTICAL DISK DRIVES ANTITRUST LITIGATION**

Hagens Berman fought on behalf of consumers in a lawsuit filed against Philips, Pioneer and others for artificially inflating the price of ODDs for consumers.

**RESULT:** \$205 million in total settlements

**BROILER CHICKEN ANTITRUST LITIGATION**

Hagens Berman serves as co-lead counsel in this massive antitrust class action asserting that the nation's largest broiler chicken producers – Tyson, Pilgrim's Pride, Perdue and a host of others – conspired to fix the price of chicken for consumers by up to 50 percent since 2009. Settlements will offer compensation to millions of American consumers who have unknowingly overpaid for chicken products for years.

**RESULT:** \$181 million in total settlements. The firm continues to litigate against remaining defendants

**ANIMATION WORKERS ANTITRUST LITIGATION**

Hagens Berman served as co-lead counsel for a nationwide class of approximately 10,000 animators and other artistic workers in an antitrust class-action case filed against Pixar, DreamWorks, The Walt Disney Company, Sony, Blue Sky Studios and others for allegedly conspiring to restrain competition to suppress compensation. The settlement resulted in a payment of more than \$13,000 per class member.

**RESULT:** \$169 million settlement

**LITHIUM-ION BATTERIES ANTITRUST LITIGATION**

Hagens Berman filed a class-action lawsuit against some of the largest electronics manufacturers for illegally fixing the price of lithium-ion batteries, pushing costs higher for consumers.

**RESULT:** \$113 million in total settlements

**APPLE IOS APP DEVELOPERS**

The firm achieved a \$100 million settlement with Apple on behalf of US iOS app developers and developers of in-app products sold on Apple's App Store following the filing of an antitrust class-action lawsuit. The suit accused Apple monopolized U.S. distribution for iOS apps and in-app digital products, resulting in commission overcharges to developers. The settlement brings important changes to App Store policies and practices, and U.S. iOS developers with less than \$1 million in annual proceeds from App Store sales can receive hundreds to tens of thousands of dollars in compensation.

**RESULT:** \$100 million settlement

**GOOGLE PLAY STORE APP DEVELOPERS**

The firm achieved a \$90 million settlement with Google on behalf of roughly 43,000 US Android app developers and developers of in-app products sold on Google's Play Store following the filing of an antitrust class-action lawsuit. The firm filed the class action against Google for violations of antitrust laws by illegally monopolizing markets for Android app distribution and in-app payment processing.

**RESULT:** \$90 million settlement

**PORK ANTITRUST LITIGATION**

In this antitrust class action, the firm's investigation revealed that since 2014, pork producers such as Tyson, Hormel and others colluded to knowingly reduce pork production to artificially inflate prices. The pork producers engaged in a conspiracy that has cost American consumers millions of dollars over the years, and so far Hagens Berman's antitrust team have achieved multiple settlements with defendants and continues to litigate claims against those remaining.

**RESULT:** \$95 million in settlements

**GENERIC PHARMACEUTICAL PRICING ANTITRUST LITIGATION**

Hagens Berman filed multiple lawsuits against numerous generic pharmaceutical companies for conspiring to increase and set prices on inexpensive, commonly used generic drugs. In 2022, U.S. District Judge Cynthia M. Rufe preliminarily approved \$86 million in settlements with Sun Pharmaceutical Industries Inc., Taro Pharmaceuticals USA Inc. and

Breckenridge Pharmaceutical Inc. for direct purchasers and indirect resellers to settle price-fixing allegations. The U.S. Department of Justice has since opened a criminal probe into the matter following Hagens Berman's case.

**RESULT:** \$86 million settlement

#### **RELAFEN ANTITRUST LITIGATION**

In 2006, Judge William Young issued preliminary approval of a proposed settlement between GlaxoSmithKline and a class of consumers and third-party payors who purchased the drug Relafen or its generic alternatives. Under the terms of the settlement, the defendants paid damages of \$75 million to class members. Of the total settlement amount, \$25 million was allocated to consumers and \$50 million was used to pay the claims of insurers and other third-party payors.

**RESULT:** \$75 million settlement

#### **DAIRY PRICE-FIXING LITIGATION**

The firm filed a class-action suit against several large players in the dairy industry, including the National Milk Producers Federation, Dairy Farmers of America, Land O'Lakes, Inc., Agri-Mark, Inc. and Cooperatives Working Together that together produce nearly 70 percent of milk consumed in the U.S. The suit alleged the groups conspired to fix U.S. milk prices through an organized scheme to limit production, involving the needless, premature slaughtering of 500,000 cows.

**RESULT:** \$52 million settlement

#### **PANASONIC RESISTORS ANTITRUST LITIGATION**

Hagens Berman was co-lead counsel, representing direct purchasers of linear resistors, a device in electronics used to limit electric current, against an alleged cartel of manufacturers who conspired to limit linear resistor price competition for nearly a decade.

**RESULT:** \$50.25 million settlement

#### **TOYS "R" US BABY PRODUCTS ANTITRUST LITIGATION**

The complaint claimed Toys "R" Us and several baby product manufacturers violated provisions of the Sherman Antitrust Act by conspiring to inflate prices of high-end baby products, including car seats, strollers, high chairs, crib bedding, breast pumps and infant carriers. The lawsuit asked the court to end what it claims are anti-competitive activities and sought damages caused by the company's actions.

**RESULT:** \$35.5 million settlement

#### **EA MADDEN NFL ANTITRUST LITIGATION**

The firm represented a class of consumers against Electronic Arts (EA) alleging it violated antitrust and consumer laws by inflating the price of EA-published videogames. The lawsuit alleged EA established agreements with the National Football League, The NFL Players Union, Arena Football League and the National Collegiate Athletic Association that drove competition out of the market and prevented new competitors from entering.

**RESULT:** \$27 million settlement

#### **HOTEL ROOM OVERPRICING**

The nation's largest hotel chains settled a class-action lawsuit brought by consumers of hotel room reservations booked online. Consumers represented by Hagens Berman alleged hotel chains agreed to restrain competition for paid search advertising for hotel rooms associated with defendants' brand names, depriving consumers free, competitive information, and raising the price of hotel rooms booked online.

**RESULT:** The parties reached a confidential settlement.

**REAL ESTATE COMMISSIONS ANTITRUST LITIGATION**

The firm represents home sellers accusing the National Association of Realtors (NAR) and the largest real estate brokerage firms in the United States of conspiring to artificially inflate commissions associated with home sales – in part by implementing rules that require home sellers to pay commission to the agent representing the buyer. As of May 2024, the firm has reached \$980.9 million in settlements with all defendants in *Moehrl v NAR* and *Burnett v NAR*, and with some of the defendants in *Gibson v NAR*. The litigation is pending against remaining defendants in *Gibson v NAR*. The courts in *Moehrl* and *Burnett* certified damages and injunctive relief classes of sellers who sold their home through a Multiple Listing Service (MLS) during the relevant time periods, as well as current and future owners of residential real estate in affected jurisdictions who are currently listing or will list homes on an MLS. Class settlements encompass sellers who listed their homes on an MLS anywhere in the United States. In an order related to expert discovery, the court said that the buyer-broker policies challenged in the lawsuit facilitate “keeping buyers in the dark and severely restricting negotiations over buyer-broker commissions.”

**RESULT:** The firm has reached settlements totaling over \$980.9 million. The court has granted final approval of the settlements with Anywhere Real Estate (\$83.5 million), Keller Williams Realty Inc. (\$70 million), and RE/MAX (\$55 million). The Court has further granted preliminary approval of settlements with NAR (\$418 million), Compass (\$57.5 million), The Real Brokerage Inc. (\$9.25 million), Douglas Elliman (\$7.75 million), @properties (\$6.5 million), and Realty ONE (\$5 million). The case is pending against remaining defendants. The New York Times reported that Steve Brobeck, Ph.D., who served as the executive director of Consumer Federation of America for nearly four decades, estimates that the \$100 billion spent per year on residential real estate commissions will probably decline by between \$20 billion and \$50 billion, if the settlement with NAR is approved by the court.



## PRACTICE AREAS

## Automotive – Defect, Fraud & Products Liability

In litigating cases, we strive to make an impact for large classes of consumers, especially those who fall victim to the gross negligence and lack of oversight of one of the nation's largest industries: auto manufacturing. Hagens Berman's automotive litigation team has repeatedly been named a Practice Group of the Year by Law360, highlighting its "eye toward landmark matters and general excellence" in this area of law.

The federal court overseeing the massive multi-district litigation against Toyota appointed the firm to co-lead one of the largest consolidations of class-action cases in U.S. history. The litigation combined more than 300 state and federal suits concerning acceleration defects tainting Toyota vehicles. Hagens Berman was selected from more than 70 law firms applying for the role. Since then, the firm's automotive practice area has grown at an unrivaled pace, pioneering new investigations into emissions-cheating, defects, false marketing and safety hazards affecting the wellbeing of millions of drivers.

Hagens Berman's work fighting corporate wrongdoing in the automotive industry has repeatedly earned it a spot in the National Law Journal's list of Elite Trial Lawyers, and the firm's auto team who worked on *Toyota* were also named finalists for Public Justice's Trial Lawyer of the Year award.

Our firm has been a leader in this area of law for nearly a decade, and our settled cases include the following matters related to public safety, defect mitigation and more.

### TOYOTA SUDDEN, UNINTENDED ACCELERATION LITIGATION

Steve Berman served as co-lead counsel for the economic loss class in this lawsuit filed on behalf of Toyota owners alleging a defect caused vehicles to undergo sudden, unintended acceleration. In addition to safety risks, consumers suffered economic loss from decreased value of Toyota vehicles following media coverage of the alleged defect.

**RESULT:** \$1.6 billion settlement, which was the largest automotive settlement in history at the time, surpassed only by the firm's future settlements

### HYUNDAI/KIA THETA II GDI ENGINE FIRE HAZARD LITIGATION I

As co-lead counsel against Hyundai and Kia, Hagens Berman helped secure a \$1.3 billion settlement on behalf of owners of cars affected by an engine defect causing spontaneous fires. The compensation includes lifetime warranty protection, software installation aimed to detect and prevent the engine defect, reimbursements for repair-related costs and lost value due to engine failures or fires, and payment for repair delays.

**RESULT:** \$1.3 billion settlement

### HYUNDAI/KIA ENGINE FIRE HAZARD LITIGATION II

Following the firm's \$1.3 billion settlement on behalf of owners of cars affected by an engine defect causing spontaneous fires in millions of Hyundai and Kia cars, Hagens Berman, which served as co-lead counsel in this case, also secured an additional settlement concerning engines not included in the first settlement. The newest settlement brings relief to owners of about 2.1 million vehicles with Gamma GDI and Nu GDI engines as well as Theta II MPI engines. "The

settlement is comprehensive in compensating class members for the harms suffered and providing protection against future harms,” Judge Staton said, noting that the deal is substantially similar to the one finalized in May 2021 in *In re Hyundai and Kia Engine Litigation*, which was valued at up to \$1.3 billion.

**RESULT:** Settlement comparable to prior \$1.3 billion in *In re Hyundai and Kia Engine Litigation*

#### **HYUNDAI/KIA HYDRAULIC ELECTRONIC CONTROL UNIT (HECU) FIRE HAZARD LITIGATION**

Hagens Berman filed this class-action lawsuit against automakers Hyundai and Kia on behalf of owners and lessees of approximately three million U.S. vehicles regarding a defect affecting the vehicles’ hydraulic and electronic control units. The defect, which the lawsuit alleges Hyundai and Kia were aware of upon selling the affected vehicles, can cause electrical short-circuits and engine fires. Conservatively, plaintiffs’ expert values the settlement in the range of \$326 million to \$652 million, depending on relief claimed by affected owners and lessors.

**RESULT:** Settlement valued at more than \$300 million

#### **HYUNDAI KIA FUEL ECONOMY LITIGATION**

Hagens Berman sued Hyundai and Kia on behalf of owners after the car manufacturers overstated the MPG fuel economy ratings on 900,000 of their cars. The suit seeks to give owners the ability to recover a lump-sum award for the lifetime extra fuel costs, rather than applying every year for that year’s losses.

**RESULT:** \$255 million settlement. Lump-sum payment plan worth \$400 million on a cash basis, and worth even more if owners opt for store credit (150 percent of cash award) or new car discount (200 percent of cash award) options.

#### **TOYOTA, LEXUS DENSO FUEL PUMP LITIGATION**

The firm filed this class action regarding a defect in the DENSO fuel pump installed in the affected Toyota and Lexus vehicles which can leave vehicle owners at risk of spontaneous vehicle shutdown, engine stall and other safety risks that increase the likelihood of a crash or injury.

**RESULT:** Settlement valued between \$212 million and \$288 million

#### **HYUNDAI KIA CAR THEFT DEFECT LITIGATION**

Serving as co-lead counsel, the firm achieved swift relief in this class action stemming from Hyundai and Kia’s failure to equip nearly nine million 2011-2022 models with an immobilizer, a common antitheft device in modern cars which prevents most vehicles from being started unless a code is transmitted from the vehicle’s smart key. The lack of immobilizer in affected vehicles spawned viral “Kia Challenge” TikTok videos demonstrating simple measures “Kia Boys” take to steal affected Hyundai and Kia vehicles using only a common USB charging cord or similar metal object to start the engine, allowing thieves to steal them in less than 90 seconds.

**RESULT:** Settlement-in-principle valued at more than \$200 million

#### **GENERAL MOTORS IGNITION SWITCH LITIGATION**

The firm served as co-lead counsel in a high-profile case on behalf of millions of owners of recalled GM vehicles affected by a safety defect linked to more than 120 fatalities. The lawsuit alleged GM did not take appropriate remedial measures, despite having prior knowledge of the defect.

**RESULT:** \$120 million settlement

**FIAT CHRYSLER (FCA) LOW OIL PRESSURE SHUT OFF LITIGATION**

Hagens Berman represented owners of Chrysler, Dodge, Fiat, Jeep and Ram vehicles affected by a defect causing overconsumption of oil and spontaneous vehicle shut off during low oil pressure. In 2022 a federal judge approved a settlement for owners of vehicles with 2.4L TigerShark MultiAir II engines.

**RESULT:** \$108 million settlement

**HONDA INFOTAINMENT SYSTEM LITIGATION**

In 2019, owners of Honda vehicles filed a class-action lawsuit against the automaker for a defect affecting the vehicles' infotainment system which was prone to failing to boot, freezing during use and suffering general malfunctions and glitches. Owners reported the issues on vehicles with as few as 580 miles. The U.S. district judge called the settlement for vehicle owners a "significant effort" in light of the difficulties and complexities of the case.

**RESULT:** \$33 million settlement

**FORD MYFORD TOUCH LITIGATION**

Hagens Berman served as co-lead counsel on behalf of owners of Ford vehicles equipped with MyFord Touch, an in-car communication and entertainment package, who claim that the flawed system put drivers at risk of an accident while causing economic hardship for owners. The complaint cites internal Ford documents that show that 500 of every 1,000 vehicles have issues involving MyFord Touch due to software bugs, and failures of the software process and architecture. Owners report that Ford has been unable to fix the problem, even after repeated visits.

**RESULT:** \$17 million settlement

**ACURA RDX INFOTAINMENT SYSTEM LITIGATION**

In this class-action lawsuit filed against American Honda Motor Co. Inc., owners of 2019 and 2020 Acura RDX vehicles accused the automaker of knowingly selling the vehicles with defective infotainment systems, posing a serious safety risk to drivers. The alleged defect causes many of the vehicles' features associated with the infotainment system to malfunction, including the navigation system, audio system, as well as safety features like the backup camera.

**RESULT:** \$10.5 million settlement

**TESLA AUTOPILOT AP2 ROLLOUT DELAY LITIGATION**

The firm filed a lawsuit against Tesla for knowingly selling nearly 50,000 cars with nonfunctional Enhanced Autopilot AP2.0 software that did not meet Tesla's promises, including inoperative Standard Safety Features on affected models sold in Q4 2016 and Q1 2017.

**RESULT:** \$5.4 million settlement

**NISSAN QUEST ACCELERATOR LITIGATION**

Hagens Berman represented Nissan Quest minivan owners alleging their vehicles developed deposits in a part of the engine, causing drivers to apply increased pressure to push the accelerator down.

**RESULT:** Settlement providing reimbursement for cleanings or replacements and applicable warranty coverage

**PENDING LITIGATION AGAINST AUTOMAKERS**

The firm has filed several pending cases against major automakers, including the following class actions promoting consumers' rights:

**FCA CHRYSLER PACIFICA HYBRID MINIVAN ENGINE SHUTDOWN LITIGATION**

Over 67,000 Chrysler plug-in hybrid electric vehicles are at risk for spontaneous power loss while the vehicle is in motion due to a serious wiring defect in the transmission of the gasoline-driven portion of the powertrain. The automaker's response to this potentially life-threatening issue falls short, leaving Chrysler customers with little recourse. According to a recall report filed with the National Highway Traffic Safety Administration in January 2023, 100% of 2017-2023 Chrysler Pacifica PHEVs are at risk for sudden engine shutoff due to this defect. Loss of motive power is total and comes without warning, giving drivers little or no opportunity to maneuver vehicles to safety, and can occur while moving at highway speeds.

**FCA CHRYSLER PACIFICA HYBRID MINIVAN FIRE HAZARD LITIGATION**

In this automotive class-action lawsuit, the firm serves as co-lead counsel representing owners of 2017 and 2018 Chrysler Pacifica plug-in hybrid electric minivans. Twelve fires have been reported in Chrysler Pacifica hybrid minivans. All of the vehicles that caught fire were parked and turned off; eight of the 12 vehicles were plugged in and charging. In the recall report filed with the National Highway Traffic Safety Administration, Chrysler said the "root cause is unknown." Hagens Berman filed a consolidated master complaint Nov. 4, 2022. The complaint highlights Fiat Chrysler's proposed "fix" as a "Hobson's choice foisted on consumers" that fails to solve the issue. Even after having the recall performed, at least two Hybrid Pacifica vehicles have exploded into flames in owners' garages and driveways. In December 2023, the federal judge overseeing the consolidated lawsuit denied Fiat Chrysler's motion to dismiss plaintiffs' claims.

**FCA DODGE RAM 1500 & 1500 CLASSIC ECODIESEL TRUCKS EGR COOLER FIRE HAZARD LITIGATION**

Hagens Berman represents owners of certain Dodge Ram 1500 trucks at risk for vehicle fire. Affected trucks have been built with defective EGR coolers that can crack due to thermal fatigue. This can allow coolant to leak into the running engine, which can result in combustion and a vehicle fire.

**FCA MONOSTABLE GEARSHIFT LITIGATION**

Over 811,000 Dodge Chargers, Chrysler 300s and Jeep Grand Cherokees were equipped with defective gear shifters that could cause the vehicles to roll away after the driver attempted to place the vehicle in park. The case went to trial, resulting in a mixed verdict in which the jury found the vehicles had a design defect under Utah law. Hagens Berman continues to pursue claims for damages on behalf of a class of owners/lessees from California and New York.

**FORD, GM, FCA, NISSAN CP4 HIGH-INJECTION FUEL PUMP DEFECT LITIGATION**

Hagens Berman has filed multiple class-action lawsuits against the "Big Three" — Ford, GM, and FCA — in addition to Nissan on behalf of diesel truck owners due to a defective high-pressure fuel injection pump in affected vehicles. The defective part generates metallic shavings and can lead to catastrophic failure of the engine. The complaints allege defendants routinely denied repair under warranty, even though the repair costs at least \$7,000, and in some cases exceeds \$10,000. After Hagens Berman filed suit against FCA with respect to the 3.0-liter engine cars and trucks, FCA issued a safety recall for those vehicles. In March 2023, Hon. Bernard A. Friedman allowed the majority of claims against Ford to continue, and in that same month, Hon. Terrence Berg certified seven state-specific classes on behalf of GM truck owners. In June 2024, the firm filed a motion for preliminary approval of a settlement reached with GM.

**FORD ESCAPE, MAVERICK AND LINCOLN CORSAIR HYBRID FIRES LITIGATION**

Ford has recalled more than 100,000 of its Escape, Maverick and Lincoln Corsair hybrid models manufactured since 2020 for a risk of spontaneously catching fire due to a safety defect. The issue has been traced to leaking fluid from the vehicles' engine block or oil pan. In response, rather than fix the faulty engine blocks and oil pans, Ford has issued "fix" instructions to its dealers that ask them to remove blinds from the grill shutter and drill holes in the floor of the engine compartment, potentially causing flammable fluids to drip into the roadway and owners' garages and driveways. The firm's class-action lawsuit against Ford was filed in August of 2022.

**FORD MUSTANG MACH-E SHUTDOWN DEFECT LITIGATION**

Owners of 2021-2022 Ford Mustang Mach-E vehicles filed a class-action lawsuit against the automaker in relation to a defective high voltage main battery contactor that can reportedly suddenly and unexpectedly cause the vehicle to lose power, disabling the engine and key safety features. The defect presents a high risk of crash, injury and death. Ford's remedies have so far been unsuccessful and may be increasing charging times and decreasing the engine power for owners.

**HONDA CIVIC ELECTRONIC POWER STEERING DEFECT LITIGATION**

The firm filed a class-action lawsuit accusing American Honda Motor Company of selling 2022-2023 Civics which it knew were equipped with dangerously faulty electronic power steering (EPS) systems. The EPS system failure occurs without warning and under various driving conditions, causing the vehicles to lose steering control at high speeds. The National Highway Traffic Safety Administration opened a preliminary investigation after receiving 145 reports of "momentary increase in steering effort," described as "sticky steering," which could result in the inability to avoid a road hazard.

**HYUNDAI, KIA & GENESIS EV BATTERY CHARGE DEFECT**

According to the suit, owners of Hyundai Ioniq 5s, Hyundai Ioniq 6s, Genesis GV60s and Kia EV6s experience vehicle charging ports overheating in as little as 30 minutes, causing charging sessions to repeatedly fail. The plaintiffs say this can leave them with unexpectedly empty vehicle batteries, and Hyundai's proposed fix for the problem is inadequate. The proposed class brings claims that the automakers violated the Computer Fraud and Abuse Act and various state consumer protection laws.

**TESLA MODEL S & MODEL X SOFTWARE BATTERY DRAIN DEFECT LITIGATION**

Hagens Berman has filed a lawsuit on behalf of owners and lessors of Tesla Model S and Model X vehicles, alleging that Tesla's automatic software updates are responsible for a drastic drop in battery performance and driving range in affected vehicles. In some cases, attorneys allege, the software update renders batteries fully inoperable, and drivers are told they must purchase a new \$15,000 battery.

**VW ATLAS WIRING HARNESS DEFECT LITIGATION**

Hagens Berman represents owners and lessors of more than 222,000 defective Volkswagen Atlas vehicles affected by a dangerous manufacturing defect in the door wiring harness. The defect can cause vehicles' systems to malfunction, affecting the functionality of airbags, brakes and more. This defect can place drivers, passengers and other traffic or pedestrians in immediate safety risk and danger of crashes.

## PRACTICE AREAS

## Automotive – Emissions Cheating

Having filed the first Dieselgate case in the country, Hagens Berman played a lead role in the record-breaking Volkswagen diesel emissions litigation. But Hagens Berman knew the story didn't end there. Since the Dieselgate scandal, the firm has uniquely dedicated resources to uncovering cheating devices used by other automakers. We have become a trailblazer in this highly specialized realm, outpacing federal agencies in unmasking fraud in emissions reporting.

When news broke in 2015 of Volkswagen's massive diesel emissions-cheating scandal, Hagens Berman was the first law firm in the nation to file suit against the automaker for its egregious fraud, going on to represent thousands of owners in litigation and take a leading role on the Plaintiffs' Steering Committee that would finalize a \$14.7 billion, record-breaking settlement for affected owners. Since this case emerged, Hagens Berman has remained on the forefront of emissions litigation, relying on our legal team's steadfast and intensive investigative skills to unearth many other emissions-cheating schemes perpetrated by BMW, General Motors, Fiat Chrysler, Mercedes and other automakers, staying one step ahead of government regulators in our pursuit of car manufacturers that have violated emissions standards and regulations, as well as consumer confidence.

Hagens Berman's managing partner, Steve Berman, has dedicated the firm's resources to upholding the rights of consumers and the environment. The firm is uniquely dedicated to this cause and is the only firm that has purchased an emissions testing machine to determine if other diesel car manufacturers install cheating devices. The firm brings new cases based on its own research, time and testing.

### VOLKSWAGEN DIESEL EMISSIONS LITIGATION

Hagens Berman was the first law firm in the nation to file a lawsuit against Volkswagen for its emissions fraud, seeking swift remedies for consumers affected by its fraud and violation of state regulations. The firm was named to the Plaintiffs' Steering Committee leading the national fight against VW, Porsche and Audi on behalf of owners and lessors of affected vehicles and also served as part of the Settlement Negotiating team in this record-breaking achievement.

**RESULT:** \$14.7 billion settlement, the largest automotive settlement in history

### VOLKSWAGEN FRANCHISE DEALERS EMISSIONS LITIGATION

Hagens Berman served as lead counsel in a first-of-its-kind lawsuit brought by a franchise dealer. Three family-owned Volkswagen dealers filed a class action against VW for intentionally defrauding dealers by installing so-called "defeat devices" in its diesel cars that cause them direct harm. The suit states VW separately carried out a systematic, illegal pricing and allocation scheme that favored some dealers over others and illegally channeled financing business to VW affiliate, Volkswagen Credit Inc. The settlement received nearly unanimous approval, with 99 percent participation in the settlement.

**RESULT:** \$1.67 billion settlement

**MERCEDES BLUETEC EMISSIONS LITIGATION**

Hagens Berman was appointed co-lead counsel in this class action representing thousands of vehicle owners against Mercedes concerning emissions-cheating in its BlueTEC diesel vehicles. The lawsuit states Mercedes told vehicle owners and lessees their diesel cars were “the world’s cleanest and most advanced diesel,” when in fact testing indicated a systemic failure to meet emissions standards. Low temperature testing at highway speeds for example, produced emissions that were 8.1 to 19.7 times the highway emissions standard; at variable speeds, testing produced emissions as high as 30.8 times the standard, according to the firm’s independent testing.

Since the case settled, Hagens Berman has taken an advisory role in the emissions-cheating litigation against Mercedes’ parent company, Daimler, filed in Australia. The firm looks to build upon its existing win against Mercedes for emissions cheating in its vehicles sold in the U.S. and support Australians who were similarly deceived.

**RESULT:** \$700 million settlement

**FIAT CHRYSLER ECODIESEL EMISSIONS LITIGATION**

The firm led charges against Fiat Chrysler that it sold hundreds of thousands of EcoDiesel-branded vehicles that release illegally high levels of NOx emissions, despite explicitly selling these “Eco” diesels to consumers who wanted a more environmentally friendly vehicle. Hagens Berman was the first firm in the nation to uncover this scheme and file against Fiat Chrysler on behalf of owners of affected Dodge RAM 1500 and Jeep Grand Cherokee EcoDiesel vehicles. Following the firm’s groundbreaking suit, the EPA took notice, filing formal accusations against Fiat Chrysler.

**RESULT:** Settlement valued at \$307 million, dependent upon claims rate

**PORSCHE EMISSIONS LITIGATION**

This lawsuit claimed fuel economy inaccuracies in half a million 2005 to 2020 Volkswagen and Porsche gasoline models, and in 2022, a federal judge granted preliminary approval of an \$80 million settlement agreement regarding emissions-cheating claims. Under the settlement, consumers in the most basic bracket of the class can receive payments from \$250 to \$1,109 per vehicle, and those who purchased higher-performance vehicles can receive an additional \$250 in compensation, with other payments of \$200 per vehicle available to other eligible class members.

**RESULT:** \$80 million settlement

**AUDI EMISSIONS LITIGATION**

In 2016, Hagens Berman unearthed additional emissions-cheating by Audi, affecting its gasoline 3.0-liter vehicles. The firm’s investigation revealed a newly discovered defeat device installed in gasoline engines which changed how the transmission operated when testing was detected to lower CO2 emissions, but otherwise allowed excessive CO2 emissions in normal, on-road driving. The firm was appointed lead counsel.

**RESULT:** The lawsuit was folded into the Volkswagen Dieselgate multidistrict litigation. The settlement benefited more than 88,000 vehicle owners and resulted in vehicle buybacks valued at more than \$30,000 for some class members.

**PENDING LITIGATION AGAINST AUTOMAKERS**

The firm is currently litigating many pending cases against major automakers regarding emissions, including the following:

**CHEVY CRUZE DIESEL EMISSIONS LITIGATION**

Hagens Berman filed a class-action lawsuit against Chevrolet (a division of General Motors) and Robert Bosch, LLC for installing emissions-cheating software in Cruze Clean Turbo Diesel cars, forcing consumers to pay high premiums for vehicles that pollute at illegal levels. While Chevy marketed these cars as a clean option, testing by an expert retained by Hagens Berman revealed the cars’ emissions are often up to 36 times the federal standard. In a recent ruling, U.S. District Judge Thomas L. Ludington upheld the bulk of the owners’ claims, and admitted the extensive emissions testing, software analysis, marketing and damages testimony offered by experts retained by Hagens Berman on behalf of Cruze



owners. In 2022, Judge Ludington excluded one of GM's experts and ruled on GM's and Bosch's motions for summary judgment, allowing the bulk of plaintiffs' claims to proceed.

#### **BMW X5 & 335D EMISSIONS LITIGATION**

Based on BMW's marketing, consumers who purchased its X5 Diesel and 335d vehicles assumed they were making a choice that was better for the environment than other options. BMW told the public that the vehicles "met emissions standards in all 50 states," that "BMW Efficient Dynamics" meant "Less emissions," that its engines "protect the environment every day," were "environmentally friendly," and turned nitric oxides (harmful pollutants in diesel exhaust) "into environmentally compatible nitrogen and water vapor." In reality, the 2009-2013 BMW X5 diesel and 2009-2011 335d vehicles emit harmful pollutants and emissions many times above legal emissions standards. A federal judge granted preliminary approval to a settlement valued at \$6 million and preliminarily appointed Hagens Berman co-class counsel for the settlement class.

#### **DODGE RAM 2500/3500 DIESEL EMISSIONS LITIGATION**

According to the firm's investigation, Dodge has sold hundreds of thousands of Dodge RAM 2500 and 3500 trucks equipped with Cummins diesel engines that release illegally high levels of NOx emissions because fuel is diverted and burned to clear out the soot in the emission system. The firm is leading a national class action against Fiat Chrysler and Cummins (the engine manufacturer) for knowingly inducing consumers to pay premium prices for vehicles that exceed emissions standards, and lead to decreased fuel economy and higher costs because of the wasted fuel. Hagens Berman has also determined that there is a defeat device in these vehicles.

#### **GENERAL MOTORS DURAMAX EMISSIONS LITIGATION**

Hagens Berman recently pioneered another instance of diesel emissions fraud. The firm's independent testing revealed that GM had installed an emissions-masking defeat device in its Duramax trucks, including [Chevy Silverado](#) and [GMC Sierra](#) models, in a cover-up akin to Volkswagen's Dieselgate concealment. In real world conditions the trucks frequently emit 1.6 – 2.5 times the legal limit of deadly NOx pollutants and have been observed emitting almost 50 times the federal standard. Emissions cheating devices are installed in an estimated 705,000 affected vehicles.

HAGENS BERMAN SOBOL SHAPIRO LLP

## PRACTICE AREAS

## Consumer Protection – General Class Litigation

Hagens Berman is a leader in protecting consumers, representing millions in large-scale cases that challenge unfair, deceptive and fraudulent practices.

We realize that consumers suffer the brunt of corporate wrongdoing and have little power to hold companies responsible or to change those tactics. We believe that when backed by a tenacious spirit and determination, class action cases have the ability to serve as a powerful line of defense in consumer protection.

Hagens Berman pursues class litigation on behalf of clients to confront fraudulent practices that consumers alone cannot effectively dispute. We make consumers' concerns a priority, collecting consumer complaints against suspected companies and exploring all avenues for prosecution.

Hagens Berman's legacy of protecting consumer rights reflects the wide spectrum of scams that occur in the marketplace. The cases that we have led have challenged a variety of practices such as:

- False, deceptive advertising of consumer products and services
- False billing and over-charging by credit card companies, banks, telecommunications providers, power companies, hospitals, insurance plans, shipping companies, airlines and Internet companies
- Deceptive practices in selling insurance and financial products and services such as life insurance and annuities
- Predatory and other unfair lending practices, and fraudulent activities related to home purchases

A few of our notable settlements include:

### **T-MOBILE DATA BREACH LITIGATION (2021)**

Hagens Berman served a court-appointed position on the Executive Committee in this consumer class action against T-Mobile for a data breach affecting 7.8 million subscribers, as well as 40 million people who had applied for credit with T-Mobile. T-Mobile also reported that approximately 850,000 active T-Mobile prepaid customers names, phone numbers and PIN numbers were exposed, as well as up to 52,000 names of customers related to current Metro by T-Mobile accounts.

**RESULT:** \$350 million settlement pending preliminary approval

### **BANK OF AMERICA COUNTRYWIDE APPRAISAL RICO LITIGATION**

Hagens Berman filed a nationwide class-action lawsuit against Bank of America, Countrywide Financial and appraisal firm, LandSafe Inc. on behalf of a class of home buyers alleging defendants carried out a series of phony appraisals in an attempt to secure more loans.

**RESULT:** \$250 million settlement

**STERICYCLE CONTRACT LITIGATION**

The firm served as court-appointed lead counsel in a class-action lawsuit against Stericycle alleging that the company violated contracts and defrauded them by hundreds of millions of dollars through an automatic price-increasing scheme. In February of 2017, a federal judge certified a nationwide consumer class. The class had more than 246,000 class members, with damages estimated preliminarily at \$608 million.

**RESULT:** \$295 million settlement

**NOTEWORLD/MERACORD DEBT SETTLEMENT LITIGATION**

Hagens Berman filed its lawsuit in 2011 on behalf of consumers nationwide, claiming the company violated Washington law and the federal Racketeer Influenced and Corrupt Organizations Act by conspiring with debt settlement providers to defraud consumers through trust accounts related to useless debt-settlement programs. Following years of plaintiff victories in the District Court and in the Ninth Circuit Court of Appeal, Judge Settle granted plaintiffs' motion for class certification and default final judgment against the Tacoma, WA company after Meracord ceased defending itself from plaintiffs' claims.

**RESULT:** \$1.45 billion default judgment

**APPLECARE WARRANTY LITIGATION**

The firm represented a class of Apple device owners claiming that Apple violated consumer laws, illegally charging customers premium prices for what they believed to be new replacement devices under its AppleCare/AppleCare+ programs. Attorneys for the class estimate the settlement will cover between 3.5 and 4 million refurbished Apple devices.

**RESULT:** \$95 million settlement has been preliminarily approved

**BANK OF AMERICA MILITARY CUSTOMER FRAUD LITIGATION**

Hagens Berman filed a class-action lawsuit alleging that Bank of America violated the Servicemembers Civil Relief Act, the Truth in Lending Act and North Carolina's Unfair and Deceptive Trade Practices Act. The suit also accused Bank of America of violating common law, including breach of contract, negligence and negligent misrepresentation.

**RESULT:** \$250 million settlement

**MIDLAND NATIONAL LIFE INSURANCE LITIGATION**

Hagens Berman filed a class-action lawsuit against Midland National Life Insurance Company claiming it engaged in a scheme to reap profits by exploiting and preying on senior citizens. The complaint states Midland National knowingly sold deferred annuity products to senior citizens that would not mature until after the annuitant's life expectancy. The 2012 settlement benefited more than 70,000 senior citizens.

**RESULT:** \$80 million settlement

**LUMBER LIQUIDATORS FLOORING PRODUCTS LIABILITY LITIGATION**

National laminate wood flooring company Lumber Liquidators Inc. reportedly sold flooring tainted with hazardous levels of formaldehyde to consumers across the country. Hagens Berman represented consumers who purchased composite wood flooring products from the company in a class-action lawsuit.

**RESULT:** \$36 million settlement

**CHASE FORCE-PLACED INSURANCE LITIGATION**

Hagens Berman filed a lawsuit on behalf of a proposed class of JPMorgan Chase borrowers nationwide whose home loans were serviced by Chase. The lawsuit alleged Chase illegally charged homeowners for inferior and often unnecessary flood insurance at premium rates nearly 10 times the market rate for similar policies.

**RESULT:** \$22 million settlement

**COVID-19 COLLEGE TUITION & FEES REIMBURSEMENT**

In 2020, as the COVID-19 pandemic unfolded, Hagens Berman sought to represent tuition and fee payers in class-action lawsuits seeking reimbursement for parents and guardians of college students or college students for tuition, fees and other expenses at colleges and universities across the nation. Hagens Berman believes that institutions of higher learning had no right to keep these charges given the coronavirus outbreak and lack of options to students, as college campuses closed. The firm has so far settled cases with Brown University, Quinnipiac University and Rutgers University, with several active cases pending.

**RESULT:** \$9 million in combined settlements so far

**TREX AND FIBER COMPOSITES LLC PORTICO DECKING**

Hagens Berman filed multiple class-action lawsuits against the makers of composite decking, including Fiber Composites LLC and Trex. The lawsuits were filed on behalf of consumers and alleged that the companies failed to uphold their promises to their customers, calling out defects in their decking including mold, fading and decking prone to fungus.

**RESULT:** More than \$8 million in combined settlement

**WALMART ORGANIC MILK MARKETING AND SALES PRACTICES LITIGATION**

The firm filed a lawsuit against Wal-Mart alleging the organic milk sold in stores under the Great Value label isn't organic. The lawsuit named Aurora Dairy Corp. as the milk producer and supplier for Wal-Mart.

**RESULT:** \$7.5 million settlement

**TENET HEALTHCARE**

In a pioneering suit filed by Hagens Berman, plaintiffs alleged that Tenet Healthcare charged excessive prices to uninsured patients at 114 hospitals owned and operated by Tenet subsidiaries in 16 different states.

**RESULT:** Settlement under which class members received amounts paid in excess of certain thresholds over a four-and-a-half-year period

**HOMEBUILDER AND REAL ESTATE DEVELOPER LITIGATION**

Hagens Berman has filed multiple class-action lawsuits against homebuilders and real estate development companies on behalf of homeowners seeking damages for alleged poor construction, depressed property values and unfair and deceptive practices often preying on elderly communities.

**RESULT:** The parties reached confidential settlements

**WELLS FARGO FORCE-PLACED INSURANCE**

Hagens Berman brought a case against Wells Fargo alleging it used "force-placed" insurance clauses in mortgage agreements, a practice that enables the bank to charge homeowners insurance premiums up to 10 times higher than normal rates.

**RESULT:** All class members received checks for more than double the amount of commissions that Wells Fargo wrongfully extracted from the force placement of insurance on class members' properties

**AMERICAN EQUITY INVESTMENT LIFE INSURANCE LITIGATION**

The firm served as co-counsel in a case against American Equity Investment Life Insurance Company that claimed the company knowingly engaged in an unethical and fraudulent scheme targeted towards senior citizens.

**RESULT:** The parties reached a confidential settlement

**CARRIER IQ CELL PHONE CONSUMER PRIVACY LITIGATION**

Hagens Berman served as co-lead counsel in this class-action lawsuit claiming that smartphone manufacturers HTC Corporation, HTC America Inc. and Samsung Electronics Co. Ltd. used software developed by Carrier IQ Inc. that illegally intercepted incoming text messages and captured users' keystrokes, including those used to compose email and text messages or to dial numbers, without consumers' knowledge or permission.

**RESULT:** The parties reached a confidential settlement

**AMAZON CONSUMER PROTECTION LITIGATION**

The firm has filed several active consumer-rights class actions against Amazon Inc. In one active matter, Hagens Berman represents a proposed class of consumers seeking to hold Amazon accountable for its alleged use of "dark patterns" to deceive users into subscribing to Amazon Prime, or complicate the process of unsubscribing. Since the firm's lawsuit, the Federal Trade Commission filed a complaint against Amazon for the same actions, bolstering the firm's existing claims.

Hagens Berman's consumer attorneys have also taken up the fight against the retail giant for its alleged price gouging that occurred during the COVID-19 pandemic, causing massive price spikes for essential goods including food, personal hygiene products and other emergency or medical supplies, allegedly violating California state consumer-protection laws.

**CBL & ASSOCIATES UTILITY CHARGES**

In this class-action lawsuit, the firm represents past and present small business tenants of CBL & Associates, a real estate investment trust. The lawsuit accuses CBL of illegally overcharging thousands of its mall tenants for years through a calculated "criminal enterprise" of inflated electricity charges, charging tenants up to 100 percent more than the cost of electricity actually used, in violation of its own lease agreements and state law.

**ONEWHEEL SHUT OFF DEFECT**

Consumers have reported sudden shutoffs and nosedives while operating Future Motion Inc.'s OneWheel electronic skateboards that launch riders from the board at potentially high speeds and steep angles. The boards have since been recalled yet Future Motion has yet to remedy the defect causing sudden loss of power. Hagens Berman filed its class action in 2022, seeking damages on behalf of consumers.

**EVENFLO BIG KID BOOSTER CAR SEAT**

Hagens Berman has been appointed co-lead counsel in a class-action lawsuit pertaining to a dangerous and defective line of child booster seats sold by Evenflo. Testing revealed Evenflo's Big Kid car seats place children weighing less than 40 pounds at grave risk of injury in the event of a car crash, especially side-impact collisions. Despite selling its Big Kid booster seat as safe for kids that weigh less than 40 pounds and "side impact tested," Evenflo does not tell consumers that its own tests showed a child seated in its booster could be in danger in such a crash.

**CONSUMER INSURANCE LITIGATION**

Hagens Berman has pioneered theories to ensure that, in first- and third-party contexts, consumers and health plans always receive the treatment and benefits to which they are entitled. Many of our cases have succeeded in expanding coverage owed and providing more benefits; recovering underpayments of benefits; and returning

uninsured/underinsured premiums from the misleading tactics of the insurer. The firm's existing cases include pending litigation against Allstate and CNA Casualty Company.

#### **ADDITIONAL CONSUMER-FACING LITIGATION**

The firm's core ethos of bringing positive change to large numbers of affected individuals in need of recourse means that the vast majority of our cases benefit consumers directly. Many of these matters fall under additional complex areas of law. For additional consumer-facing litigation, settlements and victories see our work in the areas of [antitrust price-fixing](#), [automotive litigation](#) and [emissions cheating](#).



## PRACTICE AREAS

## Consumer Protection – Drug and Supplement Litigation

Hagens Berman aggressively pursues pharmaceutical industry litigation, fighting against waste, fraud and abuse in healthcare. For decades, pharmaceutical manufacturers have been among the most profitable companies in America. But while pharmaceutical companies become richer, consumers, health plans and insurers pay higher costs for prescription and over-the-counter drugs and supplements. We shine the light of public scrutiny on this industry's practices and represent individuals, direct and indirect purchasers, and the nation's most forward-thinking public-interest groups.

The firm's pharmaceutical and dietary supplement litigation practice is second to none in the nation in terms of expertise, commitment and landmark results. Hagens Berman's attorneys have argued suits against dozens of major drug companies, and the firm's aggressive litigation against the pharmaceutical industry has recovered settlements valued at more than \$3.8 billion.

### RECENT ANTITRUST RESOLUTIONS

In the last few years, Hagens Berman — as lead or co-lead class counsel — has garnered significant settlements in several antitrust cases involving prescription drugs. In each case, the plaintiffs alleged that a manufacturer of a brand-name drug violated federal or state antitrust laws by delaying generic competitors from coming to market, forcing purchasers to buy the more expensive brand name version instead of the generic equivalent. Examples of our recent successes include:

#### ZETIA ANTITRUST LITIGATION

Hagens Berman served as court-appointed lead counsel in this class-action lawsuit representing a class of direct purchasers of Merck's blockbuster cholesterol drug, Zetia. The lawsuit against pharma giant Merck and generic drugmaker Glenmark alleges the two colluded to illegally delay the market entry of generic versions and settled in 2024.

**RESULT:** Confidential settlement valued at hundreds of millions of dollars

#### GLUMETZA ANTITRUST LITIGATION

The court denied summary judgment and paved the way for trial in this litigation against brand and generic manufacturers of the diabetes drug Glumetza. Hagens Berman served as co-lead counsel for the direct purchaser class. U.S. District Judge William Alsup approved \$453.85 million in settlements resolving direct purchasers' allegations. The result was the largest antitrust recovery to receive final approval in 2022.

**RESULT:** \$453.85 million settlement

**SUBOXONE ANTITRUST LITIGATION**

Hagens Berman was co-lead counsel for a class of direct purchasers in this pharmaceutical antitrust class action MDL alleging defendants violated federal antitrust laws by delaying generic competition for its blockbuster opioid addiction medicine, Suboxone. The complaint alleges this scheme succeeded, and purchasers incurred substantial damages as a result.

**RESULT:** \$385 million settlement

**RANBAXY ANTITRUST LITIGATION**

Hagens Berman served as co-lead counsel representing Meijer Inc. and Meijer Distribution Inc. in a class-action lawsuit against drug maker, Ranbaxy. The lawsuit alleged it recklessly stuffed the generic drug approval queues with grossly inadequate applications, deceiving the FDA into granting tentative approvals to lock in statutory exclusivities to which Ranbaxy was not entitled and that it brandished these undeserved exclusivities to exclude others while its own applications floundered, all at the direct expense of U.S. drug purchasers. The settlement was part of a \$485 million total settlement for all plaintiffs in the case. The result was the second largest antitrust recovery to receive final approval in 2022.

**RESULT:** \$340 million settlement

**FLONASE ANTITRUST LITIGATION**

Hagens Berman represented purchasers in this case alleging pharmaceutical giant GlaxoSmithKline filed petitions to prevent the emergence of generic competitors to its drug Flonase, all to overcharge consumers and purchasers of the drug, which would have been priced lower had a generic competitor been allowed to come to market.

**RESULT:** \$150 million settlement

**PROGRAF ANTITRUST LITIGATION**

Hagens Berman represented purchasers who alleged Astellas Pharma US, Inc. unlawfully maintained its monopoly and prevented generic competition for Prograf, an immunosuppressant used to help prevent organ rejection in transplant patients, harming purchasers by forcing them to pay inflated brand name prices for longer than they should have absent the anticompetitive conduct.

**RESULT:** \$98 million settlement

**RELAFEN ANTITRUST LITIGATION**

Hagens Berman filed a class-action lawsuit against GlaxoSmithKline, SmithKline Beecham Corporation, Beecham Group PLC and SmithKline Beecham PLC, on behalf of consumers and third-party payors who purchased the drug Relafen or its generic alternatives. The suit alleged that the companies who manufacture and sell Relafen unlawfully obtained a patent which allowed them to enforce a monopoly over Relafen and prevented competition by generic prescription drugs, causing consumers to pay inflated prices for the drug.

**RESULT:** \$75 million settlement, \$25 million of which was allocated to consumers and \$50 million paid the claims of insurers and other third-party payors

**SKELAXIN ANTITRUST LITIGATION**

The firm represented purchasers in this case alleging King Pharmaceuticals LLC and Mutual Pharmaceutical Company alleging conspired to suppress generic competition and preserve King's monopoly in the market for the brand name muscle relaxant Skelaxin.

**RESULT:** \$73 million class settlement

**TRICOR ANTITRUST LITIGATION**

In June 2005, Hagens Berman filed an antitrust lawsuit on behalf of a class of consumers and third-party payors against pharmaceutical manufacturers Abbott Laboratories and Fournier Industries concerning the brand name cholesterol drug Tricor. HBSS was appointed co-lead class counsel by the Court.

**RESULT:** \$65.7 million settlement

**ALLERGAN RESTASIS LITIGATION**

Hagens Berman served as court-appointed interim lead counsel for a proposed class of direct purchasers of the Allergan Inc. dry-eye emulsion, Restasis. The lawsuit accused the drugmaker fraudulently obtained a series of patents for Restasis by misrepresenting that clinical trials newly showed that a lower strength Restasis formulation worked better than a stronger version.

**RESULT:** \$51.25 million settlement

**FRAUDULENT DRUG PRICING RESOLUTIONS**

Hagens Berman has led many complex cases that take on fraud and inflated drug prices throughout the U.S. This includes sweeping manipulation of the average wholesale price benchmark used to set prices for prescription drugs nationwide, fraudulent marketing of prescription drugs and the rampant use of co-pay subsidy cards that drive up healthcare costs. These efforts have led to several significant settlements:

**MCKESSON AND FIRST DATABANK DRUG LITIGATION**

The firm discovered a far-reaching fraud by McKesson and became lead counsel in this RICO case against McKesson and First DataBank, alleging the companies fraudulently inflated prices of more than 400 prescription drugs. Following the culmination of this case, states and federal government then used Hagens Berman's work to bring additional suits. Hagens Berman represented several states and obtained settlements three to seven times more than that of the Attorneys General. Almost \$1 billion was recovered from the McKesson fraud.

**RESULT:** \$350 million settlement and a four percent rollback on the prices of 95 percent of the nation's retail branded drugs, the net impact of which could be in the billions of dollars

**AVERAGE WHOLESAL PRICE DRUG LITIGATION**

Hagens Berman served as co-lead counsel and lead trial counsel in this sprawling litigation against most of the nation's largest pharma companies, which alleges defendants artificially inflated Average Wholesale Price. Hagens Berman's work in this area led to many state governments filing suit and hundreds of millions in additional recovery.

**RESULT:** Approximately \$338 million in settlements

**FRAUDULENT MARKETING RESOLUTIONS**

Hagens Berman also litigates against drug companies that fraudulently promote drugs for uses not approved by the Food and Drug Administration (FDA), commonly known as "off-label" uses. We also litigate cases against dietary supplement manufacturers for making false claims about their products. Recent successes include:

**NEURONTIN THIRD-PARTY PAYOR LITIGATION**

Hagens Berman served as co-lead trial counsel in this case alleging that Pfizer fraudulently and unlawfully promoted the drug Neurontin for uses unapproved by the FDA.

**RESULT:** \$47 million jury verdict in favor of a single third-party payor plaintiff, automatically trebled to \$142 million, and court-approved a \$325 million class settlement

**NEW ENGLAND COMPOUNDING CENTER MENINGITIS OUTBREAK**

In 2012, the Center for Disease Control confirmed that New England Compounding Center sold at least 17,000 potentially tainted steroid shots to 75 clinics in 23 states across the country, resulting in more than 64 deaths and 751 cases of fungal meningitis, stroke or paraspinal/peripheral joint infection. HBSS attorneys Thomas M. Sobol and Kristen A. Johnson serve as Court-appointed Lead Counsel for the Plaintiffs' Steering Committee on behalf of plaintiff-victims in MDL 2419 consolidated before The Honorable Ray W. Zobel in the United States District Court for the District of Massachusetts.

**RESULT:** \$200 million settlement

**LUPRON LITIGATION**

Hagens Berman prosecuted a lawsuit against TAP Pharmaceuticals Products, Inc. on behalf of a class of consumers and third-party payors who purchased the drug Lupron. The suit charged that TAP Pharmaceutical Products, Inc., Abbott Laboratories and Takeda Pharmaceutical Company Limited conspired to fraudulently market, sell and distribute Lupron, causing consumers to pay inflated prices for the drug.

**RESULT:** \$150 million settlement

**CELEBREX/BEXTRA LITIGATION**

Hagens Berman filed a class-action lawsuit against Pfizer on behalf of individual consumers and third-party payors who paid for the drug Bextra. The firm was praised by Judge Breyer for its "unstinting" efforts on behalf of the class, adding, "The attorneys on both sides were sophisticated, skilled, professional counsel whose object was to zealously pursue their clients' interest, but not at the cost of abandoning the appropriate litigation goals, which were to see, whether or not, based upon the merits of the cases, a settlement could be achieved."

**RESULT:** \$89 million settlement

**VIOXX THIRD PARTY PAYOR MARKETING AND SALES PRACTICES LITIGATION**

The firm served as lead counsel for third party payors in the Vioxx MDL, alleging that Merck & Co. misled physicians, consumers and health benefit providers when it touted Vioxx as a superior product to other non-steroidal anti-inflammatory drugs. According to the lawsuit. The drug had no benefits over less expensive medications but carried increased risk of causing cardiovascular events.

**RESULT:** \$80 million settlement

**SERONO DRUG LITIGATION**

Hagens Berman served as lead counsel for a class of consumers and third-party payors in a suit alleging that global biotechnology company Serono, Inc. schemed to substantially increase sales of the AIDS drug Serostim by duping patients diagnosed with HIV into believing they suffered from AIDS-wasting and needed the drug to treat that condition.

**RESULT:** \$24 million settlement

**BAYER COMBINATION ASPIRIN/SUPPLEMENT LITIGATION**

Hagens Berman served as lead counsel on behalf of consumers in a suit alleging that Bayer Healthcare LLC deceptively marketed Bayer® Women's Low-Dose Aspirin + Calcium, an 81 mg aspirin pill combined with calcium, and Bayer® Aspirin With Heart Advantage, an 81 mg aspirin pill combined with phytosterols. Plaintiffs alleged that Bayer overcharged consumers for these products or that these products should not have been sold, because these products were not FDA-approved, could not provide all advertised health benefits, and were inappropriate for long-term use.

**RESULT:** \$15 million settlement

## PRACTICE AREAS

## High Tech Litigation

Hagens Berman routinely takes on the world's largest tech companies and has pending litigation against Facebook, Apple, Amazon and other Big Tech players for issues related to intellectual property, antitrust infringement, consumer rights and product defects affecting millions of individuals' daily lives.

### HIGH TECH LITIGATION ATTORNEYS

Hagens Berman brings cutting edge cases against major tech companies. We leverage our resources, breadth of knowledge and expert litigation strategies against harmful anticompetitive practices, defective products and other instances of malfeasance perpetrated by Big Tech. While some of these companies believe they are too big to fail, our firm is well-practiced in uncovering wrongdoing and holding responsible parties accountable for widespread fraud, even when governing bodies are constrained by red tape and bureaucracy.

Hagens Berman also litigates claims against tech companies in the areas of trade secrets, IP and patent law, and we represent individual business owners as well as large groups of consumers.

### HIGH TECH CLASS-ACTION CASES

Throughout Hagen's Berman's decades-long track record, some of our largest cases have been brought against Big Tech companies, resulting in monumental recoveries for our clients:

#### APPLE E-BOOKS LITIGATION

Hagens Berman served as co-lead counsel representing a class of Apple e-book purchasers claiming that Apple and five of the nation's top publishers, including HarperCollins Publishers, Hachette Book Group, Macmillan Publishers, Penguin Group Inc. and Simon & Schuster Inc. illegally fixed prices of electronic books. Working with the State Attorneys General in 33 jurisdictions, Hagens Berman reached settlements with the publishers, and after the Second Circuit confirmed its liability, Apple paid \$450 million to the consumer class, a combined settlement that provided more than twice the estimated losses suffered by consumers.

**RESULT:** \$568 million settlement

#### APPLE IOS APP STORE FEES LITIGATION

In this lawsuit against Apple, the firm served as interim lead counsel and represented U.S. iOS developers. The lawsuit accused Apple of monopolizing distribution services for iOS apps and in-app digital products, resulting in commission overcharges.

**RESULT:** \$100 million and developer-friendly changes to the App Store's policies

#### GOOGLE PLAY STORE FEES LITIGATION

The firm filed a class action on behalf of Android app developers against Google accusing it of violating antitrust laws by illegally monopolizing markets for Android app distribution and in-app payment processing. Hagens Berman was the

first to file a class case, led settlement negotiations and patterned the settlement with Google after its 2021 legal win against Apple regarding damages to iOS developers through Apple's App Store policies.

**RESULT:** \$90 million settlement

#### **GOOGLE ADSENSE LITIGATION**

Hagens Berman represented a class of Google AdSense users who suffered unjust account suspensions.

**RESULT:** \$11 million settlement

#### **PENDING LITIGATION AGAINST BIG TECH COMPANIES**

The firm also has several pending litigations against Big Tech giants like Amazon, Apple and Facebook. Some of our most notable pending claims include:

##### **AMAZON ANTITRUST VIOLATIONS**

Independent investigations by Hagens Berman's legal team and expert antitrust attorneys have revealed that Amazon.com has violated federal antitrust price-fixing and monopoly laws, causing Amazon customers to pay artificially increased prices for products purchased online. In each of the pending cases, Hagens Berman was the first to file, and it serves as interim lead counsel, where leadership was contested. In two cases, representing consumers who purchased on and off Amazon Marketplace, Hagens Berman alleges a broad-reaching agreement between Amazon and the 2 million merchants that sell on its platform as third-party sellers. This agreement prevents third-party sellers from selling at lower prices anywhere else online, even if it costs them less to sell on other platforms and it would be more profitable to do so. This agreement substantially increases the price of virtually every product sold online and consolidates Amazon's iron hold on the online retail market. In a third suit, Hagens Berman alleges that Amazon's agreements with its suppliers likewise increase online consumer prices by restraining price competition from other online retailers. These agreements impose financial penalties on the suppliers, whenever Amazon reduces its own retail price to match a lower online price of the supplier's products. These penalties pressure suppliers to impose minimum retail prices and enforce them against Amazon's retail competitors that would otherwise sell at a lower price than Amazon. In other litigation, the firm also represents booksellers and is interim lead counsel, representing e-book purchasers in antitrust matters regarding those markets and Amazon's monopolistic practices that have harmed businesses and consumers alike.

##### **APPLE PAY ANTITRUST**

The firm filed a class-action lawsuit accusing Apple of intentionally monopolizing the billion-dollar mobile wallet market on iOS platforms, forcing payment card issuers to pay supracompetitive fees and stifling mobile wallet innovation. The lawsuit claims that Apple's antitrust behavior has led to upwards of \$1 billion in illicit annual revenue through Apple Pay fees paid by payment card issuers including credit unions and other small businesses.

##### **FACEBOOK ANTITRUST**

Hagens Berman filed a class-action lawsuit alleging that Facebook gained an illegal monopoly by exploiting and selling user data. We believe Facebook utilized its own user data to identify emerging threats to its social-media monopoly without properly compensating consumers and without notifying them the extent to which their personal information was being used. A key attorney on the case at Hagens Berman was named co-lead counsel for the class of consumers.

#### **NONPUBLIC INVESTIGATIONS**

Hagens Berman is also involved in a number of nonpublic investigations of tech companies for various forms of deception and harm to consumers and employees.

## PRACTICE AREAS

## Intellectual Property

The Hagens Berman intellectual property team has deep experience in all aspects of intellectual property litigation. We specialize in complex and significant damages cases against some of the world's largest corporations.

The firm is primarily engaged in patent and copyright infringement litigation at this time. We represent intellectual property owners, including inventors, universities, non-practicing entities, authors and other groups whose patent and copyright portfolios represents a significant creative and capital investment.

Our current and recent engagements include the following:

### **DISNEY, FOX, MARVEL, PARAMOUNT COPYRIGHT LITIGATION**

Hagens Berman currently represents Rearden LLC in three cases against Hollywood film studios. The complaint alleges that the studios are liable for thousands of unauthorized copies of Rearden's groundbreaking MOVA facial performance capture software, used by the studios for CG characters that appeared in seven major motion pictures. The complaint also alleges infringement of the MOVA trademark.

### **ANGRY BIRDS TRADEMARK LITIGATION**

Hagens Berman represented a Seattle artist who filed a lawsuit against Hartz Mountain Corporation — one of the nation's largest producers of pet-related products — claiming the company illegally sold the artist's trademarked Angry Birds pet toy line to video game giant Rovio Entertainment Ltd, robbing her of millions of dollars of royalty fees.

**RESULT:** Settled under confidential terms

### **BOMBARDIER INC. PATENT LITIGATION**

The firm represented Arctic Cat Inc. in patent infringement litigation against Bombardier Recreational Products and BRP U.S. Inc. The complaint alleges that Bombardier's Sea-Doo personal watercraft infringe Arctic Cat's patents covering temporary steerable thrust technology used when the rider turns in off-throttle situations.

**RESULT:** \$46.7 million final judgment against defendants, trebling initial damages of \$15.5 million awarded in a unanimous jury verdict

### **NINTENDO PATENT LITIGATION**

The firm represented Japan-based Shinsedai Company in patent infringement litigation against Nintendo. The suit alleged that our client's patents were infringed by various sports games for the Nintendo Wii.

**RESULT:** Settled under confidential terms

### **SAMSUNG, LG, APPLE PATENT LITIGATION**

The firm represented FlatWorld Interactives LLC in patent litigation against Apple, LG and Samsung. The complaints allege that the defendants' mobile handsets, tablets, media players and other devices infringe a FlatWorld patent covering the use of certain gestures to control touchscreen displays.

**RESULT:** Settled under confidential terms

Hagens Berman is also skilled in other aspects of intellectual property law, including trademark, trade dress, unfair competition, and trade secret litigation.



HAGENS BERMAN SOBOL SHAPIRO LLP

Unlike other intellectual property firms, Hagens Berman only represents plaintiffs. This reduces the risk of potential conflicts of interest which often create delays in deciding whether or not to take a case at larger firms.

## PRACTICE AREAS

## Investor Fraud – Individual and Class Action Litigation

Investing is a speculative business involving assessment of a variety of risks that can only be properly weighed with full disclosure of accurate information. No investor should suffer undue risk or incur losses due to misrepresentations related to their investment decisions.

Our attorneys work for institutional and individual investors defrauded by unscrupulous corporate insiders and mutual funds. The firm vigorously pursues fraud recovery litigation, forcing corporations and mutual funds to answer to deceived investors.

Hagens Berman is one of the country's leading securities litigation firms advising clients in both individual and class-action cases. The firm has experience, dedication and a team with the horsepower required to drive complex cases to exemplary outcomes. Our attorneys are authorities in an array of issues unique to federal and state securities statutes and related laws. We use a variety of highly experienced experts as an integral part of our prosecution team. A few notable successes on behalf of our investor clients include:

### CHINA MEDIAEXPRESS HOLDINGS, INC. SECURITIES LITIGATION

Hagens Berman served as lead counsel in the case alleging on behalf of a class of investors that China MediaExpress Holdings made false and misleading statements, including misrepresentations about its revenues, the number of buses in its network and the nature of its business relationships. The lawsuit resulted in relief for investors valued at \$535 million.

**RESULT:** \$535 million settlement

### CHARLES SCHWAB YIELD PLUS SECURITIES LITIGATION

Lead counsel, alleging fraud in the management of the Schwab YieldPlus mutual fund.

**RESULT:** \$235 million settlement

### AEQUITAS CAPITAL MANAGEMENT SECURITIES LITIGATION

Prosecuted class action against the bankers, lawyers and accountants who assisted Aequitas in carrying out a massive Ponzi scheme that defrauded investors of millions of dollars before the firm was shut down in 2016.

**RESULT:** \$234 million in total settlements, representing the largest settlement of a securities lawsuit in Oregon history.

### JPMORGAN – MADOFF PONZI SCHEME LITIGATION

Case alleged that banking and investment giant JPMorgan was complicit in aiding Bernard Madoff's Ponzi scheme.

Investors claim that JPMorgan operated as Bernard L. Madoff Investment Securities LLC's primary banker for more than 20 years.

**RESULT:** \$218 million settlement amount for the class and a total of \$2.2 billion paid from JPMorgan that will benefit victims of Madoff's Ponzi scheme

**MCKESSON**

Hagens Berman filed this class action investor-rights derivative action based on the McKesson board's failure to monitor and oversee the company's opioid distribution operations resulting in hundreds of millions of dollars of potential damages from scores of lawsuits filed against McKesson.

**RESULT:** \$175 million record-breaking derivative settlement and strong corporate governance changes

**OPPENHEIMER SECURITIES LITIGATION**

Additional counsel for lead plaintiffs in class action alleging Oppenheimer misled investors regarding its Champion and Core Bond Funds.

**RESULT:** \$100 million settlement

**TREMONT**

Co-lead counsel in a case alleging Tremont Group Holdings (and its five Madoff feeder funds: Rye Select Broad Market Fund, L.P., Rye Select Broad Market Prime Fund, L.P., Rye Select Broad Market XL Fund, L.P., Rye Select Broad Market XL Portfolio Limited, and Rye Select Broad Market Portfolio Limited) breached its fiduciary duties by turning over \$3.1 billion to Bernard Madoff. On Sept. 14, 2015, after nearly two years of negotiations and mediation, the court granted final approval of the plan of allocation and distribution of the funds which markets estimate could yield investors as much as \$1.45 billion.

**RESULT:** \$100 million plus negotiated bankruptcy proceed resulting in distributions of over \$1 billion to investors

**BOEING**

Uncovered critical production problems with the 777 airliner documented internally by Boeing, but swept under the rug until a pending merger with McDonnell Douglas was completed.

**RESULT:** \$92.5 million record-breaking settlement

**ZUORA, INC. SECURITIES LITIGATION**

The firm filed a securities fraud class action alleging misrepresentations and concealment of delays in implementing and integrating RevPro, the company's revenue recognition management software application. A \$75.5 million settlement provided significant relief to investors.

**RESULT:** \$75.5 million settlement

**MORRISON KNUDSEN**

Filed a shareholder class action alleging that MK's senior officers concealed hundreds of millions in losses.

**RESULT:** \$63 million settlement

**RAYTHEON/WASHINGTON GROUP**

Charged Raytheon with deliberately misrepresenting the true financial condition of Raytheon Engineers & Constructors division in order to sell this division to the Washington Group at an artificially inflated price.

**RESULT:** \$39 million settlement

**THERANOS INVESTOR LITIGATION**

Hagens Berman represented Theranos investors in a lawsuit that states that Theranos and its officers set in motion a publicity campaign to raise billions of dollars for Theranos and themselves, and to induce investors to invest in Theranos, all the while knowing that its "revolutionary" blood test technology was essentially a hoax. In a case of first impression, the court upheld the investor claims where plaintiffs did not directly purchase their securities from Theranos, Elizabeth Holmes and Sunny Balwani, but through funds whose purpose included investing in Theranos.

**RESULT:** The firm secured a confidential settlement with Theranos, Holmes and Balwani ending the suit. The settlement also allowed for continued public access to depositions, video and exhibits which were featured prominently in various podcasts and streaming services, including “Bad Blood the Final Chapter,” Netflix’s “The Inventor: Out for Blood in Silicon Valley” and Hulu’s “The Dropout.”

#### U.S. WEST

Represented shareholders of U.S. West New Vector in a challenge to the proposed buyout of minority shareholders by U.S. West.

**RESULT:** Settlement achieved, resulting in a \$63 million increase in the price of the buyout, and the proposed buyout was stayed

Our current casework includes:

#### SPAC LITIGATION

Hagens Berman represents investors in a number of private securities class action lawsuits arising out of fraud and other misconduct in connection with private companies that went public through special purpose acquisition vehicle (“SPAC”) business combinations.

SPACs are shell entities that raise money and list on an exchange, usually with the goal of merging with a private firm and taking it public. SPACs burst onto the scene in 2020, as a hot alternative to traditional initial public offerings, raising more than \$80 billion raised in 2020 and more than \$160 billion raised in 2021, alone.

The SEC has recently raised serious concerns regarding the information asymmetries, the potential for misleading information and fraud, and conflicts of interest inherent SPAC business combinations. Several high-profile SPAC debacles have resulted in serious allegations of green washing, false projections and other securities fraud, collectively costing investors billions of dollars in investment losses.

The Firm’s attorneys, together with its investigators, accountants and economic consultants, are prosecuting a number of securities class actions brought on behalf of damaged SPAC investors. For example, Hagens Berman serves as the court-appointed counsel in Berkeley Lights, Danimer, Desktop Metal, Hyzon, and Redwire.

#### COVID-19-RELATED CLASS ACTIONS

As COVID-19 has continued to spread across the United States, Hagens Berman has remained keenly focused on protecting investors from frauds, illicit schemes and other misconduct relating to COVID-19. For example, Hagens Berman investigated, filed a proprietary action and serves as court-appointed lead counsel in one of the first securities class actions arising from a fraudulent scheme for corporate insiders to profit from disseminating false and misleading information concerning a company’s COVID-19 vaccine candidate, *In re Vaxart, Inc. Sec. Litig.*, No. 3:20-cv-05949-VA (N.D. Cal.). The Firm and its co-counsel recently defeated in large part defendants’ motions to dismiss in Vaxart.

#### CANNABIS SECURITIES FRAUD

The expanding legalization and sale of cannabis in not only the U.S. but globally, spurred a wave of cannabis-related initial public offerings and mergers and acquisitions. But as investors would later learn, the nascent industry was rife with accounting fraud, false projections and egregious insider trading. Hagens Berman currently serves as co-lead counsel in *In re Aurora Cannabis Inc. Securities Litigation*, 2:19-cv-20588-JMV-JBC (D. N.J.). The Firm and its counsel also recently obtained a \$13 million settlement on behalf of investors in *Ortiz v. Canopy Growth Corp. et al.*, 2:19-cv-20543 (D. N.J.).

### U.S.-LISTED FOREIGN COMPANIES

Investing in U.S.-listed foreign companies is a convenient way for U.S. investors to gain exposure to vast and fast-growing foreign economies. But the inability to inspect the audits of certain foreign firms, together with the spectacular collapses of several large issuers, have shined the light on rampant financial fraud at foreign issuers trading on American exchanges. The firm is currently leading the prosecution in a number of private securities class actions against U.S.-listed foreign companies, including against JOYY, Sasol, SOS and Wirecard.

### TECHNOLOGY SECTOR

Claims of lucrative contracts, investments and acquisitions, or of new product lines are common ways in which issuers in the technology space are about to get investors excited about the company so that they will purchase shares. But in recent history, several high-profile technology firms have been accused of attempting to pump their share price through fictitious statements about their products, prospects and economic activity. The firm was appointed lead counsel in an action against a recent IPO cloud application company, *Roberts v. Zuora Inc. et al*, 3:19-cv-03422 (N.D. Cal.), where the firm and its client have defeated defendants' motion to dismiss, certified a class of investors, and are preparing for trial. The firm was also appointed lead counsel against tech real-estate marketplace company Zillow over its failed house-flipping business, *Barua v. Zillow Group, Inc., et al.*, 2:21-cv-01551-TSZ (W. Wash.).

### WHISTLEBLOWERS

In an effort to curb Wall Street excesses, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which built vigorous whistleblower protections into the legislation known as the "Wall Street Tip-Off Law." The law empowers the U.S. Securities and Exchange Commission to award between 10 and 30 percent of any monetary sanctions recovered in excess of \$1 million to whistleblowers who provide information leading to a successful SEC enforcement. It also provides similar rewards for whistleblowers reporting fraud in the commodities markets.

Hagens Berman represents whistleblowers with claims involving violations of the Securities Exchange Act and the Commodities Exchange Act. Unlike traditional whistleblower firms who have pivoted into this area, Hagens Berman has a strong background and history of success in securities, antitrust and other areas of fraud enforcement, making us an ideal partner for these cases. Our matters before the SEC/CFTC include a range of claims, including market manipulation and fraudulent financial statements.

## PRACTICE AREAS

## Personal Injury and Abuse

For nearly two decades, Hagens Berman's blend of professional expertise and commitment to our clients has made our firm one of the most well-respected and successful mass tort and personal injury law firms in the nation. We deliver exceptional results for our clients by obtaining impressive verdicts and settlements in personal injury litigation.

Our attorneys have experience in wrongful death, brain injury and other catastrophic injury cases, as well as deep experience in social work negligence, medical malpractice, nursing home negligence and sexual abuse cases.

Hagens Berman also has unparalleled experience in very specific areas of abuse law, recovering damages on behalf of some of the most vulnerable people in our society.

### VEHICLE COLLISION/TRAUMATIC INJURIES

Hagens Berman is an established leader in traumatic injury litigation. Our attorneys fight for the rights of injured athletes, slip-and-fall victims, victims of life-changing collisions and car crashes, those injured in the workplace and other victims of negligence who have suffered severe injuries. Our firm has successfully litigated personal injury claims involving traumatic brain injuries, spinal cord damage and other catastrophic injuries that require immediate care and leave victims physically, emotionally and financially vulnerable.

### MEDICAL MALPRACTICE

Litigating a medical malpractice case takes acute specialization and knowledge of medical treatments and medicine. Notwithstanding these facts, Hagens Berman pursues meritorious medical malpractice claims in instances where clients have suffered life-altering personal injuries. Our firm's personal injury attorneys handle medical malpractice cases with the dedication and detail necessary to make victims whole. Hagens Berman is very selective in accepting medical malpractice cases and has been successful in recovering significant compensation for victims of medical error and negligence.

### NURSING HOME NEGLIGENCE

Nursing home negligence is a growing problem throughout the nation. As our population ages, reports of elder abuse and nursing home negligence continue to rise. Today, elder abuse is one of the most rapidly escalating social problems in our society. Hagens Berman is uniquely qualified to represent victims of elder abuse and nursing home negligence. Our attorneys have secured outstanding settlements in this area of law and have committed to holding nursing homes accountable for wrongdoing.

### SEXUAL ABUSE LITIGATION

Hagens Berman has represented a wide spectrum of individuals who have been victims of sexual abuse, including children and developmentally disabled adults. We treat each case individually, with compassion and attention to detail and have the expertise, resources and track record to stand up to the toughest opponents. In the area of sexual abuse, our attorneys have obtained record-breaking verdicts, including the largest personal injury verdict ever upheld by an

appellate court in the state of Washington. More about Hagens Berman's sexual abuse practice can be found on the Sexual Abuse and Harassment practice area page.

#### **SOCIAL WORK NEGLIGENCE**

Social workers play a critical role in the daily lives of our nation's most vulnerable citizens. Social workers, assigned to protect children, the developmentally disabled and elderly adults, are responsible for critical aspects of the lives of tens of thousands of citizens who are unable to protect themselves. Many social workers do a fine job. Tragically, many do not. The results are often catastrophic when a social worker fails to monitor and protect his or her vulnerable client. All too often, the failure to protect a child or disabled citizen leads to injury or sexual victimization by predators. With more than \$40 million in recoveries on behalf of vulnerable citizens who were neglected by social workers, Hagens Berman is the most experienced, successful and knowledgeable group of attorneys in this dynamic area of law.

#### **WORKPLACE INJURY**

While many workplace injury claims are precluded by workers' compensation laws, many instances of workplace injury are caused by the negligence and dangerous oversight of third parties. In these instances, victims may have valid claims. Hagens Berman's personal injury legal team has successfully brought many workplace injury claims, holding third parties liable for our clients' serious bodily injuries. This includes successfully litigating claims under the Washington Law Against Discrimination, which protects all people in the state from unfair and discriminatory practices in employment and public accommodations access.



HAGENS BERMAN SOBOL SHAPIRO LLP

## PRACTICE AREAS

## Sports Litigation

Hagens Berman has one of the nation's most highly regarded sports litigation law practices. Our attorneys are the vanguard of new and innovative legal approaches to protect the rights of professional and college athletes in cases against large, well-financed interests, including the National Collegiate Athletic Association (NCAA), the National Football League (NFL), the Fédération Internationale de Football Association (FIFA) and other sports governing institutions.

### NCAA SCHOLARSHIPS/GRANT-IN-AID LITIGATION

In a first-of-its-kind antitrust action and far-reaching case affecting approximately 40,000 Division I college athletes, Hagens Berman filed a class-action against the NCAA and its most powerful member conferences, including the Pac-12, Big Ten, Big-12, SEC and ACC, claiming these entities violated federal antitrust laws by drastically reducing the number of scholarships and financial aid student-athletes receive to an amount below the actual cost of attendance and far below what the free market would bear.

The damages portion of the case resulted in an estimated average amount of \$6,500 to each eligible class member who played his or her sport for four years.

In March of 2019, the firm as co-lead trial counsel on the injunctive aspect of the case obtained a court order that resulted in a change of NCAA rules limiting the financial treatment of athletes. That injunction was affirmed in a unanimous 9-0 Supreme Court victory, with the injunctive relief culminating in a monumental victory for plaintiffs in the case and for college athletes in years to come. The Court ruled that NCAA college athletes should be able to receive compensation from schools or conferences for athletic services other than cash compensation untethered to education-related expenses, prohibiting the NCAA from enforcing rules limiting those payments. The media called the firm's victory in the scholarships case against the NCAA a "major ruling" (ABC World News Tonight), that "will change the game" (ABC Good Morning America), "...the highest court left the NCAA unhoused and naked, with nothing left but its pretensions," (The Washington Post), it "delivered a heavy blow," (AP), and leaves the NCAA "more vulnerable than ever."

**RESULT:** \$208 million settlement regarding the damages portion of the case, 100% of estimated single damages, followed by a unanimous 9-0 decision in favor of plaintiffs from the U.S. Supreme Court regarding the injunctive portion. The media called the firm's victory in the scholarships case against the NCAA a "major ruling" (ABC World News Tonight), that "will change the game" (ABC Good Morning America), "...the highest court left the NCAA unhoused and naked, with nothing left but its pretensions," (The Washington Post), it "delivered a heavy blow," (AP), and leaves the NCAA "more vulnerable than ever."

### NCAA CONCUSSIONS LITIGATION

Cases of particular nationwide interest for fans, athletes and the general public involve numerous cases filed by Hagens Berman against the NCAA. Recently, the firm took on the NCAA for its failure to prevent concussions and protect student-athletes who suffered concussions. Steve Berman served as lead counsel in multi-district litigation and led the firm to finalize a settlement bringing sweeping changes to the NCAA's approach to concussion treatment and prevention.

The settlement's medical monitoring program is overseen by a medical science committee appointed by the court that screens and tracks concussions. Examinations include neurological and neurocognitive assessments to evaluate potential injuries. Each player now receives a seasonal baseline test to better assess concussions sustained during the season. All athletes who have sustained a concussion will now need to be cleared before returning to play. A medical professional trained in the diagnosis of concussions will be present at all games involving contact sports. The settlement also creates reporting mandates for concussions and their treatment.

**RESULT:** 50-year medical monitoring settlement funded by a \$70 million medical monitoring fund, paid by the NCAA and its insurers, as well as significant changes to and enforcement of the NCAA's concussion management policies and return-to-play guidelines

#### **NCAA & EA PLAYER NAME, IMAGE & LIKENESS (NIL) RIGHTS IN VIDEOGAMES**

Hagens Berman attorneys represented student-athletes who claimed that the NCAA illegally used their names, images and likenesses in Electronic Arts' popular NCAA Football, Basketball and March Madness videogame series.

The firm began this case with the knowledge that the NCAA and member schools were resolute in keeping as much control over student-athletes as possible and fought hard to ensure that plaintiffs would not be exploited for profit, especially by the organization that vowed to prevent the college athletes from exploitation. Settlement checks were sent to about 15,000 players, with average amounts of \$1,100 and some up to \$7,600.

The firm also represented NFL legend Jim Brown in litigation against EA for improperly using his likeness in its NFL video games, culminating in a \$600,000 voluntary judgment offered by the video game manufacturer.

**RESULT:** Combined \$60 million settlement, marking the first time the NCAA agreed to a settlement that pays student-athletes for acts related to their participation in athletics

#### **CONTINUED NIL LITIGATION**

Hagens Berman has continued efforts against the NCAA in an additional pending antitrust case regarding NIL rights. In June 2020, the firm filed its case against the NCAA and the five most powerful conferences — the Pac-12, Big Ten, Big 12, SEC and ACC — claiming the defendants had knowingly violated federal antitrust laws in abiding by a particular subset of NCAA amateurism rules that prohibit college athletes from receiving anything of value in exchange for the commercial use of their name and likeness. The firm holds that the NCAA's regulations illegally limit the compensation that Division I college athletes may receive for the use of their NIL and athletic reputations.

In unanimously upholding the rights of NCAA athletes in *Alston*, Justice Gorsuch wrote the NCAA had sought "immunity from the normal operation of the antitrust laws," and Justice Kavanaugh stated, "The NCAA is not above the law." The firm looks forward to continuing to uphold that same sentiment regarding NCAA athlete NIL rights.

In July 2021, following the firm's victory in the *Alston* case and denial of defendants' motion to dismiss in the NIL Litigation, the NCAA chose to temporarily lift rules restricting certain NIL deals in what the firm believes will be the first step in another massive change in college sports to support college athletes.

#### **FIFA & U.S. SOCCER CONCUSSIONS**

Several soccer players filed a class action against U.S. Soccer's governing bodies, which led to life-changing safety measures brought to millions of U.S. youth soccer players. Players represented by Hagens Berman alleged these groups failed to adopt effective policies to evaluate and manage concussions, leaving millions of players vulnerable to long-lasting brain injury.

The settlement against six of the largest youth soccer organizations greatly diminished risks of concussions and traumatic head injuries. Prior to the settlement, no rule limited headers in children's soccer. The settlement also highlights the importance of on-staff medical personnel at youth tournaments. Under the settlement, youth players who have sustained a concussion during practice or a game will need to follow certain return-to-play protocols before they are allowed to play again. Steve Berman, a youth soccer coach, has seen first-hand the settlement's impacts and life-changing effects every time young athletes take to the field.

**RESULT:** New return-to-play guidelines, benchmarks for concussion measurement and safety protocols, as well as new safety guidelines throughout U.S. Soccer, including completely eliminating heading for youth soccer's youngest players

#### NCAA TRANSFER ANTITRUST

Hagens Berman took on the NCAA for several highly recruited college athletes whose scholarships were revoked after a coaching change, or after the student-athletes sought to transfer to another NCAA-member school. The suit claimed the organization's limits and transfer regulations violate antitrust law.

The firm's case hinges on a destructive double standard. While non-athlete students are free to transfer and are eligible for a new scholarship without waiting a year, and coaches often transfer to the tune of a hefty pay raise, student-athletes are penalized and forced to sit out a year before they can play elsewhere, making them much less sought after by other college athletic programs. Hagens Berman continues to fight for student-athletes' rights to be treated fairly and terminate the NCAA's anticompetitive practices and overbearing regulations that limit players' options and freedoms.

#### POP WARNER

Hagens Berman represented youth athletes who have suffered traumatic brain injuries due to gross negligence and filed a lawsuit on behalf of former Pop Warner football player Donovan Hill and his mother Crystal Dixon. The suit claims that the league insisted Hill use improper and dangerous tackling techniques which left the then 13-year-old paralyzed from the neck down.

Hagens Berman sought to hold Pop Warner, its affiliates, Hill's coaches and members of the Lakewood Pop Warner board of directors accountable for the coaches' repeated and incorrect instruction that Hill and his teammates tackle opposing players by leading with the head. Sadly, months after the firm's settlement was reached in January 2016, 17-year-old Donovan passed away. The firm believes that his case will continue to have a lasting impact on young athletes for generations and will help ensure safety in youth sports.

**RESULT:** Confidential settlement on behalf of Donovan and his mother

#### MLB FOUL BALL INJURIES

Hagens Berman filed a class-action lawsuit on behalf of baseball fans, seeking to extend safety netting to all major and minor league ballparks from foul pole to foul pole. The suit alleges that tens of millions attend an MLB game annually, and every year fans of all ages, but often children, suffer horrific and preventable injuries, such as blindness, skull fractures, severe concussions and brain hemorrhages when struck by a fast-moving ball or flying shrapnel from a shattered bat. The lawsuit was dismissed with the court ruling that the plaintiffs lacked standing because the chance of getting hit by a ball is remote.

While the firm commends the league for finally addressing the serious safety issue at stake in December 2015, the firm continues to urge MLB and its commissioner to make these more than recommendations to help end senseless and avoidable injuries to baseball's biggest fans. We believe our case sparked the eventual move to netting. After one of the owners of the Mariners belittled Steve for having filed the case, the firm happily saw the addition of netting extended to the foul poles at T-Mobile Park in the firm's headquarters of Seattle.

**RESULT:** MLB's commissioner Rob Manfred issued a recommendation to all 30 MLB teams to implement extended safety measures, including additional safety netting at ballparks

#### OTHER SPORTS CASES

In addition to its class actions, Hagens Berman has filed several individual cases to uphold the rights of athletes and ensure a fair and safe environment. The firm has filed multiple individual cases to address concussions and other traumatic head injuries among student-athletes at NCAA schools and in youth sports. Hagens Berman continues to represent the interests of athletes and find innovative and effective applications of the law to uphold players' rights.

The firm has also brought many concussions cases on behalf of individual athletes, challenging large universities and institutions for the rights those who have suffered irreversible damage due to gross negligence and lack of even the most basic concussion-management guidelines.

HAGENS BERMAN SOBOL SHAPIRO LLP

# APPELLATE VICTORIES



## APPELLATE VICTORIES

## Strengthening Consumer Law

At Hagens Berman, we distinguish ourselves not merely by the results we obtain, but by how we obtain them. Few class-action firms have our firm's combination of resources and acumen to see a case through as long as needed to obtain a favorable outcome. Our attorneys were instrumental in obtaining these federal appellate decisions that have shaped consumer law and bolstered the rights of millions nationwide:

- *Tershakovec v. Ford Motor Co., Inc.*, 79 F.4th 1299 (11th Cir. 2023) (affirming class certification under laws of several states and remanding for trial)
- *Hernandez v. Illinois Inst. of Tech.*, 63 F.4th 661 (7th Cir. 2023) (claims for breach of contract and unjust enrichment upheld for failure to provide in-person education during COVID-19 pandemic)
- *In re Evenflo Co., Inc., Mktg., Sales Pracs. & Prod. Liab. Litig.*, 54 F.4th 28, 32 (1st Cir. 2022) (consumers had standing to challenge overpayment for defective car booster seats)
- *In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 27 F.4th 291 (4th Cir. 2022) (affirming fee award as authorized by Class Action Fairness Act)
- *NCAA v. Alston*, 141 S. Ct. 2141 (2021) (landmark decision invalidating NCAA antitrust restrictions on compensating student athletes)
- *Shaffer v. George Washington Univ.*, 27 F.4th 754 (D.C. Cir. 2022) (students adequately alleged universities breached contract to provide in-person education during COVID-19 pandemic)
- *United Food & Com. Workers Loc. 1776 & Participating Emps. Health & Welfare Fund v. Takeda Pharm. Co. Ltd.*, 11 F.4th 118 (2d Cir. 2021) (monopolization sufficiently alleged and brand drug manufacturer's combination patents did not claim brand drug under Hatch-Waxman Act)
- *Cherry v. Dometic Corp.*, 986 F.3d 1296 (11th Cir. 2021) (administrative feasibility identifying absent class members not required for class certification)
- *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 967 F.3d 264 (3d Cir. 2020) (upholding certified class of direct purchasers alleging anticompetitive conduct impeding market entry of generic versions of Suboxone)
- *In re NCAA Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d 1239 (9th Cir. 2020) (affirming injunction in favor of student athletes against NCAA, later sustained by Supreme Court in *NCAA v. Alston*, 141 S. Ct. 1231 (2020))
- *In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 952 F.3d 471 (4th Cir. 2020) (approving class action settlement concerning defective laminate flooring)
- *In re Lantus Direct Purchaser Antitrust Litig.*, 950 F.3d 1 (1st Cir. 2020) (drug manufacturer improperly listed insulin patent in FDA's Orange Book to extend monopoly)

- *In re Avandia Mktg., Sales & Prod. Liab. Litig.*, 945 F.3d 749 (3d Cir. 2019) (state law claims against manufacturer of type-2 diabetes drug not preempted by federal law)
- *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539 (9th Cir. 2019) (*en banc*) (upholding nationwide settlement class and providing guidance for district courts on choice-of-law inquiry in settlement context)
- *City of Miami v. Wells Fargo & Co.*, 923 F.3d 1260 (11th Cir. 2019) (municipality adequately alleged causation for discrimination violating Fair Housing Act)
- *In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 924 F.3d 662 (3d Cir. 2019) (vacating protective order for impeding common law right of public access to court filings)
- *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, 895 F.3d 597 (9th Cir. 2018) (affirming \$10 billion nationwide settlement providing relief to one-half million consumers for Volkswagen’s emissions cheating and misleading “clean diesel” advertising)
- *In re Lipitor Antitrust Litig.*, 868 F.3d 231 (3d Cir. 2017) (direct purchasers of Lipitor and Effexor plausibly alleged unlawful reverse payment settlement agreements in violation of antitrust laws)
- *In Matter of Motors Liquidation Co.*, 829 F.3d 135 (2d Cir. 2016) (General Motors bankruptcy reorganization did not bar claims stemming from defective ignition switches)
- *George v. Urban Settlement Servs.*, 833 F.3d 1242 (10th Cir. 2016) (complaint adequately alleged Bank of America’s mortgage modification program violated RICO)
- *In re Loestrin 24 Fe Antitrust Litig.*, 814 F.3d 538 (1st Cir. 2016) (“reverse payments” for antitrust purposes under Actavis are not limited to cash payments)
- *Osborn v. Visa Inc.*, 797 F.3d 1057 (D.C. Cir. 2015) (complaint adequately alleged Visa and MasterCard unlawfully agreed to restrain trade in setting ATM access fees)
- *Little v. Louisville Gas & Elec. Co.*, 805 F.3d 695 (6th Cir. 2015) (Clean Air Act did not preempt state nuisance claims against coal plant for polluting surrounding community)
- *City of Miami v. Citigroup Inc.*, 801 F.3d 1268 (11th Cir. 2015) (reversing dismissal of complaint alleging Citigroup violated Fair Housing Act by pattern of discriminatory lending)
- *Rajagopalan v. NoteWorld, LLC*, 718 F.3d 844 (9th Cir. 2013) (non-party could not invoke arbitration clause against plaintiff suing debt services provider)
- *In re Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 21 (1st Cir. 2013) (affirming \$142 million verdict for injury suffered from RICO scheme by Neurontin manufacturer Pfizer)
- *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 724 F.3d 1268 (9th Cir. 2013) (First Amendment did not shield video game developer’s use of college athletes’ likenesses)
- *Garcia v. Wachovia Corp.*, 699 F.3d 1273 (11th Cir. 2012) (Wells Fargo could not rely on Concepcion to evade waiver of any right to compel arbitration)
- *Agnew v. Nat’l Collegiate Athletic Ass’n*, 683 F.3d 328 (7th Cir. 2012) (NCAA bylaws limiting scholarships per team and prohibiting multi-year scholarships are subject to antitrust scrutiny and do not receive pro-competitive justification at pleading stage)
- *In re Lupron Mktg. & Sales Practices Litig.*, 677 F.3d 21, 24 (1st Cir. 2012) (approving cy pres provision in \$150 million settlement)

- *In re Pharm. Indus. Average Wholesale Price Litig.*, 582 F.3d 156 (1st Cir. 2009) (AstraZeneca illegally published inflated average wholesale drug prices, thereby giving windfall to physicians and injuring patients who paid inflated prices)

We set ourselves apart not only by getting results but by litigating every case through to finish – to trial and appeal, if necessary. This tenacious drive has led our firm to generate groundbreaking precedents in consumer law.

Hagens Berman has also been active in state courts nationwide. Notable examples of our victories include:

- *Franklin v. CSAA Gen. Ins. Co.*, 532 P.3d 1145, 1146 (Ariz. 2023) (injured drivers may “stack” or combine UIM coverages where multiple vehicles are insured under a single insurance policy)
- *In re Funko, Inc. Sec. Litig.*, 19 Wash. App. 2d 1045 (2021) (complaint adequately alleged violations of the Securities Act of 1933)
- *Hernandez v. Restoration Hardware, Inc.*, 409 P.3d 281 (Cal. 2018) (successfully arguing on behalf of amicus curiae that class action objectors must intervene to appeal)
- *Purdue Pharma L.P. v. State*, 256 So. 3d 1 (Miss. 2018) (refusing to transfer venue in litigation against leading opioid manufacturers)
- *Garza v. Gama*, 379 P.3d 1004 (Ariz. Ct. App. 2016) (reinstating certified class in wage-and-hour action prosecuted by Hagens Berman since 2005)
- *In re Farm Raised Salmon Cases*, 42 Cal. 4th 1077 (Cal. 2008) (Federal Food, Drug and Cosmetic Act did not preempt state claims for deceptive marketing of food products)
- *Pickett v. Holland Am. Line-Westours, Inc.*, 35 P.3d 351 (Wash. 2001) (reversing state court of appeals and upholding class action settlement with cruise line)

LEGAL TEAM

**PARTNER, EXECUTIVE COMMITTEE MEMBER****Robert B. Carey**

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**YEARS OF EXPERIENCE**

34

**PRACTICE AREAS**

Breach of Contract Claims  
Class Action  
High Tech Litigation  
Insurance Bad Faith  
Personal Injury

**BAR ADMISSIONS**

- Arizona
- Colorado

**COURT ADMISSIONS**

- Supreme Court of the United States
- Federal Circuit Court of Appeals
- Seventh Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Tenth Circuit Court of Appeals
- Various Federal District Courts

**EDUCATION**

 **HARVARD Kennedy School**  
JOHN F. KENNEDY SCHOOL OF GOVERNMENT  
Harvard University, John F.  
Kennedy School of Government,  
State & Local Government  
Program, 1992

Rob added to HB's office a **built-in mock courtroom**, complete with jury box, audio-visual equipment to record witnesses and lawyers, and separate deliberation rooms for two juries.

**INTRODUCTION**

Mr. Carey handles various types of injury and consumer claims. Mr. Carey was lead counsel on a jury trial that produced the largest medical-malpractice verdict in 2018, secured class certification in class actions on behalf of consumers and workers where damages are almost \$2 billion, and investigated the dialysis industry's role in deaths caused by central venous catheter infections and misuse of dialysis solutions.

**CURRENT ROLE**

- Partner & Executive Committee Member, Hagens Berman Sobol Shapiro LLP
- Leads Phoenix office
- Practice focuses on class-action lawsuits, including auto defect, insurance, right of publicity and fraud cases. Mr. Carey's work also extends to bad-faith insurance, personal injury and medical malpractice, with several trials involving verdicts in the hundreds of millions.
- Frequently asked to handle jury trials for high-value cases

**RECENT SUCCESS**

- In June 2018, a Denver jury awarded a monumental \$383.5 million jury verdict against GranuFlo dialysis provider, DaVita Inc. culminating lawsuits brought by families of three patients who suffered cardiac arrests and died after receiving dialysis treatments at DaVita clinics. Each of the three parties was awarded \$125 million in punitive damages from the jury, with compensatory damages ranging from \$1.5 million to \$5 million.
- Over the summer of 2012, Rob was lead counsel in Robin Antonick's case against Electronic Arts, where a jury heard evidence that Electronic Arts failed to pay Antonick for over 20 years for his work in coding and developing the legendary Madden NFL Football video game. This trial, held in the Northern District of California, resulted in two verdicts for Antonick and was dubbed a "Top Trial Verdict of 2013" by *The Daily Journal*, a leading legal publication.
- Prevailed at the Arizona Court of Appeals for the second time, keeping intact class certification for tens of thousands of truck drivers suing to recover underpayments caused by misuse of Rand McNally's HHG software by Swift Transportation.
- Helped originate the Toyota Sudden Unintended Acceleration case, filing the initial Hagens Berman complaints for a case that eventually settled for \$1.6 billion.
- Led Hagens Berman's efforts on the \$97 million settlement with Hyundai and Kia corporations over misrepresentations about MPG ratings.



## AWARDS

THE NATIONAL  
LAW JOURNAL  
**2018 TOP VERDICTS**  
MEDICAL MALPRACTICE  
**\$383,500,000**

- Helped secure a first-ever (\$60 million) settlement for collegiate student-athletes (Keller, consolidated with O'Bannon) from Electronic Arts (EA) and the NCAA for the misappropriation of the student-athletes' likenesses and images for the EA college football video game series. This groundbreaking suit went up to the U.S. Supreme Court before a settlement was reached, providing student-athletes — even current ones — with cash recoveries for the use of their likenesses without permission.
- Represented Donovan Hill against Pop Warner after he was paralyzed at 13. With Rachel Freeman, Rob secured a settlement that “forever changed youth football” (*OC Weekly*) and was “unprecedented” and owed a debt of gratitude by those who care about the safety of kids playing football (*Washington Post*). Donovan died tragically during a 2016 surgery.
- Rob secured a record verdict for a mother suing her deceased son's estate for negligence in starting a home fire. He then took an assignment of the estate's claim and pursued a bad faith claim against the insurer, resulting in lifetime financial security for the badly burned mother.
- After successfully reforming an insurance policy to cover a client — a student-athlete injured in a roll-over accident that caused incomplete tetraplegia and traumatic brain injury — Rob went to the jury, which awarded damages for all harms and losses requested and for insurance bad faith, with a verdict exceeding over 15 times policy limits.
- Rob sued the leading auto carrier for refusal to fully cover a pedestrian struck by the carrier's driver. The verdict was valued over seven figures, and included a finding of willful and wanton conduct, trebling the damages.
- After Rob cross-examined the CEO and CFO of a pharmacy benefits company, the jury entered a verdict for his client in the liability phase of a \$75 million dispute.
- During his representation of a driver paralyzed by a car's roof collapse, the insurance company ignored that the agent did not understand or offer required high-end coverages. The jury returned a verdict with a value over seven figures, including a finding for treble damages.
- Rob represented passengers of drunk driver, and persuaded the jury to award future earning capacity, essential services, medical bills and to find willful and wanton conduct against the insurer (treble damages). After a successful trip to the state supreme court, the verdict was maintained and had a value in excess of 15 times the policy limits.

## EXPERIENCE

- While serving as Arizona Chief Deputy Attorney General Mr. Carey helped secure a \$4 billion divestiture and a landmark \$165 million antitrust settlement. He also was a principal drafter of the first major overhaul of Arizona's criminal code and authored the section of the federal Prisoner Litigation Reform Act of 1995 for Senators Dole and Kyl that virtually eliminated frivolous prisoner lawsuits. Mr. Carey oversaw all major legal, policy, legislative and political issues for the Arizona attorney general's office. He developed and spearheaded passage of Arizona's law requiring the DNA testing of all sex offenders and the law requiring that criminals pay the cost of victims' rights.
- Campaign staffer, intern, and staff member for U.S. Senator John McCain, during and after Senator McCain's first run for public office.

- Adjunct Professor, Sandra Day O'Connor College of Law, teaching class actions. Has taught law and policy courses at other universities.
- Judge Pro Tempore, Maricopa County Superior Court, presiding over contract and tort jury trials.
- In the 90s, he served as trial counsel on claims by counties for damages stemming from tobacco-related illnesses (and acted as special counsel for Hagens Berman in seeking to recover damages in the landmark tobacco litigation), and since then has led dozens of consumer and insurance class actions in various states.

#### LEGAL ACTIVITIES

- Member and Former Chairman, Arizona State Bar Class Action and Derivative Suits Committee

#### RECOGNITION

- 500 Leading Lawyers in America, Plaintiff Consumer Lawyers, Lawdragon, 2019-2024
- 500 Leading Lawyers in America, Plaintiff Financial Lawyers, Lawdragon, 2020-2024
- Top 100 Trial Lawyer, Arizona's Finest Lawyers and National Trial Lawyers, 2008-present
- Member of Hagens Berman's Toyota team selected as a Finalist for Trial Lawyer of the Year, Public Justice, 2014
- Recognized by the judges of the Superior Court of Arizona in Maricopa County for outstanding contributions to the justice system
- Selected as a Leading Plaintiff Financial Lawyer in America and a Leading Plaintiff Consumers Lawyer in America
- Recognized for victims' rights efforts, U.S. Department of Justice

#### NOTABLE CASES

- *Propane Exchange Tank Litigation*
- *Hyundai/Kia MPG Litigation*
- *Swift Truckers Litigation*
- *Toyota Unintended Acceleration Litigation*
- *NCAA Student-Athlete Name and Likeness Licensing Litigation*
- *Hyundai Subframe Defect Litigation*
- *Hyundai Occupant Classification System / Airbag Litigation*
- *Hyundai Horsepower Litigation*
- *Arizona v. McKesson False Claims and Consumer Protection Litigation* (representing State of Arizona)
- *Apple Refurbished iPhone/iPad Litigation*
- *Jim Brown v. Electronic Arts*
- *LifeLock Sales and Marketing Litigation*
- *Rexall Sundown Cellasene Litigation*



## PUBLICATIONS

- Co-author, “7 Punitive Damages Strategies,” *Trial Magazine*, April 2019
- Co-author, Arizona chapter of the ABA’s “*A Practitioner’s Guide to Class Actions*”
- Co-author, Arizona and Colorado chapters of the ABA’s “*A Practitioner’s Guide to Class Actions*,” 2nd edition



**PARTNER****John DeStefano**

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**PRACTICE AREAS**

Appellate Advocacy  
[Class Action](#)  
Commercial Litigation  
[Consumer Rights](#)  
Insurance Law

**COURT ADMISSIONS**

- United States Supreme Court
- Third Circuit Court of Appeals
- Seventh Circuit Court of Appeals
- Eighth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Tenth Circuit Court of Appeals
- U.S. District Court for the District of Arizona
- U.S. District Court for the District of Colorado
- Supreme Court of Arizona

**EDUCATION**

THE UNIVERSITY OF ARIZONA  
**James E. Rogers**  
College of Law

University of Arizona Law School,  
J.D.



**HARVARD**  
UNIVERSITY

Harvard University, B.A., Classics

Mr. DeStefano takes special pride in helping to protect consumers against fraud and the corruption of honest enterprise.

**CURRENT ROLE**

- Partner, Hagens Berman Sobol Shapiro LLP
- Practice focuses on consumer, insurance, and antitrust class actions as well as appellate representation

**EXPERIENCE**

- Snell & Wilmer LLP 2009-2013
- American Inns of Court Pegasus Scholar 2012: study of commercial, media, and privacy law with barristers and judges in the U.K.
- U.S. District Court for the District of Arizona, Law Clerk to the Hon. Neil V. Wake 2008-2009
- U.S. Court of Appeals for the Ninth Circuit, Law Clerk to the Hon. William C. Canby, Jr. 2007-2008

**LEGAL ACTIVITIES**

- Adjunct Professor, Sandra Day O'Connor College of Law, Arizona State University
- Program Chair, Lorna Lockwood American Inn of Court
- Former Treasurer and Member of the Board of Trustees, American Inns of Court
- American Association for Justice

**RECOGNITION**

- 500 Leading Plaintiff Consumer Lawyers, Lawdragon, 2024
- Rising Star, Class Action/Mass Tort, Super Lawyers, 2015-2017
- Top Pro Bono Attorneys in Arizona Award, Arizona Foundation for Legal Services & Education, 2013

**NOTABLE CASES**

- Gunn v. Continental Casualty Co.
- Sieving v. Continental Casualty Co.
- Cheslow v. Continental Casualty Co.
- Brown v. Continental Casualty Co.
- Kronenberg v. Allstate Insurance Co.
- Lewis v. GEICO

- In re Hyundai & Kia Fuel Economy Litigation
- Jim Brown v. Electronic Arts Inc.

#### CLERKSHIPS

- Hon. Neil V. Wake, U.S. District Court for the District of Arizona, 2008-2009
- Hon. William C. Canby, Jr., U.S. Court of Appeals for the Ninth Circuit, 2007-2008

#### PUBLICATIONS

- Co-author of the Arizona and Colorado chapters of the ABA's "A Practitioner's Guide to Class Actions," 2nd edition

#### PERSONAL INSIGHT

When John's great-grandfather came from Italy to Boston, he lost his life savings to a man he met named Charles Ponzi. A century later, John takes special pride in protecting the public against broad-based frauds and swindles and the corruption of honest enterprise.

**PARTNER****Michella A. Kras**

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**YEARS OF EXPERIENCE**

21

**PRACTICE AREAS**

[Class Action](#)

[Commercial Litigation](#)

[Complex Civil Litigation](#)

[High Tech Litigation](#)

**BAR ADMISSIONS**

- Arizona

**COURT ADMISSIONS**

- U.S. District Court for the District of Arizona

**EDUCATION**

**ASU** Sandra Day O'Connor  
College of Law  
Arizona State University

Arizona State University College  
of Law, J.D., magna cum laude,  
2003

**ASU** Arizona State  
University

Arizona State University, B.A.,  
1997

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## State Bar of Arizona President's Volunteer Service Award, 2010

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**CURRENT ROLE**

- Partner, Hagens Berman Sobol Shapiro LLP
- Practice focuses on class-action lawsuits and complex litigation, including consumer rights. Ms. Kras' practice also focuses on personal injury, medical malpractice, wrongful death and bad-faith insurance claims.
- Ms. Kras has extensive expertise in complex litigation in a variety of commercial contexts, including actions involving various contractual breaches, RICO violations, securities fraud, negligent and intentional torts and federal and state employment law.

**RECENT SUCCESS**

- Michella was part of a litigation team that secured a \$95 million class action settlement with Apple for Apple's failure to honor its AppleCare warranties. Apple promised consumers who purchased AppleCare warranties that they would receive "equivalent to new" replacement iPhones and iPads. But consumers had no way of knowing that the replacement devices they received were not equivalent to new devices. The litigation team uncovered evidence that these replacement devices were inferior, which was concealed from consumers. The litigation team hired world-class experts to show that these replacement devices had a shorter lifespan and were more likely to fail than a new iPhone or iPad. The \$95 million settlement provides direct payments to all class members who received these inferior devices. In 2022, Judge Orrick granted final approval, noting that a \$95 million settlement "on an untested theory" was an "excellent settlement" for the class.
- In 2014, Michella was part of a litigation team that settled a data breach case against Maricopa County Community Colleges. In 2013, a data hack exposed the PII of about 2.4 million students, graduates, employees, and vendors. The litigation team secured credit monitoring for all 2.4 million class members.

**EXPERIENCE**

- Michella worked as an associate at another firm, where she was a member of the commercial and securities litigation group. Ms. Kras worked on complex litigation matters involving private securities offerings, private lending, asset purchase agreements, shareholder and member disputes, and federal and state wage and hour disputes.
- As an associate at a different law firm, her work included civil litigation, employment law, election law, health care law, and estate planning.
- Michella served as a judicial law clerk for the Arizona Supreme Court, where her work consisted of a variety of appeals, including civil cases, criminal actions, and attorney discipline.

#### LEGAL ACTIVITIES

- Consistent commitment to pro bono work; Michella has worked on several pro bono matters, including obtaining Special Juvenile Immigrant Status for a teenager that was brought to the United States as a toddler and later abandoned by her parent.
- Former volunteer and member of the steering committee for Wills for Heroes, an organization that provides free estate planning for Arizona's first responders.

#### RECOGNITION

- State Bar of Arizona President's Volunteer Service Award, 2010
- Rising Star, Southwest Super Lawyers, 2014-2015

#### NOTABLE CASES

- *Maldonado v. Apple, Inc.*
- *In re Swift Transportation Co., Inc.*
- *Liebich v. Maricopa County Community Colleges District*

#### PUBLICATIONS

- Co-author, "A Practitioner's Guide to Class Actions," West Virginia chapter of the American Bar Association, 2nd edition
- Co-author, "A Practitioner's Guide to Class Actions" West Virginia chapter of the American Bar Association, 3rd edition

## ASSOCIATE

## Tory Beardsley



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## YEARS OF EXPERIENCE

10

## PRACTICE AREAS

Consumer Rights  
High Tech Litigation

## INDUSTRY EXPERIENCE

- Consumer Fraud
- Medical Negligence

## BAR ADMISSIONS

- Arizona

## COURT ADMISSIONS

- U.S. District Court for the District of Arizona
- U.S. District Court for the District of Colorado

## EDUCATION

**ASU** Sandra Day O'Connor  
College of Law  
Arizona State University

Arizona State University Sandra  
Day O'Connor College of Law, J.D.

**THE UNIVERSITY**  
OF ARIZONA  
University of Arizona, B.A.,  
Journalism & English Literature

Ms. Beardsley has experience in prosecuting a variety of cases, including wrongful death, medical malpractice, negligence, fraud, consumer protection, data breach and bad faith insurance cases.

## CURRENT ROLE

- Associate, Hagens Berman Sobol Shapiro LLP
- Ms. Beardsley has experience prosecuting wrongful death, medical malpractice, negligence, negligence per se, intentional and negligent infliction of emotional distress, unjust enrichment, fraud, consumer protection, data breach and bad faith insurance cases.

## RECENT CASES

- Member of the trial team representing the families of three patients who died after receiving dialysis at DaVita clinics. The case culminated with a \$383.5 million jury verdict.
- Ms. Beardsley has also aided in prosecuting data breach cases litigated by the firm in Arizona.
- Ms. Beardsley has been active in litigation challenging insurers' deliberate underpayments of total loss auto claims — unfair practices that short consumers after serious car accidents when they are often injured and at their most vulnerable. In early 2022, the U.S. District Court for the District of New Jersey granted plaintiffs' motion to certify a class of New Jersey consumers challenging GEICO's use of improper adjustments to lower payments and its failure to pay substantial taxes and fees owed.
- Ms. Beardsley is also a part of the Hagens Berman litigation team challenging several auto insurers' failure to pay stacked coverages for accidents involving uninsured or underinsured motorists. In 2023, Hagens Berman obtained a unanimous decision from the Arizona Supreme Court that people injured by underinsured motorists in Arizona have the right to add together (or "stack") insurance coverages for multiple vehicles under a single insurance policy.

## RECENT SUCCESS

- In June 2018, Ms. Beardsley was on the trial team where a Denver jury awarded a monumental \$383.5 million jury verdict against GranuFlo dialysis provider, DaVita Inc. culminating lawsuits brought by families of three patients who suffered cardiac arrests and died after receiving dialysis treatments at DaVita clinics. Each of the three parties was awarded \$125 million in punitive damages from the jury, with compensatory damages ranging from \$1.5 million to \$5 million.

#### EXPERIENCE

- Prior to beginning her litigation career at Hagens Berman, Ms. Beardsley specialized in land use and development with other firms in the Phoenix area, working closely with the local municipalities and politicians to gain approval on proposed developments and ensure developments compliance with city code and zoning ordinance.

#### ACTIVITIES

- Chair and member, Herberger Young Leadership Board

#### RECOGNITION

- Rising Star, Super Lawyers, 2024

#### PERSONAL INSIGHT

In her free time, Tory is usually outside and on the move. A native Phoenician, Tory enjoys exploring all that Arizona has to offer with her dog, Bruce, whether it be via off-roading, hiking, swimming or trail running.

# EXHIBIT 2

## RIGHTS AND RESPONSIBILITIES OF A POTENTIAL CLASS REPRESENTATIVE

Hagens Berman Sobol Shapiro LLP (“Hagens Berman” or “the Firm”) is associating as counsel in your case against Economy Preferred Insurance Company and Farmers Group Property and Casualty Insurance Company f/k/a Metropolitan Group Property and Casualty Insurance Group (“Economy”) regarding the insurer’s failure to appropriately stack and pay benefits owed for multiple insured vehicles. The Firm has the discretion to select the best persons to represent the interests of the class and its claims as a class representative. By signing this form, you give Hagens Berman permission to represent you in this matter. However, it does not guarantee that the Firm will utilize you as a class representative. If we do choose to proceed with you as the class representative, below is a description of your responsibilities to assist you in understanding your role. Please contact us at any time to clarify any of these points or if you have any questions.

1. **You are suing as a Class Representative.** As such, you represent the interests of all class members who have been affected by the challenged conduct. In this case, the class consists, roughly speaking, of all persons who purchased insurance policies from the target defendant (or its affiliates), and the insurer’s failure to appropriately stack and pay benefits owed for multiple insured vehicles.
  
2. **Duty as a Class Representative.** As a class representative, the Court requires that you adequately and fairly represent the class. This is your duty. Here is how you are expected to accomplish that duty:
  - a. You must be generally familiar with the litigation.
    - (1) This does not mean you must know every aspect of this litigation. We will keep you informed of major events, and this will satisfy your duty. You should read the Complaint and understand it generally. You should know who the parties are. You should know why you are suing.
    - (2) You may and should confer with us at any time you feel it is appropriate to do so.
  
  - b. You must vigorously prosecute the litigation.
 

This basically means you will authorize Hagens Berman to do what is necessary to successfully prosecute this case on behalf of the class. We will vigorously pursue this case.
  
  - c. You must hire lawyers experienced in class action litigation.
 

Hagens Berman has national experience in class actions. Hagens Berman has participated in numerous consumer products cases, including auto insurance cases, with aggregate recoveries in the billions of dollars.



3. **Preservation of Documents.** You must preserve all of your documents that are related to this case until it has concluded, or your counsel informs you otherwise. Those documents include any information you have, no matter how it is recorded, including not only “paper” records but all financial data as well as any e-mail or other types of computer data that are stored on hard drives, CDs, DVDs, floppy discs, or the like. Additionally, “documents” to be preserved should be read broadly to include any social media or other Internet postings that may pertain to any matter at issue in this case. “Documents” also includes any documents that someone else is keeping for you. If you have any questions about whether information or items that you have should be retained, ask Hagens Berman.
4. **Postings to Social Media Sites or Internet Websites.** In order to help preserve the attorney-client privilege, as well as the work product and other case-related protections, you agree not to post information regarding this matter, or communications between us, to social media sites or to Internet websites.
5. **Responsibility for Costs.** Costs are such items as filing fees, photocopies, transcript costs, and the cost of notices if necessary. All costs are being advanced by Hagens Berman.
6. **Notice to the Class.** We will undertake this task on your behalf, and we will be responsible for all associated costs. Notice is usually accomplished by mailing a copy to identifiable class members and publishing a copy in newspapers.
7. **No Special Treatment.** You have not been promised any special treatment above the treatment which may be awarded to other class members. If successful in the Class Action, we will likely ask the judge to award you additional compensation for the extra time and effort you expend as a class representative and for having the courage to challenge defendant’s conduct. We cannot guarantee the judge will award additional compensation or the amount of such compensation.

Jesus Caballero

**No Special Treatment acknowledgment:** \_\_\_\_\_

8. **No Compensation to be a Plaintiff.** You have not been given nor received any type of compensation by Hagens Berman or anyone else to become or be a plaintiff in this case.

Jesus Caballero

**No Compensation to be a Plaintiff acknowledgement:** \_\_\_\_\_

9. **You Initiated the Lawsuit.** You are the one who initiated the request to file a lawsuit and take action against the target defendant(s).

Jesus Caballero

**You Initiated the Lawsuit acknowledgement:** \_\_\_\_\_

10. **You Do Not Have a Duty to Investigate or to Be an Expert.** As an intimidation tactic, the defendant(s) may ask you in a deposition what investigation you have undertaken to fulfill your duty as a class representative. You have no such duty personally—that is why you have hired experienced lawyers. We have conducted a thorough investigation and you have fulfilled your duty by relying on us to do so. We will and have discussed with you

our investigation. Nonetheless, it is a good practice for you to familiarize yourself with the allegations in the Complaint and to read our reports to you.

11. **Attorneys' Fees.** Our fees (payment for our time) must be approved by the Court and are dependent upon a recovery. Typically, the range of our fee request is 20% to 33-1/3% of the recovery plus reimbursement of costs. You will be provided with notice of our fee request, and you will have the opportunity to discuss it with us and object to our request if you choose to do so. Whether or not we are successful in this litigation, you will not be obligated for any of our attorneys' fees. In the unlikely event the Court were to award the defendants' fees or costs, we will pay these.

Jesus Caballero

**Attorney's Fees acknowledgement:** \_\_\_\_\_

It is further understood, agreed, and acknowledged by the Client that there may be a sharing of attorney's fees by and between Hagens Berman and other counsel, and further that such co-counsel may assume joint responsibility for the performance of legal services. Client understands that there may be a sharing of the fee at the discretion of the attorney.

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12. **Settlement.** If this case settles and does not go to trial, the settlement must be approved by the Court. You are entitled to object to the settlement if you do not agree with our recommendation to settle. We will consult you before recommending a settlement.
13. **Judicial Approval.** In prosecuting a class action, all of our actions are subject to judicial approval, and courts take that approval seriously. Thus, we are subject to scrutiny that other lawyers, including defendants' counsel, never receive. This should provide you comfort that our actions will be of the highest professional caliber.
14. **Denial of Class Certification.** If class certification is denied, or the Class once certified is later decertified, we do not have an obligation to represent you in your individual claim unless we enter into a separate retainer agreement with you. Likewise, if we are unable to pursue a class claim on your behalf, we do not have an obligation to represent you in your individual claims unless we enter into a separate retainer agreement with you.
15. **Attorneys.** The following is a list of the names and addresses of the attorneys who are representing your interests in this case:


Robert B. Carey  
John M. DeStefano  
HAGENS BERMAN SOBOL SHAPIRO LLP  
11 West Jefferson, Suite 1000  
Phoenix, AZ 85003  
Telephone: (602) 840-5900  
Facsimile: (602) 840-3012  
[rob@hbsslaw.com](mailto:rob@hbsslaw.com)

Brett Slavicek  
Justin Henry  
SLAVICEK LAW FIRM  
5500 N 24<sup>th</sup> Street  
Phoenix, AZ 85016  
Telephone: (602) 285-4425  
Facsimile: (602) 287-9184  
[brett@slaviceklaw.com](mailto:brett@slaviceklaw.com)

Additional counsel may be associated with this litigation. We will contact you should that become advisable.

Read and agreed to on: Oct 6, 2023, 2023:

Enter signature in the space below:

  
Jesus Caballero (Oct 6, 2023 16:28 PDT)

Printed Name: Jesus Caballero  
Current Address: 4903 S 4th Ave. Phoenix, Arizona 85041  
Home Telephone: 602-316-7629  
Cell Phone: ~~602-316-7629~~

J

# Association Agmt - Caballero

Final Audit Report

2023-10-06

Created:	2023-10-06
By:	natalie newell (natalie@slaviceklaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA-0N7PpcD4-0RrZ3vIwgW18tyQINmWUp7

## "Association Agmt - Caballero" History



Document created by natalie newell (natalie@slaviceklaw.com)

2023-10-06 - 10:02:58 PM GMT- IP address: 70.167.207.227



Document emailed to Jesus Caballero (caballerojesus626@gmail.com) for signature

2023-10-06 - 10:08:27 PM GMT



Email viewed by Jesus Caballero (caballerojesus626@gmail.com)

2023-10-06 - 11:11:06 PM GMT- IP address: 68.106.15.117



Document e-signed by Jesus Caballero (caballerojesus626@gmail.com)

Signature Date: 2023-10-06 - 11:28:21 PM GMT - Time Source: server- IP address: 68.106.15.117



Agreement completed.

2023-10-06 - 11:28:21 PM GMT



# EXHIBIT 3

## RIGHTS AND RESPONSIBILITIES OF A POTENTIAL CLASS REPRESENTATIVE

Hagens Berman Sobol Shapiro LLP (“Hagens Berman” or “the Firm”) is associating as counsel in your case against Farmers Casualty Insurance Company f/k/a Metropolitan Casualty Insurance Company (“Farmers”) regarding the insurer’s failure to appropriately stack and pay benefits owed for multiple insured vehicles. The Firm has the discretion to select the best persons to represent the interests of the class and its claims as a class representative. By signing this form, you give Hagens Berman permission to represent you in this matter. However, it does not guarantee that the Firm will utilize you as a class representative. If we do choose to proceed with you as the class representative, below is a description of your responsibilities to assist you in understanding your role. Please contact us at any time to clarify any of these points or if you have any questions.

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    - (2) You may and should confer with us at any time you feel it is appropriate to do so.
  - b. You must vigorously prosecute the litigation.
 

This basically means you will authorize Hagens Berman to do what is necessary to successfully prosecute this case on behalf of the class. We will vigorously pursue this case.
  - c. You must hire lawyers experienced in class action litigation.
 

Hagens Berman has national experience in class actions. Hagens Berman has participated in numerous consumer products cases, including auto insurance cases, with aggregate recoveries in the billions of dollars.
3. **Preservation of Documents.** You must preserve all of your documents that are related to this case until it has concluded, or your counsel informs you otherwise. Those documents



include any information you have, no matter how it is recorded, including not only “paper” records but all financial data as well as any e-mail or other types of computer data that are stored on hard drives, CDs, DVDs, floppy discs, or the like. Additionally, “documents” to be preserved should be read broadly to include any social media or other Internet postings that may pertain to any matter at issue in this case. “Documents” also includes any documents that someone else is keeping for you. If you have any questions about whether information or items that you have should be retained, ask Hagens Berman.

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5. **Responsibility for Costs.** Costs are such items as filing fees, photocopies, transcript costs, and the cost of notices if necessary. All costs are being advanced by Hagens Berman.
6. **Notice to the Class.** We will undertake this task on your behalf, and we will be responsible for all associated costs. Notice is usually accomplished by mailing a copy to identifiable class members and publishing a copy in newspapers.
7. **No Special Treatment.** You have not been promised any special treatment above the treatment which may be awarded to other class members. If successful in the Class Action, we will likely ask the judge to award you additional compensation for the extra time and effort you expend as a class representative and for having the courage to challenge defendant’s conduct. We cannot guarantee the judge will award additional compensation or the amount of such compensation.

**No Special Treatment acknowledgment: CC**

8. **No Compensation to be a Plaintiff.** You have not been given nor received any type of compensation by Hagens Berman or anyone else to become or be a plaintiff in this case.

**No Compensation to be a Plaintiff acknowledgement: CC**

9. **You Initiated the Lawsuit.** You are the one who initiated the request to file a lawsuit and take action against the target defendant(s).

**You Initiated the Lawsuit acknowledgement: CC**

10. **You Do Not Have a Duty to Investigate or to Be an Expert.** As an intimidation tactic, the defendant(s) may ask you in a deposition what investigation you have undertaken to fulfill your duty as a class representative. You have no such duty personally—that is why you have hired experienced lawyers. We have conducted a thorough investigation and you have fulfilled your duty by relying on us to do so. We will and have discussed with you, our investigation. Nonetheless, it is a good practice for you to familiarize yourself with the allegations in the Complaint and to read our reports to you.

11. **Attorneys' Fees.** Our fees (payment for our time) must be approved by the Court and are dependent upon a recovery. Typically, the range of our fee request is 20% to 33-1/3% of the recovery plus reimbursement of costs. You will be provided with notice of our fee request, and you will have the opportunity to discuss it with us and object to our request if you choose to do so. Whether or not we are successful in this litigation, you will not be obligated for any of our attorneys' fees. In the unlikely event the Court were to award the defendants' fees or costs, we will pay these.

**Attorney's Fees acknowledgement: CC**

It is further understood, agreed, and acknowledged by the Client that there may be a sharing of attorney's fees by and between Hagens Berman and other counsel, and further that such co-counsel may assume joint responsibility for the performance of legal services. Client understands that there may be a sharing of the fee at the discretion of the attorney.

At the end of the litigation, in the event the Court awards attorneys' fees, counsel for plaintiff will allocate the fees as agreed among those counsel participating in the litigation, based on factors such as compensable time spent working on the litigation and importance of contribution to the successful outcome. This allocation will not increase the total amount of fees.

12. **Settlement.** If this case settles and does not go to trial, the settlement must be approved by the Court. You are entitled to object to the settlement if you do not agree with our recommendation to settle. We will consult you before recommending a settlement.
13. **Judicial Approval.** In prosecuting a class action, all of our actions are subject to judicial approval, and courts take that approval seriously. Thus, we are subject to scrutiny that other lawyers, including defendants' counsel, never receive. This should provide you comfort that our actions will be of the highest professional caliber.
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Phoenix, AZ 85003  
Telephone: (602) 840-5900  
Facsimile: (602) 840-3012  
[rob@hbsslaw.com](mailto:rob@hbsslaw.com)

Brett Slavicek  
Justin Henry  
SLAVICEK LAW FIRM  
5500 N 24<sup>th</sup> Street  
Phoenix, AZ 85016  
Telephone: (602) 285-4425  
Facsimile: (602) 287-9184  
[brett@slaviceklaw.com](mailto:brett@slaviceklaw.com)

Additional counsel may be associated with this litigation. We will contact you should that become advisable.

Read and agreed to on: 2/14, 2024:

Enter signature in the space below:



Printed Name: Charles Creasman

Current Address: 6340 N. 44<sup>th</sup> St. Paradise Valley, AZ 85253

Home Telephone: 602-618-4010

Cell Phone: 602-618-4010

E-mail Address: aofs@att.net

# EXHIBIT 4

## RIGHTS AND RESPONSIBILITIES OF A POTENTIAL CLASS REPRESENTATIVE

Hagens Berman Sobol Shapiro LLP (“Hagens Berman” or “the Firm”) is associating as counsel in your case against Farmers Group Property and Casualty Insurance Company f/k/a Metropolitan Group Property and Casualty Insurance Group (“Farmers”) regarding the insurer’s failure to appropriately stack and pay benefits owed for multiple insured vehicles. The Firm has the discretion to select the best persons to represent the interests of the class and its claims as a class representative. By signing this form, you give Hagens Berman permission to represent you in this matter. However, it does not guarantee that the Firm will utilize you as a class representative. If we do choose to proceed with you as the class representative, below is a description of your responsibilities to assist you in understanding your role. Please contact us at any time to clarify any of these points or if you have any questions.

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2. **Duty as a Class Representative.** As a class representative, the Court requires that you adequately and fairly represent the class. This is your duty. Here is how you are expected to accomplish that duty:

- a. You must be generally familiar with the litigation.

- (1) This does not mean you must know every aspect of this litigation. We will keep you informed of major events, and this will satisfy your duty. You should read the Complaint and understand it generally. You should know who the parties are. You should know why you are suing.
- (2) You may and should confer with us at any time you feel it is appropriate to do so.

- b. You must vigorously prosecute the litigation.

This basically means you will authorize Hagens Berman to do what is necessary to successfully prosecute this case on behalf of the class. We will vigorously pursue this case.

- c. You must hire lawyers experienced in class action litigation.

Hagens Berman has national experience in class actions. Hagens Berman has participated in numerous consumer products cases, including auto insurance cases, with aggregate recoveries in the billions of dollars.



3. **Preservation of Documents.** You must preserve all of your documents that are related to this case until it has concluded, or your counsel informs you otherwise. Those documents include any information you have, no matter how it is recorded, including not only “paper” records but all financial data as well as any e-mail or other types of computer data that are stored on hard drives, CDs, DVDs, floppy discs, or the like. Additionally, “documents” to be preserved should be read broadly to include any social media or other Internet postings that may pertain to any matter at issue in this case. “Documents” also includes any documents that someone else is keeping for you. If you have any questions about whether information or items that you have should be retained, ask Hagens Berman.
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7. **No Special Treatment.** You have not been promised any special treatment above the treatment which may be awarded to other class members. If successful in the Class Action, we will likely ask the judge to award you additional compensation for the extra time and effort you expend as a class representative and for having the courage to challenge defendant’s conduct. We cannot guarantee the judge will award additional compensation or the amount of such compensation.

**No Special Treatment acknowledgment:** RTL

8. **No Compensation to be a Plaintiff.** You have not been given nor received any type of compensation by Hagens Berman or anyone else to become or be a plaintiff in this case.

**No Compensation to be a Plaintiff acknowledgement:** RTL

9. **You Initiated the Lawsuit.** You are the one who initiated the request to file a lawsuit and take action against the target defendant(s).

**You Initiated the Lawsuit acknowledgement:** RTL

10. **You Do Not Have a Duty to Investigate or to Be an Expert.** As an intimidation tactic, the defendant(s) may ask you in a deposition what investigation you have undertaken to fulfill your duty as a class representative. You have no such duty personally—that is why you have hired experienced lawyers. We have conducted a thorough investigation and you have fulfilled your duty by relying on us to do so. We will and have discussed with you



our investigation. Nonetheless, it is a good practice for you to familiarize yourself with the allegations in the Complaint and to read our reports to you.

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**Attorney's Fees acknowledgement:** PTL

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Brett Slavicek  
Justin Henry  
SLAVICEK LAW FIRM  
5500 N 24th Street  
Phoenix, AZ 85016  
Telephone: (602) 285-4425  
Facsimile: (602) 287-9184  
[brett@slaviceklaw.com](mailto:brett@slaviceklaw.com)

Additional counsel may be associated with this litigation. We will contact you should that become advisable.

Read and agreed to on: APRIL 3, 2024:

Enter signature in the space below:

  
\_\_\_\_\_

Printed Name: Richard Luna

Current Address: 2148 W MONTE CRISTO AVENUE, PHOENIX, AZ 85023

Home Telephone: 602-999-6179

Cell Phone: \_\_\_\_\_

# EXHIBIT 5



## RIGHTS AND RESPONSIBILITIES OF A POTENTIAL CLASS REPRESENTATIVE

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**No Special Treatment acknowledgment:** BW

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**No Compensation to be a Plaintiff acknowledgement:** BW

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**You Initiated the Lawsuit acknowledgement:** BW

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**Attorney's Fees acknowledgement:** BW

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At the end of the litigation, in the event the Court awards attorneys' fees, counsel for plaintiff will allocate the fees as agreed among those counsel participating in the litigation, based on factors such as compensable time spent working on the litigation and importance of contribution to the successful outcome. This allocation will not increase the total amount of fees.

12. **Settlement.** If this case settles and does not go to trial, the settlement must be approved by the Court. You are entitled to object to the settlement if you do not agree with our recommendation to settle. We will consult you before recommending a settlement.
13. **Judicial Approval.** In prosecuting a class action, all of our actions are subject to judicial approval, and courts take that approval seriously. Thus, we are subject to scrutiny that other lawyers, including defendants' counsel, never receive. This should provide you comfort that our actions will be of the highest professional caliber.
14. **Denial of Class Certification.** If class certification is denied, or the Class once certified is later decertified, we do not have an obligation to represent you in your individual claim unless we enter into a separate retainer agreement with you. Likewise, if we are unable to pursue a class claim on your behalf, we do not have an obligation to represent you in your individual claims unless we enter into a separate retainer agreement with you.
15. **Attorneys.** The following is a list of the names and addresses of the attorneys who are representing your interests in this case:

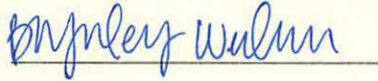
Robert B. Carey  
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Brett Slavicek  
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5500 N 24<sup>th</sup> Street  
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Telephone: (602) 285-4425  
Facsimile: (602) 287-9184  
[brett@slaviceklaw.com](mailto:brett@slaviceklaw.com)

Additional counsel may be associated with this litigation. We will contact you should that become advisable.

Read and agreed to on: April 20, 2024:

Enter signature in the space below:



Printed Name: Brynley Wilhelm

Current Address: 920 W Combs Rd Unit 235, Queen Creek, AZ 85140

Home Telephone: 480-248-4457

Cell Phone: 480-248-4457

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Jesus Caballero,

Plaintiff,

v.

Economy Preferred Insurance Company, et  
al.,

Defendants.

Nos. CV-22-02023-PHX-MTL  
CV-22-01820-PHX-MTL  
CV-24-01267-PHX-MTL  
CV-24-01270-PHX-MTL

[Consolidated]

**[PROPOSED] ORDER**

(Honorable Michael T. Liburdi)

1           Upon consideration of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service  
2 Awards, associated submissions, any opposition by Defendant, any Reply thereto, and other  
3 materials on file with this case,

4           IT IS HEREBY ORDERED that Plaintiffs' Motion for Attorneys' Fees, Expenses and  
5 Service Awards is GRANTED.

6           IT IS FURTHER ORDERED that Plaintiffs be awarded \$3,480,000.00 in attorneys' fees  
7 and \$79,136.03 in expenses.

8           IT IS FURTHER ORDERED that Service Awards of \$7,500 be awarded to Plaintiffs  
9 Jesus Caballero, Charles Creasman, Richard Luna, and Brynley Wilhelm respectively.