

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----	x	MDL No. 1409
	:	M 21-95
IN RE	:	
	:	
CURRENCY CONVERSION FEE	:	
ANTITRUST LITIGATION	:	
	:	
	x	Index No. 05 CV 7116 (WHP)
THIS DOCUMENT RELATES TO:	:	
	:	
ROBERT ROSS, et al.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	Jury Trial Demanded
	:	
BANK OF AMERICA, N.A, et al.,	:	
	:	
Defendants.	:	
	:	
-----	x	

**DECLARATION OF CHARLES P. GOODWIN IN SUPPORT OF  
BERGER & MONTAGUE, P.C.'S APPLICATION FOR  
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, Charles P. Goodwin, declare as follows:

1. I am a shareholder of the law firm of Berger & Montague, P.C. ( "Berger & Montague"). My firm has acted as counsel to Class Plaintiff in this action.
2. I am submitting this Declaration in support of Class Plaintiffs' application for an award of attorneys' fees for services rendered in the above-captioned litigation and for reimbursement of costs and expenses incurred in connection with this litigation.

3. Berger & Montague's compensation for the services rendered on behalf of Plaintiffs and the Settlement Class is wholly contingent, and the firm has been completely at risk that it would not receive any compensation for prosecuting these claims against the defendants.

4. All attorneys, paralegals and clerks at my firm are instructed to keep contemporaneous time records reflecting the time spent on this and other matters.

5. Attached as Exhibit 1 hereto is a précis of Berger & Montague's qualifications and accomplishments.

6. During the period from the inception of the case through May 1, 2010, Berger & Montague performed 10,035.40 hours of work in connection with this litigation. Specifically, Berger & Montague and its attorneys, *inter alia*, investigated plaintiffs' claims prior to filing the complaint, drafted and filed the initial complaint, contested motions to dismiss and to stay, prosecuted a successful appeal in the United Court of Appeals for the Second Circuit, prepared class certification papers, retained experts and supervised the production of an expert report, negotiated stipulations concerning class certification, sought consolidation, promulgated and responded to written and document discovery, and took and defended depositions. In addition, Berger & Montague has coordinated and guided the work of other counsel as well as developed litigation and settlement strategy for the management of this matter.

7. The total lodestar amount for attorney/professional staff time based on the firm's rates, at the time of accrual, is \$3,540,134.25. Attached hereto as Exhibit 2 is a schedule containing a detailed summary indicating amount of time – by category – spent by the shareholders, associates and other professional support staff of my firm who were involved in this litigation, the number of hours worked, their rates and their respective lodestar values. The rates at which the firm seeks compensation are its usual and customary hourly rates charged for its attorneys'

and professionals' services in similar complex class action litigation and do not include charges for expense items, which are billed separately. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm. None of the time included in this fee application represents any work done in connection with preparing this Declaration or otherwise related to petitioning for award of attorneys' fees or seeking reimbursement of costs.

8. All of the services performed by Berger & Montague in connection with this litigation were reasonably necessary in the prosecution of this case. There has been no unnecessary duplication of services for which the firm now seeks compensation.

9. During the period from inception of this litigation through May 1, 2010, Berger & Montague incurred unreimbursed expenses in connection with the prosecution of this litigation in the sum of \$232,673.69. These expenses were reasonably and necessarily incurred in connection with this litigation and are detailed in the chart attached as Exhibit 3.

10. The expenses incurred are reflected on the books and records of Berger & Montague. These books and records are prepared from checks, expense vouchers and other source materials which are regularly kept and maintained by the firm and accurately represent the expenses incurred.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of May, 2010.

A handwritten signature in black ink, appearing to read 'C. P. Goodwin', is written over a horizontal line. The signature is stylized and cursive.

Charles P. Goodwin

# Exhibit 1

**Berger & Montague, P.C.**  
ATTORNEYS AT LAW

## BERGER & MONTAGUE, P.C.

### **THE FIRM:**

Berger & Montague has been engaged in the practice of complex and class action litigation from its Center City Philadelphia office for 40 years. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of securities, antitrust, mass torts, civil and human rights, employment and consumer litigation. In numerous precedent-setting cases, the Berger firm has played a principal or lead role. The firm has achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell*. Currently, the firm consists of 66 lawyers, approximately half of whom are engaged full-time in securities litigation; 18 paralegals; several professional investigators; and an experienced support staff.

Berger & Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm's complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas, and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger & Montague has established new law and forged the path for recovery for victims of fraud and other wrongdoing.

The firm has been involved in a series of notable cases, some of them among the most important in the last 35 years of civil litigation. For example, the firm was one of the principal counsel for plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately \$2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980's. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of \$5 billion against Exxon, later reduced by U.S. Supreme Court by \$507.5 million. Berger & Montague was lead counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered in excess of \$300 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger & Montague was also lead/liaison counsel in the *Three Mile Island Litigation* arising out of a serious nuclear incident.

In the area of securities litigation, the firm has represented public institutional investors - such as the retirement funds for the States of Pennsylvania, Connecticut, New Hampshire, New Jersey Louisiana and Ohio, as well as the City of Philadelphia and numerous individual investors and private institutional investors. The firm was co-lead counsel in the *Melridge Securities Litigation* in the Federal District Court in Oregon, in which an \$88.2 million jury verdict was obtained. Berger and Montague has served as lead counsel in numerous other major class action

cases, including those against *Merrill Lynch* (settlement for investors of \$475 million) and *Rite Aid* (settlements totaling \$334 million), to name only two of the most notable successes.

In addition to its distinction in securities litigation, the firm has served as lead, co-lead or co-trial counsel on many of the most significant civil antitrust cases over the last 30 years, including *In re Corrugated Container Antitrust Litigation* (recovery in excess of \$366 million), the *Infant Formula* case (recovery of \$125 million), and the *Brand Name Prescription Drug* price fixing case (settlement of more than \$700 million) and the *State of Connecticut Tobacco Litigation* (settlement of \$3.6 billion). The firm has also played a leading role in cases in the pharmaceutical arena, especially in cases involving the delayed entry of generic or other rival drug competition, having achieved over \$1 billion in settlements in such cases over the past decade. Additionally in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a \$1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm has also played an instrumental role in bringing about a \$4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

The *National Law Journal* for the fifth time in the past six years selected Berger & Montague as one of the top plaintiffs' litigation firms in the U.S. based on its most recent performance and its combined track record of successes in the last 3-to-5 year period. Normally 15 or less firms are chosen for this honor. The *Legal 500*, a guide to worldwide legal services providers, has repeatedly cited Berger & Montague's antitrust practice as "stand[ing] out by virtue of its first-class trial skills." For four straight years, Berger & Montague has been selected by *Chambers and Partners' USA's America's Leading Lawyers for Business* as one of Pennsylvania's top antitrust firms. *Chambers USA* has specifically noted that Berger & Montague "specializes in plaintiffs' antitrust class actions, and is noted for its exceptional work in pharmaceutical and financial disputes."

In 2009, *Employment Law360*<sup>o</sup> named Berger & Montague as one of the top employment plaintiffs' firms in the U.S. selecting only eight law firms in the country for this honor. Also in 2009, The Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award on the Berger & Montague trial team in the Rocky Flats mass environmental tort class action for their "long and hard-fought" victory against "formidable corporate and government defendants," the second time Berger & Montague has won this honor. The award recognized a \$926 million judgment won after eighteen years of litigation and a four-month jury trial.

## JUDICIAL PRAISE FOR BERGER & MONTAGUE ATTORNEYS

Berger & Montague's record of successful prosecution of class actions and other complex litigation has been recognized and commended by judges and arbitrators across the country. Some remarks on the skill, efficiency, and expertise of the firm's attorneys are excerpted below.

### *Antitrust Litigation*

From **Judge William H. Pauley** of the U.S. District Court of the Southern District of New York:

“Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression.”

\* \* \*

“Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues . . . The law firms of Berger & Montague and [another firm] were indefatigable. They represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar.”

Regarding the work of Berger & Montague shareholders Merrill G. Davidoff and Ruthanne Gordon in *In re Currency Conversion Fee Antitrust Litigation*, MDL No. 1409, M21-95, slip op. at 33-34 (S.D.N.Y. Oct. 22, 2009)

From **Judge Charles P. Kocoras** of the U.S. District Court for the Northern District of Illinois:

“The stakes were high here, with the result that most matters of consequence were contested. There were numerous trips to the courthouse, and the path to the trial court and the Court of Appeals frequently traveled. The efforts of counsel for the class has [sic] produced a substantial recovery, and it is represented that the cash settlement alone is the second largest in the history of class action litigation. . . . There is no question that the results achieved by class counsel were extraordinary[.]”

Regarding the work of Berger & Montague shareholders H. Laddie Montague and Peter R. Kahana, among others, in achieving a more than \$700 million settlement with some of the defendants in *In Re Brand Name Prescription Drugs Antitrust Litigation*, 2000 U.S. Dist. LEXIS 1734 at \*5-6 (N.D. Ill. Feb. 9, 2000).

From **Judge Peter J. Messitte** of the U.S. District Court for the District of Maryland:

“The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt, the plaintiffs’ counsel are at the top of the profession in this regard and certainly have used their expertise to craft an extremely favorable settlement for their clients, and to that extent they deserve to be rewarded.”

Concerning the work of senior member, Merrill G. Davidoff, as stated in a Settlement Approval Hearing, Oct. 28, 1994. *Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.*, CA No. PJM-92-3624 (D. Md.).

From **Judge Donald W. Van Artsdalen** of the U.S. District Court for the Eastern District of Pennsylvania:

“As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs’ counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure.”

Commending the skills of firm then chairman David Berger, shareholder Martin Twersky, and other Berger & Montague attorneys, in *Bogosian v. Gulf Oil Corp.*, 621 F. Supp. 27, 31 (E.D. Pa. 1985).

From **Judge Joseph Blumenfeld** of the U.S. District Court for the District of Connecticut:

“The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions.”

Referencing the leadership of managing partner H. Laddie Montague, co-lead counsel, in *In re Master Key Antitrust Litigation*, 1977 U.S. Dist. LEXIS 12948 at \*34-35 (Nov. 4, 1977).

### *Securities Litigation*

From **Judge Jed Rakoff** of the U.S. District Court for the Southern District of New York at the fairness hearing on the \$475 million settlement and request for attorneys' fees:

“So I congratulate the plaintiffs’ counsel in this case for what I thought was a very reasonable request for attorneys’ fees.

But part of what I am saying is that in addition to all the traditional factors that are taken account of, percentage of lodestar and what have you, it seems to me it’s also important to look at what the investors are getting vis-a-vis what the attorneys are getting, and here I’m delighted to say it seems that the two correspond in a reasonable way.

Now, you have addressed at great length of your excellent submissions all the various factors, but let me hear if there is anything further that you wanted to say here.”

Praising the “very fine work done by plaintiff’s counsel” in *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, Master File No. 07-cv-9633(JSR)(DFE) (S.D.N.Y.), praising the work of Berger & Montague attorneys including Merrill G. Davidoff, Lawrence Lederer, Gary Cantor, Robin Switzenbaum and Arthur Stock.

From **Chief Justice Steele** and **Justices Holland, Berger, Jacobs and Ridgely** of the Delaware Supreme Court sitting *en banc*:

Stating that the case was litigated, Chancellor [Chandler] went on to find that:

“All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case. And I think that’s a testimony -- Mr. Valihura correctly says that’s what they are supposed to do. I recognize that; that is their job, and they were doing it professionally.”

Regarding the work of Lawrence Deutsch and Robin Switzenbaum in *In re Matter of The Philadelphia Stock Exchange, Inc.*, 945 A.2d 1123, 1143-44 (Del. 2008).

From **Chancellor William Chandler, III** of the Court of Chancery of Delaware when awarding counsel’s fee observed:

“Counsel, again, I want to thank you for your extraordinary efforts in obtaining this result for the class.”

Concerning Lawrence Deutsch and Robin Switzenbaum at the Plan of Allocation Approval Hearing in *Ginsburg v. Philadelphia Stock Exchange, Inc.*, C.A. No. 2202 (Del. Ch.) on July 2, 2008.

From **Judge Michael M. Baylson** of the U.S. District Court for the Eastern District of Pennsylvania:

“The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger & Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive.”

Praising the work of Berger & Montague attorneys including Securities Department Chair Sherrie R. Savett and shareholders Carole A. Broderick and Barbara A. Podell in *In re CIGNA Corp. Sec. Litig.*, 2007 U.S. Dist. LEXIS 51089, \*\*17-18 (E.D. Pa. July 13, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

“Thanks to the nimble class counsel, this sum, which once included securities worth \$149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received \$145,754,922.00. The class also received \$14,435,104 in interest on the Notes.

“Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over \$1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here.”

Praising the work of Berger & Montague attorneys including Securities Department Chair Sherrie R. Savett and shareholders Carole Broderick and Robin Switzenbaum in *In re Rite Aid Corp. Securities Litigation*, 269 F. Supp. 2d 603, 605 (E.D. Pa. 2003).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

“As to ‘the skill and efficiency of the attorneys involved,’ we can only echo what we said about some of the same lawyers in *U.S. Bioscience*. The results here are outstanding in a litigation that was far ahead of public agencies like the Securities and Exchange Commission and the United States Department of Justice. . . . At the same time, these attorneys have, through the division of their labors, represented the class most efficiently[.]”

Praising the work of Berger & Montague attorneys including Securities Department Chair, Sherrie R. Savett, in achieving settlements of over \$190 million in *In re Rite Aid Inc. Securities Litigation*, 146 F. Supp.2d 706, 735 (E.D. Pa. June 8, 2001).

From **Judge Marvin Katz** of the U.S. District Court for the Eastern District of Pennsylvania:

“Class counsel did a remarkable job in representing the class interests.”

Commenting on the work of Berger & Montague attorneys Merrill G. Davidoff, Todd S. Collins and Douglas M. Risen, on the partial settlement for \$111 million approved May, 2000, *In Re: IKON Office Solutions Securities Litigation*, 194 F.R.D. 166, 197 (E.D. Pa. 2000).

From Judge **Wayne R. Andersen** of the U.S. District Court for the Northern District of Illinois:

“...[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases...in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here ... I would say this has been the best representation that I have seen.”

Praising the work of Sherrie R. Savett , Carole A. Broderick, and Gary E. Cantor at a hearing in *In Re: Waste Management, Inc. Securities Litigation*, Civil Action No. 97-C 7709 (N.D. Ill. 1999).

From **Judge Helen J. Frye**, United States District Judge for the U.S. District Court for the District of Oregon:

In order to bring about this result [partial settlements then totaling \$54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District.

\* \* \*

Throughout the course of their representation, the attorneys at Berger & Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence.

Commenting, *inter alia*, on lead counsel, lead trial counsel and lead appellate counsel Merrill G. Davidoff in awarding fees on April 15, 1996 in *In Re Melridge, Inc. Securities Litigation*, No. CV 87-1426-FR (D. Ore.).

From **Judge Joseph F. Anderson, Jr.** of the U.S. District Court for the District of South Carolina:

“I don’t have a problem at all approving the settlement. In light of what you’ve said today and your submission to the Court and I am familiar with the case ... it was a sharply litigated case, with good lawyers on both sides and I think it’s an ideal case for settlement. It’s the largest settlement I’ve been called upon to approve in my eight years as a judge.”

Praising the work of Sherrie R. Savett, Securities Department Chair in achieving a \$32 million settlement in *In Re: Policy Management Systems Corporation*, Civil Action No. 3:93-0807-17 (D.S.C. 1993).

From **Judge John F. Keenan** of the U.S. District Court for the Southern District of New York:

“The quality of work of plaintiffs’ counsel on this case is also demonstrated by the efficient manner of prosecution. . . . At the settlement hearing, defense counsel conceded that plaintiffs’ counsel constitute the ‘cream of the plaintiffs’ bar.’ The court cannot find fault with that characterization.”

Regarding the work of Sherrie R. Savett in *In re Warner Communications Securities Litigation*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985).

### *Civil/Human Rights Cases*

From **Deputy Treasury Secretary Stuart E. Eizenstat**:

“We must be frank. It was the American lawyers, through the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German

companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them. . . . For this dedication and commitment to the victims, we should always be grateful to these lawyers.”

In his remarks at the July 17, 2000, signing ceremony for the international agreements which established the German Foundation to act as a funding vehicle for the payment of claims to Holocaust survivors.

### *Customer/Broker Arbitrations*

From **Robert E. Conner**, Public Arbitrator with the National Association of Securities Dealers, Inc.:

“. . . [H]aving participated over the last 17 years in 400 arbitrations and trials in various settings, . . . the professionalism and the detail and generally the civility of everyone involved has been not just a cause for commentary at the end of these proceedings but between ourselves [the arbitration panel] during the course of them, and . . . the detail and the intellectual rigor that went into the documents was fully reflective of the effort that was made in general. I wanted to make that known to everyone and to express my particular respect and admiration.”

About the efforts of Berger & Montague shareholders Merrill G. Davidoff and Eric L. Cramer, who achieved a \$1.1 million award for their client, in *Steinman v. LMP Hedge Fund, et al.*, NASD Case No. 98-04152, at Closing Argument, June 13, 2000.

### *Other*

From **Stephen M. Feiler, Ph.D.**, Director of Judicial Education, Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts, Mechanicsburg, PA *on behalf of the Common Pleas Court Judges (trial judges) of Pennsylvania*:

“On behalf of the Supreme Court of Pennsylvania and AOPC’s Judicial Education Department, thank you for your extraordinary commitment to the *Dealing with Complexities in Civil Litigation* symposia. We appreciate the considerable time you spent preparing and delivering this important course across the state. It is no surprise to me that the judges rated this among the best programs they have attended in recent years.”

About the efforts of Berger & Montague attorneys Merrill G. Davidoff, Peter Nordberg and David Sorensen in planning and presenting a CLE Program to trial judges in the Commonwealth of Pennsylvania.

## **PROMINENT JUDGMENTS AND SETTLEMENTS**

The success of Berger & Montague in prosecuting class actions and other complex litigation is best demonstrated by the firm's significant results for its clients. The following is a partial list of some of the more notable judgments and settlements:

### **Antitrust Litigation**

***In re Currency Conversion Fee Antitrust Litigation:*** Berger & Montague spearheaded a class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of \$336 million was finally approved in October 2009. (MDL No. 1409 (S.D.N.Y)).

***In re High Fructose Corn Syrup Antitrust Litigation:*** Berger & Montague was one of three co-lead counsel in this nationwide class action alleging a conspiracy to allocate volumes and customers and to price-fix among five producers of high fructose corn syrup. After nine years of litigation, including four appeals, the case was settled on the eve of trial for \$531 million. (MDL. No. 1087, Master File No. 95-1477 (C.D. Ill.)).

***In re Linerboard Antitrust Litigation:*** Berger & Montague was one of a small group of court-appointed executive committee members who led this nationwide class action against producers of linerboard. The complaint alleged that the defendants conspired to reduce production of linerboard in order to increase the price of linerboard and corrugated boxes made therefrom. At the close of discovery, the case was settled for more than \$200 million. (98 Civ. 5055 and 99-1341 (E.D. Pa.)).

***In re Terazosin Antitrust Litigation:*** Berger & Montague was one of a small group of firms alleging that Abbott Laboratories was paying its competitors to refrain from introducing less expensive generic versions of Hytrin. The case settled for a \$74.5 million settlement. (Case No. 99-MDL-1317 (S.D. Fla.)).

***In re Remeron Antitrust Litigation:*** Berger & Montague was one of a small group of firms alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Remeron. The case settled for a \$75 million settlement. (2:02-CV-02007-FSH (D. N.J.)).

***In re Tricor Antitrust Litigation:*** Berger & Montague was one of a small group of firms alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Tricor. The case settled for a \$250 million settlement. (No. 05-340 (D. Del.)).

***In re Relafen Antitrust Litigation:*** Berger & Montague was one of a small group of firms who prepared for the trial of this nationwide class action against GlaxoSmithKline, which was alleged

to have used fraudulently-procured patents to block competitors from marketing less-expensive generic versions of its popular nonsteroidal anti-inflammatory drug, Relafen (nabumetone). Just before trial, the case was settled for \$175 million. (No. 01-12239-WGY (D. Mass.)).

***State of Connecticut Tobacco Litigation:*** Berger & Montague was one of three firms to represent the State of Connecticut in a separate action in state court against the tobacco companies. The case was litigated separate from the coordinated nationwide actions. Although eventually Connecticut joined the national settlement, its counsel's contributions were recognized by being awarded the fifth largest award among the states from the fifty states' Strategic Contribution Fund.

***In re Microcrystalline Antitrust Litigation:*** Berger & Montague was one of two co-lead counsel in this class action alleging a conspiracy to fix the price of microcrystalline cellulose, used in the manufacture of many pharmaceuticals. The case was settled shortly before trial for a total of \$50 million. (MDL No. 1402 (E.D. Pa.)).

***In re Graphite Electrodes Antitrust Litigation:*** Berger & Montague was one of the four co-lead counsel in a nationwide class action price-fixing case. The case eventually settled in excess of \$130 million. (02 Civ. 99-482 (E.D. Pa.)).

***In re Buspirone Antitrust Litigation:*** The firm served on the court-appointed steering committee in this class action, representing a class of primarily pharmaceutical wholesalers and resellers. The Buspirone class action alleged that pharmaceutical manufacturer BMS engaged in a pattern of illegal conduct surrounding its popular anti-anxiety medication, Buspar, namely, paying a competitor to refrain from marketing a generic version of Buspar; improperly listing a patent with the FDA; and wrongfully prosecuting patent infringement actions against generic competitors to Buspar. On April 11, 2003, the Court finally approved a \$220 million settlement. (MDL No. 1410 (S.D.N.Y.)).

***In re Cardizem CD Antitrust Litigation:*** Berger & Montague served on the Executive Committee of firms appointed to represent the class of direct purchasers of Cardizem CD. The suit charged that Aventis (the brand-name drug manufacturer of Cardizem CD) entered into an illegal agreement to pay Andrx (the maker of a generic substitute to Cardizem CD) millions of dollars to delay the entry of the less expensive generic product. On November 26, 2002, the district court approved a final settlement against both defendants for \$110 million. (No. 99-MD-1278, MDL No. 1278 (E.D. Mich.)).

***In re Brand Name Prescription Drugs Antitrust Litigation:*** The firm served as co-lead counsel in this antitrust price-fixing class action on behalf of a class of purchasers of brand name prescription drugs. Following certification of the class by the district court, settlements exceeded \$717 million. (No. 94 C 897 (M.D. Ill.)).

***North Shore Hematology-Oncology Assoc., Inc. v. Bristol-Myers Squibb Co.:*** The firm was one of several prosecuting an action complaining of Bristol Myers's use of invalid patents to block competitors from marketing more affordable generic versions of its life-saving cancer drug, Platinol (cisplatin). The case settled for \$50 million. (No. 1:04CV248 (EGS) (D.D.C.)).

***In re Catfish Antitrust Litig. Action:*** The firm was co-trial counsel in this action which settled with the last defendant a week before trial, for total settlements approximating \$27 million. (No. 2:92CV073-D-O, MDL No. 928 (N.D. Miss.)).

***In re Carbon Dioxide Antitrust Litigation:*** The firm was co-trial counsel in this antitrust class action which settled with the last defendant days prior to trial for total settlements approximating \$53 million, plus injunctive relief. (MDL No. 940 (M.D. Fla.)).

***In re Infant Formula Antitrust Litigation:*** The firm served as co-lead counsel in an antitrust class action where settlement was achieved two days prior to trial, bringing the total settlement proceeds to \$125 million. (MDL No. 878 (N.D. Fla.)).

***Red Eagle Resources Corp., Inc., v. Baker Hughes, Inc.:*** The firm was a member of the plaintiffs' executive committee in this antitrust class action which yielded a settlement of \$52.5 million. (C.A. No. H-91-627 (S.D. Tex.)).

***In re Corrugated Container Antitrust Litigation:*** The firm, led by H. Laddie Montague, was co-trial counsel in an antitrust class action which yielded a settlement of \$366 million, plus interest, following a trial. (MDL No. 310 (S.D. Tex.)).

***Bogosian v. Gulf Oil Corp.:*** With Berger & Montague as sole lead counsel, this landmark action on behalf of a national class of more than 100,000 gasoline dealers against 13 major oil companies led to settlements of over \$35 million plus equitable relief on the eve of trial. (No. 71-1137 (E.D. Pa.)).

***In re Master Key Antitrust Litigation:*** The firm served as co-lead counsel in an antitrust class action that yielded a settlement of \$21 million during trial. (MDL No. 45 (D. Conn.)).

### **Securities Litigation**

***In re Merrill Lynch Securities Litigation:*** Berger & Montague, as co-lead counsel, obtained a recovery of \$475 million in 2009 for the benefit of the class in one of the largest recoveries among the recent financial crisis cases. (Civil Action No. 07-CV-09633 (S.D.N.Y.)).

***In re KLA Tencor Securities Litigation:*** The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of \$65 million in 2009 in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.)).

***Ginsburg v. Philadelphia Stock Exchange, Inc., et al.:*** The firm represented certain shareholders of the Philadelphia Stock Exchange in the Delaware Court of Chancery and in 2008, obtained a settlement valued in excess of \$99 million settlement. (C.A. No. 2202-CC (Del. Ch.)).

***In re Sepracor Inc. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of \$52.5 million for the benefit of bond and stock purchaser classes. (Civil Action No. 02-12235-MEL (D. Mass.)).

***In re CIGNA Corp. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of \$93 million for the benefit of the class. (Master File No. 2:02-CV-8088 (E.D. Pa.)).

***In re Fleming Companies, Inc. Securities Litigation:*** The firm, as lead counsel, obtained a class settlement of \$94 million for the benefit of the class. (Civil Action No. 5-03-MD-1530 (TJW) (E.D. Tex.)).

***In re Xcel Energy Inc. Securities, Derivative & “ERISA” Litigation:*** The firm, as co-lead counsel in the securities actions, obtained a cash settlement of \$80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (Civil Action No. 02-2677 (DSD/FLN) (D. Minn.)).

***Brown v. Kinross Gold U.S.A. Inc.:*** The firm represented lead plaintiffs as co-lead counsel and obtained \$29.25 million cash settlement and an additional \$6,528,371 in dividends for a gross settlement value of \$35,778,371. (No. 02-CV-0605 (D. Nev.))

***In re Campbell Soup Co. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of \$35 million for the benefit of the class. (Civil Action No. 00 152 (JEI) (D.N.J.)).

***In re Premiere Technologies, Inc. Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement of over \$20 million in combination of cash and common stock. (Civil Action No.1:98-CV-1804-JOF (N.D. Ga.)).

***In re: PSINet, Inc., Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of \$17.83 million on behalf of investors. (Civ. No. 00-1850-A (E.D. Va.)).

***In re Safety-Kleen Corp. Securities Litigation :*** The firm, as co-lead counsel, obtained a class settlement in the amount of \$45 million against Safety-Kleen’s outside accounting firm and certain of the Company’s officers and directors. The final settlement was obtained 2 business days before the trial was to commence. (C.A. No. 3:00-CV-736-17 (D.S.C.)).

***Emil Rossdeutscher and Dennis Kelly v. Viacom:*** The firm, as lead counsel, obtained a settlement resulting in a fund of \$14.25 million for the class. (C.A. No. 98C-03-091 (JEB) (Del. Super. Ct.)).

***Aldridge v. A.T. Cross Corp.:*** The firm represented a class of investors in a securities fraud class action against the A.T. Cross, and won a significant victory in the U.S. Court of Appeals for the First Circuit when that Court reversed the dismissal of the complaint and lessened the pleading standard for such cases in the First Circuit, holding that it would not require plaintiffs in a shareholder suit to submit proof of financial restatement in order to prove revenue inflation. See *Aldridge v. A.T. Cross Corp.*, 284 F.3d 72 (1st Cir. 2002). The case ultimately settled for \$1.5 million. (Civil Action 00203 ML (D.R.I.)).

***Silver v. UICI:*** The firm, as co-lead counsel, obtained a settlement resulting in a fund of \$16 million for the class. (No. 3:99 CV 2860-L (N.D. Tex.)).

***In re Alcatel Alsthom Securities Litigation:*** In 2001, the firm, as co-lead counsel, obtained a class settlement for investors of \$75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.)).

***In re Rite Aid Corp. Securities Litigation:*** The firm, as co-lead counsel, obtained settlements totaling \$334 million against Rite Aid's outside accounting firm and certain of the company's former officers. (99 CV 1349 (E.D. Pa.)).

***In re Sunbeam Inc. Securities Litigation:*** As co-lead counsel, the firm obtained a settlement on behalf of investors of \$141 million in the action against Sunbeam's outside accounting firm and Sunbeam's officers. (98 CV 8258 (S.D. Fla.)).

***In re Sotheby's Holding, Inc. Securities Litigation:*** The firm, as lead counsel obtained a \$70 million settlement, of which \$30 million was contributed, personally, by an individual defendant (No. 00 Civ. 1041 (DLC) (S.D.N.Y.)).

***In re Waste Management, Inc. Securities Litigation:*** In 1999, the firm, as co-lead counsel, obtained a class settlement for investors of \$220 million cash which included a settlement against Waste Management's outside accountants. (97 CV 7709 (N.D. Ill.)).

***In re IKON Office Solutions Inc. Securities Litigation:*** The firm, serving as both co-lead and liaison counsel, obtained a cash settlement of \$111 million in an action on behalf of investors against IKON and certain of its officers. (MDL Dkt. No. 1318 (E.D. Pa.)).

***In re Melridge Securities Litigation:*** The firm served as lead counsel and co-trial counsel for a class of purchasers of Melridge common stock and convertible debentures. A four-month jury trial yielded a verdict in plaintiffs' favor for \$88.2 million, and judgment was entered on RICO claims against certain defendants for \$239 million. The court approved settlements totaling \$55.4 million. (CV-87-1426 FR (D. Ore.)).

***Walco Investments, Inc. et al. v. Kenneth Thenen, et al. (Premium Sales):*** The firm, as a member of the plaintiffs' steering committee, obtained settlements of \$141 million for investors victimized by a Ponzi scheme. Reported at: 881 F. Supp. 1576 (S.D. Fla. 1995); 168 F.R.D. 315 (S.D. Fla. 1996); 947 F. Supp. 491 (S.D. Fla. 1996)).

***In re The Drexel Burnham Lambert Group, Inc.:*** The firm was appointed co-counsel for a mandatory non-opt-out class consisting of all claimants who had filed billions of dollars in securities litigation-related proofs of claim against The Drexel Burnham Lambert Group, Inc. and/or its subsidiaries. Settlements in excess of \$2.0 billion were approved in August 1991 and became effective upon consummation of Drexel's Plan of Reorganization on April 30, 1992. (90 Civ. 6954 (MP), Chapter 11, Case No. 90 B 10421 (FGC), Jointly Administered, reported at, *inter alia*, 960 F.2d 285 (2d Cir. 1992), *cert. dismissed*, 506 U.S. 1088 (1993) ("Drexel I") and 995 F.2d 1138 (2d Cir. 1993) ("Drexel II")).

***In re Michael Milken and Associates Securities Litigation:*** As court-appointed liaison counsel, the firm was one of four lead counsel who structured the \$1.3 billion "global" settlement of all claims pending against Michael R. Milken, over 200 present and former officers and directors of Drexel Burnham Lambert, and more than 350 Drexel/Milken-related entities. (MDL Dkt. No. 924, M21-62-MP (S.D.N.Y.)).

***RJR Nabisco Securities Litigation:*** In this action, Berger & Montague represented individuals who sold RJR Nabisco securities prior to the announcement of a corporate change of control. This securities case settled for \$72 million. (88 Civ. 7905 MBM (S.D.N.Y.)).

### **Individual Securities Actions**

***New Jersey v. Qwest Communications International:*** The Berger firm represented the pension funds for public employees in the State of New Jersey seeking to recover losses on their investments in Qwest common stock. The action settled for \$45 million. (MER-L-3738-02 (N.J. Super. Ct., Mercer Cty.)).

***Pennsylvania Public School Employees' Retirement System, et al. v. Time Warner, Inc., et al.:*** The Berger firm represented a group of pension funds seeking to recover for losses on their investments in AOL/Time Warner common stock. The case settled for \$23 million. (July 2003, No. 002103 (Pa. Ct. Com. Pl., Phila. Cty.)).

***Kelly v. McKesson HBOC, Inc.:*** The Berger firm represented a group of private shareholders who sold their companies to a large publicly-held corporation in exchange for \$103.5 million in stock. The case settled for a confidential sum on the eve of trial for a percentage of plaintiffs' damages far greater than plaintiffs would have received from a related class action. (C.A. No. 99C-09-265WCC (Del. Super. Ct.)).

***Forbes v. GMH:*** The Berger firm represented a private real estate developer/investor who sold a valuable apartment complex to GMH for cash and publicly-held securities. The case settled for a confidential sum which represented a significant portion of the losses experienced. (C.A. No. 07-cv-00979 (E.D. Pa.)).

### **Environmental/Mass Tort Litigation**

***In re Rocky Flats (Colo.) Nuclear Weapons Facility:*** In February 2006, the firm won a \$554 million jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium or other toxins. Judgment in the case was entered by the court in June 2008 which, with interest, totaled \$926 million (with proceedings now continuing on appeal). Recognizing this tremendous achievement, the Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award for 2009 on Mr. Davidoff and his team for their “long and hard-fought” victory against “formidable corporate and government defendants.” (No. 90-cv-00181-JLK (D. Colo.)).

***In re Exxon Valdez Oil Spill Litigation:*** On September 16, 1994, a jury trial of several months duration resulted in a record punitive damages award of \$5 billion against the Exxon defendants as a consequence of one of the largest oil spills in U.S. history. The award was reduced to \$507.5 million pursuant to a Supreme Court decision. David Berger was co-chair of the plaintiffs’ discovery committee (appointed by both the federal and state courts). Harold Berger served as a member of the organizing case management committee. H. Laddie Montague was specifically appointed by the federal court as one of the four designated trial counsel. Both Mr. Montague and Peter Kahana shared (with the entire trial team) the 1995 “Trial Lawyer of the Year Award” given by the Trial Lawyers for Public Justice. (No. A89-0095-CVCHRH (D. Alaska)).

***In re Ashland Oil Spill Litigation:*** The firm led by Harold Berger served as co-lead counsel and obtained a \$30 million settlement for damages resulting from a very large oil spill. (Master File No. M-14670 (W.D. Pa.)).

***In re School Asbestos Litigation:*** As co-lead counsel, the firm successfully litigated a case in which a nationwide class of elementary and secondary schools and school districts suffering property damage as a result of asbestos in their buildings were provided relief. Pursuant to an approved settlement, the class received in excess of \$70 million in cash and \$145 million in discounts toward replacement building materials. (No. 83-0268 (E.D. Pa.)).

***Drayton v. Pilgrim's Pride Corp.:*** The firm served as counsel in a consolidation of wrongful death and other catastrophic injury cases brought against two manufacturers of turkey products, arising out of a 2002 outbreak of *Listeria Monocytogenes* in the Northeastern United States, which resulted in the recall of over 32 million pounds of turkey – the second largest meat recall in U.S. history. A significant opinion issued in the case is *Drayton v. Pilgrim's Pride Corp.*, 472 F.Supp.2d 638 (E.D. Pa. 2006) (denying the defendants’ motions for summary judgment and applying the alternative liability doctrine). All of the cases settled on confidential terms in 2006. (No. 03-2334 (E.D. Pa.)).

***In re SEPTA 30th Street Subway/Elevated Crash Class Action:*** Berger & Montague represented a class of 220 persons asserting injury in a subway crash. Despite a statutory cap of \$1 million on damages recovery from the public carrier, and despite a finding of sole fault of the

public carrier in the investigation by the National Highway Transit Safety Administration, Berger & Montague was able to recover an aggregate of \$3.03 million for the class. (1990 Master File No. 0001 (Pa. Ct. Com. Pls., Phila. Cty.)).

***In re Three Mile Island Litigation:*** As lead/liaison counsel, the firm successfully litigated the case and reached a settlement in 1981 of \$25 million in favor of individuals, corporations and other entities suffering property damage as a result of the nuclear incident involved. (C.A. No. 79-0432 (M.D. Pa.)).

### **Health Care/ERISA Litigation**

***In re Unisys Corp. Retiree Medical Benefits:*** The firm, as co-lead counsel, handled the presentation of over 70 witnesses, 30 depositions, and over 700 trial exhibits in this action that has resulted in partial settlements in 1990 of over \$110 million for retirees whose health benefits were terminated. (MDL No. 969 (E.D. Pa.)).

***Local 56 U.F.C.W. v. Campbell Soup Co.:*** The firm represented a class of retired Campbell Soup employees in an ERISA class action to preserve and restore retiree medical benefits. A settlement yielded benefits to the class valued at \$114.5 million. (No. 93-MC-276 (SSB) (D.N.J.)).

### **Civil/Human Rights**

***In re Holocaust Victim Assets Litigation:*** Through membership on the executive committee in cases brought by Holocaust survivors against the three largest Switzerland-based banks, this litigation was settled for \$1.25 billion. (105 F. Supp.2d 139 (E.D.N.Y. 2000)).

***In re Nazi Era Cases Against German Defendants Litigation:*** Through the firm's co-lead counsel role, cases against German industry and banks for the use of slave and forced labor during the Nazi era were ultimately settled in the context of international negotiations which created a fund for victims of \$4.5 billion. (198 F.R.D. 429 (D.N.J. 2000)).

### **Consumer Litigation**

***Countrywide Predatory Lending Enforcement Action:*** Berger & Montague advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a landmark law enforcement proceeding against *Countrywide* (and its parent, Bank of America) culminating in 2008 in mortgage-related modifications and other relief for borrowers across the country valued at some \$8.6 billion.

***In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation:*** The firm served on the plaintiffs' steering committee and obtained an \$11.1 million

settlement in 2006 on behalf of persons who were incorrectly scored on a teacher's licensing exam. (MDL No. 1643 (E.D. La.)).

***In re TJX Companies Retail Security Breach Litigation:*** The firm served as co-lead counsel in litigation brought on behalf of persons whose personal and financial data was compromised in the then-largest computer theft of personal data in history. The case settled for benefits valued at over \$200 million including cash, store vouchers, identity theft insurance, as well as reimbursement of identity theft losses and driver's license replacement costs. (No. 1:07-cv-10162-WGY (D. Mass.)).

***Vadino, et al. v. American Home Products Corporation, et al.:*** The firm filed a class complaint different from that filed by any other of the filing firms in the New Jersey State Court "Fen Phen" class action, and the class sought in the firm's complaint was ultimately certified. It was the only case anywhere in the country to include a claim for medical monitoring. In the midst of trial, the New Jersey case was folded into a national settlement which occurred as the trial was ongoing, and which was structured to include a medical monitoring component worth in excess of \$1 billion. (Case Code No. 240 (N.J. Super. Ct.)).

***Block v. McDonald's Corporation:*** The firm served as co-lead counsel and obtained a settlement of \$12.5 million with McDonald's stemming from its failure to disclose the use of beef fat in its french fries. (No. 01-CH-9137 (Ill. Cir. Ct., Cook Cty.)).

***Parker v. American Isuzu Motors, Inc.:*** The firm served as sole lead counsel and obtained a claims-made settlement whereby class members recovered up to \$500 for economic damages resulting from accidents caused by faulty brakes. (Sept. Term 2003, No. 3476 (Pa. Ct. Com. Pl., Phila. Cty.)).

***Crawford v. Philadelphia Hotel Operating Co.:*** The firm served as co-lead counsel and obtained a claims-made settlement whereby persons who contracted food poisoning at a business convention recovered \$1,500 each. (March Term, 2004, No. 000070 (Pa. Ct. Com. Pl., Phila. Cty.)).

***In re Pet Foods Product Liability Litigation:*** The firm is currently serving as one of plaintiffs' co-lead counsel in this class action suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food and obtained a \$24 million cash settlement. (MDL Docket No. 1850 (D.N.J.))

### **Commercial Litigation**

***Erie Power Technologies, Inc. v. Aalborg Industries A/S, et al.:*** Berger & Montague represented a trustee in bankruptcy against officers and directors and the former corporate parent and obtained a very favorable confidential settlement. (No. 04-282E (W.D. Pa.)).

***Moglia v. Harris et al.***: Berger & Montague represented a liquidating trustee against the officers of U.S. Aggregates, Inc. and obtained a settlement of \$4 million. (No. C 04 2663 (CW) (N.D. Cal.)).

***Gray v. Gessow et al.***: The firm represented a litigation trust and brought two actions, one against the officers and directors of Sunterra Inc. an insolvent company, and the second against Sunterra's accountants, Arthur Andersen and obtained an aggregate settlement of \$4.5 million. (Case No. MJG 02-CV-1853 (D. Md.) and No. 6:02-CV-633-ORL-28JGG (M.D. Fla.)).

***Fitz, Inc. v. Ralph Wilson Plastics Co.***: The firm served as sole lead counsel and obtained, after 7 years of litigation, in 2000 a claims-made settlement whereby fabricator class members could obtain full recoveries for their losses resulting from defendants' defective contact adhesives. (No. 1-94-CV-06017 (D.N.J.)).

***Provident American Corp. and Provident Indemnity Life Insurance Company v. The Loewen Group Inc. and Loewen Group International Inc.***: Berger & Montague settled this individual claim, alleging a 10-year oral contract (despite six subsequent writings attempting to reduce terms to writing, each with materially different terms added, all of which were not signed), for a combined payment in cash and stock of the defendant, of \$30 Million. (No. 92-1964 (E.D. Pa.)).

***Marilou Whitney (Estate of Cornelius Vanderbilt Whitney) v. Turner/Time Warner***: Berger & Montague settled this individual claim for a confidential amount, seeking interpretation of the distribution agreement for the movie, *Gone with the Wind* and undistributed profits for the years 1993-1997, with forward changes in accounting and distribution.

***American Hotel Holdings Co., et. al v. Ocean Hotel Holdings, Inc., et. al.***: Berger & Montague defended against a claim for approximately \$16 million and imposition of a constructive trust, arising out of the purchase of the Latham Hotel in Philadelphia. Berger & Montague settled the case for less than the cost of the trial that was avoided. (June Term, 1997, No. 2144 (Pa. Ct. Com. Pl., Phila. Cty.))

***Creative Dimensions and Management, Inc. v. Thomas Group, Inc.***: Berger & Montague defended this case against a claim for \$30 million for breach of contract. The jury rendered a verdict in favor of Berger & Montague's client on the claim (i.e., \$0), and a verdict for the full amount of Berger & Montague's client on the counterclaim against the plaintiff. (No. 96-6318 (E.D. Pa.)).

### **Employment Litigation**

***Employees Committed for Justice v. Eastman Kodak Company:*** The firm served as co-lead counsel and obtained a settlement of \$21.4 million on behalf of a nationwide class of African American employees of Kodak alleging a pattern and practice of racial discrimination (pending final approval). A significant opinion issued in the case is *Employees Committed For Justice v. Eastman Kodak Co.*, 407 F.Supp.2d 423 (W.D.N.Y. 2005) (denying Kodak's motion to dismiss). No. 6:04-cv-06098 (W.D.N.Y.)).

***Salcido v. Cargill Meat Solutions Corp.:*** The firm served as co-lead counsel and obtained a settlement of \$7.5 million on behalf of a class of thousands of employees of Cargill Meat Solutions Corp. alleging that they were forced to work off-the-clock and during their breaks. This is one of the largest settlements of this type of case involving a single plant in U.S. history. (Civil Action Nos. 1:07-cv-01347-LJO-GSA and 1:08-cv-00605-LJO-GSA (E.D. Cal.)).

***Miller v. Hygrade Food Products, Inc.:*** The firm served as lead counsel and obtained a settlement of \$3.5 million on behalf of a group of African American employees of Sara Lee Foods Corp. to resolve charges of racial discrimination and retaliation at its Ball Park Franks plant. (No. 99-1087 (E.D. Pa.)).

***Chabrier v. Wilmington Finance, Inc.:*** The firm served as co-lead counsel and obtained a settlement of \$2,925,000 on behalf of loan officers who worked in four offices of to resolve claims for unpaid overtime wages. A significant opinion issued in the case is *Chabrier v. Wilmington Finance, Inc.*, 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant's motion to decertify the class). (No. 06-4176 (E.D. Pa.)).

***Bonnette v. Rochester Gas & Electric Co.:*** The firm served as co-lead counsel and obtained a settlement of \$2 million on behalf of a class of African American employees of Rochester Gas & Electric Co. to resolve charges of racial discrimination in hiring, job assignments, compensation, promotions, discipline, terminations, retaliation, and a hostile work environment. (No. 07-6635 (W.D.N.Y.)).

***Confidential.*** The firm served as lead counsel and obtained a settlement of \$6 million on behalf of a group of African American employees of a Fortune 100 company to resolve claims of racial discrimination, as well as injunctive relief which included significant changes to the Company's employment practices (settled out of court while charges of discrimination were pending with the U.S. Equal Employment Opportunity Commission).

### **Other Individual Litigation**

***Rita Rappaport v. Samuel Rappaport; Estate of Samuel Rappaport, Deceased:*** Berger & Montague settled this divorce action involving significant marital real estate holdings for in excess of \$20 million for the client.

## **BERGER & MONTAGUE ATTORNEY BIOS**

### **SHAREHOLDERS:**

#### **Merrill G. Davidoff**

Merrill G. Davidoff, a Senior Shareholder in the firm, received a B.A. degree from the University of Pennsylvania, and a J.D. from the University of Pennsylvania Law School (*cum laude*). He is admitted to practice law in the Commonwealth of Pennsylvania, the State of New York, the United States Supreme Court, and numerous federal Courts of Appeal. Mr. Davidoff is Co-Chairman of the Antitrust Department with Mr. Montague, Chairs the Environmental Group, and has litigated and tried a wide range of securities, antitrust, and environmental class actions.

In the Rocky Flats Nuclear Weapons Plant class action where Mr. Davidoff is lead counsel, the Court held the United States Department of Energy in contempt of court after a one week trial in November, 1995 (reported at 907 F. Supp. 1460 (D. Colo. 1995)). In 2005-2006, this class action finally went to trial (with Mr. Davidoff as lead trial counsel) and, in February 2006, the jury returned a special verdict for the plaintiffs for \$554 million, the largest property damage class action jury verdict ever. The verdict was the third-largest jury verdict of 2006 in the United States, according to *The National Law Journal*. In 2008, after extensive post-trial motions, the District Court entered a \$926 million judgment for plaintiffs in this case, resulting in the trial team's nomination as a finalist for the coveted "Trial Lawyer of the Year" award by the Public Justice Foundation. In July, 2009, the trial team led by Mr. Davidoff won the Public Justice "Trial Lawyer of the Year" award for its work on the *Rocky Flats* case.

In *In re Foreign Currency Fee Antitrust Litigation*, MDL No. 1409, where Mr. Davidoff and Berger & Montague are co-lead counsel, a proposed class action settlement of \$336 million with Visa, MasterCard, and a number of their member banks is pending court approval.

In *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720, one of the largest pending antitrust cases in the United States, H. Laddie Montague, Jr., Mr. Davidoff and Berger & Montague are one of the three Court-appointed co-lead counsel.

During his extensive legal career, Mr. Davidoff has represented diverse clients, including Burger King Corporation; John I. Haas, Inc.; Joh. Barth & Sohn, A.G.; Karhu, Inc.; Rexroth Corporation/Rexroth GmbH; ADVO System, Inc.; the LeFrak Organization; Mannesmann A.G.; Championship Auto Racing Teams, Inc.; DRDGold Limited Cascade Steel Rolling Mills, Inc.; Carpenter Technology Corp.; the State of New Jersey; and the City of Philadelphia. Mr. Davidoff represented the State of New Jersey in the *Qwest* securities litigation, securing a \$45 million "opt-out" settlement, and currently represents the State of New Jersey in "opt-out" litigation against former Lehman Brothers Inc. officers and directors. He has also represented many other large and small companies, sports teams, professional organizations, individuals and professional firms. He has acted as lead counsel and trial counsel in numerous antitrust,

commercial, environmental, and securities cases. He represented Championship Auto Racing Teams (“CART”), a major Indy-car race-sanctioning organization, in a series of antitrust cases against Indianapolis Motor Speedway and others. Mr. Davidoff has been a speaker at American Trial Lawyers Association meetings and seminars, and has addressed the Environmental and Toxic Torts Section at the National Convention of ATLA. He is also a member of the Antitrust and Business Law Sections of the American Bar Association, and served on the subcommittee of the American Bar Association Antitrust Section which prepared the 1985 supplement to the “Antitrust Civil Jury Instructions.”

In October, 2007, Mr. Davidoff was on the faculty of a continuing education program for all Pennsylvania Common Pleas (trial court) Judges, and received the following accolade:

On behalf of the Supreme Court of Pennsylvania and AOPC’s Judicial Education Department, thank you for your extraordinary commitment to the ***Dealing with Complexities in Civil Litigation*** symposia. We appreciate the considerable time you spent preparing and delivering this important course across the state. ***It is no surprise to me that the judges rated this among the best programs they have attended in recent years.***

*From: Stephen M. Feiler, Ph.D.  
Director of Judicial Education*

Mr. Davidoff served as co-lead and trial counsel for a plaintiff class in the first mass tort class action trial in federal court which resulted in a precedent-setting settlement for class members, *In re Louisville Explosions Litigation*. In the Canadian Radio-Television and Telecommunications Commission (“CRTC”) Decisions (*Challenge Communications, Ltd. v. Bell Canada*), Mr. Davidoff was lead counsel for Applicant (plaintiff) in three evidentiary hearings before the CRTC. The hearings resulted in the first precedent breaking Bell Canada’s monopoly over the telecommunications equipment which was connected to its telephone network. He was lead counsel in the *Revco Securities Litigation*, an innovative “junk bond” class action, which settled for \$36 million. Mr. Davidoff was lead plaintiffs’ counsel and lead trial counsel in *In re Melridge Securities Litigation*, tried to jury verdicts for \$88 million (securities fraud) and \$240 million (RICO). He was co-lead counsel for the class in *In re Graphite Electrodes Antitrust Litigation*, an international price-fixing case which yielded settlements ranging from 18% to 32% of the plaintiffs’ and class’ purchases from the defendants (aggregate settlements totaled \$134 million). He was one of co-lead counsel in the *Ikon Securities Litigation*, in which a settlement of \$111 million was obtained. He was co-lead counsel and designated lead trial counsel in the *In Re Sunbeam Securities Litigation*, where settlements of \$142 million were reached. One of his areas of concentration is representation in commodities futures and options matters, and expertise in derivatives. He has represented market-makers on the Philadelphia Stock Exchange, where he owned a member firm in the 1990s, as well as broker-dealers and market-makers on other exchanges.

In 2008, Chambers & Partners highly-regarded Chambers USA Edition rated Berger & Montague's Antitrust Practice as “the top choice for plaintiff antitrust representation, particularly in complex class actions.” Mr. Davidoff was described as a “giant in the field.”

### **Martin I. Twersky**

Mr. Twersky, a graduate of Yeshiva University (B.A. 1969, M.S. 1973), has practiced Antitrust Law and Complex Litigation at the firm for almost 30 years, during which time he has successfully represented numerous plaintiffs and defendants in both individual and class actions pending in state and federal courts. His practice has involved litigation in the oil and gas, banking, airline, waste hauling, agricultural chemicals and other regulated industries. He is a graduate of the University of Pennsylvania Law School (J.D. 1980). Among other cases, he has played a leading role in the following class action cases: *In re: Graphite Antitrust Litigation* (E.D. Pa.) (settlements of more than \$120 million dollars); *In re: Catfish Antitrust Litigation* (N.D. Miss.) (as a member of the trial team he helped obtain settlements of more than \$27 million dollars); *In re: Revco Securities Litigation* (N.D. Ohio) (“Junk Bond” class action where settlements of \$36 million were reached); *Bogosian v. Gulf Oil* (E.D. Pa.) (landmark litigation with settlements and injunctive relief on behalf of a nationwide class of gasoline dealers); and *Lease Oil Antitrust* (S.D. Tex.), where in a significant class action decision, the Fifth Circuit affirmed the granting of an injunction prohibiting settlements in related state court actions (*see* 200 F.3d 317 (5th Cir. 2000), *cert. denied*, 530 U.S. 1263). Mr. Twersky was appointed one of the co-lead counsel in *In re: Abrasive Grains Antitrust Litig.* (95-cv-7574) (W.D.N.Y.). Mr. Twersky has also played a key role in various non-class action cases, such as *Kutner Buick v. America Motors*, 848 F.2d 614 (3rd Circuit 1989) (breach of contract) (cited in the Advisory Committee Notes to the 1991 Amendment to Rule 50, Fed. R. Civ. P.), *Florham Park v. Chevron* (D.N.J. 1988) (Petroleum Marketing Act case), and *Frigitemp v. IDT Corp.*, 638 F. Supp. 916 (S.D. N.Y. 1986) and 76 B.R. 275, 1987 LEXIS 6547 (S.D. N.Y. 1987) (RICO case brought by the Trustee of Frigitemp Corp. against General Dynamics and others involving extortion of kickbacks from Frigitemp officers). Mr. Twersky also served prominently in savings-and-loan related securities and fraud litigation in federal and state courts in Florida, where the firm represented the Resolution Trust Corporation and officers of a failed bank in complex litigation involving securities, RICO and breach of fiduciary duty claims. *E.g.*, *Royal Palm v. Rapaport*, Civ. No. 88-8510 (S.D. Fla.) and *Rapaport v. Burgoon*, CL-89-3748 (Palm Beach County).

### **Ruthanne Gordon**

Ruthanne Gordon is a graduate of the University of Michigan (B.A. 1974) and the University of Pennsylvania Law School (J.D. 1979). Since joining the Berger firm in 1982, she has concentrated on the litigation of antitrust, securities and environmental class actions, and derivative litigation, including the following complex antitrust cases, among others: *In re Microcrystalline Cellulose Antitrust Litigation* (E.D. Pa.) (shortly before trial the case was settled for \$50 million); *In re Currency Conversion Fee Antitrust Litigation* (\$336 million settlement pending); *In re Compact Disc Antitrust Litigation*; *State of Connecticut v. Philip Morris, Inc.*, *et*

*al.*, in which the State of Connecticut recovered approximately \$3.6 billion from certain manufacturers of tobacco products; and *In re Commercial Tissue Antitrust Litigation*. She has also played a lead role in litigation involving the following industries: the real estate industry (*Lyons v. Calderone, et al.* (D.N.J.); *Best v. Koger Equity, Inc., et al.* (M.D. Fla.)); the computer industry (*In re Convex Computer Corporation Securities Litigation* (N.D. Tex.); *Heideman v. Toreson, et al.* (N.D. Cal.)); public utilities (*In re Philadelphia Electric Company Derivative Litigation* (Phila. C.C.P.); *In re PSE&G Derivative Litigation* (N.J. Super. Ct. Ch. Div.)); the environmental services industry (*Houston Corporation v. Environmental Systems Company, et al.* (E.D. Ark.)); the tobacco industry (*Friedman v. RJR Nabisco, Inc., et al.* (S.D.N.Y.)); the biotechnology industry (*In re Biogen Inc. Securities Litigation* (D. Mass.)); and the healthcare industry (*In re W.R. Grace & Co. Securities Litigation* (S.D.N.Y.)), among others.

Ms. Gordon was co-lead counsel in *In re PSE&G Derivative Litigation*, where she argued complex issues of first impression before the New Jersey Supreme Court. She was also counsel in *In re Louisville Explosion Litigation*, a class action case alleging property damage, which was prosecuted through a six-week trial and settled at the close of plaintiffs' case for more than one hundred percent of actual damages.

In addition, Ms. Gordon represented a class of Pennsylvania inmates in a federal civil rights class action, which resulted in the establishment of a statewide treatment program for Pennsylvania inmates suffering from post-traumatic stress disorder as a result of their service in the Vietnam war.

#### **Charles P. Goodwin**

Mr. Goodwin joined Berger & Montague, following his 1992 graduation *cum laude* from the University of Pennsylvania Law School, where he was an editor of the *University of Pennsylvania Law Review*. Prior to attending law school, Mr. Goodwin graduated *cum laude* from Williams College (where he received the Graves Essay Prize in economics), and enrolled in graduate studies in economics at Stanford University. Mr. Goodwin also has engaged in commercial litigation practice in New York. With Berger & Montague, Mr. Goodwin is concentrating in antitrust and employee benefits litigation. Mr. Goodwin is admitted to practice law in the Commonwealth of Pennsylvania.

#### **Michael J. Kane**

Michael J. Kane graduated from Rutgers University (B.S. 1991) and Ohio Northern University School of Law, with distinction (1994), where he was a member of the Law Review. Mr. Kane is admitted to practice in Pennsylvania and various Federal Courts.

Mr. Kane joined Berger & Montague's antitrust practice in 2005. Prior to joining Berger & Montague, Mr. Kane was affiliated with Mager, White & Goldstein, LLP where he represented clients in complex commercial litigation involving alleged unlawful business practices including:

violations of federal and state antitrust and securities laws, breach of contract and other unfair and deceptive trade practices. Mr. Kane has served in prominent roles in high profile antitrust, securities, and unfair trade practice cases filed in courts around the country. Recently, Mr. Kane served as co-lead counsel in *In re Microsoft Corporation Massachusetts Consumer Protection Litigation* (Mass. Super. Ct., Middlesex Cty.), in which plaintiffs alleged that as a result of Microsoft Corporation's anticompetitive practices, Massachusetts consumers paid more than they should have for Microsoft's operating systems and software. The case was settled for \$34 million. Other cases in which Mr. Kane has had a prominent role include:

*In re Currency Conversion Fee Antitrust Litig.* (S.D.N.Y.);

*In re Nasdaq Market Makers Antitrust Litig.* (S.D.N.Y.);

*In re Compact Disc Antitrust Litig.* (C.D. Cal.);

*In re WorldCom, Inc. Securities Litig.* (S.D.N.Y.);

*In re Lucent Technologies, Inc. Securities Litig.* (D.N.J.);

*City Closets LLC v. Self Storage Assoc., Inc.* (S.D.N.Y.);

*Rolite, Inc. v. Wheelabrator Environmental Sys. Inc.*, (E.D. Pa.);

*Amin v. Warren Hospital* (N.J. Super.).

## **ASSOCIATES:**

### **David A. Langer**

David A. Langer is a graduate of Haverford College (B.A. 1991) and Vermont Law School (J.D. *cum laude* 1999). While in law school, Mr. Langer was a member of the *Vermont Law Review* and also served as a Managing Editor. He was admitted to the Pennsylvania Bar in 1999. Mr. Langer became associated with Berger & Montague in September 1999 and practices in the antitrust complex litigation area.

### **Candace Enders**

Candice Enders is a member of Berger & Montague's antitrust department. She received a B.A. in political science from the University of Delaware in 2000 and earned her J.D. from the University of Pennsylvania in 2003.

While in law school, Ms. Enders served as a senior editor on the *Journal of Labor and Employment Law*, volunteered as a legal advocate at the Custody and Support Assistance Clinic, and interned at Philadelphia City Council.

### **Laura L. Gleason**

Laura L. Gleason is a 2006 graduate of the University of Pennsylvania Law School, where she worked for the Criminal Law Research Group, served as Senior Editor for the *Journal of Constitutional Law*, and interned with the Pennsylvania Senate Judiciary Committee.

Ms. Gleason holds a 2001 B.A. from Brandeis University, where she majored in history and fine arts and received honors for her thesis in painting.

Since joining Berger & Montague, P.C. in August 2006, Ms. Gleason has worked in the antitrust department. She is admitted to practice in Pennsylvania.

### **Nick Urban**

Nick Urban joined Berger & Montague's antitrust department in September, 2009. Mr. Urban is a 2009 graduate of the University of Pennsylvania Law School where he was a Senior Editor for the *Journal of Law and Social Change*. Mr. Urban graduated from the University of San Diego in 2004 with a B.A. in Sociology.

### **Caitlin Goldwater Coslett**

Caitlin Goldwater Coslett is a graduate of Haverford College (B.S. 2005 *magna cum laude*) and New York University School of Law (J.D. *cum laude* 2009). While in law school, Ms. Coslett was a Lederman/Milbank Fellow in Law and Economics and an Articles Selection Editor for the *NYU Review of Law and Social Change*. Since joining Berger & Montague in September 2009, Ms. Coslett has practiced in the antitrust and complex litigation area.

### **FORMER SHAREHOLDER:**

### **Edward Millstein**

Ted Millstein is a *summa cum laude* graduate of Temple University (B.A.1988) where he was selected as a Presidential Scholar and elected to Phi Alpha Theta, and the University of Pennsylvania Law School (J.D. 1991). He is admitted to practice in Pennsylvania and New Jersey and various federal courts.

Mr. Millstein has concentrated his practice in antitrust and human rights litigation. For example, he currently represents a publicly traded company in an action alleging price fixing in the carbon fiber industry. He has also represented independent service organizations in litigation against a medical equipment manufacturer arising out of its restrictive parts and service policies. *See Red Lion Med. Safety, Inc. v. Ohmeda, Inc.*, 63 F. Supp. 2d 1218 (E.D. Cal. 1999).

During the past two years, Mr. Millstein has spent a substantial portion of his time litigating cases arising from the Holocaust. He was counsel in cases filed against 14 German industrial companies and banks arising out of the use of slave labor and the Aryanization of Jewish assets during the Holocaust. He was among a small group of American lawyers who participated in international negotiations sponsored by the Governments of the United States and Germany which resulted in the creation of a German Foundation with assets of \$5 billion which will be distributed to victims of slave labor and Aryanization, as well as other wrongs from the Nazi era. Mr. Millstein was a signatory to the Joint Statement affirming the establishment of the German Foundation. He was also one of the attorneys whose efforts were specifically referenced by Deputy Secretary of the Treasury Stuart Eizenstat in his remarks and published statements on behalf of the United States government. He is currently litigating a case against the Government of Poland arising out of the post-War campaign of murder, harassment and the discriminatory taking of property belonging to Polish Jews who survived the Holocaust.

Mr. Millstein has lectured to Holocaust survivor groups and is active in numerous charitable endeavors. He is also member of the Philadelphia Bar Association Federal Courts Committee.

*Mr. Millstein departed Berger & Montague in July, 2007.*

#### **FORMER ASSOCIATE:**

##### **Keith J. Verrier**

Keith J. Verrier is an associate in Berger & Montague's antitrust department, having joined the firm in 2005. Mr. Verrier graduated, magna cum laude, from Temple University School of Law (J.D. 2000) and is a graduate of the University of Rhode Island (B.S. 1992). While in law school, Mr. Verrier was a member of the Law Review. After law school, Mr. Verrier served as a judicial clerk for the Honorable Herbert J. Hutton in the United States District Court for the Eastern District of Pennsylvania.

Prior to joining Berger & Montague, Mr. Verrier gained substantial experience in litigating complex commercial cases including several significant antitrust matters. Mr. Verrier is admitted to practice in the state and federal courts in both Pennsylvania and New Jersey.

*Mr. Verrier departed Berger & Montague in March, 2010.*

# Exhibit 2

**Firm Name: Berger & Montague, P.C.**

**Reporting Period: Inception through May 1, 2010**

Categories:

- (1) Factual Investigation
- (2) Discovery
- (3) Pleadings, Briefs & Pretrial Motions
- (4) Court Appearances
- (5) Draft Initial or Amended Complaint
- (6) Client / Shareholder Communications
- (7) Litigation Strategy & Analysis
- (8) Settlement Negotiations, Stipulation, Plan of Allocation
- (9) Trial Preparation & Trial
- (10) Appeal
- (11) Expert Witnesses

Name	1	2	3	4	5	6	7	8	9	10	11	Total Hours	Rate(s)	Total Lodestar
Merrill G. Davidoff (P)		77.80	132.60		50.00		17.70	102.50		58.10	1.70	440.40	\$590-750	\$ 304,220.50
Ruthanne Gordon (P)		11.90	197.00		18.70		11.20	3.90		12.50		255.20	\$485-650	\$ 127,027.50
Martin I. Twersky (P)		3.40	8.60				0.50	9.00		2.60	0.60	24.70	\$520-650	\$ 14,177.00
Charles P. Goodwin (P)		282.70	1244.85		44.90			343.40		338.90	89.50	2,344.25	\$360-525	\$ 1,066,068.25
Edward M. Millstein (P)		48.90	98.20		219.30		5.30			1.20		372.90	\$360-385	\$ 134,350.50
Michael J. Kane (P)		18.50	135.20				2.10				6.40	162.20	\$350-450	\$ 57,367.50
David A. Langer (A)		1236.60	751.50		339.90		33.10	279.00		584.40	26.10	3,250.60	\$250-425	\$ 1,124,043.00
Keith J. Verrier (A)			23.20									23.20	\$385	\$ 8,932.00
Candice Enders (A)								18.50		7.20		25.70	\$325-360	\$ 9,000.00
Laura Gleason (A)			121.10									121.10	\$215-310	\$ 33,599.00
Nicholas Urban (A)		309.10	205.20					73.40				587.70	\$250-275	\$ 153,622.50
Caitlin Coslett (A)			41.20									41.20	\$275	\$ 11,105.00
Karen Markert (PL)		92.25										92.25	\$195-240	\$ 19,462.50
Kevin C. Aldridge (PL)		1715.30	401.60					20.50		96.50	24.70	2,258.60	\$180-215	\$ 469,548.00
Anne Ebbesen (PL)		33.80	1.60									35.40	\$215	\$ 7,611.00
<b>TOTAL:</b>		<b>3,830.25</b>	<b>3,361.85</b>	<b>-</b>	<b>672.80</b>	<b>-</b>	<b>69.90</b>	<b>850.20</b>	<b>-</b>	<b>1,101.40</b>	<b>149.00</b>	<b>10,035.40</b>		<b>3,540,134.25</b>

(P) Partner

(A) Associate

(PL) Paralegal

# Exhibit 3

**Ross, et al. v. Bank of America, N.A. (USA), et al., No. 05 CV 07116 (WHP)**

A related case in *In re Currency Conversion Fee Antitrust Litigation*, MDL No. 1409, Master File No. M21-95 (S.D.N.Y.)

**Firm Name: Berger & Montague, P.C.**

**Reporting Period: Inception through May 1, 2010**

DESCRIPTION	TOTAL EXPENSES
Assessments	
Legal Research -- Computer/Lexis/Westlaw	\$136,973.90
Court Fees	\$855.42
Court Reporters/Transcripts	\$8,676.53
Experts	\$30,717.13
In-House Photocopying	\$26,283.20
Outside Photocopying	\$5,683.49
Postage/Express Mail/Messenger	\$3,717.54
Long Distance Telephone/Facsimile	\$1,267.54
Travel	\$16,775.69
Witness/Service Fees	\$816.00
Other (describe)	\$907.25
<b>TOTALS</b>	<b>\$232,673.69</b>