



Attorney Grievance Committee
Supreme Court of the State of New York
Appellate Division, First Judicial Department
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New York, New York 10038
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RE: PROFESSIONAL RESPONSIBILITY INVESTIGATION OF JOHN P. "SEAN" COFFEY,
REGISTRATION NUMBER: 2173409

Dear Members of the Committee:

We are writing today to request that you immediately open an investigation of John P. "Sean" Coffey for violations of Rule 7.2 of the Rules of Professional Conduct *to wit*: "A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client."¹

Specifically, we maintain that Mr. Coffey both individually, and through Bernstein Litowitz Berger & Grossmann LLP (BLB&G) where he was a Co-Managing Partner,² engaged in a multi-year scheme of pay-to-play campaign donations, charitable contributions, and other benefits to elected officials to whose agencies Mr. Coffey and his firm were soliciting for business, or seeking continued representation, in pension shareholder suits. Mr. Coffey's behavior reflected poor judgement and brought discredit upon the legal profession and the government and is worthy of sanction by the Grievance Committee.

To be clear this complaint does not maintain that Mr. Coffey violated laws *per se* but rather violated the higher standard of professional conduct attorneys in New York are held to.

RULE 7.2 - PAYMENT FOR REFERRALS

As outlined above Rule 7.2 states, "A lawyer shall not compensate or give anything of value to a person or organization to recommend or obtain employment by a client, or as a reward for having made a recommendation resulting in employment by a client." As this rule relates to

¹ NEW YORK RULES OF PROFESSIONAL CONDUCT, April 1, 2021. <https://nysba.org/app/uploads/2021/05/Rules-of-Professional-Conduct-as-amended-04072021.pdf> Rule 7.2

² John P. ("Sean") Coffey, LinkedIn, (September 24, 2021) <https://www.linkedin.com/in/john-p-sean-coffey-5b04ab12/>

contributions to government officials with whom a lawyer is seeking new or continuing business, it is further clarified by Note 5:

Campaign contributions by lawyers to government officials or candidates for public office who are, or may be, in a position to influence the award of a legal engagement may threaten governmental integrity by subjecting the recipient to a conflict of interest. Correspondingly, when a lawyer makes a significant contribution to a public official or an election campaign for a candidate for public office and is later engaged by the official to perform legal services for the official's agency, it may appear that the official has been improperly influenced in selecting the lawyer, whether or not this is so. This appearance of influence reflects poorly on the integrity of the legal profession and government as a whole. For these reasons, just as the Code prohibits a lawyer from compensating or giving anything of value to a person or organization to recommend or obtain employment by a client, the Code prohibits a lawyer from making or soliciting a political contribution to any candidate for government office, government official, political campaign committee or political party, if a disinterested person would conclude that the contribution is being made or solicited for the purpose of obtaining or being considered eligible to obtain a government legal engagement. This would be true even in the absence of an understanding between the lawyer and any government official or candidate that special consideration will be given in return for the political contribution or solicitation.

As we will detail below, Mr. Coffey has made and directed a series of donations that so distinctly departed from the normal activism of a committed Democratic activist that they can only be construed as part of a broader scheme to curry favor with government decision makers with the hope of securing or continuing lucrative business relationships with the government.

KWAME KILPATRICK DONATIONS

What may be among some of the most problematic donations by Coffey and his firm are the series of donations the firm made to the Kilpatrick Civic Fund. The Kilpatrick Civic Fund (KCF), while ostensibly being promoted as an educational fund was in fact a personal slush fund for corrupt Mayor Kwame Kilpatrick who took over \$200,000 in funds from the KCF and used them for personal expenses.³

Between 2006 and 2008, BLB&G, with the apparent approval of Sean Coffey, made \$30,000 in contributions to the KCF at the behest of Ronald Zajac, the longtime attorney for the Detroit

³ "Former Detroit Mayor Kwame Kilpatrick, His Father BERNARD Kilpatrick and CITY CONTRACTOR Bobby Ferguson Were Convicted On Racketeering, Extortion, Bribery, Fraud and Tax Charges." The United States Department of Justice, March 19, 2015. <https://www.justice.gov/usao-edmi/pr/former-detroit-mayor-kwame-kilpatrick-his-father-bernard-kilpatrick-and-city-contractor>

Police & Fire Retirement System,⁴ a client of BLB&G.⁵ Importantly as the memo on the first contribution shows the solicitation contains handwritten notes from Edward A. Grossmann that they had "discussed with Max and Sean," and the donation was approved.⁶ During his testimony, Mr. Berger clarifies that "I discussed with Max and Sean." Max clearly refers to me, and Sean refers to Sean Coffey, my former partner."⁷

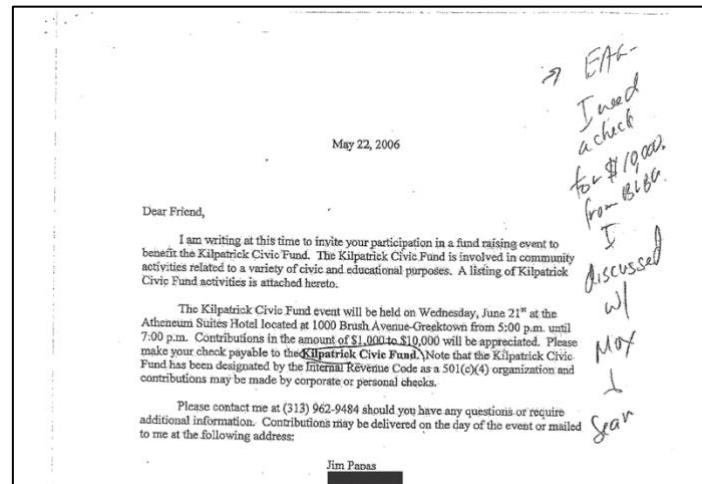
More troubling is that during questioning at Kilpatrick's trial, Max Berger, partner at BLB&G, highlighted that he often made charitable contributions to charities associated with the companies with which BLB&G did business:⁸

Well, we're asked to donate money -- we represent pension systems and other organizations all over the country, for that matter all over the world, and so very often we're asked to make donations for one cause or another. And, you know, we benefit significantly from the relationship, and we were asked to make these donations, quite frankly, at a time where, you know, we understood that Detroit was having some significant fiscal issues, and so we were more than happy to make the contributions that we made.

...

No, it's not uncommon. It's basically -- \$10,000 is not an insignificant amount of money, but we basically donate, we make donations like that quite often. (emphasis added)

It is important to note that Berger highlights that the donations made to Kilpatrick are a consequence of the benefit, the business relationship, that the company derives from the relationship with the city. Under questioning from Kilpatrick's lawyer, Berger then goes on to describe the donations as essentially a gratuity to the client.⁹



⁴ Fisher, Daniel. "Securities Lawyers Gave to DETROIT Mayor's Slush Fund." Forbes. Forbes Magazine, March 13, 2013. <https://www.forbes.com/sites/danielfisher/2013/03/11/detroit-mayors-slush-fund-included-law-firm-contributions/?sh=e08d4473af3c>

⁵ UNITED STATES OF AMERICA v KWAME M. KILPATRICK, 25 8 (UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION May 31, 2013). Jury Trial Transcript – EXHIBIT A

⁶ UNITED STATES OF AMERICA v KWAME M. KILPATRICK, 25 8 (UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION September 5, 2017) KCF-90. EXHIBIT B

⁷ *Ibid* Transcript Page 11, Line 9

⁸ *Ibid* Jury Trial Transcript p. 22

⁹ *Ibid* Jury Trial Transcript p.

Q. All right. And the purpose of it is not only for a civic purpose, but it also gives your firm exposure to the people who are engaged in the work with the City of Detroit, would you agree?

A. What I'm having trouble with is I don't know what you mean by exposure. We represent the pension systems of the City of Detroit, okay. We benefit directly from that relationship, and so it's our view that we need to give back to organizations and charities, and so on and so forth that, you know, help us, and in this particular case what was described to us was a real need, you know, in the City of Detroit for these funds because of the fiscal issues that the city was facing. (emphasis added)

Mr. Berger and BLB&G had numerous avenues, such as the local United Way, to help the city of Detroit if they felt an obligation because of the support they had received from the municipality through fee awards. Yet they would like this committee to believe that they chose the Kilpatrick Civic Fund without any understanding that the solicitation was coming through the attorney to the pension fund they represented and would be deposited into a fund controlled by the Mayor of the city who would have great sway over their continuing employment.

It strains credulity to believe that BLB&G and Mr. Coffey authorized these donations for any reason other than maintaining their continued employment by the Detroit Police & Fire Retirement System. The situation presented in the solicitation by Mr. Zajac of Mr. Berger on behalf of Mayor Kilpatrick is exactly the type of situation that Rule 7.2. and ABA Model Rule 7.6.¹⁰

At the time of the first solicitation Mayor Kilpatrick was widely known to be ethically challenged and the prohibitions outlined in Rule 7.2 would have provided a ready exit for Coffey and BLB&G to decline the solicitation, possibly offering to support a charitable organization in Detroit of their own choosing unconnected to the Mayor, yet because they were more than willing to use their ample financial resources to remain in the good graces of a corrupt lawmaker, they chose to make the donation. The corrupting influence of finances over merit is exactly the type of situation Rule 7.2 and other pay-to-play prohibitions were designed to combat.

It is worth noting that both Mr. Kilpatrick and Mr. Zajac were convicted of federal corruption charges.¹¹

¹⁰ "Rule 7.6: Political Contributions To Obtain Government Legal Engagements Or Appointments By Judges." americanbar.org. American Bar Association, March 10, 2021.

https://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_rule76/

¹¹ "Former Detroit Mayor Kwame KILPATRICK, CONTRACTOR Bobby Ferguson And BERNARD Kilpatrick Sentenced On Racketeering, Extortion, Bribery, Fraud and Tax Charges." The United States Department of Justice, March 19, 2015. <https://www.justice.gov/usao-edmi/pr/former-detroit-mayor-kwame-kilpatrick-contractor-bobby-ferguson-and-bernard-kilpatrick>

"Jury Convicts Former Detroit City TREASURER,PENSION Officials of Conspiring To Defraudpensioners through Bribery." The United States Department of Justice, March 19, 2015. <https://www.justice.gov/usao-edmi/pr/jury-convicts-former-detroit-city-treasurerpension-officials-conspiring>

Additionally, we strongly urge the committee to conduct a comprehensive investigation of BLB&G's charitable donations. Had it not been for the federal investigation of Mr. Kilpatrick, it is unlikely that the public would have become aware of the fact that a New York law firm was making charitable contributions to a non-profit controlled by one of their clients. Mr. Berger's statement regarding the KCF donation that "but we basically donate, we make donations like that quite often" invites a deeper investigation of Mr. Coffey and BLB&G's use of non-profit donations to curry favor with lawmakers.¹²

SERIES OF ANOMALOUS DONATIONS TO CANDIDATES WHOSE ONLY EXPLANATION COULD BE INFLUENCING THE LAWMAKER

Sean Coffey is an activist Democrat who has a long history of generous donations in the state of New York and to federal candidates. This is obviously a constitutionally protected activity, is unsurprising considering his history of political activism, and can be explained by an obvious genuine commitment to public policy outcomes.

What is less easily explained is Coffey's out of state donation history to a series of pension administrators that have little credible connection to his obvious public policy preferences. Sean Coffey and BLB&G have made a series of state campaign contributions outside of the State of New York to officials which can only be explained by a desire to secure business with the state or to remain in the good graces of pension administrators to continue to serve as counsel for the state pension funds.

Ohio

Coffey and BLB&G's donation history in Ohio is one of the most shocking and most egregious. Mr. Coffey's donations and explanations related to those donations make it clear that the donations were not a part of an effort to be involved in constitutionally protected political activism, but were rather part of an effort to use campaign contributions as a business tool to curry favor with elected officials to continue representation for the pension funds controlled by the State of Ohio.

As BLB&G's website notes, the firm has had a long relationship with the State of Ohio. As they note on their website regarding their work in the Freddie Mac class action:¹³

On January 15, 2004, Bernstein Litowitz Berger and Grossmann LLP filed an Amended Class Action Complaint on behalf of the Class and Court-approved Lead Plaintiffs, the Ohio Public Employees Retirement System and the State Teachers Retirement System of Ohio. On July 26, 2006, the Court granted preliminary approval of the settlement.

¹² *Ibid*, Kilpatrick Transcript p. 12

¹³ "Freddie Mac: BERNSTEIN Litowitz BERGER & GROSSMANN LLP." Freddie Mac | Bernstein Litowitz Berger & Grossmann LLP. Accessed September 28, 2021. <https://www.blbglaw.com/cases-investigations/freddie-mac>

A settlement fairness hearing was held on October 26, 2006 at 3:30 p.m. before the Honorable John E. Sprizzo, at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 21C, New York, New York, 10007, at which time final approval of the settlement was granted.

In addition to the work in the Freddie Mac case in the first half of the '00s, the firm was also actively representing the state pension funds in the second half to the decade:¹⁴

September 28, 2012

After nearly four years of intense litigation and with a trial date looming weeks away, BLB&G unveiled an unprecedented settlement with Defendant Bank of America Corporation ("BAC") in which BAC has agreed to pay \$2.425 billion in cash and to implement significant corporate governance reforms to resolve all claims in the In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation. BLB&G serves as Co-Lead Counsel for the Class of Bank of America shareholders.

...

Lead Plaintiffs for the Class are the State Teachers Retirement System of Ohio, the Ohio Public Employees Retirement System, the Teacher Retirement System of Texas, Stichting Pensioenfonds Zorg en Welzijn, represented by PGGM Vermogensbeheer B.V., and Fjärde AP-fonden. The case is currently pending in the United States District Court for the Southern District of New York before Judge P. Kevin Castel. (emphasis added)

As these articles show, during the '00s the State of Ohio's pension funds and BLB&G's status as attorney for them as lead plaintiff was a significant part of the firm's business and the fees awarded to BLB&G were quite important to the firm.

During the relevant time of BLB&G's representation of the state, Coffey made a number of political contributions.¹⁵

Contributor	Date	Amount	Employer	Recipient
JOHN P. COFFEY	2008-06-19	\$25,000.00	BERNSTEIN LITOWITZ BERGE ATTORNEY	OHIO DEMOCRATIC PARTY STATE CANDIDATE FUND

¹⁴ "BLB&G Recovers Record-Setting \$2.425 Billion for Shareholders in Action Arising from Bank of America's Acquisition of Merrill Lynch." Bernstein Litowitz Berger & Grossmann LLP. Accessed September 28, 2021. <https://www.blbglaw.com/news/updates/2012-09-28-blbg-recovers-record-setting-2425-billion-for-shareholders-in-action-arising-from-bank-of-americas-acquisition-of-merrill-lynch>

¹⁵ Accessed via Ohio Secretary of State Campaign Finance File Transfer Page:

https://www6.ohiosos.gov/ords/f?p=CFDISCLOSURE:73:7196994939744:NEW:NO:RP:P73_TYPE:NEW

JOHN COFFEY MR	2006-10-09	\$17,500.00	BERNSTEIN LITOWITZ BERGER-PARTNER	OHIO REPUBLICAN STATE CENTRAL & EXECUTIVE COMMITTEE STATE CANDIDATE FUND
JOHN P. COFFEY	2008-07-24	\$5,000.00	BERNSTEIN LITOWITZ BERGE ATTORNEY	OHIO DEMOCRATIC PARTY STATE CANDIDATE FUND
JOHN P. COFFEY	2010-10-25	\$1,000.00	RETIRED	CORDRAY/SUTTON COMMITTEE RICHARD CORDRAY
JOHN P. COFFEY	2008-10-16	\$500.00	BERNSTEIN LITOWITZ BERGE ATTORNEY	OHIO DEMOCRATIC PARTY
JOHN P. COFFEY	2008-10-16	\$2,000.00	BERNSTEIN LITOWITZ BERGE ATTORNEY	OHIO DEMOCRATIC PARTY STATE CANDIDATE FUND
JOHN P. COFFEY	2008-10-07	\$17,500.00	BERNSTEIN LITOWITZ BERGE ATTORNEY	OHIO DEMOCRATIC PARTY
JOHN P. COFFEY ESQ.	2010-10-26	\$1,000.00	ATTORNEY BERNSTEIN LITOWITZ BERGER & GROSSMANN LL	STRICKLAND FOR GOVERNOR TED STRICKLAND
JOHN P. COFFEY ESQ.	2006-11-03	\$10,000.00	BERNSTEIN LITOWITZ BERGE ATTORNEY	STRICKLAND FOR GOVERNOR TED STRICKLAND
JOHN P. COFFEY ESQ.	2009-07-24	\$1,000.00	ATTORNEY BERNSTEIN LITOWITZ BERGER & GROSSMANN LL	STRICKLAND FOR GOVERNOR TED STRICKLAND
JOHN P. COFFEY	2004-03-15	\$1,000.00	BERNSTEN LITOWITZ BERGER & GROSSMANN	CITIZENS FOR JIM PETRO JIM PETRO

From 2003 – 2007 Republican Jim Petro was the Attorney General, followed by Democrat Marc Dunn from 2007-2008, Democrat Nancy Rogers from 2008-2009 and Richard Cordray from 2009- 2011.¹⁶

Particularly noteworthy are the political party contributions in 2006 and 2008. As noted above in 2007, control of the Attorney General's office, whose office is charged with selecting outside counsel for pension matters, shifted from Republican to Democrat, and Mr. Coffey's contribution recipients changed with that shift. It would strain credulity to believe that Mr. Coffey's policy preferences shifted from Republican to Democrat swiftly sometime in 2007 and he decided to shift his campaign giving patterns in the State of Ohio.

In fact, Mr. Coffey has been asked about this donation:¹⁷

¹⁶ "Past Ohio Attorneys General 2003–2019." 2003-2019 - Ohio Attorney General Dave Yost. Accessed September 28, 2021. <https://www.ohioattorneygeneral.gov/About-AG/History/Past-Ohio-Attorney-Generals/2003-2019>

¹⁷ Lovett, Kenneth. "Attorney General Candidate SEAN Coffey May Be Democrat, but He Doesn't Mind Helping Republicans." nydailynews.com. New York Daily News, September 5, 2010.

<https://www.nydailynews.com/news/attorney-general-candidate-sean-coffey-democrat-doesn-mind-helping-republicans-article-1.440801>

Coffey is also listed in state records as giving \$17,500 to the Ohio Republican Party in 2006 and \$7,500 in 2008 to the Republican States Leadership Committee.

[Coffey's spokesperson] Sun claims that Coffey's law firm, not Coffey personally, wrote the check to the Ohio GOP.

She said his name only appears in the records because Ohio law required the overall \$100,000 donation to be apportioned among the law firm's partners.

Coffey has no recollection of contributing to the leadership committee, she said.

These comments raise a multitude of ethical problems that the committee must investigate. First, Mr. Coffey's comments maintaining his ignorance, are not credible. As the letter to Berger from Zajac in the Kilpatrick donation case above shows, (Exhibit B in this Complaint) which was dated May 22, 2006 just five months before the Ohio Republican Party Donation, Coffey had been intimately involved in the approval process for political donations like this. Even though \$100,000 may not be a large sum to firms like Bernstein Litowitz, it is still likely to rise to the level that senior partners like Mr. Coffey are required to approve the expenditure.

While it is accurate to state that Ohio permits the division of an LLP's donation among partners, there is a serious question of whether this is permissible if the partner the donation is attributed to is unaware of the attribution. In fact, if BLB&G were making corporate donations and attributing them to partners without their consent, as Mr. Coffey maintains in his comments to the newspaper, there is a question as to whether Mr. Coffey's donation was a straw donation using his name.

Further, if we are to believe Mr. Coffey that his donation to the Ohio Republican Party was made in his name without his consent, then he should have both demanded a refund from the Ohio Republican Party for the inappropriate donation and have filed a complaint with your committee against his firm for making fraudulent campaign donations under his name. There is no evidence that either of those things happened.

These donations point out an important feature of BLB&G and Coffey's giving, that they were not made to support the public policy positions of elected officials in Ohio, because it is not credible to believe that a lifelong and active Democrat like Mr. Coffey would make a donation to the Ohio Republican Party, but rather they functioned like a business expense. The donations acted like a tool of Mr. Coffey and BLB&G to show their support for their patron, the Attorney General of the State of Ohio and the particular political party that supported them at the time. And because they served that function, they transformed from protected political speech envisioned and permitted by the rules, to a tool to obtain and retain a government legal engagement which is a prohibited practice under Rule 7.2 and worth of discipline by the committee.

Finally, it is worth noting that Mr. Coffey's state level donations in Ohio, all but disappear in any significant way after he leaves BLB&G in 2009, further reinforcing the thesis of this complaint that Mr. Coffey's donations in Ohio were not made out of a sincere and genuine support for Ohio state lawmakers and their policies, but were rather a business retention and acquisition tool of him and his firm as part of an unethical scheme to acquire and retain legal representative business overseen by the officials to whom he was donating.

Minnesota

Mr. Coffey's donations in the State of Minnesota also showed a similarly peculiar donation pattern.¹⁸

Contributor	Date	Amount	Employer	Recipient
Coffey, John P	2006-10-10	\$500.00	Attorney	Swanson, Lori Atty. Gen. Committee
Coffey, John P	2006-09-06	\$1,000.00	Attorney	Hatch, Michael A Gov. Committee
Coffey, John P	2008-10-15	\$5,000.00	Attorney	Minn DFL State Central Committee

Again, notable in this donation pattern is that the donations are made to the officials who have significant involvement in the selection of counsel representing the state retirement funds. As with Ohio, during the timeframe of the donations BLB&G was representing the St. Paul Teachers Retirement Fund, a Minnesota state pension plan. As they noted in a background document on the May 2006 suit:¹⁹

Shareholder derivative action filed on behalf of Plaintiffs the St. Paul Teachers' Retirement Fund Association, the Public Employees' Retirement System of Mississippi, the Jacksonville Police & Fire Pension Fund, the Louisiana Sheriffs' Pension & Relief Fund, the Louisiana Municipal Police Employees' Retirement System and Fire & Police Pension Association of Colorado ("Public Pension Funds").

As with Ohio, Mr. Coffey's donations cease when he leaves BLB&G indicating again that his donations were merely a business retention and acquisition tool, a practice prohibited by Rule 7.2, and not a genuine concern about public policy and elected officials in the State of Minnesota.

¹⁸ Downloaded from the campaign finance databases of Ante <http://getante.com>

¹⁹ "UnitedHealth Group, Inc.: BERNSTEIN Litowitz BERGER & GROSSMANN LLP." UnitedHealth Group, Inc. | Bernstein Litowitz Berger & Grossmann LLP. Accessed September 28, 2021. <https://www.blbglaw.com/cases-investigations/unitedhealth-group-inc>

Louisiana

Other than there being a BLB&G satellite office in Louisiana, Mr. Coffey's campaign contributions in Louisiana were similar to those in the states of Michigan, Ohio, Mississippi, and Minnesota.

Contributor	Date	Amount	Employer	Recipient
JOHN P COFFEY	11/14/07	\$1,500.00	N/A	James Caldwell
MR JOHN P COFFEY	9/12/99	\$750.00	N/A	Ken Duncan
JOHN P COFFEY	1/30/03	\$1,000.00	N/A	John Kennedy
JOHN P COFFEY	1/30/03	\$1,000.00	N/A	John Kennedy
MR JOHN P COFFEY	9/12/99	\$750.00	N/A	Ken Duncan
JOHN P COFFEY	11/14/07	\$1,500.00	N/A	James Caldwell
JOHN P COFFEY	11/14/07	\$1,500.00	N/A	James Caldwell
JOHN P COFFEY	11/14/07	\$1,500.00	N/A	James Caldwell

During the 1999 donations to Mr. Ken Duncan, he served as Treasurer of the state until he was defeated by Mr. John Kennedy who served as Treasurer of the state until he was elected to the United States Senate.²⁰ Mr. James Caldwell was the Attorney General of Louisiana in 2007 when the donations were made to him.

BLB&G was actively engaged by the State of Louisiana representing them in class action suits at the time of their donations and was seeking additional work from the state. For example, in 2004 the firm issued a press release regarding the Bristol-Myers Squibb class action they successfully litigated for the state:²¹

July 30, 2004 – The Teachers' Retirement System of Louisiana, the Louisiana State Employees' Retirement System, the General Retirement System of the City of Detroit and the Fresno County Employees' Retirement Association ("Lead Plaintiffs") today

²⁰ Julia O'Donoghue, NOLA.com | The Times-Picayune. "Who's Running to Succeed John Kennedy as Louisiana Treasurer?" NOLA.com, December 13, 2016. https://www.nola.com/news/politics/article_e52e8466-2650-5110-8ecd-b336c9106fc1.html

²¹ "LOUISIANA, DETROIT AND FRESNO PENSION FUNDS OBTAIN \$300 MILLION CASH SETTLEMENT OF SECURITIES CLASS ACTION AGAINST BRISTOL-MYERS SQUIBB." Accessed September 28, 2021. <https://static.blbglaw.com/docs/Supremacplt1.30.04.pdf>

announced that the United States District Court for the Southern District of New York has granted preliminary approval of a settlement reached in the securities class action litigation, In re Bristol-Myers Squibb Securities Litigation, pending against the pharmaceutical firm Bristol Myers Squibb Company.

BLB&G continued to seek and do business with the state pension fund after the series of donations in 2003. For example:²²

On December 21, 2006, BLB&G commenced this action on behalf of the Louisiana Municipal Police Employees' Retirement System and other Caremark shareholders in order to force the Caremark directors to comply with their fiduciary duties and otherwise obtain the best value for shareholders.

Much like these other states, Mr. Coffey's contributions to Louisiana officials end with his departure from BLB&G. Again if Mr. Coffey's donations were an effort to seek positive policy changes by supporting lawmakers you might expect that Mr. Coffey would have supported John Kennedy who has held public office for over two decades, yet there are no additional contributions despite Mr. Coffey's voluminous political giving history.²³

Mississippi

Mr. Coffey and BLB&G maintained an on-going relationship with Mississippi Attorney General Jim Hood, where Mr. Coffey and BLB&G would provide financial support and other things of value to the Attorney General coincident with the awarding of state contracts. The size of the donations and their proximity in time to the awarding of contracts to BLB&G would lead any indifferent observer to conclude that there is likely a connection between the donations and the awarding of the contracts, a practice prohibited under Rule 7.2.

On February 17, 2006 Mr. Coffey made a \$5,000 donation to the campaign of Attorney General Hood.²⁴

Within a matter of days, BLB&G was awarded a series of highly lucrative contracts by the Attorney General's office.

- The day before on February 16, 2006, BLB&G signed a Retention Agreement with the Attorney General for representation in the Cigna Corporation litigation.²⁵

²² "Caremark / CVS: BERNSTEIN Litowitz BERGER & GROSSMANN LLP." Caremark / CVS | Bernstein Litowitz Berger & Grossmann LLP. Accessed September 28, 2021. <https://www.blbglaw.com/cases-investigations/caremark-cvs>

²³ See for example Mr. Coffey federal donations: https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=coffey%2C+john&contributor_employer=bernstein&contributor_employer=kramer&contributor_state=NY

²⁴ Candidate's Annual Report of Receipts and Disbursements, Attorney General Jim Hood, 2006 Annual Report, Mississippi Department of Archives and History. EXHIBIT C

²⁵ Retention Agreement – Cigna Litigation BLB&G & MS AG -EXHIBIT D

- On February 21, 2006 BLB&G signed a Retention Agreement with the Attorney General for representation in the Converium Holdings litigation.²⁶
- On February 21, 2006 BLB&G signed a Retention Agreement with the Attorney General for representation in the Delphi Corporation litigation.²⁷
- On March 14, 2006 BLB&G signed a Retention Agreement with the Attorney General for representation in the The Mills Corporation litigation.²⁸
- On May 17, 2006 BLB&G signed a Retention Agreement with the Attorney General for representation in the United Health litigation.²⁹

As public reporting noted, by the time these retention agreements were finalized, Attorney General Hood would have accepted \$25,000 from BLB&G attorneys, including Mr. Coffey. As the reporting notes, the investment by Mr. Coffey and his colleagues paid off quite handsomely.³⁰

Mr. Hood is also partial to Bernstein Litowitz. On February 21, 2006, he chose the firm to represent the Mississippi Public Employees Retirement Fund in a securities class action against Delphi Corporation—just days after receiving \$25,000 in donations from Bernstein Litowitz attorneys. The suit was eventually settled, and the lawyers on the case received \$40.5 million in fees. Mr. Hood's campaign would appear to deserve a raise. (emphasis added)

The conclusion of a disinterested party such as the Wall Street Journal that there was a connection between the campaign contributions by Mr. Coffey and this firm and the retention of the Mississippi Public Employees Retirement Fund (at the direction of the Mississippi Attorney General) further strengthens the central thesis of this complaint that Mr. Coffey has violated Rule 7.2 and his behavior is worthy of sanction by your committee.

In addition to the campaign contributions to Attorney General Hood's campaign, there are also credible claims that BLB&G and Mr. Coffey were also responsible for providing the Attorney General with subsidized travel to Ireland to attend a conference. While these trips are often rationalized as being work related, many critics highlight that they're largely junkets for lawmakers who could not afford the travel otherwise. During his 2011 campaign, the Attorney

²⁶ Retention Agreement – Converium Holdings Litigation BLB&G & MS AG -EXHIBIT E

²⁷ Retention Agreement – Delphi Corporation Litigation BLB&G & MS AG -EXHIBIT F

²⁸ Retention Agreement – The Mills Corporation Litigation BLB&G & MS AG -EXHIBIT G

²⁹ Retention Agreement – United Health Litigation BLB&G & MS AG -EXHIBIT H

³⁰ "Pay-to-Play Torts." The Wall Street Journal. Dow Jones & Company, October 31, 2009.

<https://www.wsj.com/articles/SB10001424052748704107204574473310387443816>

General's opponent, Steve Simpson, highlighted that both the campaign contribution and travel issues.³¹

For Jim Hood to insinuate that the use of a state plane to attend the funerals of troopers and assess potential hurricane damage re-defines hypocrisy considering the fact that Hood accepted an all-expenses paid trip to Ireland in 2008 along with an attorney from one of his largest campaign contributors, Bernstein, Litowitz, Berger & Grossman, a New York City law-firm that has made millions from legal contracts hand-delivered by Jim Hood. (emphasis added)

Mr. Simpson is referring to this event in Ireland.³² (Mr. Coffey at the time was a partner)

Former partner Sean Coffey, along with special guest The Honorable Jim Hood, Attorney General of the State of Mississippi, participated as guest speakers at the 8th Annual UK & Irish Pension & Investing Summit Conference in Dublin, Ireland, which took place on November 11-12, 2008.

In a rare interactive format, Mr. Coffey interviewed Attorney General Hood for an in-depth discussion on how he has helped the citizens of Mississippi push back against the destructive forces of corporate fraud.

While accusations from political opponents should always be viewed with a jaundiced eye, there is no reporting that the factual accusations made by Mr. Simpson were inaccurate. This committee should use its investigative powers to require that BLB&G turn over any documents regarding expenditures associated with the Ireland trip, including expense reports of Mr. Coffey, and expenses associated with Mr. Hood's air fare, lodging, or meals, and any expense reports associated with other BLB&G staff who traveled to the Ireland conference.

If Mr. Simpson's claims are accurate that BLB&G, and Mr. Coffey, provided the Attorney General with travel to a moderately exotic location at their expense, it is further evidence that Mr. Coffey and BLB&G had an ongoing scheme to provide things of value to the Attorney General, and this could be rightly viewed as a corrupting of the attorney selection process and a violation of Rule 7.2's prohibition on giving things of value to secure or retain representation.

³¹ -, YallPolitics Staff, By, -, YallPolitics StaffThis article was produced by Y'all Politics staff., YallPolitics Staff, This article was produced by Y'all Politics staff., and Sarah Ulmer -. "Steve Simpson Responds to JIM HOOD'S ATTACKS." Mississippi Politics and News - Y'all Politics, September 17, 2011.

https://yallpolitics.com/index.php/yp/post/steve_simpson_responds_to_jim_hoods_attacks/

³² "Sean Coffey Interviews Mississippi Attorney General Jim Hood at UK & Irish Pensions & INVESTMENTS Summit in Dublin." Bernstein Litowitz Berger & Grossmann LLP. Accessed September 29, 2021.

<https://www.blbglaw.com/news/events/2008-11-11-sean-coffey-interviews-mississippi-attorney-general-jim-hood-at-uk-irish-pensions-investments-summit-in-dublin>

Rhode Island

In Rhode Island, Mr. Coffey was widely criticized for having made donations to the State Treasurer within days after he announced that he was looking for new firms to represent the pension fund.³³

In Rhode Island, Mr. Coffey and his wife each donated \$1,000 to General Treasurer Frank Caprio on March 31, 2008, five days after Mr. Caprio told state investment officials that he was considering "making changes to the present representation" and would be soliciting proposals from securities-litigation firms.

Mr. Coffey's donations were among about a dozen contributions totaling \$10,000 from donors associated with Bernstein Litowitz that flowed that day to Mr. Caprio, whose office later selected the firm and three others to be included in the state's list of counsels.

Last year, after the Providence Journal questioned Mr. Caprio about the timing of the donations, he announced that he was returning contributions from plaintiffs' firms. Mr. Caprio gave back more than \$60,000, including checks from Mr. Coffey and his wife. "Rather than have to deal with these questions, he just decided he wanted the office to be beyond reproach and return contributions from all plaintiffs' securities firms," said Mark Dingley, chief of staff to Mr. Caprio.

As the article notes, the donations from Mr. Coffey were so troubling that Treasurer decided to return Mr. Coffey's donation to avoid the appearance of impropriety associated with Mr. Coffey, and his firm's donations.

Mr. Caprio's refund of Mr. Coffey's donation is profoundly important because it validates the central argument of this complaint. As the Code instructs, "*the Code prohibits a lawyer from making or soliciting a political contribution to any candidate for government office, government official, political campaign committee or political party, if a disinterested person would conclude that the contribution is being made or solicited for the purpose of obtaining or being considered eligible to obtain a government legal engagement.*"³⁴ While the Treasurer is not a disinterested person, as an elected official, he has a keen appreciation of what the disinterested person thinks of his behavior. Further as a politician who would attempt to seek higher public office, he clearly appreciated that the public would believe that the donation by Mr. Coffey was likely to undermine the public's trust in his office and him.

³³ Gershman, Jacob. "Attorney General Candidate Was Active Political Donor." The Wall Street Journal. Dow Jones & Company, August 9, 2010. <https://www.wsj.com/articles/SB1000142405274870358940457541783330573708>

³⁴ *Ibid* Code of Professional Conduct

CREDIBLE ALLEGATIONS OF A CORROSIVE CULTURE OF PRESSURE TO CONTRIBUTE TO CANDIDATES

Additionally, a former attorney, Bruce Bernstein, (formerly *Of Counsel* with BLB&G) has made credible claims that there was a corrosive culture at the firm that pressured staff to make political contributions to help the firm. In a complaint that he filed that detailed a series of ethical improprieties at BLB&G, Mr. Bernstein details that the managing partner had told him that a former partner had left the firm because of the political donation culture.³⁵

88. On October 1, 2012, Bernstein contacted a former BLB&G partner who, according to Berger, had raised ethical concerns while employed at BLB&G. The former partner said that he had left BLB&G because the firm had pressured him to make political contributions to elected officials who controlled the selection of counsel in securities cases on behalf of pension funds.

There are a few possible explanations including that Mr. Bernstein is fabricating or otherwise misrepresenting his conversation with the former partner, that his recollection is accurate, and the former partner is Mr. Coffey, or that his recollection is accurate and the former partner is someone other than Mr. Coffey. Unless Mr. Bernstein is misrepresenting his conversation with Mr. Berger and the former partner, the claim that there is a culture of coercive political giving is deeply problematic. If Mr. Coffey is the former partner, we are compelled to ask why he has not brought this issue to your attention, and why he regularly participated in it. If Mr. Coffey is not the partner in the Bernstein/Berger conversation, then the committee must speak with this individual to fully ascertain the scale of the problematic issues at BLB&G.

Finally, the Second Circuit Court of Appeals in its opinion upholding the District Court's decision to unseal the complaint³⁶ underscored that the behavior alleged in Mr. Bernstein's complaint, which included a legal make-work scheme with a local attorney in Mississippi after Mr. Coffey left the firm, was of public interest and would make a disinterested party question the behavior of the lawyer and the government.³⁷

As the district court noted, the complaint alleges that defendants, as counsel for a state employees' pension fund that was a lead plaintiff in a major securities class action, "regularly engage in a kickback scheme with the Mississippi Attorney General's Office, a public entity whose constituents might otherwise be in the dark about the arrangement." Whether true or not, this allegation would naturally be of legitimate interest to the public (especially those who contribute to and receive payments from

³⁵ BRUCE BERNSTEIN, -against- BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP, MAX BERGER, STEVEN SINGER, SALVATORE GRAZIANO, EDWARD GROSSMANN and GERALD SILK, (COMPLAINT March 18, 2016).

³⁶ BRUCE BERNSTEIN, Plaintiff, v. BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP, MAX BERGER, STEVEN SINGER, SALVATORE GRAZIANO, EDWARD GROSSMANN AND GERALD SILK, Defendants-Appellants. (United States Court of Appeals For the Second Circuit February 24, 2016).

³⁷ The complaint was filed under a fourteen day seal, despite the parties reaching a settlement before the expiration of the fourteen day deadline, the District Court subsequently lifted the seal.

MPERS) and to federal courts in the future (e.g., those considering whether to name BLB&G as lead class counsel or find MPERS to be an adequate class representative in future class actions)."

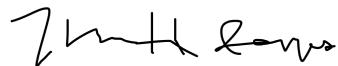
As the court clarifies, these charges are damning if true. And if true, they can only be interpreted as a clear violation of Rule 7.2. For those reasons it is incumbent on the committee to use its investigatory powers to determine the identity of Mr. Bernstein's colleague who left the firm and determine the nature and scope of BLB&G's pressure upon its staff to make contributions to their client's campaigns.

CONCLUSION

This complaint clearly outlines that Mr. Coffey, both personally and through his law firm, was using campaign contributions to secure and retain highly lucrative pension fund representational business, a practice prohibited by the Rules of Professional Conduct. Mr. Coffey may be the most skilled pension attorney in the United States, but his expertise is immaterial to your investigation. Whether Mr. Coffey and his firms would have secured these contracts with state pension funds but for their political contributions is unknowable because Mr. Coffey has so polluted and perverted the process with illicit donations. The public has a rightful expectation that the administration of justice and the awarding of public contracts to attorneys only be made on the merits of the attorney not on the depths of their pockets.

Mr. Coffey has brought discredit upon the profession and his conduct is worthy of your investigation and the imposition of the appropriate sanction.

Sincerely,



Thomas H. Jones
Founder, American Accountability Foundation

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 10-CR-20403
Hon. Nancy G. Edmunds

v.

D-1 KWAME M. KILPATRICK,
D-2 BOBBY W. FERGUSON,
D-3 BERNARD N. KILPATRICK, and
D-4 VICTOR M. MERCADO,

Defendants.

JURY TRIAL
VOLUME 25

Detroit, Michigan - Thursday, October 18, 2012

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- - -

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*Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.*

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*Jury Trial Volume 25
Thursday, October 18, 2012*

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1 as follows:

2 **DIRECT EXAMINATION**

3 **BY MR. BULLOTTA:**

4 Q. Good morning, Mr. Berger.

5 A. Good morning.

6 Q. Can you state your name for the jury.

7 A. Max Berger.

8 Q. And, Mr. Berger, what is your current occupation?

9 A. I'm an attorney.

10 Q. And what kind of law do you practice?

11 A. I prosecute securities fraud cases, civil securities fraud
12 cases on behalf of investors, including pension systems, mutual
13 funds, others.

14 Q. And does your work include litigation involving the
15 Detroit pension funds, specifically the Police and Fire pension
16 funds and the general retirement pension funds at the City of
17 Detroit?

18 A. Yes, we've represented those pension systems from time to
19 time, yes, and still do.

20 Q. And how long has your firm -- what's the name of your
21 firm, by the way?

22 A. Bernstein, Litowitz, Berger & Grossmann.

23 Q. And could you spell those for the reporter.

24 A. Yes. B-e-r-n-s-t-e-i-n, Litowitz, L-i-t-o-w-i-t-z,
25 Berger, B-e-r-g-e-r, ampersand, Grossmann, G-r-o-s-s-m-a-n-n,

*Max Berger - Direct
Thursday, October 18, 2012*

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1 LLP.

2 **Q.** And how many attorneys are in your firm?

3 **A.** Approximately 60.

4 **Q.** So how long have you been working with the City of
5 Detroit, their pension funds?

6 **A.** I couldn't give you a precise time, but it's been at least
7 seven or eight years, maybe longer.

8 **Q.** Possibly longer?

9 **A.** Yes.

10 **Q.** I want to direct your attention back to May of 2006. In
11 May of 2006 did you become aware that your firm was solicited
12 by something called the Kilpatrick Civic Fund to give a
13 donation?

14 **A.** Yes.

15 **Q.** I'm going to show you what's been marked KCF, for
16 Kilpatrick Civic Fund, 90 and ask you if you recognize these
17 documents.

18 **A.** Yes, I recognize the first page. It's a letter dated
19 May 22, 2006. I have --

20 **Q.** Is that the solicitation letter that you're talking about?

21 **A.** That's the solicitation letter. I have a -- I'm presuming
22 because it refers to the attachment -- I'm sorry to be so
23 technical, but I'm a lawyer so, I mean, I, you know --

24 **Q.** That's okay.

25 **A.** I presume that the second page is what was attached to

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10

1 that letter, but I don't have a specific recollection of the
2 language in that, although I do recall the, in general, the
3 information that's contained there.

4 **Q.** Maybe you can move up a little closer to the microphone.

5 **A.** Oh, sorry. Okay. And the third page I recognize, that's
6 a letter from my former parter, Doug McKeige, to Ron Zajac, and
7 the fourth page is check stub from my firm for the check that
8 was issued.

9 **MR. BULLOTTA:** I would move in KCF-90, Your Honor.

10 **THE COURT:** Received.

11 (Government's Exhibit KCF-90 received into evidence.)

12 **BY MR. BULLOTTA:**

13 **Q.** I want to show you the first page, and you can look in
14 front of you if it's easier, but I want to ask you if this is
15 the solicitation letter that you are referring to that's dated
16 May 22 of 2006. Is that a letter that came to your firm?

17 **A.** This is what's on the screen, this page?

18 **Q.** Yes. Can you see the screen?

19 **A.** I can, yes.

20 **Q.** Whatever is more comfortable for you.

21 **A.** It's more comfortable for me to look here, if that's okay.

22 **Q.** That's fine. Do you see the writing in the upper
23 right-hand portion of -- the handwriting on this letter, the
24 solicitation letter?

25 **A.** I do.

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11

1 **Q.** And what does that say?

2 **A.** EAG are the initials of my partner Edward A. Grossmann.
3 Edward is -- manages the business of the office, and so the
4 check request would go through him. The rest of the wording
5 is, "I need a check for \$10,000 from BLB&G."

6 **Q.** What's BLB&G?

7 **A.** Bernstein, Litowitz, Berger & Grossmann. Those are the
8 initials for the firm.

9 "I discussed with Max and Sean." Max clearly refers
10 to me, and Sean refers to Sean Coffey, my former partner.

11 **Q.** All right. And did you -- were you part of the
12 discussions as to whether or not to give a donation and also
13 how much to give to the Kilpatrick Civic Fund?

14 **A.** I was.

15 **Q.** Okay. Can I see Page 2, please.

16 And I think you said you had a general recollection,
17 but you don't recall specifically this page, is that fair?

18 **A.** That's fair, yes.

19 **Q.** Well, do you see the purposes that are listed here, to
20 promote community activities, enhance Detroit neighborhoods,
21 et cetera? Do you see those?

22 **A.** Yes.

23 **Q.** And was that consistent with what you believed this
24 Kilpatrick Civic Fund was -- its purposes were?

25 **A.** Yes, we were specifically told in connection with the

*Max Berger - Direct
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12

1 solicitation that --

2 **MR. THOMAS:** Objection.

3 **THE WITNESS:** I'm sorry.

4 **MR. THOMAS:** That's hearsay.

5 **MR. BULLOTTA:** Goes to his state of mind, Your Honor,
6 as to why he gave. It's not offered for the truth.

7 **THE COURT:** I'll permit it.

8 **A.** We were specifically told that the Civic Fund was for the
9 benefit of the citizens of Detroit and the City of Detroit and
10 was to be used for both civic and educational purposes, and so
11 this is consistent with that understanding.

12 **BY MR. BULLOTTA:**

13 **Q.** Okay. And do you see the examples that are listed on the
14 bottom of that page? And I want to just ask you if you could
15 take a look at those and see if those examples, like getting
16 out the vote rallies and co-sponsoring a Little League charity
17 football game, are those consistent with what your
18 understanding was that the fund was to be used for?

19 **A.** They would be to me, yes.

20 **Q.** Thank you. And then so was there a decision made to
21 donate \$10,000?

22 **A.** There was.

23 **MR. BULLOTTA:** Can I see Page 3 please.

24 **BY MR. BULLOTTA:**

25 **Q.** Who is Douglas McKeige?

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13

1 **A.** Douglas is a former partner of mine and was a partner at
2 the time he sent this letter.

3 **Q.** And do you see the date of this letter? What is the date
4 of the letter?

5 **A.** June 22, 2006.

6 **Q.** And can you read the letter?

7 **A.** Sure. It's addressed to Ronald Zajac.

8 **Q.** Let me stop you. Do you know who Ron Zajac is?

9 **A.** I do.

10 **Q.** Who is Ron Zajac?

11 **A.** Ron Zajac was the general counsel of the Police and Fire
12 and City of Detroit pension systems to my knowledge. He was
13 outside counsel, not an employee, but he was generally the
14 person that we dealt with with respect to those pension systems
15 as our clients.

16 **Q.** So Zajac was the attorney for the pension funds?

17 **A.** Correct.

18 **Q.** And can you read this letter that you wrote to Mr. Zajac
19 or that was written by your firm.

20 **A.** "Dear Ron." The Re: is Kilpatrick Civic Fund. "Dear Ron,
21 enclosed please find our contribution in the amount of \$10,000.
22 We are pleased to participate in this fundraising event to
23 benefit the Kilpatrick Civic Fund. Please do not hesitate to
24 contact me with any questions or comments. Thank you. Best
25 regards, Douglas M. McKeige."

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14

1 **Q.** So this was the letter that accompanied the check then?

2 **A.** That is correct.

3 **MR. BULLOTTA:** Can we see -- Ms. Facchini, can you
4 scroll up.

5 **BY MR. BULLOTTA:**

6 **Q.** Does it indicate on the letter how the check was sent?

7 **A.** It was sent via Federal Express.

8 **Q.** Thank you. And then were you contacted in this case by an
9 agent with the FBI to get information about your donation?

10 **A.** I was.

11 **Q.** I'm going to show you Page 4 of KCF-90.

12 **A.** That's the same document?

13 **Q.** Yes, it's the last page. What is this document?

14 **A.** This is a check stub, check stub meaning this is from --
15 well, maybe I described it wrong actually because I'm not
16 100 percent familiar with how, how our checks, you know,
17 actually physically look, but this is the record that we
18 maintain at the firm when we send the check out. So it's our
19 evidence of the check.

20 **Q.** Did you cause your comptroller at the firm to provide this
21 to the FBI, to get this?

22 **A.** Yes. Well, he gave it to me and I gave it to the FBI.

23 **Q.** Okay. But this was provided in response to the request by
24 the FBI?

25 **A.** That's correct.

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Thursday, October 18, 2012*

15

1 **Q.** And it shows a check of \$10,000 to the Civic Fund on
2 June 21, 2006?

3 **A.** Correct.

4 **Q.** Thank you. I want to direct your attention to the
5 following year, the following summer, July of 2007, and I'm
6 going to show you what's been marked KCF-90A. Do you recognize
7 that check?

8 **A.** Well, I don't really recognize it except that it clearly
9 is a check issued by my firm in the amount of \$10,000 to the
10 Kilpatrick Civic Fund and that date, and I do know that we made
11 a contribution around that time. So it's a check from my firm.

12 **Q.** Did you provide that to -- strike that.

13 **MR. BULLOTTA:** I'd move in KCF-90A, Your Honor.

14 **THE COURT:** Received.

15 (Government's Exhibit KCF-90A received into
16 evidence.)

17 **BY MR. BULLOTTA:**

18 **Q.** So you said you know that your firm donated another
19 \$10,000, is that right?

20 **A.** Correct, the following year.

21 **Q.** And what's the date of the check?

22 **A.** July 18, 2007.

23 **Q.** Were you involved in the decision to donate a second time
24 to the Kilpatrick Civic Fund?

25 **A.** I mean, I would have been involved. I don't have a

*Max Berger - Direct
Thursday, October 18, 2012*

16

1 specific recollection of any conversations being involved, but
2 I would have been involved. The check would not have been
3 issued without my authorization.

4 **Q.** And did you have that same understanding of the purpose of
5 the Civic Fund at the time that you believe that this went out?

6 **A.** Yes.

7 **Q.** Thank you. I want to ask you now about a third donation.
8 I'm going to show you what's been marked KCF-91, and I'll ask
9 you to tell us what that exhibit is.

10 **A.** The first page of KCF-91 is a letter dated June 4, 2008
11 from my partner, Gerald Silk, to Ron Zajac, again enclosing a
12 contribution in the amount of \$10,000 to the Kilpatrick Civic
13 Fund and what he refers to as the City of Detroit because
14 that's what we -- our understanding was of what the check was
15 for.

16 **MR. BULLOTTA:** Okay. I would move in KCF-91,
17 Your Honor.

18 **THE COURT:** Received.

19 (Government's Exhibit KCF-91 received into evidence.)

20 **BY MR. BULLOTTA:**

21 **Q.** Can you see the date of this letter?

22 **A.** I do.

23 **Q.** What is the date?

24 **A.** June 4, 2008.

25 **Q.** And can you read the letter to Mr. Zajac?

*Max Berger - Direct
Thursday, October 18, 2012*

17

1 **A.** "Dear Ron, Enclosed please find Bernstein, Litowitz,
2 Berger & Grossmann, LLP's contribution in the amount
3 of \$10,000. We are pleased to participate in this fundraising
4 event to benefit the Kilpatrick Civic Fund and the City of
5 Detroit. Very truly yours, Gerald H. Silk."

6 **Q.** Who is Gerald H. Silk?

7 **A.** He is my partner.

8 **Q.** And can we see Page 2 of KCF-91.

9 **A.** Yes.

10 **Q.** What is this document?

11 **A.** That is also a check stub that we retain in our records
12 which is evidence of the issuance of that check.

13 **Q.** What's the date on the check stub?

14 **A.** June 4, 2008, same day as the letter.

15 **Q.** And what's the amount of the check?

16 **A.** \$10,000.

17 **Q.** Thank you. Mr. Berger, did you believe when you were
18 involved in authorizing these three checks totaling \$30,000,
19 did you believe that any of the money that you donated was
20 going to be used for personal purposes by anyone?

21 **MR. THOMAS:** Object, foundation.

22 **THE COURT:** Overruled.

23 **A.** No, to the contrary, I mean, we were specifically informed
24 that the checks --

25 **MR. THOMAS:** Now that is being offered for the truth.

*Max Berger - Direct
Thursday, October 18, 2012*

18

1 **MR. BULLOTTA:** It goes to his -- the reason that he
2 donated, Your Honor.

3 **THE COURT:** I think you need a different foundation.

4 **MR. BULLOTTA:** Well, I just --

5 **BY MR. BULLOTTA:**

6 **Q.** Don't tell us what you were told, just tell us what you
7 believed. Did you believe that any of the money was -- or what
8 did you believe the money was going to be going for? You said
9 to the contrary, not for personal use.

10 **A.** Okay. We believed the contributions were going to --

11 **MR. THOMAS:** Objection, "We."

12 **THE COURT:** I.

13 **BY MR. BULLOTTA:**

14 **Q.** What did you believe?

15 **A.** We believed --

16 **Q.** Sorry, you can only talk about what you believed.

17 **A.** Oh, I believed the contributions were being made to
18 benefit the citizens of Detroit and would be used for both
19 civic and educational purposes.

20 **Q.** Did you believe that any of the monies that you donated
21 would be used for the campaign of any political candidate?

22 **A.** To the contrary. I, I absolutely believed that they would
23 not be used for personal purposes.

24 **Q.** You thought it was going to help people in the City of
25 Detroit?

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19

1 **A.** That was why I made the -- authorized making the
2 contributions.

3 **MR. BULLOTTA:** Thank you. I have no further
4 questions.

THE COURT: Mr. Thomas.

(9:14 a.m.)

CROSS EXAMINATION

8 | BY MR. THOMAS:

9 Q. Mr. Berger, how are you?

A. Very good. How are you?

11 Q. Sorry for abruptly jumping up and objecting. I didn't
12 mean to startle anyone.

13 **A.** Oh, please, I'm a lawyer, I understand these things.

14 Q. All right. You are here to testify about contributions
15 that were made over a period of three years by your firm?

A. That's correct. I mean, I assume that's correct.

17 Q. Well, I want to talk to you a little bit about that, all
18 right?

19 || A. Okay.

20 Q. Your firm is engaged in working with the City of Detroit,
21 is that correct?

22 | A. That is correct.

23 Q. And at the time you were solicited to give money, who was
24 it that solicited you to give the money?

A. Well, the letter I was shown came from Mr. Papas, but I

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20

1 believe that the communications were from Mr. Zajac.

2 **Q.** And who is Ron Zajac?

3 **A.** Ron Zajac is a lawyer who has a firm in Detroit, and he is
4 the outside counsel or general counsel, however you would
5 describe it, for the pension systems, the City of Detroit, and
6 the Fire and Police pension systems that we represent.

7 **Q.** All right. And do you know Mr. Zajac?

8 **A.** I do.

9 **Q.** And did you work with him in relationship to your work
10 with the Detroit pension systems?

11 **A.** That is correct, yes.

12 **Q.** All right. Now, how does it happen that somebody who does
13 work with the pension system gets asked to give money? Can you
14 explain that to the jury, please?

15 **A.** I'm sorry, I missed the --

16 **Q.** How is it that you are asked to donate money?

17 **A.** Well, we're asked to donate money -- we represent pension
18 systems and other organizations all over the country, for that
19 matter all over the world, and so very often we're asked to
20 make donations for one cause or another. And, you know, we
21 benefit significantly from the relationship, and we were asked
22 to make these donations, quite frankly, at a time where, you
23 know, we understood that Detroit was having some significant
24 fiscal issues, and so we were more than happy to make the
25 contributions that we made.

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1 **Q.** Okay. Now --

2 **A.** Did that answer your question?

3 **Q.** In a way. Because you're a lawyer, I want to in some way
4 engage you in a conversation about, you know, the process of
5 how it is that somebody who has worked with the City of Detroit
6 is asked to give money and the circumstances surrounding that
7 if I can.

8 **A.** You know, what I, what I recollect of the conversation,
9 and I couldn't tell you which year it was in and -- but that is
10 a -- I mean, I couldn't give you the specific words, but I --
11 but what I do recollect of it was, you know, Ron basically
12 saying that there is this Civic Fund that was established for
13 the benefit of the citizens of Detroit and for educational
14 purposes, and so on and so forth like that, and that they are
15 raising funds, would we consider making -- would we, the firm,
16 consider making contributions.

17 **Q.** Okay. Now, from a broader perspective, this is something
18 that is done quite often, would you agree, by people generally
19 in your experience?

20 **A.** Yeah, but I suppose, I mean, I have a -- you know, we're
21 charitable, our friends are charitable, so I do know that
22 generally people don't write checks for, for these purposes
23 without being asked.

24 **Q.** All right. And once you are asked, you make a
25 determination as to what the nature of your gifting is and a

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1 decision is made, right?

2 **A.** That's correct.

3 **Q.** Okay. Now, it's not just for the Civic Fund, your firm
4 probably gives money to other charitable purposes as well?

5 **A.** Yes, we do.

6 **Q.** And this amount of \$10,000 is a large amount for, let's
7 say, the jury or for us, but for the firm, your firm, that is
8 not an uncommon occurrence, or is it?

9 **A.** No, it's not uncommon. It's basically -- \$10,000 is not
10 an insignificant amount of money, but we basically donate, we
11 make donations like that quite often.

12 **Q.** Okay. Nothing improper about the donation?

13 **A.** Well, we wouldn't make it if we thought it was improper.

14 **Q.** Well, that's true and correct, but, you know, you have
15 business with the City of Detroit. Somebody who is engaged in
16 that business, Mr. Zajac, with the pension funds is asking you
17 to donate. There's nothing improper in that, would you agree?

18 **A.** Yes.

19 **Q.** All right. And the purpose of it is not only for a civic
20 purpose, but it also gives your firm exposure to the people who
21 are engaged in the work with the City of Detroit, would you
22 agree?

23 **A.** What I'm having trouble with is I don't know what you mean
24 by exposure. We represent the pension systems of the City of
25 Detroit, okay. We benefit directly from that relationship, and

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1 so it's our view that we need to give back to organizations and
2 charities, and so on and so forth that, you know, help us, and
3 in this particular case what was described to us was a real
4 need, you know, in the City of Detroit for these funds because
5 of the fiscal issues that the city was facing.

6 **Q.** Okay. So these are things that are done regularly, and
7 they are not improper?

8 **A.** That's correct.

9 **Q.** Okay. And so then you mentioned for the City of Detroit.
10 You were giving money to the Kilpatrick Civic Fund, not to the
11 City of Detroit, right?

12 **A.** Yeah, the checks were made payable -- the answer to that
13 is yes.

14 **Q.** Okay. And --

15 **A.** I'm sorry, I have to clarify that.

16 **Q.** Okay.

17 **A.** Because we didn't distinguish between whether the -- it
18 was the City of Detroit or the -- we thought that this was the
19 vehicle through which the City of Detroit would benefit.

20 **Q.** Right, and that that would be an indirect benefit, and
21 that's referred to by one of your partners when he said, you
22 know, here's 10,000, good luck to the fund and the City of
23 Detroit?

24 **A.** Correct.

25 **Q.** You said you didn't know what it meant, but you thought

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1 indirectly the city was going to benefit in some way?

2 **A.** No question, yes.

3 **Q.** Okay. So now I want to take a look at -- oh, and I should
4 ask you because you're a lawyer and you deal with maybe these
5 types of things. Are you familiar with the difference between
6 a 501(c)(3) and a 501(c)(4) corporation?

7 **A.** Not really, no.

8 **Q.** Ordinarily, corporations can't give checks, but in your
9 instance a 501(c)(4) corporation received a check from your
10 firm. There's nothing improper in that.

11 **A.** I assume not.

12 **Q.** Okay. So can we talk now about the Exhibit 90.1, please.
13 I want to put that up. You might have that in front of you.

14 **A.** I don't. I only have Exhibit 91.

15 **Q.** Okay. Well, I might make you turn around, and I'm sorry
16 to make you do that.

17 **A.** That's not a problem. I'm just trying to speak directly
18 into this. I understood there was a problem before.

19 **Q.** If I don't hear you, I'll let you know.

20 **A.** Okay.

21 **Q.** So this is the 2006 contribution, correct?

22 **A.** Yes.

23 **Q.** And, looking at that, this says -- this is on letterhead
24 from Jim Papas to invite your participation in a fundraising
25 benefit. Do you know Jim Papas?

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1 **A.** I don't believe so.

2 **Q.** Okay. Did you attend the event at the Atheneum in
3 Detroit?

4 **A.** I did not.

5 **Q.** But you conveyed a check and, did you send it to Mr. Papas
6 or did you send it to the address that Mr. Papas -- I'm sorry,
7 excuse me.

8 Did you send it to Mr. Papas or did you send it to
9 Mr. Zajac?

10 **A.** I believe we sent it to Mr. Zajac.

11 **Q.** Okay. This letter is the letter that you relied upon in
12 order to give your \$10,000 check, is that right?

13 **A.** Well, it would be a combination of that letter and also a
14 conversation with Mr. Zajac.

15 **Q.** Okay. And that was -- it indicates the name of the Civic
16 Fund, correct?

17 **A.** Yes.

18 **Q.** And that it was authorized or designated by the Internal
19 Revenue Service Code as a 501(c)(4) organization, correct?

20 **A.** Yes.

21 **Q.** And you were told that the contribution may be made by
22 corporate or personal check, and your three checks for \$10,000
23 were corporate checks, correct?

24 **A.** Well, I mean, they were partnership checks so they were
25 business checks, yeah.

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1 **Q.** Okay. And then is there --

2 These notations, are these your notations?

3 **A.** I'm sorry?

4 **Q.** Are those your notations on the right-hand side there?

5 **A.** No, they're not.

6 **Q.** But they refer to you, you're Max?

7 **A.** Correct.

8 **MR. THOMAS:** All right. So now can we see 90.2,
9 KCF-90.2.

10 **BY MR. THOMAS:**

11 **Q.** All right. This was a letter -- this was a second page of
12 an attachment that you've referred to, correct?

13 **A.** That's correct.

14 **Q.** All right. Now, this lists the organization's purposes,
15 and I just want to go through them for a minute. Mr. Bullotta
16 asked you about community activities and neighborhoods
17 betterment, and then asked you, if we go down to the bottom,
18 about whether or not you thought that any money was going to be
19 donated to any political campaign.

20 And you said, if I remember you correctly, you said
21 that you didn't think that it would have been appropriate for
22 money to go to a political campaign, correct?

23 **A.** Well, no, I don't think those were my words. I think
24 the -- I, my partners and my firm from time to time made
25 political contributions, but this was not supposed to be a

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1 political contribution. So our understanding was that these
2 checks were not for political purposes.

3 **Q.** Okay. Now, political purposes is a very broad term, and
4 it's bigger than political campaign, would you agree?

5 **A.** I have no idea.

6 **Q.** Well, I want to take you back up because I know that there
7 was a part that was skipped over and I want to be fair to you.
8 Take a look at, if you would, 1 through 5, and if we can scroll
9 up just a little bit because I want the jury to see.

10 "Organized for the following purposes," this is a list of
11 purposes that the Civic Fund was organized for and this is the
12 representation that was made to you at about the time that you
13 made the contribution.

14 It says in Part 2, "Provide information to Michigan
15 residents about legislative issues affecting their lives."
16 Now, you know, you're a lawyer, and I don't want to mince words
17 or have you parce, but did you contemplate that legislative
18 issues might have a political implication?

19 **A.** Well, I don't have a specific recollection of seeing
20 this -- I think what I said was I don't have a specific
21 recollection of seeing this sheet. I do recall, I do recall
22 seeing the earlier, the cover letter --

23 **Q.** Yes.

24 **A.** -- and I recall in general basically what was told to us
25 and what my understanding was about the purposes of these

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1 contributions.

2 **Q.** Okay.

3 **A.** So I can't say to you that I saw that and looked at it,
4 you know, at the time the contribution was made.

5 **Q.** So then I'm going to ask you the question as a lawyer,
6 because you are one and you are engaged in a very technical
7 field, whether or not you think that legislative issues could
8 involve political questions.

9 **A.** Well, the answer to that question is certainly that is the
10 case in general, but our, if I just may, our overarching
11 understanding about these contributions that were being made
12 was that they were for nonpolitical purposes to basically
13 benefit education and to -- for civic purposes for the people
14 of Detroit.

15 **Q.** Okay.

16 **A.** That was our overall understanding, and we were not
17 involved at all in how that money was spent.

18 **Q.** Well, and I want to get to that in a second, but there's
19 no question that this was from your file. This was introduced
20 into evidence by the government as a result of what it is that
21 they gathered from your file.

22 **A.** If that's what -- I can't tell you specifically as I sit
23 here what was produced, but if that was, if that representation
24 was made, then I'm sure it came from our files.

25 **Q.** Okay. And so then I want you to take a look at --

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1 **A.** I'm not saying we didn't have this document, I'm just
2 saying I don't recall seeing it.

3 **Q.** And I think that's fair and I'm pretty clear on that, but
4 I want to ask you now about Number 3. "Educate residents on
5 the importance of voting." That voting is certainly, if you're
6 talking about people that are voting on a legislative issue,
7 I'm sorry, voting on a proposal or voting as it relates to an
8 individual, that has political implications as well, does it
9 not?

10 **A.** Who you vote for is political.

11 **Q.** As political as you can get.

12 **A.** Yeah, the only thing I will say -- I'm sorry, I forgot
13 your name.

14 **Q.** My name is Jim Thomas.

15 **A.** Okay. Mr. Thomas, the only thing I can say is that in the
16 lower half of that there was another reference to, I just
17 recall reading it here, I couldn't tell you that I saw it at
18 the time, but to voter education or getting out the vote or
19 something like that, and there was a reference to basically
20 people not voting in particular areas, so --

21 **Q.** Right. And I'm going to get to that, but what I wanted to
22 address, and just in all fairness, at the bottom the thing that
23 I showed you was the term political contribution was used, and
24 I wanted to talk about a distinction between contributions to
25 anybody's political campaign versus political issues that were

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1 clearly referenced in this letter, and I just needed to know
2 what you think about, you know, legislative issues, importance
3 of voting, and the fact that things that might benefit the
4 community of Detroit at large may have a political implication.

5 **A.** I don't disagree with that.

6 **Q.** Okay. And so that cut everything short and so now I can
7 go down to the next section.

8 **A.** Yeah, that --

9 **Q.** All right. Thank you. And so this is an example of the
10 types of things that were referenced in the letter, and as you
11 sit here, you have no recollection of that, correct?

12 **A.** I don't, unfortunately.

13 **Q.** Okay, all right. Well --

14 **A.** I mean, I don't have a recollection of getting into those
15 kinds of specifics. I'm not saying I didn't see it at the
16 time. I just don't recollect it.

17 **Q.** Okay. Do you know if a 501(c)(4) corporation is known as
18 a social welfare organization?

19 **A.** I have no idea.

20 **Q.** And so then can we go to 90.3, please, and this is the
21 letter from Mr. Zajac -- or to Mr. Zajac, okay, and that is
22 Police, Fire and Retirement System is what you worked for with
23 the City of Detroit, is that right?

24 **A.** Yes.

25 **MR. THOMAS:** All right. Can we now look at 90A,

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1 please.

2 Not you, I'm sorry, I'm talking to Ms. Facchini.

3 She's our wonderful assistant here.

4 **BY MR. THOMAS:**

5 Q. This is the second check for \$10,000, correct, in 2007?

6 A. That's correct.

7 Q. Based upon the following assumptions, another check was
8 sent again, correct?

9 A. Yes.

10 Q. Was that sent to the attention of Mr. Zajac as well, if
11 you remember?

12 A. Unless there was a cover letter attached to it, if there
13 is no cover letter attached to it, I would assume that it was
14 sent to Mr. Zajac, but I have no direct knowledge.

15 Q. And it's a corporate check?

16 A. It's a partnership check.

17 Q. I keep on saying that.

18 A. That's okay.

19 **MR. THOMAS:** 90 -- is there a 90A.2? And 90A.3? No,
20 okay. So how about then KCF-91.

21 **BY MR. THOMAS:**

22 Q. These have all been admitted into evidence and talked
23 about on direct, but I wanted to talk about this. This, again,
24 is in the year 2008, and this is directed to Mr. Zajac as well,
25 correct?

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1 **A.** That's correct.

2 **Q.** And it's reciting another \$10,000 partnership
3 contribution?

4 **A.** Yes.

5 **Q.** All right. Now, had you ever seen the Articles of
6 Incorporation of the Kilpatrick Civic Fund?

7 **A.** No.

8 **Q.** You have had conversations, have you not, with agents in
9 preparation for your testimony here today?

10 **A.** Well, I was interviewed sometime in early 2010 by an FBI
11 agent named Hunt, I believe, and then just this morning for a
12 few minutes by Mr. Bullotta.

13 **Q.** You remember speaking to Special Agent David Hunt from the
14 FBI?

15 **A.** I do, yes.

16 **Q.** And did he indicate to you what it was that he felt was
17 objectionable in the spending of the money from the Kilpatrick
18 Civic Fund? If you remember.

19 **A.** I don't believe he did. I think he was just asking me
20 about the contributions, and I, when I finally saw the notes of
21 his interview, and I asked for that information and there were
22 no documents attached to it even though they said there were
23 documents attached to it, and I spoke to my comptroller and
24 asked for the evidence of the contributions, I discovered there
25 were three and not two checks. His interview notes refer to

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1 two checks, and so basically I immediately called Mr. Hunt and
2 told somebody in that office that there were three checks and
3 not two.

4 **Q.** The Kilpatrick Civic Fund is a 501(c) corporation. Would
5 you have expected that, when you were giving your donations,
6 that the Civic Fund was run by a board of directors?

7 **A.** I have no idea.

8 **Q.** As a lawyer, you know that most corporations do have
9 boards of directors, correct?

10 **A.** Yes.

11 **Q.** And that they might have officers who will make decisions?

12 **A.** Yes.

13 **Q.** And would you have expected that the officers and the
14 board of directors would have made decisions as to what the
15 expenditures would have been for the Civic Fund?

16 **A.** Yes.

17 **Q.** The -- because it's a corporation and it's involved in
18 fundraising, would you have expected that they would have had
19 employees?

20 **A.** Yes.

21 **Q.** And that these employees would either volunteer or that
22 they might be paid for what it is that they do?

23 **A.** Yes.

24 **Q.** And that would be entirely proper for a corporation that
25 was soliciting fundraising, would you agree?

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1 **A.** Yes.

2 **Q.** And as it relates to those employees, if they were going
3 to be soliciting funds from outside of the City of Detroit, you
4 would expect that they might have to travel to do that, rather
5 than a phone call?

6 **A.** Sure.

7 **Q.** You knew Ron Zajac. Ron Zajac could pick up the phone
8 because he knew you and he had a relationship with you and he
9 could ask you would you consider giving the money, but as it
10 relates to somebody who maybe doesn't have that relationship,
11 that maybe even friendship with the business relationship, that
12 they might have to travel in order to solicit funds?

13 **A.** Sure.

14 **Q.** And if you travel for business, maybe not today because I
15 imagine you want to get out of town as fast as you can to see
16 those Yankees lose --

17 **A.** We were on a 6:00 flight from New York so it was --

18 **Q.** Anyway, my baseball politics, I'm going to leave that
19 aside.

20 You might expect that if you were staying overnight
21 that you might have a hotel and that you might have to pay for
22 a meal here or there --

23 **A.** Yes.

24 **Q.** -- right? And those expenditures are something that would
25 be reimbursed by the corporation if it was for a corporate

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1 purpose?

2 **A.** I think the corporation, I'm presuming, would set its own
3 rules for reimbursable expenses just as we do, so, you know, my
4 firm, and if it was consistent with those --

5 **Q.** Purposes?

6 **A.** -- purposes and the standards that are set, you know,
7 certainly.

8 **Q.** But we're not here to second-guess what the corporation --

9 **A.** No, I have no idea what they did.

10 **Q.** -- did or the board did?

11 **A.** Well, I'm certainly not. I mean, I don't -- that's
12 certainly not my purpose here.

13 **Q.** Political contributions to a political campaign are
14 typically made to a, an entity that is set up to receive those
15 funds, would you agree?

16 **A.** Yes.

17 **Q.** There is a distinction I have tried to make with my
18 questioning for you about things that have political
19 implications that are not contributions to a political fund.
20 You recognize the distinction?

21 **A.** Yes.

22 **MR. THOMAS:** All right. Thank you, Judge.

23 Thank you, sir, and, you know, go Tigers.

24 **THE WITNESS:** Yankees are going to lose anyway, so
25 it's --

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1 **MR. THOMAS:** See, now his credibility is an issue,
2 Judge.

THE WITNESS: That was off the record, by the way.

4 **MR. BULLOTTA:** I think Mr. Thomas was being a bit
5 presumptuous. Are you a Mets fan?

THE WITNESS: I am not. I am a Yankee fan.

7 **MR. BULLOTTA:** But there are some people in New York
8 who like the Mets.

THE WITNESS: There are. Very few, but there are.

REDIRECT EXAMINATION

13 BY MR. BULLOTTA:

14 Q. I want to put KCF-91 back up on the screen for a second.

15 A. I have that in front of me, so --

16 Q. And I just wanted to ask you about the third check that
17 was sent. Do you know how that was sent, can you tell by the
18 letter?

19 **A.** Yeah, it's -- I presume it was sent Federal Express
20 because that's what it says, and we wouldn't have it on there
21 if it wasn't sent Federal Express.

22 Q. Okay. Thank you. So both the 2006 and 2008 checks appear
23 to have been sent by Federal Express?

24 | A. Correct.

25 Q. Okay. Thank you. You were asked about types of expenses.

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1 that you thought might be legitimate. Would you have donated
2 to the Kilpatrick Civic Fund or would you have advocated for it
3 in June of 2008 if you believed that some of the money would be
4 used to pay for a crisis manager for Kwame Kilpatrick, who was
5 going through a text message scandal?

6 **A.** That would not have been consistent in our view or my view
7 with the purposes of the contribution.

8 **MR. BULLOTTA:** Thank you. No further questions.

9 (9:40

10 a.m.)

11 **RECROSS EXAMINATION**

12 **BY MR. THOMAS:**

13 **Q.** In response to that last question, you knew who
14 Kwame Kilpatrick was, but you had not met him?

15 **A.** I had not met him. I did know who he was.

16 **Q.** He was the mayor of the City of Detroit?

17 **A.** Yes.

18 **Q.** And did you know that he was the figurehead for the Civic
19 Fund?

20 **A.** Well, the fund had his name on it so I assume he had a
21 connection to it.

22 **Q.** Okay. And having that assumption, were you aware of the
23 fact that Mr. Kilpatrick was under siege both personally and
24 politically?

25 **A.** I actually don't think I had specific knowledge of that.

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1 I must have -- I mean, I'm assuming it was pretty high
2 visibility, but I, I'm not sure I actually knew that.

3 **Q.** Okay.

4 **A.** I know it now, but I --

5 **Q.** You didn't know it then?

6 **A.** I may have. I just don't recollect.

7 **Q.** Okay. Would you have expected that if he was under
8 personal attack that his ability to raise funds might, for the
9 Civic Fund might have been affected in a negative way?

10 **A.** Well, I never -- I mean, you're asking me -- I mean, I
11 don't mean to be evasive, but you're asking me a hypothetical
12 question, and I have, you know -- I mean, I didn't think about
13 it at the time at all. I thought that what we were doing was
14 really sort of making the same type of donation that we had
15 made in the prior two years.

16 **Q.** So what I wanted to ask you, though, is based on
17 Mr. Bullotta's -- and he has a right to ask these questions. I
18 just want to ask you a question about that, and that is that
19 if -- he asked you, "What if you found out that money had been
20 paid to a crisis manager, would you have thought so"?

21 **MR. BULLOTTA:** Objection, I didn't ask that that way.

22 **THE COURT:** The jury can remember how the question
23 was asked. Go ahead.

24 **BY MR. THOMAS:**

25 **Q.** And I want to get into what if you knew that he was under

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1 siege politically and personally?

2 **A.** I answered the question the way I answered it because it
3 seemed to me that this was something that this would be using
4 the money for specific personal purposes, and I don't -- if
5 that was part of the by-laws of the Kilpatrick Civic Fund,
6 well, then, I'm sure that it would be appropriate, but I don't
7 know the answer to that, but it seems to me that writing a
8 check to someone for --

9 **Q.** Crisis management.

10 **A.** Who was hired for personal purposes because they are
11 facing some other things unrelated to the Civic Fund would not
12 have been consistent with the use to which, you know, we would
13 have expected that the money would go.

14 **Q.** All right. I want you to assume a couple of --

15 **A.** I'm not an expert on this, so --

16 **Q.** All right. We're talking about what your opinion is and
17 we certainly asked about your opinion as it relates to a crisis
18 manager, and if Mr. Kilpatrick is the figurehead of the Civic
19 Fund and he's under siege, would you have expected that his
20 fundraising ability would have been affected?

21 **A.** Yes.

22 **Q.** Would you expect that if he was in fact personally under
23 siege that he might want to, for purposes of the Civic Fund, to
24 address the issue so that he could in fact maybe address
25 issues?

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1 **MR. BULLOTTA:** Your Honor, I'm going to object, it
2 calls for speculation, and I think it's also irrelevant.

3 **MR. THOMAS:** Well, he opened up the door about --

4 **THE COURT:** I think you did, Mr. Bullotta.
5 Overruled.

6 **A.** I suppose so, yeah.

7 **BY MR. THOMAS:**

8 **Q.** Now, and you've already told me that you know that
9 corporations are ruled by their board of directors, correct?

10 **A.** Yes.

11 **Q.** And you're assuming regularity as it relates to their
12 actions with respect to their determination of what is properly
13 reimbursable, correct?

14 **A.** I'm assuming that whatever is proper and reimbursable
15 would be articulated in some -- either by them or in some
16 document or something like that, but if it wasn't, whatever
17 they deemed to be appropriate would control the situation.

18 **Q.** As long as it's related.

19 **A.** As long as it's related to --

20 **Q.** As long as the expenditure is related to the purposes of,
21 say, fundraising for the Civic Fund or the community purposes
22 that it is meant to do?

23 **A.** Certainly that could be the case, yes.

24 **Q.** All right. Nothing further. Thank you.

25 **A.** You're welcome.

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1 **MR. BULLOTTA:** Nothing further, Your Honor.

2 **THE COURT:** All right. Thank you, Mr. Berger. You
3 may step down, you may be excused, and you may go back to New
4 York and weep about the Yankees.

5 **MR. BULLOTTA:** Knocking on wood.

6 **THE COURT:** Knocking on wood.

7 (Witness excused at 9:45 a.m.)

8 **MR. CHUTKOW:** The government calls Jon Rutherford.

9 **THE COURT:** All right. Ladies and gentlemen, this is
10 the start of a new chapter in this case.

11 Good morning, Mr. Rutherford.

12 **MR. RUTHERFORD:** Good morning.

13 **MR. CHUTKOW:** Your Honor, before we begin, Mr. Thomas
14 has asked for a sidebar relating to an exhibit in this case.

15 **THE COURT:** All right.

16 (The following sidebar conference was held:)

17 **MR. THOMAS:** Judge, the Government's Exhibit RUTH-1
18 is a summary exhibit that includes contributions that
19 Mr. Rutherford had made to the 21st Century Fund, which is a
20 527 corporation, the Friends of Kilpatrick and Kilpatrick for
21 Congress, which are funds that relate to Mr. Kilpatrick's
22 mother, and the Generation PAC and the Community Coalition, in
23 addition to other contributions to Mr. Kilpatrick directly,
24 which would be the Kilpatrick Civic Fund.

25 The 21st Century Fund is a democratic 527

EXHIBIT B

May 22, 2006

Dear Friend,

I am writing at this time to invite your participation in a fund raising event to benefit the Kilpatrick Civic Fund. The Kilpatrick Civic Fund is involved in community activities related to a variety of civic and educational purposes. A listing of Kilpatrick Civic Fund activities is attached hereto.

The Kilpatrick Civic Fund event will be held on Wednesday, June 21st at the Atheneum Suites Hotel located at 1000 Brush Avenue-Greenpoint from 5:00 p.m. until 7:00 p.m. Contributions in the amount of \$1,000 to \$10,000 will be appreciated. Please make your check payable to the Kilpatrick Civic Fund. Note that the Kilpatrick Civic Fund has been designated by the Internal Revenue Code as a 501(c)(4) organization and contributions may be made by corporate or personal checks.

Please contact me at (313) 962-9484 should you have any questions or require additional information. Contributions may be delivered on the day of the event or mailed to me at the following address:

Jim Papas
[REDACTED]
Detroit, MI 48226

Thank you in advance for your support of the Kilpatrick Civic Fund. We are looking forward to seeing you at the event.

Sincerely,

Jim Papas

\$10,000

EAP

JP/kb

GOVERNMENT
EXHIBIT
KCF - 90

Kilpatrick Civic Fund

The Civic Fund was organized for the following purposes:

1. Promote community activities that (i) enhance Detroit neighborhoods and/or (ii) contribute to the betterment of Detroit and surrounding community children;
2. Provide information to Michigan residents about legislative issues affecting their lives;
3. Educate Detroit residents on the importance of voting;
4. Participate in activities that contribute to the redevelopment of a positive image of Detroit or benefit the northwest Detroit community at large; and
5. Support crime prevention or economic empowerment initiatives within northwest Detroit.

Examples of the Civic Fund activities include:

- A. Sponsoring "Get Out To Vote" rallies. Northwest Detroit residents were educated on the importance of voting and how the voting process works.
- B. Co-sponsoring a charity little league football game with the Westside Cubs of the Detroit Police Athletic League. Proceeds from this game were donated to the Cubs which provides after school team and image building programs for children from Northwest Detroit.
- C. Contributing to seminars on education and economic empowerment and development.

The Civic Fund is active in improving the lives of residents of the City of Detroit. No funds of the Civic Fund are donated to any political campaign.

DOUGLAS M. McKEIGE
Doug@bibglaw.com
(212) 554-1481

June 22, 2006

Via Federal Express

Ronald Zajac, Esq.
Police & Fire Retirement System
of the City of Detroit/General Retirement
System of the City of Detroit
79 Alfred Street
Detroit, MI 48201

Re: *Kilpatrick Civic Fund*

Dear Ron:

Enclosed please find our contribution in the amount of \$10,000.00. We are pleased to participate in this fund raising event to benefit the Kilpatrick Civic Fund.

Please do not hesitate to contact me with any questions or comments. Thank you.

Best Regards,

Douglas M. McKeige

DMM/rim

Enclosure

27106

Amount
10,000.00

6/21/2006

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

KELPATRICK GIVING FUND

Date Reference Number Account Number
6/21/2006

10,000.00

PRINTED IN U.S.A.

USA PATRIOT Act Disclosure

1

EXHIBIT C

CANDIDATE'S ANNUAL REPORT
OF RECEIPTS AND DISBURSEMENTS

Name of Candidate Jim Hood

Address P. O. Box 220, Jackson, Mississippi 39205 County Chickasaw

Telephone (Work) 601-359-3680 (Home) _____ (Fax) _____

Contact Name _____ Email Address _____

Office Sought Attorney General Political Party Democratic

Check here if above is different from previous report.

TYPE OF REPORT

• CHECK THE CATEGORY OF REPORT YOU ARE SUBMITTING •

- January 31, 2005 Annual Report (January 1, 2004, through December 31, 2004).... Mandatory for all candidates
 January 31, 2006 Annual Report (January 1, 2005, through December 31, 2005).... Mandatory for all candidates
 January 31, 2007 Annual Report (January 1, 2006, through December 31, 2006).... Mandatory for all candidates
 Termination Report (Candidate will no longer accept contributions or make campaign expenditures and has no outstanding campaign debt or obligations.) Required to terminate reporting obligations

IMPORTANT

- (1) Annual reports are mandatory, even if no contributions or expenditures have occurred. In such case, the candidate shall submit a report indicating "0" (Zero) for total amount of reported contributions and expenditures during this period.
- (2) Until a candidate files a termination report, annual and periodic reports must continue to be filed in accordance with Miss. Code Ann. § 23-15-807 (b)(ii) and (iii).
- (3) The appropriate office must be in actual receipt of the required reports by 5:00 p.m. on the reporting day. If the deadline falls on a weekend or a holiday, the office must be in actual receipt of the required reports by 5:00 p.m. on the first working day before the deadline.
- (4) Faxed reports are acceptable. Contributions in excess of \$200 received after the reporting period but more than 48 hours before 12:01 a.m. of the day of the election must be reported by FAX or otherwise within 48 hours of the contribution.

REPORTED CONTRIBUTIONS AND DISBURSEMENTS

	(itemized + non-itemized)	This Period	Calendar year-to-date
Total amount of contributions	\$194,947.25 + 24,715.00	\$219,662.25	\$219,662.25
Total amount of disbursements	\$268,214.38 + \$1,083.63	\$269,298.01	\$269,298.01
Total amount of cash on hand			\$15,963.64

I certify that I have examined this report and to the best of my knowledge and belief it is true, accurate, and complete.

Jim Hood
(Signature of candidate)

1-31-07
(Date)

Authority: Refer to Miss. Code Ann. §§23-15-801 (1972) et seq. for statutory requirements.

Penalties: Failure to submit required reports, or failure to submit reports in accordance with statutory deadlines, or failure to submit valid reports shall result in fines of \$50 per day and/or prosecution in accordance with Miss. Code Ann. §§ 23-15-811 and 813 (1972).

- SEND TO:
1. Candidates for statewide, state district, multi-county and all legislative offices should return form to ERIC CLARK, Secretary of State, Elections Division, P.O. Box 136, Jackson, MS 39205 or fax to 601-359-1499 or 601-359-5019.
 2. Candidates for countywide and county district offices should return form to their county Circuit Clerk.
 3. Candidates for Municipal offices should return form to their Municipal Clerk.

First Name	Last Name	Employer/Organization	Address1	CITY	State	ZIP	Occup	Type	Date1	Amount1	Type	Date2	Amount2	Type	Date3	Amount 3	YTD TOTAL
Lee	Abramson		P.O. Box 64077	Greenwood	MS	38905	attorney	Individual	2/7/2006	\$250.00						\$250.00	
Thomas B.	Alexander	Bellsouth Employees' MS PAC	175 E. Capitol Street	Jackson	MS	39201		PAC	6/1/2006	\$400.00	PAC	9/26/2006	\$600.00			\$1,000.00	
Jen	Anderson	Anderson Crowley & Burke	805 South Whetley	Ridgeland	MS	39157	attorney	In-Hnd	6/1/2006	\$300.00	Individual	6/9/2006	\$200.00			\$500.00	
John W.	Atherton	Mississippi Power Company State PAC	P.O. Box 4070	Gulfport	MS	39052		PAC	12/1/2005	\$2,500.00						\$2,500.00	
Andrew	Barroway	Schiffman & Barroway, LLP	260 King of Prussia Road	Radnor	PA	19087	attorney	Individual	2/22/2006	\$5,000.00						\$5,000.00	
Bobby	Beebe	Legacy/Care	617 Kensington Court	Ridgeland	MS	39157	business	Individual	5/30/2006	\$250.00						\$250.00	
H. K. "Ken"	Beebe		229 Calumet Drive	Madison	MS	39110	business	Individual	6/15/2006	\$250.00						\$250.00	
Marshall	Bennett	Wolfe Popper, LLP	645 Third Avenue	New York	NY	10022	attorney	Individual	2/22/2006	\$15,000.00						\$15,000.00	
Mark W.	Bengt	Bernstein Levine Berger & Grossman, LLP	10 East 40th Street	New York	NY	10018	attorney	Individual	2/16/2006	\$5,000.00						\$5,000.00	
Barney B.	Berner	Berner & Jones, PLLC	1001 Bishop Street	Honolulu	HI	96813	attorney	Individual	11/4/2006	\$250.00						\$250.00	
Bill	Blair	Blair & Bonnard	104 Summit Grove	Brandon	MS	39042	attorney	Individual	5/29/2006	\$500.00						\$500.00	
Steve	Blessey		P.O. Box 183	Blissfield	MS	39533	attorney	Individual	6/15/2006	\$250.00						\$250.00	
Walter C.	Blount		P.O. Box 207	Bessemer	MS	39021	mayor	Individual	6/13/2006	\$300.00						\$300.00	
Trey	Bobinger	Point One Strategies, LLC	P.O. Box 3015	Jackson	MS	39027	attorney	Individual	6/15/2006	\$500.00						\$500.00	
Steve	Bocaneri		10 Noland Way	Woodlands	TX	77362	attorney	Individual	6/18/2006	\$1,000.00						\$1,000.00	
Thomas W.	Brock		P.O. Box 1161	McComb	MS	39066	attorney	Individual	6/12/2006	\$1,000.00						\$1,000.00	
Walter	Brown	Walter Brown Law Firm, PLLC	P.O. Box 953	Matachic	MS	39121	attorney	Individual	6/8/2006	\$250.00						\$250.00	
Gary	Button		1671 Lake Drive	Jackson	MS	39216	attorney	Individual	8/29/2006	\$500.00						\$500.00	
Richard A.	Campbell	Denting, Parker, Hoffman, Green, Campbell & De	4851 Jenny Carter Blvd.	Norcross	GA	30093	attorney	Individual	11/7/2006	\$250.00						\$250.00	
Tommie S.	Carth	Butler Snow Law Firm	303 Bordeaux Drive	Clinton	MS	39056	attorney	Individual	6/7/2006	\$1,000.00						\$1,000.00	
Brian	Carruthers		3570 Ashland Drive	Davidsonville MD	MD	21035	attorney	Individual	11/6/2006	\$1,000.00						\$1,000.00	
Sean B.	Carthorne*		P.O. Drawer 687	Winter Valley	MS	39065	business	Individual	6/1/2006	\$500.00						\$500.00	
Dorey J.	Carpen		2037 London Avenue	Jackson	MS	39211	attorney	Individual	6/15/2006	\$500.00						\$500.00	
Donald	Clark	Butler Snow Law Firm	P.O. Box 22557	Jackson	MS	39225	attorney	Individual	6/7/2006	\$1,000.00						\$1,000.00	
John P.	Coffey	Bernstein Lipow Berger & Goodman, LLP	3 Plateau Circle East	Bronxville	NY	10708	attorney	Individual	2/17/2006	\$5,000.00						\$5,000.00	
William	DelBee	Steen DelBee & Price, LLP	P.O. Box 900	Jackson	MS	39005	attorney	Individual	6/22/2006	\$500.00						\$500.00	
			P.O. Box 1084	Jackson	MS	39215	attorney	Individual	6/14/06	\$200.00						\$200.00	
Lynn	Davis		P.O. Box 186	Houlka	MS	38850	business	Individual	11/2/2006	\$10,000.00						\$10,000.00	
Steve	DeShay		103 Paradise Point Drive	Brandon	MS	39047	business	Individual	6/15/2006	\$250.00						\$250.00	
William H.	DeLoach	Provency, Seider DeLoach, Florence & Stob	P.O. Drawer 781	Alexandria	LA	71309	attorney	Individual	11/8/2006	\$250.00						\$250.00	
Billy	Derdney	Derdney Construction Company, Inc.	P.O. Box 6717	Jackson	MS	39062	business	corp	5/31/2006	\$250.00						\$250.00	
Kane	Ditto	Statestrel Group, LLC	P.O. Box 13025	Jackson	MS	39236	business	Individual	6/15/2006	\$250.00						\$250.00	
Stephen C.	Edwards	Baker Donelson Beerman Caldwell & Berowitz	P.O. Box 3342	Jackson	MS	39007	attorney	Individual	12/29/2006	\$1,700.00	In-Hnd	6/1/2006	\$273.00			\$1,973.00	
Rufus L.	Edmiston	The Edmiston & Webb Law Firm	132 S. Salisbury Street	Raleigh	NC	27601	attorney	Individual	8/14/2006	\$250.00						\$250.00	
James J.	Eisenhower	Schneider Hamlin Segal & Lewis, LLP	1600 Market Street	Philadelphia	PA	19103	attorney	Individual	2/22/2006	\$500.00						\$500.00	
John F.	Englund	Butler Snow Law Firm	2034 Park Blvd	Jackson	MS	39211	attorney	Individual	6/7/2006	\$1,000.00						\$1,000.00	
Gunter	Erz	Lewinsohn, Com, Inc.	1782 La Costa Meadows Dr	Santa Monica	CA	90278	business	Individual	11/22/2006	\$1,000.00						\$1,000.00	
Bog	Fairbank	Mississippi Power Company State PAC	P.O. Box 4073	Gulfport	MS	39062	attorney	PAC	6/5/2006	\$500.00						\$500.00	
Frederick S.	Fox	Kopkin Fox & Goldfarb, LLP	905 Third Avenue	New York	NY	10022	attorney	Individual	3/20/2006	\$2,000.00						\$2,000.00	
Lawrence H.	Framme		2312 Elmwood Phwy.	Richmond	VA	23234	attorney	Individual	11/3/2006	\$500.00						\$500.00	

Name of Candidate: Jim Hood
Reporting Period: January 1, 2006 through December 31, 2006

EXHIBIT D

RETENTION AGREEMENT

WHEREAS, the Attorney General has determined that claims should be made against certain persons and/or legal entities which are now or have previously been known as Cigna Corporation (referred to hereinafter as "Cigna" or the "Company"), certain of Cigna's officers, directors and control persons (Chief Executive Officer H. Edward Hanway, Chief Financial Officer James G. Stewart, and Chief Accounting Officer James A. Sears), and other persons and legal entities which may be discovered in due course (which may possibly include Cigna's accountant) (all prospective defendants are referred to collectively hereinafter as the "Defendants"), and which have caused pecuniary harm to the lawful citizens of the State of Mississippi due to the Public Employees' Retirement System of Mississippi's ("PERS" or the "State") investment in Cigna securities on account of, *inter alia*, Defendants' violations of the federal securities laws and misleading financial statements (the "Claims"); and

WHEREAS, the Attorney General has determined that the damages incurred by PERS total in excess of \$428,000 under the first-in-first-out damage calculation methodology, which amount does not include legal interest, attorneys' fees, and costs;

WHEREAS, the Attorney General has determined that the investigation, research, and litigation of the Claims will require the expenditure of large sums of money and require the work of numerous lawyers, paralegals, accountants, and secretaries who are familiar with the Defendants and their tortious and/or otherwise wrongful actions and/or inactions, and related issues for an extended period of time; and

WHEREAS, the Attorney General has further determined that it is in the best interests of the State and its citizens that the State retain attorneys experienced in the prosecution of complex

securities class actions to pursue the Claims; and,

WHEREAS, the below listed Law Firm is experienced in securities class actions and litigation and has consented to represent the State, in association with the Attorney General, respecting the Claims and pursuant to the terms and conditions hereof.

IT IS, ACCORDINGLY, AGREED as follows:

1. The Office of the Attorney General hereby retains Bernstein Liebhard & Lifschitz, LLP ("Law Firm"), and certain of its members, Keith M. Fleischman, Sandy A. Liebhard, Francis Karam and Stanley D. Bernstein, are hereby designated as Special Assistant Attorneys General to investigate, research, file, and litigate the Claims as a class action in any appropriate Court or Courts or before any appropriate governmental agency.
2. The Attorney General does not relinquish his constitutional or statutory authority or responsibility through this Retention Agreement. Should the State be named lead plaintiff by the Court, the Attorney General has the sole authority, through the Law Firm, to settle this litigation on behalf of the State and the class which it represents. The Law Firm shall consult with the Attorney General and obtain his approval on all material matters pertinent to these Claims and any litigation arising therefrom, and the Attorney General shall cooperate with the Law Firm and use his best efforts to secure the cooperation of other State agencies. Prior to initiating inquiries or demands to any persons or entities, the Attorney General and the Law Firm will agree upon entities to be contacted and/or claims to be pursued; the Law Firm will thereafter be entitled to its reasonable fees and expenses, as provided below, on any recovery from such agreed-upon entity or claims, discovered as a consequence of the Law Firm's inquiry/demand. The Attorney General is not required, however, to assign any members of his staff to pursue the Claims, but may from time to

time afford staff and other support services as the Attorney General deems appropriate. The Attorney General shall designate a member(s) of his staff to monitor these Claims, and the Law Firm shall keep the Attorney General and his designated staff member(s) fully informed on all matters pertaining to the Claims.

3. The Attorney General and the Law Firm both recognize that the claims present numerous factual and legal obstacles, and that no assurance of success on the Claims has or can be made.

4. The Attorney General shall maintain responsibility for the public distribution of information concerning this matter. All press inquiries shall be referred to the Attorney General for comment and response.

5. Notwithstanding the potential difficulties, the Law Firm has agreed to represent the State, and the Attorney General hereby agrees that the Law Firm will be compensated for its efforts at the lesser amount agreed upon by any of the joint lead plaintiffs, that ordered by the Court, or that agreed upon after the trial or settlement proceedings for the class, on the following basis:

A. Fee Agreements:

Exhibit A - Retention Agreement - Matter Resolved After Initiation of Litigation

B. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by the Attorney General, shall initially be borne entirely by the Law Firm, but shall be reimbursed from any gross recoveries from the pursuit of such claims on a case-by-case basis;

C. The Law Firm shall receive no compensation or reimbursement other

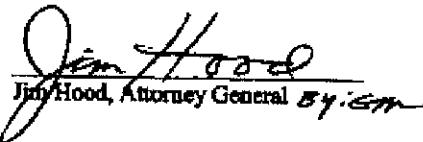
than set out above. In the event that no recovery is realized, the Law Firm shall receive no compensation or reimbursement.

6. With the approval of the Attorney General, the Law Firm may associate other attorneys at its own expense and at no cost to the State. Notwithstanding such association of other attorneys, this Retention Agreement is non-assignable and non-transferable, nor are the Law Firm's commitments delegable without the express written approval of the Attorney General.

DATED this 16 day of February, 2006.

ATTORNEY GENERAL OF
THE STATE OF MISSISSIPPI

By:


Jim Hood, Attorney General *by sm*

BERNSTEIN LIEBHARD &
LIFSHITZ, LLP

By:


Sandy A. Liebhard, Partner

Attachment A
(Retention Agreement)
(Matter Settled Prior to Initiation of Litigation) *

The following shall be the structured contingent fee schedule:

For Sums Up to \$25,000,000.00:

15%; then in addition;

For those sums between \$25,000,000.00 and \$75,000,000.00:

13%; then in addition;

For those sums between \$75,000,000.00 to \$200,000,000.00:

7%; then in addition;

For those sums between \$200,000,000.00 to \$500,000,000.00:

4%; then in addition;

For all those sums greater than \$500,000,000.00:

2%; then in addition;

For all those sums greater than \$1,000,000,000.00:

1%

* Due diligence and good faith must be exercised to settle this matter prior to filing a complaint, or before any significant discovery initiated.

Attachment B
(Retention Agreement)
(Matter Resolved After Initiation of Litigation)

The following shall be the structured contingent fee schedule:

For Sums Up to \$25,000,000.00:

After filing complaint before discovery completed: 17%
After filing complaint after discovery complete awaiting trial: 20%
After commencement of trial: 25%

then in addition;

For those sums between \$25,000,000.00 and \$75,000,000.00:

After filing complaint before discovery completed: 15%
After filing complaint after discovery complete awaiting trial: 18%
After commencement of trial: 21%

then in addition;

For those sums between \$75,000,000.00 to \$200,000,000.00:

After filing complaint before discovery completed: 10%
After filing complaint after discovery complete awaiting trial: 14%
After commencement of trial: 18%

then in addition;

For those sums between \$200,000,000.00 to \$500,000,000.00:

After filing complaint before discovery completed: 6%
After filing complaint after discovery complete awaiting trial: 8%
After commencement of trial: 10%

then in addition;

For all those sums greater than \$500,000,000.00:

After filing complaint before discovery completed: 3%
After filing complaint after discovery complete awaiting trial: 4%
After commencement of trial: 5%

EXHIBIT E

RETENTION AGREEMENT

WHEREAS, the Attorney General has determined that claims should be made against certain persons and/or legal entities which are now or have previously been known as Converium Holdings AG (referred to hereinafter as "Converium" or the "Company"), certain of Converium's officers, directors and control persons, (referred to collectively hereinafter as "Converium officers") and other persons and legal entities which may be discovered in due course (all prospective defendants are referred to collectively hereinafter as the "defendants"), and which have done damages to the lawful citizens of the State of Mississippi and/or are not paying lawful amounts to which the State is entitled (the "Claims") on account of, *inter alia*, making misrepresentations to investors in Converium securities to defraud the State of Mississippi of monies owed; and

WHEREAS, the Attorney General has determined that the damages incurred by the State of Mississippi total in excess of \$5 million, including applicable penalties, legal interest, attorneys' fees, and costs;

WHEREAS, the Attorney General has determined that the investigation, research, and litigation of the Claims will require the expenditure of large sums of money and require the work of numerous lawyers, paralegals, accountants, and secretaries who are familiar with the defendants and their tortious and/or otherwise wrongful actions and/or inactions, and related issues for an extended period of time; and

WHEREAS, the Attorney General has further determined that it is in the best interests of the State and its citizens that the State retain attorneys experienced in the prosecution of professional malpractice, securities, tax and tort claims to pursue the Claims; and,

WHEREAS, the below listed Law Firm is experienced in securities litigation and has

consented to represent the State of Mississippi, in association with the Attorney General, respecting the Claims and pursuant to the terms and conditions hereof.

IT IS, ACCORDINGLY, AGREED as follows:

1. The Office of the Attorney General hereby retains Bernstein Litowitz Berger & Grossmann LLP ("BLB&G" or the "Firm"), and its principal member, Douglas McKeige is hereby designated as the Special Assistant Attorney General to investigate, research and file the Claims in any appropriate Court or Courts or before any appropriate governmental agency.
2. The Attorney General does not relinquish his constitutional or statutory authority or responsibility through this Retention Agreement. The Attorney General has the sole authority to settle this litigation on behalf of the State of Mississippi and its citizens. BLB&G shall consult with the Attorney General and obtain his approval on all material matters pertinent to these Claims and any litigation arising therefrom, and the Attorney General shall cooperate with the Firm and use his best efforts to secure the cooperation of other State agencies. Prior to initiating inquiries or demands to any persons or entities, the Attorney General and BLB&G will agree upon entities to be contacted and/or claims to be pursued; the Firm will thereafter be entitled to its reasonable fees and expenses, as provided below, on any recovery from such agreed-upon entity or claims, discovered as a consequence of the Firm's inquiry/demand. The Attorney General is not required, however, to assign any members of his staff to pursue the Claims, but may from time to time afford staff and other support services as the Attorney General deems appropriate. The Attorney General shall designate a member(s) of his staff to monitor these Claims, and BLB&G shall keep the Attorney General and his designated staff member(s) fully informed on all matters pertaining to the Claims.
3. The Attorney General and BLB&G both recognize that the claims present numerous

factual and legal obstacles, and that no assurance of success on the Claims has or can be made.

4. The Attorney General shall maintain responsibility for the public distribution of information concerning this matter. All press inquiries shall be referred to the Attorney General for comment and response.

5. Notwithstanding the potential difficulties, BLB&G has agreed to represent the State, and the Attorney General hereby agrees that the Firm will be compensated for its efforts at the lesser amount agreed upon any of the joint lead plaintiffs, that ordered by the Court, or that agreed upon after the trial or settlement proceeds for the class, or the following basis:

A. Fee Agreements:

Exhibit A - Retention Agreement - Matter Settled Prior to Initiation of Litigation

Exhibit B - Retention Agreement -Matter Resolved After Initiation of Litigation

B. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by the Attorney General, shall initially be borne entirely by the Firm, but shall be reimbursed from any gross recoveries from the pursuit of such claims on a case-by-case basis;

C. BLB&G shall receive no compensation or reimbursement other than set out above. In the event that no recovery is realized, the Firm shall receive no compensation or reimbursement.

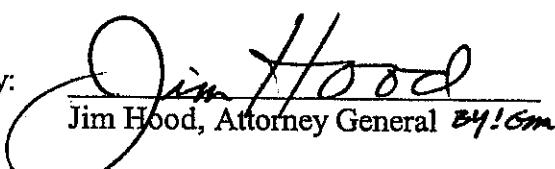
6. With the approval of the Attorney General, BLB&G may associate other attorneys at its own expense and at no cost to the State of Mississippi. Notwithstanding such association of other

attorneys, this Retention Agreement is non-assignable and non-transferable, nor are the Firm's commitments delegable without the express, written approval of the Attorney General.

DATED this 21st day of February, 2006.

**ATTORNEY GENERAL OF
THE STATE OF MISSISSIPPI**

By:


Jim Hood, Attorney General *by:cm*

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

By:


Douglas McKeige

**Attachment A
(Retention Agreement)
(Matter Settled Prior to Initiation of Litigation) ***

The following shall be the structured contingent fee schedule:

For Sums Up to \$25,000,000.00:

15%; then in addition;

For those sums between \$25,000,000.00 and \$75,000,000.00:

13%; then in addition;

For those sums between \$75,000,000.00 to \$200,000,000.00:

7%; then in addition;

For those sums between \$200,000,000.00 to \$500,000,000.00:

4%; then in addition;

For all those sums greater than \$500,000,000.00:

2%; then in addition;

For all those sums greater than \$1,000,000,000.00:

1%

* Due diligence and good faith must be exercised to settle this matter prior to filing a complaint, or before any significant discovery initiated.

Attachment B
(Retention Agreement)
(Matter Resolved After Initiation of Litigation)

The following shall be the structured contingent fee schedule:

For Sums Up to \$25,000,000.00:

After filing complaint before discovery completed:	17%
After filing complaint after discovery complete awaiting trial:	20%
After commencement of trial:	25%

then in addition;

For those sums between \$25,000,000.00 and \$75,000,000.00:

After filing complaint before discovery completed:	15%
After filing complaint after discovery complete awaiting trial:	18%
After commencement of trial:	21%

then in addition;

For those sums between \$75,000,000.00 to \$200,000,000.00:

After filing complaint before discovery completed:	10%
After filing complaint after discovery complete awaiting trial:	14%
After commencement of trial:	18%

then in addition;

For those sums between \$200,000,000.00 to \$500,000,000.00:

After filing complaint before discovery completed:	6%
After filing complaint after discovery complete awaiting trial:	8%
After commencement of trial:	10%

then in addition;

For all those sums greater than \$500,000,000.00:

After filing complaint before discovery completed:	3%
After filing complaint after discovery complete awaiting trial:	4%
After commencement of trial:	5%

then in addition;

For all those sums greater than \$1,000,000,000.00:

After filing complaint before discovery completed:	2%
After filing complaint after discovery complete awaiting trial:	3%
After commencement of trial:	4%

EXHIBIT F

RETENTION AGREEMENT

WHEREAS, the Attorney General has determined that claims should be made against certain persons and/or legal entities which are now or have previously been known as Delphi Corporation (referred to hereinafter as "Delphi Corp" or the "Company"), certain of Delphi Corp's officers, directors and control persons, (referred to collectively hereinafter as "Delphi Corp's officers") and other persons and legal entities which may be discovered in due course (all prospective defendants are referred to collectively hereinafter as the "defendants"), and which have done damages to the lawful citizens of the State of Mississippi and/or are not paying lawful amounts to which the State is entitled (the "Claims") on account of, *inter alia*, making misrepresentations to investors in Delphi Corp securities to defraud the State of Mississippi of monies owed; and

WHEREAS, the Attorney General has determined that the damages incurred by the State of Mississippi total in excess of \$1.7 million, including applicable penalties, legal interest, attorneys' fees, and costs;

WHEREAS, the Attorney General has determined that the investigation, research, and litigation of the Claims will require the expenditure of large sums of money and require the work of numerous lawyers, paralegals, accountants, and secretaries who are familiar with the defendants and their tortious and/or otherwise wrongful actions and/or inactions, and related issues for an extended period of time; and

WHEREAS, the Attorney General has further determined that it is in the best interests of the State and its citizens that the State retain attorneys experienced in the prosecution of professional malpractice, securities, tax and tort claims to pursue the Claims; and,

WHEREAS, the below listed Law Firm is experienced in securities litigation and has

consented to represent the State of Mississippi, in association with the Attorney General, respecting the Claims and pursuant to the terms and conditions hereof.

IT IS, ACCORDINGLY, AGREED as follows:

1. The Office of the Attorney General hereby retains Bernstein Litowitz Berger & Grossmann LLP ("BLB&G" or the "Firm"), and its principal member, Douglas McKeige is hereby designated as the Special Assistant Attorney General to investigate, research and file the Claims in any appropriate Court or Courts or before any appropriate governmental agency.

2. The Attorney General does not relinquish his constitutional or statutory authority or responsibility through this Retention Agreement. The Attorney General has the sole authority to settle this litigation on behalf of the State of Mississippi and its citizens. BLB&G shall consult with the Attorney General and obtain his approval on all material matters pertinent to these Claims and any litigation arising therefrom, and the Attorney General shall cooperate with the Firm and use his best efforts to secure the cooperation of other State agencies. Prior to initiating inquiries or demands to any persons or entities, the Attorney General and BLB&G will agree upon entities to be contacted and/or claims to be pursued; the Firm will thereafter be entitled to its reasonable fees and expenses, as provided below, on any recovery from such agreed-upon entity or claims, discovered as a consequence of the Firm's inquiry/demand. The Attorney General is not required, however, to assign any members of his staff to pursue the Claims, but may from time to time afford staff and other support services as the Attorney General deems appropriate. The Attorney General shall designate a member(s) of his staff to monitor these Claims, and BLB&G shall keep the Attorney General and his designated staff member(s) fully informed on all matters pertaining to the Claims.

3. The Attorney General and BLB&G both recognize that the claims present numerous

factual and legal obstacles, and that no assurance of success on the Claims has or can be made.

4. The Attorney General shall maintain responsibility for the public distribution of information concerning this matter. All press inquiries shall be referred to the Attorney General for comment and response.

5. Notwithstanding the potential difficulties, BLB&G has agreed to represent the State, and the Attorney General hereby agrees that the Firm will be compensated for its efforts at the lesser amount agreed upon any of the joint lead plaintiffs, that ordered by the Court, or that agreed upon after the trial or settlement proceeds for the class, or the following basis:

A. Fee Agreements:

Exhibit A - Retention Agreement - Matter Settled Prior to Initiation of Litigation

Exhibit B - Retention Agreement -Matter Resolved After Initiation of Litigation

B. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by the Attorney General, shall initially be borne entirely by the Firm, but shall be reimbursed from any gross recoveries from the pursuit of such claims on a case-by-case basis;

C. BLB&G shall receive no compensation or reimbursement other than set out above. In the event that no recovery is realized, the Firm shall receive no compensation or reimbursement.

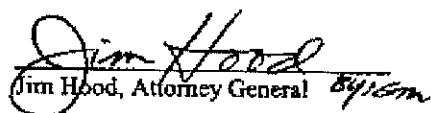
6. With the approval of the Attorney General, BLB&G may associate other attorneys at its own expense and at no cost to the State of Mississippi. Notwithstanding such association of other

attorneys, this Retention Agreement is non-assignable and non-transferable, nor are the Firm's commitments delegable without the express, written approval of the Attorney General.

DATED this 21st day of February, 2006.

**ATTORNEY GENERAL OF
THE STATE OF MISSISSIPPI**

By:


Jim Hood, Attorney General *by com*

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

By:


Douglas McKeige

**Attachment A
(Retention Agreement)
(Matter Settled Prior to Initiation of Litigation) ***

The following shall be the structured contingent fee schedule:

For Sums Up to \$25,000,000.00:

15%; then in addition;

For those sums between \$25,000,000.00 and \$75,000,000.00:

13%; then in addition;

For those sums between \$75,000,000.00 to \$200,000,000.00:

7%; then in addition;

For those sums between \$200,000,000.00 to \$500,000,000.00:

4%; then in addition;

For all those sums greater than \$500,000,000.00:

2%; then in addition;

For all those sums greater than \$1,000,000,000.00:

1%

* Due diligence and good faith must be exercised to settle this matter prior to filing a complaint, or before any significant discovery initiated.

Attachment B
(Retention Agreement)
(Matter Resolved After Initiation of Litigation)

The following shall be the structured contingent fee schedule:

For Sums Up to \$25,000,000.00:

After filing complaint before discovery completed: 17%
After filing complaint after discovery complete awaiting trial: 20%
After commencement of trial: 25%

then in addition;

For those sums between \$25,000,000.00 and \$75,000,000.00:

After filing complaint before discovery completed: 15%
After filing complaint after discovery complete awaiting trial: 18%
After commencement of trial: 21%

then in addition;

For those sums between \$75,000,000.00 to \$200,000,000.00:

After filing complaint before discovery completed: 10%
After filing complaint after discovery complete awaiting trial: 14%
After commencement of trial: 18%

then in addition;

For those sums between \$200,000,000.00 to \$500,000,000.00:

After filing complaint before discovery completed: 6%
After filing complaint after discovery complete awaiting trial: 8%
After commencement of trial: 10%

then in addition;

For all those sums greater than \$500,000,000.00:

After filing complaint before discovery completed: 3%
After filing complaint after discovery complete awaiting trial: 4%
After commencement of trial: 5%

then in addition;

For all those sums greater than \$1,000,000,000.00:

After filing complaint before discovery completed:	2%
After filing complaint after discovery complete awaiting trial:	3%
After commencement of trial:	4%

EXHIBIT G

RETENTION AGREEMENT

WHEREAS, the Attorney General has determined that claims should be made against certain persons and/or legal entities which are now or have previously been known as The Mills Corporation (referred to hereinafter as "Mills Corp" or the "Company"), certain of Mills Corp's officers, directors and control persons, (referred to collectively hereinafter as "Mills Corp officers") and other persons and legal entities which may be discovered in due course (all prospective defendants are referred to collectively hereinafter as the "defendants"), and which have done damages to the lawful citizens of the State of Mississippi and/or are not paying lawful amounts to which the State is entitled (the "Claims") on account of, *inter alia*, making misrepresentations to investors in Mills Corp securities to defraud the State of Mississippi of monies owed; and

WHEREAS, the Attorney General has determined that the damages incurred by the State of Mississippi total in excess of \$1.3 million, including applicable penalties, legal interest, attorneys' fees, and costs;

WHEREAS, the Attorney General has determined that the investigation, research, and litigation of the Claims will require the expenditure of large sums of money and require the work of numerous lawyers, paralegals, accountants, and secretaries who are familiar with the defendants and their tortious and/or otherwise wrongful actions and/or inactions, and related issues for an extended period of time; and

WHEREAS, the Attorney General has further determined that it is in the best interests of the State and its citizens that the State retain attorneys experienced in the prosecution of professional malpractice, securities, tax and tort claims to pursue the Claims; and,

WHEREAS, the below listed Law Firm is experienced in securities litigation and has

consented to represent the State of Mississippi, in association with the Attorney General, respecting the Claims and pursuant to the terms and conditions hereof.

IT IS, ACCORDINGLY, AGREED as follows:

1. The Office of the Attorney General hereby retains Bernstein Litowitz Berger & Grossmann LLP ("BLB&G" or the "Firm"), and its principal member, Douglas McKeige is hereby designated as the Special Assistant Attorney General to investigate, research and file the Claims in any appropriate Court or Courts or before any appropriate governmental agency.
2. The Attorney General does not relinquish his constitutional or statutory authority or responsibility through this Retention Agreement. The Attorney General has the sole authority to settle this litigation on behalf of the State of Mississippi and its citizens. BLB&G shall consult with the Attorney General and obtain his approval on all material matters pertinent to these Claims and any litigation arising therefrom, and the Attorney General shall cooperate with the Firm and use his best efforts to secure the cooperation of other State agencies. Prior to initiating inquiries or demands to any persons or entities, the Attorney General and BLB&G will agree upon entities to be contacted and/or claims to be pursued; the Firm will thereafter be entitled to its reasonable fees and expenses, as provided below, on any recovery from such agreed-upon entity or claims, discovered as a consequence of the Firm's inquiry/demand. The Attorney General is not required, however, to assign any members of his staff to pursue the Claims, but may from time to time afford staff and other support services as the Attorney General deems appropriate. The Attorney General shall designate a member(s) of his staff to monitor these Claims, and BLB&G shall keep the Attorney General and his designated staff member(s) fully informed on all matters pertaining to the Claims.
3. The Attorney General and BLB&G both recognize that the claims present numerous

factual and legal obstacles, and that no assurance of success on the Claims has or can be made.

4. The Attorney General shall maintain responsibility for the public distribution of information concerning this matter. All press inquiries shall be referred to the Attorney General for comment and response.

5. Notwithstanding the potential difficulties, BLB&G has agreed to represent the State, and the Attorney General hereby agrees that the Firm will be compensated for its efforts at the lesser amount agreed upon any of the joint lead plaintiffs, that ordered by the Court, or that agreed upon after the trial or settlement proceeds for the class, or the following basis:

A. Fee Agreements:

Exhibit A - Retention Agreement - Matter Settled Prior to Initiation of Litigation

Exhibit B - Retention Agreement -Matter Resolved After Initiation of Litigation

B. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by the Attorney General, shall initially be borne entirely by the Firm, but shall be reimbursed from any gross recoveries from the pursuit of such claims on a case-by-case basis;

C. BLB&G shall receive no compensation or reimbursement other than set out above. In the event that no recovery is realized, the Firm shall receive no compensation or reimbursement.

6. With the approval of the Attorney General, BLB&G may associate other attorneys at its own expense and at no cost to the State of Mississippi. Notwithstanding such association of other

attorneys, this Retention Agreement is non-assignable and non-transferable, nor are the Firm's commitments delegable without the express, written approval of the Attorney General.

DATED this 14th day of March, 2006.

**ATTORNEY GENERAL OF
THE STATE OF MISSISSIPPI**

By:

Jim Hood
Jim Hood, Attorney General *By: gm*

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

By:

Douglas McKeige
Douglas McKeige

Attachment A
(Retention Agreement)
(Matter Settled Prior to Initiation of Litigation) *

The following shall be the structured contingent fee schedule:

For Sums Up to \$25,000,000.00:

15%; then in addition;

For those sums between \$25,000,000.00 and \$75,000,000.00:

13%; then in addition;

For those sums between \$75,000,000.00 to \$200,000,000.00:

7%; then in addition;

For those sums between \$200,000,000.00 to \$500,000,000.00:

4%; then in addition;

For all those sums greater than \$500,000,000.00:

2%; then in addition;

For all those sums greater than \$1,000,000,000.00:

1%

* Due diligence and good faith must be exercised to settle this matter prior to filing a complaint, or before any significant discovery initiated.

Attachment B
(Retention Agreement)
(Matter Resolved After Initiation of Litigation)

The following shall be the structured contingent fee schedule:

For Sums Up to \$25,000,000.00:

After filing complaint before discovery completed: 17%
After filing complaint after discovery complete awaiting trial: 20%
After commencement of trial: 25%

then in addition;

For those sums between \$25,000,000.00 and \$75,000,000.00:

After filing complaint before discovery completed: 15%
After filing complaint after discovery complete awaiting trial: 18%
After commencement of trial: 21%

then in addition;

For those sums between \$75,000,000.00 to \$200,000,000.00:

After filing complaint before discovery completed: 10%
After filing complaint after discovery complete awaiting trial: 14%
After commencement of trial: 18%

then in addition;

For those sums between \$200,000,000.00 to \$500,000,000.00:

After filing complaint before discovery completed: 6%
After filing complaint after discovery complete awaiting trial: 8%
After commencement of trial: 10%

then in addition;

For all those sums greater than \$500,000,000.00:

After filing complaint before discovery completed: 3%
After filing complaint after discovery complete awaiting trial: 4%
After commencement of trial: 5%

then in addition;

For all those sums greater than \$1,000,000,000.00:

After filing complaint before discovery completed:	2%
After filing complaint after discovery complete awaiting trial:	3%
After commencement of trial:	4%

EXHIBIT H

MISSISSIPPI RETENTION AGREEMENT

WHEREAS, the Attorney General of the State of Mississippi determined that claims should be brought against certain current and former directors and/or officers (the “Defendants”) of UnitedHealth Group Inc. (the “Company”), who have done damage to the Company and the lawful citizens of the State of Mississippi, and who are not paying lawful amounts to which the Company is entitled (the “Claims”) on account of, *inter alia*, the granting of backdated stock options to UnitedHealth’s executives, and causing the Company to issue materially false and misleading public statements, including proxy statements, in order to defraud and otherwise mislead the Company and/or the Company’s shareholders, including the State of Mississippi;

WHEREAS, the Attorney General has determined that the damages incurred by the Company and/or the State of Mississippi may total in the hundreds of millions of dollars, including applicable penalties, legal interest, attorneys’ fees, and costs;

WHEREAS, the Attorney General has determined that the investigation, research, and litigation of the Claims will require the expenditure of large sums of money and require the work of numerous lawyers, paralegals, accountants, and secretaries who are familiar with the Defendants and their tortious and/or otherwise wrongful actions and/or inactions for an extended period of time;

WHEREAS, the Attorney General has further determined that it is in the best interest of the State and its citizens that the State retain attorneys experienced in the prosecution of derivative and securities claims to pursue the Claims; and

WHEREAS, the below-listed Law Firm is experienced in prosecuting securities, derivative and class action claims and has consented to represent the State of Mississippi, in

association with the Attorney General, respecting the Claims and pursuant to the terms and conditions hereof; and

IT IS ACCORDINGLY, AGREED as follows:

1. The Office of the Attorney General hereby confirms its existing retention of Bernstein Litowitz Berger & Grossmann LLP ("Law Firm"), and its principal members, Gerald Silk and Chad Johnson, are hereby designated as Special Assistant Attorneys General to investigate, research, file and otherwise prosecute the Claims in the District of Minnesota and any other appropriate Court or Courts or before any appropriate governmental agency.
2. The Attorney General does not relinquish his constitutional or statutory authority or responsibility through this Retention Agreement. The Attorney General has the sole authority to settle this litigation on behalf of the State of Mississippi and its citizens. The Law Firm shall consult with the Attorney General and obtain his approval on all material matters pertinent to these Claims and any litigation arising therefrom, and the Attorney General shall cooperate with the Law Firm and use his best efforts to secure the cooperation of other State agencies. Prior to initiating inquiries or demands to any persons or entities, the Attorney General and the Firm will agree upon entities to be contacted and/or claims to be pursued. The Firm will also thereafter be entitled to its reasonable fees and expenses, on a contingency basis as provided below, on any recovery from such agreed-upon entity or claims, obtained as a consequence of the Firm's inquiry/demand only with the approval of the Attorney General. The Attorney General is not required, however, to assign any members of his staff to pursue the Claims, but may from time to time afford staff and other support services as the Attorney General deems appropriate. The Attorney General shall designate a member or members of his staff to monitor these Claims, and

the Law Firm shall keep the Attorney General and his designated staff member(s) fully informed on all matters pertaining to the Claims.

3. The Attorney General and the Law Firm both recognize that the claims present numerous factual and legal obstacles, and that no assurance of success on the Claims has or can be made.

4. The Law Firm has agreed to represent the State, and the Attorney General hereby agrees that the Law Firm will be compensated for its efforts with reasonable attorneys' fees and reimbursed with reasonable litigation costs, on a contingency basis as discussed below:

A. All reasonable attorneys' fees shall initially be borne by the Law Firm, but shall be reimbursed from any gross recoveries from the pursuit of the Claims;

B. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by the Attorney General, shall initially be borne entirely by the Law Firm, but shall be reimbursed from any gross recoveries from the pursuit of such Claims; and

C. The Law Firm shall receive no compensation or reimbursement other than set out above. In the event that no recovery is realized for the Company or no corporate governance reforms are implemented by the Company at least in part as a result of this litigation, the Law Firm shall receive no compensation or reimbursement.

D. Under no circumstances will the State of Mississippi, the Public Employee' Retirement System of Mississippi, or any related entity be responsible for any costs, fees, or expenses related to this litigation. The Law Firm shall advance all costs

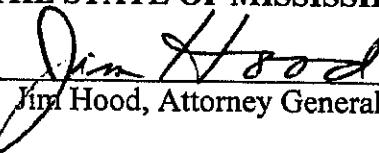
and expenses attributable to this litigation and will be paid a fee and reimbursed for such costs and expenses if and only if there is a favorable resolution and also only with the approval of the Attorney General.

5. With the approval of the Attorney General, the Law Firm may associate other attorneys at its own expense and at no cost to the State of Mississippi. Notwithstanding such association of other attorneys, this Retention Agreement is non-assignable and non-transferable, nor are the Law Firm's commitments delegable without the express, written approval of the Attorney General.

EFFECTIVE AS OF May 17, 2006.

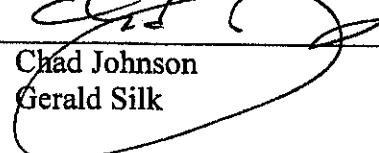
**ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI**

By:


Jim Hood, Attorney General 134.0m

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

By:


Chad Johnson
Gerald Silk