UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, PATRICK LYNCH, ROBERTO VERTHELYI and FREDERICK SHEARIN, on behalf of themselves and all others similarly situated, Plaintiffs, v. W2007 GRACE ACQUISITION I, INC., TODD P. GIANNOBLE, GREGORY FAY, BRIAN NORDAHL, DANIEL E. SMITH, MARK RICKETTS, THE GOLDMAN SACHS GROUP, INC., GOLDMAN SACHS REALTY MANAGEMENT L.P., WHITEHALL PARALLEL GLOBAL REAL ESTATE LIMITED PARTNERSHIP 2007, W2007 FINANCE SUB, LLC, W2007 GRACE I, LLC and PFD HOLDINGS, LLC, Defendants.	No. 2:13-cv-2777 (SHM/DKV) **CLASS ACTION**

DECLARATION OF KIMBERLY DONALDSON SMITH IN SUPPORT OF NAMED PLAINTIFFS' (1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASSES AND APPROVAL OF SELLER CLASS PLAN OF ALLOCATION AND (2) MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND NAMED PLAINTIFFS' CONTRIBUTION AWARDS

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I, Kimberly Donaldson Smith, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a Partner of the firm of Chimicles & Tikellis LLP, the Court-appointed Class Counsel in the above-captioned class action (the "Action") representing representative plaintiffs David Johnson ("Johnson"), Patrick Lynch ("Lynch"), Roberto Verthelyi ("Verthelyi") and Frederick Shearin ("Shearin") (collectively, "Named Plaintiffs"), and similarly-situated stockholders. I am admitted to practice in the Commonwealth of Pennsylvania and admitted to practice before this Court *pro hac vice*.

2. This declaration is respectfully submitted in support of Named Plaintiffs' Motion pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for final approval of the Settlement Agreement, approval of the Plan of Allocation of the Net Seller Class Settlement Fund and for final certification of the Holder Class and Seller Class for purposes of the Settlement.[1]

3. This declaration is also respectfully submitted in support of Class Counsel's motion, pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, for an award of attorneys' fees, payment of expenses incurred in this Action and for Named Plaintiffs' case contribution awards.

I. SUMMARY OF BACKGROUND / FACTS PERTINENT TO FINAL APPROVAL

A. The Parties

4. Named Plaintiffs are current and/or former holders of the 8.75% Series B Cumulative Preferred Stock ("Series B") or the 9.00% Series C Cumulative Preferred Stock

[1] Capitalized terms not otherwise defined herein have the meanings set forth and defined in the Stipulation and Agreement of Settlement, dated October 8, 2014 (the "Settlement Agreement"). (*See* Declaration of Kimberly Donaldson Smith in Support of Plaintiffs' Motion for Preliminary Approval, dated October 9, 2014, ECF No. 77, Exhibit A. [hereinafter, the "Smith 10/9/2014 Decl."].)

("Series C", and together with Series B, the "Preferred Stock"), issued by defendant W2007 Grace Acquisition I, Inc. (*See* Amended Complaint[2] at ¶¶ 1, 19-23.)

5. Named Plaintiffs Johnson and Shearin hold thousands of shares of Series B and Series C Preferred Stock, respectively, and have held these shares since the start of the Class Period. (Am. Complt. ¶¶ 19, 22.) Johnson currently holds 6,400 shares of Series B and Shearin holds 10,000 shares of Series C. (*See* Declaration of Kimberly Donaldson Smith in Further Support of Plaintiffs' Motion for Preliminary Approval, dated March 20, 2015, ECF No. 87, Ex. 1 and Ex. 4 [hereinafter, the "Smith 3/20/2015 Decl."].)

6. Johnson, Verthelyi and Lynch sold Preferred Stock during the relevant period when the Company was not providing timely, accurate and complete financial information. (¶¶ 59-62.) In 2010, Johnson sold 2,000 shares of Series B and sustained losses. (¶¶ 19, 181-88; Smith 3/20/2015 Decl., at Ex. 1.) In 2012, Verthelyi sold his entire position, 200 shares of Series B Preferred Stock which he had purchased in 2007, and sustained losses. (Am. Complt. ¶¶ 20, 181-88; Smith 3/20/2015 Decl. at Ex. 2.) In 2011, Lynch sold his entire position of 1,000 shares of Series B Stock which he had purchased in 2005, and sustained losses. (Am. Complt. ¶¶ 21, 181-88; Smith 3/20/2015 Decl., Ex. 3.)

7. Named defendants in this Action are W2007 Grace Acquisitions I, Inc. (the "Company" or "W2007 Grace"), The Goldman Sachs Group, Inc. ("Goldman Sachs")[3], Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007 ("Whitehall"), W2007 Finance Sub, LLC, W2007 Grace I, LLC ("Grace I") and PFD Holdings, LLC ("PFD"), and the following individuals (collectively, "Defendants"):

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[2] The Amended Complaint is docketed as Exhibit B to the Notice of Removal, dated 10/4/2013, ECF No. 1. References to the Amended Complaint will be designated as follows "(Am. Complt. ¶ __)".

[3] Goldman Sachs and its related entities collectively are referred to as GS Group".

a. Defendant Todd P. Giannoble ("Giannoble") is the President of the Company and a Director.

b. Defendant Gregory M. Fay ("Fay") is the Vice President and Treasurer of the Company and a Director.

c. Defendant Brian T. Nordahl ("Nordhal") is Vice President of the Company and a director.

d. Defendant Daniel E. Smith ("Smith") is the Vice President and Secretary of the Company and a director.

e. Defendant Mark A. Ricketts ("Ricketts") is the Vice President of the Company and a director.

(Am. Complt. ¶¶ 25-29).

B. Formation/Structure of W2007 Grace and the Equity Inns Merger

8. This Action stemmed from events that followed a 2007 merger between W2007 Grace and certain affiliates, and Equity Inns, Inc. ("ENN"), which was then a publicly-traded hotel real estate investment trust with approximately $1.4 billion in assets. (Am. Complt. ¶¶ 2, 45.)

9. The Company, W2007 Grace, was incorporated on June 20, 2007 as part of the ENN Merger. All of the common stock of the Company is owned by W2007 Grace I, LLC ("Grace I" or "Company Parent"). Grace I is owned by W2007 Finance Sub, LLC and Whitehall Parallel Global Real Estate Limited Partnership 2007 (collectively, "Whitehall"). The general partner of Whitehall Parallel Global Real Estate Limited Partnership 2007 and the partnerships owning W2007 Finance Sub, LLC are affiliates of GS Group.

10. Grace I, the Company, ENN, Grace II, L.P. ("Grace II") and Equity Inns Partnership, L.P. ("Equity LP") entered into an agreement and plan of merger pursuant to which ENN merged with and into the Company and Grace II merged with and into Equity LP (such transactions collectively, the "ENN Merger").

11. The ENN Merger was completed on October 25, 2007.

12. At the time of the ENN Merger, W2007 Grace had issued and outstanding 3.45 million shares of Series B Preferred Stock and 2.4 million shares of Series C Preferred Stock. (Am. Complt. ¶ 53.)

13. In lieu of redeeming the ENN Series B and Series C cumulative preferred stock, which had a par value of $25 per share, GS Group issued replacement stock, exchanging all ENN Series B and C preferred stock for 8.75% Series B Cumulative Preferred Stock and 9.00% Series C Cumulative Preferred Stock of W2007 Grace Acquisition I, Inc. in a one-to-one exchange ("Preferred Stock", collectively; "Series B" and "Series C" Preferred Stock, respectively.) (¶ 50.) W2007 Grace's Preferred Stock was to "have identical dividend and other rights, preferences, limitations and restrictions as [were] provided in the [ENN] Company's Series B and Series C Preferred stock." (Am. Complt. ¶ 71.) Stockholders of the Class A and Class B Preferred Stock are referred to as "Preferred Stockholders".

14. In sum, and described more fully in the following paragraphs, Named Plaintiffs allege that, after the ENN Merger, Defendants did the following, which allegedly harmed the Preferred Stockholders:

(1) Suppressed the market for the Preferred Stock by limiting the disclosure of timely financial information, *see infra* at ¶¶15-18.

(2) Effectuated the 2007 Restructuring, *see infra* at ¶¶19-24.

(3) Engaged in the 2009 Recapitalization, *see infra* at ¶¶25-35.

(4) Effectuated the Purchase Option, *see id.*

(5) Used PFD to purchase 59% of the outstanding Preferred Stock in 2012 and 2013, *see infra* at ¶¶ 36-39.

(6) Failed to pay dividends, *see infra* at ¶¶40-45.

(7) Obstructed the appointment of two directors to represent the Preferred Stockholders interests, *see infra* at *id.*

C. W2007 Grace Goes Dark

15. After the ENN Merger, the once public company went dark. (Am. Complt. ¶¶ 5, 53-112.) In addition to being delisted from the NYSE (¶ 58), W2007 Grace asserted that it no longer had any reporting obligations under the Securities Exchange Act of 1934 ("Exchange Act"). (Am. Complt. ¶ 61.)

16. Specifically, beginning in the first quarter of 2008, Preferred Stockholders' access to the Company's financial statements was restricted. Only then-current Preferred Stockholders could, by written request, and upon execution of a confidentiality agreement that restricted the use and dissemination of the information, receive from the Company limited financial information. The Preferred Stockholders' requests were required to be renewed annually.

17. After the ENN Merger, the public information disclosed by the Company was minimal, consisting of certain press releases and "frequently asked questions" posted on the Company's website. For example:

a. October 25, 2007: Merger Closes. Press Release that ENN Closes Merger with an Affiliate of Whitehall Street Global Real Estate Limited Partnership 2007

b. Approximately November 6, 2007: Registration Termination Announced. Equity Inns filed a notice of termination of registration under Section 12(g) of the Exchange Act and suspension of duty to file reports under Sections 13 and 15(d) of the Exchange Act on Form 15.

c. December 28, 2007: Declares Dividend. Press Release that W2007 GRACE ACQUISITION I, INC. DECLARES FOURTH QUARTER 2007 DIVIDENDS. Declared quarterly cash dividends for the fourth quarter 2007 of

$0.546875 per Series B preferred share and $0.56667 per Series C preferred share. The record date for the preferred dividends is December 31, 2007, and the dividends are payable on January 31, 2008.

d. February 7, 2008: Dividend Allocation. Press Release Announcing 2007 Dividend Allocation. "Holders of ENN's Series B and Series C preferred shares received a liquidating distribution of $17.50 and $17.00 per share, respectively."

e. FAQ – Approximately 2-3/2008:

What happened to my ENN Preferred Shares? On October 25, 2007, Equity Inns, Inc. ("Equity Inns") merged (the "Merger") with and into W2007 Grace Acquisition I, Inc. ("Grace"), with Grace being the surviving corporation in the Merger. .....Each share of Grace Series B and Grace Series C has identical rights, preferences, limitations and restrictions as compared to the predecessor shares of the ENN Series B and ENN Series C, respectively, except pursuant to the terms of Equity Inns' and Grace's charters, holders of Grace Series C are now entitled to receive dividends of 9.00%.

* * *

Will dividends be paid on the Grace Preferred, and to whom will they be paid? On December 28, 2007, Grace declared quarterly cash dividends for the fourth quarter 2007 ....., the next dividend payment is payable April 30, 2008 to holders of record of Grace Preferred as of March 31, 2008.

* * *

What reporting will be given to holders of Grace Preferred? The shares of ENN Series B and ENN Series C were, at the time of the Merger, delisted from the New York Stock Exchange, and neither Equity Inns nor Grace is required to file reports, including financial statements, with the Securities and Exchange Commission or make them available to holders of Grace Preferred. Please refer to the Charter, which contains all of the rights relating to the Grace Preferred.

f. March 31, 2008: Press Release announcing declaration of first quarter 2008 dividend.

g. June 30, 2008: Press Release announcing the Company "Suspends Dividend" "in connection with certain covenants contained in the loan documentation put in place in October 2007."

h. Quarterly Press Releases from September 30, 2008 through March 28, 2014, announcing that the Company "will not declare a [quarterly] dividend with respect to the 8.75% Series B Cumulative Preferred Stock and 9.00% Series C Cumulative Preferred Stock in connection with certain covenants contained in the loan documentation put in place in October 2007."

i. February 7, 2008 Press Release stating that "holders of ENN's Series B and Series C preferred shares received a liquidating distribution of $17.50 and $17.00 per

share, respectively" (the "Liquidating Distribution") described as follows: On October 25, 2007, Equity Inns, Inc. merged (the "Merger") with and into the Company, with the Company being the surviving corporation. In the Merger, the Series B and Series C preferred stock of Equity Inns, Inc. was converted into the right to receive shares of Grace Series B and Grace Series C, respectively. The receipt by former holders of Equity Inns Series B and Series C preferred stock of the newly-issued Grace Preferred Stock was, for tax purposes, considered to be a "liquidating distribution." This liquidating distribution did not entail the payment of cash to the former holders of Equity Inns Series B and Series C preferred stock, but rather the issuance of the new Grace Preferred Stock. Each share of Grace Series B and Grace Series C has identical rights, preferences, limitations and restrictions as compared to the predecessor shares of the Equity Inns Series B and Series C preferred stock, respectively.

j. April 14, 2014 – Press Release re: Financing and Exercise of the Purchase Option. The Company announced "the refinancing of its existing $955 million indebtedness with a new $976 million financing. The new financing was led by German American Capital Corporation [] with Goldman Sachs Mortgage Company acquiring a minority participation interest. The Company expects the senior loan under the GACC Financing to be securitized within the next ninety days. The GACC Financing bears interest at LIBOR plus 3.3%, has an initial term of two years and has three one-year extension options. It is secured by mortgages on 106 hotels owned by subsidiaries of W2007 Equity Inns Senior Mezz, LLC [ ].

Simultaneously with the closing of the GACC Financing, WNT Holdings, LLC, an affiliate of the Whitehall Funds, acquired from a subsidiary of the Company pursuant to the exercise of a warrant agreement a 97% interest in Senior Mezz, LLC. The Company retained a 3% interest in Senior Mezz, LLC. The October 2007 loan was repaid in April 2014 and was replaced with a new $976 million financing led by German American Capital Corporation [ ]. Simultaneously with the closing of the GACC Financing, WNT Holdings, LLC, an affiliate of the Whitehall Funds, acquired from a subsidiary of the Company pursuant to the exercise of a warrant agreement a 97% interest in W2007 Equity Inns Senior Mezz, LLC [ ]which indirectly owns 106 of the Company's hotels. The Company retained a 3% interest in Senior Mezz, LLC. The GACC Financing does not currently restrict the use of the Subsidiary Borrowers' cash to the same extent that the October 2007 loan did (but it may in the future) and the pledge of the cash flow from the Company's other 20 hotels was terminated."

18. Named Plaintiffs contended that: (i) the financial statements provided to the few Preferred Stockholders who were able to comply with these restrictions often included untimely and incomplete information; (ii) the restricted access to timely financial and operational information made it difficult for the Preferred Stockholders, and parties with an interest in

acquiring the Preferred Stock, to understand the ownership and economic interests of the Preferred Stockholders; and (iii) the minimal information disclosed through press releases and the FAQs did not provide sufficient information to permit the Preferred Stockholders and interested purchasers to understand the financial condition of the Company and the ownership and economic interests of the Preferred Stockholders.

D. Transactions That Occurred After the ENN Merger

1. The 2007 Restructuring

19. Named Plaintiffs alleged that after the consummation of the ENN Merger, Defendants secured a 99% ownership interest in the hotel assets and left the Company and its Preferred Stockholders with only 1% ownership interest in the hotel assets.

20. That change occurred through what Named Plaintiffs refer to as the "2007 Restructuring", summarized as follows:

a. Subsequent to the Merger, Grace II changed its name to W2007 Equity Inns Partnership, L.P. ("W2007 Equity LP").

b. Since the Merger, Grace I has owned all of the shares of common stock of the Company and the Company has owned a 1% general partnership interest in W2007 Equity LP (with Grace I owning a 1% general partnership interest and a 98% limited partnership interest).

c. The Company also owns 100% of W2007 Equity Inns Trust, a Maryland trust (the "Trust").

d. The Company's ownership structure also included a statutory trust – W2007 Equity Inns Statutory Trust I - secured by the $50 million of trust preferred debt ("Trust Preferred Debt").

21. Following the ENN Merger, the Company and Grace I entered into a Keepwell Agreement, effective as of October 25, 2007, the date of the ENN Merger (the "Keepwell Agreement"). Pursuant to the Keepwell Agreement, Grace I agreed to make such cash payments to the Company as were necessary to enable the Company to satisfy its obligations to the Preferred Stockholders, in accordance with the Company's charter when the Company determined, or was legally compelled, to satisfy such obligations. To date, no payments have been made and the Company has stated that none are due under the Keepwell Agreement. The Keepwell Agreement may be terminated by Grace I at any time upon 30 days' prior written notice. The Keepwell Agreement provides that there are no third-party beneficiaries of the Keepwell Agreement.

22. In 2013, a Preferred Stockholder launched a campaign to increase the number of record holders of Preferred Stock to over 300 in an effort to try to trigger the Company's reporting obligations under the Exchange Act. In response, W2007 Grace applied for an exemption, under Section 12(h) of the Securities Exchange Act of 1934, to such reporting obligations pursuant to a letter dated April 4, 2013 (the "April 4 2013 Letter"), and on April 30, 2013, the SEC issued a public notice "giving interested persons an opportunity to request a hearing on an application by W2007 Grace Acquisition I, Inc. under Section 12(h) of the Securities Exchange Act of 1934".

23. In connection with its application to the SEC for an exemption, the Company's counsel submitted the April 4, 2013 Letter to the SEC, which described the 2007 Restructuring and stated the following, among other things (Am. Complt. ¶ 76):[4]

[4] On April 22, 2015, the SEC issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the

a. "the Company holds a 1% general partnership interest in the Operating Partnership, which through a number of subsidiaries owns a group of 106 hotels and a 99% limited partnership interest in various entities owning 24 other hotels. The REIT Sub, which is wholly owned by the Company, holds 1% general partnership interests in the entities owning the 24 other hotels."

b. "the Company is a real estate holding company which does not have any operations independent from its ownership interest in the Operating Partnership and the REIT Sub, which represent low single digit percentage interests in the 130 hotels."

Similarly, the Company has reminded Preferred Stockholders in its 2014 Form 10-K, filed 5/1/2015, at 32-33, that the Company owns only 1% of W2007 Equity LP

24. Named Plaintiffs alleged that Defendants breached their fiduciary duties in doing the 2007 Restructuring.

2. The 2009 Recapitalization and the Purchase Option

25. Named Plaintiffs allege that after the consummation of the ENN Merger, Defendants effectuated various recapitalization or debt restructuring transactions that damaged the Preferred Stockholders.

"Agreed Order") consented to by the Company, in *In the Matter of W2007 Grace Acquisition I, Inc.,* S.E.C. Release No. 74782, File No. 3-16504 (April 22, 2015.). Per the Company's SEC filing, the Agreed Order addresses the methodology to be applied in counting the number of record holders of the Company's preferred stock for purposes of Section 15(d) of the Exchange Act and concludes that the Company undercounted its record holders of preferred stock and had 300 or more record holders on January 1, 2014. Pursuant to the Agreed Order, the Company agreed to resume its periodic reporting pursuant to Section 15(d) of the Exchange Act by filing an annual report on Form 10-K for the fiscal year ended December 31, 2014 on or before May 15, 2015, and filing an annual report on Form 10-K for the fiscal year ended December 31, 2013 and any subsequent periodic reports required to be filed on or before July 1, 2015. The SEC. W2007 also agreed to pay a civil penalty of $640,000.

26. Named Plaintiffs refer to those transactions as the "2009 Recapitalization", a component of which is the "Purchase Option", described as follows.

27. Immediately following the ENN Merger, the Company had $1.8 billion of new debt issued by the Goldman Sachs Mortgage Company ("GSMC") consisting of a $1.15 billion senior mortgage loan ("Senior Mortgage Loan") and $650 million of mezzanine debt ("2007 Acquisition Debt"). In addition, $50 million of Trust Preferred debt and $224 million of specific property mortgages were assumed. The Senior Mortgage Loan encumbered all of the 137 hotel properties acquired through the ENN Merger.

28. On February 2, 2008, GSMC componentized the 2007 Acquisition Debt for purposes of marketing and selling the individual components of the loan whereby the $645 million of mezzanine debt was structured into seven tranches titled A through G ("2008 Componentization")..

29. On June 29, 2009, the Company recapitalized its debt; $544.8 million of mezzanine debt (tranches B through G) held by GSMC was forgiven (the "2009 Recapitalization"). The remaining debt included the Senior Mortgage Loan and the Mezzanine A tranche ("Mezzanine A Loan", and together with the Senior Mortgage Loan, the "2009 Loans").

30. The loan covenants included, among other provisions, debt yield tests. Failure to meet these debt yield thresholds would cause the cash flow from the Hotels to be directed to accounts controlled by the lender. The Company failed to meet the debt yield tests during the term of the 2009 Loan, except for the quarters ended June 30 and September 30, 2009.

31. Following the 2009 Recapitalization (after adjustment for property sales through 2013), property ownership was concentrated in two portfolios:

(a) the Trust Portfolio which held 20 hotel properties ("Trust Hotels") and

(b) the Senior Mezz Portfolio which held 106 hotel properties ("Senior Mezz Hotels").

32. As a component of the Restructuring, GSMC was issued an option to purchase a 97% equity interest in the Senior Mezz Hotels (the "Purchase Option"). The Purchase Option was not exercisable until the 2009 Loans were paid in full. In February 2012, the Purchase Option expiration date was extended from June 2015 to July 2021 or such other later date if the 2009 Loans were further extended. In July 2012, the Purchase Option was sold to WNT Holdings LLC (an affiliate of Whitehall) ("WNT") for $175 million. The Purchase Option was exercised on April 11, 2014.

33. In December 2010, the Company entered into a modification agreement regarding the 2009 Loans (the "2010 Loan Modification"). General Electric Credit Corporation ("GECC") replaced GSMC as the Senior Mortgage Loan lender; and three third party lenders replaced GSMC as holders of the Mezzanine A Loan. The Company was unable to meet all of the requirements to extend the 2009 Loans when they matured in November 2010, requiring modification of certain terms. Among other terms, the 2010 Loan Modification provided that substantially all of the cash flows from the Senior Mezz Hotels must be directed to accounts controlled by the lenders ("cash trap") and all proceeds from the sale of hotels must be used to reduce the senior mortgage loan principal ("cash flow pledge")

34. On April 11, 2014, the Company refinanced the 2009 Loans and 2010 Loan Modification with German American Capital Corporation ("GACC") extending a $865 million loan to two subsidiaries of Senior Mezz and a $111 million to a related subsidiary, WNT Mezz I, LLC (the "2014 Refinancing"). With the 2014 Refinancing, the cash trap restrictions on the Senior Mezz Hotels and the cash flow pledge from the Trust Hotels ceased.

35. Named Plaintiffs alleged that Defendants breached their fiduciary duties in executing the 2009 Recapitalization and the Purchase Option.

3. PFD Holdings' Purchases of Preferred Stock

36. Beginning in 2012, an affiliate of GS Group, PFD began to purchase shares of the Preferred Stock.

37. On September 17, 2012, the Company issued a press release concerning the acquisitions stating "W2007 Grace Acquisition I, Inc. (the "Company") today announced that a sister company of the Company has recently acquired approximately 35% of the aggregate amount of issued and outstanding Series B and Series C preferred shares of the Company, which acquired shares remain outstanding. That sister company and its affiliates (including the Company) may also from time to time consider entering into one or more other transaction with respect to the Company, including the acquisition or disposition of securities of, or interests in, the Company (including additional transactions with respect to the Series B and Series C preferred shares of the Company)."

38. On August 13, 2013, the Company issued a press release concerning the additional acquisitions of the Preferred Stock stating "PFD Holdings, LLC ("PFD"), an affiliate of the Whitehall funds, notified the Company that it has recently acquired 24.3% of the aggregate amount of issued and outstanding Series B and Series C preferred shares of the Company, which acquired shares remain outstanding. PFD now owns 58.8% of the outstanding preferred shares. PFD has also informed the Company of its intention to consider a tender offer for the remaining preferred shares of the Company later in 2013. In light of these events, the Company has postponed the special meeting of the preferred shareholders for the purpose of electing two additional directors to the Company's Board of Directors."

39. Named Plaintiffs alleged that Defendants breached the Charter and their fiduciary duties in executing the PFD purchases.

4. Suspension of Dividends and the Election of Two Directors

40. Named Plaintiffs alleged that after the consummation of the ENN Merger, Defendants wrongfully suspended dividends and failed to take necessary steps for the required election of two directors (nominated by the preferred stockholders) to the Company's Board.

41. W2007 Grace's Charter provides that Preferred Stockholders "shall be entitled to receive, when and as declared by the Board of Directors, out of funds of the corporation legally available for payment cash dividends at the rate of 8.75% [on the Series B and 8% on the Series C] per annum of the $25 liquidation preference right to a dividend . . . and shall be paid quarterly on or before the last day of January, April, July and October of each year." Charter, §§ 5(b)(3)(A) & 5(c)(3)(A).

42. In June 2008, Defendants ceased paying dividends to Preferred Stockholders on the "basis of certain covenants contained in the loan documentation put in place in October 2007." (Am. Complt. ¶¶90-91, 95).

43. Relatedly, Sections 5(b)(5)(D) and 5(c)(5)(D) of the Charter provide that when dividends are in *arrears* for six or more quarters, the Preferred Stockholders (voting as a single class) are entitled to elect two additional directors to the Board. Am. Complt. ¶98. Various nominees were submitted by the Preferred Stockholders, but none of the nominees have been seated because, according to Defendants, there was no *quorum* present. Am. Complt. ¶99-100.

44. The Company announced, on August 13, 2013, that in light of PFD's purchase of up to 58.8% of the Preferred Stock it would "postpone[] the special meeting of the preferred

shareholders for the purpose of electing two additional directors to the Company's Board of Directors." *Id.*

45. Named Plaintiffs alleged that Defendants breached their fiduciary duties and the terms of the Charter with respect to the suspension of dividends and the election of two preferred stockholder-nominated directors to the Board.

E. Other Actions Filed by Preferred Stockholders

46. In 2007, prior to the consummation of the ENN Merger, certain Preferred Stockholders filed an action on behalf of a putative class of preferred stockholders against the former directors of ENN asserting breaches of fiduciary duties in connection with the ENN Merger. The action, captioned *Donald J. Roberts IRA et al v. McNeill et al.*, Case No. CT-004955-07, Circuit Court for Shelby County, Tennessee, (Stokes, J.), was dismissed with prejudice in January 2015, with no class recovery for the Preferred Stockholders. The Tennessee Court of Appeals' decision to vacate class certification under Tennessee law in an action involving W2007 Grace's predecessor Equity Inns. *See* Decision in *Donald J. Roberts IRA et al. v. Phillip H. McNeill, Sr. et al.*, No. W2013-01072-COA-R3-CV (Tenn. App. Ct. May 30, 2014), *available at* https://www.tncourts.gov/sites/ default/files/robertsdoopn.pdf.

47. Subsequent to the filing of this Action, on October 25, 2013, an action captioned *Dent v. W2007 Grace Acquisition I, Inc. et al.*, No. Ch-13-1605, was filed in Tennessee Chancery Court, Shelby County ("Dent"). The *Dent* lawsuit alleged similar breaches against several of the same defendants named in this Action, in addition to a former member of the Company's board of directors. Defendants filed a motion to stay the *Dent* lawsuit; the *Dent* parties agreed to a stay until the motion to remand filed by Plaintiffs in this Action (discussed supra at XX) was decided, and, Dent and his counsel were to file any response to defendants' motion to stay within ten business days after notice of the Federal Court decision denying the

remand motion. The motion to remand was decided on July 28, 2014, and Defendants promptly notified Dent of the resolution of the remand motion. As of the date of this declaration, Dent has not filed a response to the motion to stay nor taken any other steps that are reflected on the *Dent* docket.

II. THE INVESTIGATION AND PROSECUTION OF THE ACTION

A. Pre Complaint Filing Investigation

48. Before commencing the Action, Class Counsel engaged in a rigorous three-month investigation commencing in June 2013 in which Class Counsel:

a. Made a written request to the Tennessee Secretary of State seeking all filings submitted by W2007 Grace and its affiliates from 2007 to present, and then reviewed and analyzed the filings provided by the Tennessee Secretary of State.

b. Obtained from the Delaware Secretary of State all information available on PFD.

c. Sorted and analyzed complex corporate filings, creating ownership diagrams and charts.

d. Reviewed hundreds of pages of public filings filed by ENN with the SEC in connection with the ENN Merger.

e. Spoke with and interviewed numerous potential witnesses and stockholders;

f. Researched and reviewed all Company press releases and news articles concerning the Company, GS Group and its real estate division, GSMC, and Whitehall.

g. Reviewed all written correspondence on file with the SEC related to the Company's request that it be exempt from any reporting obligations.

h. Obtained copies of the Company's financial statements from the Company and reviewed and analyzed the Company's financial condition at the then current period and historically since the ENN Merger.

49. To inform and aid in Plaintiffs' investigation, and thereafter prosecution, of the claims on behalf of the Preferred Stockholders, Counsel retained the services of Partners Advisory Services Corp. ("PASCORP"). PASCORP is an expert consultant, providing valuation

and forensic accounting services to investors and their counsel, in matters involving hundreds of public limited partnerships, REITs and other public and private investment vehicles. Under the direction of its founder and President, James Vodola, since 1992 PASCORP has provided valuation and forensic accounting services to investors, and their advisors and counsel, in hundreds of public limited partnerships, real estate investment trusts ("REIT") and other public and private entities. PASCORP specializes in the analysis and evaluation of real estate, and other businesses that primarily operate within REIT and limited partnership structures. PASCORP's typical engagements result from management buyouts, roll-ups, consolidation of partnerships, insider tender offers, allegations of fraud in connection with the sale or acquisition of assets by a REIT, and real estate transactions. PASCORP also has extensive experience in the interpretation and understanding of: foundation and organizational documents for real estate owning entities, including partnerships, LLCs and REITs; consent solicitations and proxies used by management to solicit investors' consent to real estate asset purchase and sales and REIT transactions; and REIT and limited partnership financial statements and operations. Finally, PASCORP has provided expert witness, consulting, and valuation services for attorneys representing investors in many of the largest and most successful limited partnership and REIT litigation matters over the past twenty years.

50. In addition, in April 2014, Class Counsel engaged GlenDevon Group, Inc. ("GDG") to provide litigation support work, including the investigation into and analyses of the facts and claims that were the subject of the Action. GDG also was retained to analyze potential damages for the Seller Class and to prepare the Plan of Allocation. Kathleen P. Chimicles, to whom Nicholas Chimicles is married, is the founder and President of GDG. After having been the Financial Specialist of Chimicles & Tikellis LLP from 1992 through 2004, Ms. Chimicles

established GDG in January 2005 to provide forensic investigation, damages analyses and expert services for complex litigation cases including structured allocation plans. Ms. Chimicles' real estate experience and expertise is similar to that of Mr. Vodola. GDG and PASCORP worked cooperatively and collaboratively with no duplication of analyses. Attached to this Declaration as Exhibit 2 is the Declaration of Kathleen P. Chimicles, ASA in Support of the Settlement and describing the work she performed with respect to the determination of Seller Class damages and the Seller Class Plan of Allocation (the "GDG Decl.")

B. Plaintiff Johnson and Counsel Make a Books and Records Demand on the Company

51. On August 2, 2013, Class Counsel intensified its investigation by preparing and submitting to the Company on behalf of Johnson a books and records demand under Tenn. Code Ann. § 48-26-102 (the "Demand").

52. The Demand contained numerous document requests and the legal basis for each request. After numerous conversations and letters were exchanged between Class Counsel and the Company's Tennessee corporate counsel, the Company produced documents in response to Johnson's Demand.

53. Class Counsel received, reviewed and analyzed (with assistance from PASCORP) the documents received from Defendants as a result of the Demand.

C. Drafting and Filing of the Initial and Amended Complaint

54. As a result of this intensive investigation and the review and analysis of the documents received as part of the Demand, Johnson, Verthelyi and Lynch commenced the Action on September 13, 2013 in the Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District at Memphis ("State Court") with the filing of a highly particularized, well-researched, complaint.

55. On October 2, 2013, an Amended Complaint was filed adding Frederick Shearin, a holder of Series C shares, as a plaintiff.

D. Defendants Remove the Action to Federal Court and Plaintiffs Seek Remand

56. On October 4, 2013, Defendants removed this Action to this Court. (Defendants' Notice of Removal, dated 10/4/2013, ECF No. 1.)

57. In response, Named Plaintiffs moved to remand the Action to State Court on November 6, 2013.

58. The Court denied Plaintiffs' motion to remand by order dated July 28, 2014. (*See* Plaintiffs' Motion to Remand, dated 11/6/2013, ECF No. 30; Order Denying Motion to Remand, dated 7/28/2014, ECF No. 64.)

59. In addition, the Order Denying the Motion to Remand included some pertinent commentary and analysis of Plaintiffs' claims, including that "[PFD] was not bound by the Charter when it bought Preferred Stock" and "[PFD] was not a fiduciary bound by the Charter." (ECF No. 64 at page 15).

E. Defendants Move to Dismiss the Action

60. Notwithstanding the pendency of the Motion to Remand, the Court directed the Defendants to proceed with the filing of a responsive pleading to the complaint.

61. On January 23, 2014, Defendants moved to dismiss the entire Action.

62. Defendants asserted that:

(a) they owed no fiduciary duty to the Preferred Stockholders;

(b) to the extent any contractual or fiduciary duties existed, Defendants fully complied with those duties; and

(c) certain claims were untimely or inadequately pled. (See Defendants' Motion to Dismiss papers at ECF Nos. 38-40.)

63. In their Motion, Defendants cited to, among other things, the following facts and law in support of dismissal of the Action:

- The Company could not pay dividends when the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibits such declaration. The 2007 Loan Agreement prohibits such declaration, allowing for dividend payments "*provided* no . . . Trigger Period . . . is continuing." (*See* Ex. 10 to Motion, at 67 (§ 3.9(d)) (emphasis added).) Starting in June 2008, a Trigger Period went into effect, and the Board resolved that no dividend could be declared because the 2007 Loan Agreement "restricts the release of funds . . . to pay stock dividends for the shares of" preferred stock. (Am. Complt. ¶ 89.)

- "[T]he declaration and payment of a dividend rests in the discretion of a corporation's board of directors in the exercise of its business judgment," *Mann-Paller Found.* v. *Econometric Research, Inc.*, 644 F. Supp. 92, 96 (D.D.C. 1986), and, therefore, there is "no contractual right to receive a dividend," *In re Terex Corp.*, 983 F.2d 1068, 1068 (6th Cir. 1993).

- The appointment of directors is only permitted under the Bylaws if a quorum is present—and no quorum was in fact present. (*See* Am. Complt. ¶¶ 99, 101.)

- There can be no breach of contract where party exercises discretion granted to it and performance of a contract according to its terms cannot be characterized as bad faith. *Citing to Wallace* v. *Nat'l Bank of Commerce*, 938 S.W.2d 684, 687 (Tenn. 1997).

- Preferred stockholders are not owed "the broad fiduciary duties belonging to common stockholders." *RGC Int'l Investors, LDC* v. *Greka Energy Corp.*, 2000 WL 1706728, at *16 (Del. Ch. Nov. 8, 2000). Rather, under Tennessee law, all of "the preferences, limitations, and relative rights [of preferred stock] must be described in the [company's] charter," the operative contract between the Company and its preferred stockholders. Tenn. Code Ann. § 48-16-101. *See, e.g.*, *McAlister* v. *Peregrine Enters., Inc.*, 1997WL 746373, at *1-2 (Tenn. Ct. App. Dec. 4, 1997) (in action "for the redemption of preferred stock," court looked solely at the "plain terms" of the company's charter).

- Claims for breach of fiduciary duty by a director or officer are subject to a one-year statute of limitations from the date the alleged breach was or reasonably should have been discovered. Tenn. Code Ann. § 48-18-601. Plaintiffs' claims are time-barred under the applicable statutes of limitations because the following was known or should have been known prior to 2012: Before the ENN Merger was consummated, preferred stockholders commenced the *McNeill* action [*see, supra,* at ¶46] anticipating that the Company would "go dark."; the restructuring was disclosed in the Company's 2007 financial statement; on June 30, 2008, the stoppage of dividends was announced; the 2009 debt restructuring/Purchase Option was disclosed in October 2010 in the Company's 2009 year-end financial statement.

64. Named Plaintiffs vigorously opposed the Motion to Dismiss on all grounds, and filed a detailed opposition brief on March 21, 2014. (Named Plaintiffs Opposition to Defendants' Motion to Dismiss ECF No. 50). Among other things, Plaintiffs countered with:

a. The issue of whether W2007 Grace complied with or breached the Charter's terms governing the payment of dividends is not determinable as a matter of law on a motion to dismiss, and raises many questions of fact, including:
   i. the terms and impact of the loan covenants;
   ii. the terms and application of the debt yield provisions; and,
   iii. whether Defendants have discretion under the Charter to not pay dividends.

b. The Charter expressly prohibits the Company from purchasing Preferred Stock when dividends are in *arrears* (¶115, citing Charter, §§ 5(b)(5)(D) & 5(c)(5)(D)), and whether PFD's purchases violated the Charter could not be determined as a matter of law. Plaintiffs also asserted that any corporate veil between W2007 Grace and PFD could be disregarded

c. The facts and law cited with respect to the 2007 Restructuring sufficiently alleged, to withstand a Motion to Dismiss, a breach of the Charter and fiduciary duty, because such transaction materially altered W2007 Grace's ownership in valuable hotel properties (¶70-85)

d. Whether the Charter's requirement that when dividends are in *arrears*, "the number of directors then constituting the Board of Directors ***shall*** be increased by two and the holders of [Preferred Stock] ...." was complied with and whether or not *quorum* was present at any of the special meetings held on June 3, 2010, December 14, 2010 and March 27, 2012, raised issues that could not be resolved on a motion to dismiss.

e. The Amended Complaint's detailed allegations as to the following, which, at the motion to dismiss stage, sufficiently pled actionable breaches of fiduciary duty, including that Defendants: suppressed the secondary market in the Preferred Stock by refusing to release information to the public that was and is necessary for a fair and orderly secondary market (¶¶ 7, 58-69, 84 and 91); failed to pay dividends (¶¶186-97); did the 2007 Restructuring and 2009 Recapitalization so that the Preferred Stockholders hold stock in the Company which holds less valuable property interests than that of predecessor ENN (¶¶70-85); have frustrated Preferred Stockholders' right to appoint two director-nominees to serve on the Board (¶¶98-105); gave Preferred Stockholders no choice but to sell their stock at an unreasonably low price (¶¶106-27); and used PFD to buy up nearly 60% of the Preferred Stock from unwitting Preferred Stockholders. (*Id.*).

65. On September 2, 2014 Defendants withdrew, without prejudice, their Motion to Dismiss in light of the proposed Settlement, ECF. No. 72.

F. Plaintiffs Press Forward with Their Prosecution and Discovery

66. Notwithstanding the pendency of Defendants' Motion to Dismiss, Class Counsel were able to, and did, press forward with the prosecution of the Action by requesting and securing a Scheduling Order from the Court which permitted fact discovery to begin in earnest.

67. The Scheduling Order, dated February 7, 2014 (ECF No. 49) set forth the following deadlines: (i) November 7, 2014 as the deadline for completion of merits discovery; (ii) September 22, 2014 as the deadline for class certification filings and discovery; (iv) March 13, 2015 as the deadline for exchange of expert reports and expert discovery; (v) May 8, 2015 as the deadline for dispositive motions; and (vi) September 21, 2015 as the trial date.

68. Upon entry of the Scheduling Order, the parties immediately commenced merits discovery. Among other things, the parties prepared and exchanged: requests for production of documents; interrogatories; and document subpoenas on non-parties.

69. The discovery process was highly contentious with many objections lodged and disputes raised between the parties.

70. During the course of discovery, Class Counsel undertook and accomplished the following:

a. reviewed multiple filings and correspondence obtained from the SEC, including all of the public filings by ENN in 2007;

b. requested, obtained and reviewed all documents filed by W2007 Grace and the numerous related entities from 2007 through 2013 that were produced by the Tennessee and Delaware Secretaries of State;

c. reviewed information from public sources such as news articles and reviewed the investor discussion boards;

d. interviewed multiple non-party witnesses, including an anonymous confidential witness who was a former employee of GS Group;

e. issued the First Set of Document Requests, dated February 11, 2014 requesting over 84 document categories (including subparts);

f. issued the Second Set of Document Requests, dated April 11, 2014 requesting over 34 additional document categories (including subparts);

g. issued the First Set of Interrogatories, dated April 11, 2014;

h. issued the Third Set of Document Requests, dated April 17, 2014 requesting over 19 additional document categories (including subparts);

i. held multiple "meet and confer" discussions with defense counsel over Defendants' responses and objections to Named Plaintiffs' discovery requests, and then sent various letters detailing the issues and summarizing the discussions;

j. negotiated an electronically stored information ("ESI") protocol and engaged in vigorous negotiations over the scope of discovery and list of search terms in search of relevant ESI;

k. securing from Defendants thousands of pages of document discovery between April and June 2014; and,

l. held at least four meet and confer conferences from February through August 2014.

71. Plaintiffs and Class Counsel also engaged in rigorous non-party discovery as follows:

a. On April 8, 2014, Class Counsel served a subpoena on Financial Industry Regulatory Authority, Inc. ("FINRA") requesting all electronic trading records

related to W2007 Grace. Following several discussions with a representative of FINRA, on May 6, 2014, FINRA produced a compact disk containing all of the trading records requested by Class Counsel, which Class Counsel subsequently reviewed;

b. On May 5, 2014, Class Counsel served a subpoena on W2007 Grace's auditor Ernst & Young, LLP ("E&Y".) After numerous follow-up requests, demands and conversations with E&Y's counsel, E&Y produced seven boxes of hard copy audit documents and over 200 electronic files, which Class Counsel and its forensic expert PASCORP reviewed at E&Y's offices in New York City on July 8, 2014;

c. On August 29, 2014, Class Counsel subpoenaed certain records of the Depository Trust & Clearing Corporation ("DTCC".) Following multiple conversations with a representative from DTCC, on September 12, 2014, Class Counsel obtained and reviewed lists of shareholder data provided by DTCC;

d. Class Counsel held numerous discussions with representatives from the OTC Bulletin Board ("OTCBB"), W2007 Grace's proxy advisor (Broadridge Financial Services, Inc.), and counsel for the entities from which PFD purchased the Preferred Stock;

e. On July 2, 2014, Class Counsel subpoenaed the records of the former preferred stockholders who had been identified, as part of confidential discovery responses, as the entities from whom PFD had purchased its stock in private transactions. Both entities produced documents responsive to the subpoenas on July 23 and August 4, 2014, which documents Class Counsel immediately reviewed; and,

f. On August 13, 2014, Class Counsel reviewed the document production from the Company's proxy solicitor, Broadridge Financial Solutions, Inc., which was subpoenaed by Defendants and produced to Class Counsel.

72. The following work and investigation was undertaken by Class Counsel, as assisted by GDG and PASCORP, with respect to the discovery propounded *(see also, paragraphs 73, 95-96, infra)*:

a. analyzed and evaluated the financial, operating, ownership and debt structure of the Company and its related entities and affiliates;

b. analyzed the historical financial transactions affecting the ownership, assets and liabilities of the Company and its related entities;

c. analyzed, on an ongoing basis, the financial condition of the Company and its related entities;

d. analyzed the stock trading patterns of the Preferred Stock;

e. analyzed the quality and quantity of information available to the Preferred Stockholders prior to and during the Class Period;

f. estimated damages to the current Preferred Stockholders and damages to the Seller Class; and,

g. conferred with Defendants and Defendants' Counsel concerning the documents produced.

73. Class Counsel, assisted by GDG, conducted the following specific investigations and analyses utilizing ENN's SEC filings, other publicly available information, and the over 10,000 pages of documents and hundreds of native files produced:

a. Analyzed the ownership structure of the Company and applicable GS Group entities and changes in ownership during the Class Period, including the: 2007 Restructuring; the 2008 Componentization, the 2009 Recapitalization and the issuance of the Purchase Option.

b. Analyzed Limited Partnership Agreements and amendments thereto, including but not limited to: Amendment to the Agreement of Limited Partnership of Equity Inns Partnership. L.P dated June 1997; Amendments to the Agreement of Limited Partnership of Equity Inns Partnership. L.P dated March 31, 2008 which included a provision permitting the General Partner to "waive, by written consent, the requirement of any provision of this Agreement (including any conditions to the effectiveness of this Agreement, but excluding the right to consent of any other

Partner)"; Agreement of Limited Partnership of Grace II, L.P. dated June 20, 2007.

c. Analyzed the debt structure and cash flow restrictions immediately following the ENN Merger, and following the subsequent restructurings and modifications, including: the 2007 Restructuring, the 2008 Componentization, the 2009 Recapitalization, the issuance of the Purchase Option, the 2010 Loan Modification, and the 2014 Refinancing.

d. Analyzed the individual hotel properties that comprised the ENN portfolio, including the property allocation for collateral purposes in 2008 and following the 2009 Recapitalization.

e. Reviewed and analyzed the 11 properties that were sold or lost in foreclosure between 2007 and 2013. This analysis included the terms of the sale and use of proceeds from the Trust Hotels sold in 2013.

f. Analyzed the terms of the Purchase Option.

g. Analyzed the financial statements of ENN in 2006 and 2007, analyzed the financial statements and the financial condition of the Company from 2007 through the present, and the financial statements of Grace I and WNT.

h. Analyzed the 2009 Recapitalization.

i. Analyzed the cash flow of the Company and WNT, individually and collectively.

j. Analyzed the contribution to cash flow from the Trust Hotel portfolio and from the Senior Mezz Hotel portfolio.

k. Analyzed the dividend paying capacity of the Company, which included evaluating the cash trap and cash flow pledge provisions of each loan agreement and the associated dividend paying restrictions.

l. Reviewed and analyzed the terms of the Charter;

m. Reviewed and analyzed the terms of the Keepwell Agreement;

n. Reviewed documents (including the Charter and loan documentation) with respect to the payment of dividends and any changes to such provisions resulting from loan modifications, restructurings and refinancings;

o. Evaluated the documents concerning PFD's stock purchases;

p. Analyzed and reviewed information pertaining to Defendants' efforts and work to achieve a quorum with respect to the election of two directors to the Board.

G. Plaintiffs Move For Class Certification and Participate in Class Discovery

74. On May 16, 2014, Named Plaintiffs moved for class certification pursuant to Fed. R. Civ. P. 23 of a class comprising: "[a]ll record and beneficial holders of 8.75% Series B Cumulative Preferred Stock and 9.00% Series C Cumulative Preferred Stock of W2007 Grace Acquisition I, Inc. (formerly ENN) during the period October 25, 2007 through present....," or in the alternative requested certain subclasses. (Named Plaintiffs' Class Certification filing, ECF Nos. 56-57.) Named Plaintiffs also sought to be appointed as class representatives, have Chimicles & Tikellis LLP ("C&T") appointed as Class Counsel and Hagler Brucer & Turner, PLLC ("HBT") appointed as Liaison Counsel.

75. Upon the filing of Named Plaintiffs' Motion for Class Certification, the parties commenced class certification discovery, while simultaneously conducting merits discovery.

76. Defendants served on each Named Plaintiff over fifty different document requests which Class Counsel reviewed in detail with each Named Plaintiff.

77. Each Named Plaintiff spent hours reviewing and compiling their electronic and hard copy files which they turned over to Class Counsel for their review.

78. Class Counsel compiled, prepared for production and produced to Defendants all relevant documents responsive to Defendants' document requests.

79. Defendants also noticed and took the depositions of all four Named Plaintiffs.

80. Each Named Plaintiff spent hours preparing for their depositions and also met with Class Counsel for several hours in preparation for and in advance of the depositions.

81. Plaintiffs Johnson, Lynch and Verthelyi each traveled from their residences to Philadelphia and to Class Counsel's office in Haverford, Pennsylvania, to prepare for and give testimony in full-day depositions.

82. Plaintiff Shearin's deposition occurred in Memphis, TN. Class Counsel traveled to Memphis to prepare Plaintiff Shearin who also gave a full-day deposition at Liaison Counsel's office in Tennessee.

83. Class Counsel spent several hours preparing for and preparing each Named Plaintiff for his deposition and defended each Named Plaintiff at their depositions.

84. As set forth in each of their Declarations, attached as Exhibits 10, 11, 12, and 13, hereto, in addition to the efforts expended with respect to class certification, the Named Plaintiffs have spent substantial hours of their time and expended meaningful effort on behalf of and for the benefit of the Preferred Stockholders in prosecuting this Action, including the following:

- Johnson, Verthelyi and Shearin each individually volunteered to serve on the W2007 Grace Board to represent the interests of the Preferred Stockholders and

were part of a Preferred Stockholder-led group effort to force the Company to hold an annual meeting for the election of two director designees to the W2007 Grace Board.

- After Preferred Stockholders spent several years embroiled in a bitter battle with the Company and its management, Johnson contacted Class Counsel after having interviewed at least one other shareholder class action firm and upon reviewing Class Counsel's initial case advisory memorandum, Johnson retained Class Counsel and approached Verthelyi, Shearin and Lynch who all expressed a desire to join the Action as class representatives;
- Prior to filing the Action, Johnson and Shearin were making informal requests to the Company pressing them for financial and other corporate records to which they were entitled.
- Johnson spent time reviewing and commenting on Class Counsel' formal books and records demand made on the Company on Johnson's behalf.
- Johnson and Shearin co-led the effort to oppose the Company's request to the Securities and Exchange Commission ("SEC") that it be exempt from its reporting obligations under the Securities Exchange Act of 1934, and raised disclosure duty claims in the Amended Complaint seeking to challenge the propriety of the Board's decision to not file SEC reports.
- Johnson, Verthelyi, Shearin and Lynch were in constant communication with Preferred Stockholders and Class Counsel throughout the litigation.
- Class Counsel had lengthy conversations with each Named Plaintiff reviewing each and every discovery requests (50 in total) and discussing and answering

questions about the nature of the documents requested and their obligations in responding to the requests.

- After seven years of battling with the Company, monitoring their investment and/or conferring with other Preferred Stockholders, Named Plaintiffs spent hours searching for relevant case documents, emails, ESI, investment account statements spanning over seven years, and other hard copy documents, and reviewed and assisted with the responses to Defendants' interrogatories.
- Named Plaintiffs reviewed and commented on the original and/or Amended Complaints. They also reviewed the Motion for Class Certification and worked with Class Counsel in drafting and executing declarations in support of this Motion. They were provided copies of all papers filed in this Action and some or all of them spent hours reading the papers, including Defendants' Motion to Dismiss and their Opposition to this Motion.
- Named Plaintiffs also took risks associated with being a named plaintiff in a class action, such as having to be investigated and deposed. Indeed, Named Plaintiffs spent many hours over several days preparing for their depositions individually and with Class Counsel, re-familiarizing themselves with their documents and emails, the allegations and the claims, the numerous entities involved, and they met with Class Counsel to prepare and go over the mechanics and deposition process. They traveled very long distances to prepare for and give full-day depositions (*e.g.*, Lynch and Johnson flew into Philadelphia, Pennsylvania from Seattle, Washington and South Carolina, respectively). Lynch had to use two vacation days to attend his deposition. Each Named Plaintiff also reviewed his

transcript for accuracy, corrected court reporter error where appropriate and signed their deposition transcript certifications.

- Named Plaintiffs and Class Counsel were in communication during the Settlement negotiation and each Named Plaintiff, after asking many questions and only after fully satisfying themselves that the Settlement was in the best interest of the Classes' members, signed off on the material terms in the Memorandum of Understanding ("MOU") and the Settlement Agreement.
- Holder Class members Shearin and Johnson also faced additional financial risks because when the stock price began to recover on news of the MOU/proposed Settlement and the ARC Transaction, Shearin and Johnson held onto their Preferred Stock when they could have sold and recovered their cost basis. Instead they chose to hold their shares and represent the Holder Class, taking their responsibility seriously and risking their own money, which far exceeds the amount of the contribution award of $7,500.

III. THE ARC TRANSACTION

85. On June 2, 2014, W2007 Grace and WNT Holdings, LLC, announced that certain of their subsidiaries had entered into an agreement to sell the entire 126 hotel portfolio to affiliates of American Realty Capital Hospitality Trust, Inc. ("ARCH") for a combined purchase price of $1.925 billion, subject to certain adjustments (the "ARC Transaction".)

a. On May 23, 2014, subsidiaries of the Company (the 20 subsidiaries with ownership of a single hotel property and two subsidiaries of Senior Mezz representing ownership of 106 hotel properties) and WNT (as owner of a 97% interest in the Senior Mezz Hotels), entered into a Real Estate Sales

Agreement with a subsidiary of ARCH whereby ARCH would acquire the 126 hotels included in the Trust Hotel portfolio (20 hotels) and Senior Mezz Hotel portfolio (106 hotels) for $1.925 billion.

b. On November 11, 2014, the parties agreed to amend and restate the sales agreement whereby ARCH would acquire 116 hotels (20 Trust Hotels and 96 Senior Mezz Hotels) for $1.808 billion.

c. The ARC Transaction provided for the consideration to be paid in cash and Class A Membership Interests in ARC Hospitality Portfolio I Holdco, LLC and Class A Membership Interests in ARC Hospitality Portfolio II, LLC ("Class A Interests"). The Class A Interests bear interest at a Preferred Return equal to 7.5% per annum for the first 18 months following closing of the ARC Transaction and 8.00% per annum thereafter.

86. On February 27, 2015, the ARC Transaction was completed pursuant to the Amended and Restated Real Estate Sale Agreement, as amended by the First Amendment to the Original Agreement and the Letter Agreement Amendment thereto. *See* W2007 Grace Form 8-K, dated 3/5/2015, at http://www.sec.gov/Archives/edgar/data/916530/000119312515078740/d882970d8k.htm.

87. On May 1, 2015 the Company filed an unaudited *pro forma* in which it reported its anticipated assets and liabilities following the closing of the ARC Transaction. *See* W2007 Grace Form 8-K, dated 5/1/2015, at Ex. 99.1, at http://www.sec.gov/Archives/edgar/data/916530/000119312515166088/d915413dex991.htm. The *pro forma* showed that as of the date of the closing, February 27, 2015, the Company had a

reported $156,220,000 in assets and $41,934,000 in liabilities, for a net book value of $114,286,000, or $19.53 per share. (This *pro forma* was restated and superseded by the Company's Form 8-K/A filed with the SEC on June 30, 2015, to reflect a change in the accounting treatment of the ARC Transaction).

88. Upon the closing of the ARC Transaction, the Company received approximately $22.2 million in cash subject to certain post-closing adjustments, and the Company's subsidiaries were issued $99.8 million worth of preferred equity interests in a newly-formed Delaware limited liability company, ARC Hospitality Portfolio II Holdco, LLC, which indirectly owned the 20 Trust Hotel Properties.

89. On March 30, 2015, it was announced that a subsidiary of Senior Mezz had entered into a contract (the "Excluded Hotel Sale Agreement") to sell the 10 hotels which were not included in the ARC Transaction (the "Excluded Hotel Assets") for a combined purchase price of $100 million. Then, the Excluded Hotel Sale Agreement was terminated by the purchasers on May 6, 2015. On June 8, 2015, a subsidiary of Senior Mezz entered into an amendment to the terminated contract, which among other things, reinstated the contract for *nine* of the ten Excluded Hotel Assets, amended the purchase price to $*85 million*. The subsidiaries of Senior Mezz closed on the sale of the nine hotels on July 23, 2015. While the subsidiaries of Senior Mezz expect to sell the one remaining hotel, there can be no assurance as to whether or when that hotel will be sold, the form of consideration which may be received in respect of that hotel or whether the consideration which may be received in respect of that hotel will be greater or less than the purchase price allocated to that hotel in the previously contemplated sale. Even if a transaction for the one remaining hotel does occur, there can be no assurance as to when a distribution from such sale proceeds will be received by the Company.

IV. THE SETTLEMENT NEGOTIATIONS AND CONTINUED DISCOVERY AND PROSECUTION OF THE CLAIMS

90. In reaction to the 2014 Refinancing and the ARC Transaction, Class Counsel began drafting papers for injunctive relief to enjoin the ARC Transaction from closing until Class Counsel could secure additional information about the ARC Transaction, and, among other things, its impact on the Preferred Stockholders and the legal claims asserted in the Action.

91. On June 2, 2014, Counsel for the parties conferred and began discussions concerning, broadly, the ARC Transaction and its implications.

A. Ongoing Discovery and Analysis of the Claims and Discovery With Respect to the ARC Transaction

92. In addition to the ongoing requests for production of documents discussed *supra,* Class Counsel added to their request transactional and financial documents related to the ARC Transaction, which documents Defendants produced on June 10, 2014 subject to and under the protections of Rule 408 of the Federal Rules of Evidence ("FRE 408").

93. While discovery was taking place in connection with confidential settlement communications, the parties continued to engage in both merits and class certification discovery and investigation.

94. Class Counsel worked alongside their consultants GDG and PASCORP, who assisted in the continued forensic investigation of the claims, the analysis of confidential documents and information produced in connection with the ARC Transaction, investigation and analyses with respect to the Settlement negotiations and related documents; and, with GDG, conducted a damages analysis on behalf of members of the Seller Class. The analyses described, herein, were reviewed and updated throughout the discovery process creating an efficient and effective continuum of facts and analyses available to Class Counsel. The work and investigation

included the review of documents and interviews with certain Defendants and their transaction/corporate Counsel. Among other things, this work and investigation informed Class Counsel in its settlement negotiations, and ultimately, in reaching the proposed Settlement.

95. Class Counsel, together with GDG and PASCORP, utilizing publicly available information, the over 10,000 pages of documents and hundreds of native files produced by Defendants and third parties, and information gathered through multiple phone conversations, meetings and formal interviews with Defendants and Defendants' Counsel, investigated and analyzed all aspects of the ARC Transaction, including the following:

a. The proposed sale of the hotel properties to ARCH.

b. The fair value of the purchase price and the allocation of the purchase price to each property in the Trust Hotels and the Senior Mezz Hotels ("Purchase Price Allocation").

c. The Purchase Price Allocation, as agreed and compared to other indications of value such as the Company's internal property valuations.

d. Reviewed and analyzed the amount and allocation of proceeds and expenses related to the ARC Transaction for the Trust Hotels and the Senior Mezz Hotels.

e. Analyzed the Class A Interests (over $447.1 million of seller financing), including: the payment terms, interest rates, risks, and the default and cure provisions.

f. Evaluated the discount rate proposed by Defendants to calculate the present value of the Class A Interests over time.

g. Reconstructed, and confirmed, Defendants' discounted cash flow analysis and results, from which the calculation and determination of the "Estimated Proceeds

Over Time from the ARC Transaction" and the "Estimated Present Value of Proceeds from the ARC Transaction" (as set forth in the Proxy, *see* ¶ 146, *infra*).

h. Analyzed ARCH, the proposed financing structure for the ARC Transaction and potential risks to the Company if the proposed ARC Transaction was completed.

i. Prepared a reconciliation of GS Group's, Whitehall's and related entities' investment in and proceeds from the ARC Transaction.

j. Reviewed and analyzed materials from Defendants concerning other potential acquirers of the portfolio and the indicated value of the hotel properties being sold in the ARC Transaction.

k. From the initial announcement of the ARC Transaction in June 2014, through its ultimate consummation in February 2015, reviewed all changes to the ARC Transaction.

96. In addition to what has already been described, *supra*, Class Counsel assisted by GDG, through multiple phone conversations, meetings and formal interviews with Defendants and Defendants' Counsel, and the review and analysis of documents received via multiple document productions, investigated and analyzed the following in the context of the settlement negotiations and a proposed settlement:

a. The 2007 Restructuring.

b. Cash trap and cash flow pledge restrictions under for each loan agreement, including: the 2007 Acquisition Debt, the 2008 Componentization, the 2009 Recapitalization, the 2010 Loan Modification, and the 2014 Refinancing.

c. The deliberations and analyses of the Company's Board of Directors related to the continued suspension of dividends, delisting, revocation of the REIT election, and the restricted access to financial information.

d. The 2009 Recapitalization, issuance and terms of the Purchase Option, value of the Purchase Option, extension of the expiration date of the Purchase Option, sale of the Purchase Option to WNT, and the exercise of the Purchase Option in 2014.

e. PFD's purchase of stock in private transactions.

f. Review and analysis of the historical and current financial statements of the Company, Grace I and WNT (publicly filed and internally prepared).

g. Accounting methods and changes to accounting methods.

h. Use of proceeds from the sale of properties.

i. Working capital projections for the Company and WNT.

j. The flow of funds between and among the Company, Grace I, Senior Mezz, and WNT, including all related entities.

k. All aspects of the ARC Transaction, including, but not limited to: the amount and allocation of the purchase price and all expenses to each hotel property (purchase price) and portfolio (expenses); Class A Interests terms and the determining factors in the amount of Class A Interests issued with respect to the Trust Hotels and the WNT Hotels; support for and reasonableness of the closing costs; the discounted cash flow analysis and discount rate; contractual terms; and, risks of the ARC Transaction not closing.

l. Reconciliation of GS Group's, Whitehall's and related entities' investment in and proceeds from the ARC Transaction.

m. Internal property valuations and property valuation data included in documents related to the 2014 Refinancing.

n. Continuous review and analysis of ownership, operational and financial data for the Company, Grace I, and WNT.

o. Trading records for the Series B and Series C Stock, and the preferred stockholders of record as of various dates, and, changes to and patterns in the trading of Preferred Stock throughout the relevant periods.

B. The Settlement Negotiations

97. Counsel for the parties met in defense counsel's offices in New York City on June 13, 2014 to commence arm's-length settlement discussions.

98. The settlement negotiations which continued for weeks, and were conducted on three separate, independent tracks, involved at least four in-person meetings in New York City and dozens of conference calls.

1. <u>The Holder Class Claims</u>

99. Track one of the settlement discussions involved the negotiation of the Holder Class claims.

100. In sum, the ARC-related information permitted Class Counsel to assess the value of W2007 Grace's ownership and economic interest in the 126 hotel properties, the overall financial condition of the Company, the likely per share distribution amount that Preferred Stockholders would receive if the ARC Transaction closed (with and without adjustments), and the scenarios that Preferred Stockholders faced if the ARC Transaction did not close.

101. Class Counsel evaluated that data in the context of the litigation, claims, information received and analyzed in discovery, and overall risks, including:

a. The Preferred Stockholders' maximum contractual right at a full redemption, which under the Charter is $25 per share (par value) plus accrued and unpaid dividends (or $15.31 per share as of March 31, 2015). The amount of the accrued and unpaid dividends by mid-2014, during the time of the settlement negotiations, was approximately $14 per share.

b. That W2007 Grace's assets did not cover the cost of redemption and payment of accrued dividends to the Preferred Stockholders.

c. Even if the ARC Transaction closed, Class Counsel considered that:

i. The purchase price was subject to possible downward adjustments (and no upward adjustments). This concern became a reality as future events unfolded.

ii. The purchase price was subject to modification in terms of its cash and Class A Interests components; adjustments to which could increase the risk to the Preferred Stockholders.

iii. The timing of the closing of the ARC Transaction was uncertain and subject to circumstances beyond the control of the parties to the Action;

iv. The ARC Transaction did not constitute a liquidation under the terms of the Charter, therefore, Defendants and the Company could have retained the proceeds or determined to reinvest the proceeds;

v. The Settlement consideration being negotiated exceeded the proceeds per share from the ARC Transaction (*see infra* ¶146); and

vi. The strengths and weaknesses of the claims in this Action in light of the extensive merits discovery and confidential information provided to Class Counsel.

102. During the weeks of negotiation, Defendants asserted, among other things, (i) the Company only has an indirect 1% ownership interest in the properties being acquired in the ARC Transaction; (ii) the Preferred Stockholders were not entitled to redemption value or the payment of accrued and unpaid dividends because, among other reasons, the accrued dividends had never been declared ; (iii) Defendants were not obligated to distribute any proceeds from the ARC Transaction to the Preferred Stockholders; (iv) the 2009 Recapitalization and Purchase Option were necessary and protected business decisions, that prevented the loss of all preferred stock value; and (v) applicable law and terms of the Charter did not support the claims alleged and relief sought, which Defendants intended to litigate through to trial, if necessary.

103. After weeks of negotiation, the parties reached a Settlement that provides members of the Holder Class with immediate liquidity of a net $26.00 per share, an amount that is:

(1) allocated 100% of the ARC Transaction proceeds related to the Trust Hotels and the 3% interest in the Senior Mezz Hotels not owned by WNT to the Preferred Stockholders, and therefore, an amount materially higher than the Company's 1% ownership interest;

(2) materially higher than the Estimated Present Value of Proceeds from the ARC Transaction of $19.23 per share (*see infra* ¶146);

(3) was not contingent upon the occurrence or timing of closing or ultimate purchase price (or components thereof) of the ARC Transaction; and

(4) will not be reduced by attorneys' fees and litigation expenses or the cost of administering the distribution.

104. In addition, in was also negotiated by Plaintiffs and Class Counsel that, to the extent that a sufficient residual balance remains in the Net Settler Class Settlement Fund after distribution pursuant to the Plan of Allocation, such amount will be distributed to the members of the Holder Class, further increasing their recovery.

2. The Seller Class Claims

105. Track two of the settlement discussions involved the negotiation of the Seller Class claims.

106. In sum, the discovery taken, discussed *supra,* permitted Class Counsel to evaluate the damages incurred by persons who sold Preferred Stock after the ENN Merger, and persons who purchased and sold stock after the ENN Merger. As set forth in the attached GDG Declaration (Exhibit 2, hereto), GDG provided Class Counsel with a damages analysis indicating approximately $24 million in damages to the members of the Seller Class due to the lack of adequate and timely financial information being provided to the Preferred Stockholders during the relevant period. In addition, Class Counsel reviewed information concerning PFD's purchases to assure that such purchases were not made from unwitting Preferred Stockholders.

107. During the weeks of negotiations, Defendants were adamant in their position that sellers of Preferred Stock suffered nominal, if any, recoverable damages, because it was, among other things, the intervening financial crisis and economic recession that impacted the Preferred Stock price at which the members of the Seller Class sold, and, the Seller Class had no viable legal claims against Defendants with respect to unavailability of or delays in receiving timely information.

108. Class Counsel countered these arguments with legal and empirical market data developed by GDG. After weeks of negotiation, the parties reached a Settlement that secures for the members of the Seller Class a cash settlement fund of $6.0 million, to be distributed to the Seller Class members who suffered a recognized loss upon the sale of their shares, as set forth in the Plan of Allocation.

109. The Seller Class Settlement Fund represents 25% of the estimated maximum Recognized Loss, and will not be reduced by attorneys' fees or litigation expenses, with the exception of up to $150,000 for expert fees and expenses incurred with respect to Seller Class-related litigation expenses.

3. The Negotiation of the Attorneys' Fees and Expenses

110. Track three of the settlement discussions involved the negotiation of the attorneys' fees and expenses. The parties did not commence the negotiation of the amount of attorneys' fees and expenses until after the settlement negotiations for the Classes were concluded and an agreement was reached on the material financial terms of the Settlement.

111. Following a weeks-long negotiation, the parties' counsel agreed that attorneys' fees and certain litigation expenses in the aggregate amount of $4 million would be paid to Class Counsel by Defendants upon Court approval. Thus, the payment of attorneys' fees and expenses is separate from, and in addition to, the consideration of $26.00 per share for the Holder Class and the $6.0 million Seller Class Settlement Fund.

112. Finally, Class Counsel requested and negotiated the payment by Defendants of a case contribution award in the amount of $7,500 to each Named Plaintiff for the time and expenses each incurred in bringing and litigating this Action, payable by Defendants (and not from the Classes' recovery) upon Court approval. Stipulation, at ¶ 45.

113. None of the Named Plaintiffs requested, nor was promised, any award beyond his *pro rata* share of the recovery at any point in the litigation. However, given the substantial time spent by each of the Named Plaintiffs, including the significant time commitment involved with their traveling to/from, preparing for and giving, their depositions, Defendants agreed to the payment of a contribution award. The payment of these contribution awards would be separate from and in addition to the consideration of $26.00 per share for the Holder Class and the $6.0 million Seller Class Settlement Fund.

C. The Parties Enter Into A Non-Binding Memorandum of Understanding

114. On August 20, 2014, after extensive arm's-length negotiations between the parties' counsel, the parties reached agreement on enough key terms to enter into a confidential non-binding Memorandum of Understanding regarding a proposed settlement. The proposed settlement remained contingent upon, among other things, negotiation of the terms of and preparation of the Stipulation and ancillary documents, as well as completion of additional discovery relating to, among other things, the claims alleged in the Action, the defenses asserted by Defendants, and the ARC Transaction.

V. THE SETTLEMENT.

115. On August 22, 2014, the parties notified the Court of the proposed settlement and requested that the Court hold the Action in abeyance until the parties' submission of the Stipulation and the Court's ruling on the Preliminary Approval Order.

116. The parties' counsel met and held multiple conference calls to discuss and negotiate the terms of the Stipulation, and during the weeks leading up to the execution of the Stipulation of Settlement, the parties exchanged multiple drafts of the Stipulation, the Merger

Agreement, the Proxy Statement (*see* fn. 7, *infra*, concerning Class Counsel's and GDG's work with respect to the Proxy), Class Notice and all other Exhibits attached to the Stipulation.

117. The litigation, discovery and negotiations discussed herein culminated in the parties executing the final Stipulation of Settlement on October 8, 2014, attached as Exhibit A to Smith 10/9/2014 Decl.

A. Key Terms of the Stipulation

118. The Stipulation resolves all of the claims asserted in the Action on behalf of the following Classes:

> **1. Holder Class Defined**
>
> Any and all persons or entities that, as of August 22, 2014 and through the Merger Effective Time, hold 8.75% Series B Cumulative Preferred Stock and/or 9.00% Series C Cumulative Preferred Stock issued by W2007 Grace Acquisition I, Inc. (collectively, the "Preferred Stock"), excluding: (a) Defendants and their affiliates, and (b) any persons or entities that validly (i) exercised dissenters' rights in the Merger or (ii) opted out of this class (the "Holder Class".) The Merger is the merger reflected in the Merger Agreement, whereby W2007 Grace will be merged with and into Merger Sub and all Series B Preferred Stock and Series C Preferred Stock, except for the Excluded Shares, shall be converted into the right to receive $26.00 per share. The Merger Effective Time occurs when the Tennessee Articles of Merger have been duly filed with the Secretary of State of the State of Tennessee or at such later time as may be specified in the Tennessee Articles of Merger.
>
> **2. Seller Class Defined**
>
> Any and all persons or entities that sold some or all of their Preferred Stock between October 25, 2007 and October 8, 2014, inclusive, and suffered a loss, excluding: (a) Defendants and their affiliates, and (b) any persons or entities that (i) sold shares to Defendant PFD Holdings, LLC in a private transaction or (ii) validly opted out of this class (the "Seller Class," and together with the Holder Class, the "Classes".)

Stipulation, Par. 1(ii)(jj)(nnn)(qqq), Exhibit A to the Smith 10/9/2014 Decl.; *see also,* PAO.

119. The consideration and benefits conferred by the Settlement, including the Merger consideration, the Seller Class Settlement Fund and the attorneys' fees and certain expenses, can be valued at over $72 million, as follows:

a. The Stipulation provides that members of the Holder Class will recover $26 per share pursuant to a merger transaction. As of August 22, 2014, the date that the MOU was announced, there were over 500 holders of 2,399,265 unaffiliated shares of Preferred Stock Series B and C, who were eligible to receive a $26 per share recovery for a total recovery of up to $62,380,890 *plus* their pro rata share of any residual in the Net Seller Class Settlement Fund.

b. The Stipulation provides for a Seller Class Settlement Fund of $6.0 million, which is distributable to members of the Seller Class, after taxes and notice and administration expenses (the "Net Seller Class Settlement Fund"), pursuant to a Plan of Allocation described in more detail below and Exhibit 14 hereto.

c. The Stipulation also provides that Defendants will pay all attorneys' fees and contribution awards totaling $4,030,000, plus 50% of the costs associated with the dissemination of the Notice and 100% of the costs to administer the settlement merger (including the cost of disseminating the proxy statements, the proxy solicitor and disbursing the merger consideration).

120. In exchange for the above settlement consideration, the Stipulation provides for a release by members of the Holder Class and Seller Classes of any and all claims (known or unknown), including class, derivative, individual or other claims: (1) related to the purchase, sale, holding or investment in, or the terms of, the securities of the Company or its predecessors, including, without limitation, the Preferred Stock, (2) asserted or that could have been asserted, against Defendants in this Action, or arising out of or relating to the facts, matters and transactions alleged in the Action, including, without limitation, claims for breach of contract, breach of fiduciary duties, or violations of the Tennessee Business Corporations Act ("TBCA"); and (3) arising out of the Merger contemplated by the Stipulation.

121. In addition, the Settlement, including the Settlement Merger, is contingent upon the final approval by the Court, and the occurrence of the Effective Date of the Settlement.

B. The Plan of Allocation

122. Pursuant to the Settlement Agreement, the Net Seller Class Settlement Fund will be distributed to Seller Class members in accordance with the terms of the proposed Plan of Allocation attached as Exhibit 14 hereto.

123. The GDG Declaration, Exhibit 2, hereto, includes a discussion of the Plan of Allocation.

124. Under the proposed Plan of Allocation, a Seller Class member's share of the Net Seller Class Settlement Fund will primarily depend on: (1) the number of shares of Preferred Stock that the Seller Class member owned and sold between October 25, 2007 and October 8, 2014, inclusive; (2) the prices at which the Seller Class member purchased and sold the Preferred Stock; (3) whether the Seller Class member had any losses in the purchase and sale of the Preferred Stock; and (4) the total number of shares of Preferred Stock held by other members of the Seller Class who submit timely and valid Proof of Claim Forms.

125. The purpose of the Plan of Allocation is to allocate the Settlement proceeds equitably among the members of the Seller Class, taking into account such factors as the relative strength of the claims and the total claimed damages arising from the conduct complained of by the Seller Class in the Action.

126. Class Counsel and GDG calculated the potential recoverable damages realized by members of the Seller Class who owned Preferred Stock as of October 25, 2007 that arose from the continuing harm created by the restricted access to timely, accurate and complete Company information. *See* GDG Decl. at ¶¶11-25.

127. The fixed damage per share to the Series B Preferred Stock that was held as of October 25, 2007 and sold between October 25, 2007 and October 8, 2014, inclusive (the "Class

Period") equals $4.19. The damage per share to the Series C Preferred Stock that was held as of October 25, 2007 and sold during the Class Period equals $4.00. The damages per share takes into account, among other things, the liquidating distribution amounts of $17.50 and $17.00 per share of Series B and Series C, respectively, the weighted average reported trading and between October 25, 2007 and June 29, 2008, and per share adjustments for certain industry specific market changes.

128. Class Counsel and GDG also calculated and determined that there was a fixed amount of potential recoverable damages realized by members of the Seller Class who purchased shares of Preferred Stock after October 25, 2007 and sold such shares of Preferred Stock during the Class Period ("In and Out Transactions".) The determination of damage to the In and Out Transactions recognizes that both the purchase and sale decisions were made with full knowledge of the restricted access to timely, accurate and complete Company information.

129. The damage per share to In and Out Transactions equals $0.23 in the Series B Preferred Stock and $0.31 in the Series C Preferred Stock. The damages per share takes into account, among other things, the liquidating distribution amounts, estimated market losses realized through In and Out Transactions compared to the estimated imputed market losses to shares of Preferred Stock that were held on October 25, 2007 and sold during the Class Period.

130. For purposes of distribution of the Net Seller Class Settlement Fund, Recognized Loss per Share may not equal the fixed damage per share described above

131. Imputed market loss per share of Series B Preferred Stock is calculated as $17.50, the Liquidating Distribution amount, less the actual sale price per share. Imputed market loss per share of Series C Preferred Stock is calculated as $17.00, the Liquidating Distribution amount, less the actual sale price per share.

132. Recognized Loss per share of Series B Preferred Stock that was held as of October 25, 2007 and sold during the Class Period will equal the lower of: (i) the imputed market loss and (ii) $4.19. Recognized Loss per share of Series C Preferred Stock that was held as of October 25, 2007 and sold during the Class Period will equal the lower of: (i) the imputed market loss and (ii) $4.00.

133. Recognized Loss per share of In and Out Transactions in the Series B Preferred Stock will equal the lower of: (i) the actual market loss and (ii) $0.23. Recognized Loss per share of In and Out Transactions in the Series C Preferred Stock will equal the lower of: (i) the actual market loss and (ii) $0.31. Any In and Out Transactions where a gain was realized (e.g. the sale price was greater than the purchase price) will have a zero Recognized Loss.

134. The Net Seller Class Settlement Fund shall be distributed to the Authorized Claimants *pro rata* as determined by the Recognized Loss per share.

135. The Plan of Allocation takes into account the allegations made in the Action with respect to shares of Preferred Stock sold after October 25, 2007, the discovery taken, consultation with experts, the potential recoverable damages of the Seller Class.

136. Class Counsel also recognized, and took into account in determining the Recognized Loss for the Seller Class, the impact of the global financial crisis that occurred during the Class Period, which caused impairment in the share value of all hospitality real estate entities, the effects of which cannot be attributable to any alleged wrongdoing of Defendants.

137. For any member of the Seller Class to be eligible to receive a distribution from the Net Seller Class Settlement Fund, the Seller Class member must have a net loss, after all profits from transactions in Preferred Stock during the Seller Class Period are subtracted from all losses.

138. Based on the information currently available to Plaintiffs and the analysis performed by GDG, the estimated average allocation from the Seller Class Settlement Fund per share: (1) of Preferred Stock held as of October 25, 2007 and sold during the Seller Class Period would be approximately $3.28 per share; and, (2) of Preferred Stock in In and Out Transactions would be approximately $0.20 per share.

139. These estimates assume that valid and timely Proof of Claim Forms will be submitted by no more than 30% of the eligible Seller Class Preferred Shares with a Recognized Loss and that the Court awards Seller Class-related litigation expenses of $150,000. These estimates do not take into account Seller Class Notice and Administration Expenses which will reduce the Seller Class Settlement Fund. If valid and timely Proof of Claims for more eligible Seller Class Preferred Shares with a Recognized Loss are submitted, the estimated average allocation per share will be lower.

C. Continued Discovery from Defendants

140. Throughout the Settlement negotiations and through the present, Named Plaintiffs and Class Counsel, assisted by GDG, have propounded and reviewed additional substantial discovery in connection with the claims and the Settlement. Such discovery and review by Class Counsel and GDG included:

a. Review of shareholder lists;

b. Review of financial information about the Company and its affiliates;

c. Review of unaudited pro forma condensed consolidated balance sheet of the Company as of December 31, 2014, and unaudited pro forma condensed consolidated statement of operations for year ended December 31, 2014;

d. A video-conference and several telephonic interviews of Chief Financial Officer Greg Fay;

e. A video-conference interview of Chief Executive Officer, President, and Director Todd Giannoble;

f. Various telephonic interviews of the Company's transaction counsel at Sullivan & Cromwell;

g. Review of information about the Board's conduct with respect to the Purchase Option, the 2007 Restructuring, and the 2009 Recapitalization;

h. Ongoing review of the ARC Transaction; and,

i. Reviewing all Company SEC filings, including, its Annual Report on Form 10-K for the year ended December 31, 2014; Current Reports on Form 8-K or Form 8-K/A filed on March 5, 2015, March 19, 2015, March 30, 2015, April 22, 2015, May 1, 2015, and May 11, 2015; Annual Report on Form 10-K for the year ended December 31, 2013; and, quarterly reports for the periods ended March 31, 2014, June 30, 2014, September 30, 2014, and March 31, 2015.

141. On October 9, 2014, Named Plaintiffs submitted the Settlement Agreement and related papers to the Court for preliminary approval and sought certification of the Holder and Seller Classes for settlement purposes. (ECF Nos. 76-77.) Named Plaintiffs filed additional papers in support of the Settlement on December 4, 2014 and March 20, 2015. (ECF Nos. 78, 86-87.)

VI. REASONS FOR THE SETTLEMENT

142. Although not exhaustive, the following paragraphs discuss Named Plaintiffs' and Class Counsel's reasons for entering into the Settlement. *See also*, Exhibit 8, Frequently Asked Questions, dated June, 2015 posted on Class Counsel's website.

143. In connection with their consideration of and entering into the Settlement, Class Counsel, assisted by GDG, considered the following,

a. After consummation of the ENN Merger, Defendants secured a 99% ownership interest in the hotel assets and left the Company and its Preferred Stockholders with a 1% ownership interest in the hotel assets.

b. As a result of the 2007 Restructuring, the Company has a 1% ownership interest in W2007 Equity LP, the subsidiary that indirectly owned 106 of the hotels and which has a 99% ownership interest in the 20 Trust Hotels. Following exercise of the Purchase Option, the Company's interest in the hotel assets of W2007 Equity LP included 1% of the 3% ownership interest in the 106 hotels not owned by WNT, and 1% of the 99% ownership interest in the 20 Trust Hotels. Therefore, absent the Settlement, Plaintiffs estimate that the Estimated Proceed over Time (including the sale of the Excluded Hotel Assets), if made in accordance with the Company's 1% ownership interest in W2007 Equity LP, could be approximately $0.43 per share of Preferred Stock.

c. Because of the Action, the Settlement, and the Settlement Merger, the ARC Transaction proceeds are being allocated as if the Company owned 100% of W2007 Equity LP (which in turn owns 3% of the equity interests of Senior Mezz). Accordingly, as set forth in the Proxy, the Estimated Proceeds over Time

from the ARC Transaction to Preferred Stockholders would be approximately $22.46 per share and the Estimated Present Value of Proceeds from the ARC Transaction to Preferred Stockholders would be approximately $19.23 per share (or, approximately $22.96 and $19.73 per share, assuming the sale of the Excluded Hotel Assets at the same price they were allocated in the ARC Transaction).

d. The terms of the Charter with respect to redemption and that full redemption value on a per share basis, if even possible, was $40.31 ($25 per share par value plus $15.31 per share of accrued and unpaid (yet undeclared) dividends as of March 31, 2015.

e. The current assets of the Company are not sufficient to satisfy the liquidation preference and accrued and unpaid dividends.

f. The impact of the cash traps, cash flow pledges, and related covenants contained in the loan agreements on the Company's cash flows and dividend capacity, and that the cash traps, cash flow pledges, and debt yield provisions, of the various loan agreements (2007 Acquisition Debt through and including the 2010 Loan Modification) would not have been unreasonable provisions given the highly leveraged financial condition of the hotel assets.

g. That Defendants' proceeding with the 2009 Recapitalization and the Purchase Option could be viewed as reasonable in light of the highly leveraged ENN Merger, the financial crisis and the recession's impact on the hotel industry, in order to avoid foreclosure, bankruptcy and/or extinguishment of the Preferred Shares' equity value. And, Whitehall's contention that, absent the Settlement, it

had a direct legal claim to $190 million of ARC Transaction proceeds, pursuant to certain subrogation rights, and such creditor rights had priority over the rights of the Preferred Stockholders.

h. That the Holder Class Settlement consideration exceeds the per share Estimated Proceeds Over Time from the ARC Transaction and the per share Estimated Present Value of Proceeds from the ARC Transaction.

i. The Estimated Proceeds Over Time from the ARC Transaction and the per share Estimated Present Value of Proceeds from the ARC Transaction reflect 100% of the ARC Transaction proceeds related to the Trust Hotels and the 3% interest in the Senior Mezz Hotels not owned by WNT to the Preferred Stockholders, an amount materially higher than the Company's 1% ownership interest.

j. The Settlement removes the risk of continued Preferred Stock ownership, including: (1) the risk that Defendants could elect to not distribute, but hold and / or reinvest the proceeds from the ARC Transaction; (2) the risk attendant with continued ownership of the Class A Interests issued as partial consideration in the ARC Transaction, including (a) the risk of untimely payment of the Class A Interests' preferred return, (b) the risk that the initial contribution value of the Class A Interests would not be paid timely or in full, (c) the risk that under certain default provisions related to the Class A Interests, ownership of the Hotels would revert to the Company and /or WNT, and (d) the fact that the Class A Interest presently are, and were expected to remain, illiquidity; and (3) the lack of liquidity for the Preferred Stock.

k. That the Keepwell Agreement does not guarantee any payment to the Preferred Stockholders: it provides that it shall not be deemed to constitute a "guaranty of payment of dividends (if any), interest (if any), principal and premiums (if any) of any obligations, indebtedness or liability" of the Company; and, it may be terminated by Grace I unilaterally, at any time, upon 30 days' prior written notice. Further, as the Company stated in its Annual Report on Form 10-K for the year ended December 31, 2014, "[t]o date, no payments have been made and none are due under the Keepwell Agreement... [and] [t]here are no third-party beneficiaries of the Keepwell Agreement."

l. That the proceeds from the Trust Hotels sold in 2013 was, as a result of the 2009 Recapitalization, was "trapped" and pledged under the terms of the applicable loan documents at the time the Trust Hotels were sold.

m. GDG's Seller Class damages analysis.

n. That the ARC Transaction: was between non-affiliated parties; appeared to be fully-priced; the allocation of the ARC purchase price among the properties was part of a third-party transaction and consistent with other indications of estimated value of the portfolio; and the allocation of the proceeds from the ARC Transaction (net of transaction costs, proration and other purchase price adjustments), generally was allocated amongst the sellers in accordance with the allocated purchase prices of the portions of the Portfolio owned by them unless such costs were clearly associated with a particular pool (for example, the defeasance costs associated with the 20 Trust Hotels' mortgages and retirement of the Trust Preferred Debt).

144. Class Counsel also considered that under the terms of the Stipulation, neither the Merger nor the Settlement was contingent upon the consummation of the ARC Transaction. (Smith 10/9/2014 Decl., Ex. 1, Stipulation, at ¶ 13.)

a. Therefore, the Settlement consideration to the Holder Class could not be adjusted downward upon the occurrence of a downward adjustment to the purchase price (or its composition) of the ARC Transaction. The Settlement protected Preferred Stockholders from certain real and potentially costly risks, such as the risk that properties would fall out of the ARC Transaction or that the deal could be materially changed, the risk that ARC was unable to raise money to close on the ARC Transaction, and the risk that ARC would default on its Class A Interests obligations to the Company. Removing these risks provided substantial benefit to members of the Holder Class, as they had reasonable assurance that their payment and benefits under the Stipulation were not subject to deal risks or risks associated with ARCH.[5]

b. Indeed, modifications were made to the ARC Transaction which Named Plaintiffs reported to the Court on December 4, 2014, and which required the filing of an amended proxy statement with the Court. These amendments included that: (1) the purchase price of the ARC Transaction had been reduced by $117 million, from $1.925 billion to $1.808 billion; (2) the ARC Transaction was amended to acquire only 116 of the 126 hotel assets; and (3) that there was no assurance as to

[5] Indeed, on October 30, 2014, a mere three weeks after the Stipulation of Settlement was executed, news broke that the controller and principal of ARCH's sponsor was alleged to have engaged in accounting improprieties at another REIT, American Realty Capital Properties ("ARCP"). ARCP and other ARC-related REITs are the subject of federal and private legal action.

when or whether the ten excluded hotel assets would be sold or whether the consideration to be received in respect of the hotels will be greater or less than were if the ARC Transaction is consummated. Moreover the closing of the ARC Transaction had been delayed to February 27, 2015.

145. The Stipulation provided for settlement consideration of $26 per share without regard to any of the associated risks or the failure to sell the ten Excluded Hotel Assets.

146. Moreover, Plaintiffs and GDG considered and reviewed the following analysis, which was ultimately contained in the Proxy Statement concerning the estimate of proceeds from the ARC Transaction that could be distributed to the holders of the Preferred Stock, and that such estimates *are less than $26 per share*.[6]

a. First, the Estimated Proceeds Over Time from the ARC Transaction of $22.46 per share:

> We estimate the proceeds that could be distributed to the holders of the Preferred Stock over time, including PFD Holdings, as a result of the ARC Transaction would be approximately **$22.46 per share** assuming the Initial Capital Contributions of the Class A Interests are repaid in full and excluding (a) any Preferred Return (as defined below) that may be received in connection with the Class A Interests, (b) a present value discount to the repayment of the Class A Interests or any Preferred Return which such payments will occur over time, (c) any value attributed to the Excluded Hotel Assets, (d) any cash, other working capital assets and liabilities of the Company which might otherwise result in a distribution to holders of the Preferred Stock in connection with the liquidation of the Company and (e) any income tax effects which may be applicable to proceeds received by the Company (the "Estimated Proceeds over Time from the ARC Transaction").

[6] Class Counsel, assisted by GDG, reviewed, reconciled, analyzed and suggested revisions to various drafts and the final "Estimated Proceeds over Time from the ARC Transaction", the "Estimated Present Value of Proceeds from the ARC Transaction", and the Walk Down, set forth in the Proxy.

b. Second, the Estimated Present Value of Proceeds from the ARC Transaction of $19.23 per share:

> We estimate the present value (applying a 15% discount rate) of the Estimated Proceeds over Time from the ARC Transaction plus the Preferred Return, would be approximately **$19.23 per share** to the holders of the Preferred Stock, including PFD Holdings (the "Estimated Present Value of Proceeds from the ARC Transaction"). The Estimated Present Value of Proceeds from the ARC Transaction assumes that interest is collected monthly and 50% of the Initial Capital Contribution is collected 36 months after February 27, 2015, the closing date of the ARC Transaction, and the remaining 50% of the Initial Capital Contribution is collected 48 months after the closing of the ARC Transaction. The Estimated Present Value of Proceeds from the ARC Transaction excludes (i) any value attributed to the Excluded Hotel Assets, (ii) any cash, other working capital assets and liabilities of the Company which might otherwise result in a distribution to holders of the Preferred Stock in connection with the liquidation of the Company and (iii) any income tax effects which may be applicable to proceeds received by the Company.

c. Third, information contained in a detailed, tabular presentation (the "Walk Down") depicting the foregoing analysis of the Proceeds from the ARC Transaction. *See,* Final Proxy at pages 19-21,

d. Fourth, the estimated proceeds from the Excluded Hotel Assets at the time (which transaction or variation thereof closed on July 23, 2015 for the sale of nine hotels),:

> Assuming the proceeds that would be received in respect of the Excluded Hotel Assets equal the $100.0 million that was provided for in the Excluded Hotel Sale Agreement (which has since been terminated) less $2.0 million of estimated transaction expenses (not taking into account in each case any present value discount), the Company estimates that the potential proceeds in respect of such hotels would result in approximately $0.50 per share of Preferred Stock (the "Estimated Potential Proceeds from the Sale of the Excluded

Hotel Assets"). The sum of the Estimated Proceeds over Time from the ARC Transaction and the Estimated Potential Proceeds from the Sale of the Excluded Hotel Assets would be approximately **$22.96 per share** of Preferred Stock. The sum of the Estimated Present Value of Proceeds from the ARC Transaction and the Estimated Potential Proceeds from the Sale of the Excluded Hotel Assets would be approximately **$19.73 per share** of Preferred Stock.

VII. THE COURT'S PRELIMINARY APPROVAL ORDER

147. On April 30, 2015, the Court issued an Order preliminarily approving the Settlement and Notice plan. (*See* Order, ECF No. 90 [hereinafter, the "Preliminary Approval Order"].) The Preliminary Approval Order is attached hereto as Exhibit 1.

148. In the Preliminary Approval Order, the Court among other things:

a. granted preliminary approval of the Settlement finding that it falls within the range of possible approval and conditionally approved as fair, reasonable and adequate (*See* Preliminary Approval Order, at 25, 29);

b. scheduled the Settlement Hearing for September 11, 2015 (*id.* at 38-39);

c. pursuant to Fed. R. Civ. P. 23, conditionally certifying the Holder and Seller Classes for settlement purposes (*id.* 15-20), and finding that: Plaintiffs Johnson and Shearin are adequate representatives of the Holder Class; Johnson, Verthelyi, and Lynch are adequate representatives of the Seller Class; Chimicles & Tikellis is an adequate Class Counsel; and Hagler Bruce & Turner, PLLC is an adequate Liaison Counsel (*Id.* at 18, 22-24, 30-31.)

d. approved the proposed Notice finding that it "fully satisfies the requirements of due process, provides the best notice practicable under the circumstances to the members of the Classes, and provides individual notice to the members of the Classes who can be identified through reasonable effort." (*Id.* at 28, 32);

e. appointed Angeion Group LLC (the "Claims Administrator") as the claims administrator to supervise and administer the Notice plan, and to administer the Settlement consideration and distribute the Net Seller Class Settlement Fund (*Id.* at 31-32);

f. directed the Claims Administrator to mail by first class mail the Notice and Proof of Claim form to all members of the Holder and Seller Classes

who can be identified through reasonable efforts, commencing by May 21, 2015 (*Id.* at 33);

g. directed the Claims Administrator to cause the Summary Notice to be published once in the national edition of *Investor's Business Daily*, published online on the *Wall Street Journal* online edition, and transmitted over the *PRNewswire* by May 28, 2015 (*Id.*);

h. directed Defendants to cause the Proxy Statement to go out to Preferred Stockholders on or before May 21, 2015, and to hold a meeting no later than sixty calendar days after the mailing of the Proxy Statement in order for Stockholders to vote on the Merger and Charter Amendment (*Id.* at 35);

i. provided the procedure and deadline for filing a Seller Proof of Claim form (*Id.* at 37); and

j. provided the procedures and deadlines for opting out of or objecting to the Settlement (*Id.* at 35-36).

149. As set forth herein, Named Plaintiffs have complied with the requirements of the Preliminary Approval Order.

VIII. THE MERGER SETTLEMENT AND THE PROXY SOLICITATION.

150. As contemplated by the Stipulation and pursuant to the Court's Preliminary Approval Order, the Company entered into an agreement and plan of merger (the "Settlement Merger Agreement") on May 10, 2015 with W2007 Grace II, LLC ("Parent"), W2007 Grace Acquisition II, Inc. ("Merger Sub"), and, solely for the purposes of certain payment obligations thereunder, PFD Holdings and Whitehall, pursuant to which W2007 Grace would be merged with and into Merger Sub, with Merger Sub surviving as a wholly owned subsidiary of Parent (the "Settlement Merger").

151. Completion of the Settlement Merger was subject to numerous conditions, including: (i) the approval of the Settlement Merger Agreement by the affirmative vote of a majority of all the votes entitled to be cast by the holders of W2007 Grace's outstanding Preferred Stock; (ii) the approval of the amendment to W2007 Grace's amended and restated

charter; (iii) no more than 7.5% of the outstanding shares of the Preferred Stock seek to assert appraisal rights; and (iv) the final approval and entry of a final and non-appealable order and judgment of the Settlement.

152. On May 18, 2015, in compliance with the Court's Preliminary Approval Order, the Company initiated the mailing of the final Proxy Statement, dated May 14, 2015. *See* W2007 Grace Form 8-K, dated 5/18/2015, Ex. 99.1, at http://www.sec.gov/Archives/edgar/data/916530/ 000119312515192129/d927190d8k.htm [hereinafter, the "Final Proxy Statement"].

153. The Final Proxy Statement is in substantially the same form as the proxy statement submitted to the Court on October 8, 2014 as amended on December 4, 2014. *See* Smith 10/9/2014 Decl. at Ex. A-7 and Smith 12/4/2014 Decl. at Amended Ex. A-7.

154. The Final Proxy Statement asks the Preferred Stockholders to consider and vote on these three proposals ("Proxy Proposals"):

(a) the amendment to the Company's Amended and Restated Charter to limit the voting rights of Preferred Stockholders;

(b) the Settlement Merger Agreement; and

(c) the adjournment of the special meeting, if necessary.

155. The Company held its special meeting of stockholders on July 14, 2015 at which Preferred Stockholders were invited to participate telephonically. During the special meeting of stockholders, in which Class Counsel participated in telephonically, W2007 Grace's management reviewed the proposals and then opened the floor to give Preferred Stockholders an opportunity to ask questions, but no one asked any questions or made any comments concerning the Proxy Proposals.

156. After the voting was closed, the Company reported that 2,874,154 shares of the Series B Preferred Stock and 2,147,952 shares of the Series C Preferred Stock were represented in person or by proxy out of the 5,850,000 total shares outstanding and entitled to vote.

157. The final results on each of three proposals were reported as follows:

> Proposal One: The proposal to approve the amendment to the Company's Amended Restated Charter received the affirmative vote of approximately 79% of the outstanding shares of Series B Stock and Series C Stock entitled to vote at the Special Meeting.
>
> Proposal Two: The proposal to approve the Agreement and Plan of Merger, dated as of May 10, 2015 (the "Merger Agreement") received the affirmative vote of approximately 74% of the outstanding shares of Series B Preferred Stock and approximately 86% of the outstanding shares of Series C Preferred Stock entitled to vote at the Special Meeting.
>
> Proposal Three: The proposal to approve the adjournment of the special meeting, if necessary received the affirmative vote of approximately 92% of the votes cast.

See W2007 Grace's Form 8-K, dated 7/15/2015, available at http://www.sec.gov/Archives/edgar/data/916530/000119312515253670/d59510d8k.htm.

158. PFD voted its 3,450,735 shares in favor of all three proposals.

159. Preferred Stockholders were informed in the Proxy that they had the right under the TBCA to dissent from the payment of the $26 per share Merger Consideration, seek an appraisal of the fair value of the Preferred Stock; and, receive cash payment for the fair value of their Preferred Stock in accordance with the TBCA. Not one Preferred Stockholder exercised such right.

160. Upon the issuance of final approval and entry of a final and non-appealable order and judgment of the Settlement, the Company will consummate the Settlement Merger and each of the Preferred Stock will be extinguished in exchange for the right to receive a payment of $26.00 per share. Per the Stipulation, PFD will not receive Merger Consideration for its Preferred Stock and, instead, will elect to cancel its shares. (Stipulation, at ¶ 10.)

161. Moreover, if the Settlement is approved by the Court, Defendants will assume the administrative responsibility for, and pay the entire cost and expense of administrating the Settlement Merger, including the payment of the Merger Consideration. (Stipulation, at ¶ 9.) The Holder Class members' Settlement consideration will not be diminished by any administrative costs. Defendants' agents administering the payment of the Merger Consideration will also make periodic reports to Class Counsel. (Stipulation, at ¶ 12.)

IX. THE DISSEMINATION OF NOTICE TO THE SETTLEMENT CLASSES

162. The court-appointed Claims Administrator executed on the Notice Program detailed in the Preliminary Approval Order. Copies of the Court approved long-form settlement Notice (with the Seller Class Claim Form) and Summary Notice are attached as Exs. A-D to the Declaration of Mr. Charlie Ferrara of Angeion Group LLC, dated August 6, 2015 [hereinafter, the "Ferrara Decl."]. The Ferrara Decl. is attached as Exhibit 3, hereto.

163. Plaintiffs received seventy different shareholder lists and Excel files from Defendants and Computershare capturing thousands of lines of data, including names, addresses, holder identifier numbers, addresses and holdings, at different points from October 25, 2007 through May 11, 2015.

164. Class Counsel consolidated the data, removed duplication and created a universal spreadsheet deriving over 2,200 names of individuals identified as potential members of the Holder and Seller Classes and their mailing addresses.

165. On May 21, 2015, the Claims Administrator commenced the mailing of the long-form settlement Notice by first class U.S. Mail, mailing the Notice to 2,257 members of the Seller and Holder Classes. (Ferrara Decl. at ¶4.)

166. Moreover, the final Notice had been posted on Class Counsel's website at www.chimicles.com/W2007GraceLitigation on or around that date.

167. The Claims Administrator also: received requests from brokers and other nominees to mail the Notice to the broker or nominee for distribution, or to mail the Notice directly to the broker or nominees' customers; and, reissued, to the extent new addresses were available, Notices returned as undeliverable. (Ferrara Decl. at ¶¶ 5-7.) In sum, as of July 30, 3015, 4,736 Notices have been mailed. (*Id.* at ¶ 8.)

168. On May 28, 2015, the Summary Notice appeared in the national edition of *Investor's Business Daily*, appeared online on the *Wall Street Journal* online edition, and was transmitted over the *PRNewswire*. (Ferrara Decl. at ¶9.) Copies of these published Summary Notices are attached as Exs. B, C, and D to the Ferrara Decl.

169. As previously found by the Court, the approved Notice and Summary Notice had been written in straightforward, easy-to-understand language, provided details about the Action and the terms of the Settlement, including the settlement consideration provided to the Classes in exchange for the Releases, and the terms thereof. The Notice provided a detailed description of the Plan of Allocation as well.

170. The Notice and Summary Notice also informed the Classes of the date, time and location of the Final Approval Hearing, and advises the members of the Classes of their rights and how to exercise such rights, including: their right to attend the Final Approval Hearing; their right to object to the Settlement; and their right to exclude themselves from either or both of the Classes, and the deadlines for each of these actions.

171. In addition to the requirements set forth in the Preliminary Approval Order, Class Counsel drafted and posted on its website at www.chimicles.com/W2007GraceLitigation, Frequently Asked Questions posted on May 19, 2015 and updated on June 10, 2015.

172. To date, neither Class Counsel, nor the Claims Administrator, has received any request for an opt-out by any prospective member of either the Seller or the Holder Class. (Ferrara Decl. at ¶¶ 11-13.) An update on the status of opt-outs will be provided to the Court seven days before the Final Approval Hearing as set forth in the Preliminary Approval Order.

X. ATTORNEYS' FEES AND PAYMENT OF EXPENSES

173. C&T was appointed as Class Counsel and HBT was appointed as Liaison Counsel in this Action by the Court pursuant to the Preliminary Approval Order.

174. The Declaration of Van Turner, on behalf of HBT, is attached as Exhibit 9 hereto, in support of the Settlement and Application for an award of attorneys' fees in connection with services rendered in this Action and the reimbursement of expenses incurred in connection with prosecuting the case.

175. The present declaration has catalogued the extensive work, undertaken by C&T, HBT and the Named Plaintiffs in connection with the initiation, investigation, prosecution and settlement of this Action, which supports the application for an award of fees and reimbursement of expenses as follows.

A. The Fee and Expense Requested

176. Named Plaintiffs and Class Counsel seek Court approval of the following fees and expenses:

(i) The payment of attorneys' fees and expenses in the aggregate amount of $4,000,000, to be paid by Defendant W2007 Grace;

(ii) The reimbursement of certain Seller Class-related litigation expenses in the amount of $144,481.37 (not to exceed $150,000), to be paid out of the Seller Class Settlement Fund; and

(iii) payment of case contribution awards in the amount of $7,500 to each Named Plaintiff for the time and expenses incurred in bringing and litigating this Action, to be paid by Defendant W2007 Grace.

177. No attorneys' fees are being requested to be paid out of the Settlement Consideration being paid to the Holder Class or Seller Class.

178. The Stipulation provides that Defendants will not oppose Class Counsel's seeking from the Court an award of attorneys' fees and expenses of up to $4.150 million, of which W2007 Grace, or the guarantors of the payment obligations set forth in the Stipulation, will pay $4 million, and the $144,481.37 will be paid from the Seller Class Settlement Fund, if approved by the Court.

179. An award of $4,144,481.37 million in fees and expenses represents less than 6% of the estimated value of the benefits conferred by the Settlement.

180. As of the date of this Declaration, no member of the Classes has filed an objection to the anticipated fees and expenses to be requested, as set forth in the Notice.

B. Hours Expended

181. C&T and HBT have at all times assumed the responsibility of litigating this Action on a contingent-fee basis, such that any attorneys' fee would be paid only upon achieving a recovery for the benefit of Plaintiffs and the Class by settlement or judgment

182. As reflected on Exhibit 6, the total number of hours expended on this litigation by C&T is 3,600 hours, consisting of attorneys' time and other professional staff (paralegal and law

clerk) time. C&T's total lodestar as of July 31, 2015 is $2,034,767.50 C&T's lodestar figures are based upon the firm's current billing rates, which rates do not include charges for expense items. For personnel who are no longer employed by C&T, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by C&T. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by C&T, which are available at the request of the Court.

183. The hourly rates for C&T's attorneys and professional legal staff included in Exhibit 6 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other securities or shareholder litigations, including *In re Freeport-McMoran Copper & Gold Inc.*, C.A. No. 8145-VN (Delaware Chancery, 2015); *In Re Empire State Realty Trust, Inc. Investor Litigation,* Index No. 650607/2012, Supreme Court of the State of NY (2013/2015); *City of St. Clair Shores General Employees Retirement System v. Inland Western Retail Real Estate Trust, Inc., et al.*, Case 07 C 6174 (U.S.D.C. N.D. Ill, 2011); *In re Freeport-McMoran Sulphur, Inc. Shareholder Litigation,* C.A. No. 16729, Delaware Chancery (2006); *In re CNL Hotels & Resorts, Inc. Securities Litigation,* Case No. 6:04-cv-1231-Orl-31KRS (USDC, MD Fla., 2006); *I.G. Holdings Inc., et. al. v. Hallwood Realty, LLC, et. al.,* C.A. No. 20283, Delaware Chancery (2004), and *In re Real Estate Associates Limited Partnership Litigation*, Case No. CV 98-7035 DDP, United States District Court, Central District of California (2003.)

184. As reflected on Exhibit 9, the total number of hours expended on this litigation by HBT is 182.1 hours. The total lodestar for HBT as of July 31, 2015 is $100,155.00, consisting of attorneys' time and other professional staff (paralegal and law clerk) time. HBT's lodestar

figures are based upon the firm's current billing rates, which rates do not include charges for expense items.

185. C&T's and HBT's lodestar is as of July 31, 2015 and does not include time that they expect to incur to attend the Settlement Hearing and in connection with administering the Settlement.

186. Given the significant benefit conferred by the Settlement, the complexity and magnitude of the Action, the responsibility undertaken by Class Counsel, the difficulty of proof on liability and damages, the experience and skill of counsel representing Named Plaintiffs and Defendants, the contingent nature of Class Counsel's agreement to prosecute this litigation, and the public policy underlying an attorneys' fee award under these circumstances, Class Counsel respectfully submits that the requested attorneys' fees are reasonable.

187. The total lodestar equals $2,134,922.50. Thus, the requested fee of $3,648,601.70 yields a lodestar multiplier of 1.7. This multiplier is well within the mainstream of Sixth Circuit awards. Class Counsel have achieved an excellent result in an expeditious manner. Therefore, this factor also supports the requested fee.

C. Litigation Expenses

188. Expense items are billed separately and such charges are not duplicated in C&T's or HBT's billing rates. C&T's and HBT's lodestar figures are based upon each Firm's billing rates, which rates do not include charges for expense items.

189. The expenses incurred by C&T in this action are reflected on the books and records of my firm which are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses C&T incurred.

190. With respect to prosecuting the Action and obtaining for the Classes the Settlement and benefits described *supra,* C&T and HBT have incurred and are obligated to pay a total of $496,078.67 in litigation expenses. Exhibits 7 and 9 set forth the categories of expenses and amounts incurred by C&T and HBT, respectively. C&T's and HBT's total expenses are reported as of July 31, 2015 and do not include expenses that they expect to incur to attend the Settlement Hearing or in connection with administering the Settlement.

191. Of the total expenses incurred by C&T and HBT, $144,481.37 represent Seller Class-related litigation expenses, which C&T requests, per the Stipulation and Notice, to be paid from the Seller Class Settlement Fund. C&T incurred $144,282.33 in Seller Class-related expenses (Exhibit 7). HBT incurred $398.04 in filing fees and related expenses (Exhibit 9), which was equally allocated between the Holder and Seller Class. Thus, the total amount of Seller Class-related expenses equals $144,481.37.

192. Approximately $129,534.28 of such Seller Class-related expenses relates to the work performed by GDG, only with respect to determination of the Seller Class damages and the Plan of Allocation. *See* GDG Declaration, attached as Exhibit 2. GDG's work in this regard was important to Class Counsel's understanding of the claims and defenses of the Seller Class members, the Seller Class damages and instrumental to the preparation of the Plan of Allocation for the proposed Settlement.

193. The reported expenses are reasonable and were necessary for the successful prosecution of the case and in achieving this Settlement.

D. Cost of Claims Administration of the Seller Class Settlement Fund

194. As discussed *supra,* pursuant to the Preliminary Approval Orders, the Claims Administrator has proceeded with disseminating the Class Notice and publishing for the Summary Notice.

195. As of July 31, 2015, the Seller Class Claims Administration Fees and Expenses are $10,740.91 for: the printing and mailing/postage of the Notice and Proof of Claim Form; issuing additional or lost Notices and Proofs of Claim upon request of financial advisors and members of the classes; responding to class members' inquiries concerning the Notice and Proof of Claim; and publication of the Summary Notice. Importantly, this is 50% of the total cost of the Notice and Summary Notice dissemination, as Defendants are paying 50% of such costs as attributable to the Holder Class Settlement.

196. Class Counsel respectfully requests that the Court approve the payment of the $10,740.91 from the Seller Class Settlement Fund for such Seller Class Settlement Administration Fees and Expenses.

197. The Claims Administrator as estimated that the cost for administering the Seller Class Settlement Fund -- which would include, among other things, the processing of the Proofs of Claim, allocating Settlement Funds to Eligible Claimants pursuant to the Plan of Allocation, printing and mailing checks, reissuing checks, and tax reporting for the Seller Class Settlement Fund – will be approximately $50,000. In connection with Class Counsel's motion for distribution of the Net Seller Class Settlement Fund, Class Counsel will apply for approval to reserve and pay from the Net Seller Class Settlement Fund such Claims Administration Costs and Expenses.

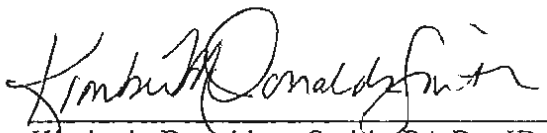
XI. EXHIBIT INDEX

198. The following Exhibits are submitted in support of Named Plaintiffs' Motion and Memoranda filed in Support of the Settlement, Certification of the Settlement Class, and an Award of Attorneys' Fees and Reimbursement of Expenses. Attached hereto is a true and correct copy of the following:

EXHIBIT	DESCRIPTION
1	April 30, 2015 Order Granting Preliminary Approval of the Class Action Settlement
2	Declaration of Kathleen P. Chimicles, ASA, of GlenDevon Group Inc. in Support of the Settlement and an award of Attorneys' Fees and Reimbursement of Expenses ("GDG Decl.")
3	Declaration of Charlie Ferrara on Behalf of Claims Administrator Angeion Group LLC ("Ferrara Decl.")
4	Proposed Final Order and Judgment
5	Proposed Order Granting an Award of Attorneys' Fees and Reimbursement of Expenses
6	Chimicles & Tikellis LLP Lodestar Report
7	Chimicles & Tikellis LLP Expense Report
8	"Frequently Asked Questions" dated June 10, 2015
9	Declaration of Van Turner, Esquire, of Hagler Bruce & Turner, PLLC
10	Declaration of David Johnson
11	Declaration of Frederick Shearin
12	Declaration of Roberto Verthelyi
13	Declaration of Patrick Lynch
14	Plan of Allocation
15	NERA 2014 Class Action Settlement Review

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of August, 2015.



Kimberly Donaldson Smith (PA Bar ID No. 83116)

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, PATRICK LYNCH, ROBERTO VERTHELYI, and FREDERICK SHEARIN, on behalf of themselves and a similarly situated class,	)	
Plaintiffs,	)	
vs.	)	**No. 13-2777**
W2007 GRACE ACQUISITION I, INC., TODD P. GIANNOBLE, GREGORY FAY, BRIAN NORDAHL, DANIEL E. SMITH, MARK RICKETTS, W2007 GRACE I, LLC, WHITEHALL PARALLEL GLOBAL REAL ESTATE LIMITED PARTNERSHIP 2007, W2007 FINANCE SUB, LLC, PFD HOLDINGS, LLC, THE GOLDMAN SACHS GROUP, INC., and GOLDMAN SACHS REALTY MANAGEMENT L.P.,	)	
Defendants.	)	

ORDER

Before the Court is the unopposed October 9, 2014 Motion for Order of Preliminary Approval of Class Action Settlement and Scheduling of Final Approval Hearing (the "Motion"), made by David Johnson ("Johnson"), Patrick Lynch ("Lynch"), Roberto Verthelyi ("Verthelyi"), and Frederick Shearin ("Shearin") (collectively "Named Plaintiffs"). (ECF No. 76.) W2007 Grace Acquisitions I, Inc. (the "Company" or "W2007 Grace"), Todd P.

Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc. ("Goldman Sachs"), Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007 ("Whitehall"), W2007 Finance Sub, LLC, W2007 Grace I, LLC ("Grace I"), and PFD Holdings, LLC[1] ("PFD") (collectively "Defendants") do not oppose the Motion.[2] (Id.) On December 4, 2014, and March 20, 2015, Named Plaintiffs filed supplemental memoranda supporting the Motion. (ECF Nos. 78, 86.)

For the following reasons, the Motion is GRANTED.

I. Background

A. Causes of Action

The Company is a private, Dallas-based hotel real estate firm incorporated in Tennessee and controlled and owned by Goldman Sachs and certain of its affiliates. (Am. Compl. ¶ 1, ECF No. 1-4.) Named Plaintiffs are current or former holders of W2007 Grace Acquisitions I, Inc. 8.75% Series B Cumulative Preferred Stock ("Series B Preferred Stock") and 9.00% Series C Cumulative Preferred Stock ("Series C Preferred Stock") (collectively, the "Preferred Stock"). (Id. ¶ 1.) Named

[1] Named Plaintiffs refer to this entity as PFD Holdings and PDF Holdings throughout this action. (Compare ECF No. 86 (PFD Holdings) with Am. Compl., ECF No. 1-4 and ECF No. 87 (PDF Holdings)). Because its counsel refers to it as PFD in its Corporate Disclosure Statement, ECF No. 59, the Court will also.

[2] Whitehall, W2007 Finance Sub, LLC, and Grace I are referred to collectively as "Majority Shareholders." (Am. Compl. ¶ 35., ECF No. 1-4.)

Plaintiffs bring this action on behalf of themselves and all current and former holders of Preferred Stock. (Id. ¶ 1.) Named Plaintiffs allege that the Company was formerly a well-capitalized and dividend-paying publicly-traded company called Equity Inns, Inc. ("ENN"). (Id. ¶ 2.) The Preferred Stock was valued at approximately $22.00 a share. (Id. ¶ 47.) Preferred stockholders had limited rights to a fixed-interest cumulative dividend and a liquidation preference of $25.00 a share over the common stockholders. (Id.)

On June 21, 2007, Goldman Sachs and some of its affiliates announced their intent to purchase ENN. (Id. ¶ 44.) Goldman Sachs, through its affiliates, purchased ENN's common stock and assumed ENN's debt in a going-private merger transaction on October 25, 2007. (Id. ¶¶ 3, 44, 48-49.) Goldman Sachs used the Company to execute that merger. (Id. ¶ 48.) Named Plaintiffs allege that Goldman Sachs controls the Company. (Id. ¶ 24.) Thereafter, Whitehall, a Goldman Sachs fund, purchased one hundred percent of the Company's common stock through a wholly-owned subsidiary, Grace I. (Id. ¶¶ 31-32, 48.) Named Plaintiffs allege that Goldman Sachs controls Whitehall. (Id. ¶ 31.) Whitehall and others[3] became the Company's Majority Shareholders. (Id. ¶ 35.) After the merger, ENN dissolved into the Company. (Id. ¶¶ 1, 48-49.)

[3] W2007 Finance Sub, LLC, and Grace I.

ENN's Charter provided that preferred stockholders could redeem their stock in the event of such a merger. (Id. ¶ 3.) A redemption would have cost $146,000,000.00. (Id. ¶ 50.) The Company did not redeem ENN preferred stock after the merger. (Id. ¶ 3.) The Company required ENN preferred stockholders to make a one-to-one exchange of their ENN preferred stock for the Company's Series B and Series C Preferred Stock. (Id.) The preferred stockholders had rights identical to the rights they had when they held ENN preferred stock. (Id. ¶ 51.)

Named Plaintiffs allege that, after the merger, the Company "engag[ed] in a classic oppression scenario." (Id. ¶ 6.) They allege that the Company used a two-part scheme to deny Named Plaintiffs any return on or benefits from their investment to compel the preferred stockholders to relinquish their stock at an inadequate price. (Id.) Named Plaintiffs allege that the first part of the scheme began when the company "went dark." (Id. ¶ 58.) Goldman Sachs and its affiliates suppressed the Preferred Stock secondary market by refusing to release necessary financial information to the public and refusing to make the Preferred Stock eligible for electronic transfer at the Depository Trust Company. (Id. ¶¶ 7, 59.) The value of the Series B Preferred Stock dropped from $17.50 to pennies per share. (Id. ¶ 64.) The value of the Series C Preferred Stock dropped from $17.00 to pennies per share. (Id.) Named

Plaintiffs also allege that the Company stopped paying dividends on the Preferred Stock in June 2008. (Id. ¶¶ 7, 91.)

Named Plaintiffs allege that Goldman Sachs entered into self-dealing loan agreements to collect large deal fees. (Id. ¶ 7.) Goldman Sachs allegedly entered into loan covenants that ensured the Company's net income went to Goldman Sachs. (Id.) Those loan covenants provided for additional debt cushions, including a debt yield test and a cash trap. (Id. ¶ 93.) An option was granted to a Goldman Sachs affiliate to purchase up to 97% of ENN's assets. (Id.) Goldman Sachs also allegedly restructured the assets and property interests in ENN's hotels so that the preferred stockholders held a much smaller interest. (Id. ¶ 7.) Named Plaintiffs allege that Goldman Sachs concealed the true value of the property interests. (Id.) The Company appeared to own the assets and income stream of W2007 Equity Inns Partnership L.P., (the "Operating Partnership"). The Operating Partnership owned ENN's hotel properties, which were acquired by Goldman Sachs affiliates during the merger. (Id. ¶¶ 41, 73.) The Company changed the ownership structure of the Operating Partnership so that the Company owned a single-digit interest in ENN's hotels. (Id. ¶ 74.) The Majority Shareholders owned almost the entire income stream from ENN's hotels. (Id. ¶ 78.) Goldman Sachs did not assist the preferred

stockholders in appointing two director-nominees, as provided by the Charter. (Id. ¶ 7.)

The second part of the alleged scheme began in 2012 when PFD, an affiliate of Goldman Sachs, began purchasing Preferred Stock through "creeping tender offers." (Id. ¶ 8.) The value of the Series B Preferred Stock ranged between $1.42 and $9.90 a share. (Id. ¶¶ 8, 108.) The value of the Series C Preferred Stock ranged between $1.50 and $12.00 a share. (Id. ¶ 108.) PFD owned 35% of the Preferred Stock by September 17, 2012. (Id.) The Company did not disclose that PFD had acquired the Preferred Stock, or any other details. (Id.) By August 13, 2013, PFD had bought another 24.3% of the Preferred Stock. (Id. ¶ 9.) PFD's total ownership interest was 58.8% of the Preferred Stock. (Id.) PFD also announced its intention to consider a tender offer for the remaining Preferred Stock. (Id. ¶ 10.) Named Plaintiffs allege that PFD's purchases were insider transactions. (Id. ¶¶ 11, 124.)

Named Plaintiffs filed a Complaint in Shelby County Chancery Court on September 13, 2013. (Compl., ECF No. 1-2.) Named Plaintiffs filed an Amended Complaint on October 2, 2013. (Am. Compl.) The Amended Complaint alleges that Defendants: (1) breached their contracts with Plaintiffs, the implied covenant of good faith and fair dealing, and Defendants' fiduciary duty; (2) aided and abetted the breach of fiduciary duty; (3) violated

the Tennessee Securities Act, T.C.A. § 48-1-121(a) (the "Blue Sky Law"); and (4) violated the Tennessee Business Corporation Act, T.C.A. § 48-17-103. (Id. ¶¶ 137-94.) Named Plaintiffs seek (1) a declaratory judgment, (2) compensatory damages, (3) equitable relief ordering the redemption of the Preferred Stock at $25.00 a share, (4) equitable relief ordering the election of two preferred stockholder representatives to the Company's Board, (5) punitive damages, and (6) costs and expenses. (Id. at 43-45.) On October 4, 2013, Defendants removed this action under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). (Not. Rem., ECF No. 1.)

B. Settlement

On June 2, 2014, the Company and a Whitehall affiliate announced that certain of their subsidiaries had entered into an agreement to sell 126 hotels for a combined purchase price of $1.925 billion, subject to certain adjustments, to affiliates of American Reality Capital Hospitality Trust, Inc. (the "ARC Transaction"). (Stipulation ¶ G, ECF No. 77-1.)

Once the ARC Transaction had been announced, the parties commenced rigorous settlement discussions. (Memo at 7, ECF No. 76-2.) On August 20, 2014, the parties entered into a confidential, non-binding Memorandum of Understanding. (Stipulation ¶ K.) The Memorandum of Understanding set forth certain proposed terms to settle all claims asserted against

Defendants in the instant action on behalf of the holders of Preferred Stock (the "Holder Class") and sellers of Preferred Stock ("Seller Class") (collectively, the "Proposed Classes"). (Id.)

The Holder Class includes anyone who, as of August 22, 2014, and through the Merger Effective Time[4], holds Preferred Stock, excluding Defendants and their affiliates, Holder Class Opt-Outs, and holders of Dissenting Shares. (Stipulation ¶ 1(ii).) The Seller Class includes preferred stockholders who sold some or all of their Preferred Stock between October 25, 2007, and October 8, 2014, inclusive, and suffered a loss, excluding Defendants and their affiliates, persons who sold shares to PFD, and Seller Class Opt-Outs. (Id. ¶ 1(nnn).)

On October 8, 2014, the parties entered into the Stipulation and Agreement of Settlement (the "Settlement") to resolve the Proposed Classes' claims against Defendants. The next day, Named Plaintiffs filed the Motion.

II. Jurisdiction

"The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000 . . . and is a class action in which (A) any member of a class of plaintiffs is a citizen of a State

[4] The Merger Effective Time is when the Tennessee Articles of Merger have been duly filed with Tennessee's Secretary of State or at such later time as may be specified in the Tennessee Articles of Merger. (Stipulation ¶ 1(rr).)

different from a named defendant . . . ." 28 U.S.C. § 1332(d)(2)(A). This is sometimes called the minimal diversity requirement.

Named Plaintiffs seek to bring a class action. Plaintiff David Johnson is a citizen of South Carolina. (Am. Compl. ¶ 19.) The Company is incorporated in Tennessee with its principal place of business in Irving, Texas. (Id. ¶ 24.) Because a member of the class of Plaintiffs is a citizen of a state different from a named Defendant, there is minimal diversity under CAFA.

The alleged amount in controversy is greater than $5,000,000.00.

III. Standard of Review

Named Plaintiffs seek provisional certification of the Proposed Classes, appointment of Chimicles & Tikellis LLP ("Chimicles") as class counsel, and Hagler Brucer & Turner, PLLC ("Hagler") as liaison counsel. (Memo at 7.)

Federal Rule of Civil Procedure 23 sets forth the criteria for certifying a class action in federal court. Fed. R. Civ. P. 23. The Rule requires a party seeking class certification to demonstrate that: the proposed class and class representatives meet all of the requirements of Rule 23(a); the case fits into one of the categories of Rule 23(b); and class counsel meets the requirements of Rule 23(g). Newberg on Class Actions

("Newberg") § 3:1 (5th ed.); Fed. R. Civ. P. 23. The Proposed Classes are defined conditionally pending approval of the Settlement Agreement. (Memo at 1.) A district court must give undiluted, even heightened, attention to Rule 23 protections before certifying a settlement-only class. UAW v. General Motors Corp., 497 F.3d 615, 625 (6th Cir. 2007).

Named Plaintiffs seek preliminary approval of the Proposed Settlement. The goal of preliminary approval of a proposed class action settlement is for a court to determine whether notice of the proposed settlement should be sent to the class, not to make a final determination about the settlement's fairness. Newberg § 13:13.

> Review and approval of class settlements involves a two-step process: (1) preliminary approval of the settlement and the content and method of class notice; and (2) final approval after notice and a fairness hearing. [At the first step], the Court "ascertain[s] whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." In this regard, the Settlement Agreement should be preliminarily approved if it (1) "does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment to class representatives or of segments of the class, or excessive compensation for attorneys," and (2) "appears to fall within the range of possible approval."

Sheick v. Auto. Component Carrier, LLC, 2010 WL 3070130, *11 (E.D. Mich. Aug. 2, 2010) (internal citations omitted.)

"At the preliminary approval stage, the bar to meet the 'fair, reasonable and adequate' standard is lowered, and the

court is required to determine whether 'the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.'" In re National Football League Players' Concussion Injury Litigation, 961 F. Supp. 2d 708, 714 (E.D. Penn. 2014) (internal citations omitted); In re Vitamins Antitrust Litigation, 2001 WL 856292 (D.D.C. July 25, 2001); see also In re Shell Oil Refinery, 155 F.R.D. 552, 555 (E.D. La. 1993) (a court must determine only whether "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preliminary preferential treatment to class representatives or segments of the class, and falls within the range of possible [judicial] approval.").

"Preliminary approval of a proposed settlement to a class action lies within the sound discretion of the Court." In re Vitamins Antitrust Litigation, 2001 WL 856292 (citing In re Shell, 155 F.R.D. at 555; In re Southern Ohio Correctional Facility, 173 F.R.D. 205, 211 (S.D. Ohio 1997) (the district court bases its preliminary approval "upon its familiarity with the issues and evidence of the case as well as the arms-length nature of the negotiations prior to the settlement")).

Named Plaintiffs seek approval of the notices that would be sent to the Proposed Classes (the "Notice" and the "Summary Form Notice"). (Memo at 1.) "Before ratifying a proposed settlement agreement, a district court also must 'direct notice in a reasonable matter to all class members who would be bound' by the settlement." UAW v. General Motors Corp., 497 F.3d at 629 (citing Fed. R. Civ. P. 23(e)(1)(B)). "The notice should be 'reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Id. at 629-30 (internal citations omitted).

Named Plaintiffs seek a fairness hearing pursuant to Fed. R. Civ. P. 23(e)(2). (Memo at 1-2.) "A fairness hearing contains several procedural safeguards: Parties to the settlement must proffer sufficient evidence to allow the district court to review the terms and legitimacy of the settlement; class members 'may object to [the] proposed settlement' on the record; and class members have a right to participate in the hearing." UAW v. General Motors Corp., 497 F.3d at 635 (internal citations omitted). "In satisfying these requirements, a district court has wide latitude. It 'may limit the fairness hearing to whatever is necessary to aid it in reaching an informed, just and reasoned decision' and need not endow objecting class members with 'the entire panoply of

protections afforded by a full-blown trial on the merits.'" Id. (internal citations omitted).

IV. Analysis

Rule 23 requires that a party seeking class certification demonstrate: that the proposed class and class representatives meet all of the requirements of Rule 23(a); the case fits into one of the categories of Rule 23(b); and class counsel meets the requirements of Rule 23(g).

A. Rule 23(a) Prerequisites for Class Certification

"Certification is proper only if 'the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.'" Wal-Mart Stores, Inc. v. Dukes, 131 S.Ct. 2541, 2551 (2011) (internal citation omitted). Rule 23 requires a party seeking class action certification to demonstrate that the proposed class and class representatives meet all of the requirements of Rule 23(a): numerosity, commonality, typicality, and adequacy. Newberg § 3:1; Fed R. Civ. P. 23(a). Courts consider two additional, implicit criteria: the class must be definite or ascertainable and the class representative must be a member of the class. Newberg § 3:1.

1. Implicit Requirements

The "class definition must be sufficiently definite so that it is administratively feasible for the court to determine

whether a particular individual is a member of the proposed class." Young v. Nationwide Mut. Ins. Co., 693 F.3d 532, 537-38 (6th Cir. 2012) (internal citation omitted).

The Holder Class includes people who, as of August 22, 2014, and through the Merger Effective Time, hold Preferred Stock. (Stipulation ¶ 1(ii).) As of August 22, 2014, Johnson holds 6,400 shares of Series B Preferred Stock and Shearin holds 10,000 shares of Series C Preferred Stock. (Johnson Decl. ¶ 2, ECF No. 87-1; Shearin Decl. ¶ 2, ECF No. 87-6.) The Holder Class definition is sufficiently definite to establish that Johnson and Shearin are members of the Holder Class.

The Seller Class includes people who sold Preferred Stock between October 25, 2007, and October 8, 2014, at a loss. (Id. ¶ 1(nnn).) In 2010, Johnson sold shares of Series B Preferred Stock at a loss. (Johnson Decl. ¶ 2.) In 2012, Vertheyli sold 200 shares of Series B Preferred Stock at a loss. (Vertheyli ¶ 2, ECF No. 87-4.) In 2011, Lynch sold 1,000 shares of Series B Preferred Stock at a loss. (Lynch ¶ 2, ECF No. 87-5; Memo at 14.) The Seller Class is sufficiently definite to establish that Johnson, Vertheyli, and Lynch are members of the Seller Class. The Proposed Classes meet the implicit requirements for class certification.

2. Rule 23(a)(1)— Numerosity / Joinder Impracticability

The Proposed Classes must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Determining the practicability of joinder is not a strictly numerical issue. In re Am. Med. Sys., Inc., 75 F.3d 1069 (6th Cir. 1996). "When class size reaches substantial portions, however, the impracticability requirement is usually satisfied by numbers alone." Id. at 1079; see generally Savagne v. Fairfield Ford Inc., 264 F.R.D. 321, 325-26 (S.D. Ohio 2009) (joinder impracticable where proposed class contained approximately 375 members); Ames v. Robert Bosch Corp., 2009 WL 803587, at *3-4 (N.D. Ohio 2009) (numerosity requirement satisfied with 180 members); Cannon v. GunnAllen Financial, Inc., 2008 WL 4279858, *4 (M.D. Tenn. 2008) (joinder impracticable based on number of potential litigants, which was between 200 and 300). "When considering whether joinder would be practicable in a given case, courts may consider 'ease of identifying members and determining addresses, ease of service on members if joined, [and] geographical dispersion' among other things." Turnage v. Norfolk Southern Corp., 307 Fed. Appx. 918, 921 (6th Cir. 2009) (internal citation omitted).

The Proposed Classes are sufficiently numerous. W2007 Grace has 5.85 million outstanding shares of Series B and Series C Preferred Stock. (Am. Compl. ¶¶ 46, 66, 130.) Named

Plaintiffs have reviewed ownership records for the applicable class periods and, based on those records, anticipate approximately 700 Holder Class members and at least 500 Seller Class members dispersed throughout the United States. (Id. ¶¶ 7, 19-22, 45, 65, 129-30, 155.) Given the size and geographic dispersion of the Proposed Classes, both Proposed Classes are sufficiently numerous.

3. Rule 23(a)(2)— Common Questions of Law or Fact

Each Proposed Class must have at least one common question of law or fact among its members, and resolution of that question must advance the litigation. Fed. R. Civ. P. 23(a)(2); Alkire v. Irving, 330 F.3d 802, 821 (6th Cir. 2004) (citing Sprague v. GMC, 133 F.3d 388, 397 (6th Cir. 1998)).

The Proposed Classes have common questions of law and fact. Named Plaintiffs allege that Defendants failed to distribute timely financial information (Am. Compl. ¶¶ 5, 7, 58-66); make the Preferred Stock eligible for electronic transfer at the Depository Trust Company; hold shareholder meetings and appoint director designees (Id. ¶¶ 7, 98-103); and pay dividends (Id. ¶¶ 7, 55, 86-97). Named Plaintiffs allege that Defendants engaged in self-dealing transactions (Id. ¶¶ 70-83, 93-95) and acquired blocks of the Preferred Stock in various transactions instead of redeeming all of the Preferred Stock (Id. ¶¶ 106-27). The alleged misconduct raises the same questions of law and fact

among the Proposed Class members, all of whom own or sold Preferred Stock. That misconduct forms a basis on which the Proposed Classes assert their Breach of Fiduciary Duty Claims. Because the common questions about misconduct go to the merits of the Proposed Classes' Breach of Fiduciary Duty Claims, their resolution would advance the litigation.

4. Rule 23(a)(3)— Claim Typicality

Named Plaintiffs' claims must be typical of the claims of the class each seeks to represent. "Typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct." In re Am. Med. Sys., Inc., 75 F.3d at 1082. "[A] plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." Id. "The premise of the typicality requirement is simply stated: as goes the claim of the named plaintiff, so go the claims of the class." Sprague, 133 F.3d at 399.

Named Plaintiffs allege a course of conduct affecting anyone who owns and/or sold Preferred Stock during the Holder Class Period or the Seller Class Period. The only substantive

difference among putative class members is the number of shares owned and/or sold. The typicality requirement is met.

5. Rule 23(a)(4)— Adequacy of Representation

Named Plaintiffs must fairly and adequately protect class interests.[5] Fed. R. Civ. P. 23(a)(4). "The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent. A class representative must be part of the class and possess the same interest and suffer the same injury as class members." Beattie v. CenturyTel, Inc., 511 F.3d 554, 562 (6th Cir. 2007) (citing Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 625-26 (1997)). Class members must have no "interests that are antagonistic to one another." Id. at 563 (internal citation omitted).

Named Plaintiffs have sworn that they have no conflicts on interest. (Johnson Decl. ¶ 3; Vertheyli ¶ 3; Lynch ¶ 3; Shearin ¶ 3.) The Settlement affords Named Plaintiffs no special treatment; advancement of their interests advances those of the Proposed Classes. There is no conflict of interest on the record presented.

[5] In 2003, Congress amended Rule 23 to include new subpart 23(g), "Class Counsel". See generally Fed. R. Civ. P. 23(g). Although courts have historically determined adequacy of counsel under Rule 23(a)(4), Rule 23(g) now governs the adequacy of counsel determination. Id.

B. Rule 23(b) Class Action Categorization

A case must fit at least one Rule 23(b) category to be maintained as a class action. Fed. R. Civ. P. 23(b). Named Plaintiffs contend that this action fits category 23(b)(3).

A class action may be maintained if Rule 23(a) is satisfied and if the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). Considerations include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action. Id.

1. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Beattie, 511 F.3d at 564 (internal citations omitted). To satisfy the predominance requirement in Rule 23(b)(3), "a plaintiff must establish that 'the issues in the class action that are subject to generalized

proof, and thus applicable to the class as a whole, ... predominate over those issues that are subject only to individualized proof.'" Id. (internal citations omitted). "[C]ommon issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues." Id. (internal citatiosn omitted).

The Proposed Classes' common issues predominate over individual issues. The legal and factual issues that are determinative of Defendants' liability are common to Proposed Class members. Defendants cannot be held liable to one Holder Class member but not another, or one Seller Class member but not another. Although there would be individualized damage issues given the varying numbers of the Claimants' shares, determination of those issues is not sufficiently onerous to compel a finding that individual issues predominate over common issues.

2. Superiority

"The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." Amchem Prods., Inc., 521 U.S. at 617. In considering whether the superiority requirement of Rule 23(b)(3) is satisfied, courts consider "the difficulties likely to be encountered in the management of a class action."

Young, 693 F.3d at 545 (citing Beattie, 511 F.3d at 567). "Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device." Id. (citing Deposit Guar. Nat'l Bank v. Roper, 445 U.S. 326 (1980)).

"[C]ases alleging a single course of wrongful conduct are particularly well-suited to class certification." Young, 693 F.3d at 545 (internal citations omitted). Where many individual inquiries are necessary, a class action is not a superior form of adjudication. Id. (internal citation omitted). However, where a threshold issue is common to all class members, class litigation is greatly preferred. Id. (internal citation omitted).

Class action is the superior form of adjudicating the Proposed Classes' claims. Named Plaintiffs allege a single course of wrongful conduct. (See Section IV.A.(c), supra.) No individual inquiries are necessary to determine liability. Given the large number of members of the Proposed Classes and their nationwide geographic dispersion, the class action mechanism would promote judicial economy. The superiority element is met.

C. Class Counsel

Named Plaintiffs seek appointment of Chimicles as class counsel and Hagler as Liaison Counsel. (2d Supp. Memo at 11, 15, ECF No. 86.)

When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). Fed. R. Civ. P. 23(g)(2). In appointing class counsel, the court must consider:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
>
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
>
> (iii) counsel's knowledge of the applicable law; and
>
> (iv) the resources that counsel will commit to representing the class; . . .

Fed. R. Civ. P. 23(g)(1)(A). The court may consider any other matter pertinent to counsel's ability to represent the interests of the class fairly and adequately. Fed. R. Civ. P. 23(g)(1)(B). Although Rule 23(g) replaces Rule (23)(a)(4), Rule 23(g) largely incorporates the adequacy standards developed under Rule 23(a)(4) so that class counsel decisions premised on Rule 23(a)(4) remain relevant. Jones v. Ford Motor Credit Co., 2005 WL 743213, *26 (S.D.N.Y. 2005).

The Court must consider the work Chimicles has done in identifying or investigating potential claims. Fed. R. Civ. P.

23(g)(1)(A)(i). Before this action, Chimicles conducted a three-month investigation of W2007 Grace and its affiliates' filings with the Tennessee and Delaware Secretaries of State, ENN's public filings in 2007, Preferred Stockholder interviews, W2007 Grace press releases and news articles, and comment letters filed with the SEC about W2007 Grace. (Memo at 4-5.) Chimicles has performed considerable work identifying and investigating potential claims.

The Court must consider Proposed Class Counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action. Fed. R. Civ. P. 23(g)(1)(A)(ii). Chimicles has extensive experience handling complex litigation. It has litigated on behalf of investors in real estate investments for more than 20 years. (2d Supp. Memo at 11.) It has been appointed lead or class counsel in numerous complex class actions across the country. (Id.) The Chimicles attorneys of record, Catherine Pratsinakis, Kimberly Donaldson Smith, and Nicholas Chimicles, have more than 13, 15, and 30 years of experience, respectively, in prosecuting claims under federal and state laws governing shareholder rights. (ECF No. 87-5.)

The Court must consider Chimicles' knowledge of the applicable law. Fed. R. Civ. P. 23(g)(1)(A)(iii). Chimicles has demonstrated sufficient knowledge of the applicable law

through its filings with the Court and its considerable experience in securities actions.

The Court must consider the resources that Proposed Class Counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(iv). Chimicles has committed significant resources in commencing this action and negotiating the Settlement between the Proposed Classes and Defendants, and has pledged to devote the necessary effort and resources to represent the Proposed Classes going forward. (2d Supp. Memo at 15.) The Court expects that it will do so. Chimicles is adequate counsel to the Proposed Classes under Rule 23(g).

Named Plaintiffs also seek appointment of Hagler as Liaison Counsel. Hagler is a competent, experienced Tennessee firm that has committed significant resources in prosecuting this action. (Memo at 32; ECF No. 87-6.) Hagler is adequate liaison counsel.

D. Preliminary Approval of Proposed Settlement

In preliminarily approving a class action settlement, a court decides whether notice of the proposed settlement is appropriate, but makes no final determination about the settlement's fairness. "[T]he Settlement Agreement should be preliminarily approved if it (1) 'does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment to class representatives or of segments of the class, or excessive compensation for attorneys,' and (2)

'appears to fall within the range of possible approval.'" Sheick, 2010 WL 3070130, *11 (internal citations omitted.)

The Settlement does not disclose grounds to doubt its fairness or other obvious deficiencies. The Settlement appears to have resulted from arm's-length negotiations between the parties' counsel. There is no unduly preferential treatment of the Named Plaintiffs or of any segment of the Proposed Classes.

A court may finally approve a settlement only if the settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). The Settlement falls within the range of possible approval. Named Plaintiffs estimate an average allocation of $3.28 per share to the Seller Class, approximately a 24% recovery. (Plan of Allocation ¶¶ 2, 16, ECF No. 77-6; Memo at 22.) The Settlement provides Holder Class members $26 per share and a pro-rata share of any remaining balance of the Seller Class Settlement Fund, a 67% recovery or more. (Memo at 22.) Given the high percentages of recovery and the significant litigation risks and costs, the Settlement falls within the range of possible approval for the Proposed Classes.

E. Adequacy of Notice of Proposed Settlement

Rule 23(b)(3) provides for what is sometimes called an "opt out" class because of the special requirements of Rule 23(c)(2) that all potential class members be provided reasonable notice and the opportunity to decline to participate. Coleman v. Gen.

Motors Acceptance Corp., 296 F.3d 443, 448 (6th Cir. 2002) (citing Fed. R. Civ. P. 23(c)(2)). The additional requirements of notice and the opportunity to opt out are necessary because claims for money damages implicate individual interests that are necessarily heterogeneous. Id. at 448. The class treatment of claims for money damages also implicates the Seventh Amendment and due process rights of individual class members. Id.

When a class is certified under Rule 23(b)(3), the district court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B). The notice must clearly and concisely state in plain, easily understood language:

> (i) the nature of the action;
>
> (ii) the definition of the class certified;
>
> (iii) the class claims, issues, or defenses;
>
> (iv) that a class member may enter an appearance through an attorney if the member so desires;
>
> (v) that the court will exclude from the class any member who requests exclusion;
>
> (vi) the time and manner for requesting exclusion; and
>
> (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

The Notice is substantively adequate. The Notice is clearly identified as a "**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION**". (Notice, ECF No. 78-1.) Under that heading, the Notice admonishes recipients that their "**legal rights might be affected by the Settlement if [they] were/are an owner of W2007 Grace Preferred Stock . . . .**" (Id.) The Notice defines the Proposed Classes and states the nature of the action in short and long forms. (Id. at 1, 5.) It identifies the Proposed Classes' claims and Defendants' defenses. (Id. at 5.) It states that class members may enter an appearance through an attorney (Id. at 18.) It identifies the time and manner for requesting exclusion. (Id. at 12.) It states the binding effect of a class judgment on members. (Id. at 3-4.) The Notice includes Class Counsel's name and address and describes how Class members can make inquiries. (Id. at 15.)

The Notice is formally adequate. In an easy-to-read table, the Notice describes the Class members' legal rights in response to the Proposed Settlement: to submit a claim form, exclude oneself, object in writing, attend the fairness hearing, or do nothing. (Notice at 3-4.) All of the information above, and more, is provided in a navigable question-and-answer format. (Id. at 4.)

The identities of the Proposed Classes' members and their addresses are known. Defendants have committed to provide the

mailing addresses of all nominees that hold Preferred Stock in the names of beneficial owners and the mailing addresses of numerous former and current beneficial owners of the Preferred Stock compiled at various times throughout the Seller Class Period. The parties commit to provide direct, individual notice to each identified Proposed Classes' member by mail.

The parties have agreed to supplement the direct mailing with the Summary Form Notice. (Memo at 36.) The parties commit to publish the Summary Form Notice in Wall Street Journal Online Edition and Investor's Business Daily and to transmit it over PR Newswire. (Id.) The Summary Form Notice states the nature of the action; the Proposed Classes' definitions; the time and manner of opting-out, submitting claims, and objecting to the Settlement; the binding effect of a judgment on class members; and contact information for inquiries. (ECF No. 77-9.)

The Notice and the Summary Form Notice adequately apprise the Proposed Classes' members of the Settlement Agreement and afford them the opportunity to make informed decisions.

F. Fairness Hearing

The Court will hold the fairness hearing in the manner set forth in its Order below.

V. Conclusion and Order

For the foregoing reasons, the Motion is GRANTED. The Court ORDERS that:

1. The Settlement is conditionally APPROVED as fair, reasonable and adequate to all members of the Classes (defined below).

2. The Parties are DIRECTED to provide notice of the proposed Settlement to the Classes as provided in this Preliminary Approval Order and the Stipulation.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court conditionally CERTIFIES the following Classes for purposes of this Settlement only and subject to further consideration at the Final Approval Hearing:

> Any and all persons or entities that, as of August 22, 2014, and through the Merger Effective Time, hold 8.75% Series B Cumulative Preferred Stock and/or 9.00% Series C Cumulative Preferred Stock issued by W2007 Grace Acquisition I, Inc. (collectively, the "Preferred Stock") as of August 22, 2014 through the Merger Effective Time, when W2007 Grace will be merged with and into another entity and all Preferred Stock shall be converted into the right to receive $26.00 per share (the "Merger"), excluding: (a) Defendants and their affiliates, and (b) any persons or entities that validly (i) exercised dissenters' rights in the Merger or (ii) opted out of this class (the "Holder Class"). The Merger is the merger reflected in the Merger Agreement, when W2007 Grace will be merged with and into Merger Sub and all Series B Preferred Stock and Series C Preferred Stock, except for the Excluded Shares, shall be converted into the right to receive $26.00 per share. The Merger Effective Time occurs when the Tennessee Articles of Merger have been duly filed with the Secretary of State of the State of

> Tennessee or at such later time as may be specified in the Tennessee Articles of Merger.

> Any and all persons or entities that sold some or all of their Preferred Stock between October 25, 2007, and October 8, 2014, inclusive (the "Seller Class Period"), and suffered a loss, excluding: (a) Defendants and their affiliates, and (b) any persons or entities that (i) sold shares to Defendant PFD Holdings, LLC in a private transaction or (ii) validly opted out of this class (the "Seller Class," and together with the Holder Class, the "Classes").

4. The Court preliminarily FINDS, solely for purposes of the Settlement, that: (a) the Holder and Seller Classes are so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Holder and Seller Classes that predominate over any individual questions; (c) the claims of the Named Plaintiffs are typical of the claims of the Classes; (d) Named Plaintiffs and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Classes; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

5. Named Plaintiffs David Johnson and Frederick Shearin are conditionally APPROVED as representatives of the Holder Class and David Johnson, Patrick Lynch, and Roberto Verthelyi

are conditionally approved as representatives of the Seller Class.

6. Chimicles & Tikellis LLP is APPROVED as Class Counsel, and the Court finds that Class Counsel has and will fairly and adequately protect the interests of the Classes.

7. The Court APPROVES Hagler Bruce & Turner, PLLC as Liaison Counsel.

8. Subject to final approval of the Stipulation by the Court, members of the Classes, in consideration of the benefits of the Settlement will fully, finally, and forever compromise, resolve, discharge, and settle the Released Claims and the Released Defendants' Claims against all Released Parties as set forth in the Stipulation.

9. The Court FINDS that Class Counsel has the authority to enter into the Stipulation on behalf of the Named Plaintiffs and the Classes, and is authorized to act on behalf of the Named Plaintiffs and the Classes, to perform all acts and execute all consents required by, or that may be given pursuant to, the Stipulation, in particular other acts that are reasonably necessary to consummate the Settlement.

10. Class Counsel is authorized to retain Angeion Group LLC (the "Claims Administrator") to administer and supervise the notice to the Seller and Holder Classes and to administer the Settlement Consideration and distribute the Net Seller Class

Settlement Fund. All reasonable costs incurred in implementing the Notice shall be paid as set forth in the Stipulation.

11. Pending further order of the Court, all litigation activity before the Court, except that contemplated in this Order, in the Stipulation, in the Notice or in the Order and Final Judgment, is STAYED and all hearings, deadlines and other proceedings before the Court in this Action, except for the Final Approval Hearing, are removed from the Court's docket.

12. The Court FINDS and ORDERS that the proposed notice plan, set forth in the Stipulation and the Notice of Proposed Settlement of Class Action Litigation (the "Notice"), annexed as Exhibit 4 to the Stipulation, fully satisfies the requirements of due process, provides the best notice practicable under the circumstances to the members of the Classes, and provides individual notice to all members of the Classes who can be identified through reasonable effort. The Court directs that the Notice be provided to members of the Classes substantially in the form set out in Exhibit 4 of the Stipulation, provided that the Parties by agreement may revise the Notice in ways that are not material or that are appropriate to update it for purposes of accuracy. No member of the Classes shall be relieved from the terms of the Settlement, including the releases provided in it, based on the contention or proof that such member failed to receive adequate or actual notice.

13. Class Counsel shall cause the Notice and the Proof of Claim and Release Form (the "Proof of Claim"), substantially in the form annexed as Exhibit 4 to the Stipulation, be mailed, by first class mail, postage prepaid, fifteen (15) business days after entry of this Order (the "Notice Date"), to all members of the Classes at their last-known addresses. Pursuant to the Stipulation, W2007 Grace shall cooperate reasonably with Class Counsel in identifying the names and addresses of potential members of the Classes.

14. No later than twenty (20) business days after entry of this Order, the Claims Administrator shall cause the Summary Notice, substantially in the form annexed hereto as Exhibit 8, to be published once in the national edition of Investor's Business Daily, over the PR Newswire, and in the Wall Street Journal Online Edition.

15. No later than fifteen (15) business days after entry of this Order, Class Counsel shall cause the Stipulation and its Exhibits and a copy of the Notice to be posted on its firm website, www.chimicles.com.

16. No later than seven (7) calendar days before the Final Approval Hearing, Class Counsel shall file with the Court one or more affidavits or declarations by Class Counsel or the Claims Administrator showing timely compliance with the requirements

for the mailing and publication of the Notice, Summary Notice, and Proof of Claim Form.

17. Class Counsel or its agent(s) shall be responsible for the receipt of all responses from members of the Classes and, until further Order of the Court, shall preserve all entries of appearance, Proof of Claim Forms and all other written communications from members of the Classes, nominees or any other Person in response to the Notice or Summary Notice.

18. The Claims Administrator shall use reasonable efforts to give notice to nominee owners such as brokerage firms and other persons or entities that held Preferred Stock as record owners but not as beneficial owners. Such nominee owners shall be asked to send the Notice and Proof of Claim Form to all such beneficial owners within ten (10) days after receipt, or to send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) days of receipt, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim Form to such beneficial owners. Such nominees may seek reimbursement of their reasonable expenses in providing notice to beneficial owners who are Class Members, if those expenses would not have been incurred but for the sending of the notice. The nominees shall provide the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Properly documented expenses

incurred by nominees in compliance with the terms of this Order shall be paid from the Seller Class Settlement Fund, subject to further order of this Court addressing any dispute about compensation.

19. No later than fifteen (15) business days after the entry of this Order, W2007 Grace shall cause to be mailed to all holders of record of Preferred Stock entitled to vote at the Shareholders' Meeting a Proxy Statement relating to the Merger in substantially the form attached as Exhibit 7 to the Stipulation, which Proxy Statement will give notice of the Shareholder Meeting; provided that W2007 Grace shall have reasonable time to amend the Proxy Statement should amendment be necessary.

20. No later than sixty (60) calendar days after the mailing of the Proxy Statement, W2007 Grace shall, in accordance with applicable law and the Charter and W2007 Grace bylaws, convene and hold the Shareholders' Meeting for the holders of Preferred Stock to vote on the Merger and the Charter Amendment.

21. A Person requesting exclusion from the Holder Class or the Seller Class must provide a written, signed request for exclusion to the Claims Administrator containing the following information: (i) name; (ii) address; (iii) telephone number; (iv) identity and original face value of the Preferred Stock purchased (or otherwise acquired) or sold; (v) prices or other

consideration paid for the Preferred Stock; (vi) the date of each purchase and sale transaction; and (vii) a statement that the Person wishes to be excluded from the Settlement. Members of the Classes may not exclude themselves by filing requests for exclusion as a group or class, but must in each instance individually and personally execute the request.

22. All requests for exclusion from the Holder or Seller Classes must be received no later than twenty-one (21) calendar days before the Final Approval Hearing.

23. Unless otherwise ordered by the Court, any member of the Holder or Seller Classes who does not submit a timely written request for exclusion as provided by this section shall be bound by all determinations and judgments in the Action, including, upon entry of the Order and Final Judgment, the terms and conditions of the Stipulation.

24. The Claims Administrator shall scan and electronically send copies of all requests for exclusion in PDF format (or such other format as agreed by the Parties) to Defendants' Counsel and Class Counsel expeditiously (and not more than three (3) business days) after the Claims Administrator receives such a request. As part of the motion papers in support of the final approval of the Settlement, Class Counsel will provide to Defendants' Counsel a list of all Persons who have requested exclusion from the Holder Class or the Seller Class and certify

that all requests for exclusion received by the Claims Administrator have been copied and provided to Defendants' Counsel.

25. To be eligible to receive a distribution from the Net Seller Class Settlement Fund, if the Settlement is effected in accordance with the terms and conditions set forth in the Stipulation, each Seller Class member must: (a) properly execute a Proof of Claim, substantially in the form annexed as Exhibit 4 to the Stipulation and (b) submit the Proof of Claim to the Claims Administrator, at the address indicated in the Notice, postmarked no later than 120 days from the Notice Date, unless that deadline is extended by order of the Court.

26. A Proof of Claim Form shall be deemed submitted when mailed, if received with a postmark indicated on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in accordance with the instructions on the Proof of Claim Form. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice.

27. Any member of the Seller Class who fails to submit a Proof of Claim Form by such date shall be barred from receiving any distribution from the Net Seller Class Settlement Fund or payment pursuant to this Stipulation (unless late-filed Proof of Claim Forms are accepted by an order of the Court), but shall in

all other respects be bound by any and all terms of the Stipulation and the Settlement, including the terms of the Judgment and the releases provided in the Stipulation, and shall be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Party on any Released Claim or Released Defendants' Claim.

28. The Claims Administrator shall determine each claimant's share of the Net Seller Class Settlement Fund based on that claimant's recognized loss, as defined in the Plan of Allocation, annexed as Exhibit 5 to the Stipulation, subject to the Court's final review and approval.

29. Class Counsel shall apply to the Court for a Seller Class Distribution Order, on notice to Defendants' Counsel, approving the Claims Administrator's administrative determinations accepting and rejecting the Claims made by members of the Seller Class and each Eligible Claimant's recognized loss, as defined in the Plan of Allocation, annexed as Exhibit 5 to the Stipulation (or other such plan of allocation as the Court may approve), and approving any fees and expenses not previously paid, including the fees and expenses of the Claims Administrator.

30. The Final Approval Hearing shall be held before the undersigned at 9:30 a.m. on Friday, September 11, 2015, which is not less than one hundred and twenty five (125) days from the

entry of this Order, in Courtroom 2, at the United States District Court for the Western District of Tennessee, 167 North Main Street, Memphis, Tennessee 38103, to consider whether:

(a) the proposed Settlement on the terms and conditions provided in the Stipulation is fair, reasonable and adequate, and should be approved by the Court;

(b) the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the Action, on the merits and with prejudice, and whether the releases set forth in the Stipulation should be ordered;

(c) the proposed Plan of Allocation for the Net Seller Class Settlement Fund is fair and reasonable and should be approved by the Court;

(d) the request for attorneys' fees and expenses should be approved;

(e) the request for a case contribution award for each of the Named Plaintiffs should be approved; and

(f) to rule upon such other matters as the Court may deem appropriate.

31. Class Counsel shall submit its filings in support of final approval of the Settlement, the Plan of Allocation, the request for an award of attorneys' fees and expenses, and the request for a case contribution award to Named Plaintiffs no

later than thirty-five (35) calendar days before the Final Approval Hearing.

32. Any member of the Classes who has not requested exclusion from the Classes may appear at the Final Approval Hearing in person or by counsel (if an appearance is timely filed and served) and may be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the Settlement, the Plan of Allocation, the request for an award of attorneys' fees and expenses, or the request for a case contribution award to Named Plaintiffs; *provided, however,* that no member of the Classes shall be heard in opposition of the Settlement and, if the Settlement is approved, the judgment entered thereon, and no briefs or other filings submitted by any such person shall be accepted or considered by the Court unless, no later than twenty-one (21) calendar days before the Final Approval Hearing, such member of one or both of the Classes has:

(a) filed with the Clerk of the Court, United States District Court for the Western District of Tennessee, Clifford David/Odell Horton Federal Building, 167 North Main Street, Memphis, Tennessee 38103, a written objection stating:

(i) the case name and number, Johnson, et al. v. W2007 Grace Acquisition I, Inc., et al., Civil

Action No. 2:13-cv-2777(SHM), United States District Court, Western District of Tennessee;

(ii) the objector's full name, address, telephone number, signature and, if represented by counsel, the name and contact information for counsel;

(iii) which of the Classes (Holder or Seller, or both) the objector is a member of and proof of such membership in one or both of the Classes (as applicable);

(iv) the number of shares of Preferred Stock owned at the time of the objection, if any;

(v) the Preferred Stock purchased and sold, and at what prices, from October 25, 2007, to the date of the objection, if any;

(vi) a written statement of the reason(s) the person objects to the Settlement (or to a particular part of the Settlement);

(vii) the legal support or documentation the objector wishes to bring to the Court's attention in support of the objection; and

(viii) a list of all other objections submitted by the Class member or Class member's counsel to any class action settlements in any court in the United States in the previous five (5) years. If

the Class member or Class member's counsel has not so objected, an affirmative statement to that effect must be included in the objection.

(b) served on the following counsel, in person or by mail, copies of such written objection, along with any supporting documentation, including proof of membership in one or both Classes, together with copies of any other briefs or documents filed with the Court:

For the Classes:	**For Defendants:**
Nicholas E. Chimicles	Sharon L. Nelles
361 West Lancaster Ave	Sullivan & Cromwell LLP
One Haverford Centre	125 Broad Street
Haverford, PA 19041	New York, NY 10004-2498

33. Any member of the Classes who does not object in the manner prescribed above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness and adequacy of the Settlement, the Plan of Allocation, the request for an award of attorneys' fees and expenses, or the request for an case contribution award to Named Plaintiffs.

34. Persons who have not (i) filed a written objection; (ii) stated an intent to appear at the Final Approval Hearing; and (iii) filed their objection with the Clerk of the Court

shall not be allowed to appear and be heard at the Final Approval Hearing.

35. No later than seven (7) calendar days before the Final Approval Hearing, Class Counsel shall cause to be filed with the Court a response to any timely-filed objections to the Settlement, the Plan of Allocation, the request for attorneys' fees and expenses, or request for case contribution awards for each of the Named Plaintiffs.

36. The Court expressly reserves the right to adjourn the Final Approval Hearing, or any adjournment thereof, without further notice to members of the Classes other than that which may be posted by the Court, and to approve the Stipulation and/or the Plan of Allocation with modifications approved by the Parties without any further notice to members of the Classes. The Court further reserves the right to enter its Order and Final Judgment approving the Settlement and dismissing the Action on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation, the request for an award of attorneys' fees and expenses, or the request for a case contribution award to Named Plaintiffs.

So ordered this 30th day of April, 2015.

s/ Samuel H. Mays, Jr.
SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, PATRICK LYNCH, ROBERTO VERTHELYI and FREDERICK SHEARIN, on behalf of themselves and all others similarly situated, Plaintiffs, v. W2007 GRACE ACQUISITION I, INC., TODD P. GIANNOBLE, GREGORY FAY, BRIAN NORDAHL, DANIEL E. SMITH, MARK RICKETTS, THE GOLDMAN SACHS GROUP, INC., GOLDMAN SACHS REALTY MANAGEMENT L.P., WHITEHALL PARALLEL GLOBAL REAL ESTATE LIMITED PARTNERSHIP 2007, W2007 FINANCE SUB, LLC, W2007 GRACE I, LLC and PFD HOLDINGS, LLC, Defendants.	No. 2:13-cv-2777 (SHM/DKV) **CLASS ACTION**

DECLARATION OF KATHLEEN P. CHIMICLES, ASA IN SUPPORT OF NAMED PLAINTIFFS' (1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASSES AND APPROVAL OF SELLER CLASS PLAN OF ALLOCATION AND (2) MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND NAMED PLAINTIFFS' CONTRIBUTION AWARDS

I, Kathleen P. Chimicles, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am the founder, President and CEO of GlenDevon Group, Inc. ("GDG").

2. Established in 2005, GDG provides forensic investigation, damages analyses and expert services for complex litigation cases including structured allocation plans. GDG also

provides management and corporate finance expertise to non-profit and privately owned businesses.

3. In my more than 30 years as a corporate finance professional, I have developed an expertise in providing key financial expert input at various stages of complex litigation from pre-case initiation analyses through discovery, trial preparation, settlement negotiations and allocation of settlement funds. A copy of my curriculum vitae is attached at Exhibit A.

4. This declaration is respectfully submitted in support of Named Plaintiffs' Motion pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for final approval of the Settlement Agreement, approval of the Plan of Allocation of the Net Seller Class Settlement Fund and for final certification of the Holder Class and Seller Class for purposes of the Settlement.[1]

5. This declaration is respectfully submitted in support of Class Counsel's motion, pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, for an award of attorneys' fees, payment of expenses incurred in the Action and for Named Plaintiffs' case contribution awards.

SCOPE OF GDG'S WORK

6. In April 2014, GDG commenced assisting Class Counsel with litigation support services, including the investigation into and analyses of the facts and claims that were the subject of the Action. GDG's litigation support work is detailed in the Declaration of Kimberly

[1] Capitalized terms not otherwise defined herein have the meanings set forth and defined in the Stipulation and Agreement of Settlement, dated October 8, 2014 (the "Settlement Agreement") (*See,* Declaration of Kimberly Donaldson Smith in Support of Plaintiffs' Motion for Preliminary Approval, dated October 9, 2014, ECF No. 77, Exhibit A [hereinafter, the "Smith 10/9/2014 Decl."]) and the Smith 8/7/2015 Decl.

Donaldson Smith in Support of Plaintiffs' Motion for Final Approval, dated August 7, 2015 ["Smith 8/7/2015 Decl."] (¶¶50, 72-73, 94-96, 106, 108, 140, 143, 146).

7. In addition to the litigation support services detailed in the Smith 8/7/2015 Decl., GDG was retained to analyze for Class Counsel and Named Plaintiffs Seller Class damages and, in connection with the Settlement, the Plan of Allocation. The Plan of Allocation is set forth as Exhibit 14 to the Smith 8/7/2015 Decl.

BACKGROUND SUMMARY

8. On October 25, 2007, Goldman Sachs, through its affiliates[2] completed the ENN Merger, purchasing all of the ENN common stock, assuming or refinancing its debts, and significantly increasing the financial leverage.

a. Immediately following the ENN Merger, the Company had $1.8 billion of new debt issued by the Goldman Sachs Mortgage Company ("GSMC") consisting of a $1.15 billion senior mortgage loan and $650 million of mezzanine debt ("2007 Acquisition Debt")[3].

b. In addition, $50 million of Trust Preferred Debt and $224 million of specific property mortgages were assumed. The senior mortgage loan encumbered all of the 137 hotel properties acquired through the ENN Merger.

9. In lieu of redeeming the ENN Series B and Series C cumulative preferred stock, Goldman Sachs and its affiliates issued replacement stock, exchanging all ENN Series B and C

[2] W2007 Grace I, LLC ("Grace LLC") 100% owned by Whitehall Parallel Global Real Estate Limited Partnership and affiliates ("Whitehall"), an affiliate of Goldman Sachs, is the parent to the Company. Grace LLC owns 100% of the common stock of the Company and a 1% interest in the Operating Partnership.

[3] The amount of debt expected to complete the ENN Merger was disclosed in SEC filings by Equity Inns prior to October 25, 2007 in Equity Inn's Form 10-K for the year ended December 31, 2006 filed on February 28, 2007.

preferred stock for 8.75% Series B Cumulative Preferred Stock and 9.00% Series C Cumulative Preferred Stock of W2007 Grace Acquisition I, Inc. in a one-to-one exchange ("Preferred Stock", collectively; "Series B" and "Series C" Preferred Stock, respectively.)

10. The ENN Merger, the subsequent recapitalization in 2009 and the debt modifications in 2010 materially changed the ownership and economic interests of the Preferred Stockholders. The restricted access to timely financial and operational information prevented the Preferred Stockholders and parties with an interest in acquiring the Preferred Stock from understanding the ownership and economic interests of the Preferred Stock in a timely manner.

a. On February 2, 2008, GSMC componentized the 2007 Acquisition Debt for purposes of marketing and selling the individual components of the loan whereby the $650 million of mezzanine debt was structured into seven tranches titled A through G ("2008 Componentization").

b. On June 29, 2009, the Company recapitalized the 2007 Acquisition Debt, $544.8 million of mezzanine debt (tranches B through G) held by affiliates of Goldman Sachs was forgiven (the "2009 Recapitalization"). The remaining debt included the Senior Mortgage Loan and the Mezzanine A tranche (collectively, the "2009 Loans"). The 2009 Loans were modified in 2010; General Electric Credit Corporation replaced GSMC as the Senior Mortgage Loan lender and three third party lenders replaced GSMC as holders of the Mezzanine A tranche (the "2010 Loan Modification").

c. As a component of the 2009 Recapitalization, GSMC was issued an option to purchase a 97% equity interest in the Senior Mezz Hotels (the "Purchase Option"); the Purchase Option was not exercisable until the 2009 Loans (and as modified in 2010) were paid in full. In February 2012, the Purchase Option expiration date was extended from June 2015 to

July 2021 or such other later date if the 2009 Loans (and as modified in 2010) was further extended. In July 2012, the Purchase Option was sold to WNT Holdings, LLC, an affiliate of Whitehall, ("WNT") for $175 million. The Purchase Option was exercised on April 11, 2014 simultaneously with the refinancing of the 2009 Loans as modified through the 2010 Loan Modification (the "2014 Refinancing").

THE SELLER CLASS DAMAGES AND THE PLAN OF ALLOCATION

11. GDG's opinions and conclusions regarding the Seller Class damages are based on the litigation support services provided with respect to the Holder Class and the specific review and analyses regarding the Seller Class[4].

12. In considering potential damages incurred by the Seller Class, GDG prepared an analysis of the reported trading in the Series B and C Preferred Stock, analysis of the changes in shareholder holdings during the Class Period, an analysis of the change in reported transaction prices in response to company specific and general economic information, an analysis of the trading patterns of similarly capitalized publicly traded REITs during the Class Period, and the trading patterns of these similarly capitalized publicly traded REITs that suspended dividend payments on their preferred stock during a portion of the Seller Class Period[5].

[4] The Seller Class is defined as any and all persons or entities that sold some or all of their Preferred Stock between October 25, 2007 and October 8, 2014, inclusive ("Seller Class Period"), and suffered a loss, excluding: (a) Defendants and their affiliates, and (b) any persons or entities that (i) sold shares to Defendant PFD Holdings, LLC in a private transaction or (ii) validly opted out of the Seller Class.

[5] In connection with the ENN Merger, Merrill Lynch issued a fairness opinion on June 20, 2007. In considering its fairness opinion, Merrill Lynch prepared a Comparable Companies Analysis. The comparable companies identified by Merrill Lynch include: Host Hotels & Resorts, Inc.; Hospitality Properties Trust; Sunstone Hotel Investors, Inc.; LaSalle Hotel Properties; Diamond Rock Hospitality Company; Strategic Hotels & Resorts, Inc.; Ashford Hospitality Trust, Inc.; FelCor Lodging Trust Incorporated; and Hersha Hospitality Trust ("Peer Companies"). Of the Peer Companies, FelCor Lodging Trust Incorporated ("FelCor") and Strategic Hotels & Resorts, Inc. ("Strategic") experienced financial difficulties during the Class

13. GDG also considered access to and the type of information available to the members of the Seller Class during the Seller Class Period:

a. Following the ENN Merger, W2007 Grace was delisted from the NYSE and ceased reporting under the Exchange Act. Preferred Stockholders were notified that the Company would be delisted in ENN's SEC filings made in connection with the ENN Merger.[6]

b. Transfers of the Company stock following delisting were reported through NASDAQ[7] and the web-based services of OTC Markets Group Inc. ("OTC"). The classes of Preferred Stock were designated as *Other OTC* by NASDAQ and as *Grey Market* securities by OTC.[8]

i. The OTC Market is defined by NASDAQ as: "A decentralized market (as opposed to an exchange market) where geographically dispersed dealers are linked by telephones and computers. The market is for securities not listed on a stock or derivatives exchange. Over the counter securities trade on a Bulletin Board offered by the National

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Period and suspended dividend payments to their preferred Stockholders. Collectively, FelCor and Strategic had five series of preferred stock issued and outstanding during the Class Period with similar rights, dividend rates and liquidations preferences as the Company's Preferred Stock

[6] For example, the proxy solicitation statement for the ENN Merger, filed with the SEC on August 24, 2007, stated: "Delisting of Our Common Stock, Series B Preferred Stock and Series C Preferred Stock - If the merger is completed, our common stock, Series B preferred stock and Series C preferred stock will no longer be traded on the New York Stock Exchange, or NYSE, and will be deregistered under the Exchange Act. As a result, we expect that we will cease to be subject to the reporting requirements under the Exchange Act." (Page 47).

[7] "Nasdaq is recognized around the globe as a diversified worldwide financial technology, trading and information services provider to the capital markets." Discover NASDAQ. (n.d.). Retrieved July 24, 2015, from http://business.nasdaq.com/discover/nasdaq-story/index.html

[8] OTC and Gray Market securities are not traded in efficient markets.

Association of Security Dealers."[9] Even though the transfers in the Preferred Stock were reported through NASDAQ, the Preferred Stock did not trade on the NASDAQ market.

ii. Grey Market is defined by OTC as: "Grey Market" is a security that is not currently traded on the OTCQX, OTCQB or OTC Pink marketplaces. Broker-dealers are not willing or able to publicly quote OTC securities because of a lack of investor interest, company information availability or regulatory compliance."[10]

iii. Trading in OTC or Grey Market securities is materially different than trading in securities listed on an exchange such as the New York Stock Exchange or the organized NASDAQ. According to Zacks Investment Research, Inc., a respected investment research organization, "Unlike the exchanges where orders are placed electronically and immediately filled, Pink Sheets and OTC trades are routed to individual broker/dealers. The broker/dealer attempts to match your order with an existing market or limit order. If he can't place the trade, the broker/dealer tries to complete the trade with another broker/dealer. If that doesn't work, the broker/dealer creates an order and posts it on the Inter-dealer Quotation System. The order remains posted until it is filled or canceled."[11]

c. On or about the beginning of the first quarter of 2008, Preferred Stockholders' access to the Company's financial statements was restricted to current Preferred

[9]NASDAQ Investing Glossary Over-the-Counter Bulletin Board and O.T.C. (n.d.). Retrieved July 24, 2015, from http://www.nasdaq.com/investing/glossary/o/over-the-counter-bulletin-board; and http://www.nasdaq.com/investing/glossary/o/o.t.c.

[10] OTC Markets Learn OTC Market Tiers. (n.d.). Retrieved July 24, 2015, fromhttp://www.otcmarkets.com/learn/otc-market-tiers

[11] Pink Sheets vs OTC (n.d.). Retrieved July 24, 2015, from http://finance.zacks.com/pink-sheets-vs-otc-8928.html

Stockholders only after such Preferred Stockholder submitted a written request and executed a confidentiality agreement that restricted the use and dissemination of the information.

i. The Preferred Stockholders' requests for information were required to be renewed annually.

ii. The financial statements provided to the few Preferred Stockholders who complied with these restrictions often included untimely and incomplete information.

iii. Interested potential buyers of the Company's Preferred Stock were not permitted access to financial information or other non-public information during most of the Seller Class Period.

d. Information accessible to all current Preferred Stockholders and any potential purchasers of the Preferred Stock during most of the Seller Class Period was limited to periodic posting of press releases and updated "Frequently Asked Questions" or "FAQs" on the Company's website. During the Seller Class Period, the Company maintained a simple website containing contact information, links to copies of press releases and the FAQs. This information did not include financial results. The Smith 8/7/2015 Decl. at ¶17 discusses the press releases and FAQs.

14. The restrictions detailed in the foregoing paragraph 13 are referred to as "Shareholder Restrictions to Financial Information".

15. On June 2, 2014 the Company publicly announced the ARC Transaction. ARC filed an 8-K with the SEC on June 2, 2014 that included as exhibits financial statements for the

Company's parent[12] and unaudited pro forma financial statements of ARC illustrating the proposed ARC Transaction. This was the first publicly disclosed financial information of the Company since prior to consummation of the ENN Merger in October 2007. This announcement was preceded by a press release on April 14, 2014 disclosing the 2014 Refinancing and the exercise of the Purchase Option by WNT. Smith 8/7/2015 Decl. at ¶¶17j, 85. On September 18, 2014 ARC filed an 8-K with the SEC that included as exhibits financial statements for the Company's parent and WNT and pro forma financial statements of ARC illustrating the proposed ARC Transaction.[13]

16. GDG concluded that the Shareholder Restrictions to Financial Information imposed by the Company and the limitation of such information to then current holders of the Preferred Stock impeded the development of informed purchase and sale transactions.

17. GDG concluded that the restricted access to timely financial and operational information prevented the Preferred Stockholders, and parties with an interest in acquiring the Preferred Stock, from understanding the ownership and economic interests of the Preferred Stockholders.

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[12] Audited consolidated financial statements of W2007 Grace I, LLC as of December 31, 2013 and December 31, 2012 and for each of the three years in the period ended December 30, 2013. Unaudited condensed consolidated financial statements of W2007 Grace I, LLC as of March 31, 2014 and December 31, 2013 and for the three month period ended March 31, 2014 and March 31, 2013. Unaudited pro forma condensed consolidated balance sheet as of March 31, 2014 and unaudited pro forma condensed consolidated statement of operations for the three months ended March 31, 2014 and for the year ended December 31, 2013.

[13] Unaudited condensed combined consolidated financial statements of W2007 Grace I LLC and WNT Holdings, LLC as of June 30, 2014 and December 31, 2013 and for the three and six months ended June 30, 2014 and June 30, 2013. Unaudited pro forma condensed consolidated balance sheet as of June 30, 2014 and unaudited pro forma condensed consolidated statement of operations for the six months ended June 30, 2014 and for the year ended December 31, 2013.

18. Therefore, GDG believes that the members of the Seller Class who owned Preferred Stock as of October 25, 2007 and sold such stock during the Seller Class Period did so subject to the continuing harm created by the restricted access to timely, accurate and complete operational and financial information in Defendants' possession and control.

19. The calculation of market losses and damages to the Seller Class were calculated using trading data supplied by NASDAQ and OTC. Trades were sporadic and daily volume was low.[14] Reported prices varied materially within short time periods.

20. Seller Class Damages, the Plan of Allocation and the determination of the amount of Recognized Loss reflect the assessment of GDG and Class Counsel of the relative strengths and risks of the claims and external market factors contributing to a decline in the reported price at which ownership of the Company's Preferred Stock was transferred ("Trade Price(s)"), as well as the relative size of estimated losses associated with each of them.

a. On October 26, 2007 the Preferred Stock was delisted from the New York Stock Exchange, an event known to occur before October 25, 2007. *See, fn. 6, above.*

b. On February 7, 2008, W2007 Grace issued a press release regarding the Liquidating Distribution. The Liquidating Distribution value attributed to the Series B Preferred Stock was $17.50 per share and $17.00 per share of Series C Preferred Stock.

c. On or about the beginning of the first quarter of 2008, the Company imposed its Shareholder Restrictions to Financial Information.

[14] Trades did not occur daily. Occasionally, the reported volume would exceed 50,000 or 100,000 shares in a single day. For most of the Seller Class Period the reported volume for a day was less than 10,000 shares, and often less than 1,000 shares.

d. One of the earliest events in the global financial crisis occurred on March 16 and 17, 2008 when JP Morgan, with assistance from the Federal Reserve and the US Treasury, agreed to purchase Bear Stearns for $2 per share. *See, fn. 12, below.*

e. On June 30, 2008, W2007 Grace announced the suspension of dividend payments to the Preferred Stockholders in compliance with certain covenants of the 2007 Acquisition Debt.[15] Dividends remained suspended through the end of the Seller Class Period.

f. From October 25, 2007 through June 29, 2008, the reported Trade Prices reflected the recognition by the Preferred Stockholders of the increased risk of ownership given the extensive limitations on the access to timely information.

g. Following June 30, 2008, the Trade Prices continued to be affected by the lack of timely information and eroded significantly due to the suspension of dividends, the debt service burden of the increased leverage, and the global financial crisis.[16] Through the middle of

[15] The amount of debt expected to complete the ENN Merger and the highly leveraged condition of the hotel portfolio following the ENN Merger was disclosed in SEC filings by ENN prior to October 25, 2007 (ENN proxy solicitation statement filed with the SEC on August 24, 2007 (pages 3, 39-40). The risks of increased debt were discussed in the ENN Form 10-K for the year ended December 31, 2006 filed with the SEC on February 28, 2007 (pages 13-14). Among the risk factors identified: "Our ability to maintain our historic rate of distributions to our shareholders is subject to fluctuations in our financial performance, operating results and capital expenditure requirements ... The timing and amount of distributions are in the sole discretion of our Board, which will consider, among other factors, our financial performance, debt service obligations and debt covenants, debt refinancing and capital expenditure requirements. We cannot assure you either that we will continue to generate sufficient cash flow in order to fund distributions at the same rate as our historic rate, or that our Board will continue to maintain our distribution rate at the same levels as we have in the past" and "Our debt service obligations could adversely affect our overall operating results.. Although our Board has recently modified a policy of limiting the amount of debt that we can incur ...the Board may change this debt policy at any time without shareholder approval. Our level of debt could subject us to many risks, including the risks that ... debt service payments may reduce cash available for distribution to our shareholders..."

[16] "In September 2008, the US Treasury invested nearly $200 billion into Fannie Mae and Freddie Mac placing the firms in conservatorship to be overseen by the Federal Housing Finance

calendar year 2013, the Trade Prices of the Preferred Stock were lower than the Trade Prices between October 25, 2007 and June 29, 2008. The Trade Prices did not approximate the Liquidating Distribution amounts until March 2014. The Trade Prices did not exceed the Liquidating Distribution until after June 2, 2014 when the ARC Transaction was announced.

h. The Company stock price patterns lagged recovery compared to the Peer Companies. On July 21, 2009, the Federal Reserve issued its semi-annual Monetary Policy Report to Congress - Chairman Bernanke testified that "the extreme risk aversion of last fall has eased somewhat, and investors are returning to the private credit markets."[17] The Dow Jones Index increased from 8,359 on July 14, 2009 to 9,069 on July 23, 2009. The Dow continued increasing through 2009 to over 10,000 by October 15, 2009. The Company's stock remained depressed while the Peer Companies' preferred stock prices increased materially as the broad market increased.

Agency, Merrill Lynch is sold to Bank of America, Lehman Brothers files for bankruptcy, and AIG receives bailout funding from the New York Federal Reserve. On September 29, 2008 the Dow drops 788 points as Congress rejects a bank bailout plan. TARP, a $700 billion bank bailout program is enacted by the US Congress on October 3, 2008. AIG receives a second bailout funding on October 8, 2008. Wells Fargo acquires Wachovia on October 12, 2008. December 11, 2008, the US economy is declared in a recession. In February 2009 the American Recovery and Reinvestment Act is signed into law and the Homeowner Affordability and Stability Plan is announced. On June 9, 2009 over 25% of the bank bailout funds are repaid. April 16, 2010 Goldman Sachs is sued by the SEC accused of securities fraud for allegedly failing to disclose conflicts of interest in subprime mortgage securities it sold to investors, who ultimately lost more than $1 billion. July 21, 2010 the Dodd-Frank Wall Street Reform and Consumer Protection Act is signed into law." Source: Back from the Brink Timeline. (n.d.). Retrieved July 24, 2015, from www.cnbc.com/back-from-the-brink-timeline/

[17] Chairman Ben S. Bernanke, *Semiannual Monetary Policy Report to the Congress,* Before the Committee on Financial Services, U.S. House of Representatives, Washington, D.C. (July 21, 2009). Retrieved August 5, 2015, from www.federalreserve.gov/newsevents/testimony/bernanke20090721a.htm

i. On June 2, 2014, the ARC Transaction is announced; through an 8-K filing with the SEC dated June 2, 2014, ARC releases financial information related to the Company's parent. *See*, fn. 12, above.

21. GDG and Class Counsel determined that the distribution of the Net Seller Class Settlement Fund, as reflected in the Plan of Allocation, should be based on the damages analysis as it relates directly to the allegations that damages incurred by members of the Seller Class who owned Preferred Stock as of October 25, 2007 and sold during the Seller Class Period arose from the continuing harm created by their restricted access to timely, accurate and complete operational and financial information.

a. The damage per share to the Series B Preferred Stock that was held as of October 25, 2007 and sold during the Seller Class Period equals $4.19. This fixed damage per share was determined as follows: the Liquidating Distribution amount of $17.50 per share less $11.04 per share, the weighted average reported Trade Price between October 25, 2007 and June 29, 2008, less a $2.27 per share adjustment for industry specific market changes measured by reference to the Peer Companies.

b. The damage per share to the Series C Preferred Stock that was held as of October 25, 2007 and sold during the Seller Class Period equals $4.00. This fixed damage per share was determined as follows: the Liquidating Distribution amount of $17.00 per share less $10.79 per share, the weighted average reported Trade Price between October 25, 2007 and June 29, 2008, less a $2.21 per share adjustment for industry specific market changes measured by reference to the Peer Companies.

22. Moreover, GDG and Class Counsel determined that there was a fixed amount of damage that was realized by members of the Seller Class who purchased shares of Preferred

Stock after October 25, 2007 and sold shares of such Preferred Stock during the Seller Class Period ("In and Out Transactions"). The determination of damage to the In and Out Transactions recognizes that both the purchase and sale decisions were made with full knowledge of the restricted access to timely, accurate and complete financial information, and recognizes that the despite this knowledge, a portion of the realized losses could be attributed to the claims in this Action.

a. The damage per share to In and Out Transactions in the Series B Preferred Stock equals $0.23; calculated as 5.41% of the fixed damage amount per share attributed to the Series B Preferred Stock. The ratio of fixed damage per share reflects the ratio of estimated market losses realized through In and Out Transactions in the Series B Preferred Stock compared to the estimated imputed market losses to shares of Series B Preferred Stock that were held on October 25, 2007 and sold during the Seller Class Period. Imputed market losses for the Series B Preferred Stock imputed a purchase price of $17.50 per share, the Liquidating Distribution amount.

b. The damage per share to In and Out Transactions in the Series C Preferred Stock equals $0.31; calculated as 7.65% of the fixed damage amount per share attributed to the Series C Preferred Stock. The ratio of fixed damage per share reflects the ratio of estimated market losses realized through In and Out Transactions in the Series C Preferred Stock compared to the estimated imputed market losses to shares of Series C Preferred Stock that were held on October 25, 2007 and sold during the Seller Class Period. Imputed market losses for Series C Preferred Stock imputed a purchase price of $17.00 per share, the Liquidating Distribution amount.

23. For purposes of the Plan of Allocation and the distribution of the Net Seller Class Settlement Fund, Recognized Loss per Share may not equal the fixed damage per share described above. Recognized Loss in the Plan of Allocation is determined as follows:

a. Recognized Loss per share of Series B Preferred Stock that was held as of October 25, 2007 and sold during the Seller Class Period will equal the lower of: (i) the imputed market loss and (ii) $4.19. Imputed market loss per share of Series B Preferred Stock is calculated as $17.50, the Liquidating Distribution amount, less the actual sale price per share.

b. Recognized Loss per share of Series C Preferred Stock that was held as of October 25, 2007 and sold during the Seller Class Period will equal the lower of: (i) the imputed market loss and (ii) $4.00. Imputed market loss per share of Series C Preferred Stock is calculated as $17.00, the Liquidating Distribution amount, less the actual sale price per share.

c. Recognized Loss per share of In and Out Transactions in the Series B Preferred Stock will equal the lower of: (i) the actual market loss and (ii) $0.23.

d. Recognized Loss per share of In and Out Transactions in the Series C Preferred Stock will equal the lower of: (i) the actual market loss and (ii) $0.31.

e. The date of purchase or sale is the "contract" or "trade" date as distinguished from the "settlement" date.

f. Market loss for In and Out Transactions will be calculated on an Average Cost inventory method.

g. In and Out Transactions where a gain was realized (e.g. the sale price was greater than the purchase price) will have a zero Recognized Loss.

24. Aggregate Recognized Loss of the Seller Class approximates $24.26 million attributable to the continuing harm created by the restricted access to timely, accurate and complete operational and financial information.

25. Seller Class damages and the Plan of Allocation do not reflect the full estimated market losses realized by the Seller Class. Class Counsel and GDG determined that approximately 24% of the market loss suffered by the Seller Class[18] was attributable to the Company specific harm caused by the restricted access to timely, accurate and complete operational and financial information. The remaining market losses are not attributable, compensable or recoverable damages due to, among other factors, the then current economic and real estate industry conditions and the excessive leverage of the 2007 Acquisition Debt, which was a material factor in the cessation of dividend payments on the Preferred Stock.

[18] Specifically, 23.9% of the Class B market Losses and 23.5% of the Class C market losses are attributable to Company specific actions. Market losses were estimated by equating Seller Class member purchase price to the Liquidating Distribution. If the Seller Class member's actual purchase price was greater than the Liquidating Distribution, then the actual realized market loss may be higher than will be imputed for purposes of the Recognized Loss.

GDG'S FEES AND EXPENSES

26. For the work performed with respect to the Seller Class, GDG has invoiced Named Plaintiffs and Class Counsel $129,500 in fees (259 hours spent on this engagement at her standard rate of $500 per hour) and $34.28 in out-of-pocket expenses.

27. For the litigation support work and work performed with respect to the Holder Class, GDG has invoiced Named Plaintiffs and Class Counsel $266,250 in fees (532.5 hours at $500 per hour) and $137.10 in out-of-pocket expenses.

28. No fees were invoiced for the time spent preparing this Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of August, 2015,

Kathleen P. Chimicles, ASA

EXHIBIT A

Exhibit A

KATHLEEN P. CHIMICLES, ASA CURRICULUM VITAE

Summary of Litigation Support Services

With over 30 years as a corporate finance professional, I have developed an expertise in providing key financial expert input at various stages of complex litigation from pre-case initiation through discovery, trial preparation, settlement negotiations and allocation of settlement funds.

Cases in which I have been involved have spanned numerous industries, including, but not limited to: banking and financial services (including aircraft and equipment leasing), consumer products and services, healthcare, horse breeding, oil & gas, real estate (residential, commercial, low income and senior living), research & development, and technology; and have involved numerous forms of securities or ownership structures, including, but not limited to: common and preferred stock, American Depository Shares, options, fixed income, hedge funds, limited partnerships, master limited partnership, and mutual funds.

Expertise has been developed in evaluating complex related party structures and financial agreements; highly leveraged transactions; and loss and damage analyses in entities without an established trading market for their equity or debt securities.

Litigation Support Engagement Responsibilities typically include many, if not all, of the following:

Investigation and Complaint Preparation

- Pre-case initiation factual analysis, damages analyses and causation assessment.
- Factual analysis for complaint preparation, including financial, operational, transactional, economic and industry analyses.

Prosecution and Discovery

- Assisting Counsel in drafting discovery requests, evaluating conformance of discovery produced to discovery requests, coding and managing the discovery produced.
- Preparation for and assistance with depositions and witness interviews.
- Factual analysis, including financial, operational, transactional, economic and industry analyses.
- Analysis of ownership structures, ownership rights, and changes over time, especially complex ownership structures among related parties.
- Analysis of financial statements and financial transactions, including complex debt and equity agreements.
- Analysis and critique of the role, analysis and conclusions of the financial advisors to the opposing party, where applicable.
- Analysis of deposition testimony.
- Analysis of fact discovery.
- Assisting Counsel in developing litigation strategy.
- Assisting Counsel with motion practice and preparation for court appearances.

Loss and Damage Analyses
- Loss analyses, damages analyses and causation assessment.
- Assisting Counsel in the review and critique of and rebuttal to opposing loss and damage theories and analyses.

Experts
- Identifying consulting and testifying experts; vetting experience and credentials of potential experts.
- Coordinating the scope of analyses and assignments among multiple experts.
- Facilitating effective and efficient communications among experts and Counsel.
- Assisting with the preparation of expert reports and rebuttal reports.
- Review and critique of opposing expert reports and rebuttal reports.
- Assisting Counsel in preparation for and attending expert depositions.
- Analyzing the expert deposition testimony.
- Assisting Counsel in developing litigation strategy following expert discovery.

Pre-Trial Preparation and Trial Support
- Assisting Counsel with motion practice and preparation for court appearances.
- Assisting Counsel with trial strategy, scope of witness testimony, and factual support, and preparation of trial exhibits.
- Attending trial.
- Assisting Counsel with factual analysis and revisions to trial strategy reflecting testimony provided.

Settlement Negotiations
- Assisting Counsel in developing and evaluating mediation analyses.
- Assisting Counsel in developing settlement strategies and various potential settlement structures.
- Assisting Counsel in constructing financial and /or corporate governance components of settlement structures.
- Assisting Counsel in settlement negotiations.
- Assisting Counsel in structuring a plan of allocation.
- Assisting Counsel in preparing settlement agreement documents.
- Preparing and assisting Counsel in the preparation of supporting declarations and other filings in support of settlement approval and the awarding of fees.

Claims Administration
- Assisting in defining and securing data required for effective claims administration.
- Review plan of allocation and respond to questions from the claims administrator concerning the plan of allocation.
- Review the claim administrator's allocation formulas and proposed distribution of settlement funds, where applicable.
- Assisting in drafting notices, plan of allocation descriptions, proof of claim forms, investment data forms, and script of frequently asked questions to respond to class member inquires.
- Fielding class member inquiries.

KATHLEEN P. CHIMICLES, ASA CURRICULUM VITAE

January 2005 to Present Founder, President & CEO GlenDevon Group Inc.

Established in 2005, GDG provides forensic investigation, damages analyses and expert services for complex litigation cases, including structured allocation plans. GDG also provides management and corporate finance expertise to non-profit and privately owned businesses.

February 1992 to December 2004
Financial Specialist Chimicles & Tikellis LLP

Served in a critical role in numerous complex litigation cases providing both independent analyses and as a member of litigation teams; provided forensic investigation, litigation support and damages analyses as itemized above under Litigation Support Engagement Responsibilities.

1982 to 1992 Investment Banking[1]
As Vice President, responsibilities included valuations of corporate entities and securities (public and private); advisory services to corporate clients regarding financing, mergers and acquisitions, strategic planning, succession and estate planning; and work-out and bankruptcy assignments; an active litigation support practice, including serving as a financial and valuation consultant and expert witness in securities and corporate litigation cases and testifying in federal and state court actions; member of the editorial staff of *Going Public: The IPO Reporter;* worked with early stage and emerging growth companies in the firm's venture capital portfolio.

Education and Professional Accreditations

Drexel University Bachelor of Science, (Finance and Computer Systems), 1983.
Villanova University, Master of Taxation, 1992.

Accredited Senior Appraiser with the American Society of Appraisers.
Member of CFA Institute.
Served as a panelist at various seminars regarding financing and valuation issues.
Co-authored various articles on ESOPs (Employee Stock Option Plans), valuation, corporate finance, damages and securities litigation.

[1] Subsequent to my resignation, the Philadelphia-based regional investment bank, Howard, Lawson & Co., was party to several consolidation transactions, most recently with Bank of America.

KATHLEEN P. CHIMICLES, ASA CURRICULUM VITAE

PROFESSIONAL AFFILIATIONS

American Society of Appraisers - Accredited Senior Appraiser (1989 to present)

CFA Institute - Chartered Financial Analyst Program (Levels I and II completed)

CFA Society of Philadelphia 1993 to present
Board of Directors (2004 to 2005), Chair University Relations Committee
(2004 to 2005, Chair Study Group Committee (2002 to 2004)

Philadelphia Estate Planning Council 1998 to 2006

Professional Recognitions
Inducted into Beta Alpha Psi, The Honors Organization for Financial Information Professionals, by the Delta Tau Chapter on November 16, 2005.

Inducted into the Harriett Worrell Society of Drexel University in 2001. This award is presented each year to a Drexel alumna whose professional achievements, contributions to the community, and service to her alma mater embody Worrell's spirit of commitment and integrity.

Drexel University
Board of Trustees 2008 to present
Buildings & Properties, Finance and Investment Committees
Board of Governors 1998 to 2003

Thomas R. Kline School of Law Advisory Board 2009 to present
Advisory Board

LeBow College of Business Dean's Advisory Board 2002 to present
Chair (2005 to 2009), Vice Chair (2003 to 2005)

Laurence A. Baiada Center for Entrepreneurship in Technology
Business Plan Competition Judge and Mentor 2002 to present

LeBow College of Business 2002-2005
Search Committee Stratakis Chair in Corporate Governance

Archbishop Iakovos Leadership 100 Endowment Fund 2005 to present
Investment Committee

WHYY 2005 to present
(Philadelphia, southern New Jersey and Wilmington Delaware
Public Broadcasting Affiliate)
Board of Directors (2005-present), Finance Committee (2007-present)

The Haverford School Leadership Council 2009 to 2012

EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, PATRICK LYNCH, ROBERTO VERTHELYI and FREDERICK SHEARIN, on behalf of themselves and all others similarly situated, Plaintiffs, v. W2007 GRACE ACQUISITION I, INC., TODD P. GIANNOBLE, GREGORY FAY, BRIAN NORDAHL, DANIEL E. SMITH, MARK RICKETTS, THE GOLDMAN SACHS GROUP, INC., GOLDMAN SACHS REALTY MANAGEMENT L.P., WHITEHALL PARALLEL GLOBAL REAL ESTATE LIMITED PARTNERSHIP 2007, W2007 FINANCE SUB, LLC, W2007 GRACE I, LLC and PFD HOLDINGS, LLC, Defendants.	No. 2:13-cv-2777 (SHM/DKV) **CLASS ACTION**

DECLARATION OF CHARLES E. FERRARA
FOR CLAIMS ADMINISTRATOR ANGEION GROUP

I, Charles E. Ferrara, declare as follows:

1. I am the Director of Operations for Angeion Group ("Angeion"), located at 1801 Market Street, Suite 660, Philadelphia, PA 19103. Pursuant to the Court's Order dated April 30, 2015 preliminarily approving the class action settlement and scheduling of final approval hearing (the "Order"), Angeion was authorized to act as the Claims Administrator in connection with the settlement of the above-captioned action (the "Action").

Mailing of the Notice and Proof of Claim

2. Pursuant to the paragraph 10 of the Order, Angeion has been responsible for administering and supervising dissemination of the Notice of Proposed Settlement of Class Action Litigation (the "Notice") and the Proof of Claim Form (the "Proof of Claim" and, collectively with the Notice, the "Notice Packet") to the Seller and Holder Classes. A true and correct copy of the Notice Packet is attached hereto as **Exhibit A.**

3. Angeion received a list from Class Counsel containing shareholders who owned W2007 Grace Preferred Stock during the Class Period (the "Class List"). The Class List contained data for 2,257 separate potential members of the Settlement Classes ("Class Members").

4. Pursuant to paragraph 13 of the Preliminary Approval Order, on May 21, 2015 (the "Notice Date"), which was fifteen business days after the entry of the Preliminary Approval Order, Angeion caused 2,257 Notice Packet to be delivered to the United States Postal Service ("USPS") to be mailed via First Class mail, postage prepaid.

5. Angeion has received requests from brokers and other nominees to (i) send the Notice Packet to the broker or nominee for distribution to the broker or nominee's customers with relevant holdings, or (ii) send the Notice Packet directly to the broker or nominee's customers with relevant holdings, whose contact information the broker's or nominee provided to Angeion. Through July 30, 2015, as a result of requests from 25 brokers and other nominees, Angeion sent an additional 2,373 Notice Packets, directly or indirectly.

6. As of July 30, 2015, the USPS has returned 15 Notice Packets as undeliverable with forwarding addresses. Angeion re-mailed the Notice Packets to the forwarding addresses provided.

7. As of July 30, 2015, the USPS has returned 332 Notice Packets as undeliverable with no forwarding address. Using locator services, 91 updated addresses were found and new Notice Packets were mailed using the corrected addresses.

8. As a result of efforts described in paragraphs 3 through 7 above, as of July 30, 2015, Angeion has mailed a total of 4,736 Notice Packets.

Publication of the Summary Notice and Toll Free Telephone Number

9. Pursuant to paragraph 14 of the Order, Angeion caused the Court-approved Summary Notice to be published on May 28, 2015 (within twenty business days of the entry of the Order) in *Investor's Business Daily* ("*IBD*"), in the *Wall Street Journal Online Edition* ("*WSJ*"), and over the *PR Newswire*. Copies of the Summary Notice as published in *IBD, WSJ,* and *PR Newswire* are attached as **Exhibit B, C, and D**, respectively.

10. On the Notice Date, Angeion also activated a toll-free telephone number, (877) 386-1776, for Class Members and brokers or nominees to call if they have questions regarding the Proof of Claim form. This toll-free phone number was included in the instructions on Proof of Claim form and will remain active throughout the remainder of the administration.

Report on Receipt of Requests for Exclusion

11. The Notice informed Class Members that written requests for exclusion from the Settlement Classes are to be received no later than August 21, 2015 and addressed to *W2007 Grace Preferred Shareholder Litigation,* EXCLUSIONS, c/o Angeion Group LLC, 1801 Market Street, Suite 660, Philadelphia, PA 19103.

12. As of July 30, 2015, Angeion has received no requests for exclusion from the Settlement Classes.

13. Angeion will continue to be the repository for exclusion requests up to and beyond the exclusion deadline and will report any exclusion requests that are received.

Claims Administration Expenses

14. As of July 30, 2015, the outstanding administration expenses related to the mailing of the Notice and publication of the Summary Notice in this Action equals $21,481.81, as itemized below:

Printing and Mailing Notice	$	11,379.09
Processing Undeliverable Notices	$	727.72
Summary Notice Publication (Media)	$	9,375.00
TOTAL	**$**	**21,481.81**

15. Angeion estimates that the total cost of this Settlement administration will be approximately $50,000, which amount includes the above $21,481.81 in outstanding Notice expenses.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 6, 2015

Charles E. Ferrara
Director of Operations for Angeion Group

EXHIBIT A

WRG

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, PATRICK LYNCH, ROBERTO VERTHELYI and FREDERICK SHEARIN, on behalf of themselves and all others similarly situated, Plaintiffs, vs. W2007 GRACE ACQUISITION I, INC., TODD P. GIANNOBLE, GREGORY FAY, BRIAN NORDAHL, DANIEL E. SMITH, MARK RICKETTS, THE GOLDMAN SACHS GROUP, INC., GOLDMAN SACHS REALTY MANAGEMENT L.P., WHITEHALL PARALLEL GLOBAL REAL ESTATE LIMITED PARTNERSHIP 2007, W2007 FINANCE SUB, LLC, W2007 GRACE I, LLC, and PFD HOLDINGS, LLC, Defendants.	No. 2:13-cv-2777 (SHM/DKV)

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION

Your legal rights might be affected by the Settlement if you were/are an owner of W2007 Grace Preferred Stock AND

(1) as of August 22, 2014 you held and through the Merger Effective Time continue to hold Series B or Series C Preferred Stock (the "Holder Class"); and/or,

(2) you sold some or all of your Preferred Stock between October 25, 2007 and October 8, 2014, inclusive, and suffered a loss (the "Seller Class").

PLEASE READ THIS NOTICE CAREFULLY. A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION. YOU HAVE NOT BEEN SUED.

This notice advises you of a proposed settlement ("Settlement") of a class action lawsuit brought by David Johnson, Patrick Lynch, Roberto Verthelyi and Frederick Shearin on behalf of themselves and as representatives of certain owners of 8.75% Series B Cumulative Preferred Stock ("Series B Preferred Stock") and/or 9.00% Series C Cumulative Preferred Stock ("Series C Preferred Stock") (collectively, the "Preferred Stock") of W2007 Grace Acquisition I, Inc. (the "Company" or "W2007 Grace"). The class action lawsuit is referred to as the "Action." The Action was brought against the Defendants named in the above-captioned action. Named Plaintiffs and Defendants are referred to as the "Parties." Capitalized terms used in this Notice will have the same meanings as those definitions in the Stipulation of Settlement ("Stipulation").

In full and complete settlement of the claims asserted by members of the Classes in the Action, and in consideration of the releases specified in the Stipulation, the Stipulation provides for the following:

With respect to the Holder Class, W2007 Grace shall present for approval by the holders of the Preferred Stock, as more fully described in the Proxy Statement, a merger transaction whereby W2007 Grace will be merged with and into another entity established for the purposes of such merger and all Series B Preferred Stock and Series C Preferred Stock (except for the Excluded Shares, defined below) shall be converted into the right to receive **$26.00** per share (the "Merger"). In the aggregate, this is approximately **$62 million** to be paid to holders of Preferred Stock who are unaffiliated with any Defendant.

With respect to the Seller Class, W2007 Grace shall establish a Seller Class Settlement Fund consisting of **$6 million** in cash. The Net Seller Class Settlement Fund shall be distributed to the eligible Seller Class members pursuant to the Plan of Allocation discussed in Question 15 of this Notice.

The Holder Class does not include: Defendants and their affiliates; persons who validly exercise dissenters' rights in the Merger; and persons who validly exclude themselves from the Holder Class. The Seller Class does not include Defendants and their affiliates; persons who sold shares to Defendant PFD Holdings, LLC ("PFD") in private transactions; and persons who validly excluded themselves from the Seller Class.

Class Counsel intend to seek from the Court an order: (i) awarding reasonable fees and expenses in the aggregate amount of $4,000,000; (ii) an award of Seller Class-related litigation expenses, other than the Seller Class Notice and Administration Expenses, not to exceed $150,000, to be paid out of the Seller Class Settlement Fund; and (iii) granting payment of a case contribution award in the amount of $7,500 to each Named Plaintiff for the time and expenses incurred in bringing and litigating this Action. If approved by the Court, reasonable fees and expenses for attorneys' fees, certain litigation expenses and the case contribution awards will be paid by W2007 Grace separately so as not to diminish the settlement consideration being paid to the members of the Classes.

As with any lawsuit, the Parties would face an uncertain outcome if the Action was not settled. Continued litigation of the Action could result in: the dismissal of all or a portion of the claims asserted in the Action; the denial of the certification of the Action as a class action; findings that, as a matter of law and/or fact, the holders of Preferred Stock are not damaged by misconduct of any Defendants; rulings that the evidence does not support the claims and damages alleged or evidence illegal or actionable wrongdoing by any Defendant; or, a judgment or verdict for greater or less than the recovery secured by the Settlement, or, no recovery at all. This Action has been highly contested from the outset. Named Plaintiffs and Defendants disagree about whether the Defendants did anything wrong, and disagree about the amount that would be recoverable if the case were tried. Defendants, among other things, have denied and continue to deny all allegations asserted in the Action and believe that they acted at all times consistent with the law. In light of the foregoing, Named Plaintiffs and Class Counsel believe that the Settlement is fair, adequate, reasonable and in the best interests of the Classes.

The United States District Court for the Western District of Tennessee (the "Court") has preliminarily approved the Settlement and has scheduled the Final Approval Hearing to evaluate the fairness and adequacy of the Settlement, and, to consider the Named Plaintiffs' request for final approval of the Settlement, for class certification, for approval of a proposed Plan of Allocation, for an award of attorneys' fees and litigation expenses, and for case contribution awards to the Named Plaintiffs. The Final Approval Hearing is scheduled for September 11, 2015, at 9:30 am in Courtroom 2 of the United States District Court for the Western District of Tennessee, Clifford David/Odell Horton Federal Building, 167 North Main Street, 11th Floor, Memphis, Tennessee 38103.

You can obtain a copy of the Stipulation and information about the Settlement by contacting Class Counsel at (866) 399-2487 (toll-free), by e-mail W2007Grace@AngeionGroup.com, or visit www.chimicles.com/W2007GraceLitigation.

Please do not contact the Court, Defendants or Defendants' counsel. They will not be able to answer your questions.

WRG

PLEASE READ THIS ENTIRE NOTICE CAREFULLY AND COMPLETELY.
IF YOU ARE A MEMBER OF ONE OR MORE OF THE SETTLEMENT CLASSES, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE.

ACTIONS YOU MAY TAKE IN THE SETTLEMENT	
IF YOU ARE A MEMBER OF THE **SELLER CLASS**, YOU MUST SUBMIT A CLAIM FORM POSTMARKED BY **SEPTEMBER 18, 2015**	Submitting the enclosed Proof of Claim Form in accordance with its instructions is the only way for members of the Seller Class to be eligible to seek payment from the Net Seller Class Settlement Fund with respect to Preferred Stock sold between October 25, 2007 and October 8, 2014, inclusive, for which a loss was suffered. **Seller Class members who do not complete and timely submit the Proof of Claim Form will be bound by the Settlement but will not participate in any distribution of the Net Seller Class Settlement Fund.**
IF YOU ARE A MEMBER OF THE **HOLDER CLASS**, YOU MUST SUBMIT A LETTER OF TRANSMITTAL	Submitting the Letter of Transmittal and supplying the information requested is the only way to for members of the Holder Class to be eligible to receive Merger consideration with respect to Preferred Stock owned as of August 22, 2014 and held through the Merger Effective Time. **Holder Class members who do not submit a Letter of Transmittal will be bound by the Settlement but will not participate in any distribution of Merger Consideration and/or any residual distribution from the Net Seller Class Settlement Fund.** Promptly after the Merger Effective Time, the Exchange Agent Computershare Trust Company, N.A. ("Exchange Agent") will mail to each person who immediately prior to the Merger Effective Time held record shares of Preferred Stock a Letter of Transmittal and instructions for use in effecting the surrender of such person's Preferred Stock certificates in exchange for the Merger consideration. If you do not receive the Letter of Transmittal following the Merger Effective Time, please contact Morrow & Co., LLC at (203) 658-9400 or toll-free (800) 662-5200.
EXCLUDE YOURSELF FROM THE SELLER CLASS OR HOLDER CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN **AUGUST 21, 2015.**	If you are a member of either of the Classes, you have the right to request exclusion (or "opt-out") from either or both of the Classes. If you timely and validly opt-out from either or both of the Classes, you will not be bound by the Settlement. But, you will also not receive any distribution (residual or otherwise) from the Net Seller Class Settlement Fund. By submitting a Letter of Transmittal, holders of Preferred Stock will release the claims set forth in the Letter of Transmittal.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN **AUGUST 21, 2015.**	If you believe that the Settlement is objectionable, you may submit a written statement explaining your objections to the Court and counsel. You cannot object to a Settlement unless you are a Class member and have not excluded yourself from any of the Classes.

ATTEND THE FINAL APPROVAL HEARING ON **SEPTEMBER 11, 2015 at 9:30 a.m.**	The hearing on whether to approve the Settlement is scheduled for **September 11, 2015 at 9:30 a.m.** and is open to the public. You do not need to attend the hearing unless you wish to speak either in support of the Settlement or in support of any objection you may have filed, in which case you must file a Notice of Intention to Appear so that it is received no later than **August 28, 2015**. The Court may postpone the Final Approval Hearing without prior notice on the date scheduled for the hearing.
DO NOTHING.	You will not be eligible to receive any payment if you are (i) a member of the Seller Class and do not timely submit a complete Proof of Claim Form postmarked by **September 18, 2015**, and/or (ii) a member of the Holder Class and do not submit a complete Letter of Transmittal. You will, however, be bound by the Settlement.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why did I receive this Notice?

The Court authorized this Notice to be sent to you because you or someone in your family or household may have been a current or former holder of Preferred Stock who may be a member of the Holder Class and/or Seller Class. The Court directed us to send you this Notice because the Court preliminarily approved the Settlement and as a potential member of one or more of the Classes you have a right to know about the proposed Settlement. If the Court approves the Settlement and the Settlement becomes final, the Settlement consideration shall be paid in accordance with the Stipulation and Plan of Allocation, and all Released Parties shall be released from all Released Claims, as set forth in the Stipulation and summarized in response to Question 11 below.

This Notice also informs you of the Action, the Settlement, your legal rights, what benefits are available under the Settlement, who is eligible for them, and how you may receive your portion of the benefits. The Notice also informs you of the Final Approval Hearing which will be held on September 11, 2015, at 9:30 a.m., before the Honorable Samuel J. Mays, Jr. of the United States District Court for the Western District of Tennessee, Clifford David/Odell Horton Federal Building, 167 North Main Street, 11th Floor, Memphis, Tennessee 38103, to determine:

(a) whether the Settlement should be approved as fair, reasonable and adequate;
(b) whether the Action should be dismissed with prejudice pursuant to the terms of the Stipulation;
(c) whether the Classes should be certified for the purposes of the Settlement only and whether Named Plaintiffs and their Counsel should be appointed as Class Representatives and Class Counsel, respectively;
(d) whether the proposed Plan of Allocation should be approved as fair and reasonable; and,
(e) whether Class Counsel's motion for an award of attorneys' fees and expenses, and payment of the case contribution awards for Named Plaintiffs should be approved.

2. Why the Action is called a "class action"?

In a class action, one or more plaintiffs, called "Named Plaintiffs," sue on behalf of people who have similar claims. Named Plaintiffs are suing on behalf of two "classes" of certain current and former holders of Preferred Stock. A class action allows the claims of all class members to be heard even though the amount involved may not be large enough for the individual class member to incur the expense of bringing his or her own action.

3. What is the Action about?

On September 13, 2013, the Action was commenced in the Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District at Memphis ("State Court") against Defendants, alleging that subsequent to October 25, 2007, Defendants undertook a course of conduct in breach of their contractual, fiduciary and statutory duties to the owners of the Company's 8.75% Series B Cumulative Preferred Stock ("Series B Preferred Stock") and 9.00% Series C Cumulative Preferred Stock ("Series C Preferred Stock" and collectively with the Series B Preferred Stock, "Preferred Stock"). On October 2, 2013, Named Plaintiffs filed an Amended Complaint in State Court.

On October 4, 2013, Defendants removed the Action to the United States District Court for the Western District of Tennessee (the "Court"). On November 6, 2013, Named Plaintiffs moved to remand the Action to State Court. Defendants filed their opposition to the Motion to Remand on December 6, 2013, and Named Plaintiffs filed their reply to the Motion to Remand on December 20, 2013. The Court denied the Motion to Remand on July 28, 2014.

On January 23, 2014, Defendants moved to dismiss the Action in its entirety, asserting that certain of Named Plaintiffs' claims were untimely, that Defendants did not owe any fiduciary duties to holders of Preferred Stock, and to the extent fiduciary, contractual or statutory duties existed, Defendants complied fully with the relevant duties. Named Plaintiffs filed their

opposition to the Motion to Dismiss on March 21, 2014, and Defendants filed their reply to the Motion to Dismiss on April 25, 2014. The Court did not rule on Defendants' Motion to Dismiss.

On February 7, 2014 the Court issued a Scheduling Order, as thereafter amended, in which the Court, among other things, set deadlines for merits and expert discovery and class certification issues. The Parties immediately engaged in merits discovery, including, among other things, exchanging requests for production of documents and interrogatories, serving objections and responses to those requests, as well as serving document subpoenas on third parties. The Defendants and third-parties produced documents in response to those requests, which Named Plaintiffs and their consultants reviewed and analyzed.

On May 16, 2014, Named Plaintiffs moved for class certification pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure. Beginning on May 16, 2014, the Parties engaged in class certification discovery, including the exchange of document requests and objections and responses to those requests, as well as taking deposition testimony from each of the Named Plaintiffs. The Court did not rule on Plaintiffs' class certification motion.

On June 2, 2014, it was announced that subsidiaries of certain Defendants entered into an agreement to sell their 126 hotels for a combined purchase price of $1.925 billion, subject to certain adjustments, to affiliates of ARC Hospitality (the "ARC Transaction"). Thereafter, Named Plaintiffs made requests for, and Defendants provided to Named Plaintiffs, information regarding the ARC Transaction. Among other information provided to and analyzed by Class Counsel, Defendant W2007 Grace estimated a reasonable fair present valuation of the ARC Transaction to be approximately $18.50 per share of Preferred Stock. As was noted, there was no guarantee that the ARC Transaction would be consummated or consummated without modification downward to its price.

The Parties continued to engage in discovery, including the exchange of information and documents directed to the merits of Named Plaintiffs' claims and Defendants' defenses thereto, in addition to the terms and conditions of the ARC Transaction. Furthermore, Named Plaintiffs worked with two consultants to review and analyze all the documents and information produced. Named Plaintiffs continued with additional discovery, including conducting interviews of key Defendants, through to the time of the execution of the Stipulation.

Named Plaintiffs, through Class Counsel, held numerous in-person and telephonic settlement discussions and arm's-length negotiations with Defendants' Counsel beginning in early June, 2014. On August 20, 2014, after these extensive arm's-length negotiations, the Parties entered into a confidential non-binding Memorandum of Understanding ("MOU"), which set forth certain terms of a proposal to settle all claims asserted against Defendants in the Action on behalf of certain current and former holders of Preferred Stock. The Settlement remained contingent upon, among other things, negotiation of the terms of the Stipulation and completion of additional discovery relating to, among other things, the claims alleged in the Action, the defenses asserted by Defendants, the ARC Transaction, and the terms of the Stipulation. On August 22, 2014, the Parties notified the Court of the proposed settlement and requested that the Court hold the Action in abeyance until the Parties' submission of the Stipulation and the Court's ruling on the Preliminary Approval Order. The Court agreed to stay all pending deadlines, including deadlines for fact discovery, and the MOU was publicly announced.

Thereafter, extensive arm's-length negotiations between Defendants' Counsel and Class Counsel continued with respect to negotiating the terms of the Stipulation. On October 8, 2014, the Stipulation of Settlement and other settlement-related documents were finalized, and thereafter submitted to the Court.

The Parties continued with the exchange of information about, among other things, the ARC Transaction and the operations of W2007 Grace. On November 13, 2014 it was announced that the terms of the ARC Transaction were amended to reflect, among other things, that ARC would purchase 116 of the 126 hotels for $1.808 billion. The Parties exchanged information about the revised ARC Transaction. The ARC Transaction was consummated on February 27, 2015. On March 30, 2015, it was announced that W2007 Equity Inns Senior Mezz, LLC ("Senior Mezz") had entered into a contract (the "Excluded Hotel Sale Agreement") to sell the 10 hotels which were not included in the ARC Transaction (the "Excluded Hotel Assets") for a combined purchase price of $100 million. On May 6, 2015 the Excluded Hotel Sale Agreement was terminated by the purchasers. While the Excluded Hotel Assets are expected to be sold, there can be no assurance as to whether or when the

Excluded Hotel Assets will be sold, the form of consideration which may be received in respect of the Excluded Hotel Assets, or whether the consideration which may be received in respect of the Excluded Hotel Assets will be greater or less than the purchase price in the Excluded Hotel Sale Agreement. Even if a transaction for the Excluded Hotel Assets does occur, there can be no assurance as to when a distribution from such sale proceeds would be received by the Company.

Subsequent to entering into the Stipulation of Settlement, the Parties continued to exchange information, including with respect to W2007 Grace's financial condition and W2007 Grace's estimate of the present valuation of the proceeds from the ARC Transaction. W2007 Grace estimated the present valuation of the proceeds to be received in the ARC Transaction to be approximately $19.23 per share of Preferred Stock (applying a 15% discount rate and assuming interest on the seller financing portion of the consideration is collected monthly and 50% of the principal amount of the seller financing portion of the consideration payable in the ARC Transaction is collected 36 months after the closing of the ARC Transaction and the remaining 50% of the principal amount of the seller financing portion of the consideration payable in the ARC Transaction is collected 48 months after the closing of the ARC Transaction), or approximately $22.46 per share of Preferred Stock (without applying any present value discount to the repayment of the principal amount of the seller financing portion of the consideration payable in the ARC Transaction and excluding interest payable on the seller financing portion of the consideration payable in the ARC Transaction).

Assuming the proceeds that would be received in respect of the Excluded Hotel Assets equal the $100.0 million that was provided for in the Excluded Hotel Sale Agreement (which has since been terminated) less $2 million of estimated transaction expenses (not taking into account in each case any present value discount), W2007 Grace estimated that the potential proceeds that would be received in respect of such hotels would result in approximately $0.50 per share of Preferred Stock, or approximately $19.73 per share when combined with the estimated present value of the proceeds that could be distributed to holders of the Preferred Stock as a result of the ARC Transaction as described above, or approximately $22.96 per share of Preferred Stock without applying any net present value discount of the seller financing portion of the consideration in the ARC Transaction as described above.

The foregoing presentation of the amount of proceeds from the ARC Transaction per share of Preferred Stock disregards that W2007 Grace Acquisition I, Inc. only has a 1% ownership interest in W2007 Equity LP, the subsidiary that indirectly owned the 106 hotels and which owned a 99% ownership interest in the other 20 Trust hotels.

Class Counsel and their consultants conducted extensive legal and factual investigations of Defendants' actions and of the alleged losses suffered by the members of the Classes as a result of Defendants' conduct alleged in the Action. Based on that investigation and discovery, Class Counsel concluded that the Settlement as reflected in the Stipulation is fair, reasonable and adequate, and in the best interest of the Classes.

On April 30, 2015, the Court entered an order preliminarily approving the Settlement, conditionally certifying the Classes for settlement purposes, authorizing the mailing of this Notice to potential Class members and the publication of the Summary Notice, and scheduling the Final Approval Hearing.

4. Why is there a Settlement?

Although Named Plaintiffs believe that the claims asserted in the Action have merit, Named Plaintiffs and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendants through class certification, trial and appeals. Named Plaintiffs and Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation. Furthermore, Named Plaintiffs and Class Counsel are mindful of the inherent problems of proof of, and the possible defenses to, class certification as well as the claims alleged in the Action.
Moreover, Class Counsel and their consultants thoroughly considered and assessed the evidence uncovered about the claims alleged in the Action and events that occurred after October 25, 2007, including:

- The rights and entitlements of holders of Preferred Stock under the applicable law and the W2007 Grace Charter.

- The impact of the financial crisis during relevant times on the financial condition of W2007 Grace, actions taken by Defendants, and losses incurred by members of the Classes.
- The purchases of Preferred Stock by PFD, which occurred in direct, private transactions, pursuant to negotiated contractual arrangements.
- The refinancing and purchase option transactions, including the terms of the loan covenants that precluded the payment of dividends.
- The impact of the refinancing and purchase option transactions on W2007 Grace and the Preferred Stock.
- The special meetings for the election by the holders of Preferred Stock of director nominees to the board of directors, for which paid proxy solicitors were unable to secure quorum.
- The information or lack thereof made available to holders of Preferred Stock after October 25, 2007.
- The information publicly available prior to October 25, 2007, including information about the financing of the Equity Inns merger and the payment of dividends.
- The transactions that occurred prior to October 25, 2007, including the change of the equity interest of the holders of Preferred Stock.
- The passage of time between the occurrence of certain events and the availability of information, and the filing of the complaints, and its impact on the timeliness or mootness of the claims.
- The Company has no obligation under the Charter to distribute the proceeds of any sale of assets.
- An assessment of the ARC Transaction, which was a fully-priced but contingent transaction for which there was no guarantee of a closing, or closing without a downward adjustment to the purchase price.
- The ARC Transaction is contingent upon seller financing which delays payment of cash consideration and creates additional risk about whether the seller financing will ultimately be paid.
- That the holders of the Preferred Stock will receive as a result of the Settlement a priority for all value attributable to W2007 Equity LP in the ARC Transaction, notwithstanding their 1% interest in the W2007 Equity LP.
- Even if the refinancing and purchase option transactions had not been entered into, the ARC Transaction may not have resulted in any distribution to holders of Preferred Stock.
- The current assets of W2007 Grace are not sufficient to satisfy the liquidation preference and accrued and unpaid dividends.
- But for the Settlement, W2007 Grace could engage in another transaction which would likely result in a payment of less than $26 per share of Preferred Stock in respect of such shares.
- That a sale of the Company's assets does not constitute a liquidation under the Charter, therefore there is no obligation of W2007 Grace to pay the redemption price or accrued dividends to holders of the Preferred Stock upon the sale of assets in the ARC Transaction (or, for any future sale of assets, consolidation, merger or share exchange absent the consummation of the ARC Transaction).

Accordingly, Class Counsel have concluded that the proposed Settlement is reasonable particularly in that the Settlement consideration, including the $26 per share for the Preferred Stock held by the Holder Class and the $6 million cash Seller Class Settlement Fund, represents an amount that is a fair compromise of the issues in dispute. Based on their investigation and evaluation, Class Counsel have determined that the Settlement is in the best interests of Named Plaintiffs and the other members of the Classes.

5. Who is included in the Classes?

The Court has preliminarily certified this Action to proceed as a Class Action for purposes of Settlement. The Classes are:

The Holder Class: Any and all persons or entities that, as of August 22, 2014 and through the Merger Effective Time, hold 8.75% Series B Cumulative Preferred Stock and/or 9.00% Series C Cumulative Preferred Stock issued by W2007 Grace Acquisition I, Inc. (collectively, the "Preferred Stock"), excluding: (a) Defendants and their affiliates, and (b) any persons or entities that validly (i) exercised dissenters' rights in the Merger or (ii) opted out of this class (the "Holder Class"). The Merger is the merger reflected in the Merger Agreement, whereby W2007 Grace will be merged with and into Merger Sub and all Series B Preferred Stock and Series C Preferred Stock, except for the Excluded Shares, shall be converted into the right to

receive $26.00 per share. The Merger Effective Time occurs when the Tennessee Articles of Merger have been duly filed with the Secretary of State of the State of Tennessee or at such later time as may be specified in the Tennessee Articles of Merger.

The Seller Class: Any and all persons or entities that sold some or all of their Preferred Stock between October 25, 2007 and October 8, 2014, inclusive, and suffered a loss, excluding: (a) Defendants and their affiliates, and (b) any persons or entities that (i) sold shares to Defendant PFD Holdings, LLC in a private transaction or (ii) validly opted out of this class (the "Seller Class," and together with the Holder Class, the "Classes").

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A MEMBER OF ONE OR BOTH OF THE CLASSES OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU ARE A MEMBER OF THE SELLER CLASS AND WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, THEN YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM (INCLUDED WITH THIS NOTICE) POSTMARKED BY SEPTEMBER 18, 2015. SEE QUESTION 14. IF YOU ARE A MEMBER OF THE HOLDER CLASS AND WISH TO BE ELIGIBLE TO RECEIVE YOUR MERGER CONSIDERATION AND ANY RESIDUAL DISTRIBUTION FROM THE NET SELLER CLASS SETTLEMENT FUND, THEN YOU ARE REQUIRED TO RETURN THE LETTER OF TRANSMITTAL THAT WILL BE SENT TO YOU BY THE EXCHANGE AGENT.

The Settlement and Merger are contingent upon, among other things, the approval of the Merger by holders of Preferred Stock, the Court granting Final Approval of the Settlement and the final occurrence of the Effective Date of the Settlement. The Settlement is not contingent on the ARC Transaction. Even if the Court approves the Settlement, the Merger and payment to the Classes can be made only after all related appeals, if any, are favorably resolved, which can take a long time. Please be patient.

6. Who is not included in the Classes?

Excluded from both Classes are Defendants W2007 Grace, Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007, W2007 Finance Sub, LLC, W2007 Grace I, LLC and PFD, and each of their respective affiliates and Persons who validly exclude themselves from one or both Classes.

Also excluded from the Seller Class are persons who sold shares to PFD in private transactions.

Excluded from the Holder Class are Persons who hold shares of Preferred Stock that are issued and outstanding immediately prior to the Merger Effective Time and who have properly demanded and perfected their rights to be paid the "fair value" of such shares in accordance with Title 48, Chapter 23 of the Tennessee Business Corporations Act ("TBCA").

Any shares of Preferred Stock acquired after August 22, 2014 are not included in the Holder Class and will not participate in any residual distribution from the Net Seller Class Settlement Fund.

7. If I am not sure whether I'm included in the Classes, is there someone I can contact?

If, after reading this Notice and the prior sections regarding who is included in the Classes, you are still not sure whether you are included, you may contact Class Counsel at the address and telephone number listed in Question 16 of this Notice.

8. What are the Settlement's benefits?

In full and complete settlement of the claims asserted by members of the Classes in the Action, and in consideration of the releases specified in the Stipulation, the Stipulation provides for the following:

For the Holder Class, W2007 Grace shall present for approval by holders of Preferred Stock, pursuant to a Proxy Statement, a Merger transaction whereby W2007 Grace will be merged with and into another entity for purposes of effecting the transaction and all Series B Preferred Stock and Series C Preferred Stock (except for (i) shares of Series B Preferred Stock and Series C Preferred Stock owned by W2007 Grace or any of its subsidiaries and (ii) holders of shares of Series B Preferred Stock or Series C Preferred Stock who have properly demanded and perfected their rights to be paid the "fair value" of such shares in accordance with Title 48, Chapter 23 of the TBCA in respect of such shares (collectively, "Excluded Shares")) shall be converted into the right to receive **$26.00** per share. All holders of Preferred Stock should read the Proxy Statement, and all exhibits and attachments thereto, in connection with the Merger. This Notice is not a substitute or replacement for the disclosures contained in the Proxy Statement. Upon the approval of the Merger Agreement by a majority of each of the Series B Preferred Stock and the Series C Preferred Stock, voting separately, and the Court in the Final Approval Order, the satisfaction or waiver by W2007 Grace of the other conditions precedent to its obligations set forth therein, and within ten (10) business days after the Effective Date, W2007 Grace will be merged with and into Merger Sub, and each share of the Preferred Stock (except for the Excluded Shares) shall be converted into, and shall be canceled in exchange for, the right to receive $26.00 in cash, without interest. In addition, to the extent that there remains any balance in the Net Seller Class Settlement Fund after distribution to the Seller Class, that balance will be distributed pro rata to the Holder Class, as set forth in the Plan of Allocation.

For the Seller Class, W2007 Grace shall establish a Seller Class Settlement Fund consisting of **$6 million** in cash. The Seller Class Settlement Fund, after deduction of (i) Seller Class Notice and Administration Expenses, (ii) any award of Seller Class-related litigation expenses not to exceed $150,000, (iii) payments for any Taxes and Tax Expenses, and (iv) costs for escrow services, if any (the "Net Seller Class Settlement Fund"), shall be distributed to the eligible Seller Class members pursuant to the Plan of Allocation. Among other things, in order to be eligible to receive a distribution from the Net Seller Class Settlement Fund, a member of the Seller Class must complete and submit a timely Proof of Claim Form and have suffered a loss. Question 15 of this Notice discusses how the amounts to be distributed from the Net Seller Class Settlement Fund will be determined and distributed per share of Preferred Stock sold by Authorized Claimants between October 25, 2007 and October 8, 2014, inclusive. The per share distribution amount will depend on the number of shares sold by Seller Class members who submit a complete and timely Proof of Claim Form and are deemed Authorized Claimants.

As with any lawsuit, the Parties would face an uncertain outcome if the Action were not settled. Continued litigation of the Action could result in: the dismissal of all or a portion of the claims asserted in the Action; the denial of the certification of the action as a Class Action; findings that, as a matter of law and/or fact, the current and former holders of Preferred Stock are not damaged by misconduct of any Defendants; rulings that the evidence does not support the claims and damages alleged or evidence illegal or actionable wrongdoing by any Defendant; or, a judgment or verdict for greater or less than the recovery secured by the Settlement, or, no recovery at all. Because of the passage of time between when events occurred and the filing of the complaint, the Court could determine that claims of current and former holders of Preferred Stock were time barred. This Action has been highly contested from the outset. Named Plaintiffs and Defendants have disagreed about whether the Defendants did anything wrong, whether a class could be certified, and whether any amount would be recoverable if the case were tried. Defendants, among other things, have denied and continue to deny all allegations asserted in the Action and believe that they acted at all times consistent with the law.

Moreover, the Settlement removes uncertainty that current and former holders of Preferred Stock may face such as: no future payment of dividends; no future liquidating event; no payment of any liquidating distribution or a liquidating distribution in excess of the Merger Consideration, even if a qualifying liquidating event were to occur, due to the ownership and economic rights of the real estate assets; no liquidating or winding up transaction that garners purchase prices for the real estate assets at prices at or near those which were received in the ARC Transaction; changes in the real estate markets; changes in the economic markets; the availability of financing and the terms of such financing; and the continued illiquidity of the Preferred Stock. Question 8 contains additional information as to why Class Counsel, after thoroughly considering the evidence uncovered about the claims alleged in the Action and events that occurred after October 25, 2007, determined that the benefits of the Settlement outweighed the risks of continued litigation.

9. How is the Merger Related to the Settlement?

THE PROXY STATEMENT DESCRIBES THE MERGER, THE MERGER AGREEMENT, THE CHARTER AMENDMENTS AND YOUR RIGHTS IN CONNECTION WITH THE MERGER.
YOU SHOULD READ THE PROXY STATEMENT IN ITS ENTIRETY.

After extensive negotiations, the Parties reached an agreement to settle the claims of the Holder Class by and through the Merger. In the Merger W2007 Grace will be merged with and into Merger Sub, and each share of the Preferred Stock (except for the Excluded Shares) shall be converted into, and shall be canceled in exchange for, the right to receive $26.00 in cash, without interest and less any applicable withholding taxes, in accordance with the Merger Agreement.

W2007 Grace shall call a shareholder meeting (the "Shareholder Meeting") scheduled to take place on July 14, 2015 at 10:00 a.m. Central Time for the purpose of voting on the Merger Agreement and the amendment to the W2007 Grace Amended and Restated Charter (the "Charter Amendment"). A Proxy Statement has been mailed to holders of record of Preferred Stock as of the close of business on the record date, May 11, 2015. The Proxy Statement describes the Merger, the Merger Agreement, and the Charter Amendment, and your rights as a holder of Preferred Stock with respect to the Merger. All holders of Preferred Stock should read the Proxy Statement, and all exhibits and attachments thereto, in connection with the Merger. This Notice is not a substitute or replacement for the disclosures contained in the Proxy Statement. For the Merger to occur, the affirmative vote of a majority of the outstanding Series B Preferred Stock and Series C Preferred Stock, voting as separate classes, is required. For the Charter Amendment to be approved, the affirmative vote of at least 66 2/3% of votes entitled to be cast by the holders of the Preferred Stock is required. PFD, which holds approximately 59% of the outstanding shares of Preferred Stock, will vote its shares in favor of the Merger and Charter Amendment.

PFD is not expected to receive consideration in the Merger, as it is PFD's intention that, if the Merger is approved and the Effective Date of the Settlement has occurred, PFD will elect to cancel the shares of Preferred Stock it owns in lieu of accepting the merger consideration of $26.00 per share of Preferred Stock by contributing such shares of Preferred Stock to a newly formed subsidiary, which subsidiary will then be contributed to W2007 Grace immediately prior to the Merger Effective Time in exchange for newly issued shares of W2007 Grace common stock. If such election is made, such shares of Preferred Stock shall, immediately prior to the Merger Effective Time, be cancelled without payment of any consideration to PFD.

The Merger Agreement provides that, unless waived by the Company, the Merger is conditioned upon: (a) approval of the Merger and Charter Amendment by holders of Preferred Stock; (b) the Opt-Out Thresholds not being met; (c) no more than 7.5% of holders of the outstanding shares of Preferred Stock validly exercising dissenters' rights; and (d) the approval of the Stipulation by the Court and the entering of a Final Judgment in the Action that is no longer appealable (which condition may not be waived); and (e) the absence of any law or order whether temporary, preliminary or permanent, being enacted, issued, entered, promulgated or enforced by any governmental authority having jurisdiction over the parties to the Merger Agreement being in effect which makes illegal, enjoins, prohibits or otherwise prevents the consummation of the Merger and the other transactions contemplated by the Merger Agreement or the Stipulation.

The Merger is contingent upon the Effective Date of the Settlement.

10. How is the ARC Transaction Related to the Settlement?

The Settlement is not and has never been contingent on the ARC Transaction or the receipt of payments under the seller financing portion of the consideration payable in the ARC Transaction. On November 13, 2014 it was announced that the terms of the ARC Transaction were amended to reflect, among other things, that ARC would purchase 116 of the 126 hotels for $1.808 billion. In addition, the Settlement is not and has never been contingent on the sale of the Excluded Hotel Assets, nor can there be any assurance that the Excluded Hotel Assets will be sold.

Defendant W2007 Grace estimated a reasonable fair present valuation of the proceeds to be received in the ARC Transaction to be approximately $19.23 per share of Preferred Stock (applying a 15% discount rate and assuming interest on the seller

financing portion of the consideration is paid monthly and 50% of the principal amount of the seller financing portion of the consideration payable in the ARC Transaction is collected 36 months after the closing of the ARC Transaction and the remaining 50% of the principal amount of the seller financing portion of the consideration payable in the ARC Transaction is collected 48 months after the closing of the ARC Transaction), or approximately $22.46 per share of Preferred Stock (without any applying any present value discount to the repayment of the principal amount of the seller financing portion of the consideration payable in the ARC Transaction and excluding interest payable on the seller financing portion of the consideration payable in the ARC Transaction).

Assuming the proceeds that would be received in respect of the Excluded Hotel Assets equal the $100.0 million that was provided for in the Excluded Hotel Asset Agreement (which has since been terminated), less $2 million of estimated transaction expenses (not taking into account in each case any present value discount), W2007 Graces estimated that the potential proceeds that would be received in respect of such hotels would result in approximately $0.50 per share of Preferred Stock, or approximately $19.73 per share when combined with the estimated present value of the proceeds that could be distributed to holders of the Preferred Stock as a result of the ARC Transaction as described above, or approximately $22.96 per share of Preferred Stock without applying any net present value discount of the seller financing portion of the consideration in the ARC Transaction as described above.

All Class members should read the Proxy Statement which describes the ARC Transaction, in addition to the Merger, the Merger Agreement, the Charter Amendment, and your rights as a holder of Preferred Stock with respect to the Merger. This Notice is not a substitute or replacement for the disclosures contained in the Proxy Statement.

11. Am I giving up anything in order to participate in the Settlement?

As a member of the Classes, in consideration for the benefits of the Settlement, you will be bound by the terms of the Stipulation, you will release the Defendants and other Released Defendant Parties from the Released Claims, as defined below, and the Action will be dismissed.

Released Defendant Parties means Defendants, their parents, subsidiaries, affiliates, predecessors (including Equity Inns), successors, assigns, and each of their respective past or present directors, officers, partners, limited partners, owners, beneficial owners, investors, employees, agents, attorneys, financial advisors, control persons, representatives, and their predecessors, successors, and assigns. Released Claims means any and all claims (including any and all Unknown Claims), demands, actions, causes of action, obligations, debts, judgments and liabilities of any kind, nature and description, whether direct or derivative, whether at law or in equity, upon any legal or equitable theory, whether contractual, common law or statutory, whether arising under federal, state, common, or foreign law (including, without limitation, claims under the federal securities laws and regulations, claims for breach of fiduciary duty, breach of contract or corporate charter, or the misstatement of or the failure to disclose material facts), whether secured or unsecured, contingent or absolute, choate or inchoate, liquidated or unliquidated, perfected or unperfected, in any forum, including in arbitration or similar proceedings, including class, derivative, individual or other claims, that previously existed or that currently exist as of the date of the approval of the Settlement by the Court or that may arise in the future against the Released Defendant Parties, (i) related to the purchase, sale, holding or investment in, or the terms of, the securities of W2007 Grace or its predecessors (including Equity Inns), including, without limitation, the Preferred Stock; (ii) asserted, or that could have been asserted in the Action or arising out of or relating to the facts, matters and transactions alleged in the Action, including, without limitation, claims for breach of contract, claims for breach of fiduciary duties, and claims for violations of the TBCA; and/or (iii) arising out of the Merger that is a component of the Settlement, including, without limitation, claims related to the sufficiency of the merger process and the Proxy Statement, and claims for breach of the fiduciary duties; *provided* that the Released Claims do not include claims based upon the interpretation or enforcement of the terms of the Settlement.

Unknown Claims means any and all Released Claims that the Named Plaintiffs or any other member of the Holder Class or Seller Class does not know or suspect to exist in his, her or its favor at the time of the release of the Released Defendant Parties, and any Released Defendants' Claims that any Defendant or any of the other Released Defendant Parties does not know or suspect to exist in his, her or its favor at the time of the release of the Releasing Plaintiffs, which if known by him, her or it

might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Released Defendants' Claims, the Parties stipulate and agree that, upon the Effective Date, each of the Named Plaintiffs and each of the Defendants shall expressly waive, and each other member of the Classes and each of the other Released Defendant Parties will be deemed to have, and by operation of the Judgment or any Alternative Judgment will have, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or any other jurisdiction, or principle of common law that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides: A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor. Named Plaintiffs, any other member of the Holder Class or Seller Class, any Defendant or any other of the Released Defendant Parties may hereafter discover facts in addition to or different from those that he, she, or it now knows or believes to be true with respect to the subject matter of, respectively, the Released Claims and the Released Defendants' Claims, but Named Plaintiffs and Defendants shall expressly, fully, finally and forever settle and release, and each other member of the Classes and each of the other Released Defendant Parties shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendants' Claims as applicable, without regard to the existence or subsequent discovery of such different or additional facts. Named Plaintiffs and Defendants acknowledge, and each other member of the Holder Class and Seller Class and each of the other Released Defendant Parties by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendants' Claims was separately bargained for and was a key and material element of the Settlement.

12. Can I exclude myself from the Classes? How do I exclude myself?

The Court has preliminarily certified the Holder Class and the Seller Class, collectively, the "Classes," pursuant to Federal Rule of Civil Procedure 23. The members of the Classes will be bound by the Settlement and the Final Judgment unless such Person mails or delivers a written "Request for Exclusion" addressed to: *W2007 Grace Preferred Shareholder Litigation,* EXCLUSIONS, c/o Angeion Group LLC, 1801 Market Street, Suite 660, Philadelphia, PA 19103. The Request for Exclusion must be received no later than August 21, 2015. You will not be able to exclude yourself from the Classes after that date. Each Request for Exclusion must (i) state that you request exclusion from the Holder Class and/or Seller Class; (ii) state the name, address and telephone number of the Person requesting exclusion; (iii) state the identity and original face value of the Preferred Stock purchased (or otherwise acquired) or sold; (iv) state the prices or other consideration paid for the Preferred Stock; (v) state the date of each purchase and sale transaction; and (vii) state that the person wishes to be excluded from the Classes. Members of the Classes may not exclude themselves by filing requests for exclusion as a group or class, but must in each instance individually and personally execute the request.

Any member of either the Holder Class or Seller Class who or which does not submit a timely written request for exclusion as provided by this section shall, upon entry of the Final Approval Order, be bound by this Stipulation, whether or not such Person objected to the Settlement and whether or not such Person received Settlement consideration.

By requesting exclusion from the Seller Class, you would retain the right to sue or commence a proceeding against any of the Defendants or released parties in connection with any of the claims asserted in the Action, but you will not receive any portion of the consideration paid from the Net Seller Class Settlement Fund. If you request exclusion from the Holder Class, you will not receive any portion of the residual distribution from the Net Seller Class Settlement Fund. If you request exclusion from the Holder Class, you will only retain your right to sue if you also do not submit a Letter of Transmittal, which would otherwise entitle you to receive $26.00 per share in merger consideration. If you submit a Letter of Transmittal, you do not retain your right to commence a proceeding against any of the Defendants or released parties in connection with any of the claims asserted in the Action.

The Holder Class does not include any persons or entities that validly exercise dissenters' rights in the Merger. Dissenters' rights are available to holders of Preferred Stock under the TBCA in connection with the proposal to approve the merger agreement in the event that the merger is consummated. Under the TBCA, if you are a holder of Preferred Stock and do not vote in favor of the amendment to W2007 Grace's Amended and Restated Charter or the merger agreement, you have the right

to seek an appraisal of the "fair value" of your Preferred Stock, and to receive a cash payment of such fair value (provided that in no event will you be entitled to more than one payment for your shares). Shareholders electing to exercise dissenters' rights must comply with the provisions of Chapter 23 of the TBCA in order to perfect their rights. Please see the disclosure in the proxy statement under the caption "Dissenters' Rights" for a discussion of the availability of dissenters' rights and the procedures required to be followed to assert these rights in connection with the proposal to approve the merger agreement.

ANYONE CONSIDERING REQUESTING EXCLUSION SHOULD CONSULT WITH THEIR PERSONAL ATTORNEY CONCERNING THE IMPLICATIONS OF EXCLUSION FROM THE CLASS AND THE ABILITY TO BRING YOUR OWN LAWSUIT, IF ANY.

13. What do I have to do to receive my portion of the Merger Consideration?

In order to receive the Merger Consideration you must complete and return the Letter of Transmittal that will be sent to you by the Exchange Agent promptly after the Merger Effective Time. After the Merger is completed, the Exchange Agent will send holders of Preferred Stock a formal Letter of Transmittal and written instructions for exchanging stock certificates for the Merger consideration. Holders of Series B Preferred Stock and Series C Preferred Stock will not be entitled to receive the Merger consideration until after they surrender their certificate or certificates (or otherwise comply with the process in the event of lost certificates) to the Exchange Agent, together with a duly completed and executed Letter of Transmittal and any other documents the Exchange Agent may reasonably require. The Letter of Transmittal will contain a broad release from all claims (known or unknown), whether individual, direct, class, derivative, representative, legal, equitable, or any other type or in any other capacity, by holders and former holders of Series B Preferred Stock and Series C Preferred Stock (1) related to their purchase, sale, holding or investment in, or the terms of, the securities of the Company or its predecessors, including, without limitation, the Preferred Stock, (2) claims asserted or that could have been asserted in the Action, or arising out of or relating to the facts, matters and transactions alleged in the Action, including, without limitation, claims for breach of contract, claims for breach of fiduciary duties, claims for violations of the TBCA, and/or (3) arising out of the Merger that is a component of the Stipulation, including, without limitation claims related to the sufficiency of the Merger process and the Proxy Statement, and claims for breach of the fiduciary duties. The Letter of Transmittal contains important terms relating to the Merger and should be reviewed carefully in its entirety.

More complete instructions are included on the Letter of Transmittal. If you do not receive the Letter of Transmittal following the Merger Effective Time, please contact Morrow & Co., LLC at (203) 658-9400 or call toll-free at (800) 662-5200.

14. What do I have to do to receive my portion of the Net Seller Class Settlement Fund?

In order to receive a portion of the Net Seller Class Settlement Fund you must complete and return the Proof of Claim form that accompanied this Notice. Your completed and signed Proof of Claim form must be mailed to the claims administrator at the address indicated on the Proof of Claim form on or before September 18, 2015. A Proof of Claim Form shall be deemed to be submitted when mailed, if received with a postmark indicated on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in accordance with the instructions on the Proof of Claim Form. If a Proof of Claim form did not accompany this Notice you may obtain a copy by contacting the claims administrator at (877) 386-1776 or W2007Grace@AngeionGroup.com. **More complete instructions are included on the Proof of Claim**.

The Claims Administrator shall determine each Authorized Claimant's share of the Net Seller Class Settlement Fund based upon each Authorized Claimant's Recognized Loss, as defined in the Plan of Allocation, which is discussed in Question 15. Keep in mind that if the portion of the Net Seller Class Settlement Fund to which you would otherwise be entitled is less than $24.00 no distribution will be made due to the cost of distributing and accounting for small settlement amounts.

Any member of the Seller Class who fails to submit a Proof of Claim by September 18, 2015 shall be forever barred from receiving any payment from the Net Seller Class Settlement Fund (unless, by order of the Court, a later-submitted Proof of

Claim Form by such Person is approved), but shall in all other respects be bound by all of the terms of the Settlement, including the terms of the Final Judgment to be entered in the Action, and will be barred from bringing any action as described in Question 11.

15. How will the Net Seller Class Settlement Fund be distributed? What is the Plan of Allocation?

After approval of the Settlement by the Court and upon satisfaction of the other conditions to the Settlement, the Net Seller Class Settlement Fund will be distributed to the Authorized Claimants in accordance with the Plan of Allocation approved by the Court. Under the terms of the Settlement and the proposed Plan of Allocation, your share of the Net Seller Class Settlement Fund will depend on: (1) your membership in the Seller Class; (2) the number of shares of Preferred Stock you owned and sold between October 25, 2007 and October 8, 2014, inclusive; (3) the prices at which you purchased and sold the Preferred Stock; (4) whether you had any losses in the purchase and sale of the Preferred Stock; (5) the expense of administering the claims process; (6) any expenses awarded by the Court in an amount not to exceed $150,000; (7) interest income received and taxes paid by the Net Seller Class Settlement Fund; and (8) the number of shares of Preferred Stock held by other members of the Seller Class who submit timely and valid Proof of Claim Forms.

The Net Seller Class Settlement Fund will not be distributed until the Court has approved a plan of allocation, and the time for petition for rehearing, appeal or review, whether by certiorari or otherwise, of the Final Judgment has expired. Neither the Defendants nor any other person or entity that paid any portion of the Net Seller Class Settlement Fund on any of their behalves are entitled to get back any portion of the Net Seller Class Settlement Fund once the Court's orders or judgments approving the Settlement become final.

The Net Seller Class Settlement Fund will be distributed in accordance with a Plan of Allocation. The purpose of the Plan of Allocation is to divide the Settlement proceeds equitably among the members of the Seller Class, taking into account such factors as the relative strength of the claims and the total claimed damages arising from the conduct complained of by the Seller Class in the Action. The Plan of Allocation, which is Exhibit 5 to the Stipulation, is described in more detail here:

PLAN OF ALLOCATION

The Plan of Allocation governs: (A) The distribution of the Net Seller Class Settlement Fund to Authorized Claimants from the Seller Class. The "Net Seller Class Settlement Fund" means the gross Seller Class Settlement Fund ($6,000,000 plus any interest earned thereon) less: (i) Seller Class Notice and Administration Expenses; (ii) any award of Seller Class-related litigation expenses not to exceed $150,000; (iii) payments for any Taxes and Tax Expenses; and (iv) costs for escrow services, if any; and (B) The distribution of any residual balance (whether by reason of tax refunds, uncashed checks, or otherwise) in the Net Seller Class Settlement Fund ("Residual") to the Holder Class ("Residual Distribution to Holder Class").

Proof of Claim Process. The Seller Class member must complete and sign the Proof of Claim Form and timely return it to the Claims Administrator. Submission of the Proof of Claim Form does not guarantee that the Seller Class member will share in the Net Seller Class Settlement Fund. Furthermore, any member of the Seller Class who or which fails to submit a Proof of Claim Form by such date shall be barred from receiving any distribution from the Net Seller Class Settlement Fund or payment (unless late-filed Proof of Claim Forms are accepted by an Order of the Court), but shall in all other respects be bound by any and all terms of the Stipulation.

Determination of Authorized Claimants. In addition to having submitted a timely, complete and executed Proof of Claim Form, in order for a member of the Seller Class to be considered an Authorized Claimant, the Claims Administrator must determine whether the Seller Class member is eligible for payment from the Net Seller Class Settlement Fund based upon that Seller Class member's Recognized Loss, which is determined as follows. The Court has reserved jurisdiction to allow, disallow or adjust the claim of any Class Member on equitable grounds. Payment pursuant to the Plan of Allocation shall be conclusive against all Authorized Claimants.

Damages and Recognized Loss. Class Counsel and its experts calculated the potential recoverable damages realized by members of the Seller Class who owned Preferred Stock as of October 25, 2007 that arose from the continuing harm created by the restricted access to timely, accurate and complete financial information. The fixed damage per share to the Series B Preferred Stock that was held as of October 25, 2007 and sold between October 25, 2007 and October 8, 2014, inclusive (the "Class Period") equals $4.19. The damage per share to the Series C Preferred Stock that was held as of October 25, 2007 and sold during the Class Period equals $4.00. The damages per share takes into account, among other things, the liquidating distribution amounts of $17.50 and $17.00 per share of Series B and Series C, respectively, the weighted average reported trading and between October 25, 2007 and June 29, 2008, and per share adjustments for certain industry specific market changes.

Class Counsel and its experts also calculated and determined that there was a fixed amount of potential recoverable damages realized by members of the Seller Class who purchased shares of Preferred Stock after October 25, 2007 and sold such shares of Preferred Stock during the Class Period ("In and Out Transactions"). The determination of damage to the In and Out Transactions recognizes that both the purchase and sale decisions were made with full knowledge of the restricted access to timely, accurate and complete financial information. The damage per share to In and Out Transactions equals $0.23 in the Series B Preferred Stock and $0.31 in the Series C Preferred Stock. The damages per share takes into account, among other things, the liquidating distribution amounts, estimated market losses realized through In and Out Transactions compared to the estimated imputed market losses to shares of Preferred Stock that were held on October 25, 2007 and sold during the Class Period.

For purposes of distribution of the Net Seller Class Settlement Fund, Recognized Loss per Share may not equal the fixed damage per share described above.

a) Recognized Loss per share of Series B Preferred Stock that was held as of October 25, 2007 and sold during the Class Period will equal the lower of: (i) the imputed market loss and (ii) $4.19. Imputed market loss per share of Series B Preferred Stock is calculated as $17.50, the Liquidating Distribution amount, less the actual sale price per share.
b) Recognized Loss per share of Series C Preferred Stock that was held as of October 25, 2007 and sold during the Class Period will equal the lower of: (i) the imputed market loss and (ii) $4.00. Imputed market loss per share of Series C Preferred Stock is calculated as $17.00, the Liquidating Distribution amount, less the actual sale price per share.
c) Recognized Loss per share of In and Out Transactions in the Series B Preferred Stock will equal the lower of: (i) the actual market loss and (ii) $0.23.
d) Recognized Loss per share of In and Out Transactions in the Series C Preferred Stock will equal the lower of: (i) the actual market loss and (ii) $0.31.
e) In and Out Transactions where a gain was realized (e.g. the sale price was greater than the purchase price) will have a zero Recognized Loss. Market loss for In and Out Transactions will be calculated on an Average Cost inventory method.

The Net Seller Class Settlement Fund shall be distributed to the Authorized Claimants *pro rata* determined by the Recognized Loss per share.

The foregoing takes into account the allegations made in the Action with respect to shares of Preferred Stock sold after October 25, 2007, the discovery taken, consultation with experts, the potential, recoverable damages of the Seller Class, and that the claims of those who sold Preferred Stock primarily related to the allegations that: (a) after October 25, 2007, Defendants restricted access by the Seller Class to timely, accurate and complete financial information; and (b) members of the Seller Class may have sold their shares to Defendant PFD Holdings. Class Counsel considered the legal and factual support for such allegations, including that the discovery taken revealed that the restrictions and dearth of timely information could not have been anticipated from the disclosures made prior to October 25, 2007 about W2007 Grace ceasing to be a publicly reporting company, and, that PFD acquired Preferred Stock pursuant to private transactions, not from members of the Seller Class. Class Counsel also recognized, and took into account in determining the Recognized Loss for the Seller Class, the impact of the

global financial crisis that occurred during the Class Period, which caused impairment in the share value of all hospitality real estate entities, the effects of which cannot be attributable to any alleged wrongdoing of Defendants.

Net Loss Required. For any member of the Seller Class to be eligible to receive a distribution from the Net Seller Class Settlement Fund, the Seller Class member must have a net loss, after all profits from transactions in Preferred Stock during the Seller Class Period are subtracted from all losses.

Transfers by Operation of Law. If an Authorized Claimant acquired the Preferred Stock by means of a gift, inheritance, assignment, devise, or operation of law, the Authorized Claimant's Recognized Loss will be calculated by using the date and price of the original purchase and not the date of transfer.

Approximate Allocation Per Share. Based on the information currently available to Plaintiffs and the analysis performed by their expert the estimated average allocation from the Seller Class Settlement Fund per share:

- of Preferred Stock held as of October 25, 2007 and sold during the Seller Class Period would be approximately $3.28 per share; and,
- of Preferred Stock in In and Out Transactions would be approximately $0.20 per share.

These are only estimates, and they assume that valid and timely Proof of Claim Forms are submitted with respect to 30% of the eligible Seller Class Preferred Shares with a Recognized Loss and that the Court awards Seller Class-related litigation expenses of $150,000. These estimates do not take into account Seller Class Notice and Administration Expenses which will reduce the Seller Class Settlement Fund. If valid and timely Proof of Claims for more eligible Seller Class Preferred Shares with a Recognized Loss are submitted, the estimated average allocation per share will be lower.

Minimum Distribution. No distributions will be made to Seller Class Authorized Claimants who would otherwise receive a distribution from the Net Seller Class Settlement Fund of less than $24.00.

Subsequent Distribution. If there is any balance in the Net Seller Class Settlement Fund after one hundred and twenty (120) calendar days from the date of distribution of the Net Seller Class Settlement Fund to Authorized Claimants, then, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their distributions, any balance remaining shall be re-distributed among Authorized Claimants in an equitable and economic manner, if feasible, until all Authorized Claimants have recovered 100% of their Recognized Losses.

Residual Distribution to Holder Class. If, after the Subsequent Distribution and the payment in full of all Seller Class Claims Administration Fees and Expenses has occurred, there remains any residual balance in the Net Seller Class Settlement Fund ("Residual"), then the Residual shall be distributed by the Class Administrator *pro rata* to the Holder Class, as set forth in the Plan of Allocation, subject to their being a sufficient Residual to effectuate such distribution. No Proof of Claim Form will be required from any member of the Holder Class in order to participate in the Residual Distribution to Holder Class and to receive, if any, a *pro rata*, allocation of the Residual.

***Cy Pres* Distribution.** Defendants retain no interest in or right to any amount remaining in the Seller Class Settlement Fund. If any balance remains in the Net Seller Class Settlement Fund after all distributions provided for in the Plan of Allocation are made, such balance shall be disbursed in accordance with Class Counsel's suggestions pursuant to *cy pres* principles and as approved by the Court.

16. Do I have a lawyer in this case?

Yes, Class Counsel for Named Plaintiffs and the Classes is:

Nicholas E. Chimicles
Kimberly M. Donaldson Smith
Catherine Pratsinakis

Chimicles & Tikellis LLP
361 West Lancaster Avenue
Haverford, PA 19041
Phone: (610) 642-8500 or (866) 399-2487 (toll-free)
Website: www.chimicles.com/W2007GraceLitigation

There is no need to retain your own lawyer. If you want to be represented by your own lawyer you may hire one at your own expense and your lawyer must file with the Court an Intention to Appear as described in Question 21.

17. Will being a member of the Classes cost me anything?

You will not be charged by Class Counsel for representation and will not be asked to pay anything. Class Counsel will ask the Court to award them reasonable attorneys' fees and expenses (described in Question 18) which amount will be paid by W2007 Grace, and will not be deducted from any of the Settlement consideration, except for an award of Seller Class-related litigation expenses not to exceed $150,000 which will be deducted from the Seller Class Settlement Fund.

18. How much will Class Counsel be paid?

Class Counsel intend to seek from the Court an order: (i) awarding reasonable fees and expenses in the aggregate amount of $4,000,000 to be paid by W2007 Grace; (ii) an award of Seller Class-related litigation expenses not to exceed $150,000, to be paid out of the Seller Class Settlement Fund; and (iii) granting payment by W2007 Grace of a case contribution award in the amount of $7,500 to each Named Plaintiff for the time and expenses incurred in bringing and litigating this Action. If approved by the Court, reasonable fees and expenses for attorneys' fees, certain litigation expenses and the Case Contribution Awards will be paid by W2007 Grace separately so as not to diminish the settlement consideration being paid to the members of the Classes. To date, Class Counsel have not received any payment for their services in prosecuting the Action, nor have Class Counsel been reimbursed for the litigation expenses.

19. Can I object to all or part of the Settlement?

If you believe that you have reason to do so, as a member of one or both of the Classes, you may make a written submission to the Court setting out the nature of your objection to the Settlement, the application for an award of attorneys' fees and litigation expenses, and/or the case contribution awards. In order for your objection to be considered, you must comply with the following procedures.

On or before August 21, 2015, you must file with the Clerk of the Court, United States District Court for the Western District of Tennessee, Clifford David/Odell Horton Federal Building, 167 North Main Street, Memphis, Tennessee 38103, a statement or letter setting forth what you are objecting to and the reasons for your objection, and including copies of any supporting documentation. Your filing should include:

(a) The case name and number: *Johnson, et al.* v. *W2007 Grace Acquisition I, Inc., et al,* Civil Action No. 2:13-cv-2777(SHM), United State District Court, Western District of Tennessee;
(b) Your name, address, telephone number and signature;
(c) Which of the Classes (Holder or Seller, or both) you are a member of;
(d) The number of shares of Preferred Stock owned at the time of the objection, if any;
(e) The Preferred Stock purchased and sold, and at what prices, from October 25, 2007 to the date of the objection, if any;
(f) The reason(s) you object to the Settlement (or to a particular part of the Settlement);
(g) All legal support or documentation you wish to bring to the Court's attention in support of your objection; and,
(h) A list of all other objections submitted by you or your counsel to any class action settlements in any court in the United States in the previous five years. If you or your counsel have not so objected so state in the objection.
(i) If you wish to appear in person at the Settlement Hearing you must also file a Notice of Intention to Appear with the

Court as described in Question 21.

You must also, on or before August 21, 2015, provide to counsel for the Parties, either in person or by mail, copies of all papers you are filing with the Clerk of the Court at the following addresses:

To Class Counsel	**To Defendants' Counsel**
Kimberly M. Donaldson Smith	Sharon L. Nelles
Chimicles & Tikellis LLP	Sullivan & Cromwell LLP
361 West Lancaster Avenue	125 Broad Street
Haverford, PA 19041	New York, New York 10004-2498

Any Class Member may attend the Final Approval Hearing, but only those Class Members who comply with the provisions hereof will be permitted to raise any objection to the proposed Settlement and only those who have filed with the Clerk and sent to Counsel a Notice of Intention to Appear (see Question 21) will be allowed to speak at the Settlement Hearing.

Upon the filing of an objection, Class Counsel may take the deposition of the objecting Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for a deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

Because any appeal by an objecting Class Member would delay the payment under the Settlement, Class Counsel may seek a cash bond to be set by the district court sufficient to account for, among other things, damages to the Classes, including lost interest, caused by the delay.

UNLESS OTHERWISE ORDERED BY THE COURT, ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED ABOVE WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM OBJECTING TO THE PROPOSED SETTLEMENT AND THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES AND CASE CONTRIBUTION AWARDS.

20. When and where will the Court consider whether to approve the Settlement?

The Court will hold a Final Approval Hearing on September 11, 2015 at 9:30 a.m. in Courtroom 2 of the United States District Court for the Western District of Tennessee, Clifford Davis/Odell Horton Federal Building, 167 North Memphis Street, 11th Floor, Memphis, Tennessee 38103. The Court will consider whether the Settlement, including the Plan of Allocation, is fair, reasonable and adequate, and, whether to approve the request for attorneys' fees and the reimbursement of expenses, and case contribution awards to Named Plaintiffs. The Court may postpone or reschedule the Final Approval Hearing without prior notice.

21. Do I have to attend the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have on behalf of Named Plaintiffs and the Classes. However, you are welcome to attend the Final Approval Hearing at your own expense, or to pay your own attorney to attend the Final Approval Hearing on your behalf, but you do not need to attend. If you send an objection, you do not have to come to Court to talk about it. As long as you timely submit your written objection as described in Question 19, it will be before the Court.

If you or your attorney want to speak at the Final Approval Hearing, you must ask the Court for permission by submitting a written "Notice of Intention to Appear at the Final Approval Hearing in *Johnson, et al.* v. *W2007 Grace Acquisition I, Inc., et al,* Civil Action No. 2:13-cv-2777(SHM)." The Notice of Intention to Appear must be BOTH (a) received by the attorneys listed in response to Question 19 no later than August 28, 2015, and (b) filed with the Clerk of the Court, United States District

Court for the Western District of Tennessee, Clifford David/Odell Horton Federal Building, 167 North Main Street, Memphis, Tennessee 38103. Be sure to include your name, address, telephone number and signature. Any objector who does not timely file and serve a Notice of Intent to Appear in accordance with this paragraph will not be permitted to speak at the Final Approval Hearing, except for good cause shown.

The Court may decide to reschedule the Final Approval Hearing without sending a further notice to the Classes.

22. Are there more details about the Settlement?

Yes. This Notice summarizes the proposed Settlement. More details are contained in the Stipulation and papers filed with the Court which are available online at www.chimicles.com/W2007GraceLitigation, or contact Class Counsel at (866) 399-2487 to request a copy of the Stipulation. Prior to the Final Approval Hearing, Named Plaintiffs' submissions in support of the Settlement will be filed with the Court. If you have any further questions you may contact Class Counsel identified in Question 16.

23. Are there more details about the Merger?

For details about the Merger, please refer to the Proxy Statement, the Merger Agreement and Letter of Transmittal. Promptly after the Merger Effective Time, the Exchange Agent will mail to each person who immediately prior to the Merger Effective Time held record shares of Preferred Stock, a Letter of Transmittal with instructions on how to exchange Preferred Stock certificates for Merger Consideration. If you do not receive the Letter of Transmittal following the Merger Effective Time, please contact Morrow & Co., LLC at (203) 658-9400 or call toll-free (800) 662-5200.

If you are unable to locate some or all of your stock certificates, please read and follow the instructions in the Letter of Transmittal. For any questions about lost stock certificates or if you need assistance obtaining your certificate number(s), please call the Exchange Agent at (855) 396-2084 (toll-free).

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you hold or held shares of Preferred Stock as a nominee for a beneficial owner who is a member of one or all of the Classes, then within 10 days after you receive this Notice you must either: (1) mail copies of this Notice by first class mail to each such beneficial owner; or (2) send a list of the names and addresses of such beneficial owners to:

W2007 Grace Preferred Shareholder Litigation
c/o Angeion Group
1801 Market Street, Suite 660
Philadelphia, PA 19103
Email: W2007Grace@AngeionGroup.com

PLEASE DO NOT CALL THE COURT OR COURT CLERK FOR INFORMATION

Dated: May 21, 2015

By Order of the United States District Court,
Western District of Tennessee

WRG

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, PATRICK LYNCH, ROBERTO VERTHELYI and FREDERICK SHEARIN, on behalf of themselves and all others similarly situated, Plaintiffs, vs. W2007 GRACE ACQUISITION I, INC., TODD P. GIANNOBLE, GREGORY FAY, BRIAN NORDAHL, DANIEL E. SMITH, MARK RICKETTS, THE GOLDMAN SACHS GROUP, INC., GOLDMAN SACHS REALTY MANAGEMENT L.P., WHITEHALL PARALLEL GLOBAL REAL ESTATE LIMITED PARTNERSHIP 2007, W2007 FINANCE SUB, LLC, W2007 GRACE I, LLC, and PFD HOLDINGS, LLC, Defendants.	No. 2:13-cv-2777 (SHM/DKV)

PROOF OF CLAIM FORM

GENERAL INSTRUCTIONS

This Proof of Claim Form applies only to Members of the Seller Class. To recover as a Member of the Seller Class based on your claim in the above-captioned litigation (the "Action"), you must complete, sign and timely return this Proof of Claim. If you fail to file a properly completed and addressed (as set forth below) Proof of Claim, or if your Proof of Claim is not timely sent, your claim may be rejected and you may be precluded from any recovery from the Net Seller Class Settlement Fund created in connection with the proposed Settlement of the Action.

Submission of this Proof of Claim, however, does not assure that you will share in the proceeds of the Settlement of the Action.

YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM POSTMARKED ON OR BEFORE SEPTEMBER 18, 2015, ADDRESSED AS FOLLOWS:

W2007 Grace Preferred Shareholder Litigation – PROOF OF CLAIM
c/o Angeion Group LLC
1801 Market Street, Suite 660
Philadelphia, PA 19103

A Proof of Claim Form shall be deemed to be submitted when mailed, if received with a postmark indicated on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in accordance with these instructions.

If you are NOT a member of the Seller Class as defined in the Notice of Proposed Settlement ("Notice") and below, DO NOT submit a Proof of Claim.

If you are a Member of the Seller Class and have not validly requested to be excluded from the Seller Class, you are bound by the terms of any Final Judgment and orders entered in the Action, including the Release included in the Stipulation of Settlement, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM FORM.

It is important that you completely read and understand in the Notice that accompanies this Proof of Claim Form, and the Plan of Allocation included in the Notice and attached as part of the Stipulation. The Notice and Plan of Allocation describe the proposed Settlement that will resolve this Action, how the members of the Seller Class are affected by the Settlement, and the manner in which the Net Seller Class Settlement Fund will be distributed, if the Court approves the Settlement and Plan of Allocation, and the Effective Date occurs. The Notice and Stipulation also contain the definitions of many defined terms (which are indicated by the initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read the Notice, including the terms of the release described therein.

CLAIMANT IDENTIFICATION

If you sold some or all of 8.75% Series B Cumulative Preferred Stock and/or 9.00% Series C Cumulative Preferred Stock of W2007 Grace Acquisition I, Inc. (collectively, the "Preferred Stock") between October 25, 2007 and October 8, 2014, inclusive, and suffered a loss, you are a member of the Seller Class. The Seller Class excludes: (a) Defendants and their affiliates, and (b) any persons or entities that (i) sold shares to Defendant PFD Holdings, LLC in a private transaction or (ii) validly opted out of the Seller Class.

If you purchased Preferred Stock and held the securities in your name, you are the beneficial owner as well as the record owner. If, however, the Preferred Stock was registered in the name of a third party, such as a nominee or brokerage firm through which you purchased the Preferred Stock, you are the beneficial purchaser and the third party is the record purchaser.

Use Part I of this form entitled "Claimant Identification" to identify each beneficial owner and record owner (if different from the beneficial owner) of the shares of Preferred Stock on whose behalf the claim is submitted. This Proof of Claim must be filed by the actual beneficial owner(s) or the legal representative of such owner(s).

All joint owners must sign this Proof of Claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of Persons represented by them and evidence of their authority must accompany this claim and their titles or capacities must be stated. The last four digits of the Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

CLAIM FORM

Use Part II of this form entitled "Schedule of Transactions in Preferred Stock" to supply all required details of your transaction(s) in 8.75% Series B Cumulative Preferred Stock ("Series B") and/or 9.00% Series C Cumulative Preferred Stock ("Series C") of W2007 Grace Acquisition I, Inc. between October 25, 2007 and October 8, 2014, inclusive. **Failure to report all transactions during the requested periods may result in the rejection of your claim.**

You are required to submit genuine and sufficient documentation for of your transaction(s) in and holdings of Preferred Stock set forth in Part II. Broker confirmations, brokerage statements reflecting your purchases or ownership or other documentation of your transactions in Preferred Stock should be attached to your Proof of Claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your Proof of Claim.

The above requests are designed to provide the minimum amount of information necessary to process the simplest claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate the amount of your claim. In some cases where the Claims Administrator cannot perform the calculation accurately or at a reasonable cost to the Seller Class with the information provided, the Claims Administrator may condition acceptance of the claim upon the production of additional information that it may, in its discretion, require to process the claim.

IF YOU HAVE QUESTIONS regarding the Proof of Claim, or need additional copies, you may contact the Claims Administrator, Angeion Group LLC at the above address, by email at W2007Grace@AngeionGroup.com, or call (877) 386-1776 (toll-free).

WRG

PROOF OF CLAIM
Must Be Postmarked No Later Than:

September 18, 2015

W2007 Grace Preferred Shareholder Litigation

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

_____
Beneficial Owner's Name (First, Middle, Last)

_____
Joint Owner's Name (First, Middle, Last)

If you are a bank or other institution filing on behalf of a third-party, and an account is needed to identify the Claimant for your records, indicate the Account Number here: _____.

Attn: _____

Street Address: _____

City: _____ **State:**_____ **Zip:**_____ **Country:**_____

Telephone No. (day) (_____)_____ **Telephone No. (evening)** (____)_____

Email:_____

_____ - ____ - _____ OR _____ - _____
Social Security Number (for individuals) **Employer Identification Number (for estates, trusts, corps., etc.)**

Check appropriate entity:

__Individual __Corporation __Joint Owners __IRA __Trust __Estate Other_____

Identify the Record Owner's Name (if different from beneficial owner(s) listed above):

_____

PART II: SCHEDULE OF TRANSACTIONS IN W2007 GRACE PREFERRED STOCK

A. Number of shares of Preferred Stock held as of October 25, 2007 as a result of the Equity Inns merger. If none, write "zero" or "0". (Must be documented):

i) _____ of Series B Preferred Stock

ii) _____ of Series C Preferred Stock

B. Purchases/Acquisitions Between October 25, 2007 and October 8, 2014, inclusive.
Separately list each and every purchase and/or acquisition of Preferred Stock during the Class Period, i.e., between October 25, 2007 and October 8, 2014, inclusive. (Must be documented).

IF NONE, CHECK HERE ____

For Series B Preferred Shares:

Date(s) of Purchase(s)/Acquisition(s) (List Chronologically) (Month/Day/Year)	Number of Series B Preferred Shares Purchased/Acquired	Purchase/ Acquisition Price Per Share	Total Purchase/Acquisition Price (Excluding taxes, fees, and commissions)	Proof of Purchase/ Acquisition Enclosed? Y/N

For Series C Preferred Shares:

Date(s) of Purchase(s)/Acquisition(s) (List Chronologically) (Month/Day/Year)	Number of Series C Preferred Shares Purchased/Acquired	Purchase/ Acquisition Price Per Share	Total Purchase/Acquisition Price (Excluding taxes, fees, and commissions)	Proof of Purchase/ Acquisition Enclosed? Y/N

C. Sales Between October 25, 2007 and October 8, 2014, inclusive.

Separately list each and every sale of Preferred Stock during the Class Period, i.e., between October 25, 2007 and October 8, 2014, inclusive. (Must be documented).

IF NONE, CHECK HERE ____

For Series B Preferred Shares:

Date(s) of Sale(s) (List Chronologically) (Month/Day/Year)	Number of Series B Preferred Shares Sold	Sale Price Per Share	Total Sale Price (Excluding taxes, fees, and commissions)	Proof of Sale Enclosed? Y/N

For Series C Preferred Shares:

Date(s) of Sale(s) (List Chronologically) (Month/Day/Year)	Number of Series C Preferred Shares Sold	Sale Price Per Share	Total Sale Price (Excluding taxes, fees, and commissions)	Proof of Sale Enclosed? Y/N

D. Number of shares of Preferred Stock held as of October 8, 2014. If none, write "zero" or "0". (Must be documented):

iii) _____ of Series B Preferred Stock

iv) _____ of Series C Preferred Stock

If you need additional space, attach extra schedules in the same format as above. Print the beneficial owner's full name and taxpayer identification number on each additional page.

PART III: SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim under the terms of the Stipulation of Settlement described in the Notice. I (We) submit this Proof of Claim acknowledging that I (We) have read the Notice, the Plan of Allocation and the Proof of Claim form, including the releases provided for in the Settlement.

I (We) also submit to the jurisdiction of the United States District Court for the Western District of Tennessee, Western Division, with respect to my (our) claim as a member of the Seller Class (as defined in the Notice).

I (We) further acknowledge that I am (we are) bound by and subject to the terms of any Final Judgments that may be entered in the Action.

I (We) agree to furnish additional information to Class Counsel or the Claims Administrator to support this claim if required to do so.

I (We) have not submitted any other claim covering the same Preferred Shares and know of no other Person having done so on my (our) behalf.

I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully and finally release, to the fullest extent that the law permits their release in this Action, each and every one of the Settled Claims as against each and every one of the Release Parties, as those terms are defined in the accompanying Notice. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to the releases or any other part or portion thereof, which is part of the Settlement.

I (we) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code. **Note: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.**

I declare under penalty of perjury under the laws of the State of _____ that the foregoing information supplied by the undersigned is true and correct and that this Proof of Claim was executed this _____ day of _____ 2015 in _____.
(City, State)

_____ _____
(Signature of Claimant) (Joint Owner sign your name here)

_____ _____
(Type or print Claimant name here) (Joint Owner type or print your name here)

_____ _____
Date Date

Identify capacity of person(s) signing on behalf of Claimant, if other than the individual, e.g., executor, president, custodian, etc._____

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please remember to sign the Proof of Claim form.

2. Remember to attach supporting documentation, and please write your name and tax identification number on each additional transaction schedule submitted.

3. Do not send original documentation to the Claims Administrator, including any stock certificates.

4. Keep a copy of your claim form for your records.

5. If you desire an acknowledgment of receipt of your Proof of Claim form, please send it Certified Mail, Return Receipt Requested.

6. If you move after submitting your Proof of Claim form, please provide your new mailing address to the Claims Administrator by email at W2007Grace@AngeionGroup.com.

W2007 Grace Preferred Shareholder Litigation – PROOF OF CLAIM
c/o Angeion Group
1801 Market Street, Suite 660
Philadelphia, PA 19103

EXHIBIT B

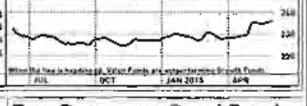
SMALL-CAP GROWTH FUNDS VS. BIG-CAP GROWTH FUNDS

[illegible]

When the line is heading up, Small-Cap Growth Funds are outperforming Big-Cap

VALUE FUNDS VS. GROWTH FUNDS

[illegible]



When the line is heading up, Value Funds are outperforming Growth Funds

Top Balanced/Asset Alloc. Funds

Last 36 Months (All Total Returns)

Mutual Fund	% Change In 2015		Performance Rating 36 Mos.	$ Net Assets
Dodge&Cox Balanced	+	3	B	15.671 bil
Price CapApprc	+	5	B–	23.142 bil
Wells Fargo Advtg A IdxAstAlloc	+	3	B–	794 mil
Lord Abbett I CalbDivGr	+	1	B–	2.136 bil
American Funds A 2045TgtRet	+	6	C+	477 mil
American Funds A 2050TgtRet	+	6	C+	391 mil
American Funds A 2040TgtRet	+	6	C+	712 mil
Columbia 2 Conv Secs	+	7	C+	1.422 bil
Lord Abbett A CaptlStruc	+	1	C+	2.136 bil
Price Retire2050	+	7	C+	4.937 bil
Price Retire 2055	+	7	C+	1.481 bil
Price Retire2045	+	7	C+	6.817 bil
Price Retire 2040	+	7	C+	15.664 bil
American Funds A 2035TgtRet	+	5	C+	781 mil
TIAA-CREF FUNDS LifeIdx2045	+	6	C+	265 mil
TIAA-CREF Instl LfCyIdx2040	+	6	C+	578 mil
American Funds A 2030TgtRet	+	5	C+	1.061 bil
Schwab Target 2040	+	5	C+	767 mil
Vanguard TargRet2045	+	5	C+	14.495 bil
JP Morgan Instl SmrtRet2040	+	6	C+	3.471 bil
Vanguard TargRet2040	+	5	C+	15.922 bil
Price Retire 2035	+	6	C+	12.057 bil
Lord Abbett I Convertible	+	6	C+	850 mil
Vantagepoint Mlstne2040	+	5	C	267 mil
TIAA-CREF Instl Retir LfCyl 2040	+	7	C	3.313 bil

Top Corporate Bond Funds

Last 36 Months (All Total Returns)

Mutual Fund	% Change In 2015		Performance Rating 36 Mos.	$ Net Assets
Fairholme Foc Inc	+	7	D+	214 mil
Principal Investors PrefSecs I	+	3	D	5.078 bil
Delaware A ExtendDurBd	–	1	D	706 mil
GMO Trust ShrtDurColl	+	0	D	619 mil
GuideStone G4 ExtDurBdInv	–	1	D–	246 mil
Loomis Syls Inv Fixed Income	+	0	D–	1.406 bil
Nuveen CI I Total Retrn	+	2	D–	1.277 bil
Vanguard LTInvGrdInv	–	2	D–	16.913 bil
Legg Mason A WACorpBond	+	1	D–	385 mil
Loomis Syls Bond Instl		0	D–	24.361 bil
PIMCO Inst I InvGrCorpBd	+	2	D–	6.658 bil
RiverNorth FundsDoubleLine Strat Inc	+	2	D–	1.368 bil
Calamos High Inc A	+	4	D–	197 mil
PIMCO P LgDurTotRet	–	1	D–	6.857 bil
Morgan Stan A Flex Inc	+	2	D–	208 mil
Rydex/Sgi A InvGrdBdA	+	1	D–	533 mil
Vanguard Index LT Bd	–	1	D–	8.516 bil
Delaware A CorpBond	+	2	D–	1.307 bil
Diamond Hill Funds StrtInc	+	4	D–	248 mil
Putnam A Income	+	2	D–	2.272 bil
J Hancock A Bond	+	1	D–	1.962 bil
Osterweis Capital Strat Inc	+	4	D–	6.822 bil
Marshall BMOCpInc	+	1	D–	359 mil
Invesco Funds A CorpBond	+	1	D–	1.016 bil
USAA Intm Trm Bd	+	1	D–	3.487 bil

[illegible]

—G—H—I—

[illegible]

—J—K—L—

[illegible]

—M—N—O—

[illegible]

—P—Q—R—

[illegible]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, et al., on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

W2007 GRACE ACQUISITION I, INC. et al.,

Defendants.

No. 13-cv-02777-SHM-dkv

CLASS ACTION

SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: ALL PERSONS WHO OWNED 8.75% SERIES B CUMULATIVE PREFERRED STOCK ("SERIES B PREFERRED STOCK") AND/OR 9.00% SERIES C CUMULATIVE PREFERRED STOCK ("SERIES C PREFERRED STOCK") (COLLECTIVELY, "PREFERRED STOCK") OF W2007 GRACE ACQUISITION I, INC. ("W2007 GRACE") AND EITHER: (1) HELD PREFERRED STOCK AS OF AUGUST 22, 2014 AND CONTINUE TO HOLD THROUGH THE MERGER EFFECTIVE TIME (THE "HOLDER CLASS"); AND/OR, (2) SOLD SOME OR ALL OF THEIR PREFERRED STOCK BETWEEN OCTOBER 25, 2007 AND OCTOBER 8, 2014, INCLUSIVE, AND SUFFERED A LOSS (THE "SELLER CLASS")

YOU ARE HEREBY NOTIFIED that the above-captioned action (the "Action") has been preliminarily certified by the Court to proceed as a class action and that the parties have reached a proposed Stipulation of Settlement ("Stipulation") that fully and completely releases the Classes' claims in consideration of the following: *For the Holder Class*, W2007 Grace shall present for approval by the holders of Preferred Stock, pursuant to a Proxy Statement, a merger transaction whereby W2007 Grace will be merged with and into another entity and all Preferred Stock (except the Excluded Shares, as defined in the Stipulation) shall be converted into the right to receive $28.00 per share (the "Merger"). In the aggregate, approximately $62 million is to be paid to eligible members of the Holder Class who are not affiliated with Defendants; and *for the Seller Class*, W2007 Grace shall establish a Seller Class Settlement Fund consisting of $3 million in cash which, after the deduction of certain fees and expenses, shall be distributed on a *pro rata* basis to eligible Seller Class members who suffered a recognized loss based on the Plan of Allocation.

YOU ARE HEREBY FURTHER NOTIFIED THAT a hearing will be held before the Honorable Samuel H. Mays in the United States District Court for the Western District of Tennessee, 167 North Main Street, Memphis, Tennessee 38103 at 9:30 a.m. on September 11, 2015 in Courtroom 2, to consider whether the proposed Settlement, conditionally approved Class Certification, Plan of Allocation, and/or counsel's application for attorneys' fees, reimbursement of expenses and payment of case contribution awards to the Plaintiffs should be granted final approval as fair, reasonable, and adequate.

IF YOU ARE A MEMBER OF EITHER OR BOTH CLASSES, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT CONSIDERATION. *To participate in the Holder Class*, you MUST timely submit your stock certificate(s) and a completed Letter of Transmittal which will be mailed by Computershare Trust Company, N.A. to all known holders of record immediately prior to the Merger Effective Time. If you have not received the Letter of Transmittal, please contact [illegible] & Co. LLC at [illegible] or call toll-free [illegible]. *To participate in the Seller Class*, you MUST timely submit a valid Proof of Claim postmarked no later than September 18, 2015. If you have not yet received the Notice of Proposed Settlement and/or Proof of Claim Form, visit [illegible] or call Class Counsel toll-free [illegible]. Class members who do not submit a complete Letter of Transmittal and/or Proof of Claim Form will be bound by the Settlement, but will not share in the Settlement consideration.

Any objections to the proposed Settlement, proposed Plan of Allocation, and/or counsel's application for attorneys' fees, reimbursement of expenses and payment of case contribution awards to Plaintiffs MUST be filed with the Court and delivered to counsel so that they are *received* by August 21, 2015. Alternatively, class members have the right to request exclusion (or opt-out) from either or both Classes by submitting a written request to the Claims Administrator, which must be *received* no later than August 21, 2015. Objections and requests for exclusion MUST be completed in accordance with the detailed instructions in the Notice.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

Direct your inquiries to:
[illegible]
[illegible]
[illegible]

Dated: May 28, 2015 By Order of the United States District Court for the Western District of Tennessee

[illegible]

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, et al., on behalf of themselves and all others similarly situated,	:	
	:	No. 2:13-cv-2777 (SHM/DKV)
Plaintiffs,	:	
v.	:	**CLASS ACTION**
	:	
W2007 GRACE ACQUISITION I, INC., et al.	:	
Defendants.	:	

SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: ALL PERSONS WHO OWN(ED) 8.75% SERIES B CUMULATIVE PREFERRED STOCK ("SERIES B PREFERRED STOCK") AND/OR 9.00% SERIES C CUMULATIVE PREFERRED STOCK ("SERIES C PREFERRED STOCK") (COLLECTIVELY, "PREFERRED STOCK") OF W2007 GRACE ACQUISITION I, INC. ("W2007 GRACE") AND EITHER: (1) *HELD* PREFERRED STOCK AS OF AUGUST 22, 2014 AND CONTINUE TO HOLD THROUGH THE MERGER EFFECTIVE TIME (THE "HOLDER CLASS"); AND/OR, (2) *SOLD* SOME OR ALL OF THEIR PREFERRED STOCK BETWEEN OCTOBER 25, 2007 AND OCTOBER 8, 2014, INCLUSIVE, AND SUFFERED A LOSS (THE "SELLER CLASS").

YOU ARE HEREBY NOTIFIED that the above-captioned action (the "Action") has been preliminarily certified by the Court to proceed as a class action and that the parties have reached a proposed Stipulation of Settlement ("Stipulation") that fully and completely releases the Classes' claims in consideration of the following: ***For the Holder Class***, W2007 Grace shall present for approval by the holders of Preferred Stock, pursuant to a Proxy Statement, a merger transaction whereby W2007 Grace will be merged with and into another entity and all Preferred Stock (except for Excluded Shares, as defined in the Stipulation) shall be converted into the right to receive $26.00 per share (the "Merger"). In the aggregate, approximately $62 million is to be paid to eligible members of the Holder Class who are not affiliated with Defendants; and ***for the Seller Class***, W2007 Grace shall establish a Seller Class Settlement Fund consisting of $6 million in cash which, after the deductions of certain fees and expenses, shall be distributed on a *pro rata* basis to eligible Seller Class members who suffered a recognized loss based on the Plan of Allocation.

YOU ARE HEREBY FURTHER NOTIFIED THAT a hearing will be held before the Honorable Samuel H. Mays in the United States District Court for the Western District of Tennessee, 167 North Main Street, Memphis, Tennessee 38103 at 9:30 a.m., on September 11, 2015 in Courtroom 2, to consider whether the proposed Settlement, conditionally approved Class Certification, Plan of Allocation, and/or counsel's application for attorneys' fees, reimbursement of expenses and payment of case contribution awards to the Plaintiffs should be granted final approval as fair, reasonable, and adequate.

IF YOU ARE A MEMBER OF EITHER OR BOTH CLASSES, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT CONSIDERATION. ***To participate in the Holder Class***, you **MUST** timely submit your stock certificate(s) and a completed Letter of Transmittal which will be mailed by Computershare Trust Company, N.A. to all known holders of record immediately prior to the Merger Effective Time. If you have not received the Letter of Transmittal, please contact Morrow & Co., LLC at (203) 658-9400 or call toll-free (800) 662-5200. ***To participate in the Seller Class***, you **MUST** timely submit a valid Proof of Claim ***postmarked no later than September 18, 2015***. If you have not yet received the Notice of Proposed Settlement and/or Proof of Claim Form, visit www.chimicles.com/W2007GraceLitigation or call Class Counsel toll-free (866) 399-2487. **Class members who do not submit a complete Letter of Transmittal and/or Proof of Claim Form will be bound by the Settlement, but will not share in the Settlement consideration.**

Any objections to the proposed Settlement, proposed Plan of Allocation, and/or counsel's application for attorneys' fees, reimbursement of expenses and payment of case contribution awards to Plaintiffs **MUST** be filed with the Court and delivered to counsel so that they are ***received*** by ***August 21, 2015***. Alternatively, class members have the right to request exclusion (or opt-out) from either or both Classes by submitting a written request to the Claims Administrator, which must be ***received no later than August 21, 2015***. Objections and requests for exclusions **MUST** be completed in accordance with the detailed instructions in the Notice.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

Direct your inquiries to:
Kimberly M. Donaldson Smith and Catherine Pratsinakis of Chimicles & Tikellis LLP
361 W. Lancaster Avenue, Haverford, PA 19041
www.chimicles.com/W2007GraceLitigationn or call toll-free (866) 399-2487

Dated: May 28, 2015 By Order of the United States District Court for the Western District of Tennessee

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, et al., on behalf of themselves and all others similarly situated,	:	
	:	No. 2:13-cv-2777 (SHM/DKV)
Plaintiffs,	:	
v.	:	**CLASS ACTION**
	:	
W2007 GRACE ACQUISITION I, INC., et al.	:	
Defendants.	:	

SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: ALL PERSONS WHO OWN(ED) 8.75% SERIES B CUMULATIVE PREFERRED STOCK ("SERIES B PREFERRED STOCK") AND/OR 9.00% SERIES C CUMULATIVE PREFERRED STOCK ("SERIES C PREFERRED STOCK") (COLLECTIVELY, "PREFERRED STOCK") OF W2007 GRACE ACQUISITION I, INC. ("W2007 GRACE") AND EITHER: (1) *HELD* PREFERRED STOCK AS OF AUGUST 22, 2014 AND CONTINUE TO HOLD THROUGH THE MERGER EFFECTIVE TIME (THE "HOLDER CLASS"); AND/OR, (2) *SOLD* SOME OR ALL OF THEIR PREFERRED STOCK BETWEEN OCTOBER 25, 2007 AND OCTOBER 8, 2014, INCLUSIVE, AND SUFFERED A LOSS (THE "SELLER CLASS").

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IF YOU ARE A MEMBER OF EITHER OR BOTH CLASSES, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT CONSIDERATION. ***To participate in the Holder Class***, you **MUST** timely submit your stock certificate(s) and a completed Letter of Transmittal which will be mailed by Computershare Trust Company, N.A. to all known holders of record immediately prior to the Merger Effective Time. If you have not received the Letter of Transmittal, please contact Morrow & Co., LLC at (203) 658-9400 or call toll-free (800) 662-5200. ***To participate in the Seller Class***, you **MUST** timely submit a valid Proof of Claim ***postmarked no later than September 18, 2015***. If you have not yet received the Notice of Proposed Settlement and/or Proof of Claim Form, visit www.chimicles.com/W2007GraceLitigation or call Class Counsel toll-free (866) 399-2487. **Class members who do not submit a complete Letter of Transmittal and/or Proof of Claim Form will be bound by the Settlement, but will not share in the Settlement consideration.**

Any objections to the proposed Settlement, proposed Plan of Allocation, and/or counsel's application for attorneys' fees, reimbursement of expenses and payment of case contribution awards to Plaintiffs **MUST** be filed with the Court and delivered to counsel so that they are ***received*** by ***August 21, 2015***. Alternatively, class members have the right to request exclusion (or opt-out) from either or both Classes by submitting a written request to the Claims Administrator, which must be ***received no later than August 21, 2015***. Objections and requests for exclusions **MUST** be completed in accordance with the detailed instructions in the Notice.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

Direct your inquiries to:
Kimberly M. Donaldson Smith and Catherine Pratsinakis of Chimicles & Tikellis LLP
361 W. Lancaster Avenue, Haverford, PA 19041
www.chimicles.com/W2007GraceLitigationn or call toll-free (866) 399-2487

Dated: May 28, 2015 By Order of the United States District Court for the Western District of Tennessee

EXHIBIT 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, PATRICK LYNCH, ROBERTO VERTHELYI and FREDERICK SHEARIN, on behalf of themselves and all others similarly situated, Plaintiffs, v. W2007 GRACE ACQUISITION I, INC., TODD P. GIANNOBLE, GREGORY FAY, BRIAN NORDAHL, DANIEL E. SMITH, MARK RICKETTS, THE GOLDMAN SACHS GROUP, INC., GOLDMAN SACHS REALTY MANAGEMENT L.P., WHITEHALL PARALLEL GLOBAL REAL ESTATE LIMITED PARTNERSHIP 2007, W2007 FINANCE SUB, LLC, W2007 GRACE I, LLC and PFD HOLDINGS, LLC, Defendants.	No. 2:13-cv-2777 (SHM/DKV) **CLASS ACTION**

[PROPOSED] ORDER AND FINAL JUDGMENT

This Court having considered: the Stipulation and Agreement of Settlement, dated October 9, 2014 (the "Stipulation"), including all Exhibits thereto (the "Settlement"), between Named Plaintiffs David Johnson, Patrick Lynch, Roberto Verthelyi and Frederick Shearin (collectively "Named Plaintiffs"), on behalf of themselves and the Classes (as defined below) and Defendants W2007 Grace Acquisition I, Inc. ("W2007 Grace"), Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited

Partnership 2007, W2007 Finance Sub, LLC, W2007 Grace I, LLC and PFD Holdings, LLC (collectively, "Defendants"); and having held a hearing on September 11, 2015 (the "Final Approval Hearing"); and having considered all of the submissions and arguments with respect thereto, and otherwise being fully informed, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Order and Final Judgment (the "Judgment") incorporates herein and makes a part hereof, the Stipulation, including the Exhibits thereto. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and overall all parties to the Action, including Class Members who did not timely file a valid request for exclusion from the Classes by the August 21, 2015 deadline pursuant to the Court's Order of Preliminary Approval of Class Action Settlement and Scheduling of Final Approval Hearing entered on September 11, 2015 (Docket No. 90) (the "Preliminary Approval Order").

AFFIRMANCE OF CLASS CERTIFICATION

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Fed R. Civ. P."), the Court certifies this Action as a class action for settlement purposes and confirms certification of the following settlement Classes, as ordered by the Court in the Preliminary Approval Order:

> Any and all persons or entities that, as of August 22, 2014 and through the Merger Effective Time, hold 8.75% Series B Cumulative Preferred Stock and/or 9.00% Series C Cumulative Preferred Stock issued by W2007 Grace Acquisition I, Inc. (collectively, the "Preferred Stock"), excluding: (a) Defendants and their affiliates, and (b) any persons or entities that validly (i) exercised dissenters' rights in the Merger or (ii) opted out of this class (the "Holder Class"). The Merger is the merger reflected in the Merger Agreement, whereby W2007 Grace will be merged with and into Merger Sub and all Series B Preferred Stock and Series C Preferred Stock, except for the Excluded Shares, shall be converted into the right to receive $26.00 per share. The Merger Effective Time occurs when the Tennessee Articles of Merger have been duly filed with the Secretary of State of the

State of Tennessee or at such later time as may be specified in the Tennessee Articles of Merger.

Any and all persons or entities that sold some or all of their Preferred Stock between October 25, 2007 and October 8, 2014, inclusive, and suffered a loss, excluding: (a) Defendants and their affiliates, and (b) any persons or entities that (i) sold shares to Defendant PFD Holdings, LLC in a private transaction or (ii) validly opted out of this class (the "Seller Class," and together with the Holder Class, the "Classes").

4. The Court confirms and incorporates its findings in the Preliminary Approval Order that the prerequisites for class certification under Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied in that:

a. The Classes are of a sufficient size and geographical dispersion that joinder of all members of the Classes is impracticable, thus satisfying Fed. R. Civ. P. 23(a)(1).

b. There are questions of law and fact common to the Classes, thus satisfying Fed. R. Civ. P. 23(a)(2). Among the questions of law and fact common to the Class are: whether the Company's Charter was violated by Defendants' acts as alleged; whether Defendants breached their fiduciary duties by their conduct as alleged; whether Defendants engaged in insider trading in violation of Tennessee statutory law; and whether the members of the Classes have sustained damages and, if so, what is the proper measure thereof.

c. Named Plaintiffs' claims for violations of contractual, fiduciary and statutory duties arising under Tennessee law are typical of the Classes' claims, thus satisfying Fed. R. Civ. P. 23(a)(3).

d. Named Plaintiffs and their selected Class Counsel, Chimicles & Tikellis LLP ("Chimicles"), and Liaison Counsel, Hagler Bruce & Turner, PLLC

("HB&T"), will fairly and adequately protect the interests of the Holder and Seller Classes, thus satisfying Fed. R. Civ. P. 23(a)(4). Accordingly, Named Plaintiffs are appointed as representatives for the Holder and Seller Classes, Chimicles is appointed as Class Counsel for the Class, HB&T is appointed Liaison Counsel for the Class.

e. The questions of law and fact common to the Classes predominate over any questions affecting only individual members, thus satisfying Fed. R. Civ. P. 23(b)(3).

f. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, thus satisfying Fed. R. Civ. P. 23(b)(3).

5. In making all of the foregoing findings, the Court has exercised its discretion in certifying the Classes.

CLASS NOTICE AND OPT-OUTS

6. The record shows that Notice has been given to the Classes in the manner approved by the Court in its Preliminary Approval Order (Docket No. 90). The Court finds that such Notice: (i) constitutes reasonable and the best notice practicable under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise all members of the Classes who could reasonably be identified of the pendency of the Action, the terms of the Settlement, and the right to object to or exclude themselves from either or both Classes and to appear at the Final Approval Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) meets the requirements of due process, Fed. R. Civ. P. 23 and any other applicable law.

7. No individuals or entities, other than those listed on Exhibit A hereto, have timely and validly excluded themselves from the Classes. This Judgment shall have no force or effect on the persons or entities listed on Exhibit A hereto.

APPROVAL OF THE SETTLEMENT

8. In light of the benefits to the Classes, the complexity, expense and possible duration of further litigation against Defendants, the risks of establishing liability and damages, and the costs of continued and protracted litigation, the Court hereby fully and finally approves the Settlement, pursuant to Fed. R. Civ. P. 23, as set forth in the Stipulation, and all attached Exhibits, in all respects, and finds that the Settlement is the result of arm's-length negotiations between experiences counsel representing the interests of the Holder and Seller Classes and Defendants. The Court has considered any submitted objections to the Settlement and hereby overrules them.

9. The Parties are hereby directed to implement and consummate the Settlement according to the terms and provisions of the Stipulation. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

DISMISSAL OF CLAIMS AND RELEASE

10. Except as to any individual claim of those Persons who have been excluded from the Classes (identified in Exhibit A attached hereto), the Action and all claims asserted in the Amended Complaint are dismissed with prejudice by the Named Plaintiffs, and other members of the Classes, and as against the Released Defendant Parties without costs, except for payments otherwise provided in the Stipulation.

11. The Court further, after review of the record of this Action, including the Amended Complaint and other motions, that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Fed. R. Civ. P. 11, and in particular Fed. R. Civ. P. 11(b).

12. Upon the Effective Date of the Settlement (as defined in the Stipulation), Named Plaintiffs and all other members of the Classes (excluding those persons or entities listed in Exhibit A who timely and validly requested exclusion from the Classes), whether or not any such member of the Classes submits a Proof of Claim Form, shall be deemed to have released, dismissed and forever discharged the Released Claims against each and all of the Released Defendant Parties, with prejudice and on the merits, without costs to any Party.

13. Upon the Effective Date of the Settlement, Named Plaintiffs and all other members of the Classes, and anyone claiming through or on behalf of any of them, are forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting any of the Released Claims against any of the Released Defendant Parties.

14. Upon the Effective Date of the Settlement, the Released Defendant Parties shall be deemed to have released, dismissed and forever discharged the Released Claims against each and all of the Releasing Plaintiffs, with prejudice and on the merits, without costs to any Party and the Released Defendant Parties are forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting any Released Claims against any of the Releasing Plaintiffs.

15. The fact and terms of the Stipulation, including Exhibits thereto, this Order and Final Judgment, all negotiations, discussions, drafts and proceedings in connection with the Settlement, and any act performed or document signed in connection with the Settlement:

(a) shall not be construed, offered or received against Defendants, Named Plaintiffs or any other Released Party as evidence of, or deemed to be evidence of, any presumption, concession or admission by any of the Defendants, Named Plaintiffs or any other Released Party with respect to the truth of any fact alleged by Named Plaintiffs or the validity, or lack thereof, of any claim that has been or could have been asserted in the Action or in any other action, or the adequacy or deficiency of any defense that has been or could have been asserted in the Action or in any other action, or of any liability, negligence, fault or wrongdoing of Defendants or any other Released Defendant Party;

(b) shall not be construed, offered or received against the Released Defendant Parties as evidence of, or deemed to be evidence of, any presumption, concession or admission of any liability, fault, misrepresentation or omission with respect to any statement or written document approved or made by any Released Defendant Party, or against Named Plaintiffs or any other member of the Classes as evidence of any infirmity in the claims of Named Plaintiffs or those of any other member of the Classes;

(c) shall not be construed, offered or received against Defendants, Named Plaintiffs or any other Released Party as evidence of, or deemed to be evidence of, any presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Parties, in any arbitration proceeding or other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; *provided*,

however, that if this Settlement is approved by the Court, the Released Parties may refer to it to effectuate the liability protections granted them hereunder;

(d) shall not be construed, offered or received against Defendants, Named Plaintiffs or any other Released Party as evidence of, or deemed to be evidence of, any presumption, concession or admission that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) shall not be construed, offered or received against Named Plaintiffs or any other member of the Classes as evidence of, or deemed to be evidence of, any presumption, concession or admission that any of Named Plaintiffs', or any other member of the Classes' claims are without merit or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Amount.

16. Any plan for allocating the Net Seller Class Settlement Fund to eligible members of the Seller Class or request for attorneys' fees and reimbursement of expenses and contribution awards for each Named Plaintiff, submitted by Class Counsel, shall in no way disturb or affect this Judgment or any releases contained herein, and shall be considered separate from this Judgment.

CONTINUING JURISDICTION

17. Without affecting the finality of this Judgment, the Court retains continuing and exclusive jurisdiction over all matters relating to: (i) the implementation, administration, consummation, enforcement and interpretation of the Settlement; (ii) the allowance, disallowance or adjustment of any claim made by members of the Classed on equitable grounds and any award or distribution of the Settlement Amount; (iii) the disposition of the Settlement Amount; (iv) the adjudication and determination of Class Counsel's request for an award of

attorneys' fees and expenses and case contribution awards for each Named Plaintiff; (v) the enforcement and administration of this Judgment; (vi) the enforcement and administration of the Stipulation, including any releases executed in connection therewith; and (vii) other matters related or ancillary to the foregoing.

18. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation, and shall be vacated to the extent provided by the Stipulation and, in such event: (i) all orders entered and releases delivered in connection with this Order shall be null and void to the extent provided by and in accordance with the Stipulation; (ii) the fact of the Settlement and papers submitted in support of the Settlement shall not be admissible in any trial in connection with the Action and the parties to the Stipulation shall be deemed to have reverted *nunc pro tunc* to their respective status in the Action immediately before August 20, 2014; and (iii) the balance of the Settlement Amount, less any Notice and Administration Expenses paid or incurred and less any Taxes paid, incurred, or owing, shall be returned in full as provided in the Stipulation.

It is so ORDERED this _____ th day of _____, 2015.

_____

The Honorable Samuel H. Mays, Jr.
United States District Judge

EXHIBIT 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, PATRICK LYNCH, ROBERTO VERTHELYI and FREDERICK SHEARIN, on behalf of themselves and all others similarly situated, Plaintiffs, v. W2007 GRACE ACQUISITION I, INC., TODD P. GIANNOBLE, GREGORY FAY, BRIAN NORDAHL, DANIEL E. SMITH, MARK RICKETTS, THE GOLDMAN SACHS GROUP, INC., GOLDMAN SACHS REALTY MANAGEMENT L.P., WHITEHALL PARALLEL GLOBAL REAL ESTATE LIMITED PARTNERSHIP 2007, W2007 FINANCE SUB, LLC, W2007 GRACE I, LLC and PFD HOLDINGS, LLC, Defendants.	No. 2:13-cv-2777 (SHM/DKV) **CLASS ACTION**

[PROPOSED] ORDER

This Court having considered the Stipulation and Agreement of Settlement, dated October 9, 2014 (the "Stipulation"), between Named Plaintiffs David Johnson, Patrick Lynch, Roberto Verthelyi and Frederick Shearin (collectively "Named Plaintiffs") and Defendant; the Motion For An Award of Attorneys' Fees, Reimbursement of Expenses and Named Plaintiffs' Contribution Awards; and, the supporting Declaration of Kimberly Donaldson Smith, dated August 7, 2015 and along with the exhibits attached thereto. And, the Court, having held a hearing on September 11, 2015 (the "Final Approval Hearing"), and having considered all of the

submissions and arguments with respect thereto, and otherwise being fully informed, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. In compliance with Federal Rule of Civil Procedure 23(h) and 54(d)(2), Class Counsel has filed a Motion For An Award of Attorneys' Fees, Reimbursement of Expenses and Named Plaintiffs' Contribution Awards ("Fee Petition").

2. Notice of the Fee Petition was served on all parties through the Court's Electronic Court Filing System.

3. The members of the Holder and Seller Classes were notified that Class Counsel intended to apply for the approval of fees, expenses and contribution awards in the Settlement Notice, which was sent by direct mail to the members of the Class, and in the published Summary Notice, in accordance with the Preliminary Approval Order, *see* ECF No. 90.

4. The members of the Classes and the Defendants were given an opportunity to respond to the Fee Petition. (*Id.*)

5. The Court heard argument with respect to the Fee Petition at the Final Approval Hearing.

6. The prerequisites of Fed. R. Civ. P. 23(h) and (54)(d)(2) have been satisfied.

7. The fees, expenses and contribution awards requested are fair and reasonable under the facts and circumstances of this Action and the Settlement.

8. The Fee Petition is hereby GRANTED in its entirety, as follows:

   a. Class Counsel's request for $4,000,000 in attorneys' fees and litigation expenses to be paid for by Defendants pursuant to the terms of the Stipulation is GRANTED.

b. Class Counsel's request for $144,481.37 in Seller Class-related expenses to be paid from the Seller Class Settlement Fund pursuant to the terms of the Stipulation is GRANTED.

c. Class Counsel's request for $30,000 in contribution awards to be paid pursuant to the terms of the Stipulation is GRANTED.

d. Class Counsel's request for the payment of 50% of the $21,481.81 in Claims Administration Expenses related to the mailing and publication of the Settlement Notice from the Seller Class Settlement Fund, pursuant to the terms of the Stipulation, is GRANTED. Defendants will pay the other 50% in accordance with the terms of the Stipulation.

It is so ORDERED this _____ th day of _____, 2015.

_____

The Honorable Samuel H. Mays, Jr.
United States District Judge

EXHIBIT 6

W2007 GRACE

FIRM NAME: Chimicles & Tikellis LLP

TIME AND LODESTAR SUMMARY

REPORTING PERIOD: Inception through July 31, 2015

NAME		CURRENT HOURLY RATE	CURRENT TOTAL HOURS	LODESTAR
Chimicles, Nicholas E.	P	$950.00	448.75	$426,312.50
Smith, Kimberly D.	P	$700.00	922.50	$645,750.00
Pratsinakis, Catherine	SC	$500.00	1,591.25	$795,625.00
Saler, Christina D.	SC	$500.00	128.75	$64,375.00
Belger, Vera G.	A	$400.00	44.25	$17,700.00
Kenney, Joseph B.	A	$300.00	43.50	$13,050.00
Moumas, Aristotle C.	LC	$300.00	31.00	$9,300.00
Mastraghin, Corneliu P.	PL	$250.00	25.75	$6,437.50
Saunders, Stephanie E.	LC	$210.00	32.25	$6,772.50
Royer, Jesse D.	PL	$150.00	100.50	$15,075.00
Ngo, Phuong	PL	$100.00	200.25	$20,025.00
Other professional staff each with less than 11 hours			31.25	$14,345.00
TOTALS			**3,600.00**	**$2,034,767.50**

P = Partner
SC = Senior Counsel
A = Associate
PL = Paralegal
LC = Law Clerk
LA = Legal Assistant

EXHIBIT 7

W2007 GRACE

FIRM NAME: Chimicles & Tikellis LLP

EXPENSE REPORT

REPORTING PERIOD: Inception through July 31, 2015

DESCRIPTION	TOTAL EXPENSES
Experts/Consultants	$ 466,138.38
Travel/Meals	$ 8,398.60
Internal Reproduction/Copies	$ 8,205.75
Court Reporters/Transcripts	$ 3,261.75
Professional Services/Fees	$ 2,851.50
Computer Research	$ 1,828.11
Press Release	$ 1,555.00
Subpoena Service	$ 1,300.00
Outside Reproduction/Copies	$ 918.97
Express Mail	$ 755.09
Filing Fees	$ 429.00
Postage	$ 38.48
Total Litigation Expenses	**$ 495,680.63**

Seller-Class related litigation expenses	**$ 144,282.33**
Holder-Class related litigation expenses	**$ 351,398.30**

EXHIBIT 8

FREQUENTLY ASKED QUESTIONS

dated June 10, 2015

The information below relates to the proposed settlement (the "Settlement") of a class action brought by preferred shareholders of W2007 Grace Acquisition I, Inc. (OTCBB: WGCBP and WGCCP) ("W2007 Grace") conditionally approved by the United States District Court for the Western District of Tennessee ("Court"), in the matter captioned *Johnson, et al. v. W2007 Grace Acquisition I, Inc., et al.*, No. 2:13-cv-02777 (W.D. Tenn.) (the "Action").

THIS IS ONLY A SUMMARY OF INFORMATION RELATING TO THE PROPOSED SETTLEMENT. THE NOTICE, PROXY AND ALL SETTLEMENT PAPERS SHOULD BE READ CAREFULLY AND IN THEIR ENTIRETY.

Q: Is my vote on the Proxy proposals important?

Yes. The failure of any shareholder to vote on the proposal to amend the Amended and Restated Charter or vote on the proposal to approve the Merger transaction will have the same effect as a vote against these proposals. Therefore, it is important that you vote your shares.

Q: *Do I need to fill out the claim form?*

You should complete and timely submit a claim form, postmarked no later than September 18, 2015, if you sold some or all of your Preferred Stock between October 25, 2007, and October 8, 2014, inclusive, and suffered a loss.

If you are a member of the Holder Class, you are not required to fill out the claim form in order to claim your share of any residual in the Net Seller Class Settlement Fund.

Q: Has the Court granted preliminary approval of the Settlement?

Yes. On April 30, 2015, the Court entered an Order preliminarily approving the Settlement and authorizing the mailing and publishing of the Notice of the Settlement to the members of the Class. A copy of the Order can be found at: http://www.chimicles.com/W2007GraceLitigation.

Q: Has the Court scheduled a date for the Final Approval Hearing?

Yes. The Court has scheduled the Final Approval Hearing for September 11, 2015 at 9:30 AM (Central Time) in Courtroom 2 of the United States District Court for the Western District of Tennessee, 167 North Main Street, Memphis, Tennessee 38103.

You do not need to appear at the Final Approval Hearing. If you want to appear, you must file a Notice of Intention to Appear; the Notice provides instructions on how to do that.

Q: How can I find out more information about the Settlement?

The Stipulation of Settlement, including all related documents, can be found at: http://www.chimicles.com/W2007GraceLitigation.

In addition, you should read the Notice of Proposed Settlement of Class Action Litigation in its entirety, as it explains the Settlement, benefits of the Settlement and how the Settlement impacts your rights, and the Notice of Special Meeting of Shareholders ("Proxy") for the meeting to be held in July 2015, as well as filings made with the Securities and Exchange Commission ("SEC") by W2007 Grace Acquisition I. The Court has ordered that the Notice and Proxy be mailed by May 21, 2015. The Notice will also be posted on Class Counsel's website at http://www.chimicles.com/W2007GraceLitigation.

In addition, Class Counsel will be filing papers with the Court on or before August 7, 2015, in support of the Settlement and fee petition. These documents will be accessible on the Firm's website. If you have additional questions, please contact Class Counsel at 610-642-8500 or by email at cp@chimicles.com.

Q: Who is affected by the Settlement? Who are members of the "Holder Class" and "Seller Class"?

Owners of W2007 Grace Acquisition I, Inc. 8.75% Series B Cumulative Preferred Stock ("Series B Preferred Stock") and/or 9.00% Series C Cumulative Preferred Stock ("Series C Preferred Stock" and together with the Series B Preferred Stock, the "Preferred Stock") who:

(1) as of August 22, 2014 held and through the Merger Effective Time continue to hold Series B or Series C Preferred Stock (the "Holder Class"); and/or,

(2) sold some or all of their Preferred Stock between October 25, 2007 and October 8, 2014, inclusive, and suffered a loss (the "Seller Class").

Q: Who are not members of the Holder Class or Seller Class?

The Holder Class does not include: Defendants and their affiliates; persons who validly exercise dissenters' rights in the Merger; and persons who validly exclude themselves from the Holder Class.

Persons or entities who sold all of their Preferred Stock after August 22, 2014 are not members of the Holder Class.

The Seller Class does not include Defendants and their affiliates; persons who sold shares to Defendant PFD Holdings, LLC ("PFD") in private transactions; and persons who validly excluded themselves from the Seller Class.

Persons or entities who sold all of their Preferred Stock after October 8, 2014 are not members of the Seller Class.

Q: ***What happens if I sell my Preferred Stock?***

If you sell (or sold) all of your Preferred Stock after August 22, 2014, then you are not a member of the Holder Class. You will not receive any distribution from the residual balance, if any, of the Net Seller Class Settlement Fund in accordance with the Settlement and Plan of Allocation. If you do not hold any Preferred Stock at the Effective Time of the Merger, then you will not receive $26 per share being paid in the Merger.

For any shares of Preferred Stock that you held as of August 22, 2014 and retain through the Effective Time of the Merger, you are a member of the Holder Class with respect to those shares of Preferred Stock.

If you sold any or all of your Preferred Stock on or before October 8, 2014, there is no guaranty that you will be eligible for a distribution from the Net Seller Class Settlement Fund with respect to such shares. The Plan of Allocation details who will be eligible for payment from the Net Seller Class Settlement Fund.

Q: ***If I sold my Preferred Stock between August 22, 2014 and October 9, 2014, am I a member of the Seller Class?***

Persons who sold Preferred Stock between October 25, 2007 and October 8, 2014, *and suffered a loss*, are members of the Seller Class with respect to the sold shares. There is no guaranty that you will be eligible for a distribution from the Net Seller Class Settlement Fund. The Plan of Allocation details who will be eligible for payment from the Net Seller Class Settlement Fund.

Q: ***If I purchase(d) Preferred Stock after August 22, 2014, am I a member of the Holder Class?***

No. If you purchased Preferred Stock after August 22, 2014, then you are not a member of the Holder Class. You will not receive any distribution from the residual balance, if any, of the Net Seller Class Settlement Fund in accordance with the Settlement and Plan of Allocation. If you hold your Preferred Stock at the Effective Time of the Merger (and have not otherwise exercised dissenters' rights, then you will receive $26 per share.

Q: ***What consideration will members of the Holder Class receive in the Settlement?***

As part of the Settlement, the holders of the Preferred Stock will be requested, pursuant to the Proxy, to approve a Merger transaction whereby W2007 Grace will be merged with and into another entity. If the Merger is approved and the Settlement becomes final, all Series B Preferred Stock and Series C Preferred Stock (except for the Excluded Shares, defined above) shall be converted into the right to receive **$26.00** per share (the "Merger"). In the aggregate, this is approximately $62 million to be paid to holders of Preferred Stock who are unaffiliated with any Defendant. In addition, to the extent there remains any balance in the Net Seller Class Settlement Fund, after distribution to eligible members of the Seller Class, then in accordance with the Plan of Allocation, such residual balance, if any, will be distributed to

eligible members of the Holder Class. In exchange for receipt of the Settlement Consideration, the members of the Holder Class will release their claims.

Q: What consideration will members of the Seller Class receive in the Settlement?

Those members of the Seller Class who submit a timely and valid Proof of Claim, will receive their share, pursuant to the Plan of Allocation, of a Seller Class Settlement Fund consisting of **$6 million** in cash. The Net Seller Class Settlement Fund shall be allocated and distributed to the eligible Seller Class members pursuant to the Plan of Allocation which is discussed in the Notice.

In exchange for receipt of the Settlement Consideration, the members of the Seller Class will release their claims.

Q: What did this Case and Settlement accomplish?

The filing of this case shone a light on the Company, which has been operating "in the dark" since the 2007 Equity Inns Merger. Before filing suit, Class Counsel conducted a statutorily-authorized books and records investigation, resulting in the production and analysis of numerous financial, organizational and operating documents. Utilizing these non-public documents as well as publicly available information, Class Counsel prepared and filed the complaint on September 13, 2013.

Class Counsel aggressively prosecuted the case, seeking and receiving discovery and conducting interviews of persons knowledgeable about the Company and events leading up to the then-current circumstances. Class Counsel consulted with the lawyers handling the case of *Donald J. Roberts IRA et al v. McNeil* that had been pending for more than five years in the Tennessee state court, which had raised claims of breach of fiduciary duty on behalf of a putative class of preferred shareholders against the former directors of Equity Inns. (The *Roberts* case ultimately, in January 2015, was dismissed with prejudice with no class recovery for the preferred shareholders.)

Just prior to the September 13, 2013 filing of the complaint, the market prices for the thinly-traded Series B Preferred Stock and C Preferred Stock ranged around $10 per share.

By the time Class Counsel began negotiating the proposed settlement with Defendants' Counsel in June 2014 (negotiations that culminated in written settlement documents in October 2014), Class Counsel had become fully familiar with numerous complex transactions that had occurred over the course of the time period between the Equity Inns Merger and the present.

The Equity Inns Merger created a capital structure with up to $2.06 billion in combined debt financing with claims senior to the Preferred Stock. Through the Equity Inns Merger, the acquiring company assumed majority ownership of the equity in the Company and its operating partnership. In 2009, the Company was in jeopardy of bankruptcy as the real estate and credit markets constricted in unprecedented ways. If bankruptcy had occurred in 2009, the Company has estimated the Preferred Stock would have essentially become worthless.

Through a negotiated debt restructuring, the Company avoided bankruptcy. Following the debt restructuring, the Company retained a 3% interest in the entity that owned the 106 hotels.

In negotiating the Settlement, Class Counsel's principal objectives included to:

1. Forestall and cause Defendants not to exercise their rights, discussed below, which would have significantly diminished the Preferred Stockholders' rights and interests.

2. Build a settlement for the Holder Class that secured a near term exit strategy for the Preferred Stockholders after being mired in a state of limbo for seven years that provided a guaranteed realizable value per share, which took into account the proposed sale of hotels to American Realty Capital Hospitality Trust, Inc. ("ARC Hospitality" and the "ARC Transaction"), but was not contingent on the closing of the ARC Transaction. Among the reasons: The volatility of the market, the risks associated with start-up ARC Hospitality's ability to raise capital to close the transaction or successfully refinance or assume the Company's existing debt, the risk of finding another buyer if the ARC Transaction was not completed, the risk the assets included in the ARC Transaction might change, and the expected necessity of the Company to accept a multi-year payment for a portion of the proceeds from the ARC Transaction. (The risks surrounding a possible ARC Hospitality transaction became even more pronounced when, just weeks after submission of the initial preliminary approval motion on October 9, 2014, there was news about regulatory and media scrutiny of key executives of affiliates of ARC Hospitality.)

3. Provide for a buyout price (ultimately negotiated at $26 per share) that guaranteed the Preferred Stockholders would receive a priority right to the ARC Transaction proceeds attributable to the Operating Partnership and the Company, and constituted a premium to the then expected amount realizable by Preferred Stockholders if the ARC Transaction closed without modification. As a result of the Settlement, the Preferred Stockholders will receive a priority for all value attributable to W2007 Equity LP in the ARC Transaction, notwithstanding their 1% interest in the W2007 Equity LP. Class Counsel believes that, whether taken on a nominal or present value basis, $26 per share exceeds the amount of attributable value of a share of Preferred Stock but for the settlement. Having locked in guaranteed liquidity for the Preferred Stockholders at the $26 per share price, while providing downside protection against the matters described in paragraphs 1 and 2, constitutes a significant benefit for the Holder Class members, who may also benefit from a supplemental distribution of the Net Seller Class Settlement Fund, if not fully distributed.

Q: Why are Class Counsel and the Plaintiffs Recommending the Settlement?

The proposed Settlement was reached after the parties engaged in extensive discovery and negotiations. A settlement is necessarily a compromise of claims and recoverable damages. Class Counsel and Plaintiffs believe that the proposed Settlement is fair and reasonable. Class Counsel's consideration takes into account the facts as revealed in discovery, the legal and contractual rights and interests of the Preferred Stockholders, and the risks associated with continued litigation, including the possibility of no recovery. T**he**

lawsuit does not purport to or intend to compensate for losses that are not attributable to legally actionable wrongdoing.

There are many reasons why Class Counsel and the Plaintiffs entered into the Settlement and are seeking Court approval of the Settlement, among them are the following:

W2007 Grace Acquisition I, Inc. only has a 1% ownership interest in W2007 Equity LP, the subsidiary that indirectly owned 106 of the hotels and which had a 99% ownership interest in the other 20 Trust hotels.

The current assets of the Company are not sufficient to satisfy the liquidation preference and accrued and unpaid dividends.

But for the Settlement, the Company could have engaged in another transaction which would likely result in a payment of the Company of less than $26 per share of the Series B Preferred Stock and the Series C Preferred Stock in extinguishment of such shares.

The Merger involving Equity Inns, Inc. and the affiliates of The Goldman Sachs Group, Inc. occurred in 2007. The Equity Inns Merger was, and was disclosed to be, a highly leveraged transaction that also occurred just prior to major real estate market and financial turmoil. All of the common stock of the Company is owned by W2007 Grace I, LLC ("Grace I"). Grace I is owned by W2007 Finance Sub, LLC ("W2007 Finance Sub") and Whitehall Parallel Global Real Estate Limited Partnership 2007 ("Whitehall Parallel"). The general partner of Whitehall Parallel and the partnerships owning W2007 Finance Sub is a wholly-owned subsidiary of The Goldman Sachs Group, Inc. ("GS Group"), which controls Goldman, Sachs & Co. ("GS") and Goldman Sachs Mortgage Company ("GSMC").

Grace I, the Company, Equity Inns, Inc. ("Equity Inns"), Grace II, L.P. ("Grace II") and Equity Inns Partnership, L.P. ("Equity LP") entered into an agreement and plan of merger pursuant to which Equity Inns merged with and into the Company and Grace II merged with and into Equity LP (the "Equity Inns Merger") in 2007. Subsequent to the Merger, Grace II changed its name to W2007 Equity Inns Partnership, L.P. ("W2007 Equity LP").

Since the Merger, Grace I has owned all of the shares of common stock of the Company and the Company has owned a 1% general partnership interest in W2007 Equity LP (with Grace I owning a 1% general partnership interest and a 98% limited partnership interest). The Company also owns 100% of W2007 Equity Inns Trust (the "Trust").

In connection with financing for the Equity Inns Merger a group of hotels (as of December 31, 2014, the 106 hotels, or the "OP Hotels") were owned by a series of wholly owned subsidiaries of W2007 Equity LP that were created in connection with financing for the Equity Inns Merger. The remaining hotels (as of December 31, 2014, a group of 20 hotels, the "Trust Hotels") were owned by various limited partnerships with various corporations as their sole general partners, which corporations were wholly-owned by the Trust. These general

partners each own a 1% ownership interest in the respective limited partnerships and W2007 Equity LP owns the remaining 99% ownership interest in the respective limited partnerships.

Also, under the loan agreements, the borrowers were required to fund and maintain certain reserves with the lender, including reserves for required repairs, taxes, insurance, the completion of franchise agreement capital improvements, the replacement of furniture, fixtures and equipment and rent payable under certain ground leases. In addition, under the loan agreements, if the borrowers did not maintain a certain aggregate debt yield, their net operating cash flows would be "trapped." The loan agreements also specified certain limited uses for the "trapped" cash flows. Similar cash traps were required in an event of default under either of the loan agreements.

As part of a series of refinancing transactions beginning in 2009 to avoid bankruptcy of the Company and extinguishment of the preferred shares equity value, GSMC voluntarily agreed to a debt restructuring to cancel $545 million of debt it owned secured by the Portfolio in lieu of foreclosure of the Portfolio, in exchange, GSMC acquired an option to purchase (the "Purchase Option") a 97% equity interest in one of the Company's wholly owned subsidiaries that indirectly owned 106 OP Hotels. The Purchase Option was acquired by an affiliate of Whitehall on July 13, 2012 for $175 million. Following refinancing of the senior mortgage loan on April 11, 2014, the Purchase Option was exercised. In addition, as part of these series of refinancing transactions in lieu of foreclosure, Whitehall agreed to inject approximately $195 million of capital to pay down debt and secure waivers of default, among other things.

In negotiating and entering into the Settlement, and assessing the strengths and weaknesses of the claims asserted in the Action, Plaintiffs and Class Counsel took into account the foregoing transactions, including their timing and purpose. In addition, Class Counsel took into account that, but for the Settlement, Whitehall could seek to be subrogated from the proceeds of the ARC Transaction for the $190 million payment, which could have reduced further any distribution, if any, to the Preferred Stockholders from the sale of the Portfolio.

The ARC Transaction. The ARC Transaction, a transaction between non-affiliated parties, closed on February 27, 2015. The aggregate purchase price for the 116 Properties was approximately $1.808 billion, subject to certain adjustments and prorations (of which $347 million was allocated to the Trust Hotels and $1.461 billion to the Senior Mezz Hotels being sold). The purchase price consisted of approximately $1.361 billion in cash (which amount includes approximately $904 million in assumed debt) and approximately $447 million in preferred equity interests (the "Preferred Equity"). The purchase price was allocated to each of the individual hotels in the Portfolio, as disclosed in ARC Hospitality's SEC filings. The consideration received at closing, net of transaction costs, proration and other purchase price adjustments, generally was allocated amongst the sellers in accordance with the allocated purchase prices of the portions of the Portfolio owned by them unless such costs are clearly associated with a particular pool (for example, the defeasance costs associated with the 20 Trust Hotels' mortgages).

Class Counsel took into account that the estimated proceeds that could be distributed to Preferred Stockholders over time, including PFD Holdings, as a result of the ARC

Transaction, would be approximately $22.46 per share assuming the Initial Capital Contributions of the Class A Interests are repaid in full and excluding (a) any Preferred Return that may be received in connection with the Class A Interests, (b) a present value discount to the repayment of the Class A Interests or any Preferred Return which such payments will occur over time, (c) any value attributed to the Excluded Hotel Assets, (d) any cash, other working capital assets and liabilities of the Company which might otherwise result in a distribution to Preferred Stockholders in connection with the liquidation of the Company and (e) any income tax effects which may be applicable to proceeds received by the Company (the "Estimated Proceeds over Time from the ARC Transaction").

In addition, Class Counsel took into account that that the estimated present value (applying a 15% discount rate) of the Estimated Proceeds over Time from the ARC Transaction plus the Preferred Return, would be approximately $19.23 per share to the holders of the Preferred Stock, including PFD Holdings (the "Estimated Present Value of Proceeds from the ARC Transaction"). The Estimated Present Value of Proceeds from the ARC Transaction assumes that interest is collected monthly and 50% of the Initial Capital Contribution is collected 36 months after February 27, 2015, the closing date of the ARC Transaction, and the remaining 50% of the Initial Capital Contribution is collected 48 months after the closing of the ARC Transaction. The Estimated Present Value of Proceeds from the ARC Transaction excludes (i) any value attributed to the Excluded Hotel Assets, (ii) any cash, other working capital assets and liabilities of the Company which might otherwise result in a distribution to holders of the Preferred Stock in connection with the liquidation of the Company and (iii) any income tax effects which may be applicable to proceeds received by the Company.

Post-closing adjustments related to the ARC Transaction are expected to be concluded on or about May 27, 2015. The working capital of the Company and Senior Mezz may be affected by these adjustments, the impact and magnitude of which cannot be estimated prior to completion of the post-closing review.

Moreover, assuming the proceeds that would be received in respect of the Excluded Hotel Assets equal the $100.0 million that was provided for in the Excluded Hotel Sale Agreement (which has been terminated) less $2.0 million of estimated transaction expenses (not taking into account in each case any present value discount), it is estimated that the potential proceeds in respect of such hotels would result in approximately $0.50 per share of Preferred Stock (the "Estimated Potential Proceeds from the Sale of the Excluded Hotel Assets"). The sum of the Estimated Proceeds over Time from the ARC Transaction and the Estimated Potential Proceeds from the Sale of the Excluded Hotel Assets would be approximately $22.96 per share of Preferred Stock. The sum of the Estimated Present Value of Proceeds from the ARC Transaction and the Estimated Potential Proceeds from the Sale of the Excluded Hotel Assets would be approximately $19.73 per share of Preferred Stock.

The foregoing presentation of the amount of proceeds from the ARC Transaction per share of Preferred Stock disregards that that W2007 Grace Acquisition I, Inc. only has a 1% ownership interest in W2007 Equity LP, the subsidiary that indirectly owned 106 of the hotels and which had a 99% ownership interest in the other 20 Trust hotels.

Also, in negotiating and entering into the Settlement, Class Counsel took into account, among other things, that the ARC Transaction and the allocation of the purchase price were part of a third-party transaction and consistent with other indications of estimated value of the Portfolio. In addition, Class Counsel took into account the risk of continued ownership of the Preferred Equity, including the lack of liquidity opportunity for the Preferred Equity, that the ability to make the payments under the Preferred Equity agreements depends upon the performance of the Portfolio and the risk of default by ARC Hospitality. Moreover, Class Counsel took into consideration that the sale of the entire Portfolio to ARC Hospitality and/or other buyers (which transactions did not require approval of the Preferred Stockholders), could result in the proceeds from such transaction(s) being retained by GS and/or its affiliates, and not in any way distributed to the Preferred Stockholders because of the reasons discussed above, including the Company's effective limited ownership interest in the Portfolio.

But for the Settlement, no payment by Grace I to the Preferred Stockholders was secured by the Keepwell Agreement. In October 2007 the Company and Grace I entered into a Keepwell Agreement, effective as of the date of the Equity Inns Merger, pursuant to which Grace I agreed to make such cash payments to the Company as are necessary to enable the Company to satisfy its obligations to the holders of the Series B and Series C Preferred Stock in accordance with the Company's charter ***when the Company determines, or is legally compelled, to satisfy such obligations***. The Keepwell Agreement provides that it shall not be deemed to constitute a "guaranty of payment of dividends (if any), interest (if any), principal and premiums (if any) of any obligations, indebtedness or liability" of the Company. Moreover, the Keepwell Agreement may be terminated by Grace I unilaterally, at any time, upon 30 days' prior written notice. Further, as the Company stated in its Annual Report on Form 10-K for the year ended December 31, 2014, "[t]o date, no payments have been made and none are due under the Keepwell Agreement... [and] [t]here are no third-party beneficiaries of the Keepwell Agreement." Therefore, but for the Settlement, including the resulting Final Judgment if the Settlement is approved, which secure payment to the Preferred Stockholders, no payment was ensured to be made to the Preferred Stockholders under the Keepwell Agreement.

The acquisition of Preferred Stock by PFD Holdings. Class Counsel secured information about PFD Holdings and how it came to own its approximately 59% interest in the Preferred Stock by 2014. The information showed that PFD Holdings did not make any open market purchases from unwitting Preferred Stockholders, or by exploiting any insider knowledge as was alleged in the Amended Complaint. Rather, PFD Holdings purchased its Preferred Stock in a series of arm's-length stock purchase transactions entered into with sophisticated investors who were informed and stood in an equal bargaining position as PFD Holdings. Class Counsel simultaneously subpoenaed the sellers to search for evidence of collusion between the sellers and PFD Holdings, but no such evidence was found.

Q: What's happening with respect to the 10 remaining hotels and what's the Preferred Stockholders' interest in them?

On March 30, 2015, it was announced that W2007 Equity Inns Senior Mezz, LLC ("Senior Mezz"), an entity in which the Company has a 3% interest, had entered into a contract (the "Excluded Hotel Sale Agreement") to sell the 10 hotels which were not included in the ARC Transaction (the "Excluded Hotel Assets") for a combined purchase price of $100 million. The Excluded Hotel Sale Agreement was terminated by the purchasers on May 6, 2015 (the ARC buyers had previously elected to exclude the same hotels from the ARC Transaction). On June 8, 2015, Senior Mezz entered into an amendment to the terminated contract, which among other things, reinstated the contract for nine of the Excluded Hotel Assets, amended the purchase price to $85 million and scheduled closing for July 23, 2015. Click here for a copy of the Form 8-K, filed on 6/9/2015. While the sellers expect to sell the Excluded Hotel Assets, there can be no assurance as to whether or when the Excluded Hotel Assets will be sold, the form of consideration which may be received in respect of the Excluded Hotel Assets or whether the consideration which may be received in respect of the Excluded Hotel Assets will be greater or less than the purchase price in the Excluded Hotel Sale Agreement. Even if a transaction for the Excluded Hotel Assets occurs, there can be no assurance as to if or when a distribution from such sale proceeds would be received by the Company.

Q: Is the Settlement contingent on the sale of the 10 Hotels that were excluded from the ARC Transaction?

No. Just as the Settlement was not contingent on the closing of the ARC Transaction, the Settlement is not contingent upon the sale of the 10 Hotels that were excluded from the ARC Transaction.

Q: What financial statements for the Company are publicly available?

As of May 12, 2015, the Company has filed with the SEC an Annual Report on Form 10-K for the year ended December 31, 2014; and Current Reports on Form 8-K or Form 8-K/A filed on March 5, 2015, March 19, 2015, March 30, 2015, April 22, 2015, May 1, 2015, and May 11, 2015. It is expected that the Company will file with the SEC on or before July 1, 2015, additional reports, including an Annual Report on Form 10-K for the year ended December 31, 2013 and quarterly reports for the periods ended March 31, 2014, June 30, 2014 and September 30, 2014.

The following financial statements will be attached to the Proxy: Audited consolidated financial statements of the Company as of December 31, 2014, 2013 and 2012 and for each of the four years ended December 31, 2014; and, unaudited pro forma condensed consolidated balance sheet of the Company as of December 31, 2014, and unaudited pro forma condensed consolidated statement of operations for year ended December 31, 2014.

In addition, the Company will continue to make required filings with the SEC on or after the date of the Proxy pursuant to the Securities Exchange Act of 1934, as amended (the

"Exchange Act"), prior to the shareholder meeting to vote on the Merger that relate to periods or events occurring in 2015.

Q: Does the SEC Cease-and-Desist Order ("SEC Order") dated April 22, 2015 change the fairness of the proposed Settlement?

No. The Court was aware of the SEC Order prior to issuing the Order granting Preliminary Approval of the Settlement. The SEC Order addresses the methodology to be applied in counting the number of record holders of the Company's Preferred Stock for purposes of Section 15(d) of the Exchange Act of 1934, as amended, and concludes that the Company undercounted its record holders of preferred stock and had 300 or more record holders on January 1, 2014. Pursuant to the SEC Order, the Company agreed to resume its periodic reporting pursuant to Section 15(d) by filing an annual report on Form 10-K for the fiscal year ended December 31, 2014 on or before May 15, 2015 (which was filed on May 1, 2015), and filing an annual report on Form 10-K for the fiscal year ended December 31, 2013 and any subsequent periodic reports required to be filed on or before July 1, 2015.

The Order does not address or relate to the nature or substance of any disclosures by the Company. The Order does not impact the fairness the proposed Settlement. The proposed Settlement was entered into after Class Counsel and their experts received and reviewed, among other things, audited financial statements of the Company since 2007.

Q: If I exercise dissenters' rights in accordance with Title 48, Chapter 23 of the Tennessee Business Corporations Act ("TBCA"), will I get the benefits of the Settlement?

No. If you are a member of the Holder Class who timely and validly exercises your dissenters' rights, you will be **excluded** from the Holder Class.

Before exercising dissenters' rights, you may want to consult with an attorney. You should be aware that the determination of "fair value" of your Preferred Stock in accordance with Title 48, Chapter 23 of the TBCA could be less than the redemption value of the merger consideration.

Q: When will I be paid?

The Settlement is not yet final, and there is currently no present or future right to any payment. Payment, if any, to those who are eligible to receive payment from the Settlement will occur only after the Settlement is granted Final Approval and the Effective Date of the Settlement occurs.

Q: What are some important factors relating to Class Counsel's anticipated fee petition?

Class Counsel thoroughly researched this case for months before filing it in September 2013, and has expended significant time and resources in prosecuting the suit in a compressed and intensive timeframe without any assurance of payment for their efforts.

Class Counsel negotiated the fees with Defendants after all material Settlement terms had been agreed upon in principle. In addition, Class Counsel insisted that Defendants agree to pay any awarded fees over and above the Settlement consideration. This is in sharp contrast to most class action settlements where the fee award is paid out of the settlement consideration.

For their work in connection with the Action and securing the proposed Settlement, Class Counsel intend to seek from the Court an order: (i) awarding reasonable fees and expenses in the aggregate amount of $4,000,000; (ii) an award of Seller Class-related litigation expenses, other than the Seller Class Notice and Administration Expenses, not to exceed $150,000, to be paid out of the Seller Class Settlement Fund; and (iii) granting payment of a case contribution award in the amount of $7,500 to each Named Plaintiff for the time and expenses incurred in bringing and litigating this Action.

Q: ***Should the parties anticipate recovering their market loss from the Seller Class Settlement?***

No. There is a difference between market loss and recoverable damages. The Class Period in this matter covers one of the most tumultuous times in our financial markets in more than a half century. We believe that the $6 million Sellers Class Settlement Fund, which will not be reduced by attorneys' fees, is a fair and reasonable result for those who sold their Preferred Shares, in light of significant litigation risks and the amount of and proof of recoverable damages.

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

David Johnson, Patrick Lynch, Roberto Verthelyi and Fredrick Shearin, on behalf of themselves and all others similarly situated,	:	Case No. 2:13-cv-02777
Plaintiffs,	:	**Class Action**
v.	:	Removed from: Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District, at Memphis
W2007 Grace Acquisition I, Inc., Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007, W2007 Finance Sub, LLC, W2007 Grace I, LLC and PFD Holdings LLC,	:	
Defendants.	:	

DECLARATION OF VAN TURNER, ESQUIRE IN SUPPORT OF NAMED PLAINTIFFS' (1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASSES AND APPROVAL OF SELLER CLASS PLAN OF ALLOCATION AND (2) MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND NAMED PLAINTIFFS' CONTRIBUTION AWARDS

I, Van Turner, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a Partner of the firm of Hagler Bruce & Turner, PLLC ("HBT"), Counsel in the above-captioned class action (the "Action") representing representative plaintiffs David Johnson ("Johnson"), Patrick Lynch ("Lynch"), Roberto Verthelyi ("Verthelyi") and Fredrick Shearin ("Shearin") (collectively, "Named Plaintiffs"), and similarly-situated shareholders.

2. I am admitted to practice in the State of Tennessee and admitted to practice before this Court.

3. This declaration is respectfully submitted in support of Named Plaintiffs' Motion pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for final approval of the Settlement Agreement, approval of the Plan of Allocation of the Net Seller Class Settlement Fund and for final certification of the Holder Class and Seller Class for purposes of the Settlement.[1]

4. This declaration is also respectfully submitted in support of Class Counsel's motion, pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, for an award of attorneys' fees, payment of expenses incurred in this Action and for Named Plaintiffs' case contribution awards.

5. The accompanying Declaration of Kimberly M. Donaldson Smith and accompanying memorandum of law set forth in greater detail, among other things, the Action, the claims and procedural history of the Action, the proposed Settlement, and the work performed by Counsel in connection therewith.

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[1] Capitalized terms not otherwise defined herein have the meanings set forth and defined in the Stipulation and Agreement of Settlement, dated October 8, 2014 (the "Settlement Agreement"). (*See* Declaration of Kimberly Donaldson Smith in Support of Plaintiffs' Motion for Preliminary Approval, dated October 9, 2014, ECF No. 77, Exhibit A. [hereinafter, the "Smith 10/9/2014 Decl."].)

6. I have at all times assumed the responsibility of litigating this Action on a contingent-fee basis, such that any attorneys' fee would be paid only upon achieving a recovery for the benefit of Plaintiffs and the Class by settlement or judgment.

7. The schedule attached hereto as Exhibit A is a detailed summary indicating the amount of time spent by the attorneys and professional support staff of HBT who were involved in this litigation, and the lodestar calculation based on HBT's current billing rates. As reflected on Exhibit A, the total number of hours expended on this litigation by HBT is 182.10 hours. The total lodestar for HBT as of August 3, 2015 is $100,155.00, consisting of attorneys' time and other professional staff (paralegal and law clerk) time. Exhibit A sets forth the time expended in this action by HBT during the relevant period for, among other things: (a) complaint review and filing; (b) motion to dismiss opposition; (c) discovery; (d) in person and telephonic court appearances; (e) class certification; and (f) settlement.

8. HBT's lodestar figures are based upon HBT's current billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in HBT's billing rates. For personnel who are no longer employed by HBT, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by HBT. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by HBT. The hourly rates for HBT's attorneys and professional legal staff included in Exhibit A are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other securities or shareholder litigations, including class action matters in which HBT has previously handled.

9. HBT also incurred routine and typical expenses in connection with prosecution and settlement of the Action in the amount of $398.04, as set forth on Exhibit B.

10. In my judgment, the number of hours expended, the services performed by the attorneys and paraprofessionals at C&T and HBT, and the expenses for which C&T and HBT seek reimbursement, were reasonable and expended for the benefit of the Class in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of August, 2015.

/s
Van Turner (Bar ID No. 022603)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

David Johnson, Patrick Lynch, Roberto Verthelyi and Fredrick Shearin, on behalf of themselves and all others similarly situated,	Case No. 2:13-cv-02777
Plaintiffs,	**Class Action**
v.	Removed from: Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District, at Memphis
W2007 Grace Acquisition I, Inc., Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007, W2007 Finance Sub, LLC, W2007 Grace I, LLC and PFD Holdings LLC,	
Defendants.	

EXHIBIT A

DECLARATION OF VAN TURNER, ESQUIRE IN SUPPORT OF NAMED PLAINTIFFS' (1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASSES AND APPROVAL OF SELLER CLASS PLAN OF ALLOCATION AND (2) MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND NAMED PLAINTIFFS' CONTRIBUTION AWARDS

The following chart for Hagler, Bruce & Turner, PLLC includes attorney fees from September 10, 2013 through July 31, 2015:

Attorney Name	Hours	Rate	Lodestar
Van D. Turner	140	$550	$77,000.00
Katrice Field	42.1	$550	$23,155.00
TOTAL			**$100,155.00**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

David Johnson, Patrick Lynch, Roberto Verthelyi and Fredrick Shearin, on behalf of themselves and all others similarly situated,	Case No. 2:13-cv-02777
Plaintiffs,	**Class Action**
v.	Removed from: Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District, at Memphis
W2007 Grace Acquisition I, Inc., Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007, W2007 Finance Sub, LLC, W2007 Grace I, LLC and PFD Holdings LLC,	
Defendants.	

EXHIBIT B

DECLARATION OF VAN TURNER, ESQUIRE IN SUPPORT OF NAMED PLAINTIFFS' (1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASSES AND APPROVAL OF SELLER CLASS PLAN OF ALLOCATION AND (2) MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND NAMED PLAINTIFFS' CONTRIBUTION AWARDS

The following chart for Hagler, Bruce & Turner, PLLC includes expenses from September 10, 2013 through July 31, 2015:

Description	Amount
Certified Mail	$98.04
Filing Fee	$300.00
TOTAL	**$398.04**

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

David Johnson, Patrick Lynch, Roberto Verthelyi and Fredrick Shearin, on behalf of themselves and all others similarly situated, Plaintiffs, v. W2007 Grace Acquisition I, Inc., Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007, W2007 Finance Sub. LLC, W2007 Grace I, LLC and PFD Holdings LLC, Defendants.	Case No. 2:13-cv-02777 Removed from: Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District, at Memphis

DECLARATION OF DAVID JOHNSON

I, David Johnson, of full age and mind, under penalty of perjury, declare as follows:

1. I am a class representative in the above-captioned action.

2. I currently hold 6,400 shares of W2007 Series B Preferred Stock in various trust and retirement accounts and have continuously held this Preferred Stock since July 2, 2007. I sold some shares of W2007 Series B Preferred Stock in 2010.

3. I owned my own business for many years and have decades of experience in real estate and investing in real estate.

4. I chose to be class representative in this action because it was the moral and right thing to do. I was not promised any payment or consideration in exchange for serving as class representative.

5. I retained Class Counsel who is competent and experienced in securities class litigation, and had vigorously prosecuted this action throughout my involvement.

6. As a class representative in this action, I actively pursued this litigation on behalf of the Settlement Classes, engaged in a considerable effort on behalf of and for the benefit of the Preferred Stockholders, and estimate that I spent at least one hundred hours of my time engaging in the following activities:

a. I interviewed class counsel and selected Chimicles & Tikellis LLP to serves as my counsel.

b. Prior to my involvement in this action:

i. I was a director nominee in connection with the election of directors to the W2007 Grace Board to be held at the Special Meeting of Preferred Stockholders on December 14, 2010;

ii. I submitted a comment to the Securities and Exchange Commission in connection with the Notice of an Application of W2007 Grace Acquisition I, Inc. under Section 12(h) of the Securities Exchange Act of 1934, File No 81-939, dated May 5, 2013 and campaigned to have other Preferred Stockholders write to the SEC.

iii. with the assistance of Class Counsel, I sent a demand for certain book and records of the Company to the W2007 Grace Board on August 2, 2013.

c. I was in regular communication with Class Counsel and well-informed both before and throughout the litigation.

d. I reviewed and commented on the original and the Amended Complaints and other filings in this action.

e. I spent at least one hour discussing my discovery obligations with Class Counsel and reviewed with Class Counsel all of the defendants' discovery requests and how to meet my discovery obligations.

f. I spent hours searching for relevant case documents, emails, electronically stored information (ESI), investment account statements spanning approximately five years, and other hard copy documents.

g. I reviewed and responded to Defendants' interrogatories with the assistance of Class Counsel.

h. I reviewed Named Plaintiffs' Motion for Class Certification and worked with Class Counsel in drafting and executing my declaration in support of that Motion.

i. I traveled from South Carolina to Haverford, Pennsylvania, and spent two days preparing for and giving a full-day deposition. I spent many hours preparing for my deposition on my own and with Class Counsel. I re-familiarized myself with my documents and emails, the allegations and the claims, the numerous entities involved, and met with Class Counsel to prepare and go over the mechanics and process of a deposition.

j. I reviewed my deposition transcript for accuracy, corrected court reporter error where appropriate and signed my deposition transcript certifying its accuracy.

k. I was involved in and had engaged in various discussions with Class Counsel concerning the negotiations of the settlement on behalf of the Seller and Holder Classes.

l. I scrutinized the terms of the settlement, asked questions and satisfied myself that the settlement was in the best interest of the Classes' members.

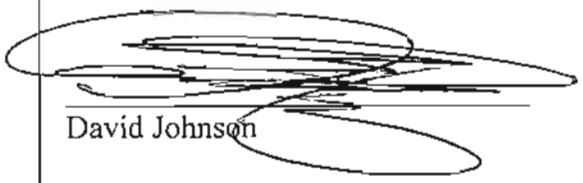
m. I discussed the Plan of Allocation with Class Counsel to ensure that the distribution of the Seller Class Settlement proceeds was equitable.

7. I authorized Class Counsel to enter into the Memorandum of Understanding and the Settlement Agreement on my behalf, given the strengths and weaknesses of the case as explained to me by experienced Class Counsel.

8. I believe that the settlement is in the best interest of former and current preferred stockholders of W2007 Grace Acquisition I, Inc.

9. I am not aware of any conflicts of interest with regard to my representation of the Seller and Holder Classes.

Executed this 5th day of August, 2015 at SENECA, South Carolina.



David Johnson

EXHIBIT 11

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

David Johnson, Patrick Lynch, Roberto Verthelyi and Frederick Shearin, on behalf of themselves and all others similarly situated,	:	Case No. 2:13-cv-02777
Plaintiffs,	:	Removed from:
v.	:	Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District, at Memphis
W2007 Grace Acquisition I, Inc., Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007, W2007 Finance Sub, LLC, W2007 Grace I, LLC and PFD Holdings LLC,	:	
Defendants.	:	

DECLARATION OF FREDERICK SHEARIN

I, Frederick Shearin, of full age and mind, under penalty of perjury, declares as follows:

1. I am a class representative in the above-captioned action.

2. I currently hold 10,000 shares of W2007 Series C Preferred Stock which I continuously held since February 2007.

3. I have a Bachelor of Science degree in chemical engineering from the Mississippi State University and worked for a division of Procter & Gamble in the Memphis area, which was later sold, for 35 years.

4. I chose to be class representative in this action because it was the moral and right thing to do. I was not promised any payment or consideration in exchange for serving as class representative.

5. I retained Class Counsel who is competent and experienced in securities class litigation and had vigorously prosecuted this action throughout my involvement.

6. As a class representative in this action, I actively pursued this litigation on behalf of the Settlement Classes, engaged in a considerable effort on behalf of and for the benefit of the Preferred Stockholders, and estimate that I spent at least one hundred hours of my time engaging in the following activities:

   a. I was in regular communication with Class Counsel and well-informed throughout the litigation.

   b. Prior to my involvement in this action, I was a director nominee in connection with the election of directors to the W2007 Grace Board to be held at the Special Meeting of Preferred Stockholders on December 14, 2010.

   c. I also submitted a comment to the Securities and Exchange Commission in connection with the Notice of an Application of W2007 Grace Acquisition I, Inc.

under Section 12(h) of the Securities Exchange Act of 1934, File No 81-939, dated May 5, 2013 and campaigned to have other Preferred Stockholders write to the SEC.

d. I reviewed and commented on the original and the Amended Complaints and other filings in this action.

e. I spent at least one hour discussing my discovery obligations with Class Counsel and reviewed with Class Counsel all of the defendants' discovery requests and how to meet my discovery obligations.

f. I spent hours searching for relevant case documents, emails, electronically stored information (ESI), investment account statements spanning approximately five years, and other hard copy documents.

g. I reviewed and responded to Defendants' interrogatories with the assistance of Class Counsel.

h. I worked with Class Counsel in drafting and executing my declaration in support of that Motion.

i. I spent two days preparing for and giving a full-day deposition in the Memphis area. I spent many hours preparing for my deposition on my own and with Class Counsel. I re-familiarized myself with my documents and emails, the allegations and the claims, the numerous entities involved, and met with Class Counsel to prepare and go over the mechanics and process of a deposition.

j. I reviewed my deposition transcript for accuracy, and signed my deposition transcript certifying its accuracy.

k. I was involved in and had engaged in various discussions with Class Counsel concerning the negotiations of the settlement on behalf of the Seller and Holder Classes.

l. I scrutinized the terms of the settlement, asked questions and satisfied myself that the settlement was in the best interest of the Classes' members.

m. I discussed the Plan of Allocation with Class Counsel to ensure that the distribution of the Seller Class Settlement proceeds was equitable.

7. I authorized Class Counsel to enter into the Memorandum of Understanding and the Settlement Agreement on my behalf, given the strengths and weaknesses of the case as explained to me by experienced Class Counsel.

8. I believe that the settlement is in the best interest of former and current preferred stockholders of W2007 Grace Acquisition I, Inc.

9. I am not aware of any conflicts of interest with regard to my representation of the Holder Class.

Executed this 4th day of August, 2015, at PIPERTON, Tennessee.

Frederick Shearin

Frederick Shearin

EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

David Johnson, Patrick Lynch, Roberto Verthelyi and Fredrick Shearin, on behalf of themselves and all others similarly situated, Plaintiffs, v. W2007 Grace Acquisition I, Inc., Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007, W2007 Finance Sub, LLC, W2007 Grace I, LLC and PFD Holdings LLC, Defendants.	Case No. 2:13-cv-02777 Removed from: Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District, at Memphis

DECLARATION OF ROBERTO VERTHELYI

I, Roberto Verthelyi, of full age and mind, under penalty of perjury, declare to the best of my knowledge as follows:

1. I am a class representative in the above-captioned action.

2. I have a Bachelor of Art degree in economics from Harpur College at Binghamton University and a Master's degree in business administration with a concentration in finance and international business from the University of Chicago, Booth School of Business.

3. From 2007 through October 25, 2012, I owned 200 shares of W2007 Series B Preferred Stock. On October 26, 2012 I sold all of my shares of W2007 Series B Preferred Stock and recognized a loss of $2,450.

4. Before I got involved in the litigation, I volunteered to serve on the W2007 Grace Board to represent the interests of the Preferred Stockholders and took part in a Preferred Stockholder-led group effort to force the Company to hold an annual meeting for the election of two director designees to the W2007 Grace Board.

5. I chose to be class representative in this action because it was the moral and right thing to do. I was not promised any payment or consideration in exchange for serving as class representative.

6. I retained Class Counsel who is competent and experienced in securities class litigation, and had vigorously prosecuted this action throughout my involvement.

7. As a class representative in this action, I actively pursued this litigation on behalf of the Settlement Classes, engaged in a considerable effort on behalf of and for the benefit of the Preferred Stockholders, and estimate that I spent at least one hundred hours of my time engaging in the following activities:

a. I was in regular communication with Class Counsel and well-informed throughout the litigation.

b. I reviewed and commented on the original and the Amended Complaints and other filings in this action.

c. I spent at least one hour discussing my discovery obligations with Class Counsel and with Class Counsel reviewed all of the discovery requests and how best to meet my discovery obligations.

d. I spent time searching for relevant case documents, emails, electronically stored information (ESI), investment account statements spanning approximately five years, and other hard copy documents.

e. I reviewed and responded to Defendants' interrogatories with the assistance of Class Counsel.

f. I reviewed Named Plaintiffs' Motion for Class Certification and worked with Class Counsel in drafting and executing my declaration in support of that Motion.

g. I traveled from the northern area of New Jersey to Haverford, Pennsylvania, and spent two days preparing for and giving a full-day deposition. I spent many hours preparing for my deposition on my own and with Class Counsel. I re-familiarized myself with my documents and emails, the allegations and the claims, the numerous entities involved, and met with Class Counsel to prepare and go over the mechanics and process of a deposition.

h. I reviewed my deposition transcript for accuracy, corrected court reporter error where appropriate and signed my deposition transcript certifying its accuracy.

i. I was involved in and had engaged in various discussions with Class Counsel concerning the negotiations of the settlement on behalf of the Seller and Holder Classes.

j. I scrutinized the terms of the settlement, asked questions and satisfied myself that the settlement was in the best interest of the Classes' members.

k. I discussed the Plan of Allocation with Class Counsel to ensure that the distribution of the Seller Class Settlement proceeds was equitable.

8. I authorized Class Counsel to enter into the Memorandum of Understanding and the Settlement Agreement on my behalf, given the strengths and weaknesses of the case as explained to me by experienced Class Counsel.

9. I believe that the settlement is in the best interest of former and current preferred stockholders of W2007 Grace Acquisition I, Inc.

10. I am not aware of any conflicts of interest with regard to my representation of the Seller Class.

Executed this 4 day of August, 2015, at Hoboken, New Jersey

Roberto Verthelyi

EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

David Johnson, Patrick Lynch, Roberto Verthelyi and Fredrick Shearin, on behalf of themselves and all others similarly situated, Plaintiffs, v. W2007 Grace Acquisition I, Inc., Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007, W2007 Finance Sub, LLC, W2007 Grace I, LLC and PFD Holdings LLC, Defendants.	Case No. 2:13-cv-02777 Removed from: Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District, at Memphis

DECLARATION OF PATRICK LYNCH

I, Patrick Lynch, of full age and mind, under penalty of perjury, declare as follows:

1. I am a class representative in the above-captioned action.

2. I owned 1,000 shares of W2007 Series B Preferred Stock (previously ENN Series B Preferred Stock) from 2005 through part of 2011. I sold all of my shares of W2007 Series B Preferred Stock on November 8, 2011, and recognized a loss of nearly $25,000.

3. I obtained my Bachelor of Science degree in biological sciences from Yale University and my Bachelor of Art degree in philosophy and a Master of Divinity degree from the

Dominican School of Philosophy & Theology. Currently, I am an employee of the Internal Revenue Service ("IRS") and work out of the Seattle, Washington office of the IRS.

4. I chose to be class representative in this action because it was the moral and right thing to do. I was not promised any payment or consideration in exchange for serving as class representative.

5. I retained Class Counsel who is competent and experienced in securities class litigation, and who had actively prosecuted this action throughout my involvement.

6. As a class representative in this action, I actively pursued this litigation on behalf of the Settlement Classes, engaged in a considerable effort on behalf of and for the benefit of the Preferred Stockholders, and estimate that I spent at least one hundred hours of my time engaging in the following activities:

a. I was in regular communication with Class Counsel and well-informed throughout the litigation.

b. I reviewed the complaint and other filings in this action.

c. I spent at least one hour discussing my discovery obligations with Class Counsel and with Class Counsel reviewed all of the discovery requests and how best to meet my discovery obligations.

d. I spent time searching for relevant case documents, emails, electronically stored information (ESI), investment account statements spanning approximately five years, and other hard copy documents.

e. I reviewed and responded to Defendants' interrogatories with the assistance of Class Counsel.

f. I worked with Class Counsel in drafting and executing my declaration in support of the Motion for Class Certification.

g. I traveled from Seattle, Washington to Haverford, Pennsylvania, and spent two days preparing for and giving a full-day deposition. I took a day off from work and used one of a limited number of vacation days.

h. I spent many hours preparing for my deposition on my own and with Class Counsel. I re-familiarized myself with my documents and emails, the allegations

and the claims, the numerous entities involved, and met with Class Counsel to prepare and go over the mechanics and process of a deposition.

i. I reviewed my deposition transcript for accuracy and signed my deposition transcript certifying its accuracy.

j. I was involved in and had engaged in various discussions with Class Counsel concerning the negotiations of the settlement on behalf of the Seller and Holder Classes.

k. I scrutinized the terms of the settlement, asked questions and satisfied myself that the settlement was in the best interest of the Classes' members.

l. I discussed the Plan of Allocation with Class Counsel to ensure that the distribution of the Seller Class Settlement proceeds was equitable.

7. I authorized Class Counsel to enter into the Memorandum of Understanding and the Settlement Agreement on my behalf, given the strengths and weaknesses of the case as explained to me by experienced Class Counsel.

8. I believe that the settlement is in the best interest of former and current preferred stockholders of W2007 Grace Acquisition I, Inc.

9. I am not aware of any conflicts of interest with regard to my representation of the Seller Class.

Executed this 7th day of August, 2015, at Cornwell, Connecticut.

Patrick Lynch

EXHIBIT 14

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, PATRICK LYNCH, ROBERTO VERTHELYI and FREDERICK SHEARIN, on behalf of themselves and all others similarly situated, Plaintiffs, vs. W2007 GRACE ACQUISITION I, INC., TODD P. GIANNOBLE, GREGORY FAY, BRIAN NORDAHL, DANIEL E. SMITH, MARK RICKETTS, THE GOLDMAN SACHS GROUP, INC., GOLDMAN SACHS REALTY MANAGEMENT L.P., WHITEHALL PARALLEL GLOBAL REAL ESTATE LIMITED PARTNERSHIP 2007, W2007 FINANCE SUB, LLC, W2007 GRACE I, LLC, and PFD HOLDINGS LLC, Defendants.	No. 2:13-cv-2777 (SHM/DKV)

PLAN OF ALLOCATION

1. Capitalized terms used herein shall have the same meaning as the term is defined in the Stipulation and Agreement of Settlement ("Stipulation"), unless otherwise stated.

2. This Plan of Allocation governs both:

a) The distribution of the Net Seller Class Settlement Fund to Authorized Claimants from the Seller Class. The "Net Seller Class Settlement Fund" means the gross Seller Class Settlement Fund ($6,000,000 plus any interest earned thereon) less: (i) Seller Class Notice and Administration Expenses; (ii) any award of Seller Class-related litigation expenses not to exceed $150,000; (iii) payments for any Taxes and Tax Expenses; and (iv) costs for escrow services, if any.

-and-

b) The distribution of any residual balance (whether by reason of tax refunds, uncashed checks, or otherwise) in the Net Seller Class Settlement Fund ("Residual") to the Holder Class ("Residual Distribution to Holder Class").

3. The Plan of Allocation does not govern the distribution of the Merger Consideration to the Holder Class. No Proof of Claim Form will be required to be completed by the Holder Class.

Definition of Classes For Purposes of Plan of Allocation

4. For purposes of allocation and distribution of the Net Seller Class Settlement Fund, and in accordance with the Stipulation, the Seller Class consists of:

> All Persons who sold some or all of their Preferred Stock between October 25, 2007 and October 8, 2014, inclusive ("Seller Class Period") and suffered a loss, excluding: Defendants and their affiliates; persons who sold shares to Defendant PFD Holdings, LLC; and Seller Class Opt-Outs.

5. For purposes of the Residual Distribution to Holder Class, and in accordance with the Stipulation, the Holder Class consists of:

> All Persons who, as of August 22, 2014 and through the Merger Effective Time, hold W2007 Grace Series B or Series C Preferred Stock, excluding: Defendants and their affiliates; Holder Class Opt-Outs; and, Dissenting Shares.

Proof of Claim Process Required for Seller Class

6. The Seller Class member must complete and sign the Proof of Claim Form and timely return it to the Claims Administrator. Submission of the Proof of Claim Form does not guarantee that the Seller Class member will share in the Net Seller Class Settlement Fund. Furthermore, any member of the Seller Class who or which fails to submit a Proof of Claim Form by such date shall be barred from receiving any distribution from the Net Seller Class Settlement Fund or payment (unless late-filed Proof of Claim Forms are accepted by an Order of the Court), but shall in all other respects be bound by any and all terms of the Stipulation.

Determination of Authorized Claimants and Recognized Loss

7. In addition to having submitted a timely, complete and executed Proof of Claim Form, in order for a member of the Seller Class to be considered an Authorized Claimant,[1] the Claims Administrator must determine whether the Seller Class member is eligible for payment from the Net Seller Class Settlement Fund based upon that Seller Class member's Recognized Loss, which is determined as follows.

[1] "Authorized Claimant" means a member of the Seller Class who or which submits a timely and valid Proof of Claim Form to the Claims Administrator, in accordance with the requirements established by the Court that is approved for payment from the Seller Class Settlement Fund.

8. Based on the allegations made in the Action with respect to shares of Preferred Stock sold after October 25, 2007, the discovery taken, and consultation with experts, potential, recoverable damages of the Seller Class primarily related to the allegations that: (a) after October 25, 2007, Defendants restricted access by the Seller Class to timely, accurate and complete financial information; and (b) members of the Seller Class may have sold their shares to Defendant PFD Holdings LLC ("PFD"). Class Counsel considered the legal and factual support for such allegations, including that the discovery taken revealed that the restrictions and dearth of timely information could not have been anticipated from the disclosures made prior to October 25, 2007 about W2007 Grace ceasing to be a publicly reporting company, and, that PFD acquired Preferred Stock pursuant to private transactions, not from members of the Seller Class. Class Counsel also recognized, and took into account in determining the Recognized Loss for the Seller Class, the impact of the global financial crisis that occurred during the Class Period, which caused impairment in the share value of all hospitality real estate entities, the effects of which cannot be attributable to any alleged wrongdoing of Defendants.

9. In creating this Plan of Allocation and determining the amount of Recognized Loss, Class Counsel and its experts assessed the relative strengths and risks of the claims and external market factors contributing to a decline in the reported trade price of the Preferred Stock, as well as the relative size of estimated damages associated with each of them.

(a) On October 26, 2007 the Preferred Stock was delisted from the New York Stock Exchange, an event known to occur before October 25, 2007.

(b) On February 7, 2008, W2007 Grace issued a press release indicating that the holders of the Series B Preferred Stock had received a liquidating distribution of $17.50 per share and holders of the Series C Preferred Stock had received a liquidating distribution of $17.00 per share (the "Liquidating Distribution").

(c) On June 30, 2008, W2007 Grace announced the suspension of dividend payments to the Preferred Stock in compliance with certain covenants of the loan documentation executed in October 2007. Dividends have remained suspended through the end of the Seller Class Period. These covenants arose from a financial transaction by which the predecessor entities to W2007 Grace, Equity Inns, Inc., a hotel real estate investment trust (also referred to as the Equity Inns lodging portfolio) were merged with and into W2007 Grace and related entities as of October 25, 2007. This transaction was financed through a material increase in the amount of debt encumbering the W2007 Grace assets. The amount of this debt was disclosed publicly through filings by Equity Inns, Inc. with the Securities and Exchange Commission prior to October 25, 2007. The risks of increased debt was discussed in the Form 10-K for the year ended December 31, 2006 filed with the Securities and Exchange Commission by Equity Inns, Inc. on February 28, 2007.

(d) From October 25, 2007 through June 29, 2008, the reported price at which ownership of the Preferred Stock was transferred ("Trade Price(s)") reflected the recognition by shareholders of the Preferred Stock of the increased risk of ownership given the extensive limitations on the access to timely information.

(e) Following June 30, 2008 the Trade Prices eroded significantly due to the suspension of dividends, the debt service burden of the increased leverage, and the global financial crisis. Through the middle of calendar year 2013, the Trade Prices of the Preferred Stock were lower than the Trade Prices between October 25, 2007 and June 29, 2008. The Trade Prices did not approximate the Liquidating Distribution amounts until March 2014. The Trade Prices did not exceed the Liquidating Distribution until after June 2, 2014 when the ARC Transaction was announced.

(f) On June 2, 2014 American Realty Capital Hospitality Trust, Inc. ("ARC Hospitality") announced that it had entered into an agreement to purchase the Equity Inns lodging portfolio, of which W2007 Grace has an ownership interest ("ARC Transaction"). The ARC Transaction was disclosed through a press release and filings with the Securities and Exchange Commission on Form 8-K, including financial information related to W2007 Grace Acquisition I, the parent company to W2007.

10. Class Counsel and its experts determined that the damage realized by members of the Seller Class who owned Preferred Stock as of October 25, 2007 arose from the continuing harm created by the restricted access to timely, accurate and complete financial information.

a) The damage per share to the Series B Preferred Stock that was held as of October 25, 2007 and sold during the Class Period equals $4.19. This fixed damage per share was determined as follows: the Liquidating Distribution amount of $17.50 per share less $11.04 per share, the weighted average reported Trade Price between October 25, 2007 and June 29, 2008, less a $2.27 per share adjustment for industry specific market changes measured by reference to similar hospitality REITS that suspended dividends on its preferred stock issues during the global financial crisis.

b) The damage per share to the Series C Preferred Stock that was held as of October 25, 2007 and sold during the Class Period equals $4.00. This fixed damage per share was determined as follows: the Liquidating Distribution amount of $17.00 per share less $10.79 per share, the weighted average reported Trade Price between October 25, 2007 and June 29, 2008, less a $2.21 per share adjustment for industry specific market changes measured by reference to similar hospitality REITS that suspended dividends on its preferred stock issues during the financial crisis.

11. Class Counsel and its experts determined that there was a fixed amount of damage that was realized by members of the Seller Class who purchased shares of Preferred Stock after October 25, 2007 and sold shares of such Preferred Stock during the Class Period ("In and Out Transactions"). The determination of damage to the In and Out Transactions recognizes that both the purchase and sale decisions were made with full knowledge of the restricted access to timely, accurate and complete financial information.

a) The damage per share to In and Out Transactions in the Series B Preferred Stock equals $0.23; calculated as 5.41% of the fixed damage amount per share attributed

to the Series B Preferred Stock. The ratio of fixed damage per share reflects the ratio of estimated market losses realized through In and Out Transactions in the Series B Preferred Stock compared to the estimated imputed market losses to shares of Series B Preferred Stock that were held on October 25, 2007 and sold during the Class Period. Imputed market losses for the Series B Preferred Stock imputed a purchase price of $17.50 per share, the Liquidating Distribution amount.

b) The damage per share to In and Out Transactions in the Series C Preferred Stock equals $0.31; calculated as 7.65% of the fixed damage amount per share attributed to the Series C Preferred Stock. The ratio of fixed damage per share reflects the ratio of estimated market losses realized through In and Out Transactions in the Series C Preferred Stock compared to the estimated imputed market losses to shares of Series C Preferred Stock that were held on October 25, 2007 and sold during the Class Period. Imputed market losses for Series C Preferred Stock imputed a purchase price of $17.00 per share, the Liquidating Distribution amount.

12. For purposes of distribution of the Net Seller Class Settlement Fund, Recognized Loss per Share may not equal the fixed damage per share described above.

a) Recognized Loss per share of Series B Preferred Stock that was held as of October 25, 2007 and sold during the Class Period will equal the lower of: (i) the imputed market loss and (ii) $4.19. Imputed market loss per share of Series B Preferred Stock is calculated as $17.50, the Liquidating Distribution amount, less the actual sale price per share.

b) Recognized Loss per share of Series C Preferred Stock that was held as of October 25, 2007 and sold during the Class Period will equal the lower of: (i) the imputed market loss and (ii) $4.00. Imputed market loss per share of Series C Preferred Stock is calculated as $17.00, the Liquidating Distribution amount, less the actual sale price per share.

c) Recognized Loss per share of In and Out Transactions in the Series B Preferred Stock will equal the lower of: (i) the actual market loss and (ii) $0.23.

d) Recognized Loss per share of In and Out Transactions in the Series C Preferred Stock will equal the lower of: (i) the actual market loss and (ii) $0.31.

e) The date of purchase or sale is the "contract" or "trade" date as distinguished from the "settlement" date.

f) Market loss for In and Out Transactions will be calculated on an Average Cost inventory method.

g) In and Out Transactions where a gain was realized (e.g. the sale price was greater than the purchase price) will have a zero Recognized Loss.

13. The Net Seller Class Settlement Fund shall be distributed to the Authorized Claimants *pro rata* determined by the Recognized Loss per share.

Net Loss Required

14. For any member of the Seller Class to be eligible to receive a distribution from the Net Seller Class Settlement Fund, the Seller Class member must have a net loss, after all profits from transactions in Preferred Stock during the Seller Class Period are subtracted from all losses.

Transfers by Operation of Law

15. If an Authorized Claimant acquired the Preferred Stock by means of a gift, inheritance, assignment, devise, or operation of law, the Authorized Claimant's Recognized Loss will be calculated by using the date and price of the original purchase and not the date of transfer.

Approximate Allocation Per Share

16. Based on the information currently available to Plaintiffs and the analysis performed by their expert, the estimated average allocation from the Seller Class Settlement Fund per share:

a) of Preferred Stock held as of October 25, 2007 and sold during the Seller Class Period, would be approximately $3.28 per share[2]; and,

b) of Preferred Stock in In and Out Transactions, would be approximately $0.20 per share.[3]

These are only estimates, and they assume that valid and timely Proof of Claim Forms are submitted with respect to 30% of the eligible Seller Class Preferred Shares with a Recognized Loss and that the Court awards Seller Class-related litigation expenses of $150,000. However, these estimates do not take into account Seller Class Notice and Administration Expenses which will reduce the Seller Class Settlement Fund prior to distribution in accordance with the Stipulation and this Plan of Allocation. If valid and timely Proof of Claims for more eligible Seller Class Preferred Shares with a Recognized Loss are submitted, the estimated average allocation per share will be lower.

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[2] The estimated average allocation per share of Series B and Series C Preferred Stock is $3.33 and $3.21, respectively.

[3] The estimated average allocation per share of Series B and Series C Preferred Stock is $0.18 and $0.22, respectively.

Minimum Distribution

17. No distributions will be made to Seller Class Authorized Claimants who would otherwise receive a distribution from the Net Seller Class Settlement Fund of less than $24.00.

Subsequent Distribution

18. If there is any balance in the Net Seller Class Settlement Fund after one hundred and twenty (120) calendar days from the date of distribution of the Net Seller Class Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise) to Authorized Claimants, then, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their distributions, any balance remaining shall be re-distributed among Authorized Claimants in an equitable and economic manner, if feasible, until all Authorized Claimants have recovered 100% of their Recognized Losses, as determined under this Plan of Allocation. This is referred to as the Subsequent Distribution.

Residual Distribution to Holder Class

19. If, after the Subsequent Distribution and the payment in full of all Seller Class Claims Administration Fees and Expenses has occurred, there remains any residual balance in the Net Seller Class Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise) ("Residual"), then the Residual shall be distributed by the Class Administrator *pro rata* to the Holder Class, as set forth in the Plan of Allocation, subject to their being a sufficient Residual to effectuate such distribution. This is referred to as the Residual Distribution to Holder Class.

20. No Proof of Claim Form will be required from any member of the Holder Class in order to participate in the Residual Distribution to Holder Class and to receive, if any, a *pro rata*, allocation of the Residual. If there is insufficient Residual to do a Residual Distribution to the Holder Class, the Residual will be distributed in accordance with ¶ 22.

21. The costs and expenses to do the Residual Distribution to Holder Class will be paid by W2007, in accordance with the Stipulation.

***Cy Pres* Distribution**

22. If, after ninety (90) calendar days from the date of the Residual Distribution to Holder Class, any balance remains in the Net Seller Class Settlement Fund, such balance shall be disbursed in accordance with Class Counsel's suggestions pursuant to *cy pres* principles, and as approved by the Court.

23. Defendants retain no interest in or right to any amount remaining in the Seller Class Settlement Fund.

Additional Provisions

24. The Court has reserved jurisdiction to allow, disallow or adjust the claim of any Class Member on equitable grounds.

25. Payment pursuant to this Plan of Allocation shall be conclusive against all Authorized Claimants.

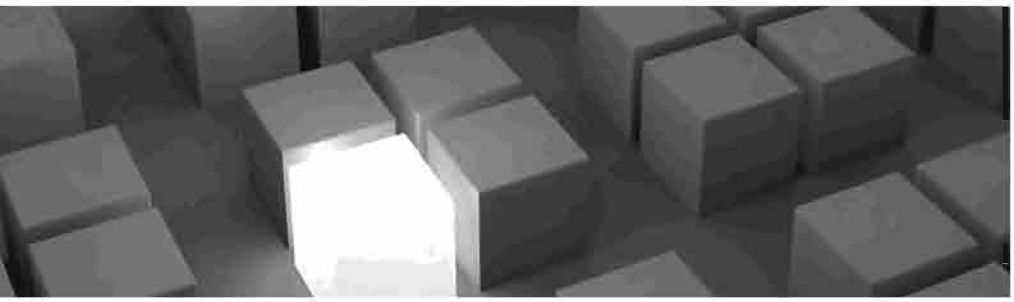
26. No Person shall have any claim, cause of action or rights against the Named Plaintiffs, Class Counsel, the Claims Administrator, any other claims administrator, or other agent designated by Class Counsel based on the distributions made substantially in accordance with the Stipulation, the Plan of Allocation, or further Order(s) of the Court.

27. The Claims Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer and calculate the claims submitted by Seller Class Members and shall oversee distribution of the Net Seller Class Settlement Fund to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the Court.

EXHIBIT 15

NERA
ECONOMIC CONSULTING

20 January 2015



Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review

Settlement amounts plummet in 2014, but post-*Halliburton II* filings rebound

By Dr. Renzo Comolli and Svetlana Starykh

Insight in Economics™

Highlights

2014 in Filings

- Number of 10b-5 filings was up 14% post *Halliburton II*, compared to the period when *Halliburton II* was pending, p. 6.
- 75% of Section 11 cases were filed in one of the circuits that, according to Petitioner in *Omnicare*, requires plaintiff to plead subjective falsity, p. 8.
- *Affiliated Ute* now invoked alongside fraud on the market in about half of the cases, p. 7.

2014 in Motions

- Only 3 motions for class certification decided at district court level post-*Halliburton II*, p. 19.

2014 in Case Resolutions

- Number of settlements continues to be at or close to the all-time low for the third consecutive year, p. 20.
- Number of 10b-5 settlements did not rebound post-*Halliburton II*, p. 21.

2014 in Settlements

- Median settlement amount lowest in 10 years at $6.5 million, p. 28.
- Average settlement amount plummeted 38%-61% since 2013, depending on the cases included in the calculation, pp. 26-27.
- 2014 average settlement amount lower post-*Halliburton II*, p. 26.

Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review

Settlement amounts plummet in 2014, but post-*Halliburton II* filings rebound

By Dr. Renzo Comolli and Svetlana Starykh[1]

20 January 2015

Introduction and Summary[2]

Once again in 2014, the Supreme Court stole the limelight in the securities class action arena with its much-awaited decision in *Halliburton v. Erica P. John Fund* ("*Halliburton II*") at the end of June. As is well known, the Supreme Court addressed the presumption of reliance at class certification for actions alleging violation of section 10(b) of the Securities Exchange Act and held that "defendants must be afforded an opportunity before class certification to defeat the presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock."[3]

At press time, only 3 district courts have had the opportunity to apply *Halliburton II*: all 3 considered defendants' arguments about price impact, but ultimately granted plaintiffs' motion for class certification. But 3 decisions are far too few to extrapolate, and the full impact of *Halliburton II* on securities class actions is still to come.

Nonetheless, data already tell us a few things. The number of 10b-5 filings rebounded 14% after the *Halliburton II* decision was issued compared to when it was pending. On the other hand, over 2014 as a whole and including all types of securities class actions into the count, the number of filings remained flat compared to recent years.

Settlement amounts in 2014 plummeted. Measured by median amount, settlements have been the lowest in 10 years. Measured by average amount, settlements have dropped 38%-61%, depending on which types of class actions are considered. Moreover, average settlement amounts were actually lower after *Halliburton II* than in the previous part of 2014. We can ask whether that is because now some defendants who face larger or somewhat larger plaintiffs' demands are holding off, planning to avail themselves of the "no price impact" defense at class certification.

Additionally, the number of settlements was low in 2014: for the third consecutive year the number of settlements was at or close to the all-time low since the PSLRA was enacted. A new analysis of the time to resolution shows that, on average, 59% of the cases resolve (whether through settlement or dismissal) within three years from first filing. But the number of cases pending in court appears to have been increasing over the last three years, suggesting a possible slowdown of resolutions.

We rounded out our analyses related to *Halliburton II* by providing statistics about the presumption of reliance pled at first filing of 10b-5 complaints in which holders of common stock were part of the proposed class. We found that fraud-on-the-market is virtually always invoked; *Affiliated Ute* was hardly ever invoked in 2009, while now it is invoked as an additional presumption in a large fraction of the cases.

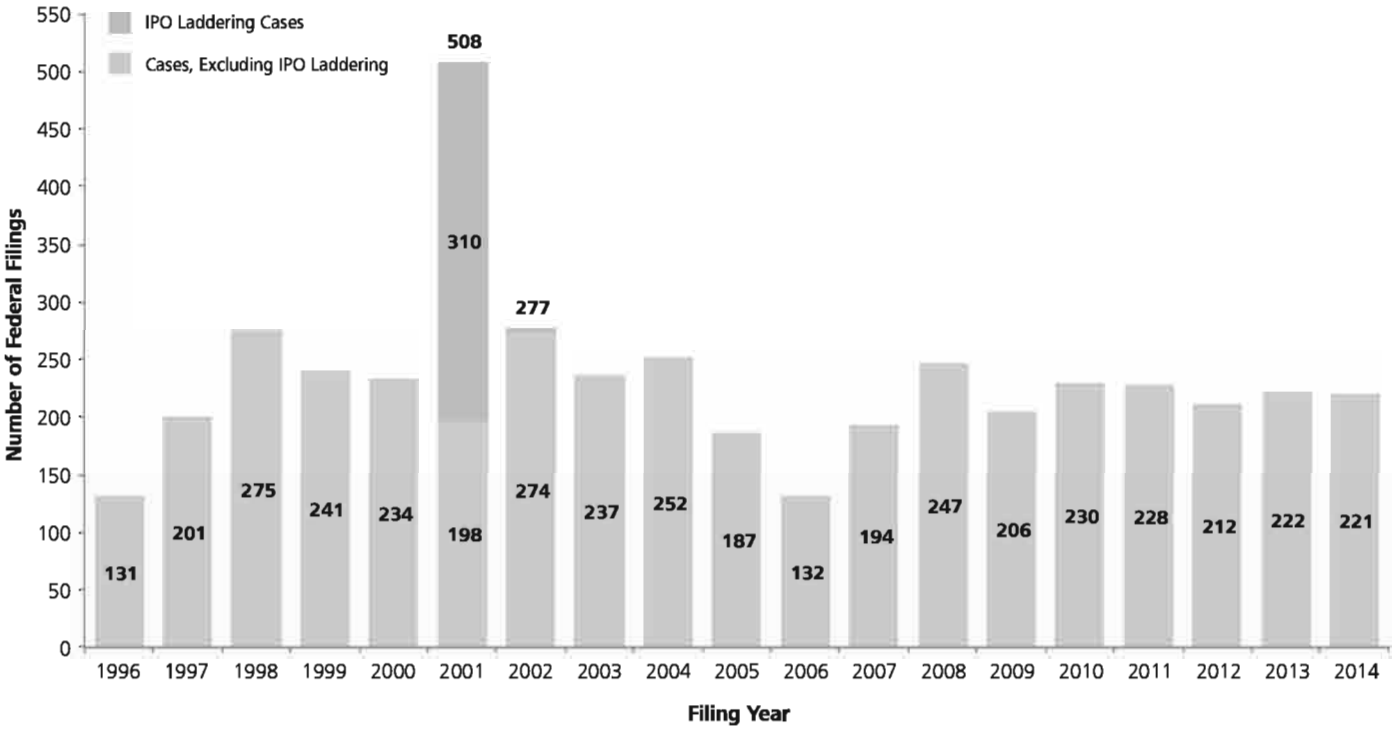
Last, in 2014 the Supreme Court also granted *certiorari* in a Section 11 case, *Omnicare.* The decision, expected for the first half of 2015, will come right on the heels of a "bumper IPO year," as 2014 as has been called. In preparation, we analyzed the historical distribution of Section 11 filings across circuits based on the question posed to the Court.

Trends in Filings[4]

Number of Cases Filed

In 2014, 221 securities class actions were filed in federal court. The annual number of securities class actions filed displayed a remarkable stability over the last 6 years: 222 were filed in 2013 and 220, on average, were filed during the 2009-2013 period. We need to go back to 2008, to the filing peak prompted by the credit crisis, to see a substantially higher number of total filings, 247. See Figure 1.

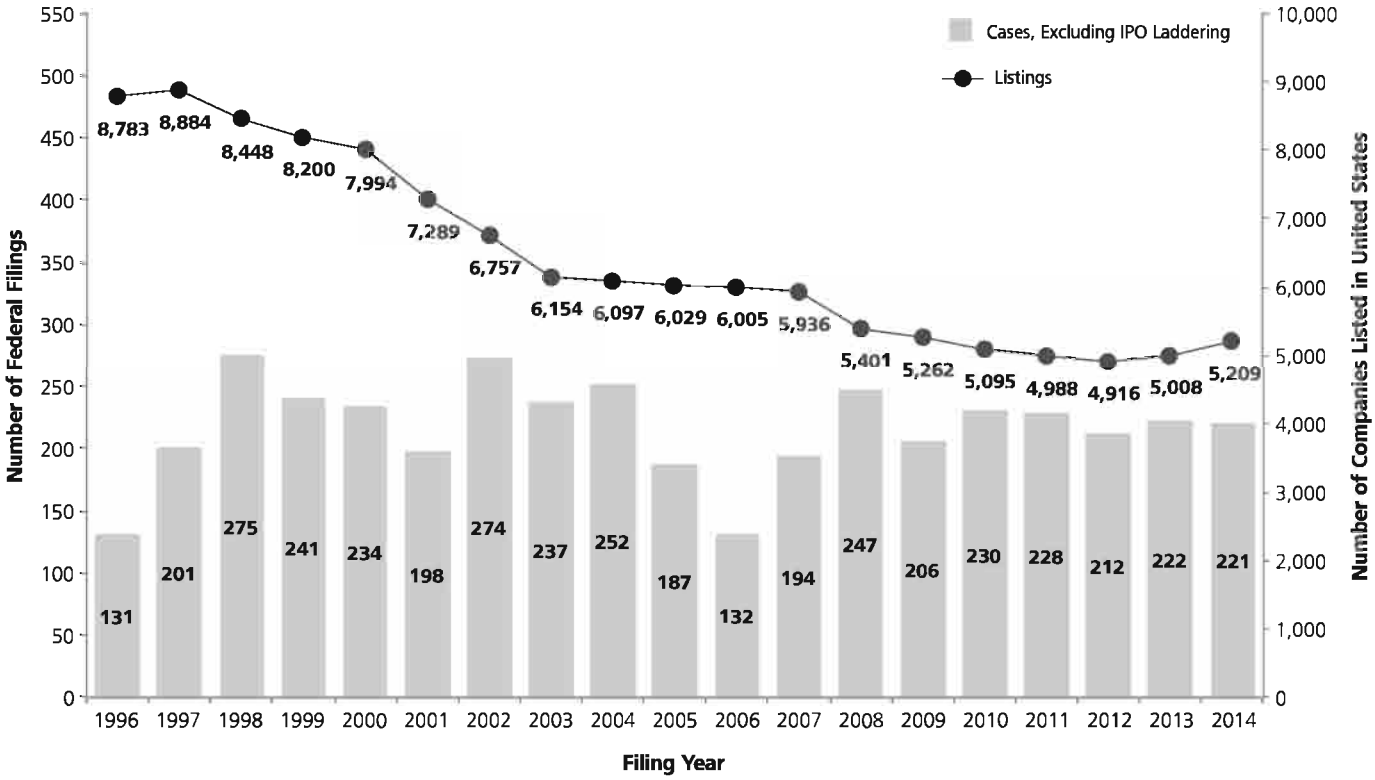
Figure 1. **Federal Filings**
January 1996 – December 2014



As of October 2014, 5,209 companies were listed on the NYSE, NASDAQ or AMEX; listings on those exchanges are used as an approximation for the number of companies listed in the US for the purpose of this analysis.[5] Given that 221 securities class actions were filed in 2014, the average probability of a company being the target of a securities class action was 4.2% in 2014.

The number of listed companies has increased by about 300 between 2012 and 2014, from 4,916 to 5,209. However, this recent increase goes in the opposite direction of the trend over the years 1996-2014. Since 1996, the number of listed companies has decreased by 3,574, or 41%, going from 8,783 to 5,209. See Figure 2. This longer trend in the number of listed companies (coupled with the number of class actions filed) has implications for the average probability of being sued, which has increased from 2.3% over the 1996-1998 period to 4.2% in 2014.

Figure 2. **Federal Filings and Number of Companies Listed in United States**
January 1996 – December 2014



Note: Number of companies listed in US is from Meridian Securities Markets; 1996-2013 values are year-end; 2014 is as of October.

Filings by Type

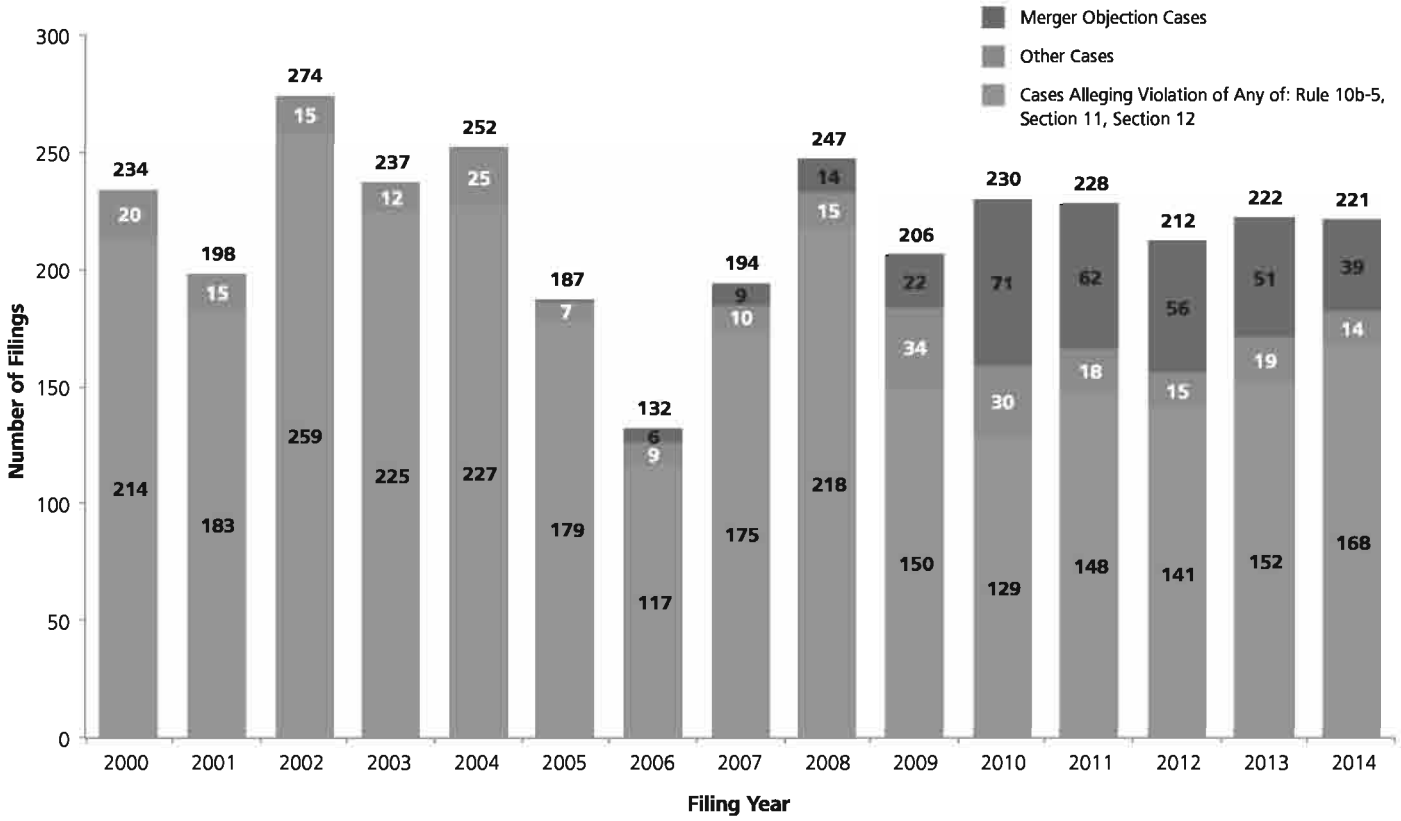
While the total number of securities class actions filed since 2009 has remained remarkably stable, the types of class actions filed have changed.

Securities class actions alleging violations of Rule 10b-5, Section 11, and/or Section 12 are often regarded as "standard" securities class actions: they are depicted in green in Figure 3. In 2014, 168 "standard" cases were filed, an 11% increase over 2013 and a 30% increase over 2010 (the recent trough). So, while the number of "standard" cases filed in 2014 is still lower than the number filed in 2008 or during the earlier 2000-2004 period, in recent years it has been on an upward trend.

Merger objection cases filed in federal court were a focus in 2010, with 71 cases filed accounting for 31% of all securities class actions filed in that year. Since then, the number of merger objections filed at federal level has been shrinking: only 39 were filed in 2014, accounting for 18% of the securities filings last year. (Here, we count as merger objections both cases alleging violation of securities laws and cases that merely allege breach of fiduciary duty. We do not count merger objections filed in state court, which can potentially be many more.)

Rounding out the total in 2014 is a variety of cases mostly alleging breach of fiduciary duty for a variety of reasons (including proxy disclosures for D&O incentive plans), but also including violations of the Trust Indenture Act of 1939, and 1 case alleging a violation of Section 5(a) of the Securities Act (and none of the "standard" allegations). See Figure 3.

Figure 3. **Federal Filings by Type**
January 2000 – December 2014



Notes: Before 2005, merger objections (if any) were not coded separately from "other cases." This figure omits IPO laddering cases.

Number of 10b-5 Cases Filed and Recent Supreme Court Cases

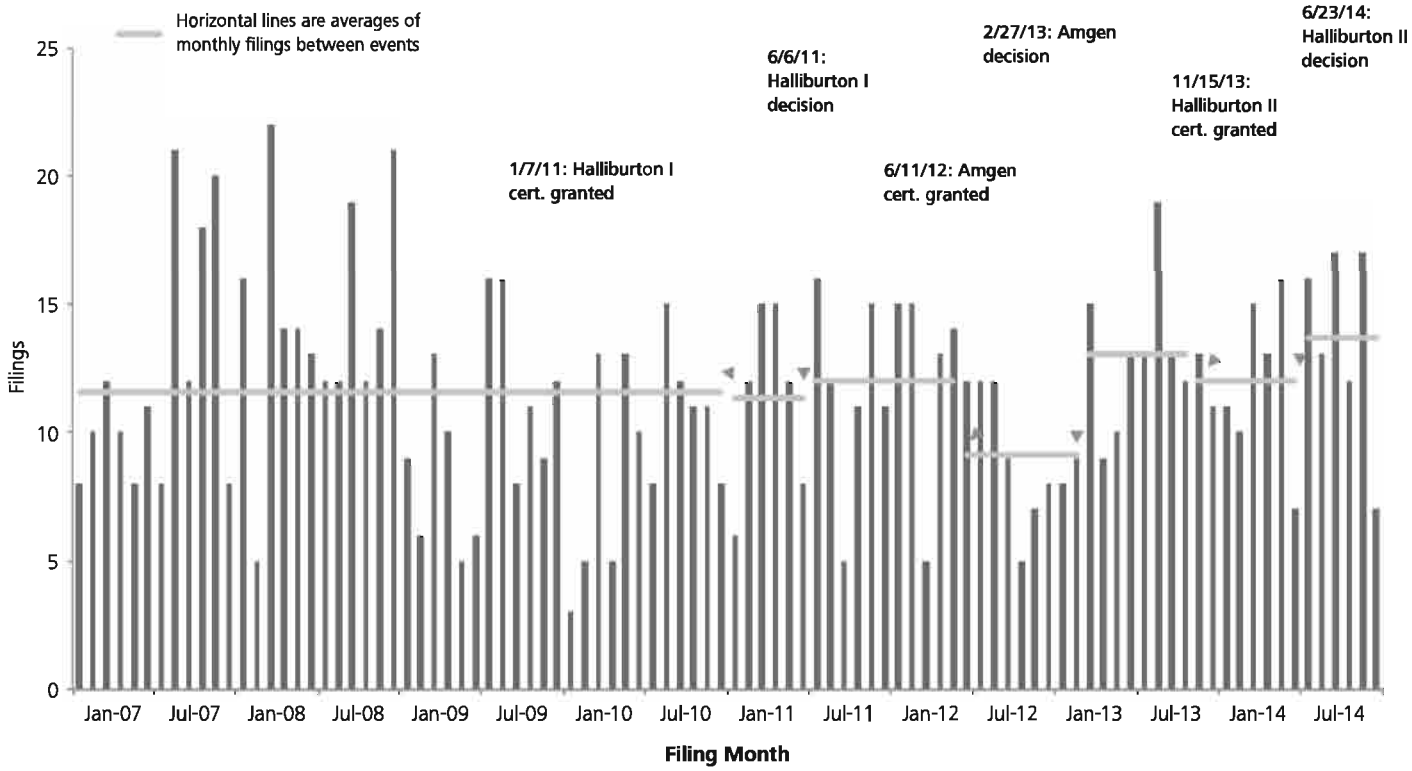
For the third time in four years, the Supreme Court has taken the center stage in the debate over securities litigation. In *Halliburton II*, the Court was asked whether it should overrule or modify *Basic*'s presumption of reliance in cases alleging violation of section 10(b) of the Securities Exchange Act and, if not, whether defendants should be afforded an opportunity to rebut the presumption at the class certification stage by showing a lack of price impact. The Court declined to overrule *Basic* and held that "defendants must be afforded an opportunity before class certification to defeat the presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock."[6]

Filings of 10b-5 class actions were slow while the Supreme Court was considering *Halliburton II* compared to previous experience, but rebounded after the decision. Compared to when *Halliburton II* was pending, the average monthly filings increased by 25% during July-November 2014. A slow December brought the post-*Halliburton II* monthly average down somewhat, but it still remained 14% higher than when *Halliburton II* was before the Court. See Figure 4. It will be interesting to see whether the increased filing activity continues in 2015.

We had already noted a similar pattern at the time of the *Amgen* decision: monthly filings were low on average while the Supreme Court was considering the case and rebound markedly after the decision was issued.

Of course, while we note the temporal correlation, we are not suggesting how much, if any, of the change in the filing activity is *due* to these decisions since we have not considered confounding factors.

Figure 4. **Monthly 10b-5 Filings**
January 2007 – December 2014



Note: Monthly averages computed on the basis of monthly number of filings (regardless of day of event).

10b-5 Filings by Presumption Invoked for Reliance

While *Halliburton II* was pending, many commentators speculated about the possible outcomes and some focused on possible strategies that the plaintiff bar could take in the event that the Supreme Court overruled *Basic*. Ample attention was devoted to the possibility that *Affiliated Ute* would become the main route to class certification should *Basic* be overruled.

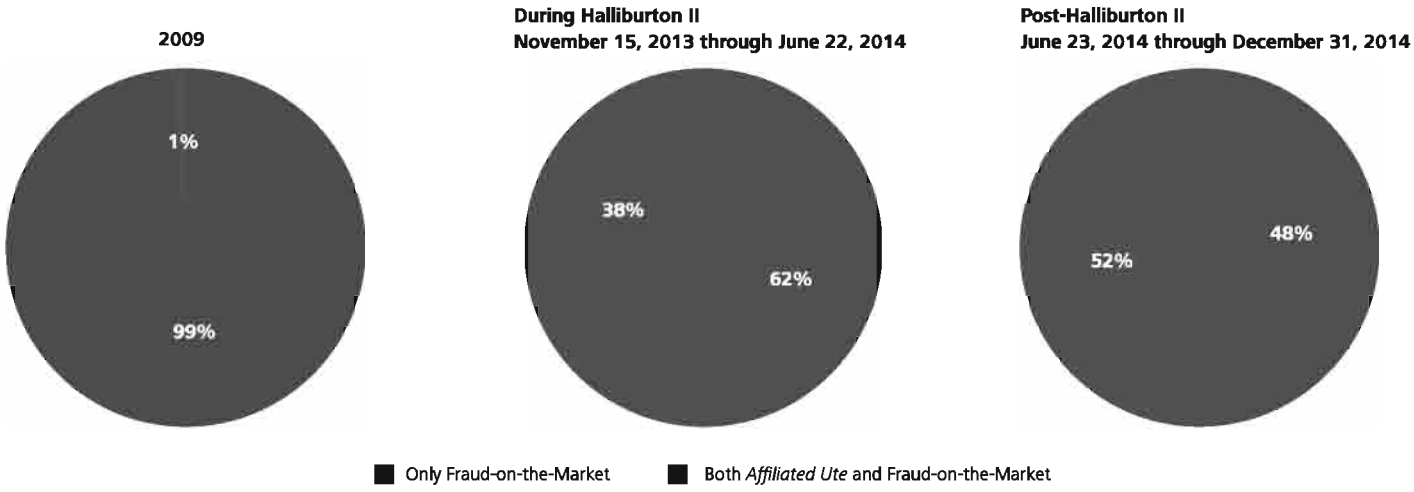
To analyze whether these comments corresponded to pleadings by the plaintiff bar, we reviewed the first available complaint for 10b-5 cases in which holders of common stock were part of the proposed class and coded whether they invoked *Basic* or *Affiliated Ute* or both.

Regardless of the period in which it was filed, every complaint that we reviewed invoked *Basic's* fraud-on-the-market presumption.[7] In contrast, the fraction of complaints that also invoked *Affiliated Ute* increased markedly from the period that preceded the grant of *certiorari* in *Halliburton II* to the period that followed it.

To represent the period preceding the grant of *certiorari*, we selected (somewhat arbitrarily) cases filed in 2009. That year also has the advantage of preceding *Halliburton I* and *Amgen* – two other Supreme Court cases that also addressed the fraud-on-the-market presumption at class certification and possibly contributed to the finding shown here.

In 2009, only 1% of the cases invoked *Affiliated Ute* (in addition to *Basic*). In contrast, 38% of the cases filed while *Halliburton II* was pending also invoked *Affiliated Ute*. See Figure 5. Moreover, *Affiliated Ute* has continued to be pled in addition to fraud-on-the-market in 52% of complaints even after the decision in *Halliburton II* was delivered and did not overrule *Basic*. Of course, pleading *Affiliated Ute* at the filing stage is relatively inexpensive; it is not clear how often certification will actually be sought on that basis.

Figure 5. **Presumptions of Reliance Pled at Filing**
Cases Alleging Violation of Rule 10b-5 Where Holders of Common Stock are Part of the Proposed Class



Notes: All cases where "Affiliated Ute" appeared also pled fraud-on-the-market.
Presumption coded on the basis of the first available complaint. Coded *Affiliated Ute* only if the words "Affiliated Ute" appeared in the complaint.
Coded Fraud-on-the-Market if there was discussion of any of the following: fraud on the market, *Basic v Levinson*, market efficiency, or the integrity of the market price.
One case where the presumption could not be determined (or possibly it was not pled) was excluded from the count.

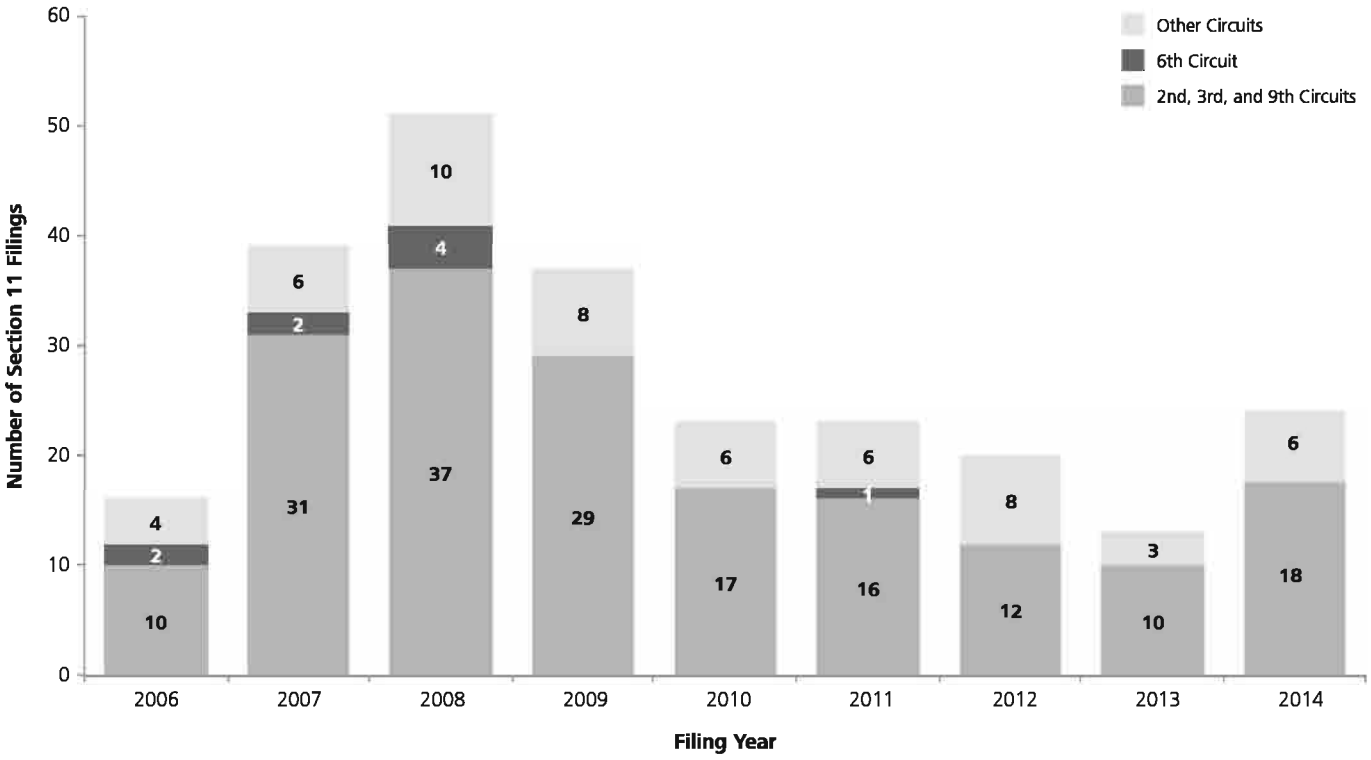
Number of Section 11 Filings and Omnicare

In 2014, the Supreme Court granted *certiorari* for another securities class action case, *Omnicare v. Laborers District Council Construction Industry Pension Fund ("Omnicare")*. The question Petitioner asked the Supreme Court to decide is "For purposes of a Section 11 claim, may a plaintiff plead that a statement of opinion was 'untrue' merely by alleging that the opinion itself was objectively wrong, as the Sixth Circuit has concluded, or must the plaintiff also allege that the statement was subjectively false—requiring allegations that the speaker's actual opinion was different from the one expressed—as the Second, Third, and Ninth Circuits have held?"[8]

Since 2006, the year in which *Omnicare* was filed, 73% of securities class actions alleging violation of Section 11 of the Securities Act of 1933 have been filed in one of the circuits that Petitioner states currently requires subjective falsity. That fraction is 75% in 2014. Figure 6 shows Section 11 filings, grouped by circuit in the following way: Second, Third, and Ninth in bright green at the bottom (which according to Petitioner require subjective falsity); Sixth in dark green (which according to Petitioner requires only objective wrongness); and all other Circuits in very light green on top.

Interestingly, the Supreme Court decision will come on the heels of what the *Financial Times* has called a "bumper IPO year."[9] According to Mergerstat data, 289 IPOs were conducted in 2014, more than in any year since 2000.[10]

Figure 6. **Section 11 Filings**
Circuits Grouped by Pleading Requirement as per Petition for a *Writ of Certiorari* in *Omnicare*
January 2006 – December 2014

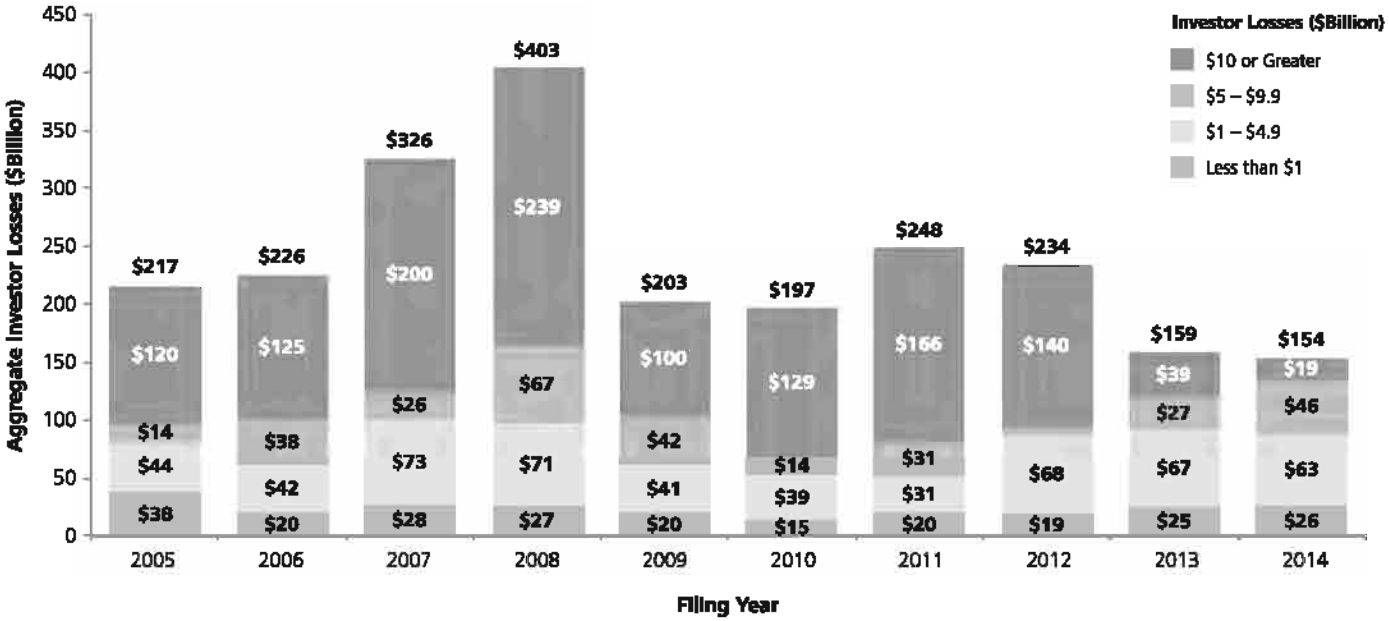


Aggregate Investor Losses

In addition to the number of filings, we also analyze the size of the cases filed using a measure that NERA labels "investor losses." Aggregate investor losses, as shown in Figure 7, are simply the sum of investor losses across all cases for which they can be computed. In each year, the presence or absence of a handful of cases with large investor losses determines much of the aggregate investor losses. For example, aggregate investor losses in 2011 were $248 billion, but $166 billion were associated with just 6 cases (shown in dark green).

In 2014 aggregate investor losses were $154 billion, approximately the same amount as in 2013. Aggregate investor losses in 2014 and 2013 were noticeably smaller than in previous year. The difference is explained mainly by the almost complete absence of cases with very large investor losses.

Figure 7. **Aggregate Investor Losses ($Billion) for Federal Filings with Alleged Violations of Rule 10b-5 or Section 11, and in Which Holders of Common Stock Are Part of the Proposed Class**
January 2005 – December 2014



NERA's investor losses variable is a proxy for the aggregate amount that investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period. Note that the investor losses variable is not a measure of damages since *any* stock that underperforms the S&P 500 would have "investor losses" over the period of underperformance; rather it is a rough proxy for the relative size of investors' potential claims. Historically, "investor losses" have been a powerful predictor of settlement size. Investor losses can explain more than half of the variance in the settlement values in our database.

We do not compute investor losses for all cases included in this publication. For instance, class actions in which only bonds and not common stock are alleged to have been damaged are not included. The largest excluded groups are the IPO laddering cases and the merger objection cases. NERA reports on securities class actions published before 2012 did not include investor losses for cases with only Section 11 allegations, but such cases are included here. The calculation for these cases is somewhat different than for cases with 10b-5 claims.

Technically, the investor losses variable explains more than half of the variance in the logarithm of settlement size. Investor losses over the class period are measured relative to the S&P 500, using a proportional decay trading model to estimate the number of affected shares of common stock. We measure investor losses only if the proposed class period is at least two days.

Filings by Circuit

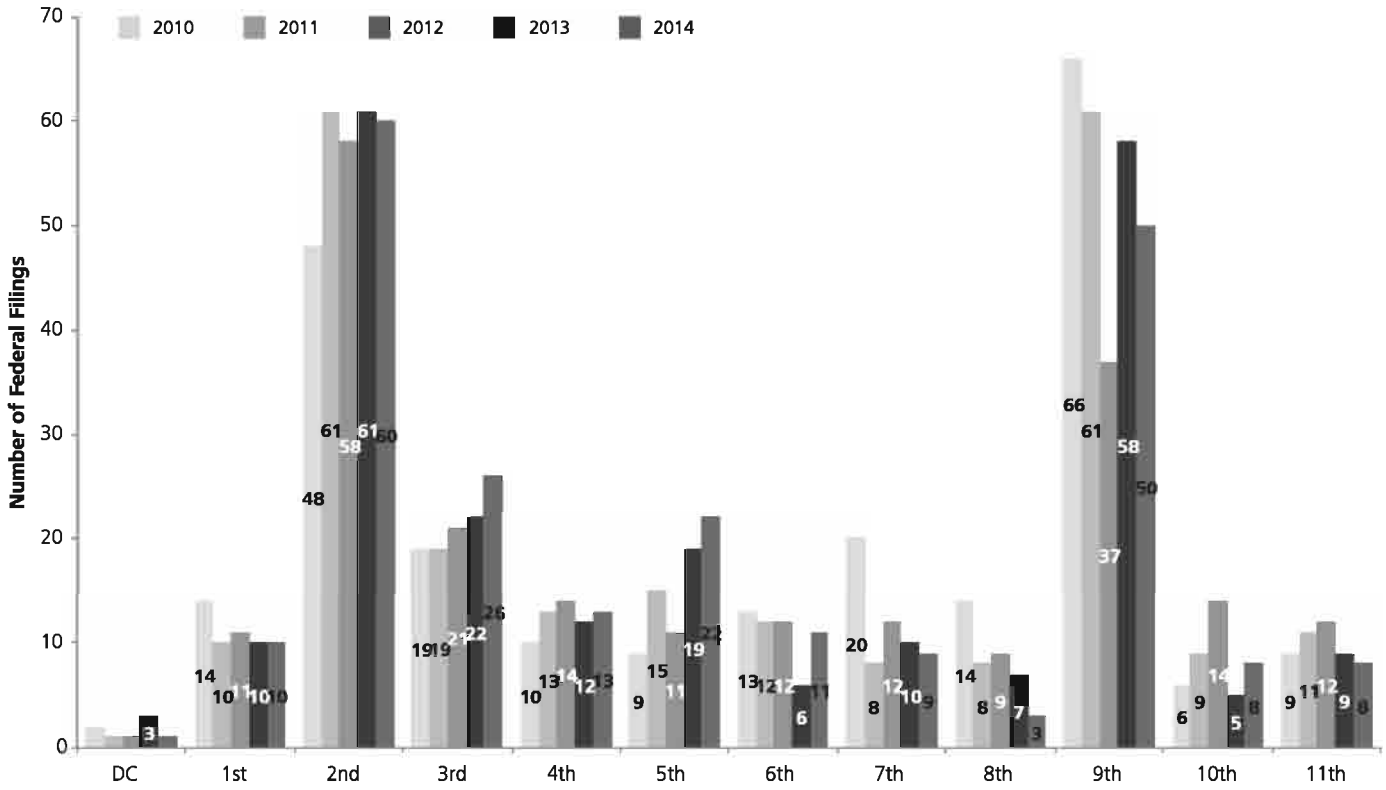
Filings continue to be concentrated in the Second and Ninth Circuits. For the fourth year in a row, the number of filings in the Second Circuit has remained around 60. See Figure 8. But the number of filings alleging violation of Rule 10b-5 in that circuit has decreased by 19% between 2013 and 2014, from 53 to 42 (not shown).

In the Ninth Circuit, the number of filings decreased from 58 to 50 between 2013 and 2014. See Figure 8. But the number of filings alleging violation of Rule 10b-5 in that circuit has hardly changed over the two years, going from 40 to 39.

The Third Circuit also continues to experience a relatively large number of securities class action filings, with 26 in 2014, up from 22 in 2013. See Figure 8. The change is much more pronounced in the number of filings alleging violation of Rule 10b-5, which more than doubled, going from 9 to 20.

The number of filings in the Fifth Circuit has also been on an increasing trend between 2010 and 2014, from 9 to 22. See Figure 8. Filings alleging violation of Rule 10b-5, which are most impacted by the string of Supreme Court decisions *Halliburton I, Amgen, Halliburton II*, have also been on an increasing trend, going from 4 to 11 between 2010 and 2014.

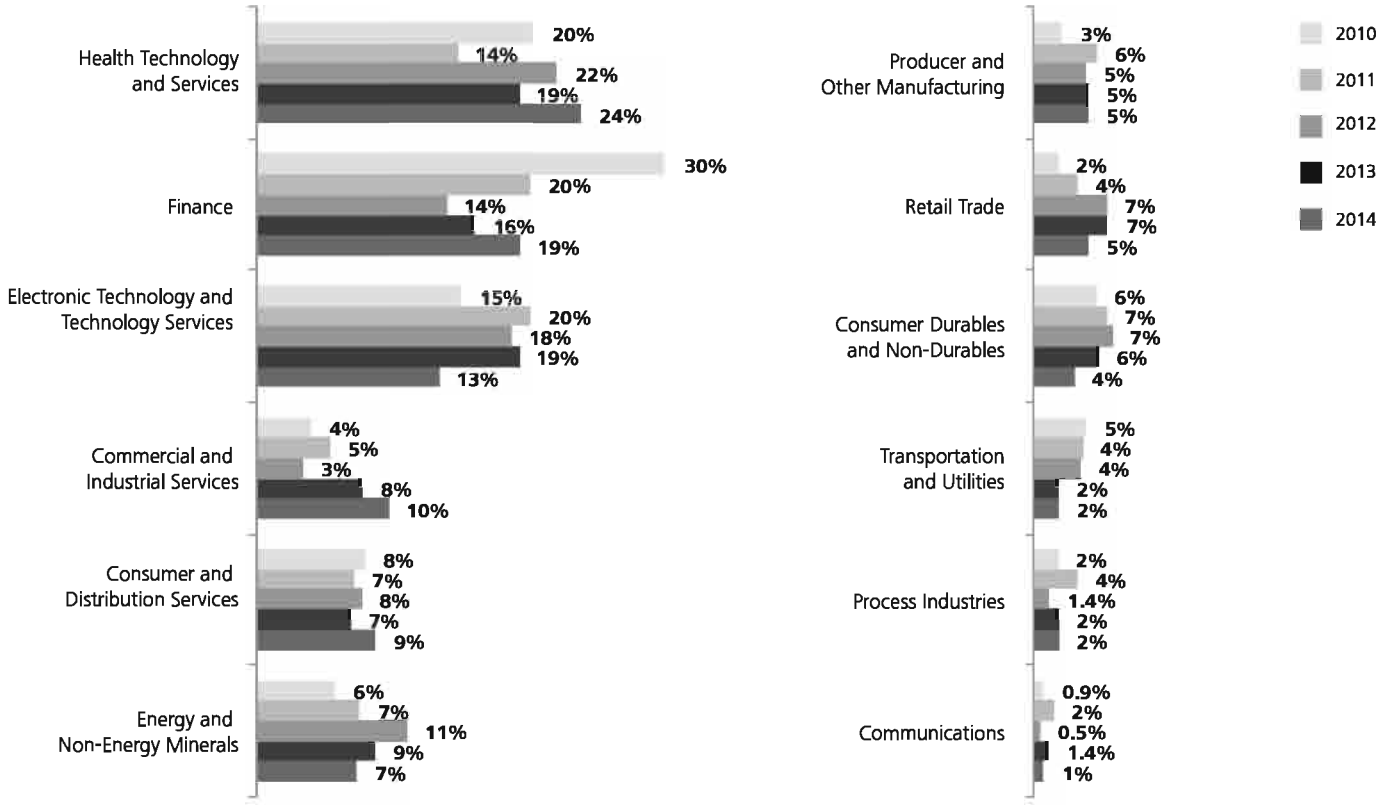
Figure 8. **Federal Filings by Circuit and Year**
January 2010 – December 2014



Filings by Sector

In 2014, the following three sectors taken together continued to account for more than half of primary defendants: health technology and services; finance; and electronic technology and services. In 2014, these sectors represented, respectively, 24%, 19% and 13% of the filings' primary defendants. See Figure 9.

Figure 9. **Percentage of Filings by Sector and Year**
January 2010 – December 2014



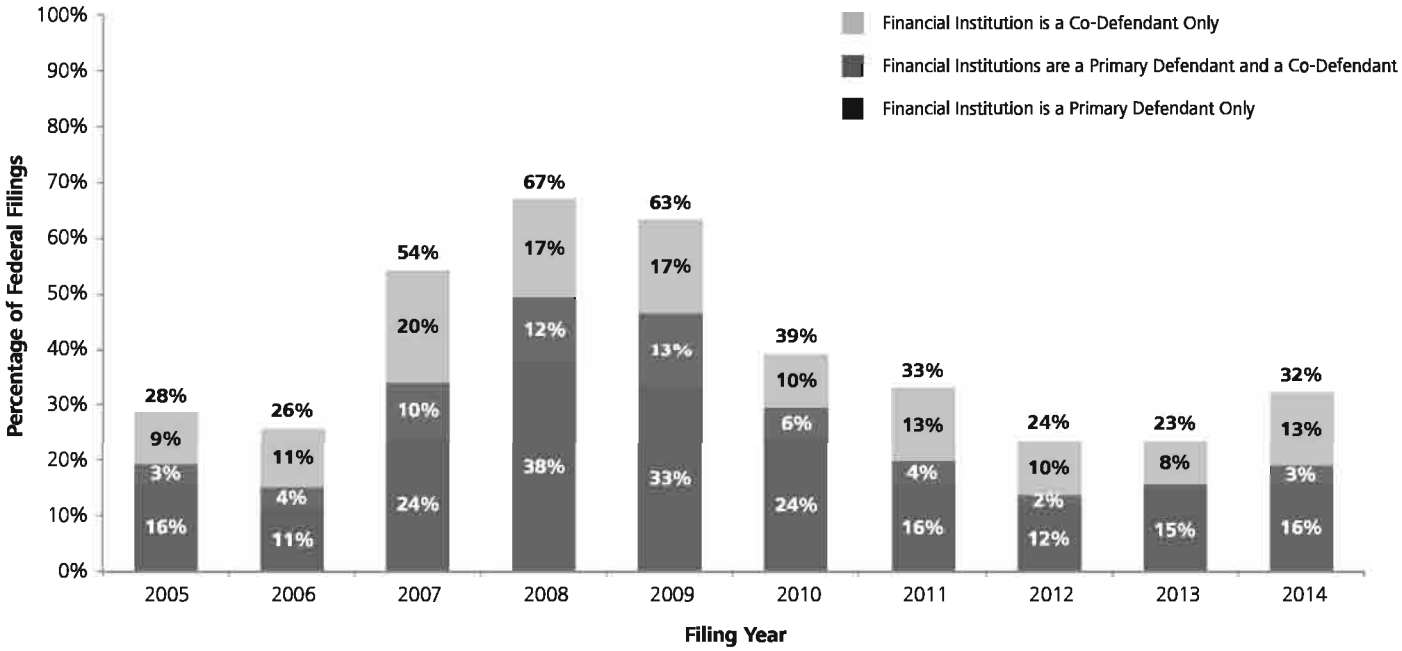
Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Defendants in the Financial Sector

In addition to being targeted as primary defendants, companies in the financial sector are often also targeted as co-defendants.

In 2014, 32% of the securities class actions filed had a defendant in the financial sector (whether primary defendant or co-defendant). That fraction represents a reversal of the trend in recent years. The fraction of filings with a financial sector defendant peaked in 2008 at 67% with the credit crisis and has been declining since then until 2013, at 23%. That fraction is 9 percentage points higher in 2014, at 32%. See Figure 10.[11]

Figure 10. **Federal Cases in which Financial Institutions Are Named Defendants**
January 2005 – December 2014

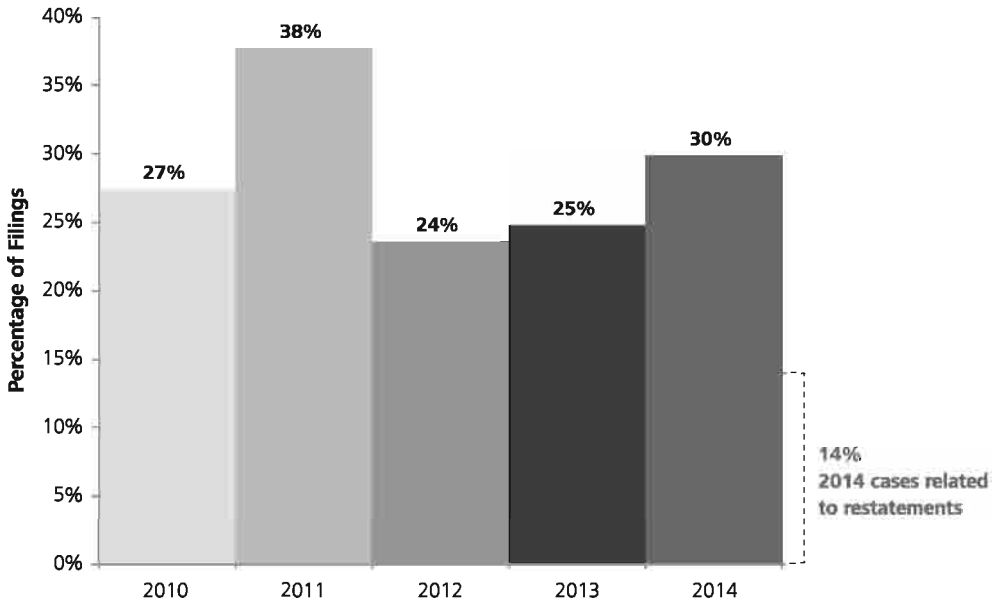


Accounting Allegations

About 30% of filings included accounting allegations in 2014, up from 25% in 2013, but still lower than the recent high of 38% in 2011. See Figure 11.

About 14% of 2014 filings included allegations related to restatements (as well as, potentially, other accounting allegations). That leaves 16% of filings in 2014 with accounting allegations but no restatement-related allegations.

Figure 11. **Accounting Allegations**
January 2010 – December 2014



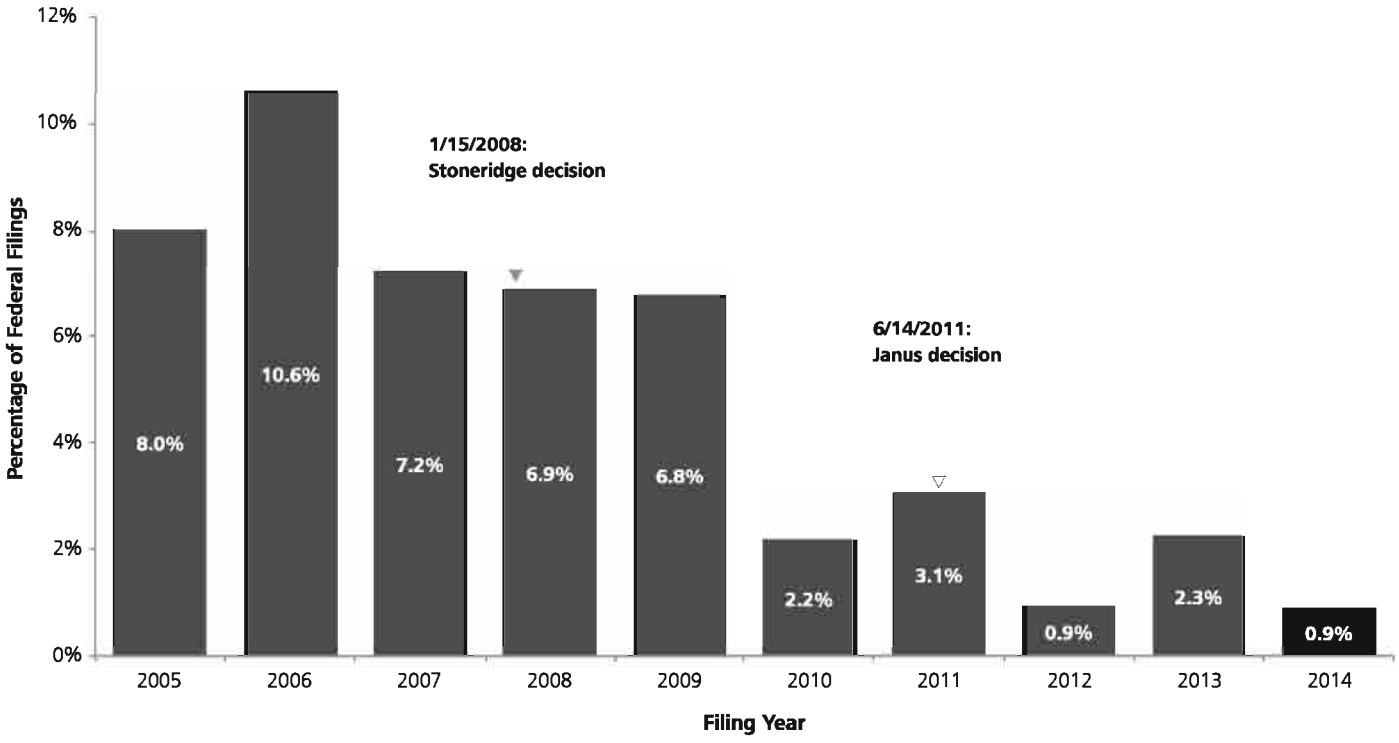
Accounting Co-Defendants

Only 2 securities class actions had an accounting co-defendant in 2014, and in only 1 of these 2 was the co-defendant a Big 4 firm.

The declining trend in the fraction of securities class actions with an accounting co-defendant has continued in 2014. That fraction has declined from 10.6% in 2006 to 0.9% in 2014. See Figure 12. As noted in prior editions of this report, this trend might be the result of changes in the legal environment. The Supreme Court's *Janus* decision in 2011 restricted the ability of plaintiffs to sue parties not directly responsible for misstatements. This decision, along with the Court's *Stoneridge* decision in 2008, which limited scheme liability, may have made accounting firms unappealing targets for securities class action litigation.

For the purposes of this Figure, we considered only co-defendants listed in the first complaint. Based on past experience, accounting co-defendants were sometimes added to later complaints. For example, 3.1% of the first complaints filed in 2011 had accounting co-defendants, while that percentage had grown to 7.5% based on the later complaints. For cases filed in 2012 and 2013, that effect seems to have vanished, though it may be too early to tell because amended complaints for those same cases may yet be filed.

Figure 12. **Percentage of Federal Filings in which an Accounting Firm is a Co-Defendant**
January 2005 – December 2014

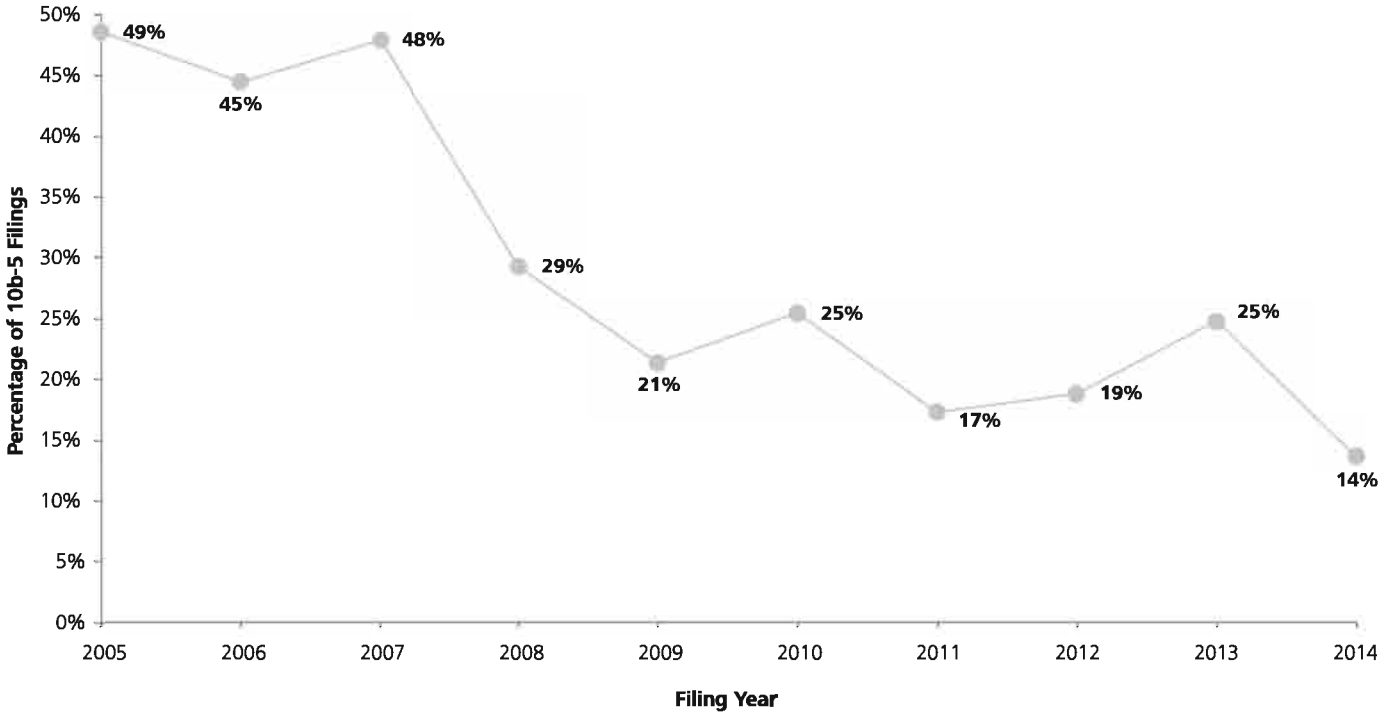


Notes: Coded on the basis of the first (available) complaint.

Insider Sales Allegations

The percentage of 10b-5 class actions that also alleged insider sales has been on a sharply decreasing trend since 2005, dropping from 49% to 14% by 2014. See Figure 13.

Figure 13. **Percentage of Rule 10b-5 Filings Alleging Insider Sales**
By Filing Year, January 2005 – December 2014

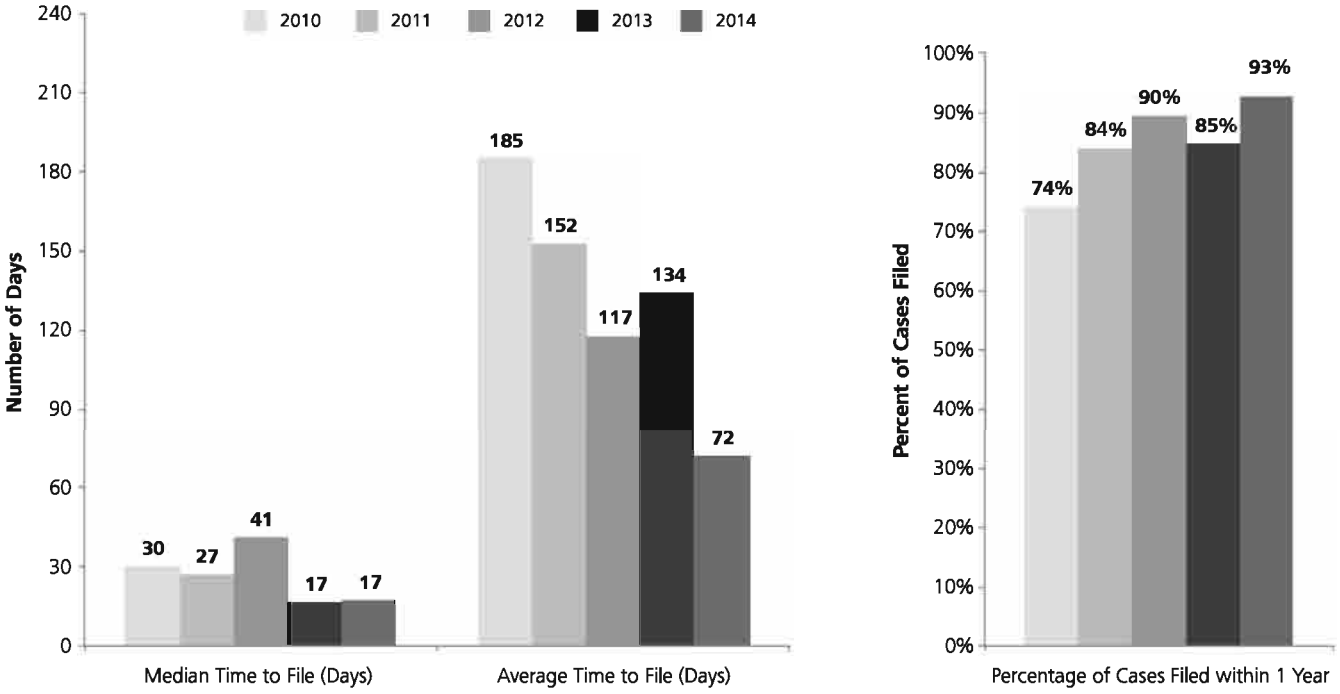


Time to File

The term "time to file" denotes the time between the end of the proposed class period and the filing date of the first complaint. Figure 14 shows three different measures of time to file: median time to file; average time to file; and percentage of cases filed within one year. All three measures indicate an acceleration of the speed of filing over the period 2010-2014.

Additionally, the average time to file, which is the measure that is most influenced by a few cases with very long time to file, has been changing more than the other two measures, suggesting that these few cases with very long time to file are becoming less frequent.

Figure 14. **Time to File from End of Alleged Class Period to File Date for Rule 10b-5 Cases**
January 2010 – December 2014



Analysis of Motions[12]

NERA's statistical analysis has found robust relationships between settlement amounts and the litigation stage at which settlements occur. We track three types of motions: motion to dismiss, motion for class certification, and motion for summary judgment. For this analysis, we track securities class actions in which holders of common stock are part of the class and a violation of any of the following is alleged: Rule 10b-5 or Section 11.

To correctly interpret the Figures, it is important to understand that we record the status of any motion as of the resolution of the case. For example, a motion to dismiss which had been granted but was later denied on appeal is recorded as *denied,* if the case settles without the motion being filed again.[13]

Outcomes of motions to dismiss and motions for class certification are discussed below.

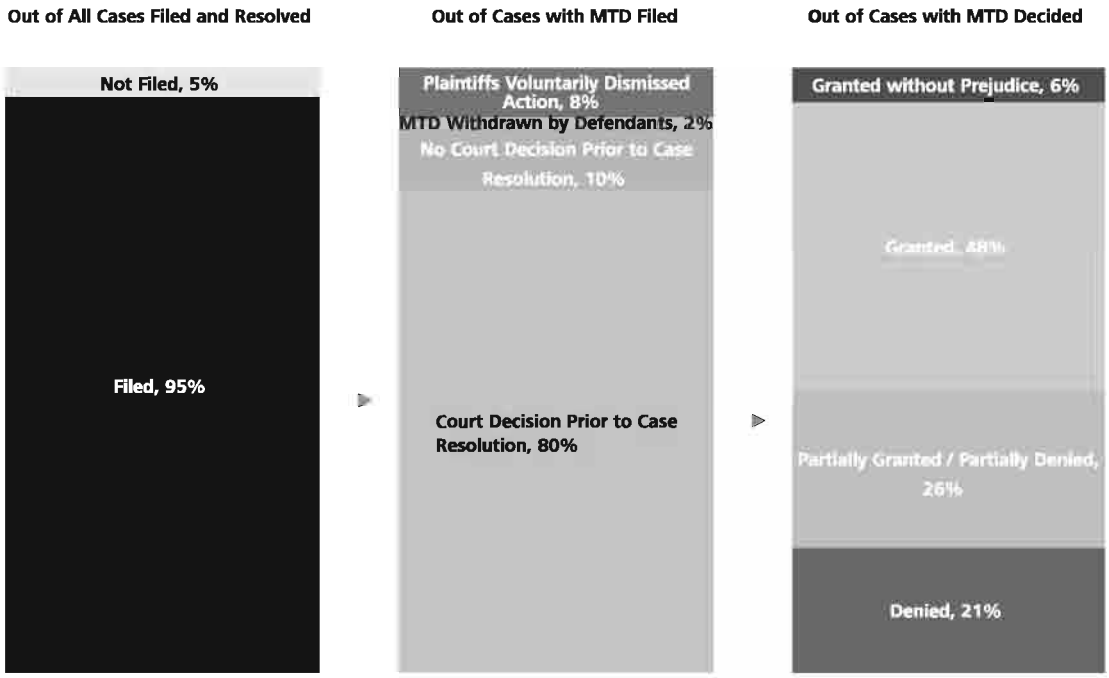
Motions for summary judgment were filed by defendants in only 8% of the securities class actions filed and resolved over the 2000-2014 period, among those we track. Outcomes of the motions for summary judgment are available from NERA, but not shown in this edition.

Motion to Dismiss

A motion to dismiss was filed in 95% of the securities class actions tracked. However, the court reached a decision on only 80% of the motions filed. In the remaining 20% of cases in which a motion to dismiss was filed, either the case resolved before a decision was taken, plaintiffs voluntarily dismissed the action, or the motion to dismiss itself was withdrawn by defendants. See Figure 15.

Out of the motions to dismiss for which a court decision was reached, the following three outcomes account for the vast majority of the decisions: granted (48%),[14] granted in part and denied in part (26%), and denied (21%). See Figure 15.

Figure 15. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2000 – December 2014



Note: Includes cases in which a violation of Rule 10b-5 or Section 11 is alleged and in which common stock is part of the class.

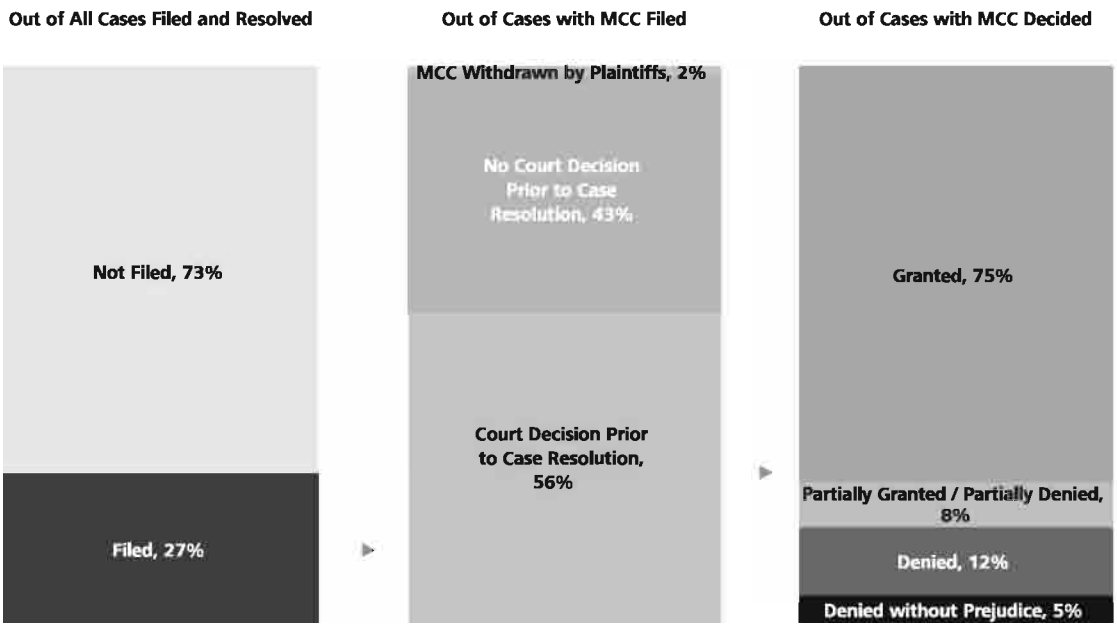
Motion for Class Certification and Post-*Halliburton II* District Court Decisions

Most securities class actions were settled or dismissed before a motion for class certification was filed: 73% of cases fell into this category. The court reached a decision in only 56% of the cases in which a motion for class certification was filed. See Figure 16. Overall, therefore, only 15% of the securities class actions filed (or 56% of the 27% of cases for which a motion for class certification was filed) reached a decision on the motion for class certification. Finally, of the motions for class certification that were decided, 75% were granted and only 12% were denied. See Figure 16.

As far as we could find, only three motions for class certification in 10b-5 cases were decided by district courts since the Supreme Court decided *Halliburton II*. They are *McIntire v. China MediaExpress Holdings*, *Aranaz v. Catalyst Pharmaceutical Partners*, and *Wallace v. Intralinks*. All three of these decisions considered defendants' arguments about price impact, but ultimately granted plaintiffs' motion to certify the class. Of course, three decisions are far too few to make even a guess on the ultimate impact that *Halliburton II* will have on future certification decisions. Both the plaintiff and the defendant bars have likely just begun exploring all the legal ramifications of *Halliburton II*.

Additionally, the motion for class certification for the *Erica P. John Fund v. Halliburton* case itself is pending again at the district court level, but at press time the Judge has not ruled on it.

Figure 16. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2000 – December 2014



Note: Includes cases in which a violation of Rule 10b-5 or Section 11 is alleged and in which common stock is part of the class.

Trends in Case Resolutions

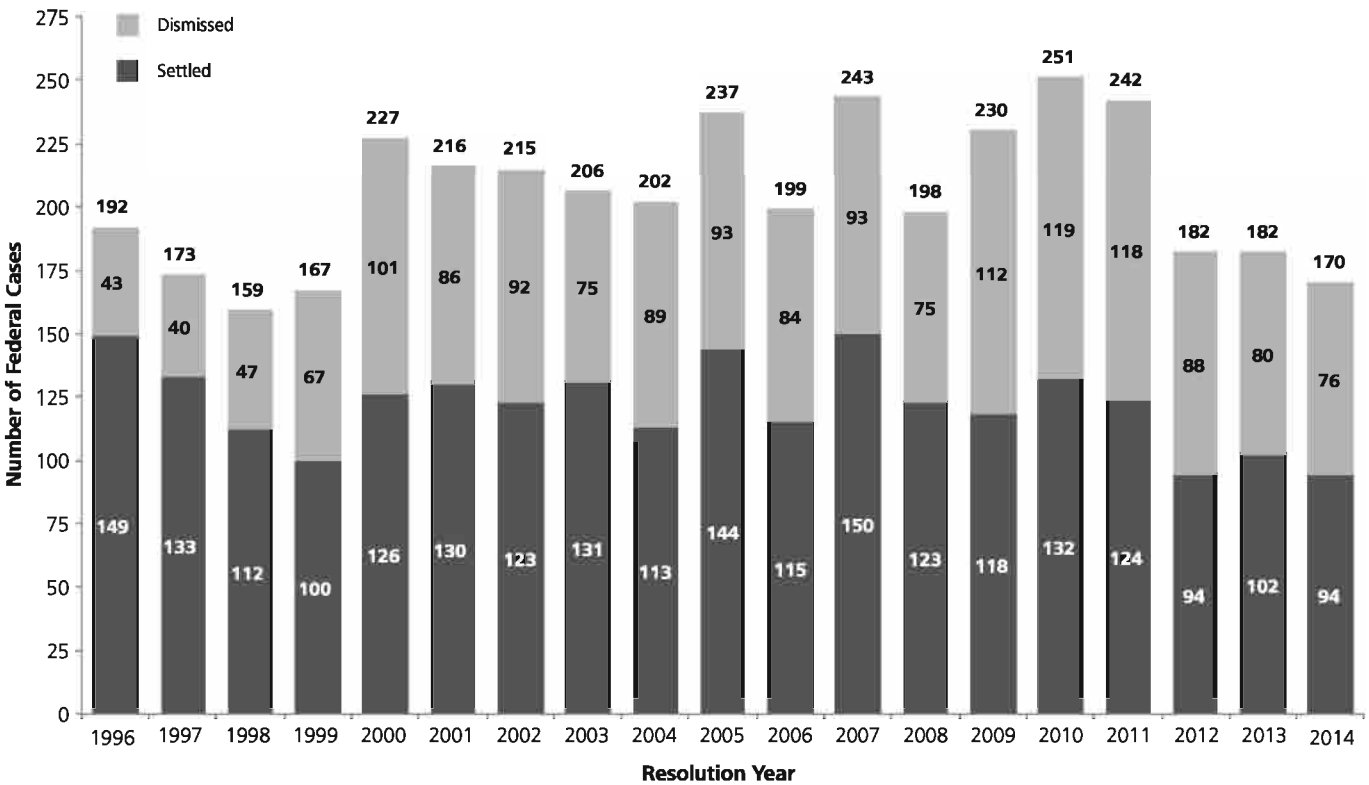
Number of Cases Settled or Dismissed

Only 94 securities class actions settled in 2014, which for the third consecutive year, is at or close to the all-time low since the passage of the PSLRA.[15] The number of securities class actions settled in 2014 is 26% lower than the yearly average in the 2000-2011 period. See Figure 17. (Note that had we displayed only the number of 10b-5 settlements, we would see that for those cases the drop actually occurred one year earlier.)

Dismissals of securities class actions have also been low over the last three years.[16] At least 76 securities class actions were dismissed in 2014.[17] See Figure 17.

The number of cases resolved – either settled or dismissed – has been low for three years. Two factors can potentially contribute to the drop in the number of resolutions: a decrease in filings and a lengthening of the resolution process. We come back to the latter factor below, when discussing the trend in the number of pending cases.

Figure 17. **Number of Resolved Cases: Dismissed or Settled**
January 1996 – December 2014



Note: Analysis excludes IPO laddering cases. Dismissals may include dismissals without prejudice and dismissals under appeal.

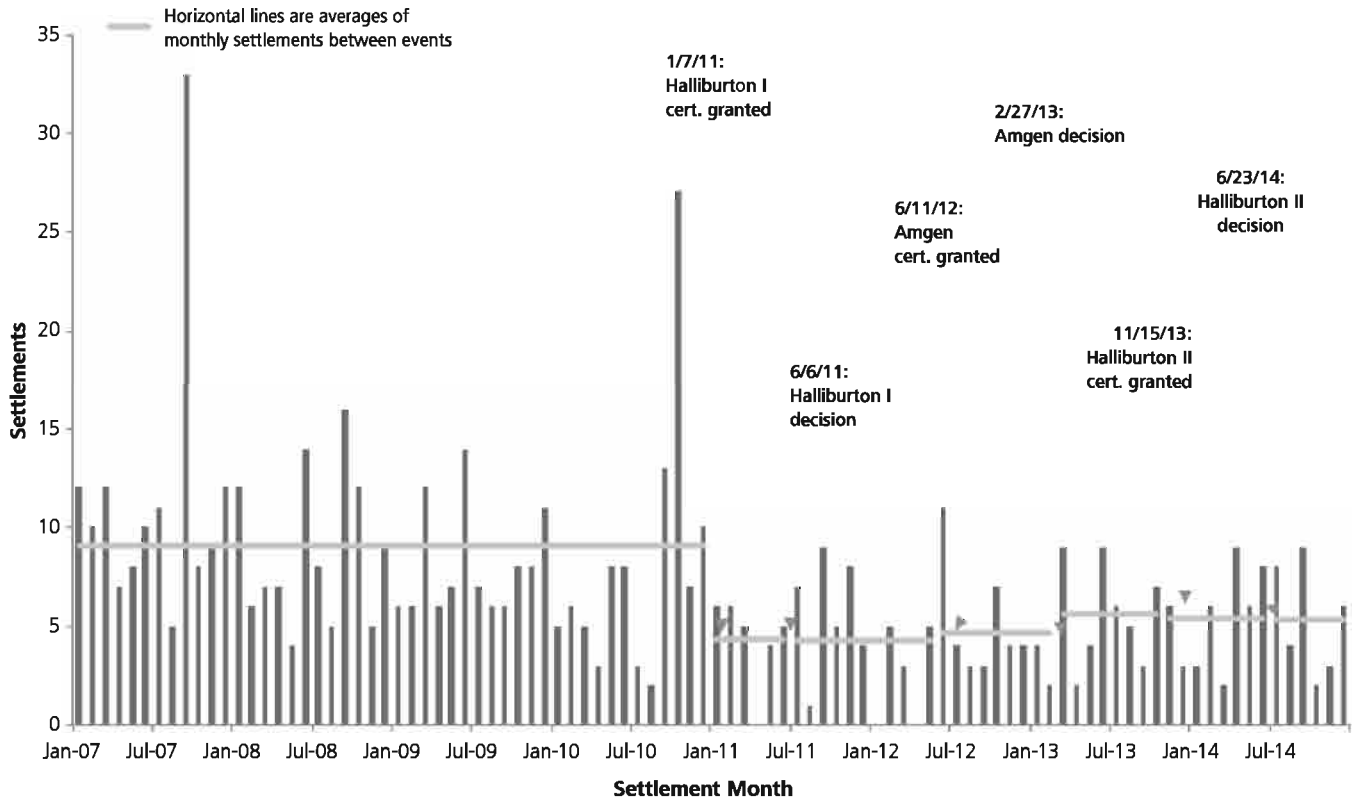
Number of 10b-5 Cases Settled and Recent Supreme Court Cases

The number of 10b-5 filings and number of 10b-5 settlements behaved differently since *Halliburton II*. The average monthly number of 10b-5 filings increased (as seen above, Figure 4). The average monthly number of settlements hardly changed: it was 5.4 while *Halliburton II* was pending at the Supreme Court level, and 5.3 since. See Figure 18.

By comparison, the average monthly number of settlements increased by 21% after *Amgen*.

While we again note a temporal correlation, we are not suggesting how much, if any, of the change in the settlement activity is *due* to these decisions since we have not considered confounding factors.

Figure 18. **Monthly 10b-5 Settlements**
January 2007 – December 2014



Note: Monthly averages computed on the basis of the monthly number of settlements (regardless of the day of the event).

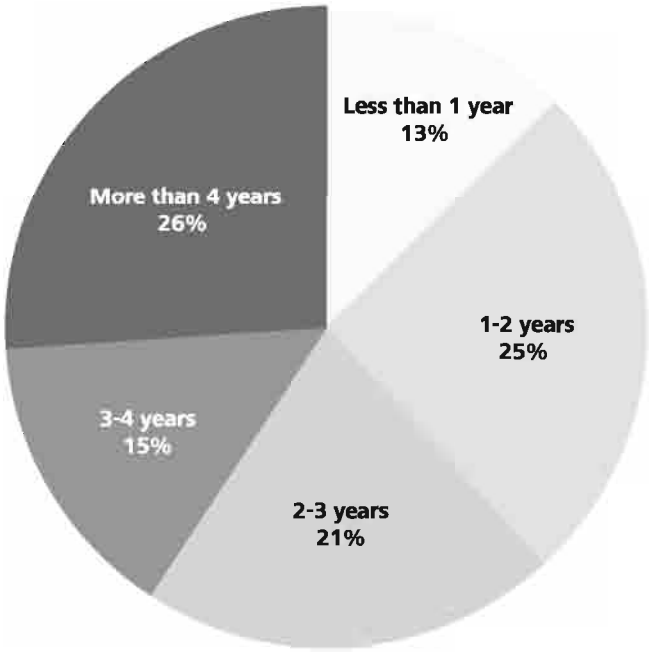
Time to Resolution

The term "time to resolution" indicates the time between filing of the first complaint and resolution (whether settlement or dismissal). We analyzed time to resolution for all securities class actions filed between 2000 and 2010. Including only class actions filed through 2010 in our analysis allows us to adopt a simple strategy to obtain numbers that are not affected by survivorship bias (the bias that would be introduced by the fact that more recently filed class actions would be observed only if they resolved quickly). As a check, we also statistically estimated a survival model including the last 4 years and found results that are qualitatively similar to those discussed here. From our analysis, we exclude IPO laddering cases and merger objection cases because the former took much longer to resolve and the latter usually much shorter.

Of the securities class actions analyzed, 13% resolved in less than 1 year, 25% took between 1 and 2 years to resolve, 21% took between 2 and 3 years, 15% took between 3 and 4 years, and 26% took more than 4 years to resolve. See Figure 19.

In other words, 59% of the securities class actions filed were settled or dismissed within 3 years.

Figure 19. **Time from First Complaint Filing to Resolution**
Cases Filed January 2000 – December 2010



Note: Excludes IPO laddering cases and merger objections.

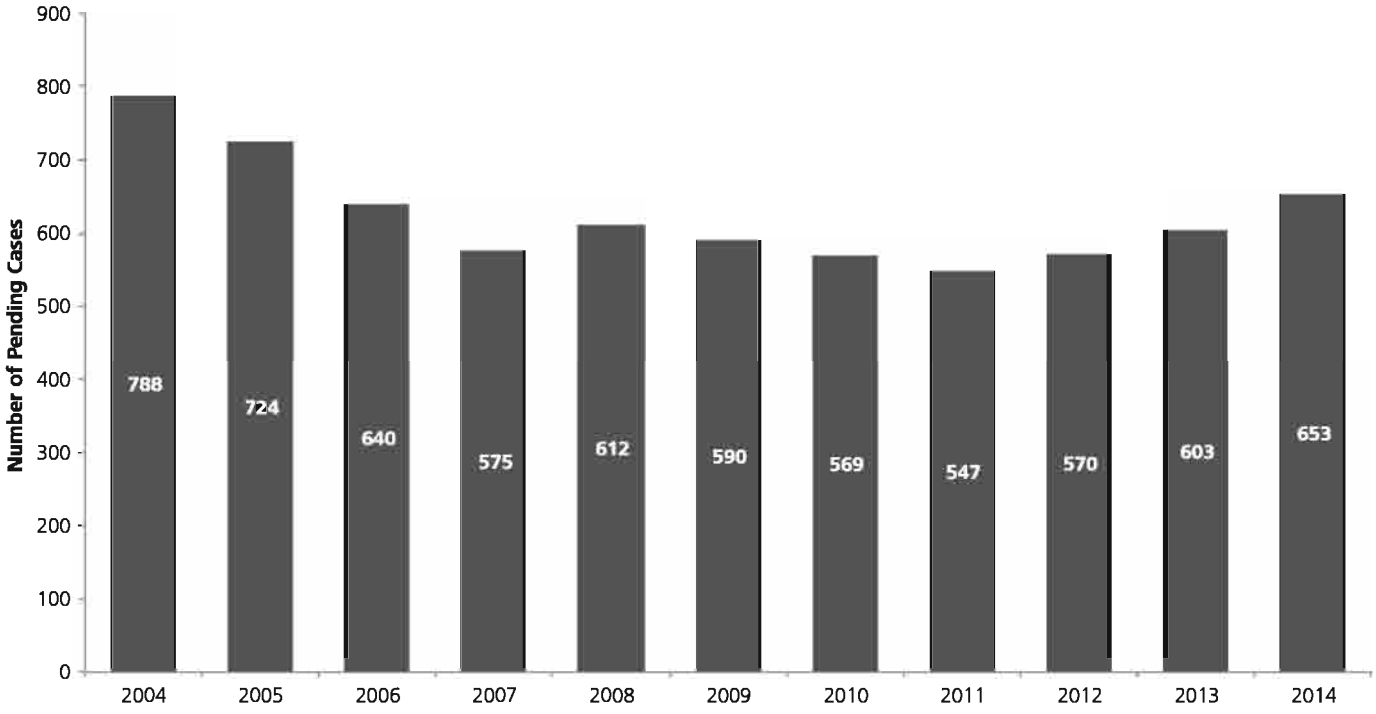
Number of Cases Pending

The number of securities class actions pending in the federal system shrunk from 788 in 2004 to 547 in 2011. See Figure 20. This information can be of interest on its own.

Additionally, when the number of new filings is constant, the change in the number of pending cases can be indicative of whether the time to resolve is shortening or lengthening. So the change in the number of pending cases supplements the previous Figure on time to resolve.

Since 2011, the number of pending cases has been increasing, reaching 653 in 2014, a 19% increase from the trough. This increase occurred over a period in which the number of filings was roughly constant thereby suggesting a slow-down of the resolution process over that period.

Figure 20. **Number of Pending Federal Cases**



Note: The figure excludes, in each year, cases that had been filed more than eight years earlier. The figure also excludes IPO laddering cases.

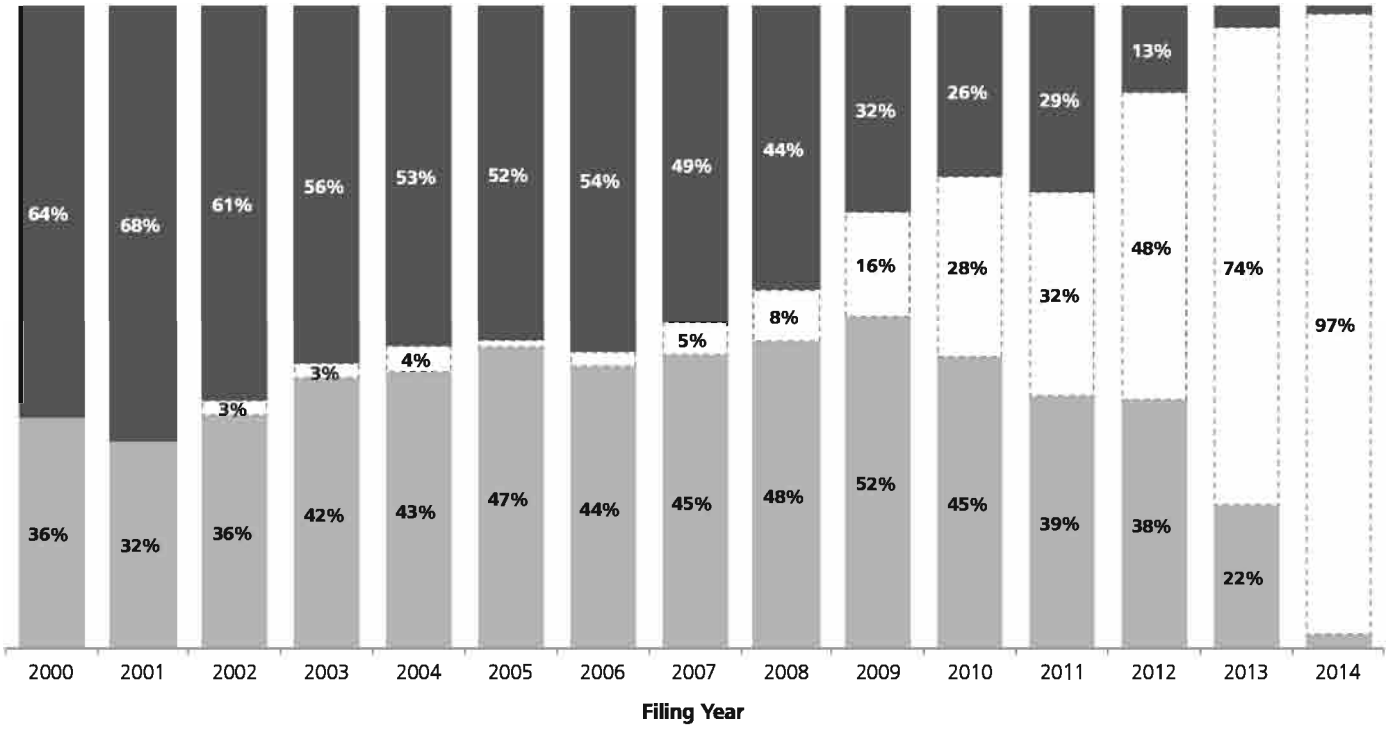
Dismissal Rates

Figure 21 shows the dismissal rate by filing cohort. It is calculated as the fraction of cases ultimately dismissed out of all cases filed in a given year.[18]

Dismissal rates have increased from 32%-36% for cases filed in 2000-2002 to 43%-47% for cases filed in 2004-2006, and then to at least 45%-52% for cases filed in 2007-2009 when most of the credit crisis related filings occurred.

While dismissal rates have been on a rising trend since 2000 at least up to 2009, two opposing factors make us cautious about drawing conclusions for recent years: the large fraction of cases awaiting resolution among those filed in recent years, and the possibility that recent dismissals will be successfully appealed or re-filed.

Figure 21. **Status of Cases as Percentage of Federal Filings by Filing Year**
January 2000 – December 2014



Notes: Analysis excludes IPO laddering, merger objection cases, and verdicts.
Dismissals may include dismissals without prejudice and dismissals under appeal.

Trends in Settlements

Settlement Amounts

We provide multiple statistics about settlement amounts; each provides information about a different facet of securities litigation. We begin by discussing two measures of average settlement amount and one measure of median settlement amount. In calculating all three of these measures, we exclude the IPO laddering cases, merger objections, and cases that settle with no cash payment to the class. The two measures of average settlement amount differ from each other because settlements that exceed $1 billion are excluded from the first that we present but not from the second.

This year, all three measures indicate that settlement amounts plummeted in 2014.

We also provide the distribution of settlement amounts and the list of top 10 settlement amounts ever.

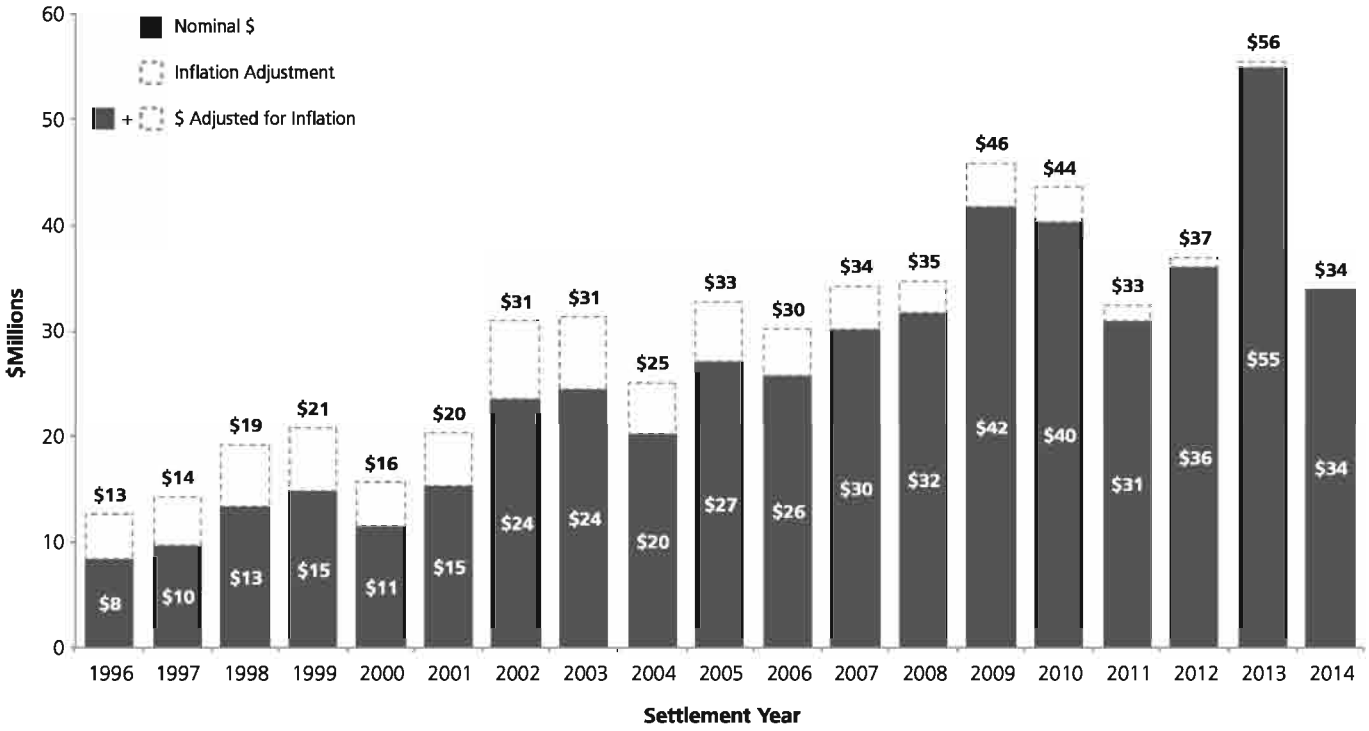
Average Settlement Amounts

Average settlement amounts plummeted 38% between 2013 and 2014, according to our first measure, which excludes settlements over $1 billion. At $34 million, the average for 2014 is much lower than the average for 2013, but in line with 2012 and 2011. See Figure 22.

As a further analysis of 2014 settlements, we calculated separate averages for settlements that received judicial approval before and after *Halliburton II* was decided. The average in the first part of the year was $40 million, while the average settlement in the second part of the year was $29 million.

Last, we have added inflation-adjusted amounts to our Figure 22.[19] While the average settlement is 4.03 times as large in 2014 as in 1996 on a nominal basis, on an inflation-adjusted basis it is 2.68 times as large.

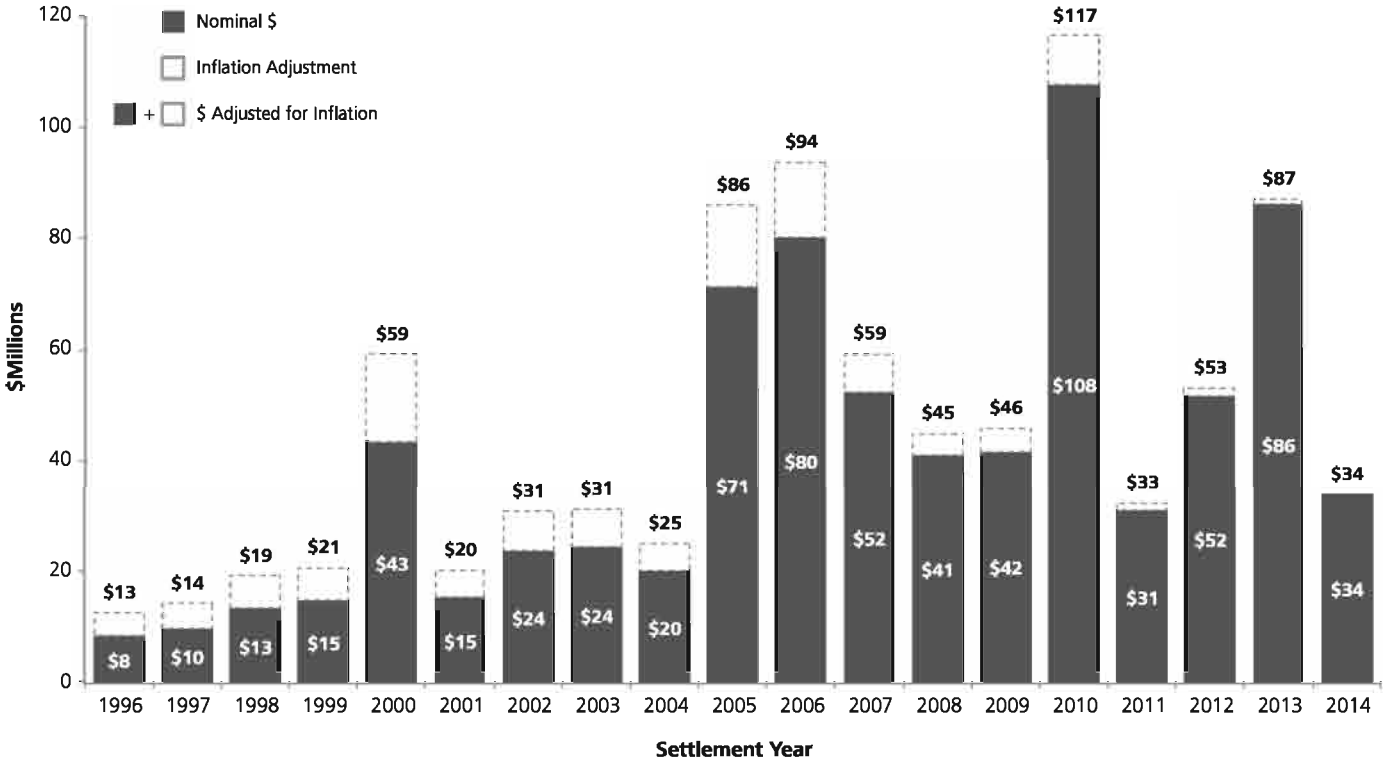
Figure 22. **Average Settlement Value ($Million)**
Excluding Settlements over $1 Billion,
and Excluding IPO Laddering, Merger Objections and Settlements for $0 to the Class
January 1996 – December 2014



Note: Inflation adjustment to October 2014; based on CPI.

Figure 22 and Figure 23 differ only in that Figure 22 excludes settlement amounts above $1 billion while Figure 23 includes them. Given that there was no settlement exceeding $1 billion in 2014, the 2014 average settlement amount is the same in both Figures. On the other hand, in 2013 a settlement that exceeded $1 billion did receive judicial approval (BofA Merrill, see Table 1 below). Thus, the average settlement amount in 2013 is even higher under this measure, $86 million, than it was under the previous measure and the decrease from 2013 to 2014 even more pronounced at 61% under this second measure than under the first.

Figure 23. **Average Settlement Value ($Million)**
Excluding IPO Laddering, Merger Objections and Settlements for $0 to the Class
January 1996 – December 2014



Note: Inflation adjustment to October 2014; based on CPI.

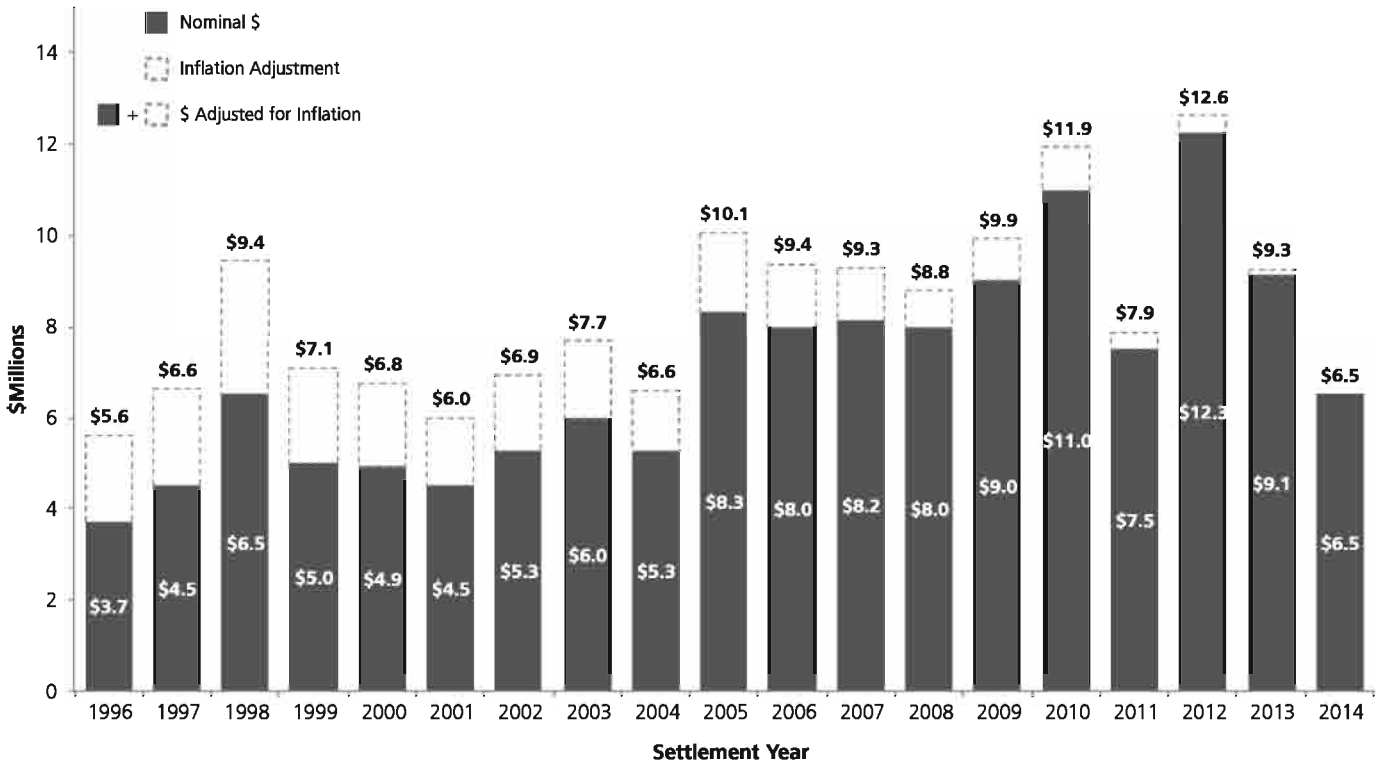
Median Settlement Amounts

The median settlement amount in 2014 was $6.5 million, the lowest median settlement in ten years. See Figure 24.

Similar to the average, the median also showed a sharp decrease between 2013 and 2014, but given that medians are more robust to extreme values than averages, the decrease in median amount over the two years is smaller at 29%.

On an inflation-adjusted basis, 2014 median settlement was the third-lowest since the passage of the PSLRA: only in 1996 and in 2001 were median settlement amounts lower on an inflation-adjusted basis.

Figure 24. **Median Settlement Value ($Million)**
Excluding IPO Laddering, Merger Objections and Settlements for $0 to the Class
January 1996 – December 2014



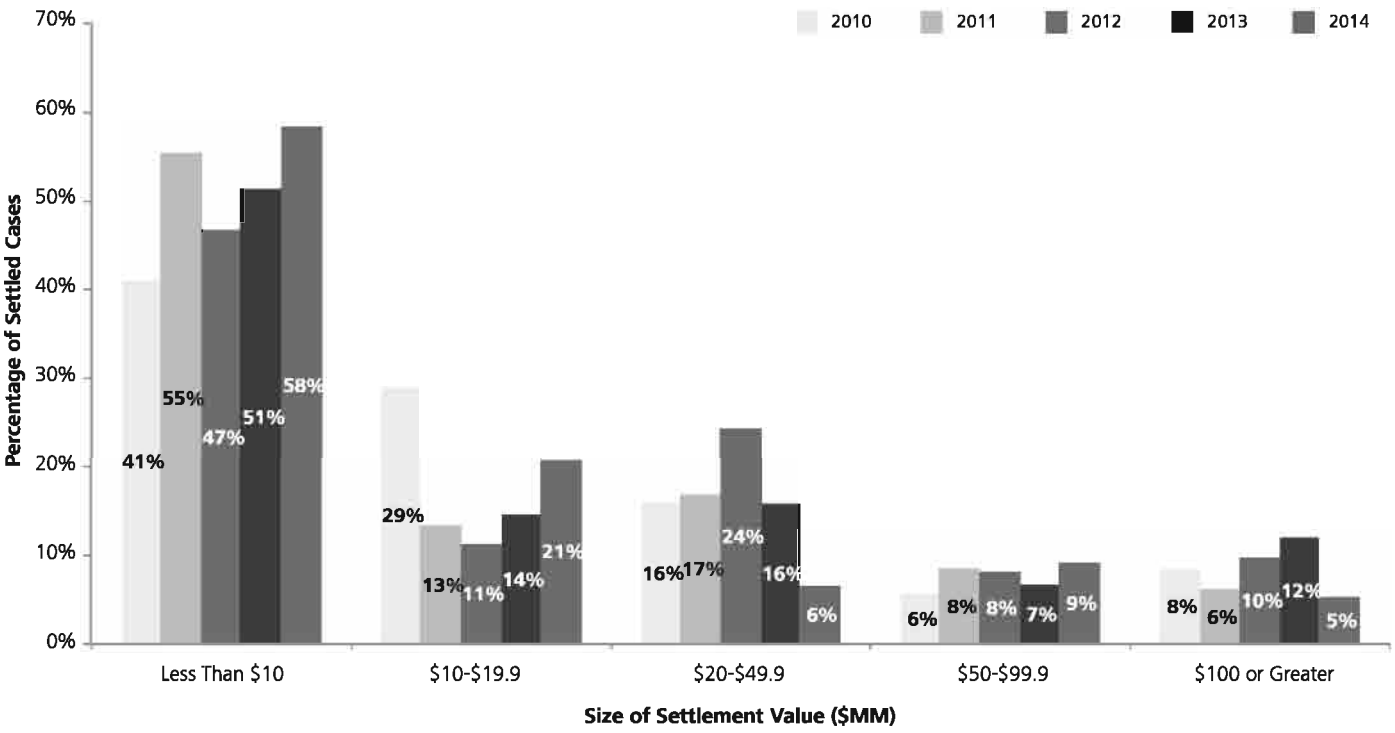
Note: Inflation adjustment to October 2014; based on CPI.

Distribution of Settlement Amounts

The fraction of cases settled for less than $10 million was larger in 2014 than at any time during the previous four years: 58% of the approved settlements were for amounts in that range. The fraction of cases that settled in the $10-$20 million range (the second-lowest range) also increased compared to 2013. See Figure 25.

Consistent with Figures 23 and 24, Figure 25 excludes settlements in merger objection cases and in cases that settled with no cash payment for the class.[20]

Figure 25. **Distribution of Settlement Values**
Excluding Merger Objections and Settlements for $0 to the Class
January 2010 – December 2014



Note: IPO laddering cases are not relevant for this figure because they settled in 2009.

The Ten Largest Settlements of Securities Class Actions of All Time

The ten largest settlements of securities class actions of all time are shown in Table 1. No 2014 settlement made the top 10. The newest addition is the settlement approved in 2013 associated with Bank of America's acquisition of Merrill Lynch.

Table 1. **Top 10 Securities Class Action Settlements (As of December 31, 2014)**

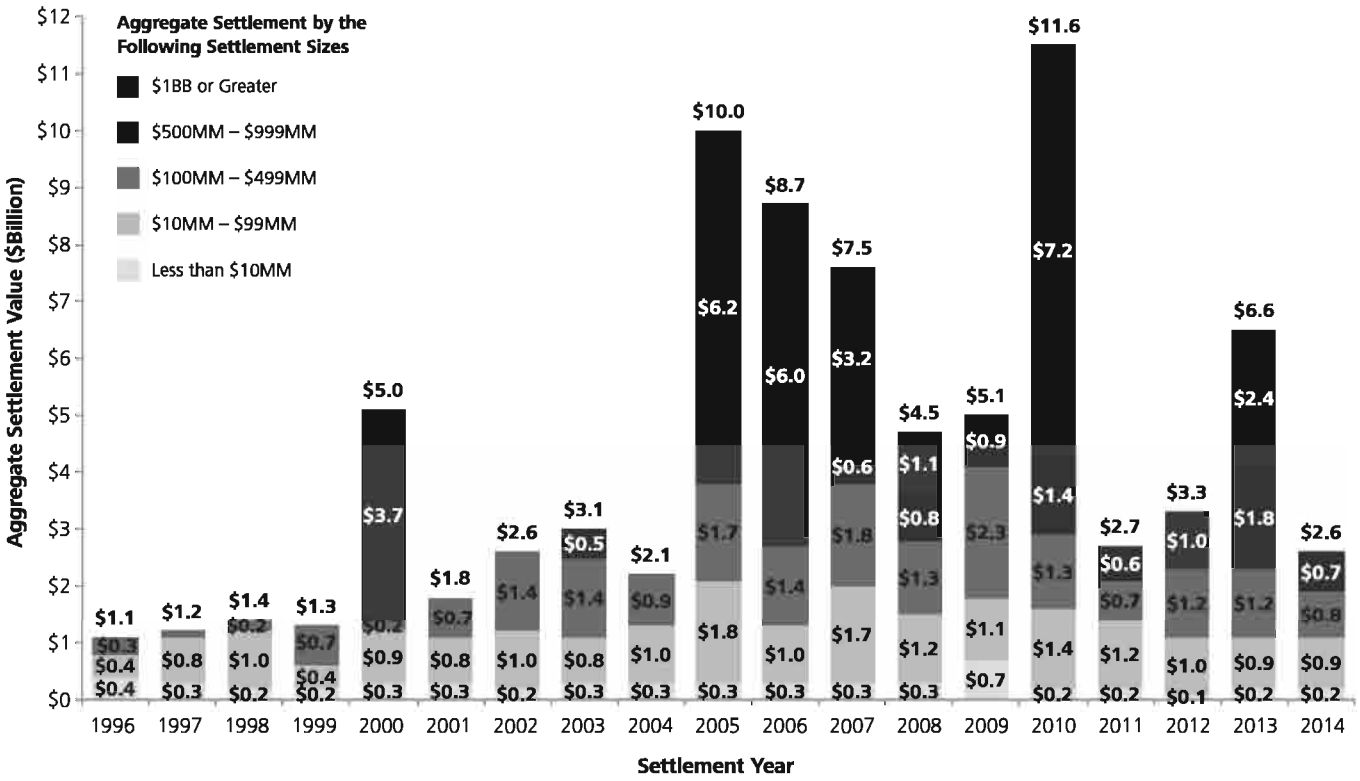
Ranking	Case Name	Settlement Years	Total Settlement Value ($MM)	Financial Institutions	Accounting Firms	Plaintiffs' Attorneys' Fees and Expenses
				Value ($MM)	Value ($MM)	Value ($MM)
1	ENRON Corp.	2003-2010	$7,242	$6,903	$73	$798
2	WorldCom, Inc.	2004-2005	$6,196	$6,004	$103	$530
3	Cendant Corp.	2000	$3,692	$342	$467	$324
4	Tyco International, Ltd.	2007	$3,200	No codefendant	$225	$493
5	In re AOL Time Warner Inc.	2006	$2,650	No codefendant	$100	$151
6	Bank of America Corp.	2013	$2,425	No codefendant	No codefendant	$177
7	Nortel Networks (I)	2006	$1,143	No codefendant	$0	$94
8	Royal Ahold, NV	2006	$1,100	$0	$0	$170
9	Nortel Networks (II)	2006	$1,074	No codefendant	$0	$89
10	McKesson HBOC, Inc.	2006-2008	$1,043	$10	$73	$88
	Total		**$29,764**	**$13,259**	**$1,040**	**$2,913**

Aggregate Settlements

We use the term "aggregate settlements" to denote the total amount of money to be paid as settlement by (non-dismissed) defendants based on the court approved settlements during a year.

Aggregate settlements were $2.6 billion in 2014, much less than the $6.6 billion approved in 2013. See Figure 26. This Figure illustrates that, over the years, much of the large fluctuations in aggregate settlements have been driven by settlements over $1 billion. In contrast, settlements under $10 million, despite often accounting for about one-half of the number of settlements in a given year, account for a very small fraction of aggregate settlements.

Figure 26. **Aggregate Settlement Value ($Billion) by Settlement Size**
January 1996 – December 2014



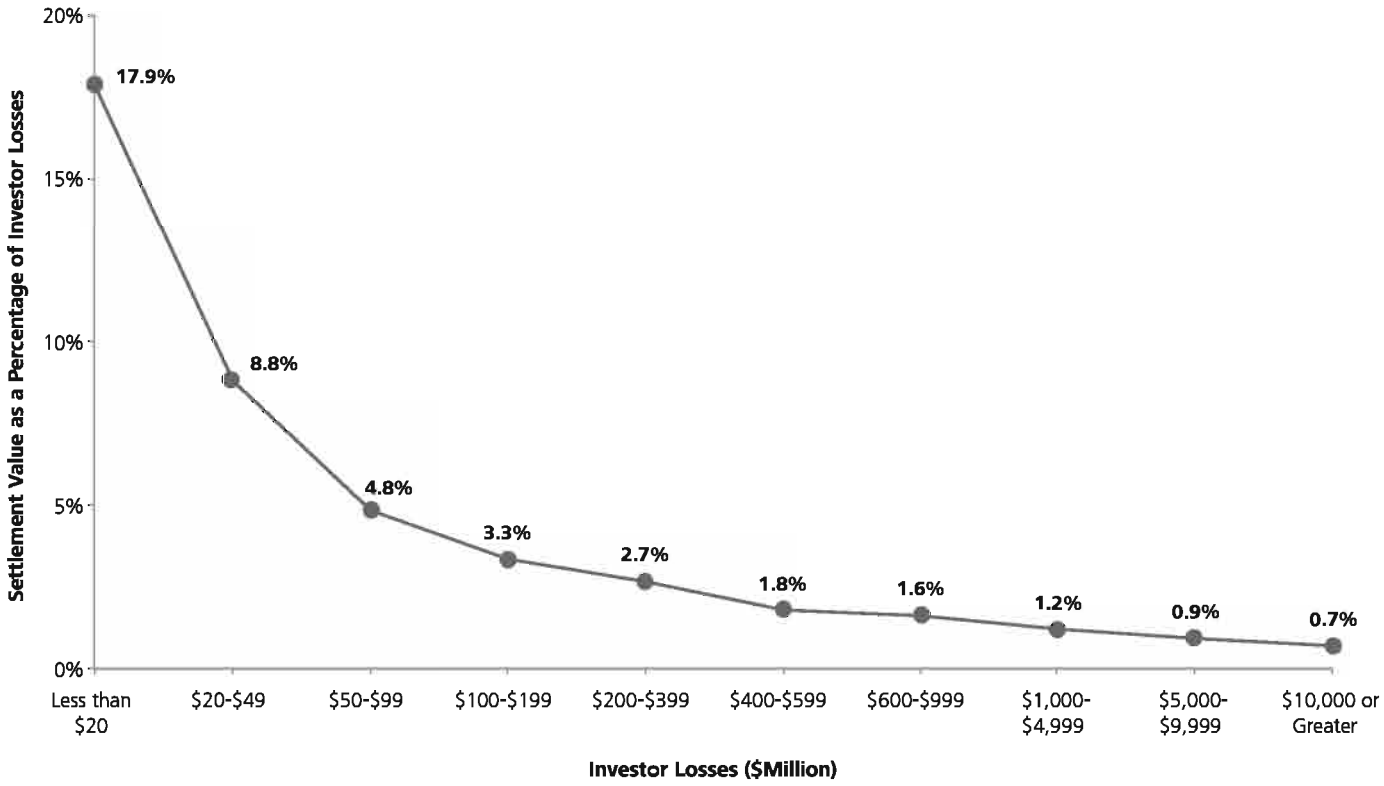
Investor Losses versus Settlements

As noted above, our investor losses measure is a proxy for the aggregate amount that investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period.

In general, settlement size grows as investor losses grow, but the relationship is not linear. Settlement size grows less than proportionately with investor losses, based on analysis of data from 1996 to 2014. Small cases typically settle for a higher fraction of investor losses (*i.e.*, more cents on the dollar) than larger cases. For example, the median ratio of settlement to investor losses was 17.9% for cases with investor losses of less than $20 million, while it was 0.7% for cases with investor losses over $10 billion. See Figure 27.

Our findings about the ratio of settlement amount to investor losses should not be interpreted as the share of damages recovered in settlement but rather as the recovery compared to a rough measure of the "size" of the case.

Figure 27. **Median of Settlement Value as a Percentage of Investor Losses**
By Level of Investor Losses; January 1996 – December 2014



Note: Excludes settlements for $0 to the class.

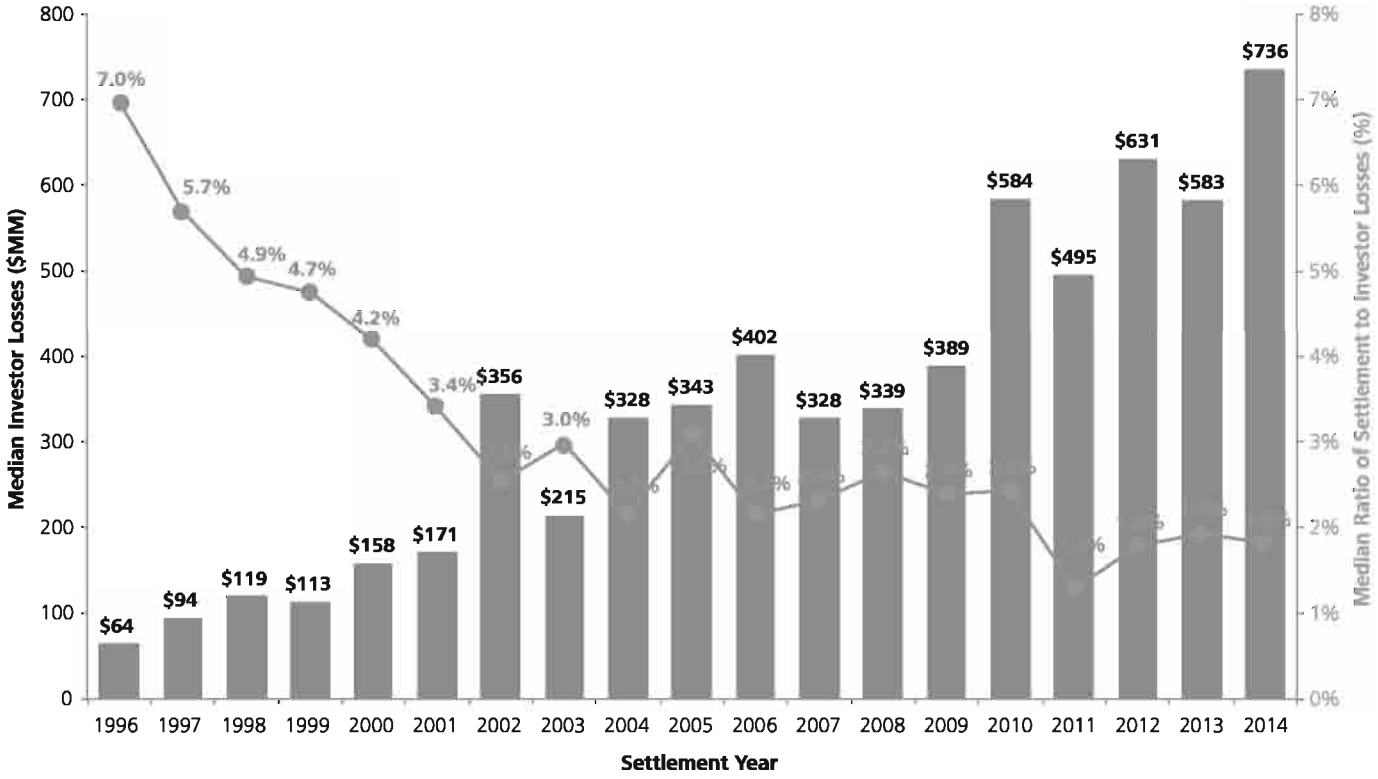
Median Investor Losses Over Time

Median investor losses for settled cases have been on an upward trend since the passage of the PSLRA. As just described, the median ratio of settlement size to investor losses decreases as investor losses increase. Over time, the increase in median investor losses has corresponded to a decreasing trend of the median ratio of settlement to investor losses. Of course, there are year-to-year fluctuations.

The median ratio of settlements to investor losses decreased from 1.9% in 2013 to 1.8% in 2014. See Figure 28.

Additionally the median ratio was 1.4% post-*Halliburton II* suggesting that cases are settling for less. It is going to be interesting to see whether this trend continues in 2015.

Figure 28. **Median Investor Losses and Median Ratio of Settlement to Investor Losses**
By Settlement Year; January 1996 – December 2014



Plaintiffs' Attorneys' Fees and Expenses

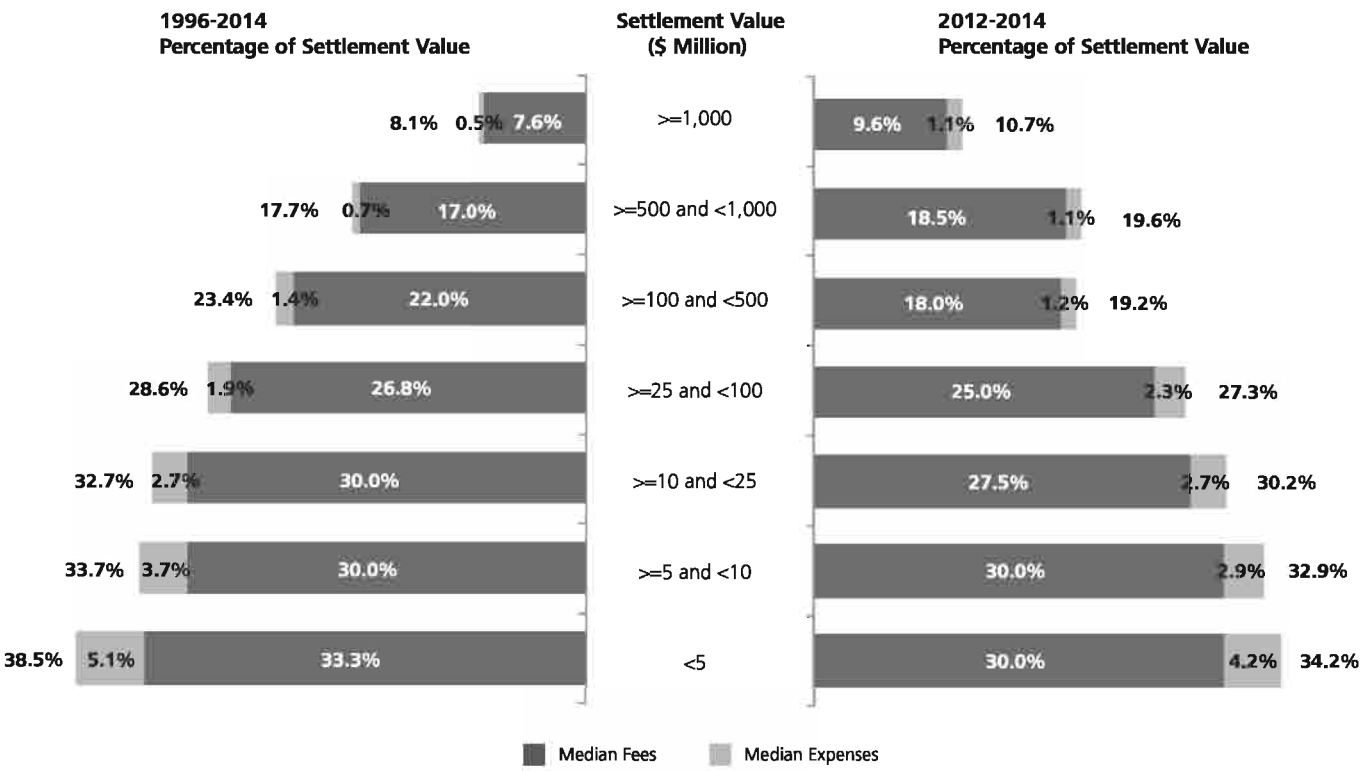
Usually, plaintiffs' attorneys' remuneration is awarded as a fraction of any settlement amount in the forms of fees, plus expenses. Figure 29 depicts plaintiffs' attorneys' fees and expenses as a proportion of settlement values. The data shown in this Figure exclude settlements for merger objection cases and cases with no cash payment to the class.

In Figure 29, we illustrate two patterns: 1) Typically, fees grow with settlement size but less than proportionally (*i.e.*, the fee percentage shrinks as the settlement size grows). 2) Fee percentages have been decreasing over time, except for fees awarded on very large settlements.

First, to illustrate that the fee percentage typically shrinks as settlement size grows, we grouped settlements by settlement value and report median fee percentage for each group. Focusing on the period 2012-2014 (the right portion of the Figure), we see that for settlements below $5 million, median fees represented 30% of the settlement; these percentages generally fall with settlement size, reaching 9.6% in fees for settlements above $1 billion.

Second, to illustrate that fee percentages have been decreasing over time (except for very large settlements), we report our findings both for the period 1996-2014 and for the sub-period 2012-2014. The comparison shows that fee percentages have decreased for settlements up to $500 million in the late sub-period. For settlements above $500 million, fees have increased.

Figure 29. **Median of Plaintiffs' Attorneys' Fees and Expenses, by Size of Settlement**



Notes: Excludes merger objection cases and cases with no cash payment to the class.

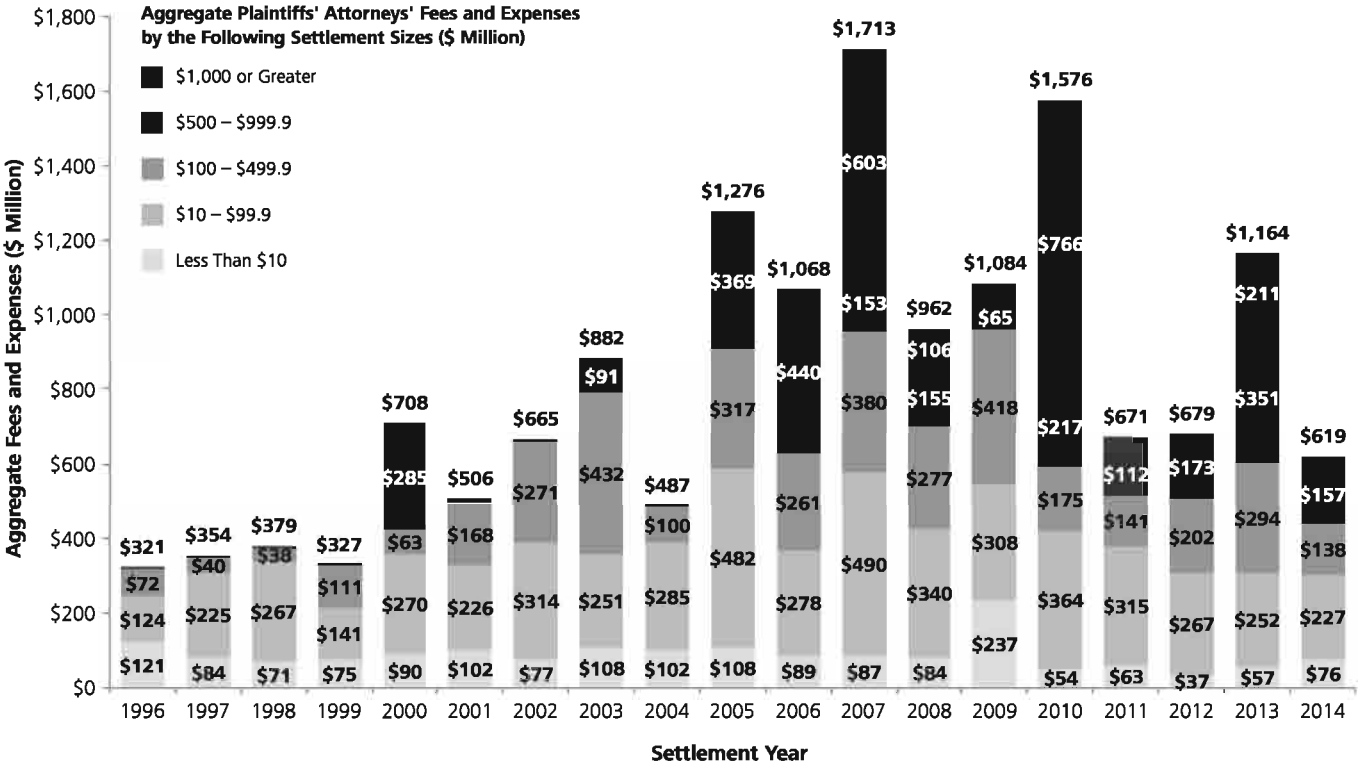
Aggregate Plaintiffs' Attorneys' Fees and Expenses

Aggregate plaintiffs' attorneys' fees and expenses are the sum of all fees and expenses that plaintiffs' attorneys receive for all securities class actions that receive judicial approval in one year.

Aggregate plaintiffs' attorneys' fees and expenses were $619 million in 2014, down almost in half since 2013 and mirroring the decrease in settlement amounts discussed above. See Figure 30.

Note that this Figure differs from the other Figures in this section, because it includes in the aggregate those fees and expenses that plaintiffs' attorneys receive for settlements in which no cash payment was made to the class. (This inclusion is a methodological change compared to last year's edition of this report).

Figure 30. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 1996 – December 2014



Trials

Very few securities class actions reach the trial stage and even fewer reach a verdict. Table 2 summarizes the outcome for all federal securities class actions that went to trial among the 4,435 that were filed since the PSLRA. Only 21 have gone to trial and only 15 have reached a verdict or a judgment.

This year, a trial was held in the case *In re Longtop Financial Technologies Securities Litigation*. A former executive of the Chinese software company was the only defendant left in the case. The jury reached a verdict for plaintiffs. As of press time, no post-trial motion or appeal has been filed.

Table 2. **Post-PSLRA Securities Class Actions That Went to Trial**
As of December 31, 2014

					Appeal and Post-Trial Proceedings	
Case Name	Federal Circuit	File Year	Trial Start Year	Verdict	Date of Last Decision	Outcome
Verdict or Judgment Reached						
In re Health Management, Inc. Securities Litigation	2	1996	1999	Verdict in favor of defendants	2000	Settled during appeal
Koppel, et al v. 4987 Corporation, et al	2	1996	2000	Verdict in favor of defendants	2002	Judgment of the District Court in favor of defendants was affirmed on appeal
In re JDS Uniphase Corporation Securities Litigation	9	2002	2007	Verdict in favor of defendants		
Joseph J Milkowski v. Thane Intl Inc, et al	9	2003	2005	Verdict in favor of defendants	2010	Judgment of the District Court in favor of defendants was affirmed on appeal
In re American Mutual Funds Fee Litigation	9	2004	2009	Judgment in favor of defendants	2011	Judgment of the District Court in favor of defendants was affirmed on appeal
Claghorn, et al v. EDSACO, Ltd., et al	9	1998	2002	Verdict in favor of plaintiffs	2002	Settled after verdict
In re Real Estate Associates Limited Partnership Litigation	9	1998	2002	Verdict in favor of plaintiffs	2003	Settled during appeal
In re Homestore.com, Inc. Securities Litigation	9	2001	2011	Verdict in favor of plaintiffs		
In re Apollo Group, Inc. Securities Litigation	9	2004	2007	Verdict in favor of plaintiffs	2012	Judgment of the District Court in favor of defendants was overturned and jury verdict reinstated on appeal; case settled thereafter
In re BankAtlantic Bancorp, Inc. Securities Litigation	11	2007	2010	Verdict in favor of plaintiffs	2012	Judgment of the District Court in favor of defendants was affirmed on appeal
In re Longtop Financial Technologies Securities Litigation	2	2011	2014	Verdict in favor of plaintiffs		
In re Clarent Corporation Securities Litigation	9	2001	2005	Mixed verdict		
In re Vivendi Universal, S.A. Securities Litigation	2	2002	2009	Mixed verdict		
Jaffe v. Household Intl Inc, et al	7	2002	2009	Mixed verdict		
In re Equisure, Inc. Sec, et al v., et al	8	1997	1998	Default judgment		
Settled with at Least Some Defendants before Verdict						
Goldberg, et al v. First Union National, et al	11	2000	2003	Settled before verdict		
In re AT&T Corporation Securities Litigation	3	2000	2004	Settled before verdict		
In re Safety Kleen, et al v. Bondholders Litigati, et al	4	2000	2005	Partially settled before verdict, default judgment		
White v. Heartland High-Yield, et al	7	2000	2005	Settled before verdict		
In re Globalstar Securities Litigation	2	2001	2005	Settled before verdict		
In re WorldCom, Inc. Securities Litigation	2	2002	2005	Settled before verdict		

Note: Data are from case dockets and news.

Notes

1 This edition of NERA's research on recent trends in securities class action litigation expands on previous work by our colleagues Lucy Allen, the late Frederick C. Dunbar, Vinita M. Juneja, Sukaina Klein, Denise Neumann Martin, Jordan Milev, John Montgomery, Robert Patton, Stephanie Plancich, David I. Tabak and others. The authors also thank Lucy Allen and David Tabak for helpful comments on this edition. In addition, we thank current and past researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this paper; all errors and omissions are ours.

2 Data for this report are collected from multiple sources, including RiskMetrics Group's Securities Class Action Services (SCAS), complaints, case dockets, Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., SEC filings, and the public press.

3 *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2412 (2014).

4 NERA tracks class actions filed in federal courts that involve securities. Most of these cases allege violations of federal securities laws; others allege violation of common law, including breach of fiduciary duty, as with some merger objection cases; still others are filed in US Federal court under foreign or state law. If multiple such actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. However, multiple actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect that consolidation. Therefore, our count for a particular year may change over time. Different assumptions for consolidating filings would likely lead to counts that are directionally similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends.

5 The October data are the most recent available from Meridian Securities Markets at press time.

6 *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2412 (2014).

7 There was only 1 potential exception: a case in which it was not clear to us what presumption, if any, was invoked; this case was excluded from our analysis.

8 Petition for a *writ of certiorari*, *Omnicare v. Laborers District Council Construction Industry Pension Fund*, October 4, 2013.

9 Andrew Bolger, "Warning signs appear after bumper IPO year," *Financial Times*, 26 December 2014.

10 Number of IPOs on US exchanges, excluding ADRs, from Mergerstat through FactSet Research Systems, Inc.

11 The percentages of federal cases in which financial institutions are named as defendants are computed on the basis of the first available complaint.

12 Cases for which investor losses are not calculated are excluded from the statistics shown in this section. The largest excluded groups are IPO laddering cases and merger objection cases.

13 Moreover, it is possible that there are some cases that we have categorized as resolved that are, or will in the future, be subject to appeal.

14 These are cases in which the language of the docket or decision referred to the motion being granted in its entirety or simply "granted," but not cases in which the motion was explicitly granted without prejudice.

15 Unless otherwise noted, tentative settlements (those yet to receive court approval) and partial settlements (those covering some but not all non-dismissed defendants) are not included in our settlement statistics. We define "Settlement Year" as the year of the first court hearing related to the fairness of the entire settlement or the last partial settlement.

16 Here the word "dismissed" is used as shorthand for all cases resolved without settlement: it includes cases in which a motion to dismiss was granted (and not appealed or appealed unsuccessfully), voluntary dismissals, and cases terminated by a successful motion for summary judgment or an unsuccessful motion for class certification. The majority of these cases are those in which a motion to dismiss was granted.

17 It is possible that not all our sources have updated the dismissal status yet. Thus, more cases may have been dismissed in 2014 than we include in our counts at press time.

18 See footnote 16 for the definition of "dismissed." The dismissal rates shown here do not include resolutions for IPO laddering cases, merger objection cases, or cases with trial verdicts. When a dismissal is reversed, we update our counts.

19 We used a simple CPI adjustment, to October 2014 (the latest data available at press time).

20 IPO laddering cases are not relevant for Figure 27, because that Figure starts in 2010, while IPO laddering cases settled in 2009.

About NERA

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