

James E. Cecchi
Lindsey H. Taylor
Donald A. Ecklund
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GABRIEL JOSEPH CARRERA, on behalf
of himself and all others similarly situated,

Plaintiff,

v.

BAYER CORPORATION and
BAYER HEALTHCARE, LLC,

Defendants.

Civil Action No. 08-4716 (JLL)(JAD)

NOTICE OF MOTION

To: All Counsel via ECF

COUNSEL:

PLEASE TAKE NOTICE that, on a date to be determined, Plaintiff shall move before the Hon. Jose L. Linares, U.S.D.J. at the Martin Luther King, Jr. Federal Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102, to enter an Order: (1) preliminarily approving the proposed Settlement of the above captioned action as contained in the accompanying Class Action Settlement Agreement (the "Settlement"); (2) setting the date for a hearing to consider final approval of the proposed Settlement, as well as Class

Counsel's Fee and Expense Application; (3) directing that notice be disseminated to Class Members at the times and in the manner proposed; and (4) granting such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, in support of the motion, the parties will rely upon the accompanying brief and the Declaration of James E. Cecchi and attached exhibits.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Federal Rules of Civil Procedure, a proposed form of Order is attached.

PLEASE TAKE FURTHER NOTICE that the parties consent to disposition of this motion on the papers in accordance with Rule 78 of the Federal Rules of Civil Procedure.

CARELLA BYRNE CECCHI
OLSTEIN BRODY & AGNELLO, P.C.

Dated: November 21, 2014

By: /s/ James E. Cecchi
 JAMES E. CECCHI

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GABRIEL JOSEPH CARRERA, on behalf
of himself and all others similarly situated,

Plaintiff,

v.

BAYER CORPORATION and BAYER
HEALTHCARE, LLC,

Defendants.

Civil Action No. 2:08-cv-4716 (JLL)(JAD)

**BRIEF IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

James E. Cecchi
Lindsey H. Taylor
Donald A. Ecklund
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700
Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

	Page
THE PROPOSED SETTLEMENT	2
NOTICE TO THE CLASS.....	3
LEGAL ARGUMENT	4
I. THE SETTLEMENT SHOULD BE APPROVED AS FAIR, REASONABLE, AND ADEQUATE	4
A. Settlement And Class Action Approval Process.....	4
B. The Criteria For Settlement Approval Are Satisfied.....	6
1. The Settlement Is The Product Of Extensive Arm’s Length Negotiations.	7
2. Counsel Are Experienced In Similar Litigation.....	8
3. The Factual Record Was Well Developed.	8
4. The Settlement Provides Substantial Relief For Class members And Treats Class members Fairly.	9
5. The Settlement Is Fair And Reasonable In Light Of The Alleged Claims And Defenses.	9
6. The Requested Class Representative Incentive Award Is Reasonable.	10
7. The Requested Attorneys’ Fees Are Fair And Reasonable.	10
II. Provisional Certification Of The Settlement Class Is Appropriate.	11
A. Rule 23(a) Is Satisfied.....	11
1. Numerosity	11
2. Commonality.....	12
3. Typicality.....	13
4. Adequacy.....	15
B. Common Questions of Law Predominate and a Class Action Is the Superior	

- Method of Adjudication 16
 - a. Common Questions Predominate 17
 - b. Class Treatment Is Superior To Alternative Methods Of Adjudication. 18
- C. The Proposed Notice To Class members Is Adequate..... 18
- D. Scheduling A Final Approval Hearing Is Appropriate..... 20
- III. CLASS COUNSEL ARE QUALIFIED TO SERVE THE CLASS 21
- CONCLUSION 22

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591, 117 S. Ct. 2231 (1997).....	22, 23
<i>Baby Neal ex rel. Kanter v. Casey</i> , 43 F.3d 48 (3d Cir. 1994).....	16, 17, 18, 19
<i>Barnes v. Am. Tobacco, Inc.</i> , 161 F.3d 127 (3d Cir. 1998)	18
<i>Bernhard v. TD Bank, N.A.</i> , 2009 WL 3233541 (D.N.J. Oct. 5, 2009).....	8
<i>Carson v. Am. Brands, Inc.</i> , 450 U.S. 79 (1981)	10
<i>Chakejian v. Equifax Info. Servs.</i> , No. 07-2211, 2011 U.S. Dist. LEXIS 63455 (E.D. Pa. June 14, 2011)	14, 20
<i>Chiang v. Veneman</i> , 385 F.3d 256 (3d Cir. 2004)	17
<i>Curiale v. Lenox Group, Inc.</i> , 2008 WL 4899474 (E.D. Pa. Nov. 14, 2008)	10
<i>Dewey v. Volkswagen of Am.</i> , 728 F. Supp. 2d 546 (D.N.J. 2010).....	14
<i>Ehrheart v. Verizon Wireless</i> , 609 F.3d 590 (3d Cir. Pa. 2010)	9, 11
<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156, 94 S. Ct. 2140 (1974)	24
<i>Eisenberg v. Gagnon</i> , 766 F.2d 770 (3d Cir. 1985)	18, 22
<i>Gates v. Rohm & Haas Co.</i> , 248 F.R.D. 434 (E.D. Pa. 2008).....	8, 10
<i>Grant v. Sullivan</i> , 131 F.R.D. 436 (M.D. Pa. 1990).....	16

In re Am. Family Enters.,
256 B.R. 377 (D.N.J. 2000) 11

In re Auto. Refinishing Paint Antitrust Litig.,
MDL No. 1426, 2003 U.S. Dist. LEXIS 18123 (E.D. Pa. Sept. 5, 2003) 9

In re Cendant,
109 F. Supp. 2d 25

In re Cendant Corp. Sec. Litig.,
109 Supp. 2d 255 (D.N.J. 2000) 11

In re Community Bank of N. Va.,
418 F.3d 277 (3d Cir. 2005) 7, 15, 22

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.,
55 F.3d 768 (3d Cir. 1995) (“*G.M. Trucks*”) 7, 9, 20

In re Ins. Brokerage Antitrust Litig.,
579 F.3d 241 (3d Cir. N.J. 2009) 9, 10, 22

In re Linerboard Antitrust Litig.,
292 F. Supp. 2d 631 (Pa. 2003) 9

In re Lucent Techs., Inc. Sec. Litig.,
307 F. Supp. 2d 633 (D.N.J. 2004) 19

In re Mercedes-Benz Antitrust Litig.,
213 F.R.D. 180 (D.N.J. 2003) 22

In re Prudential,
148 F.3d 23

In re Prudential Ins. Co. of Am. Sales Practices Litig.,
962 F. Supp. 450 (D.N.J. 1997), *aff’d*, 148 F.3d 283 (3d Cir. 1998) 11, 16, 17, 25

In re Schering Plough Corp. ERISA Litig.,
589 F.3d 585 (3d Cir. 2009) 17

In re Warfarin Sodium Antitrust Litig.,
391 F.3d 516 (3d Cir. 2004) 7, 16

Johnston v. HBO Film Mgmt., Inc.,
265 F.3d 178 (3d Cir. 2001) 18

Kalow & Springut, LLP v. Commence Corp.,
272 F.R.D. 397 (D.N.J. 2011) 17

Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.,
149 F.R.D. 65 (D.N.J. 1993), *vacated* 15, 16

Mack Trucks, Inc. v. Int’l Union, UAW,
No. 07-3737, 2011 U.S. Dist. LEXIS 51514 (E.D. Pa. May 12, 2011) 10

Mann v. TD Bank, N.A.,
No. 09-1062, 2010 U.S. Dist. LEXIS 112085 (D.N.J. Oct. 20, 2010)..... 27

McAlarnen v. Swift Transp. Co.,
No. 09-1737, 2010 U.S. Dist. LEXIS 7877 (E.D. Pa. Jan. 29, 2010)..... 18

McGee v. Cont’l Tire N. Am., Inc.,
No. 06-6234, 2009 U.S. Dist. LEXIS 17199 (D.N.J. Mar. 4, 2009) 19

Mehling v. New York Life Ins. Co.,
246 F.R.D. 467 (E.D. Pa. 2007)..... 8, 10, 25

Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,
259 F.3d 154 (3d Cir. 2001) 18, 19

Phillips Petroleum Co. v. Shutts,
472 U.S. 797, 105 S. Ct. 2965 (1985)..... 24

Serrano v. Sterling Testing Sys., Inc.,
711 F. Supp. 2d 402 (E.D. Pa. 2010)..... 11

Stewart v. Abraham,
275 F.3d 220 (3d Cir. 2001) 16

Waudby v. Verizon Wireless Servs., LLC,
248 F.R.D. 173 (D.N.J. 2008) 27

STATUTES

28 U.S.C. § 1407 3

OTHER AUTHORITIES

4 *Newberg* § 11.26 8

Fed. Jud. Ctr., *Manual for Complex Litig.*, at § 21.63 (4th ed. 2010) 8

Fed. R. Civ. P. 23 *passim*

Manual for Complex Litig., at § 13.14, § 21.632 9

Manual for Complex Litig., at § 21.632, § 21.633 15

Manual for Complex Litig. § 21.62 n. 971 14

Manual for Complex Litig., supra, at § 21.311 24

Manual for Complex Litig., supra, at § 21.312..... 24

Plaintiff Gabriel Joseph Carrera, in his individual and representative capacity on behalf of the putative Florida Settlement Class and interim class counsel Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. and Whatley Kallas, LLP (collectively “Class Counsel”), with the consent and participation of defendants Bayer Corporation and its subsidiary Bayer HealthCare, LLC (collectively referred to as “Bayer”), respectfully submit this memorandum in support of the parties’ Joint Motion for Preliminary Approval of Class Settlement and Designation of Class Counsel (the “Motion”). Plaintiff, serving as a class representative, commenced a class action lawsuit (the “Action”) against Bayer in the United States District Court, District of New Jersey on behalf of himself and all others similarly situated, seeking economic damages and other relief relating to their purchase of One-A-Day WeightSmart dietary supplements and vitamins (“WeighSmart”). Plaintiff alleged, *inter alia*, that WeightSmart failed to deliver the promised benefits, performance, or efficacy as promised and was essentially identical to other dietary supplements and vitamins, but sold for a premium based upon Bayer’s false claims.

The proposed Settlement of the Action will enable Class members to obtain a partial or total refund of the purchase price paid for WeightSmart from Bayer, as further explained and set forth in the fully executed Settlement Agreement. The parties submit for the Court’s review and preliminary approval a copy of the Settlement Agreement, which is attached as Exhibit A. Also submitted herewith is a proposed Order Granting Preliminary Approval of Class Settlement (the “Preliminary Approval Order”). Entry of the proposed Preliminary Approval Order will allow the parties to give notice of the settlement to Class members and to respond to properly filed objections, if any, and then to proceed to a hearing on final approval.

The background of this Action is well known to this Court, as it has presided over extensive proceedings in this Action. Key among those prior proceedings, the parties briefed two motions for class certification (addressing both a nationwide and Florida class). Through these extensive proceedings, as well as an appeal to the United States Court of Appeals for the Third Circuit, the parties have had ample opportunity to explore the merits of their claims and defenses in this Action. In addition, the parties, prior to briefing class certification completed ample discovery and Plaintiff and Class Counsel have conducted additional factual investigations following the appeal. The parties reached agreement on the terms of the proposed settlement through a vigorous debate of legal and factual theories involving experienced counsel. As set forth more fully below, the proposed Settlement is fair, reasonable, and adequate, and worthy of preliminary approval, and Class Counsel are more than qualified to serve and act on behalf of the Class.

THE PROPOSED SETTLEMENT

The proposed settlement class (“Settlement Class” or “Class”) consists of all persons in Florida who purchased WeightSmart. Excluded from membership in the Class are: (1) all federal judges to whom an action involving WeightSmart has been assigned and members of their families within the first degree of consanguinity and (2) all officers and directors of Bayer.

If the proposed settlement is approved by the Court, Bayer, as more fully explained in the Settlement Agreement, has agreed to refund Settlement Class Members who submit valid Claim Forms showing the actual priced paid up to \$250 dollars. Settlement Class Members who submit valid Claim Forms without proof of purchase will receive a refund of \$15. All payments will be made by check from a common fund of \$500,000.00 provided by

Bayer in the amount of the refund. Attorneys' fees and costs, class representative payment, administrative fees, pursuant to the terms in the Settlement Agreement, associated with the prosecution of these claims and the administration of the settlement will also be paid from the common fund.

To effectuate notice and administer the settlement, subject to the Court's approval, the parties have retained the services of Angeion Group ("Claims Administrator"). As a matter negotiated after the relief to the Class was agreed to, Bayer will not oppose any petition by Class Counsel for fees and costs that does not exceed 25% of the common fund. Similarly, Bayer will not oppose a petition for the payment to Plaintiff of \$5,000 as an award for service provided to the Class.

NOTICE TO THE CLASS

The Settlement Agreement provides for the best practicable notice to the Class. If the Settlement and notice plan are preliminarily approved, the Claims Administrator will establish and maintain a Settlement Website that will provide details about the Settlement, key documents concerning the Settlement and the litigation, a copy of the claim form, instructions for filing a claim, opting out of the Settlement, or objecting to the Settlement, and information concerning applicable Settlement deadlines.

Upon preliminary approval of this Settlement, Bayer or its designee will cause the Summary Notice, in a form substantially similar to that attached as Exhibit B to the Settlement Agreement, to be published in ten Florida newspapers, which have ample circulation within the State of Florida. In addition, the Claims Administrator will establish a four week internet publication program that will be geographically targeted to Florida using an established digital network, which will extend the reach of this notice program.

LEGAL ARGUMENT

I. THE SETTLEMENT SHOULD BE APPROVED AS FAIR, REASONABLE, AND ADEQUATE

The Settlement Agreement should be approved by this Court. The Settlement is the result of ample arm's length negotiations among the parties and their highly-experienced counsel, and informed by the exchange of significant information following throughout years of challenging litigation. The Settlement provides significant monetary benefits considering all of the attendant risks of litigation and relatively low cost of WeightSmart. Prior to reaching resolution, Class Counsel thoroughly investigated the case, and in doing so, gathered ample information to assess the strengths and weaknesses of the parties' positions. Having weighed the likelihood of success and the inherent risks and expense of litigation, Plaintiff and Class Counsel strongly believe that the proposed settlement is "fair, reasonable, and adequate" as required by Fed. R. Civ. P. 23(e)(1)(C).

A. Settlement And Class Action Approval Process

The Third Circuit Court of Appeals has recognized that "[t]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation," and where the parties may "gain significantly from avoiding the costs and risks of a lengthy and complex trial." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("*G.M. Trucks*"). "These economic gains multiply when settlement also avoids the costs of litigating class status — often a complex litigation within itself." *Id.*; see also *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("There is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *In re Community Bank of N. Va.*, 418 F.3d 277, 299 (3d Cir. 2005) ("[A]ll Federal Circuits recognize the utility of . . .

‘settlement classes’ as a means to facilitate the settlement of complex nationwide class actions.”).

The Manual for Complex Litigation describes a three-step procedure for approval of class action settlements:

- (1) Preliminary approval of the proposed settlement at an informal hearing;
- (2) Dissemination of mailed and/or published notice of the settlement to all affected Class members; and
- (3) A “formal fairness hearing” or final settlement approval hearing, at which Class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented.

Fed. Jud. Ctr., *Manual for Complex Litig.*, at § 21.63 (4th ed. 2010); *see also Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007) (identifying preliminary approval, notice to class, and a fairness hearing as process for reviewing a class settlement); *Bernhard v. TD Bank, N.A.*, 2009 WL 3233541, at *1 (D.N.J. Oct. 5, 2009) (same). This procedure, used by courts in this Circuit and endorsed by class action commentator Professor Newberg, safeguards Class members’ due process rights and enables the court to fulfill its role as the guardian of class interests. 4 Newberg on Class Actions (“*Newberg*”) § 11.25 (4th ed. 2010). “Preliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient.” *Bernhard*, 2009 WL 3233541, at *1.

With this motion, the parties request that the Court take the first step in the settlement approval process by granting preliminary approval of the proposed Settlement. At the preliminary approval stage, the question for this Court is whether the Settlement falls within the “range of reasonableness,” and is sufficiently fair, reasonable, and adequate to warrant dissemination of notice apprising Class members of the proposed Settlement and to

establish procedures for a final settlement hearing under Rule 23(e). 4 *Newberg* § 11.26; see also *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 445 (E.D. Pa. 2008) (“[T]he proposed Settlement is within the range of reasonableness and is not obviously deficient in any respect. Thus, preliminary approval is appropriate.”).

The Court’s grant of preliminary approval will allow all Settlement Class members to receive notice of the proposed Settlement’s terms and the date and time of the “final fairness hearing,” or final settlement approval hearing, at which Settlement Class members may be heard regarding the Settlement, and at which further evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. See *Manual for Complex Litig.*, at § 13.14, § 21.632. While the final fairness hearing is a crucial step in the settlement approval process, neither formal notice nor a hearing is required at the preliminary approval stage; the Court may grant such relief upon an informal application by the settling parties, and may conduct any necessary hearing in court or in chambers, at the Court’s discretion. *Id.* at § 13.14; cf. *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2003 U.S. Dist. LEXIS 18123, at *2 (E.D. Pa. Sept. 5, 2003) (“On March 17, 2003, we granted preliminary approval and directed that notice of the proposed settlement and formal fairness hearing be disseminated to the Class.”).

B. The Criteria For Settlement Approval Are Satisfied.

In deciding whether to grant preliminary approval, there is “an initial presumption of fairness” for settlements negotiated at arm’s length by experienced counsel informed by sufficient discovery. *G.M. Trucks*, 55 F.3d at 785; see also *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 604, n.6 (3d Cir. Pa. 2010); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631,

638 (Pa. 2003).¹ The only issue before the Court is whether the 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.” *Mehling*, 246 F.R.D. at 472 (citations omitted). At this stage, the court “need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.” *Id.*; *see also Mack Trucks, Inc. v. Int’l Union, UAW*, No. 07-3737, 2011 U.S. Dist. LEXIS 51514, at *7-8 (E.D. Pa. May 12, 2011). In determining whether class action settlements should be approved, “[c]ourts judge the fairness of a proposed compromise by weighing the Plaintiff’s likelihood of success on the merits against the amount and form of the relief offered in the settlement. . . . They do not decide the merits of the case or resolve unsettled legal questions.” *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981) (citation omitted); *see also Mack Trucks*, 2011 U.S. Dist. LEXIS 51514, at *7-8; *Mehling*, 246 F.R.D. at 472. “The decision of whether to approve a proposed settlement of a class action is left to the sound discretion of the district court.” *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 256 (3d Cir. 2009) (citation and quotation marks omitted).

1. The Settlement Is The Product Of Extensive Arm’s Length Negotiations.

The Settlement Agreement was the result of arms-length negotiation between the parties. Here, the material terms of the proposed Settlement Agreement were only realized

¹ The Court of Appeals for the Third Circuit has adopted a nine-factor test for determining whether a settlement is fair, reasonable, and adequate at the final approval stage. *See In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 258 (3d Cir. N.J. 2009). For purposes of preliminary approval, however, the Court need not address all of these factors, as “the standard for preliminary approval is far less demanding.” *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 444 n.7 (E.D. Pa. 2008); *see also Curiale v. Lenox Group, Inc.*, 2008 WL 4899474, at *9 n.4 (E.D. Pa. Nov. 14, 2008).

after years of demanding litigation before this Court and the Court of Appeals. The negotiations were informed by this history, but no less challenging than any other part of the Action. The Settlement was negotiated over many weeks of extensive, hard-fought negotiations.

2. Counsel Are Experienced In Similar Litigation.

Recommendations of experienced counsel are entitled to great weight in evaluating a proposed settlement in a class action. *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 543 (D.N.J. 1997), *aff'd*, 148 F.3d 283, 311 (3d Cir. 1998); *cf. Ehrheart*, 609 F.3d at 594 (“The settlement agreement was negotiated through and executed by experienced counsel on both sides”). “[S]ignificant weight” should be given “to the belief of experienced counsel that settlement is in the best interest of the class, so long as the Court is satisfied that the settlement is the product of good faith, arms-length negotiations.” *In re Am. Family Enters.*, 256 B.R. 377, 421 (D.N.J. 2000) (internal quotation marks omitted); *see also Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 414 (E.D. Pa. 2010); *In re Cendant Corp. Sec. Litig.*, 109 Supp. 2d 255 (D.N.J. 2000).

Class Counsel are particularly experienced in the litigation, certification, trial, and settlement of nationwide class action cases like the instant action. In negotiating this settlement, Class Counsel had the benefit of years of relevant experience and a familiarity with the facts of this case.

3. The Factual Record Was Well Developed.

The submissions filed with this Court demonstrate that Class Counsel thoroughly investigated and analyzed the legal claims and factual allegations. As a result, Class Counsel were well-positioned to evaluate the strengths and weaknesses of the case and the

appropriate basis upon which to settle it. The record developed during the years preceding this agreement, and this Court's familiarity with the case, provide sufficient information for this Court to determine that the proposed Settlement is fair.

4. The Settlement Provides Substantial Relief For Class members And Treats Class members Fairly.

As further explained in the Settlement Agreement, Bayer has agreed to reimburse Settlement Class members who submit valid claim forms either \$15.00 or if documentation showing the actual price paid for WeightSmart is provided, 100% of the purchase price paid up to \$250.00. Without class litigation, Class members would not have been in a position to achieve these benefits through individual lawsuits.

5. The Settlement Is Fair And Reasonable In Light Of The Alleged Claims And Defenses.

Plaintiff and Class Counsel were confident in the strength of their case, but also pragmatic in their awareness of the risks inherent to litigation and the various defenses available to Bayer. The reality that Class members could end up recovering only a fraction of the settlement benefits or even losing at trial was significant enough to convince Plaintiffs and Class Counsel that the settlement reached with Bayer outweighs the gamble of continued litigation. Even if Plaintiff prevailed at trial, any recovery could be delayed for years by another appeal. The Settlement provides substantial monetary relief to Class members without further delay.

Taking into account Plaintiff's chances of ultimate success on the merits, the time and expense involved in litigating the case to conclusion, and the inherent risks of litigation, the parties believe that the Settlement Agreement is fair and reasonable under all the facts and circumstances and all of the attendant risks of litigation.

6. The Requested Class Representative Incentive Award Is Reasonable.

Enhancement award for class representatives like the ones requested here are appropriate. *See Chakejian v. Equifax Info. Servs.*, No. 07-2211, 2011 U.S. Dist. LEXIS 63455, at *57-58 (E.D. Pa. June 14, 2011); *see also Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 609-10 (D.N.J. 2010). Small incentive awards, which serve as premiums in addition to any claims-based recovery from the settlement, promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits. *See Manual for Complex Litig.* § 21.62 n. 971 (incentive awards may be “merited for time spent meeting with Class members, monitoring cases, or responding to discovery”). Such awards are generally proportional to the representatives’ losses or claims, and can range from several hundred dollars to many thousands of dollars. Here, the Settlement Agreement provides that Plaintiffs may seek \$5,000 stipends for Plaintiff in recognition of his service to and efforts on behalf of the proposed Settlement Class. Bayer will not oppose a petition for the payment of an incentive award to Plaintiff of \$5,000.

7. The Requested Attorneys’ Fees Are Fair And Reasonable.

Subject to the Court’s approval, and as further explained in the Settlement Agreement, Class Counsel may seek up to 25% of the common fund in fees and costs. The parties negotiated this amount only after the substantive terms of the settlement were agreed upon. Prior to final approval, Class Counsel will file a separate motion for attorneys’ fees and costs describing the reasonableness of their fee request in light of the amount of work done by counsel, the results obtained, the quality of representation, and the complexity and novelty of the issues presented. Class Counsel’s motion for an award of attorneys’ fees and costs and service awards for the Plaintiff will be posted on the Settlement Website in

advance of the opt-out and objection deadline so that Class members may review and comment on the application if they wish.

II. Provisional Certification Of The Settlement Class Is Appropriate.

For settlement purposes only, the parties and their counsel request that the Court provisionally certify the Florida Settlement Class defined above. At this point in the approval process, provisional certification permits notice of the proposed settlement to issue to inform Settlement Class members of the existence and terms of the proposed settlement, their right to be heard on its fairness, their right to opt out, and the date, time, and place of the formal fairness hearing. *See Manual for Complex Litig.*, at § 21.632, § 21.633. Still, “regardless of whether a district court certifies a class for trial or for settlement, it must first find that the class satisfies all the requirements of Rule 23.” *In re Community*, 418 F.3d at 300. For settlement purposes, Bayer has conditionally stipulated that Plaintiff satisfies the class certification requirements set forth in Rule 23. Additionally, for the reasons below, this Class meets the requirements of Rule 23(a) and (b).

A. Rule 23(a) Is Satisfied.

1. Numerosity

Rule 23(a)(1) requires that the class be so numerous that joinder of all Class members is “impracticable.” *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 73 (D.N.J. 1993), *vacated and remanded*, 171 F.3d 818 (3d Cir. 1999). For purposes of Rule 23(a)(1), “impracticable” does not mean impossible, only that common sense suggests that it would be difficult or inconvenient to join all Class members. *See In re Prudential Insurance Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 510 (D.N.J. 1997), *aff’d*, 148 F.3d 283 (3d Cir. 1998); *see also Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001) (numerosity requirement satisfied “if the named plaintiff demonstrates that the potential number of

plaintiffs exceeds 40); *Grant v. Sullivan*, 131 F.R.D. 436, 446 (M.D. Pa. 1990) (observing that courts have certified classes with as few as 14 persons).

Here, the parties estimate that the Class includes thousands of Florida consumers. Given the number and geographic distribution of the Class members, joinder of all Class members would be impracticable, and the proposed Settlement Class easily satisfies Rule 23's numerosity requirement. *Liberty Lincoln Mercury, Inc.* 149 F.R.D. at 73.

2. Commonality

The Rule 23(a)(2) requirement is satisfied where, as here, there exist "questions of fact and law which are common to the class." All questions of fact and law need not be common to satisfy the rule. Rather, the commonality requirement is easily satisfied by the existence of one common question of law or fact. *Warfarin Sodium*, 391 F.3d at 527-28; *see also Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994) (commonality requirement not demanding because it may be satisfied by a single common issue). In the context of consumer class actions, a class asserting claims based on a common course of conduct satisfies the commonality requirement even where the Class members are exposed to different misrepresentations at different times. *Prudential*, 962 F. Supp. at 511-514.

The commonality requirement is satisfied if the named plaintiff shares at least one question of fact or law with the complaints of the prospective class. *See In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 597 (3d Cir. 2009); *see also Baby Neal For & By Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994) ("Because the requirement may be satisfied by a single common issue, it is easily met . . ."). "[C]lass members can assert such a single common complaint even if they have not all suffered actual injury; demonstrating that all Class members are *subject* to the same harm will suffice." *Kalow & Springut, LLP v. Commence*

Corp., 272 F.R.D. 397, 403 (D.N.J. 2011); *see also Chiang v. Veneman*, 385 F.3d 256, 265 (3d Cir. 2004) (the commonality requirement “is not a high bar” and is satisfied “if the named plaintiffs share at least one question of law or fact with the grievances of the prospective class”) (internal quotes and citations omitted).

Class members share numerous common questions, including: (a) whether Bayer engaged in a pattern of fraudulent, deceptive, and misleading conduct involving the marketing and sale of WeightSmart; (b) whether Bayer consciously concealed or failed to disclose material facts to Plaintiff and other members of the Class with respect to WeightSmart; (c) whether, as a result of Bayer’s misconduct, Plaintiff and other members of the Class suffered economic harm by purchasing WeightSmart; and (d) whether Plaintiffs and Class members are entitled to recover damages in connection with Bayer’s alleged unlawful conduct. Bayer steadfastly denies all of these allegations.

Because Plaintiff has identified numerous questions of law and fact common to all members of the class, Rule 23(a)(2)’s commonality requirement is fully satisfied.

3. Typicality

Rule 23(a)(3) requires that the claims or defenses of the representative parties are typical of the claims or defenses of the class and seeks to ensure that the interests of the named plaintiffs align with those of the class. *Baby Neal ex rel Kanter*, 43 F.3d at 57. In considering typicality under Rule 23(a)(3), the court must determine whether the “named plaintiffs’ individual circumstances are markedly different or...the legal theory upon which the claims are based differs from that upon which the claims of other Class members” will be based. *Johnston v. HBO Film Mgmt., Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). Typicality does not require that all Class members share identical claims. *Id.* The typicality

requirement is permissive: representative claims are “typical” if they are reasonably co-extensive with those of absent Class members; they need not be substantially identical. *See Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 183-84 (3d Cir. 2001); *Barnes v. Am. Tobacco, Inc.*, 161 F.3d 127, 141 (3d Cir. 1998).

Typicality is satisfied if the plaintiff’s claims are not “markedly different” from those of other Class members, *Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3d Cir. 1985); *see also McAlarnen v. Swift Transp. Co.*, No. 09-1737, 2010 U.S. Dist. LEXIS 7877, at *12 (E.D. Pa. Jan. 29, 2010), and Plaintiffs and the Class “point to the same broad course of alleged fraudulent conduct to support a claim for relief.” *In re Lucent Techs., Inc. Sec. Litig.*, 307 F. Supp. 2d 633, 640 (D.N.J. 2004). “[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims.” *Baby Neal*, 43 F.3d at 58. “[F]actual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the Class members, and if it is based on the same legal theory.” *Id.* (internal quotation marks omitted). Indeed, the Third Circuit recognizes a “low threshold” for satisfying typicality. *Newton*, 259 F.3d at 183-84; *see also McGee v. Cont’l Tire N. Am., Inc.*, No. 06-6234, 2009 U.S. Dist. LEXIS 17199, at *27 (D.N.J. Mar. 4, 2009) (“As with numerosity, the Third Circuit has ‘set a low threshold for satisfying’ typicality....”).

Here, the claims of the named Plaintiff are typical of those of the Class. Like those of the Class, his claims arise out of representations made by Bayer about its WeightSmart purchased by Plaintiffs and members of the Class. Plaintiff has precisely the same claims as the Settlement Class, and must satisfy the same elements of each of those claims, as must

other Settlement Class members. Supported by the same legal theories, Plaintiff and all Settlement Class members share claims based on the same alleged course of conduct: Bayer's alleged misrepresentations concerning WeightSmart. Likewise, Plaintiff and all Settlement Class members have been injured in the same manner, if at all, by this conduct. Plaintiff therefore satisfies the typicality requirement.

4. Adequacy

Rule 23(a)(4) requires that class representatives "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy requirement is met if plaintiffs: (1) are represented by competent counsel; and (2) the named plaintiffs' interests are sufficiently aligned with the interests of the putative Class members. *GM Trucks*, 55 F.3d at 800. Here, the requirements for adequacy are satisfied.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." "The adequacy of representation inquiry has two components intended to assure that the absentees' interests are fully pursued". *G.M. Trucks*, 55 F.3d at 800; *see also Chakejian*, 2011 U.S. Dist. LEXIS 63455, at *19-20. First, "it considers whether the named plaintiffs' interests are sufficiently aligned with the absentees' [interests]." *G.M. Trucks*, 55 F.3d at 800. Second, "it tests the qualifications of the counsel to represent the class." *Id.* Plaintiffs satisfy both prongs of the adequacy requirement.

First, Plaintiff's claims are co-extensive with those of the Settlement Class. Plaintiff and each Class member have an identical interest in establishing Bayer's liability. Plaintiff and each Class member have been injured in the same manner. Plaintiff asserts the same legal claims and theories as those of all Class members. Plaintiff seeks the identical relief that would be sought by all members of the Class. There is no conflict between Plaintiff's

claims and those of the proposed Settlement Class; indeed, Plaintiff is in the best position to represent such claims since he has timely alleged to have actually incurred damages as a result of Bayer's allegedly false advertising claims. Plaintiff has assumed the responsibility of representing the Settlement Class and has stood ready to represent the class at trial if necessary. Plaintiff is prepared to continue to diligently pursue this action in cooperation with counsel. Plaintiff has taken his obligations to the Settlement Class seriously. Nothing more is required.

Second, Class Counsel has extensive experience and expertise in prosecuting complex class actions, including consumer and product defect actions. Exs. D and E to the Cecchi Decl. As discussed below with respect to the requirements of Rule 23(g), Plaintiff's counsel are active practitioners who are highly experienced in class action, product liability, and consumer fraud litigation.

In pursuing this litigation, Plaintiff and Plaintiff's counsel have advanced and will continue to advance and fully protect the common interests of all members of the Class. Accordingly, Rule 23(a)(4) is satisfied.

B. Common Questions of Law Predominate and a Class Action Is the Superior Method of Adjudication

To certify a class under Rule 23(b)(3), the Court must find that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members" and that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). The existence of individual questions of fact does not *per se* preclude class certification. *Eisenberg*, 766 F.2d at 787. Rather, the predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v.*

Windsor, 521 U.S. 591, 623, 117 S. Ct. 2231, 2249 (1997); see also *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 266 (3d Cir. 2009).

The proposed Settlement Class is well-suited for certification under Rule 23(b)(3) because questions common to the Settlement Class members predominate over questions affecting only individual Settlement Class members, and the class action device provides the best method for the fair and efficient resolution of the Settlement Class members' claims against Bayer. When addressing the propriety of Settlement Class certification, courts take into account the fact that a trial will be unnecessary and that manageability, therefore, is not an issue. *Amchem*, 521 U.S. at 620.

a. Common Questions Predominate.

A class action is appropriate under Rule 23(b)(3) if “questions of law or fact common to the members of the class predominate over any questions affecting only individual members”. Fed. R. Civ. P. 23(b)(3). “Common issues predominate when the focus is on the defendants’ conduct and not on the conduct of the individual Class members.” *In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 187 (D.N.J. 2003); see also *In re Community Bank*, 418 F.3d at 309 (predominance requirement satisfied where “[a]ll plaintiffs’ claims arise from the same alleged fraudulent scheme”; “[t]he presence of potential state or federal claims that were not asserted by the named plaintiffs does not defeat a finding of predominance”). The Third Circuit has noted that the predominance requirement is “readily met” in certain cases alleging consumer fraud. *In re Prudential*, 148 F.3d at 314 (quoting *Amchem*, 521 U.S. at 625).

As discussed above, the same common questions relevant to the Rule 23(a)(2) analysis predominate, including the central questions of whether Bayer misrepresented the

benefits of WeightSmart over other available dietary supplements and vitamins. The predominance requirement is satisfied.

b. Class Treatment Is Superior To Alternative Methods Of Adjudication.

The Court should certify the Settlement Class if it finds that a “class action is superior to other available methods for fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). Class certification is superior where individual claims are small or modest. *In re Prudential*, 148 F.3d at 316; *see also Bredbenner*, 2011 U.S. Dist. LEXIS 38663, at *26-27.

Class treatment here will facilitate the favorable resolution of all Settlement Class members’ claims. Given the large numbers of Settlement Class members and the multitude of common issues present, the class device is also the most efficient and fair means of adjudicating these claims. Class treatment in the settlement context is superior to multiple individual suits or piecemeal litigation because it greatly conserves judicial resources and promotes consistency and efficiency of adjudication. Because the claims are being certified for purposes of settlement, there are no issues with manageability, and resolution of many thousands of claims in one action is far superior to individual lawsuits and promotes consistency and efficiency of adjudication. *See* Fed. R. Civ. P. 23(b)(3).

In addition, each Class Member’s claims, individually, are of relatively low value. As a practical matter, absent the use of the class action device, it would be too costly and inefficient for any individual plaintiff to finance a lawsuit asserting such claims through trial and appeal. For these reasons, the superiority requirement is easily satisfied.

C. The Proposed Notice To Class members Is Adequate.

“Rule 23(e)(1)(B) requires the court to ‘direct notice in a reasonable manner to all

Class Members who would be bound by a proposed settlement, voluntary dismissal, or compromise' regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3)." *Manual for Complex Litig., supra*, at § 21.312. Many of the same considerations govern both certification and settlement notices. In order to protect the rights of absent Class Members, the Court must provide the best notice practicable to Class Members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12, 105 S. Ct. 2965 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-175, 94 S. Ct. 2140 (1974). "Rule 23 . . . requires that individual notice in [opt-out] actions be given to Class Members who can be identified through reasonable efforts. Those who cannot be readily identified must be given 'the best notice practicable under the circumstances.'" *Manual for Complex Litig., supra*, at § 21.311.

To satisfy due process concerns, "notice to Class Members must be reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mehling*, 246 F.R.D. at 477 (internal quotation marks omitted). "To meet this standard, notice must inform Class Members of (1) the nature of the litigation; (2) the settlement's general terms; (3) where complete information can be located; and (4) the time and place of the fairness hearing and that objectors may be heard." *Id.* (internal quotation marks omitted); *see also In re Cendant*, 109 F. Supp. 2d at 254; *In re Prudential*, 962 F. Supp. at 527.

The proposed form of notice, attached as Exhibits B, satisfy all of the criteria above. The language of the proposed notices and accompanying claim form is plain and easily understood, providing neutral and objective information about the nature of the Settlement. The notices provide all pertinent information and fully inform the Class Members of the Settlement, and what actions they may take. The summary notice explains the benefits of

the Settlement, how to obtain relief from the common fund, the potential Class Members' other rights (*i.e.* the right to opt-out, right to object, the release of claims against Bayer, and their right to hire an attorney) and how to obtain additional information and a claim form.

The notices are clear and straightforward, providing putative Class members with enough information to evaluate the settlement, and to object to the settlement if desired. The publication notice will be published in ten Florida newspapers, which collectively reach residents across the State of Florida. All notices and the claim form, as well as the full settlement agreement, will be posted on the internet on a settlement-specific website. This notice is adequate under Rule 23(c)(2).

D. Scheduling A Final Approval Hearing Is Appropriate.

The last step in the settlement approval process is a final fairness hearing at which the Court may hear all evidence and argument necessary to make its settlement evaluation. Proponents of the settlement may explain the terms and conditions of the settlement, and offer argument in support of final approval. In addition, Settlement Class members, or their counsel, may be heard in support of or in opposition to the Settlement Agreement. The Court will determine after the final approval hearing whether the settlement should be approved, and whether to enter a final order and judgment under Rule 23(e). The parties propose the following schedule for the Settlement-related events in this case. The proposed dates in the right column are respectfully requested.

<u>Event</u>	<u>Proposed Due Date/Deadline</u>
Deadline for publishing Notice	December 15, 2014
Deadline for filing of papers in support of	February 20, 2015

Final Approval of Settlement and Class Counsel's Application for Attorneys' Fee and Expenses	
Deadline for submitting exclusion requests or objections	March 10, 2015
Deadline for filing of response to objections	March 20, 2015
Final Approval Hearing	March 30, 2015
Deadline for submitting claims forms	April 14, 2015

III. CLASS COUNSEL ARE QUALIFIED TO SERVE THE CLASS

Rule 23(g) requires a court to appoint class counsel when it certifies a class. Class counsel must “fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(4). Factors to be considered include “(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); *see also Mann v. TD Bank, N.A.*, No. 09-1062, 2010 U.S. Dist. LEXIS 112085, at *51-52 (D.N.J. Oct. 20, 2010); *Waudby v. Verizon Wireless Servs., LLC*, 248 F.R.D. 173, 175-76 (D.N.J. 2008).

Class Counsel have extensive experience in prosecuting claims on behalf of consumer classes. Indeed, as their firm resumes attest, Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. and Whatley Kallas, LLP have experience in a variety of complex

litigation matters, including leadership positions in national complex and class action litigations. Cecchi Decl., Exs. D and E. This experience has provided proposed Class Counsel with extensive knowledge of the applicable law. Finally, with the resources available to Class Counsel, there can be no doubt that they have resources to commit to this litigation, and have fully met each challenge encountered in the course of this case.

For the purposes of Rule 23(g), the Court should appoint James E. Cecchi and Lindsey H. Taylor of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. and Joe R. Whatley, Jr. and Patrick J. Sheehan of Whatley Kallas, LLP to act as Class Counsel for the purposes of this Settlement Class.

CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court grant the relief requested herein. A proposed Order is submitted herewith.

Dated: November 21, 2014

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.

/s/ James E. Cecchi
JAMES E. CECCHI

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GABRIEL JOSEPH CARRERA, on behalf
of himself and all others similarly situated,

Plaintiff,

v.

BAYER CORPORATION and
BAYER HEALTHCARE, LLC,

Defendants.

Civil Action No. 2:08-cv-4716 (JLL)(JAD)

**ORDER PRELIMINARILY
CERTIFYING SETTLEMENT CLASS,
GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT, AND
APPROVING CLASS NOTICE**

THIS MATTER having been opened to the Court by plaintiff Gabriel Joseph Carrera and Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. and Whatley Kallas, LLP (collectively "Class Counsel") with the consent and participation of defendants Bayer Corporation and its subsidiary Bayer HealthCare, LLC (collectively referred to as "Bayer"), by way of Plaintiff's motion for preliminary approval of the proposed Settlement in the above Action;

WHEREAS, the Court having reviewed and considered Plaintiff's motion for preliminary approval and supporting materials filed by Class Counsel and Bayer's Counsel; and

WHEREAS, this Court has fully considered the record and the requirements of law; and good cause appearing;

IT IS THIS ____ day of _____, 2014

ORDERED that the Settlement (including all terms of the Settlement Agreement and exhibits thereto) is hereby PRELIMINARILY APPROVED. The Court further finds and orders as follows.

1. The Court has subject matter jurisdiction under 28 U.S.C. § 1331, and venue is proper in this district.

2. The Court has personal jurisdiction over the Class Representative, Settlement Class Members, and Bayer.

3. The Settlement was the result of the parties' good-faith negotiations. The Settlement was entered into by experienced counsel and only after extensive arms-length negotiations. The Settlement Agreement is not the result of collusion.

4. The proceedings that occurred before the Parties reached the Settlement Agreement gave counsel opportunity to adequately assess this case's strengths and weaknesses – and thus to structure the Settlement in a way that adequately accounts for those strengths and weaknesses.

5. The Settlement falls well within the range of reason. The Settlement has no obvious deficiencies.

6. Because the Settlement meets the standards for preliminary approval, the Court preliminarily approves all terms of the Settlement, including the Settlement Agreement and all of its exhibits.

7. The Court finds, for settlement purposes only, that all requirements of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied. The Court certifies a Settlement Class of all persons in the State of Florida who purchased One-A-Day WeightSmart dietary supplements and vitamins pursuant to the terms of the parties'

Settlement Agreement. Excluded from membership in the Class are: (1) all federal judges to whom an action involving WeightSmart has been assigned and members of their families within the first degree of consanguinity and (2) all officers and directors of Bayer.

8. The Court conditionally certifies the proposed Settlement Class, and finds that the requirements of Rule 23(a) are satisfied, for settlement purposes only, as follows:

(a) Pursuant to Rule 23(a)(1), the members of the Settlement Class are so numerous that joinder of all members is impracticable.

(b) Pursuant to Rule 23(a)(2) and 23(c)(1)(B), the Court determines that there are common issues of law and fact for the Settlement Class.

(c) Pursuant to Rule 23(a)(3), the claims of the Representative Plaintiff are typical of the claims of the Settlement Class that he represents.

i. The Court hereby appoints plaintiff Gabriel Joseph Carrera as Class Representative for the Settlement Class.

(d) Pursuant to Rule 23(a)(4), Class Representative Gabriel Joseph Carrera will fairly and adequately protect and represent the interests of all members of the Settlement Class. The interests of the Class Representative are not antagonistic to those of the Settlement Class. The Class Representative plaintiff is represented by counsel experienced and competent in the prosecution of complex class action litigation.

9. The Court further finds that the requirements of Rule 23(b)(3) are satisfied, as follows:

(a) Questions of law and fact common to the members of the Settlement Class, as described above, predominate over questions that may affect only individual members; and

(b) A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

10. The Court finds that the content of the Settlement Notices and the Claim Form satisfy the requirements of Rule 23(c)(2), Rule 23(e)(1), and due process and accordingly approves those Settlement Notices and Claim Form.

11. This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Classes, as reflected in the Settlement Agreement and Plaintiff's motion for preliminary approval. The Court has reviewed the notices, and the notice procedures, and finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances. This Court also approves the Parties' proposal to create a dedicated settlement website, to cause the publication of the notice once in the legal notices section of up to ten Florida newspapers, and to implement an internet publication program that will be geographically targeted to Florida using an established digital network for four weeks. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy the requirements of Rule 23(c)(2), Rule 23(e)(1), and due process.

12. The Court preliminarily finds that the following counsel fairly and adequately represent the interests of the Settlement Classes and hereby appoints James E. Cecchi,

Lindsey H. Taylor, Joe R. Whatley, Jr. and Patrick J. Sheehan as Settlement Class Counsel pursuant to Rule 23(g).

13. The Court directs that pursuant to Rule 23(e)(2) a hearing will be held on March 30, 2015 at 10:00 a.m., to consider final approval of the Settlement (the “Final Approval Hearing” or “Fairness Hearing”) including, but not limited to, the following issues: (a) whether the Class should be certified, for settlement purposes only; (b) the fairness, reasonableness, and adequacy of the Settlement; (c) Class Counsel’s application for an award of attorneys’ fees and costs; and (d) approval of an award of service payments to the Class Representative and the Named Plaintiffs in the Related Actions. The Final Approval Hearing may be adjourned by the Court and the Court may address the matters set out above, including final approval of the Settlement, without further notice to the Settlement Class other than notice that may be posted at the Court and on the Court’s and on the Settlement Website.

14. Persons wishing to object to the proposed Settlement and/or be heard at the Fairness Hearing shall follow the following procedures:

(a) To object, a member of the Settlement Classes, individually or through counsel, must file a written objection with the Clerk, and must also serve a copy thereof upon the following, by March 10, 2015:

Settlement Class Counsel:

James E. Cecchi
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

Counsel for Bayer

Lorna A. Dotro
COUGHLIN DUFFY LLP
350 Mount Kemble Avenue
Morristown, New Jersey
(973) 631-6016

(b) Any objection regarding or related to the Settlement Agreement shall contain a caption or title that identifies it as “Objection to Class Settlement in *Carrera v. Bayer Corporation*, Civil Action No. 2:08-cv-4716 (JLL)(JAD)” and shall contain information sufficient to identify and contact the objecting Settlement Class Member, as well as a clear and concise statement of the Settlement Class Member’s objection, documents sufficient to establish the basis for their standing as a Settlement Class Member, *i.e.*, verification under oath as to the date and location of their purchase of WeightSmart or a receipt reflecting such purchase, the facts supporting the objection, and the legal grounds on which the objection is based.

(c) Any member of the Settlement Class who files and serves a timely written objection in accordance with this Order may also appear at the Fairness Hearing, to the extent permitted by the Court, either in person or through an attorney hired at the Settlement Class Member’s expense, to object to the fairness, reasonableness or adequacy of the proposed Settlement. Any attorney representing a member of the Settlement Class for the purpose of making objections must also file a Notice of Appearance with the Clerk, and must also serve copies by mail to the counsel listed above.

(d) Members of the Settlement Class or their attorneys intending to appear at the Fairness Hearing must by March 25, 2015 serve on Settlement Class Counsel and counsel for Bayer, and file with the Clerk, a notice of Intent to Object, which

includes: (i) the name, address and telephone number of the Settlement Class member and, if applicable, the name, address and telephone number of the Settlement Class member's attorney (who must file a Notice of Appearance); (ii) the objection, including any papers in support thereof; and (iii) the name and address of any witnesses to be presented at the Fairness Hearing, together with a statement as to the matters on which they wish to testify and a summary of the proposed testimony.

(e) Any member of the Settlement Class who does not timely file and serve a Notice of Intent to Object, and any witness not identified in the Notice of Intent to Object, shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

15. The Court hereby appoints Angeion Group as Claims Administrator.

16. Members of either Settlement Class who elect not to participate in the Settlement (i.e., "opt-out") must submit a written request for exclusion that is postmarked no later than March 10, 2015. The Settlement Administrator shall compile a list of all Opt-Outs to be filed with the Court no later than the Fairness Hearing.

17. Any member of the Settlement Class failing to properly and timely mail such a written notice of exclusion shall be automatically included in the Settlement Class and shall be bound by all the terms and provisions of the Settlement Agreement and the Settlement, including the Release, and Order of Final Judgment. The Court shall resolve any disputes concerning the Opt-Out provisions of the Settlement Agreement.

18. In order to participate in the Settlement and receive a refund or reimbursement from Bayer, members of the Settlement Class must mail or electronically submit to the Settlement Administrator a properly executed Claim Form. To be effective,

any such Claim Form must be postmarked or electronically submitted no later than April 14, 2015, and must otherwise comply with the procedures and instructions set forth in the Claim Form.

19. The following are the deadlines for the following events:

<u>EVENT</u>	<u>DATE</u>
Deadline for publishing Notice	December 15, 2014
Filing of papers in support of Final Approval and Class Counsel's Application for Attorneys' Fee and Expenses	February 20, 2015
Deadline for submitting exclusion requests or objections	March 10, 2015
Filing of response to objections	March 20, 2015
Final Approval Hearing	March 30, 2015
Deadline for submitting claims forms	April 14, 2015

20. To the extent not otherwise defined herein, all defined terms in this Preliminary Approval Order shall have the meaning assigned in the Settlement Agreement.

21. In the event that the Settlement does not become effective for any reason, this Preliminary Approval Order shall be rendered null and shall be vacated, and all orders entered and released delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement. If the Settlement does not become

effective, Bayer shall have retained any and all of their current defenses and arguments thereto (including but not limited to arguments that the requirements of Rule 23(a) and (b)(3) are not satisfied for purposes of continued litigation). This Action shall thereupon revert immediately to its respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and any related order had not been executed.

22. Nothing in this Preliminary Approval Order, the Settlement Agreement, or any documents or statements related thereto, is or shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Bayer, or an admission of the propriety of class certification for any purposes other than for purposes of the current proposed Settlement.

23. All other proceedings in the Action are hereby stayed until such time as the Court renders a final decision regarding approval of the proposed Settlement. No discovery with regarding to this Action, or with respect to this Settlement, shall be permitted other than as may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with this Court's Local Rules. In addition, pending a determination on final approval of the Settlement, all Settlement Class Members are hereby barred and enjoined from commencing or prosecuting any action involving any Released Claims.

24. The Court shall retain continuing jurisdiction over the Action, the Parties and the Settlement Class, and the administration, enforcement, and interpretation of the Settlement. Any disputes or controversies arising with respect to the Settlement shall be

presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the ability of the Parties to exercise their rights under Paragraphs 21 and 23 above.

JOSE L. LINARES, U.S.D.J.

James E. Cecchi
Lindsey H. Taylor
Donald A. Ecklund
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GABRIEL JOSEPH CARRERA, on behalf
of himself and all others similarly situated,

Plaintiff,

v.

BAYER CORPORATION and BAYER
HEALTHCARE, LLC,

Defendants.

Civil Action No. 2:08-cv-4716 (JLL)(JAD)

CERTIFICATE OF SERVICE

I certify that the following papers were filed electronically with the Clerk of Court to be served by operation of the Court's CM/ECF system on all counsel of record in this matter:

1. Brief in Support of the Motion for Preliminary Approval of Class Settlement;
2. Declaration of James E. Cecchi with related exhibits;
3. A proposed form of Order;
4. Notice of Motion; and

5. Certificate of Service.

I further certify that I caused courtesy copies of the above to be delivered to the Honorable Jose L. Linares, U.S.D.J., at the Martin Luther King, Jr. Federal Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102.

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
Attorneys for Plaintiff and the Class

By: /s/ James E. Cecchi
 JAMES E. CECCHI

Dated: November 21, 2014

James E. Cecchi
Lindsey H. Taylor
Donald A. Ecklund
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GABRIEL JOSEPH CARRERA, on behalf
of himself and all others similarly situated,

Plaintiff,

v.

BAYER CORPORATION and
BAYER HEALTHCARE, LLC,

Defendants.

Civil Action No. 08-4716 (JLL)(JAD)

**DECLARATION OF
JAMES E. CECCHI**

James E. Cecchi, of full age, declares:

1. I am an attorney-at-law admitted to practice and in good standing in the State of New Jersey, am a member of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. (“Carella Byrne”), and am co-counsel for plaintiff Gabriel Joseph Carrera in the above captioned matter. In such capacity, I am fully familiar with the facts contained herein. I submit this declaration in support of the Plaintiff’s motion for preliminary approval of the proposed Class Settlement and approving the form and method of notice to the Class.

Exhibit A

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made and entered into as of October 20th, 2014, among and between Plaintiff Gabriel Joseph Carrera, in his individual and representative capacity on behalf of the putative Settlement Class and defendant Bayer Corporation and its subsidiary Bayer HealthCare, LLC (collectively referred to as “Bayer”) (Bayer together with Plaintiff are collectively referred to as the “Settling Parties”). Each of the Settling Parties acting by and through their respective counsel, agree that, subject to Court approval by the United States District Court for the District of New Jersey pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Action and all matters covered by the Release and Covenant Not to Sue are hereby settled, compromised and dismissed, on the merits and with prejudice, on the terms and conditions set forth herein.

RECITALS

I. PROCEDURAL BACKGROUND

1. WHEREAS, Bayer manufactured, marketed, distributed, advertised and/or sold One-A-Day WeightSmart dietary supplements and vitamins (“WeightSmart”) beginning in 2002.
2. WHEREAS, in the United States, WeightSmart was sold by Bayer to distributors, retailers and wholesalers, some of which in turn sold to consumers.
3. WHEREAS, Bayer discontinued manufacturing, marketing, advertising and selling WeightSmart to distributors, retailers and wholesalers in January 2007.
4. WHEREAS, on August 17, 2010, Gabriel Joseph Carrera filed a class action lawsuit against Bayer in the United States District Court for the District of New Jersey alleging that Bayer engaged in misleading and deceptive advertising and marketing of WeightSmart and bringing claims for relief on behalf of himself and a class

WBS

of similarly situated consumers (the "Action").

5. WHEREAS, in July 2014, Class Counsel and counsel for Bayer initiated discussions about possible ways to resolve the litigation, and thereafter, had a series of arm's-length negotiations about terms of settlement. Those negotiations resulted in this Agreement, which Plaintiff and Class Counsel believe provides benefits to the Settlement Class, is fair, reasonable and adequate, and is in the best interests of Plaintiff and Settlement Class Members.

6. WHEREAS, Bayer has denied the allegations in this Action, including the factual allegations and the allegation that this Action could satisfy the requirements for class certification under Rule 23, including the requirement of ascertainability, and continues to deny any wrongdoing or liability in this Action.

7. WHEREAS, Plaintiff in the Action is confident that he can satisfy the requirements for class certification, including the implied requirement of ascertainability, and continues to believe that the Action is meritorious.

8. WHEREAS, Plaintiff in the Action, by and through his respective counsel, has conducted an extensive investigation, which included discovery of, and an examination of the facts and law relating to, Bayer's advertising and marketing of WeightSmart, and the claims against and the defenses of Bayer.

9. WHEREAS, this Agreement was reached as a result of extensive arm's length negotiations between counsel for Plaintiff in the Action and counsel for Bayer.

10. WHEREAS, based upon the discovery and investigation to date and evaluation of the facts and law relating to the matters alleged in the pleadings, the Settling Parties have agreed to settle the claims asserted in the Action pursuant to the provisions of this Agreement. In so doing, Plaintiff's Counsel have considered numerous risks of continued litigation and other factors, including but not limited to the following:

WAS

- A. the expense and length of time necessary to prosecute the Action through trial;
- B. the uncertainty of outcome at trial and the possibility of an appeal by either side following the trial;
- C. the possibility that a contested class might not be re-certified, and if re-certified, the possibility that such certification would be reversed on appeal;
- D. the possibility that Bayer might move for summary judgment that, if granted, would dispose of the Florida Deceptive and Unfair Trade Practices Act claims in this Action; and
- E. the benefits being made available to Plaintiff and the Settlement Class Members under the terms of this Agreement.

11. WHEREAS, weighing the above factors, as well as all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Plaintiff and Plaintiff's Counsel are satisfied that the terms and conditions of this settlement are fair, reasonable, adequate, and in the best interests of the Plaintiff and the Settlement Class Members.

12. WHEREAS, Bayer expressly disclaims any liability or any wrongdoing of any kind whatsoever, and stands by its products and advertising. Nevertheless, Bayer considers it desirable that this Action be resolved upon the terms and conditions set forth in this Agreement in order to avoid the expense, risk, uncertainty, and interference with ongoing business operations inherent in any litigation, and to obtain the releases as described herein.

NOW, THEREFORE, without any admission or concession whatsoever on the part of Plaintiff of the merit of this Action or his ability to demonstrate the ascertainability of a contested class, or any admission or concession of liability or

wrongdoing or the lack of merit of any defense whatsoever by Bayer, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiff, the Settlement Class, and Bayer that the Action and all Claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

The recitals stated above are true and accurate and are hereby made a part of this Settlement Agreement.

TERMS AND CONDITIONS OF SETTLEMENT DEFINITIONS

13. As used in this Settlement Agreement and the Exhibits hereto, in addition to any definitions set forth elsewhere in this Agreement, the following terms shall have the meanings set forth below:

A. "Action"

"Action" means the civil Action *Gabriel Joseph Carrera v. Bayer Corporation and Bayer Healthcare, LLC*, Civil Action No. 08-cv-04716 (JLL) filed in the United States District Court for the District of New Jersey.

B. "Agreement"

"Agreement" means this Settlement Agreement, including the Exhibits hereto.

C. "Bayer"

"Bayer" means Bayer Corporation and Bayer Healthcare LLC and all of their current and former parents, entities with common parents, predecessors, successors, assigns, subsidiaries, divisions, departments, and affiliates including, without limitation, and any and all of their past, present and/or future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, insurers, representatives, advisors, consultants, resellers, brokers, distributors, wholesalers, retailers, subrogees and

W&B

assigns of any of the foregoing, and representatives or insurers of any and all of the foregoing.

D. "Claim Form"

"Claim Form" means the claim form, in the form of Exhibit A hereto that Settlement Class Members must submit to the Claims Administrator in order to obtain the relief provided in this Agreement.

E. "Claimant"

"Claimant" means a Settlement Class Member that submits a Claim Form.

F. "Claims Administrator"

"Claims Administrator" means Angeion Group, approved by the Court to administer and oversee, among other things, the processing, handling, reviewing, and approving of claims made by Claimants; and communicating with Claimants.

G. "Claims Period"

"Claims Period" shall be the 120 calendar days (not including the day of the event) following the later of (i) the publication of the Class Notice or (ii) establishment of the Settlement Website.

H. "Class Counsel"

"Class Counsel" means:

James E. Cecchi
Lindsey H. Taylor
Carella, Byrne, Cecchi,
Olstein, Brody & Agnello, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

Joe R. Whatley, Jr.
Patrick J. Sheehan
Whatley Kallas, LLP
1180 Avenue of the Americas,
23rd Floor
New York, New York 10036
(212) 447-7060

I. "Class Notice"

"Class Notice" means the Court-approved notice of this Agreement that is directed to the Settlement Class Members.

WSD

J. "Common Fund"

"Common Fund" refers to the total amount recovered for the benefit of the persons in the class by virtue of this settlement agreement.

K. "Court"

"Court" means the United States District Court for the District of New Jersey.

J. "Defense Counsel"

"Defense Counsel" means:

Christopher D. Landgraff
Rebecca Weinstein Bacon
Matthew R. Ford
Bartlit Beck Herman
Palenchar & Scott LLP
54 W. Hubbard Street, Suite 300
Chicago, Illinois 60654
(312) 494-4400

Timothy I. Duffy
Lorna A. Dotro
Coughlin Duffy LLP
350 Mount Kemble Avenue
Morristown, New Jersey 07962
(973) 267-0058

WES

K. "Effective Date"

"Effective Date" means thirty-five (35) days after the Court enters an Order and Final Judgment, if no appeal is taken. If an appeal is taken, the Effective Date shall mean the first date all appellate rights (including proceedings in the Supreme Court) with respect to said Order and Final Judgment have expired or been exhausted in such a manner as to affirm the Order and Final Judgment.

L. "Fairness Hearing"

"Fairness Hearing" means the hearing that is to take place after the entry of the Preliminary Approval Order and after the Notice Date for purposes of (a) determining whether the Settlement should be approved as fair, reasonable, adequate and in the best interests of the Class Members; (b) entering the Final Order and Judgment and dismissing the Action with prejudice; and (c) ruling upon an application by Class Counsel for an award of attorneys' fees.

M. "Fee Award"

"Fee Award" means an award of reasonable fees and costs, not to exceed 25% of the common fund, to be taken out of the Common Fund, sought by application to and approved by the Court that is payable to Class Counsel.

N. "Final Approval"

"Final Approval" means the Court's entry of an Order and Final Judgment following the Fairness Hearing.

O. "Notice"

"Notice" means the Forms of Notice of Pendency and Settlement of Class Action substantially in the form attached hereto as Exhibits B and C.

P. "Notice Date"

"Notice Date" means the date that the Summary Notice is published in accord

WBS

with the plan of notice set forth below.

Q. "Notice of Missing Information"

"Notice of Missing Information" means the notice sent by the Claims Administrator to a Settlement Class Member who has submitted a Claim Form with inaccurate, disqualifying, incomplete or missing information that is required for the Settlement Class Member to be considered eligible for the relief provided by this Settlement.

R. "Objection"

"Objection" is the written communication that a Settlement Class Member may file with the Court in order to object to this Agreement as provided for in paragraphs 37-38 below.

S. "Objection/Exclusion Deadline"

"Objection/Exclusion Deadline" means the date to be set by the Court as the deadline for Settlement Class Members to submit Objection Statements and Requests for Exclusion.

T. "Objection Statements"

"Objection Statements" means written objections to the Settlement Agreement by Settlement Class Members that must (1) state the basis of the objection and all required information from the Class Notice; (2) identify the name of counsel, if any filing or assisting in the preparation of the objection and the name of the objecting class member; (3) be mailed to the Settlement Administrator, Class Counsel, and Defense Counsel; and (4) be filed with the Court by the Objection/Exclusion Deadline.

WRS

U. "Order and Final Judgment"

"Order and Final Judgment" means the final order to be issued by the Court approving the settlement pursuant to the terms and conditions of this Agreement, confirming the certification of the Settlement Class for purposes of this Agreement only, dismissing the Action with prejudice, and releasing all claims of Plaintiff and the Settlement Class Members.

V. "Person"

"Person" means any individual, corporation, trust, partnership, limited liability company, or other legal entity and their respective successors or assigns.

W. "Plaintiff"

"Plaintiff" means plaintiff Gabriel Joseph Carrera.

X. "Preliminary Approval"

"Preliminary Approval" means the Court's entry of an order, substantially in the form attached hereto as Exhibit E, approving the timing, content and manner of Class Notice, conditionally certifying the Settlement Class for purposes of this Agreement only, and preliminarily approving this Agreement.

Y. "Proof of Purchase"

"Proof of Purchase" means the documentation required to be submitted by each Claimant reflecting the purchase of WeightSmart. Claimants may submit either (i) a completed Claim Form signed under penalty of perjury; or (ii) a completed Claim Form signed under penalty of perjury together with either the receipt issued by the retailer to the purchaser for the purchase of WeightSmart, or other documentation showing the purchase price paid for the WeightSmart.

Z. "Released Claim"

"Released Claim" means any claim, cross-claim, liability, right, demand, suit,

W&D

matter, obligation, damage, restitution, disgorgement, loss or cost, attorney's fee or expense, action or cause of action, of every kind and description that the Releasing Party had or has, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Releasing Party in the Action or in any related action against any of the Released Parties arising out of or relating to the allegations in the complaints filed in the Action or Bayer's marketing, advertising, promoting or distributing of WeightSmart prior to the Effective Date of this Agreement, including but not limited to all claims that were brought or could have been brought in the Action.

AA. "Released Party"

"Released Party" means Bayer as defined above.

BB. "Releasing Party"

"Releasing Party" means the Plaintiff, each Settlement Class Member, and any Person claiming by or through him/her/it as his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate.

CC. "Request for Exclusion"

"Request for Exclusion" is the written communication that a Settlement Class Member must submit to the Claims Administrator by the Objection/Exclusion Deadline in order to be excluded from the Settlement as provided for in paragraph 40 below.

DD. "Settlement"

"Settlement" means the settlement embodied in this Agreement.

EE. "Settlement Class" or "Settlement Class Members"

"Settlement Class" and/or "Settlement Class Members" means the class as defined in paragraph 24 below.

FF. "Settlement Website"

"Settlement Website" means the website to be established by the Claims Administrator for purposes of providing notice, Claim Forms and other information regarding this Agreement to Settlement Class Members and others.

GG. "WeightSmart"

"WeightSmart" means One-A-Day WeightSmart dietary supplement vitamins distributed by Bayer, as defined above, during the period from January 1, 2002 through January 31, 2007. "WeightSmart" does not include WeightSmart Advanced, the dietary supplement formulation on the market after WeightSmart and which did not include green tea extract.

II. PRELIMINARY APPROVAL

Motion for Preliminary Approval

23. As soon as reasonably practicable after the signing of this Agreement, Plaintiff shall file with the Court a Motion for Preliminary Approval of Class Settlement that seeks entry of the Preliminary Approval order (substantially in the form attached hereto as Exhibit E), which, for settlement purposes only would:

- A. Certify a tentative Settlement Class under Federal Rule of Civil Procedure 23(b)(3) composed of the Settlement Class Members;
- B. Preliminarily approve this Settlement Agreement;
- C. Approve the proposed Notice Plan and form of Notice substantially

WBS

similar to that attached hereto as Exhibit B;

- D. Approve the Claims Administrator; and
- E. Appoint Class Counsel.

Certification of Settlement Class

24. For purposes of settlement only, and upon the express terms and conditions set forth in this Settlement Agreement, the Settling Parties agree to seek certification of a Florida Settlement Class in the Action pursuant to Federal Rule of Civil Procedure 23(b)(3) as follows:

All persons in the State of Florida who purchased WeightSmart from January 1, 2002 through the date of the publication of notice pursuant to Section III of this Agreement, excluding those who purchased the product for resale or distribution to others. All federal judges to whom this case is assigned and members of their families within the first degree of consanguinity, and officers and directors of Bayer are excluded from the class.

WJL

Class Certified for Settlement Purposes Only

25. For purposes of settlement only, the parties and their counsel agree that the Court should make preliminary findings and enter the Preliminary Approval Order (substantially in the form attached at Exhibit E) granting provisional certification of the Settlement Class subject to final findings and ratification in the Final Order and Judgment, and appointing the Plaintiff in the Action as the representative of the Settlement Class and Class Counsel as counsel for the Settlement Class. Nothing in this Settlement Agreement shall be construed as an admission by Bayer that this Action or any similar case is amenable to class certification for trial purposes or any other purpose other than settlement. Furthermore, nothing in this Settlement Agreement shall prevent Bayer or Plaintiff from opposing or supporting class certification or seeking de-certification of the conditionally-certified Settlement Class if this Agreement is terminated or if final approval of this Settlement Agreement is not obtained or not upheld on final appeal for any reason. Moreover, if this Agreement is terminated or if final approval of this Settlement Agreement is not obtained or not upheld on final appeal for any reason, no communications relating to this settlement or made during discussions relating to this settlement shall be admissible in any proceeding for any purpose.

Stay of this Action

26. Following Preliminary Approval, all activity in the Action shall be stayed except to the extent necessary to effectuate this Agreement unless and until this Agreement is terminated pursuant to its terms and conditions. The parties will jointly seek to stay any other action seeking to pursue a Released Claim.

Cooperation

27. The parties and their counsel agree to cooperate fully with one another

and to use their best efforts to effectuate the Settlement, including without limitation, in seeking preliminary and final Court approval of the Settlement Agreement and the Settlement embodied herein, carrying out the terms of this Settlement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. The Settling Parties shall cooperate in good faith and undertake all reasonable actions and steps in order to accomplish the events described in this Agreement.

III. NOTICE

Cost of Notice

28. The cost, fees and expenses of administration and of disseminating Notice in accord with the Notice Plan shall be paid from the Common Fund, and Bayer shall have no obligations beyond what is paid into the common fund with its agreement pursuant to this Agreement.

29. Notice to State and Federal Officials

30. In compliance with the attorney general notification provision of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1715, within ten (10) days after the motion for Preliminary Approval is filed, Bayer shall provide notice of this proposed Settlement to the Attorney General of the United States, and the attorney general of Florida. Bayer shall file with the Court a certification stating the date(s) on which the CAFA notices were sent. Bayer will provide Class Counsel with any substantive responses received in response to any CAFA notice served by it.

Notice to the Settlement Class Members

31. Upon Preliminary Approval of this Agreement, Bayer or its designee shall cause the Class Notice to be made as follows:

A. **Publication Notice.** Bayer or its designee will cause the Summary Notice,

in the form approved by the Court, to be published to the Settlement Class Members on or before the date specified in the Preliminary Approval Order in the following Florida newspapers: The Florida Times-Union, Florida Today, The Fort Lauderdale Sun Sentinel, The Miami Herald, The Orlando Sentinel, The Palm Beach Post, The Sarasota-Herald Tribune, The Tampa Bay Times, The Tampa Tribune, and The Treasure Coast Times/Press Tribune.

B. Website Notice. The Claims Administrator will establish a Settlement Website for the purposes of disseminating the Class Notice, this Agreement, information relating to filing a claim, opting out of the Settlement, objecting to the Settlement, deadlines relating to the Settlement, pleadings and other information relevant to the Settlement, to Settlement Class Members. The Claims Administrator shall establish the Settlement Website within 45 days of Preliminary Approval in this Action.

C. Digital Notice. The Claims Administrator will cause Xaxis Network to establish an internet publication program that is geographically targeted to Florida. The internet publication program shall begin on or before the date specified in the Preliminary Approval Order and will run for a four week period.

Contents of Notice

32. Notice to the Settlement Class Members: The Class Notice shall advise Settlement Class Members of their rights, including the right to opt-out from or object to this Agreement and the applicable procedures for doing so, shall direct them to the Settlement Website where an electronic Claim Form shall be located, shall provide instructions for contacting Class Counsel and the Claims Administrator in order to obtain a paper Claim Form or otherwise, and shall contain other information as is agreed by the Settling Parties. The Class Notice shall advise Settlement Class Members that objections to the Agreement, and papers submitted in support of said objections,

WBA

shall only be considered at the Fairness Hearing if they are submitted pursuant to the procedures set forth in paragraphs 37-38 below. The Class Notice shall advise Settlement Class Members that the time and place of the Fairness Hearing may change and shall be posted on the Settlement Website. Subject to the Court's approval, a copy of the Class Notice, which will be disseminated via Publication Notice and via the Settlement Website, is attached hereto as Exhibit C.

IV. ELIGIBILITY FOR RELIEF

33. To be eligible to receive relief under this Agreement, Settlement Class Members must submit a claim to the Claims Administrator by *either*: 1) completing, certifying and mailing the Claim Form to the Claims Administrator; or 2) electronically completing, certifying and emailing the Claim Form on the Settlement Website. Bayer accepts the procedure for establishing eligibility of relief in the interests of settling the class claims and without admitting that such a procedure would otherwise satisfy the ascertainability or other requirements of Rule 23.

34. The Claim Form must be postmarked or electronically submitted no later than the last day of the Claims Period. Claim Forms postmarked or electronically submitted after the end of the Claims Period shall be denied by the Claims Administrator and Bayer will not be obligated to make any payment on such claims.

Review of Claims

35. Validity of submitted claims: No Claim Form will be deemed valid unless it is signed in hard copy form or electronically by the Settlement Class Member under penalty of perjury, agrees and accepts that the Claims Administrator may contact the Settlement Class Member as set forth in paragraph 35.

36. The Claims Administrator shall review all submitted Claim Forms within a reasonable time to determine each Settlement Class Member's eligibility for relief, and

WBS

the amount of such relief, if any. Settlement Class Members submitting valid Claim Forms shall be entitled to relief as set forth in paragraph 43.

Incomplete Claim Forms

37. Submitted Claim Forms that omit information or contain inaccurate or disqualifying information shall be returned via first class mail by the Claims Administrator to the Settlement Class Member's address indicated on the Claim Form as part of a Notice of Missing Information. Settlement Class Members whose Claim Forms are returned shall have until the end of the Claims Period, or 15 calendar days from when the Notice of Missing Information was mailed, whichever is later, to reply to the Notice of Missing Information and provide a revised Claim Form that includes all required information. If a Settlement Class Member fails to respond by the end of the Claims Period or within 15 calendar days from when the Notice of Missing Information was mailed, whichever is later, or the Claims Administrator is unable to return the Submitted Claim Form as result of the omitted information, the Claims Administrator will reject such Settlement Class Member's claim, and Bayer will not be obligated to make any payment on such claim.

V. OBJECTIONS AND OPT-OUTS

Objections

38. Settlement Class Members shall have the right to appear and present objections as to any reason why the terms of this Agreement should not be given Final Approval. Any objection must be in writing, filed with the Court, with a copy delivered to Class Counsel and Defense Counsel at the addresses set forth in the Class Notice, no later than the Objection/Exclusion Deadline.

39. Any objection regarding or related to the Agreement shall contain a caption or title that identifies it as "Objection to Class Settlement in *Carrera v. Bayer*

Corporation and Bayer Healthcare LLC " and also shall contain information sufficient to identify and contact the objecting Settlement Class Member, his or her counsel, or any other attorney involved in the preparation of his or her objection, as well as a clear and concise statement of the Settlement Class Member's objection, documents sufficient to establish the basis for their standing as a Settlement Class member, i.e., verification under oath as to the date and location of their purchase of WeightSmart or a receipt reflecting such purchase, the facts supporting the objection, and the legal grounds on which the objection is based, and shall be served upon Defense Counsel and Class Counsel so that such papers are actually received by said counsel by the date specified in the Notice. If an objecting party chooses to appear at the hearing, a notice of intention to appear must be filed with the Court no later than the Objection/Exclusion Deadline.

Right to Respond to Objections

40. Class Counsel and Defense Counsel shall have the right to respond to any objection prior to the Fairness Hearing.

Opt Outs

41. Any Settlement Class Member who does not wish to participate in this Settlement must submit a Request for Exclusion to the Claims Administrator stating an intention to be "excluded" from this Settlement. This written Request for Exclusion must be sent via first class United States mail to the Claims Administrator at the address set forth in the Class Notice and postmarked no later than the Objection/Exclusion Deadline. The Request for Exclusion must be personally signed by the Settlement Class Member. So-called "mass" or "class" opt-outs shall not be allowed.

42. Any Settlement Class Member who has not timely requested exclusion from the Settlement will be bound by the terms of the Agreement upon Final Approval of the Settlement.

WSD

VI. SETTLEMENT RELIEF AND SETTLEMENT CONSIDERATION

43. Subject to the limitations in this Agreement, Settlement Class Members who submit a valid Claim Form to the Claims Administrator during the Claims Period and documentation showing the actual price paid will receive a refund of the actual purchase price paid up to a maximum of \$250 dollars from the common fund. Subject to the limitations in this Agreement, Settlement Class Members who submit a valid Claim Form to the Claims Administrator during the Claims Period without documentation of the actual price paid will receive a refund of \$15 dollars from the common fund. All payments will be made by sending the Class Member a check from the \$500,000.00 common fund provided by Bayer, as reduced by related costs, attorneys' fees, class representative payment, administrative fees and any other monies expended as part of the settlement. In the event that the Settlement is oversubscribed, all Settlement Class Members' claims, whether a refund of the actual price paid or the refund of \$15 dollars, will be reduced *pro rata*. In the event that funds remain in the common fund following the Claims Period, the balance will be distributed *cy pres* within Florida to such organizations as agreed on by the parties and the Court. Such payment shall be made by the Claims Administrator and mailed to the Claimants following, but no later than 30 days after, the Effective Date.

VII. ADMINISTRATION OF SETTLEMENT

44. The Claims Administrator agrees to be subject to the direction and authority of the Court with respect to the administration of the Settlement and the payment of refunds for Accepted Claims pursuant to the terms of this Agreement. Bayer shall have no responsibility or liability for the administration of the Settlement and shall have no liability, beyond the payment of refunds for Accepted Claims from the Common Fund, to the Settlement Class Members in connection with, as a result of, or arising out

of such administration.

VIII. ATTORNEYS' FEES

45. Class Counsel shall be entitled to request a payment of fees and expenses awarded by the Court, up to a maximum of 25% of the common fund, to be taken out of the Common Fund upon the Court's entry of the Final Order and Judgment and an order awarding fees, notwithstanding any appeal, upon execution of the Stipulated Undertaking. The Stipulated Undertaking shall require repayment of fees and expenses by Class Counsel should the Final Order and Judgment be reversed or materially modified or the fee and expenses order reversed or reduced on appeal. The Stipulated Undertaking shall provide that Class Counsel are jointly and severally liable to Bayer for the repayment of fees and expenses should the Final Order and Judgment be reversed or materially modified or the fee and expenses order reversed or reduced on appeal.

46. The Court's award of any fees and expenses shall be separate from its determination of whether to approve this Agreement. In the event the Court approves the settlement set forth in this Agreement, but declines to award fees and expenses in the amount requested by Class Counsel, the settlement will nevertheless be binding on the Settling Parties. If the Court declines to approve the settlement in this Agreement, no award of fees and expenses shall be paid. Further, the Settling Parties negotiated and reached agreement on the Class Counsels' fees and expenses only after reaching agreement on all other material terms of this Agreement.

47. The payment of Class Counsels' fees and expenses shall be paid from the Common Fund within fifteen (15) business days after the Court has entered the Final Approval Order and Judgment. Payment shall be made to Carella, Byrne as agent for Class Counsel for distribution to and among Plaintiff's Counsel, in accordance with wire instructions to be provided to Bayer by Carella, Byrne.

WBA

IX. NAMED PLAINTIFF PAYMENT

48. Class Counsel shall petition the Court for, and Bayer shall not oppose, a payment in an amount of \$5,000.00, to be taken out of the Common Fund, to the Named Plaintiff, in recognition of his efforts on behalf of the Settlement Class ("Named Plaintiff Payment"). The Court's award of any Named Plaintiff Payment shall be separate from its determination of whether to approve the settlement as set forth in this Agreement. In the event the Court approves the settlement, but declines to award a Named Plaintiff Payment in the amount requested by Class Counsel, the settlement will nevertheless be binding on the Settling Parties. If the Court declines to approve the settlement, no Named Plaintiff Payment shall be paid. Any Named Plaintiff Payment approved by the Court shall be paid from the Common Fund within fifteen (15) business days after the Effective Date. Payment from the Common Fund of the Named Plaintiff Payment is separate from, and in addition to, the other purported relief afforded to the Settlement Class Members in this Agreement; however, all payments will come from the Common Fund.

X. FINAL APPROVAL

Motion for Final Approval

49. Class Counsel shall petition the Court for a final order that: (1) confirms the certification of the Settlement Class as defined above; (2) dismisses this Action, with prejudice, upon the Effective Date; (3) decrees that neither the Final Approval nor this Agreement constitutes an admission of liability, fault or wrongdoing; (4) releases the Released Parties from the Released Claims of the Releasing Parties; (5) finds that this Agreement is entered into in good faith, is reasonable, fair and adequate, and is in the best interest of the Settlement Class Members; and (6) making such orders as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

Fairness Hearing

50. The Court shall conduct a Fairness Hearing so that the Court may review any objections to this Agreement, consider the fairness, reasonableness and adequacy of this Agreement and consider the Settling Parties' petition for Final Approval and Class Counsel's Application for a Fee Award. The date of the Fairness Hearing shall be posted on the Settlement Website in advance of the hearing. If the date of the Fairness Hearing is subsequently modified by the Court, no further notice is required to be published to Settlement Class Members, except that the Parties will notify any Settlement Class Member who has filed a timely Objection in writing of any change to the date of the Fairness Hearing.

Dismissal of this Action

51. The Final Approval shall provide that this Action shall be dismissed, with prejudice, upon the Effective Date.

XI. PUBLIC STATEMENTS

52. Plaintiff, Bayer, Class Counsel, and/or Defense Counsel shall not hold any press conference or issue any press release regarding the settlement reflected in this Settlement Agreement except through the notice process approved by the Court. The Settling Parties may make such disclosures as may be required to the Court, on websites as specified herein, and the Settling Parties may make such disclosures as may be required by law, or as may be necessary for financial (including without limitation, insurance, tax and audit) purposes, or to respond to inquiries relating to the settlement reflected in this Settlement Agreement.

XII. TERMINATION

Right to Terminate

53. This Agreement is contingent on the final certification of the Settlement

WSD

Class and the Final Approval as defined above. Bayer may terminate this Agreement in its entirety at any time and without further obligation if: (1) any court rejects or denies approval of any term or condition of this Agreement; (2) any court makes any order purporting to alter, amend or modify any term or condition of this Agreement; (3) any court fails to certify the Settlement Class as defined above for purposes of settlement only; or (4) more than 500 Settlement Class Members submit timely and valid Requests for Exclusion.

Notice of Termination

54. In the event Bayer exercises its right to terminate this Agreement, it shall promptly notify the Court and Class Counsel in writing and cause the Claims Administrator to notify the Settlement Class Members by posting information on the Settlement Website.

Effect of Termination

55. In the event Bayer exercises its right to terminate this Agreement, this Agreement shall be considered null and void and have no force or effect, no person or entity shall be bound by any of its terms or conditions, and the rights of all persons or entities with respect to the claims and defenses asserted in this Action shall be restored to the positions existing immediately prior to execution of this Agreement.

56. Except as otherwise provided herein, in the event the Agreement is terminated in accordance herewith, vacated, or fails to become effective for any reason, then the Settling Parties to this Agreement shall be deemed to have reverted to their respective status in the Action as of the date of this Agreement and, except as otherwise expressly provided, the Settling Parties shall proceed in all respects as if this Agreement and any related orders had not been entered.

Binding Effect

57. Upon Final Approval, Plaintiff and each Settlement Class Member who has not validly and timely submitted a Request for Exclusion shall be deemed to release and forever discharge any and all Released Parties of and from liability of any kind or type whatsoever for any and all Released Claims, and shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim(s) against any Released Party in any court or forum. This Agreement shall be the sole and exclusive remedy available to the Releasing Parties for any and all Released Claims against the Released Parties. No Released Party shall be subject to liability or expense of any kind to any Releasing Party with respect to any Released Claim.

58. The Settling Parties agree that they may hereafter discover facts in addition to or different from those they believe to be true with respect to the subject matter of this Agreement. The Settling Parties agree that, notwithstanding the discovery of the existence of any such additional or different facts that, if known, would materially affect its decision to enter into this Agreement, the releases herein given shall be and remain in effect as a full, final and complete general release of the Released Claims and the Settling Parties shall not be entitled to modify or set aside this Agreement, either in whole or in part, by reason thereof. The Settling Parties hereby waive and relinquish, to the fullest extent permitted by law, the rights and benefits of any statute which might otherwise render unenforceable a release contained in this Agreement.

IN ADDITION, EACH RELEASING PARTY HEREBY EXPRESSLY WAIVES AND RELEASES, UPON THIS AGREEMENT BECOMING EFFECTIVE, ANY AND ALL PROVISIONS, RIGHTS AND BENEFITS CONFERRED BY § 1542 OF THE CALIFORNIA CIVIL CODE, WHICH READS:

SECTION 1542. GENERAL RELEASE; EXTENT. 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 SETTLEMENT WITH THE DEBTOR; OR BY

WBD

ANY LAW OR STATE OR TERRITORY OF THE UNITED STATES, OR PRINCIPLE OF COMMON LAW, WHICH IS SIMILAR, COMPARABLE, OR EQUIVALENT TO § 1542 OF THE CALIFORNIA CIVIL CODE.

XIII. SETTLEMENT PURPOSES ONLY

Non-Admission

59. This Agreement, whether or not consummated, and any communications exchanged or actions taken pursuant to or during the negotiation of this Agreement are for settlement purposes only. Neither the fact of nor the contents of this Agreement or its exhibits, nor any communications exchanged nor actions taken pursuant to or during the negotiation of this Agreement, shall constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim asserted or fact alleged in this Action or of any wrongdoing, fault, violation of law or liability of any kind on the part of Bayer or on the propriety of class certification for litigation class.

Non-Admissibility

60. This Agreement and all negotiations, correspondence and communications leading up to its execution shall be deemed to be within the protection of Federal Rule of Evidence 408 and any analogous state or federal rules or principles. Neither this Agreement, nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Agreement, shall constitute a precedent or be admissible for any purpose in any proceeding; provided, however, that this Agreement shall be admissible in any proceeding related to the approval of this Agreement, to enforce any of its terms and conditions, to support or defend this Agreement in an appeal from an order granting or denying Final Approval, or to enforce or assert a claim or defense of *res judicata*, *collateral estoppel*, claim preclusion, issue preclusion, settlement, release, merger and bar, or any similar claim or defense against the Plaintiff, any Settlement Class Member, or

WBA

any third party.

Reservation of Rights

61. This Agreement is made without prejudice to the rights of Bayer to oppose class certification in this Action should this Agreement not be approved or implemented.

XIV. WARRANTIES AND REPRESENTATIONS

Authority to Execute

62. The Settling Parties warrant and represent that the persons executing this Agreement are duly authorized to do so. Plaintiff Gabriel Joseph Carrera has authorized James E. Cecchi to execute this Agreement on his behalf.

Assignment of Claims

63. The Settling Parties warrant and represent that no claim or any portion of any claim referenced or released in this Agreement has been sold, assigned, conveyed, or otherwise transferred to any other entity or Person.

Reading and Understanding

64. The Settling Parties warrant and represent that they have carefully read this Agreement, have consulted their attorneys regarding this Agreement, and fully understand and voluntarily accept the terms and conditions of this Agreement.

Reliance on Own Judgment

65. The Settling Parties warrant and represent that they have relied upon their own judgment and that of their legal counsel regarding the sufficient and agreed upon consideration for this Agreement and that no statement or representation by any of the other Settling Parties or their agents, employees, officers, directors or legal representatives influenced or induced them to execute this Agreement.

XV. INTERPRETATION AND ENFORCEMENT

Governing Law

66. This Agreement shall be construed under and governed by the laws of the State of New Jersey, applied without regard to laws applicable to choice of law.

Entire Agreement

67. This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Settling Parties with regard to the subject of this Agreement and shall supersede any previous agreements, representations, communications and understandings among the Settling Parties with respect to the subject matter of this Agreement.

Joint Preparation

68. This Agreement shall be construed as if the Settling Parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against any of the Settling Parties.

Recitals

69. The Recitals are a material part of this Agreement and are incorporated herein in their entirety.

Captions

70. The captions used in this Agreement are for convenience and identification purposes only and are not part of this Agreement.

Modification

71. This Agreement may not be changed, modified, or amended except in writing signed by all Settling Parties and approved by the Court. Notwithstanding the foregoing, however, the claims process set forth above may be modified by mutual agreement of the Settling Parties without Court approval and the Settling Parties may

agree to reasonable extensions of time in which to accomplish the tasks required by the terms and conditions of this Agreement, which shall not be unreasonably withheld.

Waiver

72. The waiver of any term or condition or breach of this Agreement shall not be deemed to be a waiver of any other term or condition or breach of this Agreement and shall not be deemed to be a continuing waiver.

Binding Effect

73. This Agreement shall be binding upon and inure to the benefit of the Settling Parties and each of their respective heirs, successors, assigns, executors and legal representatives.

XVI. MISCELLANEOUS TERMS AND CONDITIONS

Litigation Brought in Good Faith

74. The Settling Parties to this Agreement intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Settlement Class Members against the Released Parties with respect to the Settled Claims. Accordingly, Class Counsel and Bayer agree not to assert in any forum that the litigation was brought by Plaintiff or defended by Bayer in bad faith or without a reasonable basis. The Settling Parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure or of 28 U.S.C. § 1927 relating to the prosecution, defense, or settlement of the Action.

75. The Settling Parties agree that the amount paid and the other terms of the Agreement were negotiated at arm's-length in good faith by the Settling Parties and reflect a Settlement that was reached voluntarily after consultation with experienced legal counsel.

Notices

76. Any notice, instruction, application for Court approval or application for Court orders sought in connection with this Agreement, or any document to be given by any Settling Party to any other Settling Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, to Class Counsel and to Defense Counsel.

Execution

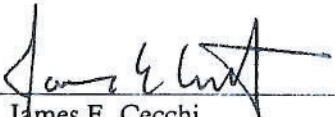
77. This Agreement may be executed by facsimile or email signatures in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same valid and binding agreement.

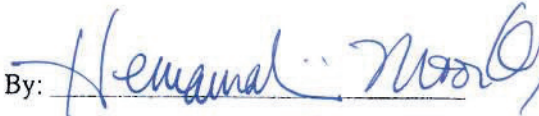
IN WITNESS WHEREOF, each of the Settling Parties hereto has caused this Agreement to be executed by its duly authorized counsel of record as of the day set forth below.

Dated: October 20, 2014

For Plaintiff and the Settlement Class:

For Bayer Corporation:

By: 
James E. Cecchi
Carella, Byrne, Cecchi,
Olstein, Brody & Agnello, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

By: 

For Bayer Healthcare LLC:

By: 
ASSISTANT SECRETARY

WRB

Exhibit B

LEGAL NOTICE TO FLORIDA CONSUMERS

THIS NOTICE MAY AFFECT YOUR RIGHTS; PLEASE READ IT CAREFULLY

If you purchased Bayer One-A-Day WeightSmart dietary supplements and vitamins in the State of Florida from January 1, 2002 to (date of publication of Notice), you may be eligible for a payment from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

A settlement has been reached between Bayer and Plaintiff Gabriel Carrera, individually and on behalf of the Settlement Class, that will resolve a class action lawsuit, called *Gabriel Joseph Carrera v. Bayer Corporation and Bayer Healthcare, LLC*, Civil Action No. 08-cv-04716 (JLL) filed in the United States District Court for the District of New Jersey. Pursuant to the Settlement, Bayer has agreed to establish a Settlement Fund in the amount of \$500,000.00. Settlement Class Members who submit timely and valid Claim Forms regarding their purchases of Bayer One-A-Day WeightSmart dietary supplements and vitamins ("WeightSmart") products that were allegedly falsely advertised, shall be entitled to a share of the Settlement Funds. Bayer denies any wrongdoing, but has agreed to a class action settlement to resolve the litigation. If you purchased WeightSmart, you may be entitled to receive compensation from the class action settlement. The Court has not yet decided whether to approve the settlement. Payments will be made if the Court approves the settlement and after all appeals are resolved. Please be patient.

ARE YOU AFFECTED?

Class Members of the settlement include consumers in the State of Florida who purchased WeightSmart from January 1, 2002 through 2008.

WHAT ARE YOUR RIGHTS AND OPTIONS?

The only way to participate in the Settlement and receive a benefit is to submit a timely and valid Claim Form. Class Members with proof of purchase can submit a Claim Form to receive up to a maximum of \$250 for all purchases of WeightSmart, subject to pro rata reductions. Class Members who do not have proof of purchase may still submit a Claim Form and will receive \$15 for all purchases of WeightSmart, subject to pro rata reductions if the valid claims submitted for payment exceed the settlement fund. Claim Forms may be downloaded and more information on your rights regarding this settlement can be found at www.floridaweightsmartsettlement.com. All Claim Forms must be postmarked or submitted online by [] to receive money from the settlement.

Your legal rights are affected whether you act or don't act. If you do not want to receive any benefit from this settlement and want to preserve your right to be part of any other lawsuit against Bayer arising from its sales and marketing of WeightSmart, you must exclude yourself. If you do not like the settlement, but wish to remain in the class, you may object. These rights and options, and the deadlines to exercise them, are explained on the settlement website, www.floridaweightsmartsettlement.com.

DO I HAVE A LAWYER IN THIS CASE?

The Court appointed Class Counsel to represent the Settlement Class. Contact information for Class Counsel is listed below. Class Counsel will ask the Court to approve payment of up to 25% of the \$500,000 settlement fund for attorneys' fees and expenses and for their efforts in achieving this Settlement which was undertaken with the risks associated in representing the class on a contingency basis. Class Counsel will also ask the Court to approve payment of \$5,000 to Plaintiff Gabriel Carrera, for his service as Class Representative.

HOW CAN YOU GET MORE INFORMATION?

Although the information in this notice is intended to assist you, it is a summary of the litigation and resulting Settlement and does not replace the information contained in the Notice or the Stipulation of Settlement, both of which can be found and downloaded from the www.floridaweightsmartsettlement.com. We recommend that you read the Notice and other relevant case documents carefully. If you have any questions, you may contact Class Counsel or the Claims Administrator, Angeion Group as identified below.

PLEASE DO NOT CONTACT THE COURT

Class Counsel

James E. Cecchi, Esq.
Lindsey H. Taylor, Esq.
Carella, Byrne, Cecchi,
Olstein, Brody & Agnello, P.C.
5 Becker Farm Road
Roseland, NJ 07068
(973) 994-1700
ltaylor@carellabyrne.com

Joe R. Whatley, Jr., Esq.
Patrick J. Sheehan, Esq.
Whatley Kallas, LLP
1180 Avenue of the Americas, 23rd Floor
New York, NY 10036
(212) 447-7060
psheehan@whatleykallas.com

Claims Administrator

WeightSmart Florida Settlement
c/o Angeion Group
1801 Market Street, Suite 660
Philadelphia, PA 19103

Exhibit C

BAYER ONE-A-DAY WEIGHTSMART SETTLEMENT CLAIM FORM

If you wish to file a claim to receive monetary compensation as described in the Settlement Agreement, you must submit this Claim Form to the Settlement Administrator, Angeion Group LLC. The Claim Form must be completed, signed, and received or postmarked on or before MONTH DAY, 20XX., for it to be valid. To qualify for monetary compensation, you must have purchased Bayer One-A-Day WeightSmart dietary supplements and vitamins that are the subject of this Action and were distributed by Bayer in the United States during the period from January 1, 2002 through December 31, 2007. A complete definition of the class qualifications is provided in the Settlement Agreement, which is available at www.WEBSITENAME.com or by calling 1-800-xxx-xxxx. There is a limit of one Claim Form per CLAIMANT.

Claim Forms must be submitted to:

Angeion Group LLC - Settlement Administrator
c/o One-A-Day WeightSmart Settlement
1801 Market Street, Suite 660
Philadelphia, PA 19103

Email: info@AngeionGroup.com

Claimant Information:

Please Type or Print (using CAPITAL letters) in the Boxes Below; Do Not Use Red Ink, Pencil, or Staples.

First Name	MI	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Mailing Address

City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>

Telephone Number

 - -

Email Address

It is your responsibility to keep a current address on file with the Settlement Administrator. Please make sure to notify the Settlement Administrator of any changes in address.



2 663369 668847

Please respond to the following questions and please also attach Proof of Purchase (if you have it). Proof of Purchase is either the receipt issued by the retailer to you for the purchase of Bayer One-A-Day WeightSmart dietary supplements or vitamins, or other documentation showing the purchase price paid for the Bayer One-A-Day WeightSmart dietary supplements or vitamins. You must sign the bottom of this Claim Form for your claim to be valid. **Incomplete or unsigned Claim Forms will not be considered. Your claim form and documentation will not be returned to you. Please retain a copy for your records.**

I purchased one or more of the Bayer One-A-Day WeightSmart dietary supplements or vitamins that are the subject of this Action, that were distributed by Bayer in the United States during the period from January 1, 2002 through December 31, 2007. I am not an employee, officer, director, agent or representative of Bayer Corporation and Bayer Healthcare LLC Bayer, and I did not purchase the Product(s) for the purpose of resale.

Yes

No

I have attached either a receipt issued by the retailer for my purchase of Bayer One-A-Day WeightSmart dietary supplements or vitamins or other documentation showing the purchase price paid for the Bayer One-A-Day WeightSmart dietary supplements or vitamins.

Yes

No

Please read, date and sign the statement below (required for all claims):

I represent that the foregoing is true and correct and I make these statements under the penalty of perjury. I understand that the Parties retain the right to verify my responses and dispute any claims made.

Date

Signature: _____

		/			/				
--	--	---	--	--	---	--	--	--	--

REMINDER: If your Claim Form is not received or postmarked on or before MONTH DAY, 20XX your claim will be rejected.

PLEASE DO NOT CALL THE COURT, THE JUDGE, OR BAYER REGARDING THIS MATTER.

If you have questions about this Claim Form visit www.WEBSITENAME.com

OR E-mail the Settlement Administrator at info@AngeionGroup.com

OR Write the Settlement Administrator at:

One-A-Day SmartWeight Settlement
c/o Angeion Group
Suite 660
1801 Market Street
Philadelphia, PA 19103

Exhibit D

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.

5 Becker Farm Road
Roseland, New Jersey 07068
Telephone No.: (973)994-1700
Telephone Fax: (973)994-1744
www.carellabyrne.com

Carella, Byrne

AN INTRODUCTION TO CARELLA, BYRNE

Carella, Byrne, Cecchi, Olstein, Brody & Agnello, with offices in Roseland, New Jersey, had its origins in a partnership created in 1976 by Charles C. Carella and others. Since then, the firm has grown from four attorneys to over 35 attorneys. In 1990, the firm merged with two others: Bozonelis and Woodward of Chatham, New Jersey, and Cecchi, Brody & Agnello, of Lyndhurst, New Jersey.

Throughout our history, our goal has not been growth for growth's sake, but to be a diversified full-service firm that offers our clients a depth of experience that is virtually unmatched. Most importantly, our growth has been a studied one: an approach which has enabled us to maintain the energy and cooperative spirit of a small practice, allowing us to respond quickly and creatively to our clients' problems.

We have significant strength in complex litigation, federal class action litigation, intellectual property, corporate, health care, public financing, environmental, labor, tax and administrative law. This level of experience offers our corporate clients very broad-based legal representation.

We have long been recognized as one of the leading New Jersey law firms, a reputation that has helped us attract a wide spectrum of clients -- from individuals to multinational corporations; from small businesses to non-profit organizations; from zoning boards to state governments.

Today, Carella, Byrne, Cecchi, Olstein, Brody & Agnello is an established and successful law firm that is ready to serve you or your organization with a breadth and depth of experience rare in a firm our size.

To help us serve our clients' promptly and in a cost effective manner, we have a full complement of law clerks, paralegals, word processors and support staff, and state-of-the-art computer and word processing systems, including optical scanners, laser printers, and Westlaw.

We are committed to quality and diversity in our practice areas. Diversity allows our firm to remain a competitive force in the legal marketplace. The firm's commitment to the highest quality of legal work walks hand-in-hand with its commitment to employ the highest quality of diverse people so that we can best serve all of the needs of our clients.

Carella, Byrne

GENERAL LITIGATION

The Carella, Byrne, Cecchi, Olstein, Brody & Agnello litigation department participates in a broad range of contested matters. We represent corporations in derivative suits and with respect to allegations of breach of federal and state securities regulations. Additionally, we represent institutions and national companies in warranty, franchise and dealer termination actions; medical malpractice defense claims; and real estate matters, including planning board, board of adjustment proceedings and fair-share housing cases.

Technical Litigation

We are uniquely staffed to handle complex technical litigation. In addition to legal training, a number of attorneys have degrees and experience in chemical, electrical, mechanical and biomedical engineering. Litigation cases involve patents, trademarks, trade secrets, copyrights, unfair competition and construction, as well as architectural and engineering malpractice.

Environmental Litigation

We handle environmental cases involving current owner liability and third-party common law claims, plus cases under federal and state statutes such as the Federal Water Pollution Control Act, ECRA, the Spill Act, the Resource Conservation Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation Liability Act of 1980 (as amended by the Superfund Amendment and Reauthorization Act of 1986), and many others. We have attorneys expertly trained in environmental matters with a background uniquely suitable to rendering appropriate advice to our corporate and individual clients.

Medical Malpractice Defense

Medical malpractice defense work is one of the busiest areas of our litigation practice. We represent a number of major health care institutions, and serve as primary defense counsel for insureds of major insurance companies. During our history, we have represented physicians, dentists, podiatrists, chiropractors, nurses, nurse midwives, and hospitals in a variety of complex litigated matters throughout the state courts.

Intellectual Property Expertise

Carella, Byrne, Cecchi, Olstein, Brody & Agnello is nationally recognized in the fields of patent, trademark, copyright, unfair competition, trade secret law and antitrust law as applied domestically and internationally. We have broad technical expertise in chemical, mechanical and electrical engineering; physics; organic chemistry; biochemistry; commercial and industrial building construction, and road and bridge construction; sewage and waste management, including toxic and hazardous waste, radwaste and environmental control. A number of our partners and associates are registered to practice before the U.S. Patent and Trademark Office.

Carella, Byrne

Our particular litigation expertise is in U.S. District Courts and Circuit Courts of Appeal in California, Illinois, Texas, New York, Pennsylvania, Florida and New Jersey, as well as the Court of Appeals for the Federal Circuit.

We also maintain close ties with associate counsel in the United Kingdom, Japan, West Germany, Canada, Italy, France, Austria, Taiwan, Korea, Australia and the Peoples Republic of China. We have controlled and/or participated in patent and other intellectual property litigation in Japan, West Germany, the United Kingdom, Canada, Australia, New Zealand and Austria.

What's more, we offer many other intellectual property services, including licensing and preparation and prosecution of patent applications around the world.

Corporate and Financial

Carella, Byrne, Cecchi, Olstein, Brody & Agnello provides all legal services involving the sale, purchase and reorganization of a business, including creation of corporations, partnerships and limited partnerships, mergers and acquisitions, public and private corporate financing, and representation in regulatory compliance cases.

Banking

We have broad experience in commercial lending matters (secured and unsecured), representing both lenders and borrowers; and have counseled banks in all aspects of operations. We have represented institutions in both state and federal regulatory compliance, and in all phases of loan work-outs and financial restructurings. Our experience also extends to commercial litigation and foreclosures.

All too often, financial institutions face breach of both secured and unsecured loan agreements. So to help our clients preserve their banking relationships with their customers, we regularly handle work-outs, no matter how simple or complex. We've handled multiparty and multistate transactions involving construction, apartment complexes, warehouse lines of credit and inventory financing.

Savings and Loan Conversions

We have helped savings and loan associations convert from mutual ownership to stock ownership. These include standard conversions, modified conversions, supervisory conversions and holding company formations. Services range from contract negotiation and completion, to regulatory authority application preparation and follow-up. And after conversion, we provide general counsel.

Mergers and Acquisitions

Our firm has counseled corporate clients on mergers and acquisitions, with a special emphasis on the acquisition or divestiture of stand-alone businesses. Clients have included large corporations filling in product lines; small, privately held corporations which are

Carella, Byrne

liquidating; and large corporate division managers involved in a management buy-out. We counsel clients on employee issues, environmental concerns, liability and contractual issues, regulatory matters and tax issues.

Creditors' Rights and Bankruptcy

Our firm provides comprehensive legal expertise for clients involved in both corporate and individual insolvencies. We have represented corporate debtors-in-possession, corporate trustees, creditors committees and secured and priority parties in reorganizations and liquidations.

We have expertise in those areas impacting on current bankruptcies including tax (including ERISA), environmental (including state and federal regulations), labor, admiralty, intellectual property, general corporate transactions and commercial and corporate litigation.

Public Finance

We are a nationally recognized Bond Counsel firm. This means that the investment community looks to us as an expert in public finance law, and that our approving legal opinions are relied on by investors as to the legality and enforceability of tax-exempt obligations.

We have served as Bond Counsel for the issuance of hundreds of millions of dollars of tax-exempt financings for municipalities and local, county and state authorities. And in this capacity, we have assisted in financing everything from the purchase of a town's computer system to the building of a resource recovery facility, to the repair of the Garden State Parkway.

In addition, we have served as underwriters' counsel and counsel to national investment banking firms, and as general counsel to companies obtaining tax-exempt loans for industrial development.

Class Action Litigation

Carella Byrne is also actively involved in the prosecution of sophisticated plaintiffs' cases involving securities fraud, consumer fraud and antitrust.

In re Vytarin/Zetia Marketing, Sales Practices and Products Liability Litigation

Carella Byrne filed the first complaint, and numerous follow up complaints, against Schering-Plough and Merck relating to their marketing of anti-cholesterol drugs Vytarin and Zetia after it was revealed that the companies had been concealing a significant study questioning the effectiveness of the drugs. The hundreds of cases filed across the nation were consolidated in the United States District Court for the District of New Jersey by the Judicial Panel for Multidistrict Litigation. Carella Byrne was appointed Co-Lead Class Counsel and achieved final approval of a \$41.5 million settlement on behalf of consumers and third-party payors. *In Re: Vytarin/Zetia Marketing, Sales Practices and Products Liability Litigation*, MDL No. 1938 (DMC).

Carella, Byrne

KPMG Tax Shelter Litigation

Carella Byrne was co-counsel for the class with respect to a class action entitled *Marvin Simon, as Authorized Representative for The Marvin Simon Trust, as amended, for Palm Investors, LLC and for The Jeffrey Markman 1993 Irrevocable Trust, Marilyn Simon, Clause Harris, Ann Harris, Ben Simon, Heidi Simon, Britt Simon, Kim Fink, Amy Goldberg, Stefan Rassing, Individually and as Trustee of The S. Rassing 1999 Trust, Fitzroy Ventures, Llc, Michael Le, Individually and as Trustee of the ML Le 1999 Trust, and Mackenzie Ventures, LLC v. KPMG LLP and Sidley Austin Brown & Wood LLP*, United States District Court, District of New Jersey, Civil Action No. 05-3189(DMC).

The *Simon* class action involved allegations against KPMG, and the law firm of Sidley Austin Brown & Wood, stemming out of their role in the promotion of fraudulent off-shore tax shelters. The case settled for approximately \$200,000,000, and was approved by the United States District Court, District of New Jersey. Carella Byrne was instrumental in achieving this significant settlement over vigorous objections from certain class members. Indeed, to achieve the settlement three full days of plenary hearings were held before the District Court, where both fact witnesses and expert witnesses testified. Carella, Byrne handled all aspects of the plenary hearing.

Exxon Dealer Class Action

In 2005, Exxon and Class Counsel reached a settlement which required Exxon to pay \$1,000,070,000 into a settlement fund which would then be utilized to pay claims submitted to a Special Master by over 10,000 class members. On behalf of the State of New Jersey, Carella Byrne participated in the settlement negotiations and assisted class counsel achieve an overwhelming victory for the class.

Further, in connection with the settlement of the class' case, the Honorable Alan Gold, U.S.D.J., appointed Carella Byrne to represent the interests of 34 States as "States' Counsel", in the post-settlement claims administration process. That assignment is ongoing, *Allapattah Services, Inc. v. Exxon Corporation*, Case No. 91-0986-Civ-Gold.

Wachovia ERISA Class Action

Carella Byrne was co-lead Class Counsel on behalf of the class in *Serio, et al. v. Wachovia Securities LLC*, Civil Action No. 06-4681(DMC), which was brought on behalf of former Prudential Financial financial advisors and branch managers whose deferred compensation contributions were forfeited when they left employment with Wachovia Securities. The plaintiffs argued that the respective deferred compensation plans are, in fact, "retirement plans" under ERISA and, as a result, the employee contributions should not have been forfeited. Alternatively, the plaintiffs argued that they were constructively discharged as a result of adverse employment conditions which made it impossible for them to perform their jobs and, as a result, their accounts should not have been forfeited under the terms of the respective plans. The settlement in this matter was approved in March 2009.

Carella, Byrne

Rail Fuel Surcharge Antitrust Class Action

In May 2006 Carella Byrne, along with Quinn, Emmanuel, Urquhart Olivier & Hedges and others, filed the first nation-wide class action against the five major United States railroads alleging that they engaged in a price-fixing conspiracy through the use of inflated rail fuel surcharges, *Dust Pro, Inc. v. CSX Transportation, Inc., et. al.*, Civil Action No. 07-2251 (DMC). This significant nationwide antitrust case (involving damages in the billions) has been consolidated by the Panel on Multi District Litigation in the District of Columbia with approximately 20 other complaints filed around the nation. Carella Byrne has been appointed to the five member Executive Committee who, along with two co-lead counsel, will lead this important case forward. *In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL No. 1969 (PLF).

In re: Mercedes-Benz Tele-Aid Contract Litigation

Carella Byrne is co-lead counsel with two other firms on behalf of the class in this multidistrict litigation arising from Mercedes-Benz's continued sales of analog Tele-Aid systems in its automobiles when it knew that FCC regulations required the discontinuance of all analog cellular communications as of February 2008. In this action, *In re Mercedes-Benz Tele-Aid Contract Litigation*, MDL No. 1914(DRD), the plaintiffs allege claims for consumer fraud and breach of warranty. The District Court certified a national consumer fraud and unjust enrichment class in 2009. The settlement of this case has been preliminarily approved and final approval is currently scheduled for September 2011.

Merck/Vioxx Securities Class Action

In September 2006, Carella Byrne was appointed Co-Liaison counsel for the class in the multi-billion dollar securities class action against Merck & Co. arising out of the withdrawal of the drug Vioxx from the market in 2004. The United States Supreme Court recently agreed that the claims in this action should go forward and it is proceeding in the District Court. *In Re: Merck & Co., Inc., Securities, Derivative & "ERISA" Litigation*, MDL No. 1658 (SRC).

In Re Virgin Mobile USA IPO Litigation

On November 21, 2007, Carella Byrne filed the first securities class action lawsuit against Virgin Mobile USA alleging that Virgin created and distributed a materially false and misleading Registration Statement and Prospectus in connection with its October 2007 IPO.

On March 18, 2008, Carella Byrne and its co-counsel were appointed Co-Lead Counsel for the Class by the United States District Court for the District of New Jersey. Final approval of the settlement in this matter was granted in December 2010. *In Re: Virgin Mobile USA IPO Litigation*, Lead Case No. 07-5619 (SDW).

Carella, Byrne

In Re: Schering-Plough/Enhance Securities Class Action Litigation

Carella Byrne filed the first case against Schering Corporation and was appointed to the leadership team as liaison counsel on behalf of the class in this securities fraud litigation related to misleading statements contained in public securities filings made by Schering-Plough Corporation related to the continued commercial viability of Vytorin and Zetia, while it was aware of the results of the Enhance study which questioned the effectiveness of both drugs. *In Re: Schering-Plough/Enhance Securities Litigation*, Lead Case No. 08-397(DMC).

In re: Merck & Co. Enhance Securities Class Action Litigation

Carella Byrne has been appointed to the leadership team of the case as Liaison Counsel on behalf of the class in this securities fraud litigation related to misleading statements contained in public securities filings made by Merck & Co., Inc. related to the continued commercial viability of Vytorin and Zetia, while it was aware of the results of the Enhance study which questioned the effectiveness of both drugs. These consolidated actions are pending in the United States District Court for the District of New Jersey. *Genessee County Employees' Retirement System v. Merck & Co., Inc., et al*, Civil Action No. 08-2177 (DMC); *Horowitz and Hoffmans v. Merck & Co., Inc., et al.*, Civil Action No. 08-2260 (DMC)

Internet Tax Class Actions

This class action was filed in New Jersey on behalf of the Township of Lyndhurst and other New Jersey municipalities which charge occupancy taxes on hotel and motel rooms. The complaint alleges that the defendants, travel websites, paid occupancy taxes based upon on the wholesale prices they paid for hotel and motel rooms, rather than the retail prices paid by the customer. The suit seeks taxes on the difference between the wholesale and retail prices. This case is currently on appeal before the United States Court of Appeals for the Third Circuit. *Township of Lyndhurst v. Priceline.com*, Civil Action No. 08-3033(JLL).

Carella Byrne was also recently appointed as co-lead counsel on behalf of the certified class in similar litigation in Florida brought by Monroe County. *The County of Monroe, Florida v. Priceline.com*, Case No. 09-10004-CIV-MOORE/SIMONTON

Johnson & Johnson

Carella Byrne is co-lead counsel in an action asserting shareholder derivative claims and is liaison counsel in separate securities fraud claims relating to allegations that Johnson & Johnson undertook several massive secret recalls of products, violated anti-kickback laws, and engaged in off-label marketing products which resulted in expenses and governmental fines of hundreds of millions of dollars. *In re Johnson & Johnson Derivative Litigation*, Civil Action No. 10-2033(FLW); *Monk v. Johnson & Johnson*, Civil Action No. 10-4841(FLW)

Pfizer Securities Litigation

Carella Byrne is liaison counsel in this federal securities fraud class action alleging that

Carella, Byrne

Wyeth, which was subsequently purchased by Pfizer, made false statements with respect to the projected sales for a pipeline drug to treat Alzheimer's Disease when, in fact, tests indicated that the drug was a failure. *Security Police and Fire Professionals of America Retirement Fund v. Pfizer*, Civil Action No. 10-3105(SDW)

Sprint ETF Action

Carella Byrne was appointed as co-class counsel for a nationwide class of individuals who were charged an early termination fee by Sprint Nextel. The Sprint ETF action settled for \$17,500,000 in 2009 and the Court granted final approval of the settlement in this matter by way of Opinion and Order dated January 15, 2010. *Sampang, et al. v. AT&T Mobility LLC, et al.*, Civil Action No. 07-5324(JLL).

T-Mobile ETF Action

Carella Byrne was appointed as co-class counsel for a nationwide class of individuals who were charged an early termination fee by T-Mobile. The Court granted final approval of the \$12,500,000 settlement in this matter by way of Opinion and Order dated September 10, 2009. *Milliron v. T-Mobile*, Civil Action No. 08-4149(JLL).

AT&T ETF Action

Carella Byrne was appointed as co-class counsel for a nationwide class of individuals who were charged an early termination fee by Cingular and AT&T. The action as settled for in excess of \$18,000,000 in 2009 and the Court final approval of the settlement by way of Order dated October 13, 2010. *Sampang, et al. v. AT&T Mobility LLC, et al.*, Civil Action No. 07-5324(JLL).

UCR Litigation

Carella Byrne was appointed as a member of Plaintiffs' Executive Committee and Settlement Liaison Counsel in this litigation, which alleges that Aetna systematically underpaid out-of-network medical claims using the flawed Ingenix database. Generally, subscribers in health insurance plans receive reimbursement for out-of-network services based upon "usual and customary" rates for the applicable service. The Ingenix database was a database, allegedly of "usual and customary" rates for medical services which health insurers used for calculating out-of-network reimbursement. Plaintiffs allege that the health insurers which used the Ingenix database for calculating reimbursement knowingly submitted artificially low data to the database, which, they, in turn, used to pay artificially low reimbursement for out-of-network services. *In re Aetna UCR Litigation*, Master Docket No. 07-3541(FSH).

In a virtually identical case against CIGNA, Carella Byrne was appointed as Settlement Liaison Counsel. *Franco v. Connecticut General Life Insurance*, Master Docket No. 07-6039 (SRC).

Schering-Plough/Merck Merger Litigation

Carella, Byrne

Carella Byrne was appointed as co-class counsel, out of 15 competing lawsuits, in litigation challenging the merger between Schering-Plough and Merck. As co-class counsel, Carella Byrne was able to negotiate a settlement which provided for significant disclosures to shareholders for use in the vote on deciding whether to approve the merger. That settlement received final approval on April 16, 2010. *In re Schering-Plough/Merck Merger Litigation*, Civil Action No. 09-1099(DMC).

Hertz Equipment Rental LDW Litigation

Carella Byrne is co-lead counsel in litigation challenging Hertz Equipment Rental's loss damage waiver and environmental recovery fee. In that litigation, the plaintiffs contend that those fees violate the New Jersey Consumer Fraud Act because the loss damage waiver provides no real benefit to customers and the environmental recovery fee has nothing to do with expenses related to environmental protection. Class certification was granted by way of opinion and order dated December 11, 2008. *Davis Landscape v. Hertz Equipment Rental Corporation*, Civil Action No. 06-3830(DMC).

Patent Infringement Actions

Carella Byrne is also representing numerous pharmaceutical companies in pending patent infringement actions. The majority of these actions arise under the Hatch-Waxman Act. Representative cases include: *Aventis v. Teva Pharmaceutical*, Civil Action No. 07-2454 (JAG) (Allegra); *Schering v. Ivax Corporation*, Civil Action No. 00-2931 (Claritin); *Eli Lilly and Company v. Actavis Elizabeth LLC et al.*, Civil Action No. 07-770; *Connetics v. Agis Industries*, Civil Action No. 05-5038 (GEB) (Olux); *Merck & Co. v. Apotex*, Civil Action No. 06-5789(MLC) (Trusopt); *Janssen Pharmaceutica v. Apotex*, Civil Action No. 06-1020(DMC) (risperidone); *Cephalon v. Mylan Pharmaceuticals, et al.*, Civil Action No. 03-1394(JCL) (Provigil); *Celgene Corp. v. Barr Laboratories*, Civil Action No. 07-286(SDW)(Thalomid); *Novartis Corp., et al. v. Lupin Ltd.*, Civil Action No. 06-5954(HAA); *Savient Pharmaceuticals v. Sandoz, et al.*, Civil Action No. 0605782(PGS) (oxandrolone).

Trusteeship/Receiverships

In addition to these ongoing matters, Carella Byrne previously was appointed Trustee/Receiver by the United States District Court, District of New Jersey, in connection with securities law violations by Eddie Antar, founder of the defunct consumer electronics chain Crazy Eddie, *Securities and Exchange Commission v. Eddie Antar et al.*, Civil Action No. 89-3773 (JCL).

The Antar Receivership required Carella Byrne to work with the Securities and Exchange Commission ("SEC"), and to commence litigation in numerous foreign jurisdictions, including Switzerland, Canada, Liechtenstein and Israel, in an effort to repatriate and recover millions of dollars in illegally obtained assets which Mr. Antar had diverted from the Crazy Eddie chain.

Carella, Byrne

In its capacity as Trustee/Receiver, Carella Byrne recovered over \$80,000,000, which was paid to Mr. Antar's victims. The SEC has reported that the *Antar* case represented the largest asset recovery in a contested case as of that time. The investment of the assets fully funded all expenses of the receivership and contributed a substantial amount to the settlement fund, even though the receivership extended from 1990 to 2005.

In addition to its other responsibilities Carella Byrne undertook administration of the settlement fund, including addressing tax and lien issues on behalf of the funds and harmed investors, participating in obtaining a tax exempt ruling on fund income from the New Jersey Division of Taxation, and working closely with the claims administrator and the SEC. Notably, in the claims evaluation and payment process, Carella Byrne personally reviewed and evaluated each claim for payment or denial of payment, and communicated the decisions to investors, the SEC and the Court, and appeared in response to any objection or appeal of the claims decisions, none of which was reversed or modified. Carella Byrne also oversaw the distribution process consisting of payments of thousands of checks to investors in a two-tier distribution process administered by the claims administrator and the bank. Finally, investor contact information was maintained and updated for future distributions in a related case.

Carella Byrne appeared for the bankruptcy trustee in *In Re Robert E. Brennan, Debtor*, Case No. 95-35502(KCF) and *Conway v. Pirates Associates et al.*, Adv. Pro. No. 98-3245(KCF). The *Brennan* matter arose out of claims by the SEC against Robert Brennan, formerly of First Jersey Securities, for securities law violations. Litigation was pursued in various domestic and foreign jurisdictions for the recovery of assets. We were successful in identifying and piercing various off-shore trusts and recovering millions of dollars for the bankruptcy estate, which was used in part to satisfy the SEC's judgment against Brennan.

Carella Byrne has also appeared either as trustee, receiver or counsel in: *Federal Trade Commission v. Oak Tree Numismatics, et al.* (D.N.J.) (control and operation of a rare coin dealer, distributions to customers, and turn-back of the enterprise to the defendants without exception); *United States v. Sheelan* (D.N.J.) (liquidation of Rule 144 restricted stock as restitution); *Harvey, Attorney General v. Clover Merchant Group et al.* (Superior Court of New Jersey, Essex County Chancery Division) (equitable receivership for fraudulent securities dealer).

Carella Byrne attorneys have also advised and represented clients with respect to numerous antitrust issues relating to restraint of trade, price fixing and monopolization, both in court and in connection with FTC investigations. Those cases include: *Biovail Corporation International v. Hoechst AG*, 49 F.Supp.2d 750 (D.N.J. 1999); *Grace Consulting, Inc. v. Geac Computer Systems, Inc. et al.*, Civil Action No. 02-1252(KSH)(D.N.J.) and *Golden Bridge Technologies v. Nokia, et al.*, Docket No. 2:05-CV-170 (E.D.Tex).

REAL ESTATE, LAND USE AND RESORT DEVELOPMENT

The Firm handles all aspects of transactions involving residential, commercial and industrial properties for both corporate and individual clients. Such transactions involve the preparation and review of real estate and financial documentation, environmental matters, land use regulations, and other related matters. Condominium transactions, including the formation of

Carella, Byrne

the condominium project and its approval by the regulatory authorities, and the preparation of the registration statement are included within this area.

The Firm's representation of land developers includes the preparation with the developer of Planning Board Applications, and the appearance before such Boards in connection with applications for subdivisions, variances and site plans. In this connection, the Firm works with the developer's experts in such areas as architecture, engineering, environmental, and traffic.

The Firm has been engaged in extensive litigation in real estate and related environmental matters, and has both represented and opposed major title companies in complex litigation.

Carella, Byrne

Regulatory Practice

Carella, Byrne, Cecchi, Olstein, Brody & Agnello is uniquely qualified to guide its clients through the proliferation of governmental regulation in a number of different areas of the law, from the regulation of casinos, to hospitals, from resource recovery facilities to public utilities.

Health Care Law

In order to effectively operate in today's competitive environment, hospitals and other health care delivery systems must keep pace with technological advances and changes in law and insurance. We do.

Currently we represent and advise a variety of health care clients, from rehabilitation facilities and nursing homes to general acute care hospitals. And our primary concern is to help each organization achieve workable solutions to operational problems. To accomplish this, we identify problems and then offer both short- and long-term recommendations to prevent exposure to legal and financial risks. Most importantly, we provide up-to-date knowledge in a constantly changing regulatory system.

We'll handle all legal matters relevant to operation; policy and regulatory requirement correction; risk management review; and efficient, effective management plan development. And we do it all with a sensitive approach to our clients' concerns.

We have extensive experience representing fiscally distressed hospitals in turn around situations. Our team of experts provides needed direction in the areas of affiliation, corporate restructuring, general workouts, and vendor negotiations, while overseeing crucial day-to-day financial and system operations.

Public Utilities

Our firm has a well-earned reputation for excellence in litigation and negotiation of public utility matters, with special emphasis on rate applications, alternative energy and cogeneration projects, solid waste litigation, and utility-related public issue negotiation.

In fact, we took the lead in drafting and passage of the "McEnroe Legislation" for resource recovery facilities; we have served as senior counsel in numerous cases before the Board of Public Utilities; and we have worked with major investment banks to provide financing for utility and cogeneration projects.

Environmental Law

We have a broad range of experience in guiding clients through the increasingly complex web of federal and state laws designed to clean up and preserve the environment. We offer counsel on compliance with all government statutes and regulations, as well as their application to commercial and real estate transactions. We can help businesses obtain the needed air, water and waste permits. And our litigation attorneys have extensive trial and appellate

Carella, Byrne

experience in a variety of cases, including toxic tort, hazardous waste, products liability, insurance law, and more.

Tax

Our firm has sophisticated experience in New Jersey State tax matters. We represent multi-national and multi-state corporations in planning, compliance, and litigation cases involving corporate income tax, sales and use tax, and other state and local taxes, including property taxes. We also provide services in federal, corporation, partnership, individual and non-profit association tax matters. This includes providing representation before the U.S. Tax Court and Administrative offices of the IRS.

Labor Relations

Carella, Byrne, Cecchi, Olstein, Brody & Agnello handle all aspects of labor relations matters in the public and private sectors. Our labor relations practice encompasses representation of management in collective bargaining negotiations, including preparation of management's contract proposals, acting as management's chief spokesperson at negotiations, and preparation and finalization of negotiated collective bargaining agreements. In addition, we represent management in the public and private sectors in grievance, disciplinary and binding arbitration proceedings.

We also have extensive experience in handling matters before the New Jersey Public Employment Relations Commission and the National Labor Relations Board and in representing management in labor related litigation in both the state and federal courts.

Government Affairs

Recognizing the need for both adversarial and negotiation excellence in the modern government arena, Carella, Byrne, Cecchi, Olstein, Brody & Agnello has developed an extensive public issues practice. Our members have testified before Congress, State Legislatures, plus state, county and local governmental and regulatory agencies. To help us retain our leadership role, we are active in a public policy consortium -- the State Capital Law Firm Group -- working within a network of prestigious firms located in every state and throughout the world.

We first work to help our clients focus their concerns, then to develop strategies for implementing their proposals, and finally to act as their representative in every forum of public policy development.

With a strong emphasis on administrative law proceedings and municipal law, we have been successful in representing major national clients in government-related matters. This strength enables us to provide full-service public policy programs for clients, ranging from specific issue representation to integrated crisis management.

International Law

Carella, Byrne, Cecchi, Olstein, Brody & Agnello has valuable expertise in various aspects of international law.

Carella, Byrne

Areas of note include airline transportation and trademark litigation involving gray market or parallel imports. Our foreign litigation experience is in the United Kingdom, Canada, Japan, West Germany, Austria, Australia, New Zealand and Italy.

The firm has particular expertise in taking foreign discovery for use in domestic litigation under the Hague Convention as well as Consular Treatises. Additionally, we have special expertise in the international overreach of the U.S. Antitrust Laws and the international transfer of technology. To accomplish this, we maintain a close working relationship with associate counsel in many foreign countries. These firms have special competence in dealing with economic and financial issues, both in their own countries and in regional economic blocks in their region, such as the Common Market.

In connection with our intellectual property law expertise, we file and prosecute patent and trademark applications throughout the world, including the European Patent. And we handle the sale and licensing of technology and trademarks.

Carella, Byrne

PARTNERS

CHARLES C. CARELLA
CCCarella@CarellaByrne.com

CHARLES C. CARELLA has been a member of Carella, Byrne, Cecchi, Olstein, Brody & Agnello since 1976 and is Chairman of the Executive Committee. He has extensive experience in many areas of corporate practice, including mergers and acquisitions, bank finance, both state and federal administrative matters, plus environmental and solid waste matters. He has appeared on numerous occasions before the Board of Public Utilities in all forms of utility matters, and has served as a Trustee/Receiver in matters initiated by the Federal Trade Commission, Securities and Exchange Commission, the Federal District Court for the District of New Jersey and has served as Provisional Director upon appointment by the Superior Court of the State of New Jersey, Chancery Division.

Mr. Carella graduated from Fordham University with a B.S. degree in 1955 (Cum Laude) and received an LL.B. degree from Rutgers University in 1958. He was admitted to the New Jersey Bar in 1959 and the New York Bar in 1983.

He has served as an Assistant Prosecutor as well as Special Prosecutor of Essex County; Director of the New Jersey State Lottery Commission, Executive Secretary to the Governor, State of New Jersey, 1975-1976; Member of the Ethical Standards Commission for the State of New Jersey; as well as Chairman, New Jersey State Racing Commission, 1976-1980. He has served as Chief Counsel to the Passaic Valley Sewerage Commissioners.

Mr. Carella is a member of the Essex County, New Jersey State, New York State and American Bar Associations, the Association of Trial Lawyers of America, and the American Judicature Society. He is a member of the Finance Board of the Archdiocese of Newark, and a Trustee Fellow of Fordham University. He was formerly Chairman of the Board of Trustees of The University of Medicine and Dentistry of New Jersey; a member of the Board of Trustees of Robert Wood Johnson University Hospital; a member of the Board of Trustees of University Health System of New Jersey; a member of the Board of Bally Gaming International, Inc., and a member of The Board of Carteret Savings Bank.

Mr. Carella has been named to *Who's Who in American Law*.

BRENDAN T. BYRNE
BByrne@CarellaByrne.com

BRENDAN T. BYRNE graduated from Princeton University with an A.B. degree in 1949 and received an LL.B. degree from Harvard Law School in 1950.

He served as Prosecutor of Essex County, New Jersey; as President of the New Jersey Public Utility Commission; as Assignment Judge of the New Jersey Superior Court; and then as Governor of New Jersey from 1974-1982.

Mr. Byrne is a former Vice President of the National District Attorney's Association; Chairman of the National Commission on Criminal Justice Standards and Goals; Chairman,

Carella, Byrne

National Governors Association on International Trade; and trustee of Princeton University. He is an Editor of the New Jersey Law Journal and of Irish Law Reports; and former Chairman of the Princeton University Council on New Jersey Affairs and United States Marshals Foundation. He is a former member of the Board of Directors of Mack Cali Realty and Chelsea GCA.

Mr. Byrne was a member of the Board of Directors of Prudential Insurance Company of America, New Jersey Bell Telephone Company, Elizabethtown Water Company, Jamesway Corporation, Ingersoll-Rand and served as a Commissioner of the New Jersey Sports and Exposition Authority. He was litigation counsel to Carvel Corp. and Witco Corporation.

JAMES E. CECCHI
JCecchi@CarellaByrne.com

JAMES E. CECCHI is a member of the firm's executive committee and specializes in complex civil and chancery litigation in federal and state court as well as the prosecutor of complex federal class actions involving claims arising under federal securities laws, consumer protection laws and antitrust laws. Mr. Cecchi personally handled on behalf of the firm the Exxon class action litigation, Merck Securities litigation, KPMG class action litigation and is currently prosecuting securities class actions, antitrust class actions and numerous consumer fraud class actions on behalf of the firm. Mr. Cecchi joined the firm in 1994 after serving in the United States Department of Justice as an Assistant United States Attorney for the District of New Jersey. In that capacity, Mr. Cecchi participated in numerous significant criminal prosecutions involving money laundering, narcotics smuggling and violations of federal firearms laws.

Mr. Cecchi graduated from Colgate University in 1989 with honors, majoring in History and Political Science. Mr. Cecchi was Executive Editor of the Colgate News. In 1989 he graduated from Fordham University School of Law and was a member of the International Law Journal. Mr. Cecchi served as Law Clerk to the Honorable Nicholas H. Politan in the United States District Court, District of New Jersey from 1989-1991. He is a member of the Federal, New Jersey State, Essex County and Bergen County Bar Associations.

ELLIOT M. OLSTEIN
EOlstein@CarellaByrne.com

ELLIOT M. OLSTEIN, a member of the Executive Committee, has broad experience in intellectual property law including securing patent protection; licensing of technical information and patents; infringement and validity opinions; evaluating intellectual property rights for investors; and intellectual property litigation. His particular areas of expertise include chemical and biochemical inventions with particular emphasis on their medical applications.

He also has experience in corporate law and business financing, including venture capital financing, with specific emphasis on technically-oriented business.

Mr. Olstein graduated from Columbia College and Columbia School of Engineering, receiving an A.B. Degree in 1960 and a B.S.Ch.E. in 1961. He received a J.D. Degree from

Carella, Byrne

Georgetown University Law Center in 1965 and an LL.M. in taxation from New York University.

Mr. Olstein served for three years as Chairman of the Patents, Trademarks, Copyrights and Unfair Competition Section of the New Jersey Bar Association and is admitted to practice in the States of New Jersey, New York, and Virginia.

ARTHUR T. VANDERBILT II
AVanderbilt@CarellaByrne.com

ARTHUR T. VANDERBILT II joined Carella, Byrne, Cecchi, Olstein, Brody & Agnello in 1982. Since 1978, Mr. Vanderbilt has specialized in public finance law. He has been listed in the “Red Book” of approved municipal bond attorneys in the United States for over twenty-five years. He has had broad experience in general obligation bond and revenue bond financings as Bond Counsel, underwriter’s counsel, and trustee’s counsel, and has been involved with billions of dollars of financings. In addition, Mr. Vanderbilt has represented many clients before the New Jersey Board of Public Utilities, and is a registered Governmental Affairs Agent.

Mr. Vanderbilt graduated with an A.B. degree from Wesleyan University (magna cum laude) in 1972 and with a J.D. degree from the University of Virginia School of Law in 1975.

After a judicial clerkship with the Hon. Herman D. Michels, Presiding Judge of the New Jersey Superior Court, Appellate Division, Mr. Vanderbilt served as Deputy Attorney General of New Jersey, and Counsel to the New Jersey Board of Public Utilities. Before joining Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart, & Olstein, he served as Assistant Counsel to the Governor of New Jersey.

Mr. Vanderbilt is listed in *Who’s Who in America*, and, as the author of many books and articles about the law, in *Contemporary Authors*. He won the American Bar Association’s Scribes Award in 1976 for the best book about the law published that year, and was inducted into the New Jersey Literary Hall of Fame in 2001. Mr. Vanderbilt served as a member and chairman of a Supreme Court District Ethics Committee, and was a member of the Supreme Court’s Advisory Committee on Professional Ethics and a member of the New Jersey State Bar Association’s Task Force on Attorney Disciplinary System. He has served as a member and president of the Board of Trustees of the Elizabeth, New Jersey Presbytery; the Summit, New Jersey Free Public Library; The Manley-Winsor Foundation and Greenwood Gardens. He is a member of the American Bar Association, the New Jersey Bar Association, and the National Association of Bond Lawyers. He was named a fellow of the American Bar Foundation in 2000.

Carella, Byrne

JAN ALAN BRODY
JBrody@CarellaByrne.com

JAN ALAN BRODY a member of the Executive Committee, became associated with the firm of Cecchi & Politan in 1976. He became a partner in 1982 and, in 1987, the firm name was changed to Cecchi, Brody & Agnello when partner Nicholas H. Politan became a United States District Court Judge.

Mr. Brody graduated from Boston University cum laude in 1973 with an A.B. degree in political science. In 1976, he graduated Boston University Law School with a Juris Doctor degree. He has had extensive experience in complex civil and chancery litigation and has a substantial family law practice.

He is a member of the American, New Jersey State, and Bergen County Bar Associations. He has also served as counsel for the Fort Lee Planning Board and as a Standing Master appointed by the United States District Court for the District of New Jersey.

JOHN M. AGNELLO
JAgnello@CarellaByrne.com

JOHN M. AGNELLO joined the firm of Cecchi and Politan in 1979. In 1983, he became a partner in the firm. In 1987, he became a name partner as the firm's name was changed to Cecchi, Brody & Agnello after Nicholas H. Politan became a U.S. District Court Judge. Cecchi, Brody and Agnello merged with Carella, Byrne in 1990 at which time Mr. Agnello became a partner in Carella, Byrne.

Mr. Agnello graduated from Stevens Institute of Technology in 1975 receiving a B.E. with Honor in mechanical engineering. In 1979, he graduated from Seton Hall University School of Law receiving a J.D., Cum Laude. He has extensive experience in complex commercial litigation with particular emphasis on environmental, insurance coverage, ERISA and construction cases. Additionally, he has a substantial labor practice representing management (both public and private) in collective bargaining negotiations, labor mediation and arbitration proceedings, as well as actions before the National Labor Relations Board and the New Jersey Public Employment Relations Commission. Mr. Agnello also represents ERISA Pension and Welfare Funds.

He is a member of the American, Federal, New Jersey State, and Bergen County Bar Associations.

CHARLES M. CARELLA
CMCarella@CarellaByrne.com

CHARLES M. CARELLA is experienced in general counsel law, municipal law, bankruptcy matters including corporate insolvency and creditors' rights and general litigation. He received his B.S. in mechanical engineering from Lehigh University in 1979 and his M.B.A. from Iona College's Hagan School of Business in 1985. He received his J.D. degree from Fordham University School of Law in 1989. He is admitted to the Bars of the State of New Jersey; The United States District Court for the District of New Jersey; the State of New York;

Carella, Byrne

and the United States District Courts for the Southern and Eastern Districts of New York. He is a member of the New Jersey State and New York Bar Associations. He is currently outside General Counsel for the Archdiocese of Newark and is a member of the Professionals Group Advisory Council for Valley National Bank. He was formerly Township Attorney for the Township of Nutley, New Jersey, 1996. He formerly served as a member of the Board of Trustees of Caldwell College and a member of the Board of Governors of the CYO Youth Ministries of the Archdiocese of Newark, New Jersey.

LINDSEY H. TAYLOR
LTaylor@CarellaByrne.com

LINDSEY H. TAYLOR, specializes in complex commercial litigation in federal court. He graduated received a bachelor's degree with honors from the University of North Carolina at Chapel Hill in 1983 and a juris doctor degree in 1986. He joined Carella, Byrne, Cecchi, Olstein, Brody & Agnello as of counsel in 2002 and became a partner in 2008. He is admitted to the bars of the States of New Jersey and New York, the District of Columbia, and the United States District Courts for the District of New Jersey, Southern and Eastern Districts of New York, and the Eastern District of Michigan, the United States Courts of Appeal for the Second, Third, and Sixth Circuits, and the United States Supreme Court. Reported cases: *In re Suprema Specialties*, 285 Fed.Appx. 782 (2d Cir. 2008)(whether N.J. Affidavit of Merit Statute applied to malpractice claim brought by N.Y. bankruptcy trustee against NJ based accountants); *Thoroughbred Software International, Inc. v. Dice Corp.*, 488 F.3d 352 (6th Cir. 2007) *aff'g in part and rev'g in part* 439 F.Supp.2d 758 (E.D.Mich. 2006) *on remand* 529 F.Supp.2d 800 (E.D.Mich. 2007)(copyright infringement of computer software); *Yuen v. Bank of China*, 151 Fed.Appx. 106 (3d Cir. 2005)(whether NJ or NY law applied to oral settlement agreement); *Aetna Casualty and Surety Co. v. Aniero Concrete Co.*, 404 F.3d 566 (2d Cir. 2005)(whether construction contract was valid because of a failure to satisfy a condition precedent and remedies if there was no valid contract); *Lucent Information Management, Inc. v. Lucent Technologies, Inc.*, 186 F.3d 311 (3d Cir. 1999)(how much "use on commerce" is necessary to obtain trademark protection); *Circle Industries USA, Inc. v. Parke Construction Group, Inc.*, 183 F.3d 105 (2d Cir.) *cert. denied* 120 S.Ct. 616 (1999)(what is the citizenship for diversity purposes for corporation which has ceased doing business); *Brown v. Grabowski*, 922 F.2d 1097 (3d Cir. 1990), *cert. denied* 111 S.Ct. 2827 (1991)(civil rights claim relating to right to protection); *Hall v. AT&T Mobility*, 608 F.Supp.2d 592 (D.N.J. 2009)(enforceability of class action waiver in arbitration clause); *In re Mercedes-Benz TeleAid Contract Litigation*, 257 F.R.D. 46 (D.N.J. 2009)(class certification of 50 state consumer fraud class); *Harper v. LG Electronics, Inc.*, 595 F.Supp.2d 486 (D.N.J. 2009)(motion to dismiss consumer fraud class action); *Coppolino v. Total Call International*, 588 F.Supp.2d 594 (D.N.J. 2008)(whether prior settlement was entitled to Full Faith and Credit); *Waudby v. Verizon Wireless Services LLC*, 228 F.R.D. 173 (D.N.J. 2008)(motion to intervene and appointment of class counsel); *In re Gabepentin Patent Litigation*, 395 F.Supp.2d 175 (D.N.J. 2005)(motion for summary judgment in Hatch-Waxman patent infringement case); *Euro-Pro Corporation v. TriStar Products*, 172 F.Supp.2d 567 (D.N.J. 2001)(whether shape of hand-held vacuum had acquired secondary meaning for trademark protection); *Biovail Corporation International v. Hoechst AG*, 49 F.Supp.2d 750 (D.N.J. 1999)(antitrust claim related to settlement agreement to pay generic drug maker to keep product off the market); *Broadcast Music, Inc. v. 84-88 Broadway, Inc.*, 942 F.Supp. 225 (D.N.J. 1996)(copyright infringement);

Carella, Byrne

Broadcast Music, Inc. v. DeGallo, Inc., 872 F. Supp. 167 (D.N.J. 1995)(copyright infringement); *Lifschultz Fast Freight v. Rainbow Shops*, 805 F.Supp. 1119; 784 F.Supp. 89 (S.D.N.Y. 1992)(claims relating to negotiated freight charges made in excess of published tariffs); *McGill v. Mountainside Police Dept.*, 720 F.Supp. 418 (D.N.J. 1989)(civil rights claims); *In Re Sound Radio, Inc.*, 145 B.R. 193 (Bankr., D.N.J. 1992)(motions to pay professional fees from bankruptcy estate); *In Re Prestegaard*, 139 B.R. 117 (Bankr., S.D.N.Y. 1992)(extent to which homestead exemption can avoid mortgage); *Unanue v. Rennert*, 39 A.D.2d 289, 831 N.Y.S.2d 904 (1st Dept. 2007)(appeal of *sua sponte* order); *Downs v. Yuen*, 298 A.D.2d 177, 748 N.Y.S.2d 131 (1st Dept. 2002)(enforceability of Hong Kong divorce decree under international comity); *Velazquez v. Jiminez*, 336 N.J.Super. 10 (App.Div. 2000)(whether Good Samaritan statute applies to physician responding to emergency in the hospital); *Conestoga Title Insurance Co. v. Premier Title Agency*, 328 N.J.Super. 460 (App.Div. 2000)(whether corporation can make fidelity bond claim for thefts by sole owner of corporation); *Citibank v. Errico*, 251 N.J.Super. 236 (App. Div. 1991)(whether NJ or NY law applies to deficiency judgment on defaulted mortgage). Publications: “Responding to the Complaint” in *New Jersey Federal Civil Procedure*, New Jersey Law Journal Books, 3d Ed. 2009; “Applying the CISG to International Software Transactions”, *Metropolitan Corporate Counsel*, October 1999, “The Digital Millennium Copyright Act: New Protections for the Computer Age”, Intellectual Property Supplement, *New Jersey Law Journal*, July 26, 1999; “Copyright Basics for Occupational Therapy Practitioners”, *OT Practice*, May 1999, “Facing the New Millennium-Without Bugs”, *OT Practice*, December 1998; “The Year 2000 Malpractice Bug: Waiting to Trap the Unwary Attorney”, for National Legal Malpractice Conference, sponsored by ABA Standing Committee on Lawyers’ Professional Liability, September 1998; “Self-Help in 2000: How a business can do its own Y2K compliance without violating copyright laws”, Intellectual Property Supplement, *New Jersey Law Journal*, July 20, 1998; “State and Local Taxation of Software: A Trap for the Unwary CIO” Chief Information Officer Journal, Fall 1989. Lectures: “Intellectual Property Basics for Health Care Attorneys”, 2004 Health & Hospital Law Symposium, New Jersey Institute for Continuing Legal Education, October, 15, 2004; “Hot Topics in Copyright Law”, 2003 Intellectual Property Summit, New Jersey Institute For Continuing Legal Education, May 2, 2003; “The Inside Track on Copyright Law”, WYNY 103.5 First Annual “Country Holiday Expo” songwriters’ seminar, November 18, 1995. Practice areas: Commercial Litigation; Intellectual Property Litigation; Bankruptcy. Mr. Taylor was a merit selection to the 2005, 2008, 2009 and 2010 New Jersey “Super Lawyers”.

JAMES T. BYERS

JByers@CarellaByrne.com

JAMES T. BYERS has been a member of Carella, Byrne, Cecchi, Olstein, Brody & Agnello since 1981 and during that time has been engaged in general corporate, real estate and banking law and tax exempt bond financing. He has broad expertise in many areas of corporate practice, including real estate and asset based lending, mergers and acquisitions, purchase and sale of real estate and corporate counseling; and as Bond Counsel in connection with the issuance of tax exempt bonds. Mr. Byers graduated from Rutgers College with an A.B. degree in 1974 and received a J.D. degree from George Washington University in 1979. He has lectured and participated in panel discussions on financing and banking law subjects. He is a member of the American and New Jersey State Bar Associations and a member of the National Association of Bond Lawyers.

Carella, Byrne

DONALD F. MICELI
DMiceli@CarellaByrne.com

DONALD F. MICELI specializes in financial matters including federal income taxation, state and real property taxation, taxation litigation and rate making matters before the New Jersey Board of Public Utilities. His practice also includes the representation of developers before local planning boards. He received a B.A. degree from Seton Hall University, an LL.B. degree from Rutgers University, and an LL.M. degree from New York University. He is admitted to the bar of the State of New Jersey and the United States Tax Court. Mr. Miceli has served as Assistant Corporation Counsel, City of Newark, and as Tax Consultant to the Essex County Board of Taxation.

A. RICHARD ROSS
RRoss@CarellaByrne.com

A. RICHARD ROSS is a member of the Litigation and Corporate Departments of the Firm. He has broad experience in complex litigation, corporate, securities, tort and banking matters. Mr. Ross is particularly experienced in international matters including asset recovery and transnational commercial ventures. He also has extensive experience in equity practice and equitable receiverships, and has engaged in a wide range of real estate, trust and estates and commercial loan transactions. Mr. Ross graduated with a B.A. degree from Reed College in 1972, and received a J.D. degree from New York Law School in 1977. He served as a Staff Attorney in the Office of the President, New Jersey Civil Service Commission in 1977, and in the Office of Legal Counsel, New Jersey Supreme Court from 1978-1982, where he also served as an ex-officio member of the Supreme Court Committee on Civil Practice. He is a member of the New Jersey Supreme Court and District Ethics Committee, New Jersey State Bar Association and the American Bar Association (member of the International, Litigation, Business Law, Tort and Insurance and Real Estate, Property and Probate Sections). Mr. Ross has numerous reported decisions including *SEC v. Antar*, 831 F. Supp. 380 (D.N.J. 1993), *judgment aff'd* 54 F. 3d 770 (3d Cir. 1995); *In re National Smelting Inc. of New Jersey Bondholders' Litigation*, 722 F. Supp. 152 (D.N.J. 1989); and *Reinfeld Inc. v. Schieffelin & Co.*, 94 N.J.(1984). Mr. Ross was a merit selection to the 2005, 2008 and 2009 New Jersey "Super Lawyers".

KENNETH L. WINTERS
KWinters@CarellaByrne.com

KENNETH L. WINTERS is primarily engaged in the areas of construction law, anti-trust, trademarks, copyrights, constitutional challenges to commercial regulatory statutes, computer and software law and general disputes. He also has extensive appellate experience. Mr. Winters graduated from the University of South Carolina in 1977 with a Bachelor of Arts Degree (magna cum laude), and became a member of Phi Beta Kappa that year. He received his J.D. degree from Duke University in 1980. He served a one year clerkship with a judge of the Superior Court of New Jersey and thereafter has been in private practice. Mr. Winters is admitted to the state and federal bars of New Jersey, and to the bars of the United States Courts of Appeal for the Third Circuit, the Federal Circuit, and the Eleventh Circuit. He is a member of the American, New Jersey State, and Essex County Bar Associations.

Carella, Byrne

JEFFREY A. COOPER
JCooper@CarellaByrne.com

JEFFREY A. COOPER specializes in bankruptcy matters involving corporate insolvency and creditors' rights litigation. He received his B.A. degree in History from Yale University in 1977 and his J.D. degree from Cornell University, 1980, where he was a Member Phi Alpha Phi. Jeffrey was an Assistant Prosecutor, Essex County, New Jersey from 1981 – 1983, a Member of the Fee Arbitration Committee District VC, Essex County, 1991 – 1995 and a Master, Bankruptcy Inn of Court, 1993 – 1994. He is admitted to the Bars of the State of New Jersey; the United States District Court for the District of New Jersey; the State of New York, the United States District Courts for the Southern and Eastern Districts of New York; and the United States Courts of Appeal for the Second and Third Circuits. He is a Member, New Jersey State Bar Association and the American Bankruptcy Institute. Jeffrey has been a Member of the Merit Selection Panel (which recommends bankruptcy judge appointments to the Third Circuit Court of Appeals) in 1998, 2000 and 2001. He also has been selected as a "Super Lawyer" in 2005, 2006, 2007 and 2009. Jeffrey is a Member of the Board of Directors and also the Chair of the Bankruptcy Section of the State Capital Global Law Firm Group, an association of law firms around the world.

CARL R. WOODWARD III
CWoodward@CarellaByrne.com

CARL R. WOODWARD III is experienced in environmental law, municipal law, zoning and planning, real estate, insurance, personal injury and general civil litigation. He received a B .A. degree, Rutgers University, 1965, and a J.D. degree, Rutgers University of Law, Newark, New Jersey, 1968. He served as Captain, United States Army, 1969-1971. Mr. Woodward was Law Secretary to the Honorable Baruch S. Seidman, Superior Court of New Jersey, Chancery Division. He served as Assistant United States Attorney, District of New Jersey, Chief, Environmental Protection Division, 197 1-1978. He is Township Attorney, Township of Chatham, 1992-present, Attorney, Borough of New Providence 1995-present, and Township Attorney, Township of Cranford 2007. He was formerly Attorney, Chatham Township Board of Adjustment, 1979-1992 and Attorney, Borough of New Providence Planning Board 1986-1994. He was Adjunct Professor of Law, Seton Hall University School of Law in 1985; President of the Rutgers Alumni Association from 1984-1985; and Trustee of Rutgers University from 1985-1991. He currently serves as a Trustee of the New Jersey Institute of Local Government Attorneys. He is a member of the American Bar Association, New Jersey State Bar Association, and Morris County Bar Association.

MELISSA E. FLAX
MFlax@CarellaByrne.com

MELISSA E. FLAX is a member of the Litigation Department of the firm. She received an A.B. Degree from the University of Michigan; American University, London, England and a J.D. Degree from Loyola University where she was a member of Loyola University Law Review. Ms. Flax served as a Law Clerk from 1992-1993 to Hon. Julio M. Fuentes, Superior

Carella, Byrne

Court of New Jersey, Essex County. She is a member of New Jersey State and New York State Bar Associations.

DENNIS F. GLEASON
DGleason@CarellaByrne.com

DENNIS F. GLEASON is a graduate of the City University of New York having received a Bachelor of Arts in 1975. In 1980 he received a Master of Arts from New York University. Mr. Gleason received his *Juris Doctor* from Seton Hall University School of Law in 1986 and was admitted to practice to the New Jersey Bar and United States District Court for the District of New Jersey in 1987. He is also admitted to practice before the United States Supreme Court; the United States Courts of Appeals for the Federal, Third, Sixth, and Seventh Circuits. He has also been admitted to numerous United States District Courts throughout the country. His practice focuses on commercial and complex litigation with particular emphasis in area the of intellectual property matters including patents, trademarks, copyrights, unfair competition and trade secrets. Mr. Gleason has also litigated matters on behalf of policyholders regarding insurance coverage and defended employment discrimination claims. Mr. Gleason also lectures and publishes in the areas of litigation procedure and intellectual property litigation. Mr. Gleason is member of the American Bar Association (Litigation and Intellectual Property Sections); New Jersey Bar Association (Vice President Federal Practice and Procedure Section); and Association of the Federal Bar of the State of New Jersey.

DAVID G. GILFILLAN
DGilfillan@CarellaByrne.com

DAVID G. GILFILLAN, born Washington, D.C., April 23, 1966; admitted to bar, 1993, New Jersey and U.S. District Court, District of New Jersey. Education: Boston College (B.A., 1988); Seton Hall University (J.D., 1993). Member, Worrall F. Mountain Inn of Court. Reported Cases: *Handy & Harmon, et al v. Borough of Park Ridge*, 302 N.J. Super. 558 (App. Div. 1997).

G. GLENNON TROUBLEFIELD
GTroublefield@CarellaByrne.com

G. GLENNON TROUBLEFIELD, born Belleville, New Jersey, October 3, 1966; admitted to bar, 1991, New Jersey and U.S. District Court, District of New Jersey; 1992, Pennsylvania and U.S. District Court, Eastern District of Pennsylvania; registered to practice before U.S. Patent and Trademark Office. Education: University of Pittsburgh (B.S.M.E., 1988); Seton Hall University (J.D., 1991). Law Clerk to Honorable Virginia A. Long, Judge, New Jersey Superior Court, Appellate Division, 1991-1992. Member, 1989-1990, Articles Editor, 1990-1991, Seton Hall Legislative Law Journal. Member: New Jersey State, Garden State and American Bar Associations. Practice Areas: Patents; Trademarks; Copyrights; Unfair Competition; Intellectual Property Litigation.

BRIAN H. FENLON
BFenlon@CarellaByrne.com

Carella, Byrne

BRIAN H. FENLON, born New York, N.Y., October 30, 1962; admitted to bar, 1987, New Jersey and U.S. District Court, District of New Jersey. Education: Muhlenberg College (A.B., 1984); Seton Hall University (J.D., 1987). Phi Alpha Theta. Member: Morris County and Essex County Bar Associations; Worrall F. Mountain Inns of Court.

OF COUNSEL

RICHARD K. MATANLE has broad experience in real estate, banking, general contract and business matters as well as commercial litigation. Within these fields of concentration, he has extensive experience in commercial lending and real estate transactions, including commercial real property leasing. His commercial loan transaction experience includes creditors' rights, litigation and loan workouts. He received a B.A. degree from the State University of New York at Buffalo and a J.D. degree from Hofstra University School of Law. Mr. Matanle was previously Associate Counsel with the Chase Manhattan Bank, N.A. and a partner in the law firm of Blackburn, Rice and Matanle. He also served as counsel with the Federal Deposit Insurance Corporation. He is admitted to the Bars of the State of New Jersey and New York and to the Bars of the United States District Courts in both States.

DONALD S. BROOKS received a B.A. degree from Columbia College and an LLB degree from Columbia University Law School. He served as a Trial Attorney with the National Labor Relations Board and immediately prior to joining Carella, Byrne, he was Senior Counsel for Merck & Co., Inc. During his twenty-seven-year career with Merck, Mr. Brooks coordinated a wide variety of general corporate work for the company, including negotiations and preparation of contracts, regulatory compliance and worldwide labor relations activities. Most recently he supervised the legal aspects of the company's worldwide technology transfer activities, including planning, negotiations and drafting licensing agreements, strategic alliances and joint as well as marketing, distribution, supply and research related agreements. Mr. Brooks has also served as a U.S. delegate to the International Labor Organization in Geneva, Switzerland. He is a member of the New Jersey and Pennsylvania Bar Association and has served as Chairman of the Corporate Law Section of the New Jersey Bar Association. Mr. Brooks is also a member of the New York Bar and has published articles on labor relations, joint ventures and training and development in corporate law departments.

FRANCIS C. HAND, born New York, N.Y.; admitted to bar, 1964, District of Columbia; 1965, New York; 1971, New Jersey; registered to practice before U.S. Patent and Trademark Office. Education: Manhattan College (B.C.E.); Georgetown University (J.D.). Arbitrator, American Arbitration Association. Member: New York State, New Jersey State and American Bar Associations; The District of Columbia Bar. Mr. Hand was previously a partner in the patent law firm of Kenyon & Kenyon for twenty years and presently represents domestic and foreign corporations in the prosecution of patents and trademarks and the litigation of patents in the federal courts. Practice Areas: Patents; Trademarks; Licensing; Litigation.

AVRAM S. EULE, born Newark, New Jersey, April 9, 1948; admitted to bar, 1971, New Jersey and U.S. District Court, District of New Jersey; 1986, U.S. Supreme Court. Education: Rutgers University (A.B., 1968); University of Oklahoma (J.D., 1971). Phi Alpha Delta. Member, Board of Governors, Rutgers Alumni Federation, 1974-1978. Board of Trustees,

Carella, Byrne

Temple Beth Am, 1989-1994; Task Forces, United Jewish Federation of MetroWest, 1992-1998. Member: American Bar Association. Reported Cases: *Dienco, Inc. v. Security National Bank of New Jersey*, 221 N.J.Super. 438 (App. Div. 1987). Practice Areas: Transactional Law; Real Estate Law; Commercial Litigation; Corporate Law; Loan Workouts.

RAYMOND W. FISHER, born Newark, New Jersey, June 8, 1949; admitted to bar, 1975, New Jersey and U.S. District Court, District Court of New Jersey; 1981, U.S. Supreme Court; 1982, U.S. Court of Appeals, Third Circuit. Education: Georgetown University (B.A., cum laude, 1971); Fordham University (J.D., 1975). Phi Beta Kappa. Member, Fordham Law Review, 1974-1975. Clerk to Honorable Thomas F. Murphy, United States District Court Judge, Southern District of New York, 1975-1976. Member New Jersey State and American Bar Association. Practice Areas: Litigation and Appeals in state and federal courts; General Practice; Employment Law; Commercial Law; Computer Law.

ASSOCIATES

RAYMOND J. LILLIE has experience in patent and trademark cases, including patent application prosecution, interferences, and validity and infringement studies. Mr. Lillie received his B.S. degree (magna cum laude) from the University of Scranton in 1981. He received a J.D. degree from the Marshall-Wythe School of Law, College of William and Mary in 1984. He is registered to practice before the United States Patent and Trademark Office.

He is a member of the American and New Jersey State Bar Associations, and a Fourth Degree member of the Knights of Columbus.

WILLIAM SQUIRE graduated from Newark College of Engineering (NJIT) in 1959 with a BS degree in Mechanical Engineering. In 1968, he received his juris doctor degree from Seton Hall University, Newark, N.J. He is admitted to the bar of the State of New Jersey. He is admitted to the United States District Court for the District of New Jersey, the United States Supreme Court and the Court of Appeals for the Federal Circuit. He is a registered patent attorney in the United States Patent and Trademark Office, having been registered in 1970.

He is a member of the New Jersey State Bar Association, The American Intellectual Property Law Association and The New Jersey Intellectual Property Law Association.

ALAN J. GRANT, born Brooklyn, New York, March 8, 1950; admitted to bar, 1985, New York; 1989, U.S. District Court, Southern and Eastern Districts of New York; 1993, U.S. Court of Appeals, Federal Circuit; registered to practice before U.S. Patent and Trademark Office. (Not admitted in New Jersey). Education: St. Francis College (B.S., 1972); State University of New York, Downstate Medical Center (Ph.D., 1979); Brooklyn Law School (J.D., 1985). Member: New York State Bar Association. Practice Areas: Patent Law; Trademark; Copyright.

STEPHEN R. DANERK, born Newark, New Jersey, May 3, 1964; admitted to bar 1989, New Jersey and U.S. District Court, District of New Jersey, 1989. Education: Muhlenberg

Carella, Byrne

College (B.A., Political Science, 1986); Seton Hall School of Law (J.D. 1989). Practice Areas: Personal Injury Litigation; Environmental Law.

DONALD ECKLUND Donald Ecklund focuses his practice on all aspects of complex commercial disputes, environmental litigation, consumer fraud, and class action litigation. Prior to joining the firm, Donald was an associate at a prestigious New York law firm for four years where he represented clients in complex products liability litigation, as well as various environmental contamination cases and other matters. Donald has served on committees in several multi-district litigations (MDLs) involving pharmaceutical drugs and medical devices. Most recently, he has been extensively involved in class action litigation arising from deceptive sales practices and engaged in commercial litigation relating to direct broadcast satellite television.

A former law clerk for the Honorable Marina Corodemus, Mass Tort Judge for the State of New Jersey (Retired), where he focused on complex mass tort and environmental litigation, and for the Honorable Joseph C. Messina, Presiding Judge Chancery Division, General Equity Part, Superior Court of New Jersey (Retired) where he focused on business and commercial litigation, Donald brings unique insights and effective advocacy skills. Donald values the views of and input from his clients, and strives to meet their needs and obtain optimal outcomes.

Donald is admitted to the Bars of the States of New Jersey and New York, and the United States District Courts for the Southern and Eastern Districts of New York and the District of New Jersey.

AUDRA E. PETROLLE graduated with a Bachelor of the Arts from New York University in 2005. In 2008, Ms. Petrolle received a Juris Doctor Degree from Seton Hall University School of Law. Formerly, Ms. Petrolle served as a law clerk to the Honorable Dennis M. Cavanaugh, U.S.D.J. in the United States District Court for the District of New Jersey during the 2009-2010 clerkship term. In 2010, Ms. Petrolle joined this firm as an associate in the litigation department with a focus on complex civil litigation, including class action and multidistrict matters. Ms. Petrolle is admitted to practice before the New Jersey State Bar, New York State Bar and the United States District Court for the District of New Jersey.

MEGAN A. NATALE graduated from Seton Hall University with a Bachelor of the Arts degree in 2007. In 2010, Ms. Natale received a Juris Doctor degree from New York Law School. In 2011, Ms. Natale joined this firm as an associate. She engages in general and complex civil litigation, with a focus on personal injury litigation, employment law, and municipal law. Ms. Natale is admitted to practice before the New Jersey State Bar and the United States District Court for the District of New Jersey.

AMANDA J. BARISICH engages in general civil litigation in state and federal court. She received a B.S. degree from Lehigh University in 2007 and Juris Doctor degree with a concentration in Intellectual Property from Seton Hall University School of Law in 2010. Prior to entering this firm, Ms. Barisich clerked for the Hon. Bernadette N. DeCastro, J.S.C. in the Civil Division of the Superior Court of New Jersey, Hudson Vicinage.

Carella, Byrne

ZACHARY S. BOWER graduated with a Bachelor of Arts in Economics and History from the University of Michigan in 2000 and received his J.D. from Boston University School of Law in 2004. After receiving his J.D., Mr. Bower served as a Law Clerk for the Honorable Judge K. Michael Moore in the United States District Court for the Southern District of Florida from September 2004 to September 2005. After his clerkship, Mr. Bower joined the law firm of Stearns Weaver Miller in Miami, FL where his practice focused on complex commercial matters such as securities litigation, fraud, and banking litigation as well as all aspects of class action litigation on behalf of both plaintiffs and defendants. Mr. Bower's current practice focuses primarily on multidistrict class action litigation. Ms. Bower is admitted to practice before the Florida State Bar and the United States District Court for the Southern District of Florida.

CAROLINE F. BARTLETT is a member of the litigation department of the firm. Ms. Bartlett received an A.B. Degree from Barnard College, Columbia University and a J.D. Degree *magna cum laude* from Seton Hall University School of Law where she received the Raymond Del Tufo Award and the Chicago Title Insurance Award for academic excellence in Constitutional Law and Real Property, respectively. During law school, Ms. Bartlett served as an articles editor for the *Seton Hall Law Review*. Before entering private practice, Ms. Bartlett was a judicial clerk for the Honorable Michael A. Chagares of the U.S. Court of Appeals for the Third Circuit and the Honorable John C. Lifland, U.S.D.J., and the Honorable Madeline Cox Arleo, U.S.M.J., of the U.S. District Court for the District of New Jersey. Prior to joining this firm, Ms. Bartlett engaged in commercial litigation, products liability and mass tort defense at the law firm of Patton Boggs LLP. Ms. Bartlett is active in the community and currently serves as a Director of the Federal Historical Society of the New Jersey District Court and has served on the executive boards of several non-profit organizations. She is admitted to practice in New Jersey and the District of Columbia.

Carella, Byrne

MEMBERS OF THE FIRM

CHARLES C. CARELLA
BRENDAN T. BYRNE
JOHN N. BAIN
PETER G. STEWART
ELLIOT M. OLSTEIN
ARTHUR T. VANDERBILT II
JAN ALAN BRODY
JOHN M. AGNELLO
CHARLES M. CARELLA
JAMES E. CECCHI
JAMES T. BYERS
DONALD F. MICELI
A. RICHARD ROSS
KENNETH L. WINTERS
JEFFREY A. COOPER
CARL R. WOODWARD III
MELISSA E. FLAX
DENNIS F. GLEASON
DAVID G. GILFILLAN
G. GLENNON TROUBLEFIELD
BRIAN H. FENLON
LINDSEY H. TAYLOR
RAYMOND J. LILLIE
WILLIAM SQUIRE
ALAN J. GRANT
STEPHEN R. DANEK
ERIC MAGNELLI
DONALD A. ECKLUND
AUDRA E. PETROLLE
MEGAN A. NATALE
AMANDA J. BARISICH
ZACHARY S. BOWER
CAROLINE F. BARTLETT

RICHARD K. MATANLE, II
DONALD S. BROOKS
FRANCIS C. HAND
AVRAM S. EULE
RAYMOND W. FISHER

(Of Counsel)

Exhibit E



Introduction

Whatley Kallas, LLP, is comprised of a nationally recognized group of attorneys with a long history of representation of plaintiffs and plaintiff classes in complex litigation, especially in the consumer and healthcare area.

Whatley Kallas operates offices in San Diego, Los Angeles, and San Francisco, California, as well as in Atlanta, Birmingham, New York, Boston, and Aspen, Colorado.

The attorneys of Whatley Kallas have gained a national reputation for their aggressive litigation style and quality legal work, particularly in their handling of complex cases. Collectively, the attorney group has tried numerous cases to verdict and has recovered billions of dollars in cash and significant corporate reforms for their clients

The lawyers of Whatley Kallas have been repeatedly recognized in legal publications, such as *The National Law Journal* and *American Lawyer*, by their peers.

The lawyers of Whatley Kallas, many of whom were formerly with Whatley Drake & Kallas, will continue to seek leadership roles in significant complex class action and derivative litigation, including consumer fraud and abuse litigation as well as other areas of litigation. These lawyers participate in class actions and complex cases across the United States, effecting meaningful change through settlements and verdicts for classes of people, businesses and pension funds.

Whatley Kallas's partners have served as co-lead counsel in numerous high profile class actions that have recovered billions of dollars for class members, and have achieved significant corporate reforms. Examples of recent cases in which the partners served in a leadership role and was extensively involved in the litigation and negotiation of settlements include: In re: Managed Care Litigation (resulting in billions of dollars in cash and value to a class of 900,000 physicians throughout the United States); In re Insurance Brokerage Antitrust Litigation (settlements with defendants Zurich Insurance Company and Arthur J. Gallagher on behalf of commercial policyholders for in excess of \$130 million); In re: Qwest Savings and Retirement Plan ERISA Litigation (approximately \$37.5 million); In re: HealthSouth Corporation Securities Litigation (\$445 million); In re Denney v. Jenkins & Gilchrist (\$81.6 million settlement on behalf of former clients of Jenkins & Gilchrist in connection with illegal tax shelters); In re MedPartners Securities Litigation (\$65 million); In re Mattel Lead Paint Contaminated Toy Litigation (tens of million dollars in value to the class).

The firm's lawyers have gained a national reputation for its aggressive litigation style and its quality legal work. A significant aspect of the Firm's resources is its ability to try a complex case. One of the Firm's founding partners, Joe R. Whatley, Jr., is an experienced trial lawyer and is one of the few lawyers representing plaintiffs in complex class action litigation who has tried a class action case to verdict. He won a \$1.28 billion jury verdict on behalf of a class of cattle ranchers against Tyson Fresh Meats, Inc. in *Pickett v. Tyson Fresh Meats, Inc.*, No. 96-A-1103-N (M.D. Ala.). Mr. Whatley also won what was at the time the largest wrongful death verdict in Louisiana history in *Dunn v. Consolidated Rail Corp.*, 890 F. Supp. 1262 (M.D.La. 1995). Mr. Whatley's experience in this regard has made him a highly sought after member of plaintiffs' leadership groups in numerous complex and multidistrict litigations.

The firm's partners have also gained a national reputation for their consistent dedication to the interests of their clients by achieving results which include both compensation to victims of wrongdoing and significant industry reforms.

Firm Litigation

Consumer Class Litigation

Whatley Kallas lawyers will continue with representation of consumers in class action cases. Cases in which lawyers of the firm have participated include:

Spencer v. Shell Oil. Homeowner suit in connection with polybutylene plumbing throughout the United States in this action in the Circuit Court of Greene County, Alabama. A settlement of approximately \$1 billion to repair and replace leaking pipes and fittings for homeowners was obtained.

In re Mattel, Inc. Toy Lead Paint Products Liability Litigation, MDL No. 1897. Class of consumers of recalled toys due to their lead content or that were defectively designed with magnets which could come loose potentially injure children manufactured and sold by Mattel and Fisher Price. A settlement providing for refunds of the purchase price of the toys and reimbursement for prior lead testing was obtained for class members and approved by the United States District Court for the Central District of California.

Pineda v. Vitamin Shoppe. Class of purchasers of Vitamin Shoppe's "Especially for Women" vitamins. The complaint alleged that testing revealed that some of these vitamins were contaminated by lead and/or contained less calcium than the label indicated. Vitamin Shoppe denied all wrongdoing. A settlement was obtained on behalf of the class, who received refunds of 100% of the value of the purchase price of the products or 125% of the purchase price if they choose store credit, which was approved by the Superior Court for Bergen County, New Jersey.

White v. Bed Bath and Beyond. A class of purchasers of bedding and linen products from Bed Bath and Beyond. Bed Bath and Beyond inflated the thread count of certain two-ply and multiply linens and other bedding products by counting threads in a manner which the Federal Trade

Commission has ruled is deceptive to consumers. A settlement was reached with Bed Bath and Beyond, which provided refunds or gift cards to purchasers of these bedding products, which was approved by the United States District Court for the District of New Jersey.

Securities, Derivative and 401(k) Litigation

The Partners of Whatley Kallas have been appointed to leadership positions in numerous securities and 401(k) class actions and derivative litigation. Examples of cases in which the firm's lawyers currently hold or have held a leadership position include, among others, the following:

In re HealthSouth Corporation Securities Litigation. Liaison Counsel in this securities class action pending in the United States District Court for the Northern District of Alabama. Settlement of more than \$670 million have been obtained for class members.

Hildebrand v. W Holding Company. Co-Lead Counsel in this securities class action against W Holding Company, WesternBank Puerto Rico and certain individuals pending in the United States District Court for the District of Puerto Rico.

In re MedPartners Securities Litigation. Liaison Counsel in this action which was filed in Circuit Court of Jefferson County, Alabama on behalf of a class of shareholders against MedPartners. A settlement of \$65 million was obtained and approved by the court.

In re Qwest Savings and Retirement Plan ERISA Litigation. Joe R. Whatley, Jr. was appointed Co-Lead Counsel in this class action filed on behalf of all participants and beneficiaries of Qwest's 401(k) retirement plan. The suit alleged that various fiduciaries of the plan failed to properly exercise their duties as required under ERISA. A settlement of approximately \$37.5 million was obtained and approved by the court.

In re Rankin v. Conaway (Kmart). Lead Counsel in this class action on behalf of participants and beneficiaries of Kmart's Retirement Savings Plans who lost money when Kmart filed for bankruptcy. The suit alleged that various fiduciaries of the Plan failed to properly exercise their duties as required under ERISA. WD&K obtained a settlement of \$11.75 million that was approved by the court.

In re Xcel Energy. Co-Lead Counsel on behalf of participants and beneficiaries of Xcel's 401(k) Retirement Plan. A settlement of \$8 million was obtained and approved by the court.

In re Broadwing, Inc. ERISA Litigation. Co-Lead Counsel in this class action brought on behalf of the participants and beneficiaries of Cincinnati Bell, Inc. Savings and Securities Plan, the Broadwing Retirement Savings Plan, and the Plans themselves, to remedy defendant's breaches of fiduciary duty under ERISA. A settlement of \$11 million was obtained and approved by the court.

McPhail, et al. v. First Command, et al. Co-Lead Counsel representing a class of military and former military families that were defrauded by First Command. First Command and its officers

are being sued because they sold to military families unsuitable financial products that contained, among other things, a 50% sales load in the first year of the product. Class certification was won and that decision was upheld by the Ninth Circuit Court of Appeals. First Command appealed that decision to the Supreme Court of the United States and cert was denied. A settlement of \$12 million obtained for class members.

Insurance and Healthcare Litigation

Whatley Kallas is a leader in complex litigation against the largest insurance, brokerage and managed care companies in the world. The lawyers at Whatley Kallas have been appointed to leadership positions in the following cases, among others:

Love v. Blue Cross Blue Shield Association, Co-Lead Counsel in this action pending in the United States District Court for the Southern District of Florida. Settlements have been reached with approximately ninety percent (90%) of the defendants. The settlements provide for in excess of \$130 million of monetary benefits and practice change relief valued in excess of two billion dollars.

In re Managed Care Litigation, MDL No. 1334. Member of the Plaintiffs' Steering Committee and represents a class of physicians against nine of the largest managed care providers in the United States including AETNA, CIGNA, United, Healthnet, Humana, PacifiCare, Prudential and WellPoint. The suit alleged that these defendants engaged in a civil conspiracy in violation of the Racketeering Influenced and Corrupt Organizations Act ("RICO") to wrongfully and fraudulently pay doctors less than the amounts to which they were entitled. Settlements were reached with AETNA, CIGNA, Healthnet, Humana, Prudential and Wellpoint consisting of monetary relief and significant business practice changes valued in the billions of dollars have been obtained and approved by the court.

In re Monumental Life Insurance Company, Industrial Life Insurance Litigation. Member of the Plaintiffs' Steering Committee in this action pending in the United States District Courts for the Eastern District of Louisiana seeking redress for discriminatory practices of many major insurance companies with respect to the sale of life insurance products to minorities. Settlements of approximately \$500 million dollars have been obtained in these cases and approved by the court.

Feller v. Blue Cross of California. Class Action successfully brought to remedy the practice of trapping members in a closed plan subject to dramatically increasing premiums. Under the settlement, among other relief, class members are allowed to switch plans without underwriting until 2014, at which time preexisting conditions will no longer serve as a basis for denying health insurance.

Environmental Litigation

Representation of thousands of individuals against the manufacturers of toxic substances released into the environment and a significant role in several nationally prominent environmental litigations including the following:

In re Allen v. ALDOT. Represented residential property owners in three neighborhoods in Montgomery, Alabama harmed by the Alabama Department of Transportation's release of the chemical TCE into the groundwater of a 600-acre area affecting the property of some 1200 homeowners. A settlement of \$5.5 million was obtained.

Antitrust Litigation

Lawyers of Whatley Kallas have significant experience in antitrust litigation, including, but not limited to, the following:

In re Insurance Brokerage Antitrust Litigation, MDL No. 1663. Co-Lead Counsel and represent a putative class of purchasers of commercial and employer benefit insurance against many of the largest insurance companies and brokers in the country relating to these companies' alleged participation in a conspiracy to manipulate the markets for insurance. To date, settlements with two of the defendants, Zurich Insurance Company and Arthur J. Gallagher, have been reached for approximately \$130 million.

In re Lorazepam and Clorazepate Antitrust Litigation. Third Party Payor Lead Class Counsel in this antitrust action which was transferred by order of the Judicial Panel for Multi-District Litigation to the United States District Court for the District of Columbia. Settlements of over \$100 million were obtained.

Pickett, et al. v. Tyson Fresh Meats, Inc. Co-Lead Counsel in representing a class of cattle ranchers against the major beef packers and producers in the country for conspiring to depress the price of beef on the cash market. In addition to serving in a leadership position in this action, Joe R. Whatley served as trial counsel in the Middle District of Alabama for the plaintiff class and the jury returned a verdict of \$1.28 billion for the class of ranchers and cattle producers.

In re Pharmacy Benefit Managers Antitrust Litigation. Co-Lead Counsel in a nationwide class action that seeks to ensure patients' access to their selected pharmacists and that independent pharmacists will be able to provide quality care to the people who seek over 1.3 billion prescriptions from them each year. The suit alleges that these Pharmacy Benefit Managers conspired to and engaged in horizontal price fixing of the reimbursement rates paid to independent pharmacies.

Waterbury Hospital v. U.S. Foodservice. Co-Lead Counsel and represents customers in a case involving a scheme whereby USF, the second largest food distributor in the U.S., fraudulently inflated the prices it charged to their cost-plus customers. USF's customers were charged, pursuant

to cost-plus agreements, inflated prices that represented the cost of products plus a kickback to their suppliers.

In Re Puerto Rican Cabotage Antitrust Litigation: Co-lead Counsel and represents purchasers in a class action alleging that Defendants conspired to fix the prices of shipping services to and from Puerto Rico. The settlement in cash and non-cash relief exceeded \$100 million in value.

Oil and Gas Royalty

Representation of oil and gas owners in litigation against oil companies. Settlements have been reached with Exxon, Torch Energy and LL&E, Inc. Relief of more than \$7.5 million for royalty owners was obtained.

Other Complex Class Action Litigation

Other complex class action cases with which lawyers of the firm have been involved include:

Tax Shelter Litigation. Representation of hundreds individuals who were sold defective tax avoidance strategies by some of the nation's largest law firms, accounting groups and investment banks. The litigation resulted in a class settlement of \$81 million with Jenkins & Gilchrist and numerous individual and aggregate settlements valued at several hundred million dollars.

Labor & Employment Litigation

Representation of participants in employer-sponsored benefit plans including defined benefit pension plans and 401(k) plans fighting to recover individual benefits and damages to the plans themselves.

Jackson v. City of Birmingham Schools (Title IX). Representation of Alabama high school basketball coach fired after he complained that the girls on his team were not treated as well as boys. The coach won a landmark Supreme Court ruling under Title IX, the law that guarantees equal access and equal facilities for men in women in sports. The case was litigated on remand and obtained a settlement that includes a city school board promise of equal facilities and the hiring of a Title IX coordinator to assure compliance.

Tyson Foods. Multi-million dollar settlement arising out of sexual harassment claims at a Tyson Foods plant in Alabama; in addition to the money, the Court ordered detailed injunctive relieve and appointed a court monitor to cure the wide-spread sexual harassment problem.

Ward v. Albertson's, Save-on, and Lucky Stores. Class of defendants' former employees who alleged that defendants failed to pay them their wages in accordance with California's waiting time statutes. Under California's Labor Code, employers must pay involuntarily terminated employees immediately upon termination, and voluntarily severed employees within 72 hours of their giving

notice of termination. Although defendants vigorously disputed these allegations, a settlement of \$18.5 million was obtained.

Biographies

Joe R. Whatley, Jr.

Joe Whatley grew up in Monroeville, Alabama, the setting for *To Kill A Mockingbird*. Mr. Whatley is one of the few lawyers in the country to have argued before the United States Supreme Court as well as tried class actions to jury verdict for plaintiffs as well as defendants. He has a wide-ranging, national practice. He has argued cases before a majority of the Circuit Courts of Appeals in the country and tried cases in a number of different State and District Courts, before Judges and juries.

He is a graduate of Harvard College (A.B., cum laude, 1975), and the University of Alabama School of Law (J.D., 1978). Mr. Whatley is a member of the Bar in the States of Alabama, Texas, Colorado and New York, and is admitted to practice before the United States Supreme Court, the United States District Court for the Middle, Southern and Northern Districts of Alabama, the Southern and Eastern Districts of New York, the Southern District of Texas, the District of Colorado, as well as the United States Court of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Ninth, and Eleventh Circuits. After graduating from the University of Alabama Law School, Mr. Whatley served as a law clerk to the Honorable Frank H. McFadden, who was then Chief United States District Judge for the Northern District of Alabama (1978-1979). Mr. Whatley is a member of the American Bar Association (Member, Sections on: Labor and Employment Law; Litigation), a member and past President (1990-1991) of the Birmingham Federal Bar Association, and a member and past President (1990-1991) of the Labor and Employment Law Section of the Alabama State Bar.

For more than a decade Mr. Whatley has focused his practice on healthcare and antitrust cases. His healthcare cases have primarily been against health insurance companies. He was one of the most active lawyers in Court proceedings in *In re Managed Care Litigation* and in *Thomas/Love v. Blue Cross*, and he was one of the principal negotiators of the path-breaking settlements in both of those proceedings that resulted in billions of dollars in monetary relief and business practice changes in the managed care industry. He represents providers of healthcare of all types in disputes with health insurance companies. He has represented and currently represents doctors and ancillary providers in a whole range of issues related to their reimbursement. He currently represents ambulatory surgery centers in antitrust claims against health insurance companies in multiple markets. He has represented hospitals in arbitration against health insurance companies.

He is also an experienced trial lawyer, having tried numerous cases, including class actions, to verdict. For example, Mr. Whatley won a \$1.28 billion jury verdict on behalf of a class of cattle ranchers against Tyson Fresh Meats, Inc. in *Pickett v. Tyson Fresh Meats, Inc.*, No. 96-A-1103-N (M.D. Ala.), and won what was at the time the largest wrongful death verdict in Louisiana history in *Dunn v. Consolidated Rail Corp.*, 890 F. Supp. 1262 (M.D. La. 1995). Mr. Whatley has recovered

billions of dollars in monetary relief and business practice changes in litigations against the managed care industry.

Mr. Whatley has been recognized by his peers as one of the top lawyers in the country. He has been admitted as a Fellow to the American College of Trial Lawyers. In 2011, he was selected as one of the top 100 lawyers in the New York Metropolitan Area. He has been selected each year for decades as one of the Best Lawyers in Alabama.

E-MAIL: jwhatley@whatleykallas.com

Edith M. Kallas

Ms. Kallas was born in New York, New York. Ms. Kallas graduated from the Juilliard School in 1984 with a B.M. in Music Performance and from the Fashion Institute of Technology with an A.A.S., summa cum laude. She is a 1987 graduate of the Benjamin N. Cardozo School of Law, where she was a member of the Moot Court Board. Ms. Kallas is admitted to the New York State Bar, the United States Supreme Court, the United States District Court for the Southern and Eastern Districts of New York and the United States Courts of Appeal for the Second, Third, Sixth, Ninth and Eleventh Circuits. She is also a member of the American Bar Association (Health Law Section), Association of the Bar of the City of New York, the New York State Bar Association, the New York County Lawyers' Association and the American Society of Medical Association Counsel.

In April of 2004, Ms. Kallas was honored by thirteen State and County Medical Societies, who presented her with an award "For the Success Attained in her Relentless Pursuit of Justice for the Physicians of America and their Patients." Also in 2004, Ms. Kallas was named by the New York County Lawyers' Association as one of the "Outstanding Women of the Bar." In 2005, the National Law Journal featured Ms. Kallas in their UP CLOSE section in an article entitled, "HMO Settlement: A Fairer Deal for Doctors." The National Law Journal also featured Ms Kallas and her partner Joe Whatley in an article entitled "Case Puts Doctors Back in the Driver's Seat" in 2007. In 2011, the National Law Journal recognized Ms. Kallas in a feature article entitled, "In Insurance Fights, a Healthy Return for Firm - With Wellpoint Case." Most recently, in February 2013, Ms. Kallas was highlighted in the *Big Suits* section of the American Lawyer Magazine in connection with the In re Aetna UCR Litigation settlement.

Ms. Kallas concentrates her practice in the areas of healthcare and insurance litigation. She represents healthcare providers and members of the organized medicine community including physicians, ancillary providers, ambulatory surgical centers, durable medical equipment providers, as well as numerous national, state and county medical societies throughout the country. Her medical association clients include the American Medical Association, Medical Society of the State of New York, Connecticut State Medical Society, Medical Society of New Jersey, California Medical Association, Florida Medical Association, Texas Medical Association, South Carolina Medical Association, Tennessee Medical Association, Northern Virginia Medical Societies, North Carolina Medical Society, Nebraska Medical Association, Washington State Medical Association, Hawaii Medical Association, Alaska State Medical Association, Rhode Island Medical Society, Vermont Medical Society, New Hampshire Medical Society, El Paso County Medical Society, and the California Chiropractic Association.

Ms. Kallas represents healthcare providers in litigation, arbitration, negotiations, and contracting, and provides day-to-day consultation and advocacy services in connection with a broad range of issues facing providers today. She has also represented healthcare providers and medical associations in numerous class actions pending in federal and state courts (including representation of a certified class of approximately 900,000 physicians throughout the United States). Ms. Kallas served as Co-Lead Counsel in the *Love et al. v. Blue Cross Blue Shield Association et al.* pending in the United States District Court for the Southern District of Florida; on the Steering Committee in the *In re Managed Care* action; as Co-Lead Counsel and a member of the Executive Committee in the UCR Class Actions against Wellpoint (pending in the C.D. Cal.), CIGNA and Aetna (both pending in the D.N.J.); as Lead Counsel in the *Scher v. Oxford* physician class arbitration; and has served as lead counsel in numerous state court healthcare actions. Ms. Kallas is also Co-Lead Counsel in the *In re Insurance Brokerage Antitrust Litigation* pending in the District of New Jersey against major brokerage and insurance companies on behalf of classes of businesses and employees who purchased insurance, including healthcare insurance. She was one of the principal negotiators of settlements with Aetna, Cigna, Healthnet, Prudential, Humana, Wellpoint and 90% of all the Blue Cross entities in the country on behalf of nationwide classes of physicians and medical societies that have resulted in billions of dollars of practice reforms and monetary relief to physicians throughout the country. The settlements have resulted in significant business practice changes that are viewed as setting a new standard in the healthcare industry that is in the best interests of physicians and their patients. Ms. Kallas has also given legislative testimony regarding issues affecting physicians and successfully handled, on a pro bono basis, an appeal for a patient requiring lifesaving treatment.

Ms. Kallas is the co-author of "Gender Bias and the Treatment of Women As Advocates," *Women in Law* 1998. Ms. Kallas has also participated as a Faculty Member and/or Speaker in connection with the following presentations: "Class Action Healthcare Litigation," ALI-ABA Healthcare Law and Litigation Conference, 1999; "Class Actions: HMOs and Healthcare Providers Under Attack," ALI-ABA Life and Health Insurance Litigation Conference, 2000; "Providers (Suits by Doctors and Hospital Class Actions)," ALI-ABA Healthcare Law and Litigation Conference, 2000; "The Application of ERISA and RICO Theories in the Age of Managed Care," *The Judges and Lawyers Breast Cancer Alert*, 2000; "Healthcare Litigation: What You Need to Know After Pegram," Practising Law Institute, 2000; "Provider Suits by Doctors and Hospitals v. HMOs," ALI-ABA Healthcare Law and Litigation Conference, 2001; The Joint Seminar Session of the School of Allied Health and Health Law Section at Quinnipiac University School of Law, 2001; The CLE Conference presented by the American Society of Medical Association Counsel, 2002; "The Unique Role of The Medical Society Effectively Litigating for Change in the Healthcare Arena," American Academy of Otolaryngology Presidential Board of Governors Special Seminar 2002; "The Future of Class Action Litigation in America," The CLE Conference presented by the American Bar Association, 2005; "Gender Bias in Litigation and the Trend Toward Diversity in Multi-District Litigation Proceedings," Mass Torts and Class Actions CLE Summit (Whatley Drake LLC Continuing Legal Education Conference) 2006 and 2007; "Arbitration Issues in Class Action Suits: How *Bazzle* Changed the Landscape of Class Arbitration," Whatley Drake & Kallas LLC Continuing Legal Education Conference 2007, ASMAC 2008; "Forum Shopping: Defendants Do It Too," Symposium on the Class Action Fairness Act and published in the Newsletter of the ABA

Tort Trial and Insurance Practice Section Business Litigation Committee, Winter 2007; "Ingenix Litigation Update," ASMAC 2010; "Negotiating Skills for Career Advancement," Connecticut State Medical Society Professional Development Conference for Women in Medicine CME, May 2010; and "National Trends in Provider Contracting," Connecticut State Medical Society, "Managed Care Contracting: Anatomy of a Contract" Seminar, April 2012; "Avoiding Traps in Alternative Dispute Resolution," American Medical Association Webinar, February 2013; "Contract Negotiation Skills," Connecticut State Medical Society Professional Development Conference for Women in Medicine CME (to be presented on May 9, 2013).

E-MAIL: ekallas@whatleykallas.com

Alan Mansfield

Alan M. Mansfield has practiced primarily in the area of national consumer class action and public interest litigation since 1991, focusing on healthcare, telecommunications, and consumer privacy issues. His clients have included such public interest organizations as the California Medical Association, Consumer Watchdog, and the Privacy Rights Clearinghouse.

Mr. Mansfield has been involved in numerous significant healthcare matters, including a class action against Anthem Blue Cross for improperly closing certain health plans, which resulted in a settlement requiring defendant to limit plan rate increases and requiring any plan changes to be without medical underwriting for several years (*Feller v. Anthem Blue Cross*, Ventura County Superior Court Case No. 56-2010-00368587-CU-BT-VTA); and a class action representing a number of California pharmacists seeking to require Pharmacy Benefits Managers to provide data required under state law, obtaining a significant decision from the Ninth Circuit interpreting the scope of the First Amendment as applied to California pharmacists' claims under California law (*Beeman v. Anthem Prescription*, 2011 U.S. App. LEXIS 14687 (9th Cir., July 19, 2011, *en banc* review granted). He was also involved in the "Joe Camel" teen smoking case, *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057.

As part of his commitment to public interest litigation, Mr. Mansfield was one of the lead counsel in *Garrett v. City of Escondido*, 465 F.Supp. 2d 1043 (S.D. Cal. 2006), in the U.S. District Court for the Southern District of California, which successfully challenged the legality of the City of Escondido's immigration landlord-tenant enforcement ordinance, resulting in one of the first decisions addressing the constitutionality of local ordinances or state laws addressing immigration issues. Based on that and other work in the community performed by both him and the previous firm for which he was the managing partner (Rosner & Mansfield LLP), he and his firm was awarded the 2007 Public Service by a Law Firm Award by the San Diego County Bar Association. He also recently assisted the ACLU in obtaining a significant First Amendment victory regarding the improper seizure by the U.S. Government of property belonging to members of the Mongols Motorcycle Club (*Rivera v. Melson*, No. 2:09-cv-02435 DOC (JCx)(C.D. Cal.)).

Highlights from other recent successful actions where he was appointed as one of the lead class counsel include a class action against American Honda for misrepresenting gas mileage on Honda Civic Hybrids, resulting in a settlement valued at over \$400 million (*Lockabey v. American Honda*, S.D. Sup. Ct. Case No. Case No. 37-2010-00087755-CU-BT-CTL); and an action involving the

unauthorized billing of consumers for overdraft fees on checking and debit account, resulting in the creation of a \$35 million common fund and significant *cy pres* contributions to several non-profit organizations (*Closson v. Bank of America*, San Francisco Superior Court Case No. CGC 04436877). He also prevailed, after a two-week long class action arbitration in January 2009, on behalf of a class of senior citizens residing at a senior living community who were charged entrance fees in violation of California's landlord-tenant laws, obtaining significant relief for the benefit of the class members and contributions for Alzheimer's Disease research (*VanPelt v. SRG*).

Mr. Mansfield was also one of the lead counsel in a class action against Sprint Communications for charging customers improper telephone fees for data plan communication, resulting in a settlement that fully refunded the vast majority of such charges (*Taylor v. Sprint Communications*, Case No. C07-CV-2231-W (RJB)); a class action involving billing customers for previously promised airtime, resulting in a class action settlement that gave over 1 million customers the ability to claim full reimbursement for the uncredited airtime (*Nelson v. Virgin Mobile*, Case No. 05-CV-1594-AJB); a case challenging Sprint's failure to provide a cancellation window when it imposed certain additional fees against customers in July 2003, resulting in a class-wide settlement returning Early Termination Fees that had been charged to consumers, as well as improving certain disclosure practices (*UCAN v. Sprint Spectrum LP*, San Diego Superior Court Case No. GIC 814461); and *Maycumber v. PowerNet Global Telecommunications*, Case No. 06-cv-1773-H (RBB) (S.D. Cal.), which challenged the practice of charging a "Network Access Charge" as a tax when it was not, resulting in a significant refund of such charges. Mr. Mansfield also represented the public interest group UCAN in an action before the California Public Utilities Commission involving improper billing for Early Termination Fees, resulting in a refund of over \$18 million in fees to over 100,000 former Cingular Wireless customers (*In Re Cingular Wireless*, CPUC Case No. I.02-06-003), as well as an action challenging AT&T California's practice of terminating 911-only service to California residents in violation of the Public Utilities Code, resulting in a multi-million dollar fine and an order requiring significant practice changes (*UCAN v. SBC California*, CPUC Case No. C.05-11-011).

Mr. Mansfield received his B.S. degree, *cum laude*, in Business Administration - Finance from California Polytechnic State University, San Luis Obispo in 1983 and his *Juris Doctorate* degree from the University of Denver School of Law in 1986. He is admitted to the Bar of the State of California, to the United States District Courts for all Districts of California and to the Third, Fifth, Ninth and Tenth Circuit Courts of Appeal.

E-MAIL: amansfield@whatleykallas.com

Patrick J. Sheehan

Mr. Sheehan heads the firm's Boston, Massachusetts office. Mr. Sheehan's practice focuses on consumer protection, health care law, insurance law, issues relating to information security and identity theft and other complex litigation. As part of his practice, Mr. Sheehan represents businesses, professional associations, professionals, consumers and other individuals in class actions and other litigation pending throughout the country.

Mr. Sheehan has represented physicians and medical associations in class actions brought in numerous federal and state courts. Mr. Sheehan currently represents plaintiff physicians and medical societies in the *In Re Managed Care Litigation* and *Love v. Blue Cross Blue Shield et al.*, pending in the United States District Court for the Southern District of Florida, which have already led to landmark settlements resulting in billions of dollars worth of managed care reforms and monetary relief for physicians across the country. Mr. Sheehan has also represented physicians and state medical societies in state court actions and arbitrations in jurisdictions across the nation.

Mr. Sheehan's current consumer class actions include *In re Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation*, pending in the Eastern District of Missouri, which alleges that Aurora Dairy and various retailers marketed and sold Aurora Dairy milk as "organic" even though it failed to comply with federal organic standards in numerous respects. Mr. Sheehan also represents consumers in the *In re Bisphenol-A Polycarbonate Plastic Products Liability Litigation*, brought against a number of the leading manufacturers of plastic bottles for misrepresenting and failing to disclose the safety risks linked to the chemical compound Bisphenol-A used to make their products.

Mr. Sheehan is also involved in *In re Insurance Brokerage Antitrust Litigation*, filed in the District of New Jersey against certain of the largest insurance companies and insurance brokers in the country in connection with their use of undisclosed contingent commissions. To date, this litigation has led to settlements totaling tens of millions of dollars.

Mr. Sheehan regularly contributes to legal publications and continuing legal education programs. He also frequently volunteers his time on a pro bono basis. Mr. Sheehan is an active participant in the Health Law Advocates Pro Bono Legal Network, through which he provides legal assistance to individuals seeking access to health care. Mr. Sheehan also served as a volunteer attorney for Trial Lawyers Care, the largest pro bono legal program in history, through which he provided legal services to individuals and families who sought compensation under the September 11th Compensation Fund.

Mr. Sheehan is a graduate of the College of the Holy Cross (B.A., 1993) and Northeastern University School of Law (J.D., 1997), where he was an editor of the NU Forum. He is a member of the American Bar Association, the American Association for Justice, the Massachusetts Bar Association, the Massachusetts Academy of Trial Attorneys and the Boston Bar Association and serves on the Board of Directors of the Holy Cross Lawyers Association. He is a member of the Massachusetts and New York Bars and is admitted to practice before the United States District Courts for the District of Massachusetts, the Southern and Eastern Districts of New York, the District of Colorado, the Eastern District of Michigan and the First Circuit Court of Appeals.

E-MAIL: psheehan@whatleykallas.com

Ilze C. Thielmann

Ms. Thielmann practices health care litigation, complex and multi-district litigation. She is a member of the New York State Bar (1995) and is also admitted to practice before the U.S. District

Courts for the Eastern and Southern Districts of New York. Ms. Thielmann attended Princeton University (A.B., 1988) and obtained her J.D. in 1994 from Columbia University Law School where she was a member of Law Review and Harlan Fiske Stone Scholar.

E-MAIL: ithielmann@whatleykallas.com

W. Tucker Brown

Mr. Brown practices in the area of class action and antitrust litigation. He is a member of Alabama Bar since 2004 and is admitted to practice before the United States Court of Appeals for the Eleventh Circuit, as well as the U.S. District Courts for the Northern, Middle and Southern Districts of Alabama, and the U.S. District Court for the District of Colorado. He obtained a B.A., *cum laude*, in 2001 from Vanderbilt University and received his J.D., *magna cum laude*, in 2004 from the Georgetown University Law Center where he was Order of the Coif. Following law school he served as law clerk to Hon. William M. Acker, Jr., U.S. District Court for the Northern District of Alabama from 2004 to 2005. He is a member of the Alabama State Bar, the American Bar Association (Antitrust Division), Birmingham Bar Association and American Association for Justice. He was born in Birmingham, Alabama.

E-MAIL: tbrown@whatleykallas.com

Charlene P. Ford

Ms. Ford concentrates her practice in the areas of class actions, complex litigation, small business law and business litigation as well as appellate practice. She is a member of the Alabama Bar and is admitted to practice before the U.S. Supreme Court and the U.S. Court of Appeals for the 11th Circuit. She is a member of the Birmingham and American Bar Associations, Alabama State Bar, Alabama Association for Justice, and American Association for Justice.

Ms. Ford is a graduate of the University of Montevallo (B.S., *summa cum laude*, 1982) and Cumberland School of Law of Samford University (J.D., *summa cum laude*, 1993) where she was a Member (1991-1993) and Comment Editor (1992-1993) of the Cumberland Law Review. Following law school, she served as law clerk to the Honorable Judge William M. Acker, Jr., U.S. District Court, Northern District of Alabama. Ms. Ford is the author of "Rule 11: Due Process Reconsidered," 22 Cumberland Law Review 729, 1991-1992. She was born in Limestone County, Alabama.

Reported Cases: PacifiCare Health Systems, Inc. v. Book, 538 U.S. 401, 123 S.Ct. 1531 (2003); Klay v. Humana, Inc., 382 F.3d 1241 (11th Cir. 2004); McFarlin v. Conesco Services, L.L.C., 381 F.3d 1251 (11th Cir. 2004); In re Humana Inc. Managed Care Litigation, 333 F.3d 1247 (11th Cir. 2003); In re Humana Inc. Managed Care Litigation, 285 F.3d 971 (11th Cir. 2002); In re Managed Care Litigation, 246 F.Supp.2d 1363 (Jud. Pan. Mult. Lit. 2003); In re Managed Care Litigation, 236 F.Supp.2d 1336 (S.D. Fla. 2002); In re Managed Care Litigation, 209 F.R.D. 678 (S.D. Fla. 2002); In re Managed Care Litigation, 135 F. Supp.2d 1235 (S.D. Fla. 2001); Moore v. Liberty Nat. Ins.Co., 108 F.Supp.2d 1266 (N.D. Ala. 2000); Avis Rent A Car Systems, Inc. v. Heilman, 876 So.2d 1111 (Ala. 2003); Yeager v. General Motors Acceptance Corp., 719 So.2d 210 (Ala. 1998); Johnson v. Garlock, 682 So.2d 25 (Ala. 1996).

E-MAIL: cford@whatleykallas.com

Deborah Winegard

Ms. Winegard represents physicians, medicals staffs, and medical societies, and focuses her practice on third-party payer issues, including the representation of physicians in overpayment recovery audits, contracting issues, and litigation.

Ms. Winegard's prior experience includes serving as the General Counsel and Director of Third Party Payer Advocacy for the Medical Association of Georgia, as Law & Government Affairs Vice President for four states for AT&T, and as an Associate on King & Spalding's Healthcare Team.

Ms. Winegard served as the Facilitator for the MDL settlements with Aetna, Blue Cross Blue Shield Association, Capital Blue Cross, CIGNA, Health Net, and Humana, handling compliance disputes brought by physicians who complained that these health insurers had violated the settlement agreements reached in the MDL healthcare litigation.

Ms. Winegard speaks widely on healthcare and reimbursement issues affecting physicians and has given presentations for the Ambulatory Surgery Center Association, the American Association of Medical Society Counsel, the American Medical Association, the California Medical Association Leadership Academy, the Florida Radiology Business Managers Association, the Georgia Free Clinic Network, the Institute for Continuing Legal Education of Georgia, the Medical Group Managers Associations and several of its chapters, and the Texas Medical Association.

Ms. Winegard graduated *magna cum laude* with a B.A. in Politics from Wake Forest University in 1979, where she was elected to the Phi Beta Kappa honor society. She earned her J.D. with honors from George Washington University in 1982. She is admitted to practice in Georgia, as well as in the United States District Court for the Northern District of Georgia.

Ms. Winegard is based in Atlanta, where she serves as a member of the Board of Governors of LifeLink Foundation. She has previously held leadership positions for the Health Law Section of the State Bar of Georgia, the Georgia Association for Women Lawyers, and the National Kidney Foundation of Georgia, and has also served on the Boards of Directors for the Alliance Française d'Atlanta and the Boys & Girls Clubs of Metro Atlanta.

Ms. Winegard speaks French and Spanish and is currently studying Chinese.

E-MAIL: dwinegard@whatleykallas.com

Shujan A. Awan

Mr. Awan is an associate with the firm. He concentrates his practice in the areas of complex and multi-district litigation. Mr. Awan graduated from New Jersey Institute of Technology, *magna cum laude* (B.S. Computer Science, 2002) and from Brooklyn Law School (J.D., 2008). During law school, Mr. Awan served as a student prosecutor for the United States Attorney's Office for the Eastern District of New York where he represented the federal government in the investigation and prosecution of misdemeanors and petty offenses. Mr. Awan was a summer associate and law clerk at the firm prior to joining on a full-time basis.

Mr. Awan is admitted to practice law in the State of New York and the Southern and Eastern Districts of New York.

E-MAIL: sawan@whatleykallas.com

D. Jamie Carruth, born 1979; admitted to bar, Alabama, 2004. *Education:* University of Alabama, Tuscaloosa, Alabama, (B.A. May 2001); University of Alabama School of Law, Tuscaloosa, Alabama (J.D. 2004); *Member:* American Bar Association.

E-MAIL: jcarruth@whatleykallas.com

William J. N. Coxwell, born Monroeville, Alabama, 1980; He was admitted to Alabama bar in 2005 and is admitted to practice in the United States District Courts for the Northern, Middle and Southern Districts of Alabama, as well as the Eleventh Circuit Court of Appeals. *Education:* University of Alabama School of Law, J.D. (2005), Rhodes College, B.A. (2002); *Member:* Alabama State Bar; American Bar Association

E-MAIL: wcoxwell@whatleykallas.com

S. Scott Garrett

Scott Garrett is a graduate of the Birmingham School of Law, May, 2012. He also graduated with a B.A. in English from Oglethorpe University in 1994. Mr. Garrett joined the Firm after passing the July 2012 Alabama Bar Examination. He is admitted to practice law in the state of Alabama as well as the United States District Court for the Northern District of Alabama.

E-MAIL: sgarrett@whatleykallas.com

Michael S. Lyons

Mr. Lyons graduated from the University of California at Santa Barbara with honors (B.A. Philosophy, 2008) and from Duke Law School (J.D., 2012). While in law school, Mr. Lyons was a Submissions Editor for the Duke Environmental Law and Policy Forum. Mr. Lyons joined the Firm after passing the July 2012 New York Bar Examination. He is admitted to practice law in the state of New York.

E-MAIL: mlyons@whatleykallas.com

Lawrence M. Bond

Mr. Bond is a graduate of Villanova University School of Law (J.D., 2009). He also graduated with a B.A. in History from Lafayette College in 2002. He clerked for the Honorable Patrick DeAlmeida in the Tax Court for New Jersey in 2009-2010. He is admitted to the New Jersey, Pennsylvania, and Colorado State Bars.

E-MAIL: lbond@whatleykallas.com

Henry C. Quillen

Before joining WhatleyKallas, Mr. Quillen was an associate in the litigation department of Sullivan & Cromwell LLP, where he focused on complex commercial litigation. He also served as a law clerk to the Honorable A. Raymond Randolph of the United States Court of Appeals for the District of Columbia Circuit, as well as the Honorable Jeffrey Howard of the United States Court of Appeals for the First Circuit.

Mr. Quillen graduated from Harvard College magna cum laude (A.B., Biochemical Sciences, 2000) and Yale Law School (J.D., 2007). He also received a Master in Public Administration from Kennedy School of Government (2007). He is a member of the American Bar Association and admitted to practice in New York, New Hampshire, the District of Columbia, the United States District Court for the District of Colorado, District of Columbia, and District of New Hampshire, and the United States Court of Appeals for the First, Tenth, Eleventh, and District of Columbia Circuits.

E-MAIL: hquillen@whatleykallas.com

OTHER

Howard M. Miles

As Executive Director and an active attorney, Mr. Miles is responsible for the business operations of the firm, including supervision of the human resources, accounting and communications departments, and he is an actively practicing lawyer. Prior to joining the firm, Mr. Miles was in private law practice for over 20 years, a portion of which he served as General Counsel for a broadcasting company based in Birmingham. Mr. Miles has counseled his business clients, including healthcare providers on a broad range of topics, including litigation, arbitration, and significant transaction work. Mr. Miles is FINRA-registered, by passing the Series 7, and is a registered mediator with the Alabama Center for Dispute Resolution. He has used his litigation and accounting background in hospital representation before arbitrators.

He has been a member of the Alabama and Mississippi State Bars since 1983. Prior to law school, Mr. Miles was a Certified Public Accountant in Mississippi. He obtained a B.B.A. in 1979 and J.D. in 1983 from the University of Mississippi. He was born in Ketchikan, Alaska.

E-MAIL: hmiles@whatleykallas.com

**Birmingham • New York • Boston • Aspen • Atlanta • San Diego • San Francisco • Los Angeles •
New Hampshire**

2001 Park Place North
Suite 1000
Birmingham, AL 35203
Telephone: (205) 488-1200
Facsimile: (800) 922-4851

1180 Avenue of the Americas
20th Floor
New York, NY 10036
Telephone: (212) 447-7060
Facsimile: (800) 922-4851

60 State Street, 7th Floor
Boston, MA 02109
Telephone: (617) 573-5118
Facsimile: (617) 573-5090

720 East Durant Avenue
Suite E6
Aspen, CO 81611
Telephone: 970-300-4848
Facsimile: 970-427-5536

1068 Virginia Ave. NE
Atlanta, GA 30306
Telephone: 404-607-8222
Facsimile: 404-607-8451

10200 Willow Creek Road, Ste 160
San Diego, CA 92131
Telephone: 619-308-5034
Facsimile: 888-331-9633

1 Sansome Street, 35th Fl.
PMB #131
San Francisco, CA 94104
Telephone: 415-906-3876
Facsimile: 888-331-9633

355 So. Grand Avenue, Ste 2450
Los Angeles, CA 90071
Telephone: 310-684-2504
Telephone: 213-943-1312
Facsimile: 888-331-9633

159 Middle Street, Suite 2C
Portsmouth, NH 03801
Telephone: 603-294-1591
Facsimile: 800-922-4851

www.whatleykallas.com