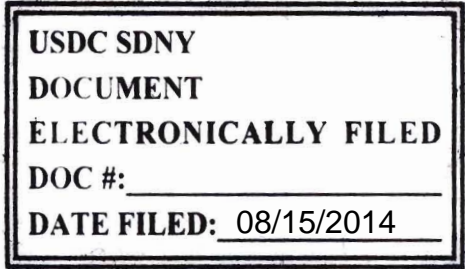


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH  
LITIGATION

14-MD-2543 (JMF)  
14-MC-2543 (JMF)

*This Document Relates to All Actions*

**ORDER NO. 8**

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JESSE M. FURMAN, United States District Judge:

On August 11, 2014, the Court held the Initial Status Conference and gave Temporary Lead Counsel for Plaintiffs (“TLC”), counsel for Defendants, and other plaintiffs’ counsel an opportunity to be heard on issues addressed in the agenda items set forth in Order No. 7 (14-MD-2543, Docket No. 215).<sup>1</sup> The Court, having reviewed all submissions by counsel in response to Order No. 5 (14-MD-2543, Docket No. 70), including all applications for leadership positions, and having considered the parties’ arguments in court, issues this Order to, among other things, (1) appoint Plaintiffs’ Lead and Liaison Counsel and members of the Plaintiffs’ Executive Committee and take steps to further define the authority, duties, and responsibilities of those positions; (2) establish a procedure for reviewing cases filed directly in the multidistrict litigation (“MDL”); (3) set forth a schedule and process for the filing of a Consolidated Complaint and any objections thereto; (4) set a schedule for regular Status Conferences and a process for counsel to submit a proposed agenda in advance of each Conference; (5) determine a process to coordinate this MDL with related cases, including proceedings in the Bankruptcy Court and state courts; (6) set forth a process and briefing schedules for motions and appeals from the Bankruptcy

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<sup>1</sup> Attached to this Order as Exhibit A is the sign-in sheet from the Initial Status Conference reflecting all counsel who indicated their appearance at the Conference.

Court; and (7-9) provide guidance and rules with respect to communications and submissions to the Court, including the submission of proposed orders.

**I. PLAINTIFFS' COUNSEL APPOINTMENTS**

At the outset, the Court reiterates its appreciation to Temporary Lead Counsel for their able assistance in the litigation up to this point. The Court appreciates that, without any guarantees for more permanent appointment, Temporary Lead Counsel was in a difficult position taking the lead and making recommendations to the Court. Temporary Lead Counsels' help in coordinating among Plaintiffs' counsel, in suggesting procedures for the appointment of counsel, in discussing threshold issues with defense counsel and the Court, and in making recommendations for other leadership positions was invaluable to the Court.

The Court thanks all counsel who applied for leadership positions for their interest and for their helpful written submissions and oral presentations. As the Court stated at the Initial Status Conference, there are many more well-qualified candidates than there are positions to fill and choosing among applicants was a difficult task. In doing so, the Court has considered the criteria it identified in Section II of Order No. 5, as well as (1) the desirability of having counsel who is familiar with bankruptcy law and procedure and (2) the need to ensure adequate representation for the full range of cases currently in the MDL (including, for example, both economic loss cases and personal injury/wrongful death cases; pre-Sale Order claims and post-Sale Order claims; claims limited to the ignition switch defect and claims relating to other alleged defects, and so on). In addition, the Court took into consideration not only the individual applicants' qualifications and experience, but the depth and quality of their firms, the experience and qualifications of any co-counsel, and the depth and quality of co-counsel's firms. The Court hopes and assumes that counsel appointed to leadership positions will take full advantage of the

range of talent among other counsel, whether through the formation of appropriate subcommittees or otherwise — and that other counsel, including those who applied unsuccessfully for leadership positions, will provide assistance as appropriate.

**A. Leadership Appointments**

Pursuant to the leadership structure approved and described by the Court in Order No. 5, the Court makes the following appointments:

*Co-Lead Counsel:* Steve W. Berman, Elizabeth J. Cabraser, and Robert C. Hilliard.

*Executive Committee:* David Boies, Lance A. Cooper, Melanie L. Cyganowski, Adam J. Levitt, Dianne M. Nast, Peter Prieto, Frank M. Pitre, Joseph F. Rice, Mark P. Robinson, Jr., and Marc M. Seltzer.

*Plaintiff Liaison Counsel:* Robin L. Greenwald.

*Federal/State Liaison Counsel:* Dawn M. Barrios.

All of the foregoing appointments are personal in nature. That is, although the Court anticipates that appointees will draw on the resources of their firms, their co-counsel, and their co-counsel's firms, each appointee is personally responsible for the duties and responsibilities that he or she assumes. In due course, the Court will discuss a process for evaluating appointees' performance and commitment to the tasks assigned.

The Court is aware that one or two of the foregoing counsel did not formally apply for the position to which he or she was appointed. If such counsel is unwilling or unable to serve in the position to which he or she was appointed, he or she shall file a letter motion on ECF (in **both 14-MD-2543 and 14-MC-2543**) seeking to withdraw from that position no later than **August 19, 2014**, at which point the Court will make a substitute appointment.

**B. Defining the Authority, Duties, and Responsibilities of Counsel**

The Court is inclined to believe that it should (1) define the authority, duties, and responsibilities of the foregoing leadership positions with greater specificity than set forth in

Order No. 5; and (2) should set more specific guidelines and rules regarding staffing, fees, expenses, and billing records than set forth in prior Orders. *See, e.g.*, Order No. 4, *In re Mirena IUD Prods. Liab. Litig.*, 13-MD-2434 (CS) (S.D.N.Y. May 22, 2013) (Docket No. 103) (directing lead and liaison counsel to propose guidelines for fees, expenses, and the like); Order No. 5, *In re Mirena IUD Prods. Liab. Litig.*, 13-MD-2434 (CS) (S.D.N.Y. July 10, 2013) (Docket No. 207) (specifying the authority, duties, and responsibilities of plaintiffs' leadership counsel and setting detailed guidelines and rules regarding staffing, fees, expenses, and billing records); *see also, e.g.*, Order No. 4, *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig.*, 10-ML-02151 (JVS) (FMO) (C.D. Cal. June 1, 2010) (Docket No. 181) (ordering that lead and liaison counsel play a gatekeeping role with respect to all pleadings and motions). Lead Counsel is directed to confer with Liaison Counsel and the Executive Committee about those issues and to be prepared to address them at the next Status Conference. Alternatively, if prepared to do so, Lead Counsel may submit a proposed order addressing the issues, in accordance with Section VII below, in advance of the Conference.

## **II. PROCESS FOR REVIEWING CASES FILED DIRECTLY IN THIS DISTRICT**

The Court establishes the following procedure for the review of cases that are directly filed within the Southern District of New York. Plaintiffs, through Lead Counsel, and Defendants will have seven (7) days from the date of a Court order consolidating a case with the MDL to meet and confer and object by letter motion to the inclusion of the case in the MDL. The party in favor of consolidation in the MDL will then have three (3) days to file a response to any such filed objection. Such objections and responses shall not exceed three (3) single-spaced pages and shall be filed **only** in 14-MD-2543 (and "spread" to the relevant member case). No replies will be allowed without leave of Court.

With regard to any cases the Court has already consolidated with the MDL, the seven-day period to meet and confer and object will begin to run as of the date of entry of this Order.

Failure to object as set forth herein shall constitute a waiver of any objection to inclusion of the case in the MDL.

### **III. CONSOLIDATED COMPLAINT**

Within forty-five (45) days of the entry of this Order, Plaintiffs, through Lead Counsel, will make available for review by all Plaintiffs through electronically secure means a draft Consolidated Complaint with respect to all claims alleging economic loss. Plaintiffs will have seven (7) days to submit to Lead Counsel any comments on the draft Consolidated Complaint. Plaintiffs, through Lead Counsel, must file a final version of the Consolidated Complaint, **in both 14-MD-2543 and 14-MC-2543**, within sixty (60) days of the entry of this Order.

Plaintiffs seeking to object to the filed Consolidated Complaint must file their objections within seven (7) days, and Lead Counsel shall have seven (7) days to respond. Any such objections and responses shall not exceed five (5) single-spaced pages and shall be **filed in both 14-MD-2543 and 14-MC-2543**. No replies will be allowed without leave of Court.

### **IV. STATUS CONFERENCES**

#### **A. Status Conference Schedule**

The Court will conduct the next Status Conference on **September 4, 2014**, at **9:30 a.m.**, in **Courtroom 310** of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York. (Please note that that is a different courtroom than the Court used for the Initial Status Conference.) Counsel should check in with the Courtroom Deputy at least fifteen minutes in advance. Counsel should arrive at the Courthouse with sufficient time to go through security. Seats in the courtroom may not be reserved.

The Court will conduct additional Status Conferences on the following dates: **October 2, 2014; November 6, 2014; and January 9, 2015**. The Court will schedule Status Conferences once every two months or so thereafter and additional Status Conferences as needed. Unless the Court orders or indicates otherwise, all Status Conferences will begin at **9:30 a.m.**, and will be held in Courtroom 1105 of Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York. (As noted, the September 4, 2014 Conference will be in Courtroom 310.)

**B. Proposed Agendas**

In advance of each Status Conference, Counsel for General Motors LLC (“New GM”) and Lead Counsel shall meet and confer regarding the agenda for the Conference. No later than five (5) days prior to each Status Conference, Counsel for New GM and Lead Counsel shall file a joint letter, not to exceed five (5) single-spaced pages and to be filed in **both 14-MD-2543 and 14-MC-2543**, setting forth the parties’ tentative agenda and the parties’ proposals on those issues (and, to the extent applicable, submitting any proposed orders — joint or otherwise — in accordance with Section VII below). In the first paragraph of the joint letter, the parties shall indicate their views on (1) whether the Court should allot more than three hours for the Status Conference; and (2) whether the Court should utilize an oversize courtroom (such as Courtroom 110 or 310) as opposed to its ordinary courtroom (Courtroom 1105).

More immediately, Lead Counsel and counsel for Defendants shall meet and confer with respect to the agenda for the September 4, 2014 Status Conference within ten (10) days of the entry of this Order. Counsel should discuss the need to address and/or update the Court with respect to the following issues (in addition to any other issues identified by counsel):

1. An initial discovery plan to produce those relevant, non-privileged documents previously provided by New GM (and the other Defendants, to the extent applicable) to Congress and the National Highway Traffic Safety Administration (“NHTSA”);

2. The entry of an appropriate protective order that balances the presumption in favor of public access to documents and information filed with the Court with the interests of maintaining as confidential information that is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure and the judicial opinions interpreting such Rule, and recognizes that the Court shall make all decisions regarding the sealing and/or redactions of pleadings or other materials filed in Court;

3. A proposal and plan to create a single electronic document depository that will be used in both this MDL and related state and federal cases;

4. The parties' positions on document discovery beyond the initial disclosures in item 1 above;

5. The parties' positions on third-party document discovery, including if such discovery should be limited to preservation efforts;

6. The parties' positions on document discovery of defendants other than New GM;

7. The parties' positions on the production of documents relating to the May 29, 2014 Report by Anton R. Valukas, and a process for addressing disputes regarding same;

8. The parties' positions on the production of documents provided by New GM to government agencies other than NHTSA, and a process for addressing disputes regarding same;

9. The entry of an Electronically Stored Information (ESI) order;

10. The entry of a Federal Rule of Evidence 502(d) order;

11. Additional preservation protocols that balance the right of Plaintiffs to obtain potentially relevant evidence against the undue burden and expense to New GM of preserving large numbers of parts that have been the subject of recalls or other evidence and a process for addressing disputes regarding the same; and

12. Other potential preservation issues relating to third parties, as well as a protocol for inspection of plaintiffs' vehicles in the event a named plaintiff wishes to sell a vehicle.

The Court expects Lead Counsel and counsel for Defendants to meet and confer in good faith on those issues (and all others that arise over the course of the litigation) in an effort to prepare agreed-upon orders for the Court's consideration whenever possible.

**C. Proposed Orders**

Unless the Court orders otherwise, no later than three (3) business days following each and every Status Conference, Lead Counsel and Counsel for New GM shall submit a proposed order (in accordance with Section VII below) memorializing any actions taken or rulings made at a Status Conference.

**V. COORDINATION WITH OTHER ACTIONS**

At each Status Conference, the parties shall apprise the Court of the existence and status of related cases proceeding in other courts, including state courts. Additionally, in consultation with Lead and Liaison Counsel, New GM is ordered to provide a joint written update to the Court every two (2) weeks, advising the Court of matters of significance (including hearings, schedules, and deadlines) in related cases, to enable this Court to effectuate appropriate coordination, including discovery coordination, with these cases.

The Court strongly believes that it is prudent to establish, at an early stage, appropriate procedures for coordinating this litigation with related cases in other courts, including the Bankruptcy Court and state courts. To that end, within ten (10) days of the entry of this Order, Plaintiff's Liaison Counsel and Federal State Liaison Counsel (and Lead Counsel, if Lead Counsel elects to join) shall meet and confer with Counsel for New GM to discuss appropriate additional procedures for such coordination. No later than five (5) days prior to the September 4, 2014 Status Conference, Plaintiff's Liaison Counsel, Federal State Liaison Counsel, and Counsel for New GM shall file a joint letter, not to exceed five (5) single-spaced pages and to be filed in **both 14-MD-2543 and 14-MC-2543**, setting forth the parties' proposals. Counsel should also be prepared to address the issue of coordination at the Status Conference itself.



## **VI. MOTIONS AND BANKRUPTCY APPEALS**

Unless otherwise ordered by the Court, all motion papers shall comply (in form, length, etc.) with the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”) (available at <http://nysd.uscourts.gov/rules/rules.pdf>) and this Court’s Individual Rules and Practices in Civil Cases (available at <http://nysd.uscourts.gov/judge/Furman> ).

New GM (and other Defendants, as applicable) is ordered to respond by **Friday, August 29, 2014**, to the motion to remand filed in *Sumners v. General Motors, LLC*, 14-CV-5461 (JMF) (14-MD-2543, Docket No. 182). The *Sumners* Plaintiffs’ reply, if any, will be due seven (7) days thereafter.

New GM is further ordered to notify the Court by letter no later than **Monday, August 18, 2014**, if it intends to object to the *Edwards* Plaintiffs’ motion for leave to file an omnibus complaint (14-MD-2543, Docket No. 188). If New GM intends to object, it shall file a response in opposition by **Monday, August 25, 2014**. The *Edwards* Plaintiffs’ reply, if any, will be due seven (7) days thereafter.

Counsel for New GM, Lead Counsel, and counsel for the *Phaneuf, Elliott, and Sesay* Plaintiffs will meet and confer regarding appropriate procedures relating to appeals from the Bankruptcy Court’s No Stay Pleading decisions, and shall submit a letter not to exceed three (3) single-spaced pages with their respective positions regarding same.

## **VII. PROCESS FOR SUBMITTING PROPOSED ORDERS**

Any and all proposed orders should be e-mailed to the Orders and Judgments Clerk of the Court ([judgments@nysd.uscourts.gov](mailto:judgments@nysd.uscourts.gov)), as a .pdf attachment. At the same time, counsel should e-mail the proposed order, as a .docx (i.e., Microsoft Word) attachment, to the Court

([Furman\\_NYSDChambers@nysd.uscourts.gov](mailto:Furman_NYSDChambers@nysd.uscourts.gov)). Any such e-mail shall state clearly in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the contents of the document. Counsel shall not include substantive communications in the body of the e-mail. (The sender of an e-mail will ordinarily receive an auto-reply e-mail appearing to come from the Courtroom Deputy stating that substantive communications in the body of the e-mail will be disregarded. Parties need not, and should not, respond to the auto-reply message.)

**VIII. TEXT-SEARCHABLE SUBMISSIONS**

All filings and submissions — regardless of format and submission method — shall be text-searchable.

**IX. CONTACTING CHAMBERS**

Most procedural and logistical questions can be answered by consulting this Court's prior orders, the Local Rules, and the Court's Individual Rules and Practices in Civil Cases. Accordingly, counsel should review those materials before contacting Chambers by telephone.

**X. CONCLUSION**

The Clerk of Court is directed to terminate Docket Nos. 108, 112, 116, 121-22, 125, 132, 134-36, 138-39, 141-45, 147, and 149-78 in 14-MD-2543, and any associated entries in member cases.

SO ORDERED.

Dated: August 15, 2014  
New York, New York

  
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JESSE M. FURMAN  
United States District Judge

# Exhibit A

Aarin April Zeif  
 Gould and Associates  
 17822 East 17th Street Suite 106  
 Tustin, CA 92780  
 714-669-2850  
 714-544-0800 (fax)  
 aarin@wageandhourlaw.com

Aaron Samuel Podhurst  
 Podhurst Orseck, P.A.  
 City National Bank Building  
 25 W Flagler Street  
 Suite 800  
 Miami, FL 33130-1780  
 305-358-2800  
 305-358-2382 (fax)  
 apodhurst@podhurst.com

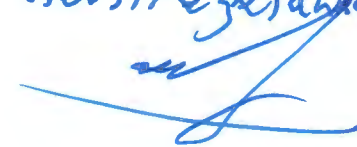
Aashish Desai  
 Mower Carreon & Desai  
 2301 Dupont Dr, Ste 360  
 Irvine, CA 92612-7503  
 (949)474-3004

Adam M. Moskowitz  
 Kozyak Tropin & Throckmorton  
 2525 Ponce de Leon Boulevard  
 Suite 900  
 Coral Gables, FL 33134-6036  
 305-372-1800  
 372-3508 (fax)  
 AMM@kttlaw.com

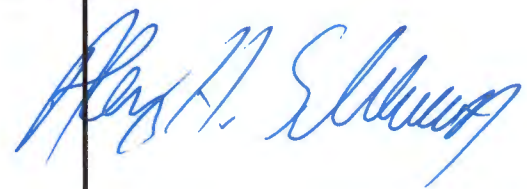
Adam Matthew Moskowitz  
 Kozyak Tropin & Throckmorton, P.A.  
 2525 Ponce de Leon Blvd.  
 9th Floor  
 Miami, FL 33134  
 (305)-372-1800  
 (305)-372-3508 (fax)  
 amm@kttlaw.com

Alexander H. Schmidt  
 Wolf Haldenstein Adler Freeman & Herz LLP  
 270 Madison Avenue  
 New York, NY 10016  
 212.545.4723  
 212.545.7494 (fax)  
 schmidt@whafh.com

ADAM J. LEVITT  
 312-214-0000  
 GRANT & EISENBERG P.A.  
 alevitt@grantlaw.com



Adam Moskowitz



Alexandra A Hamilton  
Cotchett, Pitre & McCarthy  
840 Malcolm Road  
Suite 200  
Burlingame, CA 94010  
650-697-6000  
650-697-0577 (fax)  
ahamilton@cpmlegal.com

Alfred G. Yates, Jr.  
429 Forbes Avenue  
Pittsburgh, PA 15219  
(412) 391-5164

Allan Aaron Joseph  
Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive  
32nd Floor  
Miami, FL 33131  
305-350-5690  
786-364-7995 (fax)  
ajoseph@fuerstlaw.com

Allan Pixton  
Kirkland & Ellis LLP (IL)  
300 North LaSalle Street  
Chicago, IL 60654  
(312)-862-2453  
(312)-862-2200 (fax)  
allan.pixton@kirkland.com



Allen C. Wilson  
The Law Firm of Allen Wilson  
40 Wall Street, 28 Floor  
New York, NY 10005  
(212)-714-0300  
(202)-331-3759 (fax)  
wilsonallen3@aol.com



Alyson L. Oliver  
950 W. University Drive  
Suite 200  
Rochester, MI 48307  
248 327-6556  
248-436-3385 (fax)  
notifications@oliverlg.com

Alyson Louise Oliver  
Oliver Law Group PC  
950 W. University Drive, Suite 200  
Rochester, MI 48307  
(248)-327-6556  
(248)-436-3385 (fax)  
notifications@oliverlg.com

Andre T. Tennille  
Conley Griggs Partin LLP  
The Hardin Building  
1380 West Paces Ferry Road,  
N.W., Suite 2100  
Atlanta, GA 30327  
404-467-1155  
404-467-1166 (fax)

Andrea B. Bierstein  
Hanly Conroy Bierstein Sheridan Fisher & Hayes, LLP  
112 Madison Avenue  
New York, NY 10016  
(212) 784-6403  
(212) 784-6400 (fax)  
abierstein@simmonsfirm.com

Andres Rivero  
Rivero Mestre & Castro  
2525 Ponce De Leon Blvd., Suite 1000  
Coral Gables, FL 33134  
(305) 445-2500  
(305) 445-2505 (fax)  
arivero@riveromestre.com

Andrew B Bloomer  
Kirkland and Ellis LLP  
300 North LaSalle  
Chicago, IL 60654  
312-862-2482  
312-862-2200 (fax)  
andrew.bloomer@kirkland.com



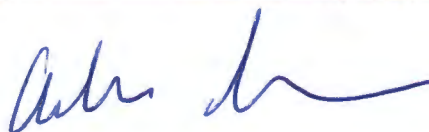
Andrew Baker Bloomer  
Kirkland & Ellis LLP (IL)  
300 North LaSalle Street  
Chicago, IL 60654  
(312)-862-2000  
(312)-862-2200 (fax)  
andrew.bloomer@kirkland.com

Andrew M. Volk  
Hagens Berman Sobol Shapiro LLP (Seattle)  
1918 8th, Avenue  
Suite 3300  
Seattle, WA 98101  
(206) 268-9371  
(206) 623-0594 (fax)  
andrew@hbsslw.com

Andrew Steven Friedman  
Bonnett, Fairbourn, Friedman & Balint, P.C.  
2901 N. Central, Suite 1000  
Phoenix, AZ 85012  
(602) 274-1100  
(602) 798-5825 (fax)  
afriedman@bffb.com

Archie Cleveland Lamb, Jr.  
Archie Lamb , Associates  
P. O. Box 2088  
Birmingham, AL 35201  
(205) 612-6789  
(205) 314-0785 (fax)  
alamb@archielamb.com

Arthur J Steinberg  
King & Spalding LLP  
1185 Ave of the Americas  
New York, NY 10036-2601  
212-556-2100



Ashley Dawn Rose  
Mlg Automotive Law, Aplc  
2801 W. Coast Hwy., Suite 370  
Newport Beach, CA 92663  
(949)-581-6900  
(949)-581-6908 (fax)  
arose@mlgautomotivelaw.com

Barry E. Fields  
Kirkland & Ellis LLP (IL)  
300 North LaSalle Street  
Chicago, IL 60654  
(312)-862-2081  
(312)-862-2200 (fax)  
bfields@kirkland.com

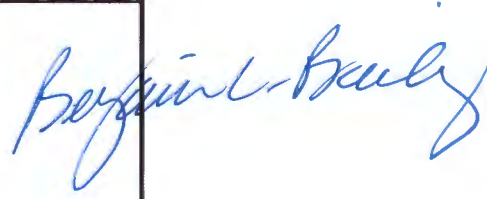
Behram V Parekh  
Kirtland and Packard LLP  
2041 Rosecreans Avenue Suite 300  
El Segundo, CA 90245  
310-536-1000  
310-536-1001 (fax)  
bvp@kirtlandpackard.com

Benjamin E. Baker  
Beasley Allen Crow Methvin Portis & Miles-AL  
P.O. Box 4160  
218 Commerce Street  
Montgomery, AL 36103-4160  
334-269-2343  
ben.baker@beasleyallen.com

Benjamin E. Baker, Jr.  
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.  
218 Commerce Street  
P O Box 4160  
Montgomery, AL 36103-4160  
(334) 269-2343  
ben.baker@beasleyallen.com

Benjamin F. Johns  
Chimicles & Tikellis LLP  
One Haverford Centre  
361 W. Lancaster Avenue  
Haverford, PA 19041  
(610) 642-8500  
bfj@chimicles.com

Benjamin L Bailey  
Bailey and Glasser LLP  
209 Capitol Street  
Charleston, WV 25301  
304-345-6555  
304-342-1110 (fax)  
bbailey@baileyglasser.com



Benno B Ashrafi  
Weitz and Luxenberg PC  
1880 Century Park East Suite 700  
Los Angeles, CA 90067  
310-4247-0921  
310-786-9927 (fax)  
bashrafi@weitzlux.com

Beth E. Terrell  
Terrell Marshall Daudt & Willie PLLC  
936 North 34th Street, Suite 300  
Seattle, WA 98103-8869  
206-816-6603  
206-350-3528 (fax)  
bterrell@tmdwlaw.com

Betsy Carol Manifold  
Wolf Haldenstein Adler Freeman and Herz  
750 B Street  
Symphony Towers Suite 2770  
San Diego, CA 92101-5050  
(619)239-4599  
manifold@whafh.com

Blair Pierson Durham  
Law Office of Blair P. Durham  
404 James Robertson Parkway  
1714 Parkway Towers  
Nashville, TN 37219  
(615) 252-4814  
(615) 496-3595 (fax)  
blair@durhamanddread.com

Bradley K King  
Ahdoot & Wolfson APC  
1016 Palm Avenue  
West Hollywood, CA 90069  
310-474-9111  
310-474-8585 (fax)  
bking@ahdootwolfson.com

Bradley Wilders  
Stueve Siegel Hanson, LLP - KCMO  
460 Nichols Road  
Suite 200  
Kansas City, MO 64112  
(816) 714-7126  
(816) 714-7101 (fax)  
wilders@stuevesiegel.com

Brandon L. Corl  
Potts Law Firm, LLP  
908 Broadway  
3rd Floor  
Kansas City, MO 64105  
(816) 931-2230  
(816)931-7030 (fax)  
bcorl@potts-law.com





Brent Hazzard HAZZARD LAW, LLC P. O. BOX 24382 Jackson, MS 39225 601/977-5253 601/977-5236 (fax) brenthazzard@yahoo.com
Brett Elliott von Borke Grossman Roth, P.A. 2525 Ponce de Leon Blvd. Suite 1150 Miami, FL 33134 305-442-8666 305-285-1668 (fax) bvb@grossmanroth.com
Brett H Cebulash Taus, Cebulash & Landau, LLP 80 Maiden Lane, Suite 1204 New York, NY 10038 (212) 931-0704 (212) 931-0703 (fax) bcebulash@tcllaw.com
Brian Kelly Herrington Freese & Herrington 1520 N. State Street Jackson, MS 39202 (601)961-4050 (601)510-9903 (fax) brian@bherringtonlaw.com
Brian O. O'Mara Robbins Geller Rudman & Dowd LLP (SAN DIEGO) 655 West Broadway Suite 1900 San Diego, CA 92101 619-231-1058 (619) 231-7423 (fax) bomara@rgrdlaw.com
Bruce S. Kingsdorf Barrios, Kingsdorf & Casteix, LLP 701 Poydras St. Suite 3650 New Orleans, LA 70139-3650 (504) 524-3300 (504)-524-3313 (fax) kingsdorf@bkc-law.com

Brian Sieve  
Kirkland & Ellis LLP  
300 N. LaSalle  
Chicago, IL 60654  
312 862-2000  
bsieve@kirkland.com

Cathleen M. Combs  
Edelman, Combs Lattuner & Goodwin, LLC  
120 S. LaSalle Street  
18th Floor, Suite 1800  
Chicago, IL 60603  
(312) 739-4200  
(312)-419-0379 (fax)  
ccombs@edcombs.com

Charles Kocher  
Saltz, Mongeluzzi, Barrett & Bendesky, P.C.  
One Liberty Plance, 52nd Floor  
1650 Market Street  
Philadelphia, PA 19103  
215-575-3986  
215-496-0999 (fax)

Charles S Zimmerman  
Zimmerman Reed PLLP  
1100 IDS Center, 80 S 8th St.  
Minneapolis, MN 55402  
612-341-0400  
612-341-0844 (fax)  
charles.zimmerman@zimmreed.com

Christopher William Keegan  
Kirkland & Ellis LLP(SF)  
555 California Street, Suite 2700  
San Francisco, CA 94104  
(415)439-1882  
(415)439-1500 (fax)  
chris.keegan@kirkland.com

Cory S. Fein  
Caddell & Chapman  
1331 Lamar, Suite 1070  
Houston, TX 77010-3027  
(713) 751-0400  
(713) 751-0906 (fax)  
csf@caddellchapman.com

Curtis Bradley Miner  
Colson Hicks Eidson  
255 Alhambra Circle  
PH  
Coral Gables, FL 33134-2351  
305-476-7400  
476-7444 (fax)  
curt@colson.com



D. Michael Andrews  
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.  
218 Commerce Street  
P O Box 4160  
Montgomery, AL 36103-4160  
(334) 269-2343  
(334) 954-7555 (fax)  
mike.andrews@beasleyallen.com

D. Todd Mathews  
Gori, Julian & Associates, PC  
156 N. Main Street  
Edwardsville, IL 62025  
618-659-9833  
618-659-9834 (fax)  
todd@gorijulianlaw.com

Dallas L. Albaugh  
Pryor Cashman LLP  
7 Times Square  
New York, NY 10036-6569  
(212)-421-4100  
(212)-798-6327 (fax)  
dalbaugh@golenbock.com

Daniel A. Edelman  
Edelman, Combs, Lattuner & Goodwin, LLC  
120 S. Lasalle Street, Suite 1800  
Chicago, IL 60603  
(312)-739-4200  
(312)-419-0379 (fax)  
courtecl@edcombs.com

Daniel C Girard  
Girard Gibbs LLP  
601 California Street 14th Floor  
San Francisco, CA 94108  
415-981-4800  
415-981-4846 (fax)  
dgc@girardgibbs.com

Daniel E. Becnel, Jr.  
Becnel Law Firm, LLC  
106 W. Seventh St.  
P.O. Drawer H  
Reserve, LA 70084  
(504)-756-4840  
(985)-536-1186 (fax)  
mmoreland@becnellaw.com

David Boies  
Boies, Schiller & Flexner LLP  
333 Main St  
Armonk N.Y. 10504 (914-749-8201)

*Handwritten signature: Nancy Proen*

Darrell Lee Barger  
Hartline Dacus Barger Dreyer LLP  
800 N Shoreline Blvd  
Suite 2000 North Tower  
Corpus Christi, TX 78401  
361-866-8009  
361-866-8039 (fax)  
dbarger@hdbdlaw.com

David Buckner  
Grossman Roth  
2525 Ponce de Leon Boulevard  
11th Floor  
Coral Gables, FL 33134-6036  
305-442-8666  
305-285-1668 (fax)  
dbu@grossmanroth.com

David Henry Lichter  
Higer Lichter & Givner LLP  
18305 Biscayne Boulevard  
Suite 402  
Aventura, FL 33160  
305-933-9970  
305-933-0998 (fax)  
dlichter@hlglawyers.com

David L. Balsler  
King & Spalding LLP  
1180 Peachtree Street  
Atlanta, GA 30309  
404-572-2782  
404 572 5100 (fax)  
dbalsler@kslaw.com

David M. Buckner  
Kozyak Tropin & Throckmorton, P.A.  
2525 Ponce de Leon Blvd.  
9th Floor  
Miami, FL 33134  
(305)-372-1800  
(305)-372-3508 (fax)  
dbu@grossmanroth.com

David Michael Andrews  
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.  
218 Commerce Street  
Montgomery, AL 36104  
(334)-269-2343  
(334)-954-7555 (fax)  
mike.andrews@beasleyallen.com

*Dianne M. NAST  
NAST LAWLLC  
1101 MARKET ST., Phila PA 19107 dnast@nastlaw.com*

David Slade  
Carney Bates & Pulliam, PLLC  
11311 Arcade Drive  
Suite 200  
Little Rock, AR 72212  
501-312-8500  
dslade@cbplaw.com

David Stein  
Girard Gibbs LLP  
601 California Street, Suite 1400  
San Francisco, CA 94108  
(415)-981-4800  
(415)-981-4846 (fax)  
ds@girardgibbs.com

David W. Mitchell  
Robbins Geller Rudman & Dowd LLP (SAN DIEGO)  
655 West Broadway  
Suite 1900  
San Diego, CA 92101  
(619)-231-1058  
(619)-231-231-7423 (fax)  
davidm@rgrdlaw.com

Dawn M. Barrios  
Barrios, Kingsdorf & Casteix, LLP  
701 Poydras St.  
Suite 3650  
New Orleans, LA 70139-3650  
(504) 524-3300  
(504)-524-3313 (fax)  
barrios@bkc-law.com



Deborah R Rosenthal  
Simmons Browder Gianaris Angelides and Barnerd LLP  
455 Market Street Suite 1150  
San Francisco, CA 94015  
415-536-3986  
415-537-4120 (fax)  
droenthal@simmonsfirm.com

Dennis R. Lansdowne  
Spangenberg, Shibley & Liber, LLP  
1001 Lakeside Ave East  
Suite 1700  
Cleveland, OH 44114  
(216)-696-3232  
(216)-696-3924 (fax)  
drl@spanglaw.com

Derek H. Potts  
Potts Law Firm, LLP  
908 Broadway  
3rd Floor  
Kansas City, MO 64105  
(816) 931-2230  
(816) 931-7030 (fax)  
dpotts@potts-law.com

Dianne M. Nast  
NastLaw LLC  
1101 Market Street, Suite 2801  
Philadelphia, PA 19107  
(215) 923-9300  
(215) 923-9302 (fax)  
dnast@nastlaw.com

Don Barrett  
Barrett Law Group, P.A.  
404 Court Square North  
P.O. Box 927  
Lexington, MS 39095  
(662)-834-9168  
(662)-834-2628 (fax)  
dbarrett@barrettlawgroup.com

Don M. Downing  
Gray, Ritter & Graham, PC  
701 Market Street  
St. Louis, MO 63101  
(314) 241-5620  
(314) 241-4140 (fax)  
ddowning@grgpc.com

Donald H. Slavik  
Robinson Calcagnie Robinson Shapiro Davis, Inc.  
19 Corporate Plaza Drive  
Newport Beach, CA 92660  
(949)-720-1288  
(949)-720-1292 (fax)  
dslavik@rcrlaw.net

Douglas Gregory Blankinship  
Finkelstein Blankinship, Frei- Pearson & Garber, LLP  
1311 Mamaroneck Avenue, Suite 220  
White Plains, NY 10605  
914-298-3281  
914-824-1561 (fax)  
gblankinship@fbfglaw.com

*Don Downing*  
*314-241-5620*  
*Gray, Ritter & Graham P.C.*

*Donald H. Slavik*  
*(414) 899-1197*  
*RCRSD*

*Greg Blankinship*  
*Finkelstein, Blankinship,*  
*Frei-Pearson & Garber LLP*

Drew T. Legando  
Landskroner Grieco Merriman  
Ste. 200  
1360 West Ninth Street  
Cleveland, OH 44113  
216-522-9000  
216-522-9007 (fax)  
drew@lgmlegal.com

E. Powell Miller  
The Miller Law Firm, P.C.  
950 W. University Drive,  
Suite 300  
Rochester, MI 48307  
(248)-841-2200  
(248)-652-2852 (fax)  
epm@millerlawpc.com

Eamon Paul Joyce  
Sidley Austin LLP (NY) *Eamon Joyce*  
787 Seventh Avenue  
New York, NY 10019  
(212) 839-8555  
(212) 839-5599 (fax)  
ejoyce@sidley.com

Edward D. Robertson, Jr.  
Bartimus Frickleton Robertson and Gorny  
715 Swifts Highway  
Jefferson City, MO 65109  
573-659-4454  
573-659-4460 (fax)  
chiprob@earthlink.net

Edward L Ripley  
King & Spalding LLP  
1000 Louisiana  
Ste 4000  
Houston, TX 77002  
713-276-7351  
713-751-3290 (fax)  
ERipley@kslaw.com

Edward L White  
Edward L. White, P.C.  
825 E 33rd St  
Edmond, OK 73013  
405-810-8188  
405-608-0971 (fax)  
ed@edwhitelaw.com

Edward W. Ciolko  
Kessler Topaz Meltzer & Check, LLP (PA)  
280 King of Prussia Road  
Radnor, PA 19087  
(610)-667-7706  
(610)-667-7056 (fax)  
eciolko@ktmc.com

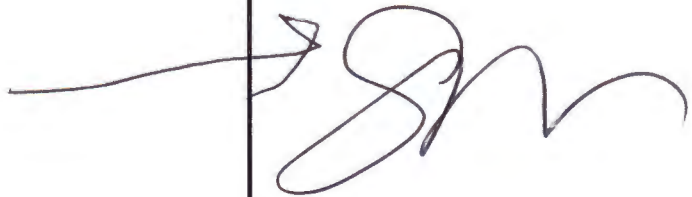
Elaine T Byszewski  
Hagens Berman Sobol Shapiro LLP  
1918 Eighth Avenue  
Suite 3300  
Seattle, WA 98101  
206-623-7292  
206-623-0594 (fax)  
elaine@hbsslw.com

Elaine T Byszewski  
Hagens Berman Sobol Shapiro LLP  
301 North Lake Avenue Suite 203  
Pasadena, CA 91101  
213-330-7150  
213-330-7152 (fax)  
elaine@hbsslw.com

Elizabeth J. Cabraser  
Lieff, Cabraser, Heimann & Bernstein, L.L.P.  
275 Battery Street  
Embarcadero Center W.  
San Francisco, CA 94111  
(415) 956-1000  
(415)-956-1008 (fax)

Elizabeth Joan Cabraser  
Lieff Cabraser Heimann and Bernstein LLP  
Embarcadero Center West  
275 Battery Street 29th Floor  
San Francisco, CA 94111-3339  
415-956-1000  
415-956-1008 (fax)  
ecabraser@lchb.com

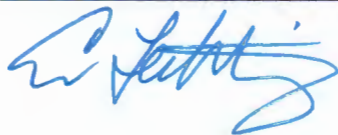
Eric B Snyder  
Bailey and Glasser LLP  
209 Capitol Street  
Charleston, WV 25301  
304-345-6555  
304-342-1110 (fax)  
esnyder@baileyglasser.com

A handwritten signature in blue ink, appearing to be 'ES', is written over the contact information for Elizabeth Joan Cabraser.



Eric H Gibbs  
Girard Gibbs LLP  
601 California Street  
14th Floor  
San Francisco, CA 94108  
415-981-4800  
415-981-4846 (fax)  
ehg@girardgibbs.com

Eric Lechtzin  
Berger & Montague, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
(215) 875-3000  
(215)-875-4604 (fax)  
elechtzin@bm.net



Eric Michael English  
King And Spalding LLP  
1100 Louisiana  
Ste 4000  
Houston, TX 77002  
713-276-7438  
eenglish@kslaw.com

Eric S. Mattson  
Sidley Austin, LLP (Chicago)  
One South Dearborn  
Chicago, IL 60603  
(312)-853-7000  
(312) 853-7036 (fax)  
emattson@sidley.com

Eugene A. Schoon  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, IL 60603  
(312) 853-7279  
(312)-853-7036 (fax)  
eschoon@sidley.com



Eugene R Egdorf  
Lanier Law Firm PC  
6810 FM 1960 West  
Houston, TX 77069  
713-659-5200  
713-659-2204 (fax)  
ere@lanierlawfirm.com

Francis (Casey) J. Flynn  
Carey, Danis and Lowe - St. Louis  
8235 Forsyth  
Suite 1100  
St. Louis, MO 63105  
314-678-3400  
314-678-3401 (fax)  
casey@jefflowepc.com

Francis J. Grey  
Ricci Tyrrell Johnson & Grey  
Eight Penn Center  
Suite 2000  
1628 John F Kennedy Boulevard  
Philadelphia, PA 19103  
215-320-3260  
215-320-3261 (fax)  
fgrey@rtjglaw.com

Francis Joseph Flynn, Jr.  
Carey, Danis & Lowe  
8235 Forsyth Boulevard, Suite 1100  
Saint Louis, MI 63105  
(314)-725-7700  
(314)-721-0905 (fax)  
casey@jefflowepc.com

Francis M. Gregorek  
Wolf, Haldenstein, Adler, Freeman & Herz  
Symphony Tower  
750 B. Street  
San Diego, CA 92101  
(619) 239-4599

Frank Cadmus Damrell, Jr  
Cotchett Pitre and McCarthy LLP  
1415 L Street Suite 1185  
Sacramento, CA 95814  
916-706-0555  
916-706-0554 (fax)

Frank M Pitre  
Cotchett Pitre Simon and McCarthy  
San Francisco Airport Office Center  
840 Malcolm Rd Suite 200  
Burlingame, CA 94010  
650-697-6000  
650-697-0577 (fax)  
fpitre@cpmlegal.com



Gregory O. Wiggins  
Wiggins, Childs, Quinn & Pantazis, LLC  
The Kress Building  
301 19th Street North  
Birmingham, AL 35203  
(205)-314-0542  
(205)-254-1500 (fax)  
gwiggins@wigginschild.com

Guy Bucci  
213 Hale Street  
Charleston, WV 25301  
304-932-4639  
304-345-0375 (fax)

Hamid M. Soueidan  
At Law Group, PLLC  
1 Parklane Boulevard  
Suite 100  
Dearborn Heights, MI 48126  
800-285-2996  
800-285-2996 (fax)  
hmsoueidan@gmail.com

Harley Shepard Tropin  
Kozyak, Tropin & Throckmorton  
2525 Ponce De Leon Boulevard  
Miami, FL 33134  
(305)-377-0662  
(305)-372-3508 (fax)  
hst@kttl.com

Hart Lawrence Robinovitch  
Zimmerman Reed PLLP  
14646 N Kierland Blvd., Ste. 145  
Scottsdale, AZ 85254-2762  
480-348-6400  
480-348-6415 (fax)  
AZDocketing@zimmreed.com

Heather Marie Baker  
Kirtland and Packard LLP  
2041 Rosecrans Avenue Suite 300  
El Segundo, CA 90245  
310-536-1000  
hmb@kirtlandpackard.com

*Harley Tropin*

James Jackson Bilsborrow  
Weitz & Luxenberg, P.C.  
700 Broadway  
New York, NY 10003  
(212)-558-5856  
jbilsborrow@weitzlux.com



James O. Lattuner  
Edelman, Combs & Lattuner  
120 S. LaSalle Street  
18th Floor  
Chicago, IL 60603  
(312) 739-4200

James R Dugan, II  
Dugan Law Firm  
365 Canal St Ste 1000  
New Orleans, LA 70130  
504-648-0180  
504-648-0181 (fax)  
jdugan@dugan-lawfirm.com

James R. Bartimus  
Bartimus Frickleto Robertson & Goza, P.C.  
11150 Overbrook Road,  
Suite 200  
Leawood, KS 66211  
913-266-2300  
913-266-2366 (fax)

James R. Dugan, II  
Murray Law Firm  
650 Poydras Street, Suite 2150  
New Orleans, LA 70130  
(504)-648-0180  
(504)-648-0181 (fax)  
jdugan@dugan-lawfirm.com

Jason Allen Zweig  
Hagens Berman Sobol Shapiro LLP (NYC)  
555 Fifth Ave Ste. 1700  
New York, NY 10117  
212-752-5455  
917-210-3980 (fax)  
jasonz@hbsslaw.com

Jason Hartley  
Stueve Siegel Hanson LLP  
550 West C Street, Suite 1750  
San Diego, CA 92101  
(619)-400-5822  
(619)-400-5832 (fax)  
hartley@stuevesiegel.com

Jason J Sigel  
Dreyer Babich Buccola Wood Campora LLP  
20 Bicentennial Circle  
Sacramento, CA 95826  
916-379-3500  
916-379-3599 (fax)  
jsigel@dbbwlaw.com

Jason M. Lindner  
Ross, Dixon & Bell, LLP  
550 West B Street  
Suite 400  
San Diego, CA 92101  
(619) 235-4040

Jasper D. Ward, IV  
Jones Ward PLC - Lou  
312 S. Fourth Street  
Marion E. Taylor Bldg 6th Floor  
Louisville, KY 40202  
502-882-6000  
502-587-2007 (fax)  
jasper@jonesward.com

Jasper Dudley Ward  
Jones & Associates  
1230 6th Avenue 7th Floor  
New York, NY 10020  
(502)-882-6000  
(502)-587-2007 (fax)  
jasper@jonesward.com

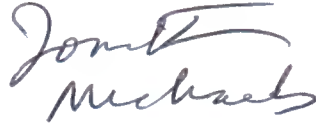
Jay Douglas Dean  
Axelrod & Dean LLP  
830 Third Avenue, Fl 5  
New York, NY 10017  
646-448-5264  
212-480-8560 (fax)  
jddean@axelroddean.com

*Jason J. Thompson  
Sommer's Schwartz P.C.  
(248) 355-0300  
Pl: Elizabeth Johnson*

<p>Jere Locke Beasley Beasley, Allen, Crow, Methvin, Portis &amp; Miles, P.C. 218 Commerce Street P O Box 4160 Montgomery, AL 36103-4160 (334) 269-2343 jere.beasley@beasleyallen.com</p>
<p>Jodi Westbrook Flowers Motley Rice LLC (SC) 28 Bridgeside Boulevard P.O. Box 1792 Mount Pleasant, SC 29464 843-216-9163 (843) 216-9680 (fax) jflowers@motleyrice.com</p> <p><i>JMF</i> <i>Bedford Auto</i></p>
<p>Joel R. Rhine Rhine Martin Law Firm, P.C. 1612 Military Cutoff, Suite 300 Wilmington, NC 28403 910-772-9960 910-772-9062 (fax) jrr@rhinelawfirm.com</p>
<p>John Brandon Martinez Hilliard Munoz Gonzales 719 S Shoreline Ste 500 Corpus Christi, TX 78401 361-882-1612 john@hmgllawfirm.com</p>
<p>John Douglas Richards Cohen Milstein Sellers &amp; Toll P.L.L.C. 88 Pine Street 14th, Floor New York, NY 10005 212-838-7797 212-838-7745 (fax) drichards@cohenmilstein.com</p>
<p>John Ernst Tangren Grant and Eisenhofer P.A. 30 N. LaSalle Street Suite 1200 Chicago, IL 60602 (312)-610-5401 (312)-214-6154 (fax) jtangren@gelaw.com</p>

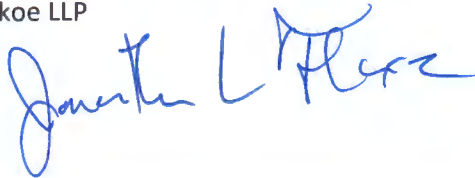
John W. Don Barrett  
BARRETT LAW GROUP, P.A.  
P.O. Box 927  
Lexington, MS 39095  
(662) 834-9168  
dbarrett@barrettlawgroup.com

Jonathan A Michaels  
Mlg Automotive Law, Ap/c  
2801 West Coast Highway Suite 370  
Newport, CA 92663  
949-527-6900  
949-581-6908 (fax)  
jmichaels@mlgautomotivelaw.com



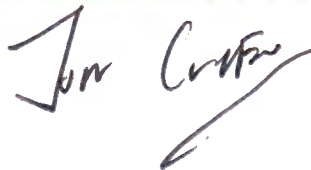
Jonathan D. Selbin  
Lief Cabraser Heimann & Bernstein, LLP  
250 Hudson Street  
8th Floor  
New York, NY 10013-1413  
(212)355-9500  
(212)355-9592 (fax)  
jselbin@lchb.com

Jonathan Laurence Flaxer  
Golenbock Eiseman Assor Bell & Peskoe LLP  
437 Madison Avenue  
New York, NY 10022  
(212) 907-7327  
(212) 754-0330 (fax)  
jflaxer@golenbock.com



Jonathan Shub  
Seeger Weiss LLP  
1515 Market Street  
Philadelphia, PA 19002  
(215)-564-2300  
(215)-851-8029 (fax)  
jshub@seegerweiss.com

Jonathan Watson Cuneo  
Cuneo Gilbert & LaDuca, LLP  
620 Fifth Avenue  
6th Floor  
New York, NY 10020  
(202) 789-3960  
202 789 1813 (fax)  
jonc@cuneolaw.com



Jorge Alejandro Mestre  
Rivero Mestre & Castro  
2525 Ponce De Leon Blvd  
Suite 1000  
Coral Gables, FL 33134  
(305) 445-2500  
(305) 445-2525 (fax)  
jmestre@riveromestre.com

Joseph B. Kenney  
Chimicles & Tikellis LLP  
361 W. Lancaster Ave.  
Haverford, PA 19041  
jbk@chimicles.com

Joseph F. Rice  
Motley Rice LLC (SC)  
28 Bridgeside Boulevard  
P.O. Box 1792  
Mount Pleasant, SC 29464  
(843)-216-9159  
(843)-216-9290 (fax)  
jrice@motleyrice.com

*Joseph Rice  
Bel final Auto  
James Dupyn  
Plaintiffs*

Joseph G. Price  
Dougherty Leventhal & Price, LLP  
75 Glenmaura National Blvd  
Moosic, PA 18507  
570-347-1011  
jprice@dlplaw.com

~~*Joseph G. Price*~~  
*on file*

Joseph G. Sauder  
Chimicles & Tikellis LLP  
361 West Lancaster Avenue  
Haverford, PA 19041  
(610)642-8500  
(610)649-3633 (fax)  
jgs@chimicles.com

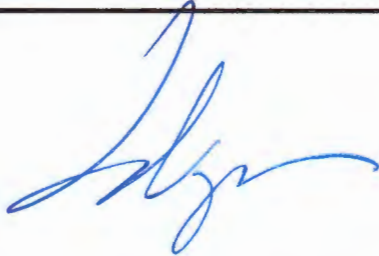
Joseph H. Meltzer  
Kessler Topaz Meltzer & Check, LLP (PA)  
280 King of Prussia Road  
Radnor, PA 19087  
(610)667-7706 x1210  
(610) 667-7056 (fax)  
jmeltzer@ktmc.com



Kyle Harold Dreyer  
Hartline Dacus Barger Dreyer LLP  
6688 N Central Expwy  
Ste 1000  
Dallas, TX 75206  
(214)-346-3714  
(214)-267-4214 (fax)  
kdreyer@hdbdlaw.com



Lance Alan Cooper  
The Cooper Firm  
531 Roselane Street  
Suite 200  
Marietta, GA 30060  
770-427-5588  
770-427-0010 (fax)  
lance@thecooperfirm.com



Lance August Harke  
Harke Clasby & Bushman LLP  
9699 NE Second Avenue  
Miami Shores, FL 33138  
(305)-536-8222  
(305)-536-8229 (fax)  
lharke@harkeclasby.com

Laurence David King  
Kaplan Fox & Kilsheimer LLP  
350 Sansome Street, Suite 400  
San Francisco, CA 94104  
(415)-772-4700  
(415)-772-4707 (fax)  
lking@kaplanfox.com

Lawrence J. Murphy  
Honigman, Miller,  
660 Woodward Avenue  
Suite 2290  
Detroit, MI 48226-3506  
313-465-7000  
lmurphy@honigman.com

Lee Javins  
Bucci Bailey & Javins L.C.  
213 Hale Street  
Charleston, WV 25301  
304-932-4639  
304-345-0375 (fax)

Leonid Feller  
Kirkland & Ellis LLP (IL)  
300 North LaSalle Street  
Chicago, IL 60654  
(312)-862-2954  
(312)-862-2200 (fax)  
leonid.feller@kirkland.com



Lester L Levy  
Wolf Popper LLP  
845 Third Avenue 12th Floor  
New York, NY 10028  
212-759-4600  
212-486-2093 (fax)  
llevy@wolffpopper.com



Linda M Fong  
Kaplan Fox & Kilsheimer LLP  
350 Sansome Street Suite 400  
San Francisco, CA 94104  
415-772-4700  
415-772-4707 (fax)  
lfong@kaplanfox.com

Lisa Verna Lecointe  
Kirkland & Ellis LLP (NYC)  
601 Lexington Avenue  
New York, NY 10022  
(212)-446-4721  
(212)-446-6460 (fax)  
llecointe@kirkland.com

Lynn A. Toops  
Cohen & Malad, LLP  
One Indiana Square  
Suite 1400  
Indianapolis, IN 46204  
(317) 636-6481  
(317) 636-2593 (fax)  
ltoops@cohenandmalad.com

Major A. Langer  
Perona, Langer, Beck & Lallande  
P.O. Box 7948  
300 East San Antonio Drive  
Long Beach, CA 90807  
(562) 426-6155  
562-490-9823 (fax)

Malcolm Todd Brown  
Wolf Haldenstein Adler Freeman & Herz  
270 Madison Avenue  
New York, NY 10016  
brown@whafh.com



Manuel Leon Dobrinsky  
Freidin & Dobrinsky PA  
2 S Biscayne Boulevard  
Suite 3100  
Miami, FL 33131  
305-371-3666  
371-6725 (fax)  
mdobrinsky@fdlaw.net

Marc M. Seltzer  
Susman Godfrey, L.L.P.  
1901 Avenue of the Stars  
Suite 950  
Los Angeles, CA 90067-6029  
(310) 789-3102  
(310) 789-3150 (fax)  
mseltzer@susmangodfrey.com



Maria Adrienne De Castro  
Desai Law Firm PC  
3200 Bristol Street Suite 650  
Costa Mesa, CA 92626  
949-614-5830  
949-271-4190 (fax)  
adrienne@desai-law.com

Marion M Reilly  
Hilliard Munoz Gonzales LLP  
719 S Shoreline Blvd  
Ste 500  
Corpus Christi, TX 78401  
361-882-1612  
marion@hmglawfirm.com

Marisa C. Livesay  
Wolf Haldenstein Adler Freeman & Herz  
750 B Street, Suite 2770  
San Diego, CA 92101  
(619)-239-4599  
(619)-234-4599 (fax)  
livesay@whafh.com

Mark DiCello  
The DiCello Law Firm  
Western Reserve Law Building  
7556 Mentor Avenue  
Mentor, OH 44060  
440-953-888  
440-953-9138 (fax)

Mark Hayden Troutman  
Isaac Wiles Burkholder and Teetor  
Two Miranova Place, Suite 700  
Columbus, OH 43215  
(614)-221-2121  
(614)-365-9516 (fax)  
mtroutman@isaacwiles.com

Mark J. Dearman  
Robbins Geller Rudman & Dowd LLP (FL)  
120 East Palmetto Park Road, Suite 500  
Boca Raton, FL 33432  
(561)-750-3000  
(561)-750-3364 (fax)  
mdearman@rgrdlaw.com

Mark K. Gyandoh  
Kessler Topaz Meltzer & Check, LLP (PA)  
280 King of Prussia Road  
Radnor, PA 19087  
(610) 667.7706  
(610) 667.7056 (fax)  
mgyandoh@ktmc.com

Mark P Pifko  
Baron and Budd PC  
15910 Ventura Boulevard Suite 1600  
Encino, CA 91436  
818-839-2333  
818-986-9698 (fax)  
MPifko@baronbudd.com

Mark P Robinson, Jr  
Robinson Calcagnie Robinson Shapiro Davis Inc  
19 Corporate Plaza Drive  
Newport Beach, CA 92660  
949-720-1288  
949-720-1292 (fax)  
mrobinson@rcrlaw.net

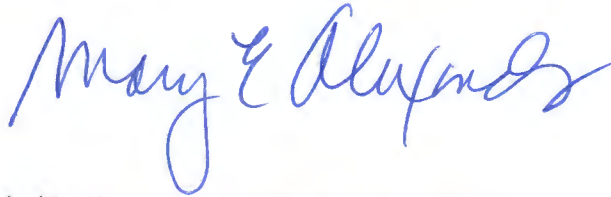


Mark P. Robinson, Jr.  
Robinson Calcagnie & Robinson  
620 Newport Center Drive, 7th Floor  
Newport Beach, CA 92660  
949-720-1288  
949-720-1292 (fax)  
mrobinson@rcrlaw.net

Mark P. Robinson, Jr.  
Robinson, Calcagnie & Robinson  
620 Newport Center Drive  
Newport Beach, CA 92660  
(949) 720-1288

Mark Parker Robinson  
Robinson Calcagnie Robinson Shapiro Davis, Inc.  
19 Corporate Plaza Drive  
Newport Beach, CA 92660  
(949)-720-1288  
(949)-720-1292 (fax)  
beachlawyer51@hotmail.com

Mary E. Alexander  
Mary Alexander & Associates, P.C.  
Suite 1303  
44 Montgomery Street  
San Francisco, CA 94104  
(415)433-4440  
(415)-433-5440 (fax)  
malexander@maryalexanderlaw.com

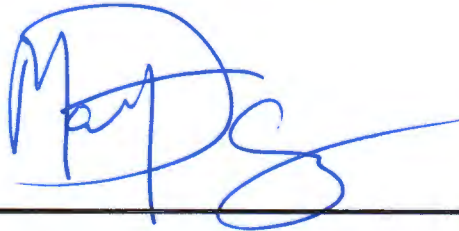


Matthew B. Moreland  
Becnel Law Firm, LLC (Reserve)  
106 W. Seventh St.  
P. O. Drawer H  
Reserve, LA 70084  
985-536-1186  
mattmoreland@cox.net

Matthew D. Schelkopf  
Chimicles & Tikellis LLP  
361 West Lancaster Avenue  
Haverford, PA 19041  
(610) 642-8500  
(610) 649-3633 (fax)

Matthew Lee Dameron  
Williams Dirks Dameron LLC  
1100 Main Street  
Suite 2600  
Kansas City, MO 64105  
(816) 876-2600  
(816) 221-8763 (fax)  
matt@williamsdirks.com

Matthew R. Doeblner  
Pribanic & Pribanic, LLC  
513 Court Place  
Pittsburgh, PA 15219  
412-281-8844  
412-281-4740 (fax)  
mdoebler@pribanic.com



Matthew Stephen Grayson  
Matthew Stephen Grayson  
Attorney at Law  
917 Nowita Place  
Venice, CA 90291  
310-827-9776

Matthew Weinshall  
Podhurst Orseck  
25 West Flagler Street  
Suite 800  
Miami, FL 33130  
305-358-2800  
mweinshall@podhurst.com

Maurice B. Graham  
Gray, Ritter & Graham, P.C.  
701 Market Street  
Suite 800  
St. Louis, MO 63101-1826  
(314)-345-2002  
314-241-4140 (fax)  
mgraham@grgpc.com

Mekel Smith Alvarez  
Morris Bart, LLC (New Orleans)  
909 Poydras St.  
Suite 2000  
New Orleans, LA 70112-4000  
504/599-3385  
504/599-3380 (fax)  
malvarez@morrisbart.com

MAURICE WILLET  
Boies Schiller  
5301 Wisconsin Ave  
11/10/15

mwilllett@bsfilp.com

Melanie L. Cyganowski  
Otterbourg, Steindler, Houston & Rosen  
230 Park Avenue  
New York, NY 10169  
(212)-661-9100  
212 682 6104 (fax)  
mcyganowski@oshr.com

*Melanie Cyganowski*  
STEVEN SOUL  
OTTORBOURG

Melissa M. Merlin  
Husch Blackwell Sanders, LLP (St. Louis)  
190 Carondelet Plaza  
Suite 600  
St. Louis, MO 63105-3441  
(314)-480-1887  
(314)-480-1505 (fax)  
melissa.merlin@huschblackwell.com

Michael A. Caddell  
Caddell & Chapman  
1331 Lamar Street, Suite 1070  
Houston, TX 77010  
(713) 751-0400  
713-751-0906 (fax)  
mac@caddellchapman.com

Michael A. Gould  
Konner Teitelbaum & Gallagher  
462 Seventh Avenue, 12th Floor  
New York, NY 10018  
(212)-697-8500  
(212)-697-4512 (fax)  
mgould@ktglaw.com

Michael Dennis Donovan  
Donovan Searles, LLC  
1845 Walnut Street, SUite 1100  
Philadelphia, PA 19103  
(215) 732-6067  
(215) 732-8060 (fax)  
mdonovan@donovanaxler.com

*Michael Dennis Donovan*

Michael Francis Ram  
Faruqi & Faruqi LLP  
1901 Avenue of the Stars, Second Floor  
Los Angeles, CA 90067  
310-461-1426  
310-461-1427 (fax)

Michael Francis Ram  
Ram, Olson, Cereghino & Kopczynski LLP  
555 Montgomery Street  
Suite 820  
San Francisco, CA 94111  
(415)-846-3862  
415-433-7311 (fax)  
mram@rocklawcal.com

Michael Isaac Miller  
Baron Budd  
15910 Ventura Boulevard  
Suite 1600  
Encino, CA 91436  
818-839-2333  
818-986-9698 (fax)  
imiller@baronbudd.com

Michael Jerome Higer  
Higer Lichter & Givner LLP  
18305 Biscayne Boulevard  
Suite 402  
Aventura, FL 33160  
305-933-9970  
933-0998 (fax)  
mhiger@hlglawyers.com

Michael Louis Kelly  
Kirtland & Packard LLP  
2361 Rosecrans Avenue  
Fourth Floor  
El Segundo, CA 90245  
(310)-536-1002  
(310)-536-1001 (fax)  
mlk@kirtlandpackard.com

Michael T. Navigato  
Bochte, Kuzniar & Navigato, LLP  
2580 Foxfield Road  
Suite 200  
St. Charles, IL 60174  
(630) 377-7770  
(630) 377-3479 (fax)  
mnavigato@bknlaw.com

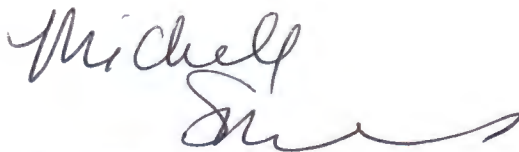
*James R. Fyfe  
recently returned by  
M. C. & appearance of  
be filed this week.*



Michael Tabb  
Greene LLP  
One Liberty Square  
Suite 1200  
Boston, MA 02109  
617-261-0040  
617 507 6559 (fax)  
matabb@greenellp.com

Michele F Raphael  
Wolf Popper LLP  
845 Third Avenue 12th Floor  
New York, NY 10022  
212-759-4600  
212-486-2093 (fax)  
mraphael@wolfpopper.com

Michele R Sowers  
Husch Blackwell LLP - St. Louis  
190 Carondelet Plaza  
Suite 600  
St. Louis, MO 63105  
(314)-480-1908  
314-480-1505 (fax)  
michele.sowers@huschblackwell.com



Michelle L. Kranz  
Zoll, Kranz & Borgess  
Ste. 100  
6620 Central Avenue  
Toledo, OH 43617  
419-841-9623  
419-841-9719 (fax)  
michelle@toledolaw.com

Miles Greaves  
Taus, Cebulash & Landau  
80 Maiden Lane  
New York, NY 10038  
(212) 931-0704  
(212)-931-0703 (fax)  
mgreaves@tcllaw.com

Mitchell A Toups  
Weller Green Toups & Terrell LLP  
2615 Calder  
Suite 400  
Beaumont, TX 77704  
409/838-0101  
14098328577 (fax)  
matoups@wgttlaw.com

Paul A. Niall  
Spilman Thomas & Battle, PLLC  
300 Kanawa Boulevard, East (25301)  
Post Office Box 273  
Charleston, WV 25321  
304-340-3800  
304-340-3801 (fax)

Paul T. Oven  
Dougherty Leventhal & Price, LLP  
75 Glenmaura National Blvd.  
Moosic, PA 18507  
570-347-1011  
3477028 (fax)  
ptoven@dplaw.com

Peter A. Muhic  
Kessler Topaz Meltzer & Check, LLP  
280 King of Prussia Road  
Radnor, PA 19087  
(610) 667-7706  
pmuhic@ktmc.com

Peter J. Brodhead  
Spangenberg, Shibley & Liber  
1001 Lakeside Avenue, E  
Ste. 1700  
Cleveland, OH 44114  
216-696-3232  
216-696-3924 (fax)  
pjb@spanglaw.com

Peter Prieto  
Podhurst Orseck, P.A.  
25 West Flagler Street  
Suite 800  
Miami, FL 33130  
305-358-2800  
305-358-2382 (fax)  
pprieto@podhurst.com



Philip J. Goodman  
Chadbourne & Parke LLP (DC)  
1200 New Hampshire Ave., NW  
Washington, DC 20036  
(202)-974-5621  
(202)-974- 6721 (fax)  
pgoodman@chadbourne.com

Philip L Gregory  
Cotchett Pitre Simon and McCarthy  
San Francisco Airport Office Center  
840 Malcolm Road Suite 200  
Burlingame, CA 94010  
650-697-6000  
650-697-0577 (fax)  
pgregory@cpmlegal.com

Phong-Chau Gia Nguyen  
Lieff Cabraser Heimann & Bernstein, LLP( SF )  
275 Battery Street, 30th Floor  
San Francisco, CA 94111-3339  
(415)-956-1000  
(415)-956-1008 (fax)  
pnguyen@lchb.com

Pryce Godfrey Tucker  
HARTLINE DACUS BARGER  
6688 N. Central Expressway  
Suite 1000  
Dallas, TX 75206  
214-346-3726  
214-267-4226 (fax)  
ptucker@hdbdlaw.com

R. Dean Gresham  
Payne Mitchell Law Group, LLP  
2911 Turtle Creek Blvd  
Suite 1400  
Dallas, TX 75219  
214-252-1888  
214-252-1889 (fax)  
dean@paynemitchell.com

R. Patrick Parker  
631 Second Avenue, S  
Suite 1R  
Nashville, TN 37210  
(615) 254-5461  
pparker@hardaway.net

Rachel Geman  
Lieff Cabraser Heimann & Bernstein, LLP  
250 Hudson Street  
8th Floor  
New York, NY 10013-1413  
(212) 355-9500  
(212)-355-9592 (fax)  
rgeman@lchb.com

A handwritten signature in black ink, appearing to read "R. Dean Gresham", is located to the right of the contact information for R. Dean Gresham.

Rachele R. Rickert  
Symphony Tower  
750 B Street  
San Diego, CA 92101  
(619) 239-4599

Randall Keith Pulliam  
Carney Williams Bates Bozeman & Pulliam, PLLC  
11311 Arcade Drive, Suite 200  
Little Rock, AR 72212  
(501) 312-8500  
(501) 312-8505 (fax)  
rpulliam@carneywilliams.com

Ranse Partin  
Conley Griggs Partin LLP  
The Hardin Building  
1380 West Paces Ferry Road  
N.W., Suite 2100  
Atlanta, GA 30327  
404-467-1155  
404-467-1166 (fax)

Renee Deborah Smith  
Kirkland & Ellis LLP (IL)  
300 North LaSalle Street  
Chicago, IL 60654  
(312) 862-2000  
(312) 862-2200 (fax)  
rdsmith@kirkland.com

Richard Cartier Godfrey  
Kirkland & Ellis LLP (IL)  
300 North LaSalle Street  
Chicago, IL 60654  
(312)-861-2391  
(312)-861-2200 (fax)  
rgodfrey@kirkland.com

*Richard Godfrey*

Richard Edward Shevitz  
Cohen & Malad, LLP  
One Indiana Square  
Suite 1400  
Indianapolis, IN 46204  
(317) 636-6481  
(317) 636-2593 (fax)  
rshevitz@cohenandmalad.com

Richard J.R. Raleigh, Jr.  
Wilmer & Lee, P.A.  
100 Washington Street  
Suite 200  
Huntsville, AL 35804-2168  
(256) 533-0202  
(256) 533-0302 (fax)  
rraleigh@wilmerlee.com

Robert A Buccola  
Dreyer Babich Buccola Wood LLP  
20 Bicentennial Circle  
Sacramento, CA 95826  
916-379-3500  
916-379-3599 (fax)

Robert A. Clifford  
Clifford Law Offices, P.C  
120 N Lasalle Street, Suite 3100  
Chicago, IL 60602  
(312)-899-9090  
(312)-251-1160 (fax)  
rac@cliffordlaw.com

Robert B Carey  
Hagens Berman Sobol Shapiro LLP  
11 West Jefferson Street Suite 1000  
Phoenix, AZ 85003  
602-840-5900  
602-840-3012 (fax)  
rob@hbsslaw.com

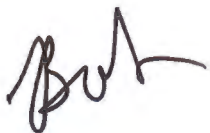
Robert B Hutchinson  
Hutchinson & Snider  
9454 Wilshire Boulevard, Suite 907  
Beverly Hills, CA 90212  
310-276-1460  
rhutchinson@hutchinsonsnider.com

Robert Burkart Ellis  
Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, IL 60654  
(312)862-2000  
rellis@kirkland.com

Robert F Childs, Jr  
WIGGINS CHILDS QUINN & PANTAZIS  
301 19th Street, North  
Birmingham, AL 35203-3204  
205-314-0500  
RFC@wcqp.com

Robert F. DiCello  
The DiCello Law Firm  
Western Reserve Law Building  
7556 Mentor Avenue  
Mentor, OH 44060  
440-953-8888  
440-953-9138 (fax)

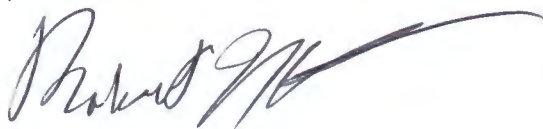
Robert Hilliard  
Hilliard Munoz Gonzales LLP  
719 S Shoreline  
Ste 500  
Corpus Christi, TX 78401  
361-882-1612  
361-882-3015 (fax)  
bobh@hmglawfirm.com



Robert J Axelrod  
Pomerantz LLP  
600 Third Ave, 20th Floor  
New York, NY 10016  
212-661-1100  
212-661-8665 (fax)  
rjaxelrod@axelroddean.com

Robert J Neary  
Kozyak Tropin & Throckmorton, P.A.  
2525 Ponce de Leon Blvd  
9th Floor  
Coral Gables, FL 33134  
(305) 372-1800  
(305) 372-3508 (fax)  
rn@kttlaw.com

Robert N. Kaplan  
Kaplan Fox & Kilsheimer LLP (NYC)  
850 Third Avenue  
14th Floor  
New York, NY 10022  
(212) 687-1980  
(212) 687-7714 (fax)  
rkaplan@kaplanfox.com



Robert S Plosky  
Wolf Popper LLP  
845 Third Avenue  
New York, NY 10022  
212-759-4600  
212-486-2093 (fax)  
rplosky@wolffpopper.com

Robin Greenwald  
Weitz & Luxenberg, P.C.  
700 Broadway  
New York, NY 10003  
(212)-558-5802  
rgreenwald@weitzlux.com

*Robin Greenwald*

Rocco Calamusa, Jr  
WIGGINS CHILDS QUINN & PANTAZIS LLC  
The Kress Building  
301 19th Street, North  
Birmingham, AL 35203-3204  
314-0500  
254-1500 (fax)  
Rcalamusa@wcqp.com

Roger L Mandel  
Lackey Hershman LLP  
3102 Oak Lawn Avenue Suite 777  
Dallas, TX 75219  
(214)-560-2201  
rlm@lhlaw.net

*Roger Mandel*

Roland K Tellis  
Baron and Budd PC  
15910 Ventura Boulevard Suite 1600  
Encino, CA 91436  
818-839-2333  
818-986-9698 (fax)  
rtellis@baronbudd.com

*RT*

Roland Karim Tellis  
Baron Budd, P.C.  
15910 Ventura Boulevard  
Encino Plaza, Suite 1600  
Encino, CA 91436  
818-839-2333  
818-986-9698 (fax)  
rtellis@baronbudd.com

Rudy Gonzales, Jr  
Attorney at Law  
719 S Shoreline  
Suite 500  
Corpus Christi, TX 78401  
361-882-1612  
361-882-3015 (fax)  
rudyg@hmgllawfirm.com

Ryan N. Clark  
Lewis, Thomason, King, Krieg & Waldrop, P.C. (Nashville)  
424 Church Street  
Suite 2500  
Nashville, TN 37219  
(615) 259-1366  
(615) 259-1389 (fax)  
rclark@lewisthomason.com

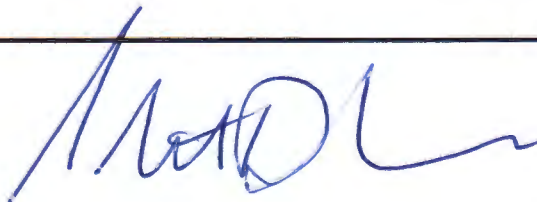
Salvadore Christina, Jr.  
Becnel Law Firm, LLC  
P. O. Drawer H  
106 West Seventh Street  
Reserve, LA 70084  
985-536-1186  
985-536-6445 (fax)  
schristina@cox.net

Scot D Wilson  
Robinson Calcagnie Robinson Shapiro Davis Inc  
19 Corporate Plaza Drive  
Newport Beach, CA 92660  
949-720-1288  
949-720-1292 (fax)  
swilson@rcrlaw.net

Scott Bradley Cooper  
The Cooper Law Firm, P.C.  
2030 Main Street, Suite 1300  
Irvine, CA 92614  
949-724-9200  
949-724-9255 (fax)  
scott@cooper-firm.com

Scott D Simpkins  
Climaco Lefkowitz Peca Wilcox & Garofoli LPA - 1  
55 Public Square  
Suite 1950  
Cleveland, OH 44113  
216-621-8484  
sdsimp@climacolaw.com

Scott Davidson  
King & Spalding LLP  
1185 Ave of the Americas  
New York, NY 10036-2601  
212-556-2100





Simon B. Paris  
Saltz, Mongeluzzi, Barrett & Bendesky, P.C.  
One Liberty Place, 52nd Floor  
1650 Market Street  
Philadelphia, PA 19103  
215-575-3986  
sparis@smbb.com

*Simon Paris  
by M. Donovan to argue*

Stephanie Anne Casey  
Colson, Hicks & Eidson  
255 Alhambra Circle  
Coral Gables, FL 33134-5008  
(305)-476-7400  
(305)-476-7444 (fax)  
scasey@colson.com

Stephen B. Devereaux  
King & Spalding, LLP (GA)  
1180 Peachtree Street, N.E.  
Atlanta, GA 30309  
(404)-572-4735  
(404)-572-5137 (fax)  
sdevereaux@kslaw.com

Sterling Starns  
Barrett Law Group, P.A.  
404 Court Square North  
Po Box 927  
Lexington, MS 39095  
(662)834-9168  
(662)834-2628 (fax)  
sstarns@barrettlawgroup.com

Steve W. Berman  
Hagens Berman Sobol Shapiro LLP (Seattle)  
1918 8th, Avenue  
Suite 3300  
Seattle, WA 98101  
(206) 268-9320  
(206) 623-0594 (fax)  
steve@hbsslw.com



Steven G Sklaver  
Susman Godfrey LLP  
1901 Avenue of the Stars Suite 950  
Los Angeles, CA 90067-6029  
310-789-3100  
310-789-3150 (fax)  
ssklaver@susmangodfrey.com

*SS/KI*

---

Thomas M. Greene  
Greene LLP  
One Liberty Square  
Suite 1200  
Boston, MA 02109  
617-261-0040  
617-507-6559 (fax)  
tgreene@greenellp.com

---

Tiffany MArko Yiatras  
Carey, Danis & Lowe  
8235 Forsyth Boulevard, Suite 1100  
Saint Louis, MO 63105  
(314)-725-7700  
(314)-721-0905 (fax)  
tyiatras@careydanis.com

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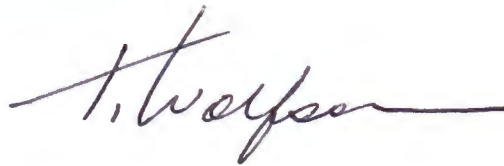
Timothy C. Bailey  
Bucci, Bailey & Javins, L.C.  
213 Hale Street  
Charleston, WV 25301  
304-932-4639  
304-345-0375 (fax)

---

Timothy L. Sifers  
Potts Law Firm, LLP  
908 Broadway  
3rd Floor  
Kansas City, MO 64105  
(816) 931-2230  
(816) 931-7030 (fax)  
tsifers@potts-law.com

---

Tina Wolfson  
Ahdoot & Wolfson, P.C.  
1016 Palm Avenue  
West Hollywood, CA 90069  
310-474-9111  
310-474-8585 (fax)  
twolfson@ahdootwolfson.com



---

Todd A Walburg  
Lieff Cabraser Heimann and Bernstein LLP  
275 Battery Street 29th Floor  
San Francisco, CA 94111-3339  
415-956-1000  
415-956-1008 (fax)  
twalburg@lchb.com

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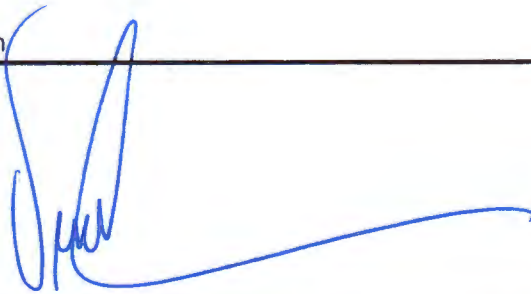
Todd Eugene Hilton  
Stueve Siegel Hanson, LLP - KCMO  
460 Nichols Road  
Suite 200  
Kansas City, MO 64112  
(816) 714-7100  
(816) 714-7101 (fax)  
hilton@stuevesiegel.com

Tracey Kitzman  
Friedman Law Group  
270 Lafayette Street, 14th Floor  
New York, NY 10012  
(212) 680-5150  
(646) 277-1151 (fax)  
tkitzman@flglp.com

Travis Edward Venable  
Thomas J Henry Injury Attorneys PLLC  
4715 Fredericksburg  
Suite 507  
San Antonio, TX 78229  
(210) 656-1000

Vess Allen Miller  
Cohen & Malad, LLP  
One Indiana Square  
Suite 1400  
Indianapolis, IN 46204  
(317) 636-6481  
(317) 636-2593 (fax)  
vmiller@cohenandmalad.com

Victor H. Pribanic  
Pribanic & Pribanic, LLC  
1735 Lincoln Way  
White Oak, PA 15131  
(412) 672-5444  
(412) 672-3715 (fax)  
lisa@pribanic.com

A handwritten signature in blue ink, appearing to be 'V. Pribanic', is written over the contact information for Victor H. Pribanic. The signature is stylized and extends across the right side of the contact block.

W. Mark Lanier  
Lanier Law Firm, P.C.  
6810 FM 1960 West  
Houston, TX 77069  
(713) 659-5200  
(713) 659-2204 (fax)

Wilson D Miles, III  
Beasley Allen Crow Methvin Portis and Miles PC  
218 Commerce Street  
PO Box 4160  
Montgomery, AL 36104  
334-269-2343  
334-954-7555 (fax)  
dee.miles@beasleyallen.com

Wilson D. Miles  
Beasley Allen Crow Methvin Portis & Miles, P.C.  
Post Office Box 4160  
Montgomery, AL 36103  
334-269-2343  
334-954-7555 (fax)  
dee.miles@beasleyallen.com

Wilson Daniel Miles, III  
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.  
P.O. Box 4160  
Montgomery, AL 36104  
(334)-269-2343  
(334)-954-7555 (fax)  
dee.miles@beasleyallen.com

Zachary Logan Wool  
Barrios, Kingsdorf & Casteix, LLP L.L.C.  
701 Poydras St, Suite 3650  
New Orleans, LA 70139  
504-524-3300  
(504) 524-0069 (fax)  
zwool@bkc-law.com

*W.D. Miles*

*Andrew Genser  
Kirkland & Ellis  
601 Lexington  
NY NY 10022  
212 446 4809  
212 446 6460  
agenser@kirkland.com*

*Peter J. Morgey  
Levin Papantonio  
Pensacola, FL.  
850-435-7068*