STONETURN GROUP

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CROWELL & MORING LLP & STONETURN GROUP

APPLICATION TO SERVE AS INDEPENDENT COMPLIANCE AUDITOR FOR HERBALIFE

AUGUST 29, 2016

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A. Executive Summary

Crowell & Moring, an international law firm, and StoneTurn Group, a consulting firm specializing in compliance, controls and forensic auditing, jointly submit this proposal to serve in collaboration as the Independent Compliance Auditor ("ICA") for Herbalife.

The combination of Crowell & Moring's attorneys and StoneTurn's auditing and forensic accounting experts meet the broad mandate of the ICA: Crowell's subject-matter expertise includes an insider's knowledge of FTC consumer protection enforcement and policies; experience working with consumer product companies including marketers of personal, health, and weight-loss products; and senior-level prosecutorial and private sector experience with complex civil and criminal investigations, prosecutions and defense. StoneTurn brings decades of experience in auditing, forensic accounting and controls design and testing. Crowell and StoneTurn have national reputations for fairness, cooperation, and creativity in finding solutions for complex problems; they have earned the trust and confidence of prosecutors, regulators, and judges, as detailed in **Part D** below.

Our proposed team leaders reflect that broad expertise and the unassailable reputation expected of an ICA. Kelly Currie, chair of Crowell & Moring's Investigations Practice, will lead the ICA Team. He recently served as Acting U.S. Attorney for the EDNY and as Chief Assistant U.S. Attorney to then-U.S. Attorney Loretta E. Lynch, and directly supervised his Office's dealings with HSBC's corporate monitor. Xavier Oustalniol, a partner at StoneTurn with over 25 years of experience as an auditor, forensic accountant and litigation consultant, will partner with Mr. Currie as the Chief Auditor and co-lead of the ICA Team.

Crowell & Moring's Los Angeles office will serve as the ICA Team's local office for all on-site work with Herbalife, and will support all ICA Team members, both on-site and remotely, ensuring prompt, secure, and responsive communications with Herbalife and the FTC.

Our joint approach to the ICA contemplates thorough, ongoing, reasoned and rational collaboration with Herbalife. This collaboration begins with evaluating the initial business and process adjustments implemented by Herbalife to comply with the Stipulated Order for Permanent Injunction and Monetary Judgment ("Order"), signed and issued by the Honorable Beverly Reid O'Connell on July 25, 2016, and continues through regular assessments of the effectiveness of those adjustments, and, to the extent necessary, identifying and evaluating potential additional adjustments to support Herbalife's continued compliance. Although much of the compliance assessment will involve traditional forensic auditing procedures, the ICA must be familiar with Herbalife's business model, policies and procedures; with the implementation of and compliance with Herbalife's policies and procedures by its independent Members; and with the FTC's consumer protection principles and settlement enforcement perspective. We can do all of that. And our team will work with Herbalife and the FTC throughout the ICA to make sure that we provide appropriate oversight without unduly inhibiting Herbalife's ongoing business or exceeding the scope of the ICA.

We welcome any inquiries and the opportunity to discuss this application further with the FTC and Herbalife.

B. Personnel

Below is general background about the firms and details about the proposed core engagement team.

Crowell & Moring

Crowell & Moring LLP is an international law firm of almost 500 attorneys with a substantial physical presence in key domestic markets, including Washington, D.C., New York, Los Angeles, San Francisco, and Orange County. Crowell is known for its regulatory and litigation heft and prides itself on its reputation for effective teamwork and responsiveness. We represent public and private businesses, non-profit organizations and government entities in complex and high-stakes litigation, enforcement, regulatory and administrative, and transactional matters, and in government and internal investigations. As detailed below, our team members have decades of experience (including inside the FTC) with FTC consumer protection issues, government and internal investigations, and guiding companies through a regulatory enforcement action. For example, our proposed ICA lead (Kelly Currie) served as Acting U.S. Attorney in the Eastern District of New York, where he oversaw a number of high-profile matters, including the recent global investigation and indictment of dozens of high-ranking FIFA officials and sports marketing executives for bribery, kickback, and related charges. Our experience on all sides of the table and our subject-matter expertise equips us to appreciate and balance the FTC's enforcement concerns and priorities with Herbalife's business objectives while supporting Herbalife's emergence from the FTC proceeding as a viable, vibrant enterprise that is an industry leader in compliance.

StoneTurn Group

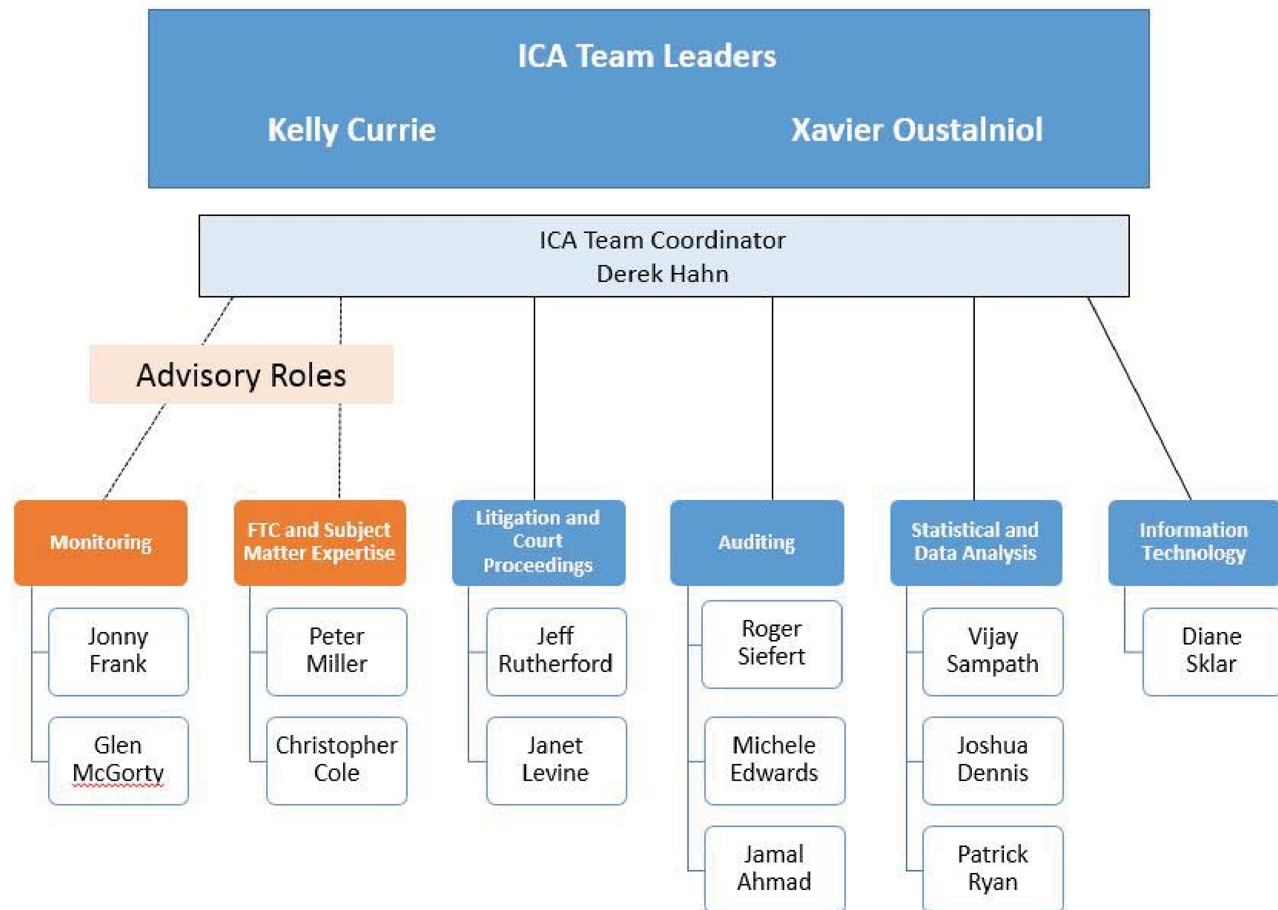
StoneTurn provides forensic and expert services to attorneys, corporations, and regulators on high-stakes legal and compliance matters such as complex litigation and disputes, regulatory enforcement actions, and financial investigations. Our professionals have been involved in monitorships since the concept was introduced in 1989. Our experience includes serving as prosecutor supervising the monitor; chief compliance officer of a monitored company; government-imposed monitor; company-appointed monitor; forensic adviser to monitor; and company adviser. We approach every engagement with deep expertise and a focus on quality. More specifically, we combine the mindset of fraud auditors with the knowledge and expertise of financial experts to help organizations recover losses, repair flawed controls, restore culture, rescue wounded relationships, mend reputational damage, and prevent the recurrence of misconduct.

ICA Senior Engagement Team

Crowell & Moring and StoneTurn share a staffing philosophy: deploying lean, highly-experienced teams. This model, which is critical for effective monitorships and compliance audits, enables us to complete projects within anticipated deadlines and budgets and to react promptly and efficiently throughout the course of an engagement.

The ICA Team commits to a transparent staffing model – "who you see is who you get" – that is, all the individuals listed below will be actively involved in the engagement, as needed. The qualifications for each member of the proposed ICA Team and their respective roles are set forth below. Please see

Appendix A for curriculum vitae for each senior ICA Team member. Each listed individual is prepared to devote the time required to serve on the ICA Team. To the extent that ICA tasks do not require the specific expertise and experience described below, the ICA team may work with additional Crowell & Moring and StoneTurn staff to accomplish those tasks in a timely and cost-efficient manner.



<u>**Team Leaders**</u>

Kelly Currie will lead the ICA Team. Mr. Currie is a partner in Crowell & Moring's White Collar & Regulatory Enforcement Group and chair of the firm's Investigations Practice. He represents companies and individuals in government investigations, regulatory enforcement actions, and corporate internal investigations. Mr. Currie served as a federal prosecutor in the U.S. Attorney's Office for the Eastern District of New York ("EDNY") for nearly 15 years. Most recently, from 2014-2016, Mr. Currie served as Acting U.S. Attorney for the EDNY and as Chief Assistant U.S. Attorney to then-U.S. Attorney Loretta E. Lynch. In that capacity, he was responsible for all criminal and civil litigation in the district on behalf of the United States and supervised more than 175 Assistant U.S. Attorneys. He oversaw a number of high-profile matters, including the investigation and indictment of dozens of high-ranking FIFA officials and sports marketing executives on charges related to alleged bribery and kickback schemes. As detailed in

Part D, below, Mr. Currie also supervised his Office's oversight of the deferred prosecution agreement with HSBC Bank, which imposed an independent compliance monitor for systemic failures in the bank's AML and sanctions compliance systems. Earlier in his career, Mr. Currie served for over a decade as an Assistant U.S. Attorney in the EDNY, including as Deputy Chief of the Criminal Division and Chief of the Violent Crimes & Terrorism Section. Mr. Currie has tried over fifteen federal jury trials to verdict and argued a dozen cases before the Second Circuit Court of Appeals.

Xavier Oustalniol will serve as the co-leader of the ICA Team and Chief Auditor responsible for reporting to the FTC, coordinating with Herbalife's designated representatives on the ground on the West Coast, and directing ICA auditing activities. Mr. Oustalniol has audited a number of companies in a variety of contexts, and has directed complex forensic accounting investigations or internal investigations for boards involving regulators such as the Securities and Exchange Commission ("SEC"), Department of Justice ("DOJ"), and Financial Industry Regulatory Authority ("FINRA"). He was an auditor for more than 10 years with Deloitte and audited manufacturers, retailers, automobile manufacturers, service companies, and financial institutions. In this capacity, he designed and implemented audit approaches tailored to risks specific to his clients.

Derek Hahn will serve as coordinator for the ICA Team, organizing the project workflow and compiling the reports for submittal to Herbalife and the FTC. Mr. Hahn is a counsel in Crowell & Moring's Los Angeles and Orange County, California offices. He has extensive experience defending companies in complex government investigations and enforcement actions across a wide range of industries, including in managing forensic accounting firms in responding to investigations by the DOJ, the SEC, and U.S. Attorneys' offices. He has represented clients in myriad fraud matters including securities, procurement, consumer and health care, and in public corruption and conflicts of interest matters. Mr. Hahn has also coordinated forensic accounting support for compliance risk assessments, leveraging that work to enhance his clients' compliance and training programs.

Monitoring

Jonny Frank will assist the ICA Team in developing forensic audit procedures. Mr. Frank leads StoneTurn's Compliance Controls & Monitoring practice, which provides financial expert and forensic services in pre- and post-incident compliance matters, internal investigations and business disputes. He has extensive experience in forensic investigations, compliance and risk management. Mr. Frank currently serves as the DOJ-appointed Independent Business Ethics & Compliance Monitor of Deutsche Bank and a senior member of the National Highway Traffic Safety Administration ("NHTSA")-appointed monitorship of Takata, a Tier One manufacturer of airbags and other automotive safety equipment, where Mr. Frank leads teams auditing Takata's ethics and compliance program and safety process. He previously served as the New York State Department of Financial Services ("DFS")-appointed compliance monitor of Ocwen, the country's largest non-bank mortgage servicer; DOJ-appointed Independent Consultant to JPMorgan Chase & Co. ("JPMC") relating to mortgage servicing practices; and forensic auditor to the DOJ FCPA Monitors of Total S.A., a $250 billion oil and gas company and Biomet, a $5 billion medical device manufacturer.

Glen G. McGorty will act as adviser to the ICA Team. Mr. McGorty is managing partner of Crowell & Moring's New York office and is an experienced trial lawyer who served almost 15 years as a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York ("SDNY") and the

Department of Justice in Washington, D.C., where he prosecuted and supervised a wide range of significant high-profile cases, handling white collar matters such as securities fraud, public corruption, wire and mail fraud, money laundering, tax violations, insider trading, accounting fraud and options backdating cases, and other serious federal criminal cases. Since 2014, Mr. McGorty has served as the Independent Monitor of the New York City District Council of the United Brotherhood of Carpenters and its Benefit Funds appointed by the U.S. District Court for the SDNY. This federal monitorship involves the protection of the union against infiltration by corrupt individuals and entities, the investigation of the union's operations, evaluation of the union's compliance programs, and the monitoring of the union's elections. Mr. McGorty advises the union on the adoption of best practices and provides an independent perspective on governance matters, including the implementation of market-recovery strategies, and reporting to the Court with bi-annual interim reports.

FTC and Subject Matter Expertise

Peter Miller will act as an adviser to the ICA Team regarding FTC and consumer protection-related issues. Mr. Miller is a senior counsel in Crowell & Moring's Washington, D.C. office in its Advertising & Product Risk Management and Privacy & Cybersecurity groups. Mr. Miller joined Crowell & Moring in 2015 after 17 years in federal government, including, most recently, 11 years with the FTC in three different roles. As Chief Privacy Officer and Senior Agency Official for Privacy, he was responsible for safeguarding personal information throughout its lifecycle at the agency. As Assistant Director for Regional Operations in the FTC Bureau of Consumer Protection's Front Office, he coordinated consumer protection investigations, litigation, and settlements in the FTC's eight regional offices, including resolution of the "toning shoe" cases against Skechers and Reebok. As a staff attorney in the Division of Advertising Practices, he investigated and litigated health and weight-loss claims, including the cases against the marketers of Cortislim and Xenadrine EFX, and he led the team investigating Airborne and similar private-label products. Mr. Miller previously spent six years as a commercial litigator in the Corporate and Financial Litigation Section of DOJ's Civil Division.

Christopher Cole will act as an adviser to the ICA Team regarding advertising- and marketing-related issues as they pertain to Herbalife's relationships and communications with and from its independent Members. Mr. Cole is the co-chair of Crowell & Moring's Advertising & Product Risk Management Group, and has extensive experience regarding FTC Act enforcement, litigation, and counseling. Mr. Cole is a Chair of the ABA Section of Antitrust Advertising Disputes and Litigation Committee and co-chair of the ABA's upcoming Consumer Protection Law conference. Mr. Cole has been ranked among the top false advertising litigators in the country by *Chambers & Partners*, and is listed by *SuperLawyers* among the top Media and First Amendment lawyers in Washington, D.C., and by *Best Lawyers in America* for Advertising Law.

Litigation and Court Proceedings

Janet Levine is a partner in Crowell & Moring's Los Angeles office, chair of the firm's Trial Practice, and a member of the firm's Management Board and Executive Committee. Ms. Levine will be the ICA Team's West Coast principal for Crowell & Moring. She is a trial and appellate attorney, with experience in securities, health care, consumer and tax fraud. Her clients have included public and privately held businesses, labor unions, and government entities. She has significant familiarity with the Los Angeles Federal Courthouse, the District and its judges, having served as law clerk to the Honorable Arthur L.

Alarcon, United States Circuit Judge, Ninth Circuit Court of Appeals, and as a Deputy Federal Public Defender. She is also a past president of the Los Angeles Chapter of the Federal Bar Association and has served two terms as a lawyer delegate to the Ninth Circuit Judicial Conference. Ms. Levine is a Fellow of the American College of Trial Lawyers, a top ranked *Chambers* white collar lawyer and has been featured in *Global Investigations Review's* Women in Investigations and by *Who's Who Legal* as a foremost practitioner in investigations. She is a past chair of the ABA's Criminal Justice Section.

Jeff Rutherford is a partner in Crowell & Moring's Los Angeles office, where he serves as managing partner. Mr. Rutherford will serve as the ICA Team's West Coast litigation and court proceedings adviser. His practice is focused on white-collar criminal defense, complex civil litigation, and civil and criminal jury trial work. Mr. Rutherford has been lead trial counsel in many civil and criminal jury trials over the last 17 years, most of which were in the Central District of California. He has significant familiarity with the Los Angeles Federal Courthouse and its judges. Mr. Rutherford was a Deputy Federal Public Defender in the Central District of California, handling both trial and appeals. He served as a law clerk to the Honorable Consuelo B. Marshall, United States District Judge, Central District of California and was a lawyer delegate to the Ninth Circuit Judicial Conference. Mr. Rutherford also serves on the Board of Directors of the Federal Bar Association in Los Angeles (for which he served as President).

Auditing

Roger Siefert will assist with the tasks of the Chief Auditor, including coordination of potential on-site visits. Mr. Siefert has performed audits across a variety of industries, including financial services, manufacturing, pharmaceuticals, public utilities, and financial services. He has also led multiple investigations of alleged financial statement fraud and other misappropriations in various industries, including financial services, insurance, broker/dealer, health care, high-tech, manufacturing, and real estate, and has participated on the defense teams of multi-million dollar securities class action lawsuits. In addition, Mr. Siefert has assisted counsel in the various stages of litigation and performed multiple business valuations of companies.

Jamal Ahmad will conduct the audits, perform testing, implement programs steps, and report findings on a recurring basis. Mr. Ahmad specializes in forensic auditing investigations related to complex financial issues, Generally Accepted Accounting Principles ("GAAP") and Generally Accepted Auditing Standards ("GAAS"). He has assisted leading law firms and corporations with forensic accounting, litigation consulting, and corporate compliance matters, including compliance monitoring, fraud investigations, assessing and implementing antifraud and compliance programs, fraud risk assessments, and fraud and compliance training.

Michele Edwards will conduct the audits, perform testing, implement programs steps, and report findings on a recurring basis. Ms. Edwards has assisted many Fortune 500 companies with building and assessing antifraud and compliance programs and controls. She has helped companies assess and respond to their vulnerability to fraud by applying the "scheme and scenario" antifraud risk assessment framework, as well as implement controls, fraud auditing, and fraud detection strategies. In addition, Ms. Edwards has led and assisted companies with corporate investigations, and she has eight years of financial statement audit experience. Ms. Edwards leads and has been a member of Independent Compliance monitor teams appointed by the National Highway Traffic Safety Administration ("NHTSA") and New York State Department of Financial Services ("DFS").

Data Management and Statistical Analysis

Dr. Vijay Sampath will support the ICA Team with data analytics, design and development of sampling methodologies, and results analysis. His extensive experience in statistical and data analysis on large datasets includes, but is not limited to, univariate and multivariate methods, parametric and non-parametric techniques, time series, graph theory, machine learning, and predictive analytics. His statistical methods experience includes: ANOVA, linear regression (e.g., OLS, panel data, logit, ordered logit), cluster analysis, discriminant analysis, principal component analysis, factor analysis, and event history analysis. Dr. Sampath also specializes in complex financial investigations involving GAAP and GAAS matters. He has managed FCPA investigations, compliance program reviews, post-closing purchase price disputes, and other litigation matters involving white collar crime, bankruptcy, and contract proceedings.

Joshua Dennis will design, implement and manage processes associated with the extraction of financial information and other relevant data from Herbalife's systems, and support the ICA Team's data analysis. He will also support the ICA Team's creation of dynamic dashboards and interfaces that will allow tasks to be completed in a more consistent and effective manner, particularly tasks that need to be performed on a recurring basis, and he will help establish "flags" to identify potential issues through the application of a risk-based approach. In addition to his significant experience in data collection, mining, anomaly detection, and reporting of transactional data, Mr. Dennis also creates dynamic tools capable of allowing users to quickly and easily explore potential outcomes across a range of desired scenarios or inputs. As part of such engagements, Mr. Dennis also frequently performs analyses in connection with data sufficiency and integrity testing, integration of disparate data sets, data exploration, and visual modeling.

Patrick Ryan will design, implement and manage processes associated with the extraction of financial information and other relevant data from Herbalife's systems, and support the ICA Team's data analysis. He will also support the ICA Team's creation of dynamic dashboards and interfaces that will allow tasks to be completed in a more consistent and effective manner, particularly tasks that need to be performed on a recurring basis, and he will help establish "flags" to identify potential issues through the application of a risk-based approach. Mr. Ryan has provided data analytics and consulting services on numerous large-scale Chapter 11 bankruptcy matters, mortgage-backed securities cases, and internal audit and investigations projects. He helped to design and manage the technology and analytics infrastructure for the internal audit division of a Fortune 50 enterprise and developed customized data-driven applications for use in internal audit and fraud investigations.

Information Technology

Diane Sklar will be responsible for interfacing with Herbalife's technology team to understand the company's IT systems, processes, and procedures, and she will coordinate with Herbalife to design effective and efficient methods for extracting and analyzing financial information and other relevant data necessary for the work of the ICA Team. Ms. Sklar will also work with Herbalife and the ICA Team to maintain appropriate data security for Herbalife and ICA Team data. Ms. Sklar is an expert in evaluating business processes and testing operational, compliance and IT controls. Her experience includes performing numerous detailed assessments of business processes; evaluating the design and

implementation plans for integrated systems; providing feedback on the adequacy of testing plans and security controls; and recommending enhancements and measures to remediate control gaps.

C. Qualifications

Team Member	*Auditing*	*Moni-toring*	*Statistical and Data Analysis*	*Data Mgt. and Info. Technology*	*Completing Projects within Deadlines*	*Court Proceedings*	*Report Writing*	*FTC/Legal Subject Matter Expertise*
Kelly Currie		X			X	X	X	X
Xavier Oustalniol	X		X		X	X	X	
Derek Hahn			X	X	X	X	X	X
Jonny Frank	X	X			X	X	X	
Glen McGorty		X			X	X	X	X
Peter Miller				X	X	X	X	X
Chris Cole					X	X	X	X
Janet Levine		X			X	X	X	X
Jeff Rutherford					X	X	X	X
Roger Siefert	X	X	X		X	X	X	
Jamal Ahmad	X	X	X		X	X	X	
Michele Edwards	X	X	X		X	X	X	
Dr. Vijay Sampath	X	X	X	X	X	X	X	
Joshua Dennis			X	X	X	X	X	
Patrick Ryan			X	X	X	X	X	
Diane Sklar			X	X	X	X	X	

D. Prior Experience And References

The collective experience of Crowell & Moring and Stoneturn uniquely qualifies us to serve as ICA for Herbalife. Set forth below are examples of projects that demonstrate our qualifications. (Please note that many of our engagements and materials are confidential and thus cannot be included in this application.)

Recent relevant project experience includes:

- **Oversight of HSBC monitor for DOJ:** In December 2012, HSBC Bank (“HSBC”) entered a deferred prosecution agreement (“DPA”) with the DOJ and the U.S. Attorney’s Office for the Eastern District of New York (“EDNY”). The DPA required HSBC to pay $1.9 billion in fines for violations of the Bank Secrecy Act arising from widespread inadequacies in the bank’s anti-money laundering systems and controls. The DPA also imposed a monitor on HSBC for five years. Both as Chief Assistant U.S. Attorney and Acting U.S. Attorney in the EDNY from 2014-2016, Kelly Currie directly supervised his Office’s dealings with HSBC’s corporate monitor. The DPA required

HSBC to overhaul its anti-money laundering and sanctions systems and controls and to implement improved overarching compliance and ethics programs. The agreement further required the monitor to report regularly to the Department of Justice. Mr. Currie reviewed the informal and formal reports submitted by the HSBC monitor regarding the bank's progress in meeting the requirements of the DPA, and supervised the federal prosecutors in their ongoing interactions with both HSBC and the monitor. In addition, Mr. Currie personally oversaw the preparation of and approved the government's periodic submissions to the district court providing the DOJ's assessment of the monitor's findings and the progress of HSBC in meeting its obligations under the DPA. When the district court ordered the public release of the monitor's annual report at the request of a bank customer, Mr. Currie oversaw the government's briefings in opposition to the unsealing on a number of legal and policy grounds, including that it would impair the monitor's ability to assess the bank's compliance with the DPA by impeding information gathering and dampening the cooperation of third parties with monitors, and that it would interfere with the bank's regulators' ability to supervise the bank. That litigation, a matter of first impression, is currently before the Second Circuit Court of Appeals. [Kelly Currie, Crowell & Moring]

Examples of work product related to this project are included in **Appendix B.**

- **Enron:** Professionals were engaged as part of the CRO team to analyze and develop an approach to bring more than 1,000 fraudulent conveyance actions on behalf of the Enron estates. We designed and implemented processes and a reporting system to measure progress of the cases and recoveries; supervised fees of outside counsel; and assisted with developing protocols with counsel to satisfy e-discovery requests in connection with various investigations and actions, for more than two years. This project required the use of large-scale data analytics, comprehensive reporting and statistical analysis – strategies and tactics likely be employed in the Herbalife matter. [Xavier Oustalniol, StoneTurn]

- **Lehman Brothers:** Xavier Oustalniol conducted an investigation into the collapse of Lehman Brothers on the behalf of the CRO in conjunction with the estates, as part of the restructuring team. This included coordinating an investigative team, developing a work plan and developing an approach to document the last days of Lehman. This endeavor required adapting to a rapidly changing environment, building internal processes to report findings regularly to the CRO, interacting with counsel, contractors, conducting interviews of many former employees to understand the processes in place and evaluate (retroactively) issues that the company had been facing. [Xavier Oustalniol, StoneTurn]

    - **Reference:**
      John Suckow
      Chief Operating Officer
      Alvarez & Marsal
      Tel: +1 646 495 4155
      E-mail: jsuckow@alvarezandmarsal.com

- **Takata:** Jonny Frank serves as a forensic adviser to the NHTSA-appointed independent monitor to Takata, a Tier One manufacturer of airbags and other automotive safety equipment. In this

role, he leads a team of risks, controls and industry experts, who conduct forensic audits of the company's safety systems and compliance controls in the U.S. and around the world. The team applies the methodology described in Parts A & B. [Jonny Frank, StoneTurn]

- **Reference:**
  Eric J. Laptook
  General Counsel, Chief Safety Officer & Chief Compliance Officer
  TK Holdings, Inc.
  Tel: +1 248 475 2497
  E-mail: Eric.Laptook@Takata.com

- **Independent Monitorship:** Glen McGorty is appointed by the U.S. District Court for the Southern District of New York to serve as the Independent Monitor of the New York City District Council of the United Brotherhood of Carpenters and its Benefit Funds in January 2015 as a result of an agreement between the United States Attorney's Office for the Southern District of New York, the District Council and the Benefit Funds, approved by the Court in its Order dated November 18, 2014, and subsequently renewed. The monitorship's primary mandate is to safeguard the union against corruption. Activities include supervising investigations into many different aspects of the union's operations; evaluating the union's compliance; monitoring the union's elections; advising the union on the adoption of best practices to comply with the Consent Decree; providing an independent perspective on governance matters; oversight of the implementation of novel market-recovery strategies; creation of a new local union within the district council; and the development of an IT system for the union's unique needs. [Glen McGorty, Crowell & Moring]

  - **References:**
    Hon. Richard Berman
    United States District Judge
    United States District Court, Southern District of NY
    500 Pearl Street
    New York, NY 10007
    (212) 805-6715

    Barbara S. Jones
    Bracewell LLP
    1251 Avenue of the Americas
    49th Floor
    New York, New York 10020-1100
    barbara.jones@bracewelllaw.com
    (212) 508-6105

  Examples of work product related to this project are included in **Appendix B.**

- **Represented client in interaction with court-appointed monitor in high-profile racketeering case:** Janet Levine represented the president and half owner of one of the largest independent grocery chains in the United States. Her client's estranged husband was arrested and charged

with racketeering offenses. While Ms. Levine's client was not charged, $109 million dollars of her assets were alleged to be subject to forfeiture; the government seized property and the businesses. After the criminal trial, the racketeering claims were completely dismissed, all forfeiture allegations were dropped and the client's property and businesses were released. During the multi-year period between her estranged husband's indictment and the trial, a monitorship was put in place and Ms. Levine counseled her on all aspects of that matter, including interactions with the monitor. [Janet Levine, Crowell & Moring]

- **Experience with claims administrators:** Janet Levine represented a union local whose members were the victims of crimes committed by a company in a lock-out. As part of a criminal plea agreement between the company and the United States, the company agreed to pay $50 million in restitution to reimburse the locked-out workers and union locals. Ms. Levine, her clients and other counsel worked with the government to establish a claims administration procedure and install a claims administrator for the fund. [Janet Levine, Crowell & Moring]

- **Represented major advertisers**: Chris Cole represented major advertisers in conjunction with both ongoing and successfully closed investigations and litigation by the FTC in the areas of telecommunications, beverages, consumer products, and technology. [Chris Cole, Crowell & Moring]

- **Lead counsel for Kimberly-Clark Corporation:** Chris Cole was lead trial counsel for Kimberly-Clark in a recently closed FTC investigation into flushable wipes. [Chris Cole, Crowell & Moring]

  Examples of work product related to this project are included in **Appendix B.**

- **Lead trial counsel**: Jeff Rutherford was lead trial counsel in *U.S. ex. rel. Hooper v. Lockheed Martin Corporation*, obtaining a complete defense jury verdict against a claim for damages in excess of $1 billion; tried before Judge Beverly Reid O'Connell [Jeff Rutherford, Crowell & Moring]

  Examples of work product related to this project are included in **Appendix B.**

E. Proposed Activities

The Order requires Herbalife to comply with the FTC's "Prohibited Business Practices" requirements by May 25, 2017—ten months after entry of the Order. Order §§ 1, XIII. The ICA's duties and responsibilities under the Order do not begin until then ("ICA Effective Date"). Order § VI.B. Thus, while the Order contemplates that an ICA will be selected 60 days after entry of the Order, Order § VI, the selected ICA will not begin hands-on work for another eight months.

Notably, while the Order contemplates that the ICA will submit an initial annual budget and initial work plan 90 days before the ICA Effective Date, Order § VI.K.1, neither the Order nor the FTC's Request for Applications to Serve as Independent Compliance Auditor for Herbalife ("FTC RFA") seem to contemplate preparatory work by the selected ICA or access by the selected ICA to additional FTC and Herbalife information prior to the ICA Effective Date on which to base that initial annual budget and

initial work plan. Finally, the ICA Effective Date is two months before Herbalife must submit its compliance report to the FTC, Order § X.A, and it is not clear how effective and useful the ICA's interactions with Herbalife during that initial two-month period will be and how available Herbalife will be to the selected ICA during that period.

Notwithstanding the inherent timing, payment, and other tensions in the Order and FTC RFA, the ICA Team used its combined experience and expertise to identify the proposed activities in the table, below, as well as the cost estimates in section G, below. The ICA Team's proposal reflects a risk-based approach that combines legal analysis with forensic compliance auditing; it is based on the assumptions identified in **Appendix C.**

ICA Proposed Activities and Timing			
Task No.	***List of Tasks***	***Proposed Time***	***Recurring (R) or Onetime (O) Task?***
1	Prepare and present to Commission staff and Defendants an initial work plan and initial annual budget.	No later than February 24, 2017 (90 days prior to the ICA Effective Date)	O
Note: Herbalife is required to submit a compliance report on July 25, 2017—two months after the ICA Effective Date. While many of the initial scoping tasks in this chart are anticipated to occur during the first 30 or 60 days after the ICA Effective Date, it may be more efficient for the ICA to wait for Herbalife to finish its compliance report and leverage that work product. In addition, the Order and FTC RFA could be read as expecting the ICA to engage in significant uncompensated work, over and above that required by this proposal, prior to the ICA Effective Date in terms of preparing an initial annual budget and initial work plan which will either be based on no more information than is currently available, or on the review of additional information provided after selection of the ICA but before the ICA Effective Date. Some of the scoping tasks described below would be more effective if undertaken in advance of the preparation of the initial work plan and initial annual budget. Crowell & Moring and StoneTurn anticipate discussing these and other aspects of the project scoping and timing with Herbalife and the FTC leading up to the ICA Effective Date.			
2	Create a preliminary risk assessment template to identify significant risks and scenarios that would give rise to a violation of Order §§ I.A-F & I.I	ICA Effective Date to 30-60 Days	O

ICA Proposed Activities and Timing			
Task No.	***List of Tasks***	***Proposed Time***	***Recurring (R) or Onetime (O) Task?***
3	Meet with Herbalife and, as appropriate, FTC to • Evaluate the progress made to implement Order requirements within the scope of the ICA including-- (1) monitoring the risks, and (2) addressing the initial business and process adjustments implemented by Herbalife to comply with the Order • Discuss any interpretation or implementation issues impacting the scope of the ICA • Agree on assessment criteria and reporting format • Agree on communications protocol, including periodic reporting (e.g., weekly calls) if required, points of contact, data transmission, and data extract formats • Identify existing Herbalife and FTC work product, if any, and key personnel that the ICA may rely on in completing activities within the scope of its work (including but not limited to the Internal Audit and Compliance functions) and developing baseline information regarding ICA-related activities	ICA Effective Date to 30-60 Days	O
4	Supplement initial work plan based on information received during Task 3	ICA Effective Date to 30-60 Days	O
5	Assess preliminary information, identify gaps, and develop plan for obtaining additional information necessary to perform activities within the scope of the ICA, including interviews of Herbalife personnel and, as needed, FTC staff	ICA Effective Date to 30-60 Days	O
6	Review Herbalife’s first Compliance Report, if made available to the ICA	61 - 90 days after ICA Effective Date	O

ICA Proposed Activities and Timing			
Task No.	***List of Tasks***	***Proposed Time***	***Recurring (R) or Onetime (O) Task?***
7	Conduct interviews of relevant Herbalife personnel and, as needed, FTC staff to • Identify policies, procedures and controls, including financial criteria and metrics, employed and implemented by Herbalife with respect to the risks within the scope of the ICA, as identified in the Complaint, Order, and FTC RFA • Obtain an understanding of the information systems in place at Herbalife used for gathering, recording and reporting of financial and other relevant information within the scope of the ICA • Obtain an understanding of Herbalife's methods of communicating policy, procedures, and practices to, and receiving information from, its independent Members and its potential new Members • Obtain an understanding of Herbalife's oversight and accountability practices regarding the conduct of its independent Members • Obtain an understanding of independent Members' methods of communicating with other independent Members, including potential new Members, regarding Herbalife policies, procedures, and practices within the scope of the ICA	61 - 90 days after ICA Effective Date	O
8	Identify other risks to be included in the ICA risk template, such as reporting, monitoring and response procedures designed to address potential issues raised by employees or business opportunity participants and other customers	61 - 90 days after ICA Effective Date	R
9	Review policies, procedures and controls to mitigate risks and prohibited practices within the scope of the ICA that Herbalife identified and implemented during the 10 months between entry of Order and the ICA Effective Date	61 - 90 days after ICA Effective Date	O
10	Assess overall effectiveness of Herbalife existing and new policies, procedures and controls against Order requirements within the scope of the ICA	61 - 90 days after ICA Effective Date	O

ICA Proposed Activities and Timing			
Task No.	***List of Tasks***	***Proposed Time***	***Recurring (R) or Onetime (O) Task?***
11	Review controls on payments of Multi-Level Compensation Note: There is internal tension in the Order regarding the scope of ICA activities with regard to Herbalife. One example is with regard to training: The ICA is required to ensure compliance with Order §§ I.A-F and I.I (*see* Order §§ VI and VI.J). By implication, the ICA is *not* required to ensure compliance with Order §§ I.G (refund policies) and I.H (training). However, Order § VI.B.1 expressly requires the ICA to evaluate Herbalife's compliance with the requirement that "Defendants are paying Multi-Level Compensation only in accordance with Subsection I.A, and subject to the limitations set forth in Subsections I.D, I.E, I.F, **and I.H**" (emphasis added). For purposes of this proposal, we assume that the ICA must verify that Herbalife has an effective system in place to provide Order-required training to its independent Members, track and verify completion of that training, and correlate completion of that training with the Order's compliance requirements for both Multi-Level Compensation, Order § I.A, and Leased or Purchased Business Locations, Order § I.I.b, but that Order and § I.H means that the ICA is not responsible for evaluating the content, quality, or other aspects of Herbalife training.	61 - 90 days after ICA Effective Date & Years 1-7	R
12	Review controls related to leases, subleases and purchases entered into by Participants. Legal review of a sample set of documents and interviews of a sample of Participants to test compliance with the requirements of the Order, including tenure of the Participant, completion of training (see Task 11 Note, above), and analysis of the Participant's business plan.	61 - 90 days after ICA Effective Date & Years 1-7	R
13	Evaluate whether changes in Herbalife's policies, procedures, and processes during the ICA term that potentially impact parts of the Order subject to the ICA are consistent with Herbalife's continued compliance with the Order.	61 - 90 days after ICA Effective Date & Years 1-7	R

ICA Proposed Activities and Timing			
Task No.	***List of Tasks***	***Proposed Time***	***Recurring (R) or Onetime (O) Task?***
14	Test operating effectiveness of controls within the scope of the ICA by (i) re-performing specific duties and functions, (ii) selecting samples of transactions for review, and (iii) reviewing other tests performed by Herbalife's risk monitoring functions (e.g., internal audit or compliance departments). ICA activities will include • Assessing the frequency of the testing • Reviewing reports tracking sales data and other exception reports • Monitoring incidents, if any, and reviewing logs, hotline reports, complaints, etc. • Meeting with various functions to review findings from Internal Audit • Reconciling sampled data with reported financial information • Testing compensation calculations • Reviewing metrics and outliers • Conducting analytical reviews and flux analysis to identify unusual performance and sales variances, statistical analysis using various variables (geographic, margins by products review, performance of newly introduced products, analysis of products returns and shipments of starting kits, review of volume of marketing materials, etc.)	61 - 90 days after ICA Effective Date & Years 1 - 7	R
15	Develop and propose an annual budget and submit work plan (updated as appropriate to reflect new, revised, and completed tasks and relevant developments during prior year) to FTC and Herbalife	90 days prior to the beginning of Years 2 - 7	R
16	Evaluate business changes and other significant developments for their impact on ICA activities and, as needed, modify ICA activities, work plan, and annual budget to support Herbalife's continued compliance, in consultation with Herbalife and FTC	Years 1 - 7	R
17	Modify ICA activities as needed throughout performance period to incorporate changes over time contemplated by Order (e.g., changes in specific testing procedures to assure ongoing compliance with "*Limitations on Rewardable Personal Consumption*," Order § I.E)	Years 1 - 7	R

ICA Proposed Activities and Timing			
Task No.	***List of Tasks***	***Proposed Time***	***Recurring (R) or Onetime (O) Task?***
18	Conduct periodic (no less than quarterly) field reviews to determine ongoing compliance, including by independent Members, with the parts of the Order within the scope of the ICA, including attendance at representative local and national Herbalife events	Years 1 - 7	R
19	Meet with Herbalife to discuss ICA findings (regularly and upon request) including, to the extent applicable, potential ICA determination of non-compliance	Years 1 - 7	R
20	Review Herbalife response to ICA findings, including, to the extent applicable, potential ICA determination of non-compliance and proposed remediation	Years 1 - 7	R
21	Meet with FTC to discuss ICA findings (regularly and upon request), including, to the extent applicable, potential determination of non-compliance and proposed remediation	Years 1 - 7	R
22	Prepare written ICA Reports, every 6 months for the first 3 years, and annually thereafter, and provide to Herbalife and to FTC	Years 1 - 7	R
23	Prepare for and attend court hearings to report on the status and results of the ICA's service as necessary	Years 1 -7	R

F. Potential Conflicts Of Interest Or Bias

The ICA Team has conducted a check. Neither the ICA Team nor any of its members have conflicts of interest or bias in this matter. A poll of the ICA Team confirms that there are no close, familial, or business relationships with the mentioned entities that would result in bias**.** No member of the proposed team has served as an Herbalife board member, employee, or distributor. The team does not include any previous FTC Commissioners or Bureau Directors.

We confirm our understanding that any individual who serves as ICA or performs duties at the ICA's direction shall agree not to be retained by the FTC or Herbalife for a period of two years after the conclusion of the engagement.

G. Estimated Costs

H. Conclusion

In summary, we believe that our proposed ICA Team is uniquely qualified to provide the skills required to execute the broad mandate of the ICA in accordance with the Order and that we have identified a thoughtful, practical, and realistic approach to ICA activities for your consideration. We welcome the opportunity to discuss our proposal, the qualifications of the team, or the particulars of pricing in further detail.

Appendix A

Curriculum Vitae for Senior ICA Team Members

crowell moring

KELLY T. CURRIE

PARTNER

NEW YORK
kcurrie@crowell.com
Phone: 212.895.4257
Fax: 212.223.4134
590 Madison Avenue
New York, NY 10022-2544

PRACTICES

- White Collar & Regulatory Enforcement
- Litigation & Trial
- Investigations: Government & Internal
- Foreign Corrupt Practices Act
- False Claims Act
- Regulatory & Policy
- SEC Enforcement
- Financial & Investment Fraud
- Anti-Money Laundering (AML)
- Internal & Governmental Investigations
- Crisis Management & Prevention

Kelly Currie is a partner in the firm's New York office, where he is a member of the White Collar & Regulatory Enforcement Group and the firm's Litigation & Trial Department. He is an experienced trial lawyer and a former federal prosecutor who represents companies and individuals in government investigations, white collar criminal defense matters, regulatory enforcement actions, and corporate internal investigations. Mr. Currie, who was a partner at Crowell & Moring from 2010 to 2014, returned to the U.S. Attorney’s Office for the Eastern District of New York in late 2014 to serve as Chief Assistant U.S. Attorney to then-U.S. Attorney Loretta E. Lynch. Following Ms. Lynch’s confirmation as U.S. Attorney General in April 2015, Mr. Currie served as Acting U.S. Attorney for the EDNY. In that capacity, he was responsible for all criminal and civil litigation in the district on behalf of the United States and supervised more than 175 Assistant U.S. Attorneys. He oversaw a number of high-profile matters, including the investigation and indictment of dozens of high-ranking FIFA officials and sports marketing executives on charges related to alleged bribery and kickback schemes corrupting FIFA and other international soccer governing bodies. In overseeing the EDNY's Civil Division, Mr. Currie supervised investigations and matters involving the False Claims Act and the Financial Institution Reform, Recovery, and Enforcement Act (FIRREA). Mr. Currie returned to Crowell & Moring in 2016.

Earlier in his career, Mr. Currie served for over a decade as an Assistant U.S. Attorney in the EDNY, including as Deputy Chief of the Criminal Division and Chief of the Violent Crimes & Terrorism Section. In addition to his supervisory responsibilities, Mr. Currie personally led numerous complex, global investigations and prosecutions, including those involving violations of the Foreign Corrupt Practices Act (FCPA), money laundering, export control violations, and financing of terrorist organizations. Mr. Currie has tried over fifteen federal jury trials to verdict and argued over a dozen cases before the Second Circuit Court of Appeals. His trials have involved securities and wire fraud, money laundering, international terrorist financing, multi-defendant RICO prosecutions, and tax fraud.

In addition to his service as a federal prosecutor, Mr. Currie has extensive experience in international negotiations and dispute resolution. From 1996 to 1998, he served as a senior advisor to former U.S. Senator George J. Mitchell, who chaired the Northern Ireland Political Negotiations. The negotiations resulted in the historic Good Friday Agreement. In 2001, Mr. Currie again served as a senior advisor to Senator Mitchell in his role as chairman of an international fact-finding commission on the Israeli-Palestinian conflict.

Representative Engagements:

Before his most recent government service, Mr. Currie's practice at Crowell & Moring focused on representations of companies and individuals in high stakes criminal and regulatory investigations and internal investigations, including:

- Global professional services firm in Foreign Corrupt Practices Act (FCPA) investigation related to business transactions in the Middle East and North Africa.
- Managing director at a U.S. investment bank in a U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC) investigation of possible FCPA violations in Asia.
- Internal investigation for publicly-traded Fortune 100 company.
- National transportation corporation in a state criminal grand jury investigation.
- Executives at an international bank in a DOJ investigation of foreign currency exchange (forex) trading.
- Traders and other professionals at financial institutions in criminal and regulatory investigations by DOJ, SEC, and CFTC of alleged manipulation of benchmark rate settings and associated derivatives trading.
- Represented executives of a pharmaceutical company in a DOJ criminal and civil False Claims Act investigation.
- Employees of financial institutions in connection with DOJ, SEC, and state attorneys general investigations regarding residential mortgage-backed securities (RMBS).
- Compliance professional at a major energy company in relation to the DOJ criminal investigation and related civil litigation resulting from the Deepwater Horizon oil rig explosion.

Prior to joining the U.S. Attorney's Office, Mr. Currie was in private practice at an international firm where he represented corporations and individuals in white collar criminal defense matters and securities litigation.

In 2008, the Eastern District Association, comprised of alumni of the Eastern District of New York U.S. Attorney's Office, presented Mr. Currie with the Charles E. Rose Award for his outstanding service as an Assistant U.S. Attorney. He is also a recipient of the New York County Lawyer's Association Public Service Award.

Mr. Currie has served as a panelist and faculty member at Department of Justice and bar association conferences related to white collar prosecutions, federal criminal practice, and national security matters.

Government Experience

- U.S. Attorney's Office-Eastern District of New York: Acting U.S. Attorney; Chief Assistant U.S. Attorney (2014-2016)

- U.S. Attorney's Office-Eastern District of New York: Deputy Chief of the Criminal Division; Chief, Violent Crimes & Terrorism Section; Assistant U.S. Attorney (1999-2010)

Admissions/Affiliations

Admitted to practice: New York

Education

- University of Virginia McIntire School of Commerce, B.S. (1986)
- University of Virginia School of Law, J.D. (1993)

Xavier Oustalniol, CPA (CA, NY), CFF, CIRA

Partner

Complex Business Litigation
Forensic Accounting

One Sansome Street
Suite 700
San Francisco, CA 94104

Tel: +1 415 848 7680

Mobile: +1 415 488 3599

xoustalniol@stoneturn.com

Education:

Université Paris IX "Dauphine," Paris, "Maîtrise" in financial and accounting techniques (MSTCF), B.A./Masters

-Economic Sciences, Associate Degree (DEUG Sciences Economiques)

Xavier Oustalniol is a Partner with StoneTurn Group in San Francisco. He focuses on complex forensic accounting issues, fraud investigations, fraud prevention and anti-corruption compliance assessments, and provides consulting services regarding securities litigation, damages analysis, international arbitration, accountant malpractice and purchase price disputes.

With over 25 years of experience as an auditor, forensic accountant and litigation consultant, Xavier has worked with clients across a wide range of industries, including financial services such as hedge funds, banks (mortgage, retail), insurance companies, investment companies, and securities broker / dealers (online, retail, government bonds, primary and clearing), as well as aviation, real estate, technology, energy, automotive, food, luxury apparel, chemicals and aviation electronic components, telecom, broadcasting, professional services partnerships (including law firms), leasing, consumer products, agricultural business, manufacturing and transportation.

Xavier has testified as an accounting expert on the application of Generally Accepted Accounting Principles (GAAP) and other financial issues at trial, deposition and in arbitration. He has authored expert reports, declarations and assisted with the preparation of experts for deposition and testimony. He also assisted counsel with deposition preparation of opposing experts and fact witnesses, and responses to Wells submissions.

He has assisted clients (debtors, creditors, trustees) in a number of bankruptcy-related litigations (including Enron, Lehman, Washington Mutual) and other accounting investigations, including during settlement negotiations and mediation.

Xavier has directed complex forensic accounting investigations or internal investigations for boards (where regulators such as SEC, DOJ and FINRA were involved) and consulted on other cross-border disputes (before the ICSID, AAA, ICC) involving companies in Europe, South and Central America and Japan.

Prior to joining StoneTurn, Xavier was with Alvarez & Marsal, where he served as a Managing Director in the firm's Global Forensic and Dispute Services practice in San Francisco. Previously, he was with two other global professional services firms. He began his career as an auditor with Deloitte.

Xavier is a Certified Public Accountant (licensed in California and New York), Certified in Financial Forensics and a Certified Insolvency and Restructuring Advisor. He is fluent in French.

Xavier Oustalniol, CPA (CA, NY), CFF, CIRA

Partner

Complex Business Litigation
Forensic Accounting

SELECT AREAS OF EXPERIENCE

- Antitrust
- Asset Diversion and Tracing
- Accountant Malpractice
- Bankruptcy Fraud and Litigation
- Breach of Contract Claims
- Corporate Veil / Alter Ego
- Economic Damages
- Expert Witness Testimony
- Financial Reporting (U.S. and French GAAP)
- Fraud Investigations, FCPA / Fraud Prevention Assessments
- International / Domestic Arbitrations
- Investigation of Accounting Irregularities
- Purchase Price Disputes
- Shareholder Class Actions
- White Collar Crime / Criminal Allegations
- Wage and Hour

SELECT INDUSTRY EXPERIENCE

- Accounting / Auditing
- Aerospace / Aviation
- Agri-business
- Automotive (Manufacturers / Parts / Dealerships / Finance Arm)
- Beverage
- Broker / Dealers (Government Securities, Prime, Online Retail)
- Cable and Satellite TV
- Chemical
- Commodities Trading
- Computer Hardware and Software
- Consumer Goods
- Document Management
- Electronic Components
- Energy / Oil and Gas
- Financial Institutions / Banks
- Food Distribution
- Government Contracting
- Hedge Funds
- Hospitality
- Insurance (P&C / Title)
- Investment Management
- Jewelry (Retail)
- Manufacturing
- Medical Products and Devices
- Mining (Copper)
- Native Corporation (Energy and Construction)
- Professional Services (Law Firms, Architectural, Advertising)
- Real Estate (REITS, Hotels, Brokerage, Investments and Other)
- Subprime Mortgage Financing
- Semiconductors
- Retail (Clothing, Luxury)
- Transportation (Maritime and Trucking)
- Telecommunications / Television
- Waste Management

Xavier Oustalniol, CPA (CA, NY), CFF, CIRA

Partner

Complex Business Litigation
Forensic Accounting

EXPERT TESTIMONY EXPERIENCE

Trial / Arbitration

- Liberty Media Corporation, LMC Capital LLC, Liberty Programming Company LLC, LMC USA VI, Inc., LMC USA VII, Inc., LMC USA VIII, Inc., LMC USA X, Inc., Liberty HSN LLC Holdings, Inc., and Liberty Media International, Inc., Plaintiffs, v. Vivendi Universal, S.A., Jean-Marie Messier, Guillaume Hannezo, and Universal Studios, Inc., Defendants. (Case No. 03 Civ. 2175 (SAS)) – May 2012 (Federal Court) – Jury trial – [Designated expert in attendance]
- Livermore Auto Group v. Chrysler – May 2010 (AAA Arbitration)
- Southlake Dodge v. Chrysler – June 2010 (AAA Arbitration)
- Larson Automotive Holdings v. Chrysler – June 2010 [Designated expert in attendance] (AAA Arbitration)
- In re: Vivendi Universal, S.A. Securities litigation (Case No. 02 Civ. 5571 (RJH/HBP)) – November 2009 (Federal Court – Jury trial) – Deposition
- In re: Vivendi Universal, S.A. Securities litigation (Case No. 02 Civ. 5571 (RJH/HBP)) – March 2008 – Report Submitted
- Liberty Media Corporation et al. v. Vivendi Universal, S.A. Jean-Marie Messier, Guillaume Hannezo, and Universal Studios, Inc. (Case No. 03 CV 2175 (RJH/HBP)) – March 2008 – Report Submitted

Deposition

- In re: Vivendi Universal, S.A. Securities litigation (Case No. 02 Civ. 5571 (RJH/HBP)) – March 2008 – Report Submitted
- Liberty Media Corporation et al. v. Vivendi Universal, S.A. Jean-Marie Messier, Guillaume Hannezo, and Universal Studios, Inc. (Case No. 03 CV 2175 (RJH/HBP)) – March 2008 – Report Submitted

Xavier Oustalniol, CPA (CA, NY), CFF, CIRA

Partner

Complex Business Litigation
Forensic Accounting

EXPERT TESTIMONY EXPERIENCE (cont'd)

Expert Designations / Declarations

- United States of America v. Doris E. Nelson (Case No. 11-CR-00159-RHW) – Designated Expert – March 2014 (Criminal Action) – Report Submitted
- Manning v. Parisis (Case No. 510186 – CA) – Designated Expert – May 2013
- BP Exploration & Production, Inc. and BP America Production Company v. DEEPWATER HORIZON Court Supervised Settlement Program et al. (Case 2:13-cv-00492) – Declaration Submitted – 2013
- William G. Stewart and Nancy Stewart v. BAC Home Loans Servicing, LP (Case No. CV 3:10-cv-01225-SI) Northern District of California – Report Submitted – 2012
- Liberty Media Corporation et al. v. Vivendi Universal, S.A. Jean-Marie Messier, Guillaume Hannezo, and Universal Studios, Inc. (Case No. 03 CV 2175 (RJH/HBP)) – June 2012 – Report Submitted
- In re: Alstom, S.A. Securities litigation (Case No. 03 CV 6595(VM)) – Report Submitted – 2009

PUBLICATIONS

- "Five Ways to Prepare for the New French Anti-Corruption Law"
  (FCPA Blog — July 2016)
- "Preparing for the New COSO Internal Control Framework"
  (Alvarez & Marsal Newsletter – *Raising the Bar* – January 2014)
- "Putting the Corruption Index to the Test"
  (Alvarez & Marsal – *Action Matters Update* – April 2013)
- "Earnings Management: Without Borders"
  (Alvarez & Marsal Newsletter – *Raising the Bar* – September 2010)
- "When the Bubble Pops, Fraud Rears its Ugly Head: How to Avoid Getting Caught in the Next Wave"
  (Alvarez & Marsal Newsletter – *Raising the Bar* – July 2009)

Xavier Oustalniol, CPA (CA, NY), CFF, CIRA

Partner

Complex Business Litigation
Forensic Accounting

RECENT PRESENTATIONS / PANELS

- “Doing Business Ethically in Africa: Success Stories and Challenges” (ABA Section of International Law, Montreal, Canada – October 21, 2015)
- “What You Should Know About Social Media and Digital Forensics, and Were Always Afraid to Ask” (Lycée Français de San Francisco – April 30, 2015)
- “Key Issues Facing Boards of Directors: Risks to Multinational Companies Arising from the U.S. Foreign Corrupt Practices Act” (Directors Roundtable – San Francisco and Menlo Park – July 16, 2013)
- “Continuous Control Monitoring to Increase FCPA Compliance Program Effectiveness” – (MetricStream Webinar – May 14, 2013)
- “How to Work With / Against an Expert - an Expert Perspective" – (Reed Smith LLP – San Francisco – November 5, 2012)
- “Unifying Compliance, Audit and Risk and Eliminating Silos” – Panel Discussion (Governance, Risk & Compliance Forums: Chicago - September 2012 and Dallas - October 2012)
- “Leveraging Your Existing Compliance Program to Address Specific Anti-Corruption and AML Requirements” - (Governance, Risk & Compliance Forums: Chicago - September 2012 and Dallas - October 2012)
- “Fraud Risk Readiness in Financial Institutions – Designing a Risk Framework that Works and … Executing” (The Compliance Conversation: AML & Anti-Corruption Event: Thomson Reuters – San Francisco – June 2012)
- “What You Need to Know About FRCP 26 and the UK Bribery Act” (Nixon Peabody – San Francisco – May 2011)

PROFESSIONAL HISTORY

- Alvarez & Marsal Global Forensic and Dispute Services, LLC
- Aon Consulting
- Kroll Zolfo Cooper
- Deloitte & Touche

Xavier Oustalniol, CPA (CA, NY), CFF, CIRA

Partner

Complex Business Litigation
Forensic Accounting

PROFESSIONAL AFFILIATIONS / OTHER

- Certified Public Accountant (CPA), Licensed in California and New York
- Certified in Financial Forensics (CFF)
- Certified Insolvency and Restructuring Advisor (CIRA)
- Member, American Institute of Certified Public Accountants (AICPA)
- Member, Association of Insolvency and Restructuring Advisors (AIRA)

crowell moring

DEREK A. HAHN

COUNSEL

ORANGE COUNTY
dhahn@crowell.com
Phone: 949.263.8400
Fax: 949.263.8414
3 Park Plaza, 20th Floor
Irvine, CA 92614-8505

LOS ANGELES
Phone: +1 213.622.4750
515 South Flower St., 40th Floor
Los Angeles, CA 90071

PRACTICES

- White Collar & Regulatory Enforcement
- Investigations: Government & Internal
- Foreign Corrupt Practices Act
- Environment & Natural Resources
- Executive Practice
- Litigation & Trial
- Regulatory & Policy
- Crisis Management & Prevention
- Environment & Resources Litigation
- Environmental Crimes
- Financial & Investment Fraud
- Foreign Corrupt Practices Act, UK Bribery Act & Anti-Corruption
- Health Care Fraud & Abuse
- Internal Investigations
- Public Corruption
- SEC Enforcement

Derek Hahn is a counsel in Crowell & Moring's Orange County, California office. His practice focuses on white-collar defense, internal investigations, complex litigation, and compliance counseling.

Mr. Hahn assists companies and individuals in the defense of government investigations and enforcement actions across a wide range of industries. He has represented clients in an array of white-collar matters, including financial fraud, public corruption, conflicts of interest, insurance fraud, counterfeiting, procurement integrity, and health care fraud. He has also defended clients in several multi-million dollar environmental enforcement matters at both the federal and state level.

Mr. Hahn has substantial expertise in matters involving the Foreign Corrupt Practices Act (FCPA). He has counseled clients on FCPA matters across six continents, including government and internal investigations, third-party due diligence reviews, compliance program and training evaluations, and post-acquisition anti-corruption risk assessments. Mr. Hahn has defended multiple FCPA investigations by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC).

Selected Engagements

- Represented multinational company and individuals in multiple investigations by the DOJ and SEC of potential FCPA violations.
- Assisted defense of former president and CFO of pharmaceutical company during internal investigation of FCPA issues by independent Board committee.
- Defended privately-held business in investigation by an Assistant U.S. Attorney into the alleged sale of counterfeit grey market goods.
- Represented health care executive in connection with federal health care fraud and public corruption investigations.

- Defended the nation's largest cement manufacturer in multistate Clean Air Act investigations and federal court litigation by the DOJ Environmental Enforcement Division and Environmental Protection Agency (United States v. CEMEX California Cement, LLC, ED-CV-07-00223-GW (C.D. Cal. 2009); United States v. CEMEX, Inc., No. 1-09-CV-00019-MSK (D. Colo.)).
- Represented former CFO of publicly-traded pharmaceutical company in connection with accounting fraud investigation.
- Advised multi-billion dollar public retirement fund on conflicts of interest under California Government Code Section 1090.
- Represented oil company and oil company executives in connection with criminal environmental litigation.
- Defended IT contractor in a federal grand jury investigation predicated on whistleblower allegations of mischarging and revolving door violations related to a multi-million dollar Iraq reconstruction contract.
- Represented client in discharge investigation by the California State Water Resource Control Board's Office of Enforcement.

Mr. Hahn regularly volunteers time to *pro bono* matters as part of his practice. Recently, he co-chaired a *pro bono* jury trial in a federal civil rights case. He also assists low income individuals in obtaining free legal representation through the Archdiocesan Legal Network. Mr. Hahn previously served on the Board of the Orange County Chapter of the National Contract Management Association. He was elected president for two consecutive terms and led the Chapter to earn the organization’s highest national recognition during his tenure.

Mr. Hahn graduated *cum laude* from Duke University with a B.S.E. in civil and environmental engineering. He received his J.D. from the University of Virginia School of Law, where he was a member of the *Virginia Law Review*.

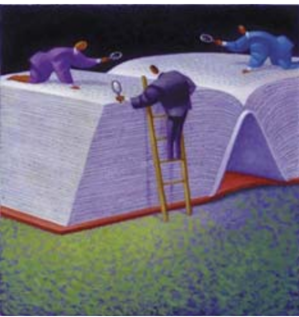
Admissions/Affiliations

Admitted to practice: California

Memberships:
American Bar Association, Cyber Crime Committee and Southern California White-Collar Crime Committee
Past-President, National Contract Management Association, Orange County Chapter
Environmental Law Institute
Association of Surfing Lawyers

Education

- University of Virginia School of Law, J.D.
- Duke University, B.S.E. civil and environmental engineering *cum laude*



Jonny J. Frank, J.D., LL.M.

Partner

Complex Business Litigation
Compliance Controls & Monitoring

17 State Street
Suite 2610
New York, NY 10004

Tel: +1 212 430 3434
Fax: +1 212 430 3399

jfrank@stoneturn.com

Education:

L.L.M., Yale Law School (Graduate Fellow)

J.D., *summa cum laude*, Boston College Law School (graduated first in class)

B.A., *cum laude*, Brandeis University

Clerkship:

Hon. Gerard Goettel (SDNY)

Jonny Frank, a Partner with StoneTurn Group, brings more than 30 years of public, private and education sector experience in forensic investigations, compliance and risk management. He joined StoneTurn in 2011 from PricewaterhouseCoopers (PwC), where he was a partner, and founded and led the firm's global Fraud Risk & Controls practice.

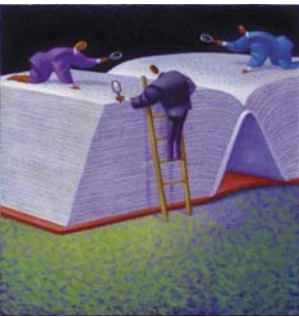
Jonny serves as the DOJ-appointed Independent Compliance and Business Ethics Monitor to a Top 5 global investment bank. He previously served as the NYS Department of Financial Services-appointed Independent Compliance Monitor to the nation's largest non-bank mortgage servicer. He also serves as forensic adviser to a NHTSA-appointed Monitor of a Tier One automotive supplier and the DOJ-appointed FCPA Monitor of a $250 billion oil and gas conglomerate and $6 billion medical device manufacturer.

Established in 2003 in the aftermath of Enron, PwC's Fraud Risk & Controls was the only Big Four practice devoted wholly to prevention, detection, and remediation of fraud, corruption, waste and abuse. Jonny pioneered the "scheme and scenario" antifraud risk assessment framework, subsequently embraced or endorsed by the SEC, COSO, AIPCA and IIA. He also developed a forensic auditing & monitoring curriculum and has trained over 5,000 professionals worldwide on risk assessment, control activities, data analytics, forensic accounting, planning and executing investigations and remediation.

Previously, he founded PwC Investigations, a global practice focused on the investigation and remediation of fraud and corruption. At PwC, Jonny led more than 500 engagements, including investigations of the President of Indonesia and Bank of China Chairman.

Jonny began his professional career as a Federal prosecutor in the U.S. Department of Justice, where he rose to Executive Assistant United States Attorney for the Eastern District of New York. His prosecutorial specialty involved investigating and prosecuting economic crimes by and against Fortune 500 companies. In the mid-1990s, the Justice Department appointed Jonny to serve as Special Counsel to the New York City Mayoral Commission on Police Corruption, where he helped to restructure processes and controls to prevent and detect corruption. The DOJ also appointed Jonny to review criminal codes and train judges and prosecutors in post-Soviet democracies.

Jonny has served on the faculties of the Yale School of Management, Fordham University Law School and Brooklyn Law School, where he taught courses on strategic fraud and corruption management, complex criminal investigations and international criminal law. He is an award-winning author of more than 45 articles and has delivered over 75 lectures worldwide to university, public and private sector audiences.



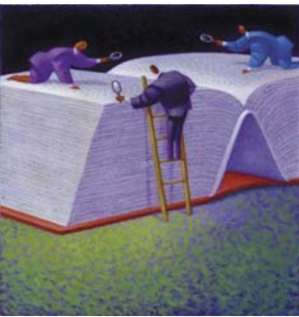
Jonny J. Frank, J.D., LL.M.

Partner

Complex Business Litigation
Compliance Controls & Monitoring

SELECT PROFESSIONAL EXPERIENCE

- Served as a government-appointed monitor in the United States and Canada.
- Supervised hundreds of complex criminal investigations during his 30+ year career in the DOJ and in the private sector, including Grumman, Honeywell, Hertz, Judge Samuel Weinberg, the Chairman of Bank of China and the President of Indonesia.
- Revamped PwC's fraud audit methodology and developed 75 full-time and 350 part-time PwC fraud auditing professionals worldwide.
- Led numerous fraud and corruption risk assessments and implemented remediation programs for asset management, banking, capital market, insurance, pharmaceutical, manufacturing, transportation and retail / consumer companies.
- Developed a methodology for corporate and private equity acquirers to: conduct integrity diligence; facilitate post-deal integration; and investigate and resolve purchase price disputes.
- Developed an audit response to more than 300 high-risk fraud audit engagements.
- Authored fraud and corruption whitepapers concerning aerospace and defense, chemicals, consumer and retail, financial services, healthcare, pharmaceutical, internal audit, transportation and utilities.
- Trained over 1,000 auditors, controllers and compliance personnel on techniques on the prevention, detection and investigation of fraud, corruption, waste and abuse.
- Responsible for the first non-prosecution agreement requiring an independent monitor.
- Delivered over 75 public and private sector lectures on various topics related to fraud, corruption, waste and abuse, including presentations to the ACFE, AICPA, Brooklyn College Law School, IIA, FINRA, Fordham Law School, SEC, SIFMA and Yale Law School.
- Pioneered antifraud frameworks and the "scheme and scenario" fraud risk assessment framework embraced or endorsed by the SEC, DOJ, COSO and AICPA.



Jonny J. Frank, J.D., LL.M.

Partner

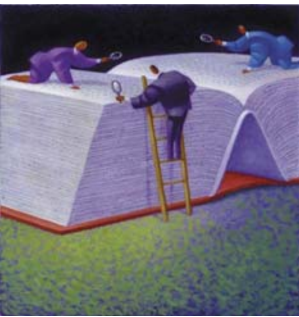
Complex Business Litigation
Compliance Controls & Monitoring

PREVIOUS EXPERIENCE

- Partner, PricewaterhouseCoopers LLP (1997—2011), Founder and leader of PwC Fraud Risk & Controls, Business Integrity Group, and Investigations
- Senior Faculty Fellow, Yale School of Management (2003—2010), Strategic Fraud Management
- Adjunct Professor of Law, Fordham University Law School (1988—2009), Complex Criminal Litigation; International Criminal Law
- Adjunct Associate Professor of Law, Brooklyn College Law School (1989—2006), Complex Criminal Litigation
- Managing Director, Decision Strategies LLC (1994—1997), Led NY office of international investigations firm
- Assistant U.S. Attorney, Eastern District of New York (1983—1994), Appointed Executive Assistant U.S. Attorney, Chief—Special Prosecutions, Deputy Chief—Criminal Division
- Special Counsel, New York City Mayoral Commission on Police Corruption (1991—1993), On appointment on part-time basis from DOJ
- Graduate Fellow, Yale Law School (1982—1983)

RECENT PUBLICATIONS

- *Five Ways to Prepare for the New French Anti-Corruption Law* — FCPA Blog (July 2016)
- *Data: A Hidden Gem in the Effectiveness of Ethics and Compliance Programs*— Compliance & Ethics Professional (March 2016)
- *Fraud Prevention as a Competitive Advantage*—RANE (February 2016)
- *5 Ways to Meet DOJ's Heightened Compliance Expectations*—Law360.com (May 2015)
- "Remediation," *Litigation Services Handbook: The Role of the Financial Expert, 5th Edition, Chapter 13A*—Wiley (April 2015)
- *Transaction Monitoring: The Next Must-Have Anti-Corruption Tool*—FCPA Blog.com (February 2015)
- *Bridging the Discovery Gap in International Arbitration*—Law360.com (February 2015)
- *Prepare Now for New Anti-Corruption Program Expectations*—Law360.com (January 2015)
- *No Longer Under Wraps—SEC Wrap Fee Scrutiny on the Rise*—Law360.com (September 2014)
- *Forensic Analytics Can Find Needles in Multiple Haystacks*— Law360.com (April 2013)



Jonny J. Frank, J.D., LL.M.

Partner

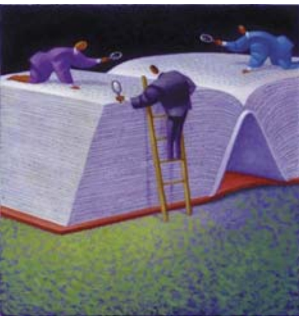
Complex Business Litigation
Compliance Controls & Monitoring

RECENT PUBLICATIONS (cont'd)

- *Reducing Adverse Legal Consequences Through FCPA Remediation*—Law Journal Newsletters, Business Crimes Bulletin (April 2013)
- *Key Elements of FCPA Remediation: Earning DOJ and SEC's ""High Premium"*—Law Journal Newsletters, Business Crimes Bulletin (March 2013)
- *Meeting SEC and FINRA Expectations about Remediation*—ABA Section of Litigation, Securities Litigation (March 2013)
- *Remediation Can Help Firms Avoid Prosecution, Reduce Fines*—BNA Prevention of Corporate Liability (July 2012)
- *Preserving Human Capital in a Legal Crisis*—Law360.com (July 2012)
- *To Disclose or Not to Disclose*—Law Journal Newsletters, Business Crimes Bulletin (July 2012)
- *Fraud—Five Questions the Board Should be Asking*—Directorship Magazine (February 2012)
- *Companies that Fear Whistleblowing Under New SEC Rules Can Mitigate Risk, Use Attorney-Client Privilege Strategically*—BNA Prevention of Corporate Liability (October 2011)
- *Prevention, Detection Could Protect $300 Billion in Stimulus-Stabilization*—BNA Banking Report (June 2009)
- *TARP Financing Recipients Should Expect to Inquire into Internal Controls, Ask How Money is Spent*—BNA Prevention of Corporate Liability (February 2009)
- *SEC and State AGs Investigate Pay-to-Play*—FS Regulatory Brief (May 2009)
- *Fraud Risk Assessment*—Managing the Business Risk of Fraud, book chapter (June 2008)
- *Turning Risk into Opportunity: Leveraging Fraud Management to Enhance IA Prestige*—Securities Industry Association (April 2008)

RECENT PRESENTATIONS

- *Proving Effectiveness: The Next Generation of Data Analytics in E&C* —ECI Annual Conference, Orlando, FL (May 2016)
- *NexGen White Collar: Where are the Law, Business and Ethics Headed?*—ABA Business Law Section Meeting, Montreal, QC, Canada (April 2016)
- *Applied Ethics & Compliance*—Menlo College, Atherton, CA (October 2015)
- *Remediating Money Laundering and Sanctions Violations*—Anti Money Laundering Conference, Foundation of Accounting Education, New York, NY (October 2014)
- *Compliance & Remediation*—3rd Annual White Collar Crime Institute, New York City Bar Association, New York, NY (May 2014)
- *Remediation & Monitoring—What's In It For You?*—ABA Business Law Section, New York, NY (February 2014)



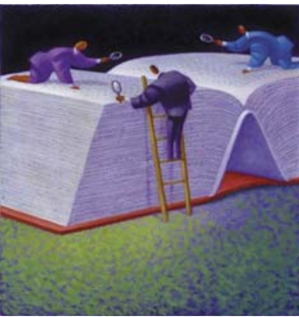
Jonny J. Frank, J.D., LL.M.

Partner

Complex Business Litigation
Compliance Controls & Monitoring

RECENT PRESENTATIONS (cont'd)

- *Meeting Government Expectations about Remediation, Independent Consultants and Monitors*—GAIM Regulation, New York, NY (February 2014)
- *Next Generation Approach to Fraud*—Institute for Internal Auditors, Stamford, CT (December 2013)
- *Looking Through Dirty Glass Windows: An Introduction to Forensic Auditing*—University of Texas McCombs School of Business, Austin, TX (November 2013)
- *Demystifying Internal Controls*—N.Y. State Society of Certified Public Accountants, New York, NY (October 2013)
- *Earning "High Premium" for Effective Remediation—Crime Pays: Increasing the Bottom Line Through Fraud Management*—Institute of Management Accountants, New Orleans, LA (June 2013)
- *Meeting FINRA and Other Regulators' Expectations about Remediation, Before and After Settlement*—ABA Securities Litigation Committee, New York, NY (May 2013)
- *Mapping a Fraud Approach that Adds Value*—MIS Training Institute Super Strategies Conference, Keynote Speaker, Orlando, FL (May 2013)
- *Effective Remediation: Avoid Prosecution, Decrease Sanctions, Increase Earnings*—Charlotte Ethics and Compliance Network, Keynote Speaker, Charlotte, NC (March 2013)
- *Key Elements of Effective Remediation: An Insider's View*—Practicing Law Institute, National Webinar (January 2013)
- *Good Fraud: Oxymoron or Music to a CFO's Ears*—CFO Rising Conference, Las Vegas, NC (October 2012)
- *Forensic Mindset + Internal Audit = Forensic Auditing: Combine a Forensic Mind-set with Internal Audit Expertise to Prevent, Detecting, and Investigate Fraud, Corruption, Waste and Abuse*—Institute for Internal Auditors, Norwalk, CT (October 2012)
- *Beware of the Wolf in Sheep's Clothing: Evaluating Respondents' Remediation Efforts*—Financial Industry Regulatory Authority (FINRA), New York, NY (September 2012)
- *Crime Pays: Finance Can Increase the Bottom Line through Fraud Management*—Institute of Management Accountants, New York, NY (September 2012)
- *Strategic Fraud Management*—CalCPA Foundation Annual Conference, Los Angeles & San Francisco, CA (June 2012)
- *From Cost to Profit Center: Increase Revenue, Cut Leakage, Protect Assets & Mitigate Fraud Risk*—Institute for Internal Auditors, Ft. Wayne, IN (May 2012) and Louisville, KY (April 2012)
- *To Disclose or Not Disclose: That's NOT the Only Question*—Insurance Industry Compliance Best Practices Roundtable, Hartford, CT (November 2011)



Jonny J. Frank, J.D., LL.M.

Partner

Complex Business Litigation
Compliance Controls & Monitoring

RECENT PRESENTATIONS (cont'd)

- *Transforming IA into a Profit Center: Reduce Leakage, Protect Assets, Mitigate Risk*—Institute for Internal Auditors, (Keynote Speaker), Pittsburgh, PA (November 2011)
- *Horatio at Rome's Bridge: The Corporate Gatekeeper in Today's Environment*—University of Santa Clara, Palo Alto, CA (September 2011)
- *Using Data Analytics to Enhance Fraud Detection in Financial Services Audits*—Institute for Internal Auditors, National Webinar (August 2011)
- *Back to the Future: Forensic Data Analytics to Prevent, Detect & Investigate Fraud, Corruption, Waste and Abuse*—Institute for Internal Auditors (Keynote Speaker), Boston, MA (May 2011)
- *Crime Pays—Rethinking Fraud & Corruption Diligence*—Transaction Services Leadership Summit, Orlando, FL (April 2011)
- *Emerging Trends in Asset Recovery*—International Association for Asset Recovery, Podcast (January 2011)
- *Transforming GRC into a Profit Center*—MIS Training Institute, Governance Risk and Compliance 2010 (Keynote Speaker), New York, NY (November 2010)
- *Strategic Fraud Management for the Tax Professional*—Like-Kind Exchange and Fixed Asset Conference (Keynote Speaker), Miami, FL (October 2010)

GLEN G. MCGORTY

PARTNER

NEW YORK
gmcgorty@crowell.com
Phone: 212.895.4246
Fax: 212.223.4134
590 Madison Avenue
New York, NY 10022-2544

PRACTICES

- White Collar & Regulatory Enforcement
- Litigation & Trial
- Investigations: Government & Internal
- Foreign Corrupt Practices Act
- Monitorships & Independent Counsel
- SEC Enforcement
- Public Corruption
- Executive Practice
- Internal Investigations
- Financial & Investment Fraud
- Anti-Money Laundering (AML)
- Internal & Governmental Investigations
- Government Ethics, Political Law & Lobbying Compliance
- Criminal Trials
- Regulatory & Policy

Glen G. McGorty is managing partner of Crowell & Moring's New York office, a member of the White Collar & Regulatory Enforcement practice group, and a member of the firm's Litigation and Trial Department and its Regulatory Department. Glen is an experienced trial lawyer who served almost 15 years as a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York (SDNY) and the U.S. Department of Justice (DOJ) in Washington, D.C.

Glen represents corporate entities and individuals in federal and state criminal and regulatory matters and in investigations conducted by grand juries, congressional committees, independent and special counsel, and international, federal, and state law enforcement and regulatory agencies. Glen has also led internal investigations for clients including an international financial institution, a major defense contractor, and a multinational engineering conglomerate.

Most recently, Glen was appointed by the U.S. District Court for the Southern District of New York to serve as the Independent Monitor of the New York City District Council of the United Brotherhood of Carpenters and its Benefit Funds.

Selected Representations

- Multiple employees of an international financial institution in a multinational foreign currency exchange investigation.
- A pool of employees at a publicly traded pharmaceutical company in connection with a federal criminal and civil health care fraud investigation.
- An international financial institution on several matters, including an internal investigation into several customers' alleged money laundering activities.
- A global engineering company in an internal investigation of bid-rigging and other antitrust allegations.

- A national defense contractor in an internal investigation regarding deviation from government contract design specifications.
- A national health care services corporation in connection with multiple state and federal False Claims Act investigations.
- A health care executive in a criminal RICO, fraud, and money laundering prosecution in the SDNY.
- A managing director at an international financial institution in connection with a multinational Foreign Corrupt Practices Act investigation.
- A director at an international financial institution in connection with a FINRA inquiry related to an index valuation.
- A hedge fund trader in an SEC enforcement action and related DOJ criminal investigation into stock trading practices.
- Multiple employees of an international financial institution in an SEC investigation into residential mortgage-backed securities trading.
- A fixed-income trader in connection with a federal insider trading investigation conducted in the SDNY.
- A strategic financial analyst in connection with a federal accounting fraud investigation in the SDNY.
- A former hedge fund trader as a witness in a major federal insider trading trial in the SDNY.
- A former New York state official in a criminal public corruption investigation conducted in the SDNY.
- A vice president of an international energy conglomerate in an expense-related employment inquiry.
- An asset management hedge fund in connection with asset forfeiture claims and the victim fund remission process in the SDNY.
- An international private equity company in a civil litigation matter in the SDNY.

Government Service

Glen joined Crowell & Moring after almost 15 years at the DOJ. During his career with the government, Glen prosecuted and supervised a wide range of significant high-profile cases, handling white collar matters such as securities fraud, public corruption, wire and mail fraud, money laundering, tax violations, insider trading, accounting fraud and options backdating cases, and other serious criminal cases, such as RICO enterprises, international narcotics trafficking, and violent crimes including kidnapping and murder.

While serving as an Assistant U.S. Attorney (AUSA) in the SDNY, Glen was lead counsel in 15 federal jury trials, and he briefed and argued over a dozen cases before the U.S. Court of Appeals for the Second Circuit. He led numerous complex criminal investigations and prosecutions in virtually every sector of the office, including the SDNY's Securities and Commodities Fraud Task Force and International Narcotics Trafficking Unit. In addition, he served in several senior supervisory positions, managing the SDNY's Narcotics, Violent Crimes, and General Crimes Units, and the Criminal Division itself, where he assisted in the supervision of approximately 150 criminal prosecutors. Glen was appointed Senior Trial Counsel in 2010 by U.S. Attorney Preet Bharara and was responsible for overseeing various matters in the SDNY's Public Corruption Unit, including the federal wiretap investigation and prosecution of New York State Senator Carl Kruger and his co-conspirators.

Before coming to the SDNY, Glen joined the DOJ through the Attorney General's Honors Program and served three and one-half years as a Trial Attorney in the Fraud Section of DOJ's Criminal Division in Washington, D.C., and as a Special Assistant U.S. Attorney in the Eastern District of Virginia (EDVA).

In 2007, Glen received the DOJ's Attorney General Award for Distinguished Service.

Glen has been a panelist and faculty member at bar association and industry conferences related to criminal investigations and prosecutions and federal criminal practice. He is an active member of the American Bar Association, the Federal Bar Council for the Second Circuit, the New York State Bar Association, and the New York City Bar Association, where he chairs the Criminal Justice subcommittee of the Federal Courts Committee.

Government Experience

- U.S. Attorney's Office-Southern District of New York: Assistant U.S. Attorney, Criminal Division (2002-2012); Deputy Chief, Narcotics Unit (2008-2010); Acting Chief, Violent Crimes Unit (2009-2010); Acting Deputy Chief, Criminal Division (2010); Senior Trial Counsel, Public Corruption Unit (2010-2012); Acting Chief, General Crimes Unit (2012)
- U.S. Attorney's Office-Eastern District of Virginia: Special Assistant U.S. Attorney (1999)
- U.S. Department of Justice: Criminal Division, Fraud Section-Trial Attorney (1998-2002)

Admissions/Affiliations

Admitted to practice: New York, New Jersey, District of Columbia

Memberships

- American Bar Association, Criminal Justice Section
- Federal Bar Council for the Second Circuit
- New York State Bar Association
- New York City Bar Association, Federal Courts Committee (co-chair of Criminal Justice subcommittee)

Education

- Princeton University, A.B. (1995)
- Northwestern University School of Law, J.D. (1998)

PETER B. MILLER

SENIOR COUNSEL

WASHINGTON, D.C.
pmiller@crowell.com
Phone: +1 202.624.2506
Fax: +1 202.628.5116
1001 Pennsylvania Avenue NW
Washington, DC 20004-2595

PRACTICES

- Privacy & Cybersecurity
- Advertising & Product Risk Management
- Privacy, Security Breach & Confidentiality
- Advertising & Consumer Protection
- Internet of Things (IoT)
- Telephone Consumer Protection Act (TCPA)
- Privacy & Cybersecurity for Educational Institutions
- Crisis Management: Breach Response & Litigation
- Crisis Management & Prevention
- Digital Health & Health Information Technology

Peter Miller is a senior counsel in Crowell & Moring's Advertising & Product Risk Management and Privacy & Cybersecurity groups in Washington, D.C. Peter supports, counsels, and advocates for clients using his familiarity with Federal Trade Commission (FTC) consumer protection policies, practices, and procedures; his experience with consumer protection investigations, litigation, and settlement negotiations; and his knowledge of operational privacy, data security, federal procurement, and risk management issues.

Peter joined Crowell & Moring from the FTC, where he served as chief privacy officer and safeguarded personal information throughout its life cycle at the agency. He previously served as assistant director for regional operations in the FTC Bureau of Consumer Protection and coordinated consumer protection activities with staff in the FTC's eight regional offices; and as a staff attorney in the Division of Advertising Practices where he investigated and litigated health and weight-loss claims. Before joining the FTC, he was a trial attorney in the Commercial Litigation Branch of the Department of Justice's Civil Division, where he litigated a variety of bankruptcy and non-bankruptcy matters involving government funds and programs.

Peter advises and counsels clients on FTC consumer protection issues, including advertising, privacy and data security. He also provides support to clients throughout the FTC investigation and enforcement process, from initial contact through responses to staff requests, meetings with FTC staff and commissioners, and, if necessary, administrative or federal district court litigation.

Peter helps clients address policy and practical issues that arise at the intersection of technology, privacy, and consumer protection, including

- Internet of Things and the increasing collection and compilation of personal and health information across a wide variety of platforms;
- Mobile devices and applications;

- Payment systems;
- Collection, protection, and use of big data;
- Vendor management issues arising from the acquisition of personal information and related services from third parties and the sharing of personal information and network access with third parties; and
- Information governance and organizational policies and procedures for protecting and working with sensitive business and personal information.
- Incident anticipation, training, preparation, and response

He also works with colleagues in the Litigation & Trial, Regulatory & Policy, and Transactions & Corporate practice areas to provide interdisciplinary representation on issues relating to consumer protection, privacy and data security, risk management, and procurement, including matters arising before other federal and state agencies and private sector disputes.

Peter is a participating member of The Sedona Conference Working Group 11 on Data Security and Privacy Liability, and he is part of the drafting team for Working Group 11's Data Privacy Primer. Peter is a Certified Information Privacy Manager (CIPM), a Certified Information Privacy Professional with government and private sector concentrations (CIPP/G/US), and a Certified Information Privacy Technologist (CIPT).

Government Experience

- U.S. Federal Trade Commission-Chief Privacy Officer (2011 - 2014); Assistant Director for Regional Operations, Bureau of Consumer Protection (2007 - 2011); Attorney, Division of Advertising Practices, Bureau of Consumer Protection (2003 – 2007)
- U.S. Department of Justice-Trial Attorney, Civil Division, Commercial Litigation Branch, Corporate/Financial Litigation (1997 - 2003)

Admissions/Affiliations

Admitted to practice: District of Columbia, New Mexico

Education

- Rice University, B.A. (1984)
- University of Texas School of Law, J.D. (1990) with honors

CHRISTOPHER A. COLE

PARTNER

WASHINGTON, D.C.
ccole@crowell.com
Phone: 202.624.2701
Fax: 202.628.5116
1001 Pennsylvania Avenue NW
Washington, DC 20004-2595

PRACTICES

- Advertising & Product Risk Management
- Litigation & Trial
- Concussion Risk Management & Litigation
- Administrative Law & Regulatory
- Advertising & Consumer Protection
- Consumer Claims
- Privacy & Cybersecurity
- Intellectual Property Litigation
- Commercial Litigation
- Class Actions
- Internet of Things (IoT)
- Crisis Management & Prevention
- Antitrust & Intellectual Property
- Regulatory & Policy

Christopher Cole is the co-chair of Crowell & Moring's Advertising & Product Risk Management (APRM) Group, a team that provides interdisciplinary solutions to companies facing challenging competitive and regulatory issues. Chris focuses on matters of false advertising, reputation and brand disparagement, intellectual property infringement, and unfair competition. He litigates Lanham Act and consumer class action cases, defends against Federal Trade Commission (FTC) and related investigations, and, he has handled numerous cases before the National Advertising Division (NAD). Chris also provides strategic and risk management guidance to some of the world's leading companies in industries such as food and beverages, media and telecommunications, home appliances, technology and consumer products.

Chris has been ranked among the top false advertising litigators in the country by *Chambers & Partners*, which has in various editions described him as a "superstar," "incredibly responsive," "outstanding," "cost-conscious," "hard-working," and has said that he "gets to the heart of the concept quickly and understands the advertising motivation in relation to the law." He is listed by *SuperLawyers* among the top Media and First Amendment lawyers in Washington, D.C., and by *Best Lawyers in America* for Advertising Law.

Chris is the chair of the American Bar Association's Section of Antitrust Committee on Advertising Disputes and Litigation, an editor of the ABA's major treatise on Consumer Protection Law and Developments, co-chair of the ABA's upcoming 2017 biannual Consumer Protection Law Conference, and co-chair of the Brand Activation Association's 2016 Annual Marketing Law Conference.

Representative Matters

- **FTC Investigations.** Represented major advertisers in conjunction with both ongoing and successfully closed investigations and litigation by the FTC in the areas of telecommunications, beverages, consumer products and technology.

Lead counsel for Kimberly-Clark Corporation in recently closed FTC investigation into flushable wipes.

- **NAD/NARB.** Handled over 50 NAD and NARB matters in the last five years for clients such as AT&T, DIRECTV, Kimberly-Clark, Matrixx Initiatives, Scotts Company, Intuit, MillerCoors, Honeywell, Samsung, Zero Technologies, Energizer/Edgewell, and Walmart. Member of the ABA task force that conducted a comprehensive review and prepared recommendations for modification of NAD operating procedures, which resulted in substantial changes to NAD's rules.
- **Lanham Act.** Lead counsel in numerous Lanham Act false advertising cases, including many involving applications for emergency relief, on behalf of clients including AT&T, Expedia, Edgewell, MillerCoors, Scotts Company, 3M, Zero Technologies, Dyson, and Kimberly-Clark.
- **Class Actions, Commercial and IP Litigation.** Defense counsel on consumer class actions, commercial, and IP litigation matters and member of successful trial teams that (a) defeated multi-billion dollar claims of patent infringement against an international chemical products manufacturer, (b) claims of breach of power purchase contracts in the energy industry, and (c) claims of trademark infringement and dilution.
- **Counseling and risk management.** Chris and his team serve as outside counsel to various Fortune 500 companies, providing and coordinating through Crowell & Moring and a network of global firms, worldwide advice in areas of product regulation, advertising, competition and risk mitigation.
- ***Pro bono*****.** Chris maintains an active *pro bono* practice, and was recently awarded the 2015 "Firm Voice" award from the Network for Victims Recovery of D.C., an organization that assists victims of violent crimes to achieve justice through advocacy, case management and legal services.

Admissions/Affiliations

Admitted to practice: District of Columbia, U.S. District Courts for the District of Columbia, Maryland, and Eastern District of Wisconsin, and U.S. Courts of Appeals for the D.C. Circuit, Federal Circuit, and Court of Veterans Benefits Claims

Memberships

Past Chair and General Counsel, Asthma and Allergy Foundation of America (AAFA)
Chair, ABA Antitrust Section, Committee on Private Advertising Litigation
Chapter Editor, ABA Treatise on Consumer Protection Law and Developments

Education

- Yale University, B.S. biology (1987) *Sigma Xi* scientific honorary society
- University of Miami, M.S. marine biology (1989) Rosenstiel Scholarship
- Boston University School of Law, J.D. (1992) *magna cum laude*, Ordroneaux Prize for top overall graduating student

JANET LEVINE

PARTNER

LOS ANGELES
jlevine@crowell.com
Phone: 213.443.5583
Fax: 213.622.2690
515 South Flower St., 40th Floor
Los Angeles, CA 90071

PRACTICES

- Litigation & Trial
- Foreign Corrupt Practices Act
- Regulatory & Policy
- White Collar & Regulatory Enforcement
- Investigations: Government & Internal
- Appellate
- Criminal Trials
- Environmental Crimes
- Export Controls
- Financial & Investment Fraud
- Health Care Fraud & Abuse
- Internal Investigations
- Public Corruption
- SEC Enforcement
- Antitrust
- Commercial Litigation
- Government Contracts
- Health Care
- Insurance/Reinsurance
- Trade Secrets
- Executive Practice
- Trial
- Anti-Money Laundering (AML)
- Internal & Governmental Investigations

Janet Levine is a partner in Crowell & Moring's Los Angeles office, chair of the firm's Trial Practice, and a member of the firm's Management Board and Executive Committee. She is a trial and appellate attorney, with extensive experience in securities, health care, and tax fraud and all manner of public corruption matters. She has represented corporations, politicians, judges, directors, officers, and executives and licensed professionals in myriad industries, providing defenses against allegations of wrongdoing. Ms. Levine brings extensive trial, grand jury, and pretrial experience, as well as extensive pre-filing resolutions of difficult and sensitive matters, including litigating grand jury matters.

Ms. Levine is one of the few lawyers to ever try a Foreign Corrupt Practices Act (FCPA) case. After a trial lasting over five weeks, she obtained a dismissal with prejudice of all charges against her client based on prosecutorial misconduct (*United States v. Aguilar*, 10-1031(A)-AHM, U.S. District Court, Central District of California).

Ms. Levine is a past chair of the American Bar Association's Criminal Justice Section and is also a member of the Criminal Justice Section Executive Committee and Council, the Section's policy-making and advisory board. She is a past chair of the American Bar Association's White Collar Crime Committee and a past chair of the American Bar Association's West Coast Regional Subcommittee on White Collar Crime. She is also a past president of the Los Angeles Chapter of the Federal Bar Association. Ms. Levine has served as a delegate to the Ninth Circuit Judicial Conference.

Ms. Levine is a Fellow of the American College of Trial Lawyers. In July 2009, she received the *Charles R. English Award*, presented each year by the Criminal Justice Section of the American Bar Association to a member of the section who has distinguished themselves in the field of criminal justice. She is recognized by many publications as being among the best lawyers in the white-collar crime arena, including being named one of the best white collar criminal defense lawyers in California by *Chambers USA*, who describes her as "an exemplary lawyer who is intelligent, extremely

hard-working and meticulous," "very talented," and "one of the best criminal defense lawyers you could ever find." In 2014, she was selected as one of *The National Law Journal's* "Litigation Trailblazers and Pioneers." Ms. Levine has also been named one of the Top 10 Southern California Super Lawyers and has been included for many years as one of the top 100 lawyers in Southern California by *Los Angeles Magazine.* She was listed as among the "Best in the West" lawyers for business crime matters by *California Lawyer* and is consistently named one of the top women litigators in California, according to the *Los Angeles Daily Journal*. She has also appeared in multiple editions of *The Best Lawyers in America*. In 2015, she was featured in *Global Investigations Review's* Women in Investigations.

In 2012, Ms. Levine also received the *California Lawyer* Attorney of the Year (CLAY) award in the "criminal law" category for her work in the landmark Foreign Corrupt Practices Act (FCPA) case, the first trial and conviction of a corporation in an FCPA prosecution. In a stunning reversal for her client, Lindsey Manufacturing's CFO, Steven Lee, the federal judge in the case found a pattern of serious prosecutorial misconduct and threw out Lee's conviction before sentencing.

In 2012 Ms. Levine also received the inaugural White Collar Criminal Defense Award from the National Association of Criminal Defense Lawyers and was named Defense Counsel of the Year by Loyola Law School. She was also chosen to be profiled in 2012 as one of ten "Top Female Trial Attorneys" by *Law360*.

In 2006, Ms. Levine and John Vandevelde received CLAY awards for their representation of accused double-agent Katrina Leung. After a widely publicized legal battle, they obtained a dismissal of all charges based on prosecutorial misconduct. They then negotiated a global resolution of all criminal and tax matters, no additional time in custody, and the return of most of the client's seized assets. Ms. Levine also received the Los Angeles County Bar Association Criminal Justice Section's *2006 Defense Attorney of the Year* award.

After graduating from law school, Ms. Levine served as law clerk to the Honorable Arthur L. Alarcon, United States Circuit Judge, Ninth Circuit Court of Appeals, and as a Deputy Federal Public Defender, where she represented indigent defendants charged with a variety of federal crimes. She received her undergraduate degree with honors in 1977 from the University of California at Los Angeles and her law degree in 1980 from Loyola Law School, Los Angeles, where she graduated *summa cum laude* and was an editor of the *Loyola Law Review*. Ms. Levine was previously a partner with Lightfoot Vandevelde Sadowsky Crouchley Rutherford & Levine LLP, and was a founding partner of Crowell & Moring's Los Angeles office.

Government Experience

- Office of the Federal Public Defender-Central District of California, Deputy Federal Public Defender (1982-1984)

Admissions/Affiliations

Admitted to practice: California, U.S. Supreme Court, U.S. Court of Appeals for the Second Circuit, U.S. Court of Appeals for the Seventh Circuit, U.S. Court of Appeals for the Ninth Circuit, U.S. District Court for the Central District of California, U.S. District Court for the Eastern District of California, U.S. District Court for the Northern District of California, U.S. District Court for the Southern District of California

Education

- University of California, Los Angeles, B.A. (1977) with honors
- Loyola Law School, Los Angeles, J.D. (1980) *summa cum laude*

JEFFREY H. RUTHERFORD

PARTNER

LOS ANGELES
jrutherford@crowell.com
Phone: 213.443.5596
Fax: 213.622.2690
515 South Flower St., 40th Floor
Los Angeles, CA 90071

PRACTICES

- Litigation & Trial
- White Collar & Regulatory Enforcement
- Investigations: Government & Internal
- Foreign Corrupt Practices Act
- Regulatory & Policy
- Antitrust
- Health Care
- Government Contracts
- Criminal Antitrust
- Criminal Procurement Fraud
- Criminal Trials
- Environmental Crimes
- Export Controls
- False Claims Act
- Financial & Investment Fraud
- Government Ethics, Political Law & Lobbying Compliance
- Health Care Fraud & Abuse
- Internal Investigations
- Public Corruption
- SEC Enforcement
- Trade Secrets Theft
- Executive Practice
- Internal & Governmental

Jeff Rutherford is a partner in Crowell & Moring's Los Angeles office, where he serves as office head. He focuses on white-collar criminal defense, complex civil litigation, and civil and criminal jury trial work. Mr. Rutherford has been lead trial counsel in numerous federal and state civil and criminal jury trials over the last 16 years. He is a member of the White Collar & Regulatory Enforcement Group, and is also active in the firm's Health Care, Antitrust, and Government Contracts practices.

Mr. Rutherford places a particular emphasis on the representation of individuals and entities in high-profile, high-stakes political corruption/public integrity, criminal antitrust, health care fraud, money laundering/Bank Secrecy Act, and civil and criminal False Claims Act/qui tam matters. But he has also represented individuals and entities in a wide array of other complex civil and white-collar criminal matters, including tax, securities, procurement fraud, entertainment, conflict of interest (Cal. Gov't Code § 1090), theft of trade secrets, campaign finance, off-label marketing, FCPA, cyber crimes, FIRREA, environmental crimes, criminal OSHA violations, and international extradition proceedings.

In 2014, Mr. Rutherford was lead trial counsel in *U.S. ex. rel. Hooper v. Lockheed Martin Corporation*, obtaining a complete defense jury verdict against a claim for damages in excess of $1 billion. The win was recognized by the *Los Angeles Daily Journal* as one of the top verdicts in 2014. Mr. Rutherford is recognized by *Chambers USA* as a leading lawyer in the California Litigation: White-Collar Crime & Government Investigations category, by *The Best Lawyers In America* in the area of white-collar criminal defense, and as a "Southern California Super Lawyer" in white-collar criminal defense. He was also named by *The Los Angeles Daily Journal* to the "2007 Top 20 Under 40" list of lawyers in California.

Mr. Rutherford's jury trials include:

- Defense of an international aerospace corporation in connection with federal *qui tam* action. Obtained complete defense verdict against a claim for damages in excess of $1 billion for alleged fraudulent billing and retaliatory discharge.
- Defense of the founder and executive director of high-performing charter school on charges of misappropriation of public funds, embezzlement, tax fraud, and conflict of interest.
- Defense of an international seafood company executive on criminal charges of importing and distributing mislabeled seafood products.
- Defense of a high-profile public official and health care executive on charges of bribery, conflict of interest, embezzlement, and tax fraud.
- Defense of a bank manager on charges of money laundering and bank fraud.
- Defense of a tax preparer on charges of aiding and abetting tax fraud.
- Defense of multiple other individuals on charges of bank fraud, wire fraud, passing counterfeit instruments, money laundering, and narcotics distribution.

Mr. Rutherford's recent non-trial representations include:

- Representation of senior executive in global criminal investigation of alleged collusion among Japanese auto parts manufacturers.
- Representation of government contractor in False Claims Act litigation pertaining to a VA contract.
- Representation of production manager in connection with criminal OSHA prosecution of a workplace fatality.
- Representation of individuals and entities in connection with investigations involving money laundering and violations of the Bank Secrecy Act.
- Representation of physician in prosecution for allegedly illegally prescribing medications.
- Representation of health care executive in connection with federal health care fraud and public corruption investigations.
- Representation of trader in connection with insider trading investigation.
- Representation of oil company and oil company executives in connection with criminal environmental criminal litigation.
- Representation of vice-president of investment advisory firm charged with antitrust bid-rigging and fraud in connection with bond investment work.
- Representation of regulatory affairs director of medical device company in connection with off-label marketing investigation.
- Representation of executive in connection with DOJ and SEC investigation of medical device company for FCPA violations.
- Representation of executive of investment firm in connection with investigation of theft of trade secrets.
- Representation of executive in connection with DOJ investigation of payola payments in the radio industry.
- Representation of multiple physicians in connection with DOJ investigations and prosecutions of health care fraud and violations of the False Claims Act and Anti-Kickback Statute.

- Representation of former KPMG partner in connection with civil litigation regarding tax shelters.
- Representation of attorney in connection with embezzlement and obstruction of justice investigation.
- Representation of various municipalities in connection with criminal and civil conflict of interest investigations.
- Representation of Mexican federal law enforcement officer in connection with money laundering prosecution.
- Representation of multiple individuals in connection with criminal antitrust investigation of price-fixing in the airline industry.
- Representation of U.S. citizen in extradition proceedings involving attempted murder and assault charges in the Netherlands.
- Representation of movie producer in connection with prosecution of an investment fraud scheme.

Mr. Rutherford was previously a partner with Lightfoot Vandevelde Sadowsky Crouchley Rutherford & Levine LLP, and was a founding partner of Crowell & Moring's Los Angeles office. Prior to that, Mr. Rutherford was a Deputy Federal Public Defender in the Central District of California, handling both trial and appeals. Before joining the Federal Public Defender, Mr. Rutherford was a litigation associate with Kaye Scholer, LLP and a Cooperating Attorney with the ACLU of Southern California. He is a past recipient of the *Pro Bono Advocacy Award* from the ACLU Foundation of Southern California and the *President's Pro Bono Service Award* from the State Bar of California for his work on litigation fighting gender discrimination in local municipal sports and recreation programs. Mr. Rutherford also served as a law clerk to the Honorable Consuelo B. Marshall, United States District Judge, Central District of California.

Mr. Rutherford received his undergraduate degree from the University of Michigan, and his law degree from the University of Minnesota Law School, where he graduated with honors and was an articles editor of the *Minnesota Law Review*. He served as an adjunct professor of Law at Loyola Law School, where he taught trial advocacy, and has been on the faculty of seminars for lawyers on law and technology and complex criminal litigation. He is a member of many bar associations, including the Cutthroat Lawyers Bar Association, and is also a member of the National Association of Criminal Defense Lawyers (NACDL). He was a lawyer delegate to the Ninth Circuit Judicial Conference. He also serves on the Board of Directors of both the Federal Bar Association in Los Angeles (for which he served on the Executive Committee) and the West Coast Regional Subcommittee of the ABA White Collar Crime Committee. Mr. Rutherford co-authors "Federal Criminal Practice," which is published by James Publishing.

Government Experience

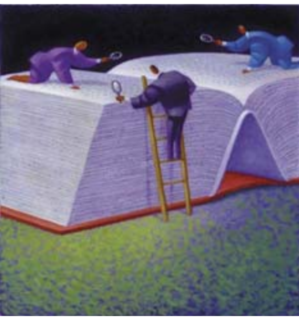
- Office of the Federal Public Defender-Central District of California, Deputy Federal Public Defender (1999-2004)

Admissions/Affiliations

Admitted to practice: California
U.S. Supreme Court, Ninth Circuit Court of Appeals, Central District of California, Eastern District of California, Northern District of California, Southern District of California, Western District of Michigan

Education

- University of Michigan, B.A. (1989)
- University of Minnesota Law School, J.D. (1995) with honors



Roger D. Siefert, CPA, CFF, ABV

Principal

Complex Business Litigation
Forensic Accounting

17 State Street

Suite 2610

New York, NY 10004

Tel: +1 212 430 3456

Fax: +1 212 430 3399

rsiefert@stoneturn.com

Education:

B.S.B.A., Concentration in Accounting, Indiana University

Roger Siefert has more than 35 years of experience in assisting clients and counsel with forensic accounting, business litigation support and audit services, as well as consulting on various accounting issues. Roger has performed audits across a variety of industries, including financial services, manufacturing, pharmaceuticals and public utilities. He has also led multiple investigations of alleged financial statement fraud and other misappropriations in various industries, including financial services, insurance, broker / dealer, healthcare, high-tech, manufacturing and real estate, and has participated on the defense teams of multi-million dollar securities class action lawsuits.

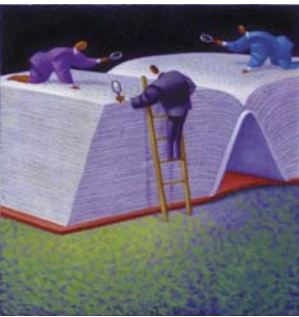
In addition, Roger has assisted counsel throughout the various stages of litigation and performed multiple business valuations of companies. He has been recognized and testified as an expert in several jurisdictions, including the United States District Court in the Southern District of New York, and state courts in California, Florida, New York and North Carolina. He has also testified as an expert at numerous depositions and before arbitration panels on matters relating to audit malpractice, SEC reporting issues, cost accounting, cost allocation and damages computations.

Roger's thought leadership has been published in the ABA Criminal Justice Section newsletter, and he has served as a guest lecturer at Rutgers Business School, Indiana University's Kelly School of Business, Pace University and Harvard University. He has also served as a panelist at industry conferences and presented at various continuing legal education venues.

Roger began his career at Deloitte, Haskins & Sells, ultimately, becoming a partner at the successor firm, Deloitte & Touche, where he spent 10 years serving audit clients, ranging from small, closely-held businesses to large, publicly-traded companies. He also served as a Firm Designated Specialist for Commercial Banking. In addition, Roger spent approximately five years working in Deloitte’s Office of General Counsel, assisting lawyers with defending claims against the firm. He later specialized in forensic accounting and litigation consulting in Deloitte's Dispute Consulting practice in New York.

Subsequent to Deloitte, Roger was a Managing Director with Finance Scholars Group and with the Financial Advisory and Litigation Consulting practice of LECG. He also served as the North America Leader of the Financial Advisory practice at Kroll, and a co-practice leader of the Forensic Accounting and Litigation Consulting group at Aon Consulting.

Roger is a Certified Public Accountant, Certified in Financial Forensics and Accredited in Business Valuation.



Roger D. Siefert, CPA, CFF, ABV

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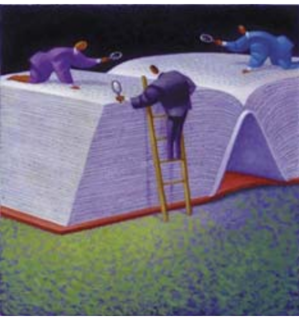
SELECT AUDIT AND ACCOUNTING EXPERIENCE

- Performed GAAS audits on both public and private corporations, partnerships and other entities involved in various industries including, commercial banks, savings & loans, mortgage banks, manufacturing, public utilities, securities brokering, and telecommunications, as well as defined pension and contributory retirement plans.
- Retained as an audit expert for one of the “Big Four” accounting firms in connection with its defense of an allegedly failed audit. The audit client was a professional services firm, and the issues involved unbilled receivables and out-of-pocket expenses and the extent of the auditors’ obligations with respect to these matters.
- Worked on the defense of numerous audit and consulting malpractice cases, while serving in Deloitte’s Office of General Counsel, in a variety of industries, including savings & loans, mortgage banks, manufacturing, public utilities and insurance.
- Investigated restatement issues at Sunbeam, Inc. The issues involved were, among other things, bill and hold, vendor incentives, and allowances for both receivables and inventories.
- Retained to work on liability issues on a number of 10b-5 securities class action cases, including Enron, Campbell’s Soup and IKON Office Solutions.
- Provided accounting consultation services to the court appointed examiner in connection with the SEC’s investigation of Spiegel, Inc. Report issued by the examiner was filed with an 8-K in September 2003.
- Retained as the forensic accounting expert in a complex billion dollar real estate / public company privatization transaction. Assisted counsel in the determination of whether certain investment requirements by one of the parties had been achieved, which, among other things, was a condition requisite to a disputed option becoming executable.
- Retained as the accounting expert for Delphi Corporation executives pursued in a Securities and Exchange Commission action that alleged that certain complex transactions had been inappropriately reported in publicly-filed documents after the Company’s spin-off from General Motors, Inc.
- Retained as a professional ethics expert by the Tax Division of the Department of Justice in connection with its allegations against a CPA involved in a Ponzi scheme.
- Provided accounting advisory services to the law firm representing the former CFO of Bristol-Myers Squibb in connection with criminal allegations raised by the Department of Justice.
- Retained as an accounting expert by the Office of Federal Housing Enterprise Oversight (OFHEO) in connection with its litigation against Freddie Mac’s former CEO.



Roger D. Siefert, CPA, CFF, ABV

Principal

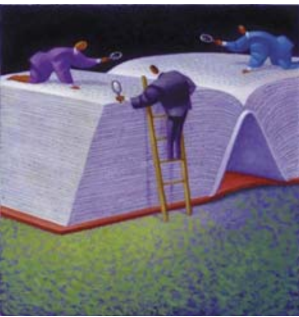
Complex Business Litigation
Forensic Accounting

SELECT AUDIT AND ACCOUNTING EXPERIENCE (cont'd)

- Retained by plaintiff as a SEC disclosure expert with respect to his private sale of securities to other members of management. The issue pertained to whether knowledge held by the purchaser amounted to a material contract change that merited disclosure in Management's Discussion and Analysis or, at a minimum, should have been disclosed to the seller by some other means prior to effecting the transaction.
- Retained as a normal course of business expert for a large telecommunications hardware manufacturer in connection with its defense of a preference action brought by a bankrupt entity. The primary issue revolved around the period that receivables remained uncollected and whether it compared to that which was typical for others in the industry.
- Retained as an accounting expert on the percentage of completion method of accounting. Defendant sold his business and the acquirer alleged that the revenue recognition on long-term contracts was inappropriate.
- Retained as the accounting expert on accounting for impairment of long-lived assets in connection with a failed acquisition transaction of a Polish telecommunications company. Ultimately testified before an ICC arbitration tribunal.
- Investigated the subprime mortgage lending practices of Walsh Securities in New Jersey and Rhode Island. Walsh was allegedly loaning on "flipped" residential properties that were significantly overvalued and then using such loans to collateralize subprime mortgage backed securities.
- Served as damages expert in a number of breach of contract cases.

PUBLICATIONS AND PRESENTATIONS

- Author, "Changing the Rules for Testifying Experts: Making it About the Destination—Not the Route," ABA Criminal Justice Section Newsletter—Winter 2011
- Presenter, "The Foreign Corrupt Practices Act," The Association of Certified Examiners Mid-Atlantic Region—May 2010
- Guest lecturer at Rutgers Business School, "Concepts of Financial Statement Analysis," Intermediate Accounting—May 2010
- Panelist, "Structured Debt Symposium," sponsored by Herrick, Feinstein—September 2008
- Panelist, "Trends in Securities Litigation," sponsored by Aon, Inc.—May 2007



Roger D. Siefert, CPA, CFF, ABV

Principal

Complex Business Litigation
Forensic Accounting

PUBLICATIONS AND PRESENTATIONS (cont'd)

- Guest lecturer at Indiana University's Kelly School of Business MBA program—2006 to 2012 (various topics related to forensic accounting and litigation consulting)
- Frequently presented on the topics of "Understanding Financial Statements" and "Accounting for Lawyers" at various continuing legal education venues.
- Presented numerous professional continuing education courses on topics as SEC disclosure requirements, cash management, and workpaper preparation and review.

PRIOR EMPLOYMENT

- Finance Scholars Group, Managing Director (2011—2012)
- LECG LLC, Managing Director (2008—2011)
- Aon Consulting, Inc., Managing Director (2006—2008)
- Kroll, Inc. (and predecessor firm, Zolfo Cooper), Managing Director (2002—2006)
- Deloitte & Touche LLP (and predecessor firm, Deloitte, Haskins & Sells)
    - Partner (1992—2002)
    - Manager, Senior, Staff Consultant (1981—1992)

PROFESSIONAL CERTIFICATIONS AND AFFILIATIONS

- Certified Public Accountant (CPA)—Indiana and New York
- Certified in Financial Forensics (CFF)
- Accredited in Business Valuation (ABV)
- Member, American Institute of Certified Public Accountants (AICPA)
- Member, New York State Society of Certified Public Accountants (NYSSCPA)
- General Affiliate, American Bar Association (ABA)

Jamal Ahmad, J.D., CPA, CFE, CFF

Managing Director

Complex Business Litigation
Forensic Accounting
Remediation & Monitoring

17 State Street

Suite 2610

New York, NY 10004

Tel: +1 212 430 3404

Fax: +1 212 991 4946

jahmad@stoneturn.com

Education:

J.D., St. John's University School of Law

B.S. Accounting, St. John's University

Jamal Ahmad, a Managing Director with StoneTurn Group, has more than 16 years of combined forensic accounting and litigation consulting experience. He specializes in accounting and forensic investigations, and disputes related to complex financial and Generally Accepted Accounting Principles (GAAP) issues. He has assisted leading law firms and corporations with forensic accounting, litigation consulting and corporate compliance matters, including compliance monitoring, fraud investigations, damage analysis, business interruption consulting, post-closing purchase price disputes and other litigation support matters.

Jamal has worked with clients across a wide range of industries, including oil drilling and refining, chemicals, financial services, insurance technology, healthcare, anti-money laundering and telecommunications. He has conducted and managed engagements in the U.S., Latin America, Europe, Africa, and the Middle East.

Prior to joining StoneTurn, Jamal spent more than 15 years in the Forensic and Litigation Services practices of several global professional services firms, including two large public accounting firms. Jamal also worked at Hewlett-Packard, where he was responsible for the development and implementation of the company's global disclosure controls and procedures, and as a member of the Disclosure Committee, determined items that required disclosure. He is fluent in Urdu.

SELECT PROFESSIONAL EXPERIENCE

Forensic Accounting and Investigations

- Oversaw the design and implementation of the global FCPA compliance program at a leading insurance brokerage company with operations in approximately 120 countries.
- Assisted global bank in conducting money laundering investigation in response to a subpoena by the US Attorney's office.
- Led team of professionals in investigating allegations of bribery of foreign customs officials in the foreign operations of a Fortune 100 electronics company.
- Assisted in investigation of allegations of bribery of foreign officials by employees of a multi-national commodities broker.
- Worked with court appointed receiver of failed half billion dollar international hedge fund accused of operating as a Ponzi scheme. Duties include supervising the accounting side of the investigation for recovery of assets misappropriated through purported hedge funds operated by the principals of the fund for ultimate distribution to the defrauded investors.

Jamal Ahmad, J.D., CPA, CFE, CFF

Managing Director

Complex Business Litigation
Forensic Accounting
Remediation & Monitoring

SELECT PROFESSIONAL EXPERIENCE (cont'd)

- Led investigation of alleged employee embezzlement at a third-party administration division of a state school board association.
- Conducted an investigation into the alleged under funding by the City of San Diego of its pension fund.
- Conducted an investigation into the Turkish subsidiary of a global advertising firm to address allegations of embezzlement by the CEO of said subsidiary.
- Conducted an investigation at the request of the federal and state banking regulatory authorities into the alleged failure on the part of a multinational bank to properly and timely report suspicious activity.
- Performed an investigation to address allegations of bribery of foreign officials at the Indian subsidiary of a global chemical company. Also conducted a review of the global ethics and compliance program and in particular the FCPA component of such program.
- Participated in the investigation at the request of FinCen into the lending practices of a global bank to address among other things, allegations of money laundering.
- Conducted reviews of business operations of potential target of acquisition on behalf of a national provider of pharmaceutical services to determine target's compliance with relevant Medicare/Medicaid billing rules.
- Performed review of accounting records of potential target on behalf of acquirer to determine if the target was diverting funds to a third party.

<u>Litigation Support Services:</u>

- Assisted counsel in the defense of an individual charged with of bribery of foreign officials.
- Part of team assisting court appointed trustee in pursuing claims against various parties in MF Global bankruptcy.
- Assisted defense counsel in lawsuit against a national hotel chain involving improper booking of rooms.
- Assisted defense counsel in a multi-million dollar partnership dispute involving the nursing home industry.
- Conducted calculation of alleged royalty to seller in disputed product sales calculation that found a significant underpayment to the client.

Jamal Ahmad, J.D., CPA, CFE, CFF

Managing Director

Complex Business Litigation
Forensic Accounting
Remediation & Monitoring

SELECT PROFESSIONAL EXPERIENCE (cont'd)

- Assisted in the preparation of a multi-million dollar business interruption claim and expert report on behalf of expert witness of a global financial services firm whose offices were destroyed in the September 11 terrorist attacks.
- Provided consulting services to plaintiff's counsel in a shareholder lawsuit against a multinational dairy company and its external auditors alleging fraud by members of senior management and negligence by the company's external auditors.
- Assisted counsel in the criminal defense of a former CFO of a Fortune 100 pharmaceutical company accused of earnings management including improper accounting for rebate accruals, the manipulation of reserves, channel stuffing and inappropriate disclosures.
- Assisted in the drafting of neutral Arbitrator's opinion in purchase price disputes resulting from multi-million dollar Buy-Sell Agreements and/or mergers of companies in numerous and diverse industries including but not limited to publishing and electronics.
- Assisted Buyers and/or Sellers of businesses in various industries including, but not limited to, manufacturing and retail, seeking or opposing multimillion-dollar post-closing adjustments to the purchase price of an acquired business.

Other:

- Part of a team assigned to review the financial statements of an acquired company for the purposes of assisting the parent in filing an S-1 Registration Statement with the SEC.
- Prepared business interruption claim for cruise operator whose operations were affected by Hurricane Sandy.
- Worked as independent compliance monitor retained by multinational engineering firm pursuant to a deferred prosecution agreement. The task of the monitor is to work with the company and review the design and implementation of the global FCPA compliance program, to enhance such program to ensure that it meets with regulatory standards, and to cooperate with the department in ongoing investigations.
- Developed and managed the processes and controls surrounding the company's global disclosure processes, including processes related to obtaining quarterly representation letters and controls assessments from executives across HP's functions and business units to support the CEO/CFO certification on Forms 10-Q/10-K.

Jamal Ahmad, J.D., CPA, CFE, CFF

Managing Director

Complex Business Litigation
Forensic Accounting
Remediation & Monitoring

SELECT PROFESSIONAL EXPERIENCE (cont'd)

- Led or participated in numerous investigations of alleged financial fraud and financial misstatement in companies in a wide range of industries from software to manufacturing.
- Performed review of AML compliance program for global financial services and communications company in the business of money transfers.

PREVIOUS EXPERIENCE

- 2011 – 2013
  - *Senior Director*, Forensic and Litigation Consulting Services at FTI
- 2005 – 2011
  - *Director* at LECG, Aon Consulting and Kroll Inc.
- 2004 – 2005
  - *Manager*, Dispute Analysis and Investigations at PricewaterhouseCoopers (PwC)
- 2003 – 2004
  - *Disclosure Committee*, Hewlett Packard
- 2001 – 2003
  - *Manager,* Fraud Risk and Controls Group at PricewaterhouseCoopers (PwC)
- 1998 – 2001
  - *Senior Consultant*, Dispute Consulting Services at Deloitte & Touche

Jamal Ahmad, J.D., CPA, CFE, CFF

Managing Director

Complex Business Litigation
Forensic Accounting
Remediation & Monitoring

PUBLICATIONS / PRESENTATIONS

- *The Impact of a Foreign Corrupt Practices Act Investigation on a Company's Reputation*—Speaker at the Zicklin School of Business (March 2013)
- *Accounting 101 for Attorneys*—Presenter at the National Business Institute (June 2010)
- *Insights and Issues*—SFAS 157 with Vijay Sampath (December 2008)
- *Conducting FCPA Internal Investigations: A Practical Guide for Forensic Accountants and Investigators*—with Vijay Sampath (November 2007)
- "*Financial Statement Fraud: Revenue and Receivables*" and "*Financial Statement Fraud: Other Schemes and Misappropriations"*—Co-authored Chapters for the textbook "A Guide to Forensic Accounting Investigation" (2006)
- *Mind the Gap; The Effect of Sarbanes-Oxley on M&A transactions*—with Jonny Frank (2003)
- *How to Sell a Family Business*—with Jonny Frank, and Ronald Chopoorian, Trusts and Estates Magazine, November (2002)

OTHER ACCOMPLISHMENTS

- Member of PwC Chairman's Task Force charged with changing the audit methodology of the PwC national firm to include requirements of SAS 99 and Sarbanes-Oxley, as well as enhanced procedures designed to deter and detect fraud in financial statement audits. This project involved revamping the firm's national audit policy to include deeper consideration of misstatements from frauds and other irregularities not previously considered. As part of engagement, developed various work steps to assist auditors in this process, as well as educating and training auditors nationwide to implement the new policy.

Michele Edwards, CPA

Managing Director

Compliance Controls & Monitoring
Forensic Accounting

125 S Wacker Drive
Suite 300
Chicago, IL 60606

Tel: +1 312 775 1221

medwards@stoneturn.com

Education:

B.S., Accounting, University of Illinois, Urbana-Champaign

Michele Edwards, a Managing Director with StoneTurn Group, has approximately 20 years of combined experience in fraud and compliance risk management and financial statement auditing. She specializes in assessing, implementing and remediating antifraud and compliance programs, fraud risk assessments, fraud and compliance training, fraud detection and forensic investigations.

Michele has assisted many Fortune 500 companies with building and assessing antifraud and compliance programs and controls. She has helped to assess and respond to their vulnerability to fraud by applying the "scheme and scenario" antifraud risk assessment framework, as well as implement controls, fraud auditing and fraud detection strategies.

Michele leads and has been a member of Independent Compliance monitor teams appointed by NHTSA and New York Department of Financial Services. In addition, Michele has led and assisted companies with corporate investigations.

Michele has worked with clients across various industries, including automotive, mortgage servicing, investment banking, retail, grocery, manufacturing, pharmaceuticals, consumer goods, telecommunications, hospitality, chemicals, consulting and construction.

Prior to joining StoneTurn, Michele spent four years with PRGX Global, Inc., where she developed and led the firm's Fraud Risk Management Service practice, with a special focus on helping clients to detect fraud. Prior to PRGX, Michele spent 14 years at PricewaterhouseCoopers (PwC) in the Forensic Services, Fraud Risk & Controls, and Audit practices. While at PwC, she spent six years advising assurance and advisory clients and audit engagement teams on fraud risk management; helped to develop new firm and service methodology at the peak of public accounting firm professional scrutiny related to financial statement fraud scandals; and supervised complex financial investigations.

In addition, she spent eight years conducting financial statement audits, and advising clients on initial and secondary public offerings, acquisitions, purchase price negotiations and private placements.

Michele is a Certified Public Accountant (licensed in the state of Illinois).

SELECT PROFESSIONAL EXPERIENCE

Assessing and Implementing Antifraud and Compliance Programs and Controls

- Assisted numerous Internal Audit, Compliance and Finance executives with the assessment and implementation of antifraud and compliance programs and controls.
- Developed frameworks, validation and testing procedures to address requirements and guidelines from various regulatory agencies and standard setters, including Sarbanes-Oxley, Foreign Corrupt Practices Act, Department of Justice, Securities and Exchange Commission, U.S. Sentencing Guidelines, Public Companies Accounting Oversight Board, Institute of Internal Auditors and Committee of Sponsoring Organizations of the Treadway Commission.

Michele Edwards, CPA

Managing Director

Compliance Controls & Monitoring
Forensic Accounting

SELECT PROFESSIONAL EXPERIENCE (cont'd)

Assessing and Implementing Antifraud and Compliance Programs and Controls (cont'd)

- Conducted interviews with senior management and operations personnel, and assessed existing antifraud and compliance programs and controls. Also conducted a gap analysis, identified recommendations, developed an implementation roadmap and business case to remediate weaknesses and enhance the company's prevention and detection strategy to further protect from fraud and misconduct risk.
- Conducted benchmarking and evaluation of ethics and business conduct standards and procedures for an international truck and engine manufacturer. Designed and conducted compliance workshops to develop a roadmap of corporate compliance and ethics activities to further develop the compliance function. As part of the roadmap, she and her team helped revise more than 50 corporate policies and code of conduct to be consistent with its key business practices and compliance-related standards, corporate policies and procedures, and established accountability across the company for compliance.
- Coordinated and conducted interviews with process owners, as well as established a steering committee to review the revised policies and code of conduct, including representatives from the Company's Legal, Compliance, Corporate Communications and IT departments.
- Developed and delivered ethics and compliance training to certain employees in conjunction with the company's efforts, and a remediation plan to strengthen internal controls over reporting surrounding various financial statement restatements related to accounting errors, irregularities and misconduct.

Fraud Risk Assessment

- Assisted many Fortune 500 companies with risk assessments to assess and respond to their vulnerability to fraud and misconduct by applying the "scheme and scenario" antifraud risk assessment framework. Conducted interviews and facilitated sessions with senior management and operations personnel across business units, functional units and processes, and assessed the likelihood and significance of fraud and misconduct schemes. Conducted a gap analysis and provided recommendations on internal controls, including preventative controls, monitoring and fraud auditing procedures, as well as developed remediation plans to help better protect the companies from fraud and misconduct.

Michele Edwards, CPA

Managing Director

Compliance Controls & Monitoring
Forensic Accounting

SELECT PROFESSIONAL EXPERIENCE (cont'd)

Fraud and Compliance Training

- Trained thousands of Internal Audit, Compliance, Legal, Investigations, Finance /Accounting and Operations personnel on fraud and compliance management. Helped them understand the legal, regulatory, professional requirements and business risks of fraud and misconduct management, and trained them on techniques to identify opportunities for fraud, how to identify fraud risk indicators, fraud schemes and scenarios, and internal controls to prevent, detect and respond to fraud risks.

Fraud Detection

- Helped many global investment banks and retailers to develop and execute a fraud detection strategy to identify indicators of potential fraudulent activity. Led teams that interviewed company personnel to understand business processes and identify opportunities for potential fraudulent activity, designed and executed fraud detection routines and reviewed anomalies to identify indicators of potential fraudulent activity. Recommended enhancements to internal controls to reduce opportunities for fraudulent activity and helped clients investigate potential fraudulent activity.

Forensic Investigations

- Conducted several SEC Section 10-A investigations related to allegations of fraud and misconduct for audit engagement teams and audit clients. Assessed the adequacy of the forensic investigations performed by third parties, and advised audit engagement teams on the adequacy of scope of the investigation procedures performed, investigation results, and findings based on the procedures performed and evidence reviewed. The investigation allegations spanned matters involving revenue recognition, related-party transactions, accounting related to the acquisition of businesses, manipulation of reserves and other financial reporting irregularities.

- Conducted an investigation for a plant of a company related to allegations of fraud and misconduct. She conducted interviews with employees, performed electronic discovery, public record searches and evaluation of documentation. Identified instances of non-compliance with policies and procedures and override of controls, as well as various accounting matters, including inappropriate accounting for prepaid expenses, capital expenditures, scrap, liabilities and other reserves, and providing false and misleading information related to a potential plan sale. The investigation resulted in the termination of the Plant Manager and other remediation of internal controls.

Michele Edwards, CPA

Managing Director

Compliance Controls & Monitoring
Forensic Accounting

SELECT PROFESSIONAL EXPERIENCE (cont'd)

Forensic Investigations (cont'd)

- Led and conducted an investigation for an intellectual property law firm that suspected one of its Equity Partners and member of the firm's Executive Committee had submitted inappropriate expenses for reimbursement. Reviewed and analyzed five years of the Equity Partner's expense submissions, conducted investigative interviews, and reported the findings so the law firm could take actions to remediate the Equity Partner's misconduct. Upon the conclusion of the investigation, the law firm enhanced its policies, monitoring and auditing procedures surrounding the expense reporting process to prevent and detect future misconduct.
- Led and conducted an investigation and contract compliance review for an investment banking firm that suspected a supplier was over billing. Assessed the company's procure-to-pay processes and identified opportunities for potential fraudulent activity, including the opportunity for collusion between company personnel and vendors. The team conducted data analysis, interviews, forensic e-mail review, and examined contracts and invoices to identify indicators of potential fraudulent activity and to assess supplier compliance with contract terms and conditions. The investigation identified an employee who was in collusion with multiple suppliers, in which a conflict of interest existed, that resulted in intentional supplier overbilling of $1.5M.

Independent Compliance Monitorships

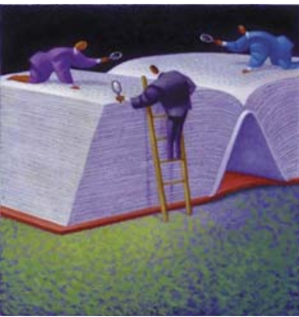
- Leads the StoneTurn team currently serving as forensic adviser to the NHTSA-appointed Independent Monitor of a Tier One automotive supplier. The team is assessing the company's process safety program and controls, ethics and compliance program, and recall and remedy program.
- Member of the StoneTurn team that served as New York State Department of Financial Services-appointed Compliance Monitor of the largest non-bank mortgage servicer in the U.S. The team reviewed thousands of loans, assessed the company's ethics and compliance programs and audited compliance controls.

PREVIOUS EXPERIENCE

- PRGX Global, Inc. (2010-2014)
- PricewaterhouseCoopers LLP (1996-2010)

PROFESSIONAL AFFILIATIONS / OTHER

- Certified Public Accountant (licensed in the state of Illinois)
- Member, American Institute of Certified Public Accountants (AICPA)
- Member of AICPA National Forensic and Business Valuation Conference Board, 2011 and 2012



Vijay Sampath, CPA, CFE, CFF, ABV

Senior Adviser

Forensic Accounting
Complex Business Litigation
Compliance Controls & Monitoring

17 State Street

Suite 2610

New York, NY 10004

Tel: +1 212 430 3403

Fax: +1 212 430 3399

vsampath@stoneturn.com

Education:

Doctor of Professional Studies (*ABD*), Concentration in Management and International Business, Pace University

M.B.A., Concentration in Finance, Rutgers University

Bachelor of Commerce, Sri Sathya Sai University, India

Dr. Vijay Sampath, an affiliate of StoneTurn Group, has more than 25 years of experience in providing forensic accounting, litigation consulting, financial statement auditing and business consulting services to clients.

Vijay specializes in complex financial investigations involving Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS) matters. He has managed Foreign Corrupt Practices Act (FCPA) investigations, compliance program reviews, post-closing purchase price disputes, and other litigation matters involving white collar crime, bankruptcy and contract proceedings.

Over the course of his career, Vijay has assisted companies across a broad range of industries, including pharmaceuticals, healthcare services, automotive, technology, financial services, manufacturing, media, consumer products, petroleum refining, insurance and retail.

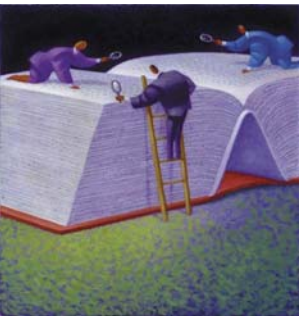
Previously, Vijay was a Managing Director with FTI Consulting, LECG and Aon Consulting. He also served as a Senior Manager in the Forensic and Dispute practice at Deloitte; Chief Financial Officer of a multi-specialty medical group practice; and Finance Director of a healthcare sciences Internet company. He began his career in the Audit and Business Advisory Services group at Price Waterhouse in India.

In addition to his consulting role with StoneTurn, Vijay is an assistant professor at the City University of New York-John Jay College of Criminal Justice, where he teaches courses on financial, forensic and managerial accounting, and auditing. He has also presented on numerous occasions at academic and practitioner conferences and panels.

Vijay is a Certified Public Accountant, Certified Fraud Examiner, Certified in Financial Forensics and Accredited in Business Valuation.

SELECT PROFESSIONAL EXPERIENCE

- Assisted counsel in FCPA investigations or compliance reviews of Fortune 500 companies, including:
    - An investigation spanning 20 countries (e.g., Nigeria, Ivory Coast, India) of one of the largest automobile manufacturers.
    - An investigation of a petroleum refining company related to allegations of bribery in sub-Saharan Africa.
    - An investigation of a consumer electronics manufacturing company in regards to allegations of bribery in three countries.
    - Member of the steering committee of an insurance brokerage company; the committee designed and implemented a global anti-corruption compliance program. The committee established systems and controls related to payments made to intermediaries.
- Provided accounting advisory services to the law firm representing the former CFO of Bristol-Myers Squibb in connection with criminal allegations raised by the Department of Justice.



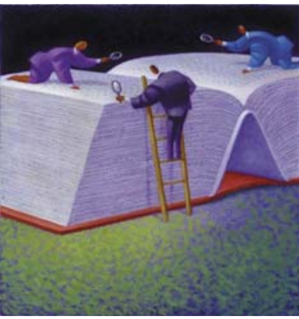
Vijay Sampath, CPA, CFE, CFF, ABV

Senior Adviser

Forensic Accounting
Complex Business Litigation
Compliance Controls & Monitoring

SELECT PROFESSIONAL EXPERIENCE (cont'd)

- Provided consulting services to buyers/sellers in post-closing purchase price disputes including a publicly-held medical services company, an electronic parts manufacturer, a media/publishing company and a rail manufacturer. Each matter involved a post-closing dispute exceeding $30 million.
- Assisted counsel in bankruptcy litigation matters of a large financial institution, a major waste management company, a leading telecommunications company and a home improvement retail company. Each engagement involved claims or fraudulent transfers or preference actions in excess of $50 million.
- Assisted the receiver of a failed hedge fund in investigating allegations that it was a Ponzi scheme. This involved reconstructing books and records of the fund from electronic and hardcopy records.
- Assisted counsel in investigating allegations of earnings management including reserves manipulation and channel stuffing by a global semiconductor company.
- Advised management of a public pharmaceutical services company during its restatement of financial statements regarding its assessment of applicable authoritative accounting guidance.
- Provided consulting services to counsel in investigating allegations of fraudulent recording of room revenue at a premier hotel chain.
- Provided consulting services to the committee of unsecured creditors of a financial institution in regards to the accounting treatment of complex repurchase transactions.
- Assisted the independent monitor of an online gaming company in ensuring compliance with the company's agreement with the Department of Justice.
- Assisted the receiver of a failed private cash vault services provider in investigating allegations of fraud and embezzlement of cash.
- Investigated allegations of fraud by employees of one of the largest industrial automation companies.
- Conducted an investigation on behalf of a financial institution of a construction company regarding allegations concerning fraudulent billing and accounting practices.
- Conducted an investigation of a not-for-profit organization to ascertain whether its activities complied with its objectives.
- Assisted experts in calculating damages in breach of contract matters.
- Performed statutory and internal audits for multinational corporations such as Citibank, Hewlett Packard, Pioneer Hi-Bred International, Bank of Tokyo, and ANZ Grindlays.



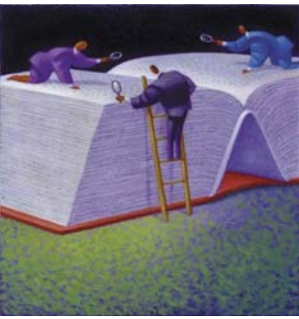
Vijay Sampath, CPA, CFE, CFF, ABV

Senior Adviser

Forensic Accounting
Complex Business Litigation
Compliance Controls & Monitoring

PUBLICATIONS AND PRESENTATIONS

- *Corruption in Multinational Enterprises: The Confluence of Corruption Culture Distance and Firm Core Values*, with Robert Vambery and Noushi Rahman; paper presented at the Academy of International Business conference, Istanbul, July 2013
- Panelist, *The Foreign Corrupt Practices Act: A Renewed Focus on Anticorruption*, organized by the North American South Asian Bar Association, San Francisco, June 2013
- *Firm Misconduct and Rehab: Do Corporate Reintegration Initiatives Lessen Sanction Severity?* with Noushi Rahman and Naomi Gardberg; paper accepted at the 2013 annual Academy of Management conference, Orlando
- Panelist, *The Impact of a Foreign Corrupt Practices Act Investigation on a Company's Reputation*, organized by Baruch College's Robert Zicklin Center for Corporate Integrity, New York, March 2013
- *Corruption and Corporate Reputation: The Paradox of Buffer and Suffer*, with Naomi Gardberg and Noushi Rahman; paper won Best Paper at the annual Academy of Management Proceedings, Boston, 2012
- Panelist, *Navigating FCPA in India*, organized by Sherman & Sterling LLP and the South Asian Bar Association, New York, January 2012
- *Corruption and Corporate Reputation: How Buffering Reputational Capital Loss During a Bribery Crisis Causes Corporate Reputation to Suffer*, with Naomi Gardberg and Noushi Rahman; paper presented at the Reputation Institute's 15th International Conference on Corporate Reputation, Brand, Identity and Competitiveness, New Orleans, May 2011
- *Corporate Reputation's Invisible Hand: Bribery, Governance and Market Penalties*, with Naomi Gardberg and Noushi Rahman; paper presented at the annual Academy of Management conference, August 2011
- *Forensic Accounting for Dummies*, with Frimette Kass-Shraibman, Wiley Publishers
- *Lessons from Satyam: How to Detect Fraud*, with Suresh Govindaraj, Business Week, May 2009
- *Fair Value Accounting - Insights and Issues*, with Jamal Ahmad, Equipment Leasing Newsletter, January 2009
- *Conducting FCPA Internal Investigations: A Practical Guide for Forensic Accountants and Investigators*, with Mark Winston and Jamal Ahmad, Aon Consulting Forum, 2008



Vijay Sampath, CPA, CFE, CFF, ABV

Senior Adviser

Forensic Accounting
Complex Business Litigation
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PRIOR EMPLOYMENT

- FTI Consulting, Managing Director (2009—2012)
- LECG LLC, Managing Director (2008—2009)
- Aon Consulting, Inc., Managing Director (2006—2008)
- Kroll, Inc., Director (2005—2006)
- Deloitte & Touche LLP, Senior Manager (2001-2005)
- Salu, Inc. (predecessor MedSprout, Inc.), Director (2000-2001)
- Brook-Island Medical Associates PC, Chief Financial Officer (1994-2000)
- Price Waterhouse (now PwC), Senior Associate (1986-1992)

PROFESSIONAL CERTIFICATIONS AND AFFILIATIONS

- Certified Public Accountant (CPA)—Colorado and New York
- Certified in Financial Forensics (CFF)
- Accredited in Business Valuation (ABV)
- Certified Fraud Examiner (CFE)
- Associate Chartered Accountant (non-practicing)—India
- Member, American Institute of Certified Public Accountants (AICPA)
- Member, Colorado Society of Certified Public Accountants
- Member, Association of Certified Fraud Examiners (ACFE)
- Member, American Accounting Association
- Member, Academy of Management
- Member, Academy of International Business

Joshua Dennis, CVA

Managing Director

Data Analytics
Intellectual Property
Complex Business Litigation

75 State Street
9th Floor
Boston, MA 02109

Tel: +1 617 570 3789

Fax: +1 617 570 3799

jdennis@stoneturn.com

Education:

B.S., Management and Business, Skidmore College

Minor, Computer Science, Skidmore College

Joshua Dennis has more than 10 years of experience working with clients and counsel on matters requiring complex data analysis, such as forensic accounting, compliance monitoring, economic damages, and valuation engagements.

In addition to his significant experience in data collection, mining, anomaly detection, and reporting of transactional and trading data, Josh also creates dynamic tools capable of allowing users to quickly and easily explore potential outcomes across a range of desired scenarios or inputs.

Within the context of litigation and disputes, Josh has extensive expertise in financial modeling to quantify and assess lost profits, diminution of business value and other types economic loss. These models not only provide clients with accurate and supportable results, but also valuable insights through graphical visualizations of the underlying data.

As part of such engagements, Josh also frequently performs analyses in connection with data sufficiency and integrity testing, integration of disparate data sets, data exploration and visual modeling. Josh also has extensive experience working with both proprietary financial and related systems, as well as commercial systems, employed across a range of industries, including banking, financial services, manufacturing, pharmaceuticals, e-Commerce and retail, among others.

- Computer Software and Hardware
- Consumer Products
- Financial Services
- Internet / e-Commerce
- Manufacturing
- Medical Devices
- Pharmaceuticals
- Retail

SELECT PROFESSIONAL EXPERIENCE

Financial Modeling and Complex Data Analysis

- Josh has designed and created complex databases to assist clients in matters such as breach of contract, mutual fund roundtrip trading and stock option backdating. These database models were capable of analyzing large and complex datasets, based on various selected time periods or scenarios. Representative case experience includes:

- Assisted counsel in a class-action matter to rebut the damages asserted by plaintiff related to allegations of market timing within the defendant’s mutual funds over a period of more than a decade. Analyses included the creation of a dynamic model that could generate multiple scenarios based upon user-selected inputs, and which encompassed over six million transactions across more than 30 mutual funds. This model was also used to determine the proportionate settlement amount that was, ultimately, paid to the class members.

- Engaged to evaluate and tests certain banking covenant for an acquired company both pre- and post-acquisition. Analyses included the creation of a dynamic model to determine the outcome of the covenant test based upon user-selected criteria.

- Retained to provide assistance to a financial services company in response to an SEC inquiry. The company provided a “signaling service” and advertised that investors utilizing the service had never had a down year. Analysis required the creation of a complex database and model to independently determine the historical returns for each investor over more than a decade, the results of which were provided in a written report to the SEC.

- Engaged to quantify the economic damages related to pricing used to determine reimbursement pursuant to a federal drug rebate program. Specifically, the allegations related to improperly reporting prices based upon the bundled sale of certain types of products. As part of the data analysis, a model was created in SQL to determine the “unbundled” price of products under various scenarios, the result of which were applied in the determination of the appropriate rebate calculated under the program. Also, assisted in preparation for trial, including the identification and subsequent modeling of damages scenarios based upon specific hospitals or groups of hospitals, as well as other potential legal outcomes. The case was ultimately settled by the parties for an amount consistent with the total damages conclusion generated by the economic model.

- Retained to analyze certain purchase and sale transaction data of securities in connection with potentially improper trading activities by a broker. Specifically, the broker was suspected of engaging in excessive trading in order to generate higher commissions and fees. The analysis included the creation of a Tableau workbook that allowed the user to visually explore trading patterns and behaviors over time, such as the proximity of related buy and sell transactions. The Tableau workbook also allowed for the comparison of various transaction data metrics, such as turnover and cost ratios, and any changes in these amounts across accounts, years and security types.

<u>Complex Business Disputes</u>

- Josh has worked on a wide-variety of dispute matters in litigation and arbitration settings. He has significant experience in quantifying economic damages related to business interruptions, non-interference and non-compete agreements, supply agreements, franchise agreements and other contractual disputes. Representative case experience includes:

  - Engaged by defendant, a global chemical manufacturer to assist in quantifying damages in a litigation that related to an alleged breach of contract. The contract included a “most favored customer” pricing provision and the parties disputed the interpretation and historical application of the provision.

  - Engaged by defendant, a leading manufacturer and distributor of clinical laboratory instrumentation for in vitro diagnostic application, to determine economic damages related to defendant’s counterclaim involving an alleged breach of contract. The breach related to plaintiff’s interference

Joshua Dennis, CVA

Managing Director

Data Analytics
Intellectual Property
Complex Business Litigation

- Retained by defendant, a national owner and franchisor of travel centers, to evaluate the alleged damages suffered by plaintiff, a global manufacturer of pharmaceutical and its insurance carrier, resulting from a stolen truckload of pharmaceutical drugs.
- Retained by respondent, a global restaurant franchisor, to assist in arbitration and rebut the economic damages proffered by the opposing expert related to an alleged breach of contract. The rebuttal included a detailed analysis of the opposing expert's damages model, and a critique of the key assumptions put forth therein.

Intellectual Property

- Josh has performed quantitative and qualitative analyses to determine reasonable royalty and lost profit damages for leading software / hardware providers, retailers and financial institutions. He has also provided in-depth examinations of the relevant industries, markets and technologies, as well as each party's financial performance, to assist in the determination of value. Representative case experience includes:
  - Retained by defendant, a worldwide manufacturer of mobile devices and electronics, to assess damages and provide rebuttal analyses in connection with an alleged patent infringement. The patent related to the resizing and formatting of digital images prior to being sent via MMS message.
  - Performed a fair market valuation of a company that specialized in the synthesis of keratin, including its patent portfolio that contained 28 patents related to the applications of keratin in a range of cosmetic and medical products.
  - Engaged by plaintiff to provide both industry and damages expertise in connection with a breach of a software licensing agreement between the licensor and licensee. Analyses included the development of several complex models in order to compute damages under a number of different assumptions based on the language of the agreement.
  - Retained by defendants in a multi-defendant litigation that included OEM computer manufacturers, as well as certain operating system and computer chip suppliers. The lawsuit, brought by a non-practicing entity, asserted alleged infringement against the defendants with respect to four patents that were purported to provide power savings in desktop and laptop computers. Analyses included the determination of a reasonable royalty, as well as a rebuttal of the damages asserted by plaintiff.
  - Engaged by defendant, a national distributor of clothing and accessories, to assess the damages related to an alleged copyright infringement. The infringement matter involved the use of a photograph to create a derivative work for use on apparel and in promotional materials and merchandise.
  - Retained by defendant, a global office supply company, to evaluate the reasonably royalty and lost profit damages asserted by plaintiff related to the alleged infringement of a design patent and trade dress. The technology related to the shape and feel of novelty silicone calculators.

Joshua Dennis, CVA

Managing Director

Data Analytics
Intellectual Property
Complex Business Litigation

Business Valuation

- Josh has assisted in the preparation of business valuation analyses and reports for various matters, including sale negotiations, contract disputes and for tax purposes. These reports required the use of both the income and market valuation approaches, and included analyses of discounted cash flows, as well as comparable companies and sale transactions. Representative case experience includes:
  - Retained to calculate the value of a minority interest in a privately held international manufacturer of fluid sealing products. The subject company was also a defendant in a significant number of asbestos-related lawsuits that greatly impacted the fair market value, which had to be accounted for within the valuation. The final report was submitted to the IRS for estate tax purposes.
  - Retained to perform a valuation of a franchise area development agreement for a company in the heating and air conditioning industry. Analyses included the capitalization method of valuation based upon the historical financial performance of the company and a determination of the appropriate risk-adjusted discount rate.
  - Engaged by counsel for plaintiff, an individual stakeholder in an oil and gas distribution company, to assess and critique certain valuation reports that had been used in connection with a potential buy-out of the plaintiffs interest in the subject company.

Non-Profit

- Josh assisted a local non-profit organization on a pro-bono basis by providing an economic analysis related to foster children entering into a pre-college program. The analysis focused on helping the organization quantitatively demonstrate the incremental economic value to the State associated with individuals that hold a college degree.
- Josh assisted a local non-profit organization on a pro-bono basis by providing an analysis of the organization's overhead costs, and how those costs compare to other similar organizations in the industry. The results of this analysis were presented to the Board of Directors.

PROFESSIONAL AFFILIATIONS / OTHER

- Member, National Association of Certified Valuation Analysts (NACVA)
- Member, Licensing Executives Society (LES)
- Suffolk Law Advanced Legal Studies, Intellectual Property Certificate

Patrick Ryan, J.D.

Manager

Data Analytics

17 State Street
Suite 2610
New York, NY 10004

Tel: +1 212 430 3412

Fax: +1 212 430 3399

pryan@stoneturn.com

Education:

J.D., Seton Hall University School of Law

B.A., English, John Carroll University

Patrick Ryan, a Manager with StoneTurn Group, brings significant experience in forensic analytics. Working for and with large financial services firms, Patrick has provided data analytics and consulting services on numerous large-scale chapter 11 bankruptcy matters, mortgage-backed securities cases, and internal audit and investigations projects.

He helped to design and manage the technology and analytics infrastructure for the internal audit division of a Fortune 50 enterprise and developed customized data-driven applications for use in internal audit and fraud investigations. His educational and professional background includes substantive experience in statistical analysis and the application of distributed computing methods to store, process and analyze extremely large datasets.

Patrick has worked with clients across various industries, including legal, technology and financial services.

Prior to joining StoneTurn, Patrick was a Senior Manager of Data Analytics in the Internal Audit Division of AIG. In this role, he developed intranet web applications, data visualizations, and dashboards to facilitate internal fraud investigations.

SELECT PROFESSIONAL EXPERIENCE

Data Analytics

- Assisted counsel in an internal investigation into whether a mortgage lender sought second appraisals to approve residential mortgages when initial appraisers did not adequately value the properties. Analysis required a complex model that applied multiple text clustering and matching methods to identify potential matches among more than one hundred thousand payment records. To account for entropy in the requested parameters, the analysis was presented with a set of dynamic filters to allow counsel to identify the most relevant matching payments for purposes of its investigation.
- Developed a web-based software application to assist the monitor of a global bank in tracking, evaluating and reporting on the bank's organizational and operational risks. Improved the monitor's efficiency by reducing the duplication of work across multiple review teams and by automating the production of complex reports for presentation to the bank.

Diane B. Sklar

Senior Adviser

Compliance Controls & Monitoring

17 State Street
Suite 2610
New York, NY 10004

Tel: +1 212 430 3400

Fax: +1 212 430 3499

Education:

M.B.A., Information Systems, Pace University, Lubin Graduate School of Business

B.B.A., Accounting, University of Massachusetts, Amherst

Diane is a high-performing, audit and consulting professional with more than 25 years of diversified client experience. Her expertise is in evaluating and monitoring business, IT and operational risks, controls and governance practices.

Diane has assisted many multinational organizations across all industries to transform their businesses by better leveraging technology and controls. Her experience includes performing detailed assessments of systems, business processes and controls, assisting in the selection and implementation of applications, leading the development and implementation of Sarbanes -Oxley and other regulatory compliance programs, performing IPO readiness assessments, developing client specific process documentation and assessing the work performed by others (e.g., internal audit, third-party providers).

Prior to her work with Stone Turn, Diane was a Director in the PwC Risk Assurance practice in the NY Metro area. As a leader in this practice, Diane focused on risk management, compliance and systems-related assessments on PwC audit engagements. Her responsibilities included managing the relationship with the CIO and Internal Audit, as well as working with the PwC financial auditors to respond to client needs, providing thought leadership, and presenting observations and recommendations to senior executives and Audit Committees.

In addition to her consulting work, Diane is an Adjunct Professor at Fairfield University's Dolan School of Business. She currently teaches Information Systems and Operations and Supply Chain Management courses in the Undergraduate Business Program, as well as Accounting Information Systems in the Masters Accounting Program.

SELECT PROFESSIONAL EXPERIENCE

Controls Optimization & Process Improvement

- Throughout her career, Diane has performed detailed assessments of business processes to deliver recommendations and provide benefits, including reduced operating expenses, increased automation capabilities and optimized controls to mitigate business risks.
- In addition, Diane has had the opportunity to work with several privately-held companies to develop, document and implement enhanced processes and controls to support a planned IPO and subsequent compliance with SOX.
- Diane has been brought in to enhance controls at clients that Identified areas of risk within the financial reporting process to investigate unusual activity and control weaknesses that were potential areas for fraud.

Diane B. Sklar

Senior Adviser

Compliance Controls & Monitoring

Controls Optimization & Process Improvement (cont'd)

- In her role as a Director at PwC, Diane led external IT and controls audits of companies for SOX and other regulatory compliance reviews. These reviews were conducted across many industries, including financial services, manufacturing, retail and service providers.
- Diane also served as the lead auditor on fully outsourced internal audit engagements, where she performed risk assessments, developed audit plans, and performed IT and business process related audits.
- As a subject matter expert on IT controls, Diane has also evaluated the design and implementation plans for integrated systems, providing feedback on the adequacy of the conversion and testing plans, security controls and documentation, as well as procedures for post "go-live" support.

PUBLICATIONS & TRAINING

- Served as part of the Audit Transformation Process (ATP) team, and developed guidance materials for identifying and testing controls, industry specific process flowcharts, controls matrices, test plans and communication plans for the role out of new Firm guidance and automated workspace functionality.
- Authored sections of the Law Firm Accounting and Financial Management and the Handbook of EDP Auditing, written by PwC and published by Warren, Gorham & Lamont.

PREVIOUS EXPERIENCE

- PricewaterhouseCoopers LLP (1988-2013)

Appendix B

Examples of Work Product Related to this Project

U.S. Department of Justice

United States Attorney's Office
Eastern District of New York

F.#2009R02380
DSS/CMT

271 Cadman Plaza East
Brooklyn, New York 11201

April 1, 2015

BY ECF

The Honorable John Gleeson
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. HSBC Bank USA, N.A. and
HSBC Holdings plc
Criminal Docket No. 12-763 (JG)

Dear Judge Gleeson:

Pursuant to the Court's July 1, 2013 order directing the government to file quarterly reports regarding the implementation of the deferred prosecution agreement ("DPA") in the above-captioned matter, the government submits this status report. As described in more detail below, the independent corporate compliance monitor Michael G. Cherkasky (the "Monitor") has submitted his First Annual Follow-Up Review Report. Having reviewed and analyzed the Monitor's findings and recommendations and discussed them with both the Monitor and HSBC Holdings plc ("HSBC Group" or the "Bank"), the government concurs with the Monitor's assessment that HSBC Group continues to act in good faith to meet the requirements of the DPA.

On January 20, 2015, the Monitor submitted his First Annual Follow-Up Review of HSBC Group's anti-money laundering ("AML") and sanctions compliance program (the "Follow-Up Review") as required under the terms of the DPA. The Follow-Up Review consisted of four inter-related components: (a) monitoring of HSBC Group-level enhancements to the AML and sanctions compliance program; (b) phased reviews of six country operations within HSBC Group; (c) thematic reviews of HSBC Group's AML and sanctions compliance program as it relates to

its trade finance and private banking businesses; and (d) monitoring of remediation efforts, program enhancements, and efforts to meet obligations not otherwise addressed.

Overall, the Monitor believes that HSBC Group has made progress in developing an effective AML and sanctions compliance program and is better protected from and positioned to detect financial crime than when it entered into the DPA in December 2012. Specifically, the Monitor found that HSBC Group has made progress in the areas of risk assessment, "Know Your Customer" information and customer due diligence processes, compliance monitoring and testing, transaction monitoring alert adjudication and suspicious activity reporting, distribution of information to management, responses to potential financial crime violations, and incentivizing AML and sanctions compliance through compensation adjustment. However, in certain instances, the Monitor believes that HSBC Group's progress has been too slow. The Monitor does not believe this is the result of bad faith or lack of commitment by HSBC Group's senior leadership, but does believe that HSBC Group can - and must - do more.

In the last year, HSBC Group took a significant first step toward meeting the most stringent requirement under the DPA, namely that it implement global AML standards based on the highest or most effective standards in any location where it operates. In 2014, HSBC issued Group-wide AML and sanctions policies and procedures. The Monitor believes that these policies are consistent with United Kingdom, European Union, Hong Kong and United States requirements, as well as global best practices. As such, in many cases, these policies impose requirements upon HSBC Group entities well beyond the requirements of local laws and regulations.

While adopting strong written policies is a significant step, it is only part of the equation. At present, the Monitor believes HSBC Group has a substantial amount of work left to do to implement its written policies. In the Monitor's view, two of the greatest impediments to HSBC Group's implementation of a sustainable compliance program are its corporate culture and its compliance technology. A strong corporate culture is one where senior executives, mid-level managers, and employees across business lines accept and believe in the importance of rigorous AML and sanctions compliance controls. The Monitor recognizes that a true cultural transformation in an institution as large and geographically diverse as HSBC Group and in an industry as challenged as the

financial services industry is a massive undertaking. In the last year, the Monitor has seen a number of positive shifts in HSBC Group's internal emphasis on AML and sanctions compliance. The Monitor believes that the most significant development in HSBC Group's progress toward cultural transformation is the success that the Bank has had in securing participation from its business lines in working to enhance HSBC Group's AML and sanctions compliance program. The Monitor believes that it is self-evident that business must bear the ultimate responsibility for effective compliance. During the past twelve months, the Monitor found that senior managers of the Bank's four business lines have convincingly accepted responsibility for enhancing HSBC Group's AML and sanctions compliance program, including taking primary responsibility for implementing, through the business lines, the Bank's new AML and sanctions policies and procedures.

While this acceptance of responsibility by senior executives and the resulting tone from the top is important, it is not sufficient for a cultural transformation. Notwithstanding the attitude of HSBC Group's senior executives, the Monitor observed other indicators that some of HSBC Group's historical cultural deficiencies continue to pervade its operations today. For example, during the United States country review, the Monitor found that senior managers of HSBC Bank USA's Global Banking and Markets ("GBM") business line inappropriately pushed back against adverse findings by the HSBC Global Internal Audit team and HSBC Bank USA's Compliance Testing and Control ("CTAC") team arising from separate reviews in early 2014 of GBM's "Know Your Customer" practices. More specifically, the Monitor found that the GBM senior managers resisted the review in a manner that caused the final audit report to be more favorable to the business than it would otherwise have been, and similarly delayed and interfered with the work of the CTAC team. In the Monitor's view, GBM's interactions with both Internal Audit and CTAC were marked by combativeness, overblown complaints about factual inaccuracy, and a basic lack of cooperativeness. The Monitor concluded that the GBM business in the United States demonstrated a deficient culture that had not fully accepted the role and legitimacy of the Internal Audit and control functions.

Once senior executives at HSBC Group learned of this problem, they took a number of steps in response. As to the responsible individuals, the Regional Head of the Americas for GBM will be reassigned, pending regulatory approval of his

successor in the United States, and will no longer be a member of GBM's Executive committee. Furthermore, as part of the 2014 year-end bonus process, this individual had a 50% negative adjustment to his 2014 bonus which resulted in a 14% decrease in his total compensation from the prior year. Another senior HSBC Executive involved in the incident also received a negative adjustment to his 2014 bonus. In addition, HSBC Group's Chief Executive issued a directive to senior HSBC employees regarding cooperation with Internal Audit. HSBC Group's Chief Executive wrote that, "At my direction, our Global Internal Audit team is holding us to a higher standard than in the past. Therefore, we should expect to have more insightful and critical audits." The Chief Executive further directed that "employees should feel that they are able to constructively present different viewpoints" but "employees must respect Internal Audit's independent opinions. Rudeness, cynicism, or any attempt to intimidate are not acceptable and will not be tolerated."

Since a final decision regarding reassignment of the Regional Head of the Americas for GBM has not yet been effected, both the Monitor and the government will continue to assess the situation to ensure that the final actions are proportionate and send the appropriate message. The Monitor found it encouraging, however, that HSBC Group's Internal Audit function, and also the CTAC team in the United States, have challenged business-side executives and have issued hard-hitting reports. The Monitor believes these compliance achievements would not have happened within HSBC Group two years ago and that they demonstrate significant positive change in the oversight functions.

Aside from corporate culture, one of the other biggest impediments to HSBC Group's development of a sustainable compliance program, in the Monitor's view, is its compliance technology. The Monitor believes, despite progress in improving its compliance technology, this remains an area of material weakness in which a great deal of work remains to be done. Specifically, HSBC Group's compliance technology systems continue to suffer from fragmentation and lack of connectivity. The lack of connectivity between systems prevents the Bank's investigators from easily reviewing a customer's banking history when evaluating potentially suspicious activity and inhibits the adequate collection and analysis of customer due diligence information. The Monitor believes HSBC Group's future compliance technology plans are reasonably calculated to produce an effective compliance program - if the plans can be successfully executed. Execution of these plans will be

difficult, expensive, and time consuming. Nevertheless, HSBC Group's leadership has assured the Monitor that this initiative has the highest priority. That is crucial, because the Monitor believes that successful execution of these technology enhancements is critical to the successful completion of the Monitorship.

The Monitor has submitted a number of specific recommendations aimed at addressing the remaining AML and sanctions compliance deficiencies. HSBC Group already has agreed to implement many of the Monitor's recommendations, and it continues to work collaboratively with the Monitor regarding the Bank's proposed modifications to several of the Monitor's recommendations. The government will continue to rigorously evaluate HSBC Group's engagement with the Monitor to ensure that HSBC Group acts expeditiously to satisfy the requirements of the DPA.

In sum, as the Monitor's report indicates, HSBC has made material progress toward meeting the most stringent compliance standards imposed to date upon a global financial institution. But as the report also makes clear, HSBC must continue and enhance its progress in order to maintain compliance with the DPA's very strict terms. The Department of Justice will continue to closely monitor HSBC's progress in

complying with the DPA's elevated standards of compliance, and stands ready to pursue all available remedies should HSBC fail to adhere to the DPA's terms.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: /s/
Alexander A. Solomon
Daniel S. Silver
Assistant U.S. Attorneys
(718) 254-6074/6034

M. KENDALL DAY
Chief, Asset Forfeiture and Money Laundering Section
Criminal Division
United States Department of Justice

By: /s/
Craig M. Timm
Deputy Chief
(202) 598-2279

cc: Counsel for Defendants (via ECF)

U.S. Department of Justice

United States Attorney
Eastern District of New York

DSS/CMT
F. #2009R02380

271 Cadman Plaza East
Brooklyn, New York 11201

June 1, 2015

By ECF

The Honorable John Gleeson
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. HSBC Bank USA, N.A. and HSBC Holdings plc
Criminal Docket No. 12-763 (JG)

Dear Judge Gleeson:

The government respectfully submits this letter in support of its request to file the Monitor's "First Annual Follow-Up Review Report" (the "Monitor's Report" or "Report") with the Court under seal. A copy of the Monitor's Report will be submitted to the Court as a sealed appendix to this letter.

I. Background

On December 11, 2012, the government filed a criminal Information charging HSBC Bank USA, N.A. ("HSBC Bank USA")[1] with violations of the Bank Secrecy Act ("BSA"), Title 31, United States Code, Section 5311 et seq., namely: willfully failing to maintain an effective anti-money laundering ("AML") program in violation of 31 U.S.C. § 5318(h) and willfully failing to conduct and maintain adequate due diligence on correspondent bank accounts held on behalf of foreign entities in violation of 31 U.S.C. § 5318(i). The criminal Information also charged HSBC Holdings plc ("HSBC Holdings")[2]

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[1] HSBC Bank USA is a federally chartered banking institution and subsidiary of HSBC North America Holdings, Inc. ("HSBC North America"). HSBC North America is an indirect subsidiary of HSBC Holdings plc.

[2] HSBC Holdings is the ultimate parent company of HSBC North America and is one of the world's largest banking and financial services groups (collectively, HSBC Holdings

with willfully facilitating financial transactions on behalf of sanctioned entities in violation of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1702 and 1705, and the Trading with the Enemy Act ("TWEA"), 50 U.S.C. App. §§ 3, 5, and 16.

On the day the Information was filed, a deferred prosecution agreement ("DPA"), statement of facts, and a corporate compliance monitor agreement were also filed with the Court. The government also submitted a letter requesting that the Court place this matter in abeyance for sixty months pursuant to the terms of the DPA and exclude that time from the period within which trial ordinarily must commence pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(h)(2).

The DPA imposes a number of stringent conditions on HSBC Group. Perhaps most significantly, the DPA requires HSBC Group to implement enhanced AML standards globally. Specifically, all HSBC Group Affiliates are required to follow the highest or most effective AML standards available in any location where HSBC Group operates. Docket Entry 3-2 at ¶ 5. That means, at a minimum, all HSBC Group Affiliates worldwide must adhere to U.S. AML standards. Docket Entry 3-2 at ¶ 5. As the Court itself noted, "the DPA imposes upon HSBC significant, and in some respects extraordinary, measures" and "it accomplishes a great deal." Docket Entry 23 at 15, 20. To oversee the implementation of these global standards and the other remedial measures, the DPA requires HSBC Holdings to retain an independent compliance monitor (the "Monitor"). Docket Entry 3-2 at ¶¶ 9-13. The Monitor is required to provide annual reports to the government on HSBC's compliance with the terms of the DPA. Docket Entry 3-4. The Court has no role in the selection or removal of the Monitor. Rather, the Monitor was selected by the Department of Justice from a pool of candidates proposed by HSBC and officially assumed his responsibilities on July 22, 2013. See Docket Entry 3-2 at ¶ 9. Since then, in accordance with the Court's July 1, 2013 Order, the government has filed quarterly reports with the Court regarding the implementation of the DPA. In these reports, the government has carefully presented a high-level overview of the Monitor's annual findings in an effort to comply with the Court's order while avoiding revealing confidential details or otherwise inviting any of the negative consequences discussed below.

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and its subsidiaries are the "HSBC Group"). HSBC Group is comprised of financial institutions throughout the world ("HSBC Group Affiliates" or "Affiliates") that are owned by various intermediate holding companies and ultimately, but indirectly, by HSBC Holdings, which is incorporated and headquartered in the United Kingdom.

In addition to serving as the Monitor under the DPA, the Monitor serves a similar role for the United Kingdom's Financial Conduct Authority ("FCA")[3] and the Board of Governors of the Federal Reserve System ("Federal Reserve").[4] Because the Monitor serves multiple roles that involve similar and overlapping responsibilities, the Monitor's annual reports integrate information, analysis, and findings related to the work performed in all three capacities.

In January 2015, the Monitor issued his First Annual Follow-Up Review Report (the "Monitor's Report" or "Report") which set forth his findings and assessment of the then-current state of HSBC Group's AML and sanctions compliance program and of its progress over the course of the preceding year in improving its AML and sanctions compliance functions. The Report was provided to the Department of Justice, FCA, and Federal Reserve, and the government provided a general overview of the Report's key findings in its court-ordered periodic update. On April 28, 2015, the Court ordered the government to file the Monitor's Report with the Court. The government submits this letter and the attached submissions from the Monitor, FCA, Federal Reserve, Hong Kong Monetary Authority,[5] and Bank Negara Malaysia in support of filing the Monitor's Report under seal.

II. Applicable Standards

The public has a "general right to inspect and copy public records and documents, including judicial records and documents." Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978). Similarly, under the First Amendment, the public has a "qualified … right to attend judicial proceedings and to access certain judicial documents." Hartford Courant Co. v. Pellegrino, 380 F.3d 83, 91 (2d Cir. 2004); see also Press-Enterprise Co. v. Superior Court of Cal., 478 U.S. 1, 9 (1986).

In applying the common law right of access to determine whether an item can be filed under seal, a district court must (1) determine whether the item is a "judicial

[3] The FCA has a statutory objective to protect and enhance the integrity of the UK financial system. In doing this, the FCA is focused on a number of priorities, including preventing the UK financial system from being used for a purpose connected with financial crime.

[4] The Federal Reserve is the consolidated supervisor of HSBC North America and the primary U.S. federal regulator of HSBC Holdings.

[5] The Hong Kong Monetary Authority has asked that we inform the Court that the views expressed in its letter are its own and were not made in coordination with any other parties.

document," (2) determine the weight of the presumption of access to any judicial document and (3) balance countervailing interests against the presumption of access. Lugosch v. Pyramid Co., 435 F.3d 110, 119-20 (2d Cir. 2006). The test for whether an item is a "judicial document" is not whether it is filed with the court, United States v. Amodeo, 44 F.3d 141, 145 (2d Cir. 1995) ("Amodeo I"), but rather whether the item is "relevant to the performance of the judicial function and useful in the judicial process." Id. The weight of the presumption of access to a judicial document, which falls along a "continuum," is determined by "the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those monitoring the federal courts." United States v. Amodeo, 71 F.3d 1044, 1049 (2d Cir. 1995) ("Amodeo II").

In assessing whether the public's qualified First Amendment right of access attaches to a particular document, courts in the Second Circuit have applied two approaches. The first is the "experience and logic" test, which assesses "whether the document[] ha[s] historically been open to the press and general public and whether public access plays a significant positive role in the functioning of the particular process in question." Lugosch, 435 F.3d at 120 (internal quotation omitted). The second approach considers the extent to which the document is derived from, or is a necessary corollary of, the capacity to attend the relevant proceedings. Id. Even where the First Amendment right applies to a document, it still may be sealed "if specific, on the record findings are made demonstrating that closure is essential to preserve higher values and [the sealing] is narrowly tailored to serve that interest." Id. (internal quotation marks omitted). Thus, both the First Amendment and common law doctrines of public access entail a balancing of factors that may necessitate sealing of particular documents or records.

Countervailing factors that must be balanced against the common law and First Amendment rights of access are case-specific, but have been found to include the danger of impairing law enforcement activities and protecting the privacy interests of third parties. Amodeo II, 71 F.3d at 1050-51. In assessing the danger of impairing law enforcement activities, courts have considered the integrity of ongoing investigations, Amodeo I, 44 F.3d at 147, and the ability of law enforcement officers to secure current and future cooperation from persons desiring confidentiality, Amodeo II, 71 F.3d at 1050.

III. Discussion

In this case, there is no common law or First Amendment right of access to the Monitor's Report. Therefore, the Court need not conduct the balancing test described above. However, even if there was a right of access, it would be outweighed by the negative effect that public disclosure would have on the monitorship, the implementation of the DPA, global regulators' ability to supervise HSBC, the risk that criminals would use the Report to exploit

weaknesses in HSBC's and other financial institutions' AML and sanctions compliance programs, and the potential impact on monitors of other institutions.

A. Common Law Right of Access

In order for the common law right of access to attach, the Court must conclude that the Monitor's Report is a "judicial document." See Lugosch, 435 F.3d at 119. To be a "judicial document" it must be "relevant to the performance of the judicial function and useful in the judicial process." Amodeo I, 44 F.3d at 145. As described in the government's January 30, 2013 Memorandum in Support of the DPA, the government maintains that the Court's authority in connection with the DPA is limited to approval of the exclusion of time under the Speedy Trial Act. However, in its July 1, 2013 Memorandum and Order, the Court found that it had limited authority to approve or reject the DPA and oversee the implementation of the DPA pursuant to its supervisory power. Docket Entry 23 at 6. Nonetheless, in approving the DPA, the Court noted that it was "as mindful of the limits of the supervisory power as I am of its existence." Docket Entry 23 at 13. The Court stated that its function during the term of the agreement is "to ensure that the implementation of the DPA remains within the bounds of lawfulness and respects the integrity of this Court." Docket Entry 23 at 20. The Court provided a non-exhaustive list of circumstances that would "warrant judicial intervention to protect the integrity of the Court," including cooperation requirements that would violate a company's attorney-client privilege, work product protections, or its employees' Fifth or Sixth Amendment rights, or a remediation requirement that would be unethical or create a conflict of interest. Docket Entry 23 at 11-12.

The Monitor's Report had not even been written when the Court approved the DPA and excluded time under the Speedy Trial Act, so the Report could have played no role in the Court's decision. Rather, the Monitor's annual reports are progress reports for the government and for HSBC's regulators regarding HSBC's compliance with certain terms of the DPA and the efficacy of HSBC's AML and sanctions compliance programs. At their core, the reports are a tool to help the government determine whether HSBC has complied with the terms of the agreement or if HSBC has breached the agreement such as to warrant seeking an additional penalty or voiding the DPA and prosecuting HSBC. As the Court noted in its Memorandum and Order, "[t]he Executive Branch alone is vested with the power to decide whether or not to prosecute." Docket Entry 23 at 14. The Court highlighted that the exercise of prosecutorial discretion is "particularly ill-suited to judicial review." Docket Entry 23 at 14 quoting Wayte v. United States, 470 U.S. 598, 607 (1985). Therefore, even assuming the Court's stated limited supervisory power over the implementation of the DPA, the Monitor's Report is not relevant to this limited judicial function as it concerns none of the circumstances described in the Court's July 1, 2013 Order.

The Monitor's role is akin to that of the independent consultant in S.E.C. v. American Intern. Group. See 712 F.3d 1 (D.C. Cir. 2013). In that case, an independent consultant appointed pursuant to a consent agreement had no relationship with the court. Id. at 4. The court did not select or supervise the independent consultant and had no authority to extend the consultant's tenure or modify his authority. Id. The consent decree did not give the independent consultant any powers unique to an individual possessing judicial authority. Id. Especially important to the D.C. Circuit was that the independent consultant's reports could not "record, explain, or justify the court's decision in any way" to approve the consent decree. Id. Ultimately, for these reasons, the D.C. Circuit found that the independent consultant's reports were not judicial documents. Id. at 3-4. The same should be the finding here, where the Monitor's reports in no way impacted the decision of this Court to approve the DPA and toll the Speedy Trial clock; the Court had no role in selecting the Monitor or otherwise determining the content or focus of his reports; and the Court's limited, stated authority over the DPA is to ensure that the DPA remains within the bounds of lawfulness and respects the integrity of this Court.

In Amodeo I, the Second Circuit relied on a diametrically different set of material facts to hold that a Court Officer's report qualified as a judicial document. In Amodeo I, the question presented was whether a report generated by a Court Officer and already filed with the district court qualified as a judicial document. In that case, a consent decree provided for a Court Officer to be appointed and authorized that Officer to exercise a number of judicial powers including the authority to subpoena witnesses and documents and to take testimony under oath. See 44 F.3d at 143. In particular, the Court Officer in Amodeo I was entitled to "all of the powers, privileges, and immunities of a person appointed pursuant to Rule 66 Fed.R.Civ.Pro. and which are customary for court appointed officers performing similar assignments." Id. (quotations omitted). Importantly, under the Amodeo I consent decree, the district court was charged with the authority and responsibility to enforce and grant relief from any of the consent decree's provisions. Id. at 146. In finding the Court Officer's report was a judicial document, the Second Circuit relied on the district court's authority to grant relief from the Court Officer's efforts and, in so doing, the necessity of the district court "considering the record of all proceedings." Id. In other words, for the Amodeo I district court to exercise its authority to grant relief from the Court Officer's judicial powers, it necessarily would rely on the record before it, including the Court Officer's report and any other pleadings filed by the parties. By contrast, the Department-appointed Monitor in this case exercises no judicial powers, and the Court is charged neither with enforcing or granting relief from the Monitor's efforts nor with playing any role in the Monitor's work. The absence in this case of the factors that rendered the Court Officer's report a judicial document in Amodeo I support the conclusion that the common law right of access does not attach to the Monitor's report.

In the event the Court determines that the Monitor's Report is a judicial document subject to the public right of access, the weight of the presumption of access would be extremely low. See Amodeo II, 71 F.3d at 1049 ("the weight to be given the presumption of access ... will fall somewhere on a continuum from matters that directly affect an adjudication to matters that come within a court's purview solely to insure their irrelevance."). As discussed in more detail below, this presumption is easily overcome here by overwhelming competing considerations against public disclosure.

B. First Amendment Right of Access

To determine whether a First Amendment right of access attaches, a court must consider whether the document has historically been available to the press and general public and plays a significant positive role in the functioning of the particular process in question (the "experience and logic" test) or whether it is derived from, or a necessary corollary of, the capacity to attend a relevant proceeding.

Documents used by the government to determine whether a defendant is abiding by the terms of a DPA have never been available to the press and general public. There are no public proceedings relating to charging decisions – indeed, those decisions are necessarily cloaked in secrecy. See United States v. Haller, 837 F.2d 84, 87-88 (2d Cir. 1988) (internal quotation omitted) (finding "the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings" because if grand jury proceedings became public, among other things, "prospective witnesses may be deterred from testifying, those who do testify may be less likely to do so truthfully, targets of investigations may flee, and person who are the subject of an ultimately meritless investigation may face public embarrassment."). As such, the press and general public are generally not entitled to access to documents that inform these decisions, meaning that the First Amendment right of access does not apply to the Monitor's Report. See also United States v. Belfort, No. 98 CR 0859, 2014 WL 2612508, at *4 (E.D.N.Y. June 11, 2014) (Gleeson, J.) (finding no First Amendment right of access to a list of victims' names when there is "no historic basis for disclosing the type of document and there is no 'logic' in public access to this information playing 'a significant positive role' in the process" and "[a]ccess to [the] information is [] in no respect 'a necessary corollary of the capacity to attend'" a relevant proceeding.).

C. Competing Interests

Because there is no common law or First Amendment right of access to the Monitor's Report, the Court need not conduct the further analysis of balancing those rights against competing considerations. However, in the event the Court concludes that either a common law or First Amendment right of access does attach, it must balance those rights against countervailing interests that nevertheless warrant sealing. In cases where a First

Amendment right applies, the Court must make "specific, on the record findings [] demonstrating that closure is essential to preserve higher values and [the sealing] is narrowly tailored to serve that interest." Lugosch, 435 F.3d at 120 (internal quotation omitted).

In this case, if the Monitor's Report were to be made public: (1) the Monitor's and the government's ability to assess whether HSBC is complying with the terms of the DPA will be negatively impacted; (2) the ability of the FCA, Federal Reserve and other regulators to fully discharge their supervisory responsibilities over HSBC will be negatively affected; (3) criminals would be given a road map for exploiting current weaknesses in the AML and sanctions compliance programs at HSBC and potentially other financial institutions; and (4) the ability of monitors and regulators of other institutions to effectively perform their duties would suffer.

1. The Monitor's Ability to Assess HSBC's Compliance with the DPA

If the Monitor's Report is made public, the Monitor's ability to assess whether HSBC is complying with the terms of the DPA will be negatively impacted. Indeed, the government and the Monitor believe that there is a real possibility that the consequences of public disclosure would be so great that the Monitor would be unable to perform the work he is required to do under the terms of the DPA. This danger of impairing law enforcement activities is the type of countervailing interest that courts have found to overcome the presumptive right to access judicial documents, especially in circumstances where law enforcement is reliant on the cooperation of others who want or need confidentiality. See Amodeo II, 71 F.3d at 1050 ("Unlimited access, while perhaps aiding the professional and public monitoring of courts, might adversely affect law enforcement interests or judicial performance. Officials with law enforcement responsibilities may be heavily reliant upon the voluntary cooperation of persons who may want or need confidentiality. If that confidentiality cannot be assured, cooperation will not be forthcoming. ... If release is likely to cause persons in the particular or future cases to resist involvement where cooperation is desirable, that effect should be weighed against the presumption of access."). In this case, the cooperation of both foreign regulators and HSBC employees, both of whom the Monitor relies on to execute his responsibilities under the DPA, will be negatively affected if the Monitor's Report is publicly released.

The cooperation of foreign regulators is essential to the Monitor's work. Pursuant to the DPA, as well as the FCA and Federal Reserve agreements under which the Monitor operates, the Monitor is required to conduct testing and make assessments of HSBC Group Affiliates around the world. Performing this function requires the cooperation of foreign regulators. It is the confidential nature of the Monitor's Report that "allows the Monitor to operate with important support from banking regulators in the jurisdictions in

which HSBC Group operates." Monitor's Letter at ¶ 8. Indeed, according to the Monitor, many jurisdictions already visited by the Monitor in 2013 and 2014 agreed to allow the Monitor access only when they were given express assurances that his reports would remain confidential. FCA Letter at ¶ 20(a). Furthermore, according to the FCA, "[i]f the report was made public, there is a significant risk that these jurisdictions (and possibly others which the Monitor might wish to visit in 2015 and future years) would refuse to agree to allow the Monitor to assess HSBC's operations in those jurisdictions throughout the remaining term of the DPA." Id. Without access to HSBC Group Affiliates, the Monitor cannot properly assess HSBC's compliance with the terms of the DPA.

To be fully effective, the Monitor needs access to confidential client information, including, among other things, names, nationality, source of wealth, transaction history and suspicious activity alerts. Monitor Letter at ¶ 8. According to the Monitor, without this information, his ability to accurately assess HSBC's compliance with certain provisions of the DPA would be materially curtailed. Id. Based on meetings with more than a dozen regulators, the Monitor believes that the presumption of confidentiality has been a critical component in obtaining foreign regulators' agreement to access confidential client information and to rely on it in preparing his reports. Monitor Letter at ¶ 9. Specifically, "[i]n one European country, [the Monitor and his team] were told that if review of confidential materials were not restricted to the FCA, DOJ and [Federal Reserve], that country's regulator would limit our access to those materials." Id. Furthermore, as noted by the Malaysian regulator Bank Negara Malaysia, the Monitor was only granted access to confidential information in Malaysia based on assurances that the Report "would be treated with utmost confidentiality, consistent with the confidentiality provisions in our legislation i.e. the Financial Services Act 2013, the Islamic Financial Services Act 2013, the Central Bank of Malaysia Act 2009 and the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001" and that the Report "would only be disclosed to DOJ, the Federal Reserve Board and UK's Financial Conduct Authority." Bank Negara Letter at ¶ 2. Therefore, if the Monitor's Report becomes public, even in countries where the Monitor is still permitted access, it is likely that his work will be negatively affected based on a lack of access to key information.

The Monitor also relies on the full, open and candid cooperation of HSBC employees. According to the Monitor, to this point, he has received an appropriate level of cooperation from HSBC employees. Monitor Letter at ¶ 11. However, public disclosure of the Monitor's Report would likely negatively impact this cooperation. The Monitor believes that "releasing this report publicly would have a chilling effect on [HSBC] employees, and the level of cooperation and candor I receive could decrease substantially. The employees might well become concerned that they would suffer negative repercussions from their statements, or information they have provided, being made public." Id. The Hong Kong

Monetary Authority similarly believes that public disclosure of the Report may "inadvertently limit[] the extent to which whistle blowers and staff will come forward and candidly communicate with the Monitor." Hong Kong Monetary Authority Letter at 2. Furthermore, the FCA has said that "were key employees to be aware that future reports may criticise them by name or by title they may be less likely to continue to support HSBC's reform efforts, potentially leaving the organisation and ultimately slowing HSBC's progress." FCA Letter at ¶ 20(c). If any of these situations were to occur, according to the Monitor, "[t]he result would be that I have less information with which to make my findings and recommendations, which ultimately would not be to the benefit of the public or [HSBC]." Monitor's Letter at ¶ 11.

In addition to the effects on future cooperation, the employees who cooperated with the Monitor for this Report have a privacy interest in the information they provided, as they could face repercussions if the Report is made public. This Court has noted that "the privacy interests of innocent third parties ... should weigh heavily in a court's balancing equation." Belfort, No. 98 CR 0859, 2014 WL 2612508, at *3 quoting Amodeo II, 71 F.3d at 1050-51. Therefore, given the potential harm to the innocent HSBC employees who cooperated with the Monitor, the Court should find that the employees' privacy interest outweighs any presumptive right to access. See id. (finding victims' privacy significantly outweighed common law right of access when the information sought was traditionally non-public and the potential harm to victims was significant.).

2. Regulators' Ability to Effectively Supervise

Aside from the effect on the Monitor's ability to fulfill his duties under the DPA, public disclosure of the Monitor's Report will impair the ability of regulators to effectively supervise HSBC. Given the overlapping responsibilities of the Monitor, any negative impact on his ability to perform under the DPA will similarly affect his ability to perform under the agreements with the FCA and Federal Reserve. According to the FCA, if the Monitor is unable to perform his functions under their agreement, "[t]he impact of this for the FCA would be that we would be unable to discharge fully our supervisory responsibilities in respect of HSBC Group and that the FCA's market integrity objective could be compromised." FCA Letter at ¶ 20(a).

Beyond the ability of the Monitor to perform under the various agreements, the FCA and the Federal Reserve have a regulatory interest in the information obtained in the Monitor's Report. Open and candid communications between financial institutions and regulators are critical to effective supervision. As the Federal Reserve points out, the information contained in the Monitor's Report is analogous to information protected by the bank examination privilege. "[T]he bank examination privilege – which protects the

confidentiality of certain deliberative information – exists to preserve the relationship between examiners and regulated organizations so that this type of communication will take place." Federal Reserve Letter at 3 citing In re Subpoena Served Upon Comptroller of Currency, 967 F.2d 630, 633-34 (D.C. Cir. 1992). If confidentiality for this type of information is not protected, "[i]t could impact Federal Reserve examiners [], thereby reducing the effectiveness of the Federal Reserve's supervision." Id.

3. A Road Map to Exploit Weaknesses at HSBC and Other Financial Institutions

The Monitor's Report identifies specific current deficiencies in HSBC's AML and sanctions compliance program that are in the process of remediation. This includes deficiencies at the Group level as well as in specific countries. As general examples, the Monitor identifies certain areas within HSBC Group where the understanding of money laundering and financial crime red flags continues to lag. The Monitor also identifies areas where new compliance policies have not yet been implemented, including areas where the lack of due diligence currently exposes HSBC to serious money laundering and sanctions risks. To be clear, the Monitor has not concluded that these deficiencies are the result of intentional misconduct or bad faith. Rather, the fact that the Monitor's review to date has revealed areas in need of improvement demonstrates the benefits of the monitorship to ensure that these problems are identified and corrected. However, if made public, these deficiencies could be exploited by those who would promote criminal activity, transfer the proceeds of crime, or evade U.S. sanctions. Furthermore, the FCA has expressed concern that the deficiencies identified at HSBC could be used to exploit similar weaknesses at other banks. FCA Letter at ¶ 23. The law enforcement purpose behind the remedial measures in the DPA would be undermined if, in disclosing the Monitor's Report, the Monitor's work is used as a road map by criminal actors to exploit compliance weaknesses at HSBC and other banks.

4. Negative Impact on Other Cases

The consequences of public disclosure of the Monitor's Report will not only affect this case, but may negatively impact other current and future cases. Foreign regulators around the world will take notice of whether or not this Report is publicly disclosed. If the Report is disclosed, there is likely to be a presumption in other countries that these types of reports will be made public in other cases. The FCA believes that this may lead some countries to refuse access to independent monitors of other organizations. FCA Letter at ¶ 20(b). Without the ability to effectively use independent monitors to scrutinize the behavior of complex global institutions, it becomes more difficult for the Department of Justice to meaningfully impose the types of remedial measures that prevent and deter financial crime.

Public disclosure of the Monitor's Report may also impact the relationship between the Department of Justice and financial regulators in the future when independent monitors are imposed. In situations, like this case, where the Department of Justice and one or more regulators impose monitorships, there are efficiencies to be gained by appointing the same person to perform both roles. When the same monitor is used, both the Department of Justice and the regulator benefit from the monitor's broader view of the organization. Furthermore, appointing the same person as monitor avoids inconsistencies and inefficiencies that could arise when different people are assigned to assess similar aspects of a company's operations.

Despite these benefits, the Federal Reserve has indicated that if having the same monitor as the Department of Justice would increase the likelihood that a monitor's work would become public, "the Federal Reserve might feel compelled to forego the advantages of efficiency and the broad view of the organization that the monitor's work provides in order to protect the confidentiality of the [Federal Reserve's Independent Consultant's] work product." Federal Reserve Letter at 4. It is likely that other regulators might also reach similar conclusions. Thus, if the Monitor's Report is publicly disclosed, the benefits of one individual serving as monitor for the Department of Justice and multiple financial regulators may be lost.

D. Narrowly Tailored

If the Court finds that a First Amendment right of access applies, but that sealing is essential to preserve countervailing values, the Court must also find that the sealing is narrowly tailored to serve that interest. See Lugosch, 435 F.3d at 120 (internal quotation omitted). Given the nature of the interests at play in this case, sealing the entire Monitor's Report is necessary to serve those interests.

Filing a redacted copy of the Monitor's report is neither practicable nor likely to eliminate the confidentiality concerns of foreign and domestic regulators. Foreign regulators would have no ultimate control over what is redacted. Thus, the only way for foreign regulators to be sure that certain information is not publicly disclosed would be to refuse to give the Monitor access to certain information or jurisdictions or to refuse to allow the Monitor to share the results of his assessment with the Department of Justice (thereby undermining the primary purpose of the monitorship). In other words, public disclosure of a redacted report would not preserve the Monitor's ability to carry out his mandate.

Furthermore, as both the Monitor and FCA point out, if all of the sensitive information were to be redacted from Report, which is approximately 1,000 pages long, what is left would be bereft of context, incomprehensible in parts, and more likely to mislead than inform the public. Monitor's Letter at ¶ 13 and FCA Letter at ¶ 24. In situations like this,

sealing the entire report is the appropriate, most narrowly tailored result. See Amodeo II, 71 F.3d at 1052 (finding that sealing of "Part 1" of a report in its entirety was appropriate where it was "rendered unintelligible as a result of redactions" and "thus more likely to mislead than to inform the public."). To date, the government has taken great care in its periodic reports to the Court to provide sufficient information and context regarding the Monitor's efforts and findings to assure the Court that "the implementation of the DPA remains within the bounds of lawfulness and respects the [Court's] integrity," Docket Entry 23 at 20, without revealing confidential information that would have one of the negative consequences discussed above.

IV. Conclusion

For the reasons set forth above, the government requests that the Court accept the Monitor's Report for filing under seal. The Monitor's active and rigorous review of HSBC's operations helps the government ensure that HSBC meets the stringent requirements of the DPA. Indeed, if HSBC fails to meet these requirements the government stands ready to impose consequences on the defendants. The government requests that the Monitor's Report be sealed to ensure that the government receives the most comprehensive, unfettered information as to whether HSBC has fully complied with the DPA.

Respectfully submitted,

KELLY T. CURRIE
Acting United States Attorney

By: /s/
Alexander A. Solomon
Daniel S. Silver
Assistant U.S. Attorneys
(718) 254-6074/6034

M. KENDALL DAY
Chief, Asset Forfeiture and Money
Laundering Section
Criminal Division
United States Department of Justice

By: /s/
Craig M. Timm
Deputy Chief
(202) 598-2279

cc: Counsel for Defendants (via ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

DISTRICT COUNCIL OF NEW YORK CITY AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, et al.,

Defendants.

90 Civ. 5722 (RMB)

FIRST INTERIM REPORT OF THE INDEPENDENT MONITOR

GLEN G. McGORTY
JOANNE R. OLEKSYK
Crowell & Moring, LLP
590 Madison Avenue, 20th Floor
New York, NY 10022
(212) 223-4000
gmcgorty@crowell.com
joleksyk@crowell.com

Office of the Independent Monitor,
District Council of New York City
and Vicinity of the United
Brotherhood of Carpenters and
Joiners of America

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I. **INTRODUCTION**

Pursuant to Section 5.l.iii of the Stipulation and Order filed in this matter on November 14, 2014, I respectfully submit this First Interim Report as the Independent Monitor of the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America (the "District Council") and its affiliated Benefit Funds. Herein, I endeavor to provide my assessment of the progress towards achieving the objectives of the 2014 Stipulation and Order and of the Consent Decree, approved by the Court on May 4, 1994; my view on the sustainability of reforms previously implemented; and my recommendations going forward.

On January 1, 2015, I assumed the responsibilities as the Court-appointed Independent Monitor, taking over for my predecessor, Dennis M. Walsh, the Court-appointed Review Officer, who served in that capacity for over four years. As Mr. Walsh best described in his Final Report filed last December, the Union from which he was departing was starkly different than the Union he began monitoring in June 2010. Mr. Walsh's interim reports, which I studied closely prior to beginning my own tenure, set forth the significant and culture-shifting reforms overseen by Mr. Walsh and his staff, pressed forward by the men and women who form the membership of the Union, and most especially effectuated by the leadership and employees of the District Council and the Benefit Funds. As an outside observer who only recently came to learn of the history of the Union, I am awestruck by what was accomplished in such a short period of time, and it is with humility and respect that I have taken over the role as the Union's Independent Monitor.

The nature of this monitorship was destined to be quite different than Mr. Walsh's because of the institutional reforms and compliance-oriented mechanisms already implemented through his efforts. Indeed, I face a far different task than my predecessor. While Mr. Walsh was charged with revamping the Union that was plagued by corruption, my responsibilities are less about eradicating such an element, though we must be ever vigilant to prevent its return. Instead, my mandate is to maintain the compliance structures implemented throughout the District Council and Benefit Funds; to assess what changes or new methodologies should be implemented to foster continued improvement within a culture of compliance; and above all, to make sure the Union does not slide one step backwards after it has come so far. In this regard, as I have said on numerous occasions, my understanding is that my monitorship of the Union may well be its last, so my top priority is simple: to make sure that the District Council and the Benefit Funds are ready and able to prosper within a compliance-first environment without the daily scrutiny of a Court-appointed monitor. To meet those goals, I have worked to combine continued oversight and often rigid adherence to proven policy and procedure, with the willingness to try new things and let the District Council and Benefit Funds find their own compliant footing, as they must do in the future. While I am only six months into my tenure as Independent Monitor, I believe the District Council and the Benefit Funds can and will continue on the right path.

As the Court is well-aware, my responsibilities as Independent Monitor include review, investigative, and oversight functions relating to both the District Council and the Benefit Funds. As described further herein, I have also spent a significant amount of time during my first six months examining issues related to various Local Unions within the District

Council's organization structure. I have been assisted in my task most closely and ably by Joanne R. Oleksyk, an associate at Crowell & Moring LLP, who has spent countless hours at the Union over the past six months and, most recently, collected much of the information needed for this interim report. Also at Crowell, my partner Jeffrey W. Pagano, a veteran labor and employment lawyer and labor organization specialist, has provided regular counsel and assistance on often complicated issues of labor law. Finally, my investigative team has been staffed by the investigative firm of Lemire LLC: Katherine Lemire, a former Assistant United States Attorney in the Southern District of New York, a former Assistant District Attorney in Manhattan, and former Counsel to the NYPD Police Commissioner; David Burroughs, a former Special Agent with the Federal Bureau of Investigation and supervisor in the FBI's Special Operations Division; and Jack Mitchell, former Chief Investigator to the Review Officer from 2010 through 2014, former investigator with the Investigation and Review Officer from 1994 through 1999, and a former Special Investigator with the New York State Organized Crime Task Force. This team has extensive law enforcement experience and, most importantly, blends a fresh perspective on the Union with the key ties and historical knowledge of the past. I am grateful to each of them for all their hard work and support.

It is a daunting task to follow Mr. Walsh, whose decades-long affiliation with the Union and boundless devotion to the mission is unsurpassed. I thank Mr. Walsh and his staff for being instrumental to my transition. So, too, were the attorneys, leaders, trustees, and employees of the District Council and the Benefit Funds, too numerous to mention here, but whose cooperation and perspective have been crucial in my first six months as the Independent Monitor. Finally, I would be remiss in not singling out the District Council's Executive

Secretary-Treasurer ("EST") Joseph Geiger, who has generously welcomed us to the Union and worked closely with us over the last six months. While we do not agree on everything all the time – meaning that we both are zealously doing our jobs – I believe that, under Mr. Geiger's leadership, the future of the Union is bright and will continue on the same positive trajectory as when I took over.

II. THE DISTRICT COUNCIL

A. Developments at the District Council

The District Council has arguably served as the centerpiece for the reforms installed by my predecessor: the drafting of the Bylaws, the Out-of-Work List ("OWL") rules, and related policies and procedures; the creation of the Office of the Inspector General ("IG Office"), the position of Chief Compliance Officer, and a Human Resources Department; and a substantial information technology ("IT") overhaul, to name only a few. Clearly, systems of compliance were created and implemented within the District Council, and I am pleased to see that the accompanying mindset among the leadership and employees of the Council has survived my predecessor's departure.

That being said, as one would expect with any "regime" change, I was greeted early on with the well-articulated concern that, while compliance remains paramount, certain rules have detrimental impacts on business development or create fundamentally unfair situations for the members, so should be closely reviewed and potential revisions considered. These suggestions, particularly with respect to the Bylaws and the OWL, initially led me to believe that I was witnessing a cultural reversal, or sliding backwards, and that my openness to allowing the District Council to explore new methods would be detrimental to what had been

accomplished already. Drilling down upon those requests, however, I soon learned that the leadership of the District Council was not seeking to overturn all the good which had been accomplished, but rather they were seeking an opportunity to self-govern — which by definition means making choices and trying new approaches, all in an effort to increase efficiencies and fairness to serve the best interests of the membership. They understood that no radical or sudden changes would be acceptable to me, thus they decided to proceed in what I believe was a forward-thinking manner: they formed committees with designated leadership to undertake a review of existing rules and procedures which they believed should be reconsidered. I was pleased to see this process in effect with respect to both the Bylaws and the OWL rules, and while they are a work in progress, I believe these working groups have the best intention: improvements without weakening the compliance mechanisms in place. As set forth in the Review Officer's Final Report, such changes are only being "considered, constructed, and adopted with great care and precision" and ultimately, only if they withstand the strict scrutiny of my office and the Government. In short, the District Council is working towards taking the reins of its own future, and it seems to be doing so in a thoughtful and cautious way, imbued with compliance — the only acceptable path forward.

Below I set forth current developments at the District Council, including some of the efforts to analyze and improve the District Council's policies and procedures.

1. Man Hours and Member Statistics

According to the data received from the Benefit Funds, as of May 2015, the projected number of hours for the Welfare Fund for the fiscal year ending June 30, 2015, is 19.1

million. This will be a healthy increase over the approximately 17.4 million hours reported for the fiscal year ending June 30, 2014.

According to the data received from the OWL, there are 12,362 journeymen members in good standing and 1,664 journeymen members in arrears as of May 31, 2015, an improvement upon the 11,371 and 1,780, respectively, detailed in my predecessor's Final Report.

2. Market Recovery Efforts: The Provisional Journeymen

As reported to Your Honor by EST Joseph Geiger at the November 2014 status conference, increasing man hours is a priority of the District Council leadership. Since coming into power, the leadership has actively strategized ways to increase man hours and market share. One product of these efforts has been the creation of the Provisional Journeymen Concrete Carpenter classification. The District Council has been losing market share in residential and hotel concrete construction for some time, thus the District Council developed this classification as a way to regain market share by lowering union employers' overall labor cost for these types of projects.

The Provisional Journeymen Concrete Carpenter classification is part of a "market recovery addendum," approved by the delegate body on December 10, 2014, and executed by the District Council and The Cement League on April 2, 2015 (attached as Exhibit A), to the District Council's CBA with The Cement League. The market recovery addendum allows the members of The Cement League to employ a 50:50 ratio of Journeymen Carpenters to Provisional Journeymen Concrete Carpenters on residential and hotel construction projects.

Provisional Journeymen Concrete Carpenters are paid a lower rate of wages and benefits, so staffing at the 50:50 ratio results in a twenty percent reduction in the average hourly rate.

The District Council intends to create a pool of Provisional Journeymen Concrete Carpenters by "stripping" carpenters skilled in vertical concrete from the non-union sector. The lower-rate package provided for in the market recovery addendum is substantially more than most non-union carpenters make, so there should not be any difficulty in finding non-union carpenters willing to work under the terms of the market recovery addendum. The recruits will join a local union affiliated with the District Council and they will be issued a regular District Council membership card showing them to be "Provisional Concrete" qualified. A new OWL list for the provisional concrete classification will be set up in order to dispatch Provisional Journeymen Concrete Carpenters where needed. Provisional Journeymen Concrete Carpenters are eligible for classification as regular journeyman carpenters upon working 7,700 hours or passing the written and practical test to obtain the recently established Journeyperson Concrete Skill Certification. Finally, and most importantly, the 50:50 staffing ratio needs to be carefully monitored by the District Council, and I will assist in those efforts as the program expands.

The establishment of the Provisional Journeymen Concrete Carpenter classification is a creative solution to the dual problems of Union carpenters being priced out of the market and competition from increasingly skilled non-union carpenters. The lower average hourly rate made possible by the market addendum should keep more residential and hotel concrete jobs within the purview of the Union. Not only will this provide work to members of the District Council, but it will also reinforce union-labor's skill advantage in this type of work. Furthermore, the new classification will draw skilled carpenters into the District Council. The

market recovery addendum lasts only until the end of the year, but I hope to see many more creative solutions like this to recover market share that has been captured by the non-union sector.

3. Contract Negotiations

As the Court is aware, some of the District Council's collective bargaining agreements ("CBAs") with employer associations expire on June 30, 2015. Thus, over the past few months, the leadership of the District Council has been negotiating successor CBAs. To this end, following a proper request-for-proposal ("RFP") process, the District Council retained the law firm of Archer, Byington, Glennon & Levine, LLP, to consult and advise on the negotiations. This law firm is providing guidance with respect to compliance with statutes applicable to labor organizations and CBAs, arising under the National Labor Relations Act ("NLRA") and otherwise applicable regulator regimes.

At the June 25th delegate meeting, the delegate body approved an agreement reached by District Council and the Building Contractors Association ("BCA"). No agreement was reached before the expiration of The Cement League CBA, and as of July 1, 2015, the District Council membership is striking.

4. Preparations for the General Convention

This August marks the forty-first General Convention of the United Brotherhood of Carpenters and Joiners of America ("UBC"). As would be expected, there is much excitement at the District Council and throughout the membership with regard to the opportunity to represent the carpenters of New York City at this high-profile event. The preparations for this event have allowed the District Council to showcase its fiscal accountability, among other things.

The District Council followed the appropriate RFP procedures to source union paraphernalia for the convention, and sought advance approval of the expenses from the delegate body.

One issue which arose during preparations for the General Convention was the discovery that the election materials for the EST's election in January 2014 inadvertently failed to specify that the EST, by virtue of his office, would be designated the District Council's single delegate to the General Convention. This notice is required by the UBC Constitution. Upon learning of this deficiency, the District Council acted swiftly to remedy this issue in accordance with the UBC Constitution. After receiving dispensation from the UBC General President from the Convention Call deadline, the District Council held an open election by the delegates. On June 15, 2015, Mr. Geiger was nominated and, absent any other eligible nominees, summarily elected to be the District Council's delegate to the General Convention.

5. The Bylaws

As referenced above, the District Council has assembled a working group to review its Bylaws and propose updates and modifications. The newly designated Bylaw Working Group comprises the Vice President, an Executive Committee Delegate, the Chief Compliance Officer and General Counsel. The Bylaws Working Group, according to its mandate, will scrutinize the Bylaws and, if appropriate, propose changes. These changes may be procedural or technical in nature, as suggested in my predecessor's Final Report, or more substantive. The latter will be subjected to strict and careful review by myself and my staff. The Bylaws Working Group conducts regular meetings and has been seeking input from District Council department managers and the leadership of the Local Unions. When the Bylaws Working Group is ready to make formal recommendations, it will seek feedback from the

Independent Monitor. In reviewing any proposals, I will apply the standards set forth succinctly in the Review Office's Final Report, ensuring that any proposed change:

> (i) comports with the strictures and goals of applicable law, the Consent Decree, and Stipulation and Order; (ii) materially improves the business operations and governance of the District Council; (iii) clearly benefits the organization and its members; (iv) is clearly written and unambiguous; (v) is the product of the process contemplated by the [UBC] Constitution and the Stipulation and Order; and (vi) is approved in writing by the Independent Monitor and the United States Attorney's Office.

I have already communicated to the Bylaws Working Group some areas that I believe should be clarified or modified based upon my own review. The District Council is carefully following the procedure for Bylaw amendments provided in the Bylaws and the UBC Constitution, and will seek approval of the United States Attorney's Office after any changes are approved by the delegate body.

6. The OWL

The leadership of the District Council has taken steps to improve the OWL, and in this regard, several new skills have been added so that employers have an enhanced ability to specify the skills they need, and carpenters can better describe and differentiate their skill sets. These new skills and classifications include the Millwork Installer Skill Certification, Concrete Boot Camp (for apprentices), Journeyperson Concrete Skill Certification and Provisional Journeymen Concrete Classification (referenced *supra* Section II.A.2). These additions have been added upon the review and consent of both the Independent Monitor and the Government.

As with the Bylaws, the District Council has formed an OWL Rules Working Group to consider and eventually propose potential changes to the OWL rules. It is clear, based upon preliminary discussions, that the OWL Rules Working Group prioritizes developing an

alternative to the three-dispatch rule instituted by my predecessor. As the Court is aware, the District Council installed a three-dispatch rule several years ago in place of the temporal limitation of the prior system – the so-called "25-day rule." Under the 25-day rule, carpenters on the OWL received dispatches to jobs until they reached the threshold of 25 days of work, after which they were dropped from the list. Under the current three-dispatch rule, carpenters receive dispatches to three jobs, and, regardless of the length of those jobs, are dropped from the list after the third dispatch.

The temporal component of the prior system was eliminated to end the skill-puffing and day-counting which plagued the 25-day rule system. When 25 days of work were guaranteed, there was little disincentive to lie about one's skills in an effort to gain work, and there was an incentive to quit just shy reaching the 25th day of a job near completion in hopes of being dispatched to a longer job. The three-dispatch system was designed to remove these improper incentives: a dispatch to a job where a member is shortly fired for not having the requisite skills still expends a dispatch, and quitting early does not result in an additional dispatch. In this way, the three-dispatch rule helps ensure that carpenters sent to a job have the requisite skills and that fewer carpenters abandon jobs, and, at least theoretically, the rule prompts a more accelerated rotation of the OWL.

In his Final Report, Mr. Walsh warned against changing the three-dispatch rule and highlighted the dangers of returning to the 25-day rule system. To be clear, I recognize the benefits of the three-dispatch rule and have determined that a return to the prior system of the 25-day rule is not an option. But I also realize that no system is perfect. It was made known to me from the beginning that there is dissatisfaction with the current system because it allows

carpenters who have had the good fortune of being sent to a job that lasted years to return to the top of the OWL when that job finally ends, while other less fortunate members move quickly through their three dispatches, securing few hours of work. I do believe that many of the members who are only able to secure limited job hours in three dispatches have such an experience because of the short-term nature of the jobs requiring their individualized skills (trade shop jobs, furniture installation jobs, etc.), or for other reasons, none of which suggest a problem with the OWL rules.

Nonetheless, aware that I would entertain any reasonable and purposeful modification to the existing system, the OWL Rules Working Group made a series of initial proposals, ranging from minor to more substantial changes. For example, the OWL Rules Working Group suggested placing an upper threshold of hours worked, above which the member would be automatically dropped from the OWL even if all three dispatches had not been used, and a lower threshold, which, if not reached after three dispatches, would result in an additional dispatch. The measurement of the thresholds in hours of work would be a change from any previous system and was intended to lessen the ambiguity that occurred under the 25-day rule when carpenters worked partial days. Under this proposed system, the finite number of dispatches would continue to guard against skill puffing. However, the hazard of premature quitting in advance of hitting the upper threshold, the key problem with the 25-day rule, would be re-introduced. Moreover, an hours-based limit has the potential to create new problems in OWL administration because of the lag-time in reported hours, and ambiguity over the treatment of contested time and hours from jobs that are shaped while a member’s position on the list is frozen.

Accordingly, the OWL Rules Working Group will continue to establish and evaluate the details of any proposed changes. I have made it clear that I would only be amenable to modifications to the three-dispatch rule if I am provided with empirical evidence of the problems it creates. How often is it that someone receives three year-long dispatches or three dispatches lasting only a few days? As way of background, the choice of three as the number of dispatches was a measure intended to curb the very unfairness that is still being discussed; three dispatches would tend to level out the unavoidable variation in hours from any one dispatch. In the absence of any empirical data beyond anecdotal reports to support the magnitude of these concerns, I have yet to be convinced that there is a better system than a simple finite number of dispatches. The District Council is skeptical that it can provide the data I seek because members' experiences on the OWL are so different depending on their skill-set and the season. I appreciate these variables, but the difficulty, or even impossibility, of collecting statistical evidence does not render anecdotal evidence sufficient to support a major change in policy.

I am hopeful we can compile data sufficient to illuminate the need for change and, if that need exists, that the OWL Rules Working Group can suggest a better though equally compliant system. In this regard, I have encouraged the leadership to consider hiring a management consultant with the appropriate expertise to bring a new perspective to a review of the OWL system. I have also explained that my approval of any change to the current dispatch system is contingent upon assurance that skill puffing and other manipulation of the OWL rules is vigilantly guarded against, most likely by triggering harsher penalties than being dropped from or to the bottom of the list. In short, I believe that *any* manipulation of or attempt to circumvent the OWL rules should be met with the most significant penalties the system can allow.

Though any modification to the three-dispatch rule is premature at this point, I recognize that the OWL rules document itself (attached as Exhibit B), which has been abridged and amended over the years, would benefit from an overhaul in the interest of creating a streamlined document (or documents) which sets forth the rules in a clear manner to the intended audience, and reflects the present environment of modern technology and full mobility. I have requested that this project be undertaken whether or not any agreement on substantive modifications to the dispatch rule can be reached.

7. Information Technology Upgrade

As Mr. Walsh's Final Report referenced, the District Council has undertaken an IT systems upgrade for its operations. Following proper RFP procedure, the District Council selected Data Research Group ("DRG") as the service provider, and in concert they developed an implementation schedule for the upgrades. The information technology ("IT") upgrade started with the Assessments Department, which the District Council determined was the top priority for new computer systems. The next priority is the Electronic Reporting System used by Shop Stewards, Council Representatives and the OWL, and lastly Grievances and the IG Office. Concurrent with these projects, DRG is also upgrading the Communication Department's system, where it is assisting with the transfer of data to a new website that will integrate user-access to much of the information in the new systems.

After great anticipation and a couple months delay from the initial timeline, the new IT system was rolled out for the Assessments Department on June 12, 2015. Concurrently with the Assessments work, another vendor, AKA Enterprise Solutions, implemented new financial software systems in Accounting and Payroll, which will be rolled out on July 1, 2015,

and January 1, 2016, respectively. These new systems will allow the Accounting and Assessment Departments to use a single interface to access all of the information needed to perform their tasks. Moreover, the data will now be controlled by the District Council, as opposed to its prior service provider, so the manner in which the information is presented and analyzed can be changed based on the District Council's evolving needs. Once the new Assessments and Accounting systems have been used for a full billing cycle, and any issues that arise are resolved, DRG will begin to implement a user interface so that members and remitting employers can see all of the information that the Assessments Department has in their file, for example, payment history or assessments owed. The user interface is scheduled to be implemented by the end of this summer. Chief Accountant Judy Montreuil and Technology Manager Ralph Rivera have worked tirelessly with DRG through all steps of the upgrade. As of late June, the new Assessments system appears to be working without any significant problems.

The delay in the deployment of the Assessments Department upgrade was largely due to the numerous and varied ways that the District Council receives payments. Though this aspect of the department was known at the time the schedule was made, integrating all of these payment options into a new system simply took longer to resolve than expected. Additionally, as the Chief Accountant and the Assessments staff became more familiar with the new system and its capabilities, they frequently refined the deliverables. Although this reportedly exceptional level of involvement prior to the conversion date added to the delay, it has ensured that the new system is keenly tailored to the District Council's needs. DRG does not expect a delay to be repeated in other departments because Assessments was the only department that required data conversion.

DRG has already begun to turn its attention to the Electronic Reporting System. The upgrades to this system include designing a much more user-friendly interface that is compatible with the Shop Stewards' devices and gives Shop Stewards and Council Representatives access to more complete information on the jobsite. As of the time of this writing, the system has just begun beta testing, and DRG expects a conversion date in late summer. DRG believes that it is similarly on-schedule with achieving a conversion date in early fall for the IG Office and Grievance Department. Additional improvements to the District Council's technology infrastructure by the District Council's own IT department can be found *infra* Section II.B.5.

8. Ongoing Implementation

a. Working Dues Check-Off System

At the time of the Review Officer's Eighth Interim Report, approximately 5,600 cards authorizing the automatic deduction of working dues from wages had voluntarily been submitted by members. As of June 25, 2015, that number had nearly doubled to 10,580. This increase in authorization cards greatly reduces the manpower required of the District Council to obtain the working dues, and is a clear achievement for the District Council. If universally utilized by both members and employers, the working dues authorization card would guarantee timely remittance of working dues and eliminate the risk of members falling out of good standing, as referenced *infra* Section II.A.10. As it stands, however, even if a member has filled out the card, working dues are only deducted from the member's paycheck if the employer or the employer's association has pledged to do so in its agreement with the District Council. Thus, the

goal of universal membership participation in the automatic working dues check-off system should be matched by a corresponding goal of universal employer participation.

Relatedly, delegates have raised the issue that there is confusion among the membership over what exactly the authorization card means. Apparently, some members mistakenly believed that the working dues authorization card meant that working dues would always be deducted from the paychecks, regardless of the employer. After the delegate meeting where the issue of confusion was raised, the Chief Compliance Officer, Joshua Leicht, assured me that he and Director of Operations Matthew Walker would take action to ensure that District Council employees explain the working dues authorization cards accurately. Accordingly, General Counsel to the District Council has drafted an explanatory notice that will be provided to members when they fill out the working dues authorization card. I will continue to track the progress on these issues.

b. Employer Reporting of Time

Per the association CBAs, participant employers are tasked with reporting members' time to the District Council on one- and two-person jobs. It has been a constant struggle to have employers report time in a timely manner. Although the District Council has a high calculated compliance level (estimated at 97.48 percent in the Twenty-First Thirty-Day Report, ECF 1622), this compliance level is only possible with the constant effort of the Electronic Reporting Compliance Team to obtain time reports by calling employers. The Electronic Reporting Compliance Team also dutifully files grievances when the employer fails to report time as required by the applicable CBA. However, the absent time that is the subject of many of the grievances is generally reported eventually, oftentimes before the grievance is even

entered into the system. Thus, grievances for failure to report time are an understandably low priority on the Grievance Committee's overwhelming docket (more on grievances *infra* Section II.C.3).

The timely reporting of hours is crucial to the District Council's operation, and especially for the success of Operation Watchdog, the District Council's program where members can self-police by viewing the hours the District Council has on file as the hours they and their co-workers have worked. At the same time, the Electronic Reporting Compliance Team's heroic (and costly) efforts to induce employers to comply with their obligations under the applicable CBAs do not appear to be improving. The burden on the Electronic Reporting Compliance Team has not lessened as employers gained familiarity with the reporting requirements as hoped, so the District Council is exploring solutions for employer time reporting that are more practical and sustainable than the status quo – a process I will monitor closely going forward.

9. Compliance

a. Policies

The District Council, with the Chief Compliance Officer in a leading role, is in the process of revising many of its policies. Far beyond merely removing outdated references to the Review Officer, the changes are intended to reflect the actual functioning of the District Council and align policies and procedures with best practices, all while adhering to a compliance methodology. In this way, the revised documents can be used by the Chief Compliance Officer, the Inspector General and the Audit Committee to perform their oversight functions. The

District Council recently completed a revised Code of Ethics (attached as Exhibit C), and policy revisions near completion include the Accounting Manual and Personnel Policy.

A new compliance project of significance is the creation of standard operating procedures for Council Representatives. Counsel to the District Council and the Chief Compliance Officer have worked with the Council Representative Managers to complete the first step: documenting the current practices of the Council Representatives. Next, the District Council will seek to determine best practices for the Council Representatives and memorialize them in a standard operating procedure document.

b. Training

During the fourth quarter of 2014, the Chief Compliance Officer developed and delivered to all District Council officers and employees comprehensive "barred persons" training. This training explains the requirements and purpose of the prohibition, and what one should do in the event that he or she had contact or suspected contact with a barred person. The presentation developed for the training was also provided to every member of the delegate body, and the Human Resources Director provides new employees with the barred persons training as part of the orientation process. During the past several months, the Inspector General, the District Council leadership and my staff have received prompt reports from members who came in contact with barred persons.

10. Failure to Pay Working Dues

In March, a number of delegates were relieved of their positions for failure to pay the working dues as required by the District Council Bylaws and the UBC Constitution. Counsel for Local Union 157, which had the largest number of delegates removed, as well as its

President, contested the District Council's method of calculating the deadline at which unpaid working dues cause a member to no longer be in good standing. The positions on this issue of Local Union 157 and the District Council are attached as Exhibits D and E.

At the request of Local Union 157, I have looked into this issue. One complaint is that the "late" notice sent by the District Council is insufficient because it notifies members of the working dues already collected for the current billing period, but not the specific amount still owing for the current billing period. Another complaint is that the notice is sent after which time the District Council already considers the working dues to be "late." While I have not issued a formal determination at this time, as I am awaiting some materials from Local Union 157, I have thus far not been persuaded that the District Council's uniform practice in this regard violates the Bylaws or UBC Constitution. The system does not seem unfair to members or otherwise inappropriate insofar as the District Council currently allows members two months from the last day in the billing period to remit working dues before any adverse status-change. I also believe the notice provided setting forth the dates upon which a member will fall into "arrears" or be suspended is sufficiently clear to alert members of these threshold dates. As to the complaint that the notice does not indicate the amount outstanding, members have always possessed knowledge of the hours they work, which form the basis of the working dues, and, in any event, this information will be readily available to the members once the IT upgrade provides user-access to the members' assessments accounts.

Regardless of how the underlying issue is resolved, I do concur that the District Council should endeavor to make the payment of dues as straightforward and convenient for the members as possible, even though it is ultimately the members' obligation to pay working dues.

For example, the District Council could standardize and refine the language in the Bylaws and the Working Dues Assessment Notice. I will work with the District Council with respect to whatever improvements can be made.

I feel obliged to comment on another aspect of this matter which I find troubling. In connection with the removal of the officers and delegates in March 2015, I learned that no small number of members perceived that the removals were politically motivated, insofar as some of the affected individuals' failure to pay dues had occurred months prior to their removal. In response, I investigated this concern and found no bad faith basis for the manner in which the officers and delegates were removed. I found, in sum, that the arrears issue was raised when a member (from a different Local Union) and the president of that Local Union inquired to the District Council as to the member's eligibility to run for election. This prompted a subsequent review of all currently sitting officers and delegates, and this review, in turn, yielded the revelation that many of these individuals had not been in good standing at all times during the prior twelve months as required.

In sum, I find baseless the accusation that the District Council's leadership was long aware of this issue and only demanded compliance when politically useful. Despite my clear communication on this front, I believe that some members continue to believe the removals were politically motivated. Unfortunately, I believe this is symptomatic of a larger problem: some members are wont to believe the legitimate actions and routine decisions of the District Council are based on illicit motives and refuse to consider evidence to the contrary. While this dynamic may be the inevitable by-product of any organization with a similar history, it is counter-productive to the health and well-being of the Union.

To dampen future suspicions, as well as promote compliance with the requirements of the UBC Constitution, I have recommended that the good standing of officers and delegates be assessed regularly. As a result, the District Council has decided that the Chief Compliance Officer will conduct a quarterly review of currently sitting officers and delegates and, if removal is warranted, the Inspector General will notify the corresponding local union.

B. Financial Health

The District Council has approximately $36 million in accounts under management, which include the Organizing Fund and the Communications Fund. The asset manager reported on the performance of the funds for the first quarter of 2015 at a recent Executive Committee meeting. Currently, the assets of the District Council are wholly invested in bonds because the District Council has pursued a conservative low-risk/asset-preservation strategy with the aim to guarantee the availability of the funds. As a result, performance was relatively weak because interest rates have been low. However, at a previous meeting, the Executive Committee voted to allow investment in equities as part of the investment mix. The asset manager will begin to transfer some assets from bonds to equities this year. The District Council will still pursue a low-risk strategy, but the addition of equities will diversify the investment portfolio and hopefully result in a higher return on investment.

Despite the healthy reserve of assets, the District Council has attempted to limit its operating budget to its expected income for the year. In the upcoming fiscal year ending June 30, 2016, however, the District Council as a whole anticipates a $4.5 million operating deficit. Part of this shortfall is due to this year’s transition from cash-based accounting to accrual-based accounting; anticipated income from assessments that have been billed but not

paid as of the fiscal year ending on June 30, 2015, cannot be recognized in either the previous or the upcoming fiscal year.

Although a budget deficit is not a positive development, the District Council remains in a transition period. Many of the present spending increases will yield long-term returns. For example, the significant investment in upgrading the IT system should render every department more cost-effective. As more working assessments are now automatically deducted from paychecks (*see supra* Section II.A.8.a), collections are expected to increase. Likewise, while spending in connection with compliance initiatives has increased at present, these expenditures should decrease over time and yield savings as corruption is averted. In addition, as my staff conducts reviews of the trial process, IG Office, and other departments (discussed *infra* Section II.C.1), they will be mindful of cost considerations when developing recommendations.

The District Council recognizes that it needs to balance its budget and is now considering the potentially huge cost-saving measure of moving out of its current location at 395 Hudson Street in Manhattan. The District Council also is reviewing how surpluses in the Organizing and Communications accounts might be utilized to meet the District Council's needs. Overall, there needs to be better planning with respect to earmarking funds for different accounts. Earmarking needs to be reassessed frequently, and decisions must be based on need, not legacy. This goes for monies allocated to the Benefit Funds as well. It is my hope that next year, before the annual wage and benefits package increase under the CBAs is apportioned to the various funds, the Executive Director of the Benefit Funds will be invited to present to the Executive Committee on the status of the Benefit Funds so that the Executive Committee (in

particular the Executive Committee Delegates who are not trustees of the Benefit Funds) can make educated decisions on this issue of utmost importance.

C. District Council Departments and Committees

1. IG Office and the Trial System

Since becoming Independent Monitor, I have worked very closely with the Inspector General Scott Danielson and his office. Mr. Danielson has spent a significant amount of time bringing me up to speed these past six months, and he has a wealth of knowledge on the history and culture of the District Council and the labor organization as a whole. I have referred a number of calls from the Hotline to his department (*see infra* Section IV.B), and he has been both responsive and conscientious in furtherance of his office's mission. In addition to working closely with me and my staff, Mr. Danielson has a close working relationship with the Chief Compliance Officer, and their combined focus on compliance is of great benefit to the District Council.

a. Activities

The IG Office continues to be very active, having worked approximately 1,600 cases and having made approximately 500 jobsite visits since January 1, 2015. Inspectors have also made thousands of Full Mobility Jobsite Inspections in 2015 and detected 43 possible Full Mobility Agreement violations. In the same period, the IG Office has filed hundreds of grievances against non-compliant employers, and brought over 200 charges against members. Of particular note, the Inspector General filed charges against Union member Anthony Calabro on June 30, 2015, based on his violation of the Consent Decree due to racketeering activities to which he previously pleaded guilty in the Eastern District of New York. *See United States v.*

Russo et al., 11 Cr. 30 (KAM) (EDNY, judgment filed May 16, 2012). A more fulsome description of the activities of the IG Office can be found in "Office of the Inspector General Case Activity Report January 1, 2015-May 31, 2015," attached as Exhibit F.

b. Review of the IG Office

As pleased as I have been to find a cooperative and productive partner in the Inspector General, I have nonetheless kept in mind my predecessor's call for the IG Office to improve its compliance with the Investigative Guidelines, its delegation of work, and its use of technology and organization. Delayed only by the press of other business, my staff will soon conduct a thorough review of the operations of the IG Office with the goals of creating a plan for the effective, accountable and efficient operation of the IG Office, and assist the Inspector General with the implementation of that plan. I am hopeful that our suggestions will aid the Inspector General in moving his crucial office forward.

c. Trial System

The current trial procedure has been in place since late August 2013. As a system of vital importance to the members, it is incumbent that the trial system serves the members and promotes justice. Upon receipt of complaints about its functioning, I had my staff observe the different stages of the trial system. While certainly an improvement over systems of the past, there do appear to be deficiencies, most clearly with respect to the timeliness of hearings. As a result, my staff is working to evaluate each stage of the procedure and make recommendations to improve the trial system's ability to fulfill its purpose of timely adjudication and resolution of conflicts. I look forward to the implementation of these recommendations, and expect to address them in my next report.

2. Audit Committee

The Audit Committee continues to meet monthly, and for the first time, funding for its activities has been included in the District Council's budget. This funding will allow the Audit Committee to hire auditors to look into issues as they arise, providing the Audit Committee with the "teeth" my predecessor justifiably feared to be lacking.

Even without funding, over the past six months the Audit Committee has reviewed accounting matters and provided advice. Mr. Bill Vorhees, the CPA advisor to the Audit Committee, has suggested that accounting at the District Council could be further strengthened by having a head of the Assessment Department separate from and in addition to the Chief Accountant. The Chief Accountant, Judy Montreuil, concurred and had already made this request to the District Council leadership. Funding for this new position was included in the budget for the fiscal year ending June 30, 2016. Despite the District Council's current financial position (discussed *supra* Section II.B), I am pleased by the leadership's prudent thinking on this matter; this position will increase the focus on collecting assessments and strengthen the District Council's overall control over its finances.

Earlier this year, the Benefit Funds sent a cost allocation, *i.e.*, a request for reimbursement, to the District Council for resources spent assisting the District Council's operations. The Audit Committee has adopted a measured and critical approach to this request and requested greater detail on and clarification of the expenses the Benefit Funds attributed to the District Council. Ms. Montreuil and Mr. Vorhees have been working to verify individual charges and intend to reach a resolution by year-end.

3. Grievance Department

Paul Tyzner, the head of the Grievance Department, reports that year-to-date recoveries on grievances filed against employers exceed $730,000. Although the related Grievance Committee is on track to hear more grievances than in 2014, grievances are being filed at an even faster rate, with over 1,300 filed since the beginning of the year. Despite the best efforts of Mr. Tyzner and his staff of three, the current backlog is approximately 5,500 grievances. In general, grievances fall into four categories: (1) failure to remit benefits in a timely manner (approximately 1,600 unresolved grievances); (2) failure to report time from one- and two- person jobs (approximately 700 unresolved grievances); (3) manning ratio violations under prior CBAs (approximately 700 unresolved grievances); and (4) other miscellaneous alleged CBA violations. Realizing that this backlog frustrates meaningful enforcement of the CBAs, the District Council is exploring options to streamline the Grievance Committee's operations, and empower the largest filers of grievances (business agents, inspectors, and the Electronic Reporting Compliance Department (discussed *supra* Section II.A.8.b)) to resolve violations outside of the grievance process.

This potential approach is not without concerns, as any decentralized method of resolving violations raises significant risks of lack of compliance and uniformity. At the same time, I understand that the current rate at which grievances are filed is unsustainable. In addition to sheer volume, there are grievances stretching back in time to an unacceptable degree. As grievances accumulate, memories decay and witnesses become unavailable, rending violations more difficult to substantiate.

Accordingly, I will be monitoring any proposed shift in policy that discourages filing grievances very closely. In addition to the issues raised above, grievances provide a paper trail of violations, and the centralized manner in which they are retained and addressed promotes consistent resolutions. If the District Council seeks to resolve violations by other means, there must be a set of standardized operating procedures in place to ensure that employers are treated uniformly, and violations and resolutions are documented. Furthermore, there must be guidelines for appropriate resolutions and a system of monitoring and auditing resolutions. The District Council has begun the first step in creating standardized procedures for Council Representatives by documenting their current practices (*see supra* Section II.A.8.a).

4. OWL Department

Under the leadership of Aaron Gholston, the OWL Department has labored tirelessly on the unenviable task of administering the OWL. I have worked closely with Mr. Gholston and will continue to do so, especially with respect to the consideration of any possible changes to the OWL rules. His insights and experience with regard to the current system will be pivotal in evaluating future modifications. Below is a summary of OWL activity since January 1, 2015:

Dispatches:

	May 2015	April 2015	March 2015	February 2015	January 2015	October 2014
Regular Dispatches	1,087	1,157	1,178	757	653	
Immediate Dispatches	40	43	61	22	30	
Off-Hour Dispatches	198	108	147	129	89	
Total Dispatches	**1,325**	**1,308**	**1,386**	**908**	**772**	**1,145**

Refused Dispatches or Unanswered Calls Not Resulting in Loss of Dispatch Under Current OWL Rules:

	May 2015	April 2015	March 2015	February 2015	January 2015
Total	**11,363**	**8,727**	**12,329**	**4,605**	**2,989**

5. Information Technology Services Department

In addition to overseeing the DRG IT system upgrade, the Information Technology Services Department ("ITS") has made numerous improvements to the District Council's IT infrastructure over the past six months. According to the ITS Manager, Ralph Rivera, ITS has replaced the failing legacy network switches and overhauled the network to separate traffic from different devices, dramatically increasing data transfer speeds. ITS has also replaced the wireless LAN controller and firewall, greatly increasing the security of the District Council's IT system. Another improvement of note is a new data back-up solution that is expected to result in $13,500 in annual cost savings.

ITS has multiple projects on the horizon for completion over the next six to eight months, including the virtualization of physical servers, upgrading the "Domain Active Directory Database," and developing an intranet site for District Council employees. Additionally, in conjunction with other departments, ITS will develop comprehensive standard operating procedures for the handling of IT requests, as well as IT procedures governing new hires and terminations. A more complete description of ITS' recent accomplishments and upcoming projects can be found in the "Executive ITS Annual Summary – June 2014 to June 2015," attached as Exhibit G.

6. Human Resources

The Human Resources Department, headed by Dana Brownstein, is one of the newer departments established within the District Council by my predecessor. The Human Resources Department was created as a compliance-strengthening initiative. Thus far, Ms. Brownstein has been very helpful in educating my staff on the policies and procedures of the Department.

a. Hiring

In early 2015, the District Council was in the process of hiring a number of Council Representatives. My staff reviewed the hiring process, and the scored applications and exams, for adherence to the Conditional Process for Hiring Council Representatives. My staff determined that those protocols had been followed, but observed that the process itself could be better crafted to serve its goal of identifying qualified candidates for Council Representatives. My staff intends to share its observations and recommendations with the District Council prior to the next round of Council Representative hiring. Generally, those recommendations include a revision of the grading process, as well as the regular updating and changing of test content to the extent allowed within the strictures of UBC requirements.

Communication of an objective hiring process is as important as the process itself. Members have expressed frustration with a perceived lack of transparency with respect to the Council Representative hiring process. Accordingly, I recommend that the process for hiring Council Representatives should be specifically referenced in the Bylaws and made available to the membership online. The District Council should consider additional measures to increase transparency in this process.

b. Training

The Human Resources Director has transferred training for District Council administrative employees to an online platform. This makes available a wide variety of courses and eliminates scheduling problems. All District Council administrative employees are required to spend a specified amount of time on training, and the courses they can take range from technical to inter-personal skills.

Council Representatives receive their training from the UBC, as will the trustees. The trustees, in addition to the Inspector General, the Chief Compliance Officer, the Director of Operations, and the Chief Accountant, also received training from the United States Department of Labor upon starting their positions.

I believe that all of the elected leaders at the District Council should pursue training opportunities targeted towards development in their roles, whether administered through the UBC or by a private educational service provider. As is the nature with democracy, a candidate with little applicable experience or skills could conceivably be elected to hold a significant leadership role in the District Council. While some elected members thrive in their new roles despite gaps in experience, all could benefit greatly from a training apparatus for the elected leadership. As properly lauded by my predecessor with respect to the Benefit Funds, such training opportunities would be no less valuable at the District Council.

D. Local Union Issues

1. Vacancies in Local Union 157

As a result of the removals discussed *supra* Section II.A.10, there were multiple vacancies among Local Union 157's elected positions this spring. These circumstances brought

to the forefront the Union's policy towards vacancies in elected offices and *pro tem* appointments, described in the Review Officer's Final Report.

The UBC Constitution sets forth some guidance for filling vacancies in delegate positions:

> When vacancies occur in any elective office of a Local Union or in the position of delegate to a Council from a Local Union, the president of the Local Union may appoint a qualified member to the vacancy pro tem, until such time as an election is held to fill the vacancy.

Section 32(B) of the UBC Constitution. Notwithstanding this provision, the history and circumstances of the District Council justified prioritizing election of delegates over the President's power to make *pro tem* appointments of unspecified duration. In October 2014, my predecessor recommended defining a limitation to that power, as described in his Final Report:

> As we have discussed, I have viewed Paragraph 4.B of the District Council Bylaws as one of the special provisions of the Bylaws which supersedes related provisions of the Constitution of the UBC. The unique circumstances of governance in New York (where corruption and outside influence have greatly harmed the Union) and the pendency of the Consent Decree since 1994 have made these special provisions necessary.
>
> Since the Bylaws were implemented in August 2011, I have strictly construed the requirement that delegates be elected "by the rank and file members of the United Brotherhood of each affiliated Local Union,' as superseding Section 32.B of the Constitution, which authorizes local union presidents to appoint delegates pro tem when a vacancy occurs "until such time as an election is held to fill the vacancy." Based on the imperative of the Consent Decree's direction that the District Council and its local unions be run "democratically," I have found my interpretation of Paragraph 4.B (barring appointments) to be a highly effective means to prevent unlawful manipulation and degradation of the delegate body (through pressure being applied on lawfully-elected delegates to resign, and being replaced by appointed cronies of local union

> officials and sometimes by persons loyal to racketeers). Further, without a clear teaching from the UBC Constitution regarding when an election must be held, the excessive passage of time after an appointment of a delegate without a special election further contravenes the Consent Decree's requirement that the affairs of the Union be conducted democratically. To date, the District Council and its eight affiliated local unions have abided by my interpretation of Paragraph 4.B.
>
> However, I also recognize that vacancies may sometimes occur for legitimate reasons and without warning and that as a result, an affected local union is under such circumstances deprived of full representation in the delegate body even when it exigently notices and holds a special election to fill the vacancy. Thus, I formally recommend that in order for the strict terms of the Consent Decree to be met – while maintaining the representation to which local unions are entitled – the District Council accept the credentials of a delegate pro tem for the first two meetings of the delegate body after the seat in question becomes vacant. Such a method will serve to more closely harmonize Paragraph 4.B and Section 32.B and ensure that local unions are fully and effectively represented (provided that able delegates pro tem are appointed) and will allow sufficient time for the necessary special election to be noticed and held.
>
> Note that I have considered the argument made by some members that a longer time in which to hold a special election is necessary because elections are "expensive" and other vacancies might occur in the same time. Such thinking is insupportable. Elections do cost money, but that is part of the inescapable price of the democracy required by the Consent Decree. Even if this were not the case, there is no way to know when or indeed whether any subsequent vacancy in the delegate body relating to the particular local union might occur.

Section I.D.12 of the Review Officer's Final Report (quoting Letter of the Review Officer to the District Council, October 13, 2014). On December 10, 2014, the delegate body adopted this recommendation, implementing a new system whereby the local union presidents could appoint a *pro tem* appointment for the two meetings following a vacancy, in order to provide time for elections to be held and for uninterrupted representation to continue. This policy was intended to

promote democracy by limiting appointments and thus encouraging elections soon after vacancies arose.

Earlier this year, I was asked by Local Union 157 to review the *pro tem* policy adopted by the District Council with respect to two vacancies among its delegates. After considering the issues, I concurred with my predecessor's recommendation of permitting *pro tem* appointments, but significantly limiting their duration in favor of elections. Local Union 157's delegate seats at issue were filled by *pro tem* delegates for the allowed period of the two meetings following the occurrence of the vacancy and then vacated pending election.

In addition to these vacancies, more vacancies arose when Local Union 157's ineligible delegates and President were removed from office in late March for failing to timely pay their working dues (discussed *supra* Section II.A.10). Also, Local Union 157's Executive Committee Delegate was removed from office in on April 6, 2015, for unrelated reasons (discussed *infra* Section IV.C). Despite these vacancies, and the limited duration of the *pro tem* appointments, Local Union 157's leadership did not initiate the process of seeking approval for the funding of the election until the June 2015 meeting. As a result, Local Union 157 will forego full representation for at least three months, due to the UBC Constitutional notice requirements for nominations and elections. These vacancies are concerning.

There have been complaints that holding an election within the two-month limitation set forth in the *pro tem* policy is not feasible. I have yet to be convinced of this view because I have not observed a local union that has truly tried to meet this deadline but failed. Furthermore, some of the current policies that potentially make this deadline a challenge can be changed. First, nothing requires pre-approval of election expenses for each specific election, and

thus the approval process for this inevitable and legitimate expense could be streamlined. Indeed, potentially an entire month is lost waiting until the next meeting of the Local Union membership simply for them to approve the expenses for an election which must be held. Second, the Executive Committee of the local does not need to wait until the next scheduled Executive Committee meeting to approve the nomination card listing the positions up for election – they could hold a special meeting just prior to the monthly meeting, which they all should be attending. If both of these actions were taken and a Local Union still could not meet the two-month deadline, at that point I would revisit my position on the two-month limitation for *pro tem* appointments of delegates and possibly support a modification of the policy to extend the *pro tem* term to the time a diligent local requires to hold an election (which I do not imagine would ever require more than three months).

Also, I have received well-articulated complaints that there is an "election fatigue" plaguing the members, generated by having to hold elections so frequently. I agree that any measure that discourages participation by the members is to be avoided, and to this end, it is unfortunate that vacancies have arisen so often this year to justify multiple elections. But clearly, the solution is not to rule by appointment – such a system breeds cronyism and corruption. Democracy requires its leadership to be elected. The only way to do that is to hold elections and, regardless of how often they occur, for members to participate fully. The members complaining of election fatigue will always be, by definition, the supporters of those in power; those opposed to the current leadership will always likely welcome the next election. Such is the reality of any political system, and a labor organization is no different. My only advice is for every member to participate in every election, regardless of how often they may

arise, and when one casts one's vote, it will hopefully be for candidates who will well-serve their constituency for their entire term of office.

With respect to the specific case of Local Union 157, there was also uncertainty over the positions up for election. Since the President of Local Union 157 was removed, the Vice President has assumed the role pursuant to the UBC Constitutional provision which allows the Vice President to assume the position of President "until such times as a President is elected" (Section 34). I believed it was unclear whether the succession rules permitted him to remain in that office for the duration of the original President's term, and reached out to the UBC for clarity on this point. My letter to the General President of the UBC is attached as Exhibit H. On June 29, 2015, the UBC General President responded and indicated that, per the UBC interpretation of Section 34, Local Union 157 should include the office of President in its upcoming election, but need not include the office of Vice President, as the Acting President would resume that role following the election. The letter from the General President is attached as Exhibit I. Counsel for Local Union 157 has indicated that, in light of the UBC's position on the matter, the upcoming election will include the position of President, along with the vacant delegate positions and the Executive Committee Delegate position, and it will be held in September 2015. Nomination cards will be mailed out on a schedule pursuant to the UBC Constitution, and nominations will be held at the August 2015 meeting.

2. Local 1556 Elections

This spring, Local 1556 sent out a notice of nominations and elections which prompted a few calls to the Independent Monitor Hotline. The nomination card stated that all the positions for delegates to the District Council were open for nomination and election. The

callers claimed that only two years of the three-year term for delegates had passed. This matter was referred to the IG Office for investigation, and I also discussed the situation with the President of the local union, Chris Parzych. Mr. Parzych explained his belief that the last election of delegates was three years ago, and provided reasonable explanations for why members may be confused as to the dates. The nominations were allowed to go forward, but the Inspector General requested copies of minutes from the meetings when the current delegates were supposedly elected. The day after the nominations meeting, Mr. Parzych contacted my office and the Inspector General and explained that he was mistaken about the date of election of the current delegates, and their terms had not yet expired. The election of delegates to these positions did not go forward. While unfortunate, I do believe this entire incident stemmed from a mistake and not intentional wrongdoing.

E. Ongoing Litigation

As the Court is aware, the District Council has interest in a number of litigation matters of note, several of which have already been brought to Your Honor's attention. General Counsel to the District Council, James M. Murphy, Esq. of Spivak Lipton LLP, is ably representing the District Council in all of these matters. In addition, as discussed at our June 16, 2015 status conference, special appellate counsel has been consulted and is in the process of being retained to defend the appeal of the Court's April 27, 2015 Decision & Order in the Wall-Ceiling matter, referenced first below.

Based upon the interest expressed at our last conference, below are summaries of these matters:

- *New York City & Vicinity District Council* v. *Association of Wall-Ceiling & Carpentry Industries of New York*, 15-1574-cv (2d Cir.), on appeal from 14-CV-

6091 (RMB)/90-CV-5722 (RMB) (SDNY, decided April 27, 2015). In this action the District Council moved to vacate an arbitrator's award that permitted the Wall-Ceiling Association ("WCC") to use a separate CBA signed with the UBC to circumvent the two-person job provision of the District Council-WCC Agreement with a term of July 1, 2011 to June 30, 2017. The agreement with the UBC purportedly allowed the WCC contractors to employ two-person crews without the 1:1 matching provision by which any carpenter not a member of the District Council must be matched by a referral from the District Council's OWL. The Court vacated the arbitrator's award because it was a clear violation of the express terms of the District Council-WCC Agreement, it did not draw its essence from that Agreement but instead drew its essence from another agreement (the UBC-WCC agreement) to which the District Council was not a party, and it violated public policy because it was contrary to the Court's May 8, 2013 Decision & Order approving the District Council-WCC Agreement, along with the Court's subsequent Orders approving other multiemployer agreements that provided for so-called full mobility, the two-person jobs provision, and the 1:1 matching provision. The WCC has appealed this ruling, and, as indicated above, an appellate specialist will likely be engaged to defend the appeal.

- *The Cement League and Northeast Regional Council of Carpenters*, NLRB Case No. 3-CA-126938. The District Council is the Party in Interest in this case which challenges the 1:1 matching provision in its CBA with the multiemployer association, The Cement League. The National Labor Relations Board's ("NLRB") December 31, 2014 complaint issued by its Office of General Counsel alleged that the 1:1 matching provision, which requires any hires who are not members of the District Council to be matched 1:1 by referrals from the District Council's OWL, on its face violates the NLRA. 1:1 matching provisions are in all of the District Council's agreements with multiemployer associations by which the employers were granted so-called full mobility to hire anyone they wanted (except for the District Council Certified Shop Steward who must lawfully be referred by the District Council's OWL). The Court approved all of those agreements during 2013. The District Council's and The Cement League's position is that the 1:1 matching provisions have an anti-corruption benefit because they ensure that there will be employees, other than the Shop Steward, who are District Council members with stakes in protecting the CBAs and the employers' required contributions to the District Council's Benefit Funds. A trial before an Administrative Law Judge ("ALJ") was held on March 25, 2015. The Cement League and the District Council presented evidence and argument that the anti-corruption benefits of the matching provisions in the Court-approved multi-employer agreements favored deferring to the Consent Decree and the Court's May 8, 2013 Decision & Order and subsequent Orders. In his May 21, 2015 Decision, the ALJ agreed with the charging party that the 1:1 matching provision is on its face unlawful under the NLRA because it favors hiring District Council members as opposed to members of the Northeast Regional Council of

Carpenters. The District Council will be filing exceptions and supporting briefs with the NLRB in Washington, D.C. by the July 2, 2015 due date.

- *United Brotherhood of Carpenters v. Tappan Zee Constructors, LLC*, 15-1002-cv (2d Cir.), on appeal from 14-CV-03688 (ALC) (SDNY, decided March 25, 2015). Although the District Council is not a party, this case is of importance because the jurisdictional claims of the District Council constituent Local 1556 Dockbuilders ("Dockbuilders") are at issue with respect to approximately 400,000 hours of work on the new Tappan Zee Bridge construction project. The UBC directed that the work should be assigned to the Dockbuilders as opposed to carpenters represented by the Northeast Regional Council of Carpenters ("NERC Carpenters"). The employer, Tappan Zee Constructors, LLC ("TZC"), disagreed and the dispute was referred to arbitration pursuant to the Project Labor Agreement (the "PLA") that incorporates the National Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan"). The arbitrator issued an award directing that the work be assigned to the Dockbuilders. Eight days later, the same arbitrator issued a contradictory award directing that the work be assigned to the Northeast Regional Carpenters. The UBC filed a petition to confirm the first award and vacate the second. TZC filed a counter-petition to confirm the second award. The District Court agreed with TZC and enforced the second award, finding that the first award was preliminary. The UBC and District Council have appealed based upon the arbitrator not having the authority under the PLA and Plan to reverse himself with the second award because the first award determined the jurisdictional issue presented and he was essentially functus officio. The UBC's motion for an expedited appeal was granted, the briefing is complete, and oral argument is scheduled for August 19, 2015.

- *Lipnic* v. *United Brotherhood of Carpenters and Joiners, District Council of New York City*, EEOC Charge # 520-2013-01872. The Commissioner of the Equal Employment Opportunity Commission ("EEOC") filed this charge against the District Council on behalf of anonymous employees alleging gender discrimination at the Javits Center. The District Council cooperated with the EEOC's investigation, and the EEOC has decided to take no further action.

- *Herzog* v. *NYC District Council of Carpenters Pension Fund et al.*, Index No. 154427 (New York Supreme Court, New York County). Arbitrator Robert Herzog brought this action seeking $283,479.83 in fees allegedly owed to him for serving as the arbitrator in numerous proceedings concerning employers' obligation under the District Council CBAs to contribute to the Benefit Funds. In addition to the unpaid fees, plaintiff seeks interest on the fees, costs, and attorneys' fees. The Funds are also defendants in the action (*see infra* Section III.F). A motion to dismiss the complaint as against the District Council has been filed, mainly on the ground that plaintiff has failed sufficiently to allege that the District Council is obligated by contract or otherwise to pay the amounts sought.

In addition to these noteworthy litigations, there are several pending claims against the District Council by individuals for alleged employment discrimination and/or alleged breach of duty of fair representation.

III. THE BENEFIT FUNDS

Pursuant to the 2014 Stipulation and Order, I have the responsibilities of review and oversight of the Benefit Funds, the District Council's affiliated Taft-Harley fringe benefit funds. During his tenure as Review Officer, Mr. Walsh oversaw dramatic improvements at the Benefit Funds, such as the development of a more centralized organization structure; the streamlining of its operations; the establishment of improved human resources policies and training; and the imposition of compliance programs. To effectuate these improvements, the Benefit Funds, like the District Council, saw significant hiring under his monitorship including, *inter alia*, the hiring of a new Executive Director, the first Human Resources Director, and a new Chief Compliance Officer. Significant strides have been made to improve the Benefit Funds' functioning.

Unfortunately, with the press of seemingly more urgent concerns elsewhere, as of the time of this writing I have not personally focused attention on the day-to-day operations of the Benefit Funds, though I felt welcome from the start by then-Executive Director Ryk Tierney; Chief Compliance Officer Julie Block; the Benefit Funds' outside counsel, Ray McGuire, Esq. and Elizabeth O'Leary, Esq. of Kauff McGuire & Margolis LLP; and the Board of Trustees, led by co-chairs David Meberg and Joseph Geiger. Personnel developments, among other things (*see infra* Section III.B), have afforded me the opportunity to work more closely with the Benefit Funds in recent weeks, and I look forward to continuing that close working relationship in the

upcoming months. Despite the strides forward, I believe that, like the District Council, there is an important role for monitorship at the Benefit Funds, as it too works towards independent self-governance.

A. Overall Condition of the Funds

The total available assets of all of the District Council's affiliated Benefit Funds are approximately $5.4 billion as of March 31, 2015. Total available assets in the Pension Fund have grown from $2.76 billion as reported in the Review Officer's Final Report to $2.89 billion as of March 31, 2015. The Pension Fund is predicted to be 93.9% funded as of July 1, 2015, up from 89.1% as of July 2014. Similarly, total available assets in the Welfare Fund have grown from the $371 million reported in the Review Officer's Final Report to $419 million as of March 31, 2015. The Annuity Fund has approximately $2 billion in assets as of March 31, 2015.

The Board of Trustees and a special Welfare Fund Subcommittee continue to devote time and attention to ensuring that the Welfare Fund remains viable while prudently considering whether any benefit changes are possible. As previously reported to the Court, the Trustees have reduced retiree premiums by 50% and reinstated both dental and vision benefits within the last year.

B. Search for a New Executive Director

As the Court has been previously made aware, Ryk Tierney resigned his position as the Executive Director of the Benefit Funds to take a position at a large national pension fund. Based on experience with prior job searches, the Trustees' expectation is that it will take a number of months to fill the position. The Trustees commenced searches for both an interim and permanent Executive Director upon receipt of Mr. Tierney's notice of termination.

With respect to the Interim Executive Director position, after interviewing three candidates the Trustees selected Regina Reardon who assumed the position effective May 26, 2015. Ms. Reardon has broad experience in employee benefits. She is an employee benefits attorney and has served as counsel to multiemployer funds. She is also the president of Healthcare Strategies, Inc. ("HSI"), an employee benefits administration and consulting company which she founded in 1997. Ms. Reardon is currently the President-elect of the International Foundation of Employee Benefit Plans ("IFEBP"), and she will become the President and Chair of the Board of the IFEBP in 2016. Ms. Reardon will be supported in her role as Interim Executive Director by two of her colleagues from HSI. I have had the privilege of meeting Ms. Reardon soon after she assumed office, and I have learned through multiple sources that she is bringing a much-needed fresh perspective on the management and operations of the Benefit Funds. I look forward to seeing what Ms. Reardon is able to accomplish while Interim Executive Director and, as I have advised her, I remain willing and able to support her in her efforts.

With respect to the search for a permanent Executive Director, the Trustees advertised the position on April 2, 2015 on IFEBP, BenefitsLink, Monster.com, and Pension & Investments, and have received approximately 36 applications to date. The Trustees have appointed a Search Committee which has begun preliminary interviews of the present candidates and is also considering retaining an executive search firm to expand the search. I believe the Trustees are thoughtfully and diligently pursuing the search for this important position and I am hopeful that a replacement will be found well before the next interim report.

C. <u>Information Technology</u>

The Benefit Funds' Information Technology ("IT") Department proposed a 5-year "Strategic Plan and Infrastructure Upgrade" for the Trustees to consider at the end of 2014. The Trustees retained a national IT consulting firm to review the IT Department's plan. The assessment of the IT Department's plan was favorable and its few recommendations have been incorporated into a revised 5-year plan. The Trustees recently approved moving forward with this plan, which is intended to ensure that the technology used by the Benefit Funds best serves its mission.

D. <u>Employee Training and Compliance</u>

The Trustees continue to provide training to the Benefits Funds' employees so that they can best serve the Funds' participants and maintain a high level of professionalism. Since Mr. Tierney's departure, the Trustees have approved retaining a Certified Employee Benefit Specialist ("CEBS") instructor from Baruch College so that employees may continue to pursue, through evening courses, the CEBS certification offered through a partnership of IFEBP and the Wharton School of the University of Pennsylvania. Other training programs include annual handbook training, respectful workplace training and leadership training. The Human Resources Director has also overseen and has assisted managers with the implementation of performance reviews. Training that has been budgeted for the upcoming fiscal year includes "Phone-Pro Plus" for the call center employees, which will train them on how to best provide service over the phone.

E. Benefit Funds Collections

Virginia & Ambinder, LLP ("V&A") continues to handle the collections for the Benefit Funds. V&A recovered nearly $2.5 million in the period from February 3, 2015, to April 7, 2015, consisting of settlement recoveries of approximately $760,000, judgment enforcement recoveries of approximately $130,000, and other recoveries of approximately $1.59 million. This brings the total amount recovered by V&A since it began as collections counsel in June 2011 to approximately $18.7 million. Some of V&A's recent collections efforts are highlighted below.

The Benefit Funds referred twelve members of the Manufacturing Woodworkers Association of Greater New York ("MWA") with outstanding audits to V&A. Based on V&A's recommendations, the Collections Committee subsequently approved settlements with ten of these employers in the total amount of $569,744. Nine of those settlements have been paid in full; the tenth is in progress, and the employer is current in its installment payments. On April 29, 2015, and May 4, 2015, V&A conducted successful arbitration hearings against the two remaining MWA employers, Nordic Interior and Rimi Woodcraft.

At the conclusion of the Nordic hearing, Arbitrator Martin Scheinman stated that he would issue an award against Nordic in the amount of $1,072,418. The award will call for Nordic to pay $150,000 within fifteen days of the issuance of the award and the balance in eighteen equal monthly installments. The award will include interest on the declining balance, and Nordic's principal will be required to provide a personal guarantee. Nordic subsequently advised that it cannot comply with the prospective award and may file for bankruptcy. On May

22, 2015, Nordic's principal asked to meet with Charles Virginia of V&A and counsel to the Benefit Funds granted permission for such a meeting.

At conclusion of the Rimi hearing, Arbitrator Martin Scheinman stated that he would issue an award against Rimi in the amount of $851,300. The award will require Rimi to make an initial payment on or before June 4, 2015 in the amount of $350,000, with the balance to be paid in eighteen equal monthly installments. The award will include interest on the declining balance, and Rimi's principal will be required to provide a personal guarantee.

The Benefit Funds' collection department has continued to further refine the weekly Shop Steward Variance Reporting module, which compares contributions remitted with hours worked three weeks after the work takes place. At the time of the Review Officer's Final Report, the module only covered employers in the WCC or the BCA. Since the end of January, the module runs on all employers, and this program is serving its objective of promptly identifying delinquent contributions so that appropriate collection action can be taken.

F. <u>Ongoing Litigation</u>

The Funds are currently facing two lawsuits of note filed in the past six months. Former Executive Director Joseph Epstein filed suit on April 14, 2015, over his termination for cause in 2012, claiming that his termination should be deemed a termination "without cause." Details surrounding Mr. Epstein's termination were provided in the Review Officer's Fifth Interim Report (at Part 2). The second lawsuit of note involves an arbitrator that the Benefit Funds used in connection with collection matters in the past, and is described *supra* Section II.E. He filed suit against the Benefit Funds on May 1, 2015, to recover fees he claims are due to him for the work he performed. The work performed by this arbitrator was referenced in the Review

Officer's Third Interim Report, at Part Two F.1.c.i. The Funds declined to pay the arbitrator's invoices in large part due to the delay (in some cases years-long) in issuing awards. The Benefit Funds recently responded to the complaint.

G. Trustees' Relationship

As is inevitable in any system where the organizational leadership is intentionally divided between labor and employer representatives to ensure dual perspectives in the decision-making process, I have found that more often than not, many decisions related to the Funds are stalled because of divisive block voting along party lines. Currently, unresolved disagreements are decided by arbitrators. The use of arbitrators is costly, and results in an outsider, rather than the Trustees, ultimately making important decisions affecting the Benefit Funds. Consistent with my predecessor's approach, I have implored the Trustees to find a way to work together. To this end, I recommend Trustees seek the services of a mediator before apparently irresolvable issues are escalated to arbitration. This would provide the Trustees an opportunity to discuss and negotiate in the presence of an independent, less costly third party in the hope of facilitating an agreement without resorting to an external decision-maker. Eventually, the mediation process may provide the Trustees with the tools to negotiate and reach agreement without the intervention of third parties, which will be particularly needed when there is no longer a Court-appointed monitor. While this is an important issue, I do not believe my intervention, aside from providing this recommendation, is necessary or appropriate. At the same time, I remain willing and able to assist in the mediation of disputes, if requested. I have witnessed the two "sides" of the Benefit Funds working well together, and I hope for more of this collaboration.

H. <u>Hollow Metal Fund</u>

The Hollow Metal Pension Fund was 93.53% funded as of January 1, 2014 (the annual report for 2015 is not yet available). The Hollow Metal Pension Fund had $107 million total investment as of March 31, 2015, and experienced nearly 3% earnings in the first quarter of 2015.

In June 2015, I met with several of the employer trustees of the Hollow Metal Fund, and opened a dialogue which I expect will continue in the coming months. As described in my predecessor's Final Report, I, too, hope that the Hollow Metal Fund continues on a compliant path, and I will closely monitor its progress and assist in whatever manner appropriate.

I. <u>Labor Technical College</u>

In March, the Labor Technical College commenced a search for a new Director of Training following the former Director's removal for violating personnel policy. Walter Warzecha was recently appointed to the position. A graduate of the Labor Technical College himself, Mr. Warzecha has been involved in training apprentices since September 1999 when he first joined the Labor Technical College as a part-time instructor. He worked his way up to become Assistant Director of Training in November 2011. Mr. Warzecha was Interim Director during the search for a permanent Director, and he was selected for the permanent position from among three finalists.

One issue of note that Mr. Warzecha is addressing involves the facilities for divers. The District Council does not have a dive tank in which to train divers, and historically divers have traveled to unions in Boston and Philadelphia to receive the appropriate training. Mr. Warzecha has determined that the Labor Technical College will take on greater

responsibility in coordinating that off-site training for members, and he is exploring the possibility of accessing dive tank facilities locally in New York City.

IV. OFFICE OF THE INDEPENDENT MONITOR

A. Investigations

My predecessor's tenure was marked with numerous successful investigations which, among other things, targeted elements of organized crime within the Union. I feared that with Mr. Walsh's departure, those elements and other corrupting influences would immediately seek to regain a foothold within the Union. Accordingly, we remain ever steadfast in preventing such events, and our investigative capabilities, including our important relationships with law enforcement agencies and prosecutors, are stronger than ever. We have recently re-established communication within the Federal Bureau of Investigation, as well as the U.S. Department of Labor's Office of Inspector General, to augment our regular communication with the United States Attorney's Office.

With respect to sensitive on-going investigations, the details cannot be reported here. I will, however, supplement this Report with a letter under seal to Your Honor outlining any non-public investigative matters which should be brought to the Court's attention.

B. Hotline and Email Reporting

Calls to the Independent Monitor Hotline are infrequent. The Independent Monitor Hotline is forwarded to the desk phone of a member of my staff, who answers calls if she is available, and promptly returns messages that are left when she is out of the office. After obtaining basic information about the issue and the caller (if forthcoming), she informs me of the call. There have been approximately 25 calls to the Hotline over the past six months, excluding

solicitations, hang-ups, and individuals trying to reach the District Council or Benefits Funds. Many are reports of worksite CBA violations, which have been referred to the IG Office as the more appropriate recipient of the complaint or issue. Other calls have reported individual issues with the District Council administration, which my staff has reviewed on behalf of the caller. We have also received a similar number of emails to our designated complaint email address: monitor-mcgorty@crowell.com.

C. Removal of Local Union 157's Executive Committee Delegate

Along with my appointment as Independent Monitor, the 2014 Stipulation and Order modified the "veto power" historically held by the monitor. Paragraph 5.b.iii of the Stipulation and Order still gives the Independent Monitor the ability to remove individuals from positions of power, or to stop any wrongful action at the District Council, but the new version imposes a significant procedural change. Rather than a unilateral "veto," the new Stipulation and Order requires the Independent Monitor to present the evidence to the District Council's Executive Committee and recommend a proper action. The Executive Committee then determines whether there is "substantial evidence" to support the conclusion of the Independent Monitor and "to make the final determination on whether the action should or should not be taken or whether the individual should or should not be removed from office or employment or face other action." 2014 Stipulation and Order ¶ 5.b.iii(1).

On December 23, 2014, a week prior to the conclusion of his term, Mr. Walsh issued a Notice of Possible Action to John Daly, Executive Committee Delegate from Local Union 157 and District Council Shop Steward. The Notice alleged that Mr. Daly was paid by his employer for work he did not perform, in violation of both federal law, including the Taft-

Hartley Act (29 U.S.C. § 186(a) and (b)), and the District Council's Code of Ethics for Shop Stewards.

As per the process, following the Notice, Mr. Daly provided a response to these allegations which included specific accountings of when, on the days in question, Mr. Daly had worked the number of hours he had reported. Based upon Mr. Daly's response, I conducted additional investigation, and on March 10, 2105, I provided him with a detailed letter and spreadsheet outlining the newly-obtained evidence against him and my conclusion that the allegations were well-founded. On April 1, 2015, after several weeks of discussion with the undersigned, Mr. Daly's counsel submitted his second response and soon thereafter, I passed my recommendation along to the Executive Committee for its independent evaluation of the evidence and Mr. Daly's responses. Pursuant to the procedures set forth in the Stipulation and Order, on April 6, 2015, the Executive Committee deliberated on the question before determining that there was substantial evidence to support the Independent Monitor's recommendation, and Mr. Daly was removed from the positions of Executive Committee Delegate and Shop Steward.

Following the appellate procedures set forth in the Stipulation and Order, Mr. Daly filed a timely appeal to the Court and the matter has been fully briefed. I am hopeful this matter will be ruled upon prior to the Local Union 157's pending election, which I believe will be held in September 2015, such that it can be resolved on the merits rather than potentially rendered moot if the Executive Committee Delegate seat is filled.

V. **CONCLUSION**

In sum, my first six months at the Union have gone by incredibly quickly. In many respects, I feel that these months have served as my "transition" period above and beyond the two prior months as set forth in the 2014 Stipulation and Order. I look forward to continuing to work with the leadership, employees, and members on both the District Council and Benefit Funds sides.

I close with several thoughts and observations:

First, it is clear that the financial condition of the Benefit Funds is strong and, relatedly, the man hours are the highest achieved in a substantial period of time, likely in connection with the improving economy. Despite this good news, it is important to remember that when there is another economic downturn or when market share is eroded through non-union labor, the Funds will feel the impact. Careful and cautious financial decisions should be made now, when the economy is strong. At the same time, however, I have heard from many members who, while grateful for reductions to certain health insurance premiums and the reinstatement of dental and vision coverage, would prefer to experience the prosperity of the Benefit Funds reflected by a reduction in benefit costs and expansion of benefits coverage. I urge the Trustees on both the employer and union sides to work closely together to make decisions which balance fiscal responsibility with the needs of the working men and women of the Union.

Second, I encourage all in the Union, from the leadership of the District Council to the members themselves, to embrace the roles of the IG Office and Chief Compliance Officer. While there have been tremendous strides in the interest of compliance, as have been properly

lauded, there have been expenses associated with those programs, and those expenses are not often well-received by all stakeholders. On multiple occasions I have been presented with comparisons of costs with other unions locally and across the U.S. I have reminded all those who have expressed concerns regarding these costs that those labor organizations, unlike this one, simply do not have the history which resulted in the Consent Decree. Though the Consent Decree shall remain intact, the current monitorship may not be in place forever, and for those who wish self-governance for the Union, I encourage everyone to accept that these compliance systems are here to stay, as are their related (and necessary) costs.

Finally, but relatedly, I was surprised to learn that the delegate body of the District Council has been extremely outspoken regarding the investigators sought to be hired by the IG Office. One particular issue of contention was their experience as carpenters. The proposed candidates had both carpentry work experience and law enforcement or related experience, yet it seemed that the delegates' concern was that they were not carpenters for a sufficiently long tenure. I stress the importance of this issue because it raises deep philosophical issues that threaten the culture of compliance the Union has fought so hard to establish. Experience with labor organizations, or even as a carpenter, is certainly of value. But when it comes to staffing an entity such as the IG Office, with its critical investigatory function, a requirement that the staff be comprised of carpenters, especially a requirement of decades of carpentry experience, is not appropriate. A paramount qualification for investigator staff should be prior law enforcement or other investigatory experience, not the years worked as a carpenter. All should want the best, most qualified candidate for any job, and be willing to pay him or her based on market demands. Only then will the Union be capable of effective and efficient

decision-marking, and be able to demonstrate suitable self-governance, rendering my role unnecessary.

Should the Court require any additional information, please contact the undersigned at Your Honor's convenience. As indicated at the last status conference, we look forward to appearing before the Court on September 16, 2015, to discuss this interim report, as well as additional developments I anticipate in the coming months.

Date: July 1, 2015
New York, New York

Respectfully submitted,

By: ______________________________

GLEN G. McGORTY
JOANNE R. OLEKSYK
Crowell & Moring, LLP
590 Madison Avenue, 20th Floor
New York, NY 10022
(212) 223-4000
gmcgorty@crowell.com
joleksyk@crowell.com

Office of the Independent Monitor,
District Council of New York City
and Vicinity of the United
Brotherhood of Carpenters and
Joiners of America

CC:

AUSA Benjamin Torrance
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007

James M. Murphy, Esq.
Spivak Lipton, LLP
1700 Broadway, 21st Floor
New York, NY 10019

Raymond McGuire, Esq.
Elizabeth O'Leary, Esq.
Kauff McGuire & Margolis LLP
950 Third Avenue, 14th Floor
New York, NY 10022

Barbara S. Jones, Esq.
Theresa J. Lee, Esq.
Zuckerman Spaeder LLP
399 Park Avenue, 14th Floor
New York, NY 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

DISTRICT COUNCIL OF NEW YORK CITY AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, et al.,

Defendants.

90 Civ. 5722 (RMB)

SECOND INTERIM REPORT OF THE INDEPENDENT MONITOR

GLEN G. McGORTY
JOANNE R. OLEKSYK
Crowell & Moring LLP
590 Madison Avenue, 20th Floor
New York, NY 10022
(212) 223-4000
gmcgorty@crowell.com
joleksyk@crowell.com

Office of the Independent Monitor,
District Council of New York City
and Vicinity of the United
Brotherhood of Carpenters and
Joiners of America

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I. INTRODUCTION

Pursuant to Paragraph 5.l.iii of the Stipulation and Order filed in this matter on November 14, 2014 (the "2014 Stipulation and Order"), I respectfully submit this Second Interim Report as the Independent Monitor ("IM") of the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of American (the "District Council" or "Union"), and its affiliated Taft-Hartley fringe benefit funds (the "Benefit Funds" or the "Funds"). Herein, I endeavor to provide my assessment of the progress towards achieving the objectives of the 2014 Stipulation and Order and the Consent Decree approved by the Court on May 4, 1994; my view on the sustainability of reforms previously implemented; and my recommendations going forward.

II. THE DISTRICT COUNCIL

A. Overview

1. Man Hours and Member Statistics

According to data received from the Benefit Funds, the quarter of July 2015 - September 2015, saw nearly 5.5 million man-hours added to the Welfare Fund. This figure supports a projection of 21.9 million man hours for the fiscal year ending June 30, 2016, a projected 2.5 million hour increase over the fiscal year ending June 30, 2015.

According to data received from the United Brotherhood of Carpenters (the "UBC" or the "International") Ultra data system, there are 12,312 journeymen members in good standing and 1,539 journeymen members in arrears (13,851 total) as of November 30, 2015. Both figures are slightly lower than those reported in my First Interim Report (ECF No. 1628).

2. Financial Health

The District Council continues to hold approximately $30 million in accounts under management as of September 30, 2015, in addition to approximately $14.8 million in cash and cash equivalents as of June 30, 2015. The addition of equities to the District Council's investment mix on July 31, 2015, referenced in my First Interim Report at Part II.B, occurred at an inopportune time given the market, but the equities investments constitute less than 12% of the District Council's invested assets and the District Council continues to pursue an overall low-risk investment strategy.

As previously reported, the District Council's budget projects an operating loss this financial year. Although the District Council is in the midst of many worthy projects that should yield future efficiency gains (described in my First Interim Report at Part II.B), and it has been explained to me that the operating loss is exacerbated by the switch from modified cash basis accounting to accrual basis accounting, an operating loss in a year during which hours are predicted to be high is cause for concern. The operating loss does not appear to be due to lavish spending – I have seen firsthand how the Operations and IT Departments continually strive to cut costs. Going into the new year, I intend to make it one of my priorities to support the District Council in investigating areas with cost-saving potential and facilitate all cost-saving strategies that can be implemented without any detriment to the compliance gains which have been made.

3. Working Dues Check-Off System

As of December 11, 2015, there are 12,317 members who have signed cards authorizing the automatic deduction of working dues from wages, up from 10,580 members in June. This figure is equal to approximately 80% of the journeymen and apprentice population.

The working dues check-off system continues to increase the efficiency of the dues collection process. In my First Interim Report at Part II.A.8.a, I reported on confusion among some of the membership as to the operation of the working dues check-off system. To eliminate any confusion, the District Council's General Counsel drafted a notice for distribution which was sent to the District Council employees who are likely to field questions from members regarding the dues authorization card, attached hereto as Exhibit A. The notice clearly explains that even having filled out the card, a member's dues will only be deducted automatically if the employer's Agreement with the District Council provides for it. It also explains the consequences if dues are not remitted: unless the member has filled out the dues authorization card *and* the employer is a signatory to an Agreement that provides for employer-remittance of authorized dues, the member will receive an invoice for the dues and will lose good standing if he or she does not pay.

4. Information Technology Upgrade

The District Council went into great detail about the Information Technology ("IT") Upgrade in its "Twenty-Third Thirty-Day Report Regarding Electronic Job Reporting and Related Compliance Procedures" (ECF No. 1649) (the "Twenty-Third Thirty-Day Report"), attached hereto without exhibits as Exhibit B, so I will not repeat that content here. I will add as an update that the main applications used by the Charges and Grievance departments, housed in the Compliance Module, have been developed. The Agreements Department applications, housed in the Jobs Module, went live on December 14, 2015. The applications used by the Out of Work List ("OWL") and Electronic Reporting departments are expected to begin beta testing in February 2016. Additionally, the new payroll system completed this past summer (referenced in Part II.A.7) went into effect as of January 1, 2016.

5. Electronic Reporting of Time

As reported in the Twenty-Third Thirty-Day Report, the calculated compliance rate for time reporting by Shop Stewards continues to be high (98.91%). *See* Exh. B, Twenty-Third Thirty-Day Report, at 5. It has come to my attention that many Shop Stewards report time electronically using their smart phones rather than the tablet devices issued and maintained by the District Council. I submit this method of reporting the time – which seems both cost-effective as well as convenient for the Shop Stewards – may be something which should be institutionalized in place of the tablet devices. It is my understanding that the District Council already supports this option, and I am confident that the District Council will consider this reality when communicating with its current IT consultant, Data Research Group ("DRG"), about its needs regarding the electronic reporting module.

As also reported in the Twenty-Third Thirty-Day Report, the calculated compliance rate for employer time reporting for one- and two-person jobs remains high (96.06%). *See* Exh. B, Twenty-Third Thirty-Day Report, at 6. But as discussed therein, and in my First Interim Report at Part II.A.8.b, substantial effort is required by the District Council to pressure recalcitrant employers to report their time, and to confirm that the vast majority of jobs with no time entered are finished jobs which have not been closed rather than the product of unreported time. The Electronic Reporting Compliance Team has two full-time employees who are devoted to "chasing down" time which employers are required to report. Even with additional assistance, these two employees are only able to follow-up on a fraction of the days for which time has not been reported (in the most recently analyzed month, the Electronic Reporting Compliance Team addressed only 1,148 job-days, and 40,820 open job-days remained

without time after 72 hours). *See* Exh. B, Twenty-Third Thirty-Day Report, at 5. The Electronic Reporting Compliance Team has held numerous seminars to explain to employers their obligations under the collective bargaining agreements ("CBAs") and how to report time electronically. Even so it has filed over 1,600 grievances in 2015 alone against non-compliant employers. Yet employers still fail to close finished jobs, fail to report time promptly, and some hold-outs do not report time at all unless prompted by the District Council. To put it simply, the system of time reporting for 1- and 2-person jobs is not working as it should.

When considering how to improve this system, it is useful to understand the purpose of collecting this information. Theoretically, the reporting of time enables the Benefit Funds to check that the correct amounts of benefits are paid. But with 1- and 2-person jobs, where the employers both pay the benefits *and* report the corresponding time, the value of the comparison is limited.[1] Therefore, the predominant benefit of employer time reporting is that it provides the District Council with information about 1- and 2-man jobs, furthering its "ability to know with certainty where covered work is being performed and by whom it is being performed . . . so that the District Council can police its jurisdiction more effectively and identify employers violating its CBAs." Fourth Interim Report of the Review Officer, at 24 n. 12, ECF No. 1226. But under the current system, the District Council cannot use employer-reported time for real-time compliance monitoring because the time is not submitted immediately, and the employers'

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[1] In the past, the District Council attempted to collect hours on 2-person jobs by requiring one of the workers on the job to report the hours. This, however, placed too great a burden on Council Representatives, who had to repeatedly appoint and register time reporters because such jobs often involved frequent changes in staffing or were of short duration. Compliance with time reporting requirements was also an issue under this system.

widespread failure to close inactive jobs clouds the District Council's retrospective picture of covered work, obscuring which jobs require investigation.

First and foremost, I am hopeful that there may be a way to increase the employers' compliance with closing jobs. Though not explicitly stated in the CBA side-letters memorializing employers' time reporting responsibility, the employers' obligation to inform the District Council of job completions is inferred because otherwise the employers' failure to report time would be a violation of the CBA. If employers promptly report when jobs become inactive, Council Representatives and Office of the Inspector General Jobsite Integrity Inspectors could make compliance checks at active jobsites without any exertion by the Electronic Reporting Compliance Team to verify which open jobs are actually active.

Furthermore, I believe that employers should remit benefits under the job numbers assigned by the District Council. Requiring employers to remit benefits under the job number assigned by the District Council is not a new idea – it was formally recommended by Review Officer Dennis Walsh in the summer of 2014. *See* Final Report of the Review Officer, at 39-40, ECF No. 1602. Linking the benefits remitted by employers to the District Council's job numbers would dramatically improve the ability of the District Council to monitor jobsites for compliance with the CBAs.

Firstly, if employers must remit benefits through the job number assigned by the District Council, the Electronic Reporting Compliance Team could automate the closing of jobs. In October, there were over 40,000 open days of 1- and 2-person jobs that did not have time

reported within 72 hours. The Thirty-Day Reports have indicated that the majority of these job-days belong to jobs which are finished but have not been formally closed.[2] Any automated closing of jobs risks closing jobs that are in fact active but have tardy time-reporters, and, presently, closing an active job would foreclose any compliance monitoring by the District Council. However, if benefits were required to be paid under job numbers, any active job closed due to the delinquent reporting of time would be re-opened when the employer paid the benefits.[3] As stated above, an accurate picture of which jobs are active is crucial to the District Council's CBA compliance efforts.

Secondly, if benefits are linked to a particular jobsite through the District Council's job numbers, the District Council would know definitely where its members are working. Under the current system, with respect to 1- and 2-person jobs, the District Council relies on the employers' accurate reporting of time and the workers' reporting of inaccuracies viewed through Operation Watchdog. To be sure, the District Council has identified CBA violations with these methods, for example discovering 1- or 2-person jobsites which in fact have more than two carpenters working without a Shop Steward, in violation of the CBA. However, with so many open job-days with no time reported, it is unknown how many violations might persist undetected. Even if the closing of jobs is improved, employers and workers are likely to

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[2] The persistence of finished jobs languishing as "open" has been a long-standing problem for the District Council. *See* Fourth Interim Report of the Review Officer, at 24-25, ECF No. 1226 (explaining that the vast majority of the over 40,000 jobs categorized as open in 2012 were actually inactive).

[3] If benefits are not paid at all, the members can see that and should report the employer's violation to the Benefit Funds at 212-366-7300, as they are expected to do now.

be more accurate and vigilant when the benefits themselves are implicated. Remitting benefits under job numbers could perhaps even eliminate the need to require employers to duplicatively report time for 1- and 2-person jobs to the District Council in addition to paying benefits, though recommendation of such an option is premature.

I understand that remitting benefits by job number is a hardship for certain types of employers that move employees across many different jobsites. To that end, I am hoping that highlighting this issue will start a dialogue among the District Council, the contractor associations, and my office aimed towards reaching the goal of remitting benefits by job number in a workable way. Some contractor associations have taken the position that whether carpenter hours should be reported under a unique number for each specific job is a matter appropriately resolved in a CBA, not through intervention by the IM. If that goal can be met through negotiation and agreement, then all the better. I intend to facilitate these conversations as much as possible, as I ultimately believe that the District Council needs to have benefit payments linked to jobsites in order to effectively monitor compliance with its CBAs.

B. Developments

1. Contract Negotiations

As of the time of this writing, the District Council and the contractor associations of The Cement League, the Greater New York Floor Coverers Association, Inc., and the Concrete Contractors Association of New York, respectively, have not agreed to new CBAs to

replace the prior ones which expired on June 30, 2015.[4] Despite the creative efforts of the District Council leadership to increase market share, such as the introduction of provisional journeymen (discussed *infra* Part II.B.3), pressure from the growing nonunion sector persists. To wit, a number of general contractors have dropped out of the BCA and gone "open shop," along with the Contractors' Association of Greater New York ("CAGNY"). The EST has spoken plainly to the Delegate Body about the challenges the District Council faces from the nonunion sector, and the General President of the UBC has recently visited to discuss these challenges as well. I was present for a meeting between the General President and members who work primarily on high-rise concrete jobs where they discussed the creation of a new local union ("Local") comprised of concrete specialists, which is examined in the following section. Despite universal recognition of the need to increase market share, the members are fundamentally divided as to efforts like Project Labor Agreements ("PLAs") or other measures which reduce wages, as part of the strategy to recapture man hours from the nonunion sector.

2. The New Local Union and the Independent High-Rise Concrete CBA

After months of fruitless negotiations with The Cement League, the International became involved in the District Council's efforts to regain market share in the high-rise concrete sector. The joint-effort of the District Council and the International has two prongs: (1) the development of an "independent" CBA for contractors in the concrete sector; and (2) the creation of a new Local devoted to concrete workers.

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[4] The Building Contractors Association, Inc. (the "BCA") agreed to a one year extension of its CBA with the District Council, expiring June 30, 2016, with an optional extension of an additional year subject to other terms.

With the facilitation of the International, the District Council entered into talks with developers about the needs of the developers, contractors and members in the high-rise concrete sector. Based on these discussions and input from the membership, the District Council drafted the "Independent Agreement for High Rise Concrete for Commercial, Hospitality, and Residential Buildings," which was approved by the Delegate Body at a special meeting on January 5, 2016. This CBA expands the application of the provisional journeyman market recovery effort and adds a new lower-cost category of carpenter, called a Utility High Rise Concrete Worker, for the purpose of stripping forms. These provisions are aimed at producing a lower average package of wages and benefits for the employer in order to grow market share without slashing the wages and benefits of experienced carpenters. The hope is that with the support of the developers, individual concrete contractors will sign this agreement. This CBA is now before Your Honor (ECF No. 1652).

In conjunction with this CBA, the International is in the process of creating a new Local within the District Council. The International has the power to create new Locals pursuant to Section 6-A of the UBC Constitution. This Local will exist to better meet the needs of high-rise concrete workers, and focus the Union's initiatives to increase market share in the concrete sector. The new Local will bear the number "212," and is expected to draw its membership from other existing Locals, as well as attract nonunion concrete workers. The International has solicited the membership for those interested in serving in a leadership capacity in Local 212. Pursuant to Section 10-M the UBC Constitution, the International will appoint initially all officers of Local 212. Pursuant to the 2014 Stipulation and Order which grants me jurisdiction over all constituent Locals, I will examine carefully the International's selections, as well as any

suggestions for new procedures or policies which differ from those currently utilized by the District Council or the other Locals.

Arising from both of these developments, the District Council plans to hire four Council Representatives specifically to service jobsites under this new CBA. This CBA, which creates new categories of workers, is expected to present new challenges in its initial implementation. The additional Council Representatives will ensure the District Council has adequate presence on the jobsites to monitor compliance with its provisions. It is my understanding that, as an indication of its support, the International is to pay for the salaries of two of the Council Representatives for some unspecified time period.

3. Market Recovery Efforts: The Provisional Journeymen

As of the time of this writing, there are still just a handful of jobs which have utilized this provision, due to few concrete job-starts this time of year. The Area Standards Department anticipates that concrete job-starts will increase in the new year, provided that the District Council has come to an agreement with concrete contractors either independently or through The Cement League. As previously noted above at Part II.B.2, the Delegate Body of the District Council has recently approved an unsigned CBA which would extend the utilization of provisional journeymen in high-rise concrete work. Though modest in scale for now, the program appears successful. Two of the contractors which hired provisional journeymen when the addendum first went into effect have re-hired the same provisional journeymen (pursuant to full mobility), suggesting that the Area Standards Department has attracted high-quality carpenters from the nonunion sector.

4. The OWL Rules

As presented in my First Interim Report, there have been many discussions concerning potential changes to the OWL rules, both within the OWL Rules Working Group and with my office. The general opinion offered by the District Council leadership with respect to the three-referral rule is that it creates unfair scenarios because it has no sensitivity to the hours received from the dispatches, meaning that an individual could be dispatched to a years-long job and then return to the top of the OWL when it ends; similarly, an individual could be dispatched three times to jobs which amount to only a handful of hours in total. I remain open to proposals by the District Council to modify the OWL rules, though I have emphasized that any change to the OWL dispatch rule must be backed by empirical data: How often do the scenarios described above occur? I am concerned that anecdotal evidence of unfair scenarios is just that, and I am opposed to making any changes to the rules based on what may be more of an exception than a common occurrence.

We are all well aware of the compliance perils of an hours-sensitive dispatch rule which have been documented in numerous of the Review Officer's reports. *See, e.g.*, Final Report of the Review Officer, at 7, ECF No. 1602. Specifically, re-introducing an hours-sensitive dispatch rule would reintroduce the problems of individuals quitting a relatively short-term job just before hitting the hours threshold in hopes of being dispatched to a longer one, and skill-puffing since being fired for not having the necessary skills would not impact the individual's ability to continue to be dispatched. Thus, before I can even begin to consider a modification to promote fairness, I need to know how often the current three-dispatch rule produces what the District Council leadership has deemed to be unfair results.

Unfortunately, I have been informed that this data is nearly impossible to produce with the IT systems of the International and the District Council that are currently in place. The International has been in the process of upgrading its member data system for the past two years. Once the International's new system, Personify, is in place, the District Council leadership believes that it will be able to obtain these statistics. Only then can we begin to evaluate the need for any proposed modifications to the dispatch rule.

Notwithstanding, I am pleased to report that the District Council has proposed and received approval to make several alterations to other OWL rules. In great need of change was the rule which set the hours the OWL could call members for referrals. These hours, set in the days before cell phones, had been from 3:00 p.m. to 6:00 p.m. only, and resulted in many immediate referrals being refused due to lack of time to prepare and/or commute. The referral hours have been changed to 9:00 a.m. to 9:00 p.m., and, correspondingly, the penalty for not answering an OWL call was removed. Extending the call hours have allowed for a quicker filling of immediate job referrals, which previously had to be held until 3:00 p.m. no matter how early it was called in by a contractor. Other changes to the OWL rules include requiring individuals without a UBC work permit to obtain one at either of two locations before registering to the OWL, and charging a member who accepts a dispatch as an Acting or Temporary Shop Steward a referral only if the member is not replaced by the Certified Shop Steward before the job ends.

In my First Interim Report, at Part II.A.6, I recommended that the OWL rules document be completely redrafted to re-organize the information in a useful manner and to use clearer language where possible. The District Council has provided my office with an initial draft

of the revised OWL rules, which we are reviewing. When we have a complete and mutually agreed-upon version, it will be brought to the Government for consent.

C. District Council Departments and Committees

1. Office of the Inspector General

The Office of the Inspector General (the "IG Office") continues to fill a central role in policing employer compliance with CBAs and member compliance with the UBC Constitution and District Council Bylaws.[5] A summary of the IG Office's recent activities can be found in "Office of the Inspector General Presentation Report for November 2015 for the District Council Delegate Body," attached hereto as Exhibit C.

It has come to my attention that there is a lack of responsiveness by District Council members to summonses from the IG Office for interviews and by members of Locals not affiliated with the District Council ("out-of-towers") to charges filed by the IG Office for failure to pay dues. This concerns me both because it demonstrates a general disregard of the IG's or District Council's authority, respectively, and also because it prompts a significant volume of cases brought by the IG Office – discussed in the context of my team's review of the trial system below at Part IV.B. The same team which performed the review of the trial system has taken foundational steps in its review of the IG Office promised in my First Interim Report at Part II.C.1.b.

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[5] I would also like to note that the District Council's Representation Center, led by the District Manager and two Lead Managers, employs nearly three dozen Council Representatives (sometimes referred to in the labor movement as business agents) who are the regular field representatives of the Union, visiting many jobs every day to enforce the collective bargaining agreements, troubleshoot problems on the jobs, and handle grievances.

Overall, I have found the IG Office to be extremely responsive to all I have asked of it. While I am hopeful my team's review will yield information which will improve the functioning of the IG Office as a whole, IG Scott Danielson has been a consistent partner with my office in upholding the compliance protocols of the Consent Decree. On numerous occasions, I have asked the IG to undertake investigations which have been referred to the IM more out of habit than for any specific purpose. My goal is to ingrain in the membership that most standard complaints – ranging from contractor non-compliance to member-on-member disputes to jobsite safety issues to perceived hour-reporting violations – should be lodged with the IG Office rather than with the IM. This fundamental shift is crucial to establish a system where the Union can function in compliance with the Consent Decree without the daily involvement of a monitor. As the Consent Decree is permanent, so must be the compliance protocols. The IG Office is the guardian of these efforts.

One investigation handled by the IG Office is worth detailing to the Court. In August 2015, both the IG Office and the IM received independent reports of irregularities with one of the Local's finances; it was alleged that (1) an officer of the Local used the Local's credit card to pay for a personal expense (what he believed to be an emergency use to pay to have his ticketed and towed vehicle released); (2) at least one check had been issued out of the Local's bank account with a single officer's signature (when two were required for its issuance); and (3) the Local's staff was required to work overtime on meeting nights to ensure stipend checks would be issued on the same night the meeting occurred, thereby wasting the Local's resources. The IG Office, working in conjunction with the Chief Compliance Officer ("CCO"), obtained relevant financial documents and conducted a series of interviews, the substance of which were

subsequently reported to me in detail. Based upon the foregoing, it was determined that the first two allegations were well-founded, but there was no evidence to support the third claim.

On the issue of credit card misuse, it was found that the local union officer's use of the credit card for a personal expense was improper regardless of the circumstance, but was mitigated by the fact that the officer brought it to the attention of the Local's bookkeeper the next morning prior to anyone else identifying the issue. After promptly reporting it, the officer also took all necessary steps to reimburse the Local, and the Local's executive board and membership were informed about what had occurred. In light of the officer immediately reporting the incident, and the absence of any financial harm, it was determined that the officer did not act in bad faith or with intent to harm the Local.

On the check issue, the same local union officer issued a $3,409.81 check payable to a vendor for an election-related expense. This check bore only a single signature, violating Section 37 of the UBC Constitution, and both the officer and the local union's bookkeeper were aware a second signature was required. Upon questioning following the issuance of the check, both the officer and the bookkeeper were fully transparent regarding their actions and took steps to issue a properly signed check to replace the original. In light of this, the fact that the expenditure itself was authorized and necessary, and the fact that the Local suffered no financial harm as a result of the check's issuance, it was determined that neither the officer nor bookkeeper acted in bad faith or with intent to harm the Local.

In light of these determinations, several corrective actions were taken. First, the CCO met with the Local's president (who was not the offending officer) and advised him of the UBC Constitutional requirement that all checks issued from the Local's accounts must be signed

by two officers, with no exceptions. The President acknowledged his understanding of this rule and stated that he had advised the other local union officers of the requirement. Both the IG and the CCO met with the offending officer and personally advised him of the UBC Constitutional requirement that all local union checks be signed by two officers, and he acknowledged his understanding of the requirement. Second the IG and CCO issued a formal letter of reprimand to the offending officer because the use of the local union credit card to pay for a personal expense – even under exigent circumstances and even without the intent for the expense to ultimately be borne by the local union – was completely improper and violated the UBC Constitution. In light of the circumstances discussed above which led the IG and CCO to determine the officer did not act in bad faith, including his prompt and complete transparency and the absence of financial harm to the Local, the IG and CCO determined that a letter of reprimand was a suitable consequence, and more appropriate than removing him from office.

I highlight this investigation and these findings for several reasons. This is an excellent example of the IG Office and CCO working together to investigate and resolve the type of matter which they should be able to typically handle – a prerequisite to the end of a monitorship. Further, I write about this occurrence to highlight the seriousness of the conduct in question. I believe the IG and CCO conducted a thorough investigation and do not second guess their findings; based upon an independent review of their report and findings, I have no objection to their conclusions and the leniency afforded the Local's officer. But even though the officer's actions were not ill-intended, this is an opportunity to make a clear statement to all those with responsibilities in the District Council and the Locals (and even the Benefit Funds, for that matter): those with fiduciary and financial responsibilities are held to a high standard, and any

improper actions (regardless of intent) shall be immediately addressed. All those in such positions of responsibility are on notice that it is their responsibility to know what the UBC Constitution and all other applicable rules require of them, and that their conduct will be scrutinized.

2. Compliance

Of similar importance to the IG, the CCO serves a necessary function in monitoring the District Council's existing safeguards. As part of his responsibilities, the CCO has led the effort to revise many of the District Council's policies and manuals – a crucial aspect of the establishment of permanent compliance protocols. As an initial matter, the CCO has revised the District Council's Accounting Manual and Personnel Policy to remove references to the Review Officer, distributing his responsibilities among roles at the District Council. Revisions have also been made to fill omissions and render the written policies consistent with actual, and best, practices. Additionally, the Accounting Manual is being updated to reflect the change to accrual basis accounting and make the purchasing policy more workable. The District Council has maintained an open dialogue with my office regarding these revisions, and we intend to submit final versions to the Government in the coming months.

Additionally, the District Council has been working on a manual for Council Representatives, as discussed in my First Interim Report at Part II.A.9.a. The District Council has documented the current responsibilities and practices of Council Representatives, which will become a tool against which to measure compliance. I expect to see this document be refined over time to reflect best practices going forward.

A section of my First Interim Report (Part II.A.10) was devoted to the issue of Delegates who had been removed from their positions because of failure to pay dues. One of my conclusions was that the eligibility of Delegates must be regularly assessed to preempt any accusation that the timing of removal of Delegates is political. The District Council has done just that. It has established a quarterly review of all Delegates' good-standing and, if appropriate, takes action to remove from office those officials whose failure to pay dues renders them ineligible to serve in a leadership capacity for the District Council. A single Delegate was removed in the most recent quarterly review of Delegate eligibility.

3. IT Department

Apart from the IT upgrade headed by DRG, the District Council's internal IT Department has been continuously improving its IT network. The IT Department has brought online the server virtualization platform, which insulates the server from defects in or attacks on the District Council's hardware. Also, the IT Department will soon be upgrading the internal domain database (the electronic storage system) from its current 2003 version to the 2012 version.

A new vendor has been chosen through an RFP process to create a new website for the District Council after the previously-engaged vendor failed to perform as expected. The project is managed by the Communications Department with assistance from the IT Department. The new website should help streamline the dissemination of information to the membership. I believe such communication, and corresponding transparency, is a crucial element of a compliant organization.

4. Grievance Department

As documented in my First Interim Report at Part II.C.3, the District Council faces an overwhelming backlog of grievances. The Grievance Department reports that 3,286 grievances have been filed in 2015, bringing the total number of open grievances to 6,641 – a significant increase from the 5,500 reported six months ago.

To the District Council's credit, it has recently changed a practice which consumed time and resources while failed to yield a corresponding benefit. By way of background, there are two types of grievances the District Council files against contractors for CBA violations: (1) grievances on behalf of individual members and (2) grievances where there was no individual member on the job wronged, *e.g.*, violations of manning ratios prior to full mobility. Prior to the present policy change, upon receiving an award for the second type of grievance, the Grievances Department would undertake a time-consuming and cumbersome manual review of the paper OWL records from the time period of the violation (generally many years ago due to the backlog). The Grievance Department would then identify an individual who would likely have been called, given the individual's skills and position on the list, and send that individual the penalty money recovered from the contractor. In addition to being time-consuming, it is not clear whether this process righted a wrong as there was no certainty that the individual receiving the penalty money actually suffered any harm caused by the contractor's CBA violation. Indeed, the identified individual may have actually benefited from not being referred to the violator's job if the job to which the individual ultimately was referred (because he or she was still on the OWL) lasted longer. Even more plausible is that, despite that individual's location at the top of the list at the time the job should have been called in, there are

many intervening factors which could have kept that individual from being referred to the violator's job. These factors include the individual simply not answering the phone, refusing the job due to its location or timing or for a safety reason, or being unavailable to take the job. These are but a few examples of the reasons why the previous system – though intended to provide just restitution for a specific, aggrieved member – was not foolproof.

Accordingly, I concurred that the mode of redress for these specific CBA violations does not necessarily lead to the intended effect of compensating the "victim" of the violation. The failure of a contractor to abide by the manning ratio requirement in reality affects everyone eligible for that job who is registered to the OWL. The Grievance Department's attempt to recreate the past in an over-simplified way did not produce just results. Thus, I fully endorse the time-saving policy change of depositing the penalties from the grievances – where not brought on behalf of any specific "victim" – into the General Fund, so that the entire membership benefits from the District Council's compliance efforts. The District Council's General Counsel's memorandum affirming the legality of such a policy change is attached as Exhibit D.

The Grievance Department has recovered $1,910,876.73 from employers as of December 23, 2015; of those funds, $38,711.14 has been deposited into the General Fund pursuant to the policy change described above.

5. Accounting Department

The IT upgrades to the Accounting Department, described in my First Interim Report at Part II.A.7, are functioning in a satisfactory manner. The new Assessments system provided an opportunity for the District Council to create new working dues assessment notice

forms. These new forms use clearer language, and I am hopeful they will serve to avert misunderstandings such as those voiced by a number of Delegates removed for failure to pay their working dues assessment earlier in 2015, as explained in Part II.A.10 of my First Interim Report.

The Audit Committee, whose initial funding was reported in my First Interim Report at Part II.C.2, asked its CPA firm[6] to review the new Assessments system. It has been communicated to me that Calibre finds the system to be quite sophisticated in general, but it has noted several areas which might benefit from tighter controls. With the final draft of recommendations to be shared with the District Council next month, its details, and the progress the District Council makes on those items, will need to be covered in the next interim report.

As previously mentioned in my First Interim Report at Part II.C.2, the Benefit Funds' bill to the District Council for cost reimbursement in early 2015 prompted a nearly year-long conversation about the bases for allocating costs to the District Council. Many items in contention have been resolved, and I believe that the District Council and Benefit Funds are close to a conclusive agreement.

Lastly, it is worth mentioning that the Accounting Department now has an Assessments Head, which will allow the Chief Accountant to better focus on her overall management responsibilities. As noted in my First Interim Report at Part II.C.2, the creation of

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[6] At its inception, the Audit Committee issued an RFP for an accounting firm and selected Calibre CPA Group, PLLC. A member of that firm attends all Audit Committee meetings.

the position was recommended by the Audit Committee, among others, and I credit the District Council for recognizing it as a priority.

6. OWL Department

Below is a summary of OWL activity from July 1, 2015, to November, 30, 2015:

Dispatches:

	July 2015	August 2015	September 2015	October 2015	November 2015
Regular Dispatches	1,373	1,410	1,146	1,454	990
Immediate Dispatches	17	37	12	9	5
Off-Hour Dispatches	158	230	60	125	60
Total Dispatches	**1,548**	**1,677**	**1,218**	**1,588**	**1,055**

The number of dispatches has remained relatively stable since the filing of my First Interim Report.

Calls Not Resulting in Dispatch or Loss of Dispatch:

	July 2015	August 2015	September 2015	October 2015	November 2015
Unanswered[7]	**1,451**	**1,414**	**2,603**	**3,024**	**1,812**
Other	**29,076**	**36,990**	**4,687**	**10,003**	**3,863**
Total	**29,076**	**36,990**	**7,290**	**13,027**	**5,675**

The chart immediately above shows an increase in unanswered OWL calls corresponding with the date of the changes to the OWL rules discussed above at Part II.B.4. To the extent this situation is detrimental, I would be amenable to considering further modifications of the rules to address this concern. Accordingly, I advise the leadership of the District Council

[7] Unanswered calls resulted in loss of dispatch before September 2015.

to seek member feedback on the extended call hours and consider fine-tuning this rule to maximize job placement in a convenient and efficient way. Still, unanswered calls represent just a fraction of the total calls which do not result in a dispatch.

I have tracked the number of calls made by the OWL which do not result in a dispatch because those calls represent an expenditure of time on something that is not achieving its intended purpose. While expenses incurred to administer the OWL are often necessary and even desirable if greater convenience is gained for the members and employers, this is an area ripe for efficiency gains. Over the past few months I have heard the concept of an automated text-messaging system floated as a possible alternative to the tens of thousands of calls that the OWL makes every month. I recommend that the District Council thoroughly researches such a system, as it should avail itself of technological changes which improve efficiency and make prior systems outmoded.

D. Litigation

As the Court is aware, the District Council has an interest in a number of litigation matters of note, several of which were brought to Your Honor's attention by General Counsel to the District Council, James M. Murphy, Esq. of Spivak Lipton LLP, earlier in 2015. Based upon the Court's expressed interest, below are summaries of these matters:

1. Continuing Litigation

- *United States v. District Council of N.Y.C. and Vicinity,* No. 15-3300-cv (2d Cir. docketed Oct. 16, 2015), on appeal from No. 90-CV-5722 (RMB) (S.D.N.Y. filed Sept. 6, 1990). As Your Honor well knows, former Executive Delegate and Shop Steward to the District Council, John Daly, appealed his removal from those positions to this Court. Pursuant to this Court's affirmation of his removal, Mr. Daly appealed to the Second Circuit. Mr. Daly's appeal brief is due January 28, 2016.

- *New York City & Vicinity District Council v. Association of Wall-Ceiling & Carpentry Industries of New York*, No. 15-1574-cv (2d Cir. docketed May 13, 2015), on appeal from Nos. 14-CV-6091 (RMB)/90-CV-5722 (RMB) (S.D.N.Y. filed Aug. 5, 2014 and decided Apr. 27, 2015). As reported in my First Interim Report and later to the Court at the September 16, 2015, status conference, the Wall-Ceiling & Carpentry Association has appealed this Court's ruling, and the District Council has engaged special appellate counsel, Andrew D. Roth of Bredhoff & Kaiser, PLLC, to brief and argue the appeal. The appeal is now fully briefed by the parties and oral argument will likely be heard by the Second Circuit in the coming months.

- *The Cement League and Northeast Regional Council of Carpenters*, NLRB Case No. 3-CA-126938. As reported in the First Interim Report, the ALJ presiding over this matter held that a provision in the District Council's CBA requiring the 1:1 matching of non-members with referrals from the non-discriminatory OWL is on its face unlawful under the NLRA. Both the District Council and The Cement League filed exceptions and supporting briefs against the ALJ's Decision & Order with the NLRB in Washington, D.C. I filed an amicus brief in support of the positions taken by the District Council and The Cement League. The NLRB accepted the amicus brief and the appeal is now fully submitted. The District Council's special appellate counsel, Mr. Roth, will be assisting on this matter should the NLRB rule against the District Council and further appeals to this Court or to an appropriate Court of Appeals are warranted.

- *Herzog v. NYC District Council of Carpenters Pension Fund et al.*, Index No. 154427 (N.Y. Sup. Ct., N.Y. Cnty. filed May 4, 2015 and decided Sept. 1, 2015). As reported in the First Interim Report, arbitrator Robert Herzog brought this action to recover fees allegedly owed to him. The complaint was dismissed both as against the District Council and the Benefit Funds, and Plaintiff has filed a notice of appeal.

2. Final Decision

- *United Brotherhood of Carpenters v. Tappan Zee Constructors, LLC*, No. 15-1002-cv (2d Cir.), on appeal from 14-CV-03688 (ALC) (S.D.N.Y. filed May 22, 2014 and decided March 25, 2015). As reported in the First Interim Report, the UBC had sued Tappan Zee Constructors, LLC in U.S. District Court to confirm the first of two contradictory awards by an arbitrator concerning the jurisdiction of the District Council Local 1556. The District Court enforced the second award, holding that the first award was preliminary. The UBC appealed, and in an opinion filed on October 20, 2015, the Second Circuit panel affirmed the District Court's decision.

3. New Litigation

Creative Construction Servs. Corp. et al v. District Council of Carpenters, No. 14-CV-07629 (S.D.N.Y. filed Sept. 19, 2014). This is an action filed by a signatory contractor

and its principal alleging that the District Council has engaged in racial discrimination and retaliation against them by enforcing the CBAs with respect to referrals, primarily of Shop Stewards, from the District Council's OWL. The plaintiffs' claims for at least $2 million in damages are filed under 42 U.S.C. § 1981 and the New York City Human Rights Law. The U.S. District Court granted in part the District Council's motions to dismiss, and the plaintiffs filed a Second Amended Complaint. The parties are currently in the discovery process. Pursuant to the case management plan, non-expert discovery closes on July 15, 2016.

III. THE BENEFIT FUNDS

A. Overall Condition of the Funds

The total available assets of the District Council's Benefit Funds are approximately $5.38 billion as of September 30, 2015. The pension fund was 94.1% funded as of July 1, 2015, according to the Funds' actuarial certification. As of September 30, 2015, total assets in the Pension Fund were $2.67 billion, with the investments having suffered a YTD loss. Similarly, the Welfare Fund's investments have suffered a YTD loss as of September 30, 2015, and its total assets were valued at $385.6 million as of that date. The Annuity Fund contained approximately $2 billion in assets as of September 30, 2015.

B. Hollow Metal Pension Fund

The Hollow Metal Pension Fund ("HMF") had approximately $100 million in total assets as of September 30, 2015, having experienced composite investment growth of only 0.3% and net withdrawals of nearly $7 million YTD as of that date.

HMF has begun to develop its own ISSI benefits administration system entitled "HOMEBAS." HMF recently finished providing ISSI with the feature function lists (rules, triggers, and work flows) and the template letters used for programming, and expects to begin parallel testing in September 2016.

C. Benefit Collections

Virginia & Ambinder, LLP ("V&A") continues to handle the collections for the Benefit Funds. Year to date, as of November 25, 2015, V&A has recovered $10.7 million on behalf of the Funds at a cost of $1.2 million in attorneys' fees and costs. This brings the net recovery for the Funds since the inception of the collections program in June 2011 to approximately $24 million.

During the past few months, the District Council recovered $1.3 million owed by inactive employer Nastasi & Associates on behalf of the Funds. The Funds have a pending action against the principal of Nastasi & Associates for breach of fiduciary duty to recover remaining amounts owed. Also, Nordic Interior, Inc. is continuing to make payments on the over $1 million award issued against it, as reported in Part III.E of my First Interim Report.

D. Compliance

Julie Block, Chief Compliance Officer of the Funds, headed an investigation into what was initially thought to be a data breach. After a series of events, it came to the attention of the CCO that an employee who had resigned had sent proprietary and confidential information to that ex-employee's personal e-mail account. Ms. Block conducted employee interviews and uncovered additional wrongdoing by that ex-employee as well as a current employee. Fortunately, the investigation concluded that the Funds' encryption software worked as intended and there was no improper use of the Funds' data. The current employee found to have committed wrongdoing was terminated, and Ms. Block is redoubling the employee training materials' emphasis on data security.

Additionally, Ms. Block continues to conduct periodic audits of various functions of the Funds, such as service provider agreements and standard operating procedures.

E. Developments

As IM, I have oversight responsibilities over the Benefit Funds. Unlike in my first six months as IM, my staff and I have had substantial opportunity to focus on the functioning of the Benefit Funds in the second half of 2015, and we look forward to a continued opportunity to assist the Funds going forward.

The most significant development at the Funds in 2015 was the departure of its Executive Director, which was reported in my First Interim Report at Part III.B. The Board of Trustees has undertaken an extensive search for a permanent Executive Director which has not yet concluded. The Board is currently considering a strong candidate, and Korn Ferry, the executive search firm hired last summer, recently has identified two additional candidates for consideration. While the search continues, Interim Executive Director Regina Reardon has been managing the Funds, utilizing her extensive experience in employee benefits. I have recently had an opportunity to sit down with Ms. Reardon to discuss the Funds and its short-term needs, and I look forward to working with her and the Board of Trustees over the next months to effectuate what I believe will be positive changes to improve the organization's functioning.

As part of its 5-year IT strategic plan, discussed in my First Interim Report at Part III.C, the Benefit Funds have completed a server and storage infrastructure upgrade. This upgrade entailed redesigning the Funds' server environment to employ virtualization technology and the most recent Microsoft operating system, and installing and configuring several new hosts

and a new storage system. The upgrade also included new installations of the Benefit Funds' anti-virus endpoint, web protection, and reporting software suites.

Additionally, the Benefit Funds' accounting software, Great Plains, has been upgraded to the most current version of Microsoft Dynamics GP 2015. The new version provides a number of additional features, such as advanced reporting. The Benefit Funds have also begun the implementation of Bit9+Carbon Black software, which will provide the Funds with additional protection from targeted cyber-attacks. Implementation is expected to be completed within eight weeks. Additional work detailed in the IT strategic plan will be performed throughout 2016.

On a less positive note, because a number of contractors have not re-signed CBAs with the District Council, the Benefit Funds have initiated the processes associated with assessing contractor withdrawal liability.

F. Ongoing Litigation

Other than defending a handful of employment discrimination claims, the Benefit Funds have not been subject to much litigation. As mentioned above at Part II.D.1, the suit brought by Mr. Herzog was dismissed. The litigation by former Executive Director Joseph Epstein, discussed in my First Interim Report at Part III.F, is ongoing: the Funds filed a motion to dismiss on October 2, 2015, which is now fully briefed.

G. Labor Technical College

For some time, the Labor Technical College (the "LTC") has made do with insufficient space, both in terms of capacity for the number of students and in terms of features

helpful for the trades taught. For example, the ceilings are not high enough for the construction that takes place in some classes, and there is no industrial exhaust system.[8]

The Co-Chairs of the Board of Trustees have been charged with exploring alternative locations for the LTC. In consultation with Gallagher Fiduciary Advisors, the Co-Chairs issued an RFP for a consultant and strategic advisor in connection with the LTC's potential relocation to alternative premises, and the potential disposition of the LTC's existing condominium unit at 395 Hudson Street. The Benefit Funds selected CBRE from among the respondents.

As did the Benefit Funds, the LTC redesigned and upgraded its infrastructure hardware and operational software, adding a new storage system and replacing servers with virtual installations. This brought the LTC's IT environment up to the current level of technology and added many additional features in areas such as security and portability. The latter is particularly critical considering that the LTC may change locations in the near future. With the upgrade complete, additional work slated for the LTC, detailed in the Funds' IT strategic plan, will be performed throughout 2016.

Despite the challenges posed by the facilities and technology, Walter Warzecha, the head of the LTC continues to improve the LTC as an institution. Over the past six months Mr. Warzecha has focused the LTC's recruitment efforts on attracting better candidates, and has introduced a one-day financial awareness class to help apprentices prepare for the income

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[8] To compensate for the lack of an exhaust system, the LTC has purchased mobile downward-draft tables to protect from sparks during welding and other such activities.

irregularity that is associated with contract work in a cyclical industry. He frequently reaches out to those outside of the District Council to discuss best practices and coordinate training. Also of note, the LTC has recently introduced a more tamper-proof student ID, which tracks apprentices' coursework and attendance.

I am gratified to hear significant positive feedback about Mr. Warzecha's leadership of the LTC, over which he assumed responsibilities earlier in 2015. I believe the LTC is an important element of the Union's future, and I support whatever is needed to facilitate its success, including possible relocation to allow for a state-of-the-art facility.

IV. OFFICE OF THE INDEPENDENT MONITOR

A. Investigations

With respect to sensitive ongoing investigations, the details cannot be reported here. I will, however, supplement this Report with a letter under seal to Your Honor outlining any nonpublic investigative matters which should be brought to the Court's attention.

B. Review of the Trial System

The most significant project my team undertook over the past few months was an in-depth review of the District Council's trial system. Overseen primarily by the investigators at Lemire LLC, the review was prompted by concerns that the trial system, though recently revamped in 2013, was inefficient and suffered from a significant backlog of cases. The team reviewed numerous relevant documents and conducted twenty-five interviews of stakeholders, including the current Trial Committee chairs, the District Council leadership and other key employees, a sampling of Trial Committee members, and other individuals including former

review officers/monitors Dennis Walsh and Walter Mack, the latter of whom presided over a prior iteration of the trial process.

In summary, the review concluded that there are several areas within the trial process which need improvement. First, there is a significant backlog of cases which must be reduced. The present case backlog negatively affects the trial system as a whole, weakening cases as witnesses' memories fade and evidence disappears. Moreover, the delays in adjudicating cases undercut members' overall confidence in the system as complaints are not addressed expeditiously. Second, there are gaps in knowledge among various stakeholders in the process, including the Trial Chairs and Trial Committee members. Third, penalties are imposed at times in an uneven fashion, undercutting members' confidence in the system and causing frustration among participants.

To facilitate improvements in these areas, my team has made a number of recommendations to the District Council. It should be noted that these recommendations pertain to improving the functioning of the trial system under the current procedural rules, not changing those rules. As always, however, I hope these recommendations will prompt a dialogue with the Council leadership, and if, from those conversations, superior ideas arise, all the better. We offer the following suggestions:

Eliminate Failure to Pay Working Dues Cases from Trial Docket.

The volume of cases filed has dramatically increased in recent years. The vast majority of these cases are filed by the IG Office: since 2012, approximately four-fifths of all cases filed originated from the IG Office. Among those cases, more than half relate to failure to

pay working dues and more than one quarter relate to failure to appear in response to an investigative summons issued by the IG Office.

With regard to failure to pay dues, we recommend that these cases be addressed through means other than the trial process. As a threshold matter, the Bylaws clearly set forth a process outside the Trial Committee for addressing the failure to pay dues by members of Locals affiliated with the District Council: "If the member does not make payment of [working dues] arrears within the time prescribed, the member shall not be in good standing and he or she shall be notified in writing that unless the amount owing is paid within 30 days thereafter his or her name shall be stricken from the membership." Bylaws, Section 14(C). We understand this system is an effective one.

For out-of-towers, collecting unpaid working dues is more complicated. Following UBC procedures, the District Council has endeavored to collect these dues by sending letters first to the individual, then to his or her local, and in some instances, to the respective district council. This has failed consistently to yield results, and, rather than seek ultimate redress with the International as provided in the UBC Constitution, the District Council has brought charges against those individuals in hopes of prompting payment. The District Council has attained some success in that the filing of charges has led some delinquent out-of-towners to settle their claims: as of December 14, 2015, 118 out of 512 of these types of matters resolved upon commencement of the case, and over $250,000 was collected. But out of the balance of the cases, only 28 matters have made it through the trial process to completion, and, despite 28 "guilty" determinations, no money has been collected on those matters. This demonstrates quite clearly that, while the filing of charges can bring in some outstanding dues, the trial process itself

only creates additional expense, causes a backlog in the system, and yields no additional collections.

While we recognize there is no simple solution to address failure to pay working dues, a means for collecting delinquent dues outside the trial process ought to be considered. Responding to this concern, the District Council leadership, in consultation with the CCO and the IG, is considering other possible means for collecting delinquent working dues, including seeking assistance from the International and bringing civil lawsuits against the offenders. I am optimistic that the District Council can devise a solution that will lead to the collection of working dues from out-of-towners and eliminate this type of case from the docket.

Reduce Failure to Appear Cases.

Charges relating to failure to appear in response to an investigative summons issued by the IG Office account for more than one-quarter of all charges filed by the IG Office. The vast majority of these cases remain open, contributing substantially to the trial system case backlog. I am aware that the IG makes several attempts to reach the subject of the summons before bringing charges, but there must be a way to eliminate the glut of these cases on the trial docket. As we undertake a review of the IG Office in the coming months, we will review the use of these investigative summonses and the use of the trial system to address members' non-appearance in response to these summonses in the hopes of working with the IG to develop a more effective solution.

Implement Training and Enhance Information-Sharing.

A common complaint among trial process stakeholders, including Trial Committee members and Trial Chairs, relates to a lack of understanding of procedural aspects of the trial process.

All parties "on-boarded" into the trial process, including Trial Chairs and Trial Committee members, should be provided with orientation training. The current Trial Chairs did receive some form of training when they were initially hired, but confusion over various aspects of the trial process persists. The orientation training should include, among other subject matter areas, rules governing the trial process, delegation of duties among the stakeholders, rules of evidence, and guidance for consistent imposition of penalties. The Director of Operations should oversee this training, in consultation with the CCO. Moreover, Trial Chair and Trial Committee members should receive periodic training updates or, at a minimum, be provided with an opportunity to convene and discuss questions. These meetings should be attended by the Director of Operations and the CCO.

In addition, regularly-scheduled meetings among Trial Chairs, the CCO, and the Director of Operations should be instituted to ensure that Trial Chairs have clear guidance on procedural matters. Moreover, the Trial Chairs should have regularly-scheduled meetings, even if only twice annually, to share information and discuss consistency among imposed penalties.

Restructure Pay for Trial Chairs.

Pay among Trial Chairs should be restructured to ensure that Trial Chairs spend time outside of trial sessions for training and information-sharing. We suggest that, beyond the pay for each trial session they chair, the Trial Chairs should be paid for additional time devoted

to collaboration and training. In this regard, we urge the District Council to evaluate whether paying the Trial Chairs an hourly rate (perhaps with some caps or caveats) may be more efficient than paying them as is currently done. Although we recognize that the District Council has limited resources and in the past has focused on controlling spending on the trial process perceived as excessive, we believe that revaluating the compensation arrangement for the Trial Chairs, including potentially requiring and compensating the Trial Chairs for additional work outside of the trials themselves, will greatly benefit the trial process. Whatever formulation of pay is ultimately devised, there should be written agreements between each Trial Chair and the District Council detailing the Trial Chairs' responsibilities and the manner in which they are paid.

Reduce Inconsistencies among Penalties.

With minimal effort, the penalties imposed by the Trial Chairs can achieve greater consistency. As a threshold matter, we learned from each of the Trial Chairs and members of the Trial Committee that inconsistencies among trial penalties were a paramount concern. The Trial Procedures, attached as Exhibit E, provide clear guidance with regard to the compilation and sharing of data pertaining to imposed penalties. The Director of Operations is charged with maintaining a database which includes penalties recommended and those ultimately imposed. *See* Exh. E, Trial Procedures § I(C). Likewise, the Director of Operations is required to provide a monthly disciplinary report to the Trial Chairs. *Id.* Moreover, the Trial Chairs are to record the disposition of each penalty imposed, and the CCO is to review the log of offenses and penalties to ensure the penalties are consistent for similar conduct. *Id.* at § II(D)(4)(s). Although I am aware that these procedures may not have been strictly adhered to in the time since the Trial

Procedures were modified, compliance with this process has been improving. Given the renewed focus on the above-referenced provisions of the Trial Procedures, I am hopeful that dialogue will increase among the Trial Chairs, the Director of Operations, and the CCO, and all stakeholders can feel comfortable that penalties are imposed in a consistent manner.

Maintain the Present Participatory Bodies.

Several members of the Executive Committee recommend reintroducing the Executive Committee's role in the trial process. At a minimum, some members of the Executive Committee believe the Executive Committee should administer the First Reads, as provided by the UBC Constitution. Given the history of the District Council as well as comments by individuals interviewed in the course of our review, we recommend against expanding the Executive Committee's role in the trial process. First, the Executive Committee's involvement could have a chilling effect on the filing of meritorious charges by introducing a political element into the system. Second, counter to the belief of those advancing a role for the Executive Committee in the trial process that it would reduce the supposed numerous frivolous claims by members against members, our review of the recent docket of cases demonstrates that claims filed by members against members actually constitute a small portion of the cases. Lastly, we deem as baseless a complaint by at least one member of the Executive Committee citing excessive costs as a reason to expand the role of the Executive Committee. Costs of the trial system have decreased substantially since Mr. Mack's tenure. Although we do not dismiss the District Council's continuing need to reduce costs, we believe the cost reductions achieved within the trial process during the last several years have been significant and negate the need for additional reductions at this time.

Edit Forms and Procedures.

As specified in a detailed report to the District Council, the forms utilized in the trial process require some corrections and enhancements. In addition, references in the Trial Procedures to the “Review Officer” should be modified and replaced with references to the “Independent Monitor.”

C. Hotline and Email Reporting

Calls to the Independent Monitor Hotline continue to be infrequent; there were fewer than 20 unique callers who intended to reach the IM over the past six months. The callers’ issues have generally been resolved by my staff communicating the issue – anonymously when requested – to the appropriate department within the District Council, and following up on progress and the outcome of the issue. Though membership communication with my office through the Hotline or designated e-mail has generally not been a source of information which has led to investigations by my office, I believe the Hotline and e-mail account are still valuable because they provide the membership with an avenue to reach out to an independent party with a union-related issue, even if that issue is not caused by *per se* corruption.

V. CONCLUSION

Pursuant to the 2014 Stipulation and Order, my term as IM ends in March 2016. In my professional view, while the goal remains to lead the Union to self-monitoring under the Consent Decree, the day for the transition away from an independent monitor has not yet arrived. While the District Council has instituted many procedures and systems to prevent corruption and ensure fair treatment of members, the administration of these systems often seems overwhelming. The Grievance and Trial systems are backed up with thousands of complaints, and the Electronic

Reporting team is only able to address a fraction of the open job-days each month. Moreover, the OWL and Electronic Reporting department in their current states cannot produce all the metrics needed to assess performance. The District Council has achieved a lot by putting these systems in place, and continues to make strides towards establishing long-lasting and effective compliance procedures which will ensure it will successfully meet the mandate of the Consent Decree in perpetuity, with or without a monitor. As long as my team and I monitor this great Union, we will do our best to assist the District Council and the Benefit Funds in progressing towards that goal. It is my understanding that in the coming months the parties will negotiate a new stipulation for presentation to the Court.

Should the Court require any additional information, please contact the undersigned at Your Honor's convenience. As indicated at the last status conference, we look forward to appearing before the Court on January 20, 2016, to discuss this interim report, as well as additional developments in the coming months.

Date: January 14, 2016
New York, New York

Respectfully submitted,

By: *s/Glen G. McGorty*

GLEN G. McGORTY
JOANNE R. OLEKSYK
Crowell & Moring, LLP
590 Madison Avenue, 20th Floor
New York, NY 10022
(212) 223-4000
gmcgorty@crowell.com
joleksyk@crowell.com

Office of the Independent Monitor,
District Council of New York City
and Vicinity of the United
Brotherhood of Carpenters and Joiners of
America

CC:

AUSA Benjamin Torrance
AUSA Tara LaMorte
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007

Raymond McGuire, Esq.
Elizabeth O'Leary, Esq.
Kauff McGuire & Margolis LLP
950 Third Avenue, 14th Floor
New York, NY 10022

James M. Murphy, Esq.
Spivak Lipton, LLP
1700 Broadway, 21st Floor
New York, NY 10019

Barbara S. Jones, Esq.
Theresa J. Lee, Esq.
Zuckerman Spaeder LLP
399 Park Avenue, 14th Floor
New York, NY 10017

UNITED STATES OF AMERICA
Federal Trade Commission
San Francisco, CA 94103

Sylvia Kundig
Attorney

901 Market Street, Ste 570
Phone: 415.848.5188
Email: skundig@ftc.gov

June 30, 2016

Christopher A. Cole, Esq.
Crowell Moring
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595

Re: FTC File No. 132-3189
Kimberly-Clark

Dear Mr. Cole:

As you know, the Federal Trade Commission has been investigating the advertising claims Kimberly-Clark has made for its Cottonelle flushable moist wipes, to determine if the claims violate section 5 of the FTC Act as unfair and deceptive acts. Upon further review of the matter, it appears that no further action is required at this time. Accordingly, the above-captioned investigation has been closed. This action is not to be construed as a determination that no violation has occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

If you have any questions, you may telephone me at 415.848.5188.

Sincerely,

Sylvia Kundig
Attorney

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 12 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NYLE J. HOOPER, Plaintiff - Appellant, And UNITED STATES OF AMERICA, Plaintiff, v. LOCKHEED MARTIN CORPORATION, Defendant - Appellee.	No. 14-56192 D.C. No. 2:08-cv-00561-BRO-PJW MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Beverly Reid O'Connell, District Judge, Presiding

Argued and Submitted February 1, 2016
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: PAEZ and M. SMITH, Circuit Judges and SILVER,[**] Senior District Judge.

I. Introduction

This case is before us for a second time. In the prior appeal, we reversed the district court's summary judgment against Plaintiff Nyle J. Hooper as to one False Claims Act theory, affirmed the grant of summary judgment as to two other theories, and reversed the dismissal of Hooper's retaliation claim. *Hooper v. Lockheed Martin Corp.,* 688 F.3d 1037 (9th Cir. 2012) ("*Hooper I*"). On remand, the case proceeded to a six-day jury trial. The jury found for Defendant Lockheed Martin Corporation, and the court entered judgment against Hooper.

The facts of the case are familiar to the parties, and the background of the Air Force's Range Standardization and Automation (RSA) IIA project is set forth in our prior opinion. We therefore do not recite the facts here except as needed in our discussion of Hooper's arguments on appeal. Finding merit in none of those arguments, we affirm.

II. Jury Instruction 21 Was Not Erroneous

At trial, Hooper pursued a theory that the invoices submitted under the RSA IIA contract were fraudulent because Lockheed fraudulently underbid for the

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[**] The Honorable Roslyn O. Silver, Senior District Judge for the U.S. District Court for the District of Arizona, sitting by designation.

contract. "[F]alse estimates, defined to include fraudulent underbidding in which the bid is not what the defendant actually intends to charge, can be a source of liability under the FCA, assuming that the other elements of an FCA claim are met." *Hooper I*, 688 F.3d at 1049 (internal reference omitted). Thus, it was not necessary for Hooper to separately prove the falsity of each invoice, because "liability will attach to each claim submitted to the government under a contract, when the contract or extension of government benefit was originally obtained through false statements or fraudulent conduct." *U.S. ex rel. Hendow v. Univ. of Phoenix*, 461 F.3d 1166, 1173 (9th Cir. 2006).

In the Joint Pretrial Conference Order, Hooper stated that he intended to "introduce evidence that Defendant submitted approximately 1200 invoices for payment in the amount of $882,717,983." The jury instructions addressed these invoices. Instruction 21 stated: "If you find that Lockheed violated the False Claims Act, you must identify each specific, individual claim for payment—an invoice or other payment demand—that Mr. Hooper proved to constitute a false claim."

Hooper argues that the jury could have understood the instruction to require separate falsity in each invoice, instead of, in accordance with Hooper's theory, in the bid. However, Instruction 21 must be read in conjunction with all the

instructions. Instruction 14 set forth the elements of Hooper's underbidding claim. Additionally, instruction 15 specified that Hooper alleged that Lockheed submitted false claims for payment in the form of invoices. Hooper's proposed instruction 8, concerning penalties, would have instructed the jury to "decide how many such claims or statements, if any, were made or presented to the Government by Lockheed."

Instruction 21 did not erroneously instruct the jury that it needed to find independent falsehood in each invoice. It merely required the jury to identify each false invoice if it found liability. Because the jury found no False Claims Act violation, it left blank the later space on the verdict form for specifying the number of false claims.

Accordingly, Hooper has not shown that any instruction misstated the elements of his claim, or that the district court abused its discretion in formulating the instructions as a whole. *See Masson v. New Yorker Magazine, Inc.*, 85 F.3d 1394, 1397 (9th Cir. 1996).

III. The Court Did Not Abuse its Discretion in Excluding Hooper's Expert Witness

Federal Rule of Civil Procedure 26(a)(2) requires a party who may present expert testimony at trial to provide a written report by the expert "at the times and

in the sequence that the court orders." Rule 37(c)(1) therefore "gives teeth" to the disclosure requirements "by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed," *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001), unless the failure to do so was "substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). We review the imposition of discovery sanctions for abuse of discretion. *Payne v. Exxon Corp.*, 121 F.3d 503, 507 (9th Cir. 1997).

On remand, Hooper sought to reopen discovery, but the district court did so only for the retaliation claim, which had not been the subject of prior discovery, and declined to reopen discovery on the underbidding claim. Nonetheless, Hooper engaged an expert, Malek, to analyze software estimation files Lockheed had produced in discovery. Malek's report mostly related to underbidding, with only a few conclusory statements related to the retaliation claim. To the extent Hooper could have shown that his failure to timely produce Malek's report in the original discovery period was substantially justified or harmless, he should have moved the district court to modify the scheduling order under Rule 16. Instead, Hooper took the unsupportable position that the Malek report was really about his retaliation claim. In such circumstances, the district court did not abuse its discretion in striking the Malek report, thus precluding him from testifying at trial.

IV. The District Court Did Not Abuse its Discretion in Excluding Polliard

"The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. "We review exclusion of evidence under Rule 403 for an abuse of discretion." *United States v. Garcia*, 729 F.3d 1171, 1175 (9th Cir. 2013). District courts are not required to engage "in a mechanical recitation of Rule 403's formula on the record . . . [a]s long as it appears from the record as a whole that the trial judge adequately weighed the probative value and prejudicial effect of proffered evidence before its admission." *Bowoto v. Chevron Corp.*, 621 F.3d 1116, 1131 (9th Cir. 2010) (quoting *United States v. Sangrey*, 586 F.2d 1312, 1315 (9th Cir. 1978)) (alteration in original).

Polliard is a former Air Force officer and contractor. He helped test RSA IIA software from 1998 to 2000, and returned to manage the software in 2008. Polliard would have testified that Lockheed failed to meet the contract requirements because it provided woefully deficient software, which imposed significant direct costs on the Air Force. Hooper sought to use this testimony to prove that

"Lockheed's defective performance was the result of numerous cornercutting measures and inefficiencies caused by its underbidding of the contract."

The district court excluded Polliard's testimony entirely, except as potential rebuttal if Lockheed opened the door by introducing evidence of the high quality of its work. During trial, the court considered whether specific evidence opened the door to Polliard's testimony, and reminded Lockheed that if it chose to introduce evidence of the high quality of its work, that would open the door. Lockheed did not introduce such evidence, so Polliard did not testify.

In conditionally excluding Polliard's testimony, the district court reasoned that the poor quality of the software Lockheed provided would not be directly probative of "cutting corners and underbidding," and that the purported performance deficiencies were unfairly prejudicial. The Air Force itself acknowledged the "we're kind of developing it as we're going" nature of the RSA IIA contract, further disconnecting any performance deficiency from any underbids. Indeed, the Air Force eventually paid Lockheed approximately twice the initial bid. This further supports the district court's assessment of the disconnect between the underbidding theory and Polliard's performance testimony, because it is not as if Lockheed cut corners to deliver a product for the original bid

price. Further, Polliard had no knowledge of the details of the initial bid or contract, and was not involved in contract change proposals.

Thus, the district court did not abuse its discretion in considering, balancing, and ultimately excluding Polliard's testimony under Rule 403.

V. Conclusion

The judgment is AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)
Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ► A material point of fact or law was overlooked in the decision;
  - ► A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ► An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- The proceeding involves a question of exceptional importance; or
- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms.*

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ► Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
  - ► and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:
http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

__________ v. __________ 9th Cir. No. __________

The Clerk is requested to tax the following costs against: __________

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	**REQUESTED** *(Each Column Must Be Completed)*				**ALLOWED** *(To Be Completed by the Clerk)*			
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST
Excerpt of Record			$	$			$	$
Opening Brief			$	$			$	$
Answering Brief			$	$			$	$
Reply Brief			$	$			$	$
Other**			$	$			$	$
			TOTAL:	$			**TOTAL:**	$

* *Costs per page*: May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other*: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

I, [ ] , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature [ ]

("s/" plus attorney's name if submitted electronically)

Date [ ]

Name of Counsel: [ ]

Attorney for: [ ]

(To Be Completed by the Clerk)

Date [ ]

Costs are taxed in the amount of $ [ ]

Clerk of Court

By: [ ] , Deputy Clerk

Appendix C

Assumptions Underlying Estimated Costs and Proposed Activities

Assumptions Underlying Estimated Costs and Proposed Activities