

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

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<b>Fred R. Richards et al.,</b>		)	
		)	
<b>Plaintiffs, on behalf of</b>		)	
<b>themselves and all others</b>		)	
<b>similarly situated,</b>		)	
		)	
<b>v.</b>		)	<b>Master File No. 2:12-cv-01133-RDP</b>
		)	
<b>Blue Cross and Blue Shield of Alabama,</b>		)	
<b>and Blue Cross and Blue Shield</b>		)	
<b>Association,</b>		)	
		)	
<b>Defendants.</b>		)	
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**APPLICATION TO APPOINT COHEN MILSTEIN AS INTERIM  
CLASS COUNSEL AND JOHN D. SAXON AS INTERIM LIAISON COUNSEL**

**I. INTRODUCTION AND SUMMARY**

Plaintiffs Fred R. Richards, Richards and Sons Construction Company, Inc., American Electric Motor Services, Inc., Thomas A. Carder, Jr. and Industrial Sales & Service, LLC (“Plaintiffs”) respectfully submit this memorandum in support of their application for appointment of Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) as Interim Class Counsel and John D. Saxon PC as Interim Liaison Counsel. Plaintiffs respectfully suggest that a leadership structure consisting of two or three lead firms, overseeing the litigation and supervising an executive committee of firms responsible for discrete areas of the litigation, would best serve the interests of the putative class. Such a structure provides the right balance among the competing goals of

efficiency, adequacy of resources, and diversity of views. Cohen Milstein, a firm that has specialized in antitrust class actions for over 40 years, is prepared to devote its considerable resources, experience and expertise to advancing the putative class's interests in this litigation and to working cooperatively and collegially with any other counsel the Court may appoint to lead this case. Plaintiffs submit that appointment of Cohen Milstein to a co-lead position is in the best interests of the putative class for the following reasons:

- Class action antitrust litigation has been a core practice area of Cohen Milstein continuously since its inception over 40 years ago. With over 60 talented, highly credentialed lawyers, 15 of whom specialize in antitrust litigation, the firm has the resources, experience, expertise and talent to lead this case effectively. The firm has repeatedly been recognized as one of the best class action firms in the country — in the antitrust area, in other practice areas, and generally.
- Cohen Milstein has experience litigating not only in the health insurance industry generally but against Blue Cross specifically, as it has been appointed co-lead counsel in the pending antitrust class action *The Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, Case No. 2:10-cv-14360 (E.D. Mich.).
- Cohen Milstein's clients were the first to challenge the Blue Cross market allocation scheme in Alabama. Cohen Milstein's knowledge of the Alabama health insurance industry, gleaned through months of research and investigation prior to filing the *Richards* complaint, makes it particularly well suited to effectively litigate competition issues concerning this industry. Cohen Milstein's singular focus on the Alabama case will help ensure that the exclusive objective of counsel will be obtaining the best result for the putative class of Blue Cross Blue Shield of Alabama ("BCBS-AL")

insureds.

- The Cohen Milstein team assigned to this case includes attorneys with exemplary credentials, extensive experience in antitrust class actions and other complex civil litigation, and demonstrated records of public service. Additionally, this application is joined by some of the most accomplished antitrust class action firms in the country, including Berger & Montague, P.C., Freedman Boyd Hollander Goldberg Urias and Ward, P.A., and Gustafson Gluek PLLC.
- Cohen Milstein's proposal of a two to three firm leadership structure with executive committee members tasked with specific responsibilities is reasonable, allows a diverse group of firms to participate actively in the leadership of the litigation, and is squarely in line with the Court's guidance.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

Plaintiffs Fred R. Richards and Richards and Sons Construction Company, Inc. filed this class action on April 17, 2012, after their counsel, Cohen Milstein, extensively researched the Alabama health insurance industry and concluded that the Defendants' explicit, horizontal agreements to divide geographic health insurance territories within the United States, including the agreement to exclusively license the Blue Cross and Blue Shield trademarks in Alabama to BCBS-AL, reduced competition, resulted in fewer health insurance choices for Alabama residents and increased premiums charged to members of BCBS-AL's individual and small group commercial health insurance plans.

Perhaps agreeing with the *Richards* Plaintiffs that the particular circumstances in Alabama provided the best opportunity to challenge the market allocation scheme, several other Plaintiffs filed

follow-on cases in Alabama. Alabama is the only state with multiple cases challenging this scheme. The second complaint filed in Alabama, *One Stop Environmental LLC v. Blue Cross Blue Shield of Alabama*, No. 2:12-cv-01910 (N.D. Ala. May 17, 2012), was not filed until a month later. Subsequently, five additional cases were filed, all of which have been consolidated by the Court.

### **III. ARGUMENT**

Plaintiffs respectfully submit that the considerations identified in Federal Rule of Civil Procedure 23(g)(1) and (2) favor the appointment of Cohen Milstein as an Interim Class Counsel.

Those considerations include:

- Counsel's experience with claims of the type asserted in the action;
- Counsel's knowledge of the applicable law;
- The work that counsel has performed identifying or investigating potential claims in the action;
- The resources counsel will commit to representing the class; and
- Any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class.

Fed. R. Civ. P. 23(g)(1)(A) & (B).

#### **A. Cohen Milstein's Extensive Experience with Antitrust Class Actions Generally, and with Litigating against Blue Cross in Particular, Will Benefit the Class.**

##### **1. Cohen Milstein has long been one of the country's leading plaintiffs' class action and antitrust law firms.**

Since its founding, Cohen Milstein has been one of the nation's leading plaintiffs' class action firms. The firm has litigated some of the nation's most complex class cases and has recovered billions of dollars of damages for injured plaintiffs.<sup>1</sup> In October 2011, *The National Law Journal*

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<sup>1</sup> See Cohen Milstein Firm Resume, attached as Exhibit A.

named Cohen Milstein one of the top plaintiffs' firms in the nation.<sup>2</sup>

Cohen Milstein has over 60 attorneys, including 15 who specialize in antitrust class actions, and has offices in Washington, D.C., New York, Philadelphia, Chicago, and Florida. Cohen Milstein has litigated many important class action cases, including:

- *Pease v. Jasper Wyman & Son, Inc.*, No. 00-015 (Maine Super. Ct., Knox Cnty.). Cohen Milstein successfully represented a class of blueberry farmers as lead counsel in a case against four processing companies for participating in a multi-year price fixing and non-solicitation conspiracy. A Maine jury found the defendants liable and awarded \$18.68 million in damages (before trebling), the precise amount calculated by plaintiffs' expert.
- *Keepseagle v. Vilsack*, No. 1:99-cv-03119 (D.D.C.). Cohen Milstein served as lead counsel for a class of Native American farmers in an 11-year case against the United States Department of Agriculture based on discrimination in the federal farm loan program. The case settled recently for \$760 million in damages and debt forgiveness. The district court described the settlement as "historic" and "groundbreaking." The court also observed that it was "probably the best negotiated agreement that this court has seen in its experience" and that Cohen Milstein "demonstrated the highest level of skills and professionalism."<sup>3</sup>
- *Infant Formula Antitrust Consumer Litigation* (17 state courts). Cohen Milstein filed 17 state-wide class actions against the nation's two largest infant formula manufacturers for price fixing. After a trial and an appeal in the United States Supreme Court, the cases

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<sup>2</sup> National Law Journal, Plaintiffs' Hot List, Oct. 3, 2011, attached as Exhibit B.

<sup>3</sup> Transcript of Fairness Hearing, Apr. 28, 2011 at 24-25, 45, 46, 49.

settled for more than \$64 million on behalf of indirect purchasers of infant formula.

- *In re The Exxon Valdez Litigation*, No. A89-095 Civ. (D. Alaska). The firm was selected to serve as co-lead counsel for plaintiffs in the largest environmental case in United States history, which resulted in a jury verdict of more than \$5 billion.

**2. Courts repeatedly have selected Cohen Milstein’s antitrust group to lead major class actions.**

Courts around the country have selected Cohen Milstein’s antitrust group to lead antitrust and other large class actions numerous times (in addition to the many cases the antitrust group has litigated as *de facto* lead counsel without court appointment). Recent cases in which Cohen Milstein’s antitrust group was appointed as lead or co-lead counsel include:

- *Carlin v. Dairy America, Inc.* (E.D. Cal.) (May 29, 2009) (appointed sole lead counsel to represent nationwide class of dairy farmers alleging that defendants negligently and incorrectly reported nonfat dry milk prices, resulting in artificially depressed prices).
- *In re Plasma-Derivative Protein Therapies Antitrust Litig.* (N.D. Ill.) (April 8, 2010) (appointed one of two co-lead counsel in a nationwide antitrust class action alleging a multi-year conspiracy to restrict output and fix prices of Ig and albumin).
- *Wallach v. Eaton Corp.* (D. Del.) (July 23, 2010) (appointed one of two co-lead counsel in an antitrust class action on behalf of purchasers of truck transmissions).
- *In re Google Inc. Street View Electronic Communications Litig.* (N.D. Cal.) (Oct. 8, 2010) (appointed one of two co-lead counsel in Wiretap action for Google’s interception of Wi-Fi communications).
- *In re E-Books Antitrust Litig.* (S.D.N.Y.) (Dec. 20, 2011) (appointed one of two co-lead counsel to represent a nationwide class of consumers of E-Books challenging a conspiracy by Apple and five of the largest book publishers to raise E-Book prices).
- *In re Ductile Iron Pipe Fitting Antitrust Litig.* (D.N.J.) (May 10, 2012) (appointed one of two co-lead counsel to represent a nationwide class of purchasers of ductile iron pipe fittings alleging price-fixing conspiracy among three largest suppliers).

These and many other courts have entrusted Cohen Milstein to zealously represent the interests of large classes of individuals and businesses.

**3. Cohen Milstein has long specialized in plaintiffs' antitrust class actions.**

Antitrust class actions have been at the core of Cohen Milstein's practice since the firm's inception. The firm's antitrust and securities practice groups have been the firm's largest two practice groups throughout its history.

The Legal 500 has ranked Cohen Milstein as a Leading Plaintiff Class Action Antitrust Firm for four years running, recently stating that the firm "has built up a solid reputation by exclusively representing plaintiffs in antitrust class actions, having taken on cases challenging price-fixing conspiracies, monopolization schemes and market-allocation agreements, among others."<sup>4</sup>

**4. Cohen Milstein has particular experience in the health insurance industry and litigating against Blue Cross.**

Not only does Cohen Milstein possess a wealth of experience litigating antitrust class actions, the firm also has specific experience litigating antitrust claims in healthcare industries. Experience with a particular industry can be invaluable to successfully litigating a claim involving that industry, as the court noted when it appointed Cohen Milstein co-lead counsel in the *E-books Antitrust Litigation*. The court gave significant weight to the firm's "particular expertise in the publishing industry," pointing out that "knowing an industry and understanding an industry is invaluable."<sup>5</sup>

Cohen Milstein is currently one of four firms serving on the leadership committee in *The Shane Group* class action, involving Sherman Act Section 1 claims against Blue Cross Blue Shield of Michigan for entering into most favored nation agreements with numerous hospitals throughout

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<sup>4</sup> Legal 500 Website, Mass Tort and Class Action: Plaintiff Representation—Antitrust (accessed September 3, 2012), attached as Exhibit C.

<sup>5</sup> Transcript of December 20, 2011 Hearing at 42 in *In re E-Books Antitrust Litig.*, No. 11-md-2293 (S.D.N.Y.).

Michigan. Daniel Small, the firm's lead lawyer in the *Richards* action, is also the firm's lead lawyer in *The Shane Group* case. Meghan Boone is the firm's associate on both cases, as well. Through the prosecution of that case, which is far into fact discovery, Cohen Milstein has been immersed in health insurance, health care, and Blue Cross issues for many months. Further, some of the legal issues in the two cases, such as certain insurance-related defenses, are likely to overlap.

**B. Cohen Milstein Was First to File on Behalf of the Putative Alabama Class.**

While the basic market allocation scheme, which underlies the claims of all plaintiffs in the related cases, has been the subject of public attention for some time, the work that Cohen Milstein did to identify not just *what* claims to bring, but *where* to bring them weighs in favor of its appointment as Interim Class Counsel. *See* Fed. R. Civ. P. 23(g)(1)(A)(i) (work done by counsel identifying and investigating potential claims). Among other things, Cohen Milstein extensively researched the advantages and disadvantages of challenging Blue Cross Blue Shield Association's ("BCBSA") licensing practices in different states around the country, eventually concluding that Alabama was the best venue. The choice of jurisdiction is important in this case, as some of the anticipated legal issues will turn on the intersection of state insurance laws with antitrust law.<sup>6</sup>

The firm that files first often is also the firm that led the pre-filing investigation. At a minimum, the first filer investigated the case independently, and could not merely have filed a copycat complaint. Thus, courts have often appointed the first-filing firm as lead or co-lead counsel for the putative class. *See In re Plasma-Derivative Protein Therapies Antitrust Litig.*, MDL No. 2109

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<sup>6</sup> The interaction between state regulation and the legality of the practices alleged is already a focal point of the ongoing litigation in the parallel North Carolina case against Blue Cross Blue Shield of North Carolina. *See, e.g.*, Brief in Support of Motion to Dismiss of Defendant Blue Cross Blue Shield of North Carolina, *Cerven v. Blue Cross Blue Shield of North Carolina*, Civil Action No. 5:12-CV-17-RLV-DCK, at 11-16 (W.D.N.C. Apr. 30, 2012) (arguing that the *Cerven* Plaintiffs' claims are barred by the North Carolina filed-rate doctrine); Brief in Support of Blue Cross Blue Shield Association's Motion to Dismiss, *Cerven v. Blue Cross Blue Shield of North Carolina*, Civil Action No. 5:12-CV-17-RLV-DCK, at 34 (W.D.N.C. Apr. 30, 2012) (same).

(N.D. Ill. April 7, 2010) (noting *inter alia* that Cohen Milstein was first to file in appointing the firm to the leadership committee); *Carlin v. DairyAmerica Inc., et al.*, No. 1:09-cv-0430 (E.D. Cal. May 29, 2009) (appointing first-filing Cohen Milstein as lead counsel, and noting that the firm had “done a majority of the preparation work leading to the filing of these actions, including investigation into the alleged misconduct and identification of the legal theory of the case”).

Here, Cohen Milstein began its investigation many months before it filed the *Richards* complaint, and long before the *Cerven* complaint was filed in North Carolina. The fact that so many other plaintiffs and law firms have filed on top of the *Richards* complaint — and none have filed on top of the parallel complaints filed in other states — suggests that the *Richards* Plaintiffs chose well. And the fact that *Richards* was the sole case on file for an entire month suggests that the idea to file in Alabama originated with Cohen Milstein and its clients.<sup>7</sup>

**C. As a Substantial Firm with a Long History and a Deep Bench of Talent, Cohen Milstein Has the Resources, Experience, and Expertise to Zealously Prosecute this Case.**

**1. The quality and depth of Cohen Milstein’s litigation team in this case will serve the best interests of the putative class.**

The attorneys from Cohen Milstein who will work on this case include the following:

Daniel A. Small, co-chair of the firm’s antitrust practice group since 2008, and a partner in the firm since 1998, has represented plaintiff classes in numerous antitrust cases over the last 23 years, and has recovered hundreds of millions of dollars for his clients. He has tried cases to verdict before juries and has argued cases in several appellate courts including the United States Supreme

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<sup>7</sup> To be sure, the various consolidated complaints each possess details not included in the other complaints. But this fact should be of minimal significance given that all allege the same basic market allocation scheme, and the contributions of each original complaint will appear in a forthcoming consolidated amended complaint (assuming the Court permits one to be filed).

Court. Mr. Small was recently named a “litigation star” in the national antitrust practice area by Benchmark Plaintiff Litigation. Mr. Small has served as lead and co-lead counsel in many antitrust and other complex cases, including *Pease v. Jasper Wyman & Son, Inc.*, which he successfully tried to verdict, and *Paper Systems, Inc. v. Mitsubishi Corp.* (E.D. Wis.), a price-fixing case which he settled for more than single damages. Mr. Small is currently serving in that role in *The Shane Group, Inc v. Blue Cross Blue Shield of Michigan* (E.D. Mich), *Prime Healthcare Services, Inc. v. SEIU* (S.D. Cal.), *In re Intel Corp. Microprocessor Antitrust Litigation* (D. Del.), *In re Publication Paper Antitrust Litigation* (D. Conn.), and *In re Google Inc. Street View Electronic Communications Litigation* (N.D. Cal.), among others. Mr. Small is a member of the Advisory Board of the American Antitrust Institute and has been invited to speak on antitrust and class action topics by the American Bar Association, the District of Columbia Bar, the Conference Board, and the American Antitrust Institute, among others. Mr. Small graduated from the American University’s Washington College of Law in 1986, before clerking for United States District Judge Roger Vinson in Pensacola, Florida.

Kit Pierson, a partner and co-chair of the firm’s antitrust practice group, has spent the last two decades handling antitrust cases and other complex litigation matters. As a shareholder at Heller Ehrman before joining Cohen Milstein, Mr. Pierson represented clients in large antitrust class actions and False Claims Act litigation, including significant jury trials. Mr. Pierson has represented the Microsoft Corporation, the 3M Company, and the American Booksellers Association in antitrust litigation. Mr. Pierson was named a Washington, D.C. "Super Lawyer" in the antitrust field. He graduated, *magna cum laude*, from the University of Michigan Law School before serving as a Law Clerk for the Honorable Harry T. Edwards, United States Court of Appeals for the District of Columbia Circuit, and the Honorable Chief Judge John Feikens, United States District Court for the Eastern District of Michigan.

Richard Koffman, a partner in the antitrust practice group, is currently serving as co-lead counsel for plaintiffs in a number of national antitrust class actions. In 2011, the U.S. Legal 500 listed Mr. Koffman as one of seven "leading lawyers" in the field of antitrust class actions. Mr. Koffman also spent four years with the Antitrust and Civil Rights Divisions of the United States Department of Justice, where he served as a Senior Trial Attorney with the Computers and Finance Section. Mr. Koffman graduated from Yale Law School before serving as a judicial clerk for Judge James B. McMillan of the Western District of North Carolina, and for Judge Anthony J. Scirica of the United States Court of Appeals for the Third Circuit.

**2. Cohen Milstein enjoys the support of a number of well respected and highly capable co-counsel.**

Cohen Milstein enjoys significant support among the other firms on file in this matter, as reflected in the fact that seven other law firms and one law professor have signed on to this application. While all these firms possess impressive qualifications, the available space permits the qualifications of just three to be highlighted here.

Berger & Montague has pioneered the use of class actions in antitrust litigation, and over the last forty years has successfully litigated many significant antitrust cases, including *Bogosian v. Gulf Oil Corp.*, *In re Corrugated Container Antitrust Litigation*, *In re Currency Conversion Fee Antitrust Litigation*, and *In re Infant Formula Antitrust Litigation*. Berger & Montague has routinely been selected by federal courts to act as lead or co-lead counsel in complex antitrust cases. For example, Berger & Montague is currently acting in lead or co-lead capacity in *In re Payment Card & Merchant Discount Litigation*, *Ross v. Bank of America*, and *Meijer, Inc. v. Abbott Labs*. The firm and its lawyers are regularly recognized by Chambers & Partners, The Legal 500, Martindale-Hubbell,

America's Best Lawyers, Lawdragon.com, and The National Law Journal for outstanding work in antitrust litigation.<sup>8</sup>

Freedman Boyd Hollander Goldberg Urias and Ward is a litigation firm handling a broad spectrum of civil and criminal cases. Joe Goldberg, a senior shareholder in the firm since 1991, practices largely in the areas of antitrust, class actions and complex commercial litigation. He has tried a number of cases to multimillion-dollar verdicts and recovered over two billion dollars for his clients. He has an “AV” rating in Martindale-Hubbell, is listed in Best Lawyers in America in antitrust, commercial litigation, and bet-the-company litigation, and has been listed in Chambers USA since its inception. Mr. Goldberg was designated by Best Lawyers in America as “bet-the-company” litigator of the year in New Mexico in 2009 and antitrust litigator of the year in 2011. He is widely recognized for his work with economic and statistical experts.<sup>9</sup>

Gustafson Gluek has been practicing in the areas of complex litigation and class actions since its inception in 2003. Much of the firm’s practice is devoted to the prosecution of antitrust violations and the firm has been appointed lead counsel in several significant antitrust matters such as: *The Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, *In re Dynamic Access Memory (DRAM) Antitrust Litigation*, *In re Vitamin C Antitrust Litigation*, and *Precision Assocs., Inc. v. Panalpina World Transport*. Daniel Gustafson, a founder and member of the firm, was recently selected as one of Minnesota Lawyer’s Attorneys of the Year for 2010 and is regularly listed by Law & Politics magazine as a Minnesota “Super Lawyer” in the fields of class actions and antitrust.<sup>10</sup>

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<sup>8</sup> See Berger & Montague Firm Résumé, attached as Exhibit D

<sup>9</sup> See Freedman Boyd Hollander Goldberg Urias and Ward Firm Résumé, attached as Exhibit E.

<sup>10</sup> See Gustafson Gluek Firm Résumé, attached as Exhibit F.

**D. Other Factors “Pertinent to Counsel’s Ability to Fairly and Adequately Represent the Interests of the Class” Weigh in Favor of Appointing Cohen Milstein.**

**1. Cohen Milstein will zealously represent the interests of the putative Alabama class because the firm is only challenging the market allocation in this state.**

Cohen Milstein is challenging Blue Cross’s market allocation in only one state: Alabama. Cohen Milstein’s exclusive focus on Alabama ensures that the putative class will have Cohen Milstein’s undivided loyalty. For example, if BCBSA were to engage in global settlement talks, Cohen Milstein would negotiate aggressively to ensure that the Alabama class received its fair share of any global deal.

**2. Cohen Milstein has a longstanding commitment to public interest work.**

Cohen Milstein has a demonstrated commitment to litigation that serves the public interest. Cohen Milstein has contributed over 37,000 hours of time to human rights and *pro bono* cases since 1996. Cohen Milstein received the National Legal Aid and Defender Association’s Beacon of Justice Award for its *pro bono* representation, and in January 2011, Cohen Milstein was selected by The National Law Journal as one of “six firms that best reflect the *pro bono* tradition.”<sup>11</sup> Professor David P. Wilkins of Harvard Law School has written that “[f]irms such as Cohen Milstein . . . are organized around a broader social justice mission that is reflected in the areas in which they practice, their significant commitment to *pro bono*, and in the backgrounds and commitments of their lawyers.”<sup>12</sup>

**3. Cohen Milstein’s proposal for a leadership structure appropriately implements the Court’s guidance.**

Cohen Milstein suggests that a leadership structure consisting of two or three lead firms,

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<sup>11</sup> *The National Law Journal*, “Justice for Contract Workers in America’s Wars,” Jan. 3, 2011, attached as Exhibit G.

<sup>12</sup> David B. Wilkins, *Rethinking the Public-Private Distinction in Legal Ethics: The Case of “Substitute” Attorneys General*, 2010 Mich. State L. Rev. 423, 446 (2010), attached as Exhibit H.

which would recommend to the Court members of an executive committee responsible for discrete areas of the litigation, would best serve the interests of the proposed class by appropriately balancing the competing goals of efficiency, adequacy of resources, and diversity of views. As it has done in so many cases before, Cohen Milstein will work cooperatively and collegially with whichever firms are appointed to lead this case.

**E. Appointing John D. Saxon as Interim Liaison Counsel Will Serve the Best Interests of the Putative Class.**

The interests of the putative class will best be served by appointing John D. Saxon as Interim Liaison Counsel in this case. Mr. Saxon opened his own practice in 1995, after practicing for eight years with other Birmingham firms and spending ten years in Washington, D.C., where he held a number of governmental positions in both Congress and the Executive Branch. He has extensive civil litigation experience in the Alabama federal courts, including in the prosecution of class actions. He has regularly litigated against insurance companies. A sample of such cases include: *Coe v. State Farm Mutual Automobile Ins. Co., et al.*, CV-91-006255 (Ala. Cir. Ct., Jefferson Cnty.); *White v. The Northwestern Mutual Life Insurance Co.*, CV-94-572 (Ala. Cir. Ct., Calhoun Cnty.); *Hubbert v. Mutual of Omaha Companies*, CV-97-P-2962-J (N.D. Ala.); *Cameron v. UNUM Life Insurance Company of America*, CV-02-BE-1273-S (N.D. Ala.); *Heron v. UNUM Provident, Inc.*, CV-08-02267-IPJ (N.D. Ala.); and, specifically against one of the defendants herein, *Express Care, Inc. v. Blue Cross Blue Shield of Alabama*, CV-99-N-1740-S (N.D. Ala.). He has experience in multi-plaintiff cases before this court: *Crutcher, et al. v. Chugach Management Systems*, CV-03-00731-RDP (N.D. Ala.), a forty-seven plaintiff race discrimination and retaliation case. Mr. Saxon has been listed in Alabama SuperLawyers every year since 2008, and for the last two years it has listed him in the Top 50 Lawyers in the State. He is listed in the Best Lawyers in America 2009-2013, has been an AV-rated attorney by Martindale-Hubbell for fifteen years, and is in the Martindale-Hubbell Bar

Register of Preeminent Lawyers. Mr. Saxon received his J.D. degree from the University of Alabama, his M.A. from the University of North Carolina at Chapel Hill, and is a graduate of the Stanford Executive Program of the Stanford University Graduate School of Business. He is a Fellow of the American College of Trial Lawyers, and in 2011 served as the first Chair of the Federal Practice Section of the Birmingham Bar Association.

#### **IV. CONCLUSION**

Cohen Milstein is committed to the zealous litigation of the putative class's claims and brings a wealth of experience, expertise, and resources that will greatly benefit the putative class. Likewise, John Saxon is a highly respected, talented and experienced lawyer who is knowledgeable about Alabama courts and procedures and well suited to serve as Interim Liaison Counsel. Lawyers from both firms will work cooperatively with any other firms this Court deems appropriate to lead this consolidated action.

Dated: September 4, 2012

Respectfully submitted,

/s/ Daniel A. Small

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Certificate of Service

I hereby certify that on this 4th day of September, 2012, I caused a true and correct copy of the foregoing document to be served on all counsel of record via the ECF system.

/s/ Daniel A. Small  
Daniel A. Small