

the Pomerantz Monitor

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Homeowners Are From Venus, Banks Are From ... MERS?

by H. Adam Prussin

Inside This Issue

- 1 [Banks Are From MERS](#)
- 2 [Pomerantz Pursues Antitrust Violators](#)
- 2 [Massive Frauds at Refco, AIG](#)
- 3 [Attorney Abe](#)
- 4 [SEC Proposes Implementing Rules on "Say-on-Pay"](#)
- 4 [Supremes Hear Arguments in AT&T Mobility](#)
- 5 [The Latest Corporate Giveaway](#)
- 5 [Old Black Magic Runs Out for Conrad](#)
- 6 [New Associate](#)
- 6 [Notable Dates](#)
- 7 [PomTrack® Update](#)

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Hardly anyone ever heard of a company called MERS. But the odds are pretty good that MERS, the Mortgage Electronic Registration Systems, is the record owner of the mortgage on your house. About 60 percent of mortgages in the United States show up in local records as being owned by this company; yet MERS claims that it does not really own any mortgages but merely serves as the recording agent for the banks that do.

Why did the banks set up this peculiar system? To save a few bucks in mortgage transfer tax payments to localities. If bank A assigns a mortgage to bank B, a mortgage transfer tax would be payable. But if both bank A and bank B use MERS as the nominal mortgage holder, record title to the mortgage does not have to change and no transfer tax would have to be paid. Or so they thought. Given the dizzying number of mortgage assignments involved in the securitization process, these little bits quickly add up.

This may turn out to have been the banks' most boneheaded play yet. According to two law professors, Christopher L. Peterson of the University of Utah and Adam Levitin of Georgetown, if MERS doesn't really own these mortgages it may not have the right to list itself as a mortgagee. State real estate laws, Peterson said in an interview, "do not have provisions authorizing financial institutions to use the name of a shell company," in large part because "the point of these statutes is to provide a transparent, reliable record of actual — as opposed to nominal — land ownership."

Mr. Peterson argues that local governments

might prevail if they sue for the unpaid mortgage transfer taxes, claiming that designating MERS as the owner was designed to hide that ownership of the mortgage really had passed. In that case, they might be entitled to collect several mortgage recording fees per mortgage.

But what if MERS really is the owner of all these mortgages, as it claimed? That could be even worse for the banks, because someone else — i.e. the banks — were undoubtedly the owners of the notes, and the owner of the notes and mortgages would be two different entities. Under a long line of precedents, separating a mortgage from the underlying note renders the mortgage unenforceable.

If these professors are right, thousands of mortgages might have become legally unenforceable because the payment promises made by borrowers when they signed the notes have been decoupled from the mortgages they signed to secure payment of those notes. Homes could be sold without paying off the mortgage.

Before you assume that courts would never wreak such havoc on the banking system, guess again. Reportedly, a federal judge in Oregon recently issued an injunction blocking Bank of America from foreclosing on a borrower's home, holding that under Oregon law, the borrower was likely to prevail on the argument that the use of MERS had invalidated the mortgage, because MERS owned the mortgage but a bank owned the note. If this argument prevails, the borrower would still owe the money, but no foreclosure would be possible and the borrower could sell the home without paying off the mort-

[Continued on Page 2 . . . /](#)

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Banks Are From . . . MERS?
. . . /continued from Page 1

gage. The lender could sue the borrower, but collecting money from distressed former homeowners might be very difficult in many cases. Moreover, many of these notes are “non-recourse”: the banks are stuck with what they can get in foreclosure. No right to foreclose? As they say in law school: too bad, so sad.

In another case, this one in Arkansas, the owner of a second mortgage foreclosed on a home without notifying MERS, which was listed as owning the first mortgage. When MERS sued to overturn the foreclosure, the state supreme court ruled that MERS was not the actual owner of the first mortgage, was not injured and could not sue.

This is just what the banking system needed: more sand in the wheels of their massive mortgage foreclosure juggernaut, which has already ground to a halt in many states over “robo-signing” and other corner-cutting gimmicks the banks employed. Could the MERS imbroglia create a huge windfall for homeowners everywhere? That may be too much to expect, but it will be fun watching the banks squirm over this one.

Pomerantz Pursues Antitrust Violators

The Sherman Antitrust Act prohibits both cartels and monopolies. A cartel is formed when competitors agree among themselves to fix prices, divide markets, or rig bids. When consumers buy products and services they expect that the price has been determined by the market forces of supply and demand and not by a back-room agreement among competitors.

Monopolization occurs when a single company obtains market power, enabling it to exclude competitors not by outcompeting them, but by misusing its market power to prevent competitors from competing, such as by imposing exclusivity contracts on distributors and retailers that keep rivals out of the market or prevent products from reaching consumers.

The Pomerantz firm is currently Co-Lead Counsel representing a putative class of consumers in both a cartel and monopolization case.

Our Cartel Case. In *Refrigerant Compressors Antitrust Litigation*, defendants allegedly formed an illegal cartel by conspiring to fix the price of refrigerant compressors, which are used in refrigerators and freezers in homes and businesses. The Panasonic Corp. and a Whirlpool Corp. subsidiary are about to plead guilty to criminal price-fixing charges and will be sentenced to pay criminal fines totaling \$140.9 million. Pana-

sonic and Whirlpool have admitted that for over three years their high level officials agreed during meetings and conversations with their competitors to coordinate prices of refrigerant compressors and to exchange information to monitor and enforce the agreed-upon prices. Fines imposed as a result of government actions are considered punishment and not restitution for the actual economic damages suffered by the consumers.

Our Monopolization Case. In the *Photochromic Lenses Antitrust Litigation*, defendant Transitions Optical is accused of monopolization of the market for photochromic eye glass lenses, which change color from clear indoors to dark outdoors. Transitions Optical, which had an 85+ % share of the market, allegedly required distributors and retailers, as a condition of doing business with them, to enter into exclusivity arrangements prohibiting them from doing business with other competitive lens manufacturers. When the dominant player has 85% of the market, there is no choice but to knuckle under.

As a result of a civil lawsuit filed by the FTC, Transitions agreed to stop all exclusive dealing practices. Although this so-called FTC Consent Decree will end Transitions’ violations of antitrust law for a limited period of time, it provides for no compensation for the economic damages suffered by the consumers.

The Pomerantz Firm is prosecuting these cases on behalf of those consumers who suffered economic damages.

Adam G. Kurtz

Defendants Escape Liability for Failing to Detect, and Stop, Massive Frauds at Refco and AIG

Creditors and investors rely on outside auditors to keep their corporate clients honest. So when those creditors or investors find out that one of those corporations has perpetrated a massive fraud right under the auditors’ noses, they get mad. One path to redress is to bring a suit on behalf of the corporation seeking recovery for the auditor’s violation of its professional and contractual obligations to the company.

But such claims often encounter a serious obstacle: the doctrine of “*in pari delicto*,” which means that recovery is barred where the plaintiff is just as much at fault as the defendant. A derivative suit is brought on behalf of the company; so if the company is equally at fault as the auditor, it can’t recover against the auditor for failing to stop its own bad behavior.

Moreover, in the event the company has gone bankrupt, the bankruptcy trustee stands in the company's shoes; so a suit by the trustee against auditors can face the same weakness.

Recently, in *Kirschner v. KPMG*, New York's highest state court resolved certified questions regarding the effect of *in pari delicto* on suits against auditor defendants in two cases arising from scandals involving Refco and AIG. In both cases, the complaint alleged that senior executives perpetrated massive financial frauds and that auditors failed to stop them. In each case, the auditors – KPMG in the Refco case, and PriceWaterhouseCoopers in the AIG case – raised the *in pari delicto* defense, claiming that company insiders were the ones primarily responsible for the fraud, and that the company cannot recover against someone else for failing to stop them. The fact that a case is brought by a trustee, or by outside investors, rather than the company itself, doesn't change that fact, because the plaintiffs "stand in the shoes" of the company and are subject to all the defenses that could be asserted against the company.

In both the *Refco* and *AIG* cases, the plaintiffs argued that these insiders were not acting to benefit the company when they committed this fraud but were out only to benefit themselves. Therefore, they said, the insiders were pursuing interests "adverse" to the interest of the company, and the company should not be held responsible for their actions.

This may sound like an abstruse legal argument, but it has serious practical consequences for investors and creditors. When massive frauds like this (allegedly) occur, directors and officers liability insurance policies may not cover the damages. Unless the insider wrongdoers are extremely wealthy, the only way to recover for the injuries suffered is from third parties who may share responsibility for the wrongdoing. If the wrongdoing of these insiders bars recovery from third parties, the company cannot be made whole.

Both the Second Circuit Court of Appeals and the Delaware Supreme Court asked the New York Court of Appeals to decide the scope of this so-called "adverse interest" exception to the *in pari delicto* defense. Adverse interest is typically found to exist only where the officer or director "totally abandons" the company's interests in undertaking such actions. Lawyers and judges have long been confused about what constitutes "total abandonment" of a principal's interests.

Take, for example, a situation where an insider does something to inflate the company's financial results, not to benefit the company but in order to increase his own bonus or achieve some other personal end. The fraud temporarily helps

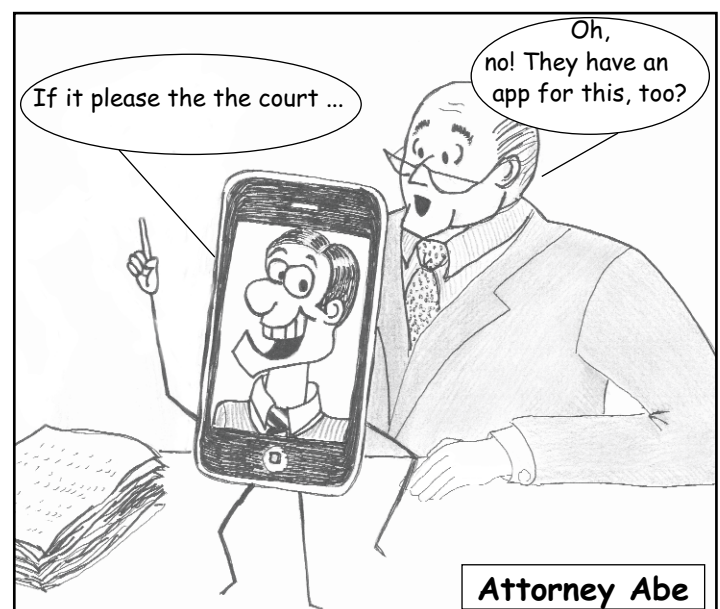
the company, by enhancing its reported financial results, but the real motivation is to help the insider; and at the end of the day the fraud is uncovered and the company is damaged. Has the wrongdoer "totally abandoned" the interests of the company? The Court of Appeals says no.

In its opinion, the Court of Appeals held that the adverse interest exception applies only when the insiders' actions have the immediate effect of harming the company. Where the conduct actually benefits the company (even if only in the short term) the exception does not apply. Thus, in our hypothetical example, the adverse interest exception would not apply because at first corporate results are improved, which benefits the company. If, on the other hand, the insider simply steals a few million dollars from the corporate safe, with the immediate effect of harming the company, the employee would have totally abandoned the interests of the company, the adverse interest exception would apply, the wrongful acts would not be attributed to the corporation, and the outside security firm charged with guarding the safe could be sued for negligence.

The Court of Appeals based its holding that the adverse interest exception applies only where corporate agents commit fraud against rather than for the corporation on the rationale-for-agency principles themselves:

[T]he presumption that an agent will communicate all material information to the principal operates except in the narrow circumstance where the corporation is actually the victim of a scheme undertaken by the agent to benefit himself or a third party personally,

Continued on Page 4 . . . /



the Pomerantz Monitor

... Massive Frauds at Refco and AIG
... /continued from Page 3

which is therefore entirely opposed (*i.e.* “adverse”) to the corporations own interests. Where the agent is perpetrating a fraud that will benefit his principal, this rationale does not make sense.

Anthony F. Maul

SEC Proposes Implementing Rules on “Say-on-Pay”

On October 18, the SEC released proposed rules designed to implement the executive compensation provisions of the Dodd-Frank Act. The proposed rules enable shareholders to cast advisory votes on both regular executive compensation and so-called “golden parachute” payments for departing executives in change-of-control situations. They also mandate enhanced disclosure of such payment agreements in proxy statements. The Commission held a public comment period on the proposed rules, which ended on November 18. We don’t yet know what changes, if any, the SEC will make as a result of the comments. Here is what the proposed rules, in their original form, would provide.

“Say-on-Pay” Vote

The new say-on-pay rule would require virtually all public companies to give their shareholders advisory votes on the compensation of the companies’ executives, beginning with a company’s first annual meeting held after January 20, 2011. Companies will have to disclose the extent to which shareholder votes will be binding, and also how companies have treated the results of such votes (if any) in the past.

“Say-on-Frequency” Vote

The new rules would also mandate that, at least every six years, companies give shareholders so-called “say-on-frequency” votes, which will influence how often say-on-pay votes are taken: annually, biennially, or triennially. As with say-on-pay votes, say-on-frequency votes are non-binding. They also share the same disclosure requirements and implementation date as say-on-pay votes.

“Golden Parachute” Vote and Additional Disclosures

The proposed rules also require that public companies involved in significant corporate transactions (like most mergers and acquisitions) give shareholders an advisory vote on any extra executive compensation triggered by consummation of the transaction. In addition, the rules mandate enhanced disclosure and discussion of such arrangements. Not only cash payments are covered by this rule; the accelerated vesting of

equity awards and pension and nonqualified deferred compensation benefits must now be disclosed as well.

Company Disclosures of What Consideration they Gave to Shareholder Votes

Companies would also be required to disclose in their Compensation Discussion and Analyses filings with the SEC on whether and how they have considered the voting results in determining executive pay. If the company has rejected the non-binding shareholder resolutions, their justifications for doing so could make interesting reading indeed.

Hedge Fund Voting Disclosures

Finally, the new regulations would force institutional investment managers who manage at least \$100 million in securities investments to file annual reports with the SEC explaining how they voted these shares on executive compensation matters.

Jim Hodgson

Supremes Hear Arguments in AT&T Mobility Case

Several months ago we reported that the Supreme Court had decided to review a case involving the enforceability of an arbitration clause in a consumer contract. The clause not only required arbitration of all disputes but also prohibited consumers from bringing a class-wide arbitration. Because the amounts involved in individual claims – \$30 charges for phone purchases – were so small, upholding the clause would mean that consumers had no effective right to redress for any improper or illegal conduct the phone company might have committed. It would never be economically practical to bring an arbitration on an individual basis. The district court had held that under California law the provisions barring class litigation were unconscionable because they made dispute resolution impracticable and therefore had the effect of insulating the phone company from any liability for any misconduct.

Although this case (*AT&T Mobility*) has been widely reported, one fact has been lost in the shuffle: the provision in the contract that awarded a \$7,500 bonus to the consumer if he won more than the phone company had offered to settle the claim. AT&T argued that this provision made it practicable for consumers to bring individual actions, and that therefore the provision barring class actions was not unconscionable.

This argument was not enough to sway either of the lower

courts, however. Nor should it have: even arbitrations cost far more than \$7,500. If the telephone company stonewalls, no one is going to go to the trouble to bring a case for \$30 in the hope that he or she might also win a \$7,500 “jackpot.”

Not that long ago the Supreme Court had decreed that arbitration clauses that do not expressly permit class actions must be interpreted as precluding them. Here the situation was even worse: the clause expressly forbade class actions.

Given all this, many were nervous that the Supreme Court granted *certiorari* in this case to further its campaign to limit the availability of class-wide arbitrations. But concerns eased somewhat when the Court heard oral argument on November 9. First, the Justices seemed reluctant to get into the state law question of what is unconscionable, with Justice Scalia asking “are we going to tell California what it has to consider unconscionable?” AT&T also argued that the federal arbitration act pre-empted the state law of unconscionability; but that argument did not seem to gain much traction either. Under the act, arbitration clauses can be invalidated under state laws that would apply equally to “any contract” and does not target arbitration agreements in particular. Under those circumstances, preemption is not an issue. The Justices were skeptical that California law improperly discriminated against arbitration agreements.

Relocation Subsidies: The Latest Corporate Giveaway

Reimbursement of relocation expenses is nothing new: if a company asks an employee to move, the least it can do is pay the costs incurred. But now we have relocation expenses on steroids. Some companies hiring new executives, or asking existing executives to relocate, are reimbursing them not only for the moving van, but also for any losses they incur when they sell their homes. In today’s market, that can be huge.

For example, according to the *WSJ*, when Microsoft recruited Stephen Elop as president of its business division in 2008, it paid him \$5.5 million in relocation benefits, including \$3.7 million to cover his losses on the sale of his home. When he later quit Microsoft in 2010, he got to keep his relocation bonus. In response to shareholder pressure, Microsoft has since put limits on its relocation packages, including a claw-back that requires reimbursement of the company if the executive jumps ship within two years.

According to the *WSJ*, about 74% of companies reimburse some or all of employees’ home-sale loss if taking a job with

the company forces the employee to move. Given the monumental housing losses some top honchos have taken, this has led to a shareholder mini-revolt at some companies.

For example, the California State Teachers’ Retirement System, along with other institutional investors, fought the reelection of three directors of Electronic Arts who had approved over \$1.5 million in relocation benefits, paid to the chief operating officer, including reimbursement of an \$800,000-plus loss on resale of his house. The three directors barely avoided being kicked out at last August’s annual meeting.

At Delta Airlines, Institutional Shareholder Services, the proxy advisory firm, urged its clients to vote against the reelection of the compensation committee members who had approved the payout of \$377,500 to the CEO for losses on his resale of his home. Delta then abruptly cancelled its home loss reimbursement program, and ISS backed off its re-election challenge.

At many companies the problem persists, however. ISS has now recommended that shareholders vote against the reelection of directors at eight companies where lavish home loss payouts had been approved for relocated executives. The *WSJ* quoted ISS special counsel Patrick McGurn as saying that “home-loss provisions are a hot-button issue with our institutional clients.”

This problem underscores what we already know: top corporate honchos live in a different world from the rest of us. They get reimbursed for their housing losses – even if they then purchased another home at a price that was reduced just as much as the house the executive sold. And when they resell their new houses at a later time, and make a handsome gain, is the company going to share in that profit? Don’t hold your breath. Heads they win, tails shareholders lose.

Old Black Magic Runs Out for Conrad

This past June the Supreme Court issued a series of rulings significantly curtailing the scope of the so-called “honest services” mail fraud statute, holding that the statute applied only to cases of bribery or kickbacks. It sent several criminal convictions back down for reconsideration by the lower courts. One of those cases involved Conrad Black, the former newspaper magnate who had been convicted of fraud, obstruction of justice, and two counts of honest services fraud.

On remand from the Supreme Court, Black’s counsel argued that the whole case was tainted by the misuse of the honest

[Continued on Page 6 . . . /](#)

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Old Black Magic Runs Out for Conrad
.../continued from Page 5

services law. In late October the federal appeals court disagreed, reversing the two honest services convictions but upholding the two others, for fraud and obstruction of justice. As a result, Black might get his sentence reduced, but he doesn't get off scot free.

Technically, the court did not enter a judgment of acquittal on the honest services convictions, ordering only a new trial on those counts; but it strongly suggested that the prosecution would be wasting its time retrying Black on those counts. If the government opts not to retry those two counts, the judge may consider the evidence presented on those two charges at the original trial when imposing a sentencing for the counts of which the defendants were properly convicted, the Seventh Circuit said.

More recently, prosecutors in New York have reportedly decided to press ahead with a retrial of Joseph Bruno, former

New York Senate Majority Leader, under the honest services law.

Pomerantz is pleased to announce that **Delisha J. Grant** has joined the Firm as associate. Ms. Grant graduated from The George Washington University Law School in 2009. There, she served as the Community Service Chair for the Black Law Students Association and was an active participant in the Domestic Violence Project, exploring social change lawyering issues in the battered women's movement. In addition, she interned at Ayuda Inc., representing immigrant victims of domestic violence and sexual assault in both family law and immigration matters. She was selected as one of eight law students nationwide to participate in the Twin Cities Diversity in Practice Program, completing rotational clerkships at both a corporate law firm and the law department of a Fortune 500 company. Ms. Grant currently serves as a volunteer lawyer for the New York City Bar Association's Foreclosure Defense Project.

notable dates

... on the Pomerantz horizon

Cheryl D. Hamer and **Jason S. Cowart** will participate in the following:

- December 11-14:** Public Fund Boards Forum in San Francisco, CA
- January 12-14:** Public Funds Summit, Phoenix, AZ
- January 30-Feb. 1:** NCPERS Legislative Conference, Washington, DC

We hope to see you there!



Cheryl D. Hamer



Jason S. Cowart

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PomTrack® Class Actions Update

The Pomerantz Firm, through its proprietary PomTrack® system, monitors client portfolios to identify potential claims for securities fraud, and to identify and evaluate clients' potential participation in class action settlements.

NEW CASES:

A selection of recently filed securities class action cases filed by various law firms are listed below. If you believe your fund is affected by any of these cases, contact Pomerantz for a consultation.

<u>Case Name</u>	<u>Ticker</u>	<u>Class Period</u>	<u>Lead Plaintiff Deadline</u>
GlobalSantaFe Corporation	GSF	October 2, 2007 – April 20, 2010	December 3, 2010
Hudson CDO Securities	N/A	December 6, 2005 – September 30, 2010	December 3, 2010
Cogent, Inc. (C.D. Cal.)	COGT	N/A	December 6, 2010
Potash Corp. of Saskatchewan	POT	August 17, 2010	December 6, 2010
Trubion Pharmaceuticals (W.D. Wash)	TRBN	N/A	December 6, 2010
DynaVox, Inc.	DVOX	N/A	December 13, 2010
China Green Agriculture, Inc.	CGA	November 12, 2009 – September 1, 2010	December 14, 2010
Solar Winds, Inc.	SWI	February 8, 2010 – July 21, 2010	December 14, 2010
Strayer Education	STRA	November 1, 2007 – August 13, 2010	December 14, 2010
Genzyme Corp. (2010)	GENZ	N/A	December 20, 2010
Regions Financial Corp. (2010)	RF	February 27, 2008 – January 19, 2009	December 20, 2010
Meta Financial Group, Inc.	CASH	May 14, 2009 – October 15, 2010	December 21, 2010
Private Bancorp, Inc.	PVTB	November 2, 2007 – October 23, 2009	December 21, 2010
Timothy Geidel/Georgetown Capital Grp./ Royal Alliance Assoc.	N/A	June 1, 1990 – September 30, 2010	December 22, 2010
The Washington Post Company	WPO	July 31, 2009 – August 13, 2010	December 27, 2010
DeVry Inc.	DV	October 25, 2007 – August 13, 2010	December 31, 2010
ITT Educational Services, Inc. (2010)	ESI	October 23, 2008 – August 13, 2010	January 3, 2011
The St. Joe Company	JOE	February 19, 2008 – October 12, 2010	January 3, 2011
Vivus, Inc. (2010)	VVUS	September 9, 2009 – July 15, 2010	January 3, 2011
Capella Education Company	CPLA	February 16, 2010 – August 13, 2010	January 4, 2011
Gentiva Health Services, Inc.	GTIV	July 31, 2008 – July 20, 2010	January 7, 2011
RINO International Corporation	RINO	March 31, 2009 – November 11, 2010	January 14, 2011
Green Bankshares, Inc.	GRNB	January 19, 2010 – November 9, 2010	January 18, 2011
Wilmington Trust Corp. (D. Del.)	WL	October 23, 2009 – November 1, 2010	January 18, 2011
MLP AG (Germany)	MLP	January 1, 1999 – December 31, 2002	December 31, 2012

SETTLEMENTS:

The following class action settlements were recently announced. If you purchased securities during the listed class period, you may

<u>Case Name</u>	<u>Amount</u>	<u>Class Period</u>	<u>Claim Filing Deadline</u>
Gilead Sciences, Inc.	\$8,250,000	July 14, 2003 – October 28, 2003	December 6, 2010
Landry's Restaurants, Inc. (2009) (Del. Ch.)	\$14,500,000	September 17, 2008	December 6, 2010
Alger Mutual Funds	\$4,828,800	November 1, 1998 – September 3, 2003	December 8, 2010
AllianceBernstein Family of Funds	\$74,586,650	October 1, 1998 – September 30, 2003	December 8, 2010
Allianz Mutual Funds (f/k/a PIMCO Funds)	\$10,612,500	February 23, 1999 – February 17, 2004	December 8, 2010
Columbia Mutual Funds	\$12,653,000	November 1, 1998 - February 25, 2004	December 8, 2010
Excelsior Family of Funds	\$3,632,600	December 12, 1998 – November 16, 2003	December 8, 2010
Invesco Funds	\$20,455,400	July 30, 1999 – November 24, 2003	December 8, 2010
Janus Funds	\$2,604,700	January 1, 2000 – September 30, 2003	December 8, 2010
MFS Mutual Funds	\$75,042,250	July 31, 1999 – December 8, 2003	December 8, 2010
PBHG Mutual Funds	\$31,538,600	July 30, 1999 – November 13, 2003	December 8, 2010
Strong Funds	\$13,678,500	January 1, 1999 – December 31, 2004	December 8, 2010
US Unwired, Inc.	\$9,700,000	May 7, 2001 – July 18, 2002	December 13, 2010
China Organic Agriculture, Inc.	\$600,000	July 12, 2007 – August 14, 2008	December 15, 2010
New Century Financial Corp.	\$124,827,088	May 5, 2005 – March 13, 2007	December 15, 2010
Kinder Morgan, Inc. (2006) (Kansas District Court)	\$200,000,000	May 29, 2006 – May 30, 2007	December 17, 2010
The PMI Group, Inc.	\$31,250,000	November 2, 2006 – March 3, 2008	December 21, 2010
Opteum, Inc.	\$2,350,000	September 29, 2005 – August 10, 2007	December 23, 2010
The Cooper Companies Inc.	\$27,000,000	July 28, 2004 – November 21, 2005	December 23, 2010
Virgin Mobile USA, Inc. (2007)	\$19,500,000	October 10, 2007 – March 12, 2008	December 31, 2010
Zandria Corp. (SEC)	\$455,898	April 4, 2000 – November 29, 2000	December 31, 2010
Bally Total Fitness Holding Corp. (2004)	\$2,000,000	August 3, 1999 – April 28, 2004	January 6, 2011
CV Technologies, Inc. (Canada) (Ontario Court)	\$6,656,960	December 11, 2006 – March 26, 2007	January 6, 2011
AtriCure, Inc. (2008)	\$2,750,000	May 10, 2007 – October 31, 2008	January 7, 2011
Agria Corp.	\$3,750,000	November 6, 2007 – June 26, 2008	January 14, 2011
Goldman Sachs Group, Inc. (2004)	\$29,000,000	July 1, 1999 – May 7, 2002	January 14, 2011
TomoTherapy, Inc.	\$5,000,000	May 9, 2007 – July 31, 2008	January 18, 2011
National City Corp. (4.0% Convertible Senior Notes)	\$22,500,000	January 23, 2008 – December 23, 2008	January 24, 2011
Stolt-Nielsen S.A.	\$2,000,000	February 1, 2001 – February 20, 2003	January 24, 2011
China Sunergy Co., Ltd.	\$1,050,000	May 17, 2007 – August 23, 2007	January 27, 2011
National City Corp. (N.D. Ohio)	\$11,000,000	January 5, 2007 – January 5, 2007	January 31, 2011
Skilled Healthcare Group, Inc.	\$3,000,000	May 14, 2007 – June 9, 2009	February 8, 2011
Merix Corp. (2004)	\$2,500,000	January 29, 2004 – May 13, 2004	February 12, 2011
Countrywide Financial Corp. (2007)(C.D. Cal.)	\$624,000,000	March 12, 2004 – March 7, 2008	February 14, 2011
Safenet, Inc. (2006)	\$25,000,000	March 31, 2003 – May 18, 2006	February 14, 2011
Hemispherx Biopharma, Inc.	\$3,600,000	February 18, 2009 – December 1, 2009	February 19, 2011
The Spectranetics Corp.	\$8,500,000	March 16, 2007 – September 4, 2008	February 21, 2011

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AND
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