

# **Exhibit C**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

MOLLY CRANE, Individually and on  
Behalf of All Other Persons Similarly  
Situated,

Plaintiff,

v.

SEXY HAIR CONCEPTS, LLC, and ULTA  
SALON COSMETICS & FRAGRANCE,  
INC.,

Defendants.

**Case 1:17-cv-10300**

**DECLARATION OF PATRICK J. VALLEY  
IN SUPPORT OF PLAINTIFF'S ASSENTED-TO MOTION  
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Patrick J. Vallely, declare under penalty of perjury:

1. I am attorney with the law firm Shapiro Haber & Urmy LLP (“Shapiro Haber & Urmy”), counsel to Plaintiff in this action.
2. I submit this declaration in support of Plaintiff’s Motion for Final Approval of Class Action Settlement (the “Motion”).
3. The defined terms I use in this declaration have the meanings provided in the Settlement Agreement and Release attached to the Motion as Exhibit A.
4. On May 30, 2018 and July 23, 2018, the parties engaged in a formal mediation before an experienced and respected mediator and retired judge, the Honorable John C. Cratsley. The first mediation session was unsuccessful, and only after a full second day of mediation were the Parties able to reach an agreement on the core terms of the Settlement. Even after that, the Parties negotiated vigorously concerning additional terms of the Settlement.

5. My firm took discovery in this action to inform ourselves concerning the value of the case and to assess the benefits of a Settlement. The core facts supporting Plaintiff's claim derived from the product labels themselves, but, in order to intelligently discuss settlement, my firm procured from Defendants before agreeing to mediation information concerning the volumes of sales of the Subject Products and other information concerning those sales (including wholesale and retail price information). Defendants also produced additional information to Plaintiff concerning Defendants' defenses, which permitted my firm to consider fully the risks associated with pressing forward with Plaintiff's claims. In whole, we obtained the necessary information in order to fully evaluate the risks and benefits of the Action before negotiating the Settlement.

6. My firm is highly experienced in class action litigation, specializing in particular in consumer class actions. The attorneys of record (myself and Edward F. Haber) together have dozens of years' experience litigating such actions. I attached hereto as **Exhibit 1** a resume detailing my firms' relevant experience in class actions, including consumer class actions.

7. Based on my firm's knowledge and understanding to evaluate the risks and the benefits of the proposed settlement, we strongly believe that the proposed settlement confers a significant benefit to Class Members. Furthermore, my firm conducted an analysis of class action settlements in cases involving similar allegations (for example, concerning misrepresentations on labels of consumer products). Based on that evaluation, and considering not only the aggregate value of the Settlement but also the structural aspects of the Settlement that will encourage and facilitate claim submission, we have concluded that this Settlement presents a highly favorable recovery for the Class.

8. The following schedule sets forth the amount of time spent by the attorneys and paralegals at my firm in prosecuting this action on behalf of the Plaintiff and the Class through February 15, 2019. The schedule also sets forth the current hourly rates of each of those attorneys and paralegals or the rates that would be charged for those professionals if they were still employed by Shapiro Haber & Urmey LLP. This schedule was prepared from contemporaneous daily time records maintained by my firm in the ordinary course, which can and will be provided to the Court if requested:

<u>Name</u>	<u>Position</u>	<u>Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Edward F. Haber	Senior Partner	\$925.00	39.8	\$36,815.00
Thomas G. Shapiro	Counsel <sup>1</sup>	\$925.00	19.7	\$18,222.50
Thomas V. Urmey	Counsel	\$925.00	1.8	\$1,665.00
Ian J. McLoughlin	Partner	\$720.00	22.6	\$16,272.00
Michelle H. Blauner	Partner	\$820.00	0.4	\$328.00
Adam M. Stewart	Senior Associate	\$575.00	3.3	\$1,897.50
Patrick J. Valley	Senior Associate	\$575.00	405.3	\$233,047.50
Jonathan Dinerstein	Associate	\$350.00	1.3	\$455.00
Robert Erickson	Paralegal	\$225.00	1.5	\$337.50
Tyler Jankauskas	Paralegal	\$225.00	14.4	\$3,240.00
Tyler Purinton	Paralegal	\$225.00	16.7	\$3,757.50
		<b>Total</b>		<b>\$316,037.50</b>

9. The hourly rates set forth above are within the range of rates customarily charged by attorneys practicing complex litigation in the Boston area. Had my firm not prosecuted this action, my firm could and would have devoted the time described above to other cases. The

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<sup>1</sup> At the time Thomas G. Shapiro and Thomas V. Urmey performed work in this case, they were Senior Partners.

major commitment of time that my firm devoted to this case precluded us from spending that time working on other cases and accepting other representations.

10. Through March 13, 2017, my firm has incurred or will incur \$6,482.45 in out-of-pocket costs and expenses in the prosecution of the case. The most significant item among these expenses is my firm's \$3,948.00 share of the expenses paid to Judge Cratsley, who successfully mediated this case. All the costs and expenses summarized below were reasonably and necessarily incurred in connection with the prosecution and settlement of this action and were recorded in the books and records maintained by my firm in the ordinary course. A breakdown of those expenses by category follows. This summary was prepared from detailed expense records of my firm, and from the estimate for settlement administration expenses provided by the Settlement Administrator, which can and will be produced to the Court if requests:

<u>Category</u>	<u>Expense</u>
Delivery	\$103.71
Filing Fee	\$400.00
Mediation Expense	\$3,948.00
Printing/Copies	\$935.70
Postage	\$8.45
Legal Research	\$955.28
Telephone Conference	\$59.31
Travel	\$72.00
<b>Total</b>	<b>\$6,482.45</b>

11. Plaintiff is seeking a service award for her assistance in and time devoted to this case. Although this case was settled at a relatively early stage, Ms. Crane's assistance in this litigation was important. Specifically, Ms. Crane assisted in the investigation of this case,

responded to written discovery (including detailed interrogatories and the collection of documents), and assisted Class Counsel in the consideration of the Settlement.

Signed under penalties of perjury on February 19, 2019.

/s/ Patrick J. Vallely  
Patrick J. Vallely

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing pleading was filed electronically through the Court's electronic filing system and that notice of this filing will be sent to all counsel of record in this matter by operation of the Court's ECF system.

Dated: February 19, 2019

*/s/ Patrick J. Vallely* \_\_\_\_\_  
Patrick J. Vallely

**Exhibit 1**

## Shapiro Haber & Urmy LLP

### OVERVIEW

With over 30 years of experience litigating, trying, and winning multi-million dollar cases across the country, Shapiro Haber & Urmy LLP (“Shapiro Haber & Urmy”) has long been a national leader in the field of complex, high-stakes litigation. Each of our attorneys has the educational background, expertise, and creativity to litigate against the largest, most prominent law firms in the country – and win. Unlike many other law firms in which only a few, if any, of the lawyers have actually tried a case to conclusion, our lawyers have successfully tried dozens of cases to verdict, including complex securities fraud actions, and have obtained outstanding results for our clients when efforts to reach a negotiated settlement have failed. As a result, we approach each case – large or small – with the expectation that it may be tried, and with the rigor and attention to detail that excellent trial preparation requires.

Shapiro Haber & Urmy’s partner, Edward F. Haber, and Counsel Thomas V. Urmy, Jr., and Thomas G. Shapiro were named Massachusetts Super Lawyers in 2006 through 2017, and were recognized as Top Rated Litigators by *The American Lawyer* in 2016. Michelle H. Blauner was named a Massachusetts Super Lawyer in 2006 through 2017. Associate Adam M. Stewart was named a Massachusetts Rising Star in 2011 through 2017, and associate Patrick J. Valley was named a Massachusetts Rising Star in 2013 through 2017. The firm has been awarded the “AV” rating by the Martindale-Hubbell Law Directory, which is given only to those firms that have earned a very high measure of professional esteem and have adhered to the highest ethical standards in the legal profession.

Shapiro Haber & Urmy’s commitment to success in high-stakes, high-profile litigation is matched by its commitment to providing access to quality legal representation on a pro bono or reduced-fee basis to low-wage individuals who otherwise might not be able to afford legal help. Our attorneys have represented low-wage workers in the fields of hospitality, janitorial services, and retail, in actions seeking to recover unpaid wages ranging from hundreds to tens of thousands of dollars. In each of these smaller cases we incur large fees and expenses, often far in excess of the wages sought to be recovered.

It is our belief that part of our duty as members of the bar is to represent those who otherwise would not have any means to obtain relief in court, and we welcome that responsibility. Reflecting this commitment, in 2011 the firm received the Law Firm Award from the Political Asylum/Immigration Representation Project (PAIR) for its pro bono work in representing asylum seekers.

## LEGAL PROFESSIONALS

### PARTNERS

#### **Edward F. Haber, Partner**

- 1966, B.A., Cornell University
- 1969, J.D. *cum laude*, Harvard Law School

#### **Michelle H. Blauner, Partner**

- 1983, B.A. *with highest distinction*, Cornell University
- 1986, J.D. *cum laude*, Harvard Law School

### ASSOCIATES

#### **Adam M. Stewart, Associate**

- 2001, B.S. *magna cum laude*, Northeastern University
- 2004, J.D. *magna cum laude*, Suffolk University Law School
- 2004-2005, law clerk for the Justices of the Massachusetts Superior Court

#### **Patrick J. Vallely, Associate**

- 2002, B.A. *magna cum laude*, University of Dayton
- 2005, J.D. *with honors*, University of Chicago Law School

#### **Jonathan F. Dinerstein, Associate**

- 2009, B.A., Tufts University
- 2016, J.D. *magna cum laude*, Boston University School of Law

### COUNSEL

#### **Thomas V. Urmv, Jr., Partner**

- 1960, B.A. *cum laude*, Amherst College
- 1964, L.L.B., Yale Law School

#### **Thomas G. Shapiro, Partner**

- 1965, B.A. *magna cum laude*, Harvard College
- 1969, J.D. *cum laude*, Harvard Law School

## JUDICIAL RECOGNITION

- Shapiro Haber & Urmy litigated the case “with considerable skill and experience” and demonstrated “excellent lawyering.” *Richard v. State St. Corp.*, (D. Mass. 2014).
- Shapiro Haber & Urmy is “highly skilled” and has “significant class action experience.” *Arnett v. Bank of Am., N.A.*, 2014 U.S. Dist. LEXIS 130903, at \*38 (D. Or. Sep. 18, 2014).
- “Shapiro Haber & Urmy is an eleven-lawyer firm with a national reputation for litigating a variety of national class actions” *Davis v. Footbridge Eng’g Servs., LLC*, 2011 U.S. Dist. LEXIS 93645, at \*8 (D. Mass. Aug. 22, 2011)
- “I think that [Shapiro Haber & Urmy] has done an excellent job on this and makes my job much, much easier.” *Olmeda v. AM Broadband, LLC*, (D. Mass. 2009) (Final Approval Hearing, Oct. 14, 2009).
- “[Shapiro Haber & Urmy] have wide experience in the field of securities class litigation [and] ... counsels’ skillful and zealous representation over a six-year period enabled the settling classes to obtain a favorable and certain cash recovery. . . . The high quality of representation provided by [Shapiro Haber & Urmy] is evident from the extensive record of this case . . . .” *In re Merrill Lynch & Co., Inc. Research Reports Securities Litig.*, 246 F.R.D. 156, 164, 174 (S.D.N.Y. 2007).
- Shapiro Haber & Urmy “has broad-based experience in complex litigation, including experience in securities fraud class actions in this district and others.” *Swack v. Credit Suisse First Boston*, 230 F.R.D. 250, 267 (D. Mass. 2005).
- “I am satisfied that [Shapiro Haber & Urmy] will prosecute this action vigorously and will protect the interests of the absent class members.” *McLaughlin v. Liberty Mutual Ins. Co.*, 224 F.R.D. 304, 310 (D. Mass. 2004).
- Shapiro Haber & Urmy is “highly qualified both generally, and in the specific context of private class actions under the Federal securities laws.” *Coopersmith, et al. v. Lehman Brothers, Inc.*, 344 F. Supp. 2d 783, 784 (D. Mass. 2004).
- Shapiro Haber & Urmy is “highly qualified to act as lead counsel for the Class” and “has extensive experience in prosecuting class actions, including as lead counsel.” *US Trust Co. of NY v. Albert* (S.D.N.Y. 1995).
- Shapiro Haber & Urmy “comes with a wealth of experience and skill in prosecuting class actions.” *US West, Inc., et al. v. Macallister, et al.*, Fed. Sec. L. Rep. P 97, 269 (D. Colo. 1992).

## QUALIFICATIONS AND EXPERIENCE

Highlights of Shapiro Haber & Army's class action experience include the following:

### ANTITRUST LITIGATION

- Shapiro Haber & Army played a leading role as a member of the Plaintiffs' Steering Committee in *In re Plasma Derivative Protein Therapies Antitrust Litig.*, C.A. No. 09-cv-07666 (N.D. Ill.), successfully defeating three lengthy and substantial motions to dismiss in that case. This was a complex, nationwide putative class action against manufacturers of plasma protein derivative therapies, which are proteins used to treat seriously ill patients across the United States. The action, filed on behalf of all direct purchasers of plasma-derivative protein therapies, alleged that plasma manufacturers agreed to restrict supply and therefore increase prices. In deciding to appoint the firm to its leadership position, the Court highlighted Shapiro Haber & Army's extensive experience litigating complex class actions. The case recently settled for \$128 million.
- Shapiro Haber & Army represented several of the nation's largest bedding manufacturers and licensors as plaintiffs in *In re Polyurethane Foam Antitrust Litig.*, C.A. No. 10-md-02196 (N.D. Ohio). Plaintiffs alleged that Defendants and their co-conspirators contracted, combined, or conspired to fix, raise, maintain, and/or stabilize prices and allocate customers for polyurethane foam in the United States.
- Shapiro Haber & Army is part of the Executive Committee in *In Re: Nexium (Esomeprazole) Antitrust Litig.*, C.A. No. 12-md-02409 (D. Mass.), representing a putative class of consumers and third-party payors who purchased or paid for Nexium products. Plaintiffs allege that Defendants conspired and entered into anticompetitive agreements designed to shield Defendant AstraZeneca and its brand name drug, Nexium, from competition with generic, lower priced versions of the drug.
- Shapiro Haber & Army has assisted in the representation of a certified class of dairy farmers in the Northeastern United States who allege that the defendants unlawfully monopolized and fixed the prices that they paid dairy farmers for their milk, and unlawfully allocated markets. The defendants included Dairy Farmers of America, Inc., Dairy Marketing Services, LLC, and Dean Foods Company. The Court approved a settlement between Plaintiffs and Defendant Dean Foods Company that provided for \$30 million in settlement funds. The case is *Allen v. Dairy Farmers of America, Inc., et al.*, C.A. No. 09-cv-230 (D. Vt.).
- In *In re: Automotive Parts Antitrust Litig.*, Master File No. 12-md-02311 (E.D. Mich.), Shapiro Haber & Army represents a putative class of indirect purchasers of various auto parts. The action alleges that Defendants fixed and maintained the prices at which such parts were sold.

- In *In re Optical Disk Drive Products Antitrust Litig.*, C.A. No. 10-md-2143 (N.D. Cal.), Shapiro Haber & Urmy represents purchasers of optical disc drives, as well as products containing optical disc drives, including DVD players, computers, and other electronic devices. The action alleges that Defendants and their co-conspirators fixed and maintained an artificial price at which optical disc drives, as well as products containing optical disc drives, were sold in the United States.
- Shapiro Haber & Urmy was appointed Vice Chair of the Executive Committee representing the class of direct purchasers in *In re Marine Products Antitrust Litig.*, C.A. No. 10-cv-2319 (C.D. Cal.) (continuing as *Ace Marine Rigging & Supply, Inc. v. Virginia Harbor Services, Inc., et al.*, C.A. No. 11-cv-00436 (C.D. Cal) and *Board of Commissions of the Port of New Orleans v. Virginia Harbor Services, Inc., et al.*, C.A. No. 11-cv-004367 (C.D. Cal)). The firm represented a class of direct purchasers of several products used in the marine industry to protect vessels, docks, and piers. The class action alleged that manufacturers of these marine products collaborated to rig bids and divide the market in order to avoid competition and maximize profits.

### CONSUMER LITIGATION

- Shapiro Haber & Urmy represents plaintiffs in a class action lawsuit filed in the Superior Court for Suffolk County, No. 98-6002-H, against Philip Morris Companies, Inc. and Philip Morris, Inc. The suit is brought under the Massachusetts Consumer Protection Act, M.G.L. c. 93A, and the common law, and seeks to recover damages from the defendants on behalf of all persons who purchased Marlboro Light cigarettes in the Commonwealth of Massachusetts. The case alleges that by using words such as “Light” and “Lowered Tar and Nicotine” on the packaging of Marlboro Lights, defendants falsely represented to purchasers that the cigarettes contained and delivered lower levels of tar and nicotine to human smokers than did regular cigarettes. In October of 2001, the Superior Court certified the case as a class action. Shapiro Haber & Urmy successfully argued against defendants’ appeal from the class certification decision, which was affirmed by the Supreme Judicial Court in August of 2004, *Aspinall v. Philip Morris Companies, Inc.*, 442 Mass. 381 (2004). The firm also successfully prevailed, before both the Superior Court and the Supreme Judicial Court, against Philip Morris’ argument that a consumer’s claims under c. 93A were preempted by federal law and the actions of the Federal Trade Commission. The final decision is reported at 453 Mass. 431 (2009). On February 19, 2016, after a five-week trial, the Court found that Philip Morris committed the alleged c. 93A violations, and awarded statutory damages plus prejudgment interest, totaling \$15 million.
- Shapiro Haber & Urmy represented putative classes of plaintiffs in litigation throughout the United States charging Bank of America with breach of contract and breach of the covenant of good faith and fair dealing in connection with the purchase of hazard and flood insurance in excess of the coverage amounts required by the mortgage agreements. In two of those cases, *Kolbe v. Bank of America*, 695 F.3d 111

(1<sup>st</sup> Cir. 2012), *en banc review granted*, and *Lass v. Bank of America*, 695 F.3d 129 (1st Cir. 2012), the Court of Appeals for the First Circuit reversed the district court's orders dismissing the claims. Shapiro Haber & Urmy successfully settled the case for \$30 million.

- Shapiro Haber & Urmy represents the putative class of plaintiffs in litigation in federal and state court in Florida against Homeward Residential, Inc. for breach of the covenant of good faith and fair dealing, and unfair business practices associated with its force-placed hazard insurance practices. Shapiro Haber & Urmy defeated Homeward's efforts to dismiss the case. *Martorella v. Deutsche Bank Nat'l Trust Co.*, 2013 WL 1137514 (S.D. Fla. Mar. 18, 2013). The parties have entered into a settled the case for a refund of 12.5% of the force-placed insurance premiums, which was approved by the state court and is being administered.
- Shapiro Haber & Urmy represents a putative class in a lawsuit filed in the United States District Court for the District of Massachusetts, No. 15-cv-12864, against defendants Massachusetts Mutual Life Insurance Company and its subsidiary C.M. Life Insurance Company. The suit is brought under the Massachusetts Consumer Protection Act, M.G.L. c. 93A, and the common law, and seeks to recover damages from the defendants on behalf of persons who purchased defendants' "MassMutual Odyssey" Fixed Annuity Product (the "Annuity"). The case alleges that the defendants falsely advertised and sold the Annuity to the plaintiff and class as providing a minimum guaranteed interest rate of 3%, but then unilaterally substituted a lower rate, which damaged plaintiff and the class because they received interest at a rate lower than the 3% rate that Defendants had promised.
- Shapiro Haber & Urmy also represents or has represented consumers and business owners by prosecuting consumer class action suits against:
  - MBTA on behalf of purchasers of commuter rail monthly passes in the months of January-March 2015 alleging breach of contract for failure to provide train service.
  - Seven Massachusetts automobile insurance companies for nonpayment of interest on arbitration awards;
  - Shell Vacation homes in connection with the sale of time shares
    - Starbucks for misrepresentation and overcharges in the sale of coffee;
  - Earth Friendly products for misrepresenting its products as "100% Natural" or "All Natural"
  - Building Products of Canada for selling defective roofing shingles;
  - Various health maintenance organizations for failure to pay claims of non-participating medical service providers for medical services in a timely fashion;
  - Zions First National Bank for charging and collecting excessive overdraft fees;
  - Re\$ubmiIt, LLC for unauthorized fees charged for insufficient funds checks;

- U-Haul for attempted price-fixing in violation of the Massachusetts consumer protection statute
- Wozo, LLC for deceptive internet marketing;
- American Medical Security, Inc. for unfair insurance practices;
- NVIDIA for the sale of defective products in violation of state consumer protection statutes
- Lenovo for the sale of defective products in violation of state consumer protection statutes
- TJX Companies, Inc. and Princeton Review related to the theft of personal and financial information of customers;
- E.I. DuPont De Nemours & Company for the potential of serious health hazards resulting from the manufacturing, sales and advertising of “Teflon”;
- Gillette for engaging in deceptive marketing practices with respect to its M3P razor and blades; and
- Southwestern Bell (doing business as Cellular One) for overcharging.

### **CONSUMER LITIGATION APPEALS**

Attorneys in our firm had principal responsibility for the brief, and presented the oral argument, in the following appeals in consumer class actions, many of which have asserted claims under M.G.L. c. 93A.

- *Kolbe v. BAC Home Loans Servicing, LP*, 695 F.3d 111 (1st Cir. 2012), *vacated by Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432 (1st Cir. 2013) (*en banc*).
- *Downing v. Globe Direct LLC*, 682 F.3d 18 (1st Cir. 2012)
- *Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012)
- *Aspinall v. Philip Morris, Inc.*, 453 Mass. 431 (2009)
- *Good v. Altria Group, Inc.*, 501 F.3d 29 (1st Cir. 2007), *aff'd* 129 S. Ct. 528 (2008)
- *Aspinall v. Philip Morris Cos., Inc.*, 442 Mass. 381 (2004)
- *Smilow v. Sw. Bell Mobile Sys., Inc.*, 323 F.3d 32 (1st Cir. 2003)
- *Roberts v. Enterprise Rent-A-Car Co. of Boston, Inc.*, 438 Mass. 187 (2002)

## SECURITIES LITIGATION

- Shapiro Haber & Urmy served as co-lead counsel prosecuting a class action on behalf of the sellers of Sigma Designs, Inc. stock from July 13, 2007 through November 28, 2007, alleging securities fraud and insider trading against Sonar Capital Management LLC and certain of its affiliated investment funds and investors and certain of its principals. *Gordon v. Sonar Capital Mgmt., Inc.* (S.D.N.Y.).
- Shapiro Haber & Urmy is liaison counsel prosecuting an action on behalf of the Federal Home Loan Bank of Boston (the “Bank”) in the United States District Court for the District of Massachusetts, arising from the sale to the Bank by numerous financial institutions of over \$5.9 billion in Private Label Mortgage-Backed Securities, by means of offering documents which Plaintiffs allege were materially false and misleading. The Bank seeks rescission and damages under M.G.L. c. 110A, M.G.L. c. 93, and applicable common law. *Fed. Home Loan Bank of Boston v. Ally Fin., et. al.* (D. Mass.). The case has recently been remanded to Massachusetts Superior Court.
- Shapiro Haber & Urmy was at the forefront of shareholder litigation addressing the nationwide epidemic of improperly backdated stock options. The firm was lead counsel or part of the leadership team in derivative actions in both state and federal courts concerning the improper backdating (or other manipulation) of stock options granted to officers, directors, and executives of the following corporations: Affiliated Computer Services, Inc.; Cablevision Systems Corp.; Linear Technology Corp.; Maxim Integrated Products; Staples, Inc.; and UnitedHealth Group, Inc. The United Health derivative action settled for over \$700 million in cash and re-priced or surrendered options – the largest derivative action options settlement on record. Other notable settlements included Maxim (approximately \$38 million in cash and re-priced and surrendered options); Affiliated Computer Services (approximately \$40 million in cash and re-priced and surrendered options); Cablevision (approximately \$34 million in cash and other consideration); Staples (approximately \$8.2 million in cash and re-priced options); Linear (\$4.5 million in cash and re-priced options as well as corporate governance changes).
- Shapiro Haber & Urmy was one of the court-appointed lead counsel in the consolidated derivative action brought on behalf of the HealthSouth Corporation against its former CEO, Richard Scrushy, its other former officers and directors, and others. This action coordinated derivative actions brought on behalf of HealthSouth in the Delaware Chancery Court, the Federal District Court in Alabama, and the state court in Birmingham, Alabama. The legal team, on which Shapiro Haber & Urmy served as one of the lead counsel, obtained the following recoveries for HealthSouth: (i) summary judgment in the Delaware Chancery Court for over \$17 million, *In re HealthSouth Corp. S’holders Litig.*, 845 A.2d 1096 (Del. Ch. 2003), *aff’d*, 847 A.2d 1121 (Del. 2004); (ii) summary judgment in the Circuit Court of Jefferson County, Alabama for over \$47 million, see *Tucker v. Scrushy*, 2006 WL 37028 (Ala. Cir. Ct. Jan. 3, 2006), *aff’d*, 2006 WL 2458818 (Ala. Aug. 25, 2006); (iii) a settlement of the derivative claims against some of the officers and directors of HealthSouth for \$100 million; (iv) a \$133 million settlement of the derivative claims against HealthSouth’s former investment advisor,

UBS; and (v) a \$2.8 billion dollar judgment against Mr. Scrusby after a bench trial in the Circuit Court of Jefferson County, Alabama.

- Shapiro Haber & Urmy was the court-appointed co-chairman of the Plaintiffs' Executive Committee in *In re Merrill Lynch Analyst Reports Sec. Litig.*, 02-MDL-1484 (S.D.N.Y.). The firm was also court-appointed lead counsel in two of the Merrill Lynch securities analyst cases: *InfoSpace Analyst Reports Sec. Litig.*, and *Internet Capital Group Analyst Reports Sec. Litig.* The Court approved a settlement in the amount of \$125 million.
- Shapiro Haber & Urmy was lead counsel in two analyst conflict of interest cases against Credit Suisse First Boston on behalf of the shareholders of Winstar Communications, Inc. and Razorfish, Inc., both of which produced multi-million dollar recoveries. *Ahearn v. Credit Suisse First Boston (Winstar)* (D. Mass.); *Swack v. Credit Suisse First Boston (Razorfish)* (D. Mass.).
- Shapiro Haber & Urmy was on the executive committee prosecuting a securities class action alleging fraud against the former officers and auditors of now bankrupt Winstar Communications, Inc. The lawsuit also alleged that Lucent Technologies participated in the fraud. The case against the former officers settled for \$18.125 million and the case against Lucent settled for \$12 million. The case against the auditors settled shortly before trial in June 2013 for \$10 million. *In re Winstar Commc'ns Inc. Sec. Litig.* (S.D.N.Y.).
- Shapiro Haber & Urmy was co-lead counsel in a class action alleging fraud against former officers and auditors of Actrade Financial Technologies. A settlement for \$5,250,000 recently received final approval in the Southern District of New York. *In re Actrade Fin. Techs., Inc. Sec. Litig.* (S.D.N.Y.).
- Shapiro Haber & Urmy represented a class of persons who had sold businesses to Waste Management, Inc. for common stock of Waste Management. The case arose from Waste Management's restatement of its financial statements. Shapiro Haber & Urmy obtained summary judgment against Waste Management as to liability for a majority of the class members. Shapiro Haber & Urmy also successfully defended defendant's appeal of the class certification order, *Mowbray v. Waste Management Holdings, Inc.*, 208 F.3d 288 (2000). The case was subsequently settled for a combination of cash and stock with a total value of \$25 million.
- Shapiro Haber & Urmy represented the Commonwealth of Massachusetts Pension Reserves Investment Trust ("PRIT") in a securities fraud action against Bear Stearns & Co., Inc. in the United States District Court for the Southern District of California. The case arose out of the sale of \$81 million in subordinated debentures issued by Weintraub Entertainment Group ("WEG"), a start-up film company. In February 1987, PRIT bought \$5 million in bonds from Bear Stearns, the placement agent for the issuer. WEG declared bankruptcy in 1990, and the bondholders lost virtually their entire investment. A class

action was filed in San Diego against Bear Stearns and others. PRIT also filed suit in 1991, and in 1993 our action was consolidated with the class action for discovery and trial. The case was tried to a jury in San Diego in the summer of 1998. Shapiro Haber & Urmy partner Thomas V. Urmy was PRIT's trial counsel. After a four-week trial, the jury found that Bear Stearns had committed securities fraud and entered a \$6.57 million verdict in favor of PRIT, representing 100% of the damages sought by PRIT at the trial. The case was subsequently settled while on appeal to the Ninth Circuit. *Pension Reserves Inv. Trust v. Bear Stearns & Co.* (S.D. Cal.).

- Shapiro Haber & Urmy represented shareholders of three ING Principal Protection Funds who brought suit alleging that the advisory fees charged are excessive and violate Section 36(b) of the Investment Company Act of 1940. The action was settled for payment by the defendants to the ING Principal Protection Funds of significant funds and a substantial reduction in investment advisory fees to be charged, which resulted in millions of dollars of future savings to the funds and their shareholders. *Price v. ING Funds Distributors, LLC* (D. Mass.).
- Shapiro Haber & Urmy was liaison counsel prosecuting a class action, pending in the United States District Court for the District of Massachusetts, alleging that State Street Bank and Trust Company breached its custodial agreements and other duties to its custodial clients in connection with a multi-million scheme to defraud committed by their investment advisor. *Handal v. State Street Corp.* (D. Mass.).
- Shapiro Haber & Urmy represented a Massachusetts bank in litigation against Merrill Lynch involving the sale of auction rate securities. *Cooperative Bank v. Merrill Lynch Pierce Fenner & Smith, Inc.* (S.D.N.Y. remanded to D. Mass.).
- Shapiro Haber & Urmy was one of plaintiffs' counsel in shareholder derivative litigation against Cendant Corporation, which arose from one of the largest financial frauds in American history. The case was settled for \$54 million. *In Re Cendant Corp. Deriv. Action Litig.* (D.N.J.).
- Shapiro Haber & Urmy represented the Trustee of UNIFI Communications, Inc., in a breach of fiduciary duty lawsuit against its former directors, alleging that they grossly mismanaged UNIFI in the period leading up to its bankruptcy, causing UNIFI's insolvency to deepen. Shapiro Haber & Urmy recovered \$3.95 million for UNIFI and its creditors. *Ferrari v. Ranalli* (D. Mass.).
- Shapiro Haber & Urmy represented shareholders of EcoScience Corp. in a breach of fiduciary duty lawsuit against its former directors, arising out of the merger between EcoScience and Agro Power Development, Inc. The case, brought in the Delaware Chancery Court, charged that the merger was accomplished by means of a false proxy statement, and resulted in the payment of an unfair price to EcoScience shareholders. Shapiro Haber & Urmy recovered \$2 million for EcoScience's shareholders. *Smalley v. DeGiglio* (Del. Ch.).

- Shapiro Haber & Urmy represented shareholders in a class action alleging securities violations in connection with a secondary offering of Digital Equipment Corp. securities. After dismissal by the District Court, partner Thomas Shapiro successfully argued the appeal to the First Circuit in *Shaw v. Digital Equipment Corp.*, 83 F.3d 1194 (1st Cir. 1996). The case was thereafter settled for \$5.2 million.
- Shapiro Haber & Urmy has recovered substantial settlements for defrauded shareholders by prosecuting securities class action suits on behalf of shareholders of, *inter alia*: Bank of New England Corp. (\$6.5 million); Bank of New England Corp. bondholders (\$8.4 million); Biopure Corp. (\$10 million); Centennial Tech., Inc. (stock and cash with a value of approximately \$20 million); Inso Corp. (\$12 million); Kendall Square Research Corp. (cash, stock and warrants, with a total value of approximately \$17 million); Kurzweil Applied Intelligence, Inc. (\$9.625 million); Lotus Dev. Corp. (\$7.5 million); MicroCom, Inc. (\$6 million); Molten Metal Tech., Inc. (\$11.85 million); Monarch Capital Corp. (\$5 million); Open Environment Corp. (\$6 million); Pegasystems, Inc. (\$5.25 million); Picturitel Corp. (\$12 million); Presstek, Inc. (\$20 million); Minoco Oil and Gas Drilling Limited Partnerships (\$15 million).

### **SECURITIES LITIGATION TRIALS**

Attorneys in the firm have conducted the following jury trials in securities cases. Attorneys in the firm have also conducted numerous civil and criminal jury trials in non-securities matters.

- Mr. Urmy obtained a favorable jury verdict on behalf of the PRIT Fund in a case tried in the United States District Court for the Southern District of California.
- Messrs. Shapiro and Haber were chief trial counsel in a securities class action entitled *Fulco v. Continental Cablevision*, C.A. No. 89-1342-Y, in a three-week jury trial before Judge Young in the United States District Court in Boston. The case was brought on behalf of the limited partners in four partnerships that owned and operated cable television systems. The jury returned a verdict for the plaintiffs for approximately \$4.5 million.
- Mr. Shapiro was chief trial counsel in a securities fraud class action against Polaroid Corporation in federal court in Boston, which resulted in a jury verdict with an estimated value of \$30 million. A panel of the Court of Appeals for the First Circuit found error in the jury instructions and remanded the case for a new trial. Polaroid then petitioned for and received *en banc* reconsideration. Sitting *en banc*, the First Circuit reversed the judgment. *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990).

- Mr. Shapiro represented a business owner in a suit against a public company in Massachusetts that acquired his business in exchange for \$11 million in company stock. The suit alleged that the stock price was artificially inflated as a result of false financial statements. Mr. Shapiro conducted the bench trial in 2009 against lawyers from three of the largest firms in Boston.
- Mr. Shapiro represented a customer in an NASD arbitration trial against Oppenheimer & Co. and the broker, and recovered out of pocket losses, unrealized investment gains per a model portfolio theory, interest on the damages, and an award of attorneys' fees.
- Mr. Haber and Ms. Blauner represented one partner in a suit against another partner for breach of fiduciary duty. The case was tried to a jury in the federal court in Boston, which returned a verdict in favor of our client in the full amount of the damages sought. The verdict was affirmed on appeal. *Wartski v. Bedford*, 926 F.2d 11 (1st Cir. 1991).
- Mr. Shapiro was co-trial counsel for a defendant in a jury-waived trial on an indictment for fraud in the sale of securities, filing false financial statements, and conspiracy. Mr. Shapiro was also on the brief in the appeal from that conviction. *United States v. Lieberman*, 608 F.2d 889 (1st Cir. 1979).

### **SECURITIES LITIGATION APPEALS**

Attorneys at Shapiro Haber & Urmy had principal responsibility for the brief, and presented the oral argument, in the following appeals in securities cases.

- *In re PolyMedica Corp. Sec. Litig.*, 432 F.3d 1 (1st Cir. 2005)
- *Lentell v. Merrill Lynch & Co., Inc.*, 396 F.3d 161 (2d Cir. 2005)
- *Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir. 2001)
- *Mowbray v. Waste Mgmt.*, 203 F.3d 288 (1st Cir. 2000)
- *Wells v. Monarch Capital Corp.*, 129 F.3d 1253 (Table) (1st Cir. 1997)
- *Alpha Group Consultants Ltd. v. Bear Stearns*, 119 F.3d 5 (Table) (9th Cir. 1997)
- *Glassman v. Computervision, Inc.*, 90 F.3d 617 (1st Cir. 1996)
- *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194 (1st Cir. 1996)
- *Wartski v. Bedford*, 926 F.2d 11 (1st Cir. 1991)
- *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990)
- *Roeder v. Alpha Indus., Inc.*, 814 F.2d 22 (1st Cir. 1987)
- *Frishman v. Maginn*, 75 Mass. App. Ct. 103 (2009)
- *Wolf v. Prudential-Bache Sec., Inc.*, 41 Mass. App. Ct. 474 (1996)
- *Kessler v. Sinclair*, 37 Mass. App. Ct. 573 (1994)

## ERISA LITIGATION

- Shapiro Haber & Urmy has been appointed co-lead counsel and is currently prosecuting an ERISA class action consolidated in the United States District Court for the District of Massachusetts against Fidelity Management & Trust Co. The case is brought on behalf of participants in 401(k) plans for Bank of America, EMC Corp. and Safety Insurance Co. and alleges that Fidelity misused the plans' "float income" by temporarily investing it for its own benefit, in violation of the Employee Retirement Income Securities Act. *In re Fidelity ERISA Float Litig.* (D. Mass.)
- Shapiro Haber & Urmy is counsel for Xerox employees who have sued the Xerox Corporation Guarantee Income Plan for breach of fiduciary duty in the calculation of retirement benefits. The case alleges that the administrators of the plan have breached their fiduciary duties by not calculating benefits for all similarly situated plan participants in the same way, and seeks to represent a class of Xerox employees. The case is pending in the Western District of New York. *Kunzman v. Conkright* (W.D.N.Y.)
- Shapiro Haber & Urmy was lead counsel prosecuting an ERISA class action, pending in the United States District Court for the District of Massachusetts, on behalf of the participants in State Street Corporation's Salary Savings Plan against State Street Corp. and the administrators of the Plan. Plaintiff alleges that State Street breached its fiduciary duties to the Plan participants by continuing to offer State Street stock as an investment option under the Plan, when the stock was overvalued and no longer a prudent investment alternative, and that defendants made material misrepresentations about the company's foreign exchange trading revenue in communications with Plan participants who had invested in State Street stock. The case settled for \$10 million. *Richard v. State Street Corp.* (D. Mass.).
- Shapiro Haber & Urmy also was as liaison counsel prosecuting an ERISA class action in the United State District Court for the District of Massachusetts on behalf of a plan administrator of the a 401(k) Plan, against Massachusetts Mutual Life Insurance Company arising out of MassMutual's receipt of revenue sharing payments from the mutual funds on its platform as kickbacks and/or a "pay to play" scheme in connection with the placing, retaining and adding the mutual funds on the menu of available funds in its 401(a) and 401(k) programs. The case settled for \$10 million. *Golden Star, Inc. v. Mass Mutual Life Insurance Co.*, C.A. No. 11-cv-30235 (D. Mass.).
- Shapiro Haber & Urmy represented former employees of Stone & Webster, Inc. to recover damages suffered by the company's retirement plans for breach of fiduciary duty under ERISA by certain former officers and directors of Stone & Webster who were fiduciaries of the plans when they continued to offer Stone & Webster stock as an investment option in the period before Stone & Webster filed for bankruptcy. The action settled for \$8 million. *Stein v. Smith* (D. Mass.)

- Shapiro Haber & Urmy LLP's litigated a class action under ERISA relating to Aetna's Life Insurance Company's improper denial of health insurance benefits in refusing to cover medical expenses incurred from the non-hospital use of a continuous passive motion machine prescribed by the plaintiff's and class members' health care professionals to treat knee injuries. In settlement, Shapiro Haber & Urmy obtained 56% of the amount of each claim for benefits for members of the settlement class. *Jaggard v. Aetna Life Ins. Co.* (D. Mass.).
- Shapiro Haber & Urmy LLP litigated a class action under ERISA against Digital Equipment Corporation and John Hancock Life Insurance Company arising out of Digital's decision to refund surplus life insurance premiums to current company employees but not to former company employees. Shapiro Haber & Urmy represented a class of former Digital Equipment employees who were participants in the life insurance plan, and who maintained that Digital Equipment had discriminated against its former employees who had paid excessive premiums under the life insurance plan. Shapiro Haber & Urmy LLP successfully settled obtained a multimillion dollar settlement for the class. *Michniewich v. Digital Equipment Corp.* (D. Mass.).

### **WHISTLE-BLOWER ACTIONS**

Shapiro Haber & Urmy has handled a number of whistleblower cases over the years, including under the federal False Claims Act and pursuant to the Securities and Exchange Commission's ("SEC") recently promulgated regulations under the Dodd-Frank Act. For example, the firm served as counsel to a whistle-blower alleging that Raytheon had violated the federal False Claims Act. In addition, the firm currently represents whistle-blowers in three separate matters brought pursuant to the SEC's new whistle-blower program. In each of those cases, the firm is assisting the whistle-blower in providing information to the SEC about possible violations of the federal securities laws by the whistle-blowers' former employers.

### **WAGE AND HOUR LITIGATION**

Shapiro Haber & Urmy has successfully represented plaintiff employees in many wage and hour individual and class actions for employee misclassification and in actions seeking to recover overtime pay owed to them under both state and federal law. Such cases have been successfully prosecuted in federal and state courts in Massachusetts and other states, recovering millions of dollars in damages from employers such as Electronic Arts; Sony Computer Entertainment America, Inc.; Arbella Insurance Company; Liberty Mutual Insurance Company; Continental Insurance Company; USAA; Ames Department Stores, Inc.; Argenbright, Inc.; Abercrombie & Fitch; Lane Bryant, Inc.; Express; United Parcel Service; Footbridge, and AM Broadband LLC. Shapiro Haber & Urmy is currently prosecuting wage claims against CVS and Pepperidge Farms.

## ATTORNEY BIOGRAPHIES

### Partners:

#### **Edward F. Haber**

Mr. Haber graduated from Cornell University in 1966 and from Harvard Law School (*cum laude*) in 1969. Upon graduation from Harvard Law School, he taught at the Boston College Law School during the 1969-1970 academic year. Mr. Haber has an AV rating from Martindale-Hubbell, and has been named a Massachusetts Super Lawyer in the field of securities litigation for the past several years, most recently in 2017. He has also been named to the national list of Super Lawyers in the Corporate Counsel Edition for securities litigation, and was recognized as a Top Rated Litigator by *The American Lawyer* in 2016. In 1988 and 1990, he was on the faculty of the New England Federal Securities Regulation Institute, sponsored by the American Law Institute/American Bar Association Committee on Continuing Professional Education. In April 1992, he was on the faculty of the Massachusetts Bar Association's seminar on the Fundamentals of Securities Arbitration. Mr. Haber is a member of the Bars of the Commonwealth of Massachusetts, the Supreme Court of the United States, the United States Courts of Appeals for the First and Seventh Circuits, and the United States District Court for the District of Massachusetts.

#### **Michelle H. Blauner**

Ms. Blauner is a 1983 graduate of Cornell University (with highest distinction) and a 1986 graduate of Harvard Law School (*cum laude*). She has been named a Massachusetts Super Lawyer numerous times, most recently in 2017. In 2013, Ms. Blauner was named one of the top 50 Woman Massachusetts Super Lawyers. Upon graduation she became an associate at the Boston law firm of Foley, Hoag & Elliot. In 1988 she joined the firm as an associate, and she became a partner in 1993. Ms. Blauner has worked on many of the complex class actions prosecuted by the firm. She is co-author, with Mr. Shapiro, of *Securities Litigation in the Aftermath of In Re Data Access Securities Litigation*, 24 New. Eng. L. Rev. 537 (1990). Ms. Blauner is a member of the Bars of the Commonwealth of Massachusetts, the United States District Courts for the Districts of Massachusetts and Colorado, and the United States Court of Appeals for the First Circuit.

### Associates:

#### **Adam M. Stewart**

Mr. Stewart is a 2001 graduate of Northeastern University (*magna cum laude*) and a 2004 graduate of Suffolk University Law School (*magna cum laude*). He has been named a Massachusetts Super Lawyer Rising Star from 2011 through 2017. He was a law clerk to the Justices of the Massachusetts Superior Court from 2004 to 2005 and joined Shapiro Haber & Urmey in 2005. He is the author of *The Silent Domino: Allowing Pre-Arrest Silence As Substantive Evidence of Guilt and The Possible Effect on Miranda*, 37 Suffolk Univ. L. Rev. 189 (2004). He is a member of the Bars of the Commonwealth of

Massachusetts, the United States District Court for the District of Massachusetts, and the United States Court of Appeals for the First Circuit.

**Patrick J. Valley**

Mr. Valley is a 2002 graduate of the University of Dayton (*magna cum laude*) and a 2005 graduate of The University of Chicago Law School (*with honors*), where he was Editor in Chief of the *Chicago Journal of International Law*. He was named a Massachusetts Super Lawyer Rising Star from 2013 through 2017. He was a litigation associate at the Boston law firm of Foley Hoag from 2005 to 2012, and joined Shapiro Haber & Urmey in 2012. He is a member of the Bars of the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts.

**Jonathan F. Dinerstein**

Mr. Dinerstein is a 2009 graduate of Tufts University and a 2016 graduate of Boston University School of Law (*magna cum laude*), where he was an Articles Editor for the Boston University Law Review. He joined Shapiro Haber & Urmey in 2017. He is a member of the Bar of the Commonwealth of Massachusetts.

**Counsel:**

**Thomas G. Shapiro**

Mr. Shapiro graduated from Harvard College (*magna cum laude*) in 1965 and from Harvard Law School (*cum laude*) in 1969. Mr. Shapiro is well known for his expertise and experience in securities litigation. He has an AV rating from Martindale-Hubbell and has been named a Massachusetts Super Lawyer numerous times, most recently in 2017. He has also been named to the national list of Super Lawyers in the Corporate Counsel Edition for securities litigation, and was recognized as a Top Rated Litigator by *The American Lawyer* in 2016. He has been a faculty member in continuing legal education programs concerning securities litigation sponsored by the Practising Law Institute, ALI-ABA, Massachusetts Continuing Legal Education, Massachusetts Academy of Trial Attorneys, and the Boston Bar Association. Mr. Shapiro has lectured on securities litigation issues for the American Corporate Counsel Association and at a NASDAQ Financial Executive Conference for senior officers of NASDAQ companies. Mr. Shapiro was also on the faculty of the Flaschner Judicial Institute's seminar for Massachusetts Superior Court judges on the Trial and Management of Complex Cases.

Mr. Shapiro is the author of the chapter "Depositions in Class Actions" in Massachusetts Deposition Practice Manual, published by Massachusetts Continuing Legal Education in 1992, and co-author of *Securities Litigation in the Aftermath of In Re Data Access Securities Litigation*, 24 New. Eng. L. Rev. 537 (1990). He served as the first Chairman of the Federal Practice Committee of the Massachusetts Bar Association. He is a member of the Bars of the Commonwealth of Massachusetts, the United States District Court for the District of Massachusetts, the United States Court of Appeals for the First Circuit, and the Supreme Court of the United States.

**Thomas V. Urmv, Jr.**

Mr. Urmv graduated from Amherst College (*cum laude*) in 1960 and from Yale Law School in 1964. He has an AV rating from Martindale-Hubbell and has been named a Massachusetts Super Lawyer numerous times, most recently in 2017. In 2016, he was also recognized as a Top Rated Litigator by *The American Lawyer*. Between 1964 and 1972, Mr. Urmv was the personal assistant and associate for the Honorable Whitman Knapp, who was named as the head of the Commission to Investigate Police Corruption in New York City and later a Judge of the United States District Court for the Southern District of New York. Before formation of the current firm in 1988, Mr. Urmv was a partner in the Boston law firm Warner & Stackpole.

Mr. Urmv is a member of the Bars of the Commonwealth of Massachusetts, the United States District Courts for the District of Massachusetts and the Southern and Eastern Districts of New York, the United States Courts of Appeals for the First, Second, Third, Ninth, and District of Columbia Circuits, and the United States Supreme Court.

