

**United States Third Circuit Court of Appeals
Task Force on Selection of Class Counsel**

**Written Statement of Catherine E. LaMarr
General Counsel
Office of the Connecticut State Treasurer**

Thank you for inviting Connecticut to provide testimony before the Task Force on Selection of Class Counsel. Our formal participation in class action securities litigation began under the direction of Hon. Denise L. Nappier, Treasurer of the State of Connecticut and sole fiduciary of the Connecticut Retirement Plans and Trust Funds (“CRPTF”). As Treasurer Nappier took office in January 1999, this formal participation is, admittedly, quite short. Connecticut’s commitment to participation as an active plaintiff in class action securities litigation is the result of significant consideration and the development of a formal process for determining whether or not to seek lead plaintiff status in such matters. Selection of counsel is one of the most important elements of our process. We take our role as lead plaintiff very seriously and value greatly our relationship with counsel in these and all matters where we engage legal counsel.

Our experiences since becoming exposed to the arena of class action securities litigation have been quite profound. Our testimony is anecdotal, but we believe highly relevant.

Establishing Our Criterion

Soon after Treasurer Nappier was elected and Catherine LaMarr was appointed her General Counsel, both received numerous communications from the plaintiff’s bar. After meeting with a few plaintiff’s law firms, Treasurer Nappier determined that Connecticut, as an institutional investor, had an obligation to actively participate in class action securities litigation to do its fair share with other active institutional investors. Connecticut established criteria for determining whether to seek appointment as lead plaintiff in class action securities litigation and began to actively encourage other institutional investors to become active participants in the litigation. . Since developing these criteria, Connecticut has twice sought to be named lead plaintiff and is currently serving as sole lead plaintiff in the *Waste Management* litigation and as co-lead plaintiff in the *Campbell’s Soup* litigation.

One very important element in our criteria includes a desire to increase asset recovery by limiting counsel fees to fair but reasonable amounts. Given the size of the recovery in many of these cases, traditional counsel percentages appeared to be enormous and unnecessary windfalls that only worked to disadvantage the members of the class. We take counsel selection in such matters very seriously in Connecticut. We have been

informed that Connecticut has negotiated the lowest fee arrangement ever agreed to by class counsel and FOUR law firms have agreed to the same terms.

Connecticut has sought to insure that it is represented by a diverse group of highly qualified attorneys. We have engaged the services of a wide range of firms to serve our needs in class action litigation. Of the three firms Connecticut has selected to represent the class (subject, always to judicial approval), one is a large, full service law firm; one is a small (4 person) boutique securities litigation firm based in Connecticut and one is a minority-owned law firm. Our primary contacts at two of these firms are women.

We believe that Connecticut is precisely the type of institutional investor plaintiff Congress hoped to encourage to take an active role in this arena when it enacted the Plaintiffs Securities Litigation Reform Act. We do not believe Connecticut is the only institutional investor with similar commitment. There are several others, and there must be. There is far too much of this litigation for a handful of plaintiffs to handle. We urge this Task Force to consider means of recruiting increasing numbers of active institutional investors to serve as lead plaintiffs in class action securities litigation.

Our Experience with Counsel

Our experience with class counsel has run the gamut from excellent to, frankly, shocking.

We have had excellent experiences with all of the three law firms we engaged to represent the class in the two matters where Connecticut serves as lead plaintiff. The three law firms we selected to represent the class have kept us informed of all matters, preparing summaries of lengthy documents, arranging for conference calls where necessary, and generally providing periodic updates at all relevant intervals. Our selected counsel has furnished us with well thought out and well written papers. Our selected counsel has taken appropriate initiative and considered innovative approaches to achieve the highest recovery possible. And, possibly most importantly, our selected counsel has listened to and addressed the concerns we have raised.

Connecticut has several disappointing experiences with law firms active in the area of class action securities litigation. We will describe only three of our negative experiences, ranging from unethical behavior to poor performance.

1. One of our selected counsel reported that another lawyer, having reviewed our negotiated fee arrangement, approached him and suggested an arrangement designed to benefit only the law firms seeking to be named lead counsel. This senior partner asked our selected counsel to collude and breach his duty to his client and convince Connecticut that it should not seek lead plaintiff status so that the two firms might together be appointed lead counsel and split a higher percentage fee. Obviously our fee arrangement was unacceptable to this senior member of the bar. Instead of merely saying “no thank you” to our fee arrangement, he chose to place his own interests above that of the

members of the class and his own client. We are pleased that our selected counsel chose to say, “no, thank you” and our relationship remains strong.

2. Another prominent law firm, with which both our office and the Connecticut Attorney General’s office had, at the time, existing client relationships, represented a group of investors seeking lead plaintiff status in the *Waste Management* litigation. The firm took positions in documents filed with the court, which were adverse to Connecticut. In fact, certain of those positions were directly opposite positions advocated on behalf of Connecticut in another matter. Giving this prominent firm the benefit of the doubt, we assumed that the California office was unaware of our current client relationship with the New York office. The Deputy Attorney General and the General Counsel placed a call to the partner in the New York office that was our primary contact. They pointed out the obvious conflict of interest and expressed displeasure with regard to certain vicious pot shots the firm had taken at our state in its documents. Following this telephone call, where the partner acted concerned and apologized, the negative attacks upon our state and the current Treasurer, who serves as sole fiduciary of our pension funds, escalated. In appointing lead plaintiff and lead counsel in the matter, the court admonished the law firm for its inappropriate and in fact, unethical, behavior.

3. In another matter, the court determined that our selected counsel, a smallish boutique firm, required additional assistance and appointed co-lead counsel. We have been quite disappointed in the poor responsiveness and slipshod quality of the work performed by this law firm. Because this firm was the court’s choice, we are in the awkward position of tolerating substandard service rather than risking offending the bench. Frankly, had we selected this counsel and received inferior service, it is quite likely that that we would have already sought to have the firm removed.

Our Conclusions

In summation, during the past 2 and one-half years, Connecticut has twice sought to serve as lead plaintiff in class action litigation. We have twice been appointed lead plaintiff. During this process, we have dealt closely with six law firms, three were selected by Connecticut to work with us, and three were not. Our experience with counsel we selected has been excellent. Our experience with counsel we did not select has been disappointing at best.

We are very concerned about the prospect of auctioning class counsel services. We believe that auctioning these services severely hinders the necessary attorney client relationship between the lead plaintiff and lead counsel. We believe that the selection of counsel is quite personal. Not only must the lead plaintiff be comfortable with the competency and experience of counsel, but such plaintiff must be comfortable with the manner in which such counsel relates to the plaintiff. Having a significant role in selection of such counsel enhances the probability that the attorney client relationship will be a good one. It has, in fact, been our experience that selection of counsel has resulted in highly effective relationships.

We are quite concerned that imposition of class counsel through an auction, or any other process may well be a deterrent to participation of the type of institutional investor plaintiffs we believe Congress sought to attract to this process. In spite of our belief that all institutional investors have an obligation to take on their fair share of responsibility for class action securities litigation, we simply wouldn't participate if we were forced to work with unethical counsel.

We believe that the institutional investor plaintiff is in the best position to negotiate fee arrangements designed to maximize recovery of lost assets. In fact, we have already been successful in negotiating such arrangements. We also believe the institutional investor is in the best position to create opportunities for small, mid-sized, minority and women owned law firms. Sensitive to diversity issues and interested in expanding the base of available counsel, Connecticut has in fact already selected a diverse group of counsel in its selection process. An auction process is likely to eliminate opportunities for diversity in the selection of class counsel.

Ultimately, approval of counsel is, by law, the decision of the court. We believe significant consideration should be given to institutional investor plaintiffs that have taken the time to negotiate fees and gain sufficient comfort with the style of the counsel selected. There are circumstances where counsel selected by the Lead Plaintiff might be inappropriate for Lead Counsel (ie. conflicts of interest). We believe, however, that the presumption should be that the institutional investor has a sufficient level of sophistication in these matters to effectively select appropriate and competent counsel to serve the needs of the class.

It is for these reasons that Connecticut encourages this Task Force to recommend against auctions in the selection of lead counsel and opt to take appropriate steps to seek out and engage in the process active, interested institutional investor plaintiffs who pay attention like Connecticut.

OFFICE OF THE STATE TREASURER
PSLRA Lead Plaintiff Criteria



As an as an institutional investor, the Connecticut Retirement Plans and Trust Funds (CRPTF) has an obligation to actively participate in Class Action Securities Litigation for the following reasons:

1. Where assets are lost due to the malfeasance of others, recovery of such lost assets must be pursued. Maximizing recovery of assets is achieved through maximizing settlement dollars, which includes limiting, as appropriate and fair, attorney fees.
2. As an institutional investor, the CRPTF has an interest in the long term well being of the companies in which we invest. Therefore, settlement negotiations, where appropriate, can and should include discussions of appropriate corporate governance improvements which will have long term positive effect upon the workforce, management, investors and the communities in which companies exist.
3. The institutional investor is in the very best position to effectively manage litigation counsel in order to maximize recovery of lost assets and achieve long term beneficial improvements with respect to the investment community.

Connecticut will seek to serve as lead plaintiff in class action securities litigation cases under the following circumstances:

1. The case appears to be strong with a strong likelihood for success.
2. The CRPTF has sustained a significant loss due to the malfeasance of others.
3. The CRPTF is likely to be named sole lead plaintiff or there is presented an opportunity to share lead plaintiff status with an institutional investor with which Connecticut has a relationship or is building a relationship.
4. The CRPTF and the Office of the Attorney General are able to able to negotiate a fair a reasonable fee agreement with counsel.
5. The case presents an opportunity to address compelling corporate governance issues.

Connecticut is committed to active participation in class action securities litigation. We believe we will be an attentive, assertive plaintiff, working diligently for the benefit of the class with, hopefully, derivative benefits for the entire investor community.

Procedures for determining whether to file a motion for lead plaintiff status:

1. Determine the CRPTF's market losses with respect to the specific security for the class period. If there is a significant loss, then:
2. Review case analysis prepared by potential counsel, in conjunction with the Office of the Attorney General and determine whether the case appears to be strong with a strong likelihood for success. If the case is strong, then:
3. Review case analysis prepared by potential counsel to determine whether the case presents an opportunity to address compelling corporate governance issues.
4. Review analysis prepared by potential counsel to determine the likelihood that CRPTF would be named sole lead plaintiff. As appropriate, consider and form coalitions.
5. Negotiate a fee arrangement with counsel and the Office of the Attorney General.