

Exhibit "M"

<p>HUMANIK, et al., Plaintiffs</p> <p>v.</p> <p>CIAVARELLA, et al., Defendants</p>	<p>CIVIL ACTION</p> <p>NO. 3:09-CV-0630</p> <p>The Honorable A. Richard Caputo</p>
--	--

DECLARATION OF PROFESSOR LYNN A. BAKER RELATING TO THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT FUND ALLOCATION PLAN

I, Lynn A. Baker, declare as follows:

1. SUMMARY OF OPINIONS

- The proposed \$2,500,000 settlement was agreed to on September 25, 2013, more than four years after the first of these consolidated cases was filed and after extensive arms-length negotiations and due diligence. As a cash settlement with minimal reversion of funds to the Defendants, the proposed settlement takes the form most favorable to the settlement Class.
- The high rate of participation of Juvenile and Parent class members, together with the small number of opt outs and the absence of any objecting class members, suggests that the class members themselves consider the settlement fund allocation plan, as detailed in the class settlement notice, to be fair and reasonable.
- I believe that the proposed settlement fund allocation plan is fair, reasonable, appropriate to the circumstances of the proposed class settlement, and consistent with accepted allocation practices in group settlements involving large numbers of plaintiffs.

- Insofar as I am aware, no basis exists for finding the proposed settlement fund allocation plan unfair, unreasonable, or not appropriate to the circumstances of the proposed class settlement.

2. CREDENTIALS AND QUALIFICATIONS

I hold the Frederick M. Baron Chair in Law at the University of Texas School of Law, where I have taught since 1997, and where I also serve as Co-Director of the Center on Lawyers, Civil Justice, and the Media. I have also been a professor at the University of Arizona College of Law (1992-1997), and have been a visiting professor at Columbia University Law School (1997) and at Rutgers (Camden) University Law School (1997). I began my academic career teaching at the University of Virginia School of Law from 1986 to 1992. Prior to that, I served as a law clerk to Judge Amalya L. Kearsse on the United States Court of Appeals for the Second Circuit in Manhattan (1985-86). I am a 1985 graduate of Yale Law School, where I served as an Article & Book Review Editor of the YALE LAW JOURNAL. I am a member of the Bars of the States of Texas and Arizona and of the United States Supreme Court.

As a law professor, one of my principal academic interests has been ethical issues in group litigation and settlement, including issues surrounding the allocation of settlement proceeds. I regularly teach a survey course on Professional Responsibility, which includes substantial discussion of these issues. I also often teach a seminar (titled "Mega-settlements") which focuses on large-dollar, complex settlements, and which involves extended, in-depth discussion of allocation issues in both mass tort and class action settings. I have frequently appeared as an invited speaker on these issues at symposia, conferences, and continuing legal education programs. My scholarly publications on these issues include: *I Cut, You Choose: The*

Role of Plaintiffs' Counsel in Allocating Settlement Proceeds, 84 Va. L. Rev. 1465 (1998) (with Charles Silver); *Mass Lawsuits and the Aggregate Settlement Rule*, 32 Wake Forest L. Rev. 733 (1997) (with Charles Silver); and *The Aggregate Settlement Rule and Ideals of Client Service*, 41 S. TEX. L. REV. 227 (1999) (with Charles Silver). These publications have been cited by numerous commentators and courts, and in leading treatises including the ALI's PRINCIPLES OF AGGREGATE LITIGATION (2010).

I have served as an expert or consultant on ethical and/or allocation issues in dozens of large-dollar, large-group settlements, including the BP class action settlement in the U.S. Court of Appeals for the Fifth Circuit, the \$4.5 billion nationwide Vioxx settlement in 2007, and the \$1.27 billion nationwide Fen-Phen class action settlement (Seventh Amendment) in 2006, numerous settlements involving various other pharmaceuticals and medical devices (including trans-vaginal mesh, Fosamax, NuvaRing, Risperdal, hip replacement products, Prozac, Yaz/Yasmin, hormone replacement therapy, Paxil, Avandia, Seroquel, Gadolineum, Rezulin, Zyprexa, Ortho Evra, Bextra, Celebrex), and many settlements involving asbestos, silica, MTBE, and other toxins. I have served as an expert in various settlements in connection with *In re WorldCom, Inc. Securities Litigation*, and in connection with class action settlements in twelve states involving alleged wage and hour violations by Wal-Mart.

Regarding the consolidated cases in the caption of this Report, I previously served as an expert regarding the fairness and reasonableness of the settlement fund allocation plan in connection with the class settlement with the Mericle Defendants, approved by this Court on December 14, 2012. See Memorandum Opinion of the Court [Mericle Settlement] (filed 12/14/12), at p. 35. See also Declaration of Professor Lynn A. Baker Relating to the Fairness

and Reasonableness of the Settlement Fund Allocation Plan [Mericle Settlement] (filed November 5, 2012)

I have provided a copy of my curriculum vitae, with addendum, as an attachment to this Declaration.

3. DOCUMENTS REVIEWED

When preparing this Report, I reviewed the items listed below which, unless noted otherwise, were generated in connection with the consolidated cases in the caption of this Report. I also reviewed other items including published scholarly works, newspaper articles related to the case and proposed settlement, and the kidswinsettlement.com website.

- Individual Plaintiffs' Master Long Form Complaint and Jury Demand (filed 6/25/2009)
- Master Settlement Agreement dated December 16, 2011 by and among Robert K. Mericle and Mericle Construction, Inc., the Representative Plaintiffs, Class Counsel and Individual Plaintiffs' Counsel
- Joint Motion for Preliminary Approval of Class Action Settlement between Plaintiffs and Mericle Defendants (filed 12/16/2011)
- Plaintiffs' Memorandum of Law in Support of Joint Motion for Preliminary Approval of Class Action Settlement between Plaintiffs and Mericle Defendants (filed 12/23/2011)
- Order Conditionally Certifying Settlement Class and Preliminarily Approving Proposed Settlement (filed 2/28/2012)

- Notice of Class Action Settlement (long form and short form) – for Mericle settlement
- Proof of Claim Form – for Mericle settlement
- Transcript of Preliminary Hearing before Judge A. Richard Caputo, January 6, 2012
- In re: Expungement of Juvenile Records and Vacatur of Luzerne County Juvenile Court Consent Decrees or Adjudications from 2003-2008 (related to case No. 81 MM 2008), First Interim Report and Recommendations of the Special Master (dated 3/12/2009)
- In re: Expungement of Juvenile Records and Vacatur of Luzerne County Juvenile Court Consent Decrees or Adjudications from 2003-2008 (related to case No. 81 MM 2008), Order of 3/26/2009
- In re: Expungement of Juvenile Records and Vacatur of Luzerne County Juvenile Court Consent Decrees or Adjudications from 2003-2008 (related to case No. 81 MM 2008), Order of 10/29/2009
- Declaration of Professor Lynn A. Baker Relating to the Fairness and Reasonableness of the Settlement Fund Allocation Plan [Mericle Settlement] (filed 11/5/12)
- Memorandum Opinion of the Court [Mericle Settlement] (filed 12/14/12)
- Final Order and Judgment [Mericle Settlement] (filed 12/14/12)
- Master Settlement Agreement with Provider Defendants (dated September 25, 2013) [hereinafter “MSA”].

- Joint Motion for Preliminary Approval of Class Action Settlement Between Plaintiffs and Provider Parties, including Exhibits (filed 10/16/13)
- Plaintiffs' Memorandum of Law in Support of Joint Motion for Preliminary Approval of Class Action Settlement Between Plaintiffs and Provider Parties, including Exhibits (filed 10/30/13)
- Order Conditionally Certifying Settlement class and preliminarily Approving Proposed Settlement (filed 11/27/13)
- Notice of Provider Defendant Class Action Settlement (mailed notice and published notice)
- Provider Defendant Settlement Proof of Claim Form and Authorization to Release Confidential Information
- Report of Stephen J. Scherf, CPA (Asterion) regarding financial condition of Provider Defendants, including Appendix (dated April 29, 2014)
- Data from the Claims Committee regarding the number and categories of Proof of Claim forms submitted, the number and categories of opt out claimants, the number of objectors, and the size of the Juvenile and parent settlement classes.

4. SYNOPSIS

This proposed settlement would resolve pending federal and state law claims against the Provider Defendants¹ and the Zappala Parties² of approximately 2,421 Juvenile settlement class

¹ The Provider Defendants are defined as PA Child Care, LLC (PAAC), Western PA Child Care, LLC (WPAAC), and Mid-Atlantic Youth Services Corp. (MAYS). See MSA at 1.

members and approximately 2,400 Parent settlement class members for an alleged scheme involving the corruption of the Luzerne County Common Pleas and Juvenile Courts from January 1, 2003 through May 28, 2008.³ As of the January 21, 2014, Opt-Out Deadline established in this Court's Order Conditionally Certifying Settlement Class and Preliminarily Approving Proposed Settlement (filed November 27, 2013), approximately 1,378 Juveniles and 865 Parents had timely submitted Proof of Claim forms to share in the proposed cash settlement fund. As I explain below, I believe that the proposed settlement fund allocation plan is fair, reasonable, appropriate to the circumstances of the proposed class settlement, and consistent with accepted allocation practices in group settlements involving large numbers of plaintiffs.

5. BACKGROUND OF THE LITIGATION

Various class action lawsuits and individual lawsuits were filed on behalf of juveniles who were adjudicated delinquent or referred to placement by former Luzerne County Court of Common Pleas Judge Mark A. Ciavarella Jr. between January 1, 2003 and May 28, 2008 (hereafter "Juveniles") and on behalf of the parents and natural guardians ("Parents") of the juveniles who were adjudicated delinquent or referred to placement by former Judge Ciavarella during that period of time.

² The Zappala Parties are defined as Gregory R. Zappala, Consulting Innovations and Services, Inc., and Southwestern PA Child Care, LLC. See MSA at 8. See also MSA at 7 (defining "Released Parties").

³ The proposed settlement does not resolve any claims against the Non-Released parties, which are defined as Robert J. Powell; Powell Law Group P.C.; Beverage Marketing of PA., Inc.; Pinnacle Group of Jupiter, LLC; Vision Holdings, LLC; Mark A. Ciavarella, Jr.; Michael T. Conahan; and all of the aforesaid's current or former employees, related parties, successors of assigns in their capacities as such. See MSA at 5.

The class action lawsuits⁴ and the individual lawsuits⁵ are all pending in the United States District Court for the Middle District of Pennsylvania (hereafter together “the Actions”). The Actions were filed against multiple defendants, and all of the Actions include the Provider Defendants as defendants.⁶ The Actions allege that the Provider Defendants and others were responsible for \$2.6 million in concealed payments to Judges Mark A. Ciavarella, Jr., and Michael T. Conahan, in exchange for referring children who appeared before Judge Ciavarella to certain juvenile correctional facilities, including PACC and/or WPACC.⁷

The Actions allege that as a result of these improper payments, juveniles who appeared before Judge Ciavarella between January 1, 2003 and May 28, 2008 were denied “their right to the honest services of [Judge Ciavarella, as a judge] of the Court of Common Pleas for Luzerne County, performed free from deceit, favoritism, bias, self-enrichment, self-dealing, concealment,

⁴ The “Legal Notice of a Class Action Settlement” (hereafter “Class Settlement Notice”) references two class action lawsuits: H.T., et al. v. Ciavarella, Case No. 09-cv-357; and Conway v. Cohan, Case No. 09-cv-291.

⁵ The Class Settlement Notice references six individual lawsuits: Wallace v. Powell, Case No. 09-cv-286; Humanik v. Ciavarella, Case No. 09-cv-630; Clark v. Conahan, Case No. 09-cv-2535; Dawn v. Conahan, Case No. 10-cv-0797; Elia v. Powell, Case No. 11-cv-465; and Elia v. Powell, Case No. 11-cv-466; Belanger v. Ciavarella, Case No. 10-cv-1405; and Gillette v. Ciavarella, Case No. 11-cv-0658.

⁶ The Class Settlement Notice states at page 2 that

This Class Action Settlement is paid for by the Provider Defendants for their benefit and for the benefit of (i) the Provider Parties, defined as PACC, WPACC, and MAYS, and all related parties, successors, assigns, members, managers, shareholders, directors, officers, employees, agents, and attorneys (excluding Non-Released Parties), and (ii) the Zappala Parties, defined as Gregory R. Zappala (“Zappala”), consulting Innovations and Services, Inc., and Southwestern PA Child Care, LLC, and all related parties, successors, assigns, members, managers, shareholders, directors, officers, employees, agents, and attorneys (excluding Non-Released Parties).

⁷ Wallace et al. v. Powell et al., USDC M.D. Pa., case 09-cv-0286, Individual Plaintiffs’ Master Long Form Complaint and Jury Demand, filed June 25, 2009, at 13-36.

and conflict of interest, and within their fiduciary duty.”⁸ It is alleged that these payments caused Judge Ciavarella “to disproportionately sentence juveniles in Luzerne County to detention prior to delinquency determinations and after delinquency determinations,” and “to ensure that a disproportionate number of juveniles . . . were incarcerated in juvenile detention facilities [PACC/WPACC].”⁹

The Actions allege, *inter alia*, that the Provider Defendants violated the Juveniles’ civil rights under 42 USC § 1983 and deprived the Juveniles of their procedural and substantive due process rights under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution;¹⁰ that they conspired to unlawfully detain the Juveniles;¹¹ that that they violated the Racketeer

⁸ Id. at 15.

⁹ Id. at 18.

¹⁰ Id. at 45-47. Among the specific claims is that the Juveniles were denied their “constitutional right to appear before [an] impartial tribunal and to have an opportunity to be heard,” *id.* at 46, and that they were denied “an adjudication of [delinquency and of] an appropriate sentence by a fair and impartial judge, free from conflict of interest and personal financial gain,” *id.* at 47. See also *id.* at 66 (contending that certain Juveniles were denied “the right to counsel, the right against self-incrimination, and the right to be advised of the consequences of waiving counsel or entering a guilty plea such that waivers and pleas are knowing, intelligent, and voluntary, as required by the due process provisions of the [U.S.] Constitution”).

¹¹ Id. at 71-72. Among the specific claims is that the Provider Defendants “conspired to facilitate the detention of Juvenile Plaintiffs at Defendants PACC and/or WPACC by paying kickbacks to Defendants Ciavarella and Conahan,” and that “[a]s a result of their involvement in the conspiracy . . . Said Defendants knew or should have known that the Orders issued by Defendant Ciavarella to detail Juvenile Plaintiffs were procured by illegal means, thereby eliminating the probable cause necessary for a lawful detention and resulting in the unlawful detention of Juvenile Plaintiffs.” *Id.* at 71.

Influenced and Corrupt Organizations Act (“RICO”) causing injuries to certain Parents’ property;¹² and that they violated Pennsylvania laws against civil conspiracies.¹³

The Supreme Court of Pennsylvania, by order of February 11, 2009, exercised its King’s Bench powers and appointed Judge Arthur E. Grim to serve as a Special Master to review the transcripts of the cases of individual juveniles who appeared before Judge Ciavarella between 2003 and 2008.¹⁴ On October 29, 2009, the Supreme Court of Pennsylvania issued an Order (per curiam) affirming the Special Master’s “finding that all juvenile adjudications and consent decrees entered by Ciavarella between January 1, 2003 and May 31, 2008, are tainted,” and ordering that “adjudications of delinquency and consent adjudications of delinquency and consent decrees be reversed and dismissed with prejudice, and that expungement of records proceed” in all cases.¹⁵

In its Order, the Supreme Court of Pennsylvania observed:

. . . During the hearing conducted by President Judge Platt in Joseph v. The Scranton Times, 19 MM 2009, Ciavarella admitted under oath that he had received payments from Robert Powell, a co-owner of the PA Child Care and Western PA Child

¹² Id. at 42 (“As a result of RICO Defendants’ violations of RICO, Plaintiffs had wages garnished, public assistance monies taken, social security benefits seized, and were otherwise forced to pay for the wrongful incarceration of the [Juveniles].”).

¹³ Id. at 68-70.

¹⁴ In re: Expungement of Juvenile Records and Vacatur of Luzerne County Juvenile Court Consent Decrees or Adjudications from 2003-2008, Order (per curiam), dated October 29, 2009, at 3.

¹⁵ Id. at 7. The only exception was cases which were not yet final in which a juvenile either proceeded before Ciavarella with counsel or was committed by Ciavarella to a non-PACC/WPACC facility. The Court’s order extended to “all cases, whether final or not, where a juvenile either proceeded before Ciavarella without counsel, or was committed by Ciavarella to [PACC/WPACC],” id. at 7, as well as to “those ‘remaining cases’ which are final,” such cases consisting of “those juvenile matters adjudicated before Ciavarella where the juvenile had counsel and the juvenile was not committed to [PACC/WPACC],” id. at 8 & n.4.

Care facilities, and from Robert K. Mericle, the developer who constructed the juvenile facilities, during the period of time that Ciavarella was presiding over juvenile matters in Luzerne County. It is a matter of record that Ciavarella routinely committed juveniles to one or another of these facilities. It is also a matter of record that Ciavarella failed to disclose his ties to Powell, much less the financial benefits he received in connection with the facilities to which he routinely committed Luzerne County juveniles. Ciavarella's admission that he received these payments, and that he failed to disclose his financial interests arising from the development of the juvenile facilities, thoroughly undermines the integrity of all juvenile proceedings before Ciavarella. **Whether or not a juvenile was represented by counsel, and whether or not a juvenile was committed to one of the facilities which secretly funneled money to Ciavarella and Conahan, this Court cannot have any confidence that Ciavarella decided any Luzerne County juvenile case fairly and impartially while he labored under the specter of his self-interested dealings with the facilities.**

....

This Court is aware, of course, that some juveniles appeared before Ciavarella with counsel and were not committed to either of the PA Child Care facilities. We agree with the parties and Judge Grim, however, that those cases are no less tainted by Ciavarella having presided. Judge Grim refers to the "pall" that was cast over all juvenile matters presided over by Ciavarella, given his financial interest, and his conduct in cases where juveniles proceeded without counsel. We fully agree that, **given the nature and extent of the taint, this Court simply cannot have confidence that any juvenile matter adjudicated by Ciavarella during this period was tried in a fair and impartial manner.**¹⁶

On December 14, 2011, Plaintiffs in the Actions entered into a settlement (the "Mericle Settlement") with defendants Robert K. Mericle and Mericle Construction, Inc. (collectively the "Mericle Defendants") to resolve the claims of the Juveniles and the Parents against the Mericle Defendants and against Luzerne County.¹⁷ On December 16, 2011, the Plaintiffs and the Mericle Defendants filed a Joint Motion for Preliminary approval of Class Action Settlement Between Plaintiffs and Mericle Defendants. On February 28, 2012, following a preliminary approval hearing, the Court issued its Order Conditionally Certifying Settlement Class and Preliminarily

¹⁶ Id. at 5-7.

¹⁷ Final Order and Judgment, at 3 (filed Dec. 14, 2012); Memorandum, at 5 (filed Dec. 14, 2012).

Approving Proposed Settlement. On November 19, 2012, the Court held a final Settlement approval hearing. I testified at that Hearing as an expert retained by the Plaintiffs to offer an opinion as to the fairness and reasonableness of the Mericle Settlement.¹⁸ On December 14, 2012, the Court issued its Final Order and Judgment, as well as a supporting Memorandum, granting final approval of the Mericle Settlement.

On September 25, 2013, Plaintiffs in the Actions entered into a settlement (the “Provider Settlement”) with the Provider Defendants to resolve the claims of the Juveniles and the Parents against the Provider Defendants and against the Zappala Parties. For purposes of settlement, all claims against the Provider Defendants and the Zappala Parties set forth in the Actions are certified for class treatment.¹⁹ On October 16, 2013, the Plaintiffs and the Provider Defendants filed a Joint Motion for Preliminary Approval of Class Action Settlement between Plaintiffs and Provider Parties (“Joint Motion”).²⁰ The Joint Motion sought, *inter alia*, an order certifying a settlement class, preliminarily approving the proposed settlement set forth in the Master Settlement Agreement dated September 25, 2013 (“MSA”), and approving the form of notice to be provided to the settlement class.

¹⁸ In this Court’s Memorandum in support of the Order approving the settlement, filed on December 14, 2012, the Court noted at page 35:

. . . Plaintiffs retained an ethics expert, Professor Lynn A. Baker, to offer an opinion as to fairness and reasonableness of the Settlement. Professor Baker has served as an ethics expert in multiple large-dollar, large-group settlements. Professor Baker, based upon her experience, opined that all of the components of the Settlement Agreement were fair, reasonable, and appropriate under the circumstances.

¹⁹ See the Provider Settlement Agreement at 7 (defining “Released Claims”).

²⁰ Wallace, et al. v. Powell, et al., USDC M.D. Pa., case 09-cv-0286, Joint Motion for Preliminary Approval of Class Action Settlement between Plaintiffs and Provider Parties, filed Oct. 16, 2013.

On November 27, 2013, the Court issued an Order Conditionally Certifying Settlement Class and Preliminarily Approving Proposed Settlement (“Preliminary Approval Order”).²¹ The Order preliminarily approved the terms of the MSA, finding them “sufficiently within the range of reasonableness, such that notice of the Settlement in the forms presented to this Court . . . should be disseminated to all members of the proposed Settlement Classes.”²² The Preliminary Approval Order further set a deadline of January 21, 2014 for Settlement Class Members seeking to opt-out of the proposed settlement to do so.²³ January 21, 2014 was also the deadline by which each Settlement Class Member seeking to claim against the cash Settlement Fund was required by the Order to submit a Proof of Claim with required documentation.²⁴ The Preliminary Approval Order required any objections to the MSA to be filed in writing and

²¹ Wallace, et al. v. Powell, et al., USDC M.D. Pa., case 09-cv-0286, Order Conditionally Certifying Settlement Class and Preliminarily Approving Proposed Settlement, filed Nov. 27, 2013.

²² Id. at 2-3.

²³ Id. at 5. The Order further provided that any Settlement Class Member who properly and timely opts-out “and intends to pursue a separate claim against the Released Parties shall be required to participate in confidential non-binding mediation with the Provider Parties, at the Opt-Out Plaintiff’s expense. Id.

²⁴ Id. at 5-6.

received by the Claims Committee, or clearly postmarked by, no later than January 21, 2014.²⁵ Judge Marina Corodemus (Ret.) was approved as the Special Master for Allocation Appeals.²⁶

As of the January 21, 2014 deadline for Settlement Class Members to opt out of the proposed settlement or to submit a completed Claim Form if seeking to participate in the settlement, and which the deadline for Settlement Class Members participating in the settlement to have postmarked a letter to the Claims Committee objecting to the Settlement, the Claims Committee had received the following:

- Claim Forms from 2,243 potential settlement class members:
 - 1,378 Juveniles
 - 865 Parents
- Opt-out notices from 9 Claimants (6 Juveniles and 3 Parents).
- No objections to the proposed settlement;

Under the terms of paragraph VII.A. of the MSA, the Provider Defendants had the option until March 23, 2014 (60 days after the Opt-Out Deadline of January 21, 2014) to terminate the MSA if seventy (70) or more of the potential members of the Juvenile class timely and properly opted out of the settlement. Because only six (6) Juveniles timely filed a notice to opt out of the

²⁵ Id. at 6-7. The MSA (para. V; page 15) provides that

Plaintiffs shall form a claims committee that will be responsible for administering various aspects of the Settlement, as described herein (the "Claims Committee"). The Claims Committee shall consist of four attorneys, including one representative from each of the following four law firms: (1) Hangley Aronchick Segal Pudlin & Schiller; (2) Anapol Schwartz; (3) Caroselli, Beachler, McTiernan & Conboy, LLC; and (4) Juvenile Law Center.

²⁶ Id. at 7.

settlement, the Provider Defendants were obligated to proceed with the settlement as set out in the MSA (MSA para. VII.A.).

6. THE PROPOSED SETTLEMENT FUND ALLOCATION PLAN AND ASSOCIATED PROCESSES

6.1. Total Value of the Fund to be Allocated

Under the terms of the MSA, the Settlement Amount will total \$2,500,000 (MSA para. II.A).²⁷ The analysis of the Provider Defendants' financial condition performed by Mr. Stephen J. Scherf, CPA, at the request of counsel for the plaintiffs concluded that this total payment is "fair and reasonable given the financial condition and equity value of the Provider Defendants after consideration of [their] significant third party debt obligations."²⁸ I have no reason to doubt that conclusion.

The MSA provides that "common benefit" attorneys' fees not to exceed thirty percent (30%) of the total settlement amount, plus "common benefit litigation expenses," will be paid from the Settlement Amount (MSA para. II.C). In addition, the Escrow Agent's fees and expenses, and any taxes and tax expenses related to the operation of the Escrow Account (MSA para. VIII.B), as well as the costs of the Special Master (MSA para. IV.F), are to be paid from the Settlement Amount.

²⁷ As explained in the MSA at paragraph VII.B., the total settlement amount will be slightly less than \$2,500,000, reflecting the fact that 9 class members formally opted out of the settlement by the January 21, 2014 deadline. See also nn.30 & 31 *infra*, and accompanying text.

²⁸ Letter Report of Mr. Stephen J. Scherf, CPA, to Plaintiffs' Counsel, dated April 28, 2014, at 2.

The Settlement Amount will be paid by the Provider Defendants into an Escrow Account in three transactions:²⁹ (1) \$600,000 to be paid no later than June 1, 2014; (2) \$1,000,000 to be paid no later than June 1, 2015; and (3) \$900,000 to be paid no later than December 21, 2015 (MSA para. II.A.). The Settlement Amount is to be reduced “by an amount equal to the aggregate value of the Opt-Out Plaintiffs’ claims under the Plan of allocation.”³⁰ Since only 6 Juveniles and 3 Parents have opted out by the Court’s deadline, the reduction in the total Settlement Amount will be small.³¹

6.2. Three Cash Funds and Two Groups of Settlement Class Members

The Plan of Allocation set out in the long-form “Legal Notice of a Class Action Settlement”³² (the “Mailed Notice”) specifies that after the court-approved costs and attorney’s fees are deducted, the remainder of the Settlement Amount (the “Net Settlement Amount”) will be divided into three separate funds, as follows:³³

²⁹ Paragraph II.B of the MSA provides that the Provider Defendants may accelerate this payment schedule if, in the sole discretion of the Provider Defendants, they can afford to do so, given their other cash flow needs.

³⁰ MSA para. VII.B.

³¹ The precise amount of the reduction cannot be determined until the point value for Juvenile claims is determined and the relevant Parent’s reimbursement amounts (including any pro rata adjustments due to the limited Parent Fund) are known. Since 1,378 Juveniles timely filed Claim Forms, however, the 6 Juveniles opting out represent less than one-half of one percent (0.43 percent) of the total Juveniles with a claim on the Juvenile Fund. And since 865 Parents timely filed Claim Forms, the 3 Parents opting out similarly represent less than one-half of one percent (0.35 percent) of the total Parents with a claim on the Parent Fund. One would expect the eventual deduction from each Fund to be approximately those same small percentages.

³² This is the ten-page “Mailed Notice of Provider Defendant Class Action Settlement” rather than the one-page “Published Notice of Provider Defendant Class Action Settlement.”

³³ Mailed Notice of Provider Defendant Class Action Settlement, at 7-8.

- Juvenile Fund – 70% of Net Settlement Amount
- Parent Fund – 15% of Net Settlement Amount
- Holdback Fund – 15% of Net Settlement Amount

A separate process is set out for allocating each of these three Funds.

The **Juvenile Fund** will be allocated among qualifying members of the settlement class of Juveniles, who are described as all juveniles who appeared before former Judge Ciavarella at any time between January 1, 2003 and May 28, 2008 and who were adjudicated delinquent and/or placed in a detention center by former Judge Ciavarella.³⁴ Those Juveniles who timely submitted to the Claims Committee a properly completed and signed Provider Defendant Proof of Claim Form will be eligible to share in the Juvenile Fund. Based on the Claims Committee's review of each such Juvenile's official records from the Luzerne County Department of Juvenile Probation ("the Records"), the Committee will assign each Juvenile to one of three Settlement Categories, thereby awarding each a specified number of "points." Once the number of points for all qualifying Juveniles is determined, that total will be divided into the Juvenile Fund to determine the dollar value of each point. Each qualifying Juvenile will then receive the value of each point multiplied by his/her individual points, as determined by his/her Settlement Category. Under the terms of the MSA, the Third Escrow Payment is to be transferred to the Escrow

³⁴ MSA at 2 (para. I.A.). The Court's "Order Conditionally Certifying Settlement Class and Preliminarily Approving Proposed Settlement" (filed November 27, 2013) approved the terms of the MSA including the definitions of the two proposed Settlement Classes. See Order at 3 (para. 4).

Account on or before December 21, 2015, and funds will not be distributed to any Settlement Class Member until after that transfer has been made.³⁵

The **Parent Fund** will be allocated among all qualifying members of the Parent Settlement Class, which is defined as all parents and/or guardians of all members of the Juveniles class (see above) who, as a result of their child's adjudication or placement by Judge Ciavarella between January 1, 2003 and May 28, 2008: (i) made payments in their own names or had wages, social security or other entitlements in their own names garnished or withdrawn; (ii) had costs, fees, interest and/or penalties in their own names assessed against them or their child; and/or (iii) suffered any loss of companionship and/or familial integrity.³⁶ Only parents who made payments in their own name (rather than payments made in the name of a child) and were not fully reimbursed as a result of claims made in connection with the Mericle Settlement are included in this Settlement Class.³⁷

³⁵ MSA at 10, 9 (para. II.D., II.A.).

³⁶ The claims of the Parent settlement class for "loss of companionship and/or familial integrity" were dismissed by the Court in its August 24, 2010 Order and accompanying Memorandum, at 16-17, 31-32.

³⁷ Order, *supra* note 34, at 2. The Mailed Notice provides that

Parents who received payment from the Mericle Settlement will not receive payment under the Provider Defendant Settlement unless they provide to the Claims Committee prior to the Proof of Claim Deadline additional Records showing that in addition to the reimbursed expenses received in the Mericle Settlement they (i) made additional payments in their own names to Luzerne County or had additional wages, social security or other entitlements in their own names garnished or withdrawn by Luzerne County; or (ii) had additional court-ordered services or pay [sic] court-ordered costs, fees, interest, and/or penalties in their own names assessed against them or their child.

Mailed Notice at 7.

Each qualifying Parent will be awarded a specific amount of money based on the payments documented in the Records or in records provided by the Parent showing payments made in his/her own name.³⁸ If the total amount validly claimed by all Parents exceeds the total funds in the Parent Fund, each qualifying Parent will receive a pro-rata share of the Parent Fund. If the funds in the Parent Fund exceed the total amount validly claimed by all parents, the remaining funds will pour over into the Juvenile Fund.³⁹ Under the terms of the MSA, the Third Escrow Payment is to be transferred to the Escrow Account on or before December 21, 2015, and funds will not be distributed to any Settlement Class Member until after that transfer has been made.⁴⁰

The **Holdback Fund** is to remain in escrow “until all final accounting is complete” for the settlement.⁴¹ The Mailed Notice further specifies that:

With written permission from the Court, the Holdback Fund may be used to pay settlement costs and attorneys’ fees. The Holdback Fund will also be used to pay all costs of the appeal process . . . and all additional payments to Settlement Class Members resulting from successful appeals. If funds remain in the Holdback Fund after payment of all costs, fees, and appeals, the remaining funds will be paid to the Juvenile Settlement Class Members in proportion to the number of points assigned to each Juvenile Settlement Class Member.⁴²

6.3. Determination of Settlement Categories for Juvenile Settlement Class Members

The Allocation Plan set out in the Mailed Notice provides that the Juvenile Fund will be allocated based on a point system. Each qualifying Juvenile Settlement Class Member

³⁸ Id. at 7.

³⁹ Id. at 8.

⁴⁰ MSA at 10, 9 (para. II.D., II.A.).

⁴¹ Mailed Notice at 8.

⁴² Id.

(“Juvenile”) will be categorized as follows for purposes of determining settlement payment amounts:⁴³

- **Probation Category** – one (1) point each – Each Juvenile who never spent any time in PACC, WPACC, or any other juvenile detention facility as a result of an adjudication by former Judge Ciavarella during the period from January 1, 2003 through May 28, 2008.
- **Non-PACC/WPACC Category** – two (2) points each -- Each Juvenile who was placed in a detention facility as a result of an adjudication or placement by former Judge Ciavarella during the period from January 1, 2003 through May 28, 2008, but who never spent any time in PACC and/or WPACC.
- **PACC/WPACC Category** – five (5) points each – Each Juvenile who was placed in PACC or WPACC as a result of an adjudication or placement by former Judge Ciavarella during the period from January 1, 2003 through May 28, 2008.

6.4. Proposed Individual Payment Amount and Appeal Process

The settlement process provides that Settlement Class Members who “timely and correctly” submit a Proof of Claim Form and who are determined by the Claims Committee to qualify for payment under the terms of the Settlement, but who believe that the Settlement Category to which they were assigned by the Claims Committee or the amount of their payment from the Settlement Fund was wrongly determined, may dispute their category and/or payment amount.⁴⁴

⁴³ Id. at 6.

⁴⁴ Id. at 8.

The court-appointed Special Master for Allocation Appeals, Judge Marina Corodemus (Ret.), will undertake an independent review of any such disputed claims.⁴⁵ In such cases, according to the Mailed Notice,

The Special Master will re-assess the Claims Committee's decision. This reassessment will include a complete review of [the Appellant's] Proof of Claim Form, the information available in the Records, and any additional written documentation provided by [the Appellant] in support of [his/her] claim. If appropriate, the Special Master will change the Settlement Category assigned by the Claims Committee or the amount of [the Appellant's] payment from the Settlement Fund, and [the Appellant's] award will be adjusted under the terms of the Plan of Allocation.⁴⁶

The Mailed Notice further states that the "determinations made by the Special Master are final and shall not be subject to any further review or appeal."⁴⁷

7. EVALUATION OF THE PROPOSED SETTLEMENT FUND ALLOCATION PLAN AND ASSOCIATED PROCESSES

The settlement fund allocation plan ("Allocation Plan") as described above is, in my opinion, fair, reasonable, appropriate to the circumstances of this proposed class settlement, and consistent with accepted allocation practices in group settlements.

It should be noted, as a preliminary matter, that the proposed settlement involves cash payments to both the Juvenile and the Parent Settlement Classes, with the only reversion of funds to the Defendants being the value under the Allocation Plan of the 9 Opt-Out Plaintiffs' claims. Insofar as those 6 Juvenile Opt-Out Plaintiffs represent less than one-half of one percent (0.43 percent) of the total Juveniles who timely filed a Claim Form, and since the 3 Parents opting out

⁴⁵ Order at 7 (para. 17).

⁴⁶ Mailed Notice at 8.

⁴⁷ Id.

similarly represent less than one-half of one percent (0.35 percent) of the total Parents who timely filed a Claim Form, the final total Settlement Amount should be only slightly less than the \$2,500,000 that the Provider Defendants committed to pay under the MSA. A cash settlement with minimal reversion of funds to the Defendants is unquestionably the form of settlement most favorable to the Settlement Classes in the present context.

7.1. The Class Members Appear to Consider the Allocation Plan Fair and Reasonable

First, it should be noted that of the approximately 2,421 Juveniles thought to be members of the Settlement Class, some 1,378 Juveniles, approximately 56.9 percent, timely filed a Claim Form seeking compensation from the cash settlement fund. In addition, of the approximately 2,400 Parents thought to be members of the Settlement Class, some 865 Parents, approximately 36.0 percent, timely filed a Claim Form. None of these approximately 2,243 claimants filed an objection to the proposed settlement, and only 6 Juveniles and 3 Parents, less than one-half of one percent of their respective eligible Classes, elected to opt out.

It is highly significant that nearly 57 percent of eligible Juvenile and 36 percent of eligible Parent settlement class members filed a Claim Form in this proposed settlement. Empirical studies of settlement class actions that involve individualized financial compensation for the class members, and which therefore require class members to “opt in” to the settlement and to file a claim form in order to receive a share of the settlement fund, have shown that participation rates are typically less than 30 percent, even when the class members are sophisticated institutions and even when the average mean potential recovery is \$280,000.⁴⁸

⁴⁸ See James D. Cox & Randall S. Thomas, *Letting Billions Slip through Your Fingers: Empirical Evidence and Legal Implications of the Failure of Financial Institutions to Participate in Securities Class Action Settlements*, 58 STAN. L. REV. 411, 412-13, 424-25 (2005) (empirical

The extremely high rate of participation in the proposed claims-made settlement, together with the small number of opt-outs and the absence of any objectors, suggests that the class members themselves consider the broad outlines of the settlement fund allocation to be fair and reasonable.

7.2. The Allocation Plan is Consistent with the Standard Economic Model of Compensation in Group Settlements

In the settlement context, one well accepted goal of a compensation plan is to replicate the claimants' expected net recovery at trial, discounted for the uncertainty of a favorable result at trial.⁴⁹ Under this standard "economic model" in a group settlement context, claimants with more serious, legally cognizable injuries would receive larger settlement offers than claimants with less serious injuries. The Allocation Plan set forth in the Mailed Notice is consistent with this well established allocation model. The Allocation Plan provides that 70 percent of the total

study of 118 securities class action settlements during 1990s finding that approximately 28% of eligible institutional investors filed claims in these settlements, in which the average mean recovery was around \$280,000 and the average median recovery was more than \$90,000). See also James D. Cox & Randall S. Thomas, *Leaving Money on the Table: Do Institutional Investors Fail to File Claims in Securities Class Actions?*, 80 WASH. U. L.Q. 855, 877 (2002) (empirical study of 53 securities class action settlements during 1990s finding that approximately 23% and 33% of two subgroups of institutional investors filed claims).

The scant empirical data that exist on participation rates in claims-made class action settlements involving monetary compensation outside of the securities litigation context indicate similarly low participation rates, ranging from one one-hundredths of one percent (0.01%) to 29% in one study. See DEBORAH R. HENSLER, ET AL., CLASS ACTION DILEMMAS: PURSUING PUBLIC GOAL FOR PRIVATE GAINS 458 (2000) (study of 7 consumer class actions including 4 claims-made settlements, with participation rates of 0.01%, 27%, 29%, and one unknown). See also Note, *The Rule 23(b)(3) Class Action: An Empirical Study*, 62 GEO. L.J. 1123, 1150 (1974) (reporting participation rate of 27% in an opt-in consumer fraud class action and 61% in an opt-in Title VII employment discrimination class action).

⁴⁹ See, e.g., Charles Silver & Lynn Baker, *I Cut, You Choose: The Role of Plaintiffs' Counsel in Allocating Settlement Proceeds*, 84 VA. L. REV. 1465, 1518-21 (1998). The "economic model" of the settlement process is commonly thought to have originated in George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984).

Net Settlement Amount will be distributed to qualifying Juveniles.⁵⁰ Within that Settlement Class, five (5) points are to be awarded to each Juvenile who had been placed in PACC/WPACC by Judge Ciavarella during the relevant time period (the “PACC/WPACC Category”).⁵¹ This is two and one-half times the number points to be awarded Juveniles in the Non-PACC/WPACC Category and five times the number of points to be awarded Juveniles in the Probation Category.⁵² The PACC/WPACC Category is the subgroup of claimants who suffered the most serious injuries as a result of the Defendants’ alleged acts, whose injuries were most directly caused by the Defendant’s alleged acts, and whose claims against the Provider Defendants are the strongest as a matter of law. It is therefore appropriate that each member of this Category should receive significantly more compensation than each member of the other two Juvenile categories.

The subgroup of Juvenile claimants with injuries that are both the least serious and have the weakest causal link to the alleged acts of the Defendants involves those who came before Judge Ciavarella during the relevant time period, but who received only probation and therefore never spent time in PACC/WPACC or any other juvenile detention facility as a result of Judge Ciavarella’s adjudication. The core harm arguably suffered by this subgroup of claimants was the denial by Judge Ciavarella of their Constitutional and statutory right to a fair and impartial tribunal for the adjudication of their case.⁵³ These claims merit some compensation, but the

⁵⁰ Mailed Notice at 7.

⁵¹ *Id.* at 6.

⁵² *Id.*

⁵³ As the Pennsylvania Supreme Court wrote in its October 29, 2009 Order (at p. 6) expunging the juvenile records and vacating the adjudications and consent decrees of individuals whose cases were adjudicated by Judge Ciavarella between January 1, 2003 and May 31, 2008

injury suffered is vastly less severe than that borne by those Juveniles whose tainted proceedings before Judge Ciavarella resulted in their placement in a detention facility. In this context, the allocation of one point to each such Juvenile seems appropriate.

The remaining Juveniles fall between the subgroup who received probation and the subgroup placed in PACC/WPACC in terms of the severity of their injuries, the strength of the causal link between those injuries and the alleged acts of the Provider Defendants, and the legal strength of their claims against those Defendants. These Juveniles, who were each placed in a non-PACC/WPACC facility as a result of an adjudication by Judge Ciavarella during the relevant time period, suffered the same core harm as the subgroup of Juveniles who received probation: Judge Ciavarella's financial dealings denied these Juveniles their Constitutional and statutory right to a fair and impartial tribunal for the adjudication of their case. In addition, however, this subgroup of Juveniles was required as a result of the tainted proceedings before Judge Ciavarella to spend time in a detention facility, a more severe injury than probation. Thus, it is appropriate that this subgroup of Juveniles receive two points rather than the one point allocated to the Juveniles who received probation.

A final subgroup of claimants to whom funds are to be distributed under the Allocation Plan is the Parent class. This subgroup is to receive reimbursement for their documented monies paid, garnished, or withdrawn as a result of their child's adjudication or placement by Judge

. . . Ciavarella's admission that he received these payments [from Robert Powell and Robert K. Mericle], and that he failed to disclose his financial interests arising from the development of the juvenile facilities, thoroughly undermines the integrity of all juvenile proceedings before Ciavarella. . . . [T]his Court cannot have any confidence that Ciavarella decided any Luzerne County juvenile case fairly and impartially while he labored under the specter of his self-interested dealings with the facilities.

Ciavarella during the relevant period.⁵⁴ A total of 15 percent of the Net Settlement Amount is allocated for these payments under the Plan. Reimbursing the specified out-of-pocket financial costs to the Parent class members related to and/or resulting from their child's tainted proceedings before Judge Ciavarella, to the extent that those costs were not previously reimbursed in the Mericle Settlement, seems to me a fair, reasonable, and appropriate use of this portion of the total Net Settlement Amount.

7.3. The Points System for Allocating the Juvenile Fund is Fair, Reasonable, and Consistent with Accepted Allocation Practices in Group Settlements

As explained in Section 6.3 above, the Juvenile Fund portion of the Net Settlement Amount will be allocated using a specified point system. In recent years, point systems have been successfully used in numerous large-dollar group settlements including, most notably, the \$4.85 billion nationwide Vioxx settlement.⁵⁵ The use of a point system is a well-accepted practice in contexts such as the settlement at issue in which two key conditions exist: the funds to be allocated are limited, and the precise number and value of the claims to be made against the

⁵⁴ The Mailed Notice states (p. 7) that Parent class members who

As a result of their child's adjudication or placement by former Judge Ciavarella during the period from January 1, 2003 through May 28, 2008, (i) made payments in their own names to Luzerne County or had wages, social security or other entitlements in their own names garnished or withdrawn by Luzerne County; or (ii) had court-ordered services or pay [sic] court-ordered costs, fees, interest, and/or penalties in their own names assessed against them or their child, shall receive the actual amount of monies paid, garnished, or withdrawn, but only if they have not already received full reimbursement of all payments made in their own name from the Mericle Settlement.

⁵⁵ The Vioxx Master Settlement Agreement and other details of that settlement are publicly available online at officialvioxxsettlement.com. I served as a paid consultant on legal ethics to the Plaintiffs' Negotiating Committee in the nationwide Vioxx settlement. I have also served as a consultant in numerous confidential large-dollar settlements in recent years, including a wide range of confidential pharmaceutical settlements, in which point systems have been successfully used to allocate the settlement fund.

fund cannot be known in advance. In the settlement at issue, the allocation of the Juvenile Fund is subject to additional uncertainty. The precise size of the Juvenile Fund to be allocated cannot be known until all of the following are known: (i) the total of the court-approved costs and fees to be deducted from the Total Settlement Amount;⁵⁶ (ii) the total deduction to be made from the Net Settlement Amount for the aggregate value of the Opt-Out Plaintiffs' claims under the Plan;⁵⁷ and (iii) the amount, if any, of the Holdback Fund and of the Parent Fund to be added to the Juvenile Fund.⁵⁸ Under these circumstances, a point system enables each claim to be valued equitably along the specified dimensions for which points are awarded, with determination of the precise dollar amount of each point reserved until the various uncertainties in the size of the fund and the values of the valid claims against the fund are finally resolved.

The point system for the allocation of the Juvenile Fund focuses solely on a readily documented objective factor: whether, as a result of an adjudication or placement by former Judge Ciavarella during the period from January 1, 2003, through May 28, 2008, the Juvenile spent any time in PACC, WPACC, or any other juvenile detention facility. Viewed as a whole, the specified point system should maximize horizontal equity among the claims against the Juvenile Fund. In addition, the claim components and point valuations are consistent with the economic model of settlement valuations discussed above: more severe injuries are (appropriately) awarded more points than less severe injuries.

In sum, the settlement Allocation Plan's handling of the Juvenile fund is, in my opinion, fair, reasonable, and consistent with accepted allocation practices in recent group settlements.

⁵⁶ Mailed Notice at 6.

⁵⁷ MSA at 18 (para. VII.B.).

⁵⁸ Mailed Notice at 8.

7.4. The Proposed Appeal Process is Appropriate and Reasonable

One further aspect of the settlement allocation process merits discussion. Each class member who timely submitted a valid Proof of Claim Form, and who believes that the Claims Committee has made an error in the determination of his/her settlement category and/or value is entitled to appeal the Claims Committee's determination to the court-appointed Special Master for Allocation Appeals, Judge Marina Corodemus (Ret.).⁵⁹ In such cases, the Special Master is authorized to undertake a *de novo* review of the Claims Committee's decision.⁶⁰

Because the Allocation Plan extensively relies on purely objective criteria, however, I would expect the number of appeals to the Special Master to be small. I would also anticipate that virtually all non-frivolous appeals would be of three types: (1) straightforward mistakes in the Claims Committee's determination of a Juvenile class member's claim category or point award; (2) straightforward mistakes in the Claims Committee's determination of the reimbursement owed a Parent class member; or (3) cases involving the presentation by an Appellant of newly obtained documentation in support of a Juvenile's claim category or a Parent's reimbursement claim. None of these types of appeal is likely to require the exercise of substantial judgment or discretion on the part of the Special Master.

Given the above, the appeal process within the larger Allocation Plan is perfectly crafted to ensure that *all* class members – both those who appeal the Claims Committee's settlement value determination and those who do not -- are treated fairly and equitably. The availability of

⁵⁹ Id.

⁶⁰ Id. (stating that the Special master "will independently review" the appealed claim and "will re-assess the Claims Committee's decision" including all information available to the Claims Committee and available in the Records).

an appeal to the Special Master provides all claimants the opportunity to have any legitimate errors in the determination of their settlement amounts corrected with a minimum of delay, expense, and procedural hassle. At the same time, claimants who have no legitimate basis to appeal their awards from the Claims Committee, and who therefore make no appeal to the Special Master, should have no reason to fear that meritless “whining” to the Special Master would have resulted in a larger award. In sum, appeals to the Special Master are part of a tightly crafted, largely objective, claim valuation and settlement fund allocation process. This appeal process, in my opinion, further enhances the overall procedural and substantive equity of the Allocation Plan, both in fact and as likely perceived by the settlement class members.

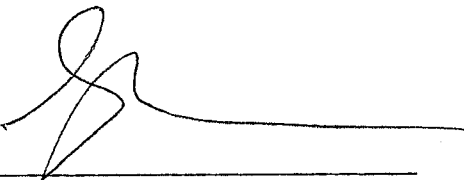
* * * * *

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed in Austin, Texas on:

May 29, 2014

Date



Lynn A. Baker

May 28, 2014

LYNN A. BAKER

University of Texas School of Law
727 East Dean Keeton Street
Austin, Texas 78705
512.232.1325 (phone)
512.232.6011 (fax)
LBaker@law.utexas.edu

3101 Lating Stream Lane
Austin, Texas 78746
512.347.9146 (phone)
512.347.9149 (fax)
512.826.6810 (cell)
LynnABaker@gmail.com

EMPLOYMENT

UNIVERSITY OF TEXAS SCHOOL OF LAW, Austin, TX

Frederick M. Baron Chair in Law (2002 - present)
Co-Director, Center on Lawyers, Civil Justice, and the Media (2001 - present)
Thomas Watt Gregory Professor (1997-2002)
Visiting Professor (Fall 1996)

UNIVERSITY OF ARIZONA COLLEGE OF LAW, Tucson, AZ

Professor (1994 - 1997)
Streich Lang Research Fellow (Summer 1993)
Associate Professor (1992 - 1994)

RUTGERS UNIVERSITY LAW SCHOOL, Camden, NJ

Visiting Professor (Spring 1997)

COLUMBIA UNIVERSITY LAW SCHOOL, New York, NY

Visiting Professor (Adjunct) (Spring 1997)

UNIVERSITY OF VIRGINIA SCHOOL OF LAW, Charlottesville, VA

Assistant Professor (1986 - 1992)

HON. AMALYA L. KEARSE, U.S. Court of Appeals for the Second Circuit, NY, NY

Law Clerk (1985-86 Term)

SUMMER ASSOCIATE

Paul, Weiss, Rifkind, Wharton & Garrison, NY, NY (1985)
Miller, Cassidy, Larroca & Lewin, Washington, DC (1984)
Lord, Day & Lord, NY, NY (1983)
Hastings Center, Hastings-on-Hudson, NY (1983)

DAVIS, POLK & WARDWELL, NY, NY

Legal Assistant (1979-80)

EDUCATION

YALE LAW SCHOOL, New Haven, CT

J.D. 1985

Yale Law Journal, Article & Book Review Editor (1984-85), Editor (1983-84)

Yale Law & Policy Review, Editor (1982-83)

OXFORD UNIVERSITY (Somerville College), Oxford, England

Honours B.A. (Philosophy, Psychology & Physiology) 1982

Marshall Scholar (1980-82)

YALE UNIVERSITY, New Haven, CT

B.A. 1978

Magna cum Laude, Distinction in Psychology

John Courtney Murray Traveling Fellowship (1978-79)

Independent research in East and West Germany. Awarded by Yale University.

LEGAL PUBLICATIONS

BOOKS

LOCAL GOVERNMENT LAW: CASES AND MATERIALS

- 4th ed. 2010 – Foundation Press: NY, NY (with Clayton P. Gillette)
- 3rd ed. 2004 -- Foundation Press: NY, NY (with Clayton P. Gillette)
- 2nd ed. 1999 – Little, Brown/Aspen: NY, NY (with Clayton P. Gillette)

TEACHER'S MANUAL, LOCAL GOVERNMENT LAW: CASES AND MATERIALS

- 4th ed. 2010 – Foundation Press: NY, NY (with Clayton P. Gillette)
- 3rd ed. 2006 -- Foundation Press: NY, NY (with Clayton P. Gillette)
- 2nd ed. 1999 – Little, Brown/Aspen: NY, NY (with Clayton P. Gillette)

ARTICLES, ESSAYS, AND BOOK CHAPTERS

Alienability of Mass Tort Claims, 63 **DEPAUL L. REV.** 265 (2014) (Clifford Symposium, "Brave New World: The Changing Face of Litigation and Law Firm Finance")

Models of Closure in Mass Torts: A Comment on "The Mass Tort Bankruptcy: A Pre-History," 5 **J. TORT LAW** 85 (2012; actually published in 2014) ("The Public Life of the Private Law: The Logic and Experience of Mass Litigation -- A Conference in Honor of Richard A. Nagareda")

- The Spending Power After NFIB v. Sebelius*, 37 **HARV. J.L. & PUB. POL'Y** 71 (2013)
(2013 Federalist Society Annual Student Symposium: "The Federal Leviathan: Is There Any Area of Modern Life to Which Federal Government Power Does Not Extend?")
- Setting Attorneys' Fees in Securities Class Actions: An Empirical Assessment*, 66 **VAND. L. REV.** 1677 (2013) (with Michael A. Perino & Charles Silver) ("The Economics of Aggregate Litigation," 19th Annual Symposium of the Institute for Law and Economic Policy)
- The Politics of Legal Ethics: Case Study of a Rule Change*, 53 **ARIZ. L. REV.** 425 (2011)
(“The Ted Schneyer Ethics Symposium: Lawyer Regulation for the 21st Century”)
- Fiduciaries and Fees: Preliminary Thoughts*, 79 **FORDHAM L. REV.** 1833 (2011) (with Charles Silver) (symposium on “Civil Procedure and the Legal Profession”)
- Constitutional Home Rule and Judicial Scrutiny*, 86 **DENV. U. L. REV.** 1337 (2009) (with Daniel B. Rodriguez) (symposium on “Home Rule”)
- excerpted in **STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM** (D. Mandelker, et al., eds. 2012)
 - excerpted in **LOCAL GOVERNMENT LAW: CASES AND MATERIALS** 317 (L.A. Baker & C.P. Gillette, eds. 2010)
- Constitutional Ambiguities and Originalism: Lessons from the Spending Power*, 103 **NW. U.L. REV.** 495 (2009) (symposium on “Original Ideas about Originalism”)
- Twenty-Year Legacy of South Dakota v. Dole: Dole Dialogue*, 52 **S.D. L. REV.** 468 (2007) (with Sanford Levinson) (symposium on “*South Dakota v. Dole*”)
- Federalism and Redistribution: Lessons from the U.S. Experience*, in **PATTERNS OF REGIONALISM AND FEDERALISM: LESSONS FOR THE U.K.** 173 (J. Fedtke & B. Markesinis, eds.) (2006, Hart Publishing; Clifford Chance Lecture Series) (proceedings of conference on “Patterns of Federalism and Regionalism: Lessons for the U.K.”)
- Federalism and the Spending Power from Dole to Birmingham Board of Education*, in **THE REHNQUIST LEGACY** 205 (C. Bradley, Ed.; 2006) (Cambridge University Press)
- The Future of Federalism?: Pierce County v. Guillen as a Case Study*, 50 **N.Y.L.S. L. REV.** 699 (2005-2006) (proceedings of conference on “From Warren to Rehnquist and Beyond: Federalism as Theory, Doctrine, Practice, and Instrument”)
- Lochner's Legacy for Modern Federalism: Pierce County v. Guillen as a Case Study*, 85 **B.U. L. REV.** 727 (2005) (proceedings of conference on “*Lochner's* Centennial”)
- Preferences, Priorities, and Plebiscites*, 13 **J. CONTEMP. LEG. ISSUES** 317 (2004)
(symposium on “Direct Democracy”)
- Getting off the Dole: Why the Court Should Abandon Its Spending Doctrine, and How a Too-Clever Congress Could Provoke It to Do So*, 78 **IND. L.J.** 459 (2003) (with Mitchell N. Berman) (symposium on “Congressional Power in the Shadow of the Rehnquist Court: Strategies for the Future”)

Facts about Fees: Lessons for Legal Ethics, 80 **TEX. L. REV.** 1985 (2002) (symposium on "What We Know and Do Not Know about the Impact of Legal Services on the American Economy and Polity")

Introduction: Civil Justice Fact and Fiction, 80 **TEX. L. REV.** 1537 (2002) (with Charles Silver) (symposium on "What We Know and Do Not Know about the Impact of Legal Services on the American Economy and Polity")

Should Liberals Fear Federalism?, 70 **U. CIN. L. REV.** 433 (2002) (William Howard Taft Lecture Symposium on "The Practical Impact of the Supreme Court's Federalism Revolution")

Federalism and the Double Standard of Judicial Review, 51 **DUKE L.J.** 75 (2001) (with Ernest A. Young) (symposium on "The Constitution in Exile")

Putting the Safeguards Back into the Political Safeguards of Federalism, 46 **VILL. L. REV.** 951 (2001) (symposium on "New Voices on the New Federalism")

The Spending Power and the Federalist Revival, 4 **CHAPMAN L. REV.** 195 (2001) (symposium on "The Spending Clause: Enumerated Power or Blank Check?")

Conditional Federal Spending and States' Rights, 574 **ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCES** 104 (2001) (symposium on "The Supreme Court's Federalism: Real or Imagined?")

The Aggregate Settlement Rule and Ideals of Client Service, 41 **S. TEX. L. REV.** 227 (1999) (with Charles Silver) (symposium on "Emerging Professional Responsibility Issues in Litigation")

Getting from Here to There: The Rebirth of Constitutional Constraints on the Special Interest State, 40 **WM. & MARY L. REV.** 515 (1999) (with Samuel H. Dinkin) (symposium on "Supermajority Rules as a Constitutional Solution")

The Revival of States' Rights: A Progress Report and a Proposal, 22 **HARV. J.L. & PUB. POL'Y** 95 (1998) (symposium on "The Revival of the Structural Constitution")

I Cut, You Choose: The Role of Plaintiffs' Counsel in Allocating Settlement Proceeds, 84 **VA. L. REV.** 1465 (1998) (with Charles Silver) (symposium on "The Law and Economics of Lawyering")

Federalism: The Argument from Article V, 13 **GA. ST. L. REV.** 923 (1997) (Henry J. Miller Distinguished Lecture Series/Symposium on "New Frontiers of Federalism")

Mass Lawsuits and the Aggregate Settlement Rule, 32 **WAKE FOREST L. REV.** 733 (1997) (with Charles Silver) (symposium on "Legal Professionalism")

- excerpted in **FOUNDATIONS OF THE LAW AND ETHICS OF LAWYERING** 213 (G.M. Cohen & S.P. Koniak, eds. 2004)

- The Senate: An Institution Whose Time Has Gone?*, 13 **J.L. & POL.** 21 (1997) (with Samuel H. Dinkin)
- excerpted in **CONSTITUTIONAL LAW** (G. Stone, et al., eds. 2009)
- The Missing Pages of the Majority Opinion in Romer v. Evans*, 68 **U. COLO. L. REV.** 387 (1997) (symposium on “*Gay Rights and the Courts: The Amendment Two Controversy*”)
- Interdisciplinary Due Diligence: The Case for Common Sense in the Search for the Swing Justice*, 70 **S. CAL. L. REV.** 187 (1996)
- “*They the People*”: *A Comment on U.S. Term Limits v. Thornton*, 38 **ARIZ. L. REV.** 859 (1996) (symposium on “Major Issues in Federalism”)
- Conditional Federal Spending After Lopez*, 95 **COLUM. L. REV.** 1119 (1995)
- Bargaining for Public Assistance*, 72 **DEN. U. L. REV.** 949 (1995) (symposium on “The Unconstitutional Conditions Doctrine”)
- Constitutional Change and Direct Democracy*, 66 **U. COLO. L. REV.** 143 (1995) (symposium on “Governing By Initiative”)
- excerpted in **STATE CONSTITUTIONAL LAW: CASES AND MATERIALS** (R. Williams, ed. 2012)
- When Every Relationship Is Above Average: Perceptions and Expectations of Divorce at the Time of Marriage*, 17 **LAW & HUM. BEH.** 439 (1993) (with R.E. Emery)
- excerpted in **FAMILY LAW IN ACTION: A READER** 73 (M. F. Brinig, et al. eds. 1999)
- Direct Democracy and Discrimination: A Public Choice Perspective*, 67 **CHI.-KENT L. REV.** 707 (1992) (with replies by Julian Eule and William Riker) (symposium on “The Law and Economics of Local Government”)
- “*Just Do It*”: *Pragmatism and Progressive Social Change*, 78 **VA. L. REV.** 697 (1992) (with reply by Richard Rorty)
- excerpted in **JURISPRUDENCE: CONTEMPORARY READINGS, NARRATIVES, AND PROBLEMS** 492 (N. Levit & R. Hayman eds. 1994)
 - earlier version published in **PRAGMATISM IN LAW AND SOCIETY** 99 (M. Brint & W. Weaver eds. 1991)
- The Myth of the American Welfare State*, 9 **YALE L. & POL’Y REV.** 110 (1991) (reviewing T. MARMOR, J. MASHAW & P. HARVEY, *AMERICA’S MISUNDERSTOOD WELFARE STATE: PERSISTENT MYTHS, ENDURING REALITIES* (1990))
- The Prices of Rights: Toward a Positive Theory of Unconstitutional Conditions*, 75 **CORNELL L. REV.** 1185 (1990)
- Webster and Incomplete Judicial Review*, 6 **J.L. & POL.** 549 (1990) (symposium on “Judicial Review in a Democratic Society”)

Promulgating the Marriage Contract, 23 **U. MICH. J.L. REF.** 217 (1990)
■ excerpted in **D. WESTFALL, FAMILY LAW** 227 (1994)

"I Think I Do": Another Perspective on Consent and the Law, 16 **LAW, MED. & HEALTH CARE** 256 (1988) (festschrift for Jay Katz, Elizabeth K. Dollard Professor of Law, Medicine, and Psychiatry, Yale University)

Unnecessary and Improper: The Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, 94 **YALE L.J.** 1117 (1985) (student note)

OTHER

South Dakota v. Dole, entry in 4 **ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES** 431 (D. Tanenhaus, ed.) (2008, Macmillan)

South Dakota v. Dole, entry in 2 **FEDERALISM IN AMERICA: AN ENCYCLOPEDIA** 578 (J. Marbach, E. Katz & T. Smith, eds.) (2006, Greenwood Press)

The City in the 21st Century, 32 **URB. LAW.** 365 (2000) (Introduction to symposium on "The City in the 21st Century")

Trademark Protection, Letter to the Editor, **N.Y. TIMES**, June 22, 1996, at A14

SELECTED PROFESSIONAL ACTIVITIES AND HONORS

Board of Scholars, Initiative and Referendum Institute, University of Southern California (2004 – present)

Editorial Board, **CATO SUPREME COURT REVIEW** (2001 – present)

Panel of academic contributors, **BLACK'S LAW DICTIONARY** (8th ed. 2004)

Dean's commendation for "especially high student evaluations" in Fall 1999 Property course (120 First Year students)

Teacher of the Year (1995-96) -- University of Arizona College of Law (chosen by student body)

CURRENT PRIMARY TEACHING AREAS

Professional Responsibility
Mega-Settlements (seminar)
State and Local Government Law
Property

BAR ADMISSIONS

Texas, 2003

Arizona, 1992

U.S. Supreme Court, 2002

INVITED PRESENTATIONS

- “Recent Developments in Legal Ethics,” invited presentation, University of Texas Law School Annual Reunion, Austin, TX, April 12, 2014
- “Private Ordering Versus Judicial Regulation of Attorneys’ Fees in Securities Class Actions: An Empirical Assessment,” invited paper and presentation (with Michael A. Perino & Charles Silver), Corporate & Securities Litigation Workshop, University of Illinois at Urbana-Champaign, Chicago, IL, November 8, 2013
- “The Public Life of the Private Law: The Logic and Experience of Mass Litigation,” invited commentator, “A Conference in Honor of Richard A. Nagareda,” Vanderbilt Law School, Nashville, TN, September 28, 2013
- “Setting Attorneys’ Fees in Securities Class Actions: An Empirical Assessment,” invited paper and presentation (with Michael A. Perino & Charles Silver)
- Faculty Colloquium, University of Texas Law School, Austin, TX, August 29, 2013
 - 19th Annual Symposium of the Institute for Law and Economic Policy, “The Economics of Aggregate Litigation,” Naples, FL, April 2013
- “Mass Torts as Quasi-Class Actions: The Role of Judicial Oversight,” invited panelist, ABA’s 2013 National Conference on Professional Responsibility, San Antonio, TX, May 2013
- “Alienability of Mass Tort Claims,” invited paper and presentation, the Clifford Symposium, “Brave New World: The Changing Face of Litigation and Law Firm Finance,” DePaul Law School, Chicago, IL, April 2013
- “Setting Attorneys’ Fees in Securities Class Actions: An Empirical Assessment,” invited paper and presentation (with Michael A. Perino & Charles Silver), 19th Annual Symposium of the Institute for Law and Economic Policy, “The Economics of Aggregate Litigation,” Naples, FL, April 2013
- “The Business of Law,” invited panelist, Mass Torts Made Perfect, Las Vegas, NV, April 2013
- “Limitations Attached to Federal Money,” invited panelist, Federalist Society National Student Symposium on “The Federal Leviathan,” Austin, TX, March 2013
- Invited presentation, “The Opportunities and Challenges of Metro Government: A Conversation at Vanderbilt Law School to Celebrate 50 Years of Consolidated Government in Nashville,” Nashville, TN, February 2013
- “Governance from the State Perspective,” panel moderator, conference on “Is America Governable?,” University of Texas School of Law, Austin, TX, January 2013
- “The NFIB Medicaid Decision: Interpretation and Implications,” invited panelist, a Hot Topic Program at the AALS Annual Meeting, New Orleans, LA, January 2013
- “Fee Caps,” invited paper and presentation (with Charles Silver), 5th International Legal Ethics Conference, Banff, Alberta, Canada, July 2012

- “The Quasi Class Action and Judicial Regulation of Attorneys’ Fees,” invited paper and presentation, Conference on “The Future of Class Actions and Its Alternatives,” Loyola University Chicago School of Law, Chicago, IL, April 2012
- “Ethical Issues Surrounding Fees and Settlements in Mass Torts,” invited presentation, Symposium on “Mass Torts in the Federal Courts,” Charleston School of Law, Charleston SC, February 2012
- “Federalism in the 21st Century: Balancing States’ Rights with Federal Power,” invited panelist, 2011 Ninth Circuit Judicial Conference, Carlsbad, CA, August 2011
- “Fiduciaries and Fees: Puzzles for Plaintiffs’ Attorneys,” invited speaker, Mass Torts Made Perfect, Las Vegas, NV, April 2011
- “The Politics of Legal Ethics: Case Study of a Rule Change,” invited paper and presentation “Ted Schneyer Ethics Symposium: Lawyer Regulation for the 21st Century,” James E. Rogers College of Law, University of Arizona, Tucson, AZ, January 2011
- “Fiduciaries and Fees: Preliminary Thoughts,” invited paper, symposium on “Civil Procedure and Legal Ethics,” Fordham Law Review, Fordham University School of Law, New York, NY, November 2010 (with Charles Silver)
- “Fee Caps” (with Charles Silver), invited paper and presentation
- Colloquium, University of Houston Law Center, Houston, TX, April 2010
 - Faculty Workshop, University of Kansas School of Law, Lawrence, KS, April 2010
- Invited speaker, Cecil D. Branstetter Litigation & Dispute Resolution Program, workshop on “The Regulation of Attorneys’ Fees in Aggregate Litigation,” Vanderbilt University Law School, Nashville, TN, February 2010
- “Constitutional Home Rule and Judicial Scrutiny,” invited speaker, panel on “The City as a Political Actor: Powers, Boundaries, Responsibilities,” Section on State and Local Government Law, AALS Annual Meeting, New Orleans, LA, January 2010
- “Judicially Imposed Fee Caps and Other Recent Developments: Ethical Issues in Mass Tort Litigation,” invited speaker, Mass Torts Made Perfect, Las Vegas, NV, October 2009
- “Breaking Developments in Pharmaceutical Litigation,” invited panelist on ethical issues, Texas State Bar, Austin, TX, April 2009
- “Constitutional Home Rule and Judicial Scrutiny,” Invited Paper and Presentation, Randall-Park Faculty Colloquium, University of Kentucky College of Law, Lexington, KY, April 2009
- “Liberty, Responsibility and the Legal Profession,” invited colloquium participant, Liberty Fund Colloquium, San Diego, CA, March 2009

- Invited Paper and Presentation, Conference on “Municipal Home Rule,” Byron R. White Center for the Study of American Constitutional Law, University of Colorado, Denver, CO, January 2009
- “Fee Caps,” Paper and Presentation, Drawing Board Lunch, University of Texas School of Law, Austin, TX, October 2008
- “Constitutional Ambiguities and Originalism: Lessons from the Spending Power,” Invited Paper and Presentation, Conference on “Original Ideas on Originalism,” Northwestern University School of Law, Chicago, IL, April 2008
- “Ethical and Liability Issues in Group Litigation: Vioxx and Beyond,” Invited Presentation, Mass Torts Made Perfect, Las Vegas, NV, April 2008
- “Ethical Considerations,” Invited Presentation, Mealey’s VIOXX Litigation Conference, New Orleans, LA, December 2007
- “Ethical Aspects of the Nationwide Vioxx Settlement,” Invited Presentation
- Los Angeles, CA, November 2007
 - Philadelphia, PA, November 2007
- “Aggregate Settlements: Critical Considerations for Both Plaintiff and Defense Counsel – Recent Developments and New Concerns,” Invited Speaker, Seventh Annual Class Action/Mass Tort Symposium, Louisiana State Bar, New Orleans, LA, October 2007
- “Group Settlements in the New Era: Ethical and Liability Issues,” Invited Presentation
- “Hot Topics in Pharmaceutical Litigation,” Miami, FL, June 2007
 - Mass Torts Made Perfect, Las Vegas, NV, March 2007
- “Comparative Domestic Constitutional Law: Federalism and Localism as a Case Study,” Drawing Board Lunch Presentation, Univ. of Texas School of Law, Austin, TX, April 2007 (with Dan Rodriguez)
- “Solving the Problem of the Modern Spending Power,” Invited Paper and Presentation, Legal Theory Colloquium, University of California at Davis School of Law, Davis, CA, March 2007
- “Do the Ethics Rules Governing Group Litigation Disadvantage Plaintiffs?,” Invited Presentation, The Review of Litigation Symposium on “Products Liability: Litigation Trends on the 10th Anniversary of the Third Restatement,” Austin, TX, March 2007
- “Dole Dialogue,” Invited Speaker, Conference on *South Dakota v. Dole*, Univ. of South Dakota Law School, January 2007
- “Aggregate Settlements: Rules, Strategies, and Pitfalls,” Invited Panelist, Association of Professional Responsibility Lawyers Annual Meeting, Chicago, IL, August 2005

- “Federalism and the Spending Power from *Dole* to *Birmingham Board of Education*,” Invited Paper and Presentation, Conference on “The Rehnquist Legacy,” Indiana University Law School, Bloomington, IN, April 2005
- “When Can Mass Torts Have Mass Settlements?,” Invited Panelist, ABA Section of Dispute Resolution, 7th Annual Conference on “The Golden State of ADR,” Los Angeles, CA, April 2005
- “The Future of Federalism? *Pierce County v. Guillen* as a Case Study,” Invited Paper and Presentation, Panel on “From Warren to Rehnquist and Beyond: Federalism as Theory, Doctrine, Practice, and Instrument,” Section on Federal Courts, AALS Annual Meeting, San Francisco, CA, January 2005
- “*Lochner*’s Legacy for Modern Federalism: *Pierce County v. Guillen* as a Case Study,” Invited Paper and Presentation, Faculty Colloquium, UCLA Law School, Los Angeles, CA, November 2004
- “Ethical Issues and Sources of Potential Liability for Attorneys in Group Settlements,” Invited Speaker, Fifth Annual Class Action/Mass Tort Symposium, Louisiana State Bar, New Orleans, LA, October 2004
- “*Lochner*’s Legacy for Modern Federalism: *Pierce County v. Guillen* as a Case Study,” Invited Paper and Presentation, Conference on the “*Lochner* Centennial,” Boston University Law School, Boston, MA, October 2004
- “Ethical Issues and Sources of Potential Liability for Attorneys in Group Settlements,” Invited Speaker, Houston Bar Association, CLE Seminar, Houston, TX, August 2004
- “Ethical Issues and Sources of Potential Liability for Attorneys in Group Settlements,” Invited Speaker, Andrews Silica Litigation 2004 Conference, New Orleans, LA, May 2004
- “Toward a Federalism for the Twenty-First Century: A Role for Non-Parametric Judicial Review under the Spending Clause?” (with Samuel H. Dinkin), Invited Paper and Presentation, Faculty Colloquium, Florida State Law School, Tallahassee, FL, April 2004
- “Ethical Issues in Group Settlements,” Invited Presentation, ABA Toxic Tort & Environmental Law Round Up: Preparing for Litigation Beyond the Asbestos Horizon, Phoenix, AZ, March 2004
- “A Primer on Federalism Law and Policy,” Invited Presentation, ABA Section of Environment, Energy & Resources, 33rd Annual Conference on Environmental Law, Keystone, CO, March 2004
- “Federalism, Redistribution, and Judicial Review: Lessons from the U.S. Experience,” conference on “Patterns of Federalism and Regionalism: Lessons for the U.K.,” University College London, London, England, November 2003

- “Sources of Potential Liability for Attorneys in Group Settlements,” Invited Speaker, Mealey’s/LexisNexis “Asbestos 101” Conference, Dallas, TX, June 2003
- “Preferences, Priorities, and Plebiscites,” Invited Paper and Presentation, Symposium on “Direct Democracy,” University of San Diego School of Law, San Diego, CA, June 2003
- “Sources of Potential Liability for Attorneys in Group Settlements,” Invited Speaker, meeting of Capital Area Trial Lawyers Association, Austin, TX, March 2003
- “Constitutional Origins, Structure, and Change: A Global Dialogue on Federalism in the 21st Century,” Invited Speaker, conference sponsored by the Forum of Federations and the International Association of Centers for Federal Studies, held at Center for State Constitutional Studies, Rutgers University, Camden, NJ, November 2002
- “Sources of Potential Liability for Attorneys in Group Settlements,” Invited Speaker, Third Annual “Masters of Trial” Seminar, Houston Trial Lawyers Association, Houston, TX, November 2002
- “Professional Responsibility: Critical Mass Tort Settlement Considerations,” Invited Speaker, Third Annual Class Action/Mass Tort Symposium, Louisiana State Bar, New Orleans, Louisiana, October 2002
- "Facts about Fees: Lessons for Legal Ethics," Invited Paper and Presentation, Symposium on “What We Know and Don’t Know about the Impact of Legal Services on the American Economy and Polity,” University of Texas School of Law, Austin, Texas, February 2002
- "Toward a Federalism for the Twenty-First Century: A Role for Non-Parametric Judicial Review under the Spending Cause?" (with Samuel H. Dinkin), Invited Paper and Presentation:
- Law, Economics, and Politics Workshop jointly sponsored by the University of San Diego Law School and the University of California at San Diego Political Science Department, San Diego, California, March 2002
 - 2002 Annual Meeting of the Public Choice Society, San Diego, California, March 2002
- “Getting off the *Dole*: Why the Court Should Abandon Its Spending Doctrine, and How Congress Could Provoke It to Do So,” Invited Paper and Presentation (with Mitchell N. Berman), Symposium on “Congressional Power in the Shadow of the Rehnquist Court: Strategies for the Future,” Indiana University School of Law, Bloomington, Indiana, February 2002
- Invited Speaker, Panel on "Separation of Powers in State Government," Annual Meeting of the National Council of State Legislatures, San Antonio, Texas, August 2001
- “Toward a Federalism for the Twenty-First Century: A Role for Non-Parametric Judicial Review under the Spending Clause?” (with Samuel H. Dinkin), Invited Paper and Presentation:
- Oxford University (St. John’s College), Oxford, England, June 2001
 - University of Chicago Law School, Chicago, Illinois, April 2001

- "Should Liberals Fear Federalism?," Invited Paper and Presentation, Taft Lecture Symposium, University of Cincinnati College of Law, Cincinnati, Ohio, February 2001
- "The Spending Power and the Federalist Revival," Invited Paper and Presentation, Symposium on "The Spending Power: Enumerated Power or Blank Check?," Chapman University School of Law, Orange, California, January 2001
- "Putting the Safeguards Back into the Political Safeguards of Federalism," Invited Paper and Presentation, Symposium on "New Voices on the New Federalism," Villanova University School of Law, Villanova, Pennsylvania, October 2000
- "Federalism and the Double Standard of Judicial Review" (with E. Young), Invited Paper and Presentation, Symposium on "The Constitution in Exile -- Is It Time to Bring It in from the Cold?," Duke University School of Law, Durham, North Carolina, October 2000
- "States' Rights and the Promise of Liberty: Toward a Federalism for the Twenty-First Century," Invited Presentation, Reunion Weekend 2000, University of Texas School of Law, Austin, Texas, April 15, 2000
- "Toward a Federalism for the Twenty-First Century: The Case for Non-Parametric Judicial Review under the Spending Clause" (with Samuel H. Dinkin), Invited Paper and Presentation:
- University of Virginia School of Law, Charlottesville, Virginia, March 2000
 - Cornell University Law School, Ithaca, NY, February 2000
- Invited Commentator, Conference on "Deliberating About Deliberative Democracy," University of Texas Government Department, Austin, Texas, February 5, 2000
- Invited Speaker, Panel on "Federalism," Conference of Chief Justices of State Supreme Courts, University of Texas School of Law, Austin, Texas, February 1, 2000
- "Class Auctions" (with Samuel H. Dinkin & Charles Silver), Invited Presentation, Section on Insurance Law's Program on "Insurance Class Actions," Annual Meeting of the Association of American Law Schools, Washington, DC, January 7, 2000
- "The Role of States' Rights in Protecting the Rights of Minorities: Lessons from the U.S. Experience, Invited Paper and Presentation, Symposium on "Comparative Constitutional Law: Defining the Field," Georgetown University Law Center, Washington, D.C., Sept. 17, 1999
- "Toward a Federalism for the Twenty-First Century: The Case for Non-Parametric Judicial Review" (with Samuel H. Dinkin), Invited Paper and Presentation, American Political Science Association, Annual Meeting, Atlanta, GA, Sept. 4, 1999
- Ethics Panel Discussion, Invited Presentation, 9th Annual Conference on State and Federal Appeals, University of Texas School of Law (CLE Program), Austin, Texas, June 1999

- “Toward a Federalism for the Twenty-First Century: The Case for Non-Parametric Judicial Review under the Spending Clause” (with Samuel H. Dinkin), Invited Paper and Presentation:
- Vanderbilt University Law School, Nashville, Tennessee, April 1999
 - University of Iowa College of Law, Iowa City, Iowa, April 1999
- “Getting from Here to There: The Rebirth of Constitutional Constraints on the Special Interest State” (with Samuel H. Dinkin), Invited Paper, Symposium on “Supermajority Rules as a Constitutional Solution,” William and Mary Law Review, Spring 1999
- “Ethical Issues for the Personal Injury Attorney” (with Charles Silver), Invited Presentation, 22nd Annual Page Keeton Products Liability & Personal Injury Law Conference, University of Texas School of Law (CLE Program), Austin, Texas, October 1998
- “The Revival of States’ Rights: A Progress Report and a Proposal,” Invited Paper and Presentation, Symposium on “The Revival of the Structural Constitution,” Federalist Society’s Seventeenth National Symposium, New York University School of Law, New York, NY, March 1998
- “I Cut, You Choose: The Role of Plaintiffs’ Counsel in Allocating Settlement Proceeds” (with Charles Silver), Invited Paper and Presentation, Symposium on “The Law and Economics of Lawyering,” Univ. of Virginia School of Law, Charlottesville, VA, February 1998
- Invited Commentator, “What Cities and Suburbs Owe Each Other,” Joint Program of Sections on State and Local Government Law and Minority Groups, Association of American Law Schools, Annual Meeting, San Francisco, CA, January 1998
- “Mass Lawsuits and the Aggregate Settlement Rule” (with Charles Silver), Invited Paper, Symposium on “Legal Professionalism,” Wake Forest Law Review, Fall 1997
- “Federalism: The Argument from Article V,” Invited Paper and Presentation, Henry J. Miller Distinguished Lecture Series/Symposium on “New Frontiers of Federalism,” Georgia State University College of Law, Atlanta, GA, February 1997
- “The Missing Pages of the Majority Opinion in *Romer v. Evans*,” Invited Paper and Presentation, Ira Rothgerber Conference on “Gay Rights and the Courts: The Amendment Two Controversy,” University of Colorado School of Law, Boulder, CO, October 1996
- “The Senate: An Institution Whose Time Has Gone?,” Invited Paper and/or Presentation:
- Georgetown University Law Center, Washington, D.C., Law & Economics Workshop, February 1996
 - University of Texas School of Law, Austin, TX, February 1996
 - Rutgers University Law School, Camden, NJ, February 1996
 - University of Minnesota Law School, Minneapolis, MN, January 1996
 - University of Pennsylvania Law School, Philadelphia, PA, January 1996
 - George Washington University National Law Center, Washington, DC, Dec. 1995
 - University of San Diego Law School, San Diego, CA, November 1995

- “They the People”: A Comment on *U.S. Term Limits v. Thornton*, Invited Paper and Presentation, Conference on “Major Issues in Federalism,” University of Arizona College of Law, Tucson, AZ, March 1996
- “Bargaining for Public Assistance,” Invited Paper and Presentation, Conference on “The Unconstitutional Conditions Doctrine,” University of Denver College of Law, Denver, CO, March 1995
- “Constitutional Change and Direct Democracy,” Invited Paper and Presentation, Conference on “Governing By Initiative,” University of Colorado Law School, Boulder, CO, September 1994
- Invited Presentation, Conference on Richard Epstein’s **BARGAINING WITH THE STATE**, George Mason University Law School, Law and Economics Center, Arlington, VA, March 1994
- Invited Participant, Conference on “Emanations from *Rust*: The Impact on the Nonprofit Sector of the Unconstitutional Conditions Doctrine,” New York University School of Law, The Program on Philanthropy and the Law, NY, NY, October 1992
- Invited Commentator, Task Force Report and Recommendations, American Bar Association Task Force on Initiatives and Referenda (Section on Torts and Insurance Practice), Annual Meeting, San Francisco, CA, August 1992
- “Direct Democracy and Discrimination: A Public Choice Perspective,” Invited Paper and Presentation
- John M. Olin Foundation Conference on “The Law and Economics of Local Government,” University of Virginia School of Law, Charlottesville, VA, November 1991
 - New York Law School, NY, NY, October 1991 (presentation)
 - University of Arizona College of Law, Tucson, AZ, October 1991 (presentation)
 - University of Illinois College of Law, Champaign, IL, February 1992 (presentation)
- “Just Do It’: Pragmatism and Progressive Social Change,” Invited Paper and Presentation, Conference on “Pragmatism in Law and Society,” University of Virginia, Charlottesville, VA, November 1990
- “*Webster* and Incomplete Judicial Review,” Invited Paper and Presentation, Symposium on “Judicial Review in a Democratic Society: Lessons from the American and French Experiences,” University of Virginia School of Law, Charlottesville, VA, November 1989
- “I Think I Do’: Another Perspective on Consent and the Law,” Invited Paper, **LAW, MEDICINE AND HEALTH CARE** Festschrift for Jay Katz, Elizabeth K. Dollard Professor of Law, Medicine, and Psychiatry, Yale University, Fall 1988
- Invited Panelist, Conference on “Free Speech and Advertising: Who Draws the Line?,” Institute for Democratic Communication, Boston University, Boston, MA, April 1987

COMMITTEE SERVICE

University of Texas School of Law (1997 - present)

Budget: 2012-14; 2011-12 (Chair); 2005-06; 2000-01
Faculty Appointments: 2007-08 (Chair); 2005-06 (Chair of Entry-Level Subcommittee);
2004-05 (Chair), 2003-04 (Chair), 2002-03, 1999-2001, 1997-98
Strategic Planning Committee: 2013-14 (Co-Chair)
Governance: 2010-11 (Chair)
Lateral Appointments: 1999-2001, 1997-98
Tenure: 2006-07; 1997-98
Faculty Colloquia: 2006-07 (Coordinator); 1999-2001 (Co-coordinator, 2000-2001, Fall
1999; Coordinator, Spring 2000)
Endowed Lectures: 2006-07 (Coordinator); 1999-2001 (Co-coordinator, 2000-2001; Fall
1999; Coordinator, Spring 2000)
Scheduling: 2006-07 (Chair)
Computer Services Committee: 2008-09
Dean's Advisory Council: 2004-05
Long-Term Planning Committee (Working Group): 2001-02
Dean's Ad hoc Budget Committee: 2002-03
Ad hoc Committee on Appointments Voting Rules (Chair): 2008
Ad hoc Committee on the Sunflower Ceremony: 1999-2000

University of Texas (1997 – present)

System-Wide Committees

Chancellor's Blue Ribbon Panel on Professionalism and Citizenship (2012)
(appointed by Chancellor)
Committee to Frame UT Policies on Conflict of Commitment (2012)

University Committees

University Gender Equity Council, Law School representative (2013-present)
Committee to Select Rhodes and Marshall Scholarship Candidates from the
University of Texas, Member (2010)
Selection of Dean of LBJ School of Public Affairs, Consultative Committee to
the Provost, Member (2009-10) (appointed by University Provost)
Faculty Grievance Panel Pool, Member (2008-10; 2006-08; 2003-05) (appointed
by University President)
Chair, University Hearing Panel on Termination for Cause (2003) (appointed to
Panel by University President)

Association of American Law Schools

Section on Professional Responsibility: Executive Committee (2012-)
Section on State and Local Government Law: Executive Committee (1994-2000);
Chair (1999-2000); Chair-Elect (1998-99); Secretary (1997-98)
Section on Constitutional Law: Executive Committee (2003-04)

University of Arizona College of Law (1992 - 1996)

Faculty Appointments: 1995-96, 1993-94
Dean Search: 1994-95 (appointed by University Provost)
Workshops/Speakers: 1995-96, 1994-95 (Chair), 1993-94
Admissions: 1992-95
Judicial Clerkships: 1992-93

University of Virginia School of Law (1986 - 1992)

Admissions: 1987-92
Judicial Clerkships: 1987-91
McCorkle Lecture: 1987-88
Faculty Secretary: 1986-87

SELECTED PUBLIC SERVICE

Pierce County v. Guillen, 537 U.S. 129 (2003), Amicus Brief in Support of Respondent (with Mitchell N. Berman), filed August 2002, available at 2002 WL 1964091

Resource Witness, Texas House Select Committee on Constitutional Revision, Hearing on Proposed Changes in Gubernatorial Power, April 1999.

Resource Witness, Texas Senate State Affairs Committee, Hearing on Proposed Constitution, March 1999

Burrow v. Arce, 997 S.W.2d 229 (Tex. 1999), Amicus Brief (1998 WL 35336105), Supplemental Amicus Brief (1999 WL 35047216), and Supplemental Letter Brief (1999 WL 35047216) in support of David Burrow (all with Charles Silver)

Task Force on Pima County (Arizona) Charter Government (1996-97), legal counsel

Judicial College of Arizona, Legal Institute for Non-Law Trained Judges, faculty member (Property Law) (1993-1996)

SELECTED OTHER HONORS AND ACTIVITIES

World Bridge Championships

2010 – Philadelphia, PA – McConnell Cup (5th place (tie)); Women’s Pairs (8th place)
2009 – Sao Paulo, Brazil – Venice Cup (2nd place) (one of 12 women selected to represent the USA)
2006 – Verona, Italy – McConnell Cup (9th place (tie)); Women’s Pairs (13th place); Thirteenth place – Women’s Pairs
2002 – Montreal, Canada – McConnell Cup (5th place (tie)); Women’s Pairs (17th place)
2001 – Paris, France – Venice Cup (5th place (tie)) (one of 12 women selected to represent the USA)

North American Bridge Championships

- First place -- Life Master Women's Pairs – Fall 2007, 2003
Women's Swiss Teams – Spring 2007, 2001, 1998
Women's Board-a-Match Teams – Fall 2008, 2006, 2005, 1999
Women's Knock Out Teams – Summer 2010, 2008, 2005, 2003
Mixed Board-a-Match Teams -- Summer 1999
- Second place – Women's Swiss Teams – Spring 2008, 1999
Women's Board-a-Match Teams – Fall 2002
- Third place -- Women's Knock Out Teams – Summer 2013, 2004, 2002, 2001, 1997
(all 3rd place tie)
Women's Swiss Teams – Fall 2013
Life Master Women's Pairs – Fall 2013

U.S. Women's Bridge Championships (USBF Women's Team Trials)

- First place – Summer 2009, 2001
- Second place – Summer 2008
- Third place -- Summer 2003, 2000 (tie)
- Beijing Hua Yuan Cup World Women Elite Bridge Tournament (2013) (one of six women selected to represent the USA) Hua Yuan Cup Teams (7th place); Capital Cup Pairs (15th)
- Beijing Hua Yuan Cup World Women Elite Bridge Tournament (2011) (one of six women Selected to represent the USA) Hua Yuan Cup Teams (6th place); Yang Guang Sheng Da Cup Pairs (6th place)
- WBP Pairs -- Third place -- 2003
- World Life Master, World Bridge Federation
- Diamond Life Master, American Contract Bridge League
- Selected to U.S. Olympic Rowing Team Camp (1976)
- Selected to National Rowing Team Camp (1978, 1977, 1975)
- Yale Varsity Women's Crew (1974-78)

PERSONAL

- Married to Samuel H. Dinkin, Ph.D.
- One child, Mahria Alexandra Baker (born 10/6/98)

Addendum to Curriculum Vita of Lynn A. Baker

Since May 1, 2010, I have testified as an expert at trial or by deposition in the following cases:

- H.T., et al. v Ciavarella, et al. – U.S. District Court, Middle District of Pennsylvania – expert testimony at Final Approval Hearing before Hon. A. Richard Caputo (November 19, 2012)
- Bickel & Brewer v Kevin M. Curley – before the American Arbitration Association – deposition (March 23, 2012) and testimony at Arbitration (April 5, 2012)
- Marc Abrams, et al. v Dell, Inc., et al. – U.S. District Court, Western District of Texas – expert testimony at Final Approval Hearing before Hon. Sam Sparks (May 21, 2010)

My fee for serving as an expert in connection with the proposed Provider Defendant settlement in the matter of H.T., et al. v Ciavarella, et al., and consolidated cases, is \$900 per hour.