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MEHRI & SKALET, PLLC
2009 YEAR IN REVIEW

* (PENDING IN DC)

Mehri & Skalet is proud to present the outstanding 2009 work of our lawyers and entire legal team. Our mission is simple: employ the legal system to serve the public interest. We do that through groundbreaking work in such areas as civil rights, employment law, gender equality, consumer protection, Fair Labor Standards Act, False Claims Act, and fair housing. Our successes and challenges in the past year meant significant growth for our firm, and we are pleased to share our news with you.

Madison Avenue Project

M&S kicked off the new year by launching the Madison Avenue Project, an initiative to tackle race discrimination in the advertising industry. Partnering with the NAACP, M&S released a one hundred-page report, "Research Perspectives on Race and Employment in the Advertising Industry" by economists Marc Bendick, Jr., Ph.D. and Mary Lou Egan, Ph.D., which documents longstanding racial bias throughout the industry. Among its many remarkable findings, the report reveals that racial discrimination is 38 percent worse in the advertising industry than in the overall U.S. labor market, and that the "discrimination divide" between advertising and other U.S. industries is more than twice as bad now as it was 30 years ago.

M&S Partner and project leader Cyrus Mehri called the findings "absolutely astonishing in this day and age," and NAACP Interim General Counsel Angela Ciccolo announced that the NAACP is "going to circulate the report not just to our units to inform our members, but also to Fortune 100 companies to urge them to stop aiding and abetting widespread discrimination by this industry."

Throughout 2009, M&S has investigated individual and systemic claims of race discrimination in the advertising industry and, along with the NAACP, hopes to create a "new day" where people of all backgrounds, including African-Americans, can fairly compete for high-level creative and business positions in the industry. The investigation currently focuses on Interpublic Group, Omnicom Group, Publicis USA, and WPP Group, and their business units.

The Project has been generating buzz in the advertising industry and has been featured in *The New York Times*, *Advertising Age*, and *Adweek*, and was featured on National Public Radio's *All Things Considered* in January 2010.

Women on Wall Street

In 2009, M&S continued to prosecute individual and class-wide claims of gender bias in the financial services industry. On September 15, 2009, M&S, along with co-counsel Sprenger & Lang and

Moody & Warner, filed a nationwide class action lawsuit against Wachovia Securities, LLC alleging that the company engaged in systemic gender discrimination against its female financial advisors (*Carter v. Wells Fargo Advisors*, No. 09-1752, D.D.C.).

M&S and co-counsel have been engaged in productive dialogue with Wachovia Securities for over two years and are seeking substantial relief for the class. Noted New York-based mediator Margaret L. Shaw of JAMS has been working with the parties and stated that she expected them to continue “their fruitful discussions.”

M&S has also continued monitoring its recent gender discrimination settlements on behalf of female financial advisors at Morgan Stanley and Smith Barney. M&S has been working with Diversity Monitor Catherine Hagen Pepe to oversee the programmatic relief provisions of a five-year, \$46 million settlement with Morgan Stanley, which received final approval on October 26, 2007 (*Augst-Johnson v. Morgan Stanley*, No. 06-1142, D.D.C.). Class members participating in the four-year, \$33 million settlement with Smith Barney, which received final approval on August 13, 2008, began receiving their monetary awards in September 2009 (*Amochaev v. Smith Barney*, No. 05-1298, N.D. Cal.).

Notable Settlements

- ***Norflet v. John Hancock Life Insurance Company*, No. 04-1099 (D. Conn.)**

On August 21, 2009, the U.S. District Court for the District of Connecticut granted final approval of a \$24.4 million race discrimination class action settlement with John Hancock Life Insurance Company, resolving claims of decades-old discriminatory practices in the sale and marketing of life insurance policies to African-Americans. “The settlement is extraordinary,” said co-lead counsel Cyrus Mehri. “It makes fair amends for historic practices by providing relief to those who were sold what we believe were inferior insurance policies and by giving a substantial amount of money back to the African-American community.”

The case had been under intense litigation since 2004, when M&S, along with co-counsel Klafter Olsen & Lesser, filed suit against John Hancock on behalf of plaintiff Merle Norflet, an African-American woman whose mother had purchased life insurance policies from John Hancock in the 1940’s and 1950’s. M&S overcame motions to dismiss (2007 U.S. Dist. LEXIS 13217) and summary judgment (2007 U.S. Dist. LEXIS 65797) to successfully obtain class certification (2007 U.S. Dist. LEXIS 65793).

Class members, who are defined as all African-Americans who were purchasers, owners, insureds, or beneficiaries of industrial or monthly debit policies issued by John Hancock prior to 1959, are entitled to up to \$1,200 per policy if they submit valid claims as determined by the Special Master, retired U.S. District Court Judge U.W. Clemon. Noted civil rights attorney John Brittain will head a committee that will advise counsel on *cy pres* distributions to organizations that benefit African-American communities. The committee is comprised of leading civil rights attorneys Theodore Shaw, Judge Nathaniel Jones, Geraldine Sumter, Charles Ogletree, and John Powell, and community advocate Deidra Ierardi.

- ***Niewinski v. Resurrection Health Care Corporation*, No. 04-ch-15187 (Cook County Cir. Ct.)**

On January 12, 2009, the Cook County Circuit Court approved a multi-million dollar settlement with Resurrection Health Care Corporation, a not-for-profit health care system that includes nine

hospitals in the Chicago area, in a case alleging billing overcharges and other violations against uninsured patients. The far-reaching settlement resolved a 2004 suit filed by M&S on behalf of uninsured patients, and includes compensation for past overcharges, substantial future reductions in rates charged to uninsured patients, changes in collection techniques and practices, and greater availability of charity care. M&S Partner Steve Skalet, co-lead counsel for plaintiffs, expressed his belief that the settlement will “encourage other nonprofit hospitals to responsibly meet their charity care obligations.”

- ***Motley v. Homecomings Financial, No. 08-0339 (D. Minn.)***

M&S filed a multi-claim, nationwide class action lawsuit in the U.S. District Court for the District of Minnesota against Homecomings Financial, LLC and its parent company, GMAC Financial, LLC, in January 2008. The complaint alleged that Homecomings assessed a variety of fees and charges that it failed to properly account for and explain to borrowers. In December 2009, the parties entered a mutually satisfactory settlement agreement regarding plaintiffs’ claims.

- **Other Settlements**

M&S attorneys Steve Skalet and Woodley Osborne, along with co-counsel, successfully represented a number of former employees of a nationwide bank who were wrongfully terminated by their employer. The confidential settlement resulted in monetary relief for each of the former employees. The bank also agreed to eliminate harmful information from the employees’ FINRA Forms U-5 that had made it difficult for the employees to find new jobs.

In 2009, M&S attorneys Steve Skalet and Janelle Carter successfully settled five pro bono cases on behalf of homeowners who were victimized by a foreclosure rescue scam in a series of foreclosure actions filed against them, as well as in a consumer action filed by the Attorney General for the District of Columbia.

Ongoing Litigation

- ***Laney v. American Standard Companies, No. 07-3991 (D.N.J.)***

M&S is currently litigating a proposed class action in the U.S. District Court for the District of New Jersey against American Standard concerning its “Champion” two-piece toilet. Plaintiff alleges that the Champion contains a defectively designed flush valve that causes the toilet to leak internally, resulting in dramatically higher water bills, and replacement and repair costs to purchasers. The parties are currently briefing plaintiff’s motion for class certification.

- ***Somers v. Apple Inc., No. 07-6507 (N.D. Cal.)***

M&S is currently litigating a class action complaint on behalf of a purchaser of Apple’s iPod portable music device in the U.S. District Court for the Northern District of California, alleging that Apple illegally monopolized the market for portable music devices and electronic music downloads, in violation of federal and state antitrust and consumer laws. The Court did not certify a class consisting of indirect purchasers of iPods because it felt that damages to that class could not be proven on a class-wide basis. Plaintiff intends to seek class certification and relief under an amended Complaint asserting different claims based on the fact pattern alleged as well as a class of iTunes purchasers.

- ***In re MagSafe Apple Power Adapter Litigation, No. 09-1911 (N.D. Cal.)***

In November 2009, M&S was appointed interim co-lead counsel on behalf of a proposed nationwide class of Apple MacBook owners. Plaintiffs allege that the “MagSafe” adapter that comes with the computer is defectively designed and manufactured, causing it to fray, spark, overheat, melt, and cease functioning. The case is in its early stages.

- ***In re Comcast Corp. Set-Top Cable Television Box Antitrust Litigation, No. 09-2034 (E.D. Pa.)***

M&S represents plaintiffs in an action filed in the U.S. District Court for the Eastern District of Pennsylvania alleging that Comcast’s requirement that customers pay a monthly rental fee for the cable box constitutes anticompetitive behavior under the antitrust laws.

- ***Gutierrez v. Johnson & Johnson, No. 01-5302 (D.N.J.)***

On July 31, 2009, M&S filed a renewed motion for class certification on behalf of plaintiffs in a lawsuit challenging Johnson & Johnson’s policies and practices with respect to the manner in which employees of African and Hispanic descent are promoted and compensated by the company. The case alleges the existence of a pattern and practice of discrimination in terms of how professionals and managers of African and Hispanic descent are promoted and compensated as compared to non-Hispanic white employees.

- ***Amar v. Canon U.S.A., No. 08-4329 (E.D.N.Y.)***

On August 21, 2009, M&S filed a second amended class action complaint against Canon U.S.A. and Canon Business Solutions on behalf of African-American sales representatives alleging that the company discriminated against them on the basis of race in compensation, promotions, and other terms and conditions of employment. The case was filed in the U.S. District Court for the Eastern District of New York and is still in its early stages.

- ***Emergency Physicians of St. Clare’s, LLC v. ProAssurance Corporation, No. 09-6244 (D.N.J.)***

In December 2009, M&S filed a complaint in the U.S. District Court for the District of New Jersey on behalf of plaintiffs alleging that ProAssurance charged doctors more for malpractice insurance than legally allowed. The case is in its early stages.

Our New Partners and Of Counsel

M&S recently welcomed three new partners and one new Of Counsel to our practice.

Janell Byrd joined M&S in February 2010 as a partner and will expand the firm’s well-established civil rights practice. She was an attorney with the NAACP Legal Defense and Educational Fund for many years, where she focused on school desegregation and affirmative action cases. Janell comes to M&S from the Cochran Firm, where she handled jury trials involving police misconduct and medical abuse and neglect cases. She is a graduate of Boalt Hall School of Law at the University of California, and clerked for the Honorable Cecil F. Poole on the United States Court of Appeals for the Ninth Circuit.

Jay Angoff joined the firm in March 2009 and was named partner in November 2009. Jay has an extensive background in insurance law and leads M&S's work in that area. He served as Missouri's Insurance Commissioner and as New Jersey's Deputy Insurance Commissioner, and has advocated on behalf of insurance consumers in state and federal courts, before state and federal administrative agencies, in Congress, and before the legislatures of more than 40 states. Jay is a graduate of Vanderbilt Law School.*

Craig Briskin, who joined the firm in 2007, became a partner in November 2009. Craig specializes in consumer protection and antitrust class actions. Prior to joining M&S, he prosecuted antitrust and commodities class actions at the New York firm of Labaton Sucharow LLP, and practiced immigration, disability, and welfare law as an Equal Justice Works fellow at New York Legal Assistance Group. Craig is a graduate of Harvard Law School.

Heidi Burakiewicz joined the firm in January 2010 as Of Counsel. Heidi previously practiced at Woodley & McGillivray, where she handled Fair Labor Standards Act cases on behalf of employees seeking unpaid wages and overtime compensation. She has represented employees and unions in collective/class action and multi-plaintiff suits before various federal courts as well as in arbitration, and she pioneered litigation against the Bureau of Prisons resulting in the collection of over \$20 million in unpaid wages since 2005. Heidi is a graduate of American University's Washington College of Law.

2009-2011 Find Justice Fellow

In an effort to further the firm's mission of public justice, M&S established the Find Justice Fellowship, a two-year position which offers a new attorney the opportunity to gain experience on the wide range of cases that M&S pursues. In September 2009, Danielle Davis became the first M&S Find Justice Fellow. Danielle graduated from Howard University School of Law in May 2009 and was recently sworn into the Maryland Bar. Danielle is committed to public interest law and previously interned with the United Mine Workers of America, AFL-CIO, where she was a Peggy Browning Fund Fellow, and with the EEOC.

Fritz-Pollard Alliance

M&S continues to do pro bono work for the Fritz-Pollard Alliance, an affinity group of NFL minority coaches, scouts, and front office personnel founded by Cyrus Mehri and Johnnie L. Cochran, Jr. in 2003 following the publication of their groundbreaking report, "Black Coaches in the National Football League: Superior Performance, Inferior Opportunities." FPA has spearheaded the hiring of a record number of minority personnel at the NFL, including seven African-American head coaches and five general managers. Diversity has brought success to the teams that have embraced it, and five out of the last six Super Bowl teams have had either an African-American general manager or head coach.

FPA's role in promoting diversity at the NFL was recently featured in *The New York Times* and *The Washington Post*.

* In February 2010, Jay Angoff left M&S to serve as a Special Advisor on insurance-related issues to the Secretary of the U.S. Department of Health and Human Services.

Other Activities

In late 2008, Cyrus Mehri testified before the Senate Judiciary Committee alongside Supreme Court litigant Lilly Ledbetter, leading to a robust dialogue on diversifying the federal bench, not only in terms of race and gender, but also in terms of life and work experience. Cyrus, along with associate Ellen Eardley, also co-authored a paper titled, "21st Century Tools for Advancing Equal Opportunity: Recommendations for the Next Administration," which was released by the American Constitution Society.

In 2009, M&S was featured in *From Delinquent to Disciple*, an autobiography written by former client James L. Robinson, Sr., who was the lead plaintiff in *Robinson v. Ford Motor Company* (No. 08-844, S.D. Ohio), a lawsuit which resulted in a multi-million dollar settlement that created an unprecedented number of highly coveted apprenticeship positions at Ford for African-American hourly employees.

Voices for Corporate Responsibility

M&S ended the year by launching the Voices for Corporate Responsibility Project with Grant & Eisenhofer on December 15, 2009, with a press conference and panel discussion held at the National Press Club. The launch released the results of a new Harris poll commissioned by the Voices Project, which revealed a concern among one out of every five corporate executives of publicly traded companies that their own companies "do not comply with federal, state, or local laws," and a concern among two out of every five executives that corporate leaders "put narrow short term goals ahead of the long term benefit of the company."

Project leaders Cyrus Mehri and Reuben Guttman led a panel discussion on the role of corporate professionals in recognizing and taking action against corporate wrongdoing. Panelists included whistleblowers Mike Prieto, the former CEO of Bell Aerospace Services; David Welch, the first whistleblower to win a case before an Administrative Law Judge under the Sarbanes-Oxley whistleblower provision; Glenn DeMott, a former senior pharmaceutical sales consultant for Pfizer who was one of six main whistleblowers whose litigation under the False Claims Act prompted a record \$2.9 billion settlement; Charles Deuschle, a former senior Lockheed technician who reported violations of environmental and health standards at the Paducah, Kentucky nuclear plant; and Jon Oberg, a former U.S. Department of Education researcher who discovered that student lending companies were improperly collecting hundreds of millions of dollars in federal subsidies.

Following the financial crisis of 2008, M&S and Grant & Eisenhofer founded the Voices Project to serve as a safe haven and resource for corporate executives, senior managers, and other professionals who believe their corporations should behave with integrity for the long-term benefit of the company, shareholders, consumers, and the community. It provides an opportunity for professionals to speak confidentially with other executives and experienced counsel about corporate wrongdoing and approaches to remedy the wrongdoing. The Project's distinguished Advisory Board includes former whistleblowers, investigative reporters, and leaders in the field of corporate governance.

