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### **Mehri & Skalet, PLLC** **2010 Year in Review**

Our mission is simple: we use the legal system to serve the public interest. We do that with groundbreaking work in areas such as civil rights, fair housing, employment law, consumer protection, the Fair Labor Standards Act, prevailing wage law, and the False Claims Act. We are pleased to share our 2010 Year in Review with you.

In 2010, we secured major victories in suits alleging gender and race discrimination, settling cases that won significant financial compensation for our clients and helped change the practices of corporate America. Mehri & Skalet also initiated new actions with clients in the areas of fair wages, mortgage insurance, real estate fraud, and consumer protection. In addition to litigation, our firm was very active in pursuing social change in the advertising industry, corporate boardrooms, and on Wall Street.

#### **Notable Settlements**

- ***Carter v. Wells Fargo Advisors, No. 09-1752 (D.D.C.)***

In 2009, as part of our Women on Wall Street Project, M&S along with co-counsel filed a class action lawsuit against Wachovia Securities, LLC, alleging that the company engaged in systemic gender discrimination against its female financial advisors. In December 2010, the parties reached a proposed class settlement that includes a \$32 million fund from which awards, fees and costs will be paid. The settlement also requires the company to make significant changes to its internal policies that affect the distribution of business opportunities, including the appointment of an independent monitor and a jointly selected expert. In January 2011, the Court granted the parties' Joint Motion for Preliminary Approval of the Settlement. Formal notice to potential class members is underway.

- ***Cadman v. Bank of America, No. C08-02245 (D.CA)***

In 2008, M&S filed a class action lawsuit on behalf of individuals currently or previously employed by Bank of America in the State of California as Mortgage Loan Officers and Senior Mortgage Loan Officers of Retail Executives (MLOs). Plaintiffs claimed that the Bank's policies and practices denied lawful compensation to MLOs. In September 2010 the Court approved the class action settlement, which provided for payment of more than \$8 million to class members.

- ***Norflet Progress Fund***

The Norflet Progress Fund is part of the settlement of the class action lawsuit, *Norflet v. John Hancock Life Insurance Co.*, No. 3:04-cv-1099 (D.Conn.).

The lead plaintiff in this lawsuit, Merle Norflet, who is African American, alleged that during the 1940s and 1950s John Hancock had a policy of discouraging the sale of life insurance to African Americans and, when they did sell them insurance, offered them inferior and substandard policies. The lawsuit alleged that prior to 1959, at which time John Hancock did start to offer the full range of policies to African Americans, the company steered African Americans to these substandard products. Ms. Norflet's family had purchased a number of insurance policies from the 1940s era sold by John Hancock insurance agents.

The parties reached a settlement in 2009 which created a \$24 million fund to pay claims to the class plus fees and costs. There is also a large *cy pres* component of over \$15 million, which will be distributed to organizations that benefit African-American communities.

The *cy pres* fund is named the "Norflet Progress Fund" in honor of Ms. Merle Norflet, the lead plaintiff in the lawsuit. The Court appointed a prestigious *cy pres* committee chaired by law professor John Brittain to make recommendations on the distribution from the Norflet Progress Fund. The Committee is in the process of recommending qualified organizations for grants from the Fund, which will be used to address systemic issues impacting African-American communities. The Committee has invited organizations to submit a letter of inquiry indicating the population served by the organization and the type of grant sought. After reviewing letters of inquiry, the Committee will invite organizations to submit full grant proposals and applications. The Committee and Class Counsel hope to award grants in late 2011.

### **Ongoing Litigation**

- ***SimplexGrinnell LP Prevailing Wage Litigation***

M&S along with co-counsel brought suit on behalf of current and former fire alarm and sprinkler system workers of SimplexGrinnell LP, who claim that they were not been paid "prevailing wages" as required by many states for work on public projects. In *Ramos v. SimplexGrinnell LP*, No. 1:07-cv-981 (E.D.N.Y.), the plaintiffs are seeking \$16 million in damages on behalf of a proposed class of 600 members. Class certification has been fully briefed and is awaiting judgment. In *Hioutakos v. Simplex Grinnell LP*, No. 2:10-cv-4505 (D.N.J.), a similar action has been filed and is in the discovery stages. M&S also is investigating violations by SimplexGrinnell LP and other companies of other states' prevailing wage laws.

- ***Moses v. SunTrust, No. 1:10-cv-02029 (D.D.C.)***

In November 2010, Mehri & Skalet filed suit in federal court in the District of Columbia on behalf of a proposed class of homeowners against SunTrust Bank and several providers of private mortgage insurance ("PMI"). Plaintiff alleges that SunTrust had agreements with PMI companies to receive illegal kickback fees for arranging PMI with these insurers, and that this kickback scheme artificially inflated the cost of borrowers' PMI premiums.

The alleged scheme challenged in this case is carried out under the guise of so-called “captive reinsurance” by which a SunTrust subsidiary — its “captive reinsurer” — receives a portion of the borrower’s monthly PMI premium payments — ostensibly for sharing in the risk of default on loans. However, the deal is structured so that SunTrust actually assumes little to no risk. Thus, the payment is essentially a kickback or a referral fee, which is illegal under the Real Estate Settlement Procedures Act (“RESPA”). The Complaint also alleges that SunTrust violated the Truth in Lending Act (“TILA”) in failing to properly disclose the PMI costs prior to closing.

- ***Chamber of Commerce – IRS Case***

In September 2010, M&S on behalf of the U.S. Chamber Watch alerted the I.R.S. to potential tax fraud by the U.S. Chamber of Commerce. U.S. Chamber Watch was founded by Change to Win to monitor the U.S. Chamber and its undue influence in the political and legal arena. The complaint alleges a violation of tax codes by the Chamber for receiving and using over \$18 million for its operations that derive from a 501(c)(3) foundation created by AIG and run by Hank Greenberg. Information at <http://www.fixtheuschamber.org/what-chamber/us-chamber-and-aig-foundations-multimillion-dollar-tax-fraud> and [http://www.nytimes.com/2010/10/22/us/politics/22\\_chamber.html](http://www.nytimes.com/2010/10/22/us/politics/22_chamber.html).

- ***Bush v. Ruth’s Chris Steak House, Inc., No. 10-01721 (D.D.C.)***

In October 2010, M&S and co-counsel filed a gender discrimination lawsuit against Ruth’s Chris Steak House and its parent company. The suit alleges wide-spread discrimination against women in pay, promotions, and terminations, as well as a sexually charged working environment fostered by a predominately male leadership team, who routinely engaged in sexual commentary and behavior demeaning to women.

- ***Bell v. Clyde’s Restaurant Group, Inc., No. 10-01720 (D.D.C.)***

In October 2010, M&S filed a collective action lawsuit on behalf of workers at Clyde’s Restaurant Group, Inc. who worked in tip-earning positions such as front waiter, back waiter, and bartender. Plaintiffs allege that Clyde’s failed to pay them minimum wage and overtime compensation for all hours worked pursuant to federal and state laws, and improperly required employees to dry-clean their uniforms. In addition, plaintiffs allege that Clyde’s required them to perform work off the clock, and underpaid them for time worked when they could not earn tips.

The parties are currently briefing plaintiffs’ motion for conditional certification of the collective action and issuance of Notice to similarly situated individuals.

- ***Hawkins v. Hooters of America, Inc., No. 09-1475 (D.D.C.)***

M&S is litigating a collective action on behalf of employees of Hooters of America, Inc., who were employed in the position of “Hooter’s Girl.” Plaintiffs allege that Hooters failed to pay them the appropriate minimum wage and overtime compensation pursuant to federal and state laws. The parties are currently engaged in discovery on the individual claims of the 17 named plaintiffs in arbitration. They also are awaiting a decision by the U.S. District Court for the District of Columbia determining whether the case can proceed on a collective action basis, and whether the parties should notify other similarly situated individuals of the pendency of the case.

The issues in the case regarding mandatory arbitration were featured in the Washington Post on November 8, 2010. (<http://www.washingtonpost.com/wp-dyn/content/article/2010/11/05/AR2010110507318.html>.)

- **FLSA Cases against the Bureau of Prisons**

M&S is representing the American Federation of Government Employees (AFGE) Council of Prison Locals against the U.S. Department of Justice, Federal Bureau of Prisons, in numerous arbitrations on behalf of correctional officers and other bargaining unit employees for a variety of wage and hour violations. These violations include failing to compensate employees for performing work before and after their scheduled shifts (portal to portal violations), failing to pay shift differentials, and general contract violations.

- ***Yanqiu Ke v. Enlightened Wealth Institute, No. 10-02036 (D.D.C.)***

M&S has filed a class action complaint with co-counsel on behalf of Plaintiff Yanqiu Ke against Enlightened Wealth Institute ("EWI"), and several of its officers. Plaintiff claims that Defendants perpetuated a fraudulent scheme to enroll participants in real estate investment seminars, promising that they would teach "no money down" methods of investing that would yield large profits. After securing thousands of dollars in fees from their "students," EWI did not teach them feasible investment methods. Moreover, EWI's proposed methods — most of which are no more than garden-variety property flipping — ignore the realities of the current real estate market, and the unavailability of financing for "no-money down" investments.

- ***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 parties are in settlement negotiations.

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

M&S is litigating a class action anti-trust complaint with co-counsel on behalf of purchasers of Apple's iPod portable music device and iTunes users in the U.S. District Court for the Northern District of California. The case alleges that Apple illegally monopolized the market for portable music devices and electronic music downloads, in violation of federal and state antitrust and consumer laws. In addition, we assert that Apple is improperly charging iTunes users for unlocking their iTunes songs so that they can be freely transferred to other portable devices. The Court denied Plaintiff's motion for certification of a class of indirect purchasers of iPods, holding that damages to that class could not be proven on a class-wide basis. Plaintiff is now seeking certification of a class of iTunes purchasers under an amended Complaint.

- ***Scull v. Doctors Groover Christie & Merritt, P.C., No. 325698V (Cir. Ct. Montgomery County, MD)***

In January 2010, M&S filed a class action complaint seeking redress for claims of improper "balance billing" policies by Groover, Christie & Merritt, P.C. Balance billing is the billing of an insured

patient by a health care provider for a balance alleged to be owed after the patient's insurer has already paid the provider. Balance billing an insured patient for referred services is prohibited by Maryland law.

- ***Waterside Towers Resident Association, Inc. v. Trilon Plaza Company, L.P.*, No. 2006 CA 008620 (Superior Court D.C.)**

M&S filed a lawsuit in 2004 on behalf of the Waterside Towers Resident Association, claiming that the owners of Waterside had sold the property, but did not furnish an Offer of Sale to the tenants as required by law. The case was dismissed in the lower court, but in August 2010, the tenants' position was vindicated when the D.C. Court of Appeals ruled that the transfer of the townhomes portion of the project was a sale, which requires notice to the tenants, a right to negotiate, and a right of first refusal to purchase the property. The case has been remanded to the Superior Court for further proceedings.

## **Special Projects**

### **Women on Wall Street Project**

This year M&S continued to monitor its recent gender discrimination settlements on behalf of female financial advisors at Morgan Stanley and Smith Barney. With the addition of the Wachovia settlement, the project's expected settlement trilogy now totals approximately \$112 million, and has transformed the way Wall Street allocates business opportunities to financial advisors.

### **Voices for Corporate Responsibility Project**

M&S launched the "Voices Project" in 2009 to create an organization for professionals who want their corporations to behave with integrity for the long-term benefit of the company, shareholders, consumers, and the community. In 2010 Mehri & Skalet continued this work.

In May 2010, the Voices for Corporate Responsibility Project and Voices Board Member David Welch encouraged OSHA to address flaws in its Whistleblower Protection Program. Voices pointed to Dr. Welch's original research showing that between 1994 and 2008 OSHA investigators determined that only 874 (3.2%) of the 27,298 investigations of Sarbanes-Oxley Act claims had merit. OSHA responded by conducting a top-to-bottom review of the Office of Whistleblower Protection Program. Cyrus Mehri and Ellen Eardley of Mehri & Skalet and Dr. Welch provided OSHA with recommendations as part of the formal review. Voices for Corporate Responsibility worked in partnership with the Government Accountability Project to provide OSHA the most helpful feedback to improve whistleblower rights.

M&S represented a woman who testified before the Financial Crisis Inquiry Commission regarding the illegal underwriting practices in the mortgage lending industry that led to the collapse of the housing market. Our client testified about the improper practices she discovered and opposed until she was forced out of her job.

In December 2010, Cyrus Mehri participated in a Voices program with Change to Win, the Government Accountability Project, and other groups to assert that corporate compliance departments are no substitute for coordinated investigations by government agencies alerted by whistleblowers.

Partners in the Voices Project included Grant & Eisenhofer, P.A., and the Employment Law Group.

## **Madison Avenue Project**

Mehri & Skalet and the NAACP launched the Madison Avenue Project in 2009 to address historic and pervasive discrimination against African Americans in the advertising industry. In 2010 the Project's investigation led to M&S filing EEOC charges against ad companies on behalf of several affected individuals.

The Project also has continued to generate buzz in the advertising industry and has been featured in numerous newspapers, magazines, and online media sources. In September 2010, Cyrus Mehri and Janelle Carter's article "View From the Front Lines: Despite gains, much work still needs to be done" was published in *ADWEEK*. The article discusses the continuing presence of discrimination in the advertising industry. In November of 2010 Cyrus Mehri and Janelle Carter's guest editorial entitled "Change on Madison Avenue" appeared in *Diversity Executive*.

In addition to the articles, the Project held a press conference in 2010 to release startling information regarding the advertisements that were aired during the 2010 Super Bowl. The report "White Men Dominate Advertising Agencies' Creative Director Positions," written by Dr. Richard Lapchick and a team of graduate students, found that of the 52 professionally produced ads by advertising agencies that aired during the 2010 Super Bowl, all of the creative directors were white and only 6% were women. Not a single creative director was Black or Latino. A qualitative review of the ads themselves found few people of color in lead roles while women were often portrayed in an unfavorable light. (<http://www.madisonavenueproject.com/UserFiles/File/newMadisonAvenue2010.pdf>)

## **Fritz Pollard Alliance**

M&S continues to do pro bono work for the Fritz Pollard Alliance (FPA), 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 eight minority head coaches and five general managers. Diversity has brought success to the teams that have embraced it, and seven out of the last ten Super Bowl teams have had either an African-American general manager or head coach, including Mike Tomlin who in 2011 led the Pittsburgh Steelers to their second Super Bowl in three years. After the recent hires of Leslie Frazier (Minnesota Vikings), Ron Rivera (Carolina Panthers), and Hue Jackson (Oakland Raiders), there are now a record eight minority head coaches in the NFL.

Former M&S associate, N. Jeremi Duru, has written *Advancing the Ball: Race, Reformation, and the Quest for Equal Coaching Opportunity in the NFL* published by Oxford University Press. The book has a forward by Tony Dungy, who in 2007 was the first African-American head coach to win a Super Bowl. The book highlights the work of the FPA in convincing the NFL to institute the "Rooney Rule" ensuring that NFL teams with coaching vacancies interview minority candidates. Mr. Duru, now a professor at Temple Law School, is on a national book tour and also writes for Yahoo sports. The book can be purchased online at [www.oup.com](http://www.oup.com).

Cyrus Mehri contributed to the book *Reversing Field: Examining Commercialization, Labor, Gender, and Race in 21st Century Sports Law* and published an op ed with Professor Duru in the Nashville Tennessean.

## **Firm News**

### **Our New Attorney – Ray Fay**

Ray Fay joined M&S in August 2010 as Of Counsel. He was previously at Constantine Cannon LLP where he was a partner. Ray has over thirty years of experience in complex civil and class action litigation, with primary specialties in employment law and employee benefits litigation. He has been trial counsel in some of the nation's largest antitrust, age discrimination and ERISA cases, and participated in over one hundred federal cases under federal employment discrimination laws, ERISA, the Railway Labor Act and the Fair Labor Standards Act. In addition he is an American Arbitration Association arbitrator in employment and commercial cases. Ray is a graduate of Georgetown University Law Center.

### **Find Justice Fellowship**

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 in the wide range of cases that M&S pursues. Danielle Davis was our first M&S Find Justice Fellow. 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 then with the EEOC. Danielle graduated from Howard University School of Law in May 2009 and will leave M&S to clerk for a U.S. Magistrate Judge in New Orleans.

M&S recently selected our next Find Justice Fellow, Zachary Best. Zachary will graduate from Georgetown Law School in May 2011 and will begin his fellowship in the fall of 2011.

### **Other Activities**

Early in 2010 the Obama administration appointed M&S partner Jay Angoff to a leading position to implement the historic health care legislation. Specifically, Jay oversaw the development of several of the key regulations designed to protect consumers under the new law.

In November Cyrus Mehri participated in a notable civil rights conference at Emory Law School that featured speakers such as John Lewis, John Doar, U.W. Clemon (retired N.D. Alabama District Judge), John T. Nixon (U.S. District Judge M.D. Tenn.), and Bari-Ellen Roberts (plaintiff in the landmark Texaco case).

M&S filed several Qui Tam cases under seal in 2010 and successfully provided pro bono legal assistance to numerous homeowners who were applying for loan modifications or were facing foreclosure and having difficulties with lenders in the process.



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