EXHIBIT 2

Report of the Independent Fiduciary for the Settlement in *Iannone v. AutoZone, Inc.*

November 1, 2024

TABLE OF CONTENTS

I. Introduction

Fiduciary Counselors has been appointed as an independent fiduciary for the AutoZone, Inc. 401(k) Plan (the "Plan") in connection with the settlement (the "Settlement") reached in *Iannone v. AutoZone, Inc.*, Case No. 2:19-cv-02779-MSN-tmp (the "Litigation" or "Action"), which was brought in the United States District Court for the Western District of Tennessee (the "Court"). Fiduciary Counselors has reviewed over 150 previous settlements involving ERISA plans.

II. Executive Summary of Conclusions

After a review of key pleadings, decisions and orders, selected other materials and interviews with counsel for the parties, Fiduciary Counselors has determined that:

- The Court has certified the Litigation as a class action both during the Litigation and for settlement purposes, and in any event, there is a genuine controversy involving the Plan.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.
- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption ("PTE") 76-1.
- All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.
- The Plan is receiving no consideration other than cash in the Settlement.

Based on these determinations about the Settlement, Fiduciary Counselors hereby approves and authorizes the Settlement on behalf of the Plan in accordance with PTE 2003-39.

III. Procedure

Fiduciary Counselors reviewed key documents, including the Amended Complaint, the Motion for Class Certification, the Court's Order Granting Class Certification, the Motion to Exclude Plaintiffs' Expert, the Magistrate Judge's Order on the Motion to Exclude Plaintiffs' Expert, Plaintiffs' Motion for Partial Summary Judgment, Defendants' Motion for Summary Judgment, the Magistrate Judge's Report and Recommendation denying Plaintiffs' Motion for Partial

Summary Judgment and denying in part and granting in part Defendants' Motion for Summary Judgment, the Settlement Agreement, the parties' mediation statements, the Motion for Preliminary Approval and related papers, the Joint Response to Order Directing Supplemental Briefing, the Court's Order Preliminarily Approving Settlement, the Notice, the Plan of Allocation, the Motion for Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards and related papers, and the Motion for Final Approval and related papers.

In order to help assess the strengths and weaknesses of the claims and defenses in the Litigation, as well as the process leading to the Settlement, the members of the Fiduciary Counselors Litigation Committee conducted separate telephone interviews with counsel for Defendants and counsel for the Plaintiffs.

IV. Background

A. Procedural History of Case

***Litigation*.**

Plaintiffs[1] filed their Complaint against Defendant AutoZone, Inc. ("AutoZone") on November 13, 2019 for violations of fiduciary duty owed to the Plan under ERISA. The Named Plaintiffs were participants in an ERISA defined contribution plan sponsored by their employer, AutoZone. Plaintiffs Iannone and James ("Plaintiffs") filed their Amended Complaint naming Northern Trust Corporation and Northern Trust, Inc. as Defendants (the "Northern Trust Defendants") (among others)[2] on September 22, 2021. Specifically, Plaintiffs alleged the Northern Trust Defendants violated fiduciary duties under ERISA that it owed to the Plan's participants and beneficiaries as the Plan's former investment advisor. Plaintiffs alleged Northern Trust breached its fiduciary duties by failing to monitor certain investment fees related to the investment options offered through the GoalMaker service, failing to monitor the recordkeeping fees, and failing to monitor the Plan's stable value option (the Prudential Guaranteed Income Fund or "GIF").[3]

On November 15, 2021, the Northern Trust Defendants filed a motion to dismiss for failure to state a claim. On December 1, 2021, the Plaintiffs and Northern Trust Defendants agreed to a stipulation of dismissal as to the breach of duty of loyalty claim filed against the Northern Trust Defendants and the Northern Trust Defendants also agreed to drop their Motion to Dismiss and simply file an Answer. On December 17,

[1] The original Plaintiffs in this matter were Faith Miller and Michael J. Iannone, Jr. Ms. Miller was dismissed, and Ms. Nicole James appeared with the First Amended Complaint.

[2] The "non-settling" Defendants are AutoZone, Inc. and the individual investment committee members named in the Amended Complaint (Bill Giles, Brian Campbell, Steve Beussink, Kristin Wright, Michael Womack, Kevin Williams, and Rick Smith) (collectively, the "AutoZone Defendants").

[3] Northern Trust resigned as AutoZone's investment advisor to the Plan, effective June 30, 2018, mid-way through the Class Period.

2021, the Northern Trust Defendants filed their Answer to Plaintiffs' Amended Complaint.

On February 28, 2022, Plaintiffs file their Motion for Class Certification. On April 1, 2022, the Northern Trust Defendants joined the AutoZone Defendants in opposing Plaintiffs' request for Class Certification. On August 12, 2022, Judge Pham issued a Report and Recommendation to Certify a Class. On August 26, 2022, the Northern Trust Defendants joined the AutoZone Defendants in objecting to Judge Pham's Report and Recommendation regarding Class Certification. On December 7, 2022, Judge Norris adopted Judge Pham's Report and Recommendation regarding Class Certification.

On January 13, 2023, the Northern Trust Defendants joined the AutoZone Defendants in filing a Motion to exclude the testimony of Plaintiffs' experts. On February 3, 2023, the Northern Trust Defendants moved for Summary Judgment. On August 9, 2023, Judge Pham issued a Report and Recommendation as to the Motions to exclude Plaintiffs' expert testimony, which was not objected to by any party. On October 10, 2023, the Northern Trust Defendants filed various Motions in Limine. On October 11, 2023, Judge Pham issued a Report and Recommendation as to the Motions for Summary Judgment.

On October 16, 2023, all parties attended a Pre-Trial Conference with the Court. On October 16, 2023, the Northern Trust Defendants moved to continue trial. On October 18, 2023, the Court denied the motions to continue trial but set a conference on October 20, 2023. On October 20, 2023, the Court held a pre-trial status conference and entered a Pre-Trial Order.

On October 22, 2023, the Class Representatives and Northern Trust reached a settlement. On October 23, 2023, the Class Representatives began trial against the AutoZone Defendants and the Northern Trust Defendants and Plaintiffs reported the settlement with the Northern Trust Defendants to the Court. On October 31, 2023, the Class Representatives concluded their trial against the AutoZone Defendants.

Plaintiffs, through their counsel, responded to all motions filed on the docket, participated in multiple hearings with the Court, and engaged in voluminous discovery throughout. In doing so, Plaintiffs' counsel engaged qualified experts to prepare their case, reviewed tens of thousands of documents including extensive financial data and spreadsheets, issued subpoenas to multiple third-parties to connect the evidence, deposed multiple corporate and fact witnesses, and prepared to present their case against the Northern Trust Defendants at trial (and did proceed through trial against the non-settling Defendants).

Settlement and Preliminary Approval.

Throughout the intense litigation process, the parties engaged in consistent arm's-length settlement negotiations. On October 27, 2022, the parties conducted a mediation with David Geronemus of JAMS Mediation Group. While this original session did not result in a resolution, it did lay the groundwork for future discussions. On September 6, 2023, the parties reconvened settlement discussions with David Geronemus and set a second

mediation for October 3, 2023. Ultimately, this mediation was cancelled. However, the Plaintiffs and the Northern Trust Defendants continued settlement discussions informally, over multiple sessions, through the eve of trial, and on October 22, 2023, were able to reach a tentative resolution. The next day, Northern Trust and the Plaintiffs ("the Settling Parties") informed the Court of the Settlement.

Plaintiff filed a motion seeking preliminary approval of the Settlement on December 7, 2023. In the Response to Order Directing Supplemental Briefing on February 29, 2024, the settling parties addressed several questions posed by the Court. The Court granted Plaintiff's motion on August 21, 2024. The Court (1) preliminarily approved the settlement; (2) approved the form and method of class notice; (3) set November 21, 2024 as the date for a Fairness Hearing; (4) approved October 31, 2024 as the deadline for objections; and (5) preliminarily approved the Motion for Bar Order[4] (the bar order is limited to AutoZone's potential claims seeking indemnification or contribution against Northern Trust).

Objections.

October 31, 2024 is the deadline for Class Members to file objections to the Settlement. As of the date of this report, no Class Members filed an objection.

V. Settlement

A. Settlement Consideration

The Settlement provides for a Class Settlement Amount of $2,500,000. After deducting (a) all attorneys' fees and expenses; (b) all administrative expenses; and (c) incentive awards, the remainder (known as the "Net Proceeds") will be distributed to the Class Members in accordance with the Plan of Allocation.

Class and Class Period

The preliminary approval order certified the following Settlement Class[5]:

> All persons, other than AutoZone or Individual Defendants, who are or were participants as of November 11, 2013 in Plan, and invested in any of the GoalMaker

[4] Because the Settlement is contingent on the issuance of a bar order, the Court considered it within the context of preliminary approval. The Court also noted that to the extent an evidentiary fairness hearing on the bar order applies when a non-settling defendant does not oppose such an order, it is not required because the judgment reduction proposed in the Motion for Bar Order is at least as great as the proportionate share of fault that is attributed to Northern Trust. *See In re Greektown Holdings*, 728 F.3d at n.7 (citing *Gerber v. MTC Elec. Techs. Co., Ltd.*, 329 F.3d 297, 306 (2d Cir. 2003)) (describing the *Gerber* Court as saying "no fairness hearing is required if the judgment reduction is at least as great as the settling defendant's proportionate fault").

[5] This definition also is in the notice and the proposed final order. In the Response to Order Directing Supplemental Briefing, the settling parties acknowledged that the Settlement had included a different definition as a result of an inadvertent error and that the Settlement Class should not differ materially from the Class previously certified by the Court.

> Funds including (i) beneficiaries of deceased participants who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future, and (ii) alternate payees under a Qualified Domestic Relations Order who, as of November 11, 2013, were receiving benefit payments or will be entitled to receive benefit payments in the future.
>
> Excluded from the Settlement Class are (a) any person who was or is an officer, director, employee, or a shareholder of 5% or more of the equity of AutoZone or is an officer, director or controlling person of AutoZone; (b) the spouse or children of any individual who is an officer, director or owner of 5% or more of the equity of AutoZone; (c) Plaintiffs' counsel; (d) sitting magistrates, judges and justices, and their current spouse and children; and, (e) the legal representatives, heirs, successors and assigns of any such excluded person.

The Settlement defines Class Period as the period from November 11, 2013 through the date of the preliminary approval order [August 21, 2024].

The Court has certified the Settlement Class.

B. The Release

The Settlement defines "Released Claims" as follows:

> any and all actual or potential claims (including claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), actions, demands, rights, obligations, liabilities, expenses, costs, and causes of action, accrued or not, whether arising under federal, state, or local law, whether by statute, contract, or equity, whether brought in an individual or representative capacity, whether accrued or not, whether known or unknown, suspected or unsuspected, foreseen or unforeseen based in whole or in part on acts or failures to act from the beginning of time through the end of the Class Period (together with the specific examples in Sections 3.2.1-3.2.5, the Released Claims):
>
> 1. That were asserted in the Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, or could have been alleged, in the Complaint filed in the Action; and/or
>
> 2. That arise out of, relate in any way to, are based on, or have any connection with (a) the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan's investment options or service providers; (b) any advice or other services Northern Trust provided to the Plan including any related acts or omission; (c) disclosures or failures to disclose information regarding the Plan's investment options, fees, or service providers; (d) the management, oversight or administration of the Plan or its fiduciaries; or (e)

alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions under ERISA; or

3. That would be barred by *res judicata* based on entry of the Final Approval Order and Judgment; or

4. That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any Class Member in accordance with the Plan of Allocation.

5. That relate to the approval by the Independent Fiduciary of the Settlement, unless brought against the Independent Fiduciary alone.

The Class Representatives, Class Members and the Plan expressly waive and relinquish, to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which provides that a "general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor," and any similar state, federal or other law, rule or regulation or principle of common law of any domestic governmental entity.

"Released Claims" does not include any Class Representatives' or the Settlement Class Members' right to their respective vested account balances under the terms of the Plan and according to the Plan's records as of the date the Settlement becomes Final.

"Released Claims" does not include any pending litigation or administrative processes other than the Action.

The Action and all Released Claims shall be dismissed with prejudice with respect to the Settling Defendants.

The terms of the release, including the provision for the Independent Fiduciary to provide a release of claims by the Plan, are reasonable.

C. The Plan of Allocation

Under the Plan of Allocation, the Administrator will determine the Settlement Class Members and calculate the amount each Settlement Class Member receives by dividing the Net Settlement Fund by the total number of Settlement Class Members. To get the total number of Settlement Class Members, the Plan of Allocation provides that the Plan's recordkeeper will furnish to the Administrator (1) the balances in each Settlement Class Member's Plan account as of November 11, 2013 and (2) the balances in each Settlement Class Member's Plan account on December 31 of each year from 2014 through 2023. In the Response to Order Directing Supplemental Briefing, Class Counsel explained why they believe an equal distribution to all Settlement Class members is equitable:

> An equal distribution is equitable given the Settlement's smaller dollar value compared to the relief requested by Plaintiffs at trial against Defendant AutoZone, and given there is a diminishing return to the Class if administrative resources and expenses were used to calculate individual pro-rata payouts, when the difference in payouts would be negligible, particularly when taking into consideration that the best practice would be to provide a "floor" on the payouts such there is still a likelihood of a participant cashing their payout check (typically $10). Under these circumstances, the selection of a per capita distribution was appropriate.

For Class Members with an Active Account in the AutoZone Plan, as of the date of entry of the Final Order, each Class Member's Settlement Amount will be allocated into their current AutoZone Plan account. The deposited amount shall be invested by the AutoZone Plan Recordkeeper pursuant to the Settlement Class Member's investment elections on file for new contributions. If the Class Member has no election on file, it shall be invested in any default investment option(s) designated by the AutoZone Plan, and if the AutoZone Plan has not designated any default investment option(s), in a target date fund commensurate with the Class Member's retirement age or similar fund under the AutoZone Plan. Under no circumstances may funds be invested in the GIF.

Former Participants (Settlement Class Members without Current Accounts under the Plan) shall be paid directly by the Settlement Administrator by check. Checks issued to Former Participants shall be valid for 180 days from the date of issue.

No sooner than fourteen (14) calendar days following the expiration of all undeposited checks issued pursuant to the Plan of Allocation, the Settlement Administrator shall notify counsel for Plaintiffs and Defendants of the amount of any monies remaining in the Qualified Settlement Fund. These funds will then be deposited into the current AutoZone Plan to defray administrative expenses per the Settlement Agreement. Unless otherwise expressly provided for in the Settlement Agreement, no part of the Settlement Fund may be used to reimburse any Defendant or otherwise offset costs, including Settlement-related costs, incurred by any Defendant.

We find the Plan of Allocation to be reasonable, including:

1. the equal distribution to all Settlement Class Members; and

2. the provisions for payments into Plan accounts for Class Members with Active Accounts and by check for Former Participants.

The allocation is cost-effective and fair to Class Members in terms of both calculation and distribution.

D. Attorneys' Fees, Litigation Expenses and Case Contribution Awards

Class Counsel seek an award of attorneys' fees in the amount of $833,333.33, which represents one-third of the Settlement Amount of $2,500,000. In the Response to Order

Directing Supplemental Briefing, Class Counsel documented 6,410 lodestar hours, without administrative time, through October 22, 2023 (the date that Class Representatives began trial against the AutoZone Defendants). Counsel also showed what its lodestar would be under hourly rates approved in three cases with wide variances in the rates approved. Under those calculations, Class Counsel's lodestar ranged from $5,224,028.75 (using rates from *Monroe v. FTS USA, LLC*, 2014 U.S. Dis/. LEXIS 128451) to $6,695,365.00 (*Karpik v. Huntington Bancshares Inc.*, 2021 U.S. Dist. LEXIS 38641, *27-28) to $9,179,425.00 (*Cassell v. Vanderbilt Univ.*, 2019 U.S. Dist. LEXIS 242062, *9-10) depending on which analogous fee award the Court were to apply in this instance. In the Memorandum in Support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards, Class Counsel asserted that these rates and the equivalent lodestar is also in line with that awarded this past May in *In re Fam. Dollar Stores, Inc*., 2024 U.S. Dist. LEXIS 97141, *18. Therefore, the lodestar crosscheck far exceeds the resulting hourly rate of this settlement and would produce a lodestar multiplier of substantially less than one (1). In our experience, the percentage requested and the lodestar multiplier are within the range of attorney fee awards for similar ERISA cases, with the most common award in similar cases equaling one-third of the settlement amount. In light of the work performed, the result achieved, the litigation risk assumed by Class Counsel, and the combination of the percentage and the lodestar multiplier, Fiduciary Counselors finds the requested attorneys' fees to be reasonable.

Class Counsel also request reimbursement of $435,956.42[6] for litigation costs incurred through October 22, 2023, including $283,716.71 for expert fees and related expenses, $77,904.26 for transcripts and depositions, and $33,072.24 for travel. The expert fees were for three expert groups and a database used by the experts to review the voluminous ESI documentation in the cloud. Given the extensive litigation and the crucial role of experts, Fiduciary Counselors finds the request for expenses to be reasonable.

Class Counsel also seek incentive awards in the amount of $10,000 each for Class Representatives Michael J. Iannone and Nicole James for a total of $20,000. Plaintiffs each participated extensively in the prosecution of this case by (i) providing information to counsel to assist in the pre-suit evaluation of the Plan; (ii) responding to document requests and sitting for a deposition; and, (iii) preparing for and attending the trial of this case. Attendance at the depositions and trial involved a substantial amount of time, out of town travel, and inconvenience (including lost opportunities at work) for both Plaintiffs. Fiduciary Counselors finds the request for incentive awards to be reasonable.

In sum, although the Court ultimately will decide what fees, expenses and incentive awards to approve, we find that the requested amounts are reasonable under ERISA.

[6] This figure assumes that all of the $435,956.42 in costs through October 22, 2023 are allocated to the $2.5 million Northern Trust settlement. Class Counsel believe, and we agree, that this is reasonable because that settlement would not have been achieved without the expenses incurred even though they also were useful against the AutoZone Defendants.

VI. PTE 2003-39 Determination

As required by PTE 2003-39, Fiduciary Counselors has determined that:

- **The Court has certified the Litigation as a class action both during the Litigation and for settlement purposes.** Thus, the requirement of a determination by counsel regarding the existence of a genuine controversy does not apply. Nevertheless, we have determined that there is a genuine controversy involving the Plan. Based on the documents we reviewed and our calls with counsel, we find that there is a genuine controversy involving the Plan within the meaning of the Department of Labor Class Exemption, which the Settlement will resolve.

- **The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.** The Action claims that Northern Trust was a fiduciary to the Plan and violated fiduciary duties under ERISA that it owed to the Plan's participants and beneficiaries as the Plan's former investment advisor. Plaintiffs alleged Northern Trust breached its fiduciary duties by failing to monitor certain investment fees related to the investment options offered through the GoalMaker service, failed to monitor the recordkeeping fees, and failed to monitor the Plan's stable value option. In the Amended Complaint, Plaintiffs asserted causes of action for losses they contend were suffered by the Plan as the result of these alleged breaches of fiduciary duty by Northern Trust. Northern Trust denied each and every allegation of wrongdoing made in the Amended Complaint and contended that it had no liability in the Action. Northern Trust specifically denied the allegations that Northern Trust breached any fiduciary duty or any other provisions of ERISA in connection with its role as an investment advisor to the Plan. The Northern Trust Defendants asserted that Northern Trust had no duties with respect to recordkeeping expenses, that Northern Trust was not the party that made the challenged decisions, and that, in any event, all advice it provided was consistent with its duties as an investment advisor. They also argued that any liability would be limited to its actions during an approximately three year period out of a much longer class period because (i) all alleged wrongdoing that occurred more than six years before Plaintiffs moved to amend their Complaint in March 2021 is time-barred as to Northern Trust under ERISA's six-year statute of repose and (ii) Northern Trust resigned as the Plan's investment advisor effective June 30, 2018.

  In the absence of a Settlement, Plaintiffs would have faced significant litigation risk. The additional work and risk involved in continuing the litigation are illustrated by the fact that the remaining non-settling parties engaged in a week and a half of trial and continued to provide filings to the Court well after the trial. As other courts have recognized, "ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation." *Krueger v. Ameriprise*, 2015 WL 4246879, at *1 (D. Minn. July 13, 2015); *see also In re Marsh ERISA Litig.*, 265 F.R.D. 128, 138 (S.D.N.Y. 2010) ("Many courts have recognized the complexity of ERISA breach of fiduciary duty

actions."). Indeed, it is not unusual for these cases to extend for a decade or longer before final resolution. *See Shanechian,* 2013 WL 12178108, *at* *5 (discussing how ERISA case that had lasted for six years could last for six more years absent a settlement); *Tussey v. ABB Inc.*, 2017 WL 6343803, at *3 (W.D. Mo. Dec. 12, 2017) (requesting proposed findings more than ten years after suit was filed on December 29, 2006); *Tibble v. Edison Int'l*, 2017 WL 3523737, at *15 (C.D. Cal. Aug. 16, 2017) (outlining remaining issues ten years after suit was filed on August 16, 2007); *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) (noting that the case had originally been filed on September 11, 2006).

The Litigation has lasted for over four years and the Settlement was only reached on the eve of trial, after the Plaintiffs survived challenges such as motions to dismiss, class certification, *Daubert*, and summary judgment. Throughout, the parties conducted over twenty depositions of parties and third parties. Plaintiffs reviewed tens of thousands of electronic documents, including intricate financial data. Plaintiffs engaged multiple high-level experts. The settling Defendants did the same. Thus, the parties were well informed of the risks and potential recoveries associated with continued litigation. *Fusion Elite All Stars v. Varsity Brands, LLC*, 2023 U.S. Dist. LEXIS 179316, *15 (granting settlement approval when "the settlement was reached after the conclusion of fact and expert discovery, which featured significant motion practice concerning discovery disputes.").

Since the beginning of this case, Plaintiffs' claims have been vigorously challenged by both settling and non-settling Defendants. The Class is currently still litigating with non-settling Defendants and no outcome at trial or on appeal is certain. The net Settlement, after fees and expenses, would be approximately $1,284,113.58, resulting in an award of about $35.28 per capita.

The $2,500,000 Settlement Amount is a fair and reasonable recovery given the defenses the Defendants would have asserted, the potential damages, the risks involved in proceeding to trial and the possibility of reversal on appeal of any favorable judgment.

Fiduciary Counselors also finds the other terms of the Settlement to be reasonable, including the scope of the release, attorneys' expenses, the requested incentive awards to the Class Representatives and the Plan of Allocation.

- **The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.** As indicated in the finding above, Fiduciary Counselors determined that Class Counsel obtained a favorable agreement from Defendants in light of the challenges in proving the underlying claims and damages. The agreement also was reached after lengthy arm's-length negotiations, including mediations supervised by David Geronemus of JAMS Mediation Group.

- **The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.** Fiduciary Counselors found no indication the Settlement is part of any broader agreement between Defendants and the Plan.

- **The transaction is not described in PTE 76-1.** The Settlement did not relate to delinquent employer contributions to multiple employer plans and multiple employer collectively bargained plans, the subject of PTE 76-1.

- **All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.**

- **The Plan is receiving no consideration other than cash in the Settlement.** Therefore, conditions in PTE 2003-39 relating to non-cash consideration do not apply.

- **Acknowledgement of fiduciary status.** Fiduciary Counselors has acknowledged in its engagement letter that it is a fiduciary with respect to the settlement of the Litigation on behalf of the Plan.

- **Recordkeeping**. Fiduciary Counselors will keep records related to this decision and make them available for inspection by the Plan's participants and beneficiaries as required by PTE 2003-39.

- **Fiduciary Counselors' independence**. Fiduciary Counselors has no relationship to, or interest in, any of the parties involved in the litigation, other than the Plan, that might affect the exercise of our best judgment as a fiduciary.

Based on these determinations about the Settlement, Fiduciary Counselors (i) authorizes the Settlement in accordance with PTE 2003-39; and (ii) gives a release in its capacity as a fiduciary of the Plan, for and on behalf of the Plan. Fiduciary Counselors also has determined not to object to any aspect of the Settlement.

Sincerely,

Stephen Caflisch

Stephen Caflisch
Senior Vice President & General Counsel