UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Wendy Berry, Lorri Hulings, and Kathleen Sammons, individually and as representatives of a class of similarly situated persons, and on behalf of the FirstGroup America, Inc. Retirement Savings Plan, Plaintiffs, v. FirstGroup America, Inc., FirstGroup America, Inc. Employee Benefits Committee, and Aon Hewitt Investment Consulting, Inc., Defendants.	Case No. 1:18-cv-00326-JPH **FAIRNESS HEARING REQUESTED**

FIRSTGROUP DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF PARTIAL CLASS ACTION SETTLEMENT WITH DEFENDANT AON HEWITT INVESTMENT CONSULTING, INC.

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INTRODUCTION

Plaintiffs' Motion for Preliminary Approval of Partial Class Action Settlement with Defendant Aon Hewitt Investment Consulting, Inc. (the "Motion," ECF No. 144[1]) should be denied because the terms of the bar order unfairly prejudice the FGA Defendants.[2]

Plaintiffs and Defendant Aon Hewitt Investment Consulting, Inc. ("Aon") have reached an agreement to settle all claims in this action against Aon, and only those claims, for $4.5 million (the "Proposed Settlement"). Mem., ECF No. 144-1, at PAGEID 12364. As part of the Proposed Settlement, Plaintiffs and Aon have requested the entry of a bar order that seeks to extinguish the FGA Defendants' rights to bring any claims for indemnity, contribution or third-party claims against Aon, including those pursuant to the indemnification provisions in the investment management agreement ("IMA") to which Aon agreed when it was hired as the FGA 401(k) Plan's delegated investment fiduciary. *Id*. at PAGEID 12380-81.

The bar order, however, is overly broad and, as such, prejudicial to the FGA Defendants. It extinguishes independent claims that the FGA Defendants may have against Aon, and curtails the rights of the FGA Defendants—who were not parties to the settlement agreement between Plaintiffs and Aon (the "Settlement Agreement")—to an extent unnecessary to satisfy any successful claims by Plaintiffs and the Class (as defined in Order Certifying Class, ECF No. 92, at PAGEID 2687). Accordingly, Plaintiffs' Motion should be denied or Section 2.4(g)(ii) of the Settlement Agreement (ECF No. 144-3, at PAGEID 12403–04)[3] should be stricken.

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[1] The Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Partial Class Action Settlement with Defendant Aon Hewitt Investment Consulting, Inc., ECF No. 144-1, is referred to as the "Memorandum" or "Mem.".

[2] The FGA Defendants are the Employee Retirement Benefits Committee (together with its predecessor entity, the "Committee") and FirstGroup America, Inc. ("FGA"). FGA sponsors the at-issue 401(k) plan (the "401(k) Plan").

[3] Section 1.9 of the Settlement Agreement defines the Bar Order as "the settlement bar order as set forth in Section 2.3(g)." Settlement Agreement, ECF No. 144-3, at PAGEID 12396. And again the Memorandum refers to

Alternatively, the Court should hold a fairness hearing to determine whether it is appropriate to include the bar order, as written, in the Settlement Agreement.

BACKGROUND

The 401(k) Plan

FGA sponsors the 401(k) Plan, which provides retirement benefits to its eligible employees. Responsibility for the oversight of the 401(k) Plan, as well as for other employee benefits offered by FGA, was vested with the Committee. Mem. in Supp. of the FGA Defs' Mot. for Summ. J., ECF No. 108, at PAGEID 4155–56. Starting in 2009, Aon began serving as the investment consultant for the 401(k) Plan and FGA's separate pension plan (the "Pension Plan"). *Id*. at PAGEID 4157. In this role, Aon advised the Committee regarding the 401(k) Plan's investment options. *Id*. In 2009, Aon was also retained by FGA to serve as the Pension Plan's delegated investment fiduciary. *Id*. In 2013, Aon was retained to serve in the same role—delegated investment fiduciary—for the 401(k) Plan as well. *Id*. In this expanded role, Aon's responsibilities to the 401(k) Plan included the selection, monitoring, and replacement of its investments. *Id*. Aon held this role until 2022. *Id*. at PAGEID 4163.

The Investment Management Agreement

The terms under which the FGA Defendants engaged Aon (then known as Hewitt EnnisKnupp, or "HEK") to serve as the 401(k) Plan's delegated investment fiduciary were memorialized in the IMA.[4] Relevant here, the FGA Defendants bargained for an indemnification undertaking by Aon/HEK. The indemnification provision, at Section 10(a) of the IMA, provides in relevant part:

Settlement Agreement ¶ 2.3(g) and § 2.3(g). Mem., ECF No. 144-1 at PAGEID 12380–81. However, there is no Paragraph or Section 2.3(g) of that document, notwithstanding Plaintiffs' multiple references thereto.

[4] The IMA was subsequently amended, although the amendments did not impact the indemnification provisions.

> HEK shall indemnify and hold Client [FGA and its affiliates], the Plan, and their respective directors, officers, employees and representatives harmless from and against ***any and all claims, actions, losses, damages, liabilities, and expenses (including reasonable attorneys' fees and expenses)*** if and to the extent the expenses are cause by HEK's breach of fiduciary duty, willful misconduct, bad faith, breach of this Agreement or negligence of HEK in the performance of the Services [including the selection and monitoring of "the plan menu, investment options and target date funds"].

IMA, ECF No. 109-6, at PAGEID 4428, 4432, 4436 (¶ 10(a), Sch. A ¶ 2.a) (emphasis added).

The IMA further provides that the indemnification agreement between the FGA Defendants and Aon/HEK shall "survive the termination or expiration of this Agreement." *Id.*, at PAGEID 4434 (¶ 15(f)). The indemnification agreement therefore continues to be a valid and enforceable agreement. *See id.*

The Lawsuit

Plaintiffs filed this lawsuit against Aon and the FGA Defendants, asserting that each violated ERISA in connection with the 401(k) Plan's use "of newly-launched funds from [Aon]," which supposedly "underperformed their benchmarks, and underperformed the funds they replaced." Second Am. Compl., ECF No. 71, at PAGEID 1490 (¶ 2). Plaintiffs seek two forms of supposed losses: (i) "investment losses" incurred from the use of Aon's funds, and (ii) disgorgement of Aon's profits. *Id.* at PAGEID 1519 (¶¶ 77–79).

The Proposed Settlement

Aon has reached the Proposed Settlement in the amount of $4,500,000 with Plaintiffs. Settlement Agreement, ECF No. 144-3, at PAGEID 12407. This Proposed Settlement intends to resolve all claims against Aon related to Plaintiffs' alleged loss associated with the "selection and retention of the Aon Hewitt Funds for the [401(k)] Plan." Mem., ECF No. 144-1, at PAGEID 12364. The FGA Defendants are not parties to the Proposed Settlement, and the Proposed Settlement explicitly does not release any claims that Plaintiffs have or may have

against them. Settlement Agreement, ECF No. 144-3, at PAGEID 12400 (§ 1.46). On December 12, 2022, Plaintiffs filed their Motion requesting that the Court provide preliminary approval for partial settlement of the lawsuit relating to their claims against Aon.[5]

Section 2.4(g)(ii) of the Settlement Agreement contains a bar order that seeks to "permanently bar[]" any "Barred Claims against Aon Hewitt [and a vast array of its related people and entities, defined as "Released Parties"] in this Action or in any other forum, action or proceeding of any kind," resulting in "[a]ll such Barred Claims [being] extinguished, precluded, discharged, satisfied, and unenforceable." Settlement Agreement, ECF No. 144-3, at PAGEID 12404. "Barred Claims" are defined in Section 1.10 to include "Claims asserted or that could have been asserted by the Non-Settling Defendants against Aon Hewitt for indemnity and/or contribution and/or third-party Claims of any type (including contractual indemnity claims) arising from this Action . . . ." *Id.* at PAGEID 12396. In turn, "Claims" are defined in Section 1.13 to include: "any and all manner of claims, actions, causes of actions, potential actions, suits, arbitrations, controversies, costs, damages, losses, obligations, liabilities, judgments, and demands whatsoever, known or unknown, suspected or unsuspected, accrued or unaccrued, whether class, individual, or otherwise, arising under the laws, regulations, or common law of the United States of America, any state or political subdivision thereof, or any foreign country or jurisdiction, in law, in contract, or in equity, and regardless of legal theory." *Id.* at PAGEID 12397.[6]

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[5] While Plaintiffs describe their Motion as "Unopposed" in their Memorandum (ECF No. 144-1, at PAGEID 12357), Plaintiffs did not consult with or attempt to confer with the FGA Defendants before filing their "Unopposed" Motion. The Motion itself, ECF No. 144, at PAGEID 12355, specifies only that Aon does not oppose the Motion. As stated herein, the FGA Defendants do, in fact, oppose Plaintiffs' Motion as currently drafted.

[6] The bar order also includes, at Sections 2.4(g)(i) and (iii) of the Settlement Agreement, provisions barring Aon from pursuing claims against the FGA Defendants and providing that any judgment entered in favor of Plaintiffs be reduced by the proportionate share of fault attributable to Aon. Settlement Agreement, ECF No. 144-3, at PAGEID 12403–04. The FGA Defendants do not oppose those provisions of the bar order. The FGA Defendants only oppose the extinguishment of their contractual rights against Aon beyond what is necessary to effectuate the

ARGUMENT

I. Plaintiffs' Motion Should Be Denied Because the Terms of the Bar Order Unfairly Prejudice the FGA Defendants and Extinguish Their Independent Rights Against Aon.

The FGA Defendants do not take a position as to the Proposed Settlement generally, but instead oppose the Motion due to the inclusion in the Proposed Settlement of a bar order that seeks to extinguish the contractually bargained-for rights they have vis-a-vis Aon to recover, among other things, (i) their attorneys' fees and expenses of defending themselves in this action, and (ii) the full extent of any liability they might have to the Class if Aon is also found to have breached its fiduciary duties.

Plaintiffs' Motion should be denied to prevent the unfair prejudice that the FGA Defendants would suffer from its enforcement. Indeed, courts in this District reject settlement agreements where, like here, they include bar orders that seek to bar indemnification claims based on contractual agreements. For example, in *Garrison Southfield Park LLC v. Closed Loop Refin. & Recovery, Inc.*, the Court held that it would "exceed the bounds of substantive fairness" to extinguish contractual obligations to non-settling defendants in a bar order. No. 17-783, 2021 WL 4397865, at *13 (S.D. Ohio Sept. 27, 2021). While it recognized policy considerations favoring bar orders for certain contribution claims, it recognized that "[b]arring statutory and common law contribution claims is one thing. Barring contractual claims is another." *Id.* at *14. It continued that "[i]t would be patently unfair to relieve [a settling defendant] of its contractual duties through a private settlement with a non-party to those contracts", just as the settlement with Plaintiffs here (who were not parties to the IMA) would relieve Aon of its contractual

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settlement Plaintiffs reached with Aon. However, if the Court were to agree to strike Section 2.4(g)(ii) of the Settlement Agreement, which would have extinguished the FGA Defendants' claims against Aon, the FGA Defendants would not oppose also striking the reciprocal bar on Aon's rights vis-à-vis the FGA Defendants contained in Section 2.4(g)(i).

obligations to the FGA Defendants. *See id.* (citing cases). The policy of incentivizing settlements through bar orders does not warrant "throw[ing] all considerations of fairness to non-settling Defendants out the window." *Id.; see also Garrison Southfield Park LLC, v. Close Loop Refin. & Recovery, Inc.*, No. 17-783, 2022 WL 472436, at *3 (S.D. Ohio Feb. 16, 2022) (holding a different contribution bar was also unfair because it barred contractual claims between the settling defendant and "others not party to [the] settlement agreement.).

As a condition of retaining Aon as the 401(k) Plan's delegated investment fiduciary, the IMA included an indemnification agreement, whereby Aon agreed to indemnify the FGA Defendants for "any and all claims, actions, losses, damages, liabilities, and expenses (including reasonable attorneys' fees and expenses) if and to the extent the expenses are caused by [Aon's] breach of fiduciary duty, willful misconduct, bad faith, breach of this [IMA] or negligence . . . ." IMA, ECF No. 109-6, at PAGEID 4432 (¶ 10(a)). Section 2.4(g)(ii) of the Settlement Agreement would expressly preclude the FGA Defendants from ever enforcing this right. Plaintiffs cannot use their settlement with Aon to allow Aon to circumvent its contractual obligations to the FGA Defendants.[7]

Plaintiffs argue that the inclusion of set-off language in the bar order justifies the cancellation of the FGA Defendants' contractual rights vis-à-vis Aon. Mem., ECF No. 144-1, at PAGEID 12380-81. They are wrong for at least three reasons.

[7] Because the FGA Defendants have contractual indemnification rights that would be extinguished under the Proposed Settlement, they have standing to object to the Settlement Agreement to the extent that it purports to extinguish such rights. *See In re Lawnmower Engine Horsepower Mktg. & Sales Pracs. Litig.*, 733 F. Supp. 2d 997, 1018-19 (E.D. Wis. 2010) (citing *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247 (7th Cir. 1992)). The Sixth Circuit is in agreement with *Agretti*, that "a non-settling party has standing to object [to a settlement] when the non-settling party 'can show plain legal prejudice resulting from the settlement'" such as where the settlement "interfere[s] with any contractual or contribution rights they may have. . . ." *Ball by Guardian v. DeWine*, No. 20-3927, 2021 WL 4047032, at *3 (6th Cir. Jun. 30, 2021) (quoting *Agretti* 982 F.2d at 247). As the leading class action treatise explains, "courts universally recognize . . . [that] nonsettling defendants who are able to demonstrate 'plain legal prejudice' from the settlement to which they would like to object have standing to do so." 4 Newberg and Rubenstein on Class Actions § 13:24 (6th ed.). Such "plain legal prejudice" gives non-settling defendants standing to "object to any terms that preclude them from seeking indemnification from the settling defendants." *Id.*

First, the set-off provision in the bar order states that, if a judgment is entered in favor of Plaintiffs against the FGA Defendants, it would be reduced by the "proportionate share of fault that is attributable to Aon . . . ." Settlement Agreement, ECF No. 144-3, at PAGEID 12404 (§ 2(g)(iii)). While this language attempts to apportion any possible judgment by the share of fault—if any—assigned to the FGA Defendants and Aon, this is only relevant if a judgment is entered in favor of Plaintiffs against the FGA Defendants. But the IMA does not limit the indemnification rights of the FGA Defendants to scenarios where they are found liable. Instead, the bargained-for agreement also allows the FGA Defendants to recover for attorneys' fees and expenses in defending against "any and all claims [and] actions", regardless of whether or not a judgment is entered against them in such action. IMA, ECF No. 109-6, at PAGEID 4432 (¶ 10(a)).

The right to fees from Aon regardless of a judgment against the FGA Defendants is an independent right that the FGA Defendants possess separate from any liability that they may have to Plaintiffs or the Class, and it therefore cannot be extinguished by the bar order. As Plaintiffs' own Sixth Circuit case instructs: "[n]o court has authorized barring claims with independent damages." *In re Greektown Holdings, LLC*, 728 F.3d 567, 579 (6th Cir. 2013) (quoting *TBG, Inc. v. Bendis*, 36 F.3d 916, 928 (10th Cir. 1994)). "A bar order that enjoins independent claims and provides no compensation is problematic to say the least." *Id.* But that is precisely what Plaintiffs here seek to do in the Settlement Agreement.

Second, the IMA allows the FGA Defendants to recover from Aon ***all***, not just a proportionate share, of "losses, damages, liabilities, and expenses." IMA, ECF No. 109-6, at PAGEID 4432 (¶ 10(a)) (emphasis added). To be sure, the IMA's indemnification language provides that the FGA Defendants' right to indemnification arises "if and to the extent the

expenses are caused by [Aon]'s breach of fiduciary duty." *Id*. However, this contractual language does not impose a proportionate setoff that looks to relative fault, as Section 2.4(g)(iii) of Settlement Agreement does. Instead, the contractual provision allows the FGA Defendants to be indemnified "against any and all claims" "if and to the extent the expenses are caused by" Aon's breach. *Id*. Here, as noted *supra*, at p. 3, Plaintiffs' alleged losses are (i) investment losses from the use of Aon's funds, and (ii) disgorgement of Aon's profits. Those losses are either solely in Aon's possession (disgorged profits) or are entirely indivisible (investment losses). In any subsequent indemnification action, the FGA Defendants would be able to argue that, regardless of their supposed share of proportionate fault, such pleaded losses were "caused by" Aon's breaches (*i.e.*, Aon's management of Aon funds and resulting Aon profits).

Third, the proposed bar order would extinguish "any and all manner of . . . demands whatsoever, known or unknown, suspected or unsuspected, accrued or unaccrued" "arising from this Action" that the FGA Defendants might have against Aon. Settlement Agreement, ECF No. 144-3, at PAGEID 12396–97 (§§ 1.10, 1.13). By definition, the FGA Defendants do not even know or suspect the unknown or unsuspected accrued or unaccrued claims that they could have against Aon, whether arising in contract (like the IMA) or any other legal theory. Because the services Aon provided to the 401(k) Plan are the subject of the Action—and are also the subject of the IMA between the FGA Defendants and Aon—the FGA Defendants would be effectively barred from asserting any claim against Aon concerning its management of the 401(k) Plan, including those claims that they do not even know or suspect might exist. While Aon and Plaintiffs might validly consent to extinguish all suspected and unsuspected claims each has against the other, because each is providing consideration for its undertakings memorialized in the Settlement Agreement, the FGA Defendants cannot be forced to have such a broad gag order

imposed against them without their participation or assent. The Sixth Circuit expressly rejects such overbroad bar orders, particularly where they implicate claims as between settling and non-settling defendants that are independent from the defendants' liability to the Class. *See In re Greektown Holdings*, 728 F.3d at 579-80; *accord TBG, Inc.*, 36 F.3d at 929.

Had the Settlement Agreement's bar order merely precluded only "contribution claims and indemnity claims based on equitable principles rather than written contracts," that could have been sufficient. *In re Lawnmower Engine Horsepower Mktg. & Sales Pracs. Litig.*, 733 F. Supp. 2d at 1021. But that is not what this Settlement Agreement does here—to the contrary, it expressly "includ[es] contractual indemnity claims" in its definition of "Barred Claims" at Section 1.10. Settlement Agreement, ECF No. 144-3, at PAGEID 12396. "A settlement bar should not be approved unless it is narrowly tailored and preceded by a judicial determination that the settlement has been entered into in good faith and that no one has been set apart for unfair treatment." *In re Masters Mates & Pilots Pension Plan and IRAP Litig.*, 957 F.2d 1020, 1031 (2d Cir. 1992). Bar orders, like here, that overreach "should not garner court approval." *Agway, Inc. Employees' 401(k) Thrift Inv. Plan v. Magnuson*, 409 F. Supp. 2d 136, 142 (N.D.N.Y. 2005) (rejecting a bar order).

None of Plaintiffs' cases supports the proposition that a bar order can appropriately extinguish contractual indemnification rights or claims between the defendants that are independent of their liability to the Plaintiffs or Class. In *Gordon v. Dadante*, No. 05-2726, 2008 WL 1805787 (N.D. Ohio Apr. 18, 2008), *aff'd*, 336 F. App'x 540 (6th Cir. 2009), "no party ha[d] objected to any of the Release conditions or the imposition of the Bar Order." *Id.* at *14. Here, the FGA Defendants object. Furthermore, the receiver in *Gordon* concluded that the non-settling defendants' "claims did not have significant value—and therefore did not alter his

analysis of the fairness of the settlement amount—because [they] were unlikely to succeed in holding [the settling defendant] responsible for their individual losses." 336 F. App'x at 550. Here, no determination has been made as to whether the FGA Defendants could recover their fees or any liability from Aon—let alone succeed on their unsuspected claims—and it is entirely plausible that their contractual indemnification rights could have significant value given that the investment losses claimed in this case are indivisible and arose from Aon's management of the 401(k) Plan.

Unlike here, *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155 (4th Cir. 1991), dealt with contribution claims in the context of the Securities Act and did not involve a contractual right to indemnification. *See id.* at 160. Even in that inapposite context, the Fourth Circuit ***vacated*** the settlement agreement and bar order because the district court did not explain how it would avoid the risks that the non-settling defendant raised. *Id.* at 161–62. Finally, as discussed, *supra*, *In re Greektown Holdings*, supports the FGA Defendants because it rejected language, like here, that barred independent claims between the defendants "arising out of" the challenged action. 728 F.3d at 579-80.

In sum, Plaintiffs' Motion should be denied because the bar order seeks to eliminate the FGA Defendants' separately and independently bargained for contractual rights, as well as their right to bring any other claims against Aon arising from its services with respect to the 401(k) Plan.

II. Plaintiffs Are Incorrect that No Evidentiary Fairness Is Required.

Plaintiffs also incorrectly assert that "the Sixth Circuit has explained that no evidentiary fairness hearing is required" before extinguishing the FGA Defendants' contractual indemnification and other rights. Mem., ECF No. 144-1, at PAGEID 12381. The only Sixth Circuit case upon which they rely, *In re Greektown Holdings, Inc.*, supports the FGA

Defendants, as explained above. And as it relates to the question of whether to hold a fairness hearing, there the court there held that none was required under the facts of that case because the non-settling defendants "had no right of contribution against the" settling defendants, rendering any fairness hearing unnecessary. *In re Greektown Holdings, Inc,* 728 F.3d at 576. Given the IMA, at minimum, the factual record here is different, and the FGA Defendants do have potential claims against Aon. Under the facts here, the general rule adopted by the Sixth Circuit applies: "when 'a settlement agreement contains a bar order extinguishing possible legal claims of non-settling defendants, the court must conduct an evidentiary fairness hearing to determine whether the settling defendants are paying their fair share of the liability.'" *Id.* (quoting *McDannold v. Star Bank, N.A.*, 261 F.3d 478, 484 (6th Cir. 2001)).[8]

Plaintiffs' only other case, *Gerber v. MTC Electronic Technologies Co.*, 329 F.3d 297 (2d Cir. 2003), is also distinguishable. There, the court—in an opinion written by then-Judge Sotomayor—explained that, "[i]f, however, [a non-settling defendant] were to prove that it sustained independent reputational damages ***or losses relating to the cost of defense arising out of a breached contractual or fiduciary relationship*** with [a settling defendant], it has not been compensated for those losses by the judgment credit, and any such claims should not be extinguished." *Id.* at 306 (emphasis added). Because the bar order there would extinguish claims for the cost of defense—as the Settlement Agreement here purports to do—the Second Circuit rejected the order as written. *Id.* at 306-07. And the proportionate set-off in that case was even more generous to the non-settling defendants than the set-off here: in *Gerber*, the lower court authorized a "capped proportionate share" approach where "the credit [to non-

[8] As a matter of timing, the FGA Defendants submitted a motion for summary judgment on October 14, 2022 (ECF No. 107), nearly two months prior to the submission of Plaintiffs' Motion. The FGA Defendants' summary judgment motion has since been fully briefed and is ripe for resolution. As a matter of judicial efficiency, the Court might wish to hear argument or resolve that pending motion first before conducting a fairness hearing on Plaintiffs' settlement with Aon.

settling defendants] is the *greater* of the settlement amount for common damages or the settling defendants' share of liability as proven at trial. *Id.* at 301 (emphasis in original). Here, the Settlement Agreement is more limited, and could impermissibly result in Plaintiffs and the Class obtaining a windfall by recovering more than any adjudicated losses.[9]

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion should be denied, or in the alternative, the language in the bar order limiting the FGA Defendants' rights to pursue claims against Aon should be stricken or a fairness hearing held regarding the bar order.

[9] For example, Plaintiffs' damages expert, Brian Becker, Ph.D., calculates the amount of damages from the Aon funds in the 401(k) Plan other than the Aon target date funds as an amount similar to the $4.5 million recovery Plaintiffs have obtained from the Settlement Agreement. If, at trial, it is determined that this is the only compensable loss to the Class, and the fault is 75% the responsibility of Aon—the entity that managed the funds and obtained all the alleged profits—and 25% of the FGA Defendants, who hired Aon to manage those assets, under the Settlement Agreement's set-off approach, the FGA Defendants would be liable to the Class for approximately $1.125 million, its 25% allocated share of fault. Because the Class already obtained a settlement of $4.5 million from Aon, it would now obtain a windfall of approximately $1.125 million greater than the amount of loss proven in this hypothetical.

Dated: December 27, 2022

By: */s/ James O. Fleckner*

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CERTIFICATE OF SERVICE

I, James O. Fleckner, hereby certify that I served this document on counsel of record via ECF on December 27, 2022.

/s/ James O. Fleckner