



## **ND STATE INVESTMENT BOARD SECURITIES LITIGATION COMMITTEE**

**Thursday, February 4, 2021, 2:00 p.m. CT  
North Dakota Retirement and Investment Office (RIO)  
RIO Conference Room (Virtual Meeting Host)  
3442 East Century Avenue, Bismarck, ND**

Teleconferencing – +1 701-328-0950, Participant Code – 803514486#

### **AGENDA**

- 1. Call to Order and Approval of Agenda** – Chief Deputy Attorney General Seibel **Committee Action**
- 2. Minutes (November 5, 2020)** **Committee Action**
- 3. Securities Litigation Committee (SLC) Updates** – Mr. Hunter (20 minutes)
  - a. Pending Securities Litigation Activity – Mr. Hunter *Informational*
  - b. Robbins Geller International Securities Case Overview – Ms. Roxana Pierce
  - c. Securities Litigation Market Update – Mr. Craig D'Alessio and Mr. Mike Lange *Informational* \*
  - \* *Possible Executive Session for confidential and privileged attorney client consultation pursuant to NDCC 44-04-17.1(4), NDCC 44-04-19.1 and NDCC 44-04-19.2*
  - d. Executive Director Recommendation – Mr. Hunter **Committee Action**
- 4. Other - Next Proposed SIB Securities Litigation Committee Meeting**

**North Dakota Retirement and Investment Office  
3442 E Century Ave, Bismarck, ND 58503  
May 6, 2021 (Thursday from 2:00 to 3:30pm)**
- 5. Adjournment**

Any individual requiring an auxiliary aid or service should contact the Retirement and Investment Office at (701) 328-9885 at least (3) days prior to the scheduled meeting.

**NORTH DAKOTA STATE INVESTMENT BOARD  
SECURITIES LITIGATION COMMITTEE  
MINUTES OF THE NOVEMBER 5, 2020, MEETING**

**MEMBERS PRESENT:** Troy Seibel, Chair  
Jodi Smith, Vice Chair  
Dean DePountis, Attorney General's Office  
Connie Flanagan, Chief Financial Officer  
David Hunter, Executive Director/CIO

**STAFF PRESENT:** Ann Griffin, Investment Accountant  
Bonnie Heit, Suprv. Admin Svs  
Matt Posch, Investment/Compliance Officer  
Darren Schulz, Dep. CIO

**GUESTS:** Olav Haaze, Grant & Eisenhofer  
Marc Weinberg, Grant & Eisenhofer

**CALL TO ORDER:**

Mr. Seibel, Chair, called the State Investment Board (SIB) Securities Litigation Committee (SLC) regular meeting to order at 1:03 p.m. on Thursday, November 5, 2020, at the Retirement and Investment Office (RIO) (virtual host), 3442 E Century Ave, Bismarck, ND.

**AGENDA:**

IT WAS MOVED BY COMMISSIONER SMITH AND SECONDED BY MS. FLANAGAN AND CARRIED BY A VOICE VOTE TO APPROVE THE AGENDA FOR THE NOVEMBER 5, 2020, MEETING.

AYES: COMMISSIONER SMITH, MS. FLANAGAN, MR. DEPOUNTIS, MR. HUNTER, AND MR. SEIBEL  
NAYS: NONE  
MOTION CARRIED

**MINUTES:**

IT WAS MOVED BY COMMISSIONER SMITH AND SECONDED BY MR. DEPOUNTIS AND CARRIED BY A VOICE VOTE TO ACCEPT THE MINUTES OF THE AUGUST 11, 2020, MEETING AS DISTRIBUTED.

AYES: MS. FLANAGAN, MR. DEPOUNTIS, MR. HUNTER, COMMISSIONER SMITH, AND MR. SEIBEL  
NAYS: NONE  
MOTION CARRIED

**MEETING SCHEDULE:**

A draft meeting schedule was presented for the SLC's review and acceptance.

IT WAS MOVED BY MS. FLANAGAN AND SECONDED BY COMMISSIONER SMITH AND CARRIED BY A VOICE VOTE TO ACCEPT THE MEETING SCHEDULE FOR 2021.

AYES: MR. DEPOUNTIS, MR. HUNTER, COMMISSIONER SMITH, MS. FLANAGAN, AND MR. SEIBEL  
NAYS: NONE  
MOTION CARRIED

**RECOVERIES:**

Ms. Flanagan reviewed the annual securities litigation activity report for the fiscal year ended June 30, 2020. Out of the 37 class action claims filed, \$638,661 was recovered.

**CONTINGENCY DISCLOSURE:**

Mr. Hunter reviewed the footnote for the disclosures of contingencies for the RIO financial statements. The SIB has been named as a defendant in the Tribune and General Motors bankruptcy proceedings.

**INTERNATIONAL SECURITIES FRAUD CASES:**

IT WAS MOVED BY MR. HUNTER AND SECONDED BY COMMISSIONER SMITH AND CARRIED BY A ROLL CALL VOTE TO ENTER INTO EXECUTIVE SESSION TO REVIEW THE INTERNATIONAL SECURITIES FRAUD CASES PURSUANT TO NDCC 44-04-17.1(4), NDCC 44-04-19.1, AND NDCC 44-04-19.2.

AYES: MR. HUNTER, MS. FLANAGAN, MR. DEPOUNTIS, COMMISSIONER SMITH, AND MR. SEIBEL

NAYS: NONE

MOTION CARRIED

The SLC exited Open Session at 1:11 p.m. and entered into Executive Session at 1:15 p.m.

The following participated: Mr. DePountis, Ms. Flanagan, Mr. Hunter, Mr. Seibel, Commissioner Smith, Mr. Schulz, Mr. Weinberg, Mr. Haazen, and Ms. Heit.

The SLC exited the Executive Session at 1:24 p.m. and entered into Open Session at 1:33 p.m.

**OTHER:**

The next Securities Litigation meeting is scheduled for Thursday, February 4, 2021, at 2:00 p.m. at the Retirement and Investment Office, 3442 East Century Avenue, Bismarck, ND.

**ADJOURNMENT:**

With no further business to come before the SLC, Mr. Seibel adjourned the meeting at 1:34 p.m.

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Mr. Seibel, Chair

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Bonnie Heit  
Recorder

## Committee Action

**TO:** SIB Securities Litigation Committee

**FROM:** Dave Hunter, ED/CIO, and Connie Flanagan, Chief Financial Officer

**DATE:** February 4, 2021

**SUBJECT:** Securities Litigation – Daimler AG

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- Financial Recovery Technologies (FRT), our securities litigation monitoring firm, made RIO aware of a developing international securities litigation case against Daimler AG (Daimler) in recent weeks.
- Daimler, a German multinational automotive corporation, has been sued for allegedly violating the German Securities Trading Act (WpHG) by failing to disclose the use of “illegal defeat devices” – software installed in its vehicles to temporarily lower nitrous oxide levels emitted during emission tests.
- Based on our SIB approved SLC Charter, the Committee is authorized to “[make decisions on the level of participation the SIB will take in ... opt-in or group litigation](#)” cases and “[approve the selection of special assistant attorneys](#)” under the guidance and approval of the AG office ([SLC Charter](#) on next page).
- The SLC intends to discuss the merits of the case with Craig D’Alessio and/or Emily Fortin of FRT to confirm: 1) estimated damages are approximately \$1.8 million; 2) the legal jurisdiction is Germany; and 3) the SIB approved litigation threshold for Germany is \$5 million ([Exhibit A](#)).
- The attached FRT “Global Opt-In Litigation – Organizer Comparison” Monitoring Alert states the “Jurisdiction Risk” for this Daimler AG case in Germany is deemed to be “[Moderate Risk](#)” for “Costs”, “Discovery” and “Anonymity” ([Exhibit B](#)).
- FRT believes there is “little downside risk to pursuing securities litigation in this case and there is a good chance of obtaining a 25% estimated recovery” which translates into “an approximate (\$1.8 million x 25%) \$450,000 gross loss recovery or an estimated \$315,000 net loss recovery” after up to a 30% contingent fee arrangement which will not require the approval of the ND Emergency Commission.
- If the SLC concurs, RIO will request Ms. Roxana Pierce of Robbins Geller to share additional background on the merits and risks of electing to “Opt-In” to this case. [After discussion, RIO may request a Special Assistant Attorney General \(SAAG\) appointment by our AG office, if desired.](#)

## **CHARTER OF THE SECURITIES LITIGATION COMMITTEE OF THE NORTH DAKOTA STATE INVESTMENT BOARD**

### **PURPOSE**

The Securities Litigation Committee (the Committee) is a standing committee of the North Dakota State Investment Board (SIB) created to assist in fulfilling its fiduciary oversight responsibilities of monitoring the investment of assets entrusted to it by the various statutory and contracted funds, and to serve as a communications link for the SIB, RIO's management and staff, third party securities litigation firms, and others.

The Committee will determine when an active role should be pursued in regards to securities litigation affecting securities within the SIB's portfolios.

### **AUTHORITY**

The Committee is authorized to:

- draft policy (to be formally approved by SIB) regarding dollar and/or risk thresholds for determining when to opt-out of class actions and/or seek direct litigation or lead plaintiff status;
- based on SIB approved policy, make decisions on the level of participation the SIB will take in direct litigation, opt-in or group litigation, anti-trust and other class actions; and
- approve the selection of special assistant attorneys in cases of direct litigation.

### **Committee Action Requested:**

RIO respectfully requests the SLC to consider engaging Robbins Geller Rudman & Dowd LLP (or one of the two other firms highlighted by FRT) to Opt-In into international group securities litigation to recover up to an estimated \$315,000 in net loss recoveries from allegedly violating German securities trading laws by Daimler AG noting the requested participation deadline is June 1, 2021, with a final date on or before December 31, 2021.



## GLOBAL OPT-IN LITIGATION: ORGANIZER COMPARISON

December 2020

# Daimler AG

Daimler AG, a German multinational automotive corporation, has been sued in for allegedly violating the German Securities Trading Act (WpHG) by failing to disclose the use of “illegal defeat devices” - software installed in its vehicles to temporarily lower nitrous oxide levels emitted during emissions tests.

### The current stage of litigation

In December 2018, the Lower Regional Court of Stuttgart accepted a motion for model case proceedings (called a KapMug). This was the first formal step towards collective redress for investors. When the KapMug has been accepted with a model plaintiff chosen, it will trigger a six-month period of time for other investors to register their claims with the court and prevent them from expiring. While registering claims preserves them, investors must still ‘perfect’ claims by filing suit before the KapMug proceedings progress beyond the model case proceedings to the final stage of the process: the adjudication of individual claims.

### The Organizers

Currently, three organizers are planning opt-in group litigation in Germany.

- AdvoFin Prozessfinanzierung AG (AdvoFin), with Rotter Rechtsanwälte as local counsel;
- Robbins Geller Rudman & Dowd (Robbins Geller), with Nieding + Barth as local counsel; and
- Deminor Recovery Services (Deminor), with Arnold & Porter as local counsel<sup>1</sup>

### Their proposed terms of representation

The table below details the planned recovery efforts for three organizers: Rotter, Robbins Geller and Deminor<sup>2</sup>. In selecting the one that best fits your needs, please note several key differences in their strategies and proposed terms of representation.

Relevant time periods: Each organizer has a different claim period. You should consider how the differing time periods impact your estimated losses and which best matches your trading history.

Securities covered: All three efforts encompass Daimler common stock.

Eligible losses: Your estimated losses will likely vary significantly by organizer. All are using an inflationary (event study) method, but as noted in the table there are differences in their models (constant versus variable inflation) and in their Claim Periods. They have also chosen different disclosure dates and end their claim periods at different time. Some are considering recessionary damages, a less conservative method. Depending on your trading history, this will likely produce different estimates.

<sup>1</sup> Deminor considers its case analysis proprietary and restricted to clients but offered the following statement: “At this stage, given the ongoing investigations and factual uncertainty, we believe that a registration of claim is a recommended and prudent path that safeguards investors’ interests and future options on the case. Once further information emerges, it will still be possible to file suit against Daimler and to join the German model case (“KapMug”) as a full participant to pursue compensation for damages suffered. Indeed, on the basis of a thorough factual investigation and legal advice from German counsel on the options available as of today to investors under German law, Deminor recommends that investors register in a first stage their claims with the KapMug proceeding in Stuttgart, once the model plaintiff has been appointed by the court (likely during Q4 2020/Q1 2021). This will have the effect of tolling the statute of limitations, while preserving the possibility to issue proceedings at a later stage when further evidence against Daimler emerges, and some of the key outstanding questions are resolved. We have determined the class period, which stretches from 10 July 2012 to 11 October 2019 (both dates included). If new information comes to light, the class period might be broadened or shortened.

<sup>2</sup> Deminor restricts its funding terms to clients but provided the following: “We work on an “all-in” contingency fee basis (i.e. costs included). The percentage of the success fee varies, depending in which step a success is reached (registration of the claims vs issuance of proceedings seeking damages). Investors are invited to sign up for the case by 30 November 2020 (soft deadline). In order to join our group, we will need (i) the contract of services duly executed, (ii) a statement issued by your bank confirming the trades throughout the relevant period and (iii) a power of attorney to the German counsel.”



**Proposed success fees and expense reimbursement:** All organizers are proposing representation on a no-win, no-fee basis, advancing all case costs, and will insure you against the risk of adverse (loser pays) cost shifting. All are proposing a success fee from your recovery, if any. The fees for Rotter are 25% - the fee for Robbins Geller is 30%. Deminor's fee is in the same range. However, differences among fee percentages become minimal when costs are factored in. Robbins Geller offers an 'all in' fee that includes case expenses. Rotter gets case cost reimbursement in addition to their percentage fees. In short, when costs are factored in the funder fee rates are essentially similar, so the percentage difference should not weigh heavily in your participation decision.

**Protection against adverse costs:** Under German law, the amount of adverse cost exposure is modest in amount and fixed at the start of the case based on claim value. For foreign claimants, German courts typically require claimants post bonds or other security. All organizers will give any required security and will be insuring clients against adverse costs with their own assets and not with ATE insurance. Only Robbins Geller is expressly covering the legal cost related to any US federal court proceedings under 28 USC Section 1782.

**Registration documents:** Please be sure to carefully read the funding documents for the organizer you select to fully understand the role it will play in the recovery efforts, particularly those provisions concerning their ability to discontinue funding the matter and the decision-making around possible settlement. Both Deminor and Robbins Geller consider their registration agreement proprietary and confidential. Therefore, if you want to register with either of them we will first need to send them your trade data for loss estimates and then, if they consider your losses sufficiently large, you will need to have a call with them first so they can ascertain your interest in joining before they will share with you their registration agreements, case analyses, and other offering terms.

## Organizer(s) Comparison Matrix

The following firms are contemplating actions against Daimler and soliciting shareholder interest.

	Advofin/Rotter	Robbins Geller/Nieding + Barth	Deminor/Arnold & Porter
Local German Counsel	Rotter Rechtsanwälte	Nieding + Barth	Arnold & Porter
Funder(s)	AdvoFin Prozessfinanzierung AG (AdvoFin)	Robbins Geller	Deminor
Relevant Period	September 26, 2015 – June 11, 2018	January 1, 2011 – December 31, 2018	July 10, 2012 – October 11, 2019
Damages Methodology	Inflationary model (event study) - details not available. "We currently calculate a loss between EUR 6 and EUR 15 per share." Recission damages may also be available.	Inflationary model	Inflationary model
Percentage Success Fee	25%	25-30%	30%
Applied to Gross or Net Recovery	Net: The organizer success fee is applied after reimbursement of all case costs paid by AdvoFin.	N/A	N/A
Protection against Adverse Costs	Funder indemnification - no ATE insurance. Funder will post required bond or deposits for foreign plaintiffs.	Funder indemnification – no ATE insurance. This Organizer is covering the legal cost related to any US federal court proceedings under 28 USC Section 1782.	Funder indemnification - no ATE insurance.
Choice of Law/Forum for Dispute Resolution	Funding agreement does not specify choice of law - venue for dispute resolution is the Vienna courts.	N/A	N/A
Registration Requirements	Funding Letter Agreement Power of Attorney (POA)	In order to register with this Organizer, you will need to first authorize FRT to send your data so they can confirm your losses are significant and they would like to discuss representing you. You will then need to have a call with them to confirm your intention to join before they will send you their case analyses and registration agreements which will include a funding agreement and power of attorney for local counsel.	In order to register with this Organizer, you will need to first authorize FRT to send your data so they can confirm your losses are significant and they would like to discuss representing you. You will then need to have a call with them to confirm your intention to join before they will send you their case analyses and registration agreements which will include a funding agreement and power of attorney for local counsel.

# Organizer Profiles

## THE ADVOFIN/ ROTTER GROUP

Founded in 1998, **Rotter Rechtsanwälte** is based in Munich and Bremen. With four lawyers, it is among the most experienced plaintiff securities litigation firms in Germany. Since 2006, Rotter has been counsel in dozens of matters against German companies, including the proceedings against VW. It has been selected and appointed under the Investor Model Proceedings Act by German Higher Regional Courts as counsel for model plaintiffs in six damage actions based on incorrect market information.

Funded by high-net-worth institutional investors, Austria based **AdvoFin Prozessfinanzierung AG** started in 2001 and is now a significant funder of collective procedures. Rotter and AdvoFin have been working together for more than seven years.

## THE ROBBINS GELLER/NIEDING + BARTH GROUP

**Robbins Geller Rudman & Dowd LLP** ("Robbins Geller" or the "Firm") specializes in complex litigation emphasizing securities, corporate mergers and acquisitions, shareholder derivative, whistleblower, antitrust, consumer and insurance class actions. The Firm's unparalleled experience and capabilities in these fields are based on the talents of its attorneys, who have successfully prosecuted thousands of class action lawsuits.

The Firm is widely recognized as a leading law firm worldwide. Judges have described Robbins Geller as one of the most formidable securities law firms in the United States. With 200 lawyers in 9 offices nationwide, the Firm has the resources, experience and tenacity to achieve superior results, including some of the largest recoveries in history: \$17+ billion (US Volkswagen Consumer class action) and \$7.2 billion (US Enron securities class action).

**Nieding + Barth Rechtsanwaltsaktiengesellschaft** is one of the leading law firms in banking and capital markets law in Germany. They have been committed to institutional and private investors since 1994 - on a national and international level. In this regard, over 50 decisions by the Federal Court of Justice (BGH) on investor protection have already been brought about. The total damage represented by private and institutional investors now adds up to around 20 billion euros.

They are also active in the DSW (German Association for Protection of Securities), the largest association for investor protection in Germany, and in the German Investor Protection Association (DASB), which is the first point of contact for investors who have been victims of dubious financial advisors in the so-called "gray capital market".

## THE DEMINOR/ARNOLD & PORTER GROUP

**Deminor Recovery Services** ("Deminor") has been a pioneer and market leader in international asset recoveries for private and institutional investors since 1990. It's clients benefit from Deminor's 25+ years of experience in the fields of investor protection, shareholder activism, corporate governance and investment recovery. Deminor is organized as a fully independent private partnership.

**Arnold & Porter** are a client-driven and industry-focused worldwide litigation firm. Their lawyers practice in more than 40 practice areas across the litigation, regulatory and transactional spectrum to help clients with complex needs stay ahead of the global market, anticipate opportunities and address issues that impact the very value of their businesses. Their global reach, experience and deep knowledge allow them to work across geographic, cultural, technological and ideological borders, to offer clients forward-looking, results-oriented solutions that resolve their US, international and cross-border legal needs.



# Exhibit A

## Non-US Opt-In and Group Litigation Jurisdictional Thresholds

Jurisdictional Description	Threshold
Passive/very low risk jurisdictions, simple registration or claim filing (no participation in litigation required, strong anonymity, very low costs) including, but potentially not limited to: Australia, Israel, Netherlands (including Dutch Foundations), regulatory funds (e.g. Compensation Schemes in UK)	<b>\$20,000 (FRT proposal to lower to zero)</b>
Low risk jurisdictions (no discovery, low cost) including, but potentially not limited to: Japan	<b>\$1 million</b>
Moderate risk jurisdictions (moderate cost, funded/insured to protect from cost shifting, some restricted discovery, not fully public) including but potentially not limited to: Germany, Austria, Belgium, Switzerland, Denmark, Spain, Finland, France, Hong Kong, Indonesia, Ireland, Italy, Korea, Luxembourg, Malaysia, Norway, New Zealand, Portugal, Sweden, and Thailand	<b>\$5 million</b>
High risk jurisdictions (potential in-person discovery, no anonymity, uncapped fees) including, but potentially not limited to: Taiwan, United Kingdom, Singapore, Brazil	<b>\$10 million</b>

Jurisdictional Thresholds are developed in consultation with legal counsel including other designated agents which are experts in global securities litigation matters.