

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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SECURITIES AND EXCHANGE COMMISSION,	:	
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Plaintiff,	:	
	:	
v.	:	Civil Action No. 00 C 4240
	:	
SYSTEM SOFTWARE ASSOCIATES, INC.,	:	(Judge Elaine E. Bucklo)
ROGER COVEY and	:	
JOSEPH SKADRA,	:	
	:	
Defendants.	:	

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**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S  
MOTION FOR DISTRIBUTION OF FUNDS IN CRIS  
ACCOUNT AND APPLICATION FOR APPOINTMENT OF  
SPECIAL AGENT AND MEMORANDUM IN SUPPORT**

Plaintiff Securities and Exchange Commission ("SEC" or "Commission") submits this motion for distribution of the funds currently in the Court Registry Investment System ("CRIS") interest bearing account established with respect to this action. In particular, the SEC requests that (a) a Disgorgement Fund be established, which would include all of the funds in the CRIS account, including not only the disgorgement and prejudgment interest paid by Defendant Roger Covey but also the \$100,000 civil penalty that he paid; (b) an accountant be appointed as a Special Agent for purposes of filing tax returns and related documents of, and calculating the taxes owed by, the Disgorgement Fund; (c) the funds currently held in the CRIS account for this action be transferred to a non-interest bearing registry fund of this Court pending further Order of this Court; and (d) after the Special Agent has calculated the taxes owed by the Disgorgement Fund and filed tax returns, and upon further order of the Court, all of the money in the Disgorgement Fund, less taxes and related expenses, be turned over to the Claims Administrator

of the settlement distribution fund in *In re Systems Software Associates, Inc. Securities Litigation*, Master File No. 97 C 177 (N.D. Ill. Order and Final Judgment docketed Aug. 27, 2002) (“SSA Federal Class Action”) for the distribution on a *pro rata* basis to the class members who will receive proceeds from that fund. A proposed Order is attached.

In addition, the SEC requests that, prior to the Court ruling on the SEC’s motion for distribution of funds, the Court issue an order establishing a comment period for the SEC’s motion. A separate proposed Order is attached. The SEC proposes that any person wishing to comment on or object to the SEC’s proposal for distribution of funds be required to do so by filing their comments in writing with the Court within thirty days after the Court enters its order establishing a comment period, with a copy to be served by first-class mail upon counsel for the SEC and defendant Covey. The SEC also proposes that it be given thirty days from the last date a comment may be filed to respond to any comments. Upon entry of the Court’s Order establishing a comment period, the SEC will issue a litigation release and post the release on its website announcing its proposal for distributing the funds in the CRIS account to provide notice of its proposal and allow for written comments from the public.

In support of this motion, the SEC states:

1. The SEC filed its Complaint on July 13, 2000, naming System Software Associates, Inc. (“SSA”), Covey and Joseph Skadra as defendants. Without admitting or denying the allegations of the SEC’s Complaint, SSA consented to a Final Judgment entered by this Court on August 25, 2000, and Covey and Skadra consented to Final Judgments entered by this Court on October 3, 2002. Pursuant to Paragraphs IV and V of the Final Judgment Against Defendant Roger Covey, Covey was required to pay disgorgement of \$127,000, prejudgment interest thereon of \$89,205.38, and a civil penalty of \$100,000 – a total of \$316,205.38 – to the Clerk of the Court. Paragraphs IV and V both provided:

Pending further order, the Clerk shall hold these funds in the Court Registry Investment System (“CRIS”) Interest Bearing Account to be established by this Court with respect to this action. By making this payment, Defendant relinquishes all legal and equitable right, title and interest in such funds, and no part of the funds shall be returned to Defendant.

The Final Judgment against SSA did not require it to make any payment to the Clerk of the Court, and the Final Judgment against Skadra waived payment by him based on his sworn financial statement furnished to the SEC.

2. Covey satisfied his payment obligations under the Final Judgment entered against him by paying \$316,205.38 to the Clerk of Court on October 31, 2002. The Clerk of the Court has invested those funds in the CRIS, where they remain pending further order of this Court and are accumulating interest.

#### **ESTABLISHMENT OF DISGORGEMENT FUND**

3. The Commission now seeks to establish a Disgorgement Fund with the funds in the CRIS account for this action and to distribute those funds to investors harmed by the fraudulent conduct alleged in its Complaint. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 [P.L. No. 107-204] (“Sarbanes-Oxley”) – the so-called “Fair Funds” provision of Sarbanes-Oxley – the SEC seeks to include in the Disgorgement Fund the civil penalty of \$100,000 that Covey paid. Section 308(a) of Sarbanes-Oxley states in relevant part:

(a) CIVIL PENALTIES ADDED TO DISGORGEMENT FUNDS FOR THE RELIEF OF VICTIMS. If in any judicial or administrative action brought by the Commission under the securities laws ... the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

Permitting Covey's civil penalty to be aggregated with disgorgement – rather than paid directly to the United States Treasury<sup>1</sup> – will permit the Commission to return more money to defrauded investors in this action. This is precisely the result that Congress intended when it passed the Fair Funds Provision of the new Sarbanes-Oxley Act and is consistent with the public interest.

#### **APPOINTMENT OF SPECIAL AGENT**

4. The Commission's understanding is that the Disgorgement Fund must file tax returns and may owe taxes as a result of the interest earned on the disgorged funds held in the CRIS account in 2002 and 2003.

5. The Commission applies to have David P. Boxer, CPA, of the accounting firm Weiser LLP, appointed as Special Agent for the purposes of filing tax returns and related documents of, and calculating the taxes owed by, the Disgorgement Fund. A copy of Mr. Boxer's curriculum vitae is attached as Exhibit 1. The Commission has used Mr. Boxer on several occasions in the past for this purpose, and has been pleased with his work on such occasions. Mr. Boxer has advised the Commission staff that his fees will not exceed \$7,500. The Commission's proposed order includes various provisions setting forth requirements and rights of the Special Agent.

#### **TRANSFER OF FUNDS TO NON-INTEREST BEARING ACCOUNT**

6. The Commission seeks an order that the Clerk of this Court notify Plaintiff and Plaintiff's Special Agent of the amount of money in the Disgorgement Fund that is held in the CRIS interest bearing account in this case and that the Clerk transfer those funds into a non-interest bearing registry fund of this Court pending further order of this Court. This will enable the Special Agent to prepare any necessary federal tax returns and calculate any taxes due.

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<sup>1</sup>Prior to Sarbanes-Oxley, civil penalties were required to be paid to the United States Treasury under Section 21(d)(3)(C) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)(C)].

## DISTRIBUTION OF FUNDS

7. The Commission is vested with broad discretion in fashioning distribution plans for disgorgement funds. See *SEC v. Certain Unknown Purchasers*, 817 F.2d 1018 (2d Cir. 1987); *SEC v. Levine*, 881 F.2d 1165 (2d Cir. 1989). See also *SEC v. Finacor Anstalt*, 1991 WL 173327, at \*3 (S.D.N.Y. 1991) (rejecting challenge to SEC's proposed distribution plan and holding that the "equities weigh in favor of limiting payment at this time to the claimants suffering the greatest injury"). This discretion "includ[es] the flexibility to decide that certain groups of claimants would receive payments and others would not." *Levine*, 881 F.2d at 1182. Accord, *SEC v. Wang*, 944 F.2d 80, 87-88 (2d Cir. 1991) ("decision to treat some options traders differently from stock traders was reasonable and fair" even though "[t]his kind of line-drawing ... inevitably leaves out some potential claimants").

8. In distributing the CRIS account funds, which are substantially less than total investor losses, the Commission seeks to maximize the amount of money that investors aggrieved by the conduct challenged in its Complaint will receive, to get money to investors as quickly as possible, and to minimize administrative costs.

9. The Commission has considered various alternatives for distributing the funds, including distributing them through the claims administrators in *Steinberg v. System Software Associates, Inc.*, No. 97 CH 00287 (Cook Cty.) (the "State Class Action"), *Retsky Family Limited Partnership v. Price Waterhouse LLP*, No. 97 C 7694 (the "Retsky Class Action"), and the SSA Federal Class Action, as well as through the appointment of a receiver. In addition, the Commission has considered the proposal of Thomas J. Lacey, who recently filed a motion to intervene in this action, to limit distribution of the Disgorgement Fund "to a class of investors holding SSA shares they purchased after Jan. 7, 1997" (Complaint in Intervention at 23) when SSA announced a restatement of earnings related to conduct challenged in the SEC's Complaint.

10. The Commission has determined that it is in the best interest of investors to have the funds in the CRIS account here, less taxes and related expenses, turned over to the SSA Federal Class Action Claims Administrator for the distribution on a *pro rata* basis to the class members who will receive proceeds of the settlement distribution fund established pursuant to the Order and Final Judgment, docketed August 27, 2002, in the SSA Federal Class Action. A copy of that Order and Final Judgment in the SSA Federal Class Action is attached as Exhibit 2. Distributing the funds through one of the class action claims administrators would save significant administrative costs compared to distributing the funds through a new receiver.

11. The SSA Federal Class Action is the most appropriate class action for distribution of the funds in this case because the Claims Administrator anticipates distributing the funds in that class action settlement fund – approximately \$409,000 (after attorneys’ fees and expenses) – shortly, and the funds from this action can simply be added to that settlement fund without additional cost (other than the tax expense described above). In addition, the complaint in the SSA Federal Class Action contains the same substantive allegations as the SEC’s Complaint in this action and covers the same period of time, and Covey is a defendant in both actions. Further, the class certified by the Court in the SSA Federal Class Action includes many of the victims in this action. In the SSA Federal Class Action, the Court certified as a class “all persons who purchased the common stock of [SSA], during the period of August 22, 1994 through and including November 20, 1994, and those who purchased common stock during the period of November 21, 1994 through and including January 7, 1997, who sold their stock prior to January 7, 1997, and who suffered damages as a result” excluding the defendants and various related parties. Exhibit 2, Order and Final Judgment at n.1. In this action, the period of the fraud alleged in the Complaint was “[b]eginning in July 1994 and continuing through at least December 1996.” Complaint ¶ 1.

12. The Claims Administrator has advised the Commission staff that there are at least 950 valid claimants with a total recognized loss in excess of \$55 million in the SSA Federal Class Action. Accordingly, there is no risk that adding the disgorgement, prejudgment interest, and civil penalties that Covey has paid in this action to the \$409,000 settlement fund in the SSA Federal Class Action will provide double recovery or any sort of windfall to the valid claimants in the SSA Federal Class Action.

13. The class in the State Class Action included all purchasers of SSA stock during the period between November 21, 1994 and January 7, 1997 who still held that stock on January 7, 1997. *See In re: System Software Associates, Inc.*, 2000 WL 283099 (N.D. Ill. March 8, 2002). These class members are sometimes referred to as the “buy and hold purchasers” while the class members in the SSA Federal Class Action are sometimes referred to as the “early purchasers” and the “in and out purchasers.” According to the State Class Action Claims Administrator, approximately \$2 million was distributed in August 2000 in the State Class Action to 1,905 claimants with a total recognized loss of approximately \$73.5 million. It is preferable to distribute the funds through the SSA Federal Class Action where the funds are about to be distributed, rather than through the State Class Action where the distribution was completed almost three years ago, because the costs of distribution to claimants in the State Class Action will be greater and many claimants in that class action may have moved in the three years since settlement funds were distributed to them.

14. The Commission also considered some division of the Disgorgement Fund in this action between claimants in the SSA Federal Class Action and claimants in the State Class Action. As a practical matter, however, the amount of funds to be distributed in this case is not large enough to justify dividing the funds between those two groups.

15. The Retsky Class Action was brought against SSA's auditor, not Covey or any other SSA officers or directors, and since the Commission's Complaint in this case did not name the auditor as a defendant, the Retsky Class Action should not be used as a vehicle to distribute the funds paid by Covey in this case. The Retsky Class Action Claims Administrator has advised the Commission staff that, in that action, there are approximately 2,400 valid claimants with a total recognized loss of \$67.5 million. The certified class includes "all persons or entities who purchased or otherwise acquired SSA common stock during the period from December 15, 1994 [the date SSA's auditor filed the audit certification for SSA's fiscal year 1994 Form 10-K] through January 7, 1997 [the date the fraud was disclosed by SSA's announcement that it was restating its financial results for its 1994 and 1995 fiscal years] inclusive, and who suffered damages thereby." *Retsky*, 1999 WL 543209 (N.D. Ill. July 23, 1999). The *Retsky* class, which includes "in and out purchasers" and "buy and hold purchasers," overlaps with the class in the SSA Federal Class Action and the State Class Action, but covers a shorter period of time. The Claims Administrator in the Retsky Class Action has advised Commission staff that there is approximately \$8.33 million, after attorneys' fees and expenses, to distribute to claimants. Again, in light of the substantial losses suffered by those who invested in SSA in the period from approximately July 1994 through January 7, 1997, there is no danger valid claimants in the Retsky Class Action who are also claimants in the SSA Federal Class Action will receive a double recovery or any sort of windfall if the Disgorgement Fund here is added to the settlement fund in the SSA Federal Class Action.

16. Having the SSA Federal Class Action Claims Administrator distribute the proceeds in the CRIS account here to class members in the SSA Federal Class Action would save money and be more efficient than appointing a new receiver to administer the CRIS account here, because the SSA Federal Class Action Claims Administrator has already taken certain

steps to provide notice to class members, to identify valid claims, and to determine the *pro rata* amounts to which the class members are entitled. See Affidavit of Joshua S. Devore in Support of Plaintiffs' Counsel's Application for Final Approval of Settlement and for an Award of Attorneys' Fees and Expenses ¶¶ 32-40, docketed on July 16, 2002, and Notice of Settlement of Class Action, attached as Exhibits 3 and 4 respectively. A new receiver for the Disgorgement Fund in this action would incur substantial additional costs, thereby substantially reducing the amount left to distribute to investors, because (s)he would have essentially to repeat much of the work already done by the SSA Federal Class Action Claims Administrator. Moreover, the class members who will be receiving distributions from the fund in the SSA Federal Class Action will be compensated for only a small percentage of their losses.

17. The Court in the SSA Federal Class Action stated that the requirements of mailing notices to each class member who could be identified and publishing notice in *The Wall Street Journal* had been complied with and that a hearing providing all interested persons with an opportunity to be heard had been held. Exhibit 2, Order and Final Judgment at 2. The Court also approved the proposed Plan of Allocation of the Net Settlement Fund in the SSA Federal Class Action. Exhibit 2, Order and Final Judgment ¶ 6 at 4.

18. Finally, the Commission believes it would not be appropriate to distribute the funds in this case to Mr. Lacey's proposed "class of investors holding SSA shares they purchased after Jan. 7, 1997." Complaint in Intervention at 23. Anyone purchasing SSA stock after January 7, 1997 did so after SSA announced that day that (a) as alleged in paragraph 34 of the Commission's Complaint, "it was restating its 1994 and 1995 year end financial statements to reverse in excess of \$30 million in previously reported [BPCS] revenues"; and (b) as alleged in paragraph 50, SSA was eliminating an additional "\$37 million of reported revenue, and the associated net income, from 1996." This action concerns events and conduct between July 1994

and the end of 1996 – *i.e.*, events and conduct leading up to and prompting the January 7, 1997 restatement – and the victims of the conduct charged in the Complaint purchased SSA stock before the restatement. Accordingly, purchasers of SSA stock after the January 7, 1997 restatement – whether or not they were injured by SSA’s, Covey’s, or Skadra’s conduct after that date and whether or not that conduct was illegal – are not an appropriate class of investors who should receive funds from the Distribution Fund in *this* case.

19. The SEC requests that none of the proceeds in the Disgorgement Fund be distributed to plaintiffs’ counsel in the SSA Federal Class Action or the SSA Federal Class Action Claims Administrator. Plaintiffs’ counsel has not requested any fee from the Disgorgement Fund, and neither has the claims administrator. Their compensation will come from the existing proceeds in the SSA Federal Class Action settlement fund.

20. After the Court enters its order pursuant to the SEC’s instant motion and after the Special Agent has calculated the taxes owed by the Disgorgement Fund and filed tax returns, the SEC will seek a further order of the Court specifying details of the distribution of funds by the SSA Federal Class Action Claims Administrator.

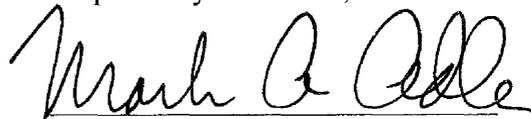
21. Counsel for the SEC has discussed with plaintiffs’ counsel in the SSA Federal Class Action the SEC’s proposal for the SSA Federal Class Action Claims Administrator to distribute the CRIS account in this action in accordance with the terms of this motion and the accompanying proposed Order, and they have no objection to it. Counsel for the SEC has also discussed its proposal with the SSA Federal Class Action Claims Administrator (ACS Financial & Securities Services, 80 Broad Street, New York, New York 10004), and the Claims Administrator is willing to distribute the CRIS account in this action in accordance with the terms of this motion and the accompanying proposed Order.

CONCLUSION

22. For the foregoing reasons, the SEC requests that its motion be granted and that (a) a Disgorgement Fund be established, which would include all of the funds in the CRIS account including not only the disgorgement and prejudgment interest paid by Defendant Covey but also the \$100,000 civil penalty that he paid; (b) an accountant be appointed as a Special Agent for purposes of filing tax returns and related documents of, and calculating the taxes owed by, the Disgorgement Fund; (c) the funds currently held in the CRIS account for this action be transferred to a non-interest bearing registry fund of this Court pending further order of this Court; and (d) after the Special Agent files tax returns and calculates the taxes owed by the Disgorgement Fund, and upon further order of the Court, all of the money in the Disgorgement Fund, less taxes and related expenses, be turned over to the Claims Administrator of the settlement fund in the SSA Federal Class Action for distribution on a *pro rata* basis to the class members who will receive proceeds of the SSA Federal Class Action settlement. The SEC also requests that, prior to ruling on this motion, the Court enter an order in the form attached establishing a comment period for the SEC's distribution proposal.

Dated: July 16, 2003

Respectfully submitted,



James A. Meyers (202-942-4712)  
Mark A. Adler (202-942-4770)  
John L. Hunter (202-942-4825)  
Juliet Dupuy Gardner (202-942-4795)  
Securities and Exchange Commission  
450 Fifth Street, N.W., Mail Stop 09-11  
Washington, D.C. 20549

Attorneys for Plaintiff



**David P. Boxer,  
CPA, BBA, MBA, CFE**

**Curricula Vitae**

**David P. Boxer,**  
**CPA, BBA, MBA, CFE**

- Practicing public accountant for over 35 years
- CPA in New York for over 30 years
- CPA in New Jersey
- Current firm affiliation: M.R.Weiser & Co. LLP
  - 3 offices
  - 350 partners and staff
  - 12th largest firm in New York
  - 20th largest firm nationwide
- Position and current responsibilities: Senior Technical Partner
  - Director of SEC Practice
  - Director of Quality Control
  - Director of Professional Development
- Former affiliations:
  - Ernst & Whinney (international firm)
  - S.D. Leidesdorf & Co. (large national firm)
  - Staff of Public Oversight Board of the AICPA Division of Firms
- Committee service:
  - AICPA
    - Executive Committee-SEC Practice Section of the AICPA Division of Firms; Planning Sub Committee; Budget Task Force; Task Force on SECPS Membership
    - SEC Regulations Committee and Formalization Task Force
    - Professional Ethics Executive Committee
    - Nominations Committee-SEC Practice Section of the AICPA Division of Firms
    - Joint Trial Board

- NYS Society of CPAs
  - Former Chairman of SEC Practice Committee
  - Litigation Support Committee
  - Cooperation With Investment Bankers and Stock Exchanges Committee
  - General Committee on Accounting and Auditing
  - Quality Controls Committee
- Member Moores Rowland International SEC Committee
- Qualified as an expert witness before the Supreme Court of the State of New York
- Certified Fraud Examiner
- Member AICPA
- Member NYS Society of CPAs
- Member NJS Society of CPAs
- Graduate School Adjunct - Taught SEC Accounting at graduate level
- Author:
  - Articles published in various professional journals
  - Chapters in WG&L "Corporate Controller's Manual"
- Public speaking engagements - numerous subjects

## Accounting Malpractice Cases

1. Security Pacific Bank vs. KPMG Peat Marwick\*
2. Menzies, Plc. vs. KPMG Peat Marwick
3. In the Matter of Bernard Weiner, CPA and Paul Young, CPA (SEC Enforcement Administrative Proceeding Pursuant to Rule 2(e))
4. National Westminster Bank vs. Ackerman & Co.
5. Clinton Summit Investors vs. Grankow & Carnevale, et al
6. National Westminster Bank vs. Ehrenkrantz and Company, et al
7. First Fidelity Bank, N.A. vs. Garagozza & Ryan, P.A.

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\*Landmark privity case

## SEC Engagements

1. SEC v. Prudential Securities Incorporated  
93 CIV.2164(HHG)
2. SEC v. Paine Webber Incorporated  
96 CIV.0331(SHS)
3. SEC v. Michael R. Milken et al  
88 CIV.6209(MP)
4. SEC v. Drexel Burnham Lambert, Inc., et al  
88 CIV.6209(MP)
5. SEC v. Salomon Brothers Inc.  
92 CIV.3691(RPP)
6. SEC v. Sayegh  
89 CIV.0572(JFK)
7. SEC v. Robert M. Freeman  
93 CIV.3806(MP) (Fund Administrator)
8. SEC v. Charles R. Hack and Benthom International, Ltd.  
90 CIV.0722(TPG)
9. SEC v. Programming & Systems, Inc.  
92 CIV.1539(RCL) (Court Appointed Special Agent)
10. SEC v. Oxford Capital Securities, Inc., et al  
92 CIV.0935(WCC) (Court Appointed Special Master)

11. SEC v. Vision Communications, Inc., et al  
94 CIV.0615 (CRR)
12. SEC v. Ortwin Heider et al  
90 CIV.4636(LJF)
13. SEC v. H.K. Freeland & Co.  
91CIV.7986(CSH)
14. Administrative Proceeding Pursuant to Rule 2(e) in the Matter of Bernard  
Weiner, CPA and Paul Young, CPA (AAER No. 633)
15. SEC v. Pleasure Time, Inc. et al  
95 CIV.0178(SSB) (Fund Administrator)
16. SEC v. William K. Fisher  
94 CIV.7543 (Court Appointed Special Agent)
17. SEC v. Jose Antonio Feliu Roviralata  
94 CIV.1963 (LFO) (Court Appointed Special Agent)
18. SEC v. Teresa Fernandez  
96 CIV.8702 (Court Appointed Special Agent)
19. SEC v. Glittergrove Investments, Ltd.  
99 CIV.1153
20. SEC v. Wolf Financial Group and F.N. Wolf & Co.  
94B44009/10 (RLB) (Court Appointed Special Agent)
21. SEC v. Mervyn Cooper et al  
95 CIV. 8535 (SVW) (Court Appointed Special Agent)
22. SEC v. Paul A. Bilzerian  
89 CIV. 1854(SSH)

## **Other Engagements Relating to Accounting Issues**

1. UNISYS Corporation v. Hercules Incorporated
2. First Fidelity Bank, N.A. v. Bernato, Inc. et al
3. Roslyn Country Club, Inc., et al vs. Levitt and Sons, Inc.
4. Fonda Group, Inc. v. Erving Industries, Inc. and Scott Paper Company, et al Civil Action No 95-5402
5. Westinghouse Electric Corporation vs. Florence B. Durso, Trustee
6. R.A.L.M. v. New York Downtown Hospital

**David P. Boxer,**  
**CPA, BBA, MBA, CFE**

Recent and Continuing Assignments Include

- Representative of the SEC's Enforcement Division (DC) in the settlement of a landmark insider trading case.
- Served as accountant for the Claims Administrator in the settlement of the largest private securities fraud case in history.
- Representative of the SEC's Enforcement Division (DC) as a Special Agent in connection with the alleged financial fraud of a public company.
- Appointment as a Special Master by the SEC's Enforcement Division (NY) in connection with a Settlement Order alleging violation of the Federal Securities laws.
- Assisted the SEC's Enforcement Division (DC) in the preparation of a Settlement Agreement involving a landmark case against a major securities firm.
- Testified as an expert witness in New York State Supreme Court in a valuation case.
- Represented a major foreign public company in an accountant's malpractice case.
- Served as an expert witness for a major U.S. bank in a landmark malpractice case involving privity.
- Represented banks on several accountants' malpractice cases.

**David P. Boxer,  
CPA, BBA, MBA, CFE**

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My educational background and professional experience and memberships in support of my expertise in accounting and auditing are summarized below:

**Professional Standing:**

I am a Certified Public Accountant registered in the State of New York since 1966 and in the State of New Jersey since 1992 and have been in the practice of public accounting since 1963.

**Current Firm Affiliation and Responsibilities:**

I am currently a partner in the accounting firm of M.R.Weiser & Co. LLP. M.R.Weiser has been in practice since 1921 and has offices in New York City, Lake Success, New York and Edison, New Jersey. The firm has 52 partners and a total organization of approximately 350 people. The firm is among the twelfth largest firms in New York, among the top 20 largest firms in the country, and is affiliated with Moores Rowland International, the world's ninth largest network of independent accounting firms, with offices throughout the United States and 85 countries around the world. I have been with M.R. Weiser since 1984. I am the firm's Director of Quality Control and as such, am the firm's senior technical partner with responsibilities for accounting and auditing, quality control standards and interpreting professional standards (accounting, auditing, professional ethics) for the firm's practice. In addition, I am the firm's Director of Professional Development and Director of SEC Practice.

**Former CPA Firm Affiliations:**

Prior to joining M.R. Weiser & Co., LLP, I had been with S.D. Leidesdorf & Co. (a large national firm) and with Ernst & Whinney (now Ernst & Young) subsequent to the merger of Leidesdorf and Ernst & Whinney in 1978. My responsibilities during the last twelve years with Leidesdorf/Ernst & Whinney were principally related to quality control (pre-issuance review and consultation) as it relates to SEC practice.

In connection with such responsibilities, I participated in engagements related to filings under the Securities Act of 1933 and the Securities Exchange Act of 1934 of approximately 75 to 100 public companies including dozens of initial public offerings and other filings under the 1933 Act.

**Staff of Public Oversight Board:**

Immediately prior to joining the M.R. Weiser organization, I was a Technical Director on the staff of the Public Oversight Board of the SEC Practice Section of the American Institute of Certified Public Accountants Division of Firms.

The Public Oversight Board (POB) was established in 1978 as an essential factor in the accounting profession's self-regulatory initiative. The Board monitors and evaluates the activities of the SEC Practice Section and makes recommendations for improving the operation and the effectiveness of the Section's programs. The primary responsibility of the Board is to assure that the public interest is carefully considered in connection with the implementation of the Practice Section's two major programs -- the peer review program and the special investigations process.

As such, it functions as a liaison between the SEC (whose operations are monitored by the Congress of the United States) and the accounting profession.

During my four-year tenure with the Board, I was involved in the monitoring and evaluation of the effectiveness of dozens of peer reviews conducted under the Section's program. Peer review is the keystone of the Section's self-regulatory effort. Member firms participate to assure themselves and the public that they are delivering high quality professional auditing and accounting services. My peer review oversight responsibilities related to firms of all sizes throughout the country and included the smallest and largest of firms (including members of the then "Big Eight").

**Education:**

I obtained a Bachelor of Business Administration degree from The City College of The City University of New York (1963) and a Master of Business Administration from Bernard M. Baruch College of The City University of New York (1977).

**Teaching - Graduate School:**

At the request of the Chairman of the Accounting Department of Baruch Graduate School, I created and taught (for several years) an advanced specialized course on SEC Accounting. This was an adjunct position and was in addition to my full-time position as a practicing CPA.

**Professional Memberships:**

I am a member of the American Institute of Certified Public Accountants since 1967, The New York State Society of Certified Public Accountants since 1967, and of The New Jersey State Society of Certified Public Accountants since 1993.

In addition, I am an accredited Certified Fraud Examiner (CFE).

**Committee Service:**

I am a past chairman of the SEC Practice Committee of the NYS Society of CPAs. Other committee service includes membership on the Society's Quality Controls Committee, Committee on Cooperation with Investment Bankers and Stock Exchanges and Litigation Support Committee.

I was formerly a member of the Executive Committee of the AICPA's SEC Practice Section of the Division of Firms. The objective of the Committee is to improve the quality of practice by CPA firms before the Securities and Exchange Commission through establishment of practice requirements for member firms; to establish and maintain an effective system of self-regulation of member firms by means of mandatory peer reviews, required maintenance of appropriate quality controls and the imposition of sanctions for failure to meet membership requirements; to enhance the effectiveness of the section's regulatory system through the monitoring and evaluation activities of an independent oversight board composed of public members; and to provide a forum for development of technical information relating to SEC practice.

I was formerly a member of the AICPA's SEC Regulations Committee. The objective of the Committee is to provide advice and assistance to the SEC regarding its rules and regulations that are in effect, and those proposed, as they relate to financial statements and related matters included in SEC filings. In addition, I was a member of The Task Force on Formalization of SEC Policies of such Committee. The purpose of The Task Force was to lobby the SEC staff to issue regulations to address numerous issues which were then currently applied by the staff administratively. The Task Force viewed its agenda as being in the public and professional interest.

I am currently a member of the AICPA's Joint Trial Board. The ethics division of the AICPA investigates alleged breaches of ethical standards. When it finds a prima facie case of violation of ethical standards, it reports the matter to the Secretary of the Joint Trial Board, who summons the member to trial. The objective of the Joint Trial Board is to provide for uniform enforcement of professional standards by adjudicating disciplinary charges against members of a participating state society and AICPA through a system of hearing panels.

I was formerly a member of the AICPA's Professional Ethics Executive Committee. The objective of the Committee is to develop standards of ethics, promote understanding and voluntary compliance with such standards, establish and present apparent violations of the standards and the AICPA's bylaws to the Joint Trial Board for disciplinary action, improve the profession's enforcement procedures, and coordinate the subcommittees of the Professional Ethics Division.

**Certified Fraud Examiner:**

The Association of Certified Fraud Examiners designates professionals as a CFE if they meet a stringent set of criteria, including strict character, experience, and education requirements. CFEs are responsible for resolving a wide range of allegations of fraud and white-collar crime. They have the expertise to obtain evidence; take statements and write reports; testify to findings; and assist in all aspects of detecting and preventing white-collar crime. CFEs are employed in a variety of industries, including the investigative division of corporations, private businesses, and government agencies.

**Publications:**

My publications (professional articles on accounting and auditing subjects) include the following:

- Thesis entitled "Subsequent Events and After-Acquired Information: Auditing and Reporting" submitted in partial fulfillment of the requirements for the degree of Master of Business Administration.
- Article entitled "Guidance to Successor Auditors to Laventhol on SEC Filings," *The CPA Journal* - March 1991.
- A 24-page chapter entitled "SEC Reporting Requirements" included in *The Corporate Controller's Manual* published by Warren, Gorham & Lamont, Inc.
- Article entitled "Business Combinations: Reporting to the SEC" published in the *Journal of Accountancy* - April 1973.

- A chapter entitled “Business Combinations: Reporting to the SEC” included in *The Practicing Law Institute Handbook on “Understanding Financial Statements 1975.”*
- An article entitled “ASR 159 - Management’s Discussion and Analysis of the Earnings Summary” included in the SEC Commentary Sections of *The CPA Journal* - June 1976.
- Co-author of a paper entitled “Internal Financial Reports” submitted in competition before The XII Inter-American Accounting Conference. The paper was presented at the conference held in Vancouver, Canada and was judged first in its topic, first among all papers submitted by U.S. authors, and fourth among all papers submitted by representatives of all Western Hemisphere countries.
- Technical advisor on a self-study course produced by the Foundation for Accounting Education entitled “SEC Requirements for a Real Estate Venture.”

**Public Speaking Engagements:**

My public speaking engagements concerning SEC, accounting and auditing subjects include the following:

- “SEC Rules for Foreign Auditors” speech before the Moores Rowland International Conference - Mexico City (1996).
- “Accounting Malpractice,” teleconferenced speech and panel discussion for the Continuing Legal Education Satellite Network (CLESN) (1993).
- “Current Projects at the Office of the Chief Accountant of the SEC” chaired panel discussion at the AICPA’s 20th National Conference on Current SEC Developments (1993).
- “Current FASB Projects Affecting SEC Registrants,” chaired panel discussion before the 1992 Nineteenth Annual National Conference on Current SEC Developments (1992).
- “Current Developments in Accounting,” chaired panel discussion at the 1991 Eighteenth Annual National Conference on Current SEC Developments, sponsored by the AICPA (1991).
- “Update on SEC Developments and Unpublished SEC Staff Positions on Practice Issues,” speech before the NYS Society of CPAs’ SEC Practice Committee (1991).
- “Prospective Financial Statements” speech before Barclays Bank of New York and National Westminster Bank (1991).

- “Financial Reporting for a Real Estate Offering” before seminars on “Real Estate Ventures” sponsored by The Foundation for Accounting Education (1973 and 1975).
- “Multinational Reporting - Efforts of International Accounting Bodies” before The Seminar on International Accounting: Current Issues and Problems sponsored by The World Trade Institute (1976 and 1977).
- “Periodic Reporting Under The Securities Exchange Act of 1934” before the “Seminar (course) of SEC Accounting” sponsored by Executive Enterprises, Inc. (1979).
- “Efforts of International Accounting Bodies - Towards Harmony in International Auditing and Reporting Standards” before the “Seminar on International Accounting Techniques” sponsored by The American Management Association (March 1979 and October 1979).
- “The Role of the Public Oversight Board in the Peer Review Process” before the “1982 SEC Accounting Conference” sponsored by The Foundation for Accounting Education (1982).



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

POCKETED  
AUG 27 2002

IN RE: SYSTEMS SOFTWARE )  
ASSOCIATES, INC. SECURITIES )  
LITIGATION )

\_\_\_\_\_)  
THIS DOCUMENT RELATES TO )  
ALL ACTIONS. )

Master File No. 97 C 177  
Judge John W. Darrah

ORDER AND FINAL JUDGMENT

On May 29, 2002, Plaintiffs, Albert Bachorowski, Michael Connor, Lucian B. Cox, Catherine Drozd, Dennis W. Corbin, the Retsky Family Limited Partnership, Hung A. Pham, Nathan Schleifer, Jaspal Singh, Ravinder Sing, Donald J. Sorota, Kim Walter, and Allen Goodcase (collectively, the "Plaintiffs"), acting on behalf of themselves and the Class of purchasers of System Software Associates, Inc. ("SSA") common stock previously certified by the Court<sup>1</sup>, entered into a Stipulation of Settlement ("Stipulation") between Plaintiffs and Defendants Roger E. Covey, Joseph J. Skadra, Terence H. Osborne, Terry E. Notari, and Larry J. Ford (collectively, the "Defendants").

By Order dated June 3, 2002 (the "Preliminary Approval Order", this Court preliminarily approved the Stipulation, a copy of which is attached hereto and incorporated herein, in settlement of all claims in the action (the "Settlement") between the Plaintiffs, acting on behalf of themselves

<sup>1</sup>By Order dated December 6, 2000, this Court certified a Class defined as all persons who purchased the common stock of System Software Associates, Inc., during the period of August 22, 1994 through and including November 20, 1994, and those who purchased common stock during the period of November 21, 1994 through and including January 7, 1997, who sold their stock prior to January 7, 1997, and who suffered damages as a result. Excluded from the class are the defendants (Systems Software Associates, Inc. and related entities Roger E. Covey, Terence H. Osborne, Terry E. Notari, Joseph Skarda, and Larry F. Ford); members of the individual defendants' families; any entity in which any defendant has a controlling interest or which is a parent or subsidiary of or is controlled by System Software Associates, Inc.; and officers, directors, employees, affiliates, legal representatives, heirs, predecessors, successors, and assigns of any excluded person or entity.

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and the Class and the Defendants.

Pursuant to the Preliminary Approval Order, this Court scheduled a hearing on August 8, 2002 at 9:00 a.m. to determine, among other things: (i) whether the proposed Settlement set forth in the Stipulation should be approved by the Court as being fair, reasonable, and adequate; (ii) whether final judgment should be entered thereon dismissing with prejudice all Released Claims against the Released Persons; (iii) whether the proposed Plan of Distribution of Net Settlement Fund is fair, reasonable, and adequate; and (iv) whether to approve the applications of counsel for the Plaintiffs ("Plaintiffs' Counsel") for awards of attorneys' fees, costs, and disbursements. This Court ordered that the Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing (the "Notice"), substantially in the form annexed as Exhibit A-1 to the Stipulation, be mailed by first-class mail, postage prepaid, on or before June 13, 2002, to each member of the Class who could be identified, and that a Summary Notice, substantially in the form annexed as Exhibit A-3 to the Stipulation, be published in the national edition of *The Wall Street Journal* within ten days after the mailing of the Notice.

As attested by the Affidavit of DaleAnn States filed with this Court on July 15, 2002, the provisions of said Order as to notice were complied with. Moreover, the hearing on the proposed Settlement was duly held before this Court on August 8, 2002, at which time all interested persons were afforded the opportunity to be heard. This Court has duly considered all of the submissions and arguments presented with respect to the proposed Settlement.

NOW THEREFORE, after due deliberations and after the review and consideration of materials, including exhibits, filed by the Plaintiffs: (i) Class Plaintiffs' Memorandum in Support of Final Approval of the proposed Settlement; (ii) Affidavit of DaleAnn States; (iii) Class Plaintiffs'

Memorandum in Support of an Award of Attorneys' Fees and Reimbursement of Expenses; (iv) Affidavit of Joshua S. Devore in Support of Plaintiffs' Counsel's Application for Final Approval of Settlement for an Award of Attorneys' Fees and Expenses; (v) Affidavit of Robert M. Korneich in Support of Joint Petition for Attorneys' Fees and Disbursements Filed on Behalf of Wolf Popper LLP; (vi) Affidavit of Joseph D. Ament in Support of Joint Petition for Attorneys' Fees and Disbursements Filed on Behalf of Much Shelist Freed Denenberg Ament & Rubenstein, P.C.; (vii) Affidavit of Sanford P. Dumain in Support of Joint Petition for Attorneys' Fees and Disbursements Filed on Behalf of Milberg Weiss Bershad Hynes & Lerach LLP; (viii) Affidavit of Lawrence G. Soicher in Support of Joint Petition for Attorneys' Fees and Disbursements Filed on Behalf of The Law Offices of Lawrence G. Soicher; and (ix) Affidavit of Joshua S. Devore in Support of Joint Petition for Attorneys' Fees and Disbursements Filed on Behalf of Cohen, Milstein, Hausfeld & Toll, P.L.L.C., this Court hereby FINDS, CONCLUDES, ADJUDGES, and DECREES that:

1. This Order is binding on all Class Members as described in the Court's Order of December 6, 2002, excluding all persons who timely filed a request to be excluded from the Class, pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, who are not bound by any of the terms of this Order. Only those persons specifically identified in Appendix A hereto, who otherwise would be members of the Class, have validly requested exclusion from the Class, and those requests for exclusion are hereby GRANTED.

2. All terms in this Order shall have the meanings set forth in the Stipulation.

3. The proposed Settlement of the Action on the terms and conditions set forth in the Stipulation is fair, reasonable, and adequate, is in the best interests of the Class and is hereby APPROVED.

4. The notification provided for and given to the Class constitutes the best notice practicable under the circumstances and is in full compliance with the notice requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4.

5. The proposed Plan of Allocation of the Net Settlement Fund as set forth in the Notice is, in all respects, fair, reasonable, and adequate and is hereby APPROVED.

6. No meritorious objections to the Settlement have been timely presented to the Court.

7. There is no just reason for delay in the entry of judgment as agreed upon in the Stipulation, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

8. This Order and Final Judgment is final for purposes of appeal and may be appealed notwithstanding other matters presently pending, and the Clerk is hereby directed to enter judgment thereon.

9. Certification under Rule 54(b) will not result in unnecessary appellate review nor will review of the adjudicated claims moot any further developments in this Action. Even if subsequent appeals are filed, the nature of these claims is such that the appellate court would not have to decide the same issues more than once. The reservation of jurisdiction by this Court in this matter does not affect in any way the finality of this Order and Final Judgment.

10. This Action is dismissed on the merits with prejudice and without costs to any party, in accordance with Rule 23 of the Federal Rules of Civil Procedure; and each Defendant and his respective heirs, executors, and assigns (the "Released Persons") are hereby released and discharged from all actual and potential claims, liabilities, demands, causes of action, or lawsuits against any

and all Released Persons, whether legal, equitable, statutory or any other type or form, and which were brought or potentially could have been brought in an individual, representative or any other capacity, that relate to or arise out of the events, acts, or omissions alleged in the Action against the Defendants (the "Released Claims").

11. All Class Members and their respective heirs, executors, administrators, representatives, agents, successors, and assigns are hereby permanently barred, enjoined, and restricted from commencing or prosecuting any and all Released Claims against the Released Persons.

12. Defendants and the Released Persons are hereby permanently barred, enjoined, and restricted from commencing or prosecuting any and all claims arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims against the Plaintiffs, any and all Class Members and Plaintiffs' Counsel.

13. A Bar Order is hereby entered permanently barring all past, present, and future claims for contribution arising out of the Class Action or any and all actual and potential claims, liabilities, demands, causes of action, or lawsuits against any and all Released Persons, whether legal, equitable, statutory or of any other type or form, and which were brought or potentially could have been brought in an individual, representative or any other capacity, that relate to or arise out of the events, acts, or omissions alleged in the Action against the Defendants: (i) by any person or entity against each of the Settling Defendants and (ii) by each of the Settling Defendants against any person or entity.

14. The Defendants shall have no role in nor responsibility for the form, substance, method, or manner of administration or distribution of the Settlement Fund to Class Members. All

expenses related thereto, including out-of-pocket costs and expenses, shall be paid from the Settlement Fund. Neither the Defendants nor their counsel shall have any responsibility for or liability with respect to the administration or processing of claims or the allocation of the Settlement Fund, including, without limitation, determinations as to the validity of Proofs of Claim, the amounts of claims, and distributions from the Settlement Fund.

15. The Seventh Circuit endorses the percentage-of-the fund method for the award of attorneys' fees in common fund cases because the method most closely approximates the manner in which attorneys are compensated in the marketplace for these types of cases. *See Florin v. Nationsbank, N.A.*, 34 F.3d 560, 566 (7<sup>th</sup> Cir. 1994); *In re Continental Illinois Sec. Litig.*, 962 F.2d 566, 572 (7<sup>th</sup> Cir. 1992).

16. The Joint Petition by Plaintiffs' Counsel for an Award of Attorneys' Fees and Reimbursement of Expenses is hereby granted. Plaintiffs' Counsel are hereby jointly awarded a total fee of 33% of the Settlement Fund (\$208,333.33). Payment will be made from the Settlement Fund to all Plaintiffs' Counsel after the Effective Date (as defined in the Stipulation). Plaintiffs' Co-Lead Counsel (as set forth in the Notice) are hereby directed to allocate the attorneys' fees among all Plaintiffs' Counsel in a fashion which, in the opinion of Plaintiffs' Co-Lead Counsel, fully compensates Plaintiffs' Counsel in view of their respective contributions to the prosecution of this litigation.

17. Plaintiffs' Counsel are awarded \$8,673.46 as reimbursement of their reasonable expenses incurred in connection with this litigation, including interest on those expenses, as submitted to the Court. Such payment shall also be made from the Settlement Fund at the same time as the fee award is made.

18. This Judgment, the Stipulation and all papers related to it are not, and shall not in any event be, an admission by Defendants of any liability or wrongdoing whatsoever and shall not be offered as evidence of any such liability or wrongdoing in this or any future proceeding.

19. The Court hereby restrains and enjoins all persons who have appeared in these proceedings and any other person from taking any actions in or inconsistent with this Order and Final Judgment and the Settlement that the Court hereby approves.

20. Jurisdiction is hereby reserved over all matters relating to the consummation of the Settlement in accordance with the Stipulation, including any further requests for fees and expenses in connection with administration of the Settlement, and over all matters relating to the effectuation and enforcement of the provisions of this Order.

APPROVED AND SO ORDERED:

Dated:

*August 26, 2002*



JOHN W. DARRAH  
United States District Judge



U.S. DISTRICT COURT  
CENTRAL

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FD-1

\_\_\_\_\_  
IN RE SYSTEM SOFTWARE )  
ASSOCIATES, INC. SECURITIES )  
LITIGATION )  
\_\_\_\_\_  
THIS DOCUMENT RELATES TO: )  
ALL ACTIONS )  
\_\_\_\_\_

Master File No. 97-C-177

Judge John W. Darrah

**DOCKETED**  
JUL 16 2002

**AFFIDAVIT OF JOSHUA S. DEVORE IN SUPPORT OF PLAINTIFFS'  
COUNSEL'S APPLICATION FOR FINAL APPROVAL OF  
SETTLEMENT AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

District of Columbia ) ss:  
 )  
 )

I, **JOSHUA S. DEVORE**, being first duly sworn according to law, depose and say:

**I. INTRODUCTION**

1. I am an attorney with the law firm of Cohen, Milstein, Hausfeld & Toll, P.L.L.C. My firm has served as Co-Lead Counsel for Plaintiffs, together with Wolf Popper LLP and Milberg Weiss Bershad Hynes & Lerach LLP, in the above-captioned action (the "Action"). I submit this affidavit in support of the proposed settlement of this Action (the "Settlement") on behalf of a class of all persons (the "Class") who purchased or otherwise acquired the common stock of System Software Associates, Inc. ("SSA" or the "Company") during the period from August 22, 1994 through January 7, 1997, inclusive (the "Class Period"), and who suffered

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damages thereby, excluding those individuals who purchased SSA common stock during the period from November 21, 1994 through and including January 7, 1997 who continued to hold such stock at the close of trading on January 7, 1997. The Class as described herein was certified by the Court by Memorandum Opinion and Order dated December 6, 2000. I also submit this affidavit in support of the Plan of Allocation, and in support of Plaintiffs' Counsel's application for an award of attorneys' fees and expenses.

2. As demonstrated below and in the accompanying supporting memorandum of law, the proposed \$625,000 Settlement is fair, reasonable, and adequate, and should be approved by this Court. The proposed Plan of Allocation is a fair and reasonable method for distributing the proceeds of the Settlement to the members of the Class and should also be approved.

3. This Settlement is in addition to the \$14,000,000 settlement achieved with SSA's former auditor, Price Waterhouse ("PW") in the related action Retsky Family L.P. v. Price Waterhouse, LLP, No. 97 C 7694 (the "Retsky Action"), and provides additional and separate benefits to members of the Class as described herein.

4. The Settlement, memorialized by a Stipulation of Settlement Between Plaintiffs and Defendants Roger E. Covey, Joseph J. Skadra, Terence H. Osborne, Terry E. Notari and Larry J. Ford dated May 29, 2002 (the "Stipulation"), provides for the creation of a settlement fund of \$625,000 in cash, plus interest (the "Settlement Fund") which has been accruing since November 1, 2000 on the first \$180,000 of the Settlement Fund and which has been accruing since June 6, 2002 on the remaining \$445,000 of the Settlement Fund. By Order dated June 3, 2002 (the "Preliminary Order"), the Court granted preliminary approval of the Settlement, ordered that notice be disseminated to the Class, set July 22, 2002 as the deadline for the

submission of any objections to the Settlement and Award of Attorneys' Fees and Expenses, and set a final hearing date of August 8, 2002.

5. As explained in greater detail herein, this Settlement is an excellent recovery for the Class. The Settlement was accomplished after Plaintiffs' Counsel conducted a full factual investigation into the Class claims, engaged in discovery, prepared for trial, and engaged in protracted settlement negotiations with Defendants that involved frank and open discussions of the facts and strengths and weaknesses of their respective positions. Moreover, given the limited resources of the Settling Defendants, the bankruptcy of SSA, and the previous settlement by some of the same defendants reached in a corresponding state action styled Steinberg v. System Software Assoc., Inc., No. 97 CH 00287 (Cook Cty.), with a separate class, the \$625,000 recovery for the Class here is an excellent result in these circumstances.

6. The favorable reaction of the Class members to the Settlement supports both its reasonableness and that of the fee request. Pursuant to the Preliminary Order, the deadline for filing objections to the Settlement, Plan of Allocation or Attorneys' Fees and Expense Application expires on July 22, 2002. As of this date, Plaintiffs' Co-Lead Counsel has not been made aware of any objection to the Settlement, the Plan of Allocation, or the request for attorneys' fees and expenses.

## **II. HISTORY OF THE CASE**

7. Prior to and during the Class Period, SSA developed, marketed and supported business application software. Its three primary product lines consisted of integrated products designed for manufacturing, distributing, and financial applications.

8. On January 21, 1997, Plaintiffs Albert Bachorowoski and Michael Connor IRA

Rollover filed an action in this District against SSA and the individual defendants, Roger E. Covey, Joseph J. Skadra, Terence H. Osborne, Terry E. Notari and Larry J. Ford (collectively, not including SSA, the "Settling Defendants") who were officers of the Company. The lawsuit was brought as a putative class action on behalf of a class of investors who purchased the common stock of SSA in the open market between August 22, 1994 and January 7, 1997, inclusive. The suit alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

9. Counsel's investigation into the alleged wrongdoing at SSA began before January 7, 1997, when SSA issued a press release announcing that it would restate its financial results for its 1994 and 1995 fiscal years. This announcement caused SSA's stock to close at \$11 3/8 per share that day, 63% lower than the Class Period high of \$30.52 per share reached on September 22, 1995.

10. To prepare the initial complaint, Plaintiffs' Counsel conducted an investigation into SSA based on sources available in published form as well as computer databases. In performing their research, Counsel reviewed, inter alia, articles, wire service stories, analysts' reports, press releases, and Securities and Exchange Commission ("SEC") filings made by or concerning SSA.

11. The complaint alleged that during the period from August 22, 1994 through and including January 7, 1997, Defendants issued to the investing public materially false and misleading financial statements concerning SSA's revenues and earnings. The alleged misrepresentations included:

1. the Company's sales revenue and earnings for fiscal 1994 and 1995 were

materially misstated;

2. the Company's financial statements did not present, in all material respects, the Company's true condition, and did not reflect all adjustments which were necessary for a fair statement of the interim and full year periods presented;

3. the Company's internal accounting controls were inadequate and, as a result, the Company prematurely and improperly recognized sales revenue; and

4. the Company's audited financial statements for the fiscal years 1994 and 1995 were not presented in conformity with generally accepted accounting principles ("GAAP") or principles of fair reporting.

12. The complaint further alleged that SSA falsely and materially overstated its net income and earnings per share for each quarterly period during the Class Period, and that by failing to file financial statements with the SEC that conformed to the requirements of GAAP, such financial statements were presumptively misleading and inaccurate pursuant to Regulation S-X, 17 C.F.R. 210.4-01(a)(1).

13. Pursuant to the requirements of the Exchange Act, § 21D(a)(3)(A)(i), Plaintiffs published notices advising members of the proposed Class of the pendency of the cases and advising Class Members of their right to file a motion for appointment as Lead Plaintiff in the class action against SSA.

14. On March 10, 1997, a group of SSA investors -- Jaspal Singh, Ravinder Singh, Michael Connor IRA Rollover and Hung A. Pham -- filed a Motion for Appointment of Lead Plaintiffs, and Entry of Pre-trial Order No. 1, seeking appointment of lead plaintiffs and lead counsel, pursuant to § 21D(a)(3) of the Exchange Act.

15. On March 12, 1997, the Court appointed these individuals to be Lead Plaintiffs in the Action and approved their selection of Cohen, Milstein, Hausfeld & Toll, P.L.L.C, Milberg Weiss Bershad Hynes & Lerach LLP and Wolf Popper LLP as Plaintiffs' Co-lead Counsel.

16. After much investigation, Plaintiffs filed a Consolidated Amended Class Action Complaint and later a Second Consolidated and Amended Class Action Complaint (the "Complaint"), which set forth in great detail the alleged violations of the securities laws by defendants.

17. Following extensive briefing, on September 23, 1998, SSA's and the Settling Defendants' motion to dismiss the Complaint and motion for summary judgment both were denied pending the outcome of the Steinberg action.

18. Defendants renewed their motion to dismiss the Complaint in 1999 and, following additional briefing, on March 3, 2000, defendants' motion to dismiss the Complaint was denied in part and granted in part, to the effect that the claims of the instant certified Class were sustained in full. Shortly thereafter, SSA filed for bankruptcy, leaving Plaintiffs to proceed solely against the individual defendants.

#### **The Price Waterhouse Litigation**

19. Meanwhile, on October 31, 1997, Plaintiff Retsky Family Limited Partnership (the "Retsky Plaintiff") filed an action (the "Retsky Action") in this District against SSA's auditors, PW. The lawsuit was brought as a putative class action on behalf of a class of investors who purchased the common stock of SSA in the open market between December 15, 1994 and January 7, 1997, inclusive. The suit alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 [17 C.F.R. §

240.10b-5] promulgated thereunder.

20. Pursuant to the requirements of the Exchange Act, § 21D(a)(3)(A)(i), notice was published advising members of the proposed Class of the pendency of the cases and advising Class Members of their right to file a motion for appointment as Lead Plaintiff.

21. On January 9, 1998, the Retsky Plaintiff filed a Motion for Appointment of Lead Plaintiff and Lead Counsel, pursuant to § 21D(a)(3) of the Exchange Act.

22. On January 13, 1998, the Court appointed the Retsky Plaintiff to be Lead Plaintiff in the Retsky Action, and approved its selection of Cohen, Milstein, Hausfeld & Toll, P.L.L.C, Milberg Weiss Bershad Hynes & Lerach LLP and Wolf Popper LLP as Plaintiffs' Co-lead Counsel, the same counsel as the instant Action.

23. The complaint against Price Waterhouse (the "PW Complaint") alleged that during the period from December 15, 1994 through and including January 7, 1997, SSA and PW materially misled the investing public, thereby inflating the price of SSA common stock by publicly issuing false and misleading financial statements for the Company's fiscal years of 1994 and 1995, and omitting to disclose material facts necessary to make said financial statements not false and misleading.

24. The PW Complaint further alleged that PW falsely and materially overstated SSA's net income and earnings per share for each quarterly period during the Class Period, and that by failing to file financial statements with the SEC that conformed to the requirements of GAAP, such financial statements were presumptively misleading and inaccurate pursuant to Regulation S-X, 17 C.F.R. 210.4-01(a)(1).

25. On January 30, 1998, PW served a motion to dismiss the PW Complaint. After

full briefing, the Court denied PW's motion to dismiss on October 21, 1998.

### **Discovery**

26. Discovery in the instant Action and the Retsky Action was coordinated. Discovery consisted of Plaintiffs' request for documents from parties to the actions as well as non-parties, requests for answers to interrogatories, and depositions. In particular, all of the document producing parties, including SSA and PW, produced over 110,000 pages of documents, which Plaintiffs reviewed. Plaintiffs deposed 19 individuals, including some of the Settling Defendants, non-defendant employees of SSA and PW, SSA's outside counsel, and an employee of KPMG, which was SSA's auditor subsequent to PW. Following merits discovery, the parties engaged in expert discovery, which involved the preparation of expert reports by each side, reviewing opposing experts' reports, and the taking of experts' depositions. Discovery in the actions was hard-fought and each party filed and defended several motions to compel discovery.

27. Plaintiffs' Counsel's investigation of the allegations against the Settling Defendants was conducted in conjunction with their investigation and prosecution of the action against PW. In performing their research, Plaintiffs' Counsel reviewed, inter alia, SSA internal documents, PW's audit workpapers, articles, wire service stories, analysts' reports, press releases, and SEC filings made by or concerning SSA.

### **Class Certification**

28. On April 25, 2000, Plaintiffs filed a motion for class certification. Defendants filed an opposition to Plaintiffs' motion for class certification, to which Plaintiffs replied. The Court granted Plaintiffs' motion on December 6, 2000, and, accordingly, certified the Class.

Notice of the proposed settlement of the Action as a class action was mailed to Class Members on or about June 13, 2002, and was published in The Wall Street Journal on or about June 24, 2002. No requests for exclusion from the Class have yet been received.

#### **Trial Preparation in the Retsky Action**

29. On December 10, 2001, this Court entered a Memorandum Opinion and Order approving the settlement and awarding Plaintiffs' Counsel attorneys' fees and expenses. Similarly, the instant Settlement was entered shortly before trial was to commence.

#### **Recovery**

30. Plaintiffs' Counsel worked with in-house and outside experts to develop a sense of overall damages suffered by the Class. The initial damage analysis was based on publicly available information concerning the price and trading volume of SSA stock. From the instant Settlement, Class Members in the Action may recover on average \$0.03 from the \$625,000 settlement. Importantly, however, many of these individuals were also eligible to participate in the \$14,000,000 settlement fund in the Retsky Action. The information concerning the instant Settlement was published in the Notice to Class Members, as required by law. This estimate presumes that all eligible claimants actually file proofs of claim. In fact, in many recent cases only about one-third of all eligible claimants actually file claims. Were that to occur in this case, the per-share recovery would be three times as much as described in the Notice.

31. Plaintiffs' Counsel consider that there was a substantial risk that Plaintiffs and the Class might not have prevailed on all their claims and that there were risks that the decline in the price of SSA common stock could be attributed, in whole or in part, to other factors. Moreover, Defendants had limited resources to fund a larger settlement, given that SSA filed for bankruptcy

on May 3, 2000.

### **III. OVERVIEW OF THE SETTLEMENT AND PLAN OF ALLOCATION**

32. The \$625,000 cash Settlement amount and the interest earned thereon shall be the "Settlement Fund." The Settlement Fund, less all taxes, approved costs, fees and expenses (the "Net Settlement Fund") shall be distributed to members of the Class who submit acceptable Proofs of Claim ("Authorized Claimants").

33. Pursuant to the terms of the Settlement Agreement, Defendants deposited \$625,000 into escrow, \$180,000 of which has been earning interest for the benefit of the Class since November 1, 2000 and the remaining \$445,000 of which has been earning interest for the benefit of the Class since June 6, 2002.

34. The Claims Administrator shall determine each Authorized Claimant's pro rata share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Claim." The Recognized Claim formula is not intended to be an estimate of the amount that a Class Member might have been able to recover after a trial; nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Claim formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants.

35. An Authorized Claimant's Recognized Claim shall mean the amount determined in accordance with the following:

- (i) for each share<sup>1</sup> of SSA common stock purchased on the open market from

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<sup>1</sup> SSA stock split three-for-two on December 28, 1995. Awards on Recognized Claims will account for this split.

August 22, 1994 through November 20, 1994 which an Authorized Claimant continued to hold as of the close of trading on January 7, 1997 (the end of the Class Period), the Recognized Claim shall be equal to "The Estimated Inflation Per Share" on the date of purchase of the SSA common stock;

(ii) for each share of SSA common stock purchased on the open market during the Class Period which an Authorized Claimant sold at a loss prior to the close of trading on January 7, 1997, the Recognized Claim shall be equal to the lesser of (a) the difference, if a loss, between The Estimated Inflation Per Share on the date of purchase of the SSA common stock during the Class Period and The Estimated Inflation Per Share on the date of sale of the SSA common stock, or (b) the difference, if a loss, between the purchase price paid (including commissions etc.) and the proceeds received on sale (net of commissions etc.).

36. Each Authorized Claimant shall be allocated a pro rata share of the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Authorized Claimants.

37. Class Members who do not submit acceptable Proofs of Claim will not share in the settlement proceeds. Class Members who do not submit an acceptable Proof of Claim will nevertheless be bound by the Settlement and the Order and Final Judgment of the Court dismissing this Action.

38. Checks will be distributed to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in

the distribution of the Net Settlement Fund cash their distribution checks, any balance remaining in the Net Settlement Fund nine (9) months after the initial distribution of such funds shall be re-distributed to Class Members who have cashed their checks and who would receive at least \$10.00 from such re-distribution. If after six months after such re-distribution any funds shall remain in the Net Settlement Fund, then such balance shall be contributed to The Legal Aid Society.

39. Each Class Member whose claim is allowed pursuant to the Stipulation shall receive a share of the Net Settlement Fund pursuant to a plan of allocation that was devised by Plaintiffs' Counsel after consultation with their damages expert. Under the proposed Plan of Allocation, each Class Member who is determined to be an Authorized Claimant will receive a proportionate share of the Net Settlement Fund based upon the ratio of the Claimant's Recognized Claim to the aggregate of all Authorized Claimants' Recognized Claims.

40. Pursuant to the Preliminary Order, Plaintiffs' Counsel implemented a notice program whereby notice was given to the members of the Class by mail and by publication. Copies of the Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing (the "Notice") and a Proof of Claim form were mailed to individuals identified as potential claimants from claim forms submitted in the Retsky Action. Copies of the Notice and Proof of Claim were also mailed to major brokerage houses who act as nominees for many shareholders together with a cover letter requesting them to forward copies of the Notice to their beneficiaries or to provide the Claims Administrator with lists of their beneficiaries so that the Claims Administrator could forward copies to the beneficiaries. A total of 8,732 Notices have been mailed to potential Class Members to date. See Affidavit of DaleAnn States of ACS

Financial & Securities Services (the "Claims Administrator"), dated July 10, 2002 (the "States Aff."), ¶ 5, filed concurrently herewith. In addition, on June 24, 2002, a summary notice was published in the national edition of The Wall Street Journal. See States Aff. ¶ 6.

#### **IV. THIS COURT SHOULD APPROVE THE SETTLEMENT**

##### **Risks of Establishing Liability**

41. Although Plaintiffs believe in the merits of its case, it was not without considerable risk, including the heavy burden of proof in a complex and lengthy trial. Plaintiffs' Counsel weighed these risks against the immediate monetary benefit provided by the proposed Settlement. Based upon these considerations, it is the opinion of Plaintiffs' Counsel, who have extensive expertise in the area of class action securities litigation, that the Settlement achieved in this Action is fair, reasonable and adequate, and should be approved by this Court.

42. In order to succeed at trial on the Section 10(b) claim, Plaintiffs would have had to prove that: (a) the Defendants possessed information about SSA alleged to have been omitted or misstated, (b) the Defendants' disclosures were false and misleading, (c) the information omitted or misrepresented would have been material to an investor in determining whether to invest in SSA, (d) the Defendants withheld information from the investing public either with an actual intent to deceive, manipulate, or defraud, or in reckless disregard of facts known to them, (e) Defendants knew or recklessly disregarded that SSA's financial statements were misstated due to SSA's revenue recognition policy that violated GAAP, and (f) that Defendants' conduct caused Plaintiffs' damages. Proving each of those factors is a heavy burden, no matter how strong the claims may appear to be.

43. It is impossible to predict how a jury would respond to Plaintiffs' argument that

several of Defendants' statements identified in the Complaint were materially false and misleading. Defendants, for instance, could seek to persuade a jury that Plaintiffs are disgruntled shareholders, upset over SSA's poor business judgment in recognizing revenue on its software contracts, and not the victim of securities fraud. Although Plaintiffs disagree, a jury might consider SSA's arguments convincing enough to find against Plaintiffs.

44. From the inception of the Action, Defendants have denied all liability and continue to disclaim any wrongdoing. Although Plaintiffs are confident that it could forcefully argue its case at trial, Defendants would be fully equipped to respond to each of Plaintiffs' claims with potentially effective arguments.

45. Just prior to the commencement of the Retsky trial, the Retsky parties agreed to an arbitration of the claims. On June 18, 2001, the Arbitrator awarded the Class \$14,000,000 for settlement of the claims against PW. It should be noted, however, that just because the Retsky Plaintiff was successful at the Arbitration, it does not necessarily follow that Plaintiffs would have been successful at a trial of the instant Action against these defendants, notwithstanding that the transactions at issue are the same. The evidence relating to the culpability of the defendants here and that of PW in the Retsky Action was substantially different. Moreover, the Arbitrator was quite sophisticated and experienced with respect to accounting and auditing issues. A jury might have been confused in ways that the Arbitrator was not. Accordingly, the Arbitrator's decision in the Retsky Action is not indicative that a jury would have returned a verdict in favor of Plaintiffs in the instant Action.

#### **Risks of Proving Damages and Loss Causation**

46. The traditional measure of damages for Rule 10b-5 claims is the "out-of-pocket"

standard. Pursuant to this standard, a plaintiff's damages equal the difference between: (i) a security's "fair value" and (ii) the price a plaintiff paid for the security on the open market while a defendant's deceptive scheme was in effect. As a result, determining out-of-pocket damages is a complex process requiring expert testimony.

47. Plaintiffs' and Defendants' experts would inevitably have different assessments of Plaintiffs' out-of-pocket damages. It is uncertain whose expert a jury would find more persuasive. Although Plaintiffs believe that they could prove injury and substantial damages, Plaintiffs recognize that a jury could be influenced by Defendants' expected arguments that the trading price of SSA common stock was affected more by various market forces and industry conditions than by Defendants' actions or omissions. Plaintiffs also faced the obstacle that the price of SSA's stock did not decline as sharply as might have been expected when SSA announced the restatement of its financial statements.

48. Defendants would also certainly argue that Plaintiffs must prove not only that it suffered damages, but that its damages were proximately caused by the alleged fraud.

49. Moreover, even if Plaintiffs were successful in proving all of the elements of their case, including damages, at trial, it is unlikely the Settling Defendants, who are individuals and not corporations, would be able to satisfy a judgment substantially larger than the Settlement amount.

#### **Risk of Delay**

50. Given the time value of money, a future recovery -- even one in excess of the proposed Settlement -- may be less valuable to the Class than receiving the benefits of the Settlement now. In addition, a delay of several more years could pose serious risks to the

development of Plaintiffs' case. The discovery of evidence, years after events have occurred, is extremely costly. Moreover, with each day that passes, memories fade and important evidence disappears.

V. **THE REQUEST FOR ATTORNEYS' FEES AND EXPENSES IS REASONABLE AND SHOULD BE AWARDED**

51. Plaintiffs' Counsel are applying for fees in the amount of 33\_ % of the \$625,000 Settlement Amount, or \$208,333.33, plus interest. Plaintiffs' Counsel are also seeking reimbursement of \$8,673.46 of their out-of-pocket expenses, which were necessarily incurred in the prosecution of this Action. As the accompanying Plaintiffs' Memorandum in Support of an Award of Attorneys' Fees and Reimbursement of Expenses (the "Fee Brief") makes clear, Courts can and frequently do award attorneys' fees based on a percentage of the a settlement fund. The percentage requested here is well within the range of what courts in this District and Circuit routinely award. This percentage is consistent with this Court's award of attorneys fees in the Retsky Action.

52. As much of the proceedings in this Action and the Retsky Action were interrelated, Plaintiffs' Counsel believes they were reasonably and fairly compensated for the effort expended in the Retsky Action at the rate of 33\_ % of the Retsky settlement. As such, Plaintiffs' Counsel is requesting the Court award additional fees in this Action at the same rate as in the Retsky Action, 33\_ %. The Settlement obtained in the instant Action is smaller than that obtained from Price Waterhouse, which reflects the realities of the differing abilities to pay a Settlement between PW and the Settling Defendants. Similarly, the requested fee is smaller, as the effort expended in obtaining the additional settlement in the instant Action was reduced due

to the effort expended in the Retsky Action.

53. The fee is also reasonable on the basis of the lodestar approach. Counsel have collectively devoted 544.25 hours to the prosecution of this action, in addition to the 14,085.18 hours worked in the Retsky Action, beginning several months before the action was filed. The expenditure of 544.25 hours, for a lodestar legal time expense of \$185,652.50, is offered to assist the Court in determining whether the percentage fee to be applied in this case constitutes an inappropriate windfall to attorneys. In this case, awarding counsel the percentage requested will not result in a windfall.

54. As outlined in the Fee Brief, Plaintiffs' Counsel's request for 33 % of the Settlement Amount is within the range of contingency fees generally awarded in private litigation, and appropriately reflects the efforts expended and the results achieved.

55. The legal and factual arguments in support of the award of attorneys' fees and the reimbursement of expenses are further detailed in the Fee Brief and Class Plaintiffs' Memorandum in Support of Final Approval of the Proposed Settlement (the "Settlement Brief"), submitted herewith. Taken together with this affidavit, these documents demonstrate that Plaintiffs' Counsel devoted substantial amounts of time and money to prosecute this action in addition to the time spent on the Retsky Action. Plaintiffs' Counsel worked efficiently and without duplicating each other's efforts. Plaintiffs' Counsel have obtained an excellent result in this complex Action.

56. Plaintiffs also seek an award of reimbursement of expenses totaling \$8,673.46. The principal source of expenses incurred are administrative costs such as telephone, fax, computer-aided research and copying costs, as well as travel. Individual affidavits from each law

firm seeking reimbursement are submitted to the Court in a separate Compendium.

### **The Results Obtained**

57. As set forth in greater detail in the Fee Brief, Plaintiffs' Counsel's efforts have produced a substantial benefit to the Class. Plaintiffs' Counsel have achieved a settlement of \$625,000 from the Settling Defendants for the benefit of the Class. This, especially when combined with the Retsky settlement, from which many of the Class Members may also receive a distribution, is an excellent recovery for the Class, given the risks articulated herein and in the Settlement Brief.

### **The Risks Assumed By Plaintiffs' Counsel**

58. Plaintiffs' Counsel accepted this case on a wholly contingent fee basis. Counsel knew from the outset that they might expend millions of dollars in attorneys' time in pursuing this Action on behalf of the Class, and receive no compensation if the Action ultimately proved unsuccessful. All of Plaintiffs' Counsel's effort and time was expended without any certainty of payment.

59. This affidavit and the Fee Brief and Settlement Brief describe the substantial risks faced by Plaintiffs in this Action. The same difficulties also constituted risks that Plaintiffs' Counsel would never be paid for their efforts.

60. There are numerous cases wherein Plaintiffs' Counsel, in contingent fee cases such as this, after expenditures of thousands of hours, have received no compensation whatsoever. For example, as described in the Fee Brief, not long ago the Eleventh Circuit overturned an \$81 million jury verdict for the plaintiff class and ordered the entire litigation dismissed. See Robbins v. Koger Properties, Inc., 116 F.3d 1441 (11th Cir. 1997). The Koger

case is but one such example. Meaningful settlement of actions such as this are only possible because of the knowledge of Defendants and their counsel that the leading members of the Plaintiffs' bar are prepared and willing to go to trial on these terms.

61. Courts have repeatedly held that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations. The SEC, a vital but understaffed government agency, does not have the budget or manpower to ensure complete enforcement of the securities laws. If this important public policy is to be carried out, the courts must award fees that will adequately compensate Plaintiffs' Counsel, taking into account the enormous risk undertaken with a clear view of the economics of the situation.

62. Another factor in favor of awarding Plaintiffs' Counsel the fees they have requested is the contingent fee attorney's loss of the use of the money used to prosecute litigation -- money that could have been invested and earning the attorney a profit. Attorneys representing hourly-rate clients are paid regularly during the course of litigation, as Defendants' counsel here probably were. That money is immediately available for investment and the creation of additional revenue for the attorneys. Such additional revenues are not available to contingent fee attorneys working on a contingent fee basis and were not available to Plaintiffs' Counsel during the length of this Action.

#### **The Complexity of the Litigation**

63. As discussed in detail in the Settlement Brief and herein, Plaintiffs' Counsel guided a complex, difficult, and challenging litigation and series of settlement negotiations.

#### **The Skill and Standing of All Counsel**

64. The expertise and experience of Plaintiffs' Counsel is another important factor to

be weighed in setting a fair fee. Plaintiffs' Counsel are experienced and skilled practitioners in the securities litigation field, and are responsible for significant settlements as well as legal decisions that enable litigation such as this to be successfully prosecuted, vindicating the interests of Class Members.

65. The quality of the work performed by counsel for Plaintiffs in attaining the Settlement should also be evaluated in light of the quality of the opposition. The Settling Defendants are represented by highly qualified and capable counsel, the firms of McDermott, Will & Emery and Robinson, Curley & Clayton, P.C.

66. The quality of work performed by Plaintiffs' Counsel is also reflected in the fact that Plaintiffs' Counsel were able to obtain such a result for the Class in a situation where the result after trial might well have been a total loss; and even if Plaintiffs' were successful, the Settling Defendants likely would be unable to satisfy even a small portion of the judgment. The efficiency with which this Action was conducted, the competency Plaintiffs' Counsel demonstrated in litigating and subsequently negotiating the Settlement of this case, and the favorable Settlement obtained despite substantial risks indicate a high-quality performance by Plaintiffs' Counsel.

**The Reaction of The Class to the Fee Request**

67. In addition to describing the litigation and the Settlement, the Notice given to Class Members included a statement Plaintiffs' Counsel intended to apply for an award of attorneys' fees "not to exceed 33\_ % of the Settlement Fund, and for reimbursement of their litigation costs and disbursements." Plaintiffs' Counsel have applied herein for fees in the amount of 33\_ % of the Settlement Fund, and accrued interest, and limited their expense amount to \$8,673.46. No objection to the fee request described in the Notice has of yet been served upon Plaintiffs' Counsel.

## VI. CONCLUSION

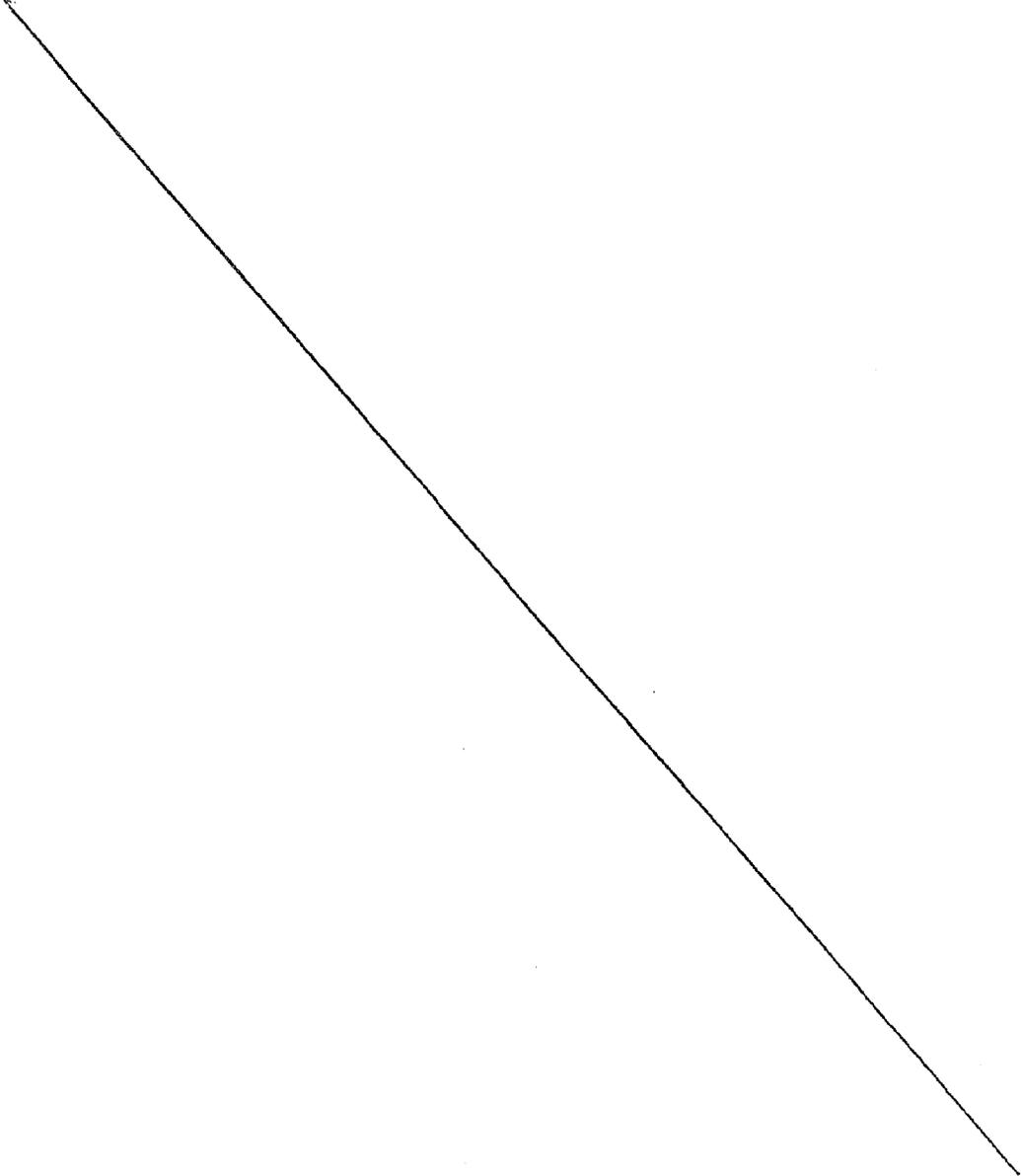
68. In achieving the proposed Settlement, Plaintiffs' Counsel carefully considered several factors, including the maximum amount Plaintiffs could reasonably expect to obtain at trial, the risks of proving liability of these Defendants, the risks of proving damages, and the risk of collecting any larger amount if all the other risks were overcome, all of which are discussed in detail in this affidavit and the accompanying Settlement Brief. Plaintiffs' Counsel considered as well the delay that would likely be incurred in obtaining a recovery for the Class by a trial of the Action and inevitable appeals therefrom.

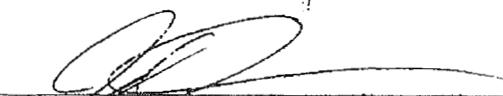
69. Based on all these factors, as well as Plaintiffs' Counsel's extensive experience litigating securities class actions, we believe that the proposed Settlement, which provides a substantial recovery to the Class and which can compensate Class Members immediately, is far more beneficial than waiting years for an uncertain outcome.

70. The Settlement and the Plan of Allocation are fair, reasonable and adequate in light of the criteria generally considered. Plaintiffs and their counsel request that this Court approve the proposed Settlement, the Plan of Allocation, and grant Plaintiffs' Counsel's

application for a joint award of attorneys' fees in the amount of 33\_ % of the Gross Settlement Fund or \$208,333.33, and expenses in the amount of \$8,673.46.

71. The foregoing is true and correct to the best of my knowledge.



  
\_\_\_\_\_  
JOSHUA S. DEVORE

Sworn to before me this  
16<sup>th</sup> day of July, 2002

  
\_\_\_\_\_  
Notary Public

  
My Commission Expires 12/14/03



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE SYSTEM SOFTWARE
ASSOCIATES, INC. SECURITIES
LITIGATION

SSA II

Master File No. 97-C-177

Judge John W. Darrah

THIS DOCUMENT RELATES TO:
ALL ACTIONS

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF
CLASS ACTION AND SETTLEMENT HEARING

TO: ALL PERSONS AND ENTITIES WHO PURCHASED THE COMMON STOCK OF SYSTEM SOFTWARE
ASSOCIATES, INC. ("SSA" OR THE "COMPANY"), FROM AUGUST 22, 1994 THROUGH NOVEMBER 20,
1994 AND ALL PERSONS AND ENTITIES WHO PURCHASED THE COMMON STOCK OF THE COMPANY
FROM NOVEMBER 21, 1994 THROUGH AND INCLUDING JANUARY 7, 1997 AND SOLD THAT STOCK ON
OR BEFORE JANUARY 7, 1997 ("THE CLASS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY
PROCEEDINGS IN THIS LITIGATION. PLAINTIFFS AND DEFENDANTS HAVE AGREED TO A SETTLEMENT OF
THE LITIGATION WHICH PROVIDES FOR BENEFITS TO ALL MEMBERS OF THE CLASS (AS DEFINED IN
PARAGRAPH 15 BELOW) IF THE SETTLEMENT IS APPROVED BY THE COURT.

THE SETTLEMENT WILL CONSIST OF SIX HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$625,000),
PLUS INTEREST:

1. NOTICE IS HEREBY GIVEN, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United
States District Court for the Northern District of Illinois, dated June 3, 2002, that a hearing will be held before the Honorable John
W. Darrah in Courtroom No. 1203 of the United States District Court for the Northern District of Illinois, 219 South Dearborn St.,
Chicago, IL, 60604 at 9:00 a.m. on August 8, 2002 (the "Settlement Hearing"): (i) to determine whether the proposed settlement (the
"Settlement") of the above-captioned litigation (the "Action") between Plaintiffs and defendants Roger E. Covey, Joseph J. Skadra,
Terence H. Osborne, Terry E. Notari, and Larry J. Ford (collectively, "Defendants") in the Action, as set forth in the Stipulation of
Settlement Between Plaintiffs and Defendants dated May 29, 2002, (the "Stipulation") is fair, reasonable and adequate; (ii) to
determine whether final judgment should be entered thereon dismissing the Action on the merits as to Defendants with prejudice and
without costs; (iii) to determine whether the Plan of Allocation of the Net Settlement Fund (as described below) is fair, reasonable,
and adequate; and (iv) for purposes of awarding attorneys' fees, costs and disbursements.

SUMMARY OF SETTLEMENT

2. Statement of Recovery: The Settlement will result in the immediate creation of a settlement fund consisting of \$625,000 in
cash (the "Settlement Sum"), plus interest (the "Settlement Fund"). The average recovery per share depends on a number of variables
including the number of shares affected, the amount of price inflation per share, and the number of claims filed and accepted.
Plaintiffs estimate that there were approximately 22.1 million shares of SSA common stock traded during the Class Period (as defined
below) that may have been damaged as a result of the alleged wrongdoing described below. However, not all of these shares are
included in the Class definition in this Action. Specifically, those persons and entities who purchased the common stock of SSA from
November 21, 1994 through January 7, 1997, and held that stock after January 7, 1997, are not included within the Class. These
purchasers were included in a corresponding state class settlement reached in Steinberg v. System Software Assoc., Inc., No. 97 CH
00287 (Cook Cty.). Plaintiffs estimate that the average recovery per damaged share of SSA common stock under the Settlement is
\$.03 per damaged share before deduction of Court-awarded attorneys' fees and expenses. Depending on the number of claims
submitted and when during the Class Period a Class Member purchased and sold his or her shares of SSA common stock, an
individual Class Member may receive more or less than this average amount.

3. Under the relevant securities laws, a claimant's recoverable damages are limited to the losses attributable to the alleged
fraud. Losses that resulted from factors other than the alleged fraud are not compensable from the Settlement Fund. For purposes of
the Settlement herein, a Class Member's distribution from the Net Settlement Fund will be governed by the proposed Plan of
Allocation described below at paragraphs 32-37, or such other Plan of Allocation as may be approved by the Court.

4. A detailed explanation of how each Class Member's claim will be calculated is set forth in the Plaintiffs' proposed Plan of Allocation which appears at paragraphs 32-37 below.

5. Statement of Attorneys' Fees and Costs Sought: Plaintiffs' Counsel intends to apply for an award of attorneys' fees from the Court to be paid from the Settlement Fund in an amount not to exceed 33 1/3% of the Settlement Fund, or approximately \$0.01 per damaged share. Plaintiff's Counsel intends to apply for a separate award of costs incurred in prosecuting the Action. Plaintiffs' Counsel has received no other consideration for prosecution of the Action.

6. Statement of Potential Outcome: If the Class prevailed on each claim alleged under the Securities Exchange Act of 1934, Plaintiffs' Counsel's damage expert estimates that the average amount of potential damages per share would be approximately \$4.08. Defendants disagree with this estimate, and dispute that the Class would prevail upon any claim absent a settlement.

7. Purpose of Notice: The purpose of this Notice is to inform you of the proposed Settlement of a class action and of a Settlement Hearing at which approval by the Court of the proposed Settlement will be sought. If you are a Class Member, this settlement may affect certain of your legal rights.

8. Reasons for Settlement: Plaintiffs and Plaintiffs' Counsel believe that the Settlement is fair, reasonable, and adequate to members of the Class. They have reached this conclusion after considering the immediate recovery to the Class, the uncertainty of the outcome of further litigation, and the ability of the Defendants to withstand a judgment against them in the absence of this Settlement. Plaintiffs' Counsel consider that there was a substantial risk that Plaintiffs and the Class might not have prevailed on all their claims at trial and that there were risks that the decline in the price of SSA common stock could be attributed, in whole or in part, to other factors. Therefore, Plaintiffs could have recovered nothing or substantially less than the amount of the Settlement Fund.

9. Further Information: For further information regarding this Settlement, contact the claims administrator or attorneys identified in paragraph 42, below.

10. The Defendants deny that they are liable to the Plaintiffs or the Class and deny that Plaintiffs or the Class have suffered any damages.

#### **BACKGROUND OF THE ACTION**

11. On January 9, 1997, a class action was filed in this Court entitled *Cox v. System Software Associates, Inc.*, Civil Action No. 97 C 0177, on behalf of the named plaintiff and all others similarly situated. Subsequently, other similar class actions were filed. By order of the Court, these various class actions were consolidated on March 12, 1997 under the caption *In re System Software Associates, Inc. Securities Litigation*, Master File No. 97-C-177. Plaintiffs in the Action filed a Consolidated Amended Complaint on April 28, 1997, and a Second Amended Complaint on December 15, 1997 (the "Complaint"). On May 3, 2000, System Software Associates, Inc. ("SSA" or the "Company"), one of the original defendants in the Action, filed for bankruptcy under Chapter 11 of the U.S. bankruptcy laws, thereby invoking the automatic stay provision. SSA is not a party to the Stipulation.

12. The Complaint asserts claims for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t, and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission, 17 C.F.R. 240.10b-5, and violations of state law (the "Class Claims"). The Class Claims contained in the Complaint were asserted on behalf of all persons and entities who purchased the common stock of SSA from August 22, 1994 through January 7, 1997, excluding individuals included in a corresponding state class settlement reached in *Steinberg v. System Software Assoc., Inc.*, No. 97 CH 00287 (Cook Cty.), and certain other persons as described in the Complaint.

13. The Class Claims relate primarily to the alleged artificial inflation of SSA's stock price during the period from August 22, 1994 through January 7, 1997, which was allegedly caused by SSA's improper recognition of revenue primarily with respect to three contracts. On January 7, 1997, SSA announced that it would restate its financial results for its 1994 and 1995 fiscal years. Plaintiffs allege that as a result of SSA's dissemination of allegedly false and misleading statements relating to its financial condition during the period from August 22, 1994 through January 7, 1997, the market price of SSA's common stock was artificially inflated, thereby causing damages to Class Members.

14. The Defendants have each vigorously denied all liability and all allegations of wrongdoing in the Action and have denied, and continue to deny, that they are liable to the Plaintiffs or the Class. Defendants have not conceded any infirmity in the defenses they had intended to assert in the Action, nor have they waived any such defenses.

#### **THE CLASS**

15. Pursuant to the Court's December 6, 2000 Order, a plaintiff Class (the "Class") has been certified, consisting of: (1) all persons and entities who purchased the common stock of SSA from August 22, 1994 through November 20, 1994; and (2) all persons and entities who purchased the common stock of SSA from November 21, 1994 through January 7, 1997, but who sold that stock on or prior to January 7, 1997. The Class is limited to those who were damaged by their purchases during the above-referenced periods. The Class specifically excludes the Defendants, members of their immediate families, any entity in which any Defendant has a controlling interest or which is a parent or subsidiary of or is controlled by SSA, and officers, directors, affiliates, legal

representatives, heirs, predecessors, successors, and assigns of any excluded person or entity. For the purposes of this Settlement, the period August 22, 1994 through January 7, 1997 is referred to herein as the "Class Period."

#### **FACTORS LEADING TO THE PROPOSED SETTLEMENT**

16. Plaintiffs, through their counsel, have made a thorough investigation into the facts and circumstances relevant to this Action, including analyses of hundreds of thousands of documents produced by Defendants, SSA and various third parties, including PriceWaterhouseCoopers, SSA's outside auditor during the relevant period. In connection with that investigation, they have considered the expense and substantial additional length of time necessary to prosecute this Action against the Defendants through trial; the uncertainties of the outcome of this complex litigation; the limited funds available; and the immediate benefit to the Class provided by the proposed Settlement. Based upon these considerations, Plaintiffs and their counsel have concluded that it is in the best interests of the Plaintiffs and the Class to settle this Action as against Defendants on the terms set forth in the Stipulation.

17. The Defendants, while denying all wrongdoing of any kind and denying any liability to Plaintiffs or the Class, and relying on the provisions of the Stipulation that the proposed Settlement shall in no event be construed or deemed to be evidence, or an admission, or a concession on the part of Defendants of any fault or liability whatsoever, and without conceding any infirmity in the defenses they have asserted or intended to assert in the Action, consider it desirable that this Action be dismissed with regards to them on the terms set forth in the Stipulation and as discussed herein in order to avoid further expense, to dispose of burdensome and protracted litigation and to terminate all controversy concerning the Action.

18. Plaintiffs and the Defendants, by their respective counsel, conducted arms-length settlement negotiations over many months, the results of which is the Settlement described herein and set forth more fully in the Stipulation. It was concluded that a Settlement which represented an immediate cash benefit is in the best interests of the Class.

#### **TERMS OF THE SETTLEMENT**

19. In full settlement of the Action, the Defendants will pay a total of \$625,000 in cash for the benefit of the Class. The Defendants have transferred the Settlement Sum to the Escrow Agent. The Settlement Sum, plus all accrued interest will constitute the Settlement Fund. The Settlement Fund will not be distributed to Class Members unless the Settlement is approved by the Court and until claims are fully reviewed and the Court issues an Order authorizing distribution to the Class, which may take months after the deadline for submission of Proof of Claim forms.

20. The consideration for the Settlement is the entry by the Court of an Order and Final Judgment which will dismiss with prejudice all Released Claims against the Released Persons, which consists of the Defendants and their respective heirs, executors and assigns. The Order and Final Judgment will bar and permanently enjoin Plaintiffs and each Class Member (with the exception of those who request exclusion from the Class by July 15, 2002 in the manner described herein), whether or not such Class Member has submitted a Proof of Claim, from prosecuting the Released Claims, as defined below, and any such Class Member shall be conclusively deemed to have fully, finally and forever released, relinquished and discharged any and all such Released Claims against the Released Persons.

21. As used herein, "Released Claims" means all actual and potential claims, liabilities, demands, causes of action, or lawsuits against any and all Released Persons, whether legal, equitable, statutory or of any other type or form, and which were brought or potentially could have been brought in an individual, representative or any other capacity, that relate to or arise out of the events, acts, or omissions alleged in the Action against the Defendants.

22. Upon approval of the Settlement by the Court and upon satisfaction of the other conditions to the Settlement, the Settlement Fund will be distributed as follows:

- (1) To pay Out-of-Pocket expenses in connection with providing Notice to the members of the Class and administering the Settlement on behalf of the Class;
- (2) To pay Plaintiffs' Counsels' attorneys' fees and reimbursement of expenses, with interest thereon, if and to the extent allowed by the Court;
- (3) To pay the reasonable costs incurred in the preparation of any tax returns required to be filed on behalf of the Settlement Fund as well as the taxes (and any interest and penalties determined to be due thereon) owed by reason of the earnings of the Settlement Fund, including taxes and tax expenses; and
- (4) Subject to the approval by the Court of the Plan of Allocation, as set forth in ¶¶ 32-37, below, the balance of the Settlement Fund (the "Net Settlement Fund") shall be distributed in accordance with the Plan of Allocation to Class Members who do not timely exercise their right to opt out of the Class and who submit valid, timely Proofs of Claim ("Authorized Claimants").

#### **APPLICATIONS FOR ATTORNEYS' FEES, COSTS AND DISBURSEMENTS**

23. Counsel for the Plaintiffs ("Plaintiffs' Counsel") shall apply to the Court for an award of attorneys' fees in an amount not to exceed 33 1/3% of the Settlement Fund, and for reimbursement of their litigation costs and disbursements. To the extent so approved

by the Court, the Settlement Fund will be reduced by such attorneys' fees and expenses. Any attorneys' fees, costs and disbursements awarded will be paid entirely from the Settlement Fund, subject to Court approval.

24. Only members of the Class will share in the distribution of the Net Settlement Fund. As a condition of the Settlement, each person claiming to be an Authorized Claimant shall be required to submit a separate Proof of Claim no later than September 20, 2002 to the address set forth in the attached Proof of Claim form. Unless otherwise ordered by the Court, any Class Member who fails to submit a Proof of Claim by September 20, 2002 shall be forever barred from receiving any payments pursuant to the Settlement set forth in the Stipulation, but will in all other respects be subject to the provisions of the Stipulation, including the terms of any judgment entered and the releases given to the Defendants.

25. The Proof of Claim, which is enclosed herewith, includes a general release of the Defendants. Extra copies of the Proof of Claim can be obtained from the Claims Administrator at the address noted in Paragraph 42(a) below.

26. The Court has reserved jurisdiction to allow, disallow or adjust the claim of any Class Member on equitable grounds. The Court also reserves the right to modify the Plan of Allocation without further notice to the Class. Payment pursuant to the Plan of Allocation attached hereto shall be conclusive against all Authorized Claimants.

#### **EXCLUSIONS FROM THE CLASS/OBJECTIONS TO THE SETTLEMENT**

27. A member of the Class will be bound by the proposed Settlement provided for in the Stipulation, in the event it is approved by the Court, and by any judgment or determination of the Court affecting the Class in the Action, unless such member shall mail by first-class mail a written request for exclusion from the Class, postmarked on or prior to July 15, 2002, to the Clerk of the Court, with a copy mailed to counsel identified in paragraph 29 herein. Such request for exclusion must state (a) the name, address and telephone number of the person seeking exclusion, (b) the title and case number of this action, (c) a statement requesting exclusion from the Class, (d) the number of shares of SSA common stock purchased and/or sold during the Class Period and the date(s) of each such purchase and sale and (e) the name and address of the person in whose name the stock is or was registered. The request must be signed by the person requesting exclusion. A request for exclusion shall not be effective unless it is made in the manner and within the time set forth in this paragraph. If a member of the Class requests to be excluded, such Class member will not receive any benefit provided for in the Stipulation in the event it is approved by the Court, meaning he will not receive any distribution from the Net Settlement Fund, or participate further in the Action.

28. Any member of the Class who does not request exclusion in the manner provided for herein may, but need not, enter an appearance in this Action at his own cost through counsel of his own choice. If he does not enter an appearance, he will be represented by the attorneys for the Plaintiffs in the Action as set forth in the Stipulation.

29. Any member of the Class who has not requested exclusion from the Class as set forth in paragraph 27 above, may appear at the Settlement Hearing in person or through counsel and be heard as to why the proposed Settlement of the Action should or should not be approved as fair, reasonable and adequate, why a judgment should or should not be entered thereon, and why all Plaintiffs' Counsel should or should not be awarded attorneys' fees, costs, and disbursements as requested; *provided, however*, that no member of the Class shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the judgment to be entered thereon approving the same, or the fees, costs, disbursements and any payments requested, unless on or before July 22, 2002, that person has served, by hand or first-class mail, written objections and copies of any supporting papers and briefs (which must contain proof of membership in the Class) upon Plaintiffs' Co-Lead Counsel:

Steven J. Toll  
Joshua S. Devore  
COHEN, MILSTEIN, HAUSFELD & TOLL  
1100 New York Avenue, N.W.  
West Tower, Suite 500  
Washington, D.C. 20005-3934

Robert M. Kornreich  
WOLF POPPER LLP  
845 Third Avenue  
New York, New York 10022

and upon counsel for the Defendants:

Alan F. Curley  
ROBINSON CURLEY & CLAYTON, P.C.  
300 South Wacker Drive  
Suite 1700  
Chicago, IL 60606

Sanford P. Dumain  
Beth Kaswan  
MILBERG WEISS BERSHAD HYNES  
& LERACH LLP  
One Pennsylvania Plaza  
New York, New York 10119

William P. Schuman  
MCDERMOTT, WILL & EMERY  
227 West Monroe Street  
Chicago, IL 60606

and has filed said objections, papers and briefs, showing due proof of service upon Plaintiffs' Counsel and Defendants' counsel with the Clerk of the United States District Court for the Northern District of Illinois, US Courthouse, 219 South Dearborn St., Chicago, IL, 60604.

30. Any member of the Class who objects to the Settlement but does not submit an objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Settlement or Plaintiffs' Counsel's application for fees, costs and disbursements.

31. The Settlement will become effective at such time as an Order entered by the Court approving the Settlement shall become final and not subject to appeal (the "Effective Date").

#### **PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS AMONG CLASS MEMBERS**

32. The Net Settlement Fund shall be distributed to members of the Class who submit acceptable Proofs of Claim (i.e., Authorized Claimants).

33. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Claim." The Recognized Claim formula is not intended to be an estimate of the amount that a Class Member might have been able to recover after a trial; nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Claim formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants.

34. An Authorized Claimant's "Recognized Claim" shall mean the amount determined in accordance with the following:

- (i) for each share<sup>1</sup> of SSA common stock purchased on the open market from August 22, 1994 through November 20, 1994 which an Authorized Claimant continued to hold as of the close of trading on January 7, 1997 (the end of the Class Period), the Recognized Claim shall be equal to "The Estimated Inflation Per Share"<sup>2</sup> on the date of purchase of the SSA common stock;
- (ii) for each share of SSA common stock purchased on the open market during the Class Period which an Authorized Claimant sold at a loss prior to the close of trading on January 7, 1997, the Recognized Claim shall be equal to the lesser of (a) the difference, if a loss, between "The Estimated Inflation Per Share" on the date of purchase of the SSA common stock during the Class Period and "The Estimated Inflation Per Share" on the date of sale of the SSA common stock, or (b) the difference, if a loss, between the purchase price paid (including commissions etc.) and the proceeds received on sale (net of commissions etc.).

35. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Authorized Claimants.

36. Class Members who do not submit acceptable Proofs of Claim will not share in the settlement proceeds. Class Members who do not submit an acceptable Proof of Claim will nevertheless be bound by the Settlement and the Order and Final Judgment of the Court dismissing this Action.

37. Checks will be distributed to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, any balance remaining in the Net Settlement Fund nine (9) months after the initial distribution of such funds shall be re-distributed to Class Members who have cashed their checks and who would receive at least \$10.00 from such re-distribution. If after six months after such re-distribution any funds shall remain in the Net Settlement Fund, then such balance shall be contributed to The Legal Aid Society.

#### **RELEASES**

38. Pursuant to the Stipulation, and subject only to the final approval of the Settlement by the Court, the Plaintiffs, in their representative capacities and each Class Member and their respective heirs, executors, administrators, representatives, agents, successors and assigns shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished and discharged the Released Persons of and from any and all Released Claims, whether or not such Class Member executes and delivers the Proof of Claim.

39. Pursuant to the Stipulation, and subject only to the final approval of the Settlement by the Court, the Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished and discharged the Plaintiffs, all Class Members and Plaintiffs' Counsel of and from any and all claims arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims.

<sup>1</sup> SSA stock split three-for-two on December 28, 1995. Unless otherwise indicated, all stock prices and other data are presented on a post split basis (i.e. share prices and inflation prior to December 28, 1995 reflect two thirds of a pre split share).

<sup>2</sup> For a table of "The Estimated Inflation Per Share," please contact the Claims Administrator.

**SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

40. If you purchased SSA common stock from August 22, 1994 through January 7, 1997 for the beneficial interest of a person or entity other than yourself, you are requested promptly to provide the name and last known address of each person or organization for whom or which you effected such purchases. The information should be sent in writing to:

SYSTEM SOFTWARE ASSOCIATES SECURITIES LITIGATION  
c/o ACS Financial & Securities Services  
P.O. Box 684  
Old Chelsea Station  
New York, NY 10113-0955

Upon receipt of such information, copies of this Notice will be sent to each beneficial owner so designated. Alternatively, you may request, in writing, additional copies of this Notice and you may mail the Notice directly to the beneficial owners of the securities referred to herein.

**EXAMINATION OF PAPERS AND INQUIRIES**

41. The foregoing is only a summary of the Action and the proposed Settlement, and does not purport to be comprehensive. For a more detailed statement of the matters involved in the Action and the proposed Settlement, you may refer to the pleadings, the Stipulation and the other papers filed in the Action, which may be inspected at the Office of the Clerk of the United States District Court for the Northern District of Illinois, US Courthouse, 219 South Dearborn St., Chicago, IL, 60604, during regular business hours of each business day.

42. All inquiries by members of the Class pertaining to the Class Claims should be directed to:

- (1) For inquiries regarding the claims process, the Proof of Claim, or other inquiries concerning the form of the settlement, contact:

SYSTEM SOFTWARE ASSOCIATES SECURITIES LITIGATION  
c/o ACS Financial & Securities Services  
P.O. Box 684  
Old Chelsea Station  
New York, NY 10113-0955  
1-800-475-4699

- (2) For inquiries regarding the litigation, the terms of the settlement, or other inquiries concerning the substance of the settlement, contact:

Steven J. Toll  
Joshua S. Devore  
COHEN, MILSTEIN, HAUSFELD & TOLL  
1100 New York Avenue, N.W.  
West Tower, Suite 500  
Washington, D.C. 20005-3934

Sanford P. Dumain  
Beth Kaswan  
MILBERG WEISS BERSHAD HYNES  
& LERACH LLP  
One Pennsylvania Plaza  
New York, New York 10119

Robert M. Komreich  
WOLF POPPER LLP  
845 Third Avenue  
New York, New York 10022

Inquiries should not be directed to counsel for Defendants, the Clerk of the Court or to the Judge.

43. All proceedings with respect to the Settlement described by this Notice and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

Dated: June 13, 2002

Clerk of the Court  
United States District Court  
Northern District of Illinois

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE SYSTEM SOFTWARE  
ASSOCIATES, INC. SECURITIES  
LITIGATION

*SSA II*

Master File No. 97-C-177

Judge John W. Darrah

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**PROOF OF CLAIM AND RELEASE**

DEADLINE FOR SUBMISSION: SEPTEMBER 20, 2002.

IF YOU PURCHASED THE COMMON STOCK OF SYSTEM SOFTWARE ASSOCIATES, INC. ("SSA" OR THE "COMPANY"), FROM AUGUST 22, 1994 THROUGH NOVEMBER 20, 1994 OR PURCHASED SSA COMMON STOCK FROM NOVEMBER 21, 1994 THROUGH JANUARY 7, 1997, AND SOLD THAT STOCK ON OR BEFORE JANUARY 7, 1997, AND ALLEGEDLY SUFFERED DAMAGES THEREBY, YOU ARE A "CLASS MEMBER" AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS. (EXCLUDED FROM THE CLASS ARE THE DEFENDANTS, MEMBERS OF THE DEFENDANTS' IMMEDIATE FAMILIES, ANY ENTITY IN WHICH ANY DEFENDANT HAS A CONTROLLING INTEREST OR WHICH IS A PARENT OR SUBSIDIARY OF OR IS CONTROLLED BY SSA, AND OFFICERS, DIRECTORS, AFFILIATES, LEGAL REPRESENTATIVES, HEIRS, PREDECESSORS, SUCCESSORS, AND ASSIGNS OF ANY EXCLUDED PERSON OR ENTITY.)

IF YOU ARE A CLASS MEMBER, YOU MUST COMPLETE AND SUBMIT THIS FORM IN ORDER TO BE ELIGIBLE FOR ANY SETTLEMENT BENEFITS.

YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND MAIL IT BY FIRST CLASS MAIL, POSTMARKED NO LATER THAN SEPTEMBER 20, 2002 TO THE FOLLOWING ADDRESS:

SYSTEM SOFTWARE ASSOCIATES SECURITIES LITIGATION  
c/o ACS Financial & Securities Services  
P.O. Box 684  
Old Chelsea Station  
New York, NY 10113-0955

YOUR FAILURE TO SUBMIT YOUR CLAIM BY SEPTEMBER 20, 2002 WILL SUBJECT YOUR CLAIM TO REJECTION AND PRECLUDE YOUR RECEIVING ANY MONEY IN CONNECTION WITH THE SETTLEMENT OF THIS LITIGATION. DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURT OR TO ANY OF THE PARTIES OR THEIR COUNSEL AS ANY SUCH CLAIM WILL BE DEEMED NOT TO HAVE BEEN SUBMITTED. SUBMIT YOUR CLAIM ONLY TO THE CLAIMS ADMINISTRATOR.

1. I purchased or otherwise acquired the common stock of System Software Associates, Inc. ("SSA") during the period from August 22, 1994, through November 20, 1994, inclusive and/or I purchased the common stock of SSA during the period from November 21, 1994 through January 7, 1997, inclusive and sold those securities on or before January 7, 1997. The period of August 22, 1994 through and including January 7, 1997 is referred to as the "class period." (Do not submit this Proof of Claim if you did not purchase SSA common stock under the circumstances described above).

2. By submitting this Proof of Claim, I state that I believe in good faith that I am a Class Member as defined above and in the Notice of Settlement of Class Action, Hearing on Proposed Settlement and Attorneys' Fee Petition and Right to Share in Settlement Fund (the "Notice"), or am acting for such person; that I am not a Defendant in the Action or anyone excluded from the Class; that I have read and understand the Notice; that I believe that I am entitled to receive a share of the Net Settlement Fund; that I elect to participate in the proposed Settlement described in the Notice; and that I have not filed a request for exclusion. If you are acting in a representative capacity on behalf of a Class Member (e.g., as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.

3. I have set forth where requested below all relevant information with respect to each purchase of SSA common stock during the Class Period, and each sale, if any, of such securities.

4. I have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, relevant portions of my tax returns or other documents evidencing each purchase, sale or retention of SSA common stock listed below in support of my claim. IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER OR TAX ADVISOR BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.

5. I understand that the information contained in this Proof of Claim is subject to such verification as the Court may direct, and I agree to cooperate in any such verification.

6. Upon the occurrence of the Effective Date (as defined in the Notice) my signature hereto will constitute a full and complete release, remise and discharge by me or, if I am submitting this Proof of Claim on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by my, its, his, her or their heirs, executors, administrators, successors, and assigns of each of the "Released Persons" of all "Released Claims," as defined in the Notice.

7. Statement of Claim

Name(s) of Beneficial Owner(s)

Name

Street No.

City

State

Zip Code

(Day)

(Night)

Telephone No.

Telephone Number

Taxpayer I.D. No. or Social Security No.

Check one:  Individual  Corporation  Trustee/Custodian  
 Estate  Other (Specify)  IRA Account

Joint Owner's Name (if any)

8. At the close of business on August 21, 1994, I owned \_\_\_\_\_ shares of SSA common stock.

9. I made the following purchases of SSA common stock during the period AUGUST 22, 1994 THROUGH NOVEMBER 20, 1994, inclusive:

Date(s) of Purchase (List Chronologically) (Month/Day/Year)	Number of Shares of Common Stock Purchased	Purchase Price Per Share of Common Stock	Aggregate Cost (including commissions, taxes, and fees)
___/___/___	_____	\$ _____	\$ _____
___/___/___	_____	\$ _____	\$ _____
___/___/___	_____	\$ _____	\$ _____
___/___/___	_____	\$ _____	\$ _____

10. I made the following purchases of SSA common stock during the period NOVEMBER 21, 1994 THROUGH JANUARY 7, 1997, inclusive:

Date(s) of Purchase (List Chronologically) (Month/Day/Year)	Number of Shares of Common Stock Purchased	Purchase Price Per Share of Common Stock	Aggregate Cost (including commissions, taxes, and fees)
___/___/___	_____	\$ _____	\$ _____
___/___/___	_____	\$ _____	\$ _____
___/___/___	_____	\$ _____	\$ _____
___/___/___	_____	\$ _____	\$ _____

11. I made the following sales of SSA common stock during the period AUGUST 22, 1994 THROUGH JANUARY 7, 1997, inclusive:

<u>Date(s) of Sale (List Chronologically) (Month/Day/Year)</u>	<u>Number of Shares of Common Stock Sold</u>	<u>Sale Price Per Share of Common Stock</u>	<u>Amount Received (net of commissions, taxes, and fees)</u>
<u>  /  /  </u>	<u>          </u>	\$ <u>          </u>	\$ <u>          </u>
<u>  /  /  </u>	<u>          </u>	\$ <u>          </u>	\$ <u>          </u>
<u>  /  /  </u>	<u>          </u>	\$ <u>          </u>	\$ <u>          </u>
<u>  /  /  </u>	<u>          </u>	\$ <u>          </u>	\$ <u>          </u>

12. At the close of business on January 7, 1997, I still owned \_\_\_\_\_ shares of SSA common stock ((include supporting documentation).

13. Substitute Form W-9

Request for Taxpayer Identification Number:

Enter taxpayer identification number below for the Beneficial Owner(s). For most individuals, this is your Social Security Number. The Internal Revenue Service ("I.R.S.") requires such taxpayer identification number. If you fail to provide this information, your claim may be rejected.

\_\_\_\_\_  
Social Security Number (for individuals)

or

\_\_\_\_\_  
Taxpayer Identification Number  
(for estates, trusts, corporations, etc.)

14. Certification

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS FORM IS TRUE, CORRECT AND COMPLETE.

I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(c) of the Internal Revenue Code because: (a) I am (We are) exempt from backup withholding, or (b) I (We) have not been notified by the I.R.S. that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the I.R.S. has notified me (us) that I am (we are) no longer subject to backup withholding.

**NOTE: IF YOU HAVE BEEN NOTIFIED BY THE I.R.S. THAT YOU ARE SUBJECT TO BACKUP WITHHOLDING, PLEASE STRIKE OUT THE LANGUAGE THAT YOU ARE NOT SUBJECT TO BACKUP WITHHOLDING IN THE CERTIFICATION ABOVE.**

Signature of Claimant (If this claim is being made on behalf of Joint Claimants, then each must sign)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date:

If the person executing this Proof of Claim is acting in a representative capacity, evidence of such person's current authority to act on behalf of the Class Member must be submitted with this Proof of Claim.

Date: \_\_\_\_\_

**THIS PROOF OF CLAIM MUST BE SUBMITTED NO LATER THAN SEPTEMBER 20, 2002, AND MUST BE MAILED TO:**

SYSTEM SOFTWARE ASSOCIATES SECURITIES LITIGATION  
c/o ACS Financial & Securities Services  
P.O. Box 684  
Old Chelsea Station  
New York, NY 10113-0955

PLEASE DETACH ALONG PERFORATION

A Proof of Claim received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by September 20, 2002, and if a postmark is indicated on the envelope and it is mailed first class, and addressed in accordance with the above instructions. In all other cases, a Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator.

If you wish to be assured that your Proof of Claim is actually received by the Claims Administrator, then you should send it by Certified Mail, Return Receipt Requested. No acknowledgment will be made as to the receipt of claim forms. You should be aware that it will take a significant amount of time to process fully all of the Proofs of Claim and to administer the Settlement. This work will be completed as promptly as time permits, given the need to investigate and tabulate each Proof of Claim. Please notify the Claims Administrator of any change of address.

**Reminder Checklist:**

1. Please sign the above declaration.
2. Remember to attach supporting documentation.
3. Do not send original stock certificates.
4. Keep a copy of your claim for your records.
5. If you move, or if this notice was sent to you at an old or otherwise incorrect address please notify the Claims Administrator of your new address.



William P. Schuman  
McDermott, Will & Emery  
227 West Monroe Street  
Chicago, Illinois 60606-5096

and upon the Commission:

Mark A. Adler  
Assistant Chief Litigation Counsel  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Mail Stop 09-11  
Washington, DC 20549-0911;

and it is further

ORDERED that the Commission may respond in writing to any comments so filed within thirty (30) days after the last date a comment may be filed, with copies of any such response to be filed with the Court and served by first-class mail upon counsel of record for defendant Covey, and all persons who submitted comments to the motion pursuant to this Order.

SO ORDERED.

\_\_\_\_\_  
ELAINE E. BUCKLO  
UNITED STATES DISTRICT JUDGE

Date: \_\_\_\_\_, 2003



settlement distribution fund in *In re Systems Software Associates, Inc. Securities Litigation*, Master File No. 97 C 177 (N.D. Ill. Order and Final Judgment docketed Aug. 27, 2002) (“SSA Federal Class Action”) for the distribution on a *pro rata* basis to the class members who will receive proceeds from that fund. Accordingly, it is hereby

ORDERED that plaintiff’s motion is GRANTED in all respects; and it is further

ORDERED that a Disgorgement Fund be established consisting of the disgorgement, prejudgment interest, and penalties that were paid by Defendant Roger Covey into the CRIS account for this case in the amount of \$316,205.38, plus accrued interest thereon; and it is further

ORDERED that David P. Boxer, CPA, of the accounting firm Weiser LLP, is hereby appointed as Special Agent for the purposes of filing tax returns and related documents of, and calculating the taxes owed by, the Disgorgement Fund; and it is further

ORDERED that the Special Agent shall have the following rights and duties:

a. The Special Agent shall propose and file any necessary federal tax returns and shall calculate the amount of taxes and any interest or penalties owing thereon as a result of the interest earned on the disgorged funds while the funds were in the Registry of the Court pursuant to the Final Judgments in this case (the “Tax Obligation”). The Special Agent shall file a request with the IRS to abate any applicable tax penalties. The Clerk of the Court will pay the Tax Obligation to the U.S. Treasury pursuant to further order of this Court.

b. The Special Agent is entitled to receive compensation from the Disgorgement Fund at his standard hourly rates in an amount not to exceed \$7,500 (including such fees as are incurred by his own partners and associates or any other accountant chosen by the Special Agent) and other reasonable and documented costs and expenses incurred in the performance of his duties (the “Special Agent Compensation”), which the Clerk of the Court will

pay to the Special Agent pursuant to further order of this Court.

c. The Special Agent is excused from all legal requirements to post a bond or give an undertaking of any type in connection with his duties and obligations as Special Agent under the Plan.

d. The Special Agent is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for his own good faith compliance with any order, rule, law, judgment, or decree, including the orders of this Court. In no event shall he be liable to the defendants or any claimant for his good faith compliance with his duties and responsibilities under this Plan relating to the Tax Obligation, nor shall he be liable to anyone for any action taken or omitted by him relating to the Tax Obligation, except upon a finding by this Court that he acted or failed to act as a result of misfeasance, bad faith, gross negligence, or in reckless disregard of his duties.

e. The Special Agent may be removed at any time by the Court, and replaced with a successor. In the event the Special Agent decides to resign, he shall first give written notice to the parties and the Court of his intention, and his resignation shall not be effective until the Court has appointed a successor. The Special Agent shall then follow such instructions as his successor or the Court may give him; and it is further

ORDERED that the Clerk of this Court shall notify Plaintiff and Plaintiff's Special Agent of the amount of money in the Disgorgement Fund that is currently in the CRIS interest bearing account in this case, and transfer those funds into a non-interest bearing registry fund of this Court where those funds shall remain pending further order of this Court; and it is further

ORDERED that, after being notified that the Special Agent has calculated the taxes owed by the Disgorgement Fund and filed tax returns, and upon further order of the Court, the Clerk of

Court shall calculate the amount of money remaining in the Disgorgement Fund after payment of the Tax Obligation, the Special Agent Compensation, and any other costs of administering the fund (the "Available Distribution") and turn over the Available Distribution to the Claims Administrator of the settlement distribution fund established in the SSA Federal Class Action for the distribution on a *pro rata* basis to the class members who will receive proceeds from that fund. The Available Distribution shall not be paid to plaintiffs' counsel in the SSA Federal Class Action or the SSA Federal Class Action Claims Administrator for any compensation or expenses. Additional terms and conditions concerning the SSA Federal Class Action Claims Administrator's distribution of funds shall be specified in a further order of the Court.

SO ORDERED.

\_\_\_\_\_  
ELAINE E. BUCKLO  
UNITED STATES DISTRICT JUDGE

Date: \_\_\_\_\_, 2003

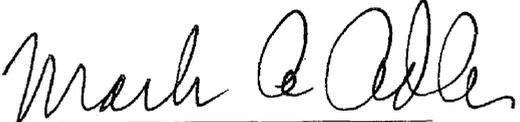
**CERTIFICATE OF SERVICE**

I hereby certify that, on July 16, 2003, I caused an executed copy of the foregoing Notice of Motion, Plaintiff Securities and Exchange Commission's Motion for Distribution of Funds in CRIS Account and Application for Appointment of Special Agent and Memorandum in Support, the exhibits thereto, and proposed Orders to be served by FedEx (standard overnight delivery) to:

William P. Schuman, Esq.  
McDermott, Will & emery  
227 West Monroe Street  
Chicago, Illinois 60606-5096  
Attorneys for Defendants Roger Covey and Joseph Skadra

and by first class mail, postage prepaid to:

Thomas J. Lacey  
Box 1854  
Iowa City, Iowa 52244  
Applicant for Intervention.

  
Mark A. Adler

Date: July 16, 2003