No. 11-1085

IN THE

Supreme Court of the United States

AMGEN, INC., *et al.*,

Petitioners,

v.

CONNECTICUT RETIREMENT PLANS AND TRUST FUNDS,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN, INC., IN SUPPORT OF RESPONDENT

SCOTT L. NELSON
Counsel of Record
ALLISON M. ZIEVE
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org

Attorneys for Amicus Curiae Public Citizen, Inc.

September 2012

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes and Rules:

Other:

INTEREST OF AMICUS CURIAE[1]

Public Citizen, Inc., a national consumer-advocacy organization founded in 1971, appears on behalf of its members and supporters nationwide before Congress, administrative agencies, and courts on a wide range of issues, and works for enactment and enforcement of laws protecting consumers, workers, and the public. Public Citizen often represents the interests of its members in litigation and as amicus curiae.

Public Citizen believes that class actions are a critically important tool for seeking justice where defendants have engaged in the same or similar unlawful conduct toward many people—investors, consumers, and employees especially—that has resulted in injuries that are large in the aggregate, but are less cost-effective to redress individually. In that situation, class actions offer the best means for both individual redress and classwide remedies, as well as deterrence of wrongful conduct, while simultaneously serving the interests of defendants in achieving definitive and binding resolution of claims against them on the broadest possible basis consistent with the requirements of due process. Class actions have historically played a vital role in civil rights cases, consumer cases, and, of particular relevance here, securities fraud cases.

---

[1] Written consents from both parties to the filing of amicus curiae briefs in support of either party are on file with the Clerk. This brief was not authored in whole or in part by counsel for a party. No person or entity other than amicus curiae or its counsel made a monetary contribution to the preparation or submission of this brief.

At the same time, Public Citizen has long recognized that class actions may be misused, to the detriment of absent class members as well as defendants. Public Citizen attorneys have, in many cases, represented class members whose rights have been compromised by the improper certification of classes and the approval of settlements that are not in their interests or that have been entered into without respect for such due process entitlements as the right of absent class members to receive notice and to opt out.

The interests of both named and absent class members, defendants, the judiciary, and the public at large are best served by adherence to the principles incorporated in Federal Rule of Civil Procedure 23. Those principles are in turn informed both by the Due Process Clause and by the considerations of fairness and efficiency that led to the creation of the modern version of Rule 23 in 1966 and to the many refinements of the Rule that have occurred since then. Public Citizen has sought to advance this view by participating, either as lead counsel, co-counsel, or amicus curiae in many of this Court's decisions that are relevant to the issues posed by this case, including *Shady Grove Orthopedic Associates v. Allstate Insurance Co.*, 130 S. Ct. 1431 (2010), *Amchem Products, Inc. v. Windsor,* 521 U.S. 591 (1997), *Smith v. Bayer Corp.*, 131 S. Ct. 2368 (2011), and *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011). Public Citizen believes that the submission of this brief may similarly be helpful to the Court in resolving this case.

SUMMARY OF ARGUMENT

Amgen's argument that certification of a plaintiff class in a securities fraud case premised on the fraud-on-the-market theory of recovery requires proof that the misrepresentations at issue were material rests on a fundamental error: It confuses the issue of whether common questions *predominate* with the issue of whether the plaintiffs will *prevail* on those common questions. Under Federal Rule of Civil Procedure 23(b)(3), a showing that common questions predominate—not proof that the plaintiffs will prevail on them—is the touchstone of class certification. In a fraud-on-the-market case, once it is established that the securities at issue are traded in an efficient market, the materiality of the claimed misrepresentations *is* one of the common questions that predominate. Plaintiffs in such a case do not have to prove that they will win on that question to establish that it and the other common issues present in a fraud-on-the-market case predominate over individual questions.

Amgen's contrary position rests less on the terms of Rule 23 and the case law construing it than on considerations of policy: Amgen contends that imposing a heavier burden on plaintiffs seeking to certify securities fraud class actions is necessary to redress disadvantages to defendants that Rule 23's operation would otherwise perpetuate. But it is Amgen's position that would have adverse effects not only on plaintiffs, but also on the courts and even on the defendants Amgen seeks to protect. By requiring plaintiffs to prove, at the certification stage, parts of their case that are not necessary to establish the existence or predominance of common questions, adoption of Amgen's view would multiply the extent and costs of precertification

discovery, and would burden both courts and parties with what would amount to two trials on the merits of each case.

Moreover, by substantially increasing the burden of precertification proceedings and the stakes of the certification decision, Amgen would perversely increase the settlement pressure exerted on defendants by both uncertified and certified class actions. And by shifting the determination of the question of materiality from the merits stage of the case to the certification stage, Amgen would, ironically, ensure that even in a case where a defendant prevailed on the materiality issue, it would not secure a resolution of that common question that would bind members of the putative class and thereby protect the defendant against successive suits.

In short, Amgen offers neither a faithful reading of Rule 23 nor a sound approach to vindicating the fundamental purposes of the Rule—providing a fair and efficient means of resolving common issues affecting large groups of litigants.

ARGUMENT

I. In a Fraud-on-the-Market Case, Materiality Is Not a *Prerequisite* to Class Certification, but One of the Common Questions That the Class Is Certified to Resolve.

Federal Rule of Civil Procedure 23 sets forth in detail the requirements that an action must meet to be certified as a class action. Absent a congresssional decision to exclude a particular type of claim from the operation of Rule 23, *any* action meeting the Rule's requirements is eligible for class certification. *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 130 S.

Ct. 1431, 1438 (2010). A court must certify a class if, and only if, it is "satisfied, after a rigorous analysis, that the prerequisites of [the Rule] have been satisfied." *Gen. Tel. Co. of SW v. Falcon,* 457 U.S. 147, 161 (1982). That determination "generally involves considerations that are 'enmeshed in the factual and legal issues comprising the plaintiff's cause of action.'" *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 (1978) (citation omitted). Thus, a court considering certification may not avoid the determinations required by Rule 23 merely because they may overlap to some extent with the merits of the plaintiffs' claims. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551-52 (2011). Nonetheless, the plaintiffs' burden at the certification stage is not to show that they will prevail on the merits, but only to "demonstrate … compliance with the rule." *Id.* at 2551.

Rule 23's requirements for certification are set forth in the first two subsections of the Rule, (a) and (b). Rule 23(a) provides that plaintiffs seeking to represent a class must show that:

> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

In addition to these four prerequisites, generally referred to as "numerosity," "commonality," "typicality," and "adequacy of representation," *see Shady*

Grove, 130 S. Ct. at 1437, the plaintiffs must also demonstrate that they meet the criteria of one of the three subdivisions of Rule 23(b). Those subdivisions, respectively, authorize certification of classes in cases where individual litigation would lead to inconsistent adjudications or otherwise impair the rights of absent parties (Rule 23(b)(1)), where classwide injunctive or declaratory relief is appropriate (Rule 23(b)(2)), or where "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy" (Rule 23(b)(3)).

If the plaintiffs succeed in showing satisfaction of the Rule 23(a) prerequisites and the requirements of one of the subdivisions of Rule 23(b), then, in the words of Rule 23(b), "[a] class action may be maintained." As this Court has explained, "[b]y its terms this [language] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action." *Shady Grove*, 130 S. Ct. at 1437. "Rule 23 unambiguously authorizes *any* plaintiff, in *any* federal civil proceeding, to maintain a class action if the Rule's prerequisites are met." *Id*. at 1442.

In case like this one, in which certification is sought under Rule 23(b), the key issues are *predominance* of common questions over issues requiring individual adjudication, and *superiority* of the class action over individual litigation as a means for resolving those common questions. The common questions that must predominate are the same "questions of law or fact common to the class" whose existence satisfies

the Rule 23(a)(2) commonality prerequisite to certification. As this Court has explained, a putative class's claims present a common question within the meaning of the Rule when the "claims … depend upon a common contention" that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 131 S. Ct. at 2551. Rule 23(b)(3)'s inquiry into whether such claims predominate, in turn, "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods, Inc. v. Windsor,* 521 U.S. 591, 623 (1997).

The identification of common questions and the determination whether those questions predominate depend on the substantive law applicable to claims for which class treatment is sought. *See, e.g., Wal-Mart*, 131 S. Ct. at 2551-52. In this case, the relevant principles of substantive law are the criteria for the assertion of a fraud-on-the-market claim under Rule 10b-5 established in this Court's decision in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), and its progeny.

Importantly, the elements of a fraud-on-the-market claim are *not* additional criteria for class certification beyond those set forth in Rule 23: Rule 23 remains the "one-size-fits-all formula for deciding the class-action question," *Shady Grove*, 130 S. Ct. at 1437, and that formula is applicable to fraud-on-the-market claims no less (and no more) than to any other claim brought in a federal court. Nor do the elements of a fraud-on-the-market claim somehow emanate from Rule 23, making them applicable only in class actions. The terms of the Rules Enabling Act, 28

U.S.C. § 2072, make clear that Rule 23, like other valid rules of procedure, does not "change plaintiffs' separate entitlements to relief," but "leaves the parties' legal rights and duties intact and the rules of decision unchanged." *Shady Grove*, 130 S. Ct. at 1443 (plurality). In other words, if a class of plaintiffs may recover damages upon proof of a fraud-on-the-market claim, it necessarily follows that each member of the class could likewise "bring a freestanding suit asserting his individual claim" for the damages he suffered. *Id*. (plurality).

Thus, class actions are available in fraud-on-the-market cases not because the fraud-on-the-market theory supplies a procedural standard for certification of a class, but because (and to the extent that) the substantive elements of such a claim provide the common questions that must exist and predominate to allow certification of a class under Rules 23(a) and (b)(3). That is precisely what this Court held in *Basic*. There, the Court first established the viability of the fraud-on-the-market theory as a substantive basis for recovery under Rule 10b-5, set forth the elements (including materiality) required to establish liability under that theory, and established a presumption of reliance upon proof of a material false statement where securities are traded in an efficient market. *See Basic*, 485 U.S. at 230-49. Based upon those holdings, the Court further concluded that the district court had been correct in certifying a class, because, under the substantive legal standard adopted by the Court, the class's claims presented common legal questions that predominated over individual questions. *See id*. at 242, 250.

Specifically, the Court in *Basic* observed that a fraud-on-the-market claim "require[s] resolution of several common questions of law and fact concerning the falsity or misleading nature of … public statements made by [the defendant], the presence or absence of scienter, *and the materiality of the misrepresentations, if any*." *Id*. at 242 (emphasis added). Absent the presumption of reliance afforded by the fraud-on-the-market doctrine, however, these common issues may be "overwhelmed" by the need to prove "individualized reliance [by] each member of the proposed plaintiff class." *Id*.

The *Basic* presumption that individual investors in securities traded in an efficient market rely on material misrepresentations (because such misrepresentations impair the integrity of market prices on which securities investors rely, *see id*. at 244-45), has the effect of overcoming the potential predominance of individual issues that might otherwise bar certification of a class. Under *Basic*, proof of the existence of an efficient market allows the answer to the common question of material falsity also to supply a common answer to the otherwise individual question of reliance. Thus, *Basic*'s substantive holding about the proof required to establish liability in a fraud-on-the-market case also makes possible a procedural finding that common issues predominate in a securities fraud class action if the criterion of an efficient market is present. As this Court explained in *Wal-Mart*:

> Rule 23(b)(3)'s requirement that "questions of law or fact common to class members predominate over any questions affecting only individual members" would often be an insuperable barrier to class certification [in class-action suits for se-

> curities fraud], since each of the individual investors would have to prove reliance on the alleged misrepresentation. But the problem dissipates if the plaintiffs can establish the applicability of the so-called "fraud on the market" presumption, which says that all traders who purchase stock in an efficient market are presumed to have relied on the accuracy of a company's public statements. To invoke this presumption, the plaintiffs seeking 23(b)(3) certification must prove that their shares were traded on an efficient market ….

131 S. Ct. at 2552 n.6.

Contrary to Amgen's assertion, plaintiffs who have shown the existence of an efficient market need not also prove that misrepresentations were material to establish that common issues predominate for purposes of Rule 23. Materiality is, of course, an element of a fraud-on-the-market claim under *Basic* (as, indeed, it is an element of a securities claim *not* resting on a fraud-on-the-market theory), but its existence is not necessary to show the presence and predominance of common questions of fact or law. Under *Basic*, it is the existence of an efficient market that allows a common, classwide answer to the question of reliance through the answer to the common question of material falsity. *See* 485 U.S. at 243-48. Thus, where an efficient market has been shown to exist, *materiality is one of the central, common questions that predominate* in a securities fraud class action. Plaintiffs need not show that they will prevail on that issue to demonstrate either that it is present or that, together with the other common questions posed by a fraud-on-

the-market claim, it predominates over individual issues.

This conclusion follows directly from *Basic*, where the Court explicitly described materiality as one of the common issues in the case—issues that predominated in light of the Court's ruling that individual reliance need not be affirmatively proved. *Id*. at 242. Thus, *Basic* affirmed the certification of a class even though the materiality of the misrepresentations at issue had *not* been established and the issue remained subject to dispute on remand under the substantive standard established by the Court. *Id*. at 240-41.

Moreover, the materiality issue in a fraud-on-the-market case fits squarely within this Court's definition of a common question: one that "generate[s] common *answers* apt to drive the resolution of the litigation." *Wal-Mart*, 131 S. Ct. at 2551 (citation omitted). In other words, a common question "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*.

Where the plaintiff has shown an efficient market, the question whether misrepresentations were materially false meets that definition exactly. Because the test of materiality is objective, depending not on the interests of particular investors but on what a "reasonable investor" would consider significant, *see Basic*, 485 U.S. at 232, the question can be, and indeed necessarily must be, answered on a classwide basis. And determining its truth or falsity will resolve an issue central to the validity of each class member's claims in one stroke. If the misrepresentations are material, not only will one element of the class's claim

be established directly, but reliance will also be presumed and a finding of liability to all members of the class will be possible (depending on the resolution of the other common issues that must be proved to establish liability).

If, on the other hand, the claimed misrepresentations are *not* material, the fraud-on-the-market claim of *each* member of the plaintiff class will fail. More than that, a finding of lack of materiality will be fatal to *any* securities fraud claim that *any* individual member of the class may advance based on the alleged misrepresentation, because materiality is an element of a securities fraud claim under Rule 10b-5 *whether or not* it invokes the fraud-on-the-market theory. *Basic*, 485 U.S. at 231-32. And materiality is judged by the same objective standard in both fraud-on-the-market cases and securities fraud cases not premised on the fraud-on-the-market theory. *Id.*

Thus, answering the question of materiality does *not* determine whether the class members' claims present common or individual issues, or whether the former predominate over the latter. It determines, in one stroke, whether the claims of each member of the class survive or fail. That quality is the essence of a common question, not of an issue that must be resolved to determine *whether* common questions exist and predominate. And because the proof of an efficient market allows a common rather than individual answer to the question of reliance, common questions (including materiality) predominate in a fraud-on-the-market case, permitting certification under Rule 23(b)(3). In short, materiality is one of the common questions *to be answered* in a securities fraud class action, not a question that must be determined before

such an action may be *allowed* to proceed under Rule 23.

II. Requiring Plaintiffs to Prove Materiality at the Certification Stage Would Be Counterproductive.

Amgen's plea that the Court require plaintiffs to prove materiality at the certification stage does not rest on a fair reading of Rule 23—which, as shown above, provides no support for Amgen's position—but largely on the contention that the burdens of class litigation require the creation of an additional obstacle to certification of a class for this category of claims. Such policy arguments are unavailing in light of Rule 23's applicability to all claims unless Congress says otherwise. *See Shady Grove*, 130 S. Ct. at 1437. Congress has not done so here, and the Rule does not permit additional certification requirements to be engrafted onto particular types of claims because of perceived policy benefits.

In any event, the cure Amgen proposes is worse than the disease it posits. By requiring that materiality—including, in Amgen's view, such questions as the validity of Amgen's asserted truth-on-the-market defense—be tried to the court at the certification stage, Amgen's position would necessarily have the effect of postponing the certification determination until the parties had a full opportunity to pursue discovery on what is essentially a merits issue.

The 2003 Amendments to Rule 23, by changing the former requirement that the certification decision be made "as soon as practicable after commencement of an action" to the current provision calling for certification to occur "at an early practicable time" (Fed. R. Civ. P. 23(c)(1)), recognized the need for substan-

tial discovery in aid of the certification decision in many cases. See Fed. R. Civ. P. 23, Advisory Comm. Notes to 2003 Amendments, Subdivision (c), Paragraph (1). As the Advisory Committee explained:

> Although an evaluation of the probable outcome on the merits is not properly part of the certification decision, discovery in aid of the certification decision often includes information required to identify the nature of the issues that actually will be presented at trial. In this sense it is appropriate to conduct controlled discovery into the "merits," limited to those aspects relevant to making the certification decision on an informed basis.

Id. By significantly expanding the degree to which the certification decision would turn on the resolution of the merits of the claim, Amgen's position would concomitantly expand the merits-related discovery needed to allow resolution of the certification issue.

Moreover, it seems unlikely that Amgen's position would be limited to the issue of materiality. Amgen's expansive logic would lead to the troubling conclusion that still other merits issues, such as whether representations were false or misleading, should also be resolved at the certification stage. Each additional merits issue folded into the certification decision would carry with it additional needs for discovery and would increase the extent to which the certification hearing would replicate the trial on the merits of the class's securities fraud claims.

The unnecessary replication of the adjudication of the merits of the claim at the certification stage would increase the burden on the court and impose additional costs on plaintiffs with potentially meritorious claims. Indeed, it would prevent a class whose claims

presented triable issues of fact as to materiality and the other elements of a fraud-on-the-market claim under the summary judgment standard—that is, issues on which a reasonable jury could permissibly reach a decision either way, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)—from reaching a jury on a classwide basis unless the plaintiffs proved their claim to the judge's satisfaction, a considerably greater burden than avoiding summary judgment.

But Amgen's approach would also undercut the very benefits Amgen seeks to achieve for defendants. By substantially delaying the time when the certification decision could be made and greatly increasing the scope of precertification discovery, most of which would be sought from the defendants, Amgen's approach would shift costs and burdens now borne by defendants *after* certification to the precertification phase of the case. The demands of facing an *uncertified* securities fraud class action would increasingly approximate those of defending a certified class action, ratcheting up the settlement pressures that Amgen points to as the principal reason for adopting its position.

Moreover, requiring adjudication of materiality and other merits questions common to the class as part of the certification decision would greatly *increase* the stakes of that determination for defendants as well as plaintiffs. Class certification would reflect a judge's factual finding not only that the securities at issue were traded in an efficient market, but also that the defendants had made material misrepresentations on which class members trading during the class period had presumptively relied. Although the defendants would likely have the opportunity to relitigate those

issues before a jury if the case went to trial, a judge's findings that the plaintiffs had already proved most of their merits case to his satisfaction would send a clear signal that the defendants had a greatly reduced chance of prevailing on the merits at a trial. In addition, a judge's finding as a matter of fact that the plaintiff had shown a material misrepresentation would certainly rule out a later grant of summary judgment to the defendant on that issue, as it would necessarily eliminate any possibility that the defendant could carry its burden of persuading the judge that there was not even a triable issue of fact as to materiality. The heightened significance of the certification decision would accentuate the shift of the burden of defending the case from after certification to before.

At the same time, deciding materiality at the certification stage would deprive defendants of much of the benefit of a *favorable* determination on that issue. If materiality were a criterion for class certification, a judicial determination that misrepresentations were not material would bind the named plaintiff with respect to the certification determination, but not with respect to the issue of materiality insofar as it is an element of the named plaintiff's individual claim. Even where a question is decided at the certification stage, it must be decided again at trial if it is an element of a substantive claim or defense. *Wal-Mart*, 131 S. Ct. at 2552 n.6. *Cf. Lytle v. Household Mfg., Inc.*, 494 U.S. 545 (1990). Thus, a ruling on materiality at the certification stage would not stop even the named plaintiff from relitigating that issue on the merits.

More importantly, adopting Amgen's position would deprive litigants and the judicial system of the

principal benefits of class actions: the gains in efficiency, fairness, and repose that accrue when genuinely common issues are litigated together on the merits in such a manner as to yield judgments that bind plaintiffs and defendants alike. A finding of lack of materiality at the certification stage would not be binding on any class member who was not a named plaintiff, either with respect to the merits of the absent class member's securities fraud claims or with respect to whether a class could be certified in another case presenting identical claims. This Court unanimously held in *Smith v. Bayer Corp*. that "in the absence of a certification under … Rule [23], the precondition for binding [a nonparty class member] was not met. Neither a proposed class action nor a rejected class action may bind nonparties." 131 S. Ct. 2368, 2380 (2011). As *Smith v. Bayer* makes clear, the principle that a decision not to certify a class does not bind absent class members applies equally to the merits of the absent class members' claims and to the issue of class certification itself. *See id.* at 2381 (acknowledging the point that "under our approach class counsel can repeatedly try to certify the same class").

Thus, under Amgen's approach of deciding materiality at the certification stage, a decision that a class could not be certified because a misrepresentation was not material would never estop another class member from making the same allegation of materiality in a subsequent fraud-on-the-market securities fraud case, *or from seeking to have an identical class certified to pursue that identical claim*. Moreover, each subsequent plaintiff would receive the benefit of tolling of the applicable statute of limitations during the time when the prior, unsuccessful class claims were pending. Indeed, this Court in *Smith v. Bayer* explicitly ob-

served that the rule that denials of class certification do not bind absent class members is fully consistent with the Court's decisions holding that the pendency of an uncertified class action tolls statutes of limitations for absent class members. *Id.* at 2379, n.10.[2]

As this Court recognized in *Amchem, Inc. v. Windsor*, the entire objective of Rule 23(b)(3) is "to cover cases 'in which a class action would achieve economies of time, effort, and expense, and promote ... uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" 521 U.S. at 615 (quoting Fed. R. Civ. P. 23, Advisory Comm. Notes to 1966 Amendments, Subdivision (b)(3)). In circumstances where an efficient market exists, *Basic* establishes that the claims of securities fraud plaintiffs turn together on common issues including materiality, falsity, and scienter. The considerations of fairness and judicial economy on which Rule 23 is based are best served by recognizing those common questions for what they are and allowing them to receive a common answer on the merits—whether favorable or unfavorable to the defendants.

---

[2] Appellate decisions predating *Smith v. Bayer* and *Shady Grove* have indicated that later plaintiffs seeking to have class actions certified, as opposed to asserting individual claims, may not receive the full benefit of tolling. *See, e.g.*, *Yang v. Odom*, 392 F.3d 97 (3d Cir. 2004). But those decisions appear impossible to square with *Smith*'s holding that denials of certification are not binding on absent class members and with *Shady Grove*'s recognition that plaintiffs with viable individual claims are entitled to maintain class actions if they satisfy the terms of Rule 23.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

SCOTT L. NELSON
Counsel of Record
ALLISON M. ZIEVE
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org

Attorneys for Amicus Curiae Public Citizen, Inc.

September 2012