

EXHIBIT B



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**Holifield Janich & Associates, PLLC Report on
the Proposed Settlement in
*Dudenhoeffer, et. al v. Fifth Third Bancorp, et. al.***

TABLE OF CONTENTS

I.	Introduction	1
II.	Executive Summary of Conclusions.....	1
III.	Holifield Janich & Associates, PLLC’s Procedure.....	2
IV.	The Litigation and Settlement History.....	2
V.	Settlement.....	6
VI.	PTE 2003-39 Evaluation.....	12

Exhibit A: Documents Reviewed

I. Introduction

There is currently pending a proposed settlement (the “Settlement”) in the class action litigation captioned *Dudenhoeffer et. al. v. Fifth Third Bancorp, et. al*, Civil Action No. 1:08-civ-00538-SSBMRA in the United States District Court for the Southern District of Ohio (the “Litigation”). Defendant Fifth Third Bancorp is a party in interest to the entities, which comprise the Settlement Class (the “Plan”). Settlement Class Members are required to meet the conditions set forth in Prohibited Transaction Exemption 2003-39 (PTE 2003-39) if they participate in the Settlement. On behalf of the Settlement Class, Holifield Janich & Associates, PLLC, was retained to evaluate whether the proposed Settlement satisfies the requirements of PTE 200-39 and provide a report the plan may utilize in determining whether to accept the Settlement as written or file an objection. Any objection or request for exclusion must be postmarked by July 11, 2016.

In addition to this report, authorizing fiduciaries may obtain additional information regarding the Litigation and the Settlement at www.fifththirderisasettlement.com. Capitalized terms not otherwise defined in this report shall have the meaning assigned to them in the Settlement.

II. Executive Summary of Conclusions

After a review of key pleadings, decisions and orders, and interviews with relevant parties, Holifield Janich & Associates, PLLC has determined that:

- The Court has preliminarily certified a Settlement Class, so there is no need for a determination by counsel regarding the existence of a genuine controversy.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, the plan of allocation and the amount of any attorney’s fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan’s likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.
- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm’s-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption 76-1.

- All terms of the Settlement are specifically described in the written settlement agreement.
- The Plan is receiving no assets other than cash in the Settlement.

In preparing this report, Holifield Janich & Associates, PLLC is serving as an independent fiduciary for the Plan. As such, we conclude that the Settlement satisfies the requirements of PTE 2003-39, and we would not opt out of the Settlement or object to the Settlement.

III. Holifield Janich & Associates, PLLC's Procedure

Holifield Janich & Associates, PLLC has reviewed the Settlement, the complaints, relevant Court opinions and orders, and other documents as listed in Exhibit A, including key briefs. In order to help assess the strengths and weaknesses of the claims and defenses in the Litigation, as well as the process leading to the Settlement, separate telephone interviews with counsel for both Defendants and Plaintiffs were conducted.

IV. The Litigation and Settlement History

The following discussions of the Litigation and the history leading to the Settlement is based primarily on excerpts and other information provided from Plaintiff's memorandum in support of preliminary approval of the settlement, supplemented as appropriate to clarify the issues presented.

A. The Settlement Class Claims and Defendants' Defenses

Named Plaintiffs filed a Consolidated Class Action Complaint on September 21, 2009 alleging that during the Class Period which began July 19, 2007 the Defendants breached their fiduciary duties under ERISA by allowing the imprudent investment of the Plan's assets in Fifth Third common stock notwithstanding that they knew or should have known that such an investment was unduly risky and imprudent, and would lead to a loss of "tens of millions of dollars" to participants who invested in the Fifth Third Stock Fund of the Master Profit Sharing Plan. The Complaint alleges in detail numerous factual bases to support an alleged breach of fiduciary duty, and set forth purported facts to establish:

- Serious Company Mismanagement: the serious mismanagement of company operations (i.e., Fifth Third shifted significantly from its historically conservative lending practices and engaged in risky subprime lending) that led directly to a decline in the company's stock price and the rapid deterioration of the company's financial condition;
- Misleading Plan Participants: several options were available to Defendants that would satisfy their fiduciary duty to plan participants but instead misled the plan participants to believe that their continued investment of assets in the Fifth Third Stock Fund would be prudent (i.e., failed to disclose the true state of affairs within the Company, thus causing the Company Stock to be artificially inflated in price);

- Conflict of Interest: Defendants had a conflict of interest insofar as their own stock compensation awards motivated them to remain silent about material negative financial information on company operations, thus allowing plan participants to continue to hold and acquire Fifth Third Stock; and
- Deliberate Concealment: Defendants' actions and inactions were intended to conceal from plan participants their breaches of fiduciary duty in a manner that could not have been discovered through due diligence by plan participants.

Named Plaintiffs assert four separate claims on behalf of the Plan as follows:

1. That all Defendants failed to prudently and loyally manage the Plan's assets, resulting in a breach of fiduciary duties in violation of ERISA Sections 404 and 405. 29 U.S.C. § 1104, §1105 [Count I];
2. That Defendants Fifth Third and CEO failed to monitor the performance of other fiduciaries, resulting in a breach of fiduciary duties in violation of ERISA Section 404. 29 U.S.C. §1104 [Count II];
3. That all Defendants failed to avoid conflicts of interest, resulting in a breach of fiduciary duties in violation of ERISA Sections 404 and 405. 29 U.S.C. § 1104 §1105 [Count III]; and
4. That all Defendants are liable for a breach of fiduciary responsibility by the other fiduciaries because of their knowledge of a breach and failure to remedy it, by knowingly participating in a breach, and by enabling another to commit a breach, resulting in co-fiduciary liability for breaches of fiduciary duties in violation of ERISA Section 405. 29 U.S.C. §1105 [Count IV].

Defendants deny the material allegations of the Complaint and specifically deny that they ever engaged in any wrongful conduct, non-disclosure, violation of law or breach of duty under ERISA. If the Litigation were to continue, Defendants would raise numerous defenses to liability, including that:

1. Defendants did not engage in any of the allegedly improper conduct charged in the Complaint;
2. Defendants were not fiduciaries of the Plan, or if they were fiduciaries, their fiduciary duties did not extend to the matters at issue in the Litigation;
3. Defendants never failed to disclose any material information regarding the Company;
4. Fifth Third Stock was at all times a prudent investment for the Plan and its participants;
5. To the extent that they were fiduciaries as to the matters at issue in the Litigation, Defendants fully and prudently discharged all of their fiduciary duties under ERISA; and

6. If the Court were to determine Defendants failed to discharge any of their fiduciary duties under ERISA, such breach of fiduciary duty did not cause the Plan or its participants to suffer any loss.

B. The History of the Litigation

Plaintiffs Dudenhoefer and Partovipanah filed their ERISA complaint on August 12, 2008 and September 11, 2008, respectively, against Fifth Third and other fiduciaries allegedly responsible for the investment of assets in the Fifth Third Bancorp 401(k) Savings Plan, formerly known as the Fifth Third Bancorp Master Profit Sharing Plan. (the “Plan”). The Court consolidated their ERISA actions on October 9, 2008. On March 16, 2009, the case was consolidated with the *Eshe* securities case for discovery purposes only.

On May 15, 2009, Plaintiffs filed a Consolidated Class Action Complaint alleging that Defendants and other Plan fiduciaries breached their fiduciary duties under ERISA through their management, oversight and administration of the Plan’s investment in Fifth Third Stock during the Class Period from July 19, 2007 and January 15, 2016. Plaintiffs asserted that as a result losses were incurred by the Plan.

After dismissal of the Outside Director Defendants, on September 21, 2009 Plaintiffs filed an amended Consolidated Class Action Complaint re-pleading the previous allegations of the prior consolidated complaint solely against the Fifth Third Defendants. On November 24, 2010, the Court granted Defendants’ motion to dismiss with prejudice and denied Plaintiffs’ request to amend the Complaint. Plaintiffs filed their Notice of Appeal to the Sixth Circuit Court of Appeals on December 22, 2010. Thereafter, the Parties participated in a telephone mediation conference held on February 2, 2011 before the Office of the Circuit Mediators for the Sixth Circuit. This conference was unsuccessful and did not result in a settlement.

Between July and October 2011 the Parties fully briefed the appeal, the case was presented by the Parties at oral argument before the Sixth Circuit Court of Appeals on June 7, 2012, and a decision was rendered by the Sixth Circuit reversing and remanding the case in an opinion issued *in Dudenhoeffer v. Fifth Third Bancorp*, 692 F.3d 410 (6th Cir. 2012). Defendants’ petition for a rehearing and rehearing en banc was denied on October 12, 2012. On December 14, 2012 Defendants petitioned for a writ of certiorari to the U.S. Supreme Court, which was granted on December 16, 2013 in *Fifth Third Bancorp. et. al. v. Dudenhoeffer, et. al.*, 134 S. Ct. 822 (2013).

During the pendency of the petition for writ of certiorari, the Parties continued to litigate the case in the district court. Defendants filed an Answer to the Complaint on October 31, 2012. Plaintiffs’ filed a motion to strike certain affirmative defenses on November 21, 2012, which was subsequently briefed by the Parties. Plaintiffs served discovery requests and interrogatories on Defendants on March 19, 2013 and, in response, Defendants filed a motion for protective order on April 18, 2013 seeking to stay the action in the district court pending resolution of the petition for writ of certiorari.

At a subsequent June 4, 2013 status conference, the district court lifted the stay it previously issued for the limited purpose of granting Plaintiffs’ request that Defendants produce documents that had

been produced in the *Eshe* action in lieu of responding to all of Plaintiffs' prior discovery requests. Fifth Third produced almost 2 million pages of documents in the securities action, which was subsequently reviewed and analyzed over the subsequent several months.

After the writ of certiorari was granted, the Parties prepared and filed their respective briefs in the U.S. Supreme Court. Others filed various amicus curiae briefs on behalf of the Plaintiffs and Defendants. Oral argument was held before the U.S. Supreme Court on April 2, 2014. On June 25, 2014, the U.S. Supreme Court issued a unanimous opinion vacating the remanding the Sixth Circuit's decision. *Fifth Third Bancorp et. al. v. Dudenhoeffer et. al.*, 134 S. Ct. 2459 (2014).

Upon remand of the case to the Sixth Circuit, the Parties engaged in mediation before the Sixth Circuit Mediation Office with Robert Kaiser. Mediation briefs were prepared and submitted by the Parties to Mr. Kaiser and an in-person mediation session was held on February 3, 2015. No settlement was reached. Several additional telephone negotiations were held and settlement proposals exchanged under Mr. Kaiser's guidance until an agreement was reached in principle on August 6, 2015. A memorandum of understanding was prepared and executed on November 16, 2015. The Parties executed a Settlement Agreement on January 15, 2016.

On March 15, 2016 Plaintiffs filed a motion for preliminary approval of the Settlement, attaching the Settlement Agreement, Proposed Plan of Allocation, proposed forms of Class Notice, and proposed orders. On March 29, 2016 the Court issued an Order granting the Motion for Preliminary Approval of Class Action Settlement and issued a Preliminary Approval Order setting a briefing schedule for final approval of settlement and filing of the Plaintiffs' petition for attorneys' fees and costs. The Court also directed that notice be given to members of the Settlement Class.

On May 11, 2016, the Settlement Administrator mailed the Class Notice to all identifiable Settlement Class Members with known addresses, published notice in the *Cincinnati Enquirer*, and made available the Class Notice and other related Settlement documentation on a website dedicated to the Settlement. On May 1, 2016 the Notice was published over the internet on PR Newswire. The deadline to file objections to the proposed Settlement was June 20, 2016. No objections were received.

C. The Discovery Conducted

There were no depositions taken nor written discovery exchanged in this case as it was decided on a motion to dismiss. At the direction of the district court, Defendants sent Plaintiffs a trove of documents produced in the companion *Eshe* securities case which related to the Fifth Third loan portfolio in 2007-09 capital issues and the correlations between what was known internally by Defendants and the disclosures made in the Bank's SEC filings. Plaintiffs' counsel in *Dudenhoeffer* had the benefits of these documents. Plaintiffs also asserted that Class Counsel conducted an extensive investigation and informal discovery before filing the Complaint, and in preparation for mediation also reviewed a significant quantity of Plan related materials produced by Defendants.

D. The Settlement Negotiations

On February 3, 2015, the Parties participated in a mediation session with Robert Kaiser, a mediator with the Sixth Circuit Office of the Circuit Mediators. The formal mediation did not result in a resolution, but the parties continued to their discussions and negotiations by way of several periodic telephonic conferences and numerous email exchanges.

On November 17, 2015, Named Plaintiffs and Defendants, through their respective attorneys, reached an agreement in principle to settle the Litigation on behalf of all persons, except Defendants and their Immediate Family Members, who were participants in or beneficiaries of the Plan, at any time between July 19, 2007, and January 15, 2016 (the “Class Period”) and whose Plan accounts included investments in Fifth Third Stock, subject to the execution of definitive settlement documentation.

Following further discussions by the Parties’ respective legal counsel on the terms of the Settlement, the Parties prepared and executed the Stipulation of Settlement. The Stipulation of Settlement was presented to the court for preliminary approval that was granted on March 28, 2016.

E. Preliminary Approval, Notice, and Objections

The Court preliminarily approved the proposed Settlement Agreement, preliminarily approved certifying a class for settlement purposes, approved the form and manner of class notice, and preliminarily approved the plan of allocation and set June 20, 2016 as the date for Settlement Class members to file objections to the Settlement. As of the date of this report, Holifield, Janich & Associates, PLLC is unaware of any objections.

V. Settlement

A. Settlement Amount and Other Consideration

The proposed Settlement provides for a non-opt out settlement in a cash amount of \$6,000,000. The amount of the Settlement Fund to be allocated and distributed to Settlement Class Members will be net of:

(a) applicable taxes on the income of the Settlement Fund and tax-related expenses incurred in connection with the taxation of the Settlement Fund, such as the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund, the reasonable fees and expenses incurred for or by a third-party vendor appointed by Class Counsel for calculation, allocation and distribution pursuant to the Plan of Allocation;

(b) the costs and expenses incurred in connection with providing notice to Settlement Class Members and administering the Settlement on behalf of Settlement Class Members;

(c) attorneys' fees and Litigation expenses awarded by the Court to Plaintiffs' Counsel;

(d) Case Contribution Awards approved by the Court in an amount not to exceed \$10,000.00 per each Named Plaintiff, John Dudenhoeffer and Alireza Partovipanah, for their service; and

(e) post-award expenses, if any, approved by the Court as an award of reasonable expenses incurred by Plaintiffs' Class Counsel in connection with post-settlement proceedings and administration.

Defendants will pay the fees for this report and evaluation.

In addition to the \$6,000,000.00 Settlement Amount, the Parties agree that Fifth Third, as settlor of the Plan, will make Plan design changes that will not be subject to amendment for the periods specified below. These plan design changes (the "Non-Monetary Relief") consists of:

A. The freezing of the Fifth Third Stock Fund such that:

a. Participants will be prohibited from investing all future employee, employer and rollover contributions into the Fifth Third Stock Fund. No new participants in the Plan will be permitted to invest in the Fifth Third Stock Fund.

b. Participants will be prohibited from transferring any or all of their existing account balance into the Fifth Third Stock Fund.

c. Participants with existing account balances invested in the Fifth Third Stock Fund will be able to transfer their assets from this Fund to any other investment option offered in the Plan. However, after the transfer of any balance out of the Fifth Third Stock Fund, they will be unable to transfer any prior transferred amounts back into the Fifth Third Stock Fund.

d. Participants with existing account balances invested in the Fifth Third Stock Fund will still be able to elect to have their dividends from the Fifth Third Stock Fund reinvested into the Fifth Third Stock Fund.

e. These changes will take effect on a date to be determined by Fifth Third but in no event later than twelve months following the Final Approval Order and Judgment.

f. Fifth Third will amend the Plan document and effectuate the changes. Fifth Third also retains the right to amend the Plan to reduce participation in or eliminate the Fifth Third Stock Fund as an investment option.

g. In addition, a communication strategy will be developed by Fifth Third to educate participants about these changes and the benefits of asset allocation and diversification.

B. With respect to the vesting schedule for matching contributions:

a. All participants are 100% fully vested in matching contributions made for plan years beginning after December 31, 2014.

b. Matching contributions for plan years beginning before January 1, 2015 and all profit sharing contributions will still be subject to a 3-year cliff-vesting schedule (0% vesting for the first two years, and 100% vesting after year three).

c. The 100% vesting for matching contributions will not apply to any Company's qualified plan that Fifth Third may acquire in the future that is merged into the Fifth Third Bancorp 401(k) Savings Plan.

d. Fifth Third retains the right to amend the Plan, including the vesting schedule applicable to matching contributions, in the future, but agrees not to amend the vesting schedule of the Plan to provide for a less generous schedule, for a period of less than five (5) years unless otherwise required by fiduciary obligations or changes in the law.

C. With respect to Fifth Third's matching contributions:

a. Fifth Third currently funds Plan contributions in the form of cash (not shares) and agrees as part of the settlement not to change this for at least the next eight (8) years.

D. With respect to notices to Plan participants who currently have more than 20% of their account(s) invested in the Fifth Third Stock Fund:

a. The Plan fiduciary will direct the record keeper of the Plan to send an annual notice to participants that have more than 20% of their account invested in Fifth Third Stock Fund and educate them about the benefits of asset allocation and diversification.

b. This annual notification will be sent so long as the Fifth Third Stock Fund is in existence.

E. With respect to improving fiduciary training for Plan participants:

a. The Fifth Third Bancorp Pension, Profit Sharing, and Medical Plan Committee members receive annual fiduciary training.

b. Fifth Third agrees to increase this training to be conducted at least twice annually,

B. Settlement Class and Class Period

The Settlement Class, preliminarily certified by the Court, is defined as:

All Persons (excluding the Defendants and their Immediate Family Members) who were participants in or beneficiaries (including alternate payees) of the Fifth Third Bancorp 401(k)

Savings Plan (formerly known as the Fifth Third Bancorp Master Profit Sharing Plan) at any time between July 19, 2007 and January 15, 2016 (the “Class Period”), and whose Plan account included investments in Fifth Third Stock.

C. The Release

The Settlement includes a release by the Settlement Class for all claims that:

(a) were brought or could have been brought in the Litigation and arise out of the same or substantially similar facts, circumstances, situations, transactions, or occurrences as those alleged in the Litigation during the Settlement Class Period; or

(b) were brought or could have been brought under ERISA based on or relating to the investment of Plan assets in Fifth Third Stock by or through the Plan during the Settlement Class Period.

(Stipulation of Settlement, Section 1.34)

The Settlement includes a release by the Defendants for all claims that:

related to the institution or prosecution of the Litigation or relating to the settlement of any of Plaintiffs’ Released Claims.

(Stipulation of Settlement, Section 1.15)

Based on discussions with counsel for Plaintiffs and counsel for Defendants, we understand that the Defendants’ released claims is intended to principally cover any potential claim arising from an alleged violation of Rule 11 of the Federal Rules of Civil Procedure.

The releases and discharges do not include the release or discharge of any rights or duties of the parties arising out of the Settlement Agreement, including the express warranties and covenants contained therein.

D. The Covenants Not to Sue

The Settlement includes covenants not to sue by the Settlement Class that covenant and agree:

(a) not to file any claim (whether individually, derivatively, on behalf of a class, or in any other capacity) released as stated in the Settlement Agreement against any of the Defendants or their administrators, heirs, agents or professional advisors, and

(b) that the foregoing covenant and agreement shall be a complete defense to any claim against the Defendants or their administrators, heirs, agents or professional advisors.

The covenant not to sue does not preclude any action or claim related to the interpretation or enforcement of the Settlement Agreement.

(Stipulation of Settlement, Section 4.11)

The Settlement includes covenants not to sue by the Defendants that covenant and agree:

(a) not to file any claim released as stated in the Settlement Agreement against any of the Named Plaintiffs, the Settlement Class, Plaintiffs' Counsel, and each of their appointed representatives, and

(b) that the foregoing covenants and agreements shall be a complete defense to any claim against the Named Plaintiffs, the Settlement Class, Plaintiffs' Counsel, and each of their appointed representatives.

The covenant does not preclude any action or claim related to the interpretation or enforcement of the Settlement Agreement.

(Stipulation of Settlement, Section 4.1.2)

E. The Plan of Allocation

The Plan of Allocation is based on the pro rata losses of individual Settlement Class Members vis-à-vis the Plan's losses. After payment of attorneys' fees and expenses and expenses associated with class notice and the administration of the Settlement, and after payment of taxes by the Plan, the balance of the Settlement Amount is to be allocated to participants or beneficiaries who are Settlement Class Members in accordance with the Plan of Allocation procedures as described below:

Prior to disbursement of the Net Settlement Fund to the Plan, Defendants are to provide the Settlement Administrator with data needed to determine the amount of the Net Settlement Fund to be distributed to each Settlement Class Member.

Determination of Net Loss

For purposes of determining the amount to be allocated to each Settlement Class Member, the Settlement Administrator will determine the Net Loss as follows:

Net Loss = $A + B - C - D$, where for each Settlement Class Member's account:

A = the dollar value, if any, of the balance invested in the Fifth Third Stock Fund on the first day of the Settlement Class Period;

B = the dollar value, if any, of all acquisitions of the Fifth Third Stock Fund after the first day of the Settlement Class Period and during the Class Period as of the time of purchase(s);

C = the dollar value, if any, of all dispositions of the Fifth Third Stock Fund during the Settlement Class Period as of the time of the sale(s), and

D=the dollar value, if any, of the Fifth Third Stock Fund remaining on the last day of the Settlement Class Period.

Determination of Plan Loss and Preliminary Fractional Share

Net Losses of the Settlement Class Members will be totaled to determine the entire Plan loss over the Class Period. The Settlement Administrator shall then calculate for each Settlement Class Member his or her “Preliminary Fractional Share” of the Plan’s Loss by dividing each Settlement Class Member’s Net Loss by the Plan’s Loss.

Calculation of Preliminary Dollar Recovery

The Settlement Administrator then calculates for each Settlement Class Member his or her Preliminary Dollar Recovery of the Net Settlement Fund by multiplying the Settlement Class Member’s Preliminary Fractional Share by the Net Settlement Fund.

The proposed Plan of Allocation is consistent with the claims made by the Plaintiffs on behalf of the Settlement Class and is reasonable.

F. Attorneys’ Fees and Named Plaintiff Awards

Plaintiffs’ counsel has requested an attorney fee award of \$2,000,000, which is one third of the \$6,000,000 Settlement Fund. Plaintiffs’ counsel’s total lodestar (normal fees multiplied by hours worked on the case) is \$3,096,813.75, which results in a fractional multiplier of 0.65. The total number of billable hours for the 3 firms representing plaintiffs and the Class is 6,604.6 hours, which is a reasonable number given the heavily contested and protracted nature of this litigation over the span of an 8-year period. The 33% percentage requested is significantly less than Plaintiffs’ Counsels’ lodestar and therefore is quite reasonable under the circumstances of this particular case. The requested percentage of the fund award actually results in a discount of Counsels’ normal fees.

Multipliers well above the fractional multiplier Plaintiffs’ Counsel has requested are routinely granted in similarly complex ERISA class action cases. In addition to the Monetary Relief, the Settlement provides for Non-Monetary Relief, which are a series of structural changes to the Plan, which will provide significant benefits to the Plan participants.

This case presented a variety of complex issues, the case was hard-fought and skillfully litigated (including an appeal to the Sixth Circuit Court of Appeals and the U.S. Supreme Court), and counsel obtained a valuable settlement in light of the risks involved. Because of the work performed, the result achieved for the Settlement Class, the complexity of the litigation, the litigation risk assumed by Plaintiffs’ counsel, and the combination of the percentage and the lodestar multiplier, and the additional Non-Monetary Relief agreed upon by the Parties, Holifield Janich & Associates, PLLC finds the requested attorneys’ fees to be reasonable.

Plaintiff's counsel also seek reimbursement of their out-of-pocket expenses of \$207,283.17, which includes standard litigation costs and expenses such as costs for experts, document depository, appellate printing costs, copying, postage, and other miscellaneous costs incurred during the litigation of this case. Holifield Janich & Associates, PLLC finds the request for expenses to be reasonable.

Plaintiffs' counsel has requested case contribution awards of \$10,000 each to John Dudenhofer and Alireza Partovipanah, the Named Plaintiffs' and Class representatives in this Litigation. This award is within the range of similar awards in ERISA cases. The amounts requested are in line with amounts typically awarded in analogous cases. Their respective declarations submitted to the Court attest that both devoted substantial effort and time to the litigation (in excess of 65 hours each), reviewing draft pleadings and motions, searching for and producing relevant documents, reviewing filings, and communicating regularly with Plaintiffs' Class Counsel throughout the litigation. Holifield Janich & Associates, PLLC finds the request for the case contribution awards to be reasonable.

VI. PTE 2003-39 Evaluation

Holifield Janich & Associates, PLLC has evaluated whether the Settlement satisfied the requirements of PTE 2003-39, as described below:

1. The Court has preliminarily certified a Settlement Class.

The requirement of a determination by counsel regarding the existence of a genuine controversy does not apply.

2. The Settlement terms, including the scope of the release of claims, the amount of cash and non-monetary relief to be received by the Plan, and the amount of any attorney's fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.

The allegations, defenses and arguments in this case are complex.

Count I of the Complaint alleged that during the class period, Fifth Third switched from being a conservative lender to a subprime lender with a result that its loan portfolio became increasingly at risk due to defaults. Because of this change in its lending philosophy and its management of the company Plaintiffs claim that Defendants knew or should have known – based on both public and non-public information—that investing in Fifth Third common stock was too risky for a retirement plan. As a result, Plaintiffs alleged that Defendants breached their fiduciary duty of prudence as follows:

- (a) not selling the ESOP's holdings in Fifth Third stock;
 - (b) not preventing participants from making further purchases of Fifth Third stock;
- and

- (c) not publicly disclosing supposedly inside information material to the value of Fifth Third stock;
- (d) by making misrepresentations and omissions in SEC filings regarding Fifth Third's financial condition, causing the Fifth Third stock price to be artificially inflated and preventing Plan participants from appreciating the true risks of their Fifth Third stock investment.

The remaining three counts are causes of action derivative of and dependent on the success of Plaintiffs' Count I claim for breach of fiduciary duty:

Count II: the failure to monitor persons to whom Defendants delegated their fiduciary duties;

Count III: the failure to avoid conflicts of interest; and

Count III: the failure to remedy another's breach of fiduciary duty.

Defendants' motion to dismiss the Complaint in its entirety for failure to state a claim was granted by the district court but reversed by the Sixth Circuit Court of Appeals. The U.S. Supreme Court granted certiorari to determine whether the Sixth Circuit applied the proper pleading standard regarding Plaintiffs' duty of prudence claims. In a unanimous opinion vacating and remanding the Sixth Circuit's decision, the Supreme Court abrogated twenty years of ERISA jurisprudence by rejecting application of the "presumption of prudence" at the pleading stage, ruling that ESOP fiduciaries are subject to the duty of prudence just as other ERISA fiduciaries are.

The Supreme Court also held that the Sixth Circuit failed to apply the proper pleading standard in the case. Where stock is publicly traded, as in this case, allegations that a fiduciary should have recognized the market was improperly valuing the stock are "implausible as a general rule" and requires allegations of "special circumstances" that would establish that reliance on the market price would be imprudent. Where a fiduciary claim is based on non-public information, the Supreme Court held that "a plaintiff must plausibly allege an alternative action that the defendant could have taken that would have been consistent with the securities laws and that a prudent fiduciary in the same circumstances would not have viewed as more likely to harm the fund than to help it."

After the Supreme Court rendered its decision, the parties subsequently engaged in settlement discussions that led to execution of the Settlement Agreement. The parties have vigorously litigated the case over an 8-year period. Defendants have steadfastly denied any wrongdoing or liability, and have maintained that if the case were allowed to proceed, they would assert strong defenses to each claim.

Defendants have consistently denied any liability in this case and have asserted—with initial success—that Plaintiffs' Complaint fails to state a claim. Notwithstanding the reversal of the district court's previous grant of their motion to dismiss, Defendants point to the U.S. Supreme Court opinion to continue their contention that Plaintiffs' claims cannot be maintained under the new pleading requirements that the Supreme Court established.

Defendants continue to maintain in this Litigation that the Supreme Court held that the Complaint fails to allege that Defendants acted imprudently in relying on publicly available information. (Defendants' Joint Mediation Statement, Page 7: quoting the Supreme Court opinion to state that "ERISA fiduciaries . . . may, as a general matter, . . . prudently rely on the market place" and the Sixth Circuit "did not point to any special circumstances rendering reliance on the market price imprudent").

Further, Defendants contend that Plaintiffs have not alleged facts required by the Supreme Court to demonstrate that Defendants acted imprudently in connection with any non-public information. (Defendants' Joint Mediation Statement, Page 7: quoting the Supreme Court opinion, stating that Plaintiffs' did not and cannot "plausibly allege an alternative action that the defendant could have taken . . . consistent with the securities laws" or "plausibly allege that a prudent fiduciary in the defendant's position could not have concluded that stopping purchases . . . or publicly disclosing inside information" of Fifth Third stock would do more harm than good).

Defendants also argue that Plaintiffs' fail to state a claim for misrepresentation or omission because allegations of the Complaint that the Plan incorporated by reference into its Master Profit Sharing Plan Prospectus certain SEC filings which allegedly contain misstatements and omissions is not inconsistent with case law holding that preparation, signing and filing of SEC documents –including a plan prospectus—are not fiduciary acts under ERISA. (Defendants' Joint Mediation Statement, Page 9-10).

Finally, Defendants' state that Plaintiffs' claim of co-fiduciary liability, derivative of the primary breach of fiduciary duty claim, would fail when the fiduciary breach claim is dismissed. (Defendants' Joint Mediation Statement, Page 10). In sum, Defendants continue to believe this case to be highly defensible with strong legal positions. Notwithstanding, Defendants have offered what they believe to be a fair Settlement to avoid the continued expenditure of time, money and resources in defense costs. (Defendants' Joint Mediation Statement, Page 10). Defendants did not assert nor forgo any claims of their own.

By contrast, Plaintiffs have asserted in their recent pleadings in the district court that they believe they would ultimately be successful, though they acknowledge the strong defenses they would face if the Litigation were to continue. Plaintiffs also acknowledge they would face some unique challenges based upon the Supreme Court opinion establishing new pleading requirements, resulting in uncertainty in post-Fifth Third case law. For example, Plaintiffs acknowledge that "no plaintiff has successfully pled "special circumstances" in an action post-Fifth Third." (Plaintiffs' Memorandum of Law In Support of Preliminary Approval of Settlement, Page 17). Notwithstanding, Plaintiffs maintain that they could surmount the defense issues though "ultimate success is not assured" and "when viewed in light of the risks of proving liability" the Settlement is in Plaintiffs' view fair, adequate and reasonable. (Plaintiffs' Memorandum of Law in Support of Preliminary Approval of Settlement, Page 18).

With regard to the cash amount of the Settlement, Plaintiffs calculated their potential damages to be anywhere from mid-seven figures to eight figures. Notwithstanding, Plaintiffs acknowledge the uncertainty in calculating the amount of actual damages at the current stage of the Litigation (without the benefit of discovery), the uncertain impact of expert testimony for each party, and thus the fact that proving damages would be fraught with risks. (Plaintiffs' Memorandum of Law in Support of Preliminary Approval of Settlement, Page 20).

In light of the substantial expense and risk that would be involved in further litigation, the difficulty in prevailing on the merits and establishing damages, and the delay that would result in providing any relief to the Settlement Class Members if this 8-year old Litigation continued through additional motion practice, trial and appeal, the \$6,000,000 cash amount and non-monetary relief of the Settlement is reasonable.

Holifield Janich & Associates, PLLC also finds that the Release, the Plan of Allocation, the Attorneys Fee and Expense request, and the requested Contribution Award payments to the class representatives are reasonable.

3. **The terms and conditions of the transaction are no less favorable to the Plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.**

As previously indicated, Holifield Janich & Associates, PLLC has determined that Plaintiffs' counsel obtained a favorable agreement from Defendants in light of the challenges in proving the underlying claims. In addition, the record in this case strongly indicates that the terms and conditions of the Settlement were agreed to by unrelated parties after hard-fought litigation and arm's-length negotiations, a conclusion that was reinforced by discussions with Plaintiffs' and Defendants' counsel.

4. **The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.**

Holifield Janich & Associates, PLLC found no such agreement, arrangement or understanding.

5. **The Plan is not extending credit to a party in interest as a result of the Settlement.**

The conditions in PTE 2003-39 related to extension of credit do not apply.

6. **The transaction is not described in PTE 76-1.**

The Settlement does not relate to delinquent employer contributions to multiple employer plans and multiple employer collectively bargained plans.

7. **All terms of the Settlement are specifically described in the written settlement agreement.**

The parties filed a Stipulation of Settlement and Release that contains terms of the Settlement.

8. **The non-cash consideration makes the Settlement more valuable than an all-cash Settlement would have been.**

Professor of Finance Krishna Ramaswamy of The Wharton School for Business prepared a report on the valuation of the structural relief for submission to the Court on July 1, 2016. In his report, Professor Ramaswamy concluded that educating Plan participants about the changes set forth in Section 7.4.1(a)-(f) and the benefits of asset allocation and diversification--as required by Section 7.4.1(g) of the Settlement Agreement--would be a benefit having an estimated dollar value to the Plan of between \$1.6 to \$3.2 million. With regard to the other forms of non-monetary relief set forth in Sections 7.4.2-5 of the Settlement Agreement, Professor Ramaswamy believes such measures would add—and not reduce—the value of the overall benefits from the Settlement Agreement, notwithstanding the fact that a monetary valuation cannot be ascribed to them.

Holifield Janich & Associates, PLLC finds that the non-monetary relief included in the Settlement Agreement provides a significant benefit to existing and future Plan participants, and that these terms are consistent with the objectives of the Litigation. To the extent the non-monetary relief described in the Settlement Agreement is considered to be non-cash assets under PTE 2003-39, the related requirements are met.

9. **Acknowledgement of fiduciary status.**

Holifield Janich & Associates, PLLC is acting as a fiduciary with respect to the Settlement Class Members. We have evaluated whether the Settlement satisfies the requirements of PTE 2003-39 and approve this settlement pursuant to the Stipulation of Settlement.

10. **Recordkeeping.**

Plan's fiduciaries will need to keep records related to compliance with PTE 2003-39 and make them available for inspection by Plan participants and beneficiaries, as required by PTE 2003-39. Holifield Janich & Associates, PLLC will maintain the records of its engagement for a period of six years as required by PTE 2003-39.

11. **Independence.**

Holifield Janich & Associates, PLLC represents that it has prepared this report as an independent fiduciary and has no relationship to, or interest in, any of the settling parties that might affect the exercise of its best judgment as an independent fiduciary to the Settlement Class Members and that it is independent of the parties in the action.

Very truly yours,

HOLIFIELD · JANICH & ASSOCIATES, PLLC



By: _____
Daniel N. Janich

DNJ:scr

Exhibit A: Documents Reviewed

DOCUMENTS REVIEWED

1. U.S. District Court - Complaint
2. U.S. District Court - Consolidated Class Action Complaint with Exhibits
3. U.S. District Court - Consolidated Amended Complaint
4. U.S. District Court - Defendants' Motion to Dismiss & Exhibits
5. U.S. District Court - Response in Opposition to Motion to Dismiss
6. U.S. District Court - Defendant's Reply in Support of Motion to Dismiss
7. U.S. District Court Order Granting Motion to Dismiss
8. U.S. District Court - Defendants' Answer to Plaintiffs' Amended Complaint
9. U.S. District Court - Plaintiffs' Motion for Preliminary Approval
10. U.S. District Court - Plaintiffs' Memorandum in Support of Motion for Preliminary Approval
11. U.S. District Court Order Granting Preliminary Approval
12. U.S. District Court - Plaintiffs' Motion for Final Approval of Settlement, Certification of Class and Approval of Plan of Allocation
13. U.S. District Court - Memorandum of Law In Support of Plaintiffs' Unopposed Motion for Final Approval of Settlement and Approval of Plan of Allocation
14. U.S. District Court - Proposed Court Order on Final Approval and Judgment
15. U.S. District Court - Plaintiffs' Motion for Attorney's Fees
16. U.S. District Court - Affidavit in Support of Plaintiffs' Motion for Attorney's Fees
17. U.S. District Court - Memorandum of Law in Support of Plaintiffs' Motion for Attorney's Fees
18. U.S. District Court - Proposed Court Order Approving Fees
19. U.S. District Court - Declarations of: Mark Gyando; Tina Chiango; Thomas McKenna; Ronald Perry; Plaintiff Dudenhoefer; and Plaintiff Alireza Partovinah
20. U.S. District Court - Notice of Corrected Exhibit 1
21. Memorandum of Understanding
22. U.S. District Court - Stipulation of Settlement with Exhibits
23. U.S. District Court - Plan of Allocation
24. Fifth Third ERISA Escrow Agreement as Fully Executed
25. U.S. District Court - Order on Joint Motion to Remand
26. Plaintiffs' Mediation Statement
27. Defendants' Joint Mediation Statement
28. Professor Krishna Ramaswamy's Report on Valuation of Non-Monetary Relief
29. Firm Overview of Kessler Topaz Meltzer
30. Firm Overview of Gainey McKenna & Egleston
31. Sixth Circuit – Appellants' Reply Brief
32. Sixth Circuit – Brief of Appellants
33. Sixth Circuit – Brief of Appellees
34. Sixth Circuit Court of Appeals Opinion
35. Sixth Circuit Order for Joint Motion to Remand
36. Fifth Third Bancorp Petition for Writ of Certiorari
37. U.S. Supreme Court - Petitioners' Merit Brief

38. U.S. Supreme Court - Petitioners' Reply Brief
39. U.S. Supreme Court - Respondents' Brief
40. U.S. Supreme Court – Supp. Brief of Fifth Third Bancorp
41. U.S. Supreme Court – Supp. Brief of Respondents
47. U.S. Supreme Court Decision