



## STATEMENT OF LEGAL AUTHORITY

Rule 201 governs judicial notice of adjudicative facts. FRE 201(a). The taking of judicial notice is required under subdivision (d) of the Rule only when a party requests it and the necessary information is supplied. FRE 201, Advisory Committee Notes to subdivisions (c) and (d). The facts that may be considered for judicial notice must nevertheless be relevant evidence within the meaning of Rule 401 in order for those facts to be admissible adjudicative facts. See 21 Charles A. Wright & Kenneth A. Graham, Jr., *Federal Practice and Procedure: Evidence* § 5105 (1977); see also, e.g., *Vermont Public Interest Research Group v. United States Fish & Wildlife Service*, 247 F. Supp. 2d 495, 516 (D. Vt. 2002); *In re Luxottica Group, SpA Securities Litigation*, 293 F. Supp. 2d 224, 230 (E.D. N.Y. 2003); *Kramer v. Time Warner, Inc.*, 937 F.2d 767, 774 (2d Cir. 1991). “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” FRE 403; see also *In re Indian Palms Associates v. California Federal Bank*, 61 F.3d 197, 205-06 (3d Cir. 1995); *Prater v. Commissioner of Internal Revenue*, Nos. 22489-89, 10956-90, 1993 WL 220398, \*3-\*4 (U.S. Tax. Ct. June 23, 1993). Thus, facts appropriate for judicial notice must be relevant and their probative value must outweigh unfair prejudice.<sup>1</sup>

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<sup>1</sup> Some of the cases cited by the Underwriter Defendants in their first request for judicial notice are informative. For example, the court in *Kramer v. Time Warner*, 937 F.2d at 774, notes that a court may take judicial notice of the contents of “relevant” documents filed with the Securities and Exchange Commission. In *In re Homestore.com, Inc. Securities Litigation*, 347 F. Sup. 2d 814, 816 (C.D. Ca. 2004), the court explains that an “adjudicative fact” is one “to which the law is applied in the process of adjudication,” which implicitly acknowledges the relevancy requirement. In *In re Capline Corp. Securities Litigation*, 288 F. Supp. 2d 1054, 1076-77 (N.D. Ca. 2003), a case which is entirely different from the instant case both procedurally and factually, the court noted that it could take judicial notice of certain relevant facts, but refused to do so as to others it determined were not relevant.

**RESPONSES AND OBJECTIONS TO THE  
UNDERWRITER-RELATED DEFENDANTS'  
FIRST REQUEST FOR JUDICIAL NOTICE**

Lead Plaintiff does not oppose the Underwriter Defendants' requests numbered one through seventeen, and requests that the facts set forth therein be conclusively established for all parties. Lead Plaintiff objects to Underwriter Defendants' requests numbered eighteen through twenty as follows:

**REQUEST NO. 18:**

UW Exhibit 18381 is SOP 90-7, *Financial Reporting by Entities in Reorganization Under the Bankruptcy Code*, issued by the AICPA on November 19, 1990.

**OBJECTION:**

Lead Plaintiff objects to this request for judicial notice because either it does not seek judicial notice of facts that are relevant or the probative value of any facts in the request is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

**REQUEST NO. 19:**

UW Exhibit 18382 is CS Section 100, *Consulting Services: Definitions and Standards*, effective for engagements accepted on or after January 1, 1992.

**OBJECTION:**

Lead Plaintiff objects to this request for judicial notice because either it does not seek judicial notice of facts that are relevant or the probative value of any facts in the request is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

**REQUEST NO. 20:**

UW Exhibit 18383 is ET Section 201, "General Standards" of the AICPA *Code of Professional Conduct*, and was adopted by the AICPA on January 12, 1998.

**OBJECTION:**

Lead Plaintiff objects to this request for judicial notice because either it does not seek judicial notice of facts that are relevant or the probative value of any facts in the request is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

**LEAD PLAINTIFF'S FIRST REQUEST FOR JUDICIAL NOTICE**

Lead Plaintiff respectfully submits this request pursuant to Rule 201(d) of the Federal Rules of Evidence for the Court to admit into evidence Exhibits 1 through 44 annexed hereto, take judicial notice of the following facts concerning the identified standards that were in effect during the class period, and instruct the jury that they should take the noticed facts as conclusively proved:

1. In 1998, at the request of the chairman of the Securities and Exchange Commission, the Public Oversight Board appointed a Panel on Audit Effectiveness and charged it to thoroughly examine the audit model. The Panel and its staff completed a comprehensive review and evaluation of the way independent audits were performed and assessed the effects of trends in auditing on the public interest. The Panel issued its Report and Recommendations on August 31, 2000. The Public Oversight Board has made available the August 31, 2000 *Panel on Audit Effectiveness Report and Recommendations* on the world wide web at [www.pobauditpanel.org](http://www.pobauditpanel.org) . Lead Plaintiff's Trial Exhibit 5559 is *Panel on Audit Effectiveness Report and Recommendations* (annexed hereto as Exhibit 1).

2. Annexed hereto as Exhibit 2 is *AU Section 150: Generally Accepted Auditing Standards*, which was issued in November of 1972, as amended, effective After August 31, 1982.

3. Annexed hereto as Exhibit 3 is *AU Section 210: Training and Proficiency of the Independent Auditor*, which was issued in November of 1972, as amended, effective after August 31, 1982.

4. Annexed hereto as Exhibit 4 is *AU Section 220: Independence*, which was issued in November of 1972.

5. Annexed hereto as Exhibit 5 is *AU Section 230: Due Professional Care in the Performance of Work*, which was issued in November of 1972, as amended, effective for audits of financial statements for periods ending on or after December 15, 1997.

6. Annexed hereto as Exhibit 6 is *AU Section 311: Planning and Supervision*, effective for periods ending after September 30, 1978.

7. Annexed hereto as Exhibit 7 is *AU Section 312: Audit Risk and Materiality in Conducting an Audit*, effective for audits of financial statements for periods beginning after June 30, 1984.

8. Lead Plaintiff's Trial Exhibit 8268 is *AU Section 316: Consideration of Fraud in a Financial Statement Audit* effective for audits of financial statements for periods ending on or after December 15, 1997 (annexed hereto as Exhibit 8).

9. Annexed hereto as Exhibit 9 is *AU Section 319: Consideration of Internal Control in a Financial Statement Audit*, effective for audits of financial statements for periods beginning on or after January 1, 1990.

10. Annexed hereto as Exhibit 10 is *AU Section 322: The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements*, effective for audits of financial statements for periods ending after December 15, 1991.

11. Annexed hereto as Exhibit 11 is *AU Section 325: Communication of Internal Control Related Matters Noting in an Audit*, effective for audits of financial statements for periods beginning on or after January 1, 1989.
12. Lead Plaintiff's Trial Exhibit 8305 is *AU Section 326: Evidential Matter*, issued in August, 1990, updated to be effective for engagements beginning on or after January 1, 1997 (annexed hereto as Exhibit 12).
13. Annexed hereto as Exhibit 13 is *AU Section 329: Analytical Procedures*, effective for audits of financial statements for periods beginning on or after January 1, 1989.
14. Annexed hereto as Exhibit 14 is *AU Section 333: Management Representations*, effective for audits of financial statements for periods ending on or after June 30, 1998.
15. Annexed hereto as Exhibit 15 is *AU Section 339: Working Papers*, issued on April 1, 1982, effective for engagements beginning after May 31, 1982.
16. Annexed hereto as Exhibit 16 is *AU Section 339: Audit Documentation*, effective for audits of financial statements for periods beginning on or after May 15, 2002.
17. Annexed hereto as Exhibit 17 is *AU Section 380: Communication with Audit Committees*, effective for audits of financial statements for periods beginning on or after January 1, 1989.
18. Annexed hereto as Exhibit 18 is *AU Section 410: Adherence to Generally Accepted Accounting Principles*, issued in November, 1972.
19. Annexed hereto as Exhibit 19 is *AU Section 411: The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles in the Independent Auditor's Report*, effective for audits of financial statements for periods ending after March 15, 1992 (containing amendments effective June 30, 2001).

20. Annexed hereto as Exhibit 20 is *AU Section 411: The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles*, effective for audits of financial statements for periods ending after March 15, 1992.

21. Annexed hereto as Exhibit 21 is *AU Section 431: Adequacy of Disclosure in Financial Statements*, issued in October, 1980.

22. Annexed hereto as Exhibit 22 is *AU Section 508: Reports on Audited Financial Statements*, effective for reports issued or reissued on or after January 1, 1989.

23. Annexed hereto as Exhibit 23 is *AU Section 508: Reports on Audited Financial Statements*, effective for reports issued or reissued on or after January 1, 1989.

24. Lead Plaintiff's Trial Exhibit 8301 is *AU Section 623: Special Reports*, effective for reports issued on or after July 1, 1989 (annexed hereto as Exhibit 24).

25. Lead Plaintiff's Trial Exhibit 8298 is *AU Section 634: Letters for Underwriters and Certain Other Requesting Parties*, effective for comfort letters issued on or after June 30, 1993, unless otherwise indicated (annexed hereto as Exhibit 24).

26. Lead Plaintiff's Trial Exhibit 8299 is *AU Section 722, Interim Financial Information*, effective for interim periods within fiscal years beginning after September 15, 1992 (annexed hereto as Exhibit 26).

27. Annexed hereto as Exhibit 27 is *APB 16: Business Combinations*, issued in August 1970, and effective for business combinations initiated after October 31, 1970.

28. Annexed hereto as Exhibit 28 is *APB 17: Intangible Assets*, issued in August 1970, and effective for intangible assets acquired after October 31, 1970.

29. Annexed hereto as Exhibit 29 is *APB 20: Accounting Changes*, issued in July 1971, and effective for fiscal years beginning after July 31, 1971.

30. Annexed hereto as Exhibit 30 is *ARB 43: Restatement and Revision of Accounting Research Bulletins*, effective as of June 1953.
31. Lead Plaintiff's Trial Exhibit 8334 is *FAS 2: Accounting for Research and Development Costs*, issued in October 1974, and effective for fiscal years beginning on or after January 1, 1975 (annexed hereto as Exhibit 31).
32. Annexed hereto as Exhibit 32 is *FAS 5: Accounting for Contingencies*, issued in March 1975, and effective for fiscal years beginning on or after July 1, 1975.
33. Annexed hereto as Exhibit 33 is *FAS 36: Disclosure of Pension Information an amendment of APB Opinion No. 8*, issued in May 1980, and effective for fiscal years beginning after December 15, 1979, and for complete interim statements issued after June 30, 1980, for interim periods within those fiscal years.
34. Annexed hereto as Exhibit 34 is *FAS 86: Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed*, issued in August 1985, and effective for financial statements for fiscal years beginning after December 15, 1985.
35. Annexed hereto as Exhibit 35 is *FAS 94: Consolidation of All Majority-Owned Subsidiaries and amendment of ARB No. 51, with related amendments of APB Opinion No. 18 and ARB No. 43, Chapter 12*, issued in October 1987, and effective for fiscal years ending after December 15, 1998.
36. Annexed hereto as Exhibit 36 is *FAS 121: Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of*, issued in March 1995, and effective for fiscal years beginning after December 15, 1995.
37. Annexed hereto as Exhibit 37 is *FAS 142: Goodwill and Other Intangible Assets*, issued in June 2001, and effective for fiscal years beginning after December 31, 2001.




38. Lead Plaintiff's Trial Exhibit 8339 is *FASCON 2: Qualitative Characteristics of Accounting Information*, issued in May 1980 (annexed hereto as Exhibit 38).
39. Lead Plaintiff's Trial Exhibit 8340 is *FASCON 5: Recognition and Measurement in Financial Statements of Business Enterprises*, issued in December 1984 (annexed hereto as Exhibit 39).
40. Lead Plaintiff's Trial Exhibit 8341 is *FASCON 6: Elements of Financial Statements a replacement of FASB Concepts Statement No. 3 (incorporating an amendment of FASB Concepts Statement No.2)*, issued in December 1985 (annexed hereto as Exhibit 40).
41. Lead Plaintiff's Trial Exhibit 8333 is *FIN 4: Applicability of FASB Statement No. 2 to Business Combinations Accounted for by the Purchase Method and interpretation of FASB Statement No. 2*, issued in February 1975, and effective for business combinations initiated after March 31, 1975 (annexed hereto as Exhibit 41).
42. Lead Plaintiff's Trial Exhibit 8332 is *FIN 6: Applicability of FASB Statement No. 2 to Computer Software an interpretation of FASB No. 2*, issued in February 1975, and effective for fiscal years beginning on or after April 1, 1975 (annexed hereto as Exhibit 42).
43. Annexed hereto as Exhibit 43 is *SEC Staff Accounting Bulletin: No. 101 – Revenue Recognition in Financial Statements*, issued on December 3, 1999.
44. Lead Plaintiff's Trial Exhibit 8336 is *AICPA Rule 203 – Accounting Principles*, adopted as of January 12, 1988 (annexed hereto as Exhibit 44).

Dated: February 4, 2005

Respectfully submitted,

**BARRACK, RODOS & BACINE**

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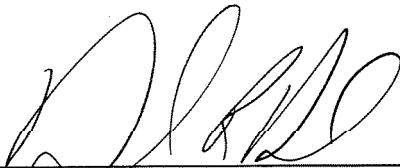
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**CERTIFICATE OF SERVICE**

I, David R. Hassel, Esq. hereby certify that a true and correct copy of Lead Plaintiff's Responses And Objections To The Underwriter-Related Defendants' First Requests For Judicial Notice And Lead Plaintiff's First Request For Judicial Notice is being served on this date upon all involved parties by sending a copy of same to all counsel listed on the attached service list by first-class mail, postage prepaid.

Dated: New York, New York  
February 4, 2005



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