UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CNA HOLDINGS, INC. AND CELANESE AMERICAS CORPORATION,	§	
Plaintiffs,	§	
v.	§	**CIVIL ACTION NO. 3-08-CV-1032-B**
KAYE SCHOLER LLP, ROBERT B. BERNSTEIN, AND MICHAEL D. BLECHMAN,	§	
Defendants.	§	

PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs CNA Holdings, Inc. and Celanese Americas Corporation (together, "Celanese"), for their first amended complaint against defendants Kaye Scholer LLP, Robert B. Bernstein and Michael D. Blechman (collectively, "Kaye Scholer"), respectfully allege as follows:

Preliminary Statement

1. This action arises from the negligence and professional malpractice of Kaye Scholer, a major New York law firm, and two of its lawyers, who represented Celanese in antitrust actions against Celanese in the United States District Court for the Western District of North Carolina (the "North Carolina Federal Court"). Kaye Scholer's negligence and professional malpractice resulted in the imposition of large monetary sanctions against Celanese and forced Celanese to incur enormous additional expenses in complying with the Court's sanction orders. Moreover, Kaye Scholer's misconduct transformed the antitrust actions against

Celanese -- which, as Kaye Scholer themselves told Celanese, were not meritorious and should have been settled at most for nuisance value -- into actions that Celanese had no choice but to settle, on the eve of trial, for $107 million.

2. Kaye Scholer's negligence and malpractice -- described by the North Carolina Federal Court as "egregious" and "discovery abuse" -- included, among other things, their utter and inexcusable failure to produce to the plaintiffs in the antitrust cases hundreds of thousands of documents that Celanese had provided to Kaye Scholer (many of which were in Kaye Scholer's offices) and that were responsive to the antitrust plaintiffs' discovery requests, as well as a pattern of oral and written misrepresentations to the North Carolina Federal Court and to the antitrust plaintiffs concerning Celanese's documents.

3. Kaye Scholer's negligence and malpractice resulted in the North Carolina Federal Court's decision to impose monetary sanctions on Celanese and to evaluate imposing further sanctions at trial, possibly including adverse jury instructions that Celanese had engaged in bad faith, willful and deliberate discovery misconduct and that such misconduct reflected consciousness of guilt with respect to the antitrust claims. Celanese was forced to retain new counsel, pay monetary sanctions, perform enormous amounts of work and expend millions of dollars in obtaining, organizing, reviewing and producing documents -- in an extremely tight time frame -- to comply with the North Carolina Federal Court's orders and in attempting to oppose motions for additional sanctions. In addition, the inflated $107 million settlement forced by Kaye Scholer's misconduct was essential to avoid the potentially devastating impact of sanctions that would have undermined Celanese's defense on the merits and would have exposed Celanese to catastrophic treble antitrust damages.

4. There can be no doubt about the egregiousness of Kaye Scholer's conduct and the enormous damage such conduct inflicted upon Celanese. The North Carolina Federal Court held that it was "under Kaye Scholer's watch" that Celanese was sanctioned for "discovery abuse," which the Court described as "egregious."

5. The North Carolina Federal Court found that:

> [T]he efficient disposition of a case like this one depends on full and candid discovery and [Celanese has] withheld that compliance with their obligations. ... The efforts by [Celanese] do not meet the requirements of the discovery rules or the court's directives. ... The court is not unmindful of the positions urged by [Celanese], but in the context of the trove of documents it held in the wings just out of sight of the non-class plaintiffs, these positions can't be seen as coherent or compelling. And they don't encourage the court to rely on the good faith of [Celanese]. ... The efforts by [Celanese] to play cat and mouse with the court and with the non-class plaintiffs since at least 2004 is unbecoming ... to say the least.

6. Indeed, the North Carolina Federal Court found that such discovery abuses were so serious that they raised the "disturbing" specter that Kaye Scholer had made knowing and intentional misrepresentations to the parties and the Court:

> Notwithstanding apologies by newly retained counsel for Hoechst Celanese, and Hoechst's attempts thus far to remedy its previous non-disclosures, the allegations made against Hoechst are most disturbing. The Court does not take lightly the allegation that material false written and oral representations were knowingly and intentionally made to the Non-Class Plaintiffs and to this Court.

7. Kaye Scholer has compounded its malpractice and breach of fiduciary obligations to Celanese by refusing entirely to take any responsibility whatsoever for its egregious misconduct. Instead, following the commencement of this now-removed action in Texas state

court, Kaye Scholer commenced a frivolous action in federal court in New York, seeking to recover their attorneys' fees for work that included conduct that the North Carolina Federal Court found was sanctionable as a matter of law. Kaye Scholer's conduct violates their fiduciary responsibilities to its former client, Celanese, and their ethical responsibilities as members of the Bar.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs, and Celanese and Kaye Scholer are citizens of different states.

9. This Court has jurisdiction over Kaye Scholer because, among other things, (a) Kaye Scholer purposefully has availed itself of the privileges and benefits of conducting business in the State of Texas by, among other things, engaging in business in Texas and contracting with one or more Texas residents, and (b) this action arises out of and is related to specific contacts by Kaye Scholer with the State of Texas and Kaye Scholer committed tortious acts in part in the State of Texas which damaged Celanese in the State of Texas.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (a)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

11. Plaintiff CNA HOLDINGS, INC. ("CNA") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the State of Texas.

12. Plaintiff CELANESE AMERICAS CORPORATION ("Celanese Americas") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the State of Texas.

13. Defendant KAYE SCHOLER LLP is a New York limited liability partnership engaged in the practice of law in the State of New York and other States.

14. Defendant MICHAEL D. BLECHMAN ("Blechman") is a resident of the State of New York and is, and was at all relevant times, a partner in Kaye Scholer.

15. Defendant ROBERT B. BERNSTEIN ("Bernstein") is a resident of the State of New York and was at all relevant times special counsel to Kaye Scholer.

STATEMENT OF FACTS

A. Background

16. CNA was engaged in the manufacture and sale of polyester staple fiber ("PSF"), a petroleum-based synthetic fiber used to make textiles, clothing, furniture upholsteries and other products. On December 10, 1998, pursuant to an Asset Purchase Agreement (the "1998 Sales Agreement"), CNA's North American polyester assets, including its PSF business, were sold to Arteva Specialties S.a.r.l. d/b/a KoSa, now known as INVISTA S.a.r.l. ("KoSa") as part of a larger sale of most of the various polyester assets owned by Celanese's former corporate parent, Hoechst Aktiengesellschaft, now known as Hoechst GmbH ("Hoechst").

B. The Government's Antitrust Investigation

17. In early 2000, DAK Americas, a joint venture between E.I. DuPont de Nemours & Company and Akra Polyester, S.A. de C.V. ("DAK"), informed the Antitrust Division of the

United States Department of Justice ("DOJ") of certain potentially improper communications between DAK and one or more of its competitors in the United States PSF industry and applied for entry into the DOJ's Corporate Leniency Program. The communications disclosed by DAK to the DOJ commenced in September 1999, nine months after Celanese had exited the PSF business in accordance with the 1998 Sales Agreement. Shortly after the DAK disclosures, the DOJ commenced a grand jury investigation of potential criminal violations of the federal antitrust laws by companies involved in the sale of PSF (the "DOJ Investigation"). The DOJ issued subpoenas to KoSa and the other major domestic PSF producers including DuPont, Wellman, Inc. and Nan Ya Plastics Corp ("Nan Ya"). No such DOJ subpoena was issued at that time or at any time to CNA, Celanese Americas or their former corporate parent, Hoechst.

18. KoSa and the head of its PSF business, Troy Stanley ("Stanley"), ultimately pled guilty to violation of the Sherman Act in December 2002. The DOJ indicted a former Nan Ya salesman, Brad Dutton, charging a conspiracy that commenced in September 1999. Dutton was subsequently acquitted at trial. The Kosa and Stanley guilty pleas and the Dutton indictment covered conduct that occurred after the Celanese sale of the PSF business pursuant to the 1998 Sales Agreement. The DOJ never filed any charges against Celanese or Hoechst.

C. The 2002-2003 Celanese Document Search

19. On April 2, 2001, Hoechst received an indemnity demand from KoSa informing Hoechst of the existence of the DOJ Investigation and contending that Hoechst and its affiliates had engaged in unlawful anti-competitive conduct in the PSF business before the December 10, 1998 sale to KoSa and that, by not disclosing that purported conduct to KoSa before the sale, Hoechst had breached certain provisions of the 1998 Sales Agreement (the "KoSa Demand").

20. In or about May 2001, Celanese retained the Texas law firm Baker Botts LLP ("Baker Botts") to represent Hoechst and Celanese in connection with the KoSa Demand and the DOJ Investigation. On or about January 25, 2002, at Celanese's request, Baker Botts contacted the DOJ to determine whether, as KoSa had represented, the DOJ was conducting an antitrust investigation of the PSF industry. The DOJ confirmed the existence of its investigation. The DOJ later contacted Baker Botts to request that Celanese provide a report of its corporate history pertaining to the PSF business. That corporate history was provided to the DOJ by Baker Botts on May 8, 2002.

21. On May 15, 2002, the DOJ informally requested from Baker Botts that Celanese produce copies of any travel and expense reports or similar records for Grover Smith, Celanese's former Vice President and General Manager for the North American PSF business, and three former Celanese employees who had worked for him, as well as the names of other Celanese employees who worked with or for Grover Smith between 1995 and December 1998 (the "May 2002 Request").

22. Celanese decided to comply voluntarily and fully with the May 2002 Request. Commencing in May 2002, Celanese and Baker Botts searched for documents covered by the May 2002 Request and certain other documents related to the polyester staple business (the "2002-2003 Document Search"). Although the May 2002 Request was limited to expense reports for specific Celanese employees, the scope of the 2002-2003 Document Search was much broader in view of the allegations made in connection with the KoSa Demand.

23. During the 2002-2003 Document Search, Celanese and Hoechst retained defendant Blechman, a senior partner at Kaye Scholer, to represent the companies in connection

with the KoSa Demand and any potential civil antitrust litigation arising from the DOJ Investigation. Celanese formally retained Kaye Scholer in March 2002. Celanese directed Kaye Scholer and Baker Botts to work together and share all information and documents concerning the 2002-2003 Document Search. Kaye Scholer's Bernstein, who was then Special Counsel at the firm, was assigned to work on the matter.

24. In connection with the 2002-2003 Document Search, Celanese provided to Baker Botts indices of documents maintained at the Celanese Carowinds archives in Charlotte, North Carolina (the "Charlotte Document Index") and Hillside, New Jersey (the "Hillside Document Index"). Based on its review of the Hillside document Index, Baker Botts selected for a detailed review 14 boxes of documents from the Hillside facility.

25. During 2002, Baker Botts also conducted interviews of various Celanese executives previously involved in the PSF business, who identified documents relating to the PSF business, including correspondence, journals and personal files. Baker Botts prepared memoranda memorializing the content of these interviews.

26. Between June and October 2002, a Celanese legal assistant reviewed approximately one hundred of rolls of microfilm from Celanese's microfilm files in North Carolina -- an Index of which was provided to Baker Botts in July 2002 (the "Microfilm Document Index") -- and identified a number of documents responsive to the May 2002 Request. Those documents included approximately 2,700 pages of expense reports for several former Celanese PSF employees. Between July 1 and October 1, 2002, copies of those documents were sent by Celanese to Baker Botts.

27. Baker Botts forwarded to the DOJ 220 pages of expense reports relating to Grover Smith on August 7, 2002.

28. The DOJ informed Baker Botts on September 30, 2002 that, although its PSF investigation was continuing, it had determined not to charge Celanese. The DOJ formally closed its investigation on January 12, 2005 without bringing any charges against Celanese or Hoechst. In August 2006, Celanese discovered that Baker Botts inadvertently had not produced to the DOJ a number of the expense reports Celanese had provided to Baker Botts in 2002 that were responsive to the May 2002 Request. In September 2006, at Celanese's request, Baker Botts contacted the DOJ and offered to provide these additional expense reports, but the DOJ declined the offer.

D. Kaye Scholer Is Informed Of The Celanese PSF Documents

29. Kaye Scholer were advised during the second half of 2002 of the existence of large volumes of Celanese documents at numerous storage facilities, including documents relating to the PSF business. On October 18, 2002, Baker Botts informed Kaye Scholer of the existence of over 20,000 boxes of documents in Celanese's corporate archives in Hillside, New Jersey and that it had requested 14 boxes of those documents for review. On November 10, 2004, Baker Botts delivered the 14 boxes of documents Baker Botts retrieved from the Hillside archive by overnight Federal Express to Kaye Scholer's offices in New York. Baker Botts also confirmed to Kaye Scholer the existence of more than 3,000 rolls of microfilm, certain of which contained copies of expense reports submitted by former employees of the Celanese PSF business. On March 19, 2003, Baker Botts provided to Kaye Scholer a task list identifying 30-40 of the rolls of microfilm as "potentially useful."

30. Celanese sent Blechman, on October 29, 2002, copies of correspondence and e-mails generated in connection with the 2002-2003 Document Search. Those materials apprised Kaye Scholer of, among other things, the Charlotte Document Index, the Hillside Document Index, and the microfilm Document Index. Celanese also provided Kaye Scholer at that time with an organizational chart specific to the PSF business, which identified those employees knowledgeable about Celanese's PSF business.

31. On October 21, 2002, Baker Botts provided Kaye Scholer with documents, including Board minutes and supporting documents from 1997 and 1998 that referenced, among other things: (a) the financial condition of the United States PSF business; (b) North American PSF capacity and demand; (c) the impact of PSF imports on Celanese; (d) the impact on the PSF industry of Nan Ya and Wellman capacity expansions; (e) Celanese's unsuccessful attempts to increase prices for PSF; (f) Celanese's efforts to reduce its costs to produce PSF; (g) Celanese's internal PSF "Customer Profitability Analysis"; and (h) integration of Celanese's Mexican PSF production (the "Trevira PSF documents").

32. Kaye Scholer and Baker Botts jointly conducted a review in Mexico City in November 2002 of the files of Celanese's PSF affiliate, Celanese Mexicana. As a result of this search, Kaye Scholer collected a number of documents concerning the PSF business (the "Mexican PSF documents").

33. In sum, by the end of 2002, Kaye Scholer had actual knowledge of: the Charlotte document Index; the Hillside document Index; the existence of potentially responsive 20,000 boxes of documents at the Hillside facility; the 14 boxes of documents from the Hillside facility requested by Baker Botts; the microfilm document Index; the Trevira PSF documents; and the

Mexican PSF documents. Each of these sources referred to or contained documents related to the PSF business.

E. The Civil PSF Antitrust Litigation

1. Civil Antitrust Actions

34. Beginning in September 2002, 14 individual antitrust actions and 10 antitrust class actions (later consolidated) were filed by or on behalf of alleged PSF direct purchasers. Those actions were filed against KoSa, DAK, Nan Ya and Wellman -- but not Celanese -- in various courts throughout the United States. On April 22, 2003, those actions were consolidated into Multi-District Litigation proceedings (the "Polyester Staple MDL") in the North Carolina Federal Court. The claims in these actions related to conduct that occurred after Celanese sold its PSF business to KoSa.

35. Between March 2003 and October 2004, five individual PSF purchasers filed actions against the other defendants and also Celanese in United States District Courts in North Carolina and South Carolina. All five actions (collectively, the "Individual Actions") were transferred into the Polyester Staple MDL. (The five individual North Carolina plaintiffs in the Individual Actions are referred to hereinafter as the "Original North Carolina Plaintiffs".)

2. Discovery In Polyester Staple MDL

36. Kaye Scholer's negligence and malpractice with respect to discovery commenced at least as early as the time of their first official discovery filing in the Individual Actions. On June 30, 2003, Kaye Scholer prepared and served, on behalf of Celanese and Hoechst in the Individual Actions, initial disclosures pursuant to Rule 26 of the Federal Rules of Civil Procedure (the "Rule 26 Disclosures"). In the Rule 26 Disclosures, Kaye Scholer stated that

"[e]xcept for certain archived miscellaneous files which were not transferred, all documents pertaining to the operations of [Celanese's PSF business] were transferred to the buyer when the business was sold." That representation was erroneous. Kaye Scholer also stated that Celanese would "produce responsive documents to the extent that such documents were not transferred to KoSa ... and to the extent such documents have not already been provided to the United States Department of Justice." As alleged below, Kaye Scholer failed to honor that representation.

37. Celanese and the other defendants in the Polyester Staple MDL were served on July 15, 2003 with MDL Plaintiffs' First Set of Document Requests (the "Document Requests"), which sought 70 different categories of documents relating to the PSF business.

3. Kaye Scholer Failed To Produce Hundreds Of Thousands of Responsive Documents

38. On September 5, 2003, Kaye Scholer informed the MDL Plaintiffs that Celanese had fewer than 300 pages of documents responsive to the Document Requests. Kaye Scholer -- through local counsel Smith Anderson -- produced on September 9, 2003, a total of 220 pages of documents in response to the Document Requests. This production consisted of the 220 pages of Grover Smith expense reports that Baker Botts had provided to the DOJ in August 2002 in response to the May 2002 Request (the "Smith Expense Reports"), but did not include the additional expense reports for other employees that Celanese had provided to Baker Botts. Celanese's September 17, 2003 Responses and Objections to the Document Requests and the transmittal letter -- both prepared by Kaye Scholer -- both claimed that "whatever responsive documents [Celanese] may have had were transferred to the buyers of its polyester business [ ] when KoSa bought that business in December 1998." Those representations also were erroneous.

39. Kaye Scholer was aware of hundreds of thousands of Celanese documents responsive to Plaintiffs' Document Requests, including from the sources identified in paragraph 33 above and as alleged further below.

40. Pursuant to the North Carolina Federal Court's pre-trial order, all fact discovery in the Individual Actions was to be completed by March 15, 2006.

41. Despite Kaye Scholer's actual possession of a large number of Celanese documents responsive to the Document Requests and their knowledge as to the locations of additional potentially responsive Celanese documents, during the three-year period from the commencement of the Individual Actions until the close of fact discovery on March 15, 2006, Kaye Scholer produced no Celanese documents in the Individual Actions other than the Smith Expense Reports. Kaye Scholer repeatedly represented -- both to the North Carolina Federal Court and to the Original North Carolina Plaintiffs -- that, except for the 220 pages of Smith Expense Reports, all of Celanese's documents related to PSF had been transferred to KoSa when the PSF business was sold in 1998. Those representations were erroneous.

4. Additional Information And Documents Provided To Kaye Scholer

42. During 2004, Celanese continued to provide to Kaye Scholer both documents and information as to sources of Celanese documents and relied on Kaye Scholer to ensure that Celanese was in compliance with all of its discovery obligations. A former Celanese employee, Jim Sutton, on August 2004, provided to Kaye Scholer an Index of 209 boxes of documents related to the due diligence concerning the PSF business conducted by KoSa in connection with the 1998 Sales Agreement (the "Due Diligence Document Index"). Sutton reported that those documents (the "Due Diligence Documents") had been stored in the "Data Room" at Celanese's

Dreyfus Research Park in Charlotte, North Carolina. Many of the Due Diligence Documents were responsive to the Document Requests but were not produced by Kaye Scholer in the Individual Actions.

43. Also during 2004, Celanese provided Kaye Scholer excerpts from minutes of meetings of the Board of Management of Hoechst, Celanese's former corporate parent, which related to the sale of Hoechst's PSF businesses to KoSa. Those documents were responsive to the Document Requests but were not produced by Kaye Scholer in the Individual Actions.

44. The Celanese employee responsible for Celanese's off-site records storage facilities in Charlotte, North Carolina, Dan Wolfe, updated and forwarded to Kaye Scholer on August 3, 2004, the Charlotte Document Index, which disclosed thousands of boxes of documents stored in the Carowinds warehouse facility (the "Updated Charlotte Document Index"). Certain of the documents located at the Charlotte facility were responsive to the Document Requests but were not produced by Kaye Scholer in the Individual Actions.

45. According to the Updated Charlotte Document Index, one of the boxes in that facility is described as "Polyester Investigation 2003." The documents in that box provided a clear guide to other sources of Celanese documents potentially responsive to the Document Requests. Kaye Scholer failed even to review the contents of that box before the close of fact discovery in the Individual Actions.

46. Kaye Scholer made no efforts to identify or review documents maintained in electronic format and did not identify documents stored in additional locations such as the Wilmington, North Carolina archive or Celanese's facility in Narrows, Virginia. Each of those sources also contained documents responsive to the Document Requests.

47. In an October 3, 2005 hearing concerning a proposed amendment to the North Carolina Federal Court's scheduling order, Kaye Scholer opposed a stay of the depositions of former Celanese employees to accommodate a Court-ordered mediation, representing to the Court on the record that Kaye Scholer had "*made our production -- we met our production requirements*"(emphasis added). Those representations were erroneous.

48. On December 13, 2005, in response to an October 4, 2005 letter from Original North Carolina Plaintiffs' counsel questioning Kaye Scholer's representations concerning the absence of any Celanese responsive documents other than the Smith Expense Reports, Kaye Scholer reiterated their prior representations that "[a]ll documents that Celanese may have had relating to the 'production, marketing and sale of polyester staple from 1995 through 1998' were transferred to KoSa as of December 18, 1998." Those representations also were erroneous.

F. The New York KoSa Action

49. At the same time that they were repeatedly representing in the Individual Actions that Celanese had no documents responsive to the Document Requests relating to the PSF business, Kaye Scholer was producing precisely such documents in a separate action in New York against Celanese.

50. On November 3, 2003, KoSa had filed an action against Celanese and Hoechst in the United States District Court for the Southern District of New York alleging, among other things, that Celanese had engaged in unlawful anti-competitive conduct in the PSF industry before the December 10, 1998 sale to KoSa and that Hoechst had breached certain provisions of the 1998 Sales Agreement (the "KoSa Action"). Kaye Scholer represented Celanese and Hoechst in connection with the KoSa Action.

51. In August 2004, Kaye Scholer prepared and filed Celanese's initial Rule 26 disclosures in the KoSa Action. In these disclosures, Kaye Scholer disclosed numerous categories of Celanese documents related to the PSF business, including due diligence documents, transactional documents, documents regarding the value of the PSF business, correspondence, and board minutes. Kaye Scholer further stated that those documents were located at various Celanese offices and archives in North Carolina and New Jersey (the "KoSa Rule 26 Disclosures").

52. On September 7, 2004, KoSa served Celanese with Plaintiffs' First Set of Document Requests (the "KoSa Document Requests"), which sought, among other things, documents relating to the Celanese PSF business and the sale of that business to KoSa.

53. Between December 2004 and February 2005, Kaye Scholer produced to KoSa in the KoSa Action tens of thousands of pages of documents related to its PSF business and the sale of the Celanese PSF business, including the following:

(a) 33,546 pages of documents obtained from Celanese Americas' Legal, Human Resources, and General Accounting Departments, including Trevira Board meeting minutes, due diligence documents, organizational charts, and expense reports which related to Celanese's PSF business.

(b) 152,794 pages from the due diligence documents, which related to Celanese's PSF business.

Most of those documents were responsive to the Document Requests in the Individual Actions and should have been produced by Kaye Scholer there.

54. Bernstein admitted -- at a subsequent deposition which the North Carolina Federal Court permitted the Original North Carolina Plaintiffs to take -- that those documents should have been -- but were not -- produced because of Kaye Scholer's "inadvertent error":

> Q. Can you tell us, Mr. Bernstein, why documents relating to polyester staple fiber in the December 2004 production by Hoechst Celanese to Koch and Kosa were not produced to the plaintiffs ...?
>
> A. I think it was inadvertent error . . . those documents should have been produced and it was inadvertent that they were not.

55. Bernstein also admitted that other documents relating to the PSF business that Celanese and Baker Botts had provided to Kaye Scholer also should have been produced to the Original North Carolina Plaintiffs but were not as a result of Kaye Scholer's "inadverten[ce]":

> Q. And these documents that are referenced as having been produced on June 29, 2006 came from the 14 boxes of files that Baker Botts had forwarded to you in November of 2004. Is that correct?
>
> A. I believe that to be the case. They have been reviewed and these documents I believe had been produced in the New York action but were inadvertently not produced in [the Individual Actions].

Kaye Scholer continued to make materially erroneous representations to the North Carolina Federal Court concerning the Celanese documents responsive to the Document Requests.

G. Kaye Scholer's Discovery Misconduct in 2006

56. The Original North Carolina Plaintiffs continued to press Kaye Scholer as to the accuracy of their representations concerning the Celanese documents. In response, on January 10, 2006, Kaye Scholer reiterated that "all documents that Celanese may have had relating to the production, marketing and sale of polyester staple from 1995 through 1998 were transferred to KoSa as of December 10, 1998, when KoSa bought Celanese's interest in the polyester business." Those representations were erroneous.

57. Unconvinced by Kaye Scholer's representations concerning the Celanese documents, the Original North Carolina Plaintiffs, on February 13, 2006, served interrogatories on Celanese seeking information concerning Celanese's search for, and production of,

documents responsive to the Document Requests (the "Document Production Interrogatories"). On March 1, 2006, the Original North Carolina Plaintiffs also served a Rule 30(b)(6) deposition notice on Celanese concerning, among other things, the Celanese document search efforts.

58. In their written responses to the Document Production Interrogatories, which Kaye Scholer served on the Original North Carolina Plaintiffs on March 15, 2006 (the "March 2006 Interrogatory Responses"), Kaye Scholer reiterated their prior erroneous representations that "all polyester staple documents in the possession of the Celanese Kaye Scholer when they owned the business were transferred to KoSa when the business was sold in 1998." Kaye Scholer then disclosed -- for the first time -- a mere fraction of the Celanese documents that they improperly had failed to produce to North Carolina Plaintiffs. Thus, Kaye Scholer claimed that "the only copies of [PSF] documents that Celanese retained were copies of documents from the data room that were made available to KoSa prior to the sale" and that "except for copies of documents from the data room that were made available to KoSa prior to the sale, no responsive documents were found." Those representations likewise were erroneous.

59. More than one week after the discovery deadline in the Individual Actions, Kaye Scholer, on March 23, 2006, informed the Original North Carolina Plaintiffs, for the first time, that Kaye Scholer was in possession of 80 to 85 boxes of "data room" documents, *i.e.*, the Due Diligence Documents, that Kaye Scholer claimed were too "voluminous" to copy. Even that belated disclosure was incomplete.

60. In an apparent attempt to avoid producing a Rule 30(b)(6) witness who would be required to testify about Kaye Scholer's document search efforts and lead to disclosure of Kaye Scholer's discovery misconduct, Kaye Scholer moved for a protective order with respect to the

Original North Carolina Plaintiffs' deposition notice. The Original North Carolina Plaintiffs opposed that motion and cross-moved for the imposition of sanctions on Celanese based on Kaye Scholer's failure to produce the Due Diligence Documents (the "March 2006 Sanctions Motion").

61. In their opposition to the March 2006 Sanctions Motion, Kaye Scholer did not provide any justification for their refusal to disclose to Original North Carolina Plaintiffs the fact that Kaye Scholer had been in possession of the Due Diligence Documents, nor did they disclose to the North Carolina Federal Court or to the Original North Carolina Plaintiffs the existence of the other responsive Celanese documents located at Kaye Scholer's own offices in New York.

62. To the contrary, in an April 14, 2006 declaration submitted in support of Kaye Scholer's Opposition to Sanctions, Bernstein stated that Kaye Scholer had not reviewed the Due Diligence Documents and that all of those documents had been produced to KoSa in the KoSa Action. Bernstein represented that "the only files that Celanese has which it has not independently searched for documents responsive to [Original North Carolina Plaintiffs'] requests are due diligence files." Those representations, as Bernstein later admitted, were erroneous.

63. Kaye Scholer subsequently prepared and filed an amended Opposition to Sanctions in which they stated that "the only documents Celanese has not produced to plaintiffs are duplicate copies of due diligence materials that were transferred and produced by Celanese to KoSa years ago, and as demonstrated below, long since produced by KoSa to plaintiffs." In their original and amended Opposition to Sanctions, Kaye Scholer did not disclose the existence of

thousands of pages of other Celanese documents that were responsive to the Document Requests and physically in the possession of Kaye Scholer.

64. Kaye Scholer submitted, on May 10, 2006, another Bernstein declaration, which stated that Hoechst had reviewed the Due Diligence Documents, but found only 3,155 pages of documents that were "potentially relevant" or that "relate to polyester staple." That representation also was erroneous. Many more than 3,155 pages of the Due Diligence Documents were responsive to the Document Requests.

H. The June 6, 2006 Hearing

65. Kaye Scholer's misrepresentations to the North Carolina Federal Court about its document search and production efforts continued at the June 6, 2006 hearing on the March 2006 Sanctions Motion, including the following:

(a) "They say, well, you only produced 220 documents. We said yes, that's what the government had asked of us and that's what we gave the government. But the other part of the story is that all of our documents concerning the business as far as we know have been transferred to KoSa...."

(b) "The issue of when did we learn about these documents, there is not a mystery there. [Original North Carolina Plaintiffs' counsel] says that we learned about them in 2003 and should have told him about them. That is not so. We didn't know about them in 2003."

(c) "All documents that Celanese may have had relating to the, quote, production, marketing, and sale of polyester staple from '95 through '98, close quote, were transferred to KoSa as of December 10, 1998, when KoSa bought Celanese's interest in the polyester business. That was a true statement...."

Each of those representations was erroneous.

66. At the conclusion of arguments at the June 6, 2006 hearing, the North Carolina Federal Court granted Original North Carolina Plaintiffs' sanctions motion based on its finding

that Celanese had failed to produce the responsive Due Diligence Documents to the Original North Carolina Plaintiffs (the "June 6th Order"). In a ruling from the bench issued immediately after completion of oral argument, the North Carolina Federal Court stated on the record, among other things, as follows:

> [T]he efficient disposition of a case like this one depends on full and candid discovery and [Celanese has] withheld that compliance with their obligations. ... The efforts by [Celanese] do not meet the requirements of the discovery rules or the court's directives. ... The court is not unmindful of the positions urged by [Celanese], but in the context of the trove of documents it held in the wings just out of sight of the non-class plaintiffs, these positions can't be seen as coherent or compelling. And they don't encourage the court to rely on the good faith of [Celanese]. ... The efforts by [Celanese] to play cat and mouse with the court and with the non-class plaintiffs since at least 2004 is unbecoming ... to say the least.

The North Carolina Federal Court also denied Kaye Scholer's motion for a protective order with respect to Original North Carolina Plaintiffs' Rule 30(b)(6) deposition notices.

67. The June 6th Order provided for two phases of sanctions against Celanese. First, Celanese was ordered to pay Original North Carolina Plaintiffs for the attorneys' fees and expenses incurred in connection with their prosecution of the motion for discovery sanctions. On June 27, 2006, Original North Carolina Plaintiffs' counsel submitted invoices in support of those fees and expenses. In a subsequent order dated November 16, 2006, the Court awarded Original North Carolina Plaintiffs $113,542.50 in such fees and expenses. Second, the Court stated that it would evaluate imposing additional sanctions against Celanese pending further review of the consequences of Celanese's discovery conduct. In addition, the North Carolina Federal Court extended the discovery period but did so only for the Original North Carolina Plaintiffs.

I. Celanese Dismisses Kaye Scholer As Counsel

68. In July 2006, Celanese discharged Kaye Scholer and directed that Kaye Scholer's files immediately be transferred to the law firm Kasowitz, Benson, Torres & Friedman LLP ("KBTF"). Upon information and belief, at some time after July 2006, Bernstein's 25-year tenure at Kaye Scholer was terminated.

69. A *de novo* review of Celanese's various document repositories and archives immediately was undertaken by KBTF to ensure that Celanese was in full compliance with its discovery obligations under the Federal Rules of Civil Procedure, the June 6th Order, and the Document Requests. That *de novo* document review -- which led Celanese to incur millions of dollars in additional attorneys' fees and costs, and had to be conducted under an extremely compressed time schedule -- resulted in the production of more than 400,000 pages of Celanese documents that were responsive to the Document Requests and should have been produced by Kaye Scholer in the Individual Actions.

70. The *de novo* document review consisted of, among other things, the following:

(a) Review of more than 7,000 boxes containing over 1,750,000 pages of documents from numerous locations in the United States, Canada and Mexico;

(b) Review of 483 microfilm rolls of documents;

(c) Review of more than 13,000 sheets of microfiche (each containing approximately 270 pages of documents);

(d) Review of numerous sources of electronic data; and

(e) Review of an inactive computer server previously used by Celanese's former Film & Fiber Group at its Charlotte headquarters and data in Celanese's Dallas headquarters previously used by Celanese's former ethylene glycol business.

J. The October 2006 Sanctions Motion

71. Upon discovery of the extent of the non-production of Celanese documents responsive to the Document Requests, Original North Carolina Plaintiffs filed a motion on October 24, 2006 for additional sanctions based on the allegation that Celanese knowingly adopted a "policy of non-production, non-disclosure, and outright deception" in an effort to conceal evidence. The Original North Carolina Plaintiffs further alleged that the "shocking misconduct by Celanese ... reveal[ed], at a minimum, consciousness of guilt by Celanese regarding its anticompetitive conduct, and an effort to conceal that conduct . . . to avoid civil liability."

72. The Original North Carolina Plaintiffs requested the following additional sanctions: (a) an order to Celanese to produce for deposition those employees who were directly and personally involved in the search for responsive documents; (b) a default judgment against Celanese establishing its liability on the Original North Carolina Plaintiffs' claims; (c) a finding of fact by the Court that Celanese engaged in bad faith, willful and deliberate discovery misconduct to avoid producing relevant documents; (d) instructions to the jury that Celanese's misconduct reflects consciousness of guilt; (e) adverse inferences against Celanese on claims that it engaged in an illegal price-fixing conspiracy; and (f) an order prohibiting Celanese from introducing any evidence, making any argument, or otherwise eliciting any information before the jury regarding the DOJ's decision not to prosecute Celanese for antitrust violations.

73. At the hearing held by the North Carolina Federal Court in connection with the October 2006 Sanctions Motion, the North Carolina Federal Court expressed on the record its view as to the serious nature of the document non-production matter:

> Notwithstanding apologies by newly retained counsel for Hoechst Celanese, and Hoechst's attempts thus far to remedy its previous non-disclosures, the allegations made against Hoechst are most disturbing. The Court does not take lightly the allegation that *material false written and oral representations were knowingly and intentionally made* to the [Original North Carolina] and to this Court. [emphasis added]

The North Carolina Federal Court granted the Original North Carolina Plaintiffs' request for depositions of Celanese employees who were directly involved in the search for documents responsive to the Document Requests. This resulted in the deposition of seven Celanese in-house lawyers and other legal professionals and the deposition of Bernstein. The Court held the issue of the full scope of additional sanctions on Celanese could not be determined until the record could be developed fully as to the full extent of the prejudice caused to the Original North Carolina Plaintiffs by the "discovery abuse":

> It is impossible to fully measure the impact of [Celanese's] conduct until all of the discovery is taken and the parties have a chance to digest the meaning of said discovery for purposes of their respective cases. In other words, the Court will not attempt to prematurely quantify the extent of prejudice which [Celanese's] discovery abuse has caused to [Original North Carolina Plaintiffs]. As the case proceeds and facts develop, the Court will evaluate the need for additional sanctions.

74. Almost one year and a half later, in an order issued on April 1, 2008 concerning a jurisdictional motion, the North Carolina Federal Court continued to refer to Kaye Scholer's misconduct:

> Under Kaye Scholer's watch, [Celanese] was sanctioned for fairly egregious discovery abuse. The Court essentially determined that [Celanese's] search for discoverable materials and miniscule production during the first three years of litigation was wholly inadequate.

K. The Additional 2006 North Carolina Plaintiffs

75. Once the scope of Kaye Scholer's discovery misconduct was disclosed, the Individual Actions changed dramatically. On September 11 and 12, 2006, 25 direct PSF purchasers -- including a significant number of very large purchasers which previously had not asserted any claims against Celanese (the "2006 North Carolina Plaintiffs") -- commenced two federal district court actions -- the "*Burlington* Action" and "*Parkdale* Action" -- in which they asserted federal and state antitrust claims against Celanese and Hoechst. The potential Celanese monetary exposure to antitrust treble damages escalated dramatically.

L. Kaye Scholer's Negligence Grossly Inflates Settlement Value Of The Individual Actions

76. The direct PSF purchaser antitrust claims against Celanese, including those asserted in the Individual Actions, were not meritorious and, before discovery of Kaye Scholer's discovery abuse, did not represent a serious risk of substantial damages against Celanese. In fact, Kaye Scholer itself had advised Celanese that it would have been "difficult, if not impossible," for Original North Carolina Plaintiffs or any other PSF purchasers to prove that any conduct involving Celanese inflated PSF prices.

77. In November 2005, Kaye Scholer advised Celanese of its assessment of the Original North Carolina Plaintiffs' claims as follows:

> [T]he only evidence thus far supporting a 1995-1998 conspiracy is Troy Stanley's vague and contradictory testimony at the Dutton trial…
>
> * * * * * * * *
>
> Celanese staple managers Grover Smith and Tom Nixon and 8 other former Celanese employees -- has said there was no conspiracy.

> The only contrary witness is Troy Stanley, Celanese's former sales manager for the apparel and home fashions segment of the polyester staple market, who has not yet been deposed, but who testified at the Dutton trial that he had been "involved" in a conspiracy with Wellman to fix prices and allocate customers as far back as 1994 and 1995. On the other hand, Stanley also testified that he did not begin "coordinating" prices with competitors until September 1999, and that prior to September 1999, "there was not a coordinated effort [to raise prices] on the part of polyester suppliers."
>
> * * * * * * * *
>
> The economic evidence thus far strongly tends to negate the existence of a 1995-1998 conspiracy... [P]olyester staple prices declined steeply during those years. In addition, the U.S. International Trade Commission found that Asian producers were dumping polyester staple fiber in the U.S. between 1996 and 1998. The undisputed evidence also shows that Celanese's business plan during the 1995-1998 period was to "run full/sell full," *i.e.*, to run its production facilities at maximum capacity and sell everything produced. Grover Smith, who was in charge of Celanese's staple business, testified that not only did Celanese expand production capacity between 1995 and 1998, but it lowered price to increase market share -- and market share data confirm that Celanese's share increased from 22% in 1996 to 28% in 1998.

78. Kaye Scholer's November 2005 assessment further stated:

> Finally, it should be noted that all the plaintiffs asserting claims against the Celanese Kaye Scholer commenced their actions more than four years after Celanese sold the business. Therefore, absent some basis for tolling, their claims would be time-barred under the four-year statute of limitations governing federal antitrust claims.
>
> * * * * * * * *
>
> Even if we do not obtain summary judgment, we believe that our chances of prevailing at trial are excellent. This is not only because the evidence of a 1995-1998 conspiracy is extremely thin, but also because the witnesses that will testify on our behalf -- including especially Grover Smith -- are attractive and persuasive, while Troy Stanley's testimony was obviously insufficient to convince the jury (albeit under a more stringent burden of proof) in the Dutton trial.

79. Kaye Scholer advised Celanese that the actions merited little more than a nuisance value settlement.

80. The negligence and malpractice of Kaye Scholer and the consequences of that negligence caused the chances of Celanese's prevailing at trial to decrease dramatically.

81. In May 2008, as a result of Kaye Scholer's conduct, Celanese was forced to settle the claims asserted by all the Original and 2006 North Carolina Plaintiffs for $107 million (the "Settlement Amount").

82. The North Carolina Federal Court's sanctions rulings and the threat of additional severe sanctions at trial resulting from Kaye Scholer's conduct materially changed Celanese's likelihood of success at trial. Moreover, the large number of additional direct PSF purchasers who filed suit against Celanese, because they learned of the Court's sanctions rulings, increased dramatically Celanese's potential exposure.

83. On June 19, 2008, Kaye Scholer filed suit against Celanese in the Southern District of New York seeking to recover allegedly unpaid legal fees as damages based on Celanese's alleged breach of contract and under a *quantum merit* theory. Kaye Scholer also impermissibly is seeking a declaratory judgment that it did not commit legal malpractice or breach its fiduciary duties to Celanese. Kaye Scholer's New York lawsuit is frivolous and, in any event, should be dismissed because Celanese initiated litigation in Texas concerning Kaye Scholer's legal malpractice over three weeks before Kaye Scholer initiated the New York action. Remarkably, even though Kaye Scholer was aware of the Texas action before it filed the New York action (as evidenced by its removal of the Texas action on the same day that the New York action was filed), Kaye Scholer chose to initiate a new action concerning the same

representation at issue in this lawsuit but failed to disclose the existence of the Texas action in its "Statement Concerning Relatedness of Case" that was filed with its complaint in the New York action.

STATEMENT OF CLAIMS

COUNT ONE

Negligence/Malpractice

84. Celanese repeats and realleges paragraphs 1 through 83 above as though fully set forth herein.

85. Kaye Scholer formed an attorney-client relationship with Celanese to provide it with expert antitrust legal representation in connection with the Individual Actions and the Polyester Staple MDL. As attorneys representing Celanese in those matters, Kaye Scholer owed Celanese a duty to act in accordance with the standards of care ordinarily provided by professionals providing legal representation. Kaye Scholer breached the duty they owed to Celanese in connection with their representation of Celanese by reason of the foregoing and by, among other things:

(a) Failing to produce documents in their possession responsive to the Document Requests;

(b) Failing to search for responsive documents or review adequately potentially responsive documents and materials in their possession or sources of materials of which they were aware; and

(c) Repeatedly and erroneously representing to the North Carolina Federal Court and to Original North Carolina Plaintiffs the facts concerning the Celanese documents and Kaye Scholer's search efforts.

86. Kaye Scholer's negligence proximately caused damages to Celanese in an amount to be determined at trial.

87. As a result of Kaye Scholer's actions, Celanese has suffered substantial damages, including, but not limited to, the payment of the difference between the Settlement Amount and the nominal settlement amount that it would have paid absent Kaye Scholer's negligence, and attorneys' fees and costs paid to Kaye Scholer and other law firms.

COUNT TWO

Gross Negligence

88. Celanese repeats and realleges paragraphs 1 through 87 above as though fully set forth herein.

89. Kaye Scholer's acts and omissions in its representation of Celanese constitute gross negligence.

90. Given the substantial number of responsive documents in Kaye Scholer's actual possession that were not produced, Kaye Scholer's repeated and erroneous misrepresentations to the North Carolina Federal Court and to Original North Carolina Plaintiffs concerning those documents, and failure to produce such documents rises to the level of gross negligence. Knowing of an extreme degree of risk of damages to Celanese, Kaye Scholer proceeded with conscious indifference to the rights, safety or welfare of Celanese.

91. As a result of Kaye Scholer's actions, Celanese has suffered substantial damages, including, but not limited to, the difference between the Settlement Amount and the nominal settlement amount that it would have paid absent Kaye Scholer's gross negligence and attorneys' fees and costs paid to Kaye Scholer and other law firms, in an amount to be determined at trial.

92. Celanese suffered damages resulting from Kaye Scholer's gross negligence, which entitles Celanese to exemplary damages under Texas Civil Practice and Remedies Code section 41.003(a).

COUNT THREE

Breach of Fiduciary Duty

93. Celanese repeats and realleges paragraphs 1 through 92 above as though fully set forth herein.

94. As attorneys representing Celanese in connection with the Polyester Staple MDL and the Individual Actions, Kaye Scholer owed a fiduciary duty to Celanese to act in accordance with the standards of care ordinarily provided by professionals when providing legal representation.

95. Kaye Scholer owed Celanese a fiduciary duty not to neglect the legal matter entrusted to Kaye Scholer and not to obstruct improperly the discovery process in the Polyester Staple MDL and the Individual Actions.

96. As a result of Kaye Scholer's action, Kaye Scholer breached their fiduciary duty to Celanese.

97. As a result of Kaye Scholer's breach of their fiduciary duties, Celanese has suffered substantial damages, including, but not limited to, the difference between the Settlement Amount and the nominal settlement amount that it would have paid absent Kaye Scholer's gross negligence and attorneys' fees and costs paid to Kaye Scholer and other law firms, in an amount to be determined at trial.

COUNT FOUR

Unjust Enrichment

98. Celanese repeats and realleges paragraphs 1 through 97 above as though fully set forth herein.

99. The Defendants will be unjustly enriched if allowed to retain the legal fees which Celanese paid to Defendants in connection with their representation of Celanese in the Polyester Staple Litigation and the Individual Actions because Defendants did not provide proper or adequate representation to Celanese. Defendants' continued retention of those fees violates fundamental principles of justice, equity and good conscience.

100. As the direct and proximate result of Defendants' conduct, Celanese has suffered damages, both direct and consequential.

VICARIOUS LIABILITY/RESPONDEAT SUPERIOR/JOINT AND SEVERAL LIABILITY

101. Celanese repeats and realleges paragraphs 1 through 100 above as though fully set forth herein.

102. At all relevant times, Bernstein, Blechman, and any other Kaye Scholer attorney or paraprofessional who worked on the Polyester Staple MDL and the Individual Actions, were employed by Kaye Scholer and acted at the direction of and with the authority of Kaye Scholer. The conduct of Bernstein, Blechman, and the other Kaye Scholer partners, associates and paraprofessionals who worked on the Polyester Staple MDL and the Individual Actions as described above, occurred in the course and scope of Kaye Scholer's business. As such, Kaye Scholer is liable for the actions and conduct of Bernstein, Blechman, and the other Kaye Scholer

partners, associates and paraprofessionals who worked on the Polyester Staple MDL and the Individual Actions under the doctrines of vicarious liability and respondeat superior.

103. Kaye Scholer is also jointly and severally liable for the professional malpractice, negligence, gross negligence and breach of fiduciary duties of Blechman and Bernstein because they were acting in the course of their employment by Kaye Scholer during their representation of Celanese.

JURY DEMAND

104. Celanese respectfully demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs CNA Holdings, Inc. and Celanese Americas Corporation pray for the following relief:

A. Compensatory damages in an amount to be determined at trial;

B. Disgorgement of the attorneys' fees plaintiffs paid to Kaye Scholer in connection with the Polyester Staple Litigation and the Individual Actions;

C. The attorneys' fees that Celanese incurred to other law firms as a result of purposes of curing Kaye Scholer's misconduct, defending against the allegations of discovery abuse, and attempting to avoid the imposition of sanctions;

D. Exemplary damages in an amount to be determined at trial;

E. Pre-judgment and post-judgment interest;

F. The attorneys' fees and costs of this action; and

G. Any such further relief as this Court may deem just and proper.

Respectfully submitted,

By: /s/ *Paul J. Zoeller*
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