**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**

KIM YOUNG, RONALD JOHNSON, WILLIAM JONES, ALLEN GORMAN, GERRAD LAMOUR, LEE MERCADO, BRADLEY HYTREK, CARL GRAY, and MATTHEW LIPTAK, on behalf of themselves and a class of others similarly situated,

Plaintiffs,

v.

COUNTY OF COOK and SHERIFF TOM DART in his capacity as Head of the Cook County Sheriff's Department,

Defendants.

No. 06-CV-552

JUDGE KENNELLY

**DECLARATION OF MICHAEL KANOVITZ**

1. I am an attorney admitted to practice before this Court and am providing this Declaration in support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Incentive Awards. This Declaration is based on my personal knowledge.

2. I am a partner at Loevy & Loevy. I served as lead counsel on *County of Cook, et al. v. American International Group, Inc.; et al.* ("Young Insurance"), which was the case that my firm brought on behalf of the Class against American International Group, Inc.; AIG Claims, Inc.; AIG Specialty Excess; Illinois National Insurance Company; Insurance Company of the State of Pennsylvania; and Lexington Insurance Company (collectively, the "AIG Defendants" or "AIG").

3. Loevy & Loevy is a highly experienced litigation and trial firm, having won hundreds of millions of dollars in verdicts and settlements for clients with diverse legal issues, including civil rights, False Claims Act cases for whistleblowers, and class actions.

4. Our firm is consistently willing to represent clients who no other firms will represent because the cases are either too challenging, or because there are not a lot of economic damages. Instead of just looking at the size of the compensable injuries, We take cases where justice demands it. The firm also devotes hundreds of hours each year to *pro bono* cases, primarily post-conviction work.

5. Our firm handles cases almost exclusively on a contingent-fee basis. For civil rights cases, our standard contingency fee is 40% of the gross recovery. When we represent whistleblowers in False Claims Act cases, our standard retainer provides for a 45% contingency fee if the government intervenes to prosecute the case, and a 50% contingency fee if the government declines to intervene.

6. We accept cases with the expectation that we will take them all the way through trial, and the appellate process if needed, and we treat every case as if it will go that far. Young Insurance was no exception.

7. Litigating Young Insurance was no exception. As noted above, I served as lead counsel throughout the litigation. We staffed the case efficiently, despite being up against defendants that were part of a multi-billion corporation and therefore had nearly unlimited resources to devote to the litigation. My partner Scott Rauscher was the primary attorney working on the matter with me. Mr. Rauscher worked on all phases of the case, including oral and written discovery, dispositive motions, trial, and post-trial proceedings.

8. My partner Jon Loevy and I served as co-lead counsel for the trial. My partner Roshna Keen had served as a key member of the underlying strip-search litigation and trial teams, and she joined the Young Insurance trial team and participated in post-trial proceedings. In addition, we added Frank Newell to assist with pretrial and trial tasks.

9. My partner Arthur Loevy played an integral role in leading the negotiations for the Young Insurance settlement, as he often does in the firm's cases.

10. A firm resume containing detailed information about our firm and its attorneys is attached as Exhibit 1 hereto. In addition to the firm resume, I would like to give the Court a brief summary of the background and qualifications of the attorneys listed above.

**Michael Kanovitz**

11. I graduated *cum laude* from the Cornell Law School in June 1994. I spent the first three years of my career practicing general and commercial litigation at Stites & Harbison, a large firm based out of Louisville, Kentucky. After three years, I left Stites & Harbison and chose to begin representing plaintiffs. After one year as a solo practitioner, I accepted an associate attorney position in Washington, D.C. with a boutique law firm then known as Mehri, Malkin, & Ross. While there, I started the firm's practice area in consumer protection class actions and whistleblower cases under the False Claims Act. I worked there until September of 2001. Since that time, I have been a partner with Loevy & Loevy.

12. My practice areas at the firm include, among others, Section 1983 civil rights litigation, class actions, whistleblower protection, and federal False Claims Act litigation.

13. In addition to serving as lead counsel in the underlying case here, as well as Young Insurance, I have served as class counsel in a number of other successful civil rights class actions, including *Flood v. Dominguez,* Case No. 08-cv-153 (N.D. Ind.), a conditions of

confinement class action that resulted in a $7.2 million settlement. In approving that settlement, the Honorable Philip P. Simon stated that "class counsel [from Loevy & Loevy]…are highly experienced, highly respected and have done an outstanding job in the face of a very strong opposition." I also served as class counsel in *Dunn v. City of Chicago*, Case No. 04-cv-6804 (N.D. Ill.), a class action concerning the unconstitutional treatment of inmates held in lockup by the Chicago Police Department, which resulted in a $16.5 million settlement.

14. In addition to the underlying strip-search case and Young Insurance, I have achieved eight-figure verdicts in multiple other cases, including *White v. McKinley*, 4:05-cv-00203-NKL (W.D. Mo.) ($16 million jury verdict for individual civil rights plaintiff) and *Fox v. Barnes*, 09-5453 (N.D. Ill.) ($12 million jury verdict for individual civil rights plaintiff, plus an assignment of claims against an insurance company).

15. In addition I have served as lead counsel in multiple other civil rights cases that achieved settlements prior to trial of $1 million or more, including: *Dunn v. City of Chicago*, 04-6804 (N.D. Ill) (class action involving police misconduct, $16.5 million); *Flood v. Dominguez*, 2:08-CV-00153 (N.D. Ind.) (jail conditions class action, $7.2 million); *Towler v. City of Cleveland*, 1:10-cv-01939-CAB (N.D. Oh.) ($4.7 million individual civil rights settlement); *Kittler v. City of Chicago* ($2 million); *Sornberger v. City of Knoxville*, 02-1224 (C.D. Ill.) ($1 million); *Awalt v. CHC, et al.*, No. 11 C 6142 (N.D. Ill.), a jail death case that resolved with a seven-figure settlement; a confidential settlement in 2016 in the Northern District of Illinois for medical deliberate indifference in excess of $2 million; a confidential settlement in 2016 in the Southern District of Illinois in excess of $2 million.

16. In total, the civil rights cases in which I served as lead or co-lead counsel have resulted in the recovery of nearly $300 million for my clients.

17. I have also achieved successes handling my clients' federal appeals, often establishing new propositions of law. For example, in the Seventh Circuit I briefed and argued the following cases: *Julian v. Hanna*, 732 F.3d 842 (7th Cir. 2013) (Seventh Circuit's first recognition of a federal malicious prosecution since changing circuit law in *Newsome v. McCabe*); *Lopez v. City of Chicago*, 464 F.3d 711 (7th Cir. 2006) (establishing that the Fourth Amendment, rather than Fourteenth Amendment, governs conditions of confinement, and thus medical care, claims while in police custody; reversing directed verdict for defendant with orders to direct verdict for Plaintiff); *Mercado v. Dart*, 604 F.3d 360 (7th Cir. 2010) (affirming denial of 11th Amendment immunity to county elected official for acts taken when executing state law requirements); *Sornberger v. City of Knoxville*, 434 F.3d 1006 (7th Cir. 2006) (recognizing two new propositions: first, that Fifth Amendment protections apply when a compelled statement is used prior to trial to support an arraignment; and, second, that citizens may bring civil claims for *Miranda* warning violations); *Vance v. Rumsfeld*, 653 F.3d 591 (7th Cir. 2011) (panel opinion affirming availability of *Bivens* remedy against former U.S. Secretary of Defense) (reversed in *en banc* decision). In the Eighth Circuit, I briefed and argued successfully in the civil rights case of *White v. McKinley*, 605 F.3d 525 (8th Cir. 2010) (affirming judgment on jury verdict for plaintiff); and in the consumer protection case of *Snell v. Allianz Life*, 327 F.3d 665 (8th Cir. 2003) (reversing district court's refusal to permit late opt out by class member).

18. I was also appointed by the United States Court of Appeals for the Sixth Circuit to represent a prisoner challenging, albeit unsuccessfully, the constitutionality of the *in forma pauperis* provisions of the Prison Litigation Reform Act in *Hampton v. Hobbs*, 106 F.3d 1281 (6th Cir. 1997). In addition, I was the chief draftsperson in briefing on behalf of the prevailing

plaintiff-appellant in *Mattei v. Mattei*, 126 F.3d 794 (6th Cir. 1997). The case adopted an expansive, pro-plaintiff reading of the ERISA retaliation provision.

19. In addition to working advancements in the law in my appellate cases, my class-action cases have also achieved significant reforms in how local law enforcement agencies treat those who come into their custody.

20. I co-authored the Eighth through Eleventh Editions of *Constitutional Law, a* police practices textbook published by LEXIS/NEXIS. This text is used in law enforcement academies and degree programs throughout the country.

21. Outside of the field of civil rights, I have also represented whistleblowers in numerous cases involving complex litigation under the federal False Claims Act, as well as plaintiffs in consumer protection class actions. Examples include: (1) *United States, et al. v. LifeWatch Services, Inc.*, 1:13-cv-4052 (N.D. Ill.) ($12.975 million, FCA litigation); (2) *Birchmeier v. Caribbean Cruise Line, et al.*, 1:12-cv-4069 (N.D. Ill.) ($56-$76 million TCPA settlement); (3) *United States et al., v. McHugh Construction*, et al, 1:08-cv-2443 (N.D. Ill.) ($12 million). I have also been appointed class counsel in several other consumer protection cases, was the chief architect of the litigation strategy in *Farkas v. Bridgestone/Firestone. Inc.*, 13 F.Supp.2d 1107 (W.D. Ky. 2000), which obtained a nationwide temporary restraining order entitling thousands of owners of recalled tires to receive refunds for tire replacement costs, and I have obtained numerous multi-million dollar confidential settlements in other cases.

**Arthur Loevy**

22. Arthur Loevy graduated from the University of Michigan Law School in 1963, and has been a member of the Illinois bar continuously for more than forty years. Mr. Loevy began his legal career practicing labor law until 1970 when he became an elected officer of a

trade union, the Amalgamated Clothing and Textile Workers Union ("ACTWU"). He proceeded to serve in various elected capacities for trade unions, including International Executive Vice President of ACTWU, International Secretary-Treasurer of ACTWU, and, most recently International Secretary-Treasurer of the Union of Needle-Trades Industrial and Textile Employees (U.N.I.T.E.).

23. Mr. Loevy has also served as a Director and Vice Chairman of the Executive Committee of the Amalgamated Bank of New York (1990-98), the President, Chief Executive Officer, and Trustee of various Taft-Hartley insurance and trust funds for almost twenty years, the President of the Amalgamated Housing Foundation (1974-98), and the President of the Sidney Hillman Health Center in Chicago (1980-98).

24. Mr. Loevy resumed the practice of law on a full-time basis in 1997. In 1998, he joined Loevy & Loevy, where he has practiced ever since. Mr. Loevy serves as the functional equivalent of a managing partner, is the firm's primary intake attorney, and plays an active role in discovery and settlement negotiations, among other things.

25. Mr. Loevy was the lead settlement negotiator for the plaintiffs in Young Insurance, and his strong negotiating skills provided immense value to the Class.

**Jon Loevy**

26. Mr. Loevy graduated from Columbia University Law School in 1993, where he was a Senior Editor on the Columbia Law Review. He was also a Kent Scholar (approximately top 1% of the class) and the recipient of several awards for academic distinction, including the Young B. Smith Prize for the student with the top examination in torts and the Paul R. Hays Prize given to the student with the top examination in civil procedure.

27. After graduating from law school, Mr. Loevy completed a clerkship for the Hon. Milton I. Shadur of the Northern District of Illinois in 1994.

28. Thereafter, Mr. Loevy worked as an associate in the litigation department at Sidley & Austin in Chicago for almost two years. After leaving Sidley & Austin, he built a successful civil rights law practice as a solo practitioner. Thereafter, Mr. Loevy and his wife, Danielle Loevy, and father, Arthur Loevy, formed Loevy & Loevy. Mr. Loevy is also a Lecturer in Law at the University of Chicago Law School, where he co-teaches a clinic on wrongful conviction litigation with other members of his firm called the Exoneration Project. Mr. Loevy also teaches Trial Advocacy to clinic students at the University of Chicago Law School.

29. Mr. Loevy is one of the most accomplished trial lawyers in the City of Chicago, if not the country. He has won well over $100 million in jury verdicts, including a dozen separate jury verdicts in excess of one million dollars. Many, if not most, of his civil rights clients were unsympathetic from a jury perspective, and the vast majority of these trials were long-shots. Over one stretch, Mr. Loevy won 15 jury trials in a row.

30. After one trial victory, the Honorable James F. Holderman, Chief Judge of the Northern District of Illinois summarized Loevy's trial skills in a written decision reported at *Garcia v. Chicago*, 2003 WL 22175620 (N.D. Ill. 2003):

> Jon Loevy is an outstanding trial lawyer. His ability belies his years of experience, and he certainly should not be held in a lock-step position based on his law school graduation year with regard to his hourly rate... Not only did Jon Loevy display tremendous advocacy skills during the trial before the jury, he handled all the matters involved in this litigation with great aplomb. His case was well-organized. The evidentiary progression was easy to follow. His examinations of adverse witnesses, and his dealing with the sometimes improper tactics of his opposing counsel, were highly professional.

> Jon Loevy's poise, analysis, and demeanor in front of the jury, as well as his rappier-like cross-examination style, are reminiscent of the trial skills displayed by some of the nationally recognized trial lawyers in this community when they were the age that Jon Loevy is now.
>
> [Fn] Among those nationally recognized trial lawyers whose trial skills the court is familiar with when they were Jon Loevy's age are: Royal B. Martin of Martin, Brown and Sullivan; Michael D. Monico of Monico, Spevack and Pavich; Thomas R. Mulroy of McGuire Woods; Anton J. Valukas of Jenner & Block; and Dan K. Webb of Winston & Strawn. Additionally, Jon Loevy's overall performance ranks among the finest displays of courtroom work by a plaintiff's lead trial counsel that this court has presided over in several years.

31. In another opinion reported at *Robinson v. City of Harvey*, 2008 WL 4534158 (N.D. Ill. Oct. 7, 2008), Judge Joan H. Lefkow observed the following in the context of adjudicating Mr. Loevy's billing rate: "the court is not unmindful of Jon Loevy's success in this case and his now established reputation as a singularly formidable trial lawyer in civil rights cases." *Id*. at *7.

32. Mr. Loevy is also an accomplished appellate advocate, having won more than fourteen of the last eighteen cases he argued in the federal appellate courts.

33. Mr. Loevy's contribution to the development of the Young Insurance claims was vital to obtaining the result we obtained for the Class.

**Roshna Keen**

34. Roshna Keen graduated from Northwestern University Law School in 2004, where she served on the Law Review and received the Honorable Robert A. Sprecher Merit Award and the Arlin Miner Prize for Outstanding Brief Writing.

35. After graduating law school, she worked for four years at Sidley Austin LLP, where she litigated numerous cases in federal and state court, including white collar cases and complex class actions.

36. She joined Loevy & Loevy in 2008 and is a partner at the firm. She also serves as a lecturer at the University of Chicago Law School, where she teaches an animal welfare law seminar.

37. As noted above, Ms. Keen was a key member of the litigation and trial teams in the underlying strip-search case, and she joined the Young Insurance team to assist with the trial and post-trial proceedings.

38. Ms. Keen was able to use her substantial litigation and trial experience to add great value to the trial team. Ms. Keen has substantial trial experience, including serving as first-chair in a wrongful conviction case that resulted in a $2.5 million verdict for her client.

**Scott Rauscher**

39. Scott Rauscher graduated from the University of Chicago Law School in 2005, with honors. Immediately after law school, he clerked for the Honorable Rhesa H. Barksdale, United States Court of Appeals for the Fifth Circuit. He then joined Sidley Austin LLP, where he practiced for more than five years.

40. Mr. Rauscher joined Loevy & Loevy in 2012, and he is a partner at the firm.

41. Since joining Loevy & Loevy, he has served in lead roles resulting in large recoveries for clients in varied substantive areas of the law. For example, he served as co-class counsel in *Birchmeier*, which as noted above, resulted in a settlement of $56-$76 million for the class. He also served in a lead role in the *LifeWatch* case mentioned above, a declined False Claims Act case that resulted in a nearly $13 million settlement. In the civil rights context, among other cases, Mr. Rauscher was a member of the trial team and had a lead role in the post-trial discovery in *Colyer v. City of Chicago*, Case No. 12-cv-4855 (N.D. Ill.), a shooting case that resulted in a multi-million settlement, as well as a landmark internal

investigation into the City of Chicago Law Department Civil Rights Unit's discovery practices, after the court granted a new trial as a result of attorney misconduct.

42. Mr. Rauscher worked with me from the outset of the Young Insurance case. His background in commercial litigation at Sidley Austin LLP, one of the country's leading law firms, made him ideally suited to work on the Young Insurance case and added substantial value to the Class.

**Frank Newell**

43. Frank Newell joined Loevy & Loevy in 2016, where he has worked on a wide variety of matters, including representing whistleblowers in False Claims Act litigation.

44. Mr. Newell graduated with honors from Harvard Law School in 2006. Prior to joining Loevy & Loevy, Mr. Newell was a litigation associate at Sidley Austin LLP in Chicago, where he worked on a broad array of complex commercial litigation matters at the state and federal levels, representing both plaintiffs and defendants in actions ranging in subject matter from breach of contract to fraud to intellectual property.

45. Mr. Newell was able to quickly jump into the complex Young Insurance case shortly before the first trial setting, using his background at Sidley Austin LLP to efficiently research substantive issues that arose during the pretrial and trial proceedings, as well participating in the post-trial briefing process.

**THE YOUNG INSURANCE LITIGATION**

46. The complaint that we filed in the Young Insurance complaint provides a detailed description of the allegations in that case, and it is attached as Exhibit 2 to this Declaration.

47. In short, the complaint alleged that AIG defrauded the County by switching the name of the insurer who was to provide the County's first-layer excess insurance policy in 2007,

a change that AIG later used as the basis for refusing to pay any additional money toward the Young I settlement.

48. Young Insurance was originally filed under seal, pursuant to the procedures in the Illinois False Claims Act, so that the Illinois Attorney General could investigate the allegations.

49. The Attorney General subsequently declined to intervene.

50. Loevy & Loevy, unlike many other firms that handle False Claims Act cases, litigates declined False Claims Act cases, and Young Insurance was no exception.

51. Shortly after the Illinois Attorney General declined to intervene, the defendants filed six separate motions to dismiss, all of which Class Counsel successfully opposed.

52. Later, Cook County intervened in the case to control the False Claims Act claim, but given the overlap between that claim and the common law tort and contract claims, Class Counsel remained as lead counsel throughout the Young Insurance case, including at trial.

53. Discovery lasted years and included multiple sets of written discovery, 25 depositions, and the exchange of more than 150,000 pages of documents.

54. At the close of discovery, defendants filed four separate summary judgment motions, on all claims and for all defendants. In their summary judgment motions, the AIG insurers referred to the claims against them as “preposterous,” “ludicrous,” and “ridiculous.” Class counsel filed cross-motions for summary judgment on the breach of contract claims, and argued that a trial was necessary on the tort claims.

55. The *Young Insurance* court denied the motions for summary judgment almost entirely, ruling that a trial was necessary on all claims and against all defendants other than for AIG, Inc, which was dismissed for lack of personal jurisdiction. Ex. 3 (Young Insurance SJ Orders).

56. Thus, in March of 2016, the parties proceeded to trial. The trial was a resounding success for the Young class members, with the jury awarding $20 million for the fraud claim, $20 million for a fraudulent inducement claim, $20 million for the False Claims Act claim, and an additional $20 million in punitive damages. Ex. 4 (Young Insurance Judgment).

57. Following the verdict, the parties filed post-trial motions that, among other things, disputed the amount of the verdict. Class counsel took the position that the jury had properly reached a verdict valued at $120 million, consisting of $60 million for the False Claims Act claim plus $20 million for the fraud claim plus $20 million for the fraudulent concealment claim plus $20 million for the punitive damages claim.

58. AIG, on the other hand, took the position that the jury awarded a total $20 million in compensatory damages, to treble, plus $20 million in punitive damages, for a total award of $80 million.

59. The trial court agreed with Class Counsel's view that the jury had awarded a verdict valued at $120 million, but held that such a damages award was cumulative and therefore improper. Ex. 5 (Young Insurance Post-Trial Order). The court therefore vacated the damages award, setting the stage for a retrial on damages. *Id*.

60. The court also overturned the common law fraud and fraudulent concealment judgments and vacated the punitive damages award, holding that there was insufficient evidence to warrant those awards.

61. The AIG insurers then tried unsuccessfully to take an interlocutory appeal, again sought summary judgment with the trial court, and continued to try to limit the potential damages at a retrial, all of which failed.

**RESOLVING YOUNG INSURANCE**

62. Until the eve of the first trial, the AIG insurers expressed absolutely no interest in settling. In fact, in their summary judgment brief, they referred to plaintiffs' claims as "preposterous," "ludicrous," and "ridiculous."

63. It was not until the eve of trial that they offered any real money. At that time, they finally offered the $20 million that should have been paid back when the parties were trying to settle Young I, but still refused to pay for the interest owed on the $20 million, which by that time, years later, was well into the seven figures. Class Counsel decided that the Class would be best served by trying the case, with the belief that the jury would find in the Class's favor on the tort claims and award punitive damages (plus the fact that compensatory damages would automatically treble under the Illinois False Claims Act).

64. After the court limited the damages at the retrial to a maximum of $60 million, the AIG insurers expressed an interest in settling in that range (which was far above the range in – pretrial discussions), and thus avoiding plaintiffs' appeal of the $120 million verdict.

65. As the retrial approached, Class Counsel was able to negotiate a $52 million settlement, which is nearly 90% of the potential damages available the court's post-trial rulings. Ex. 6 (Young Insurance Settlement Agreement).

66. There are few firms willing or able to take such a complex case to trial, and far fewer that have the zeal to secure a $55 million settlement in a complex civil rights case and then keep litigating. Fewer still have the skills to analyze relevant insurance policies to determine that common law and statutory causes of action exist against the defendant's insurance companies, negotiate an assignment of those claims, and then spend nearly five years litigating the assigned claims, all of which were necessary to achieve this result for the Class.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on July 28, 2017

/s/ Michael Kanovitz
Michael Kanovitz