

GARY M. BERNE, OSB No. 774077

Email: gberne@stollberne.com

STEVE D. LARSON, OSB No. 863540

Email: slarson@stollberne.com

MARK A. FRIEL, OSB No. 002592

Email: mfriel@stollberne.com

STOLL STOLL BERNE LOKTING

& **SHLACHTER P.C.**

209 S.W. Oak Street, 5th Floor

Portland, OR 97204

Telephone: 503/227-1600

503/227-6840 (fax)

Liaison Counsel

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

In re VESTAS WIND SYSTEMS A/S)
SECURITIES LITIGATION)

Case No. 3:11-cv-00585-AC

CLASS ACTION

This Document Relates To:)

DECLARATION OF DANIEL WEINSTEIN

ALL ACTIONS.)
_____)

DECLARATION OF HON. DANIEL H. WEINSTEIN (RET.)

I, Judge Daniel H. Weinstein (Ret.), hereby declare as follows:

1. I submit this Declaration in my capacity as the mediator of the proposed Settlement of the claims in the matter *In re Vestas Wind Systems A/S Securities Litigation*, No. 3:11-cv-00585-AC. I make this declaration based on personal knowledge and I am competent to testify to the matters set forth herein.

2. All of the Parties, entities, and individuals who were represented at the mediation sessions or who participated in the negotiations executed a Confidentiality Agreement, indicating that the mediation process was to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such process from later discovery and/or use in evidence. The Parties further agreed that the Confidentiality Agreement extends to all present and future civil, judicial, quasi-judicial, arbitral, administrative or other proceedings. Nothing in my declaration divulges any privileged information. Further, the filing of this declaration does not constitute the waiver of any such confidentiality.

3. From 1982 through 1988, I served as a Judge of the Superior Court of the State of California, County of San Francisco. I also served as an Associate Justice Pro Tern of the California Supreme Court and the First District Court of Appeal.

4. Since retiring from the bench, I have been a full-time mediator. For over twenty years, I have presided over the mediation of countless disputes, including many complex multi-party disputes throughout the United States. By way of example, I have mediated dozens of class actions involving public companies such Enron, Homestore, Qwest, Adelphia, New Century, Parmalat, Broadcom, Aviva, Marsh & McLennan, and other major New York Stock Exchange and Nasdaq corporations. I have also mediated numerous other types of class actions, including

securities class actions, ERISA actions, intellectual property actions, environmental cases, subprime litigation, litigation with bankruptcy aspects and litigation brought by borrowers, credit card customers, insurance purchases, and air crash victims. Many of the cases involve complex fact patterns and legal issues, and involve hundreds of millions (or billions) of dollars in claimed damages. They often include numerous plaintiffs and plaintiffs' counsel, as well as a multitude of defendants (issuers, directors, officers, insurance carriers, professional tiers, etc.) and defense counsel. For each of the last ten years, I have assisted parties in forging settlements of complex disputes involving more than one billion dollars in the aggregate.

5. I set forth my background as a mediator above to provide context for the comments that follow, and to demonstrate that my perspective on the settlement of this Action is rooted in significant experience in the resolution of complex litigation. As described below, this current matter presented significant and complicated legal, factual and practical issues. The Parties were represented during the mediation process through zealous and able counsel, who negotiated aggressively and at arm's length for their clients. I firmly believe that the settlement of this case, reached at the end of the mediation process, represents a reasonable and practical resolution of this complex and highly uncertain litigation. The Court, of course, will make determinations as to the "fairness" of the settlement under applicable legal standards. From a mediator's perspective, however, I can say that I unreservedly recommend the agreed upon settlement as reasonable, hard-fought, arm's length, and accurately reflective of the risks and potential rewards of the claims being settled.

6. I served as the mediator in the litigation *In re Vestas Wind Systems A/S Securities Litigation*, No. 3:11-cv-00585-AC. I have been asked to provide this declaration in order to give my impression of the mediation process that resulted in the settlement that has been presented for approval in this action. I have personal knowledge of the facts stated herein from my role as

mediator of this dispute.

7. Like many of the complex disputes that I mediate, the mediation of this litigation was lengthy and difficult and has a long history. The initial mediation sessions between the parties were conducted by the late Nicholas H. Politan on January 5, and February 16-17, 2012. I understand that, although the parties made some progress during those sessions, they were ultimately unable to reach a settlement, and litigation resumed. Lead Plaintiff filed a consolidated amended complaint; defendants filed motions to dismiss; Lead Plaintiff filed an opposition brief; defendants filed reply briefs, and the motions were ready for a hearing before the federal court.

8. My involvement in this mediation began in August 2013, when the parties agreed to continue to try to resolve this U.S.-based litigation while the fully briefed motions to dismiss were pending. The Parties agreed to a two-day mediation to be held at the San Francisco JAMS offices. In advance of the mediation Plaintiff and Defense Counsel submitted extensive mediation statements, including the briefing on the motions to dismiss. Ultimately, I conducted a two-day mediation session in San Francisco on September 10-11, 2013. In addition, I also participated in numerous phone calls with counsel for all parties, conference calls, and other communications during my involvement in the process. Having mediated other cases with Plaintiff Counsel and Defense Counsel, I knew first-hand of the professional and vigorous advocacy capabilities of these experienced securities litigators, and both sides presented their positions clearly, concisely and accurately in the mediation session.

9. By the time the parties sought my assistance in mediating their disputes, the primary hurdle the parties faced in resolving the case was the fact that their respective positions regarding the strengths and weaknesses of the case had polarized. In essence, the parties had retreated from the progress towards a settlement achieved by Judge Politan. The parties had drastically different views

of the merits, loss causation and damages. My task at the September 2013 mediation was to see if the parties could be brought back to the table and common ground could be found.

10. The initial merits challenge that had to be overcome was whether defendants would prevail in their assertion that the Securities Exchange Act does not apply to the Company's unsponsored ADRs and foreign ordinary shares trading in the United States. Plaintiffs' position was that Vestas knew of and consented to the ADRs trading in the U.S. and kept U.S. investors informed about the Company's quarterly and annual results in English. Defendant's position was that under the U.S. Supreme Court's decision in *Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869 (2010), U.S. securities laws do not apply to unsponsored ADRs.

11. The parties were also very polarized as to other merits issues, loss causation and damages. During the September 2013 mediation sessions, I expended considerable energy while employing "shuttle diplomacy" to make headway on these issues with the parties. Initially, defendants asserted plaintiff could not establish loss causation as to plaintiff's claims regarding Vestas' obsolete inventory because Vestas never disclosed any inventory write-offs or restatements during the originally pled class period. Plaintiffs' position was that Vestas had in fact disclosed that inventory was written down through the multi-billion Euro financial restatement in November 2010. The parties also had profound disagreements about the accounting issues underlying plaintiffs' claims.

12. Ultimately, through compromising, and with my assistance, the parties were able to achieve a middle ground on their differences. Once this was achieved, the parties were able to negotiate and agreed to settle this litigation for \$5 million. This amount represents damages suffered by investors who purchased the ADRs or less-traded common stock. I believe this constitutes an excellent result for plaintiffs who faced the real possibility of recovering nothing if the Court

accepted defendants' *Morrison* arguments. I also believe this result constitutes an excellent result for defendants because it provides them closure in the U.S. and allows them to obtain goodwill with U.S.-based investors.

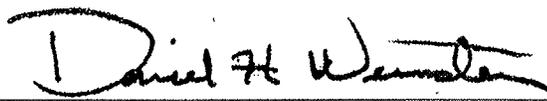
13. This settlement is the result of vigorous arm's-length negotiations by counsel on behalf of their clients that occurred over two years and was conducted by experienced and competent counsel who were well prepared and extremely well-versed in the strengths and weaknesses of their respective positions.

14. As a mediator assisting the parties in these negotiations, I was able to gain valuable insights into the strengths and weaknesses of plaintiffs' case. As I stated above, I believe the settlement achieved here is a very good result given the potential maximum damages to the class of ADR and common stock purchasers in the United States. In addition to the \$5 million settlement, which benefits the class, I also believe that class members and all Vestas shareholders have benefited from the arduous settlement negotiations conducted here. During the pendency of this litigation and the course of these negotiations, and to my understanding, after Vestas's consultation with some of the Company's largest shareholders, Vestas has instituted a series of corporate governance and operational changes in the way the Company is governed for the benefit of all Vestas investors. Additionally, to my understanding, Vestas has made several changes in its executive and board appointments. I understand that a list of these reforms has been provided to the Court by Lead Plaintiff's counsel. I have been informed that Vestas' share and ADR price has allegedly increased over 400 percent since the reform measures were instituted. As mediator I am unable to opine what if any part the reforms played in the increase in share price. From my involvement as the mediator for the case, I observed first hand that this was a hard-fought settlement negotiation resulting in a strong result for the class and an equitable settlement. The advocacy on both sides of the case was

outstanding. It is clear to me that the class could not have obtained such a significant settlement without the efforts of Plaintiffs' counsel who were able to go toe-to-toe with the top-notch defense lawyers involved and the savvy and sophisticated representatives of Defendants – all of whom displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients. Based on my review of all the negotiations conducted in this case, Lead Plaintiff's allegations in the operative complaint and my experience, the corporate reforms were undertaken in part because of the pendency and prosecution of this action. These reforms may very well have conferred additional benefits to Vestas' shareholders that would not have occurred but for, among other things, the diligence of Lead Plaintiffs' Counsel.

15. In summary, I view this settlement as a reflection of the Parties' evaluation of the litigation risks while providing a fair compensation to the class and the benefits of avoiding litigation proceedings and/or appeals that would likely ensue absent a settlement, with uncertain results and extraordinary costs to the parties. The settlement would not have occurred, but for the arduous and continuous efforts of Counsel for Lead Plaintiff and the Class on the one-hand and counsel for Vestas on the other who agreed to continue negotiations even after it appeared further settlement negotiations would be futile. Although, clearly an issue for the Court to decide, in my view, based on my knowledge of this matter, all the materials provided to me, the extensive efforts of skilled advocacy and arm's length bargaining of counsel, the litigation risks, and the benefits reached in the proposed Settlement, I believe that it is a fair, reasonable, and adequate settlement, of all of the claims against the Defendants, and I respectfully recommend that it be approved by this Court.

Dated: May 9, 2014



Hon. Daniel H. Weinstein (Ret.)

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 5, 2014.

s/ TRIG R. SMITH

TRIG R. SMITH

ROBBINS GELLER RUDMAN
& DOWD LLP

655 West Broadway, Suite 1900

San Diego, CA 92101-8498

Telephone: 619/231-1058

619/231-7423 (fax)

E-mail:TrigS@rgrdlaw.com

Mailing Information for a Case 3:11-cv-00585-MO In re: Vestas Wind Systems A/S Securities Litigation

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Robert L. Aldisert**
raldisert@perkinscoie.com,skroberts@perkinscoie.com,docketpor@perkinscoie.com,adargis@perkinscoie.com
- **Jeffrey A. Berens**
jeff@dyerberens.com
- **Gary M. Berne**
gberne@stollberne.com,abuck@stollberne.com
- **Marshall P. Dees**
mdees@holzerlaw.com
- **Ralph C. Ferrara**
rferrara@proskauer.com
- **Mark A. Friel**
mfriel@stollberne.com,sjohnson@stollberne.com
- **Steve D. Larson**
slarson@stollberne.com,sjohnson@stollberne.com
- **Keith F. Park**
keithp@rgrdlaw.com
- **Milo Petranovich**
petranovichm@lanepowell.com,pettingerk@lanepowell.com,docketing-pdx@lanepowell.com
- **Jonathan E. Richman**
jerichman@proskauer.com
- **Henry Rosen**
henryr@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Trig R. Smith**
tsmith@rgrdlaw.com,e_file_sd@rgrdlaw.com,susanw@rgrdlaw.com
- **Tanya Durkee Urbach**
urbacht@lanepowell.com,pinkleyl@lanepowell.com,docketing-PDX@lanepowell.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)