

# **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA**

**IN RE WILLIAMS SECURITIES  
LITIGATION**

This Document Relates To: WMB Subclass

Case No. 02-CV-72-SPF (FHM)

Judge Stephen P. Friot

**ECF Filed**

**JOINT DECLARATION OF MICHAEL PADFIELD FOR THE  
ONTARIO TEACHERS' PENSION PLAN BOARD AND DAVID MALONE  
FOR THE ARKANSAS TEACHER RETIREMENT SYSTEM IN SUPPORT OF  
THE FINAL APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION,  
AND AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

We, MICHAEL PADFIELD, for the Ontario Teachers' Pension Plan Board ("Ontario Teachers"), and DAVID MALONE, for the Arkansas Teacher Retirement System ("Arkansas Teachers") (together with Ontario Teachers, "Lead Plaintiffs"), jointly declare as follows:

1. Michael Padfield is Senior Legal Counsel, Investments for Ontario Teachers. As discussed below, Mr. Padfield directly oversaw the prosecution of this case for Ontario Teachers and had regular and frequent contact with Lead Counsel about this matter. Mr. Padfield is authorized to make this declaration on behalf of Ontario Teachers.

2. David Malone was the Executive Director of Arkansas Teachers during the prosecution of this case. (Pursuant to long-standing plans, Mr. Malone recently retired from Arkansas Teachers effective as of December 31, 2006.) As discussed below, Mr. Malone directly oversaw the prosecution of this case for Arkansas Teachers and had regular and frequent contact with Lead Counsel about the matter. Mr. Malone is authorized to make this declaration on behalf of Arkansas Teachers.

3. The statements in this declaration are made jointly by Messrs. Padfield and Malone unless the statements are made specifically about either Ontario Teachers or Arkansas Teachers. In that case, the statements specifically about Ontario Teachers are made by Michael Padfield, and the statements specifically about Arkansas Teachers are made by David Malone.

4. We have personal knowledge of the matters set forth in this joint declaration as a result of having been directly involved over the past two years in the prosecution, mediation and settlement of this action, and we could and would testify competently thereto.

5. We submit this joint declaration in support of Lead Plaintiffs' application for: (1) approval of the settlement reached between Lead Plaintiffs on behalf of themselves and the class and the defendants in this action, (2) approval of the proposed plan of allocation (the "Plan of Allocation"); and (3) approval of an award of attorneys' fees and reimbursement of litigation expenses.

## **Background**

### **Ontario Teachers**

6. Ontario Teachers is a public pension system organized to provide retirement, disability and survivor benefit programs to Ontario's approximately 163,000 elementary and secondary school teachers and approximately 101,000 retired teachers. The fund is located in Toronto, Ontario, and has net assets under management of approximately \$85 billion (US).

7. As an institutional investor and public pension fund, Ontario Teachers takes very seriously its responsibility to oversee the prosecution of securities class actions when appropriate.

8. Ontario Teachers, through the active and continuous involvement of its Senior Legal Counsel, Michael Padfield, monitors and supervises its activities as lead plaintiff in

securities class actions. Mr. Padfield has had extensive and regular communications with Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz,” the Court-appointed Lead Counsel for the class), concerning the prosecution, mediation, and settlement of this case. Mr. Padfield has generally spoken with counsel several times each month but often weekly and on numerous occasions more than once a day when important decisions needed to be made. When necessary, Mr. Padfield briefed executives at Ontario Teachers – including Claude Lamoureux, Ontario Teachers’ President and Chief Executive, Robert Bertram, Executive Vice-President Investments and Roger Barton, Vice-President General Counsel & Secretary – regarding the status of the action.

9. Ontario Teachers is highly familiar with securities class action litigation in the United States, as it also has served and serves as a court-appointed lead plaintiff in securities class actions involving Nortel Networks, Biovail Corporation, and Cable & Wireless. Based on its active participation in the prosecution of this action and its other experiences as a lead plaintiff, Ontario Teachers was able to capably oversee the prosecution of this case as well as the ultimate settlement of the action.

10. During the period from July 24, 2000 through July 22, 2002 (the “class period”), Ontario Teachers purchased 1,080,500 shares of The Williams Companies, Inc. (“Williams” or “WMB”) common stock on the open market, spending nearly \$26 million in net funds (*i.e.*, funds spent to purchase WMB stock in excess of funds received on sales of WMB stock). Ontario Teachers suffered substantial losses as a result of the fraud alleged in this action. Therefore, among other reasons, Ontario Teachers was highly motivated – and viewed it as its duty working with Arkansas Teachers and Lead Counsel – to see to it that the recovery was maximized to the greatest extent possible in light of the risks and circumstances of the case.

### Arkansas Teachers

11. Arkansas Teachers is a public pension system organized for the benefit of retired employees of the state's schools. Arkansas Teachers has approximately \$10.6 billion in assets under management and is responsible for retirement benefits for approximately 94,000 active employees and retired pensioners.

12. As an institutional investor and public pension fund, Arkansas Teachers takes very seriously its responsibility to oversee the prosecution of securities class actions when appropriate.

13. Arkansas Teachers, through the active and continuous involvement of its Executive Director, David Malone, monitored and supervised its activities as Lead Plaintiff in this case. Mr. Malone was the Executive Director of Arkansas Teachers during the duration of the prosecution of this litigation. Mr. Malone has had extensive and regular communications with Bernstein Litowitz concerning the prosecution, mediation, and settlement of this case. Mr. Malone generally spoke with counsel several times each month but often weekly and on numerous occasions more than once a day when important decisions needed to be made. When appropriate, Mr. Malone briefed fellow executive at Arkansas Teachers – including Julie Cabe, who was then Arkansas Teachers' Deputy Director and who now, since the retirement of Mr. Malone as of December 31, 2006, is serving as its Executive Director – regarding the status of the action.

14. In addition to being represented by inside counsel as well as outside firms (such as Bernstein Litowitz) for matters including this one, Arkansas Teachers is generally represented by the Arkansas Attorney General's Office. In addition to Mr. Malone's oversight of the prosecution of this case, the Arkansas Attorney General's Office participated in the oversight and

prosecution of this case. A seasoned Arkansas Assistant Attorney General, Mark A. Hagemeyer, actively participated in the oversight and prosecution of this case. Like Mr. Malone, Mr. Hagemeyer had regular and extensive contact with Bernstein Litowitz about the progress of the case, as well as about strategic issues and decisions that needed to be made. Furthermore, Mr. Hagemeyer participated with Bernstein Litowitz in the preparation for certain key depositions taken in the case – and Mr. Hagemeyer personally attended those depositions along with Bernstein Litowitz. In addition to Mr. Hagemeyer, the Arkansas Attorney General himself discussed the prosecution and settlement of this case with Bernstein Litowitz.

15. Arkansas Teachers is highly familiar with securities class action litigation in the United States, as it also has served and serves as a court-appointed lead plaintiff in securities class actions involving MasTec, Inc., EVCI Career Colleges Holding Corp., and SFBC International, Inc. Based on its active participation in the prosecution of this action and its other experiences as a lead plaintiff, Arkansas Teachers was able to capably oversee the prosecution of this case as well as the ultimate settlement of the action.

16. During the class period, Arkansas Teachers purchased 1,135,000 shares of WMB common stock on the open market, spending over \$16 million for those shares. Arkansas Teachers suffered substantial losses as a result of the fraud alleged in this action. Therefore, among other reasons, Arkansas Teachers was highly motivated – and viewed it as its duty working with Ontario Teachers and Lead Counsel – to see to it that the recovery was maximized to the greatest extent possible in light of the risks and circumstances of the case.

#### **Appointment As Lead Plaintiffs**

17. In late 2004, a hedge fund known as HGK, withdrew for undisclosed reasons from its role as the prior lead plaintiff in this action. The Court invited class members to apply to

become lead plaintiff(s) on behalf of the class. Before deciding to seek to be appointed as lead plaintiffs, Ontario Teachers and Arkansas Teachers consulted with Bernstein Litowitz about the action. We knew there were likely tens of thousands of investors, including our funds, who had suffered significant damages from investing in Williams during the class period.

18. We also knew that establishing liability against the defendants in this action would not be difficult as there was no restatement by Williams of its financial results, no government investigation that had uncovered wrongdoing by the company or its officers, no admissions of wrongdoing by the company, and no terminations of any officers or directors of the company for improper conduct relating to the allegations of fraud in this action. We also understood that there were difficult and complex factual and legal issues relating to proving falsity, scienter, loss causation, and damages under the federal securities laws. We believed, however, based on our discussions with Bernstein Litowitz, that the claims asserted against Williams and the other defendants were meritorious and that the members of the class should be entitled to fair compensation for the damages sustained as a result of the alleged fraud. Therefore, after consideration and discussion of these factors among our institutions and lawyers at Bernstein Litowitz, our institutions decided to respond to the Court's invitation to seek to become the new lead plaintiffs on behalf of the class. We also proposed that the Court appoint our counsel, Bernstein Litowitz, to serve as Lead Counsel for the class. Both of our funds have previously retained and worked with Bernstein Litowitz in connection with separate securities actions, and we have found their work and professionalism to be of the highest caliber.

19. We discussed with Bernstein Litowitz involving Michael Burrage of the Burrage Law Firm as Liaison Counsel for the class. Based on these discussions, we knew that Michael Burrage's involvement as Liaison Counsel could be very helpful to the prosecution of this action.

Mr. Burrage is intimately familiar with trial practice in the region and has an outstanding reputation as an experienced trial lawyer, and is a former United States District Judge in the State of Oklahoma. Therefore, we agreed with Bernstein Litowitz's recommendation that we propose that Mr. Burrage serve as Liaison Counsel to the class.

20. Following contested motion practice for the appointment of lead plaintiff, Arkansas Teachers and Ontario Teachers were appointed by the Court in January 2005 as the Lead Plaintiffs. The Court also approved our selections of Bernstein Litowitz as Lead Counsel and The Burrage Law Firm as Liaison Counsel to the class.

**Lead Plaintiffs Actively Participated  
In The Prosecution And Settlement Of The Action**

**Prosecution Of The Action**

21. Ontario Teachers and Arkansas Teachers decided to serve as the lead plaintiffs in this action in order to obtain the maximum recovery possible for the benefit of the class given the substantial risks involved in prosecuting the action. To achieve this objective, we closely supervised, carefully monitored, and were actively involved in all aspects of the prosecution of the action. We received regular and detailed status reports from Bernstein Litowitz on important case developments and were involved in all significant decisions in the case.

22. Upon the appointment of our funds as Lead Plaintiffs, we knew that a huge undertaking by our funds and Lead Counsel was immediately necessary. We knew that fact depositions were scheduled to begin in April 2005, just a few months after we were appointed as Lead Plaintiffs. Therefore, Bernstein Litowitz had to quickly complete document discovery and review and organize the millions of pages of documents produced by defendants. These immediate and pressing demands required that Bernstein Litowitz assemble a large team of lawyers from its firm and several other firms working with it to accomplish this enormous task.



This also required that Bernstein Litowitz utilize an electronic document organization system to allow the attorneys to search electronically the millions of pages of documents produced and to organize them in ways that were useful in depositions, summary judgment, and ultimately trial if needed. Once the documents were uploaded on the electronic document organization system, lawyers at Bernstein Litowitz, and at other firms working with them, had to review the massive production of documents for evidence to use in connection with fact depositions, expert discovery, summary judgment and trial if necessary. We were regularly updated by Bernstein Litowitz concerning the progress that was being made in connection with this massive document review.

23. We also discussed with Bernstein Litowitz the need to begin working with experts in a number of highly-technical fields who could help assess the information obtained through discovery, evaluate the need to seek certain additional, focused information from defendants or elsewhere, prepare for depositions and help make those depositions as fruitful as possible, and (where appropriate) ultimately serve as testifying expert witnesses in connection with expert discovery and at trial if necessary. This included experts in the fields of energy marketing and trading, internal controls, finance, telecommunications, loss causation, market efficiency, damages, due diligence by underwriters and directors, and accounting and auditing. Bernstein Litowitz conferred with us about hiring experts in these and related fields. It was apparent that those experts, working with Bernstein Litowitz, added significant value to the case.

24. Within only a few weeks of our funds' appointment as Lead Plaintiffs, Bernstein Litowitz filed on our behalf and on behalf of the class a motion to certify the Class. As with all other substantive filings in the case, we reviewed and commented on the motion for class certification before it was filed. The motion for class certification led to the prompt initiation of

discovery relating to class certification, which took place between January and August 2005. We each personally spent significant time on matters related to class certification discovery. As Lead Plaintiffs and proposed class representatives, we searched for, organized and delivered to Bernstein Litowitz documents for production concerning, among other things, our funds' respective transactions in Williams' securities. We also each prepared for (with Lead Counsel) and appeared for our separate depositions conducted at length by defense counsel. We also were kept apprised by Lead Counsel regarding the depositions of other proposed class representatives in connection with class certification discovery. Furthermore, we reviewed and discussed with Lead Counsel all briefs filed by both sides relating to class certification.

25. Overlapping for several months with class certification discovery, merits depositions took place between April 2005 and January 2006. As with other matters, Bernstein Litowitz conferred with us regarding all noteworthy issues arising out of merits depositions. Bernstein Litowitz discussed with us on a regular basis decisions regarding which depositions would be pursued, the sequence and timing of those depositions, and the evidence elicited from the depositions. We were kept informed by Bernstein Litowitz regarding the fact that well over one hundred merits depositions were taken in locations throughout the country, including in Oklahoma, California, New York, Montana, Texas, Nebraska, and elsewhere. The deponents included many of the former top officers and directors of Williams, audit partners from Ernst and Young LLP ("E&Y"), and underwriters from some of the largest banks in the United States. Attorneys from the Arkansas Attorney General's Office attended a number of the key depositions and discussed deposition strategy with Lead Counsel.

26. Following class certification discovery and fact discovery, expert discovery was conducted between January and early April 2006. As noted above, Lead Counsel retained with

our approval relevant experts to provide testimony on highly technical and contested matters. In connection with expert discovery, Lead Counsel served detailed initial and rebuttal expert reports, and deposed and defended numerous expert depositions. Throughout expert discovery, Lead Counsel kept us updated on the testimony and conclusions reached by plaintiffs' and defendants' respective experts.

27. Immediately following expert discovery, summary judgment briefing began. Defendants filed numerous motions for summary judgment which together comprised more than five hundred (500) of pages of briefing not including exhibits. Defendants' summary judgment briefs required that Lead Counsel engage in a massive undertaking to respond to numerous factual and legal arguments with references to evidence developed through discovery. We discussed this work with Bernstein Litowitz, and also reviewed both the summary judgment papers filed by defendants as well as the summary judgment papers drafted by Lead Counsel. (As with other substantive filings in this case, we reviewed and commented on the summary judgment papers prepared by Bernstein Litowitz before they were filed.) Based on the extensive work that Lead Counsel had done throughout fact and expert discovery, Lead Counsel filed on our behalf detailed briefs responding point-by-point to defendants' summary judgment briefs.

28. In addition, based on evidence Lead Counsel developed through discovery, Bernstein Litowitz filed on our behalf and for the class an affirmative motion for summary judgment with respect to certain facts that Lead Counsel believed could be resolved against defendants as a matter of law. We reviewed and discussed with Lead Counsel that affirmative summary judgment motion and related papers before they were filed.

29. As the case moved toward trial, we regularly discussed with Lead Counsel issues relating to the possible trial of the case. We understood that there were a number of risks

associated with trying the case, including the risk that a Tulsa jury would not be inclined to issue an important verdict against Williams or award significant damages against Williams and its co-defendants. We also knew, however, that Bernstein Litowitz and The Burrage Law firm have significant trial experience, and that if defendants were not prepared to pay what we viewed as an adequate amount to settle the case, those firms and our institutions as Lead Plaintiffs would be ready and able to try the case.

30. Among other preparations for trial, we conferred with Lead Counsel regarding the retention of a highly-regarded jury consulting group in the region, as well as a trial graphics group. Before the case settled, we knew that Lead Counsel and Liaison Counsel had jury research (which was to include mock trials) underway to help prepare for the significant possibility that we would have to try this case.

#### **The Extensive Mediation Process That Led To The Settlement**

31. While our institutions were overseeing the prosecution of this case, the parties were engaged in protracted and contentious settlement negotiations, with Judge Layn R. Phillips (former United States District Judge for the Western District of Oklahoma) serving as the mediator. The settlement negotiations, with which we were deeply involved, took place over the course of more than a year.

32. Because of our close supervision of the litigation and our institutions' prior experiences serving as lead plaintiffs, we believe we were well-positioned and qualified to evaluate the reasonableness and adequacy of the various settlement proposals – and to formulate settlement positions on behalf of the class.

33. For more than a year leading up to the settlement reached in June 2006, Judge Phillips had numerous discussions with counsel on both sides of the case to explore the

possibility of settling the case. Bernstein Litowitz kept us apprised of all such discussions, and discussed with us in detail all offers and responses made during the protracted settlement negotiations.

34. In October 2005, Judge Phillips convened a mediation session among the parties in Dallas, Texas. At that time, fact discovery was partially complete, but neither expert discovery nor summary judgment briefing had begun. During the October 2005 mediation, we conferred with Lead Counsel at length regarding the parties' respective positions and Judge Phillips' efforts to mediate a settlement. Over the course of that two day mediation, it became clear that there was no realistic chance of settling the case against Williams, the underwriter defendants, and the individual defendants (the "Williams defendants") at that time. However, in connection with that mediation, we were able with the involvement of Judge Phillips to agree on an arrangement that ultimately led to the settlement of the claims against E&Y.

#### **The Settlement With Ernst & Young**

35. After extensive consultation with Lead Counsel, we agreed upon an arrangement with E&Y whereby E&Y agreed to pay \$10 million into an escrow account for the benefit of the class, with Judge Phillips serving as the arbitrator to decide on an additional amount that E&Y would be required to pay within a specified range. Consistent with this arrangement, over the coming months, Lead Counsel and E&Y prepared detailed opening and reply arbitration briefs, which were submitted to Judge Phillips. We reviewed and commented on plaintiffs' arbitration briefs before they were submitted to Judge Phillips.

36. Following the submission of Lead Plaintiffs' and E&Y's arbitration briefs, Judge Phillips issued an arbitration award in June 2006 providing that E&Y would be required to pay a

total of \$21 million in to settle the claims against it. Based on our active participation and involvement in the case, we believe this represents an excellent recovery from E&Y for the class.

### **The Settlement With Williams**

37. After October 2005, Judge Phillips continued to engage in separate discussions with Lead Counsel and counsel for the Williams defendants in an effort to reach a resolution of the remaining claims. On numerous occasions, we discussed with Lead Counsel the settlement negotiations and positions of the parties. Consistent with those discussions, and given our understanding of the merits of the case and our commitment to maximizing the recovery on behalf of the class in light of the risks and circumstances of the case, we decided with Lead and Liaison Counsel to advance the case toward trial.

38. In May 2006, when summary judgment motions were pending and as Lead and Liaison Counsel were preparing for the trial (which was scheduled to begin a few months later, in August 2006), Judge Phillips convened a second in-person mediation. This mediation session took place on May 19, 2006 in Judge Phillips' offices in Newport Beach, California. We both traveled to and actively participated in the mediation along with Lead Counsel and Liaison Counsel.

39. Although a settlement was not reached at the May 19, 2006 mediation, following the mediation Judge Phillips continued to explore the possibility of settlement with our counsel and with counsel for the Williams defendants. Bernstein Litowitz kept us apprised as these discussions were ongoing.

40. On June 9, 2006, just two months before the scheduled trial, the Williams defendants and we agreed in principle to a settlement on behalf of the class for \$290 million in cash. Together with the \$21 obtained from E&Y, this brought the total recovery on behalf of the

class to \$311 million. Based on our intimate involvement in the prosecution of this action and knowledge of the risks involved in litigating this case, we believe this is an excellent recovery for the class.

**Lead Plaintiffs Strongly Endorse The Settlement,  
The Plan Of Allocation, And The Application For An Award  
Of Attorneys' Fees And Reimbursement Of Litigation Expenses**

41. Based on our involvement in the prosecution and settlement of this action, we strongly endorse the settlement of \$311 million in cash, and believe it provides an excellent recovery for the class. Based on the analysis completed by the retained damages expert in this action, we also strongly endorse the proposed plan of allocation. We believe that it represents a fair and reasonable method for valuing claims submitted by class members, and for distributing the net settlement funds to class members who submit valid and timely proof of claim forms.

42. As Lead Plaintiffs, we take very seriously our role to ensure that the attorneys' fees are fair in light of the result achieved for the class, and reasonably compensate counsel for the work involved and the substantial risks they undertook in litigating this action. We know that counsel undertook a major investment in terms of both professional time and out-of-pocket expenses to cover the litigation costs. The professional time for Bernstein Litowitz and the other firms that contributed to the prosecution of the case – more than 140,000 hours before adding the Seymour Law Firm's time (which we understand will be identified in papers to be supplied by the Seymour Law Firm) – is reflective of the tremendous amount of work that was required to successfully complete fact discovery, class certification discovery, expert discovery, summary judgment, mediation, and to prepare for trial, all of which was necessary to obtain the settlement ultimately achieved. The out-of-pocket expenses associated with prosecuting this case reflect the need to copy and make use of over 18 million pages of documents, the need to retain and work

closely with numerous experts on complex issues, the need to pay for court reporters to cover over one hundred depositions, the need to travel to depositions and meetings with witnesses, and other standard litigation expenses. We believe these out-of-pocket expenses were not only reasonable, but critical to ensure the recovery achieved.

43. On the basis of these factors, as well as our close oversight of the prosecution of this case, we approve of a fee application for total attorneys' fees of 25% of the settlement fund after deduction of Court-awarded expenses. We understand that this percentage award will cover all class counsel who contributed to the prosecution of the case. We believe that such an award represents a fair and reasonable payment to plaintiffs' counsel for their efforts, for the excellent result achieved, and the substantial risks undertaken in this case. We further believe that the litigation expenses being requested for reimbursement are reasonable and were necessary for the prosecution and successful resolution of this action.<sup>1</sup>

44. In conclusion, as authorized representatives of Lead Plaintiffs who were directly involved in the prosecution, mediation and settlement of this action, we strongly (i) support the settlement obtained for the class as fair, reasonable and adequate, and believe it represents an outstanding recovery for the class; (ii) endorse the plan of allocation, and believe it provides a fair and reasonable method for valuing claims submitted by class members and for distributing the net settlement funds; and (iii) endorse and approve the attorneys' fee and litigation expense reimbursement application, and believe it represents fair and reasonable compensation for Lead

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<sup>1</sup> We reserve judgment on asserted expenses for which the Seymour Law Firm may seek reimbursement. Despite requests seeking this information and despite the fact that the Seymour Law Firm represents no client in connection with this case which could have reviewed its purported expenses, the Seymour Law Firm has never given us or Lead Counsel an opportunity to review the backup, support, or detail for its purported expenses. Accordingly, we are not in a position to endorse any expenses for which the Seymour Law Firm may seek reimbursement.



Counsel and other plaintiffs' firms involved in prosecuting the case in light of the outstanding recovery for the class and the litigation risks assumed. Accordingly, we respectfully request that the Court approve the settlement, the plan of allocation, and the attorneys' fee and litigation expense reimbursement application.

We each declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed this 12<sup>th</sup> day of January 2007



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MICHAEL PADFIELD

Executed this 12<sup>th</sup> day of January 2007

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DAVID MALONE

Counsel and other plaintiffs' firms involved in prosecuting the case in light of the outstanding recovery for the class and the litigation risks assumed. Accordingly, we respectfully request that the Court approve the settlement, the plan of allocation, and the attorneys' fee and litigation expense reimbursement application.

We each declare, under penalty of perjury, that the foregoing facts are true and correct.

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