

**CURTIS J. TIMM and
CAMAC FUND LP**

Plaintiffs,

v.

**IMPAC MORTGAGE HOLDINGS,
INC.**

Defendant.

* * * * *

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No. 24-C-11-008391
*

FILED
JAN 18 2022
CIVIL DIV.
CIRCUIT COURT FOR
BALTIMORE CITY

**PLAINTIFF CAMAC FUND LP'S OPPOSITION TO PLAINTIFF CURTIS TIMM'S
MOTION FOR CLASS CERTIFICATION AND OTHER RELIEF**

Plaintiffs, Camac Fund LP ("Camac") and Curtis Timm ("Timm"), have each filed motions¹ asking that the Court certify a Maryland Rule 2-231(c)(2) class (albeit with different class definitions), and requesting that whoever is appointed lead counsel in the case be allowed to petition for an award of attorneys' fees and expenses out of the common fund created by the litigation. But they disagree about:

- **The definition of the class.** Timm's proposed definition ignores the issue—recognized by the Court and all of the other parties—that the Court must resolve the identity of the persons entitled to the dividends. Timm's proposed class definition does not give anyone other than current stockholders an opportunity to be heard on the issue and he does not propose a procedure to allow the Court to determine who is to receive the dividends. Camac's motion asks the Court to make a preliminary determination of who will receive the dividends that Impac Mortgage Holdings, Inc. ("Impac") is required to pay, and approve a proposed Notice Program that will give class members an

¹ Docket # 164/0 Motion to Certify Class, Appoint Class Representative and Lead Counsel, Preliminarily Determine Right to Receive Dividends, and Set Final Judgment Hearing ("Camac Motion") and Docket #165/0 Motion for Class Certification and Other Relief ("Timm Motion").

opportunity to be heard and allow the Court to make a final determination of the recipients of the dividends. While Timm gives no reason for ignoring the issue and not giving class members an opportunity to be heard, in the Camac Motion and its supporting Memorandum of Law (“Camac Memorandum”), Camac fully briefed the issues of why the class members should have an opportunity to be heard and how and why the Court should rule regarding the recipients of the dividends; therefore, Camac will not repeat those arguments in detail herein. Camac Mem. pp. 15, 26-28.

- **The appointment of the Class Representative and Lead Counsel.** Timm, who is not a lawyer and is ineligible for multiple reasons to serve as Lead Counsel, nonetheless wants this Court to order that he is entitled to practice law and represent the class. Camac asks that the Court appoint it to serve as Class Representative and appoint its counsel, Tydings & Rosenberg, as Lead Counsel. The record in this case demonstrates that Maryland lawyers—both Tydings and the lawyers Timm discharged in 2014 and 2017—did the advocacy that resulted in the favorable rulings and judgment that this Court has entered and will enter. Timm’s actions in this case demonstrate that the Court should not appoint him to serve as either Class Representative or Lead Counsel.²

For the reasons set forth below, and those in the Camac Motion and Camac Memorandum, Camac asks this Court to grant its Motion and deny Timm’s.

² Timm seeks an order requiring Impac to pay cumulative dividends that have accrued after the three quarters of dividends that the Court has ordered Impac to pay. See Timm Motion, p. 1. As it did in its Opposition to Motion Filed by Curtis Timm (3/16/18, #126/1), Camac takes no position on this request.

I. TIMM HAS NEVER BEEN AUTHORIZED TO PRACTICE LAW IN THIS CASE, IS INELIGIBLE FOR APPOINTMENT AS COUNSEL TO THE CLASS, AND WOULD OTHERWISE BE AN INADEQUATE CLASS COUNSEL.

A. Timm Is Not Authorized to Practice Law.

Timm has moved for appointment as class counsel. There are multiple reasons why, if Timm were otherwise eligible, he would be an inadequate class counsel. The Court, however, need not address those issues because he is disqualified for one basic reason: he is not an attorney and never took a single action in this case as counsel. He is not, and to the best of Camac's knowledge has never been, a member of the Maryland bar. He has not been specially admitted to practice in this case under Maryland Code, § 10-215 of the Business Occupations and Professions Article ("BOP") ("Special admission to practice law") nor Maryland Rule 19-217 ("Special admission of out-of-state attorneys *pro hac vice*."). Moreover, he is not eligible to be admitted because Rule 19-217(a) only permits special admission of "an attorney who is a member in good standing of the Bar of another state" To the best of Camac's knowledge, Timm does not meet that requirement.³

In his Affidavit Timm acknowledges that he is a "retired attorney," and in his deposition he admitted that after his retirement in 1990, he "[gave] up practicing as a lawyer." Timm Aff., ¶ 3 (attached to Timm Mem. as Exhibit B); Deposition of Curtis Timm Excerpt, p. 7, attached hereto as Exhibit 1. As he states, he practiced in Florida and, upon information and belief, he also practiced in Minnesota. To the best of Camac's knowledge, however, Timm is unable to practice law in either jurisdiction. He is not a member in good standing of the Minnesota Bar and is not authorized to practice law in that state. *See* Minnesota Judicial Branch Lawyer Details

³ If there were facts to establish that Timm is a member in good standing of the bar of another state, or otherwise qualified to practice law in Maryland, one would expect that he would have presented them in his motion seeking to act as an attorney. But he did not present any such facts, and therefore Camac has exercised its best efforts to determine whether there is any basis for Timm's request and has found none.

attached hereto as Exhibit 2. In Florida, he is designated as retired and “not eligible to practice law in Florida.” See Florida Bar Member Profile attached hereto as Exhibit 3. Under Florida Rules, “Members of The Florida Bar in good standing means only those persons licensed to practice law in Florida who have paid annual membership fees for the current year **and who are not retired . . .**” FL ST BAR Rule 1-3.2(a) (emphasis added). Because Timm is retired, he is not a member in good standing of the Florida bar and, unless he is a member in good standing of the bar of another state, he is not eligible to be specially admitted in Maryland. See Md. R. 19-217(a). Camac is aware of no authority that would enable this Court to admit Timm to practice law in this case, much less authorize him to have lawfully practiced law over the last four years.

Notwithstanding his ineligibility, Timm has repeatedly claimed in this case to have served as the attorney for the putative class. For example, in his brief before the Court of Special Appeals, he asserted: “I am not just the pro se Attorney; I am the attorney in this case representing the class of Shareholders.”⁴ (June 22, 2019, Timm Court of Special Appeals Brief, p. 16 (emphasis in the original)). In his Memorandum in Support of the Timm Motion (“Timm Memorandum”), he asserts that he was “counsel for the putative class of Series B shareholders” and seeks attorneys’ fees. Timm Mem., p. 21. Fortunately for him he has not been “the attorney” or counsel representing the shareholders, since representing others would violate BOP § 10-601: “Except as otherwise provided by law, a person may not practice, attempt to practice, or offer to practice law in the State unless admitted to the Bar.” And, fortunately for the putative class members, they have been represented by lawyers, both Camac’s lawyers and Timm’s since-fired

⁴ Proceeding *pro se* does not mean that the litigant is serving as an attorney, particularly on behalf of a putative class. Rather, it literally means: “For himself; in his own behalf; in person.” See <https://thelawdictionary.org/pro-se/>

lawyers, who litigated the case and restored the stockholders' rights under the Articles Supplementary.⁵

B. Timm Would Not Be an Adequate Lead Counsel.

Because Timm is not eligible to serve as counsel for the other stockholders, there is no need for this Court to examine whether he would be qualified if he were eligible. Nevertheless, the Court can consider Timm's work in this case and will see that however competent he may have been to practice law when he was authorized to do so, he has repeatedly demonstrated that he is not competent to represent a class of shareholders in this case.⁶

The discovery, briefing and argument on all of the issues that eventually produced a judgment—the motion to dismiss, the cross motions for summary judgment and the winning appellate briefs in the appeals—were done by the lawyers.⁷ Timm only began filing papers after the cross motions for summary judgment were fully briefed and argued by the lawyers for the parties. While Timm filed a lot of paper, much was improperly filed, the vast majority lacked citations to the law and the record and concerned issues (such as the payment of dividends to the

⁵ The Timm Motion states that he intends to seek millions of dollars in attorneys' fees once a class has been certified. Putting aside the fact that someone who is not an attorney in good standing of this or any other court cannot be paid attorneys' fees, Camac reserves its right to oppose that request if it is ever made. Suffice it to say that such a claim would require an examination of the admittedly undocumented more than 4,300 hours that he claims to have worked on the litigation (and how much of that work benefitted the class), as well as an examination of many of the expenses that he claims, such as the two flights and 13 meals between May 2, 2017, and April 10, 2018, a period in which there were no in-person proceedings in this case, and the hundreds of dollars claimed for the expense of prosecuting his cross-appeal primarily to benefit the Series C, which he lost. In addition, as noted in Camac's motion, Camac opposes any portion of its recovery in this action going to Timm. Camac Mem. p. 21, n. 12.

⁶ Competency is often evaluated based on the quality of briefing and arguments in the case. *See Young v. Magnequench Intern., Inc.*, 188 F.R.D. 504, 508 (S.D. Ind. 1999) ("we look to the quality of the briefs and arguments presented by counsel as evidence of competence."). *See also* William Rubenstein, 1 *Newberg on Class Actions* ("Newberg") § 3:76 (5th ed., 2021). For example, in *Kingsepp v. Wesleyan University*, the court observed that it "must scrutinize the character, competence and quality of counsel retained by the plaintiff," and noted unfavorably the fact that counsel "avoid[ed] any analysis or discussion ... opting instead for long quotes and conclusory assertions." 142 F.R.D. 597, 599-602 (S.D. N.Y. 1992) (internal quotation omitted).

⁷ Exhibit 5 to this Memorandum is a summary of much of the litigation efforts in this case, identifying who did what. The difference between the work done by Timm *pro se*, and that done by the attorneys, and principally Tydings, is striking.

Series C shareholders) that have nothing to do with the favorable judgment that has been entered in this case. And his *pro se* advocacy demonstrates that he is not competent to represent the class.⁸ Some examples:

1. In the Court of Special Appeals, Timm was required, by June 28, 2019, to file his opening (cross-appellant) and opposition (appellee) brief. On June 22, 2019, he filed what he titled “Brief of Appellee.” Notwithstanding its title, very little of the brief addressed the issues in Impac’s appeal. The vast majority of the brief, which cited no case law, dealt with the issues in Timm’s cross-appeal and a request that the Court of Special Appeals award damages and attorneys’ fees to Timm. Weeks later, Timm filed a Motion to Alter Brief and Extend Time, seeking leave to file his cross-appellant brief. Adding to what would be a comedy of errors if it were not a serious matter, he did not serve his motion on the other parties. The Court wrote to him stating that it would not accept the motion until it received a certificate of service reflecting that it had been served on the parties, which he then filed. Then, Timm filed a “Preferred C Brief with Appendix of Cross-Appellant” on August 16, 2019. The Court denied Timm’s Motion and struck that brief. The multiple attempts to file a brief and repeated failure to follow the Maryland Rules speak volumes and demonstrate a profound lack of understanding of Maryland procedure.⁹

2. The quality of Timm’s work did not go unnoticed by the Court of Special Appeals. In several places in its Opinion, the Court prefaced its description of Timm’s arguments on the cross-appeal with “as best we can discern,” indicating that the Court was

⁸ Timm claims that “[f]or much of the last 12 years, Timm served as his own counsel.” Timm Mem., p. 12. Putting aside the fact that Timm’s attorneys filed this suit in December 2011, ten years ago, he acted *pro se* and was unrepresented by counsel for approximately four of those years.

⁹ Failure to comply with basic rules can be disqualifying for an applicant for lead counsel appointment. See *English v. Apple, Inc.*, 2016 WL 1188200 (N.D. Cal. 2016).

having difficulty understanding Timm's arguments. *Impac Mortgage Holdings v. Timm*, 245 Md.App. 84, 103, 116, 118 (2020).

3. The Court then quotes from Timm's brief and states:

That's it—Mr. Timm develops his argument no further and cites no case law to support it. His failure to present sufficient argument in his appellate brief means that Mr. Timm has waived his challenge to the court's [2013] summary judgment ruling, and we affirm the circuit court judgment on that ground. Md. Rule 8-504(a)(6) (requiring that an appellate brief contain "[a]rgument in support of the party's position"); *Klaunenberg v. State*, 355 Md. 528, 552, 735 A.2d 1061 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal."); *Beck v. Mangels*, 100 Md. App. 144, 149, 640 A.2d 236 (1994). It is not our role to review a trial court's decision—which on this issue spans over ten pages—and issue-spot errors that the appellant hasn't identified.

Id. at 116.

The Court continues: "As before, Mr. Timm's legal arguments are far from fully developed." *Id.* at 119. And:

Mr. Timm's opening appellate brief does not cite any case law or develop any legal argument concerning the legal theories underlying Count III that he asserted in the Complaint and that the circuit court addressed in depth in its January 2013 memorandum opinion. His reply brief mentions the legal theories, but cites no case law and develops no legal argument as to the grounds upon which the circuit court erred in granting summary judgment in Impac's favor on Count III. Accordingly, we find that Mr. Timm has waived his challenge to the court's grant of judgment on Count III for failure to offer sufficient argument.

Id. at 125. Finally, the Court instructed Timm that punitive damages are not available for breach of contract, rejecting his argument that they are permitted in a tort action, because he alleged no tort claim. *See id.* Timm's work here is like that in *Sweet v. Pfizer*, 232 F.R.D. 360, 371 (C.D. Cal. 2005), in which the court found a proposed class counsel to be inadequate and noted: "The moving and reply papers are so strewn with errors that at times the argument simply could not be ascertained."

Timm's advocacy in this Court was similarly wanting. Some examples:

1. At oral argument before this Court on April 16, 2018, Timm was admonished by Judge Pierson to “stick to this case” rather than talking about Larry King and how Timm’s firm (when he was practicing) “had a national case that was in the press every night” that involved the switching of babies by a hospital. *See* April 16, 2018, Hearing Transcript Excerpt, pp. 24–25, attached hereto as Exhibit 4. In that colloquy, Timm told Judge Pierson (as he had done in multiple papers previously filed): “All I want the Court to know is that this case is going to be – your summary judgments are going to be reversed and the Preferred C will be back in the case.” *Id.* at 25. In denying from the bench Timm’s motion to reconsider or revise, Judge Pierson noted that Timm “simply repeated the same arguments that were made previously,” and that “there comes a point at which we can’t seem – simply can’t be re-litigating the same things over and over again.” *Id.* at 27.

2. Timm filed 13 papers *pro se* in this Court.¹⁰ Not one cited any caselaw.

3. Much of Timm’s *pro se* advocacy was little more than attempting to threaten, insult and bully this Court into ruling his way. In one of his papers, he threatened to “disclose the sordid facts of this case to the public media” if Judge Pierson did not accede to his demands. *Petition to the Honorable Judge W. Michel Pierson to Either Decide or Transfer Case*, p. 20 (117/0). In another, he (a) accused Judge Pierson of making “an obviously false statement,” (b) accused Judge Pierson of “[having] the guts” to make an “outrageously false claim,” and (c) admonished Judge Pierson for his “less than sterling record in this case.” *Request to Modify December 29, 2017 Opinion*, pp. 15, 24 (122/0). He further advised the Court that it would “never get away with refusing to follow the uncontested evidence,” and that revising its prior rulings would “enhance your legal and judicial reputation,” and “save the embarrassment of

¹⁰ Docket entries 117/0, 122/0, 126/0, 126/4, 126/7, 134/0, 135/1, 139/0, 141/0, 145/0, 145/4. Two letters are not docketed.

having ruled erroneously and refusing to correct your errors.” *Id.* at 25. This type of “advocacy” is not appropriate in any setting, least of all when seeking to represent an entire class.

Timm’s work *pro se* in this case does not demonstrate a competence in handling cases like this in a Maryland court and produced no benefit for the putative class. He cannot, and should not, represent the class.

C. Tydings Is Best Able to Represent the Interests of the Class.

Federal Rule 23(g) provides guidance as to whom a Court should appoint as lead counsel if there are multiple applicants. “If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.” Rule 23(g)(2).

And the applicant must satisfy the four factors of Rule 23(g)(1)(A):

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel's knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class.

Camac’s opening memorandum demonstrated that Tydings satisfied each of the four factors and those points need not be restated. Camac Mem., pp. 21–26. Timm’s Affidavit reflects no experience in handling class actions, so he fails to satisfy at least one of the four mandatory requirements. *See Sweet*, 232 F.R.D. at 370 (“Not only does Plaintiffs’ counsel admittedly lack experience with class actions, but their work to date in this action demonstrates a failure to comply with the federal rules”)

Further, it is questionable whether Timm even intends to represent the entire class’s interests. Even though all parties agree that the proper recipients of the three quarters of

dividends are the current stockholders, Impac, Camac, and the Court also recognize that prior stockholders should have an opportunity to receive notice and be heard. Timm's proposed definition of the class, which is limited to current holders, would deprive prior holders of that opportunity and ignores Judge Pierson's instructions about the issues that remain and how they should be addressed. By providing notice and an opportunity to be heard to prior stockholders, Camac is risking its own recovery of the dividends, but to properly represent the interests of the class, is willing to accept that risk. Apparently, Timm is not.¹¹

Camac has, throughout this litigation, been represented by Tydings. There is no comparison between the contribution that Timm's *pro se* work made to the favorable judgments that have been, and will be, entered and the work done by Tydings. One need look no further than his Court of Special Appeals opening brief, in which Timm cited no cases. Crucially, during the period when Timm was unrepresented, very little of the work that he did related to the issues that were successful and benefited the Series B stockholders—upholding the ruling that the Series B was improperly amended, arguing that the Series B stockholders were entitled to a full three quarters of dividends, and opposing Impac's attempts to prevent the stockholders from receiving all or part of the three quarters of dividends. Instead, his papers almost singularly focused on the Series C claims, making repeated and unsuccessful arguments. Finally, as discussed in the Camac Memorandum, this Court should give strong consideration to the counsel representing the largest stakeholder which, in this case, is Camac. *See* Camac Mem., p. 20; *In re Constellation Energy Group, Incorporated Shareholder Litigation*, Case No. 24-C-11-003015, (Balt. City Cir. Ct. June 1, 2011) (Memorandum Opinion and Order) (found in the Camac Memorandum Appendix of Unpublished Cases).

¹¹ While Timm owned Series B stock at the time of Impac's actions at issue, as discussed below, a substantial portion of his holdings was purchased during the pendency of the litigation.

Tydings is best able to represent the interests of the class. Timm's request for appointment should be denied and Camac's request should be granted.

II. CAMAC, THE LARGEST STAKEHOLDER AND THE PARTY WITH THE GREATEST INVOLVEMENT IN OBTAINING THE FAVORABLE RESULT FOR THE CLASS, IS THE MOST APPROPRIATE CLASS REPRESENTATIVE.

Camac has explained why it is an appropriate class representative. Camac Mem., pp. 18–21. Timm's argument that he would be an appropriate class representative, and more appropriate than Camac, can be distilled to two points: (a) had he not initially discovered that Impac did not have the requisite two-thirds consent, and had he not filed the action, there would have been no lawsuit, and (b) Camac purchased its Series B stock after learning of the lawsuit. Neither merits the appointment of Timm.

A. The attorneys, and particularly Camac's attorneys, litigated the case, and produced the victory for the Series B stockholders.

There is no dispute that Timm initially determined that Impac did not comply with the requirement in its Articles Supplementary that it receive consents from 2/3 of the Series B stockholders to amend the Articles. But that discovery alone did not obtain the favorable judgment in this case and does not qualify him to be the class representative.

Throughout this case, there have been two arguments why the required consent was not obtained. Timm's primary argument was that Impac never received any valid consents ("Valid Consents Argument"). He, and Camac, until this Court's December 29, 2017, Memorandum Opinion and Order, made that argument but it was rejected at every step of the litigation. After terminating his second counsel, Timm continued to unsuccessfully press the Valid Consent Argument in multiple papers that he filed in this case and in his cross-appeal to the Court of

Special Appeals.¹² In fact, he made the argument yet again in his Memorandum. *See* Timm Mem., p. 18 n. 4.

The second argument (with which this Court and the appellate courts agreed) was that, even if the consents were valid, the Articles required consents from 2/3 of the Series B stockholders, and the consent of 2/3 of the combined Series B and Series C was not sufficient (“2/3 Consent Argument”). Timm’s first set of attorneys pressed both arguments. On January 28, 2013, this Court granted summary judgment in Impac’s favor and dismissed all counts based on the Valid Consent Argument. (19/1.) On the 2/3 Consent Argument, Judge Pierson denied Impac’s motion, holding that the language of the Articles Supplementary was ambiguous and it was unclear whether an amendment required 2/3 consent of the Series B, or if a combined 2/3 consent was sufficient. *Id.*

Thereafter, Camac, represented by Tydings, entered the case as an intervening plaintiff, and Timm fired his first set of attorneys and hired Thomas J. Minton. Tydings and Mr. Minton conducted extensive discovery. They did a detailed review of Impac’s corporate documents, deposed Impac employees, counsel, underwriters, and its expert and analyzed dozens of corporate documents and prospectuses of other companies. In doing so, they developed a record of extrinsic evidence to support the 2/3 Consent Argument. Ultimately, the briefing by Tydings and Mr. Minton and the argument presented by Tydings prevailed in this Court. And the briefing and arguments presented by Tydings prevailed before both appellate courts. The detailed analysis and presentation of the documents and other evidence of Impac and the other companies was a significant component of the briefs and arguments of Camac’s counsel and figured prominently in the favorable decisions of the Circuit Court and the Court of Appeals, as both

¹² Docket entries 117/0, 122/0, 126/0, 126/4, 126/7, 135/1, 145/0, 145/4, and two letters that are not docketed.

opinions relied heavily on the analysis of the documents and evidence. As shown by Timm's *pro se* filings, he did not concern himself with these evidence-based arguments to support the 2/3 Consent Argument—his nearly-exclusive focus was the Valid Consents Argument, despite its repeated rejection. It was the work of Camac's attorneys and Mr. Minton through 2017, and Camac's attorneys thereafter, that secured the judgment for the class.

Similarly, obtaining the relief that this Court granted to the class was almost exclusively the result of the work of Camac's attorneys. Because Impac repurchased Series B shares in October 2009, both plaintiffs contended in their Complaints that Impac was required to pay the stockholders any dividends that were unpaid at the time of the repurchase. Timm's Complaint (and Camac's Complaint in Intervention), alleges, in Count IV, that "Impac must immediately declare and pay the cumulative dividends that were payable for the **two quarters** that preceded Impac's purchase of stock." (Emphasis added). And, in the Prayer for Relief, each Complaint requested an order requiring Impac to declare and pay dividends for the **third and fourth quarters** of 2009 as a result of Impac's repurchase in October 2009. However, in March 2018, when briefing the issues of what relief should be granted, Tydings determined that dividends for the second quarter of 2009—in addition to the third and fourth quarters—had not been paid. The Court agreed, and that additional quarter—which is worth nearly \$400,000 to the class—was ordered to be declared and paid. That was **solely** the result of the work of Camac's attorneys—had Tydings not discovered that the second quarter of 2009 was unpaid, the Class would have lost its right to receive nearly \$400,000.

Additionally, Impac sought to avoid its obligation to pay these dividends at all. First, it argued that the repurchase was unauthorized and should be unwound and, as a result, it would not be obligated to pay the dividends at that time. It also attempted to limit the dividend for the

fourth quarter of 2009 to the “stub period”—October 1 through the date of purchase, which would be approximately 23% of the dividend for the entire quarter. Tydings, not Timm, argued against these claims and prevailed. Timm failed to address these issues; instead, he mocked Camac for doing so: “Finally, PL wants to respond to Defs [sic] and Camac’s briefs beating to death the minor, almost irrelevant issues involving two or perhaps three quarterly dividends in 2009.” Timm instead chose to focus on damage claims that were rejected by the Court and proclaimed that he “won’t waste hours on the trivial issues briefed by Defs and Camac.” Plaintiff’s Response to Defs’ [sic] and Camac March 2018 Briefs, p. 11 (126/7). Although Timm apparently believes that nearly \$400,000 in dividends is trivial to the class, Camac does not.

A chart summarizing the work performed in this litigation shows the difference in the focus and success of the respective efforts by Timm *pro se*, his attorneys, and Camac, through its attorneys. See Impac Events Chart, attached hereto as Exhibit 5. In addition to the procedural and substantive issues with his papers described *supra* in Section I.B, Timm filed multiple useless (e.g., Petition to Judge Pierson to Either Decide or Transfer Case), repetitious, and procedurally flawed papers.¹³ Consequently, the import of his claim of spending over 4,300 hours on this litigation, without time records, is questionable, because it is readily apparent from the papers that he filed *pro se* that a substantial amount of his time was spent in connection with the Series C claims, and not for the benefit of the class of Series B shareholders.

¹³ To be clear, Camac agreed with Timm on the Valid Consents Argument and joined Mr. Minton in filing the initial Motion for Revision of Summary Judgment addressing it. But, once that motion was denied on December 29, 2017, the third time that Judge Pierson ruled on that argument, the issue had been decided and there was no point in continuing to re-argue it (as Timm repeatedly did to Judge Pierson at least seven times between February 12, 2018, and October 23, 2018).

In sum, even though Timm started the litigation, Camac brought it to a successful conclusion, and maximized the class's recovery. Camac, not Timm, should be the class representative.

B. Camac's Purchase of the Stock After Suit Was Filed Is Irrelevant to Determine Who Should Be Class Representative.

Timm complains that Camac purchased Series B shares only after learning of the lawsuit and claims that this somehow makes Camac a less qualified class representative than Timm. Timm cites no law to support this claim, and the facts also fail to support the claim.

Although Timm did own Series B stock when he filed suit, he bought additional stock thereafter. At the time of his deposition in January 2015 (years after suit was filed), he owned 26,025 shares of Series B, some of which he had already purchased after the suit was filed. *See* Ex. 1, pp. 30-33 (including Timm Deposition Exhibit 2). In addition, according to his affidavit, he now owns 37,025 shares, so nearly 30% of his current holdings, if not more, were purchased well into the litigation. Thus, Timm's statement in his Affidavit that, purportedly unlike Camac, he "purchased the [Series B] shares for full value" is, at best, misleading. *See* Timm Aff., ¶10.

More importantly, in his deposition, Timm explained why he bought more shares: "I frankly had so much time and effort in this case I decided I needed a larger stake in the ultimate outcome." Ex. 1, p. 29. Timm clearly does not think there was anything wrong with buying a stake in the litigation, which makes his argument against Camac ring hollow. In addition, as Judge Carrion observed in *Constellation*, (discussed in and attached to the Camac Memorandum) it is important that the Court consider the size of the stake of the respective applicants for class representative. Here, the nature of Camac's stake—its current holdings of Series B shares—is like Timm's, but the size of Camac's stake is far larger than Timm's.

Timm states in his affidavit, without basis, that Camac “would be a poor class representative because [it] is not seeking full compensation for the Series B Shareholders.” Timm Aff., ¶ 10. Camac has amply demonstrated, throughout its involvement in the litigation, that it seeks as much compensation for the Series B stockholders as they can get under the law and facts of this case. As stated, Camac’s attorneys discovered an extra quarter of dividends about which Timm was unaware, and “carried the ball” entirely in opposing Impac’s attempts to limit its obligation to pay dividends. What Camac did not do is bring or continue to press highly speculative and unsupported claims, like Timm’s attempt to recover punitive damages, that have no basis under Maryland law.

Notwithstanding the attacks that Timm seeks to hurl at Camac, Timm’s actions before suit was filed make it clear that benefitting the class was not Timm’s primary motivation in this case. In fact, prior to bringing suit he attempted to reach a settlement with Impac in such a way that it would not have to be disclosed to other stockholders in a Form 8-K. He wanted to be bought out and, as he described it:

Well, you know, that Form 8-K is for significant corporate transactions where you have to notify the public. I was thinking with the number of shares I owned, the total amounts could be insignificant enough [for Impac] not to report on the Form 8-K.

Ex. 1, p. 58. He even concocted a more surreptitious method of avoiding public disclosure of his proposed settlement:

In subsequent conferences I said I think the way to avoid having to file an 8-K would be for Impac to find some third-party purchaser of my shares. I said I will put the shares with a bank who will be authorized to transfer those shares to any person who paid, I was at \$20 a share for those shares. Then [Impac] would know for sure [it] could purchase those shares and it wouldn’t make any difference to me who purchased them.

Id. at 76. Then, he tried to sweeten the deal by offering to consent to the amendment to put the Series B consents over the 2/3 threshold:

Then I gave him the idea. I said in addition I will consents [sic] to your amendments so that all of it, although it is belated, you can show people that there was a consent to these shares that I own that you purchased.

Id. at 77.

So, Timm attempted to get Impac to privately buy him alone out in such a way that no one else would know about the transaction and, if a question was ever raised as to whether Impac received the 2/3 consent, it could claim that it had enough consents by pointing to the purchase of Timm's stock even though that would have occurred long after the tender offer closed. Impac's unwillingness to go along with this self-enriching scheme is what led Timm to file his suit, and not some desire to benefit the class.

Once his overtures were rejected, the only means that Timm had to recover value for the shares that he owned (and the shares he purchased later), was to file suit. Just as Timm did for much of his holdings, Camac bought its shares on the open market at a time when the outcome of the case was far from certain. Owning seven times more Class B shares than Timm, Camac has had a far larger stake in the successful prosecution of the litigation. And while Camac, like Timm, has invested time and money in this litigation, unlike Timm, Camac allowed its attorneys to litigate the case, which resulted in the successful outcome. Camac, having bought the stock amid the uncertainty of the litigation, put its money where its mouth is, and is the appropriate choice for class representative.

As stated in Camac's Motion, there is a two-part test to determine adequacy for appointment as a class representative: (i) there can be no conflicts between the interest of the representative and the interests of the class, and (ii) the representative must be committed to vigorously prosecuting the interests of the class through experienced, qualified counsel. Camac Mem., p. 18.

Timm fails to satisfy the first prong, as the conflict between Timm and the rest of the class is clear. From Timm's pre-suit attempt to shakedown Impac and enrich himself, through his current papers seeking the payment of one-third of the recovery as attorneys' fees—even though he is not an attorney – Timm's actions demonstrate that he has pursued this case primarily for himself, not the rest of the shareholders. In addition, Timm has decided to ignore Judge Pierson's directive that: "The primary issue remaining for resolution is the identity of the persons entitled to dividends on Series B shares. The parties agree that this issue requires class proceedings." July 16, 2018, Mem. Op. at 11 (132/0). Instead, he seeks a class consisting only of current stockholders, which would deprive past stockholders of the right of notice and the opportunity to be heard. This would appear to be a conflict. Conversely, even though Camac did not own stock at the time of Impac's actions in 2009 that triggered the requirement to pay dividends, Camac's proposed class definition and Notice Program will give all stockholders who might claim a right to the dividends an opportunity to be heard. For this reason, Camac is a more appropriate class representative.

The second prong—that the representative must be committed to vigorously prosecuting the interests of the class through experienced, qualified counsel—undoubtedly weighs in Camac's favor. Timm's motion makes it clear that Timm considers himself the counsel and Mr. Costello's role is nothing more than to "provide support to Timm if needed" if Timm is appointed class counsel. Camac has explained in great detail why Timm does not meet this requirement. And, just as a *pro se* litigant cannot serve as class counsel, a *pro se* plaintiff cannot serve as class representative. See William Rubenstein, 1 Newberg on Class Actions ("Newberg") § 3:79 (5th ed., 2021) ("A *pro se* litigant seeks to serve as both client and lawyer. A

pro se class action litigant therefore effectively proposes to serve as both class representative and class counsel. Perhaps for that reason alone, she is not adequate to do either job.”).

All of the facts and law in this case compel the inescapable conclusion that Timm is not adequate to be appointed class representative.

III. TIMM’S REQUEST FOR PAYMENT

Timm requests that he be compensated from the proceeds of the common fund that will be paid to the Series B stockholders. As explained in the Camac Motion, if fees are awarded, they should come from the common fund. However, Timm is simply not entitled to attorneys’ fees. As discussed above, although he was an attorney over 30 years ago, he is not an attorney now. He did not, and cannot, represent the Class, and he cannot be appointed Lead Counsel. Even putting aside that threshold issue, Timm, as a *pro se* litigant, is not entitled to an award of attorneys’ fees if, as appears to be the case here, he did not incur any. In *Frison v. Mathis*, 188 Md. App. 97, 106 (2009), the Court of Special Appeals affirmed the denial of Rule 1-341 fees to an attorney appearing *pro se*, holding: “When an attorney represents himself, he has not ‘incurred’ any actual expenses in the nature of attorney’s fees, and therefore, he cannot recover attorney’s fees pursuant to Rule 1-341.” See also *Horn v. F.D.I.C.*, 2011 WL 6132309, *2 (D. Md. 2011) (“It is well settled that a self-represented party ordinarily is not eligible to receive an award of attorneys’ fees.”); *Kay v. Ehrler*, 499 U.S. 432, 435 (1991) (affirming that a *pro se* litigant who is also a lawyer in civil rights actions is not entitled to attorney fees). In any event, as stated in footnote 5 above, Camac reserves its right to oppose Timm’s claim for attorneys’ fees if such a request is made.

In the alternative, Timm seeks to present evidence at a later date to support a claim for an incentive award for his efforts in initiating this action. Timm makes it clear he wants credit for originating the case and because he feels he did a lot of work as “counsel” in the case. As

shown above, Timm is not entitled to an award for work as counsel and he should not be allowed to make a back-door attempt to be paid attorneys' fees by calling it something else. And there is no authority for giving a class representative an oversized payment because he suffered a wrong that others also suffered and then brought it to an attorney to prosecute—that is not what incentive awards are about. Incentive awards are not granted as a bounty for bringing an action, or for arriving at a theory of liability that ultimately proves successful. Rather, in determining whether an incentive award is warranted, “a court should ‘consider the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.’” *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 468-69 (D. Md. 2014) (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

Additionally, courts often premise incentive awards on the risk that the class representatives undertook in representing the class. *See* Newberg, § 17:3. In *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 691 (D. Md. 2013), the court found that an incentive payment of \$2,500 to each named plaintiff was reasonable where plaintiffs undertook personal risk in litigating against their former employer. Here, of course, there was no risk to Timm, other than out of pocket expenses that he may have incurred (and the nature and extent of those are questionable).

Accordingly, the Court should deny Timm's request for an incentive award. Finally, if Timm is appointed a class representative, any incentive award must be reasonable and in the range of the typical incentive awards in other class actions and, particularly, securities class

actions.¹⁴ Camac reserves its right to be heard on this issue if Timm moves for an incentive award in a specific amount.

CONCLUSION

For the reasons set forth above, and those contained in the Camac Motion and supporting Memorandum, Camac respectfully requests that this Court grant its Motion and deny the Timm Motion.

Respectfully submitted,



John B. Isbister, CPF #7712010177
Daniel S. Katz, CPF 8011010192
Timothy R. VanCisin, CPF #1912180188
Tydings & Rosenberg LLP
One East Pratt Street, Suite 901
Baltimore, Maryland 21202
(Tel.) 410-752-9700
(Fax) 410-727-5460
jisbister@tydingslaw.com
dkatz@tydingslaw.com
Tvancisin@tydingslaw.com

Counsel for Plaintiff Camac Fund L.P.

¹⁴ While Timm does not specify the amount of incentive award that he intends to request, his papers suggest that he is envisioning a payday in the millions, like his attorneys' fee request. Incentive awards simply do not approach that magnitude. Some examples are *Singleton, supra* (\$2,500 to each of two named plaintiffs), *Whitaker v. Navy Federal Credit Union*, No. RDB-09-cv-2288, 2010 WL 3928616, at *7 (D. Md. Aug. 1, 2011) (\$5,000), *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451 (D. Md. 2014) (\$5,000 to each named plaintiff), *Decohen v. Abbasi, LLC*, 299 F.R.D. 469 (D. Md. 2014) (\$10,000), *Queen v. Constellation Power Source Generation Inc.*, No. 24-C-07009289, 2008 WL 8775646, (Md.Cir.Ct. Dec. 30, 2008) (\$25,000 to one named plaintiff and \$2,000 to another), *Raider v. Sunderland*, No. Civ.A. 19357 NC., 2006 WL 75310, at *2 (Del. Ch. Jan. 4, 2006) (a securities class action awarding \$42,400 from the fee of class counsel and discussing Delaware state cases granting awards from \$5,000 to \$95,000).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2022, copies of the foregoing
Opposition to Plaintiff Curtis Timm's Motion for Class Certification and Other Relief were sent
by electronic mail, and first-class mail, postage prepaid, to:

Thomas C. Costello, Esquire
Anne L. Preston, Esquire
Costello Law Group
409 Washington Avenue, Suite 410
Towson, Maryland 21204
tcc@costellolawgroup.com
alp@costellolawgroup.com

Attorneys for Plaintiff, Curtis Timm

Pamela S. Palmer, Esquire
Kevin Crisp, Esquire
Pepper Hamilton LLP
350 South Grand Avenue
Two California Plaza, Suite 3400
Los Angeles, CA 90071
palmerp@pepperlaw.com
crispk@pepperlaw.com

G. Stewart Webb, Jr.
Venable LLP
750 East Pratt Street, Suite 900
Baltimore, Maryland 21202
gswebb@Venable.com

Attorneys for Defendant Impac Mortgage Holdings, Inc.



Daniel S. Katz, CPF #8011010192

EXHIBIT 1

IN THE CIRCUIT COURT FOR BALTIMORE CITY

-----X

CURTIS J. TIMM and CAMAC FUND, LP On
Behalf of themselves and all persons
Similarly situated,

Plaintiffs,

Case Number
24-C-11-008391

-against-

IMPAC MORTGAGE HOLDINGS, INC.,
Defendant.

-----X

January 14, 2015
9:30 a.m.

Deposition of CURTIS TIMM, taken by
Defendant, pursuant to Notice, at the offices of
Pepper Hamilton, LLP, 620 Eighth Avenue, New
York, New York, before TAMMEY M. PASTOR, a
Registered Professional Reporter, Certified
LiveNote Reporter and Notary Public within and
for the State of New York.

<p style="text-align: right;">Page 6</p> <p>1 CURTIS TIMM 2 primarily transactional as opposed to 3 litigation? 4 A. Mine was primarily tax and 5 corporate. I handled a lot of mergers and 6 acquisition and specialized in that general 7 area. But rare among attorneys, I felt you 8 could not be a good office attorney unless 9 you could go into court and try cases. 10 So over the years I have always 11 tried at least one, possibly two jury cases. 12 In the last few years almost all of them 13 were in Federal Court. 14 Q. How long were you with this 15 firm in Florida? 16 A. Since 1958. 17 Q. And how long did you stay with 18 them? 19 A. Well, I retired after about 35 20 years of practice in 1989, '90 era. The firm 21 ended up being Icard Merrill Curtis, 22 C-U-L-L-I-S, Timm, Furen, F-U-R-E-N and 23 Ginsberg. 24 Q. Any relation to Ruth Bader? 25 A. No.</p>	<p style="text-align: right;">Page 8</p> <p>1 CURTIS TIMM 2 cities and area. I finally sold out the 3 biggest amounts in 1983, '84 era area. 4 Then I decided that I had to 5 learn the securities business and investment 6 in the markets. So I got an office for my 7 own purposes only in brokerage firms. I 8 wanted to be associated with people who 9 traded the market and who had ideas. And 10 that I could learn how to trade and invest 11 money, because I had some money, but it was 12 all cash. 13 I had decided that at that time 14 it wasn't that good to re-enter the real 15 estate market. 16 Q. So having an office with these 17 brokerage firms, did you work for the 18 brokerage firms? 19 A. No. No. I just rented a place 20 so that I could have a place to go. And my 21 wife was happy to have me leave the house 22 every day. 23 Q. I understand that, risk of 24 retirement. When you were engaged in 25 learning the investment business, did you</p>
<p style="text-align: right;">Page 7</p> <p>1 CURTIS TIMM 2 Q. So retired in 1990 after 35 3 years of practice. 4 A. Correct. 5 Q. After you retired did you give 6 up practicing as a lawyer? 7 A. Yes. Because I was actually 8 about less than 60 years old and didn't want 9 to have to practice for prior clients that I 10 represented for 20, 30 years, I voluntarily 11 agreed to a non-compete agreement, which is 12 the best thing I ever did. 13 When people came to me and said 14 you've been our attorney for 20 years, why 15 can't you do this? I'd say no, I can't, I 16 have a non-compete agreement. 17 Q. How did you occupy your time 18 after you retired in any professional 19 capacity? 20 A. Having moved to Florida in its 21 infancy of its present growth, it wasn't 22 easy to not realize that real estate was the 23 thing to be in as an investor. 24 So for years I bought into 25 vacant real estate on the edge of growing</p>	<p style="text-align: right;">Page 9</p> <p>1 CURTIS TIMM 2 manage your own? 3 A. Yes. 4 Q. Were they stock and bond 5 investments? 6 A. Yes. 7 Q. This is starting in about 190? 8 A. Correct. 9 Q. Did you ever manage anybody 10 else's investments other than your own? 11 A. I had a lot of opportunities 12 because even in the last ten years or so, I 13 would attempt to predict everything from the 14 Dow, interest rates and other things. 15 So my long-range predictions 16 were pretty decent. My short range timing 17 was subject to some question. 18 Q. Did you publish your 19 predictions? 20 A. I had a group of about eight or 21 ten people that I sent my ideas to 22 throughout the United States. I had a fellow 23 in Boston who published a periodical or a 24 monthly newsletter called Inference and 25 which cost 16,000 a year to take.</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 26</p> <p>1 CURTIS TIMM</p> <p>2 question. It was unclear.</p> <p>3 Do you know how many different</p> <p>4 series of preferred stock Impac had</p> <p>5 outstanding in 2007?</p> <p>6 A. Of course, yes.</p> <p>7 Q. And what were those series?</p> <p>8 A. Well, they had 2 million shares</p> <p>9 of Preferred B. They had 4.4 million plus</p> <p>10 shares of Preferred C. And earlier they had</p> <p>11 created what is called trust preferred</p> <p>12 securities. And they had a few of those that</p> <p>13 you might consider to be within that</p> <p>14 classification.</p> <p>15 Q. Did you ever invest in any</p> <p>16 trust preferred securities at Impac?</p> <p>17 A. No.</p> <p>18 Q. Did you invest in the Series B</p> <p>19 and the Series C Preferred?</p> <p>20 A. I did eventually.</p> <p>21 Q. When you first started</p> <p>22 investing in Impac preferred did you</p> <p>23 purchase the Series B or Series C or both?</p> <p>24 A. I think my first purchases</p> <p>25 would have been Preferred B. They are</p>	<p style="text-align: right;">Page 28</p> <p>1 CURTIS TIMM</p> <p>2 some in depth investigation.</p> <p>3 Q. Did you talk with any other</p> <p>4 investment professionals before purchasing</p> <p>5 Impac preferred stock about purchasing Impac</p> <p>6 preferred stock?</p> <p>7 A. No.</p> <p>8 Q. Have you ever sold Impac</p> <p>9 preferred stock?</p> <p>10 A. Have I what?</p> <p>11 Q. Ever sold.</p> <p>12 A. Yes.</p> <p>13 Q. When did you sell?</p> <p>14 A. In the Offering Circular to the</p> <p>15 tender offer dated May 29, 2009 you</p> <p>16 indicated that after the tender offer was</p> <p>17 complete that there would be in public</p> <p>18 market for the preferred stock. Well, I</p> <p>19 owned preferred stock. I had examined the</p> <p>20 Offering Circular in detail. I knew all sort</p> <p>21 of statements therein were not correct. And</p> <p>22 I knew that your two principals owned a</p> <p>23 company that had value far in excess of what</p> <p>24 was represented.</p> <p>25 So I didn't participate in the</p>
<p style="text-align: right;">Page 27</p> <p>1 CURTIS TIMM</p> <p>2 outlined in my answers.</p> <p>3 Q. Do you remember what</p> <p>4 documentation you looked at before deciding</p> <p>5 to purchase Impac preferred stock?</p> <p>6 A. I started investigating Impac</p> <p>7 with the intention of buying their common</p> <p>8 stock. 2000, 2001. I have a lot of time. I</p> <p>9 have been unemployed in the normal sense</p> <p>10 since say, 1990.</p> <p>11 So I do due diligence to a</p> <p>12 greater degree than 95 to 99 percent of the</p> <p>13 people. Because I have the time. I am</p> <p>14 inclined to want to know everything. So I</p> <p>15 follow Impac quite closely, meaning to the</p> <p>16 point that I can remember somewhere along</p> <p>17 the line when Tompkinson was listed as one</p> <p>18 of the highest employed CEOs in California.</p> <p>19 This is before Silicon Valley. But I would</p> <p>20 know that.</p> <p>21 And I would read all the</p> <p>22 lawsuits that they were involved with. I</p> <p>23 know their background as far as who</p> <p>24 represented them, as far as accountants,</p> <p>25 KPMG and Ernst & Young. So, yes, I did do</p>	<p style="text-align: right;">Page 29</p> <p>1 CURTIS TIMM</p> <p>2 tender offer. I wanted to find out if in</p> <p>3 fact there was no public market for the</p> <p>4 preferred stock after June 29, 2009.</p> <p>5 So in early July, 2009 I sold a</p> <p>6 thousand shares of Preferred B. And I found</p> <p>7 out there was still a public market despite</p> <p>8 what was stated in the Offering Circular.</p> <p>9 Q. Other than the sale of 1,000</p> <p>10 shares of Preferred B in July 2009 have you</p> <p>11 sold any other Impac preferred?</p> <p>12 A. I have not.</p> <p>13 Q. Have you purchased Impac</p> <p>14 preferred since this lawsuit was filed?</p> <p>15 A. I have purchase some, yes.</p> <p>16 Q. Preferred B or Preferred C?</p> <p>17 A. Both.</p> <p>18 Q. Between 2007 when you first</p> <p>19 started buying and the time you filed this</p> <p>20 lawsuit, did you purchase on multiple</p> <p>21 occasions Impac preferred stock?</p> <p>22 A. On a couple occasions. I</p> <p>23 frankly had so much time and effort in this</p> <p>24 case I decided I needed a larger stake in</p> <p>25 the ultimate outcome.</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 CURTIS TIMM</p> <p>2 Q. Can you tell me currently how</p> <p>3 much preferred stock you own?</p> <p>4 A. I'm just trying to think.</p> <p>5 Personally it's in this thing, something</p> <p>6 like 30,000 B and roughly 20,000 C.</p> <p>7 Q. We have some documents that you</p> <p>8 produced that may show how much stock you</p> <p>9 own. I want to ask you about it.</p> <p>10 A. Yes. You have the --</p> <p>11 Q. Yes. We will mark another</p> <p>12 exhibit Timm Exhibit 2.</p> <p>13 (Timm Deposition Exhibit</p> <p>14 2 for identification, E*Trade,</p> <p>15 Ameritrade, Stifel Account Statements</p> <p>16 9/30/14, no production numbers.)</p> <p>17 BY MS. PALMER:</p> <p>18 Q. Curtis Exhibit 2 consists of</p> <p>19 four pages that -- sorry, I get dyslectic</p> <p>20 about your name, I keep calling you by your</p> <p>21 last name. So this is actually Timm</p> <p>22 Exhibit 2.</p> <p>23 These are four pages that you</p> <p>24 produced, three of which appear to be</p> <p>25 statements from September 30, 2014 from</p>	<p style="text-align: right;">Page 32</p> <p>1 CURTIS TIMM</p> <p>2 C in another block.</p> <p>3 MR. MINTON: That is Preferred B</p> <p>4 that's your writing.</p> <p>5 A. Excuse me, 19,000 are Preferred</p> <p>6 B. And 3,000 of Preferred C. That is in the</p> <p>7 Ameritrade account.</p> <p>8 Q. Just to confirm what your</p> <p>9 attorney said, that's your handwriting on</p> <p>10 that page circling those amounts?</p> <p>11 A. Yes. That is mine.</p> <p>12 Q. What does the next page show</p> <p>13 us?</p> <p>14 A. This is, this would be, the</p> <p>15 next page is, this is 9/30, 2014, it shows</p> <p>16 19,024 of Preferred B and 3,000. That is</p> <p>17 3,000 of Preferred C.</p> <p>18 Q. So this appears to be exactly</p> <p>19 the same number of shares as in the</p> <p>20 Ameritrade account on the prior page. Do you</p> <p>21 think page 3 of this exhibit is also</p> <p>22 referring to your Ameritrade account?</p> <p>23 A. E*Trade is different from</p> <p>24 Ameritrade.</p> <p>25 MR. MINTON: Well the question is</p>
<p style="text-align: right;">Page 31</p> <p>1 CURTIS TIMM</p> <p>2 E*Trade. And one of which is a statement of</p> <p>3 September 30, 2014 from Stifel. What are</p> <p>4 these documents, can you describe them?</p> <p>5 A. These are monthly statements</p> <p>6 from the preferred -- from the brokers who</p> <p>7 held in street name my investments in Impac</p> <p>8 Preferred B and Preferred C.</p> <p>9 Q. As of September 30, 2014?</p> <p>10 A. Whatever date is on those</p> <p>11 statements.</p> <p>12 Q. Other than E*Trade and Stifel?</p> <p>13 MR. MINTON: One of them is</p> <p>14 Ameritrade.</p> <p>15 Q. I missed that one. Maybe it is</p> <p>16 better if you go through it and show me what</p> <p>17 brokers are reflected on these documents as</p> <p>18 holding your stock.</p> <p>19 A. Okay, E*Trade. The first page</p> <p>20 shows that I own 5,001 shares of Preferred B</p> <p>21 and 15,000 of Preferred C.</p> <p>22 Q. That is with E*Trade?</p> <p>23 A. That is E*Trade. The Ameritrade</p> <p>24 account shows that I own 19,024 shares of</p> <p>25 Preferred C in one block and 3,000 Preferred</p>	<p style="text-align: right;">Page 33</p> <p>1 CURTIS TIMM</p> <p>2 since it is the same amount, 19,024 in</p> <p>3 3, is this page Ameritrade as well or</p> <p>4 something else?</p> <p>5 A. It appears to be, yes.</p> <p>6 Q. The last page of this exhibit,</p> <p>7 what does this show?</p> <p>8 A. This is a Stifel account in</p> <p>9 which I own 2,000 shares of Preferred B.</p> <p>10 Q. Other than these three accounts</p> <p>11 do you own any preferred Impac stock in any</p> <p>12 other accounts?</p> <p>13 A. No.</p> <p>14 Q. This is the grand total of your</p> <p>15 current holdings of Preferred B and C?</p> <p>16 A. Correct.</p> <p>17 Q. Have you ever been deposed</p> <p>18 before?</p> <p>19 A. I have never been a Plaintiff</p> <p>20 in a lawsuit to my knowledge. But I have a</p> <p>21 couple of times, I believe been deposed as</p> <p>22 an expert, I can't even tell you what the</p> <p>23 lawsuits are, no, this would be a rare</p> <p>24 occurrence for me.</p> <p>25 Q. In what capacity were you</p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 54</p> <p>1 CURTIS TIMM</p> <p>2 many courses allow the cumulative voting on</p> <p>3 Directors, if you have 1,000 votes voting</p> <p>4 them for certain things you can cumulate and</p> <p>5 instead of voting for 3 Directors, cumulate</p> <p>6 those and vote on one Director. That was the</p> <p>7 gist of what I was talking about.</p> <p>8 Q. Were you referring to</p> <p>9 cumulation of votes for the B and C shares</p> <p>10 voting together, is that what you were</p> <p>11 supposing they might come back with?</p> <p>12 A. I wasn't afraid of that because</p> <p>13 I knew the provisions of article 6.</p> <p>14 Q. I am not sure I understand your</p> <p>15 answer then. "Maybe they will claim they</p> <p>16 can cumulate the votes on the Preferred B</p> <p>17 issue."</p> <p>18 How would that have resulted in</p> <p>19 more than two-thirds of vote to amend the</p> <p>20 charter?</p> <p>21 MR. MINTON: Objection, vague.</p> <p>22 Calls for speculation. Assumes fact not</p> <p>23 in evidence.</p> <p>24 A. I knew that Impac had been</p> <p>25 caught in a fundamental error that made the</p>	<p style="text-align: right;">Page 56</p> <p>1 CURTIS TIMM</p> <p>2 A. I did -- to Ashmore, excuse me,</p> <p>3 I was thinking you said to Morrison. No, I</p> <p>4 did not. No figures were discussed.</p> <p>5 Q. At this point when you were</p> <p>6 speaking with Mr. Ashmore, had you read the</p> <p>7 Prospectus or Prospectus Supplement for</p> <p>8 Preferred B or Preferred C shares?</p> <p>9 A. I can't remember reading it, so</p> <p>10 I presume I did not. I'd say I did not.</p> <p>11 Q. If you turn to page 3 of this</p> <p>12 document there are additional notes that</p> <p>13 carry from the bottom of page 3 through page</p> <p>14 4. When were these additional notes added?</p> <p>15 A. At about the time I did this.</p> <p>16 In other words, I wanted a memo that not</p> <p>17 only put in writing what our telephone</p> <p>18 conversation was but our possible responses</p> <p>19 to thing.</p> <p>20 Q. You are saying these additional</p> <p>21 notes on page 3 and page 4 you believe you</p> <p>22 added in -- in the same time frame, 2009?</p> <p>23 A. Yes. I'd say the same time</p> <p>24 frame.</p> <p>25 Q. Page 4, the last page of these</p>
<p style="text-align: right;">Page 55</p> <p>1 CURTIS TIMM</p> <p>2 amendment of the Preferred B shares</p> <p>3 impossible. And that I expected them -- I</p> <p>4 read all your lawsuits to the extent that,</p> <p>5 you know, if possible to follow. And I know</p> <p>6 of all the technical defenses and claims. So</p> <p>7 I just assumed something like this would</p> <p>8 come up.</p> <p>9 Q. This was written before any</p> <p>10 lawsuit was filed.</p> <p>11 A. Correct.</p> <p>12 Q. So what did you have in mind at</p> <p>13 this time that Impac might say about the</p> <p>14 ability to cumulate votes on the Preferred</p> <p>15 B?</p> <p>16 A. I wasn't really considering</p> <p>17 that. All I was interested in is to have</p> <p>18 them buy my shares so I could get rid of</p> <p>19 this. And that my total investment would not</p> <p>20 be wiped out.</p> <p>21 Q. Did you make proposal to Mr.</p> <p>22 Ashmore as to how much you wanted for your</p> <p>23 shares?</p> <p>24 A. I did.</p> <p>25 Q. You did not?</p>	<p style="text-align: right;">Page 57</p> <p>1 CURTIS TIMM</p> <p>2 notes contemplates, or you contemplate in</p> <p>3 paragraph that is numbered 5, "If a class</p> <p>4 action is required, we would challenge."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Were you contemplating at the</p> <p>8 time in 2009 filing a class action lawsuit?</p> <p>9 A. No, I was just going through</p> <p>10 the possibilities of what could occur.</p> <p>11 Q. The reference to "we" and "our"</p> <p>12 appears several times on this page. Who did</p> <p>13 you mean by "we?"</p> <p>14 A. I mean the preferred</p> <p>15 shareholders.</p> <p>16 Q. Had you --</p> <p>17 A. Myself. You know, a lot of</p> <p>18 times instead of "I" everything, "I"</p> <p>19 everything, I say "we."</p> <p>20 Q. The royal "we."</p> <p>21 A. Yes.</p> <p>22 Q. "We" meaning you?</p> <p>23 A. Me.</p> <p>24 Q. Okay. The last paragraph on</p> <p>25 this page, paragraph 7 says, "The amount we</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 CURTIS TIMM</p> <p>2 seek which would be a repurchase of our</p> <p>3 preferred at \$20 per share already has a</p> <p>4 market value of over \$1 per share and the</p> <p>5 total net amount payable would be an amount</p> <p>6 that is not material for SEC purposes."</p> <p>7 What was your thinking in</p> <p>8 putting down those words?</p> <p>9 A. Well, you know, that Form 8-K</p> <p>10 is for significant corporate transactions</p> <p>11 where you have to notify the public. I was</p> <p>12 thinking with the number of shares I owned,</p> <p>13 the total amounts could be insignificant</p> <p>14 enough not to report on the Form 8-K.</p> <p>15 Q. So you were thinking that if</p> <p>16 Impac settled with you by purchasing your</p> <p>17 shares, that would not be a reportable event</p> <p>18 for Impac?</p> <p>19 A. I thought it possibly could not</p> <p>20 be reportable.</p> <p>21 Q. Your last sentence here "They</p> <p>22 can claim our legal arguments regarding the</p> <p>23 amending of the preferred are not credible</p> <p>24 as they probably have stated by this time."</p> <p>25 What did you mean by "As they</p>	<p style="text-align: right;">Page 60</p> <p>1 CURTIS TIMM</p> <p>2 Q. Who recommended, other than</p> <p>3 counsel, other than any discussions with</p> <p>4 counsel that would reveal privileged</p> <p>5 information, that you file a Complaint with</p> <p>6 the SEC?</p> <p>7 A. I talked to three people that I</p> <p>8 remember. One was a man by the name of Leo,</p> <p>9 L-E-O Montgomery. He was a principal of</p> <p>10 Ernst & Young which at one time was Impac's</p> <p>11 accountants.</p> <p>12 I had a friend who practices in</p> <p>13 Birmingham, Alabama in this particular area</p> <p>14 that I talked to who was a fellow government</p> <p>15 member at Highlands Country Club. So just in</p> <p>16 a casual conversation at the end of the day</p> <p>17 I asked him what could be done or what</p> <p>18 should I do. I am trying to think of his</p> <p>19 name. I can't think of it.</p> <p>20 The third persons was one of</p> <p>21 the corporate attorneys of Sun Hydraulics</p> <p>22 Corporation.</p> <p>23 Q. Who is that?</p> <p>24 A. I will give you the name later</p> <p>25 when I think of it. I just casually asked</p>
<p style="text-align: right;">Page 59</p> <p>1 CURTIS TIMM</p> <p>2 probably have stated by this time" what were</p> <p>3 you thinking they had stated anything?</p> <p>4 A. Well, they would deny, that</p> <p>5 Impac would deny those arguments.</p> <p>6 Q. You anticipated that Impac</p> <p>7 would deny the amendments were improper?</p> <p>8 A. I did. I did.</p> <p>9 Q. So, have you provided some or</p> <p>10 all of Exhibit 4 to anyone other than your</p> <p>11 attorney and in production in this case?</p> <p>12 A. No.</p> <p>13 Q. Did you provide any of this</p> <p>14 document to the SEC?</p> <p>15 A. I should qualify that last</p> <p>16 answer. You are aware that when I couldn't</p> <p>17 arrive at some kind of settlement with Impac</p> <p>18 I was faced with either dropping this whole</p> <p>19 thing or proceeding. I decided I couldn't in</p> <p>20 good conscious drop it.</p> <p>21 So I filed a Complaint with the</p> <p>22 SEC. And I had discussed what likely you</p> <p>23 could do with this kind of a situation. A</p> <p>24 number of people said the SEC will take care</p> <p>25 of it, just file a Complaint with them.</p>	<p style="text-align: right;">Page 61</p> <p>1 CURTIS TIMM</p> <p>2 him. Sun Hydraulics is a public,</p> <p>3 multinational corporation I personally</p> <p>4 formed was the attorney forming it. I was a</p> <p>5 Director for many years. He was a member of</p> <p>6 their, the Tampa law firm I recommended to</p> <p>7 take my place as corporate counsel.</p> <p>8 Q. Other than Sun Hydraulics</p> <p>9 Director --</p> <p>10 A. Attorney.</p> <p>11 Q. Director and attorney?</p> <p>12 A. No. He was just the attorney.</p> <p>13 MR. MINTON: Just the attorney he</p> <p>14 said.</p> <p>15 Q. Sun Hydraulics attorney, the</p> <p>16 golf friend at Highlands Park and Leo</p> <p>17 Montgomery did you with anyone else --</p> <p>18 A. No.</p> <p>19 Q. -- about --</p> <p>20 A. What I should do.</p> <p>21 Q. What you should do. Okay.</p> <p>22 Did any of these three people</p> <p>23 did you discuss with them the particular</p> <p>24 issue of whether two-thirds of the B shares</p> <p>25 had to consent in order to amend the</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 74</p> <p>1 CURTIS TIMM</p> <p>2 A. Preferred C was formed it had</p> <p>3 different provisions regarding election of</p> <p>4 Directors than what was in Preferred B. The</p> <p>5 reason it had different provisions there was</p> <p>6 another series of preferred shares involved.</p> <p>7 Q. When you were referring earlier</p> <p>8 to you found no amendments, what did you</p> <p>9 mean by that?</p> <p>10 A. He told me there was an</p> <p>11 amendment to Preferred B. There were none.</p> <p>12 Q. There was no amendments to</p> <p>13 Preferred B other than the amendment made on</p> <p>14 the stockholder consent in 2009</p> <p>15 acknowledging you disagree with that, but</p> <p>16 that was only amendment to Preferred B;</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. So in your second conversation</p> <p>20 with Mr. Morrison you expressed the view</p> <p>21 that you did not believe that the Preferred</p> <p>22 B and Preferred C could be combined for a</p> <p>23 two-thirds vote to amend their charters; is</p> <p>24 that correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 76</p> <p>1 CURTIS TIMM</p> <p>2 A. I followed Impac and all their</p> <p>3 lawsuits that, you know, I kept track of</p> <p>4 everything. I would read all their press</p> <p>5 releases. When they had a lawsuit I would go</p> <p>6 back and Google it and try to get what was</p> <p>7 stated in Impac's responses.</p> <p>8 And I know they are great</p> <p>9 negotiators. So I gave them a \$20 figure for</p> <p>10 repurchasing my stock thinking that you will</p> <p>11 be sorry to hear I probably would have</p> <p>12 settled for \$15 a share and you would never</p> <p>13 have this lawsuit. But you didn't.</p> <p>14 I can probably shorten this up.</p> <p>15 In subsequent conferences I said I think the</p> <p>16 way to avoid having to file an 8-K would be</p> <p>17 for Impac to find some third-party purchaser</p> <p>18 of my shares. I said I will put the shares</p> <p>19 with a bank who will be authorized to</p> <p>20 transfer those shares to any person who</p> <p>21 paid, I was at \$20 a share for those shares.</p> <p>22 Then you would know for sure</p> <p>23 you could purchase those shares and it</p> <p>24 wouldn't make any difference to me who</p> <p>25 purchased them.</p>
<p style="text-align: right;">Page 75</p> <p>1 CURTIS TIMM</p> <p>2 Q. And Mr. Morrison was silent in</p> <p>3 response to that?</p> <p>4 A. He dropped that claim totally.</p> <p>5 Never brought it up again.</p> <p>6 Q. He didn't respond to you, he</p> <p>7 didn't argue with you?</p> <p>8 A. He did not.</p> <p>9 Q. But he didn't affirmatively say</p> <p>10 yes, you're right; is that correct?</p> <p>11 A. Correct. He didn't say</p> <p>12 anything. He just gave up the idea.</p> <p>13 Q. How did he -- what did he say</p> <p>14 to you during that phone call?</p> <p>15 A. I did most of the talking</p> <p>16 because he is the one who claimed there was</p> <p>17 an amendment, which there wasn't.</p> <p>18 So then we started to discuss</p> <p>19 what I wanted. I had some ideas about how</p> <p>20 Impac might achieve the objective of getting</p> <p>21 rid of me without notifying every other</p> <p>22 shareholder who hadn't realized the fatal</p> <p>23 flaw in Impac's scheme.</p> <p>24 Q. What was your proposal to Mr.</p> <p>25 Morrison?</p>	<p style="text-align: right;">Page 77</p> <p>1 CURTIS TIMM</p> <p>2 Then I gave him the idea. I</p> <p>3 said in addition I will consents to your</p> <p>4 amendments so that all of it, although it is</p> <p>5 belated, you can show people that there was</p> <p>6 a consent to these shares that I own that</p> <p>7 you purchased.</p> <p>8 It looks to be I gave him the</p> <p>9 idea to purchase additional shares. Whether</p> <p>10 I did or not, at least I told him about it.</p> <p>11 Q. How did Mr. Morrison respond to</p> <p>12 your proposal?</p> <p>13 A. He said he'd get back with me.</p> <p>14 Q. Did he get back with you?</p> <p>15 A. He did ultimately.</p> <p>16 Q. Was that a phone conversation?</p> <p>17 A. Yes.</p> <p>18 Q. Did he call you or did you call</p> <p>19 him?</p> <p>20 A. Whatever it was he kept</p> <p>21 delaying, he would never call me back.</p> <p>22 So I would keep calling him.</p> <p>23 Whether I got through to him or he called</p> <p>24 back, whatever way it was, and it is</p> <p>25 probably in my notes, he at that time told</p>

20 (Pages 74 to 77)



Account Number: XXXX-4072

Statement Period: September 1, 2014 - September 30, 2014

Account Type: INDIVIDUAL

DESCRIPTION	SYMBOL/ CUSIP	ACCT TYPE	QUANTITY	PRICE	TOTAL MKT VALUE	PORTFOLIO (%)	EST. ANNUAL INCOME	EST. ANNUAL YIELD (%)
IMPAC MORTGAGE HOLDINGS INC 9.375% CUM RED PERP PFD STOCK	IMPHP	Cash	<u>5,001</u>	4.8500	24,254.85	9.43		
IMPAC MORTGAGE HOLDINGS INC 9.125% SER C CUM RED PERP PFD	IMPHO	Cash	<u>15,000</u>	3.3000	49,500.00	19.25		





My Account: Overview

Discover what's new
New site features & more

48106768 + Link/Add Acct

Balances

Account value

Launch
Trade Architect
Smart platform. Smarter investor.

Positions

Top 8 holdings		Biggest 8 movers	
IMPHP	\$4.70 0.00 (0.00%) 18,024 shares		
IMPHO	\$2.75 0.00 (0.00%) 3,000 shares		

Handwritten notes: PFD B (circled around IMPHP), PFD C (circled around IMPHO)

8 of 14 See all

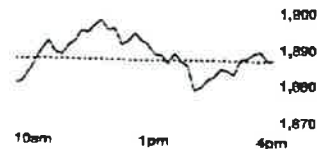
Market Snapshot

TGIF As Markets Rally, S&P 500 Posts
Longest Weekly Loss Streak Since 2011

U.S. stocks rallied on Friday following positive earnings reports from several large-cap multinationals this morning on a relatively light day of market moving news. The Dow traded higher by more... [Read](#)

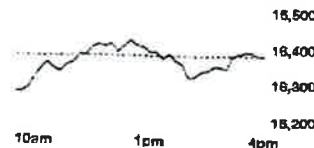
S&P 500

1,886.76 0.00 (0.00%)



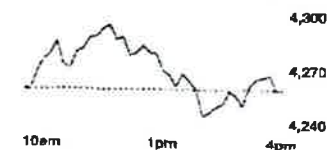
Dow Jones Industrials

16,380.41 0.00 (0.00%)



NASDAQ Composite

4,258.43 +0.002 (0.00%)



481-06768

Income Summary Detail

Income Summary Detail		
Description	Current	Year to Date
Foreign Dividend Tax Withheld	\$ (113.43)	\$ (1,179.22)
Limited P'trs Return of Capital	0.00	6,948.00
Qualified Dividends	756.17	7,861.12
IDA Interest	0.18	1.14

*This section displays current and year to date taxation values for this account. The current totals may not equate to the total payments listed on this statement as corrections to tax reporting may also be included. These corrections can include changes made to previous payments and removal of payments reportable in a previous tax year (spillover dividends). The year to date totals will accurately reflect your cumulative amount for the year.

Account Positions

[illegible]

STIFEL

CURTIS J TIMM

September 1 -
September 30, 2014
Account Number:

Page 3 of 6
SS02 5567-6427

ASSET DETAILS

This section shows the cash equivalents and/or securities in your account. Prices obtained from outside sources are considered reliable but are not guaranteed by Stifel. Actual prices may vary, and upon sale, you may receive more or less than your original purchase price. Contact your Financial Advisor for current price quotes.

NET CASH EQUIVALENTS

	Current value	Estimated Annualized Income	Estimated Yield %
Net Cash Equivalents	\$0.00	\$0.00	

PORTFOLIO ASSETS - HELD AT STIFEL

Preferreds	Symbol/ Type	Quantity	Current Price/ Current Value	Estimated Annualized Income	Estimated Yield %
IMPAC MORTGAGE HOLDINGS INC SER B CUMULATIVE REDEEMABLE PFD 9.375% CUSIP: 45254P300	IMPHP Cash	2,000	4.8500 9,700.00	187.50	19.33%
Total Preferreds			\$9,700.00	\$187.50	1.93%
Total Portfolio Assets - Held at Stifel			\$9,700.00	\$187.50	1.93%
Total Net Portfolio Value			\$9,700.00	\$187.50	1.93%

11/01/2014 10:00 AM

EXHIBIT 2



MINNESOTA JUDICIAL BRANCH

Lawyer Details

Lawyer ID	0110085
Last Name	TIMM
First Name	CURTIS
Middle Name	J
Address	1424 WESTBROOK DRIVE SARASOTA, FL 34231
Date Admitted	10/25/54
Last Payment	
Next Payment Due	
Authorized to Practice Law?	NOT AUTHORIZED
Additional information related to limited license statuses may be obtained through the Lawyer Registration Website .	
Current Disciplinary Status	NONE
Additional information on disciplinary history or statuses may be obtained at Lawyer's Professional Responsibility Board Website .	
CLE Status	VOLUNTARILY RESTRICTED
FEE Status	SUSPENDED FOR NON-PAYMENT OF FEES
Professional Liability Insurance	Lawyer does NOT represent private clients
Good Standing:	No

[<- Back to Lawyer List...](#)

EXHIBIT 3

MEMBER PROFILE

Curtis John Timm

Retired

Not Eligible to Practice Law in Florida

Bar Number:

81430

Mail Address:

1424 Westbrook Dr
Sarasota, FL 34231-3549

Office: **941-921-4137**

Cell: **941-921-4137**

Personal Bar URL:

<https://www.floridabar.org/mybarprofile/81430>

vCard:



County:

Sarasota

Circuit:

12

Admitted:

06/28/1957

10-Year Discipline History:

None

Law School:

University of Minnesota Law School

opportunity to add personal and professional information to the directory. The lawyer is solely responsible for reviewing and updating any additional information in the directory. The lawyer's added information is not reviewed by The Bar for accuracy and The Bar makes no warranty of any kind, express or implied. The Florida Bar, its Board of Governors, employees, and agents are not responsible for the accuracy of that additional information. Publication of lawyers' contact information in this listing does not mean the lawyers have agreed to receive unsolicited communications in any form. Unauthorized use of this data may result in civil or criminal penalties. The Find a Lawyer directory is not a lawyer referral service.

EXHIBIT 4

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

CURTIS J. TIMM et al.,
Plaintiffs,

Case No.: 24C11008391

vs.

IMPAC MORTGAGE HOLDINGS, INC.
Defendant.

OFFICIAL TRANSCRIPT OF PROCEEDINGS
(MOTIONS HEARING)

Baltimore, Maryland

Monday, April 16, 2018

BEFORE:

HONORABLE W. MICHEL PIERSON, JUDGE

APPEARANCES:

For Plaintiff, Curtis Timm, pro se

For Plaintiff, Camac:

JOHN B. ISBISTER, ESQUIRE
DANIEL S. KATZ, ESQUIRE

For the Defendant, Impac Mortgage Holdings, Inc.:

PAM PALMER, ESQUIRE
STEWART WEBB, JR., ESQUIRE

Electronic Proceedings Transcribed By: Pamela Skaw

HUNT REPORTING COMPANY
Court Reporting and Litigation Support
Serving Maryland, Washington, and Virginia
410-766-HUNT (4868)
1-800-950-DEPO (3376)

1 the shares.

2 Now, this was after. It was utterly impossible
3 for the broker involved, who is transferring book entry
4 shares to have gotten those shares to Impac before Impac
5 purchased the shares. They didn't even know about it until
6 after the purchase. Absolutely impossible.

7 So, the idea that these were the equivalent to
8 written consent if they were the equivalent of written
9 consents, they weren't timely delivered before Impac
10 purchased the shares. Thus, for eight years, I have
11 labored, on my own, brought this case, because I discovered
12 these fatal flaw and that I knew I had to win the case
13 ultimately and I will.

14 And I can -- I bring this up during the status
15 conference. And I've got other things to say but I'll --
16 I'm going to long.

17 THE COURT: What do you have other things to say
18 about?

19 MR. TIMM: All right. This case is going to be
20 appealed. I have contacted Mr. Biada (phonetic) and
21 Mr. Silver - Rosenberg, the one that has the 19 man law firm
22 and they're standing by, depending upon what action this
23 Court takes. And I have tell you that I've been at this
24 thing too many years all alone and my firm had a national
25 case that was in the press every night. And it involved the

HUNT REPORTING COMPANY
Court Reporting and Litigation Support
Serving Maryland, Washington, and Virginia
410-766-HUNT (4868)
1-800-950-DEPO (3376)

1 mistaken switching of two babies by a (indiscernible -
2 2:52:04).

3 THE COURT: No, no, no. I want you to stick to
4 this case.

5 MR. TIMM: Pardon me.

6 THE COURT: I want you to stick to this case.

7 MR. TIMM: Okay. Well, I want to tell you that we
8 got Larry King --

9 THE COURT: I said I want you to stick --

10 MR. TIMM: Okay.

11 THE COURT: -- to this case.

12 MR. TIMM: Okay. All I want the Court to know is
13 that this case is going to be -- your summary judgments are
14 going to be reversed and that Preferred C will be back in
15 the case. That is premature at this time to certify it as a
16 class action and that Plaintiff wants everything decided at
17 one time at the appeal level and that I object to anything
18 that delays or prevents that and that Plaintiff objects to
19 any rulings that would prevent them from obtaining the
20 damages they're entitled to for the eight to nine years that
21 the Defendants have had our money.

22 I'll stop there, Your Honor.

23 THE COURT: All right. Thank you.

24 Ms. Palmer, do you wish to add anything? Your
25 response to Mr. Timm's motion?

1 to the Plaintiff, are erroneous. In other words, I'm
2 including not only the Court's ruling on the Preferred C
3 reconsideration motion but also the Court's original ruling
4 on the breach of fiduciary duty claim and the other
5 determinations that the Court made at the time of the
6 original motion to dismiss, including the theory that the
7 shareholders could not validly consent or did not validly
8 consent because of the sequence of the transaction.

9 And I am denying that motion and I will say simply
10 that there really isn't any point, in my view, at this time,
11 in repeating the reasons for the Court's ruling again.
12 Mr. Timm has, in my view, simply repeated the same arguments
13 that we made previously and it certainly may be that I am
14 wrong in the holding that I made but there really isn't
15 anything to be gained by another round of debate over it and
16 I think that the reasons have already been stated and they
17 either are wrong or they're not.

18 I certainly understand very well that Mr. Timm
19 disagrees with them and believes that they are erroneous but
20 there comes a point at which we can't seem -- simply can't
21 be re-litigating the same things over and over again. So,
22 they will stand at this point and, obviously, they'll be the
23 subject of an appellate opinion or appellate consideration.

24 So, I want to be clear I'm also rejecting the
25 request that the Court also reconsider all of the other

HUNT REPORTING COMPANY
Court Reporting and Litigation Support
Serving Maryland, Washington, and Virginia
410-766-HUNT (4868)
1-800-950-DEPO (3376)

EXHIBIT 5

Activity	Who drafted/argued/handled	Outcome
Complaint filed (12/7/11, #1/0)	Silverman	
Opposition to Motion to Dismiss/Summary Judgment (4/30/12, #18/2)	Silverman	Granted in part, denied in part (1/29/13, #19/1)
Motion to Revise January 28, 2013 Order (2/27/13, #32/0) and Reply (4/26/13, #32/2)	Silverman	Denied (12/6/13, #32/3)
Complaint in Intervention (3/5/14, #41/0)	Tydings	
Plaintiff application for commission/Impac Motion for Protective Order (5/5/14, #44/0)	Silverman	Application denied/protective order granted (8/4/14, #44/2)
Motion to Strike Appearance (7/3/14, #45/0)	Silverman	Granted (7/8/14, #45/1)
Depositions; propounding and responding to discovery (2014-15)	Tydings/Minton	
Motion for Class Certification (2/27/15, #93/0), Reply (4/22/15, #93/2)	Minton/Tydings wrote	
Plaintiffs' Cross-Motion for Summary Judgment and Opposition to Impac's Motion for Summary Judgment (3/9/15, #39/1, 94/0), Reply (5/29/15, #94/5)	Tydings/Minton wrote; Tydings argued	Granted (12/29/17, #94/7)
Plaintiffs' Motion for Revision of Partial Summary Judgment (4/1/15, #97/0)	Minton/Tydings wrote; Minton argued	Denied (12/29/17, #94/7)
Amendment of Complaint (3/29/16, #108/0)	Minton/Tydings	
Opposition to Defendant's Motion to Strike Amended Complaint and Motion for Sanctions (5/3/16, #109/1)	Minton/Tydings	Defendant's Motion to Strike granted; Motion for Sanctions denied (12/29/17, #94/7)
Motion to Strike Appearance (4/24/17, #113/0)	Minton	Granted (5/15/17, #113/1), Notice to Employ New Counsel issued (5/15/17, #116/0)
Letter to Judge Pierson – argues that no consents were ever given, asserts that he	Timm	Timm's "ideas" not adopted by Court.

“has two ideas that if adopted will dispose of all legal issues in this case without the Court having to write any opinions” and a “3 rd idea that, if adopted, will likely result in a settlement shortly of all issues again without the court having to issue any opinion.,” and requests that “he be allowed to represent the interests of the preferred shareholders” during a conference call. (4/28/17, not listed on docket) ¹		
Line in response to Timm 4/28/17 letter	Tydings	
Letter to Judge Pierson in response to Camac Line 5/12/17	Timm	
Petition to Judge Pierson to Either Decide or Transfer Case (5/22/17, #117/0)	Timm	Not ruled on
Line in response to Petition and 5/12/17 letter (5/24/17, #118/0)	Tydings	
Correspondence: Request to Modify December 29, 2017, Opinion (2/20/18, #122/0)	Timm	Timm ordered to file a motion requesting relief (3/1/18, #124/0)
Motion regarding Court Opinion Dated December 29, 2017 Relative to Pfd B Issues (request to rescind orders dismissing claims against individual defendants and punitive damage claims, withdrawal of class certification motion, demand for setting jury trial on damages, explanation of why Timm has hired no lawyer, selection of lead plaintiff) (3/12/18, #126/0)	Timm	Denied (7/17/18, #126/9)

¹ If the undocketed papers and those filed in the Court of Special Appeals are not available to the Court, Camac will provide them upon request.

Brief regarding action Plaintiff wants court to take (seeks reversal of 2013 grant of summary judgment, requests jury trial on damages, withdraws motion for class certification, requests hearing on lead plaintiff upon certification, requests order requiring Impac to pay all accrued dividends and commence paying quarterly dividends) (3/19/18, #126/4)	Timm	Denied (7/17/18, #132/0, #132/2), corrected (7/26/18, #132/4)
Camac Memorandum of Law requesting declaration of rights and injunction, arguing 2-602 order not necessary, arguing dividends are owed for second, third, and fourth quarters on 2009 and that those dividends should be paid to current stockholders, arguing that Impac's attempt to unwind repurchase should be rejected, requesting an order directing Impac to set a date for election of two directors, and arguing that Impac should bear the cost of giving notice to the class. (3/16/18, #128/0)	Tydings	Camac's requested relief granted, except 2-602 order entered; and, class certification, including issue of who should bear cost of notice, deferred. (7/17/18, #132/0, #132/2), corrected (7/26/18, #132/4)
Opposition to Motion Filed by Curtis Timm (3/16/18, #126/1)	Tydings	Relief requested by Timm denied. (7/17/18, #132/0, #132/2), corrected (7/26/18, #132/4)
Pl's Response to Defs' and Camac's March 2018 Briefs (4/3/18, #126/7)	Timm	Relief requested by Timm denied. (7/17/18, #132/0, #132/2), corrected (7/26/18, #132/4)
Response to Timm Memorandum (3/30/18, #126/6)	Tydings	Relief requested by Timm denied. (7/17/18, #132/0, #132/2), corrected (7/26/18, #132/4)

Response to Defendant's Opening Position (3/30/18, #126/8)	Tydings	Camac's requested relief granted, except 2-602 order entered and class certification, including issue of who should bear cost of notice, deferred. (7/17/18, #132/0, #132/2), corrected (7/26/18, #132/4)
Request to modify July 16, 2018 judgments (8/8/18, #134/0)	Timm	Denied (9/7/18, #134/1)
Notice of Appeal (8/15/18, #139/0)	Timm	
Opposition to Impac Motion to Stay Election Pending Appeal (8/21/18, #135/1, 135/2)	Timm and Tydings (separately)	Impac Motion to stay granted and Camac request for bond denied. (9/7/18, #135/5)
Corrected Notice of Appeal (8/23/18, #141/0)	Timm	
Motion to Require Bond (10/9/18, #145/0), Reply (11/2/18, #145/4)	Timm	Denied (10/30/18, #145/2)
Court of Special Appeals – appeal by Impac	Tydings – briefed (6/25/19) and argued (10/22/19)	Affirmed (4/1/20)
Court of Special Appeals – appellee brief (primarily arguing cross-appeal by Timm of denial of motion to modify summary judgment and grant of motion to strike Amended Complaint)	Timm (citing no case law)– briefed (6/28/19) and argued (10/22/19)	Affirmed (4/1/20)
Court of Special Appeals – Motion to alter brief and extend time for filing (8/6/19, and again 8/13/19 due to failure to serve other parties)	Timm	Denied, and Timm brief ordered stricken (9/5/19)
Cross-Appellant Brief (8/15/19)	Timm (citing no case law)	Brief ordered stricken (9/5/19)
Cross-Appellant Reply Brief (9/16/18)	Timm (citing one case)	Affirmed (4/1/20)
Supplemental Memorandum requested by Court of Special Appeals addressing whether Court has jurisdiction to hear interlocutory appeal	Timm (citing no case law) (2/19/20) and Tydings (2/21/20)	Court determined that it had jurisdiction (4/1/20)

Answer to Impac's Petition for <i>certiorari</i>	Timm (6/3/20) and Tydings (6/4/20)	<i>Certiorari</i> granted. (7/14/20)
Court of Appeals – appeal by Impac	Timm – Briefed (10/13/20) Tydings – Briefed (10/14/20) and argued (12/4/20)	Affirmed (7/15/21)

Blue highlight denotes papers filed by Tydings on behalf of Camac.

Yellow highlight denotes papers filed by Timm *pro se*.

Green highlight denotes favorable, or mostly favorable, result for plaintiff involved in filing (Camac or Timm)

Gray highlight denotes unfavorable, or mostly unfavorable, result for plaintiff involved in filing (Camac or Timm).