

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF TEXAS  
 TYLER DIVISION

ALAN B. MARCUS, Individually and on  
 Behalf of All Others Similarly Situated,

Plaintiff,

vs.

J.C. PENNEY COMPANY, INC., et al.,

Defendants.

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Civil Action No. 6:13-cv-00736-RWS-KNM  
 (Consolidated)

CLASS ACTION

**DECLARATION OF WESLEY HILL FILED ON BEHALF OF WARD SMITH & HILL,  
 PLLC IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND  
 EXPENSES**

I, Wesley Hill, declare as follows:

1. I am a member of the firm of Ward, Smith & Hill, PLLC. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses/charges ("expenses") in connection with services rendered in the above-entitled action.

2. This firm is local counsel of record for lead plaintiff National Shopmen Pension Fund.

3. The information in this declaration regarding the firm's time and expenses is taken from time and expense printouts and supporting documentation prepared and/or maintained by the firm in the ordinary course of business. I am the partner who oversaw and/or conducted the day-to-day activities in the litigation and I reviewed these printouts (and backup documentation where

necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. As a result of this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. After the reductions referred to above, the number of hours spent on this litigation by my firm is 66.5. A breakdown of the lodestar is provided in Exhibit A. The lodestar amount for attorney time based on the firm's current rates is \$36,140.00. The hourly rates shown in Exhibit A are the usual and customary rates set by the firm for each individual.

5. My firm seeks an award of \$740.06 in expenses and charges in connection with the prosecution of the litigation. Those expenses and charges are summarized by category in Exhibit B.

6. The following is additional information regarding certain of these expenses:

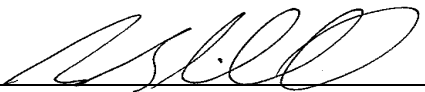
(a) Filing, Witness and Other Fees: \$595.00. These expenses have been paid to the Court for filing fees and to attorney service firms or individuals who served process of the complaint or subpoenas. The vendors who were paid for these services are set forth in Exhibit C.

(b) Photocopies: \$77.80. In connection with this case, the firm made 778 in-house black and white copies, charging \$0.10 per copy for a total of \$77.80. Each time an in-house copy machine is used, our billing system requires that a case or administrative billing code be entered and that is how the 778 copies were identified as related to this case.

7. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from receipts, expense vouchers, check records and other documents and are an accurate record of the expenses.

8. The identification and background of my firm and its partners is attached hereto as Exhibit D.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of October, 2017, at Longview, Texas.

  
\_\_\_\_\_  
Wesley Hill

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2017, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 25, 2017.

s/ Robert R. Henssler Jr.

ROBERT R. HENSSLER JR.

ROBBINS GELLER RUDMAN  
& DOWD LLP

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San Diego, CA 92101-8498

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**Mailing Information for a Case 6:13-cv-00736-RWS-KNM Marcus v. J.C. Penney Company, Inc. et al****Electronic Mail Notice List**

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

- **Thomas Robert Ajamie**  
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- **X Jay Alvarez**  
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- **Benjamin D Bianco**  
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- **Thomas Emerson Bilek**  
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- **Austin P Brane**  
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- **John Frederick Bufe**  
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jimc@rgrdlaw.com
- **Roger F Claxton**  
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- **David J Harris , Jr**  
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- **Claire Abernathy Henry**  
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- **Robert R Hensler , Jr**  
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- **Jack Wesley Hill**  
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- **JC Penney Investor Group**  
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- **Daniel Ward Jackson**  
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- **Michael E Jones**  
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- **Jamie Jean McKey**  
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- **Danielle Suzanne Myers**  
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- **Thomas John Ward , Jr**  
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- **Meryl L Young**  
myoung@gibsondunn.com,pmclean@gibsondunn.com,cfitzgerald@gibsondunn.com

#### **Manual Notice List**

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

- (No manual recipients)

# **EXHIBIT A**

**EXHIBIT A**

**Marcus v J.C. Penny Company, Inc. et al.  
Ward, Smith & Hill, PLLC  
Inception through October 5, 2017**

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Wesley Hill	(P)	60.7	\$550	\$33,385.00
Claire Henry	(P)	5.8	\$475	\$2,755.00
<b><i>TOTAL</i></b>				<b><i>\$36,140.00</i></b>

(P) Partner



# **EXHIBIT B**

**EXHIBIT B**

**Marcus v J.C. Penny Company, Inc. et al.  
Ward, Smith & Hill, PLLC  
Inception through October 5, 2017**

<i>CATEGORY</i>		<i>TOTAL</i>
Filing, Witness and Other Fees		\$595.00
PACER charges		\$21.90
Messenger, Overnight Delivery		\$45.36
Photocopies		
In-House Black and White Copies: (778 copies at \$0.10 per page)		\$77.80
<b><i>TOTAL</i></b>		<b><i>\$740.06</i></b>

# **EXHIBIT C**

**EXHIBIT C**

**Marcus v J.C. Penny Company, Inc. et al.  
Ward, Smith & Hill, PLLC  
Inception through October 5, 2017**

Filing, Witness and Other Fees: \$595.00

<i><b>DATE</b></i>	<i><b>VENDOR</b></i>	<i><b>PURPOSE</b></i>
10/01/2013	PAY.GOV	Complaint filing fee
10/05/2013	STLCOURTFILING.COM	Process service of the complaint on Kenneth Hannah
10/10/2013	A.P.S. Process Services	Process service of the complaint on J.C. Penney Company, Inc. and Myron Ullman, III

# **EXHIBIT D**



**Name:** Wesley Hill  
**Title:** Partner  
**Phone:** 903-757-6400  
 866-305-6400  
**Fax:** 903-757-2323  
**Email:** wh@wsfirm.com

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## Wesley Hill

Board certified in civil trial law, Wesley Hill balances a successful practice in intellectual property and business litigation. With more than 25 trials to his credit, including over a dozen patent cases, Mr. Hill brings broad courtroom experience to every case he handles.

Mr. Hill's trial successes include significant plaintiff's verdicts as well as no-liability findings for defense clients. Most recently, he obtained substantial damage awards and willful patent infringement findings for Saint Lawrence Communications, LLC against Motorola Mobility (to read more, click [here](#)) and Cellular Communications Equipment, LLC against Apple, Inc. (To read more, click [here](#)). Other recent trial successes include a defense jury verdict for Ralcorp Holdings and Medallion Foods, defeating claims by Frito-Lay for patent infringement, trademark infringement, and theft of trade secrets, and a state court victory for a small business owner sued after a failed business venture. Outside of trial, Mr. Hill has also successfully litigated and resolved cases involving franchise operations, business partnerships, breach of contract, and fraud. Having assisted clients with the resolution of hundreds of cases, Mr. Hill understands how to identify clients' priorities and achieve their objectives, whether through litigation, settlement, or trial.

A former briefing attorney to the Honorable T. John Ward, former United States District Judge for the Eastern District of Texas, Mr. Hill is chairman of the Eastern District of Texas Local Rules Committee and is intimately familiar with practice in the district. He graduated second in his law school class at Texas Tech University (J.D., 2001) and received the Texas Young Lawyers Association State Moot Court Best Advocate Award. A native East Texan, Mr. Hill also is a graduate of the University of Texas at Tyler (B.A., 1998).

## Practice Areas

Patent Litigation  
 Oil & Gas Litigation  
 Business Disputes  
 Federal Criminal Defense

## Professional Honors and Distinctions

Board Certified in Civil Trial Law by the Texas Board of Legal Specialization  
 American Board of Trial Advocates  
*Texas Super Lawyers Rising Stars*, Thomson Reuters, 2011-2016  
*Texas Super Lawyers*, Thomson Reuters, 2016  
 LexisNexis Martindale-Hubbell, AV Peer Review Rating  
 2017 Benchmark Litigation Future Star, Top Litigator Under 40 (Energy and Natural Resources, Intellectual Property)  
 The Order of the Coif  
 National Order of Barristers  
 Best Advocate Texas Young Lawyers Association  
 State Moot Court Competition, 2000

THOMSON REUTERS

Best Advocate Quarterfinalist, American Bar Association National Appellate Advocacy Competition, 2001

## Published Articles/Seminars

*Focus Groups and Mock Trials: Best Practices in Patent Litigation*, 52<sup>nd</sup> Annual Conference on Intellectual Property Law, The Center for American and International Law, 2014

*ED Texas Local Rules Committee: A New Model Order*, Eastern District Bench Bar Conference jointly with the Federal Circuit Bar Association, 2013

*Risk Management & Intellectual Property Issues*, 2012 Symposium on Global Markets, The Center for American and International Law, 2012

*Balancing the Economics of Discovery*, Eastern District Bench Bar Conference jointly with the Federal Circuit Bar Association, 2011

*EDTX Patent Litigation: Why It's Here, How It Works, Where It's Going & A Federal Rules Update*, Smith County Bar Association, 2010

*The Joint Defense Group in Patent Litigation: Necessary Evil or Useful Asset*, Practicing Law Institute, 2010

*Winning Strategies in the Eastern District of Texas*, Los Angeles Intellectual Property Law Association, 2008

*Texas Eastern District Federal Court Update*, Smith County Bar Association, 2008

Presenter *Cost Shifting in Electronic Discovery, Litigation in the High Tech Industry*, State Bar of Texas, 2004

Moderator *Electronic Filing and Case Management*, Eastern District of Texas CLE, 2004

## Court Admissions

Texas State District Courts, 2001

U.S. District Court for the Eastern District of Texas, 2002

U.S. District Court for the Northern District of Texas, 2004

U.S. Court of Appeals for the 5th Circuit, 2003

U.S. Supreme Court, 2008

## Educational Background

Texas Tech University School of Law, J.D., 2001

University of Texas at Tyler, B.A., 1998

## Professional Affiliations

Eastern District of Texas Local Rules Advisory Committee, Chairman

The Honorable T. John Ward American Inn of Court, Member

Pro Bono College of the State Bar of Texas, Member 2003

Texas Bar Association, Member

American Bar Association, Member

Texas Bar Foundation, Life Fellow

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full name                      email                      phone                      send



## Claire Abernathy Henry

Claire Abernathy Henry joined Ward, Smith & Hill in 2011 after serving as a briefing attorney to the Honorable T. John Ward, former U.S. District Judge for the Eastern District of Texas, and has extensive knowledge of federal court practice in the Eastern District of Texas.

Ms. Henry began her legal career in Dallas, where she represented businesses and local governments in complex commercial cases, including class actions, breach of contract and fiduciary duty cases, and professional malpractice suits. After returning to East Texas in 2007, Ms. Henry continued to hone her litigation skills on a wide range of federal and state court cases. Over the past several years, Ms. Henry's practice primarily has focused on patent litigation, commercial disputes, and employment law.

A native of Longview, Ms. Henry attended high school at Groton School in Groton, Mass., before graduating summa cum laude and Phi Beta Kappa from Vanderbilt University in 2002. Ms. Henry graduated from Stanford Law School in 2005, where she was a pro bono distinguished graduate and a member of Women of Stanford Law and the Stanford Public Interest Law Foundation.

**Name:** Claire Abernathy Henry  
**Title:** Partner  
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**Email:** [claire@wsfirm.com](mailto:claire@wsfirm.com)

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### Practice Areas

Patent Litigation  
 Commercial Disputes  
 Employment Law

### Professional Honors and Distinctions

Texas Super Lawyers Rising Stars, 2012-2017, Thomson Reuters

### Court Admissions

Texas State District Courts, 2006  
 U.S. District Court for the Eastern District of Texas, 2007  
 U.S. District Court for the Northern District of Texas, 2006

### Educational Background

Stanford Law School, J.D., 2005, Pro Bono Distinguished Graduate  
 Vanderbilt University, B.A., 2002, Summa Cum Laude, Phi Beta Kappa

### Professional Affiliations

Texas Bar Association  
 American Bar Association  
 The Honorable T. John Ward American Inn of Court

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## WARD, SMITH &amp; HILL, PLLC

903.757.6400  
866.305.6400

## T. John "Johnny" Ward Jr.

Having served as a trial attorney in more than 40 jury trials involving a variety of challenging legal issues, Johnny Ward is one of the most distinguished trial lawyers in East Texas. Mr. Ward has successfully tried a wide variety of complex cases to verdict, including numerous patent infringement, breach of contract and fiduciary duty, consumer dispute, personal injury, wrongful death and survival claim, and civil rights cases. In the process, Mr. Ward has secured a string of major courtroom victories against some of the world's most recognizable companies, including Apple, Samsung, Verizon, and Microsoft.

Mr. Ward's courtroom work has earned him a national reputation in high-stakes litigation, as evidenced by his AV Peer Review Rating by Martindale-Hubbell and recognition as a *Texas Super Lawyer* by Super Lawyers magazine in every year since the existence of the publication. In 2012, at the age of 41, he was inducted into the American College of Trial Lawyers. Mr. Ward is frequently called on by law firms throughout the nation to provide his knowledge and skill in complex cases before East Texas juries.

A member of the American Board of Trial Advocates, a Fellow of the Texas Bar Foundation, and a sustaining member of the Texas Trial Lawyers Association, Mr. Ward is admitted to practice before the 5<sup>th</sup> and 6<sup>th</sup> Circuit United States Courts of Appeals; and the United States District Courts for the Eastern, Northern, and Western Districts. He graduated with distinction from the University of Oklahoma in 1992 and Texas Tech Law School in 1995 (Magna Cum Laude), before clerking for the Hon. Robert M. Parker (Ret.) with the U.S. Fifth Circuit Court of Appeals.

**Name:** T. John "Johnny" Ward Jr.  
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## Practice Areas

Patent Infringement  
Intellectual Property  
Auto Accidents  
Products Liability  
Insurance Claims  
Business Torts  
Breach of Contract  
Commercial Disputes  
Deceptive Trade Practices  
Federal Tort Claims  
Will Contests

## Professional Honors and Distinctions

AV Rated by LexisNexis Martindale-Hubbell  
*Texas Super Lawyers*, 2003-2016, Thomson Reuters  
Litigation Star, Intellectual Property, Benchmark Litigation, 2017  
Best Lawyers in America, 2017  
Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization, 2002  
American Jurisprudence Award: Property Law, Medical Malpractice, Consumer Law  
Member of the Texas Tech University School of Law Board of Barristers  
AAJ National Mock Trial Team, 1993-1994



## Court Admissions

Texas State District Courts, 1995  
U.S. District Court for the Eastern District of Texas, 1997  
U.S. District Court for the Northern District of Texas, 1996  
U.S. District Court for the Western District of Texas, 2001  
Colorado State District Courts, 2016  
U.S. Court of Appeals for the 6th Circuit, 1999  
U.S. Court of Appeals for the 5th Circuit, 1998

## Educational Background

Texas Tech University School of Law, J.D., 1995, magna cum laude  
University of Oklahoma, B.A., 1992, with distinction  
Phi Beta Kappa

## Professional Affiliations

American College of Trial Lawyers  
International Society of Barristers – Fellow  
American Board of Trial Advocates  
Texas Bar Foundation Texas Trial Lawyers Association, 1997-present  
American Association for Justice, 1997-present  
Northeast Texas Bar Association  
Gregg County Bar Association  
Eastern District of Texas Bar Association

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