liability in favor of Defendants. Although not specified in the opinion, the *Athlone* factors were considered and deemed applicable.

In addition to their contentions that Ross untimely filed the Rule 60(b)(6) motions and failed to identify grounds upon which 60(b)(6) relief may be granted, Defendants also assert that under Rule 8(c), Ross has waived the *res judicata* defense, having only raised it for the first time on January 25, 2016, when he filed the Rule 60(b)(6) motions. This argument lacks merit for the reason previously mentioned in the discussion addressing untimeliness.

Notwithstanding, federal law provides that while the courts have discretion to find that the issue of *res judicata* has been waived, a court may, "in appropriate cases," *sua sponte* raise the issue of the preclusive effect of a prior judgment. *In re Stevenson*, 40 A.3d 1212, 1223 (Pa. 2012) (citing *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 231 (1995) ("[W]aivers of res judicata need not always be accepted – [ ] trial courts may in appropriate cases raise the res judicata bar on their own motion.")). By its ability to act spontaneously, courts can act to conserve judicial resources. *Id.*

The instant consolidated matter is, in this Court's opinion, such an "appropriate case" to exercise, in the interest of conserving judicial resources, its discretion to consider and not find waived Ross' *res judicata* argument. Indeed, as revealed by the afore-described complex procedural history, Ross has raised this defense at the earliest opportunity, *i.e.*, after the Illinois district court addressed Defendants' damages. As such, Ross could not have asserted this defense in his initial pleadings, which were filed more than four years before the defense arose.

Furthermore, it is not lost on this Court that upon facts shared by both 12-998 and 12-

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807, 811 (2d Cir. 1992)); *see also Toscano v. Conn. Gen. Life Ins. Co.*, 288 F. App'x 36, 38 (3d Cir. 2008) ("The defense of claim preclusion, however, may be raised and adjudicated on a motion to dismiss and the court can take notice of all facts necessary for the decision.").

2760, Defendants argued *for* the application of *res judicata* in the dismissed 12-998 action. To quote this Court's June 19, 2014 Memorandum Opinion:

> [T] he parties in this case and the Illinois Action are one and the same, *see Green v. Cooper Hospital/University Medical Center*, No. 97-5745, 1997 WL 749475, at *1-2 (E.D. Pa. Dec. 3, 1997) (district court found identical parties where second action contained two less and two additional parties than the first action, but contained defendants common to both); that the central component and contention in both actions as evidenced by the [*Revised MRB Agreement*] (which explicitly references the [*Settlement Agreement*])[22] and the [*Settlement Agreement*] itself, is the same – Ross's obligation to transfer all interest and rights in the Patent;[23] and lastly, that the federal judge, having considered the merits which led to the [2012] Illinois Action, compelled the parties' obligations as contemplated in both the [*Settlement Agreement*] and [*Revised MRB Agreement*]. Clearly, all the elements of the doctrine of *res judicata* have been met.

As in the 12-998 matter, the elements of *res judicata* are met in the 12-2760 matter. The only difference between the 12-998 and 12-2760 actions are the reversed roles of the parties as plaintiffs and defendants. Further, in considering the *Athlone* factors, the parties in this case and the 2012 Illinois Action are essentially the same, containing parties common to both. Second, the central component and contention in both actions is Ross' adjudicated breach of the obligation to transfer all right, title, and interest in the Patent. That is, the parties' causes of action in the 12-2760 matter and 2012 Illinois Action are essentially the same. The acts complained of and the demand for relief are the same, and material facts alleged are the same – Defendants here seek to recover damages caused by Ross' adjudicated breach of his contracted obligation to transfer all of his right, title and interest in the Patent consistent with the *Settlement Agreement*, "or any other agreement contemplated by" it – *i.e.*, the *Revised MRB Agreement*, which is the root or basis of the 12-2760 matter.[24] Likewise, the theory of recovery is the same in both matters; *to wit*: Defendants here seek damages for Ross' breach under the *Revised MRB Agreement*, and in

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22 *Revised MRB Agrt.*, Seventh Recital.

23 *Id.* at ¶ 1; *Settlement Agrt.*, ¶ 2, Dfts' Supp. Brief, Ex. A.

24 *Settlement Agrt.*, ¶ 27.

the 2012 Illinois Action Meyer-Chatfield declined other damages, requested and was awarded damages in the form of attorneys' fees and costs for the same breach under the *Settlement Agreement*. As for the third *Athlone* factor, the witnesses overlap between the 12-2760 action and 2012 Illinois Action: Ross, Meyer-Chatfield, and Braverman Kaskey are implicated in both, and the documents, while not the same, the *Revised MRB Agreement* at the core of the instant matter is a document "contemplated by" the *Settlement Agreement*, central to the 2012 Illinois Action.

After careful consideration of the *Athlone* factors, this Court concludes that the causes of action in the pending 12-2760 matter and in the resolved 2012 Illinois Action are the same and, therefore, the application of the doctrine of *res judicata*, implicated from the rationale of Judge Zagel's final judgment in the 2012 Illinois Action, is warranted in this matter. Consequently, this Court opines that because Defendants waived and failed to seek all damages they were entitled to in the 2012 Illinois Action, Defendants cannot now seek to recover those explicitly "forgone" damages in this Court. Defendants' request for damages is, therefore, barred by the doctrine of *res judicata.* The relief Ross seeks under Rule 60(b)(6) is justified.

Defendants' Request for Damages

While this Court has determined that the doctrine of *res judicata* bars Defendants' claim for damages, further discussion, however, is warranted. Instantly, Defendants seek to recover the following damages: (1) the *AXA Patent Interest* acquisition – $250,000.00 (as stated, shared equally by the Balshe Parties and Meyer-Chatfield); (2) payments to Ross for Patent-related services – $113,309.00; (3) attorneys' fees and costs – $589,323.62; and (4) pre- and post-judgment interest.

This Court finds Defendants' request for these items of damages problematic. First, the request for damages on the *AXA Patent Interest* pertained to the 2012 Delaware Action, which

sought enforcement of the *Settlement Agreement*. Judge Zagel dismissed this 2012 Delaware Action on January 6, 2016. It is beyond this Court why damages arising from the 2012 Delaware Action, ultimately dismissed in the Northern District of Illinois, should be considered in this matter. Defendants have provided no rationale for this Court to do so. Second, Ross' obligation to work exclusively for Meyer-Chatfield in selling new BOLI and COLI insurance cases in conjunction with Meyer-Chatfield's sales representatives, as provided for in the *Revised MRB Agreement*, was an obligation contemplated in ¶ 27 of the *Settlement Agreement* and, as emphasized, Meyer-Chatfield chose not to seek damages in the 2012 Illinois Action. Thus, Defendants have effectively waived these damages. Third, Defendants request legal fees and litigation costs incurred between 2008 and 2015 while litigating against Ross for failing to transfer his right, title, and interest in the Patent, a result which was ensured by Judge Zagel's decision in the 2012 Illinois Action. As noted, Meyer-Chatfield was awarded attorneys' fees and costs in securing the Patent transfer in the 2012 Illinois Action. Based upon this summation, this Court finds Defendants' contentions in opposing Ross' *res judicata* argument and in requesting additional damages for the same injury somewhat disingenuous.

CONCLUSION

For the reasons stated herein, principally the application of the doctrine of *res judicata*, Ross' Rule 60(b)(6) *motions for relief* are granted. Defendants are entitled to no compensatory damages. An appropriate Order consistent with this Memorandum Opinion follows.

NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court