UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONSTRUCTION LABORERS PENSION TRUST OF GREATER ST. LOUIS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. AUTOLIV, INC., et al., Defendants.	Civil Action No. 1:13-cv-02546-JPO CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

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I. INTRODUCTION

Lead Counsel for the Class ("Lead Counsel") have obtained a cash Settlement Fund of $22,500,000 for the benefit of the Class.[1] As explained in the contemporaneously filed submissions in support of the Settlement, this very favorable result, obtained despite serious obstacles to recovery, is a credit to Lead Counsel's vigorous and diligent prosecution of the litigation. Lead Counsel now respectfully move this Court for an award of attorneys' fees in the amount of 30% of the Settlement Fund. In addition, Lead Counsel respectfully request $116,071.94 in expenses that were reasonably and necessarily incurred in prosecuting this litigation and obtaining the Settlement for the benefit of the Class.

II. PRELIMINARY STATEMENT

The $22.5 million Settlement obtained by Lead Counsel is an excellent result for the Class, considering the substantial risks and obstacles faced by Lead Plaintiffs if the litigation were to continue.[2] Lead Counsel's efforts in achieving this result have been without compensation of any kind and their fee and payment of expenses has been wholly contingent upon the result achieved. The requested fee is reasonable given the result obtained, is consistent with the fees awarded in similar actions in this Circuit and decisions throughout the country, and follows the appropriate method for compensating counsel. The requested fee has also been approved by the institutional

[1] All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement dated August 14, 2014 ("Settlement Agreement" or "Settlement").

[2] The accompanying Joint Declaration of Robert M. Rothman and Ira A. Schochet in Support of (1) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Distribution of Settlement Proceeds, and (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses ("Joint Decl.") is an integral part of this submission. The Court is respectfully referred to it for a detailed description of the factual and procedural history of the Action, the claims asserted, Lead Plaintiffs' and Lead Counsel's investigation and litigation efforts, the negotiations leading to the Settlement, and the fairness and reasonableness of the Settlement, the Plan of Distribution, and counsel's request for an award of attorneys' fees and expenses.

Lead Plaintiffs, Electrical Workers Pension Fund Local 103 IBEW, Monroe County Employees' Retirement System, and Construction Laborers Pension Trust of Greater St. Louis (the "Lead Plaintiffs").

The litigation is subject to the provisions of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and, therefore, was extremely risky and difficult. The effect of the PSLRA has been to make it harder for investors to successfully resolve securities class actions. In this post-PSLRA environment, a great percentage of cases are being dismissed amid defendants' constant attempts to push the envelope and contours of the PSLRA. As former United States Supreme Court Justice Sandra Day O'Connor noted in *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009), "[t]o be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action."

In addition to presenting significant risks and obstacles, given Defendants' assertions and defenses rebutting the claims of federal securities laws violations, the prosecution of the litigation required a concerted and thorough effort by Lead Counsel who: conducted an extensive, world-wide investigation into Defendants' conduct involving numerous confidential witnesses; drafted a detailed amended complaint based on the fruits of that investigation; researched and briefed an opposition to Defendants' two motions to dismiss that complaint; reviewed public as well as internal, non-public documents produced by Autoliv during settlement negotiations; retained and consulted with professional consultants in the automotive safety industry and in the study of securities damages and financial analysis; participated in mediated settlement negotiations, which included the exchange of mediation statements addressed to the areas in dispute; and interviewed a Vice President of Investor Relations and Business Activities/Mergers and Acquisitions for Autoliv who was, and is, involved in preparing Autoliv's SEC filings and coordinating Autoliv's investor activities for the Americas and

other regions. Joint Decl., ¶¶7, 62. As a result, the Settlement is the culmination of vigorous litigation and arm's-length settlement negotiations. It was only through the diligent efforts of Lead Counsel that the members of the Class will receive compensation for Defendants' alleged wrongdoing.

To date, the reaction of the Class to the Settlement and the request for attorneys' fees and expenses has been very positive. In accordance with this Court's Order Preliminarily Approving Settlement and Providing for Notice, copies of the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing (the "Notice") were sent to purported Class Members. *See* Declaration of Stephanie A. Thurin Regarding Notice Dissemination and Publication ("Mailing Decl."), ¶¶3-10. The Notice informed members of the Class that Lead Counsel would make an application for up to 30% of the Settlement Fund plus expenses not to exceed $200,000, plus interest on such amounts. In addition, a summary notice was published in *Investor's Business Daily* and over the *PR Newswire*. Mailing Decl., ¶11. In response to this extensive Court-approved notice program, no objections to Lead Counsel's fee and expense request have been received.[3] This fact strongly evidences that the fee request is fair and reasonable.

For the reasons set forth herein, as well as in the accompanying Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Distribution of Settlement Proceeds ("Settlement Brief") and in the Joint Declaration, Lead Counsel respectfully submit that the attorneys' fees requested are fair and reasonable under the applicable legal standards and in light of the contingency risk undertaken, the vigorous efforts of counsel in prosecuting this litigation on behalf of the Class, and the substantial and certain benefits obtained,

[3] The objection deadline is October 3, 2014. Should any objections be received prior to that date, Lead Counsel will respond to them in a reply brief, which will be filed on October 17, 2014.

and therefore should be awarded by the Court. Moreover, the expenses requested are reasonable in amount and were necessarily incurred for the successful prosecution of the litigation.

III. ARGUMENT

A. Lead Counsel Are Entitled to an Award of Attorneys' Fees and Expenses from the Common Fund

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000); *Savoie v. Merchants Bank*, 166 F.3d 456, 459-60 (2d Cir. 1999). "The court's authority to reimburse the representative parties . . . stems from the fact that the class-action device is a creature of equity and the allowance of attorney-related costs is considered part of the historic equity power of the federal courts." 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* §1803, at 325 (3d ed. 2005). The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf. *See also Goldberger*, 209 F.3d at 47; *City of Providence v. Aéropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 WL 1883494, at *10 (S.D.N.Y. May 9, 2014) ("*City of Providence*").

Courts have recognized that, in addition to providing just compensation, awards of fair attorneys' fees from a common fund should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature. *See, e.g.*, *City of Providence*, 2014 WL 188349, at *11; *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002). Indeed, the Supreme Court has emphasized that private securities actions, such as the instant action, provide "'a most

effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)); *accord Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007).

Courts in this Circuit have consistently adhered to these principles and the "[d]etermination of 'reasonableness' is within the discretion of the district court." *In re Interpublic Sec. Litig.*, No. 02 Civ. 6527 (DLC), 2004 WL 2397190, at *10 (S.D.N.Y. Oct. 26, 2004).

B. The Court Should Award a Reasonable Percentage of the Common Fund

The Second Circuit has authorized district courts to employ the percentage-of-the-fund method when awarding fees in common fund cases. *See Goldberger*, 209 F.3d at 47 (holding that the percentage-of-the-fund method may be used to determine appropriate attorneys' fees, although the lodestar method may also be used); *City of Providence*, 2014 WL 1883494, at *11; *see also Hayes v. Harmony Gold Mining Co.*, 509 Fed. App'x. 21, 24 (2d Cir. 2013) (affirming district court's conclusion that the percentage method "aligns the interests of class counsel with those of the class"), *cert. denied*, ___ U.S. ___, 134 S. Ct. 310 (2013). In expressly approving the percentage method, the Second Circuit recognized that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-49;[4] *Savoie*, 166 F.3d at 460

[4] The use of the percentage-of-the-fund method in common fund cases has been approved by every other Court of Appeals that has addressed the issue. *See In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995); *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821-22 (3d Cir. 1995); *Rawlings v. Prudential-Bache Props.*, 9 F.3d 513, 515-16 (6th Cir. 1993); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454-56 (10th Cir. 1988); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 773-74 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). Indeed, the

(stating that the "percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases").[5]

The trend among district courts in this Circuit, although not uniform, is to apply the percentage-of-the-fund method, rather than the lodestar approach. *See, e.g.*, *City of Providence*, 2014 WL 1883494, at *11; *In re Beacon Assocs. Litig.*, No. 09 Civ. 777 (CM), 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013); *Silverstein v. AllianceBernstein L.P.*, No. 09-CV-5904 (JPO), 2013 WL 7122612, at *8 (S.D.N.Y. Dec. 20, 2013); *Landmen Partners Inc. v. Blackstone Grp. L.P.*, No. 08-cv-03601-HB-FM, slip op. (S.D.N.Y. Dec. 18, 2013) [6]; *Bd. of Trs. of Operating Engr's Pension Trust v. JPMorgan Chase Bank, Nat'l Ass'n*, No. 09-cv-09333-KBF, slip op. (S.D.N.Y. Nov. 20, 2013); *Aponte v. Comprehensive Health Mgmt.*, No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at *6 (S.D.N.Y. Apr. 2, 2013) ("The Court finds that the amount of fees requested is fair and reasonable using the 'percentage-of-recovery' method, which is consistent with the 'trend in this Circuit.'") (citation omitted); *In re IMAX Sec. Litig.*, No. 06 Civ. 6128 (NRB), 2012 WL 3133476, at *5 (S.D.N.Y. Aug. 1, 2012) ("'the percentage method continues to be the trend of district courts in th[e

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Eleventh and District of Columbia Circuits require the use of the percentage method in common fund cases. *Camden*, 946 F.2d at 774; *Swedish Hosp.*, 1 F.3d at 1271.

[5] The determination of attorneys' fees using the percentage-of-the-fund method is also supported by the PSLRA which states that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a ***reasonable percentage*** of the amount" recovered for the class. 15 U.S.C. §78u-4(a)(6) (emphasis added). Some courts have concluded that, by drafting the PSLRA in such a manner, Congress expressed a preference for the percentage, as opposed to the lodestar, method in securities class actions. *See In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *3 (S.D.N.Y. Nov. 7, 2007); *Maley*, 186 F. Supp. 2d at 370; *In re Am. Bank Note Holographics*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436 (S.D.N.Y. 2004).

[6] All unreported authorities referred to herein are attached to the Compendium of Unreported Authorities in Support of Motion for an Award of Attorneys' Fees and Expenses, submitted herewith as Exhibit 7 to the Joint Declaration.

Second] Circuit'") (citation omitted); *In re LaBranche Sec. Litig.*, No. 03-CV-8201 (RWS), slip op. (S.D.N.Y. Jan. 22, 2009); *In re Tommy Hilfiger Sec. Litig.*, No. 1:04-CV-07678-SAS, slip op. (S.D.N.Y. Oct. 16, 2008); *In re OSI Pharms., Inc. Sec. Litig.*, No. 2:04-CV-05505-JS-WDW, slip op. (E.D.N.Y. Aug. 22, 2008); *Stefaniak v. HSBC Bank USA, N.A.*, No. 1:05-CV-720 S, 2008 WL 7630102, at *3 (W.D.N.Y. June 28, 2008); *Veeco*, 2007 WL 4115808, at *3; *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510 (CPS)(SMG), 2007 WL 2743675, at *13 (E.D.N.Y. Sept. 18, 2007); *In re Doral Fin. Corp. Sec. Litig.*, No. 1:05-md-01706-RO, slip op. (S.D.N.Y. July 17, 2007); *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *8 (S.D.N.Y. Oct. 24, 2005) ("The trend in the Second Circuit recently has been to use the percentage method."); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 520 (E.D.N.Y. 2003) (trend in this Circuit is to award attorneys' fees using the percentage method), *aff'd sub nom. Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96 (2d Cir. 2005); *Maley*, 186 F. Supp. 2d at 370 (trend in this Circuit is to use the percentage method); *see also In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 397 (S.D.N.Y. 1999) (stating that "[c]ourts increasingly have come to recognize the shortcomings of the lodestar/multiplier method as a universal rule for compensation"); *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 597 (S.D.N.Y. 1992) (holding that "the lodestar formula is undesirable if an alternative is available").

Given the language of the PSLRA, the Supreme Court's indication that the percentage method is proper in this type of case, the Second Circuit's explicit approval of the percentage method in *Goldberger*, and the trend among the district courts in this Circuit, the Court should award Lead Counsel attorneys' fees based on a percentage of the fund. The percentage approach not only aligns the interests of counsel and the class, *Elliot v. Leatherstocking Corp.*, No. 3:10-CV-0934 (MAD/DEP), 2012 WL 6024572, at *5 (N.D.N.Y. Dec. 4, 2012), it also recognizes that the quality

of counsel's services is measured best by the results achieved, and "can serve as a proxy for the market in setting counsel fees." *Am. Bank Note*, 127 F. Supp. 2d at 432.

The requested fee is also in line with the recent fee awards for common fund cases in this District and elsewhere. *See* §III.D.

C. The Relevant Factors Confirm that the Requested Fee Is Reasonable

The Second Circuit in *Goldberger* explained that whether the court uses the percentage-of-the-fund method or the lodestar approach, it should continue to consider the traditional criteria that reflect a reasonable fee in common fund cases, including: (i) the time and labor expended by counsel; (ii) the risks of the litigation; (iii) the magnitude and complexity of the litigation; (iv) the requested fee in relation to the settlement; (v) the quality of representation; and (vi) public policy considerations. *Goldberger*, 209 F.3d at 50. An analysis of these factors demonstrates that the requested fee is fair and reasonable.

1. The Time and Labor Expended by Counsel

Lead Counsel have expended a substantial amount of time and effort pursuing this litigation on behalf of the Class. Since its inception, Lead Counsel and their professionals have devoted more than 3,680 hours to this litigation. As discussed more fully in the Joint Declaration, submitted herewith, Lead Counsel conducted a comprehensive investigation into the Class' claims; researched and prepared a detailed amended complaint; opposed two separate motions to dismiss; consulted with professional consultants in a variety of fields concerning the claims and defenses (including an expert in the precise industry in which Autoliv conducts its business in order to overcome difficulties otherwise presented concerning pleading and proving the claims); reviewed confidential internal documents provided by Autoliv; engaged in a hard-fought mediated settlement process with experienced defense counsel; and interviewed a current Autoliv executive with extensive relevant

knowledge about the alleged claims and defenses. Moreover, Lead Counsel, with the assistance of their damages consultant, analyzed the alleged artificial inflation present in the prices of Autoliv's common stock during the Class Period, estimated damages suffered by the Class, and prepared the proposed Plan of Distribution of settlement proceeds. The legal work on this litigation will not end with the Court's approval of the Settlement. Additional hours and resources will necessarily be expended assisting Class Members with their Proof of Claim forms, shepherding the claims process, and responding to Class Member inquiries. *See Aponte*, 2013 WL 1364147, at *6.

At all times during the pendency of the Action, Lead Counsel's efforts were driven by and focused on advancing the litigation to bring about the most successful outcome for the Class, whether through settlement or trial, by the most efficient means possible. Accordingly, the time and effort devoted to this case by Lead Counsel to obtain the $22.5 million Settlement confirms that the 30% fee request is reasonable.

2. The Risks of the Litigation

a. The Contingent Nature of Lead Counsel's Representation Supports the Requested Fee

Courts within the Second Circuit have long recognized that the risk associated with a case undertaken on a contingency basis is an important factor in determining an appropriate fee award:

> Lead Counsel undertook this Action on a wholly contingent-fee basis, investing a substantial amount of time and money to prosecute the Action without a guarantee of compensation or even the recovery of expenses. Unlike counsel for Defendants, who is paid substantial hourly rates and reimbursed for their expenses on a regular basis, Lead Counsel has not been compensated for any time or expenses since this case began, and would have received no compensation or expenses had this case not been successful.

City of Providence, 2014 WL 1883494, at *14. "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, No. 01-CV-11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004); *City of*

Providence, 2014 WL 1883494, at *14 (same); *Am. Bank Note*, 127 F. Supp. 2d at 433 (concluding it is "appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award"); *In re Prudential Inc. Sec. Ltd. P'ships Litig.*, 985 F. Supp. 410, 417 (S.D.N.Y. 1997) ("Numerous courts have recognized that the attorney's contingent fee risk is an important factor in determining the fee award."). This risk encompasses not just the risk of no payment, but also the risk of underpayment. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992) (reversing district court's fee award where court failed to account for, among other things, risk of underpayment to counsel).

Here, Lead Counsel pursued Lead Plaintiffs' claims against Defendants in this complex and far-ranging litigation with no guarantee of ever being compensated for their investment of time and money that the case would require. In undertaking this responsibility, Lead Counsel dedicated substantial attorney and professional resources to the prosecution of the litigation, and paid the considerable expenses which a case such as this entails. Not only do contingent litigation firms have to pay regular overhead, but they also must advance the expenses of the litigation. The financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis.

It is also wrong to presume that a law firm handling complex contingent litigation always wins. Indeed, the risk of no recovery in complex cases of this type is very real. There are numerous class actions in which plaintiffs' counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. As the court in *Xcel* recognized, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005). Even plaintiffs who

get past summary judgment and succeed at trial may find their judgment overturned on appeal or on a post-trial motion.[7]

b. Risks of Establishing Liability

This securities fraud litigation required delving into – in addition to the issues that arise from such an action – related charges of antitrust violations, with the myriad significant factual and legal complexities and, most importantly for purposes of this discussion, risks that flow from both such claims. Indeed, the "Second Circuit has identified 'the risk of success as perhaps the foremost factor to be considered in determining [a reasonable award of attorneys' fees].'" *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *18 (S.D.N.Y. Dec. 23, 2009) (quoting *Goldberger*, 209 F.3d at 54). While Lead Plaintiffs remain confident in their ability to prove their claims and to effectively rebut Defendants' defenses, proving liability was far from certain.

To succeed on their claims, Lead Plaintiffs must prove, *inter alia*, that Defendants made misstatements or omissions of material fact with scienter in connection with the purchase of Autoliv common stock, and that the Class suffered losses as a result of the revelation of the truth. As

[7] *See, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming judgment as a matter of law on the basis of loss causation following a jury verdict partially in plaintiffs' favor); *Robbins v. Koger Props.*, 116 F.3d 1441, 1448-49 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1233 (10th Cir. 1996) (Tenth Circuit overturned securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion); *In re Apple Computer Sec. Litig.*, No. C-84-20148(A)-JW, 1991 WL 238298, at *1 (N.D. Cal. Sept. 6, 1991) (verdict against two individual defendants, but court vacated judgment on motion for judgment notwithstanding the verdict); *Backman v. Polaroid Corp.*, 910 F.2d 10, 18 (1st Cir. 1990) (where the class won a substantial jury verdict and motion for J.N.O.V. was denied, on appeal the judgment was reversed and the case was dismissed – after 11 years of litigation); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 309 (2d Cir. 1979) (multimillion dollar judgment reversed after lengthy trial).

explained in detail in the Joint Declaration, Defendants raised and were prepared to continue to litigate a number of arguments and defenses involving, primarily, the ability of Lead Plaintiffs to establish that Defendants acted with scienter and whether there were actionable misstatements and omissions. *See generally* Joint Decl., ¶¶86-106.

For instance with respect to scienter, although Autoliv pled guilty to two violations of Section 1 of the Sherman Act, Defendants disputed that the plea could be used by Lead Plaintiffs to establish scienter in this case. Lead Plaintiffs argue, among other things, that Autoliv's guilty plea is a sworn admission that it knowingly and intentionally participated in deliberately illegal conduct through "high-level" employees of Autoliv Japan, including Matsunaga (among other employees of that subsidiary). *Id.*, ¶¶88-89. Lead Plaintiffs' ability, however, to use the guilty pleas by Autoliv and Matsunaga to establish or support an inference of scienter as to the Company was uncertain, and so Lead Counsel also marshaled multiple types of circumstantial evidence of scienter. They developed allegations concerning: (i) "red flags" that should have alerted Defendants to the anti-competitive conduct, and thus the fact that their alleged misstatements were false or misleading; (ii) Defendants' involvement in Autoliv's Request for Quotation bidding process; and (iii) Defendants' knowledge of Autoliv's "core operations." *Id.*, ¶94. In connection with the first of those efforts, Lead Counsel retained an automotive industry expert to lend expertise to the identification and analysis of red flags that would have alerted Defendants to anti-competitive conduct, such that they knew or recklessly disregarded that such acts were at least partly responsible for certain of Autoliv's reported results. *Id.*, ¶56.

With respect to establishing material misstatements or omissions, Defendants and Lead Plaintiffs disputed whether, among other things: (i) statements concerning Autoliv's financial results or competition were factually true, or on the whole true, and Defendants were under an obligation to

disclose the Company's illegal activities; (ii) statements regarding Autoliv's business practices, ethics and legal compliance were inactionable puffery; and (iii) any of the alleged statements were forward looking and protected by the PSLRA's safe harbor provisions. Defendants also challenged Lead Plaintiffs' ability to connect the individual Defendants to alleged statements that were not signed by them or personally conveyed during conference calls. Joint Decl., ¶¶98-105.

Lead Plaintiffs responded to these challenges in their response to Defendants' motions to dismiss by citation to legal authority supporting their position as to each. Thus, Lead Plaintiffs argued that Defendants attributed Autoliv's reported "record" financial results during the Class Period to benign and lawful factors, rather than the Company's participation in an anti-competitive conspiracy, and therefore such statements were false and misleading. *See, e.g.*, *Freudenberg v. E*Trade Fin. Corp.*, 712 F. Supp. 2d 171, 180 (S.D.N.Y. 2010) (holding that once the company "'put[] the topic of the cause of its financial success at issue, then it [was] obligated to disclose information concerning the source of its success'") (citation omitted). To rebut the "puffery" contentions, Lead Counsel focused on United States Supreme Court authority that statements convey existing fact where they are "reasonably understood to rest on a factual basis that justifies them as accurate, the absence of which renders them misleading." *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1093 (1991). With respect to the safe harbor defense, Lead Plaintiffs argued that the statements involved historical or existing fact, *see, e.g.*, *Richman v. Goldman Sachs Grp., Inc.*, 868 F. Supp. 2d 261, 277-78 (S.D.N.Y. 2012) (finding that defendant's statements regarding its compliance with applicable laws and ability to detect conflicts of interest were actionable misrepresentations of existing facts when the opposite was true), and that the allegations establishing scienter also undermine a "safe harbor" defense, as does the absence of meaningful cautionary language. With respect to whether statements that were not signed or spoken by an individual

Defendant could be attributed to them for purposes of a claim, Lead Counsel developed allegations supporting the application of the group pleading doctrine and argue that they could implicitly attribute statements concerning Japanese and Toyota sales to Matsunaga. Joint Decl., ¶41. *See, e.g.*, *City of Pontiac Gen. Emps.' Ret. Sys. v. Lockheed Martin Corp.*, 875 F. Supp. 2d 359, 373 (S.D.N.Y. 2012) (holding that group pleading doctrine "allows a plaintiff to rely on a presumption that written statements that are 'group-published,' *e.g.*, SEC filings and press releases, are statements made by all individuals 'with direct involvement in the everyday business of the company'") (citation omitted).

Lead Counsel worked diligently to rebut Defendants' defenses in connection with opposing the motions to dismiss and to position the case during settlement negotiations to maximize the value of the claims for the Class. They were similarly prepared to do so if the case proceeded to trial. Nonetheless, despite their strong assertion of authority supporting their positions on these issues, Defendants cited contrary authority such that there remained a significant risk that Lead Plaintiffs would not succeed on one, more, or all of them.

c. Risk of Establishing Loss Causation and Damages

Whether Lead Plaintiffs could ultimately prove that the Class was damaged was also hotly contested. Defendants strenuously disagreed with Lead Plaintiffs' damage estimates – assuming that no, or significantly fewer, damages could be established. "Proof of damages in complex class actions is always complex and difficult and often subject to expert testimony." *Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8831 (CM)(MHD), 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014). In order for the Class to recover damages at the level estimated by Lead Plaintiffs' damages consultant, Lead Plaintiffs would have to prevail on each and every one of the claims alleged, for the entirety of the Class Period alleged by Lead Plaintiffs. Defendants would argue that the declines in Autoliv's share price and the resulting losses incurred by shareholders were caused by other factors,

and were not related to, or proximately caused by, revelations concerning the alleged misstatements or omissions. Joint Decl., ¶107. More specifically, Defendants claimed that the July 8, 2011 announcement was a timely disclosure of negative news relating to the investigation. *Id.* Defendants would also dispute Lead Plaintiffs' damage calculations and the methodology used by their consultant to calculate artificial inflation. *Id.*, ¶123.

The damage assessments of the parties' trial experts would be sure to vary substantially, and trial would become a "battle of experts." The outcome of such battles is never predictable, and there existed the very real possibility that a jury could be swayed by experts for Defendants to minimize the Class' losses or to show that the losses were attributable to factors other than the alleged misstatements and omissions. *See Marsh*, 2009 WL 5178546, at *6; *Maley*, 186 F. Supp. 2d at 365. Thus, even if Lead Plaintiffs prevailed as to liability at trial, the judgment obtained could well have been only a fraction of the damages claimed. *See, e.g.*, *In re Flag Telecom Holdings*, No. 02-CV-3400 (CM)(PED), 2010 WL 4537550, at *28 (S.D.N.Y. Nov. 8, 2010) (burden in proving the extent of the class' damages weighed in favor of approving fee request).

3. The Magnitude and Complexity of the Litigation

The complexity of the litigation is another factor examined by courts evaluating the reasonableness of attorneys' fees requested by class counsel. *See Chatelain v. Prudential-Bache Sec.*, 805 F. Supp. 209, 216 (S.D.N.Y. 1992). It is widely recognized that shareholder actions are notoriously complex and difficult to prove. *See In re Bayer AG Sec. Litig*, No. 03 Civ. 1546 (WHP), 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008). "[T]he complex and multifaceted subject matter involved in a securities class action such as this supports the fee request." *City of Providence*, 2014 WL 1883494, at *16. "[S]ecurities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000);

see also In re AOL Time Warner, Inc. Sec. & ERISA Litig., No. MDL 1500, 2006 WL 903236, at *9 (S.D.N.Y. Apr. 6, 2006) ("[T]he legal requirements for recovery under the securities laws present considerable challenges, particularly with respect to loss causation and the calculation of damages.").[8] This litigation is no different from the cases referenced above.

As described in greater detail in the accompanying Settlement Brief and the Joint Declaration, this litigation involved difficult and complex expert-intensive issues regarding violations of the federal antitrust and securities laws against a Swedish company where the alleged wrongdoing was focused in Japan, and evidence may have developed showing that such unlawful conduct occurred at other Autoliv subsidiaries around the world. Lead Plaintiffs would likely need to translate the vast majority of documents anticipated to be produced during discovery. In addition, it is likely that many of the depositions would need to take place overseas and require expensive translation services. Lead Plaintiffs would also have to overcome data protection and Hague Convention issues, but may not have been able to do so prior to the close of discovery (or at all). Much of the discovery, once produced (and translated), would itself be extraordinarily complex – relating to the automotive industry, Autoliv's financial metrics, and both the anti-competitive allegations and the securities fraud allegations. Joint Decl., ¶75.

Defendants would have undoubtedly opposed a motion for class certification after taking extensive discovery of the Lead Plaintiffs and their experts, then filed motions for summary judgment and *Daubert* motions after fact and expert discovery. Briefing to resolve such motions would have entailed further substantial expenditure of time and effort. Assuming Lead Plaintiffs

[8] *See, e.g.*, *Hubbard*, 688 F.3d 713 (affirming judgment as a matter of law on the basis of loss causation following a jury verdict partially in plaintiffs' favor); *Robbins*, 116 F.3d at 1448-49 (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant).

survived Defendants' summary judgment motion, and a class was certified over Defendants' certain opposition, trial preparation would have required many additional hours of work, at great expense. The trial of liability issues alone would have involved substantial attorney and expert time, the introduction of voluminous documentary and deposition evidence, vigorously contested *in limine* motions, and the considerable expenditures of judicial resources. The "normal" cost of litigation, including copying, travel, depositions, experts, computer support services, and other necessary expenses, are quite high. Taking a case through summary judgment and trial implicates an additional tier of resources. In addition, this litigation was vigorously contested by Defendants who were ably represented by very experienced and qualified attorneys. *See Flag Telecom*, 2010 WL 4537550, at *28 (standing of opposing counsel underscores complexity of litigation and challenges faced by class counsel). "[N]otwithstanding this formidable opposition, Lead Counsel was able to develop Lead Plaintiff's case so as to resolve the litigation on terms favorably to the Class." *City of Providence*, 2014 WL 1883494, at *17. Accordingly, these factors support the conclusion that the requested fee is reasonable and fair.

4. The Quality of Representation

The quality of the representation provided by Lead Counsel and the standing of counsel are also important factors that support the reasonableness of the requested fee. *See Flag Telecom*, 2010 WL 4537550, at *28. Lead Counsel's efforts in efficiently and pragmatically bringing this litigation to a successful conclusion are the best indicator of the experience and ability of the attorneys involved. Lead Counsel are well regarded nationally for their successful representation of clients in complex class action matters. *See* Joint Decl., ¶¶142-143; Exhibit A to the accompanying Declaration of Robert M. Rothman ("Robbins Geller Fee Decl."), and Exhibit A to the Declaration of Ira A. Schochet ("Labaton Fee Decl."). This factor supports Lead Counsel's fee application.

5. Public Policy Considerations

The federal securities laws are remedial in nature, and, to effectuate their purpose of protecting investors, the courts must encourage private lawsuits. *See Basic Inc. v. Levinson*, 485 U.S. 224, 230-31 (1988). The Supreme Court has emphasized that private securities actions such as this provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman*, 472 U.S. at 310 (citation omitted); *Tellabs*, 551 U.S. at 319 (noting that the court has long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions). Indeed, lawyers that pursue private suits such as this on behalf of investors augment the overburdened SEC by "acting as 'private attorneys general.'" *Ressler v. Jacobson*, 149 F.R.D. 651, 657 (M.D. Fla. 1992).[9]

As actionable securities fraud unfortunately exists, society benefits from strong advocacy on behalf of securities holders. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."); *see also Shapiro*, 2014 WL 1224666, noting the importance of "private enforcement actions and the corresponding need to incentivize attorneys to pursue such actions on a contingency fee basis":

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[9] *See also Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *In re Med. X-Ray Film Antitrust Litig.*, No. CV-93-5904, 1998 WL 661515, at *8 (E.D.N.Y. Aug. 7, 1998) (awarding fee of 33-1/3% because it "furthers the public policy of encouraging private lawsuits"); *Chatelain*, 805 F. Supp. at 216 (determining that "an adequate award furthers the public policy of encouraging private lawsuits in pursuance of the remedial federal securities laws"); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 750-51 (S.D.N.Y. 1985) (observing that "[f]air awards in cases such as this encourage and support other prosecutions, and thereby forward the cause of securities law enforcement and compliance"), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

> [C]lass actions serve as private enforcement tools when . . . regulatory entities fail to adequately protect investors . . . plaintiffs' attorneys need to be sufficiently incentivized to commence such actions in order to ensure that defendants who engage in misconduct will suffer serious financial consequences . . . awarding counsel a fee that is too low would therefore be detrimental to this system of private enforcement.

Id. at *24 (citation omitted). Thus, "public policy favors the granting of [attorneys'] fees sufficient to reward counsel for bringing these actions and to encourage them to bring additional such actions." *Ressler*, 149 F.R.D. at 657.

D. The Requested Attorneys' Fees Are Reasonable Under Either the Percentage-of-the-Fund Method or the Lodestar Method

Regardless of which method a court uses to award attorneys' fees, the award must be reasonable under the circumstances of the particular case. *Goldberger*, 209 F.3d at 47. In selecting an appropriate fee award, the Supreme Court recognizes that a fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery. *Blum v. Stenson*, 465 U.S. 886, 903 (1984) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (Brennan, J., concurring).

On a percentage basis, the compensation requested here is within the range of percentage fee awards within the Second Circuit. *See Silverberg v. People's Bank*, 23 Fed. App'x. 46, 47-49 (2d Cir. 2001) (affirming district court order awarding attorneys' fees and expenses of nearly one-third of settlement fund); *Fisher v. Suffolk Bancorp*, No. 1:11-cv-05114-RML, slip op. (E.D.N.Y. Nov. 19, 2013); *In re Amaranth Natural Gas Commodities Litig.*, No. 07 Civ. 6377 (SAS), slip op. at 7 (S.D.N.Y. June 11, 2012) (awarding 30% of $77.1 million fund); *OSI Pharms.*, slip op. at 1

(awarding 30% of $9 million fund); *In re L.G. Philips LCD Co., Ltd. Sec. Litig.*, No. 1:07-cv-00909-RJS, slip op. at 1 (S.D.N.Y. Mar. 17, 2011); *In re JAKKS Pac., Inc. S'holders Class Action Litig.*, No. 04-CV-8807 (RJS), slip op. at 5 (S.D.N.Y. Oct. 28, 2010) (awarding 30% of $3.925 million fund); *Schnall v. Annuity & Life Re (Holdings), Ltd.*, No. 02 CV 2133 (EBB), slip op. at 8-9 (D. Conn. Jan. 21, 2005) (awarding 33-1/3% of $16.5 million fund); *LaBranche*, slip op. at 1 (awarding 30% of $13 million fund); *Taft v. Ackermans*, No. 02 Civ. 7951 (PKL), 2007 WL 414493, at *1, *11 (S.D.N.Y. Jan. 31, 2007) (awarding 30% of $15.175 million fund); *Collins v. Olin Corp.*, No. 3:03-cv-945(CFD), 2010 WL 1677764, at *7 (D. Conn. Apr. 21, 2010) (awarding one-third of settlement fund as attorneys' fees); *Stefaniak*, 2008 WL 7630102, at *3 (awarding 33% of fund, finding it "typical in class action settlements in the Second Circuit"); *In re Van Der Moolen Holding N.V. Sec. Litig.*, No. 1:03-CV-8284 (RWS), slip op. at 2 (S.D.N.Y. Dec. 6, 2006) (awarding 33-1/3% of fund); *Maley*, 186 F. Supp. 2d at 374 (awarding 33-1/3% of settlement fund).

E. The Requested Attorneys' Fees Are Also Reasonable Under the Lodestar Cross-Check

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, a district court may cross-check the proposed award against counsel's lodestar. *Goldberger*, 209 F.3d at 50. "Where the lodestar is 'used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court.'" *Veeco*, 2007 WL 4115808, at *8 (quoting *Goldberger*, 209 F.3d at 50).

Under the lodestar method, the court must engage in a two-step analysis: first, to determine the lodestar, the court multiplies the number of hours each attorney and other professional spent on the case by each professional's reasonable hourly rate;[10] and second, the court adjusts that lodestar

[10] The Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Jenkins*, 491 U.S. at 283-84.

figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained, and the quality of the attorney's work. *See, e.g.*, *City of Providence*, 2014 WL 1883494, at *13. Performing the lodestar cross-check here confirms that the fee requested by Lead Counsel is reasonable and should be approved.

Lead Counsel and their professionals have spent, in the aggregate, 3,682.10 hours in the prosecution of this case. *See* Robbins Geller Fee Decl. and Labaton Fee Decl., attached as Exhibits 1 and 2 to the Joint Decl. The resulting lodestar is $1,992,674.50. The amount of attorneys' fees requested by Lead Counsel herein, 30% of the Settlement Amount, or $6,750,000, plus interest, yields a 3.38 multiplier on Lead Counsel's lodestar.

In determining whether the rates are reasonable, the Court should take into account the attorneys' professional reputation, experience, and status. As Lead Counsel's declarations demonstrate, counsel are among the most prominent, experienced, and well-regarded securities practitioners in the nation. *See In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *22 (S.D.N.Y. Feb. 1, 2007) (approving counsel's hourly rates). The hourly billing rates of Lead Counsel here range from $640 to $975 for partners, $620 to $750 for of counsel, and $350 to $690 for other attorneys. *See* Joint Decl., ¶140. "In determining the propriety of the hourly rates charged by plaintiffs' counsel in class actions, courts have continually held that the standard is the rate charged in the community where the services were performed for the type of services performed by counsel." *In re Telik Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 589 (S.D.N.Y. 2008). In fact, "perhaps the best indicator of the "market rate" in the New York area for plaintiffs' counsel in securities class actions is to examine the rates charged by New York firms that defend class actions on a regular basis." *Id.* Defense firm billing rates gathered and analyzed by Labaton Sucharow from bankruptcy court filings in 2013, in many cases, exceeded these rates. *See*

Joint Decl., ¶140; Ex. 4. Similarly, the *National Law Journal's* annual survey of law firm billing rates in 2013 shows that average partner billing rates among the Nation's largest defense firms ranged from $930 to $1,055 per hour and average associate billing rates ranged from $590 to $670 per hour. *Id*., Ex. 5.

The multiplier of 3.38 reflected here falls within the range of multipliers found reasonable for cross-check purposes by courts in this Circuit and elsewhere and is fully justified here given the effort required, the risks faced and overcome, and the results achieved.[11] Indeed, "'[i]n contingent litigation, lodestar multiples of over 4 are routinely awarded by courts.'" *Spicer v. Pier Sixty LLC*, No. 08 Civ. 10240 (PAE), 2012 WL 4364503, at *4 (S.D.N.Y. Sept. 14, 2012) (quoting *Telik*, 576 F. Supp. 2d at 590); *see also In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 WL 2230177, at *17 n.7 (S.D.N.Y. July 27, 2007).

In *Maley*, after almost one year of litigation, the parties reached a "relatively quick settlement" prior to the commencement of extensive discovery. *See Maley*, 186 F. Supp. 2d at 363-64. In awarding a fee of 33-1/3% that resulted in a lodestar cross-check multiplier of 4.65, the court held that "[i]n the context of a complex class action, early settlement has far reaching benefits in the judicial system." *Id*. at 373. The court held that the multiplier of 4.65 was "well within the range awarded by courts in this Circuit and courts throughout the country." *Id*. at 369.[12] Similarly, the lodestar multiplier here is well within the range awarded by courts in this Circuit.

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[11] "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended." *Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974) (citation omitted).

[12] *See, e.g.*, *In re RJR Nabisco, Inc. Sec. Litig.*, No. MDL 818 (MBM), 1992 WL 210138, at *7-*8 (S.D.N.Y. Aug. 24, 1992) (approving fees of over $17.7 million, notwithstanding objection that such an award of fees represented a multiplier of 6); *Weiss v. Mercedes-Benz of N. Am.*, 899 F. Supp.

The lodestar multiplier is to be used merely as a cross-check on reasonableness. To find otherwise undermines the principles supporting the percentage approach and encourages needless lodestar-building litigation. *See also Ikon*, 194 F.R.D. at 196 ("The court will not reduce the requested award simply for the sake of doing so when every other factor ordinarily considered weighs in favor of approving class counsel's request of thirty percent."). Indeed, early settlements are encouraged by courts and are consistent with the purposes of the Federal Rules of Civil Procedure, which "'shall be construed and administered to ensure the ***just***, ***speedy***, and ***inexpensive determination*** of every action.'" *Xcel*, 364 F. Supp. 2d at 992 (quoting Fed. R. Civ. P. 1) (emphasis in original). Lead Counsel invested substantial time and effort prosecuting this litigation to a successful completion. The requested fee, therefore, is manifestly reasonable, whether calculated as a percentage of the fund or in relation to Lead Counsel's lodestar.

F. The Class' Reaction to the Fee Request

To date, the Claims Administrator has sent 23,595 copies of the Notice to potential Class Members and nominees informing them, *inter alia*, that Lead Counsel intended to apply to the Court for an award of attorneys' fees of up to 30% of the Settlement Fund, plus expenses not to exceed $200,000, plus interest on both amounts. While the time to object to the fee request is not until October 3, 2014, as of the date of this Memorandum no Class Member has filed an objection to the fee and expense request or any other aspect of the Settlement.[13] *See Silverstein*, 2013 WL 7122612,

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1297, 1304 (D.N.J. 1995) (awarding fee resulting in 9.3 multiplier); *Cosgrove v. Sullivan*, 759 F. Supp. 166, 167 n.1 (S.D.N.Y. 1991) (multiplier of 8.74); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 197 (S.D.N.Y. 1997) (multiplier of 5.5); *see also* 1 Alba Conte, *Attorney Fee Awards* §2.06, at 39 (2d ed. 1993) ("When a large common fund has been recovered and the hours are relatively small, some courts reach a reasonable fee determination based on large multiples of 5 or 10 times the lodestar.").

[13] Should any objections be received, Lead Counsel will address them in a reply brief, to be filed on October 17, 2014.

at *9 ("No Class Member objected to Class Counsel's request for 33 1/3% of the fund, which also provides support for Class Counsel's fee request.").

IV. LEAD COUNSEL'S EXPENSES WERE REASONABLY INCURRED AND NECESSARY TO THE PROSECUTION OF THIS LITIGATION

Lead Counsel also respectfully request $116,071.94 in expenses incurred while prosecuting this litigation. Lead Counsel have submitted declarations regarding the accuracy of these expenses, which are of the type commonly paid to counsel. *See In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (court may compensate class counsel for reasonable expenses necessary to the representation of the class). Most of counsel's modest expenses are the costs of filing fees, on-line legal and financial research, mediation, investigators, and expert consultants. These expenses were necessary to Lead Plaintiffs' success in achieving the Settlement. *See Global Crossing*, 225 F.R.D. at 468 ("The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which 'the paying, arms' length market' reimburses attorneys [and] [f]or this reason, they are properly chargeable to the Settlement fund."). *See also Silverstein*, 2013 WL 7122612, at *10. To date, while the deadline has not passed, no objections to the expense request have been filed. Accordingly, Lead Counsel respectfully request payment for these expenses, plus interest earned on such amount at the same rate as that earned by the Settlement Fund. *See City of Providence*, 2014 WL 1883494, at *19.

V. CONCLUSION

Lead Counsel's efforts have resulted in a very favorable result for the Class. Therefore, Lead Counsel respectfully request that the Court award attorneys' fees of 30% of the Settlement Fund plus expenses in the amount of $116,071.94, plus interest on both amounts. A proposed order will be submitted with Lead Counsel's reply papers after the deadline for objections has passed.

DATED: September 19, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 19, 2014.

s/ Robert M. Rothman
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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.

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