

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re CHEMED CORP. SECURITIES)	No. 1:12-cv-00028-MRB
LITIGATION)	
_____)	<u>CLASS ACTION</u>
)	
This Document Relates To:)	Judge Michael R. Barrett
)	
ALL ACTIONS.)	
_____)	

MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD COUNSEL’S MOTION FOR AN
AWARD OF ATTORNEYS’ FEES AND EXPENSES

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I. INTRODUCTION

Co-Lead Counsel have succeeded in obtaining a \$6,000,000 cash Settlement Fund for the benefit of the Settlement Class.¹ The substantial recovery obtained for the Settlement Class was achieved through the skill, tenacity, and effective advocacy of Co-Lead Counsel who now respectfully move this Court for an award of attorneys' fees in the amount of 33% of the Settlement Fund, or \$1,980,000, plus expenses incurred in prosecuting this litigation of \$65,628.07, plus any accrued interest on both amounts.

Awarding the fee on the percentage basis is the appropriate method of compensating counsel in this case, and the requested fee is well within the range of percentages awarded in class actions in this District, Circuit, and across the country.² The amount requested is warranted in light of the substantial and certain recovery obtained, the extensive efforts of counsel in obtaining the result, and the significant risks in bringing and prosecuting this Action on behalf of the Settlement Class. This litigation was held to a high pleading standard under the Private Securities Litigation Reform Act of 1995 ("PSLRA") and thereafter was extremely risky and difficult. Co-Lead Counsel were mindful of the fact that, in this post-PSLRA environment, a greater percentage of cases are being dismissed more than ever before. The effect of the PSLRA is to make it more difficult for investors to bring and successfully resolve securities class actions. In cases filed after 2000, 47% of motions to

¹ Submitted herewith in support of approval of the proposed Settlement is the Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds ("Settlement Brief"). The Court is also respectfully referred to the accompanying Joint Declaration of Jonathan Gardner and Evan J. Kaufman in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds and Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses ("Joint Decl." or "Joint Declaration"), for a more detailed history of the litigation, the extensive efforts of Co-Lead Counsel and the factors bearing on the reasonableness of the requested award of attorneys' fees and expenses. All terms used herein are defined in the Stipulation and Agreement of Settlement dated February 6, 2014 (the "Stipulation"), unless otherwise indicated.

² Attached hereto as Exhibit A is a listing of cases where courts in class actions in this Circuit and other circuits have awarded fees of 33% or more of the settlement amount.

dismiss have been granted in their entirety, and an additional 17% were granted in part. *See* Dr. Renzo Comolli, Sukaina Klein, Dr. Ronald I. Miller, and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2012 Full-Year Review Settlements Up; Attorneys' Fees Down* (NERA Jan. 29, 2013) at 16. As retired Supreme Court Justice Sandra Day O'Connor recognized: "To 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." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009).

In addition to the substantial risks in prosecuting this Action, the skill and effort to achieve the Settlement was substantial. While the case settled at a relatively early stage, a result encouraged by the courts and consistent with the purposes of the Federal Rules of Civil Procedure, Co-Lead Counsel marshaled considerable resources and committed substantial amounts of time and expense in the prosecution of the Action. As set forth in the Joint Declaration, the Settlement was not achieved until Co-Lead Counsel: (i) conducted a thorough pre-filing investigation of Lead Plaintiffs' claims, including a meticulous review of Chemed's public filings, analyst reports, and media items, as well as information regarding VITAS; (ii) filed a detailed Amended Complaint after further investigation ("First Amended Complaint"); (iii) identified and interviewed more than one hundred potential witnesses, twenty of whose accounts were included in the complaints filed by Lead Plaintiffs; (iv) opposed Defendants' comprehensive motion to dismiss the First Amended Complaint; (v) moved to file a proposed second amended complaint; (vi) drafted a proposed second amended complaint; (vii) met extensively with experts in the fields of Medicare billing regulations, the hospice care industry, damages and loss causation; (viii) prepared for and attended mediation with

Vice Chancellor Lamb; and (ix) negotiated and documented the final terms of settlement contained in the Stipulation.³ Joint Decl., ¶¶8, 65.

Co-Lead Counsel undertook the representation of the Settlement Class on a contingent fee basis and no payment has been made to counsel to date for their services or for the litigation expenses they have incurred on behalf of the Settlement Class. Co-Lead Counsel firmly believe that the Settlement is the result of their diligent and effective advocacy, as well as their reputations as attorneys who are unwavering in their dedication to the interests of the class and unafraid to zealously prosecute a meritorious case through trial and subsequent appeals. In a case asserting claims based on complex legal and factual issues which were vigorously opposed by highly skilled and experienced defense counsel, Co-Lead Counsel succeeded in securing a highly favorable result for the Settlement Class.

Significantly, the fee request was approved by the Court-appointed Lead Plaintiffs. *See* Declaration of Michael P. Donovan and the Declaration of James Klein, submitted herewith. As the Third Circuit held in *In re Cendant Corp. Litig.*, 264 F.3d 201, 220 (3d Cir. 2001): “[C]ourts should afford a presumption of reasonableness to fee requests submitted pursuant to an agreement between a properly-selected lead plaintiff and properly-selected lead counsel.”

As discussed herein, as well as in the Settlement Brief and the Joint Declaration, the requested fee is fair and reasonable when considered under the applicable standards in the Sixth Circuit and is well within the range of awards in class actions in this Circuit and courts nationwide. Moreover, the requested expenses are reasonable in amount and were necessarily incurred for the successful prosecution of the litigation.

³ The efforts of counsel in achieving this Settlement are set forth in greater detail in the accompanying Joint Declaration.

II. CO-LEAD COUNSEL ARE ENTITLED TO THE REASONABLE ATTORNEYS' FEE REQUESTED HEREIN

A. Co-Lead Counsel Are Entitled to a Fee from the Common Fund They Obtained

The Supreme Court has long recognized the “common fund” exception to the general rule that a litigant bears his or her own attorneys’ fees. *Trustees v. Greenough*, 105 U.S. 527 (1882). The rationale for the common fund principle was explained in *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980), as follows:

[T]his Court has recognized consistently 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. . . . Jurisdiction over the fund involved in the litigation allows a court to prevent . . . inequity by assessing attorney’s fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

The common fund doctrine both prevents unjust enrichment and encourages counsel to protect the rights of those who have very small claims. The Supreme Court has emphasized that private actions provide “‘a most effective weapon in the enforcement’ of the securities laws and are ‘a necessary supplement to [Securities and Exchange] Commission 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)).⁴

B. The Court Should Award Attorneys’ Fees Using the Percentage Approach

The diligent efforts of Co-Lead Counsel have resulted in the creation of the Settlement Fund of \$6,000,000. Courts generally favor awarding fees from a common fund based upon the percentage-of-the-fund method. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (stating that in common fund cases “a reasonable fee is based on a percentage of the fund bestowed on the class”);

⁴ *See also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007) (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”).

Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 165-66 (1939); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 124-25 (1885); *Greenough*, 105 U.S. at 532. The PSLRA also supports the use of the percentage-of-the-fund method. See 15 U.S.C. §78u-4(a)(6) (“Total attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.”). Thus, Congress followed the Supreme Court’s lead and endorsed the efficacy of the percentage approach to fee awards in securities class actions.

Consistent with Supreme Court authority, the Sixth Circuit has also held that the percentage approach is a proper method for determining attorneys’ fee awards in common fund cases. See, e.g., *Rawlings v. Prudential-Bache Props.*, 9 F.3d 513, 515-16 (6th Cir. 1993). District courts in this Circuit have virtually uniformly shifted to the percentage method in awarding fees in common fund cases, particularly securities cases.⁵ The Sixth Circuit is not alone in its use of the percentage approach. The vast majority of other circuits recognize the propriety of percentage fee awards in common fund cases and the shortcomings of the lodestar/multiplier method. For example, the District of Columbia Circuit held:

We adopt a percentage-of-the-fund methodology . . . because it is more efficient, easier to administer, and more closely reflects the marketplace.

Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1270 (D.C. Cir. 1993).

Moreover, as noted by most courts approving the percentage-of-the-fund method, the percentage method directly aligns the interests of the class and its counsel and provides a powerful

⁵ See *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 528 (E.D. Ky. 2010), *aff’d sub nom. Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011); *New Eng. Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 633 (W.D. Ky. 2006) (“[T]he Court will apply the percentage-of-the-fund method which is consistent with the majority trend.”); and *In re Telectronics Pacing Sys.*, 186 F.R.D. 459, 483 (S.D. Ohio 1999) (“the preferred method in common fund cases has been to award a reasonable percentage of the fund to Class Counsel as attorneys’ fees”), *rev’d on other grounds*, 221 F.3d 870 (6th Cir. 2000).

incentive for efficient prosecution, thereby benefiting both litigants and the judicial system. The percentage-of-the-fund method also “affords the Court greater flexibility in assuring that Counsel are adequately compensated for the results that they have achieved and the work that they have done, while also protecting the Class’ interest in the fund.” *Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261, 1280 (S.D. Ohio 1996).

C. The Requested Fee Award Is Well Within the Applicable Range of Percentage-of-Fund Awards

In selecting an appropriate percentage award, the Supreme Court recognizes that an appropriate fee is intended to approximate what counsel would receive if they were bargaining for their 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*, 465 U.S. at 903* (“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.”).

Co-Lead Counsel’s request for an award of attorneys’ fees of 33% of the Settlement Fund is within the range of percentage awards made by courts in this Circuit and courts nationwide. *See, e.g., North Port FireFighters’ Pension-Local Option Plan v. Fushi Copperweld, Inc.*, No. 3:11-cv-00595, slip op. (M.D. Tenn. May 12, 2014) (awarding 33-1/3% of \$3.25 million settlement amount, plus expenses); *Morse v. McWhorter*, No. 3:97-0370, slip op. (M.D. Tenn. Mar. 12, 2004) (awarding 33-1/3% of \$49.5 million settlement, plus expenses); *In re Sirrom Capital Corp. Sec. Litig.*, No. 3-98-0643, slip op. (M.D. Tenn. Feb. 4, 2000) (awarding 33-1/3% of \$15 million settlement, plus expenses). *See also Landmen Partners Inc. v. Blackstone Grp. L.P.*, No. 08-cv-03601-HB-FM, slip op. (S.D.N.Y. Dec. 18, 2013) (awarding 33-1/3% of \$85 million settlement amount, plus expenses); *In re Constellation Energy Grp. Inc. Sec. Litig.*, No. 1:08-cv-02854-CCB, slip op. (D. Md. Nov. 4, 2013) (awarding 33-1/3% of \$4 million settlement amount, plus expenses); *Conlee v. WMS Indus.*,

No. 1:11-cv-03503-JBZ, slip op. (N.D. Ill. May 20, 2014) (awarding 33% of \$3.7 million settlement amount, plus expenses); *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), slip op. (S.D.N.Y. May 9, 2014) (awarding 33% of \$15 million settlement amount, plus expenses). See Exhibit A attached hereto.

III. THE REQUESTED FEE IS REASONABLE UNDER THE RAMEY FACTORS

Although the Court of Appeals for the Sixth Circuit has not expressly directed a preference for either the percentage approach or the lodestar method in common fund cases, the standard is whether an award is reasonable under the circumstances. See *Rawlings*, 9 F.3d at 517 (recognizing the growing trend towards adoption of a percentage approach in common fund cases, but declining to adopt a hard and fast rule applying the percentage approach in common fund cases). In determining the “reasonableness” of attorneys’ fees, the Sixth Circuit identified six relevant factors for consideration: “1) the value of the benefit rendered to the corporation or its stockholders, 2) society’s stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others, 3) whether the services were undertaken on a contingent fee basis, 4) the value of the services . . . , 5) the complexity of the litigation, and 6) the professional skill and standing of counsel involved on both sides.” *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974). See also *Smillie v. Park Chem. Co.*, 710 F.2d 271, 275 (6th Cir. 1983). Applying the *Ramey* factors to this fee and expense request, this Court reasonably may conclude that the percentage-of-the-fund requested is justified under the circumstances of this case and the fee is fair and reasonable.

A. The Value of the Benefits Achieved

Co-Lead Counsel have secured a settlement that provides for a substantial and certain cash payment of \$6 million. Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“most

critical factor is the degree of success obtained”).⁶ This outstanding settlement was achieved as a direct result of the skill, effort, and tenacity of Co-Lead Counsel in prosecuting this Action on behalf of the Settlement Class. There is no question that Co-Lead Counsel took significant risks in obtaining this highly favorable result for the Settlement Class.

While Lead Plaintiffs believe that their claims have substantial merit, if litigation were to proceed, there is, nonetheless, a significant risk that the Settlement Class could recover less than the amount of the Settlement, or nothing at all. Throughout the litigation, Defendants have consistently maintained that Lead Plaintiffs could not establish liability or damages and have challenged virtually every factual and legal issue in an effort to defeat Lead Plaintiffs’ claims. For example, in their motion to dismiss, Defendants maintained that Lead Plaintiffs could not demonstrate loss causation. Indeed, proving loss causation is one of the major roadblocks that a plaintiff must overcome to successfully prosecute a securities class action and, if this Action continued, would have been a hotly contested issue. Joint Decl., ¶¶39-42; *see, e.g., Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirmed a lower court ruling which granted defendants’ motion for judgment as a matter of law based on plaintiff’s failure to prove loss causation, thereby overturning a jury verdict in plaintiff’s favor). *See also Meyer v. Greene*, 710 F.3d 1189 (11th Cir. 2013) (affirming order granting motion to dismiss, finding, among other things, that announcement of SEC investigation, without more, had failed to adequately support loss causation). In addition to the risk of proving loss causation, Lead Plaintiffs would have faced significant risk in proving the falsity of Defendants’ alleged misstatements as well as each Defendant’s scienter. Joint Decl., ¶¶36-38.

⁶ *See also Rawlings*, 9 F.3d at 516 (“When awarding attorneys’ fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved.”); *In re Delphi Corp. Sec.*, 248 F.R.D. 483, 503 (E.D. Mich. 2008) (“The primary factor in determining a reasonable fee is the result achieved on behalf of the class.”); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988) (“The quality of work performed in a case that settles before trial is best measured by the benefit obtained.”), *aff’d*, 899 F.2d 21 (11th Cir. 1990).

Despite the significant risks of continued litigation, Co-Lead Counsel were able to achieve a result of significant value to the Settlement Class. The Settlement, which represents between 11.5% and 14% of Lead Plaintiffs' consulting damages expert's estimated range of damages, compares very favorably to other court-approved settlements in PSLRA cases. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007) (\$13.75 million settlement yielding 6% of potential damages after deducting fees and costs was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 U.S. Dist. LEXIS 9450, at *33 (S.D.N.Y. Feb. 1, 2007) ("The settlement . . . represents a recovery of approximately 6.25% of estimated damages. This is at the higher end of the range of reasonableness of recovery in class actions securities litigations."). *See also* Settlement Brief, §III.B.

As detailed in the Settlement Brief and in the Joint Declaration, there were significant legal and factual roadblocks to obtaining a more favorable outcome in this Action. Joint Decl., ¶¶32-43, 60-64. Despite these obstacles to recovery, Co-Lead Counsel secured a sizeable and certain recovery for the benefit of the Settlement Class. As a result of this Settlement, Settlement Class Members will receive compensation for their losses in Chemed capital stock now, and avoid the substantial expense, delay, and uncertainty of continued litigation.

B. 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 313. The percentage-of-the-fund method is prevalent in common fund cases because

plaintiffs' counsel in complex securities class action litigation are invariably retained on a contingent basis, largely due to the huge commitment of time and expense required. Adequate compensation to encourage attorneys to assume the risk of litigation is in the public interest. Indeed, without adequate compensation, it would be difficult to retain the caliber of lawyers necessary, willing, and able to properly prosecute to a favorable conclusion complex, risky, and expensive class actions such as this one. Thus, an important factor is "society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others." *Ramey*, 508 F.2d at 1196. *See also In re Prudential-Bache Energy Income P'ships Sec. Litig.*, No. 888, 1994 U.S. Dist. LEXIS 6621, at *20-*21 (E.D. La. May 18, 1994). Without the willingness of Co-Lead Counsel to assume that task, members of the Settlement Class would not have recovered anything, let alone the many millions of dollars obtained here for their benefit. As actionable securities fraud exists and society benefits from strong advocacy on behalf of security holders, public policy favors the granting of the fee and expense application.

C. The Contingent Nature of the Fee

Co-Lead Counsel undertook this Action on a contingent fee basis, assuming a significant risk that the Action would yield no recovery and leave them uncompensated. This risk encompasses not only the risk of zero payment, but also the risk of underpayment. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992). Unlike counsel for Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Co-Lead Counsel have not been compensated for any time or expenses since this case began in January 2012. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See In re Telectronics Pacing Sys.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001).

While securities cases have always been complex and difficult to prosecute, the PSLRA has only increased the difficulty in successfully prosecuting a securities class action. Co-Lead Counsel

addressed numerous difficult issues in opposing Defendants' motion to dismiss and there was no guarantee that those claims would survive the heightened pleading standards of the PSLRA. As one court has noted: "An unfortunate byproduct of the PSLRA is that potentially meritorious suits will be short-circuited by the heightened pleading standard." *Bryant v. Avado Brands, Inc.*, 100 F. Supp. 2d 1368, 1377 (M.D. Ga. 2000), *rev'd on other grounds sub nom. Bryant v. Dupree*, 252 F.3d 1161 (11th Cir. 2001).⁷ Lead Plaintiffs faced the substantial burden of proving, *inter alia*, that each of the Defendants was responsible for an omission or a misstatement that was material, that the omissions or misstatements impacted the market price of Chemed's capital stock and caused damage to the Settlement Class, and, that each Defendant acted with scienter. *In re Comshare, Inc. Sec. Litig.*, 183 F.3d 542, 548 (6th Cir. 1999).

As noted herein, in the Joint Declaration and in the Settlement Brief, Defendants steadfastly maintained that they did nothing wrong and would offer evidence, including the testimony of expert witnesses, to support their positions. Assuming the Court certified the class, and Lead Plaintiffs were able to overcome Defendants' anticipated motion(s) for summary judgment after the completion of discovery, and prove liability at trial, they still would have faced significant risks in proving loss causation and damages.⁸ Damages could be significantly reduced if Defendants prevailed on issues relating to liability, showed that any assumption made by Lead Plaintiffs' causation and damages expert was incorrect or unreliable, or could show that any portion of the market drop was due to factors other than the alleged fraud or that the market was inefficient. Lead

⁷ Even strong cases that ultimately have been widely recognized as meritorious have been dismissed. *See Goldstein v. MCI WorldCom*, 340 F.3d 238 (5th Cir. 2003).

⁸ Although the parties had not yet commenced class certification briefing, it was far from certain that the Court would certify Lead Plaintiffs' proposed class, as the relevant standard for such a motion is currently under review by the Supreme Court. *See Erica P. John Fund v. Halliburton Co.*, ___ U.S. ___, 131 S. Ct. 2179 (2011). In the event that the Supreme Court overrules or modifies its prior holding in *Basic*, Lead Plaintiffs' burden in certifying a class could be increased. *See Basic*, 485 U.S. at 241-42.

Plaintiffs realized that in the inevitable “battle of experts,” the jury could have sided with Defendants’ expert(s) and found no damages or only a fraction of the damages Lead Plaintiffs claimed. *See In re Lupron(R) Mktg. & Sales Practices Litig.*, MDL No. 1430, 2005 U.S. Dist. LEXIS 17456, at *16 (D. Mass. Aug. 17, 2005) (“History is replete with cases in which plaintiffs prevailed at trial on issues of liability, but recovered little or nothing by way of damages.”) (collecting cases).

Indeed, the risk of no recovery in complex cases of this type is very real. There are numerous class actions in which plaintiff’s counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. *See, e.g., In re Oracle Corp. Sec. Litig.*, No. C 01-00988 SI, 2009 U.S. Dist. LEXIS 50995 (N.D. Cal. June 16, 2009), *aff’d*, 627 F.3d 376 (9th Cir. 2010) (court granted summary judgment to defendants after eight years of litigation, and after plaintiff’s counsel incurred over \$6 million in expenses, and worked over 100,000 hours, representing a lodestar of approximately \$48 million). Co-Lead Counsel are aware of many other hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, or changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts by members of the plaintiff’s bar produced no fee for counsel. *See, e.g., In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469, 47-73 (S.D.N.Y. 2010) (after completion of extensive foreign discovery, 95% of plaintiffs’ damages were eliminated by the Supreme Court’s reversal of 40 years of unbroken circuit court precedents in *Morrison v. Nat’l Aust. Bank Ltd.*, 561 U.S. 247 (2010)). As the court in *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005) 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.” Even plaintiffs who get past summary judgment and succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion.

As noted above, the Eleventh Circuit in *Hubbard* very recently upheld a lower court's decision overturning a jury verdict because plaintiff did not present sufficient evidence to prove loss causation. *See Hubbard*, 688 F.3d 713. This is *not* an infrequent risk.⁹

Because the fee in this matter was entirely contingent, the only certainties were that there would be no fee without a successful result and that such a result would be realized only after considerable and difficult effort. The contingent nature of Co-Lead Counsel's representation strongly favors approval of the requested fee.

D. The Diligent Prosecution of the Litigation

A considerable effort on the part of Co-Lead Counsel was required to obtain this outstanding settlement. As a result of that effort, a substantial and certain recovery of \$6 million has been obtained at a relatively early stage of the litigation without the substantial expense, delay, risk and uncertainty of continued litigation. 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). Plaintiffs' Counsel have spent more than 4,560 hours with a resulting lodestar of \$2,358,020.25 at current rates.¹⁰ The requested

⁹ *See, e.g., In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486-CW(EDL), 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (defense verdict by jury); *Robbins v. Koger Props., Inc.*, 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 U.S. Dist. LEXIS 15608, at *1-*2 (N.D. Cal. Sept. 6, 1991) (following verdict against two individual defendants, but court vacated judgment on motion for judgment notwithstanding the verdict).

¹⁰ The Supreme Court has indicated that the use of current rather than historical rates is appropriate in examining the lodestar because current rates more adequately compensate for inflation and loss of use of funds. *See Jenkins*, 491 U.S. at 283-84. Courts in this Circuit have also stated that it is proper to compensate counsel for delay by using current rates in examining lodestar. *See Barnes v. City of Cincinnati*, 401 F.3d 729, 745 (6th Cir. 2005).

fee represents a negative multiplier of Plaintiffs' Counsel's time. A lodestar "cross-check" therefore confirms the reasonableness of the requested fee. *See Stanley v. United States Steel Co.*, No. 04-74654, 2009 U.S. Dist. LEXIS 114065, at *9-*10 (E.D. Mich. Dec. 8, 2009) (lodestar cross-check resulted in negative multiplier; court determined that lodestar with a multiplier would result in larger fee than counsel's request).

As discussed in more detail in the Joint Declaration, the Settlement was not achieved until Co-Lead Counsel, *inter alia*, conducted an extensive investigation of the factual and legal basis for Lead Plaintiffs' claims; reviewed and analyzed an enormous quantity of publicly-available information about Defendants and the allegations; filed detailed complaints alleging Defendants' violations of the federal securities laws; identified and interviewed more than one hundred percipient witnesses; opposed Defendants' attacks on the pleadings; consulted with experts; drafted a detailed mediation statement; engaged in hard-fought settlement negotiations with the substantial assistance of Vice Chancellor Lamb; and negotiated the terms of the Stipulation and its exhibits. *See generally* Joint Decl. The significant resources devoted by Plaintiffs' Counsel reflects the substantial effort entailed in bringing this difficult litigation to a successful and highly favorable conclusion for the Settlement Class. As set forth herein, in the Joint Declaration and the Settlement Brief, Defendants mounted a vigorous defense and fought Lead Plaintiffs at every step. Given the risks involved and the result obtained, the requested fee is reasonable and appropriate.

E. The Complexity of the Litigation

The complexity of the issues is a significant factor to be considered in making a fee award. Courts have long recognized that securities class actions present inherently complex and novel issues. As Judge Finesilver noted in *Miller v. Woodmoor Corp.*, No. 74-F-988, 1978 U.S. Dist. LEXIS 15234 (D. Colo. Sept. 28, 1978):

The benefit to the class must also be viewed in its relationship to the complexity, magnitude, and novelty of the case. . . .

Despite years of litigation, the area of securities law has gained little predictability. There are few “routine” or “simple” securities actions. Courts are continually modifying and/or reversing prior decisions in an attempt to interpret the securities law in such a way as to follow the spirit of the law while adapting to new situations which arise. Indeed, many facets of securities law have taken drastically new directions during the pendency of this action. . . .

The complexity of a case is compounded when it is certified as a class action. . . . Management of the case, in and of itself, is a monumental task for counsel and the Court.

Id. at *11-*12. Judge Finesilver’s comments ring even more true today. While courts have always recognized that securities class actions carry significant complexities, the adoption of the PSLRA has made the successful prosecution of these cases even more complex and uncertain.

There is no question that from the outset this Action presented a number of sharply contested issues of both fact and law and that Lead Plaintiffs faced formidable defenses to liability and damages. Lead Plaintiffs’ claims arise from Defendants’ allegedly false and misleading statements and omissions regarding the driving force behind Chemed’s improved financial performance and its compliance with Medicare rules and regulations. Joint Decl., ¶20. Lead Plaintiffs allege that Chemed’s VITAS segment achieved its positive results in large part by enrolling and admitting ineligible, non-terminally ill patients within its hospice care program. *Id.*, ¶21. Throughout the Action, Defendants have adamantly denied liability and asserted that they had absolute defenses to Lead Plaintiffs’ claims.

As discussed in the Joint Declaration and the Settlement Brief, substantial risks and uncertainties in this type of litigation, and in this case in particular, made it far from certain that a recovery, let alone a \$6 million recovery, would ultimately be obtained. From the outset, this post-PSLRA action was an especially difficult and highly uncertain securities case, with no assurance whatsoever that it would survive Defendants’ attacks on the pleadings, motion(s) for summary judgment, trial, and appeals. As the court noted in *In re Ikon Office Solutions, Inc.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000), “[t]here were the legal obstacles of establishing scienter, damages,

causation The court also acknowledges that securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." The court's statements in *Ikon* are certainly applicable here.

Even if Lead Plaintiffs obtained a significant judgment after trial, the inevitable appeals would follow. Despite the novelty and difficulty of the issues raised, counsel secured an excellent result for the Settlement Class. As a result, this factor strongly supports the requested award.

F. The Quality of the Representation

Plaintiffs' Counsel include locally and nationally known leaders in the fields of securities class actions and complex litigation. *See* Declarations of counsel, submitted herewith. The quality of the representation is best demonstrated by the substantial benefit achieved for the Settlement Class and the effective and efficient prosecution and resolution of the Action under difficult and challenging circumstances. The substantial recovery obtained for the Settlement Class is the direct result of the substantial efforts of highly skilled and specialized attorneys who possess significant experience in the prosecution of complex securities class actions. From the outset of the Action, Co-Lead Counsel engaged in a concerted effort to obtain the maximum recovery for the Settlement Class and committed considerable resources and time in the research, investigation, and prosecution of this case. Such quality, efficiency, and dedication support the requested fee. *See In re Rio Hair Naturalizer*, No. 1055, 1996 U.S. Dist. LEXIS 20440, at *55-*56 (E.D. Mich. Dec. 20, 1996).

The quality of opposing counsel is also important when the court evaluates the services rendered by plaintiffs' counsel. *See, e.g., Delphi*, 248 F.R.D. at 504 ("The ability of Co-Lead Counsel to negotiate a favorable settlement in the face of formidable legal opposition further evidences the reasonableness of the fee award requested."); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) ("Securities Lead Counsel obtained the Settlement in the face of vigorous opposition by defendants who were represented by some of the nation's leading

law firms.”). Plaintiffs’ Counsel were opposed in this litigation by very skilled and highly respected counsel from Cravath, Swaine & Moore LLP and Dinsmore & Shohl LLP, firms with well-deserved reputations for vigorous advocacy in the defense of complex civil actions. The ability of Plaintiffs’ Counsel to obtain a favorable result for the Settlement Class in the face of such formidable opposition further evidences the quality of their work.

Thus, there can be no dispute that all of the factors discussed above weigh in favor of the fee and expense award requested, and that the Court should grant Co-Lead Counsel’s fee and expense application in its entirety.

IV. PLAINTIFFS’ COUNSEL’S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

Plaintiffs’ Counsel also request payment of expenses incurred by them in connection with the prosecution of this Action in the amount of \$65,628.07. *See* accompanying Declaration of Evan J. Kaufman Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys’ Fees and Expenses, the Declaration of Jonathan Gardner Filed on Behalf of Labaton Sucharow LLP in Support of Application for Award of Attorneys’ Fees and Expenses, and the Declaration of Jeffrey S. Goldenberg Filed on Behalf of Plaintiffs in Support of Application for Award of Attorneys’ Fees and Expenses attesting to the accuracy of Plaintiffs’ Counsel’s expenses. The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace.¹¹ *See In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 535 (E.D.

¹¹ *See also Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees those out-of-pocket expenses that ‘would normally be charged to a fee paying client.’”) (citation omitted); *see also New Eng. Health Care*, 234 F.R.D. at 635 (“In determining whether the requested expenses are compensable, the Court has considered ‘whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases.’”) (citation omitted).

Mich. 2003). The categories of expenses for which counsel seek payment here are the type of expenses routinely charged to hourly clients and, therefore, should be paid out of the common fund.

A large component of Plaintiffs' Counsel's expenses are the costs of experts, including the retention of experts with significant experience in Medicare reimbursement policies, the hospice care industry and damages in securities class actions. Each was essential to understanding the complex issues raised in this litigation. Plaintiffs' Counsel also utilized investigators to assist them in identifying and interviewing witnesses with knowledge of Lead Plaintiffs' allegations and incurred the costs of meals, lodging, and transportation in connection with travel required during the litigation. Plaintiffs' Counsel also incurred the costs of computerized research. It is standard practice for attorneys to use these services to assist them in researching legal and factual issues. Other expenses that were necessarily incurred in the prosecution of this litigation include expenses for mediation fees, photocopying, filing fees, postage and overnight delivery, and telephone and telecopier expenses. Because these were all necessary expenses incurred by Plaintiffs' Counsel, they should be paid from the Settlement Fund.

V. CONCLUSION

For all of the foregoing reasons, Co-Lead Counsel respectfully request that the Court approve their application for attorneys' fees and expenses in the amounts requested. A proposed order will be submitted with Co-Lead Counsel's reply papers, after the deadline for objections has passed.

DATED: June 4, 2014

Respectfully submitted,

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Co-Lead Counsel for Lead Plaintiffs and the
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EXHIBIT A

Cases In Which Award Of Fees
Equalled Or Exceeded 33% Of The Fund Plus Expenses

1. *Beech Cinema, Inc. v. Twentieth Century Fox Film Corp.*, 480 F. Supp. 1195 (S.D.N.Y. 1979) (fee equal to 53.2% of recovery, plus costs);
2. *Lewis v. Musham*, [1981 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶97,946 (S.D.N.Y. 1981) (fee equal to 49% of total recovery);
3. *Sharp v. Coopers & Lybrand*, No. 75-1313 (E.D. Pa. July 2, 1981) (fee equal to 47.95% of recovery, plus expenses);
4. *Green v. Emersons, Ltd.*, [1987 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶93,263 (S.D.N.Y. 1987) (42.6% of the fund, plus expenses);
5. *Levitin v. A Pea in the Pod, Inc.*, Civil Action No. 3:94-CV-0247D (N.D. Tex. Mar. 27, 1998) (fee award equal to 40% of recovery, plus expenses);
6. *In re Atlantic Financial Management, Inc. Sec. Litig.*, MDL No. 584 (D. Mass. May 9, 1989) (fee equal to 40% of recovery, plus expenses);
7. *Valente v. Pepsico, Inc.*, [1979 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶96,921 (D. Del. 1979) (fee and expense award equal to 38.8% of total recovery);
8. *Weinberger v. Jackson*, C-89-2301-CAL (N.D. Cal. Mar. 19, 1991) (fee equal to 37% of recovery, plus expenses);
9. *Van Gemert v. Boeing Co.*, 516 F. Supp. 412 (S.D.N.Y. 1981) (fee and expense award equal to 36.2% of total recovery);
10. *Adams v. Standard Knitting Mills, Inc.*, [1978 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶96,377 (E.D. Tenn. 1978) (fee and expense award equal to 35.8% of recovery);
11. *Baron v. Commercial & Industrial Bank of Memphis*, [1979-1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶97,132 (S.D.N.Y. 1979) (fee and expense award equal to 35.5% of total recovery);
12. *B&B Inv. Club v. Kleinert's Inc.*, No. 73-642 (E.D. Pa. 1978) (fee and expense award equal to 35.1% of total recovery);
13. *Harris v. Brinkerhoff*, No. 90-3100-DT(JRx) (C.D. Cal. Feb. 21, 1995) (fee equal to 35% of recovery, plus expenses);
14. *In re Consolidated Pinnacle West Sec. Litig./Resolution Trust Corporation-MeraBank Litig.*, Master File No. CIV-88-1830-PHX-PAR (D. Ariz. Dec. 30, 1993) (fee equal to 35% of recovery, plus expenses);

15. *Unocal Corporation v. Milken*, No. 90-1281-JSL(Tx) (C.D. Cal. Jan. 3, 1992) (fee equal to 35% of recovery, plus expenses);
16. *In re De Laurentiis Entertainment Group Inc. Sec. Litig.*, Master File No. CV-88-01582-MRP(Bx) (C.D. Cal. Nov. 14, 1991) (fee equal to 35% of total recovery, plus expenses);
17. *Cooper v. Hwang*, No. C-86-20146-WAI (N.D. Cal. Mar. 5, 1991) (fee equal to 35% of total recovery, plus expenses);
18. *In re FPI/Agretech Sec. Litig.*, MDL No. 763 (D. Haw. Dec. 11, 1990) (fee award equal to 35% of total fund, plus expenses);
19. *A&J Deutscher Family Fund v. Pacific Scientific Co.*, CV-85-1850-PAR(JRx) (C.D. Cal. June 16, 1989) (fee equal to 35% of recovery, plus expenses);
20. *Shore v. Parklane Hosiery Co.*, [1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶97,602 (S.D.N.Y. 1980) (fee equal to 35% of total recovery);
21. *In re Apple Computer Sec. Litig.*, Master File No. C-84-20148(a)-JW (N.D. Cal. Mar. 30, 1992) (fee equal to approximately 34% of total recovery, plus expenses);
22. *Plascow v. Clausing Corp.*, [1982-1983 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶99,228 (S.D.N.Y. 1983) (fee equal to 34% of recovery, plus expenses);
23. *North Port Firefighters' Pension-Local Option Plan v. Fushi Copperweld, Inc.*, No. 3:11-cv-00595 (M.D. Tenn. May 12, 2014) (awarded fees of 33-1/3% of \$3.25 million, plus expenses);
24. *Landmen Partners Inc. v. Blackstone Group*, No. 08-cv-03601-HB-FM (S.D.N.Y. Dec. 18, 2013) (awarded fees of 33-1/3% of \$85 million recovery, plus expenses);
25. *Eshe Fund v. Fifth Third Bancorp*, No. 1:08-cv-421 (S.D. Ohio Nov. 20, 2013) (awarded fees and expenses of 33-1/3% of \$16 million recovery);
26. *In re Constellation Energy Group, Inc. Sec. Litig.*, No. 1:08-cv-02854-CCB (D. Md. Nov. 4, 2013) (awarded fees of 33-1/3% of \$4 million recovery, plus expenses);
27. *Levine v. Atricare, Inc.*, No. 1:06-cv-14324-RJH (S.D.N.Y. May 27, 2011) (awarded fees of 33-1/3% of \$2 million recovery, plus expenses);
28. *In re Noah Educ. Holdings Ltd. Sec. Litig.*, No. 1:08-cv-09203 (S.D.N.Y. May 27, 2011) (awarded fees of 33-1/3% of \$1.75 million recovery, plus expenses);
29. *Menkes v. Stolt-Nielsen S.A.*, No. 3:03CV00409(DJS) (D. Conn. Jan. 25, 2011) (awarded fees of 33-1/3% of \$2 million recovery, plus expenses);
30. *Moorhead v. CONSOL Energy, Inc.*, No. 2:03-cv-01588-TFM (W.D. Pa. May 14, 2007) (awarded fees of 33-1/3% of \$2.7 million recovery, plus expenses);

31. *Wade v. Bayer AG, et al.*, No. CT-004748-06 (Shelby County, Tenn. Cir. Ct. Dec. 7, 2006) (awarded 33-1/3% of recovery, plus expenses);
32. *In re Van der Moolen Holding N.V. Sec. Litig.*, No. 1:03-CV-8284 (S.D.N.Y. Dec. 6, 2006) (fee equal to 33-1/3% of recovery, plus expenses);
33. *In re Interpool, Inc. Sec. Litig.*, No. 3:04-cv-00321-SRC (D.N.J. Sept. 9, 2006) (awarded 33-1/3% of recovery, plus expenses);
34. *Denver Area Meat Cutters and Employers Pension Plan v. James L. Clayton, et al.*, Case No. E-19723 (Blount County Tenn. June 8, 2005) (fee award equal to 33-1/3% of recovery, plus expenses);
35. *Franks v. Cheap Tickets, Inc., et al.*, Civil No. 01-1-2376-08-DDD (1st Cir. Haw. July 2, 2004 (fee equal to 33-1/3% of the fund, plus expenses);
36. *In re Select Comfort Corp. Sec. Litig.*, Master File No. 99-884 (D. Minn. Feb. 28, 2003) (fee equal to 33-1/3% of total recovery, plus expenses);
37. *In re InaCom Corp. Sec. Litig.*, Master File No. 00-701 (D. Del. Jan. 14, 2003) (fee equal to 33-1/3% of total recovery, plus expenses);
38. *In re APAC Teleservices Inc. Sec. Litig.*, No. 97-CIV-9145(BJS) (S.D.N.Y. Dec. 11, 2001) (fee equal to 33-1/3% of total recovery, plus expenses);
39. *In re DrKoop.com*, No. 00-CA-427-JRN (W.D. Tex. Nov. 14, 2001) (fee equal to 33-1/3% of total recovery, plus expenses);
40. *Saddle Rock Partners, Ltd. v. Hiatt*, No. 96-CIV-9474(SHS) (S.D.N.Y. Apr. 12, 2001) (fee equal to 33-1/3% of total recovery, plus expenses);
41. *Levanthal v. Tow*. Case No. 3:97-CV-21642-DJS (D. Conn. Jan. 31, 2001) (fee equal to 33-1/3% of total recovery, plus expenses);
42. *Branca v. Paymentech, Inc.*, No. 3:97-CV-2507-L (N.D. Tex. Jan. 4, 2001) (fee equal to 33-1/3% of total recovery, plus expenses);
43. *In re Schein Pharmaceutical, Inc. Sec. Litig.*, Master Docket No. 98-4311(JCL) (D.N.J. Dec. 7, 2000) (fee equal to 33-1/3% of total recovery, plus expenses);
44. *In re Future Healthcare Sec. Litig.*, Master File No. C-1-95-180 (S.D. Ohio Nov. 28, 2000) (fee equal to 33-1/3% of total recovery, plus expenses);
45. *In re Cityscape Financial Corp. Sec. Litig.*, MDL Docket No. 1234 (E.D.N.Y. Nov. 27, 2000) (fee equal to 33-1/3% of total recovery, plus expenses);
46. *Provenz v. Miller*, No. C-92-20159-RMW(EAI) (N.D. Cal. Aug. 23, 1999) (fee equal to 33-1/3% of total recovery, plus expenses);

47. *In re PNC Bank Corp. Sec. Litig.*, No. 94-1961 (W.D. Pa. Sept. 25, 1998) (fee equal to 33-1/3% of total recovery, plus expenses);
48. *Gordon v. American Adjustable Rate Term Trust*, Civil No. 4-95-666 (D. Minn. Sept. 3, 1996) (fee equal to 33-1/3% of total recovery, plus expenses);
49. *In re Olicom Sec. Litig.*, Master File No. 3:94-CV-0511-D (N.D. Tex. Aug. 30, 1996) (fee equal to 33-1/3% of total recovery, plus expenses);
50. *In re ZZZZ Best Sec. Litig.*, No. CV-87-3574-RSWL(Bx) (C.D. Cal. Jan. 23, 1995) (fee equal to 33-1/3% of total recovery, plus expenses);
51. *In re Xytronyx Sec. Litig.*, Master File No. 92-194-IEG(CM) (S.D. Cal. June 15, 1994) (fee equal to 33-1/3% of recovery, plus expenses);
52. *Snyder v. Oneok Inc.*, Civil No. 88-C-1500E (N.D. Okla. Nov. 1, 1993) (fee equal to 33-1/3% of recovery, plus expenses);
53. *In re Rykoff-Sexton Sec. Litig.*, Master File No. CV-90-0689-DT(Tx) (C.D. Cal. Dec. 30, 1991) (fee equal to 33-1/3% of recovery, plus expenses);
54. *In re New World Entertainment Sec. Litig.*, Master File No. 88-06260-MRP(Kx) (C.D. Cal. Oct. 7, 1991) (fee equal to 33-1/3% of recovery, plus expenses);
55. *In re Seagate Technology Sec. Litig.*, Master File No. C-84-20756(A)-WAI (N.D. Cal. Aug. 14, 1991) (fee equal to 33-1/3% of total recovery, plus expenses);
56. *Mirochnick v. Glasky*, Civ. No. 86-6145-JMI(Px) (C.D. Cal. July 1, 1991) (fee equal to 33-1/3% of recovery, plus expenses);
57. *In re Digital Sound Corporation Sec. Litig.*, Master File No. 90-3533-MRP(Bx) (C.D. Cal. Apr. 8, 1991) (fee equal to 33-1/3% of total recovery, plus expenses);
58. *Teichler v. DSC Communications Corp.*, CA 3-85-2005-T (N.D. Tex. 1990) (fee equal to 33-1/3% of recovery, plus expenses);
59. *Lee v. Steloff*, Civ. No. 88-00811-HLH(GHKx) (C.D. Cal. Jan. 26, 1990) (fee equal to 33-1/3% of recovery, plus expenses);
60. *Paul v. Western Health Plans, Inc.*, C-88-1182-K(M) (S.D. Cal. 1989) (fee equal to 33-1/3% of total recovery, plus expenses);
61. *Draney v. Wilson, Morton, Assaf & McElligott*, [1985-1986 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶92,360 (D. Ariz. 1985) (fee equal to 33-1/3% of recovery, plus expenses);
62. *Conlee v. WMS Industries*, No. 1:11-cv-03503-JBZ (N.D. Ill. May 20, 2014) (awarded fees of 33% of \$3.7 million recovery, plus expenses);

63. *In re State Street Bank and Trust Co. Fixed Income Funds Inv. Litig.*, No. 1:08-cv-08235-PAC (S.D.N.Y. Sept. 6, 2012) (awarded fees of 33% of \$6.25 million recovery, plus expenses);
64. *Schultz v. Applicia, Inc.*, No. 06-60149-CIV (S.D. Fla. Jan. 15, 2008) (fee equal to 33% of recovery, plus expenses);
65. *In re Canadian Superior Energy Inc. Sec. Litig.*, Master File No. 04-CV-02020(RO) (S.D.N.Y. Oct. 19, 2005) (fee award equal to 33% of recovery, plus expenses);
66. *Thomas & Thomas Rodmakers Inc., et al. v. Newport Adhesives and Composites, Inc., et al.*, Case No. CV-99-07796-FMC(RNBx) (C.D. Cal. Oct. 17, 2005) (fee award equal to 33% of recovery, plus expenses);
67. *In re U.S. Interactive, Inc. Sec. Litig.*, Case No. 01-CV-522 (E.D. Pa. Oct. 20, 2003) (fee equal to 33% of total recovery, plus expenses);
68. *In re Lifescan, Inc. Consumer Litigation*, Case No. C-98-20321-JF (N.D. Cal. Mar. 18, 2002) (fee equal to 33% of total recovery, plus expenses);
69. *In re Reliance Sec. Litig.*, MDL Docket No. 1304 (D. Del. Feb. 8, 2002) (fee equal to 33% of total recovery, plus expenses);
70. *Retsky v. Price Waterhouse*, No. 97-C-7694 (N.D. Ill. Jan. 30, 2002) (fee equal to 33% of total recovery, plus expenses);
71. *In re General Instrument Sec. Litig.*, No. 01-3051 (E.D. Pa. Dec. 28, 2001) (fee equal to 33% of total recovery, plus expenses);
72. *Adams v. Amplidyne*, No. 99-4468(MLC) (D.N.J. Aug. 14, 2001) (fee equal to 33% of total recovery, plus expenses);
73. *Klein v. King*, Civ. No. C-88-3141-FMS (N.D. Cal. May 10, 1993) (fee equal to 33% of recovery, plus expenses);
74. *In re Public Service Company of New Mexico*, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶96,988 (S.D. Cal. 1992) (fee equal to 33% of total recovery, plus expenses);
75. *Malanka v. De Castro*, [1990-1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶95,657 (D. Mass. 1990) (fee equal to 33% of total recovery, plus expenses);