UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION	**Case No. 15-cv-7759 (LAK)**
This Matter Relates To: **All Actions**	

DECLARATION OF IRA A. SCHOCHET IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES

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I, IRA A. SCHOCHET, declare as follows pursuant to 28 U.S.C. §1746:

1. I am a member of the law firm of Labaton Sucharow LLP ("Labaton Sucharow"), court-appointed Lead Counsel for Oklahoma Police Pension and Retirement System ("Oklahoma Police" or "Lead Plaintiff") and the proposed settlement class in this securities fraud class action (the "Action") and I submit this declaration in support of (i) Lead Plaintiff's Motion for Approval of Class Action Settlement and Plan of Allocation, and (ii) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses.[1] I am familiar with the proceedings in this Action and have personal knowledge of the matters set forth herein based upon my supervision and active participation in the Action. If called as a witness, I could and would testify competently thereto.

2. The purpose of this declaration is to set forth the background of the Action, its litigation history, and the negotiations that led to the proposed Settlement with Fifth Street Finance Corp. ("FSC" or the "Company"), Fifth Street Asset Management ("FSAM" and, together with FSC and related entities, "Fifth Street"), Leonard M. Tannenbaum, Bernard D. Berman, Alexander C. Frank, Todd G. Owens, Ivelin M. Dimitrov, and Richard A. Petrocelli (collectively, the "Individual Defendants" and, together, with FSC and FSAM, the "Defendants"). This declaration thus provides the bases for the Court's consideration of whether the (i) Settlement, (ii) Plan of Allocation, and (iii) application for attorneys' fees and expenses are fair, reasonable, and adequate.

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[1] Unless otherwise indicated, capitalized terms have the same meanings as in the Stipulation of Settlement, dated July 27, 2016 (the "Settlement Agreement") (ECF No. 93-1).

Citations to "Ex.___" herein refer to exhibits to this declaration. For clarity, exhibits that themselves have attached exhibits will be referenced as "Ex. __-__." The first numerical reference is to the designation of the entire exhibit attached hereto and the second reference is to the exhibit designation within the exhibit itself.

3. The Settlement will resolve all claims asserted in the Action against Defendants on behalf of the Class, which consists of: all persons and entities (or legal beneficiaries) who purchased or otherwise acquired common stock of FSC during the period from July 7, 2014 through February 6, 2015, inclusive ("Class Period").[2] *See* Settlement Agreement ¶ 10.

I. PRELIMINARY STATEMENT

4. Subject to Court approval, Lead Plaintiff and Lead Counsel have obtained a recovery for the Class of $14,050,000 in cash. This is approximately 15% of Lead Plaintiff's expert estimated maximum damages of approximately $95 million at the high end, and 20% at the lower end of damages (approximately $74 million), which assumes that Defendants succeeded on certain damages-related issues.[3] *See* Section V.B., *infra*. The Settlement is even more impressive when considering the fact that Defendants would likely contend that damages are significantly smaller, with lower estimates just based on damages-related issues, and very substantial reductions based on assumptions that they would succeed on particular liability-related issues. *See* Section V.B., *infra*.

5. The negotiations leading to the Settlement were protracted, difficult, and required careful analysis of complex factual and legal issues. The determination of whether or not to

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[2] Excluded from the Class are: (i) all Defendants; any other individuals who were officers or directors (as determined under section 16 of the Exchange Act) of FSC or FSAM during the Class Period; Family Members of any of the foregoing, and their legal representatives, trustees, administrators, heirs, successors, or assigns; and any entity in which any Defendant had a Controlling Interest during the Class Period; (ii) persons or entities who submit timely and valid requests for exclusion from the Class; and (iii) persons or entities who, while represented by counsel, settled an actual or threatened lawsuit or other proceeding against the Releasees and released the Releasees from any further Claims concerning their purchase or other acquisition of FSC common stock during the Class Period.

[3] These issues relate to variables such as when the truth was fully revealed—*i.e.*, whether damages may be predicated on a two-day decline (February 9-10), or are limited to only a one day window, and the extent to which gains based on pre-Class period purchases are required to be netted out.

settle the Action was the result of a unique and rigorous process. This process was initiated because the parties recognized that FSC, FSAM and their officers and directors faced significant claims in at least the Action, the FSAM Class Action, and the FSC Derivative Actions,[4] as well as potential claims arising from an investigation by the U.S. Securities and Exchange Commission ("SEC") relating to, and arising out of, the allegations asserted in this Action. However, it was also represented by Defendants' counsel, and later verified upon discovery of liability insurance policies applicable here, that Defendants had only limited directors and officers liability insurance proceeds with which to satisfy those claims, *and* to pay to defend the lawsuits and investigations they faced. Because of (a) the limited amount of liability insurance available and (b) the obligation of the insurers to cover Defendants' defense attorney costs for this Action and the various other actions and the investigation identified above, it was Lead Counsel's opinion that if available insurance proceeds were sufficient to obtain a fair settlement for the Class, an early resolution would be preferable to prolonged proceedings. Such an outcome would avoid the significant risk to the Class of substantial (if not complete) dissipation of available insurance coverage, as well as the risk that any judgment would otherwise not be payable by the thinly-capitalized corporate defendants or the Individual Defendants, and the material risk of loss on some or all of the liability and damages issues, as discussed below. Through this process, Lead Plaintiff obtained for the Class a significant recovery of its damages,

[4] In addition to this Action, a related but distinct class action entitled, *Linde v. Fifth Street Asset Management Inc.*, Case No. 1:16-cv-01941 (the "FSAM Class Action") is pending before the Court on behalf of investors in FSAM, and FSC shareholder derivative actions were filed in the District of Connecticut, Delaware Chancery Court, and Connecticut state court (the "Derivative Actions"). The Settlement of the Derivative Actions was granted final approval on December 13, 2016 by the District of Connecticut.

and did so by bargaining for a substantial share of the amount of available insurance, as well as monies from other sources needed to achieve this result.[5]

6. To be clear, however, from the outset it was Lead Plaintiff and Lead Counsel's opinion that a determination of whether a proposed settlement was fair could not be done without an in-depth assessment, through review of documents and questions posed to key Fifth Street officers and directors, of the strengths and weaknesses of the claims. Thus, in order to take a practical, pragmatic approach to resolving the case at an early stage, Lead Counsel insisted that it and Defendants' counsel work cooperatively to come up with a method by which it could to adequately assess the facts, despite the existence of the automatic stay of discovery pending resolution of the motion to dismiss the complaint pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA").

7. This assessment was done and, as discussed herein, ultimately, by the time the Settlement was reached, Lead Plaintiff had indeed developed a very clear understanding of the factual and legal considerations confronting it and the Class had the case continued. As an overview, Lead Plaintiff, through Lead Counsel: (i) investigated the facts and law relating to the claims alleged in the Action, including the identification of more than fifty potential witnesses (former employees of defendants) and interviews with eleven of them; (ii) worked with a forensic accounting expert to identify potential allegations to include in an amended complaint; (iii) drafted a comprehensive Consolidated Amended Class Action Complaint (the "Complaint"); (iv) closely consulted with damages/causation experts as well as the aforementioned accounting expert; (v) reviewed and analyzed over 5,000 pages of internal FSC and FSAM documents

[5] FSC confirmed, in announcing the proposed settlement of this Action and related actions in an August 4, 2016 press release, that approximately 99% of the Settlement will be paid from insurance coverage.

submitted to Lead Plaintiff by Defendants before the mediation, which also included a full set of all insurance policies potentially covering Lead Plaintiff's claims, as well as those of the plaintiffs in the related actions; (vi) participated in a two-day "Pre-Mediation Presentation" by Defendants' Counsel to Lead Counsel, Lead Plaintiff's accounting expert, and counsel for plaintiffs in the related actions, as well as retired California Superior Court Judge Daniel Weinstein ("Judge Weinstein" or the "Mediator") and his staff, which was designed to enable plaintiffs and their counsel to determine whether mediated discussions concerning potential settlements would be appropriate and fruitful; (vii) participated in a three-day mediation session from June 15, 2016 to June 17, 2016 with Judge Weinstein; (viii) pushed, in rigorous negotiations lasting for approximately one month, to significantly expand the amount of material Defendants would provide, notwithstanding the PSLRA stay; (ix) reviewed and analyzed more than 2.4 million pages of documents produced by Defendants during a subsequent additional discovery process, including (a) additional documents related to the Pre-Mediation Presentation and all documents referenced therein, including internal emails; (b) FSC credit files for the FSC investments Lead Plaintiff alleged were significantly impaired during the Class Period, which included documents relating to the origination, valuation, and management of those investments; and (c) the full set of documents that Defendants' Counsel had produced to the SEC on behalf of FSC and FSAM relating to the allegations raised in the Action, the FSAM Class Action and the Derivative Actions in connection with an ordinary-course examination of FSAM's investment adviser subsidiary, Fifth Street Management LLC, by the SEC's Office of Compliance Inspections and Examinations, as well as an investigation by the SEC Division of Enforcement;[6] and (x) conducted five separate day-long interviews of five senior executives and directors of

[6] The SEC's investigation was initiated after the Action was filed and has not resulted in claims against the Defendants and it has not generated any pleadings, findings, or testimony.

FSC and FSAM during the additional discovery process, to expand upon and test the assertions made by Defense counsel during the Pre-Meditation Presentation.

8. Armed with this substantial base of knowledge, which would otherwise have only been obtained after considerable formal discovery, Lead Plaintiff was in a position to balance the proposed settlement amount with a well-educated assessment of the likelihood of overcoming the significant risks of litigation that were apparent at the beginning of this case. At the conclusion of this process, it was Lead Counsel's opinion, concurred in by Lead Plaintiff, that the risks faced by the Class, as detailed herein, remained substantial, exceeding those presented in typical securities class actions.

9. In particular, beyond the complexity of the accounting issues at the core of the Action, Lead Plaintiff faced a substantial risk with respect to sufficiently pleading and proving the falsity of Defendants' statements under *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 135 S. Ct. 1318, 1325-28, 1332 (2015) ("*Omnicare*"). Based on that ruling—and rulings of the Second Circuit and this Court interpreting and applying *Omnicare*—Defendants would have contended, as they did in support of their motion to dismiss, that the critical accounting issues (*e.g.*, valuation of FSC's assets at fair value and interest recognition determinations) required judgment and thus constituted statements of opinion, not facts.[7] According to Defendants, Lead Plaintiff would have had to prove that either Defendants truly did not believe that FSC's valuations of its investments were true, or that that the valuations were not the result of a meaningful inquiry or assessment by Defendants. Thus, as this Court recently wrote, "*Omnicare* makes just as clear that it is substantially more difficult for a securities

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[7] Indeed, as this Court found shortly before this Action commenced, although financial estimates such as those here may "involve some factual inputs, they necessarily require judgment and thus are statements of opinion or belief, not of fact." *City of Westland Police and Fire Ret. Sys v. MetLife, Inc.*, 129 F. Supp. 3d 48, 68 (S.D.N.Y 2015) ("*MetLife*") (citations omitted).

plaintiff to allege adequately (or, ultimately, to prove) that such a[n opinion] statement is false than it is to allege adequately (or prove) that a statement of pure fact is false." *Id.* at 68-69.

10. Lead Plaintiff was prepared to refute these arguments (as discussed in detail in Section V, *infra*), by, for instance, arguing that the inputs used for the valuation analyses, such as the portfolio companies' revenue forecasts for the next five years, were inappropriate as they failed to account for, or were not adjusted following, company-specific negative developments, such as repeated revenue projection misses due to competitive developments, macroeconomic developments (*e.g.*, energy price declines) or heightened regulatory scrutiny. These developments, Lead Plaintiff would argue, strongly suggest that prior revenue forecasts were unlikely to be met, such that Defendants' valuations on which they were based could not be the result of a meaningful inquiry. Nonetheless, there was significant risk that some, if not all, of the alleged false statements would be dismissed at trial or, even before then, at the motion to dismiss or summary judgment stages. Moreover, given that the premises of Defendants' attacks on falsity are also basic to many of their scienter and loss causation challenges, those elements were also at risk for similar reasons. Of course, even if Lead Plaintiff had been successful in establishing liability at trial, it still faced the likelihood of lengthy post-trial motion practice and appeals, as well as years of potential delay in distributing any cash to the Class.

11. After careful review and analysis of the information gleaned from the additional discovery process, and in consultation with its accounting expert, who also examined relevant documents, Lead Plaintiff concluded that while there remained arguments that could be made to advance the Class' claims, the material risks to those claims seen from the very beginning of the litigation had, at the very least, not diminished. Accordingly, with the advice of Lead Counsel, Lead Plaintiff determined to proceed with the Settlement.

12. The Settlement has the full support of Lead Plaintiff, as set forth in the Declaration of Steven K. Snyder on behalf of Oklahoma Police, dated December 29, 2016 (attached hereto as Ex. 1). The proposed Settlement is also endorsed by Judge Weinstein, who believes that it constitutes an excellent result supported by: extensive efforts in arm's-length bargaining of counsel, the merits of the claims and defenses, the potential maximum damages, the amount of available insurance coverage, and the possibility that Lead Plaintiff would recover nothing if the Court were to accept defendants' factual or legal arguments. Declaration of Hon. Daniel H. Weinstein (Ret.) in Support of Proposed Settlements of Fifth Street Securities Litigation, dated December 29, 2016, ¶ 26 ("Weinstein Declaration" or "Weinstein Decl.") (annexed hereto as Ex. 2).

13. In connection with the Settlement, Lead Plaintiff also seeks approval of the proposed Plan of Allocation for the proceeds of the Settlement. Lead Counsel consulted with Lead Plaintiff's damages expert in formulating the Plan of Allocation and designed it to achieve an equitable and rational distribution of the Settlement proceeds consistent with Lead Plaintiff's damages theory during the prosecution of the Action.

14. Finally, Lead Counsel, on behalf of itself and Robbins Geller Rudman & Dowd LLP (collectively "Plaintiff's Counsel"), is applying for an award of attorneys' fees of $2,464,316 (equal to counsel's lodestar), and payment of litigation expenses in the amount of $245,122.80 (the "Fee and Expense Application"). Lead Counsel is making the fee request on the basis of the lodestar method rather than the percentage of recovery method in view of this Court's prior decisions concerning fee applications. The requested fee, if approved, would be approximately 17.5% of the Settlement Fund.

15. As set forth in detail below, Lead Counsel made a concerted effort to ensure the efficient prosecution of the Action and the avoidance of duplication of effort, within a very compressed timeframe. Saliently, a core team of four partners and senior to mid-level associates who prosecuted the case incurred almost half of the lodestar. Staff attorneys reviewing documents account for approximately 20% of the time submitted. Through this focused allocation of responsibility, the most important documents, facts, legal precedents and arguments percolated up to the most senior attorneys, who were able to deploy them to strongly argue for the maximum recovery possible during the three-day mediation session, and then to ferret out a substantial amount of information during the interviews with which to judge that recovery. The result of this effort was a settlement amount that reflected a range of approximately 15% to 20% of maximum potential damages, and an ability to make a very well-educated calculation of the adequacy of such a recovery. Accordingly, this is not a case where Lead Counsel simply went through the motions, performed *pro forma* work, and obtained a premature or sub-par result. To the contrary, we respectfully submit that this application is reasonably justified because of Lead Counsel's tenacity, hard work, high quality representation, and very favorable result.

16. In sum, for all of the reasons set forth herein, and in the supporting memoranda of law submitted herewith, we respectfully submit that the Settlement and Plan of Allocation are "fair, reasonable and adequate" in all respects, and should be approved by the Court pursuant to Federal Rule of Civil Procedure Rule 23(e). For similar reasons, and for the additional reasons set forth in Sections VIII and IX below, we respectfully submit that Lead Counsel's request for attorneys' fees and payment of expenses is also fair and reasonable and should be approved pursuant to Federal Rule of Civil Procedure Rules 23(h) and 54(d).

II. LITIGATION HISTORY

A. Initial Complaints and Appointment of Lead Plaintiff

17. On October 1, 2015, an initial securities class action complaint, captioned *Randall, Trustee, Howard & Gale Randall Trust FBO Kimberly Randall Irrevocable Trust UA Feb 15, 2000 v. Fifth Street Finance Corp., et al.*, No. 1:15-cv-07759, was filed in this Court for violations of the Securities and Exchange Act of 1934 (the "Exchange Act") on behalf of FSC investors. ECF No. 1. Soon thereafter, two other shareholder groups filed complaints with similar allegations: *Waters-Cottrell v. Fifth Street Finance Corp., et al.*, No. 3:15-cv-01488 (D. Conn. filed Oct. 14, 2015 and transferred to S.D.N.Y. on Jan. 6, 2016 where it is Case Number: 1:16-cv-00088) and *Hurwitz v. Fifth Street Finance Corp., et al.*, No. 1:15-cv-08908 (S.D.N.Y. filed Nov. 12, 2015). As further detailed herein and in the memoranda filed in support of Lead Plaintiff's Motion for Approval of Proposed Class Action Settlement and Plan of Allocation ("Approval Brief"), and Lead Counsel's Motion for Award of Attorneys' Fees and Payment of Litigation Expenses ("Fee Brief"), the complaints generally alleged that during the Class Period FSC, FSAM, and the Individual Defendants engaged in a fraudulent scheme to artificially inflate FSC's assets and investment income in its financial statements and to improperly delay the write-down of its investments in order to create the appearance of financial health and increasing revenues for FSC, a business development corporation ("BDC"), and FSAM, its investment adviser's parent company. Central to the alleged scheme, in October 2014, within the Class Period, Defendant Tannenbaum (chairman of the board of directors of FSC until September 2014 and Chief Executive Officer ("CEO") of FSC until January 2015) and his associates took FSAM public in an initial public offering (the "FSAM IPO"), at prices that Lead Plaintiff claims were artificially inflated as a result of the alleged fraud, to the benefit of the Individual Defendants who had ownership stakes in FSAM. *See, e.g., id.* ¶¶ 4-6.

18. On November 30, 2015, Randall Trust and Oklahoma Police moved for appointment as lead plaintiffs and requested that their respective counsel, Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), which filed the initial *Randall* complaint on October 1, 2015, and Labaton Sucharow LLP ("Labaton Sucharow") be appointed lead counsel. ECF No. 56. Five additional shareholder groups moved for lead plaintiff. ECF Nos. 41, 44, 47, 50, 53. On February 1, 2016, after all but one movant withdrew their respective motions and the remaining parties fully briefed their positions, the Court appointed Oklahoma Police—the only institutional investor movant—as Lead Plaintiff and approved its selection of Labaton Sucharow as Lead Counsel to represent the putative Class. ECF No. 78.

19. On April 8, 2016, the Court consolidated the three cases into the single Action captioned *In re Fifth Street Finance Corp. Securities Litigation*, No. 1:15-cv-07759. ECF No. 83.

20. As mentioned above, in addition to the Action, FSC, FSAM, and their officers and directors faced claims in several other lawsuits, including derivative lawsuits filed in both state and federal courts as well as the FSAM Class Action, which was filed against FSAM and certain of its officers and directors and transferred to this Court. The plaintiffs in the FSAM Class Action allege that FSAM and certain of its officers and directors made materially false and misleading statements in connection with FSAM's October 30, 2014 initial public offering in violation of the Securities Act of 1933. Complaint at ¶ 4, *Linde v. Fifth Street Asset Management, Inc.*, No. 1:16-cv-01941 (D. Conn. Jan. 7, 2016).

B. The Complaint and Motion to Dismiss

21. On April 1, 2016, Lead Plaintiff filed the Consolidated Amended Complaint For Violations of the Federal Securities Laws. ECF No. 82, annexed hereto as Ex. 3. The Complaint asserted claims against FSC, FSAM, and the Individual Defendants arising from violations of

§§ 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC on behalf of a class of all persons and entities who purchased or otherwise acquired FSC common stock during the Class Period, and who were damaged thereby. *Id.* ¶¶ 1, 205. Lead Plaintiff's allegations were based on an investigation conducted by Lead Counsel, which included, *inter alia,* reviewing and analyzing publicly available information concerning Defendants, including documents filed publicly by FSC with the SEC, press releases, news articles, other public statements issued by or concerning Defendants; communicating with, and reviewing analyses prepared by, experts in accounting and damages; and interviews with former employees and non-parties with potentially relevant information. Lead Counsel's investigation enabled Lead Plaintiff to expand on the allegations raised in the initial complaints, adding more detail and specificity to meet the strictures of the PSLRA.[8]

22. The Complaint alleges, as background to its claims, that FSC is a publicly traded specialty finance company that lends to, and invests in, small and mid-sized companies, through the direction of its external asset manager, which is a subsidiary of FSAM (*e.g.*, ¶¶ 15, 26, 28). Both FSC and FSAM were founded by defendant Tannenbaum (*e.g.*, ¶¶ 17, 25). Defendants Tannenbaum, Berman, Dimitrov and Frank (among others not named as defendants in this Action), were the owners of FSAM before taking that company public in October 2014, as

[8] In particular, the investigation was instrumental in, among other things, (i) bolstering and refining the initial complaints' core allegations concerning FSC's mis-valuation of troubled investments in three specific companies (TransTrade, JTC, and Phoenix, as defined below), including through the addition of visual aids (charts) and allegations detailing the applicable accounting standards, and (ii) developing and adding new allegations concerning FSC's troubled investment in one additional company (CCCG, as defined below). Lead Counsel's investigation also resulted in the inclusion of particularized allegations demonstrating the materiality of the alleged mis-valuations and other misstatements, both from an accounting perspective, which was predicated on an evaluation of quantitative and qualitative factors, as well as from the perspective of investors and analysts. The investigation also allowed Lead Plaintiff to expand on and develop particularized allegations supporting Defendants' scienter.

discussed below. During the Class Period, the Individual Defendants held senior- or board- level positions at FSC and/or controlled FSC's investment adviser and FSAM, the adviser's parent company. For example, Tannenbaum, Berman, Owens, Frank and Dimitrov held senior positions at FSC's investment adviser, which FSC relied on to manage its day-to-day business and to value FSC's investments. Those individuals, with the exception of Frank, also served as members of FSC's Board of Directors, providing them with ultimate responsibility for determining the value of FSC's investments.

23. At all relevant times, FSC was the source of approximately 90% of FSAM's assets under management and was its primary source of revenue (*e.g.*, Complaint ¶ 29). The amount of fees paid by FSC to FSAM is largely determined by the value of FSC's gross portfolio assets (*e.g.*, *id.*). As such, the larger FSC's asset portfolio became and the more income it recorded, the greater FSAM's revenue stream would appear to investors, and the higher the price at which FSAM shares could be sold to the public, allegedly for the Defendants' benefit (*e.g.*, *id.* ¶ 38).

24. Because FSC, through its investment manager, primarily invests in illiquid assets, investors and the market are unable to independently ascertain the credit quality, value, and actual performance of the Company's investments (*e.g.*, *id.* ¶ 32). Lead Plaintiff alleges in its Complaint that leading up to the initial public offering of FSAM shares that went effective on October 29, 2014 and was completed on November 4, 2014, FSC materially misstated the fair value of its investments, and other related metrics such as net asset value, total net assets, the net unrealized appreciation on those investments, and income earned from those investments, because Defendants failed to appropriately account for and properly value FSC's interest income

and its investments' fair value in each of its financial statements during the Class Period. *Id.* ¶ 41.

25. In particular, the Complaint alleges that during the Class Period, Defendants misrepresented: (i) the fair value of FSC's investment portfolio generally and the fair value of its investments in four companies specifically;[9] (ii) the extent to which FSC had covered, and would be able to cover, its dividend projection, which it increased by a material amount, 10% to $.0917 per share, for September through November 2014 early in the Class Period; (iii) the financial health and delinquency (or non-accrual) status of its investments; and (iv) related financial metrics, such as interest income, net interest income, net assets resulting from operations, and earnings per share. *Id.* The core allegation is that FSC inflated its net assets resulting from operations by deferring both write-downs of the fair value of its investments in the afore-referenced four companies, as well as placing those investments on non-accrual status, until after the FSAM IPO. *Id.* ¶ 119. Had FSC written down and placed on non-accrual status those assets by the quarter ended September 30, 2014, before the completion of the FSAM IPO, it allegedly would have reported a $1.109 million loss in net assets resulting from operations, rather than the increase that it reported to investors. *Id.* ¶¶ 119-120.

26. Lead Plaintiff alleges that FSC's February 9, 2015 disclosure of its fiscal results for the quarter ended December 31, 2014—the quarter in which Defendants conducted the FSAM IPO—corrected the artificial inflation in FSC's stock price caused by the Defendants' misrepresentations about FSC's investments and outlook. *E.g.*, Complaint ¶ 8. On that day, only months after certain Defendants reaped nearly $100 million in proceeds from the FSAM IPO—

[9] Namely, FSC's investments in: (i) TransTrade Operators, Inc. ("TransTrade"), (ii) Phoenix Brands Merger Sub LLC ("Phoenix"), (iii) JTC Education, Inc. ("JTC") and (iv) CCCG, LLC ("CCCG"). *Id.* ¶¶ 61-96.

Tannenbaum alone received nearly $88 million[10]—FSC reported its fiscal results for the first fiscal quarter of 2015 (ended December 31, 2014), revealing that it had moved $106 million worth of investments to non-accrual status (*e.g.*, *id.* ¶ 8).[11] Defendants also notified shareholders that unrealized depreciation on the Company's investments increased to $62 million and quarterly net losses totaled $17.6 million (*id.*). The Company also declared that it would not issue a dividend for February 2015, and future dividend payments would be decreased by more than 30% in connection with a more "conservative" dividend policy (*id.*).

27. Lead Plaintiff alleges that these disclosures corrected the artificial inflation in FSC's stock price caused by the Defendants' public misrepresentations about the fair value of FSC's investments, its ability to cover dividend payments, its financial health, and other financial metrics relating to its investments' value and income/accrual status. *Id.* Indeed, Investors and analysts were stunned by the disclosures, with one analyst observing that "FSC Management has forfeited virtually all credibility." *Id.* ¶ 165. As a result, the price of FSC common stock plummeted $1.27 (or by nearly 15%) per share on February 9, 2015 to close at $7.22 per share, and it declined by an additional $.27 on February 10, 2015. *See id.* Lead Plaintiff alleges that these sharp market price declines reflected the elimination of the artificial inflation in FSC's stock price caused the alleged misrepresentations, and it and members of the Class suffered substantial damages as a result of Defendants' misconduct.

28. Defendants filed a motion to dismiss the Complaint on May 31, 2016. ECF No. 86. Defendants generally argued, *inter alia*, that: (i) the Complaint did not allege falsity (*i.e.* that

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[10] Berman received nearly $6 million, Dimitrov reaped nearly $1.2 million and Frank obtained nearly $230,000 as a result of the FSAM IPO. Complaint ¶ 177.

[11] A "non-accrual" loan is one as to which the investor company has not been receiving scheduled payments, the investee/borrower is not expected to pay all principal and interest due, there is insufficient value to support the accrual, or the company does not otherwise expect the borrower to be able to service its debt and other obligations.

any of the Defendants made any materially false or misleading misstatement or omission); (ii) the Complaint did not allege a strong inference of scienter because Lead Plaintiff did not plead particularized facts showing Defendants' lack of belief in their subjective expressions of judgment about the financial health of FSC's investments, did not sufficiently allege any motive and opportunity to commit fraud, and did not allege strong circumstantial evidence of conscious misbehavior or reckless disregard of the truth; (iii) the Complaint did not adequately plead reliance because every alleged fact purportedly challenging FSC's valuations, projections, and other judgments came from FSC's own financial disclosures, thus the "truth" was already known to the market and reflected in the stock price; and (iv) the Complaint did not adequately plead loss causation because FSC's true financial condition was already known to the market and reflected in the stock price when certain restructuring efforts and loan modifications were disclosed prior to and during the Class Period.

29. On July 8, 2016, during the pendency of the motion to dismiss, Lead Plaintiff informed the Court, on a confidential basis, that Lead Plaintiff and Defendants had agreed to a tentative framework to resolve the Action, conditioned on the completion of substantial discovery from Defendants pursuant to Rule 408 of the Federal Rules of Evidence. Lead Plaintiff requested that the Court extend all deadlines by 90 days while Lead Plaintiff conducted such discovery. Lead Plaintiff further informed the Court that the parties would present the proposed settlement to the Court after the completion of this process. Pursuant to an Order dated July 11, 2016, Lead Plaintiff's deadline to file its opposition to Defendants' motion to dismiss was extended to October 28, 2016. ECF No. 90.[12]

[12] On September 26, 2016, after Lead Plaintiff filed its "Consented to Motion For Authorization to Notify Class of Proposed Settlement and to Schedule Fairness Hearing" on

III. THE SETTLEMENT

30. The proposed Settlement is for $14,050,000 in cash. As discussed herein, the Settlement is the result of protracted arm's-length negotiations by an informed Lead Plaintiff and Lead Counsel. The Settlement provides Class Members immediate benefits and eliminates the significant risk (discussed below) that continued litigation would not result in a favorable outcome, or that sufficient assets, claimed by plaintiffs in multiple lawsuits, would not be available to resolve Lead Plaintiff's claims.

31. For the reasons discussed below and in the accompanying Approval Brief, Lead Plaintiff and Lead Counsel believe that they have obtained an outstanding result that is more than fair, reasonable and adequate, especially considering the risk of recovering nothing or less than the Settlement after substantial delay.

A. Negotiation of the Settlement

32. The proposed Settlement resulted from a thoughtful, difficult and demanding process. Early in the litigation, all of the parties in this and the related actions referred to above began tentative discussions as to the practical problem that prolonged litigation would likely quickly result in the dissipation of the entire amount of insurance coverage for the claims in all of the cases, and the related problem that there were multiple significant claims upon *all* of the same sources of recovery, including the insurance proceeds. Given that fact, the parties considered both the advisability of an early resolution of all of the litigation, and the means by which they could do so in a manner that secured their respective interests. In Spring 2016, the parties to this Action, as well as the related actions, agreed to retain Judge Weinstein to act as mediator. Over the course of several weeks, the parties exhaustively negotiated a framework by

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September 23, 2015 (ECF No. 92), the Court issued an Order denying Defendants' motion to dismiss without prejudice. ECF No. 95.

which, among other things, Lead Plaintiff could be provided with a significant amount of the discovery it would otherwise obtain if the Action were to continue, while at the same time protecting and reserving Defendants' rights in the event that the settlement discussions were unsuccessful.

33. As result of these discussions, counsel for Defendants first provided Lead Plaintiff and the plaintiffs in the FSAM Class Action approximately 5,300 pages consisting of internal FSC and FSAM documents and all applicable insurance policies covering the Defendants (including relevant correspondence between Defendants and their insurance carriers regarding the coverage under such policies). In exchange, the parties agreed upon a protocol for maintaining the confidentiality of the documents and other materials and to ensure that they would be used solely for settlement purposes.

34. Following Lead Plaintiff's and its accounting expert's review of these documents, on June 1, 2016, Lead Counsel sent to Judge Weinstein, per his request, a detailed letter setting forth Lead Plaintiff's position in advance of a pre-mediation presentation. Additionally, Lead Counsel raised with Defendants numerous detailed questions and open issues concerning FSC's valuation and interest recognition procedures, generally as well as with respect to their application to the four key investments, including the inputs used to value such investments. The questions focused on issues that Lead Counsel and its accounting expert believed remained unanswered by their analysis and review of the documents produced up to that point, and which Lead Plaintiff sought to have addressed during the Pre-Mediation Presentation and by any subsequent confirmatory discovery.

35. On June 6 and 7, 2016, Defendants' counsel gave a two-day Pre-Mediation Presentation. The presentation was attended by Lead Counsel, Lead Plaintiff's accounting

expert, counsel in the various related actions, Judge Weinstein (participating remotely), two of Judge Weinstein's assistant mediators, and the Executive Director of Fifth Street's legal department. The Pre-Mediation Presentation was designed to enable Lead Plaintiff, and the plaintiffs in the related actions, to determine whether mediated discussions concerning a potential settlement of the claims in the respective cases would be appropriate and fruitful.

36. During the Pre-Mediation Presentation, Defendants' counsel reported detailed factual information over the course of approximately 800 slides concerning events and circumstances relating to the principal allegations in the Complaint, as well as related litigation issues, including: (i) an overview of the investment activities of FSC; (ii) a review of the unique features of BDCs, including dividend payouts based on accrued payment-in-kind ("PIK") interest[13] and their incentives to work with troubled portfolio companies, including through restructuring loans to include a PIK interest component, to avoid having those companies default on their obligations and thus maximize long-term recovery value; (iii) scrutiny of FSC's assets by internal and external auditors and third-party valuation firms, including valuation firms required and selected by FSC's creditors as well as valuation firms selected by Defendants; (iv) the circumstances of the timing of FSC's write-downs of the four portfolio companies at issue in the Action; (v) FSC's investment valuation policy and the circumstances of valuation review by its valuation team and its auditor PricewaterhouseCoopers; (vi) the accounting standards

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[13] PIK is contractually deferred interest added to principal and generally due at the end of the loan term. ¶ 35 n.6. When a borrower cannot pay normal interest terms, PIK provisions can be used in a refinanced loan to nominally increase loan income (and, thus, the fees paid to FSAM) while at the same time rendering that income more speculative as payment is deferred until the end of the loan term. *Id.* BDCs, such as FSC, may pay cash dividends on PIK income even though that interest has not yet been, and may never be, paid (in cash), and are required to do so to the extent that the PIK income exceeds 90% of their total taxable income, including interest income. *Id.* During the Class Period, FSC recorded, projected and paid cash dividends partly based on PIK income. *See id.*

applicable to BDCs, including the differing approaches to estimating fair value of debt instruments: the enterprise value and the market yield methods; and (vii) analyses of insurance coverage, indemnity and damages issues.

37. As was explained to Lead Counsel, the Pre-Mediation Presentation was developed from Defendants' counsel's review of millions of pages of internal FSC and FSAM documents and records, such as internal emails, Board of Directors and Audit Committee materials, documents concerning the FSAM IPO, analyses prepared by the independent third-party valuation firms valuing investments in FSC's portfolio, and all applicable insurance policies.

38. The Pre-Mediation Presentation responded to many of the questions that Lead Plaintiff posed to Defendants in advance of the presentation. Those that remained open were addressed after Lead Plaintiff posed additional questions for clarification following the Presentation and through the additional discovery detailed below.

39. Following the Pre-Mediation Presentation and the review of the documents that had been thus far produced, Lead Plaintiff and Lead Counsel agreed to move forward with a formal mediation. Between June 15 and 17, 2016, Lead Counsel, Defendants' counsel, and others participated in a three-day mediation session before Judge Weinstein, a highly qualified mediator with more than 25 years of experience presiding over complex commercial disputes, including many complex multi-party securities class action lawsuits.[14] Weinstein Decl. ¶ 6. Approximately 60 people attended the mediation sessions, including Lead Counsel, Defendants' counsel, a representative of Lead Plaintiff, plaintiffs' counsel in the related actions, representatives of all of Defendants' insurers in the applicable insurance towers, and a

[14] A detailed account of the mediation process is set forth in the accompanying Weinstein Declaration (Ex. 2).

representative from Fifth Street. Each constituency caucused separately and had independent confidential discussions with the Mediator.

40. During the mediation, in private sessions, Lead Counsel made a presentation to representatives of the corporate defendants and the carriers in which Lead Counsel argued as to the continued strength of the Class's claims, even in light of the facts revealed by the Pre-Mediation Presentation, based in part on its accounting expert's analysis, and thereby made it clear that Lead Plaintiff had a sufficient basis upon which to resist any settlement resolution that did not provide the Class with a very material portion of both the available insurance proceeds and their aggregate damages. The representative of Lead Plaintiff actively participated in negotiations with a thorough understanding of the issues. Lead Counsel also consulted by telephone with its forensic accounting expert, who also participated in discussions with Lead Counsel and Defendants' counsel in the mediation, during which the latter responded to the remaining unanswered substantive merits-related questions that Lead Counsel had posed to Defendants.

41. The settlement discussions required all three full days of the scheduled mediation session. At the conclusion of the mediation, however, the parties to this Action were unable to reach an agreement in principle, and Judge Weinstein thereafter made a mediator's proposal to settle this case for $14,050,000. *Id.* ¶ 18. Both sides considered the proposal over several days. Lead Plaintiff ultimately agreed in principle to the proposed Settlement, subject to its ability to conduct further discovery, including the production of additional documents and interviews of key senior executives and directors of FSC and FSAM to verify the accuracy of information presented during the Pre-Mediation Presentation. No discussion of Lead Counsel's attorneys' fees took place during the consideration of the proposal. *Id.*

42. After approximately one month of negotiation, Lead Plaintiff and Defendants executed the Settlement Agreement on July 27, 2016, subject to termination if additional discovery did not support continuing with the Settlement.

B. Additional Discovery

43. The parameters of the additional discovery were negotiated for approximately one month. During this process, Lead Counsel successfully pushed to significantly expand the scope of the discovery initially proposed by Defendants, resulting in a production and discovery protocol agreement as further discussed below. The confirmatory discovery was conducted between July 29, 2016 and August 26, 2016.

44. Pursuant to the agreement between the parties, Defendants produced more than 90,000 documents (numbering more than 2.4 million pages), involving, *inter alia*: (i) the Pre-Mediation Presentation and all documents referenced therein, including internal emails; (ii) additional documents utilized in creating the Pre-Mediation Presentation, including the list of search terms used while creating the presentation and in connection with Fifth Street's investigation into the Complaint's allegations; (iii) the credit files for the four FSC investments Lead Plaintiff alleged to be significantly over-valued and impaired during the Class Period, which consisted of documents relating to the origination, valuation, and management of those investments; and (iv) the full set of documents that the Defendants' counsel had produced to the SEC on behalf of FSC and FSAM in connection with an investigation that Lead Plaintiff became aware of relating to the allegations set forth in the Complaint.

45. Although the negotiations leading to the discovery were difficult and often contested, Lead Counsel was able to obtain favorable terms on a number of the additional discovery issues that were discussed. In particular, Lead Counsel extracted concessions expanding the number and type of documents produced to them, removal of certain restrictions

on who could have access to the documents for their review, and expansion of the period of time for that review. Lead Plaintiff was also able to expand the time available for informal interviews, as discussed below.

46. To properly analyze and process this complicated and voluminous information within a very short period of time, Lead Counsel focused on accomplishing this task in the most time and cost efficient manner possible.

47. First, a team of attorneys was assembled. These attorneys utilized review guidelines and protocols that were put in place and monitored to ensure efficient and accurate review of the documents. The review was structured to limit overall cost, with the bulk of the initial review being conducted by attorneys experienced in electronic document discovery. All aspects of the attorney review were carefully supervised to eliminate inefficiencies and to ensure a high quality work-product. This supervision included in-person training sessions, the creation of a set of relevant materials and information, and in-person instruction from more senior attorneys. There were also frequent conferences to discuss important documents and interview preparation efforts.

48. Second, in order to further facilitate a least costly and most time-efficient process, all of the documents were placed in an electronic database that was created by and maintained by Defendants' vendor, BDO USA LLC ("BDO"), and for which Defendants agreed to bear the bulk of the cost, including hosting costs. The database, called Relativity, allowed Lead Counsel to search for documents through Boolean-type searches, as well as by multiple categories, such as by author and/or recipients, type of document (*e.g.*, emails, memoranda, SEC filings), date, Bates number/document identification number, etc.

49. This technology was used to review and analyze the approximately 2.4 million pages of documents produced on an exceedingly targeted and expedited basis. Rather than simply review each document in the linear order in which it was produced, Lead Counsel leveraged the technology by searching and analyzing the document production for information concerning key factual themes.

50. Simultaneously, Lead Plaintiff's accounting expert and his staff assisted counsel in their review in order to identify and analyze the most valuable documents and conferred with counsel as to their findings.

51. After Lead Counsel's review and analysis of the documents produced by Defendants, Lead Plaintiff also conducted five day-long interviews of senior executives and directors of FSC and FSAM during the week of August 22, 2016, including Individual Defendants Bernard D. Berman (FSC Director, President and former Chief Compliance Officer (CCO); FSAM Co-President and CCO), Alexander C. Frank (FSC's former CFO; FSAM's COO and CFO), and Ivelin M. Dimitrov (FSC Director, President, and Chief Investment Officer (CIO); FSAM CIO); the Chairman of FSC's Audit Committee, Richard P. Dutkiewicz; and Fifth Street's Head of Portfolio Management, Brian D. Finkelstein.[15] At Lead Plaintiff's insistence, each of these individuals was made available to be interviewed for a full six hours, excluding time taken for breaks and lunch. Each interview consisted of a morning and afternoon session, and plaintiffs' counsel from each of the three sets of actions attended each interview.[16]

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[15] More detailed descriptions of the relevant roles and positions of the individual defendants who were interviewed during the confirmatory discovery process appear in the Complaint. *See, e.g.*, ¶¶ 18-19, 21.

[16] Plaintiffs' counsel from each of the cases coordinated among themselves so that the interviews could be conducted in an efficient manner and without duplication. As such, primary interviewers were selected, with each firm being provided the opportunity to suggest topics and questions to that interviewer and to ask additional questions tailored to each firm's (or group of

52. After review of all of this discovery, and in consultation with its accounting expert, Lead Plaintiff and Lead Counsel determined to proceed with the proposed Settlement. On August 31, 2016, Lead Counsel informed Defendants' Counsel that Lead Plaintiff would not terminate the Settlement, given that the additional discovery process reinforced and confirmed Lead Plaintiff's belief that the Settlement is fair, reasonable, and adequate, and represents an excellent result for the Class.

IV. LEAD PLAINTIFF'S ESTIMATE OF POTENTIAL DAMAGES

53. The $14,050,000 Settlement recovers a significant portion of Lead Plaintiff's estimated damages, which, based on expert analysis, ranged from approximately $74 million to about $95 million. Accordingly, the Settlement provides a recovery of approximately 15% to 20% of the Class's maximum estimated damages, respectively. The Settlement is even more impressive when considering the fact that Defendants would contend that damages were significantly lower. *See* Section V.B., *infra*.

54. Typical securities class action recoveries as a percentage of damages hover around the range of 5% to 6%. *See, e.g., In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02-MDL-1484, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) ("The Settlement Fund is approximately $40.3 million. The settlement thus 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* Lead Plaintiff's Approval Brief, Section I.C.8.

55. Additionally, the Settlement of $14,050,000 more than doubles the median reported settlement amounts in recent securities class actions. As reported by Cornerstone

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firms') case. As such, Lead Counsel was the primary interviewer of Defendant Berman and Richard Dutkiewicz, but also suggested questions and lines of inquiry to be explored at each interview, and directly asked questions at each interview. Additional details regarding the manner in which Lead Counsel conducted the confirmatory discovery is set forth below, in Section VIII.A.2.

Research, in 2015 the median settlement amount was $6.1 million and from 1996 through 2014, the median was just $8.2 million. *See* Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Securities Class Action Settlements - 2015 Review and Analysis* at 1 (Cornerstone Research 2016) (Ex. 4).

V. RISKS OF CONTINUED LITIGATION

56. By virtue of the investigation described above, Lead Counsel and Lead Plaintiff believe that there is substantial evidence to support Lead Plaintiff's claims. However, they also understand, given the voluminous confirmatory discovery they reviewed, that Lead Plaintiff and the Class would face considerable challenges and defenses on each element of the claims, spanning from the Defendants' motion to dismiss the Complaint to (if the Action were to continue) trial and the inevitable appeals that would follow, even if Lead Plaintiff were able to obtain a favorable verdict against Defendants.

57. In agreeing to settle, Lead Plaintiff weighed the substantial and immediate cash benefit to Class Members under the terms of the Settlement against the hurdles facing the Class in prosecuting the case. Lead Plaintiff considered, *inter alia*: (i) the difficulties and challenges involved in proving the securities fraud elements of (a) falsity, (b) materiality, (c) scienter, (d) reliance, (e) loss causation, and (f) damages; (ii) the fact that, even if Lead Plaintiff prevailed at trial, any monetary recovery could potentially have been less than the Settlement Amount; (iii) the delays inherent in such litigation, including appeals; and (iv) the likely dissipation during the early part of the litigation of any insurance proceeds that could fund a recovery for the Class, leaving only the assets of the Defendants, which were also not assured, may have proven difficult to reach, and were also subject to multiple competing claims.

58. In weighing these risks, which are explored below, Lead Plaintiff and Lead Counsel also considered that the alleged violations of complex accounting rules governing fair

value determinations and interest recognition, on which Plaintiff's claims entirely depended, would have been difficult to present to a jury and were vigorously disputed by Defendants who would offer credible alternative explanations and defenses supported by third party valuation firms and fact witnesses.

A. Risks Concerning Establishing Liability of Defendants

59. The claims against Defendants presented significant liability risks given, among other things, the highly fact-intensive and intricate nature of the alleged fraud at issue, as well as the previously referred to relevant accounting standards requiring subjective judgments. All elements of liability would have been vigorously disputed by Defendants, even if the Defendants' motion to dismiss were defeated.

1. Risks Concerning Falsity of the Alleged Misstatements

60. Lead Plaintiff faced a substantial burden given the Supreme Court's decision in *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, 135 S.Ct. 1318, 1325-28, 1332 (2015), and decisions of this Court interpreting and applying *Omnicare*. In *Omnicare*, the Supreme Court held that for statements of opinion, plaintiffs must plead that the speaker did not truly hold the opinion or that the statement did not rest on a meaningful inquiry. *Id.* at 1325-28, 1332. This Court is very familiar with this area of the law, as set forth in its recent decision in *City of Westland v. MetLife, Inc.,* 129 F. Supp. 3d 48 (S.D.N.Y. 2015). In fact, the holding in *Omnicare* originated with this Court. *Id.* at 77 n. 155.

61. Based on the holding and reasoning in *Omnicare*, Defendants argued in their motion to dismiss, and would undoubtedly continue to argue, that because FSC's investment assets were illiquid non-investment-grade assets that lacked ascertainable market values, the statements based on those values at issue in this case reflected subjective, good faith judgments, opinions, and estimates that were fundamentally incapable of being false or misleading.

62. Thus, Lead Plaintiff would have had to satisfy *Omnicare* to defeat Defendants' motions to dismiss, overcome a summary judgment challenge and prove that Defendants' disclosed valuations of FSC's investment assets were false or misleading. Lead Plaintiff would have had to battle in support of this contention with respect to each of the alleged underlying misstatements.

63. In further support of their *Omnicare* argument, Defendants would proffer evidence demonstrating that FSC's valuation and income recognition policies and procedures were approved by its external auditors, and contend that the reasonableness of FSC's valuations and accrual/interest income recognition determinations is demonstrated by the fact that it has not been required to issue an accounting restatement. Defendants would also highlight evidence showing that the valuations ascribed to FSC's investments were vetted by external third-party valuation firms that reached materially similar valuations after conducting their own independent analysis. Defendants would paint the allegations as mere fraud by hindsight, a second-guessing of FSC's subjective decisions based on a *post hoc* analysis. Defendants would contend that the allegations challenging FSC's dividend related statements, particularly projections of future dividends and the sustainability of its dividends, and general statements regarding the financial health of its portfolio are entirely dependent on—and thus will fail along with—the underlying claim that FSC incorrectly valued, and recognized interest income from, assets in its portfolio.

64. Lead Plaintiff believes that Defendants' arguments could be overcome and was prepared to submit several compelling counter-arguments. For example, fair value and non-accrual determinations are not just entirely subjective opinions, such as the statement that a particular song "is great." There are accounting guidelines that establish procedures and parameters circumscribing the range of possible opinions. On that basis, Lead Plaintiff would

have argued that Defendants did not have a reasonable basis for their opinions because they had not conducted a meaningful inquiry, particularly in light of the troubled history of the relevant investments. For example, Lead Plaintiff would argue that key inputs used to value the four relevant investments, particularly the portfolio companies' revenue forecasts for the next five years, were patently inappropriate as they failed to account for, and be adjusted following, company-specific developments, such as repeated revenue projection misses due to competitive developments, macroeconomic developments (*e.g.*, energy price declines) or heightened regulatory scrutiny, providing a strong basis to conclude that prior revenue forecasts were unlikely to be met, such that the valuations on which they were based were not the result of a meaningful inquiry. In other words, such inputs—and thus the four relevant investments' fair value determinations—remained unchanged regardless of significant headwinds of indefinite duration impacting the portfolio companies' performance and imperiling their viability for the foreseeable future.

65. Lead Plaintiff would also point to the proximity between the alleged misstatements, the FSAM IPO (which closed in November 2014) and the timing of the write-downs (as of the end of December 2014), as circumstantial evidence that the company-specific developments driving the write-downs revealed on February 9, 2015 were long existing. Lead Plaintiff considered such evidence strong support for the allegations that the write-downs and their public disclosure were wrongfully delayed beyond the IPO closing, particularly given that the intervening events during these short periods of time were not different in kind or scope from what had been occurring as of the time of the original representations.

66. Lead Plaintiff would have also sought to marshal evidence supporting an argument that other inputs used to manufacture FSC's fair value determinations were highly

unreasonable and contributed to improperly inflated valuations. Lead Plaintiff would argue that the effect of these incongruous assumptions and calculations was magnified by the small cushion Defendants employed in measuring the extent to which the portfolio companies were capable of servicing their respective debts. That is, Lead Plaintiff contends that use of more reasonable inputs would have made unambiguously clear much earlier, during the Class Period, the need for asset valuation write-downs and placing certain companies on non-accrual status.

67. Lead Plaintiff would also argue that third party valuation reports disclosing valuations in line with those applied and disclosed by Defendants do not immunize them from liability. In particular, the third parties' valuations were based on the same problematic inputs as FSC's valuations, which Defendants knew or recklessly disregarded lacked a reasonable basis. There also remained issues as to the extent to which all relevant facts and assumptions with respect to the troubled portfolio assets were disclosed to the valuation firms. In any event, FSC and its board was required to perform and report their own valuations.

68. Defendants would also likely dispute the falsity of FSC's statements about "sustainable" dividends because, they argue, these were subjective, forward-looking statements rather than an assertion of fact. Defendants would likely argue that FSC never explicitly promised that it would continue to pay the increased dividend indefinitely, that FSC actually paid all of the projected dividends, and that the statements themselves were insulated from liability by the bespeaks-caution doctrine, offering protection for forward-looking statements and other estimates. As to the latter point, they would point to FSC's disclosure documents, which they argued contained multiple risk warnings about the nature of FSC's risky investments to portfolio companies.

69. Lead Plaintiff would respond to such assertions with arguments similar to those outlined above, as they also support the notion that FSC's dividend projections, which depended on maintaining inflated valuations and improperly recognizing interest income, were unsustainable. Additionally, Lead Plaintiff would challenge Defendants' cautionary language as boiler-plate that was not sufficiently meaningful to invoke the protection of the bespeaks caution doctrine. Specifically, Lead Plaintiff would argue that the warnings misleadingly presented a number of contingencies, such as those implicating the accuracy of FSC's fair value determinations and its investment adviser's incentives arising from its fee arrangement with FSC, as hypothetical "risks" when in fact such risks (*e.g.*, Defendants' material overstatement of fair value and FSC's investment adviser making speculative, risky investments to increase its compensation in the lead up to its IPO) had already materialized.

70. Another risk is that Defendants would likely pursue a "truth on the market" defense that the alleged misstatements could not have been false because FSC fully disclosed its valuation policies to investors by explaining the various methodologies, the inputs applied to each, the multiple levels of review, and the inherent subjectivity in making these valuation decisions, and all of the information underlying Lead Plaintiff's allegations (particularly those implicating FSC's accounting, valuation, and financial metric analyses) was publicly disclosed during the Class Period. Class Members could thus draw their own conclusions about whether FSC's valuation judgments were or were not reasonable in light of the steps that FSC fully disclosed it was taking.

71. Lead Plaintiff would respond by arguing that the disclosed information was buried in FSC's voluminous SEC filings and a substantial, time-consuming analysis by

accounting experts and Lead Counsel was required to glean what Lead Plaintiff alleged.[17] Further, the information that FSC disclosed with respect to the four relevant investments did not disclose company-specific developments, projections or risks necessary to provide investors with the pertinent information needed to appreciate the true extent to which these investments' fair value should be written down.

72. Despite these arguments, the Class faced a very real risk that the Court, at the motion to dismiss or summary judgment stage, or a jury at trial could agree with Defendants and conclude that there were no actionable misstatements or omissions. Specifically, the fact-finder could find that based on the evidence presented by Defendants, they had actually conducted a meaningful inquiry and timely wrote down the relevant investments' fair value. This was certainly one of the key themes that Defendants espoused during the Pre-Mediation Presentation, mediation, and throughout settlement negotiations. And even if the Lead Plaintiff was successful in establishing liability at trial, it continued to face the possibility of lengthy post-trial motion practice and appeals, as well as years of potential delay in distributing any cash to the Class. Moreover, given that the premises of Defendants' attacks on falsity are also applicable to many of their materiality, scienter, and loss causation challenges, those elements were also at risk for similar reasons.

2. Risks Concerning Materiality

73. To succeed in its claims on behalf of the Class, Lead Plaintiff would be required to prove the statements and omissions were material to a reasonable investor. Defendants would undoubtedly argue that none of FSC's alleged mis-valuation and related judgments about its

[17] Thus, the information was not "conveyed to the public with a degree of intensity and credibility sufficient to counter-balance effectively any misleading information created by the alleged misstatements" as it must be in order to invoke the truth-on-the-market defense. *Ganino v. Citizens Utilities Co.*, 228 F. 3d 154, 167 (2d Cir. 2000).

investments was material. For example, Lead Plaintiff alleged that FSC improperly recognized $3.094 million in interest income from the investments at issue in the quarter ended June 30, 2014, and an additional $3.095 million in the following quarter. Complaint ¶ 113. Even if these statements were proven to be false, Defendants would argue that these improperly recognized sums did not reduce total investment income by a significant amount.

74. In addition, Defendants would challenge Lead Plaintiff's allegations that recognition of this income inflated other financial metrics, including net investment income, net assets resulting from operations, and earnings per share. *Id.* ¶¶ 114-118. Defendants' argument is that these improperly reported metrics, and the write-downs of the investments at issue, also did not reduce total investment income by a significant amount. Judged against the fair value of FSC's entire portfolio, Defendants would contend that the unrealized losses had an insignificant impact on shareholders and thus did not injure the Class Members. Defendants also would have argued that the lack of any restatement forecloses a finding of materiality.

75. Lead Plaintiff believed it would be able to overcome these arguments. In particular, materiality in the context of accounting related misstatements requires a holistic analysis of both quantitative and qualitative factors. As a result, Lead Plaintiff would have argued that the misstatements at issue here were material because Defendants' failure to timely write down the relevant investments and place them on non-accrual status masked a change in earnings, changed a loss into income, and increased management's compensation by (1) increasing the pool of assets used to determine its base management fee and (2) allowing the FSAM IPO to proceed and enrich certain of the Defendants. Lead Plaintiff would have also argued that the market's reaction to the relevant investments' write-downs and non-accruals provides additional evidence of materiality. Despite these arguments, the Class faced a real risk

at the motion to dismiss stage and thereafter that the Court, and then a fact-finder, would disagree.

3. Risks Concerning Scienter

76. A plaintiff's burden in pleading and proving scienter under Section 10(b) of the Exchange Act is a heavy one. Plaintiffs alleging a violation of Section 10(b) of the Exchange Act must plead "with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind," *i.e.* scienter. 15 U.S.C. §78u-4(b)(2)(A). If the Complaint survived Defendants' motion to dismiss, Lead Plaintiff would have to prove it more likely than not that Defendants knew or were severely reckless in not knowing that FSC's fair value determinations and financial statements and metrics implicated thereby were false when issued.

77. In connection with the motion to dismiss, Defendants argued that Lead Plaintiff had failed to establish a strong inference of scienter because Plaintiff had not pled particularized facts showing: (i) Defendants' lack of belief in their subjective expressions of judgment and opinion; (ii) Defendants' "motive and opportunity" to commit fraud; or (iii) strong circumstantial evidence of conscious misbehavior or reckless disregard of the truth. Central to the defenses in this case is the assertion that the investment accounting issues at the heart of Lead Plaintiff's claims are complex and difficult, leaving considerable margin of error for individuals to reach differing, but reasonable, conclusions. Because each of the alleged misstatements involved judgment calls, estimates, opinions, and projections of the financial metrics, Defendants could successfully argue that they did not act with scienter, because they actually believed that the statements were true and were unaware of information undermining the bases for their beliefs.

78. Additionally, Defendants would likely argue that Lead Plaintiff would not be able to prove scienter because Defendants had no motive to engage in such a fraud. Defendants would argue that FSC did not receive a material benefit from the initial public offering of FSAM,

and that certain Individual Defendants similarly did not receive any personal benefit as a result. Defendants would likely argue that FSC's secondary offering during the Class Period did not create a legally cognizable motive because the offering was normal capital-raising that most companies engage in from time to time.

79. Despite these likely arguments, Lead Plaintiff believed that it would be able to establish the element of scienter. As Lead Plaintiff alleged in the Complaint, the valuation and credit quality of FSC's portfolio was critical to the business strategies and operations of FSC and FSAM and the Individual Defendants were involved in valuing FSC's investments and reporting those valuations. Thus, Defendants were presumably aware of any adverse facts concerning their investment portfolio, including in particular the four relevant portfolio companies' frequent need to refinance or restructure loans, their respective lackluster financial results, and the continued, increasing challenges facing them that made a turnaround in their fortunes unlikely, making clear that delay in writing them down lacked any reasonable basis. Lead Plaintiff believes that relevant material facts it learned during the mediation process as to the performance of these companies buttressed these allegations. Thus, Lead Plaintiff would endeavor to introduce documentary and witness evidence indicating that Defendants knew or were severely reckless in not knowing that FSC's financial statements were false when issued.

80. Lead Plaintiff would also argue that Defendants were motivated to participate in and conceal inflated fair value determinations and the other alleged misconduct in order to enrich themselves through the FSAM IPO. Given that FSAM's future expected cash flows are tied directly to the long-term viability of FSC and its business, defendants sought to maintain the illusion of sustainable performance in FSC's investment portfolio until after certain of them could cash out in the FSAM IPO. In other words, Defendants had motive and opportunity to

conceal, and actively concealed, the deteriorating credit quality of FSC's portfolio and delayed the recognition of write-downs and investment losses until after the FSAM IPO had been completed. Many of the Defendants personally benefited from the FSAM IPO, which is strong evidence of motive. In particular, Defendant Tannenbaum received nearly $88 million, Defendant Berman received nearly $6 million, Defendant Dimitrov received about $1.2 million and Defendant Frank received about $230,000. Further, given these and the other individual defendants' positions at both FSC and FSAM, as well as their related entities, and the responsibility for FSC's Board of Directors for valuing FSC's investments, they were in a position to make the valuation decisions giving rise to this Action.

81. Further, Lead Plaintiff would assert that the close proximity in time between the alleged misstatements and the disclosure date was evidence of scienter, in particular given the closing date of the initial public offering of FSAM in November 2014. *See supra* ¶ 65.

82. There was, however, a substantial risk that Lead Plaintiff's arguments would be rejected at the pleading stage or thereafter. Furthermore, during the additional discovery process, Lead Plaintiff found no silver bullet demonstrating scienter and came to understand that its ability to prove its case would largely depend on circumstantial evidence and a battle of accounting experts regarding such evidence.

B. Risks Concerning Loss Causation and Damages

83. Lead Plaintiff also faced barriers to establishing loss causation and resulting damages with respect to the claims asserted against Defendants. As described above, Lead Plaintiff alleged a disclosure date of February 9, 2015, when FSC reported its financial disclosures for the quarter ended December 31, 2014, the same quarter in which Defendants conducted the initial public offering of FSAM. Complaint ¶ 8. On this disclosure date, FSC announced that it would issue no dividends for February 2015, while decreasing future dividend

payments by more than 30%, and that it had moved $106 million worth of investments to non-accrual status as of the end of the quarter during which FSAM was being taken public. *Id.* As noted above and alleged in the Complaint, the market reacted harshly to those disclosures, causing the price of FSC common stock to decline by nearly 15% per share by the time the market closed on February 9.

84. As mentioned above, Lead Plaintiff's expert estimated the upper bound of damages to be about $95 million, based on a two-day decline from February 9 to the next trading day on February 10, 2015. Lead Plaintiff's upper-bound estimate of damages would be vigorously challenged by Defendants, who would likely argue that, because no new information was revealed on February 10, 2015, the decline in the price of FSC stock on that day was caused by unrelated factors rather than by a continued reaction from the prior day's disclosures. Defendants would likely rely on authority supporting the proposition that it is inappropriate to calculate damages based on a two-day window, where, as here, the relevant stock allegedly trades in an efficient market.[18] This is because, as Defendants would contend, "[a]n efficient market is said to digest or impound news into the stock price in a matter of minutes".[19]

85. Lead Plaintiff would counter such arguments with case law and expert analysis. *See, e.g., United States v. Hatfield*, No. 06-CR-0550 JS AKT, 2014 WL 7271616, at *13 (E.D.N.Y. Dec. 18, 2014) (finding a two-day event window appropriate where the corrective press release was made late in the day); Mark L. Mitchell & Jeffry M. Netter, *The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange*

[18] *See, e.g.*, *Erica P. John Fund, Inc. v. Halliburton Co*., 309 F.R.D. 251, 269 (N.D. Tex. 2015; Richard A. Brealey & Stewart C. Myers, *Principles of Corporate Finance*, at 351-53 (McGraw-Hill: New York, 7th ed. 2003)) (explaining that studies show that when firms publish their latest earnings or announce dividend changes, the major part of the price adjustment occurs within 5 to 10 minutes of the announcement).

[19] *Halliburton Co*., 309 F.R.D. at 269 (citations omitted).

Commission, 49 Bus. Law. 545 (1994) ("With respect to securities fraud cases, there is substantial variation in the complexity of determining the length of an event window….The main advice is to carefully identify the exact dates during which the information in question reached the market, and then restrict the window to a short period if possible, generally two or three days around each release of new information.") However, it is far from clear how a trier-of-fact would resolve the ensuing expert battle and assess the evidence. If Defendants' argument that damages can only be predicated on a single-day decline (on February 9) was accepted, Lead Plaintiff's expert estimated damages would fall to about $88 million.

86. Defendants would also likely argue that Class Members' gains based on their pre-Class Period purchases are required to be netted out. The risk that Defendants would prevail on this issue was substantial, given the Second Circuit's teaching on this damages question.[20] Nonetheless, Lead Plaintiff did not lack support for the argument that such netting is unwarranted, given the holdings of certain courts from outside of the Second Circuit, based on public policy consistent with the purposes of the federal securities laws.[21] However, Lead Plaintiff was cognizant of the long odds it faced in succeeding on this argument, essentially seeking a change in Second Circuit precedent based on persuasive authority. To the extent

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[20] *See Abrahamson v. Fleschner*, 568 F.2d 862, 878-79 (2d Cir. 1977) (holding "a plaintiff may [not] recover for losses, but ignore his profits, where both result from a single wrong").

[21] *See generally, e.g.*, *In re Sepracor Inc. Sec. Litig.*, 233 F.R.D. 52, 54 (D. Mass. 2005) (rejecting defendant's argument that the proposed class representative was unfit because it had not suffered any economic loss due to class period investment gains, "find[ing] a transaction-based methodology, which allows claims for unprofitable transactions without offsetting that recoverable loss with gains from profitable transactions, to be more consistent with the provisions of the statute and rule."); *In re Schering-Plough Corp. Sec. Litig.*, No. 01-0829, 2003 WL 25547564, at * 9 (D.N.J. Oct. 10, 2003) (recognizing at class certification stage that "[a]ny capital gains made with respect to the sale of shares purchased before the Class Period are irrelevant"); *Burke v. Ruttenberg*, 102 F. Supp. 2d 1280, 1302 n.32 (N.D. Ala. 2000) (noting the same at the lead plaintiff appointment stage).

Defendants prevailed, Lead Plaintiff's expert estimated damages would be reduced from approximately \$88 million to approximately \$74 million, or by an additional 16%.

87. Further, Defendants would likely contend at trial that damages were significantly lower than about \$74 million, based on disagreements as to assumptions used in calculating securities fraud damages, and even much lower still based on Defendants' contentions on liability issues. For instance, Defendants would likely argue that the disclosure on February 9, 2015 could not have caused the alleged losses because the elements of the allegedly concealed risk were previously revealed to the market each quarter in FSC's public filings, long before the price drop. Defendants would attempt to establish that each cash infusion into the investments, each restructuring of payment-in-kind interest, and each alteration of loan terms was disclosed before the write-downs occurred. Defendants would thus attempt to establish that FSC's alleged financial condition was known by investors well before the alleged disclosure date of February 9, 2015. More specifically, Defendants would likely have argued that the only new information disclosed on February 9, 2015 related to the suspension and cut of FSC's dividend, in which case damages would likely be significantly lower. And, of course, Defendants would vociferously contend that damages were zero on the assumption that Lead Plaintiff could not prove that any Defendant made an actionable misstatement with the requisite scienter.

88. Lead Plaintiff had counterarguments to Defendants' arguments, which generally overlap with its arguments regarding falsity, materiality and scienter. For example, for the reasons discussed above with respect to falsity, Defendants' truth-on-the-market defense should fail, and should not warrant a reduction in damages.

89. Additionally, at summary judgment and trial, the Lead Plaintiff's and Defendants' respective damages experts would likely present conflicting assumptions and methodologies

concerning loss causation and damages, including the method of disaggregating potentially confounding news from the alleged fraud-related cause of the stock drops. This inevitable "battle of the experts" raises substantial uncertainty regarding the resolution of these issues at summary judgment or trial. The risk that the jury would credit Defendants' damages position over that of Lead Plaintiff presents the very real possibility that the amount of recovery for the Class would be substantially lower than the estimated damages calculated by Lead Plaintiff's expert, even assuming liability were proven.

C. Dispositive Motions and Trial Risk

90. While Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants were strong, as discussed above, Defendants vigorously contested the elements of falsity, materiality, scienter, and loss causation in the motion to dismiss. At this stage in the litigation, Lead Plaintiff faces a considerable hurdle: with respect to motions to dismiss filed in securities class action cases in 2015, 54% were granted in full and 20% were granted in part. *See* Svetlana Starykh and Stefan Boettrich, *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review* at 19 (NERA Jan. 25, 2016), Ex. 5.

91. If Defendants failed in their endeavor to dismiss the Complaint in full or in part, Lead Plaintiff would still need to sufficiently establish the elements of falsity, materiality, scienter, and loss causation at the summary judgment stage and the trial stage. Lead Plaintiff would need to present numerous complicated valuation and accounting issues to the trier of fact in a clear and compelling way in order to fend off Defendants' factual and legal challenges. In 2015, 96 out of 204 securities class actions were dismissed overall. *Id.* at 21.

92. Moreover, given the nature of the claims, Lead Counsel intended to rely heavily on expert opinion concerning valuation, damages, loss causation, and FSC's investments. Accordingly, the Class bore the risk that its experts could be the subject of a successful *Daubert*

challenge prior to trial, permitting little or no expert testimony on key issues. Even if Lead Plaintiff's experts were allowed to testify, there was a significant risk that a jury would credit Defendants' experts over the Lead Plaintiff's experts.

D. Limited Insurance and Bankruptcy Risk

93. Even if a favorable judgment was obtained following trial and upheld on appeal, (i) the limited pool of available insurance, against which plaintiffs in numerous other cases were competing to obtain, and all of which was fast dissipating as Defendants engaged in litigation efforts in all of them and addressed an SEC investigation, coupled with (ii) Defendants' bankruptcy risk that existed because the high-end of Lead Plaintiff's damages range ($95 million) roughly equaled the total cash FSC and FSAM had on hand as of December 31, 2015 ($99.8 million total, with FSC's share being $82.6 million and FSAM's share being $17.2 million), and (iii) the highly uncertain business prospects of a company focused on speculative assets, as well as (iv) the usual difficulties of identifying and going after personal assets, posed risks that some or all of the judgment would never be recoverable. And these assets would as well have been the subject of competition among plaintiffs in various lawsuits.

VI. COMPLIANCE WITH THE COURT'S ORDER PROVISIONALLY CERTIFYING SETTLEMENT CLASS AND APPROVING NOTICE TO SETTLEMENT CLASS AND CLASS REACTION TO DATE

94. The Court authorized the dissemination of the Notice of the Settlement to the Class by Order entered November 10, 2016 (the "Notice Order"). ECF No. 103. Pursuant to the Notice Order, the Court approved A.B. Data, Ltd. ("A.B. Data") as Claims Administrator in the Action and instructed A.B. Data to disseminate copies of the Court-approved cover letter, Notice and Claim Form (collectively "Notice Packet") by mail and to publish the Publication Notice.

95. The Notice, attached as Ex. A to the Declaration of Adam D. Walter Regarding (A) Mailing of the Cover Letter, Individual Notice and Claim Form; (B) Issuance of the

Publication Notice; and (C) Report on Requests for Exclusion and Objections Received to Date, dated January 10, 2017 ("Mailing Declaration" or "Mailing Decl.") (attached as Ex. 6 hereto), provided potential Class Members with information about the terms of the Settlement and, among other things: their right to exclude themselves from the Class; their right to object to any aspect of the Settlement, the Plan of Allocation, or the fee and expense application; and the manner for submitting a Claim Form in order to be eligible for a payment from the Net Settlement Fund. The Notice also informed Class Members of Lead Counsel's intention to apply for an award of attorneys' fees and for payment of litigation expenses. The Notice was accompanied by a simple cover letter alerting recipients to the related FSAM Class Action. *Id.* Ex. A. The FSC cover letter was blue, to create an eye-catching distinction. *Id.* n. 1.

96. As detailed in the Mailing Declaration, A.B. Data mailed Notice Packets to all known potential Class Members as well as banks, brokerage firms, and other third party nominees whose clients may be Class Members. Mailing Decl. ¶¶ 2-9. In total, to date, A.B. Data has mailed 43,177 Notice Packets to potential nominees and Class Members. *Id.* ¶ 9. To disseminate the Notice, A.B. Data obtained the names and addresses of potential Class Members from listings provided by FSC and its transfer agent and from banks, brokers and other nominees. *Id.* ¶¶ 3-7.

97. On December 5, 2016 and December 7, 2016, A.B. Data caused the Publication Notice to be published in *Investor's Business Daily* and *The Wall Street Journal*, respectively, and to be transmitted over *PR Newswire*. *Id.* ¶ 10 and Exhibits B, C, and D thereto.

98. A.B. Data also maintains and posts information regarding the Settlement on a dedicated website established for the Action, www.FSCSecuritiesSettlement.com, to provide Class Members with information concerning the Settlement, as well as downloadable copies of

the Notice Packet and the Settlement Agreement, and online claim filing capability. *Id.* ¶ 12. The home page of the website contained clear references to the FSAM Class Action and the Derivative Actions, with links to their websites for ease of reference. In addition, Lead Counsel has made relevant documents concerning the Settlement available on its firm website, www.labaton.com.

99. Pursuant to the terms of the Order Provisionally Certifying Settlement Class and Approving Notice to Settlement Class, the deadline for Class Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application or to request exclusion from the Class is January 26, 2017. To date, Lead Counsel has received no objections and the Claims Administrator has received no requests for exclusion from the Class. *Id.* ¶ 13. Should any objections or requests for exclusion be received, Lead Plaintiff will address them in its reply papers, which are due February 9, 2017.

VII. PLAN OF ALLOCATION

100. Pursuant to the Notice Order, and as set forth in the Notice, all Class Members who wish to participate in the distribution of the proceeds from the Settlement must submit a valid Proof of Claim and all required information postmarked no later than March 27, 2017. As explained in the Notice, after deduction of Court-awarded attorneys' fees and expenses, notice and administration costs, and applicable Tax Expenses, the balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the plan of allocation approved by the Court (the "Plan of Allocation").

101. The Plan of Allocation proposed by the Lead Plaintiff, which is set forth in full in the Notice (Ex. 6-A at ¶¶ 23-35), is designed to achieve an equitable and rational distribution of the Net Settlement Fund to eligible claimants, consistent with the Lead Plaintiff's damages theory during the prosecution of the Action. Lead Counsel developed the Plan of Allocation in

consultation with its damages expert and believes that the plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

102. The plan provides for distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on "Recognized Loss" formulas tied to liability and damages. In developing the Plan of Allocation, the Class' damages expert considered the amount of artificial inflation present in FSC's common stock throughout the Class Period that was purportedly caused by the alleged fraud. This analysis entailed studying the price declines associated with FSC's allegedly corrective disclosure, adjusted to eliminate the effects attributable to general market or industry conditions. The amount of artificial inflation identified will be used in calculating Recognized Loss Amounts for Authorized Claimants.

103. A.B. Data, Ltd., as the Court-approved Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's total recognized loss compared to the aggregate recognized losses of all Authorized Claimants, as calculated in accordance with the Plan of Allocation. The calculation will depend upon several factors, including when the Authorized Claimant's common stock was purchased and whether the stock was sold during the Class Period and, if so, when.

104. To date, there have been no objections to the Plan of Allocation and Lead Plaintiff and Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable, and should be approved.

VIII. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES

105. In addition to seeking approval of the Settlement and the Plan of Allocation, Lead Counsel respectfully requests an award of attorneys' fees of $2,464,316, which is equal to Plaintiff's Counsel's aggregate lodestar.[22]

106. Attached hereto as Exhibits 7 and 8 are declarations from Plaintiff's Counsel reporting their respective time and expenses. *See* Declaration of Ira A. Schochet on behalf of Labaton Sucharow, dated January 12, 2017 (Ex. 7); Declaration of David A. Rosenfeld on behalf of Robbins Geller, dated January 9, 2017 (Ex. 8). Included with each declaration is a schedule (Exhibit A) that summarizes the number of hours worked by each attorney and professional support staff employed by the firm and the value of that time at current billing rates, *i.e.* the "lodestar" of the respective firms, as well as the expenses incurred by category.[23] Exhibit B to each declaration categorizes counsel's lodestar into different core tasks. As set forth in each declaration, the schedules were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firm, which are available at the request of the Court.

107. Lead Counsel is making the fee request on the basis of the lodestar method rather than the percentage of recovery method in view of this Court's prior decisions concerning fee applications. The requested fee, if approved, would be approximately 17.5% of the Settlement Fund. Lead Counsel also respectfully requests payment of expenses reasonably incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of $245,122.80, plus accrued interest at the same rate as earned by the Settlement Fund. The fee

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[22] Labaton Sucharow billed $2,070,671.50 in lodestar and Robbins Geller billed $393,644.75. Exs. 7 – A, 8 – A.

[23] Attached hereto as Exhibit 9 is a summary table reporting the lodestars and expenses of counsel.

and expense requests are both below the maximum amounts that the Notice advised could be requested.

108. Lead Counsel has studied and analyzed this Court's previous fee decisions in securities class actions and seeks to address below the various concerns expressed recently and over the years. Lead Counsel made efforts to litigate in an extremely efficient and streamlined fashion, minimizing cost and expense, particularly given the tight timeframes under which it was operating. Accordingly, and as set forth in the accompanying Fee Brief, Lead Counsel respectfully submits that the fee requested is justified and should be approved based on the result achieved for the Class, the extent and quality of work performed, the risks of the litigation, and the contingent nature of the representation.

A. Lead Counsel Took Care to Avoid Duplication and Inefficiencies

1. Lead Counsel's Coordinated with Attorneys Who Filed the Initial Complaint

109. As noted above, the initial complaint in this Action was filed by Robbins Geller, the law firm with which Lead Counsel jointly moved for appointment as co-lead counsel, but which withdrew its application for appointment as Lead Counsel. Lead Counsel leveraged the work done by Robbins Geller with respect to its investigation and initial complaint in order to avoid duplication and expeditiously investigate and file claims on behalf of Lead Plaintiff and the Class in an amended complaint.

110. Accordingly, shortly after being appointed as Lead Counsel, Labaton Sucharow, together with its forensic accounting expert, communicated with Robbins Geller as to its understanding of the bases for the allegations in the initial *Randall* Trust complaint, particularly those relating to or otherwise implicating the mis-valuation of three specific investments in FSC's portfolio (namely, FSC's investments in TransTrade, JTC, and Phoenix).

111. This coordination provided Lead Counsel with a firm foundation for drafting the Complaint. As discussed above, building upon that initial spadework, Lead Counsel further developed and alleged detailed facts and analyses in support of the Class' claims, based as well upon its own independent investigation, in consultation with its expert.

2. Lead Counsel Conducted an Extremely Efficient Document Review

112. From the outset, Lead Counsel went through great pains to avoid inefficiencies, duplication, and excessive reliance on junior attorneys to review documents. In contrast to many securities class actions in which the majority of the lodestar is based on document review time, Lead Counsel prosecuted this case in a very different manner. Staff attorneys that Lead Counsel employed to review documents only totaled about 20% of Plaintiff's Counsel's lodestar. *See* Exs. 7 - A, 8 – A, 9.

113. Lead Counsel's ability to keep document review time to a minimum was accomplished in the face of a document production by Defendants that exceeded 2.4 million pages of documents and needed to be reviewed in an extremely limited time-frame of one month. Further still, the production consisted of a plethora of different types of documents (memoranda, accounting workpapers, valuation reports, emails, spreadsheets), in multiple formats (Outlook, Word, Excel, PowerPoint). Lead Counsel responded to the task of reviewing, analyzing and making the best use of this significant and complex production by utilizing a number of procedures and techniques to maximize efficiency and minimize costs.

114. For example, to quickly review Defendants' sizeable production, Lead Counsel relied upon a small team of attorneys who focused on reviewing documents for the purpose of preparing for informal discovery interviews and confirming the key information Defendants' disclosed during the Pre-Mediation Presentation. The size of the review team was about nine attorneys at any one time—a very compact, but focused group given the number of documents

and limited time in which to review them, and one that maximized and concentrated the knowledge and understanding of the case. The review was structured to limit overall cost, with the bulk of the initial analysis and review being conducted by staff attorneys experienced in electronic document discovery, and deposition preparation. These attorneys were employed by Lead Counsel and all but two remain employees. (An associate employed by Robbins Geller also participated in the document review, in addition to other work he performed at the start of the case.)

115. All aspects of the attorney review were carefully supervised to eliminate inefficiencies and to ensure a high quality work-product. This supervision included multiple training sessions, the preparation of a set of relevant materials and information, presentations regarding the key legal and factual issues in the case, and in-person instruction from more senior attorneys. There were also frequent team meetings to discuss important documents, discovery preparation efforts, and case strategy.

116. As noted above, in order to further reduce cost, time, and effort, all of the documents were placed in an electronic database that was created by and maintained at BDO. The database, called Relativity, not only allowed Lead Counsel to materially reduce the number of documents that needed to be reviewed by using Boolean-type searches, as well as by multiple categories, such as by author and/or recipients, type of document (*e.g.*, emails, memoranda, SEC filings), date, Bates number, etc.

117. Rather than simply review each document, Lead Counsel maximized the benefit of the technology by searching the document production for information concerning key witnesses and case-related concepts. This approach is forensic in nature and heavily relies on the document "metadata" (the embedded bibliographic information in the documents) to identify the

key witnesses, document custodians, and highly relevant documents in short order. Lead Plaintiff would then provide its accounting expert with a targeted subset of the most relevant documents for discussion and analysis.

118. These procedures enabled Lead Counsel to conduct interviews of five key witnesses during the week of August 22, 2016, even though Plaintiff received access to the 2.4 million pages of confirmatory discovery documents only about three weeks prior.

119. The forensic value provided by Relativity was also central to Lead Counsel's ability to timely identify key memos, emails, charts and reports, each containing evidence bearing on the Lead Plaintiff's claims, with which Lead Counsel were able to confront the witnesses Defendants produced for interviews. As a result, the interviews were far more productive than they would otherwise have been.

120. In sum, the ability of Relativity to quickly and efficiently identify important relevant documents, and to categorize those documents by interviewee, enabled Lead Counsel to maintain a lean staff of reviewers. The net result represents a cost savings for the Class.

3. Lead Counsel Prosecuted the Action with a Small Team of Partners and Associates, and Focused Document Review

121. The majority of the work on this case was done by a small number of professionals who performed a wide range of tasks in the prosecution of the lawsuit. First, three lawyers, Joel Bernstein (partner), Ira Schochet (partner) and Eric Gottlieb (associate), who maintained their roles throughout the case, constituted approximately $943,601 in lodestar or 38% of Plaintiff's Counsel's lodestar. *See* Exs. 7 - A, 9-10.[24] When the parties agreed to participate in the Pre-Mediation Presentation, and it became clear that Defendants would produce

[24] Exhibit 10 provides a summary of the work performed by Lead Counsel's core attorneys and professional staff.

documents in advance of it, as well as provide multiple witnesses for interviews, one additional attorney from Labaton Sucharow joined the team: Corban Rhodes (senior associate). *See* Exs. 7 - A, 10. This core team of four lawyers amounted to $1,090,000 in lodestar or 44% of the total lodestar.

122. Consistent with this lean and efficient staffing, two attorneys, Corban Rhodes and Eric Gottlieb, were responsible for taking the lead in conducting two of the five witness interviews and participating in and asking questions during the three remaining interviews. These same two attorneys were also responsible for supervising the review of the confirmatory discovery documents and coordinating with accounting experts in connection with conducting that review and preparing for the witness interviews. Lead Counsel thus maximized their repository of knowledge on a small group of lawyers and eliminated duplication of effort that could have arisen from multiple individuals having to re-learn and digest the same information for subsequent interviews. This procedure reflects Lead Counsel's effort to maintain an efficient balance of work-flow within the litigation team.

B. The Time and Labor Devoted to the Action

123. The work undertaken by Lead Counsel in investigating and prosecuting this case and arriving at the present Settlement has been targeted and challenging. Among other efforts, Lead Counsel conducted a thorough pre-complaint investigation, drafted the Complaint, consulted with experts, reviewed pre-mediation internal FSC and FSAM documents, participated in the two-day Pre-Mediation Presentation, participated in a three-day mediation session from June 15, 2016 to June 17, 2016 with Judge Weinstein, reviewed and analyzed more than 2.4 million pages of documents produced by Defendants during the additional discovery process, and conducted day-long interviews of five senior executives and directors of FSC and

FSAM, generally intended to test the assertions made by the Defendants during the Pre-Meditation Presentation.

124. At all times throughout the pendency of the Action, Lead Counsel's efforts were driven 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 necessary.

125. The hourly billing rates of Plaintiff's counsel here range from $645 to $985 for partners and $335 to $725 for other attorneys. *See* Exs. 7 – A, 8 - A. It is respectfully submitted that the hourly rates for attorneys and professional support staff included in these schedules are reasonable and customary. Exhibit 11, attached hereto, is a table of billing rates for defense firms, including Defendants' Counsel here, compiled by Labaton Sucharow from fee applications submitted by such firms in bankruptcy proceedings nationwide in 2016. The analysis shows that across all types of attorneys, plaintiffs' counsel's rates here are consistent with, or lower than, the firms surveyed.

126. Plaintiff's Counsel have expended more than 4,763 hours in the prosecution and investigation of the Action for a combined lodestar of $2,464,316. *See* Exs. 7 – A, 8 – A, 9. The fee request of $2,464,316 equals this lodestar and reflects no multiplier. *Id.*

127. Lead Counsel is not seeking a multiple in consideration of the fact that the Parties focused on potential and then actual settlement discussions early on in the case. Notwithstanding this fact, we respectfully submit that the requested fee is warranted in this case for several reasons. First, as explained herein, Lead Counsel undertook a significant amount of effort in procuring and, then engaging in, a substantial amount of informal discovery, far more than is typical given the Private Litigation Reform Act stay of all discovery. This information was used to formulate the strongest possible arguments to counter Defendants' detailed presentation of

their arguments, in order to withstand negotiating pressure to settle for anything less than a maximum recovery of damages. Lead Counsel did not use the likelihood of settlement to just sit back and accept what Defendants would have preferred to resolve the action. Accordingly, notwithstanding that this is a complex case involving novel valuation issues, and one in which Defendants had numerous strong legal and factual arguments to counter Lead Plaintiff's claims, Lead Counsel nonetheless obtained a settlement for the Class representing a much higher than usual percentage of its either likely or maximum damages. This recovery was also achieved despite numerous other claimants and a limited aggregate amount of applicable insurance coverage. The result achieved attests to the hard work and skill Lead Counsel employed in this case.

128. Second, Lead Counsel took a pragmatic approach to litigating this case. Efforts were targeted on evaluating whether a negotiated resolution at an early stage would be appropriate, negotiating for the maximum amount of informal discovery, and then using that discovery to negotiate a fair and reasonable settlement at mediation. These tasks were carried out on a very expedited basis and with a focus on avoiding duplication and waste. As explained above, Lead Counsel maintained a relatively small team of core professionals who were principally responsible for the day-to-day prosecution of this Action. Exs. 7 – A, 10. The evaluation process did not drag on in order to buttress billable hours, instead it was all completed within just three months.

129. Of total lodestar, 356.6 hours ($227,959.50 in lodestar) was spent on settlement related tasks after the Settlement Agreement was executed, such as preparing the motion for authorization to send notice, working with the Claims Administrator on the notice program, and

preparing the approval papers. Time spent on the Fee and Expense Application is not included in Plaintiff's Counsel's lodestar.

130. Finally, as detailed herein, courts measure risk on a contingent fee request at the beginning of the case, and here, the risk *ab initio* of dismissal or no recovery was significant. The Court is also respectfully referred to the Fee Brief for a full discussion of the merits of the Fee and Expense Application.

C. The Risks and Unique Complexities of the Action

1. Contingency Risk Faced Given that Securities Class Actions Are Generally Dismissed and Have Been Lost Even After Successful Trial

131. Although Lead Plaintiff and Lead Counsel believe the case against Defendants is strong, as discussed above, this Action presented substantial challenges from the start. The specific risks Lead Plaintiff faced in proving Defendants' liability, scienter, loss causation, and damages, along with the challenges and risks of proceeding to trial, are detailed in Section V. above. The allegations would culminate in a trial of factually intricate and complex issues involving the valuation of FSC's investments. These case-specific risks are in addition to the more typical risks accompanying securities class action litigation, such as the fact that this Action was undertaken on a contingent-fee basis.

132. While Defendants approached Lead Plaintiff fairly early on as to the possibility of participating in a procedure designed to resolve all of the securities-related actions they were defending, including this Action, courts have held that risk is judged based on the circumstances at the beginning of litigation, when the decision is made to represent the Lead Plaintiff in prosecuting the Class' claims.[25] And from the outset, Lead Counsel understood that it was

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[25] *See, e.g.*, *Freedman v. Weatherford Int'l Ltd.*, No. 12 CIV. 2121 (LAK), 2015 WL 7454142, at *1 (S.D.N.Y. Nov. 23, 2015) (citing *Goldberger v. Integrated Resources, Inc.*, 209

embarking on a complex, expensive, risky, and potentially lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking this responsibility, Lead Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable costs that a case such as this requires. Given these concerns, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis.

133. Lead Counsel also bore the risk that no recovery would be achieved. Prosecuting securities class actions on a contingent basis is akin to navigating a minefield of procedural hurdles. The PSLRA substantially changed the landscape by staying discovery pending the motion to dismiss and raising the pleading standard to require a strong inference of scienter. The pleading standard on scienter is therefore a bigger obstacle than the standard at summary judgment, which merely requires that plaintiffs show that there is a triable issue of fact. The statistics show that most securities class actions are dismissed in connection with a motion to dismiss. Specifically, in 2015 54% of cases were dismissed in full and 20% were dismissed in part. *See* Ex. 5 (Fig. 16 at 19). Even with the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured—even after a successful trial. *See, e.g.*, *Hubbard v. Bank Atl. 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 in plaintiffs' favor); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*, 116 F.3d

F.3d 43, 55 (2d Cir. 2000); *In re Colgate–Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 351 (S.D.N.Y. 2014)).

1441 (11th Cir. 1997) (reversing $81 million jury verdict and dismissing case with prejudice in securities action). The road to recovery can be very long and arduous. *See, e.g., In re Apollo Grp., Inc. Sec. Litig.*, Case No. CV-04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010) (trial court overturned unanimous verdict for plaintiffs, verdict later reinstated by the Ninth Circuit Court of Appeals, and judgment finally re-entered after denial of *certiorari* by the United States Supreme Court).

134. In light of these risks, it is not surprising that a large percentage of securities class actions settle. But that is not an infirmity of securities class actions. Rather, the large percentage of settlements is emblematic of our judicial system that heavily favors such outcomes. Indeed, the percentage of federal civil actions (class and individual) that go to trial has been steadily declining for the past 50 years. In 1962, 11.5% of federal civil cases went to trial, compared with 6.1% in 1982, 1.8% in 2002, and 1.2% in 2009.[26] This out-of-court resolution serves the important public policy of minimizing the burden on the judiciary. Accordingly, the fact that securities class actions settle is not surprising or demonstrative of any failure to prosecute.

135. It takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint, win at trial or, as particularly relevant in this case, present a strong argument necessary to tenaciously hold out for a maximum recovery in settlement discussions. Courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties

[26] Ashby Jones, "Why Have Federal Civil Jury Trials Basically Disappeared?", Wall St. J. L. Blog (Sept. 21, 2010) (Ex. 12). *See also*, Judge Morton Denlow (Ret.), "Magistrate Judges' Important Role in Settling Cases," *The Federal Lawyer* (May/June 2014) ("It has been well documented that few federal civil cases go to trial. In 2012, less than 2 percent of federal civil cases went to trial. This small percentage of trials reflects the general trend toward settlement and motions for summary judgment as the primary way most civil cases are concluded.") (Ex. 13).

of officers and directors of public companies. If this important public policy is to be carried out, courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action. Respectfully, we submit that the critical, highly contextual question when evaluating a fee application is whether the amount requested is reasonably warranted by the quality of the representation and the result obtained, in light of both the risk of no fee if the case is not settled, as well as diminished recoveries for the Class if counsel took the easier route by accepting a sub-par settlement without significant expenditure of time or talent.

D. The Quality of Plaintiff's Counsel's Representation and their Standing and Expertise

136. Lead Counsel Labaton Sucharow, as demonstrated by the firm resume attached to its declaration, is among the most experienced and skilled firms in the securities litigation field, and has a long and successful track record in such cases. *See* Ex. 7 – C. It has served as lead counsel in a number of high profile matters, for example: *In re Am. Int'l Grp, Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements of $1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1501 (N.D. Ala.) (representing the State of Michigan Retirement System, New Mexico State Investment Council, and the New Mexico Educational Retirement Board and securing settlements of more than $600 million); and *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension Funds and reaching settlements of more than $600 million). Such significant recoveries achieved through settlement, and the one at bar in this case, are in major part the result of Lead Counsel's reputation, including the fact that it has not hesitated to try securities fraud class actions that could not be otherwise satisfactorily resolved: *In re Real Estate Assoc.*

Ltd. Partnership Litig. (C.D. Cal. 2002) ($184 jury verdict for plaintiffs), *In re BankAtlantic Bancorp, Inc*. (S.D. Fla. 2010) (after plaintiffs' jury verdict, court granted defendants' motion for judgment as a matter of law), *aff'd*, 688 F. 3d 713 (11th Cir. 2012) (trial court erred, but defendants entitled to judgment as matter of law on lack of loss causation); *In re JDS Uniphase Sec. Litig*., Case No. C-02-1486 (N.D. Cal. 2007) (jury verdict for defendants).

137. Robbins Geller has recently achieved numerous substantial recoveries in this District on behalf of shareholders, including in *Jones v. Pfizer, Inc.*, No. 10-cv-03864-AKH ($400 million recovery); *Fort Worth Employees' Retirement Fund v. J.P. Morgan Chase & Co.*, No. 09-cv-03701-JPO (S.D.N.Y.) ($388 million recovery); and *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, No. 08-cv-10783-LAP (S.D.N.Y) ($272 million recovery). In addition to its other past successes, which include recovering more than $7.2 billion for investors in *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.), this past year Robbins Geller achieved a settlement of $1.575 billion in *Jaffe v. Household Int'l, Inc.*, No. 02-cv-05893 (N.D. Ill.)—the largest securities class action recovery following a trial. *See* Ex. 8 – C.

E. Standing and Caliber of Defense Counsel

138. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. In this Action, FSC is represented by O'Melveny & Myers LLP, and FSAM and the Individual Defendants are represented by Proskauer Rose LLP. These firms are well-known and respected law firms with attorneys who vigorously represented the interests of their respective clients.[27] In the face of this

[27] In particular, Proskauer Rose partner Ralph Ferrara, a member of the Securities Litigation and White Collar Defense & Investigations Groups in Proskauer's Washington, D.C. office, served as one of the lead attorneys for defendants. Mr. Ferrara has been named one of the country's leading lawyers in nine categories by Best Lawyers, including *Best Lawyers*: "Bet-the-Company" Litigation, Commercial Litigation, Litigation - Regulatory Enforcement (SEC,

experienced, formidable, and well-financed opposition, Lead Counsel was nonetheless able to achieve a settlement very favorable to the Class.

F. Lead Plaintiff Supports the Fee and Expense Application

139. Lead Plaintiff is a sophisticated institutional investor. Oklahoma Police manages the public pension system for municipal police officers in Oklahoma City and more than $2 billion in assets. *See* Ex. 1. Lead Plaintiff believes the fee and expense request is fair, reasonable, and warrants consideration and approval by the Court. *Id.* ¶ 6. In coming to this conclusion, Lead Plaintiff considered the work conducted, the size of the recovery obtained, and the considerable risks of litigation. *Id*. Further, the Lead Plaintiff reached its conclusions based on more than just the extensive communications with its counsel and its review of documents provided to them. Rather, the Lead Plaintiff was also an active participant in the mediation efforts that were undertaken. *Id*.

140. The Lead Plaintiff has taken its fiduciary duties in this Action extremely seriously and understands that it needs to ensure that Lead Counsel's fee request is fair in light of the work performed and result achieved for the Class. Ex. 1 ¶ 6. To that end, well before any of the mediation sessions (and before being appointed as lead plaintiff), the Lead Plaintiff had entered into an *ex ante* fee agreement with counsel, authorizing a fee of no more than 25% of a future recovery. Thus, one of the factors the Lead Plaintiff considered—though by no means the only one—is that the fee request of approximately 17.5% is below that amount. *Id.*

Telecom, Energy), Litigation – Securities, Securities / Capital Markets Law, and Securities Regulation—a status shared by only 100 of the 50,000 lawyers globally recognized by the *Best Lawyers* (http://www.proskauer.com/professionals/ralph-ferrara/). He was also an inductee to the "inaugural 2014 honorees of Securities Docket's Enforcement Hall of Fame, a list of the lawyers who have made the most extraordinary contributions to, and impact upon, the field of securities enforcement over their lifetimes" (*id.*). Earlier in Mr. Ferrara's career, he served as General Counsel of the SEC.

IX. REQUEST FOR PAYMENT OF LITIGATION EXPENSES

141. Lead Counsel seeks payment from the Settlement Fund of $245,122.80 in payment of litigation expenses reasonably and necessarily incurred by plaintiffs' counsel in connection with prosecuting the claims against Defendants. *See* Exs. 7 ¶ 7, 8 ¶ 8. As attested to, these expenses are reflected on the books and records maintained by Labaton Sucharow or Robbins Geller. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. Expenses are set forth in detail in the firm's declaration, which identifies the specific category of expense—*e.g.*, online/computer research, experts' fees, work-related transportation, duplicating, telephone, fax and postage expenses, and other costs incurred for which counsel seek payment. These expense items are billed separately by the firm and such charges are not duplicated in the firm's billing rates.

142. From the beginning of the case, Lead Counsel was aware that it might not recover any of its expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Thus, Lead Counsel was motivated to, and did, take steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case. Lead Counsel maintained strict control over the litigation expenses.

143. Of the total amount of Lead Counsel's expenses, $164,017.60, or approximately 67%, was expended on accounting and damages experts. Early in the litigation, Lead Counsel retained a forensic accounting consultant to assist in drafting the detailed and extensive Complaint and investigating the claims, given the need to properly analyze the complex issues relating to valuation of the illiquid BDC portfolio assets relevant to this action. Additionally, Lead Counsel retained an expert to offer opinions concerning damages and loss causation and to rebut the potential arguments that Defendants may have asserted with respect to those issues.

Lead Counsel was also assisted by an expert in developing a fair and reasonable Plan of Allocation. Additionally, mediation fees totaled $42,028.37 and were incurred in connection with the extensive work conducted by Judge Weinstein over the course of three formal days of mediation, and much work undertaken before and after those sessions, which was crucial to the resolution of the Action.

144. The other expenses for which Lead Counsel seeks payment ($39,076.83) are of the type that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include court fees, online legal and factual research, work-related transportation, costs related to the document productions, copying costs, long distance telephone and facsimile charges, and postage and delivery expenses. All of the litigation expenses incurred, which total $245,122.80, were necessary to the successful prosecution and resolution of the claims against Defendants.

X. THE REACTION OF THE CLASS TO THE FEE AND EXPENSE APPLICATION

145. Consistent with the Notice Order, to date, 43,177 Notice Packets have been mailed to potential Class Members advising them that Lead Counsel would seek an award of attorneys' fees and payment of expenses in an amount not to exceed 25% and $500,000. *See* Ex. 6-A at 1. Additionally, the Publication Notice was published in *The Wall Street Journal* and *Investor's Business Daily* and was transmitted over *PR Newswire*. *See* Ex. 6 ¶ 10. The Notice and the Settlement Agreement have also been available on the settlement website maintained by A.B. Data, Ltd. *Id.* ¶ 12. While the deadline set by the Court for Class Members to object to the Fee and Expense Application has not yet passed, to date no objections have been received. Lead Counsel will respond to any objections received in our reply papers, which are due February 9, 2017.

XI. MISCELLANEOUS EXHIBITS

146. Annexed hereto as Exhibit 14 is a compendium of unreported cases cited in the accompanying Fee Brief, in alphabetical order.

147. Annexed hereto as Exhibit 15 is a true and correct copy of Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 272 (2010).

148. Annexed hereto as Exhibit 16 is a true and correct copy of Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811 (2010).

149. Annexed hereto as Exhibit 17 is a true and correct copy of the Joint Declaration, filed in *In re Bank of New York Mellon Corp. Forex Trans. Litig.*, No. 12-md-2335-LAK (S.D.N.Y), ECF No. 622.

150. Annexed hereto as Exhibit 18 is a true and correct copy of a transcript of proceedings in *In re Lehman Brothers*, No. 09-md-2017 (S.D.N.Y. Apr. 16, 2014), ECF No. 1402.

XII. CONCLUSION

151. In view of the significant recovery to the Class and the substantial challenges presented by the claims and facts in this case, as described above and in the accompanying memorandum of law, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should likewise be approved as fair, reasonable, and adequate. In view of the significant recovery achieved and the quality of work performed, among other things, as described above and in the accompanying memorandum of law, Lead Counsel respectfully submits that the Fee and Expense Application be approved in full.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on January 12, 2017.

/s/ *Ira A. Schochet*
IRA A. SCHOCHET

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2017 the foregoing was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ *Ira A. Schochet*
IRA A. SCHOCHET

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION
No. 15-cv-7759 (LAK)

LIST OF EXHIBITS

NO.	**DESCRIPTION**
1	Declaration of Oklahoma Police Pension and Retirement System in Support of Approval of Proposed Class Action Settlement and Request for Attorneys' Fees and Expenses, dated December 29, 2016
2	Declaration of Hon. Daniel H. Weinstein (Ret.) in Support of Proposed Settlements of Fifth Street Securities Litigation, dated December 29, 2016
3	Consolidated Amended Complaint for Violations of the Federal Securities Laws, ECF No. 82
4	Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Securities Class Action Settlements - 2015 Review and Analysis* (Cornerstone Research 2016)
5	Svetlana Starykh and Stefan Boettrich, *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review* (NERA Jan. 25, 2016)
6	Declaration of Adam D. Walter Regarding: (A) Mailing of the Cover Letter, Individual Notice and Claim Form; (B) Issuance of the Publication Notice; and (C) Report on Requests for Exclusion and Objections Received to Date, dated January 10, 2017
7	Declaration of Ira A. Schochet Filed on Behalf of Labaton Sucharow LLP in Support of Application for Award of Attorneys' Fees and Expenses, dated January 12, 2017
8	Declaration of David A. Rosenfeld Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, dated January 9, 2017
9	Summary Table of Plaintiff's Counsel's Lodestars and Expenses
10	Summary of Work Performed by Lead Counsel Core Attorneys and Professional Staff
11	Table of 2016 Billing Rates from Bankruptcy Court Filings

No.	**Description**
12	Ashby Jones, "Why Have Federal Civil Jury Trials Basically Disappeared?", Wall St. J. L. Blog (Sept. 21, 2010)
13	Judge Morton Denlow (Ret.), "Magistrate Judges' Important Role in Settling Cases," The Federal Lawyer (May/June 2014)
14	Compendium of Cases
15	Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248 (2010)
16	Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811 (2010)
17	Excerpt of Joint Declaration, *In re Bank of New York Mellon Corp. Forex Trans. Litig.*, No. 12-md-2335-LAK (S.D.N.Y), ECF No. 622
18	Transcript, *In re Lehman Brothers*, No. 09-md-2017 (S.D.N.Y. Apr. 16, 2014), ECF No. 1402

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION	Case No. 15-cv-7759 (LAK)
This Matter Relates To:	
All Actions	

DECLARATION OF OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM IN SUPPORT OF APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND REQUEST FOR ATTORNEYS' FEES AND EXPENSES

I, Steven K. Snyder, declare as follows, pursuant to 28 U.S.C. §1746:

1. I am Executive Director of Oklahoma Police Pension and Retirement System ("Oklahoma Police" or "Oklahoma"), Court-appointed Lead Plaintiff in this securities class action (the "Action").[1] Oklahoma Police was established in 1981 and is a defined benefit pension plan based in Oklahoma City, Oklahoma. Oklahoma Police provides retirement, death, and disability benefits and is overseen by a 13-member board of trustees. We manage more than $2.2 billion in assets on behalf of more than 8,500 beneficiaries.

2. I submit this Declaration in support of (a) Lead Plaintiff's Motion for Approval of Proposed Class Action Settlement and Plan of Allocation and (b) Lead

[1] Unless otherwise indicated, capitalized terms have those meanings contained in the Stipulation of Settlement, dated July 27, 2016 (the "Settlement Agreement") (ECF No. 93-1), entered into by and among Lead Plaintiff and the Defendants.

Counsel's Motion for Award of Attorneys' Fees and Payment of Litigation Expenses. I have personal knowledge of the matters set forth in this Declaration, as I, or others working closely with me or under my direction, have been directly involved in monitoring and overseeing the prosecution of the Action on Oklahoma Police's behalf, and I could and would testify competently thereto.

I. Oversight Performed by Oklahoma Police Pension and Retirement System

3. In fulfillment of its responsibilities as a Court-appointed lead plaintiff, Oklahoma Police endeavored to protect the interests of the Class and to vigorously pursue a favorable result in this Action.

4. Since being appointed as a lead plaintiff, Oklahoma has monitored and been engaged in all material aspects of the prosecution and resolution of this Action. Specifically, throughout this litigation, I have personally:

- Met and conferred with Lead Counsel on the overall strategies for the prosecution of the Action and on developments in the case, including in-person meetings with Lead Counsel focused on litigation strategy, settlement communications and related settlement strategy;

- Traveled to New York, NY to participate in the Parties' all day mediation sessions on June 16-17, 2016; and

- Following the mediation sessions, coordinated closely with Lead Counsel regarding settlement developments, including numerous discussions with counsel relating to the conduct of additional discovery and the reasonableness of Judge Weinstein's recommended settlement amount and the risks of continued litigation.

II. Oklahoma Police Strongly Endorses Approval of the Settlement by the Court

5. Based on its involvement throughout the prosecution and resolution of the claims, Oklahoma Police believes that the proposed Settlement is eminently fair, reasonable and adequate. We believe that the proposed Settlement represents an excellent recovery for the Class, particularly in light of the substantial risks to being able to obtain a larger recovery after protracted litigation and trial, and the risk of dissipation of

recoverable assets, or non-collectability of such assets. Therefore, Oklahoma strongly endorses approval of the Settlement by the Court.

III. Oklahoma Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses

6. Lead Counsel's request, on behalf of all plaintiffs' counsel, for an award of attorneys' fees has been authorized by Oklahoma as fair and reasonable in light of the efficient and diligent work they performed on behalf of the Class. Oklahoma carefully evaluated the fee request by considering the quality and scope of the work performed by counsel, the substantial recovery obtained, the obstacles and challenges in the case, and our existing fee agreement with Lead Counsel. Oklahoma further believes that the litigation expenses being requested are also reasonable, and that they represent the costs and expenses necessary for the prosecution and resolution of the claims. Based on the foregoing, and consistent with its obligation to the Class to obtain the best result at the most efficient cost, we fully support Lead Counsel's motion for an award of attorneys' fees and payment of litigation expenses.

IV. Conclusion

7. In conclusion, Oklahoma Police Pension and Retirement System, a Court-appointed lead plaintiff that was closely involved throughout the prosecution and settlement of the claims, strongly endorses the Settlement as fair, reasonable and adequate, and believes it represents an outstanding recovery for the Class. We further support Lead Counsel's attorneys' fee and litigation expense application, and believe that it represents fair and reasonable compensation for counsel in light of the recovery obtained for the Class and the quality of the work conducted.

8. Accordingly, we respectfully request that the Court approve Lead Plaintiff's motion for final approval of the proposed Settlement and Lead Counsel's motion for an award of attorneys' fees and payment of expenses.

I declare under penalty of perjury that that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of Oklahoma Police Pension and Retirement System.

Executed on 12-29-2016.

STEVEN K. SNYDER

Exhibit 2

DECLARATION OF HON. DANIEL H. WEINSTEIN (RET.)
IN SUPPORT OF PROPOSED SETTLEMENTS OF
FIFTH STREET SECURITIES LITIGATION

I, Judge Daniel H. Weinstein (Ret.), hereby declare as follows:

1. I submit this Declaration in my capacity as the mediator of the proposed settlements of the claims in three related sets of matters involving Fifth Street Finance Corp. ("FSC"), a business-development corporation, and its investment adviser, Fifth Street Asset Management Inc. ("FSAM"): (*i*) securities class actions brought by FSC shareholders and consolidated under the caption *In re Fifth Street Finance Corp. Securities Litigation*, Case No. 15-cv-7759 (LAK) (S.D.N.Y.) (the "FSC Securities Action"); (*ii*) shareholder derivative actions brought on behalf of FSC and consolidated under three different captions: *In re Fifth Street Finance Corp. Shareholder Derivative Litigation*, Case No. 3:15-cv-01795-RNC (D. Conn.), *In re Fifth Street Finance Corp. Shareholder Derivative Litigation*, FST-CV 16-6027659 (Conn. Sup. Ct., Stamford/Norfolk) , and *In re Fifth Street Finance Corp. Stockholder Litigation*, C.A. No. 12157-VCG (Del. Ch. Ct) (collectively, the "FSC Derivative Actions"); and (*iii*) a securities class action brought on behalf of FSAM shareholders under the caption *Linde v. Fifth Street Asset Management Inc.*, Case No. 1:16-cv-01941 (LAK) (S.D.N.Y.) (the "FSAM Securities Action") (collectively, the "Actions").

2. I have been asked to provide this Declaration to describe and state my view of the mediation process that resulted in the proposed settlements in the Actions. I understand that only two of the three proposed settlements – those in the FSC and FSAM securities class actions – are before this Court and that the United States District Court for the District of Connecticut granted final approval of the settlement of the Derivative Actions on December 13, 2016. I will therefore address my comments primarily to the two securities settlements, although – because all of the cases were mediated contemporaneously – some of my remarks will cover all three sets of cases.

3. Except as otherwise stated, I have personal knowledge of the facts stated herein from my role as mediator of the Actions, and I am competent to testify to the matters set forth in this Declaration.

4. All of the parties, entities, and individuals who were represented at the mediation sessions or who participated in the negotiations executed a Confidentiality Agreement stating that the mediation process in each case was to be considered a settlement negotiation for the purpose of all federal and state rules protecting mediation disclosures from later discovery and/or use in evidence. The parties further agreed that the Confidentiality Agreement extends to all present and future civil, judicial, quasi-judicial, arbitral, administrative, or other proceedings. Nothing in my Declaration divulges any privileged information, and the filing of this Declaration does not constitute a waiver of any such confidentiality.

5. From 1982 through 1988, I served as a Judge of the Superior Court of the State of California, County of San Francisco. I also served as an Associate Justice Pro Tem of the California Supreme Court and the First District Court of Appeal.

6. Since retiring from the bench, I have been a full-time mediator. For more than 25 years, I have presided over the mediation of countless disputes, including many complex multi-party disputes throughout the United States. By way of example, I have mediated dozens of class actions involving public companies such as Enron, Homestore, Qwest, Adelphia, New Century, Parmalat, Broadcom, Aviva, Marsh & McLennan, and other major New York Stock Exchange and Nasdaq corporations. I have also mediated numerous types of class actions, including securities class actions, ERISA actions, intellectual-property actions, environmental cases, subprime litigation, litigation with bankruptcy aspects, and litigation brought by borrowers, credit-card customers, insurance purchasers, and air-crash victims. Many of the cases have involved complex fact patterns and legal issues and hundreds of millions (or billions) of dollars in claimed damages. The cases often include numerous plaintiffs and plaintiffs' counsel, as well as a multitude of defendants (issuers, directors, officers, insurance carriers, professional tiers, etc.) and defense counsel.

7. For each of the last ten years, I have assisted parties in forging settlements of complex disputes involving more than one billion dollars in the aggregate.

8. I set forth my background as a mediator above to provide context for the comments that follow and to demonstrate that my perspective on the settlement of these Actions is rooted in significant experience in the resolution of complex litigation. As described below, the current matters presented significant and complicated legal, factual, and practical issues. The parties were represented during the mediation process by zealous and able counsel, who negotiated aggressively and at arm's length for their clients. I firmly believe that the proposed settlements of these cases, reached at the end of an extensive mediation process, represent reasonable and practical resolutions of these complex and highly uncertain litigations. The Court, of course, will make determinations as to the "fairness" of the settlement under

applicable legal standards. From a mediator's perspective, however, I can say that I unreservedly recommend the agreed-upon settlements as reasonable, hard-fought, arm's length, and accurately reflective of the risks and potential rewards of the claims being settled.

9. As with many of the complex disputes that I mediate, the mediation of the related Actions was lengthy and difficult. Here, the mediation process included two days for a pre-mediation presentation, and three days for the mediation itself. At the time of the mediation, the FSC Securities Action was pending in the United States District Court for the Southern District of New York; three sets of similar shareholder derivative actions on behalf of FSC were pending in the United States District Court for the District of Connecticut, the Connecticut Superior Court for the District of Stamford/Norwalk, and the Delaware Court of Chancery; and the FSAM Securities Action was pending in the United States District Court for the Southern District of New York.

10. I understood that the parties had agreed to explore the prospect of an early mediation because of the relatively limited insurance resources available to the defendants and because of the parties' belief that those resources would be better spent on trying to resolve the Actions than on litigating them in many different forums.

11. The mediation sessions were preceded by an extensive exchange of information among the parties. This information exchange consisted of three phases.

12. First, I understand that the defendants produced to the various plaintiffs approximately 5,300 pages of internal FSC and/or FSAM documents, as well as all applicable insurance policies.

13. Second, before the actual mediation sessions began, defendants' counsel made a two-day evidentiary "Pre-Mediation Presentation" to approximately 30 plaintiffs' counsel and to

me (as well as my two assistant mediators, Jed Melnick and Simone Lelchuk) on June 6 and 7, 2016. The Pre-Mediation Presentation consisted of more than 800 PowerPoint slides with detailed factual information about the events and circumstances relating to the principal allegations in the various Complaints, as developed from defendants' counsel's review of databases containing many millions of pages of internal FSC and FSAM documents and records, including internal emails, Board of Directors and Audit Committee materials, and analyses prepared by independent third-party valuation firms that had valued the principal FSC investments at issue in the Actions.

14. Third, before, during, and after the Pre-Mediation Presentation, plaintiffs' counsel posed various questions to defendants' counsel. Defendants' counsel provided answers during the Pre-Mediation Presentation and during the mediation itself.

15. Following the Pre-Mediation Presentation and their review of the documents provided by defendants, plaintiffs agreed to move forward with the mediation, which took place at defendants' counsel's office in New York on June 15, 16, and 17, 2016.

16. Approximately 60 people – including plaintiffs' and defendants' counsel in the Actions, defendants' insurers, a representative of lead plaintiff in the FSC Securities Action, and representatives from FSC and FSAM – attended the mediation. Each subgroup had its own room: the FSC securities plaintiffs in one room, the FSC derivative plaintiffs in another, the FSAM securities plaintiffs in another, the insurers in another, and defense counsel and the FSC/FSAM representatives in yet another. I (and my two assistant mediators) shuttled among the various rooms to facilitate negotiations.

17. During the mediation, each of the plaintiff groups made separate presentations to representatives of the defendants and their carriers in response to the defendants' extensive Pre-

Mediation Presentation. Each rebuttal presentation distilled the areas of continued disagreement as to both the issues raised in the respective litigations and the likelihood of success of the claims and defenses. During the presentations, the respective parties engaged in colloquies about the issues and likelihood of prevailing.

18. The only agreement reached, and documented in a Term Sheet, during the three-day mediation was in the FSAM Securities Action. After many attempts to bring the parties together, I was finally able to get them to agree in principle to resolve the case for $9,250,000. No discussion of plaintiffs' attorneys' fees took place during those negotiations.

19. The FSC Securities Action took a little longer to resolve. By the end of the last day of the mediation, no agreement had been reached, so I made a mediator's proposal to settle the case for $14,050,000. The parties considered the proposal over the next few days and finally agreed to it and documented their agreement in a Term Sheet. Again, no discussion of plaintiffs' attorneys' fees took place during those negotiations.

20. With respect to the FSC derivative actions, the parties signed a Term Sheet memorializing their agreement on June 24, 2016, and we then needed to convene another day of mediation on July 14, 2016, just on the issue of plaintiffs' attorneys' fees. I ultimately made a mediator's proposal, which the parties accepted a few days later.

21. The Term Sheets of Agreement were then embodied in Stipulations of Settlement: the Derivative Stipulation of Settlement executed on July 26, 2016; and the FSC and FSAM Stipulations of Settlement executed on July 27, 2016.

22. The three Stipulations of Settlement provided for an additional discovery period following the execution date of the Stipulations (the "Additional Discovery"). Pursuant to the Stipulations, all plaintiffs' counsel were given access to detailed information regarding the facts

underlying the claims in their respective complaints and were allowed to conduct informal interviews of relevant FSC and FSAM officials. The Stipulations of Settlement also granted plaintiffs the right to terminate the proposed settlements, if, as a result of reviewing the Additional Information, plaintiffs reasonably and in good faith no longer believed that the proposed Stipulations of Settlement were fair, reasonable, and adequate.

23. I understand that Additional Discovery was conducted between July 29, 2016 and August 26, 2016. I further understand that, during that period, plaintiffs had access to approximately 90,000 documents related to the securities and derivative complaints, including all documents directly referenced in the Pre-Mediation Presentation, additional documents used in creating the Pre-Mediation Presentation, the credit files for the four FSC investments that the FSC and FSAM Securities Actions alleged to have been significantly over-valued and impaired, the full set of documents that defendants' counsel produced to the SEC in connection with a related investigation, and a list of search terms used while creating the Pre-Mediation Presentation.

24. I have confirmed that, in addition to reviewing the Additional Discovery documents, plaintiffs' counsel interviewed the following FSC and/or FSAM officials during the week of August 22, 2016: (*i*) Bernard Berman, FSAM Co-President and Chief Compliance Officer, FSC Chairman, and FSC Former Chief Compliance Officer and President; (*ii*) Ivelin Dimitrov, FSAM Chief Investment Officer, FSC President and Chief Investment Officer, FSC Director; (*iii*) Alexander C. Frank, FSAM Chief Operating Officer and Chief Financial Officer and Director, FSC Former Chief Financial Officer; (*iv*) Brian Finkelstein, Head of Portfolio Management, Fifth Street; and (*v*) Richard P. Dutkiewicz, FSC Independent Board Member and Audit Committee Chair. I understand that each interview consisted of a morning and afternoon

session, with each interviewee available for questioning by plaintiffs' counsel for an aggregate of approximately six hours per interviewee, exclusive of lunch and other breaks, and that counsel representing each group of plaintiffs attended each interview.

25. The mediation and efforts that led to the Stipulations of Settlement, as well as the Additional Discovery that I understand that plaintiffs' counsel conducted, demonstrate that these proposed settlements are the result of vigorous, arm's-length negotiations by experienced, competent counsel, who were well prepared and well versed in the strengths and weaknesses of their respective positions and on the applicable law.

26. I believe that the proposed settlements constitute excellent results for the various groups of plaintiffs in light of the merits of the claims and defenses, the potential maximum damages, the amount of available insurance coverage, and the real possibility that the plaintiffs would recover nothing if the applicable Court were to accept defendants' factual or legal arguments.

27. In summary, I view the proposed settlements as a reflection of the parties' evaluation of the litigation risks while providing fair compensation to FSC's and FSAM's shareholders and the benefits of avoiding litigation proceedings and/or appeals that would likely ensue absent a settlement, with uncertain results and extraordinary costs to the parties. The settlements would not have occurred but for the arduous and continuous efforts of plaintiffs' and defendants' counsel, who agreed to continue negotiations even when further settlement negotiations appeared to be futile. Although the Court will need to make its own decision as to the fairness and reasonableness of each settlement, I believe – based on my knowledge of these matters, all the materials provided to me, the extensive efforts of skilled advocates, the arm's-length bargaining of counsel, the litigation risks, and the benefits obtained – that the proposed

settlements represent fair, reasonable, and adequate resolutions of all of the claims against the defendants, and I respectfully recommend that the settlements be approved.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 29, 2017

Hon. Daniel H. Weinstein (Ret.)

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOWARD RANDALL, TRUSTEE, HOWARD & GALE RANDALL TRUST FBO KIMBERLY RANDALL IRREVOCABLE TRUST UA FEB 15, 2000, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

FIFTH STREET FINANCE CORP., FIFTH STREET ASSET MANAGEMENT, INC., LEONARD M. TANNENBAUM, BERNARD D. BERMAN, ALEXANDER C. FRANK, TODD G. OWENS, IVELIN M. DIMITROV, and RICHARD A. PETROCELLI,

Defendants.

Civil Action No. 15-cv-7759 (LAK)

<u>CLASS ACTION</u>
<u>ECF CASE</u>

<u>DEMAND FOR JURY TRIAL</u>

ROBERT J. HURWITZ, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

FIFTH STREET FINANCE CORP., FIFTH STREET ASSET MANAGEMENT, INC., LEONARD M. TANNENBAUM, BERNARD D. BERMAN, ALEXANDER C. FRANK, TODD G. OWENS, IVELIN M. DIMITROV, and RICHARD A. PETROCELLI,

Defendants.

Civil Action No. 15-cv-8908 (LAK)

<u>CLASS ACTION</u>
<u>ECF CASE</u>

<u>DEMAND FOR JURY TRIAL</u>

LYNN WATERS-COTTRELL, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

FIFTH STREET FINANCE CORP., FIFTH STREET ASSET MANAGEMENT, INC., LEONARD M. TANNENBAUM, BERNARD D. BERMAN, ALEXANDER C. FRANK,

Civil Action No. 15-cv-00088 (LAK)

<u>CLASS ACTION</u>
<u>ECF CASE</u>

TODD G. OWENS, IVELIN M. DIMITROV, and RICHARD A. PETROCELLI,

Defendants.

DEMAND FOR JURY TRIAL

CONSOLIDATED AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

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Court-appointed Lead Plaintiff, Oklahoma Police Pension and Retirement System ("Oklahoma Police" or "OPPRS"), individually and on behalf of all others similarly situated, alleges the following based upon personal knowledge as to plaintiff and plaintiff's own acts, and upon information and belief as to all other matters based on the investigation conducted by and through plaintiff's attorneys, which included, among other things, a review of U.S. Securities and Exchange Commission ("SEC") filings by Fifth Street Finance Corp. ("FSC" or the "Company") and Fifth Street Asset Management, Inc. ("FSAM," and, together with FSC and related entities, "Fifth Street"), as well as media reports and analyst reports about Fifth Street. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a securities class action on behalf of all persons or entities that purchased FSC common stock between July 7, 2014 and February 6, 2015, inclusive (the "Class Period") seeking to pursue violations of the Securities Exchange Act of 1934 (the "1934 Act") and Rule 10b-5 promulgated thereunder.

2. FSC and FSAM are part of a credit-focused asset management enterprise founded by defendant Leonard M. Tannenbaum ("Tannenbaum"). FSC is a publicly traded asset portfolio company within the Fifth Street family of companies that lends to and invests in small and midsized companies in connection with investments by private equity sponsors with the stated goal of generating investment income, which are then paid out as dividends to FSC shareholders.

3. FSAM provides investment advisory and management services to FSC through Fifth Street Management LLC ("Fifth Street Management") and advisory services through FSC CT LLC (f/k/a FSC CT, Inc.) ("FSC CT"). Both Fifth Street Management and FSC CT were

wholly-owned subsidiaries of FSAM at all relevant times. Fifth Street Management is the asset manager and investment advisor for FSC, from which FSAM receives tens of millions of dollars annually for the provision of investment advisory services. As of June 30, 2014, FSC provided about 90% of FSAM's assets under management, and thuswas the asset manager's primary revenue source. The amount of fees paid by FSC to FSAM is largely determined by FSC's gross portfolio assets. Thus, FSAM may increase the amount of fees it receives from FSC by directing FSC to borrow money to make additional investments that increase the size of FSC's asset portfolio. FSC primarily invests in illiquid assets and uses a form of fair value accounting that prevents investors and the market from being able to independently ascertain the credit quality and actual performance of the Company's investments, while allowing the Company to record investment income (thereby increasing fees paid to FSAM) even if that income is never collected.

4. During the Class Period, defendants engaged in a fraudulent scheme and course of business designed to artificially inflate FSC's assets and investment income in order to increase FSAM's revenue. At its core, the scheme was a simple one. Defendant Tannenbaum and his associates were the private owners of FSAM before taking the company public in an initial public offering in October 2014 (the "FSAM IPO"). Because FSAM is an investment management company with its revenues tied directly to FSC's gross assets and recorded income, the larger FSC's asset portfolio became and the more income it recorded the greater FSAM's revenue stream would appear to investors, and the higher the price at which defendant Tannenbaum and his associates could sell FSAM shares to the public.

5. In furtherance of this scheme, FSAM, acting as the investment manager for FSC, caused FSC to dramatically expand its investment portfolio throughout 2014, increasing its total

assets by 28% year-over-year to $2.7 billion by fiscal year's end on September 30, 2014. Base and incentive management fees paid by FSC to FSAM ballooned in kind, growing by over 40% in a single year to $86 million for fiscal 2014. Defendants then highlighted FSAM's growth in income in the FSAM IPO offering materials, including a compound annual growth rate ("CAGR") in management fee revenues of nearly 50% from June 30, 2013 to June 30, 2014.

6. However, unbeknownst to investors and the market, and as further detailed below, in order to fuel this investment spree and hide the true state of Fifth Street's financial health prior to and after FSAM's IPO, defendants had pushed FSC into increasingly risky, speculative investments at unsustainable leverage levels, delayed writing down impaired investments in order to create the appearance of financial health and increasing revenues for FSC and FSAM, disregarded or abandoned underwriting guidelines when making investments, and improperly accelerated the recognition of fee income in clear violation of applicable accounting rules. Given that FSAM's future expected cash flows are tied directly to the long-term viability of FSC and its business, defendants sought to maintain the illusion of sustainable performance in FSC's investment portfolio until after they could cash out in the FSAM IPO. Toward this end, defendants actively concealed the deteriorating credit quality of FSC's portfolio and delayed the recognition of write-downs and investment losses until after the FSAM IPO had been completed. Defendants also systematically overstated the income generated by FSC's investments and the fair value of its portfolio, while simultaneously providing investors and the market with false and misleading portrayals of FSC's business trends and expected performance.

7. As planned, defendant Tannenbaum and other owners of FSAM (many of whom were also executive officers and/or directors at the Company) cashed out for tens of millions of dollars in the FSAM IPO. The gross cash proceeds for the offering alone were approximately

$100 million, a single payout more than 160 times greater than defendant Tannenbaum's base salary from FSAM for all of 2014.

8. Outside investors in FSC, meanwhile, were left holding the bag. On February 9, 2015, FSC reported its fiscal results for the quarter ended December 31, 2014 - the same quarter in which defendants conducted the FSAM IPO. FSC revealed that, around the time its executives were pocketing tens of millions of dollars by taking FSAM public, it had moved $106 million worth of investments to non-accrual status, with an additional $ 17 million likely to be designated non-accrual in the subsequent quarter, which, together, constituted about 5% of the Company's entire debt investment portfolio on a cost basis. The Company also revealed that, even though the total assets of FSC's investment portfolio had continued to increase to nearly $3 billion by quarter end (an increase of over 42% since the end of fiscal 2013), the net investment income ("NII")[1] received by the Company had actually ***decreased*** by 6% compared to the prior quarter. Unrealized depreciation on the Company's investments for the quarter had ballooned to $62 million (not including $13.1 million reclassified as realized losses), while its quarterly net realized losses were $17.6 million. Most astonishing of all, despite having announced an impressive 10% dividend increase only four months before taking FSAM public, FSC declared that it would issue zero dividends for February 2015, while decreasing future dividend payments by more than 30% as part of a more "conservative" dividend policy.

9. Investors and analysts were stunned, with one analyst observing that "FSC Management has forfeited virtually all credibility." The price of FSC common stock plummeted $1.27 per share on February 9, 2015 to close at $7.22 per share, a decline of nearly 15% on

[1] According to the Company's 2014 Form 10-K, "[n]et investment income is the difference between [FSC's] income from interest, dividends, fees, and other investment income and total expenses."

volume of 10.9 million shares. Analysts slashed price targets and several downgraded the stock following the announcement.

10. On February 23, 2015, Fitch Ratings Inc. downgraded FSC's long-term Issuer Default Rating to a "speculative" rating of BB+ from a "good credit quality" rating of BBB- on a negative outlook, citing "FSC's higher leverage levels, combined with increased portfolio risk, an inconsistent dividend policy, material portfolio growth in a very competitive underwriting environment, asset quality deterioration, and weaker operating performance."

JURISDICTION AND VENUE

11. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the 1934 Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 (17 C.F.R. §240.10b-5) promulgated thereunder by the SEC. Jurisdiction is conferred by §27 of the 1934 Act (15 U.S.C. §78aa).

12. Venue is proper pursuant §27 of the 1934 Act and 28 U.S.C. §1391(b) and (c) as many of the acts and conduct complained of herein occurred in this District. Many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District and FSC common stock trades on the NASDAQ stock exchange in this District. In addition, several public offerings of Fifth Street entities, including FSC and FSAM, occurred in this District.

13. In connection with the acts and conduct alleged herein, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate telephone communications, and the facilities of the national securities exchanges and markets.

PARTIES

14. Lead Plaintiff Oklahoma Police is a defined-benefit retirement system founded in January 1981 to provide pension and other specified benefits for qualified police officers and

their beneficiaries from the participating municipalities. Oklahoma Police is overseen by a board of thirteen members: seven elected by Oklahoma Police members; one appointed by each of Oklahoma's Governor, Speaker of the House, and President Pro Tempore of the Senate; one appointed by the President of the Oklahoma Municipal League; and two by virtue of their offices: Oklahoma's State Insurance Commissioner and Director of State Finance. As of December 2015, Oklahoma Police managed more than $2.2 billion in assets on behalf of more than 8,500 beneficiaries. As set forth in its previously filed Certification (filed on November 30, 2015) and incorporated by reference, OPPRS purchased FSC common stock during the Class Period and was damaged thereby.

15. Defendant FSC is a specialty finance company that lends to and invests in small and mid-sized companies, primarily in connection with investments by private equity sponsors. It is externally managed and advised by FSAM's wholly owned subsidiary, Fifth Street Management and FSC CT. FSC common stock trades on the NASDAQ Global Select Market in this District.

16. Defendant FSAM is the publicly traded parent company of Fifth Street Management and FSC CT. FSAM stock trades in this district. Fifth Street Management, an affiliate of FSC and an operating subsidiary of FSAM, acts as investment advisor for FSC in addition to various private Fifth Street funds. FSC CT is a wholly-owned subsidiary of Fifth Street Management. FS CT furnishes FSC with the facilities and administrative services necessary to conduct FSC's day-to-day operations and assists FSC in connection with the determination and publishing of FSC's net asset value, the preparation and filing of tax returns, and the printing and dissemination of reports to FSC's stockholders. Defendants Tannenbaum,

Berman, Dimitrov, Frank and Owens own and/or control FSAM, Fifth Street Management and FSC CT.[2]

17. Defendant Tannenbaum founded Fifth Street in 1998. He served as the chairman of the board of directors ("Chairman") of FSC until September 2014. He also served as the Chief Executive Officer ("CEO") of FSC until January 2015. Defendant Tannenbaum is also a principal of FSAM, and has been its Chairman and CEO since at least the FSAM IPO. At all relevant times, Tannenbaum was a managing partner and CEO of Fifth Street Management and served on its investment committee and management committee. FSC's proxy statement dated January 28, 2014 (the "2014 FSC Proxy") disclosed with respect to Tannenbaum's responsibilities and qualifications that "Tannenbaum brings to our Companies [*e.g.*, FSC]…extensive financial and risk assessment abilities", and his "positions as chief executive officer of [FSC], managing partner of our investment adviser and member of its investment committee provides [FSC's] Board with a direct line of communication to, and direct knowledge of the operations of [FSC] and our investment adviser."

18. Defendant Bernard D. Berman ("Berman") served as President of FSC from February 2010 to September 2014 and its Secretary until September 2014. He has been a member of the FSC board of directors since February 2009, its president from February 2010 to September 2014, and its Chairman since September 2014. Defendant Berman is also a principal of FSAM and has been the Co-President, Chief Investment Officer ("CIO") and a director of FSAM since at least its IPO. At all relevant times, Berman has been a partner of FSC's investment advisor (Fifth Street Management), served as its co-president, and served on its

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[2] Hereinafter, FSAM, Fifth Street Management, and FSC CT are collectively referred to as FSAM, unless otherwise noted.

investment committee and management committee. Berman also served as President of FSC CT at all relevant times.

19. Defendant Alexander C. Frank ("Frank") served as the Chief Financial Officer ("CFO") of FSC until July 2014. During the Class Period, Frank also served as the chief operating officer and chief financial officer of FSC's investment adviser (Fifth Street Management), and also served on its management committee. In addition, defendant Frank is a principal of FSAM and has served as its Chief Operating Officer ("COO") and CFO since at least the FSAM IPO.

20. Defendant Todd G. Owens ("Owens") has served as a director of FSC since November 2014 and as its CEO since January 2015. During the Class Period, Owens also served as the co-president of FSC's investment adviser (Fifth Street Management) and as a member of its management committee. In addition, he served as FSC's President from September 2014 until January 2015. Defendant Owens has served as FSAM's Co-President since September 2014.

21. Defendant Ivelin M. Dimitrov ("Dimitrov") at all relevant times served as a director and the CIO of FSC. During the Class Period, Dimitrov served as the CIO of FSC's investment adviser and on the investment advisor's (Fifth Street Management's) management and investment committees. With respect to Dimitrov's responsibilities and qualifications, FSC's 2014 Proxy, as well as its proxy statement filed on February 5, 2015, disclosed that Dimitrov is responsible for (1) "the credit underwriting of our investment portfolio, overseeing risk analysis and investment approvals", (2) "lead[ing] the tactical asset allocation decisions for the portfolio, shifting exposures between asset classes and industries, as well as managing interest rate risk", (3) "the recruitment and development of [Fifth Street Management]'s

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investment team", and (4) "head[ing] the senior loan product business strategy across Fifth Street's platform." These proxy statements also added he "[h]e has substantial experience in financial analysis, valuation and investment research," which, in the words of the 2014 FSC Proxy, he "brings to FSC." He has served as President of FSC since January 2015. In addition, Dimitrov is a principal of FSAM and has served as FSAM's CIO since at least its IPO.

22. Defendant Richard A. Petrocelli ("Petrocelli") served as the CFO of FSC from July 2014 until July 2015, during which time he was also an employee of FSAM.

23. Tannenbaum, Berman, Frank, Owens, Dimitrov, and Petrocelli are referred to herein as the "Individual Defendants."

24. The Individual Defendants, because of their positions with Fifth Street, possessed the power and authority to control the contents of FSC's quarterly and annual reports, offering materials, press releases, and presentations to securities analysts, money and portfolio managers, and institutional investors, *i.e.*, the market. Because of their positions within Fifth Street, and their access to material non-public information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false and misleading statements as pleaded herein.

SUBSTANTIVE ALLEGATIONS

I. Background

25. Defendant Tannenbaum founded Fifth Street in 1998 as an asset management company specializing in raising funds from private investors and investing in small and mid-sized companies. Thereafter, defendant Tannenbaum and his associates launched several

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investment funds under the Fifth Street moniker. In June 2008, FSC was the first of these funds taken public.

26. FSC is a specialty finance company that lends to and invests in small and mid-sized companies, primarily in connection with investments by private equity sponsors. As of September 30, 2013, FSC's portfolio totaled $1.9 billion in assets. Its investment portfolio was comprised of 99 investments, 86 of which were in operating companies and 13 of which were in private equity funds.[3] Of these investments, 100% were ranked in the top two tiers of the Company's internal investment rankings, meaning that all of FSC's investments were performing within or above the Company's expectations. Similarly, no investments were in non-accrual status.[4]

27. FSC is a business development company ("BDC") under the Investment Company Act of 1940 (the "ICA"). The investment objective of FSC is to maximize its portfolio returns by generating investment income. In turn, FSC pays out this investment income in dividends to its shareholders. The rate and amount of these dividend payments is critical to the market's valuation of FSC. For example, in a January 5, 2012, Wall Street Transcript interview, a senior analyst stated that the amount of dividends was one of "the most important factors" investors looked at when evaluating BDCs. Indeed, to qualify as a BDC, a company must distribute at least 90% of its taxable income to shareholders in the form of dividends. However, most BDCs distribute 98% or more of their taxable income in order to avoid corporate taxation

[3] The fiscal year for FSC ends on September 30 of the corresponding calendar year. Thus, for example, FSC's fiscal year 2014 ended on September 30, 2014. FSAM's fiscal year ends on December 31 of the corresponding calendar year.

[4] A "non-accrual" loan means that a company has not been receiving scheduled payments on that investment, the investee is not expected to pay all principal and interest due, there is insufficient value to support the accrual, or the company does not otherwise expect the borrower to be able to service its debt and other obligations.

as a regulated investment company. This was also true for FSC, which stated in its 2013 Form 10-K that it "intends to distribute between 90% and 100% of its taxable income and gains."

28. FSC is managed by operating subsidiaries of FSAM, an asset management company founded by defendant Tannenbaum. FSAM is a registered investment advisor under the Investment Advisers Act of 1940 (the "IAA"), and as such owes fiduciary duties to FSC, including the duties to act in good faith and in the best interests of the Company. For example, FSC disclosed in its Form 10-K for the fiscal year ended September 30, 2014, filed December 1, 2014 ("FSC 2014 Form 10-K") that FSAM "has a fiduciary duty to act solely in the best interests" of the Company and "in accordance with the Advisers Act", and FSAM's investment mandate "is to maximize [FSC's] portfolio's total return by generating current income from [FSC's] debt investments and capital appreciation from [its] equity investments."

29. FSAM earns fees from FSC for the provision of advisory and management services. Under the terms of its investment advisory agreement with FSC, FSAM earns a base management fee calculated at an annual rate of 2% of FSC's gross assets, including leveraged assets and excluding any cash and cash equivalents. FSC 2014 Form 10-K, at 144. In addition, FSAM receives incentive fee income pursuant to a complex formula tied to FSC's NII and other performance factors. Historically, the majority of FSAM's fees have been earned on the gross amount of FSC's assets—that is, through base management fees (as opposed to through incentive fees). For example, in fiscal 2013, FSC paid about $36 million in base management fees to FSAM compared to about $28 million in incentive fees. In fiscal 2014, FSC paid $51 million in base management fees to FSAM compared to about $36 million in incentive fees. During the Class Period, over 90% of FSAM's assets under management resided in FSC, meaning that the Company was FSAM's primary source of revenue.

30. As FSC has acknowledged, its fee arrangement may incentivize FSAM to increase the amount of gross assets in FSC's portfolio, even if the investments had a high risk of default, increased leverage or were speculative. As stated in the Company's 2014 Form 10-K:

> The incentive fee payable by us to our investment adviser may create an incentive for it to make investments on our behalf that are risky or more speculative than would be the case in the absence of such compensation arrangement, which could result in higher investment losses, particularly during cyclical economic downturns. The way in which the incentive fee payable to our investment adviser is determined, which is calculated separately in two components as a percentage of the income (subject to a hurdle rate) and as a percentage of the realized gain on invested capital, may encourage our investment adviser to use leverage to increase the return on our investments or otherwise manipulate our income so as to recognize income in quarters where the hurdle rate is exceeded. Under certain circumstances, the use of leverage may increase the likelihood of default, which would disfavor the holders of our common stock.
>
> * * *
>
> The fact that our base management fee is payable based upon our gross assets, which would include any borrowings for investment purposes, may encourage our investment adviser to use leverage to make additional investments. Under certain circumstances, the use of increased leverage may increase the likelihood of default, which would disfavor holders of our common stock.

31. Nevertheless, before and during the Class Period, FSC repeatedly emphasized to investors and the market its purportedly conservative investment approach, rigorous underwriting standards, strong credit protections and other investment safeguards as core elements of its investment policy.

32. The nature of FSC's financial policies and investment activities render it effectively impossible for the market or investors to independently ascertain the value and performance of the Company's portfolio. FSC invests primarily in illiquid securities including debt and equity investments of privately held small and mid-sized companies for which limited public information exists. Further, all of its investments are "recorded at fair value as determined in good faith by [its] Board of Directors." As such, the value of FSC's investments is

determined in large part using non-public assumptions and information, which the market assumes, absent any material facts to the contrary, are derived using methodologies and analyses undertaken in good faith. However, as detailed below, FSC and the other defendants had access to the information.

33. FSC's 2014 Form 10-K advised investors that the "inherently uncertain" nature of this determination could potentially result in a material overstatement of the value of its assets:

> Certain factors that may be considered in determining the fair value of our investments include the nature and realizable value of any collateral, the portfolio company's earnings and its ability to make payments on its indebtedness, the markets in which the portfolio company does business, comparison to comparable publicly traded companies, discounted cash flow and other relevant factors. Because such valuations, and particularly valuations of private securities and private companies, are inherently uncertain, may fluctuate over short periods of time and may be based on estimates, our determinations of fair value may differ materially from the values that would have been used if a ready market for these securities existed. Due to this uncertainty, our fair value determinations may cause our net asset value on a given date to materially understate or overstate the value that we may ultimately realize upon the sale of one or more of our investments. As a result, investors purchasing our common stock based on an overstated net asset value would pay a higher price than the realizable value of our investments might warrant.

34. However, again, this warning as to such a possibility—which, it claims, would result only "[d]ue to this uncertainty"—is framed with an implication as to a good faith effort to arrive at an accurate valuation, even if the result happens to differ from what would be used "if a ready market for these securities existed[.]" As such, it failed to warn that, instead, Defendants could, and in fact, as alleged in more detail below, Defendants *were*, at that same time, knowingly or recklessly inflating FSC's fair value determinations.

35. FSC used a form of fair value accounting by which it recognized income before the income was actually paid to the Company. FSC did this in a variety of ways, including by

recognizing original issue discounts ("OID") accruals,[5] accruals on contingent payment debt instruments, or payment-in-kind ("PIK") interest provisions as income even though such income may never actually be paid to the Company.[6] As detailed below, FSC applied this methodology in such a manner as to improperly defer the recognition of losses and loan write-downs until later in the life of the loan and to conceal poor loan performance.

36. Defendants were aided in their scheme by what even Tannenbaum acknowledged is the complexity of BDC investments, making it effectively impossible for outsiders to analyze the portfolios of BDCs, such as FSC. As Tannebaum stated in an April 2015 *Bloomberg Business* interview, "the complexity and sheer number of investments make it unlikely that busy Wall Street analysts - let alone retail investors - can analyze all of a BDCs holdings."

II. Fraudulent Scheme and Course of Conduct

37. Throughout FSC's fiscal 2014 and 2015, and during the Class Period, defendants embarked on a fraudulent scheme and course of business designed to artificially inflate the value of FSC's investments, overstate its income and revenues from operations, and conceal deterioration in the quality of its investments and risk profile.

38. At its core, the scheme was a simple one. Because FSAM is an investment management company with its revenues determined by the amount of assets it manages and investment income it generates, the greater the amount of FSC's assets and investment income,

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[5] OID is a form of deferred interest on a debt instrument that is issued at a discount—i.e., at less than their value at maturity.

[6] PIK is contractually deferred interest added to principal and generally due at the end of the loan term. When a borrower cannot pay normal interest terms, PIK provisions can be used in a refinanced loan to nominally increase loan income (and, thus, the fees paid to FSAM) while at the same time rendering that income more speculative as payment is deferred until the end of the loan term. Moreover, the Company has stated that it may pay dividends on PIK income "even though we have not yet collected the cash and may never collect the cash relating to the PIK interest."

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the higher the price defendant Tannenbaum and other FSAM principals could receive for their offer of FSAM shares to the public.

39. Thus, despite Defendants' repeated assurances that they were operating a conservative investment portfolio designed to mitigate losses and to increase the Company's net investment income, in reality FSC took on ballooning debt in order to make ever more speculative and risky investments. In addition, defendants artificially inflated the Company's income and deferred the recognition of loan losses and the deteriorating quality of FSC's investments until after the FSAM IPO had been completed and FSAM's principals could cash out. To create the illusion of sustainable business growth, defendants provided false and misleading assessments of FSC's portfolio's performance and business trends, including by increasing FSC's dividend payments by 10% in July 2014 even though they knew that such payments were not sustainable and were not reasonably supportable by FSC's investment performance or expected performance.

40. During the Class Period, to further create and maintain the illusion necessary for Defendants' scheme to succeed, each of FSC's financial statements identified below were misstated and materially misleading, in two critical ways. First, FSC manipulated the reported fair value of its investments by deferring necessary write-downs until after FSAM's IPO. Second, and relatedly, FSC continued to recognize interest income from troubled investments despite clear warning signs that the income would never be realized.

41. Consequently, FSC materially misstated several financial metrics reported in each of FSC's quarterly and annual financial statements identified below. For instance, and as further detailed below, with regard to FSC's balance sheet, FSC misstated in each of its financial statements metrics such as investments at fair value, net unrealized appreciation on investments,

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net assets, and net asset value, by failing to appropriately account for incentive fee income, interest income, and the fair value of its investments. FSC similarly misreported its income statement, and in particular misreported, among other metrics, its interest income, PIK interest income, fee income, total investment income, expenses such as the base management fee, net investment income, unrealized appreciation on investments, net increase in net assets resulting from operations, and earnings per share.

42. Ultimately, defendants had no reasonable basis to believe or state that the Company's financial statements were accurate and accounted for properly, and they therefore knew the financial statements were false and misleading when issued.

A. <u>FSC Failed To Record Timely Adjustments To The Reported Fair Value Of Investments and Halt Recognition Of Interest Income On A Timely Basis</u>

43. In particular, GAAP required FSC to properly apply ASC Topic 820, *Fair Value Measurements and Disclosures* ("ASC 820") and ASC Topic 946, *Financial Services – Investment Companies* ("ASC 946") to account for the value of its investments. *E.g.*, FSC 2014 Form 10-K, at 114. Specifically, ASC 946-320-35-1 required FSC to "measure investments in debt and equity securities subsequently at fair value."

44. Fair value is the "price that would be received to sell an asset or paid to transfer a liability in an orderly transaction in the principal (or most advantageous) market at the measurement date under current market conditions (that is, an exit price) regardless of whether that price is directly observable or estimated using another valuation technique." ASC 820-10-35-9A. Or, as FSC put it during the Class Period, "[a]uthoritative accounting guidance defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date."

45. The concept and objective of fair value is defined in ASC 820-10-05-1B:

> Fair value is a market-based measurement, not an entity-specific measurement. For some assets and liabilities, observable market transactions or market information might be available. For other assets and liabilities, observable market transactions and market information might not be available. However, the objective of a fair value measurement in both cases is the same—to estimate the price at which an orderly transaction to sell the asset or to transfer the liability would take place between market participants at the measurement date under current market conditions (that is, an exit price at the measurement date from the perspective of a market participant that holds the asset or owes the liability).

46. Thus, at each financial reporting date and for each financial instrument owned by FSC, GAAP required FSC to estimate that instrument's fair market value, to compare it to that financial instrument's cost basis, and to then record as an unrealized gain or loss any difference between the two amounts.

47. To measure fair value at each financial reporting date, "[u]nder ASC 820, the Company performs detailed valuations of its debt and equity investments on an individual basis…" FSC 2014 Form 10-K, at 115. During the Class period, FSC disclosed that "[o]ur Board of Directors undertakes a multi-step valuation process each quarter in connection with determining the fair value of our investment." *Id.* at 10. FSC's investment advisor assists the FSC Board of Directors with the valuation process. Given the Individual Defendants' positions at, and control over, FSC's investment advisor, and their status as FSC board members and/or senior executives during the Class Period, each of them were intimately involved in, and responsible for, determining the fair value of FSC's investments.

48. FSC described its investment strategy as follows:

> We generally invest in securities that are rated below investment grade by rating agencies or that would be rated below investment grade if they were rated. Below investment grade securities, which are often referred to as "high yield" or "junk," have predominantly speculative characteristics with respect to the issuer's capacity to pay interest and repay principal.

FSC 2014 Form 10-K, at 1.

49. The securities in which FSC, through FSAM, generally invested—high-yield debt securities—"are inherently different from investment-grade debt securities." ASC 946-320-05-3. As ASC 946-320-05-3 recognizes, "[t]hey present additional credit, liquidity, and market risks for all participants in this marketplace: holders, issuers, underwriters, and broker-dealers."

50. In particular, GAAP states that "[i]ssues of high-yield debt securities are more likely to default on interest or principal than are issues of investment-grade securities." ASC 946-320-05-3. The American Institute of CPAs ("AICPA") Audit and Accounting Guide, *Investment Companies* ("AAG"),[7] reiterates this concept. AAG 3.30. In this way, GAAP focuses on two potential loss components associated with debt securities.

51. *First*, FSC was exposed to the risk that the investee company would fail to pay some or all unpaid interest (*i.e.*, FSC's interest receivable). *Second*, FSC was exposed to the risk that the investee company would fail to pay some or all outstanding principal. For example, as of September 30, 2014, more than 57% of FSC's debt investments did not require the issuer to make principal payments until the debt maturity date. FSC 2014 Form 10-K, p.1.

52. FSC's securities exhibited further risk characteristics. For example:

(a) FSC's debt investments were illiquid. FSC 2014 Form 10-K, at 9.

(b) FSC's debt was due from small and mid-sized companies. *Id.*

(c) The only security on these loans were the assets of the investee companies. *Id.* at 53. If the investee company was unable to repay the debt, it would be unlikely that the investee company would have adequate collateral to otherwise satisfy the terms of the debt. Consequently, the severity of loss on default was likely to be high.

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[7] The AICPA issues industry specific Audit & Accounting Guides ("AAG") to provide guidance in preparing financial statements in accordance with GAAP. The AAG for Investment Companies was applicable to FSC. Thus AAG interpreted GAAP pronouncements on the proper methods to assess fair value for financial instruments.

53. ASC 820 provides a hierarchy of levels associated with the fair value of reported investments. The fair value hierarchy defined and required by ASC 820 ranks the quality and reliability of the inputs used to determine the fair value of investments as reported in the financial statements. This hierarchy is composed of three levels (ASC 820-10-35-37):

(a) Level 1 inputs are quoted market prices for identical assets or liabilities in active markets. ASC 820-10-35-40 to 46.

(b) Level 2 inputs are observable market-based inputs or unobservable inputs that are corroborated by market data. ASC 820-10-35-47 to 51.

(c) Level 3 inputs are unobservable (*i.e.*, not corroborated by market data). ASC 820-10-35-52 to 54-A.

54. As of September 30, 2014, immediately prior to FSAM's IPO, all of FSC's investments relied on Level 3 inputs. FSC 2014 Form 10-K, at 119. This fact, combined with other related circumstances, reflected several recognized fraud risk factors that required Defendants, each of whom had a role in the analysis and calculation of true value to more closely scrutinize—and be attuned to the risk of improperly inflated—fair value determinations. The risk factors at issue here include (AAG, Fraud Risk Factors, Exhibit 11-1):

(a) "Significant investments for which readily available market quotes are not available…" (Part 1, B.1.b). As noted, all of the investments were designated as relying on Level 3 inputs.

(b) "Unusual and considerable influence of the portfolio manager over the pricing sources, fair valuation methodology, or inputs used to value securities" (Part 1, B.2.b). As alleged herein, FSC was dependent on the employees of its investment advisor, FSAM, to run FSC's day-to-day business, including the

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monitoring and evaluation of its investments, and FSAM provided substantial assistance with the valuation process. By virtue of relying on its investment advisor to manage its every-day business and monitor its investments, FSC necessarily depended on sources of information and other inputs provided by its investment advisor during the valuation process. This relationship, coupled with the fact that there is substantial overlap between those who control and manage FSC's investment advisor and FSC's directors who are ultimately responsible for FSC's fair value determination, clearly shows that FSC's investment advisor had unusual and considerable influence over the valuation process.

(c) "Adviser's fee revenues (including performance incentives) directly related to either the value of fund assets or performance, if the adviser has substantial discretion in valuing portfolio investments, and changes in fee revenues may be significant to the adviser." (Part 1, C.4). As alleged herein, the compensation paid to FSAM, FSC's investment advisor, directly related to and depended on both the value and performance of FSC's investment portfolio, FSC's investment advisor had substantial influence over and discretion in valuing FSC's investments, and changes in the investment advisor's fee revenues may be significant to the advisor in that they, among other things, would decrease the amount that FSAM received through its IPO.

55. Similarly, FSC's use of payment-in-kind interest ("PIK") was an additional factor that further increased the risk that FSC's reported fair value was misstated and required those involved in the fair valuation process to carefully review the valuations of loans with PIK interest. As FSC's 2014 Form 10-K disclosed:

> PIK interest represents contractually deferred interest added to the loan balance that is generally due at the end of the loan term and recorded as interest income on

an accrual basis to the extent such amounts are expected to be collected. Instruments bearing PIK interest typically carry higher interest rates as a result of their payment deferral and increased credit risk.

56. FSC's reliance on PIK interest underwent a significant shift during the fiscal year ended September 30, 2014. The amount of unpaid PIK increased 66% in fiscal 2014, increasing from $23.9 million as of fiscal 2013 to $39.7 million as of fiscal 2014. 2014 FSC Form 10-K, at 136. By contrast, FSC received only $8.0 million in payment of PIK interest in both fiscal years 2013 and 2014. Thus, in fiscal 2013, the amount of PIK interest that FSC received was only about 35% of the amount of unpaid PIK ($23.9 million). Thereafter, the amount of PIK interest that FSC received in fiscal 2014 was reduced to about 20% of the amount of unpaid PIK ($39.7 million).

57. GAAP recognizes and highlights the fact that losses associated with adjustments or write-offs of accrued interest can significantly affect an investment company's income statement. More specifically, "[w]riteoffs of interest receivable differ from traditional writeoffs of trade accounts receivable since they can significantly affect an investment company's statement of operations, the performance measurement ratios of expenses to average net assets, and net investment income to average net assets." ASC 946-320-05-8.

58. FSC purported to maintain a "close working relationship" with management of the investee companies, which "helps [FSC] spot challenges early—especially those that may impact the company's ability to repay the loan."[8] FSC was required to account for these risks when it reported the fair value of the investments. ASC 946-320-35-11.

59. FSC clearly violated the relevant GAAP provisions alleged and outlined above relating to true value measurements. As alleged in more detail below, it is apparent that, by no later than September 30, 2014, Defendants were aware, or recklessly disregarded, that at least

[8] http://www.fifthstreetfinance.com/financial-advisor/our-business/

four of FSC's portfolio companies were experiencing financial hardships interfering with their ability to meet their current and future obligations to FSC and requiring restructurings of their debts (i.e. debt securities in FSC's portfolio), and accordingly, that the fair market values of these portfolio companies' distressed debt securities were significantly below their respective, publicly disclosed cost bases.

60. Although clearly required to do so by GAAP under such circumstances, Defendants failed to record the resulting material unrealized losses—i.e., true value write-downs—on those deteriorating debt investments. Instead, Defendants violated GAAP by delaying such recognition until the reporting period following the quarter and fiscal year ended September 30, 2014—after the Individual Defendants collectively reaped nearly $100 million in proceeds through FSAM's IPO. As a result, and alleged in greater detail below, numerous of FSC's financial statements metrics, such as investments at fair value, net unrealized appreciation on investments, net assets, and net asset value, and FSC's income statement metrics, such as its interest income, PIK interest income, fee income, total investment income, expenses such as the base management fee, net investment income, unrealized appreciation on investments, net increase in net assets resulting from operations, and earnings per share, were materially overstated by Defendants.

61. Investments by FSC in TransTrade Operators, Inc. ("TransTrade"), Phoenix Brands Merger Sub LLC ("Phoenix"), JTC Education, Inc. ("JTC") and CCCG, LLC ("CCCG") clearly illustrate how Defendants improperly delayed the write-down of FSC's investments and overstated its investment income in violation of GAAP, which also helped create an illusion that FSC would cover dividend payments.

1. <u>**FSC Misstated Income From TransTrade And The Fair Value Of The TransTrade Investment Prior To The FSAM IPO**</u>

62. FSC had a close business relationship with TransTrade, a transportation and logistics company in which it invested. Indeed, TransTrade was one of FSC's "Control Investments." FSC 2014 Form 10-K, at 90.[9]

63. Prior to FSAM's IPO, Defendants received numerous signals that TransTrade had experienced, or would experience, hardship in repayment of its debt and related interest to FSC. First, on December 1, 2012, FSC restructured the interest payment terms associated with both its Term Loan A and Term Loan B due from TransTrade's predecessor entity, Trans-Trade Brokers, Inc. ("TransTrade Brokers"). Specifically, on the Term Loan A, FSC reduced the cash interest rate by 6% in exchange for a 6% increase in the PIK interest rate. On its Term Loan B, FSC also swapped a 12% cash interest payment obligation for a 12% PIK interest obligation. FSC Form 10-Q, filed February 6, 2013, at 13. In other words, TransTrade was allowed to stop making significant current interest payments in exchange for a promise to pay that interest at the end of the loan term. Eventually, FSC wrote-down the fair value of its $6.2 million investment in the Term Loan B to $0. FSC Form 10-Q, filed February 6, 2013, at 6.

64. Next, in May 2013, FSC restructured its investment in the predecessor entity, TransTrade Brokers. FSC 2014 10-K, at 63 ("In May 2013, we restructured our investment in Trans-Trade Brokers, Inc. As part of the restructuring, we exchanged cash and its debt and equity securities for debt and equity securities in the restructured entity, TransTrade Operators, Inc. and recorded a realized loss in the amount of $6.1 million on this transaction."). As part of the restructuring, FSC realized an investment loss of $6.1 million.[10] *See* Event 1 in the table below.

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[9] "Control Investments are defined by the Investment Company Act of 1940… as investments in companies in which [FSC] owns more than 25% of the voting securities or maintains greater than 50% of the board representation." FSC 2014 Form 10-K, p. 100.

[10] A realized loss occurs upon disposition of an investment. Prior to disposition, changes in fair value are classified as unrealized gains or losses. In either event, changes in fair value are recorded in income in the period a change is made.

65. Thereafter, FSC's principal investment in TransTrade was in the form of a First Lien Term Loan due May 31, 2016. This loan initially had a cash interest rate of 11% and a 3% PIK interest rate.

66. In the quarter ended December 31, 2013, FSC authorized a change in TransTrade's interest payment terms. Specifically, FSC reduced the cash interest rate from 11% to 0%, and increased the PIK interest rate in a reciprocal amount, from 3% to 14%. FSC Form 10-Q, dated February 6, 2014, p.14. This restructuring, which is reflected in the table below as Event 2, was essentially identical to the December 2012 restructuring described above that was shortly followed by a significant investment loss.

67. In the quarter ended March 31, 2014, FSC recorded a $3.0 million (21%) write-down of the fair value of its investment in TransTrade. FSC Form 10-Q, dated May 8, 2014, at 5. The change in the fair value of FSC's TransTrade investment clearly shows that Defendants were well aware of the deteriorating quality of the loan and substantial likelihood of non-payment.

68. Then, on August 1, 2014, FSC lowered the PIK interest rate from 14% to10%. FSC 2014 Form 10-K, at 100. FSC did not, however, increase the cash interest rate (*i.e.*, it remained 0%). *See* Event 3 in the table below. Without a concurrent repayment, this concession also reflected the risk that TransTrade would be unable to fully repay its indebtedness to FSC.

69. As a result, by October 2014, when FSAM's IPO became effective, FSC had restructured TransTrade's debt, shifted the interest obligation from cash to PIK, and then reduced the PIK interest rate. Clearly, TransTrade was experiencing financial hardship associated with the then-existing debt terms. Collectively, these changes signaled that an adjustment to the fair value of this investment was warranted. The changes also signaled that FSC should have

adopted a measured approach to the recognition of interest income. In fact, these changes are consistent with the Investment Ranking criteria FSC disclosed that it applied in categorizing assets (more fully alleged *infra*) and determining when to place PIK interest on non-accrual:

> Investment Ranking 3 is used for **investments that are performing below our expectations and for which risk has materially increased since the original or restructured investment**. The portfolio company may be out of compliance with debt covenants and may require closer monitoring. To the extent that the underlying agreement has a PIK interest provision, **investments with a ranking of 3 are generally those on which we are not accruing PIK interest**.

FSC 2014 Form 10-K, at 9 (emphasis added).

70. But, as shown in the table below, through the quarter ended September 30, 2014, FSC failed to place its TransTrade investment on non-accrual and continued to recognize interest income on this investment. As a result, FSC recorded substantial PIK interest, but no longer received periodic cash payments from TransTrade. When it continued to recognize this interest income, FSC represented to investors that FSC's TransTrade investment was continuing to perform at or above expectations and that the PIK interest income would be collected by the Company. As of the quarter ended September 30, 2014, FSC had not changed TransTrade's investment ranking to Investment Ranking 3.

71. By the quarter ended December 31, 2014, after the FSAM IPO had been completed, FSC could no longer hide the inevitable losses associated with this investment. At that time, FSC belatedly placed TransTrade, along with other investments discussed below, on non-accrual status. FSC Form 10-Q, filed February 9, 2015, at 56. In other words, FSC finally acknowledged that it could no longer justify recognizing non-cash interest income from TransTrade. FSC also took an additional $2.2 million write-down of the fair value of TransTrade's debt. At that time, as reflected in the following table, FSC reported the TransTrade investment at only 57% of its cost.

TransTrade Operators, Inc.
First Lien Term Loan due 5/31/2016
All $ amounts in '000s

Event	Financial Statement Date	Cost	Fair Value	Unrealized Gain / (Loss)	Interest / Dividend / Fee Income
(1)	6/30/2013	$ 13,556	$ 13,507	$ (49)	$ 164
	9/30/2013	$ 13,660	$ 13,524	$ (136)	$ 164
(2)	12/31/2013	$ 14,154	$ 14,021	$ (133)	$ 512
	3/31/2014	$ 14,656	$ 11,494	$ (3,162)	$ 511
	6/30/2014	$ 15,180	$ 11,323	$ (3,857)	$ 537
(3)	9/30/2014	$ 15,572	$ 11,109	$ (4,463)	$ 442
FSAM IPO					
	12/31/2014	$ 15,572	$ 8,865	$ (6,707)	$ 28

72. "The timing was impeccable; just imagine if this non-accrual had appeared when [FSC's] execs were on a road show to pitch shares of the [FSAM] asset management business!" Jordan Wathen, *Why are Lawyers Gunning for Fifth Street Finance Corp.,* The Motley Fool (Oct. 8, 2015). In sum, the foregoing facts provide a solid basis for the conclusion that FSC improperly deferred the necessary write-down of the fair value of this investment and the placement of this investee on non-accrual status until the FSAM IPO had taken place.

73. There is further evidence that FSC was aware its termloan investment in TransTrade, and related interest income, was worthless, and it improperly delayed writing down the value of its investment and placing the investment on non-accrual status. Beginning in March 2014, FSC made multiple cash injections into TransTrade in the form of equity investments. FSC made these investments, then immediately wrote their fair market values down to zero. FSC's decision to maintain TransTrade on life-support by throwing good money after bad, had a single purpose: to stave off placing FSC's larger, $15 million debt investment in TransTrade on non-accrual status, until after the completion of FSAM IPO. Indeed, throughout this period, FSC continued to disclose that it considered its $14.7 million debt investment in

TransTrade to be on accrual status. As one financial writer put it when explaining FSC's problematic equity investments in TransTrade:

> When a BDC wants to move the goal posts by deferring non-accruals, it's quite easy to do. All it takes is a little imagination and a little more capital. If you continuously feed capital to underperformers, then you can forever ensure that an investment will never go bad.

Jordan Wathen, *Why are Lawyers Gunning for Fifth Street Finance Corp*., The Motley Fool (Oct. 8, 2015).

74. The first of these investments occurred in March 2014, when FSC injected $5.2 million into TransTrade in the form of Series B Preferred Units. As shown in the following table, FSC immediately valued its 5.2 million Series B preferred shares at a fair value of zero, and maintained that valuation in subsequent periods.

TransTrade Operators, Inc.
5,200,000 Series B Preferred Units in TransTrade Holding LLC
All $ amounts in '000s

Financial Statement Date	Cost	Fair Value	Unrealized Gain / (Loss)
3/31/2014	$ 5,200	$ -	$ (5,200)
6/30/2014	$ 5,200	$ -	$ (5,200)
9/30/2014	$ 5,200	$ -	$ (5,200)
FSAM IPO			
12/31/2014	$ 5,200	$ -	$ (5,200)
3/31/2015	$ 5,200	$ -	$ (5,200)

75. FSC's $5.2 million, however, proved insufficient to shore up its investment in TransTrade. In the very next quarter, which ended June 30, 2014, FSC allowed the troubled TransTrade to return to the trough, this time to the tune of $1.4 million in the form of Series A Preferred Units, as shown in the table below. Again, FSC immediately wrote down the value of this investment to zero, as reflected in the below table.

76. Further, in the quarter ended September 30, 2014, FSC injected another $0.6 million into TransTrade, bringing its investment up to $2 million. Tellingly, as shown in the following table, the fair market value of these Series A preferred shares remained at zero.

TransTrade Operators, Inc.
Series A Preferred Units TransTrade Holdings LLC
All $ amounts in '000s

Financial Statement Date	Cost	Fair Value	Unrealized Gain / (Loss)
6/30/2014	$ 1,404	$ -	$ (1,404)
9/30/2014	$ 2,000	$ -	$ (2,000)
FSAM IPO			

77. As of the quarter ended September 30, 2014, and until FSC disclosed TransTrades's non-accrual status on February 9, 2015 (after FSAM's IPO), the market did not and could not know or fully appreciate the extent to which the TransTrade debt investment was impaired—and the fact that the investment should have been placed on non-accrual status—because FSC was and had been "recognizing income from this investment as if everything [was] OK [sic]." Wathen, *supra*.

78. FSC's continued failed investments provide significant evidence that TransTrade was so distressed that FSC should have, but failed to, place its related debt investment on non-accrual status and similarly reduce the reported fair value of that investment.

2. <u>FSC Misstated Income From Phoenix And The Fair Value Of The Phoenix Investment Prior To The FSAM IPO</u>

79. The original terms of Phoenix's Subordinated Term Loan due February 1, 2017 included 10% cash interest and 3.875% PIK interest. Like its investment in TransTrade, however, FSC was forced to restructure the terms of this loan. Specifically, FSC agreed to the following modifications of the cash interest terms of this investment:

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(a) On March 1, 2013, boosted the cash interest rate on the loan by 0.75% to 10.75%. *See* Event 1 in the table below.

(b) On November 21, 2013, FSC increased the cash interest rate by another 2.00%, from 10.75% to 12.75%. *See* Event 2 in the table below.

80. FSC revealed in its Form 10-Q for the period ended June 30, 2014 (filed August 7, 2014), that FSC abruptly converted the cash interest payments to PIK interest, effective April 1, 2014. Specifically, FSC decreased the cash interest rate from 12.75% to 0%, i.e. 10% less than the original rate, and increased the PIK interest rate by 12.75% to 16.625%. This modification effectively enabled Phoenix to cease paying interest on its subordinated term loan. Despite the absence of cash flow to validate Phoenix's creditworthiness, this change also enabled FSC to recognize significantly larger amounts of interest income than was supported by the original loan terms. This interest, however, was in non-cash PIK form, thereby deferring FSC's receipt of payment on the loan significantly into the future, if it were to be paid at all.

81. These events signaled that Phoenix was experiencing hardship meeting its then-existing obligations. Nevertheless, in the same quarter (ended June 30, 2014), FSC masked the impairment of its Phoenix investments by increasing the principal of its subordinated term loan to Phoenix by $8.3 million. FSC's decision to extend additional credit to Phoenix and continue to recognize interest income was in contrast to the fact that it wrote-down the fair value of the investment by an additional $0.8 million at that time. *See* Event 3 in the table below.

82. In the same timeframe, however, FSC also amended the terms of two significantly smaller loans with Phoenix, reducing the cash interest by 2% on both Phoenix's $3.6 million cost Senior Term Loan and its $2.9 million First Lien Revolver Loan. These changes misleadingly suggested to investors that, notwithstanding the slight fair value write-down of the subordinated

term loan, Phoenix's cash flows were sufficiently strong and the risk of non-payment was sufficiently reduced to qualify for lower cash interest on the two smaller loans, and that, therefore, FSC would also ultimately collect on the more substantial PIK accrued interest.

83. During the quarter ended September 30, 2014, in an effort to maintain the illusion of the health of its Phoenix investments, FSC continued to record interest income from Phoenix and actually reported an increase in the fair value of the Phoenix Subordinated Term Loan. More specifically, FSC increased the principal, cost, and fair value of Phoenix's Subordinated Term Loan to $31.6 million, $31.4 million, and $30.2 million, respectively, in its fourth fiscal quarter of 2014 (quarter ended September 30, 2014), thus concealing its impairment from the public. *See* Event 4 in table below. As of the quarter ended September 30, 2014, FSC had not changed the ranking of its Phoenix investments to Investment Ranking 3.

84. Then, in a dramatic reversal, immediately after the FSAM IPO had been completed, in the quarter ended December 31, 2014, FSC placed its Phoenix term loan investment on non-accrual status. FSC also recorded a massive $10.3 million write-down in the fair value of this investment. *See* Event 5 in the table below.

Phoenix Brands Merger Sub LLC
Subordinated Term Loan due 2/1/2017
All $ amounts in '000s

Event	Financial Statement Date	Principal	Cost	Fair Value	Unrealized Gain / (Loss)
(1)	3/31/2013	$ 21,197	$ 20,866	$ 20,851	$ (15)
	6/30/2013	$ 21,401	$ 21,093	$ 20,811	$ (282)
	9/30/2013	$ 21,610	$ 21,323	$ 20,842	$ (481)
(2)	12/31/2013	$ 21,821	$ 21,556	$ 21,001	$ (555)
	3/31/2014	$ 22,030	$ 21,786	$ 21,306	$ (480)
(3)	6/30/2014	$ 30,320	$ 30,097	$ 28,847	$ (1,250)
(4)	9/30/2014	$ 31,590	$ 31,389	$ 30,154	$ (1,235)
FSAM IPO					
(5)	12/31/2014	$ 32,914	$ 31,410	$ 19,908	$ (11,502)

85. In sum, the foregoing facts provide a solid basis for the conclusion that FSC improperly deferred the continued write-down of the fair value of this investment and the placement of this investment on non-accrual status until the FSAM IPO had taken place.

3. FSC Misstated Income From JTC And The Fair Value Of The JTC Investment Prior To The FSAM IPO

86. The original terms of FSC's subordinated term loan to JTC due November 1, 2017 reflected a cash interest rate of 13%. Throughout fiscal 2014, FSC reported relatively stable principal, cost, and fair value amounts on this investment.

87. Only after the FSAM IPO had been completed did FSC disclose that its JTC investment (i.e. the subordinated term loan) was, in reality, significantly impaired. Indeed, as with TransTrade and Phoenix, FSC's investment in JTC required substantial restructuring. Specifically, on November 25, 2014, FSC amended the loan terms to reduce the cash interest rate to 0% and implement a 13.25% non-cash PIK interest rate. *See* Event 1 in the table below.

88. In the quarter ended December 31, 2014, FSC reported that the principal of its loan to JTC had increased $1.3 million. This change reflected the interest that JTC owed, but had

not yet paid to FSC during 2014. This increase indicated that FSC had not collected nearly 69% of the annual interest income for the year (*i.e.*, the $1.3 million principal balance increase divided by the $ 1.9 million expected annual cash interest payments).[11] In other words, FSC had not been collecting cash interest on the loan for nearly 69% of the year, or a period of more than eight months, but investors had been repeatedly assured that the loan was performing within expectations.

89. Ultimately, however, the restructuring of this loan was worthless to FSC. FSC placed JTC on non-accrual status in the same quarter ended December 31, 2014—i.e., after FSAM's IPO. Further, FSC was forced to recognize a $1.7 million write-down of the fair value of its JTC investment. *See* Event 2 in the table below.

JTC Education, Inc.
Subordinated Term Loan due 11/1/2017
All $ amounts in '000s

Event	Financial Statement Date	Principal	Cost	Fair Value	Unrealized Gain / (Loss)
	3/31/2014	$ 14,500	$ 14,425	$ 14,506	$ 81
	6/30/2014	$ 14,500	$ 14,430	$ 14,493	$ 63
	9/30/2014	$ 14,500	$ 14,436	$ 14,449	$ 13
			FSAM IPO		
(1)(2)	12/31/2014	$ 15,823	$ 14,441	$ 12,727	$ (1,714)

90. In sum, the foregoing facts provide a solid basis for the conclusion that , FSC improperly deferred the write-down of the fair value of this investment and the placement of this investment on non-accrual status until the FSAM IPO had taken place.

4. <u>FSC Misstated Income from CCCG And The Fair Value Of The CCCG Investment Prior To The FSAM IPO</u>

[11] Applying the 13.25% annual cash rate of interest to the original $14.5 million principal, the estimated annual interest income for the loan would have been about $1.9 million for the 2014 fiscal year (*i.e.*, a 13.25%) annual interest rate on a $14.5 million loan equals $1.9 million).

91. The original terms of CCCG's First Lien Term Loan due July 29, 2015 reflected a cash interest of LIBOR +8%.

92. Like its investments in TransTrade, JTC and Phoenix, however, FSC was forced to restructure the terms of this loan. Specifically, FSC agreed to the following modifications of the cash interest terms of this investment:

(a) On November 15, 2012, the cash interest rate was increased 0.5% and the PIK rate was increased 1.0%.

(b) On December 31, 2013, FSC extended the maturity date by more than a year, to December 29, 2017. *See* Event 1 in the table below.

93. FSC's accounting for this investment was stable until the quarter ended September 30, 2014, when it recorded a $3.0 million unrealized loss. As with FSC's investments in JTC, TransTrade, and Phoenix, however, the market did and could not know or fully appreciate the extent to which the CCCG debt investment was impaired—and the fact that the investment should have been placed on non-accrual status—because Fifth Street was and had been "recognizing income from this investment as if everything [was] OK [sic]." Wathen, *supra*.

94. But, only after the FSAM IPO, FSC disclosed significant further adverse changes to its accounting for its investment in CCCG. Specifically, in the quarter ended December 31, 2014, FSC placed the PIK component of the loan on non-accrual. *See* Event 2 in the table below. FSC also recorded a $12.2 million unrealized loss on the investment in that quarter. By that time, FSC acknowledged its CCCG investment had lost approximately 50% of its value.

95. The cash interest component of the loan was placed on non-accrual in the next quarter.

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CCCG, LLC
First Lien Term Loan due 7/29/2015
All $ amounts in '000s

Event	Financial Statement Date	Principal	Cost	Fair Value	Unrealized Gain / (Loss)
(1)	12/31/2013	$ 35,328	$ 34,926	$ 34,727	$ (199)
	3/31/2014	$ 34,223	$ 33,850	$ 33,510	$ (340)
	6/30/2014	$ 34,396	$ 34,053	$ 33,177	$ (876)
	9/30/2014	$ 34,572	$ 34,259	$ 30,309	$ (3,950)
FSAM IPO					
(2)	12/31/2014	$ 34,748	$ 34,290	$ 18,125	$ (16,165)

96. In sum, the foregoing facts provide a solid basis for the conclusion that, FSC improperly deferred the continued write-down of the fair value of this investment and the placement of this investee on non-accrual status until after the completion of FSAM's IPO.

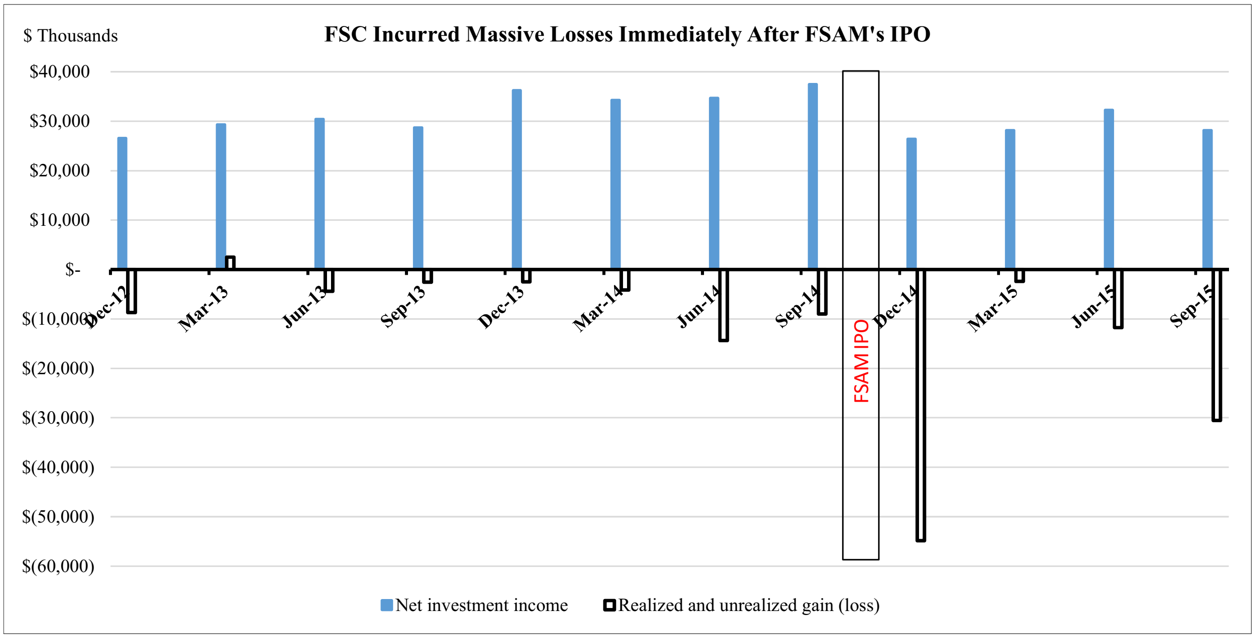
5. **Defendants' Failure to Properly Write-Down the TransTrade, Phoenix, JTC and CCCG Investments and Place Them on Non-Accrual Status Increased the Amount of Incentive Fees that FSC Paid to FSAM**

97. Changes in the reported fair value of FSC's investments were reported separately from FSC's net investment income. Such changes were reported as "realized and unrealized gain[s] or loss[es]." Critically, the calculation of Part I of the Incentive Fee paid by FSC to FSAM was based on net investment income, thereby excluding changes in fair value.

98. To the extent FSC deferred placing an investment on non-accrual status for interest income purposes, FSAM continued to generate fees even if FSC simultaneously incurred reductions in the fair value of its investments. Thus, FSAM and the Individual Defendants who stood to benefit from its IPO had a clear motivation to direct FSC to preserve the accrual status of its investments.

99. The table below demonstrates that FSC had a history of nominal (i.e. relatively small) fair value adjustments (write-downs) up until the quarter ended December 31, 2014—the

quarter when FSAM had its IPO. Only after the FSAM IPO had occurred, did FSC record negative fair value adjustments, including those related to TransTrade, Phoenix, JTC, and CCCG, that dwarfed all prior adjustments.



See 2015 FSC Form 10-K, at 53.

100. Notably, FSC paid FSAM $35.5 million for Part I Incentive Fees during fiscal 2014. FSC 2014 Form 10-K, at 87. This amount was a 26% increase over the $28.2 million of Part I Incentive Fees paid for fiscal 2013. If FSC had, instead, placed these investments on non-accrual prior to FSAM's IPO as it was required to do, Part I Incentive Fees would have been negatively impacted. In that event, FSAM's revenue growth rate prior to its IPO would also have suffered commensurate impacts. In any event, FSC would not have misrepresented the fair value losses as occurring solely after FSAM's IPO, in the quarter ended December 31, 2014.

101. Tellingly, FSC has not publicly provided a legitimate explanation for the seismic shift in fair value losses purportedly attributable to the quarter ended December 31, 2014.

B. ***<u>FSC's Misstatements Were Material</u>***

102. In SEC filings and investor presentations, FSC represented that it maintained a "high quality portfolio" with a "conservative" investment policy and ample protections to minimize the risk of any investment losses and maximize the Company's net investment income. For example, in a February 6, 2014 earnings conference call with investors, defendant Tannenbaum stated:

> The credit performance of the portfolio is strong, and we reported three quarters in a row with no loans non-accrual. This excellent credit performance is a result of our deep bench of the experienced underwriters and portfolio managers and our multi-million dollar investment systems.
>
> Our overall portfolio remains healthy, as borrowers are benefiting from a modestly growing economy and support from the private equity sponsors.
>
> We are moving forward on several initiatives intended to improve net investment income per share over time. While the progress has been slower than expected, **we continue to move in the right direction and expect these initiatives to collectively benefit growth and net investment income in future quarters.**

103. Similarly, in a May 8, 2014 earnings conference call, defendant Frank stated that the Company was "very conservatively positioned relative to [its] peers" with a "strong" "credit quality of the portfolio," and stated that 99.5% of the Company's investments were performing at or above expectations while none "had stopped accruing income."

104. Likewise, during the August 7, 2014 earnings call, Rich Petrocelli, FSC's CFO, reiterated that FSC has "been able to source, underwrite, and structure a diverse portfolio of high-quality, primarily senior secured loans with a low amount of PIK income" and confirmed "[t]he credit profile of the investment portfolio continues to be strong[.]"

105. Until on or about the time of the FSAM IPO, FSC continued to report that its investments were able withstand credit risk. Thus, as of September 30, 2014, immediately prior to the FSAM IPO, FSC did not have any investments that were PIK nonaccrual status. FSC 2014 Form 10-K, at 56. However, in the quarter immediately following the FSAM IPO, FSC

disclosed that more than 4% of FSC's debt portfolio had been re-classified as PIK non-accrual. FSC Form 10-Q, filed Feb. 9, 2015, at 62.

106. Another tool Defendants used in furthering the illusion, until the FSAM IPO, of a safe and stable investment portfolio, even as it grew, wasthe "Investment Ranking" system, categorizing its investments according to performance, that FSC employed, as noted above. The rankings were as follows:

Rank	**Description**
1	"[P]erforming above expectations and/or capital gains are expected."
2	"[P]erforming substantially within our expectations, and whose risks remain materially consistent with the potential risks at the time of the original or restructured investment."
3	"[P]erforming below our expectations and for which risk has materially increased since the original or restructured investment."
4	"[P]erforming substantially below our expectations and for which risk has increased substantially since the original or restructured investment.

See, e.g., FSC 2014 Form 10-K, at 8-9.

107. In particular, these rankings provide another illustration of the purportedly sudden deterioration of FSC's investments. In the two quarters prior to the FSAM IPO, FSC reported that only $6.4 million of investments had a ranking of 3 or 4. FSC 2014 Form 10-K, at 9. But, in the quarter ended December 31, 2014, FSC disclosed that this total had risen more than nine fold to $67 million. That new information emerged regarding a material component of FSC's investment portfolio only after the FSAM IPO strains credibility, and, as detailed above, is false. Sufficient information was available before the FSAM IPO as to significant credit deterioration such that the lower rankings should have been applied earlier.

108. Tannenbaum, when speaking on behalf of FSC on August 7, 2014, claimed to have "good visibility into repayments and when [FSC] expect[s] repayments." Unlike the Company's public investors, Defendants were in a position to closely monitor the performance of these investments, the underlying companies' abilities to make timely payments on these

loans, the companies' weaker cash flows, the increased risks of non-payment or default on their loans, and in some cases the companies' non-payment of their loans altogether. Indeed, the Company stated that it had done so.

109. In reality, from September 30, 2013 to September 30, 2014, FSC increased its total assets by about $600 million while its net assets increased by about only $110 million.

110. In other words, FSAM directed FSC to absorb massive amounts of debt to increase fee-generating gross assets despite the risk of the associated leverage. During the same period of time, the Base Management Fee paid by FSC to FSAM grew from $9.6 million for the quarter ended September 30, 2013 to $12.6 million for the quarter ended September 30, 2014. FSC 2014 Form 10-K, at 86. From fiscal year 2013 to fiscal year 2014, the Base Management Fee paid collected by FSAM increased from $33.4 million to $51.0 million, a 53% increase. *Id.* at 48.

111. GAAP relevant to the evaluation of materiality is summarized in ASC 250-10-S99. ASC 250-10-S99 provides guidance on both quantitative and qualitative aspects of materiality for financial statement issuers and their auditors. ASC 250-10-S99 states "[a]mong the considerations that may well render material a quantitatively small misstatement of a financial statement item are:"

#	**Consideration**
1	"Whether the misstatement masks a change in earnings or other trends."
2	"Whether the misstatement changes a loss into income or vice versa."
3	"Whether the misstatement has the effect of increasing management's compensation - for example, by satisfying requirements for the award of bonuses or other forms of incentive compensation."

112. The misstatements at issue here are material because the four investments described above were all belatedly placed on non-accrual status and were written down during FSC's first fiscal quarter of 2015 (ended December 31, 2014), ***after*** the FSAM IPO had been

completed, rather than during the Class Period. That is, as alleged in detail below, this failure to timely account for the investments masked a change in earnings and other trends, changed a loss into income, and increased the compensation of management—i.e. the compensation of the Individual Defendants' and FSAM's.

113. First, the table below summarizes the interest income that FSC recognized from these investments in its fiscal quarters ended June 30, 2014 and September 30, 2014, which it would not have been able to if it had timely placed these investments on non-accural status.[12]

June 30, 2014	TransTrade	Phoenix	JTC	CCCG	Total
Cash Interest Rate	0.000%	0.000%	13.250%	8.655%	
PIK Interest Rate	14.000%	16.625%	0.000%	1.000%	
Principal	$ 15,180	$30,320	$14,500	$34,396	$94,396
Total Interest Income	$ 530	$ 1,257	$ 479	$ 828	**$ 3,094**

September 30, 2014	TransTrade	Phoenix	JTC	CCCG	Total
Cash Interest Rate	0.000%	0.000%	13.250%	8.657%	
PIK Interest Rate	14.000%	16.625%	0.000%	1.000%	
PIK Interest Rate (1)	10.000%				
Principal	$ 15,572	$31,590	$14,500	$34,572	$96,234
Total Interest Income	$ 445	$ 1,324	$ 484	$ 841	**$ 3,095**

114. This recognized interest income on investments that should have been on non-accrual status, in turn, affected the amount of FSC's reported Net Investment Income:

Quarter Ended	June 30, 2014	September 30, 2014
Net Investment Income (NII) - As Reported	$ 34,665	$ 37,458
Correction for Non-Accrual Investment Income	$ (3,094)	$ (3,095)
Corrected NII	$ 31,571	$ 34,363
Percentage Overstatement of NII	10%	9%

[12] The PIK interest rate on the TransTrade debt was reduced from 14% to 10% on August 1, 2014. This change reduced total interest income on this debt by approximately $84,000 in the quarter ended September 30, 2014 as compared to the prior quarter. This reduced amount has been used in subsequent tables that measure the misstatement of the Company's financial statements.

115. NII is a primary determinant of the distributions an investment company makes to shareholders. See, e.g., AAG, 4.17, "A shareholder in an investment company usually chooses to receive distributions from net investment income." Indeed, Net Investment Income was the first financial metric that FSC reported in its December 1, 2014 press release highlighting the fourth fiscal quarter of 2014 and the full fiscal 2014 year.

116. Accordingly, Defendants' overstatements of net investment income from these investments had a material impact on FSC's financial statements for the fourth fiscal quarter of 2014, particularly given their magnitude and the fact that they contributed to increasing the compensation of FSAM and the Individual Defendants.

117. Further, FSC's improper continued recognition of interest income also materially inflated its reported Net Increase in Net Assets Resulting From Operations, again given their magnitude and the fact that they contributed to increasing the compensation of FSAM and the Individual Defendant.

Quarter Ended	**June 30, 2014**	**September 30, 2014**
Net Increase in Net Assets Resulting from Operations	$ 20,287	$ 28,439
Correction for Non-Accrual Investment Income	$ (3,094)	$ (3,095)
Corrected Net Increase in Net Assets Resulting from Operations	$ 17,193	$ 25,344
Percentage Overstatement of Net Increase in Net Assets Resulting from Operations	18%	12%

118. Similarly, FSC's earnings-per-share ("EPS") was overstated by its continued recognition of interest income associated with investments that met the criteria for non-accrual:

Quarter Ended	**June 30, 2014**	**September 30, 2014**
EPS - Basic as Reported	$ 0.15	$ 0.19
EPS Correction for Non-Accrual Investment Income (Rounded)	$ (0.02)	$ (0.02)
EPS Corrected for Non-Accrual Investment Income (Rounded)	$ 0.13	$ 0.17
Percentage Overstatement of EPS - Basic (Rounded)	18%	12%

119. The misstatements associated with FSC's improper recognition of interest income alone was material. However, as described above, there was at least one additional layer of FSC's improper accounting. To wit: FSC improperly deferred the write-down of the fair value of the four investments described above until after the FSAM IPO. These misstatements also impacted FSC's reported net increase in net assets from operations. The following table summarizes the material impact of the adjustments that should have been, but were not, made at least by the quarter and fiscal year ended September 30, 2014:

Summary of Misstatements	**September 30, 2014**	
Net Increase in Net Assets Resulting from Operations - As Reported		$ 28,439
Error 1: Correction for Non-accrual Investment Income		$ (3,095)
Error 2: Correction for Additional Unrealized Losses in Fair Value		
TransTrade	$ (2,244)	
Phoenix	$ (10,267)	
CCCG	$ (12,215)	
JTC	$ (1,727)	
Total Additional Unrealized Loss		$ (26,453)
Corrected Net Increase (Decrease) in Net Assets Resulting from Operations		$ (1,109)

120. As demonstrated in the above charts, if FSC had properly accounted for the gains and losses associated with these investments, FSC ***would have reported a decrease in net assets*** in the quarter ended September 30, 2014 rather than the increase in net assets it actually reported. Such a change would have been a stark reversal in the reported trend of FSC's earnings. The December 2014 quarter was the first time a net decrease in net assets had been reported in over 12 quarters. Instead, FSC improperly deferred reporting such an event until after the FSAM IPO. Given that these "misstatement[s] mask[ed] a change in earnings or other trends" (ASC 250), they were material.

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121. These adjustments would have had dire impacts on essentially all of FSC's key financial metrics. The table below illustrates certain of these impacts on the FSC's quarter ended September 30, 2014:

Quarter Ended September 30, 2014	As Reported	Adjustment	As Corrected	% Overstated / (Understated)
Net Investment Income	$ 37,458	$ (3,095)	$ 34,363	9%
Realized and Unrealized Gain (Loss)	$ (9,019)	$ (26,453)	$ (35,472)	75%
Net Increase in Net Assets Resulting from Operations	$ 28,439	$ (29,548)	$ (1,109)	2665%
Earnings per Common Share (Rounded)	$ 0.19	$ (0.20)	$ (0.01)	2665%

122. Further, FSC's misstatements serve as an illustration of the materiality factors set forth by the SEC and reiterated in GAAP. As explained in ASC 250-10-S99:

> [T]he staff believes that a registrant and the auditors of its financial statements should not assume that even small intentional misstatements in financial statements, for example those pursuant to actions to 'manage' earnings, are immaterial. ***While the intent of management does not render a misstatement material, it may provide significant evidence of materiality. The evidence may be particularly compelling where management has intentionally misstated items in the financial statements to 'manage' reported earnings. In that instance, it presumably has done so believing that the resulting amounts and trends would be significant to users of the registrant's financial statements*** (footnotes omitted).

C. *FSC Misled Investors That Its Dividend Policy Was Sustainable*

123. Throughout this time period, FSC also emphasized that it would pursue a sustainable dividend policy - then set at a $1.00 annualized run rate that was consistent with FSC's publicly disclosed net investment income. For example, in an earnings conference call with investors on November 26, 2013, defendant Tannenbaum stated:

> **We understand that setting a dividend consistent with net investment income is important to our equity investors**, our debt investors, as well as the rating agencies to maintain and perhaps improve our investment grade rating. We believe our net investment income per share in fiscal-year 2014 should meet or exceed $ 1.00 per share annual dividend rate.
>
> The Board of Directors' decision to realign the dividend at the current level is a reflection of the market environment and the high quality of the

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portfolio. In short, we believe the realignment to the dividend is the right thing for our shareholders in the short and long-term, and here at Fifth Street, we are committed to ensuring FSC's long-term success, which will, in turn, be beneficial to our shareholders.

* * *

I think we could actually run lower than target leverage and earn our $1.00, but the idea is not to cut the dividend twice, right. The idea is to get the dividend to a number that you can meet or exceed . . . .

During the February 6, 2014 conference call, defendant Tannenbaum continued on this theme, stating that the Company would not raise the dividend until "we can meet or exceed the dividend for a couple of quarters and give that confidence .. . ***[w]e want to make sure that it's sustainable***."

124. On May 5, 2014, FSC issued a press release announcing that its rating outlook had been revised upward by Standard & Poor's Rating Services from "stable" to "positive." In the release, defendant Tannenbaum stated that the credit upgrade was a result of FSC's 'credit risk management, profitability and sound operational management," and claimed that the Company was ideal for 'risk averse investors" who are "looking for a stable income stream". The release disclosed:

We are very pleased with the outlook revision by Standard & Poor's, which is a reflection of Fifth Street Finance Corp.'s credit risk management, profitability and sound operational management. . . . The improvement in our outlook highlights FSC's high quality portfolio as well as the strength of Fifth Street's origination and underwriting platform, which is a key differentiator from many of our peers. We believe that investing in FSC stock provides a unique opportunity for risk averse investors who seek a diversified portfolio of assets and are looking for a stable income stream.

125. On May 7, 2014, FSC issued a press release announcing that it had entered into a joint partnership with Trinity Universal Insurance Company ("Trinity"), a subsidiary of Kemper Corporation, to create Senior Loan Fund JV 1, LLC ("SLF JV 1"). The press release stated that

FSC would be committing $87.5 million in assets to SLF JV 1, while $12.5 million would come from Trinity and up to $200 million in additional financing would be sought from third parties.

126. On July 2, 2014, FSC issued a press release entitled "[FSC] Expects [SLF JV 1] to Generate a Mid-Teens Return," which was also filed on Form 8-K. The release stated that $101.5 million of leverage for the facility had been provided by a New York branch of Deutsche Bank AG with $55 million in equity coming from FSC and Trinity, with the partners contributing 87.5% and 12.5% of this amount, respectively. The release disclosed that FSC "initially invested $156.5 million out of its anticipated investment capacity of approximately $300.0 million in a diversified portfolio of senior secured loans" and "FSC believes that funding this initial portfolio of assets should generate a mid-teens return on its investment, which is higher than the return on FSC's current portfolio." Defendant Tannenbaum was quoted in the release as further adding: '"Funding the initial portfolio and continuing to ramp SLF JV 1 should generate a mid-teens return on our investment and is a key component in driving future earnings growth.'"

127. Less than a week later, on July 7, 2014—the first day of the Class Period—FSC issued a press release announcing an increase of its monthly dividends by 10% to $0.0917 per share for September through November 2014, which was also filed on Form 8-K.[13] It stated that the reason for the dividend increase was the "confidence" the Company had in its future revenue streams, including investment income from the newly launched SLF JV1 fund, disclosing:

> 'At FSC, we are executing on strategic initiatives intended to drive future earnings growth, including the timely funding of an initial portfolio in SLF JV 1, a joint venture between FSC and a subsidiary of Kemper Corporation (NYSE:KMPR). Continuing to fund additional investments in SLF JV 1 along with potentially completing and expanding other similar joint ventures have provided our Board of Directors with confidence in making its most recent

[13] Defendants would later conduct the FSAM IPO during this time of higher dividend payments.

> dividend declaration. As a result, we are pleased to announce a 10% increase in our monthly dividend to an annualized run rate of $1.10 per share beginning in September 2014,' stated FSC's Chief Executive Officer, Leonard M. Tannenbaum.

128. However, even had the SLF JV 1 portfolio generated the "mid-teen" returns on FSC's initial investment that Defendants represented it would, the additional earnings would have proven insufficient to support the increased dividend rate of $0.0917 per share touted by FSC. FSC's inability to pay dividends is compounded when taking into account the $29.5 million of misstatements/adjustments related to improperly accrued interest revenue and improper valuation alleged above. This is demonstrated in the following table, which compares FSC's $42.0 million dividend for the quarter ended September 30, 2014 (composed of 3 monthly dividends at $0.0917 per share, including Distributed DRIP Shares) to FSC's hypothetical earnings assuming SLF JV 1 earned a 15.0%, 17.5% or even 20.0% return on its $158.5 million investment:[14]

[14] From the inception of the SLF JV 1 loan fund to the fiscal year ended September 30, 2014, FSC was able to grow the SLF JV I portfolio to only $158.5 million, which was only slightly higher than its initial investment of $156.5 million and well shy of its $300 million target. *E.g.*, FSC 2014 Form 10-K, at 58.

$ Thousands, for quarter ended September 30, 2014			
Hypothetical Rate of Return on SLF JV 1 Senior Secured Loan Portfolio	**15.0%**	**17.5%**	**20.0%**
SLF JV 1 Senior Secured Loan Portfolio	$ 158,451	$ 158,451	$ 158,451
SLF JV 1 Returns at Hypothetical Rate of Return, Prorated for 1 Quarter	$ 5,942	$ 6,932	$ 7,923
<u>Less:</u> SLF JV 1 Return, at 8.09% Rate of Return - As Reported, Prorated for 1 Quarter	$ (3,205)	$ (3,205)	$ (3,205)
Hypothetical Incremental SLF JV 1 Return	$ 2,737	$ 3,728	$ 4,718
<u>Plus:</u> Net Increase in Net Assets Resulting from Operations - As Reported	$ 28,439	$ 28,439	$ 28,439
Net Increase in Net Assets Resulting from Operations - With Hypothetical SLF JV 1 Return	**$ 31,176**	**$ 32,167**	**$ 33,157**
FSC Dividend, at $0.0917 per Share, including Distributed DRIP Shares - As Reported	**$ 42,000**	**$ 42,000**	**$ 42,000**
Surplus (Shortfall) to Dividend at $0.0917 per Share, including Distributed DRIP Shares, at Approximately $14 million per month	**$ (10,824)**	**$ (9,833)**	**$ (8,843)**
<u>Less:</u> Correction for Misstatement (Non-accrual Investment Income and Additional Unrealized Loss)	**$ (29,548)**	**$ (29,548)**	**$ (29,548)**
Surplus (Shortfall) to Dividend at $0.0917 per Share, Corrected for Misstatement	**$ (40,372)**	**$ (39,381)**	**$ (38,391)**

129. Thus, a rate of return of 15.0% on the SLF JV 1 portfolio in the quarter ended September 30, 2014, would have still left FSC short of making its dividend by at least $10.8 million. This is assuming FSC was able to devote the *entirety* of its earnings to dividends, which is clearly unreasonable and unsustainable. Once corrected for the $29.5 of misstatements identified and at issue in this complaint, the shortfall balloons to $40.4 million. . Similarly, neither a 17.5% nor a 20% return on FSC's investments in the SLF JV 1 portfolio—well above the "mid-teens" return claimed by Defendants—would have enabled FSC to sustain an increased dividend payment of $0.0917 per share. Paying out such a dividend under these circumstances

would be neither reasonable nor sustainable, and would be inconsistent with, and significantly greater than, FSC's historic dividend payout ratio.[15]

III. Materially False and Misleading Statements Issued During the Class Period

130. The Class Period begins on July 7, 2014. On that date, FSC issued a press release announcing an increase of its monthly dividends by 10% to $0.0917 per share for September through November 2014, which was also filed on Form 8-K.[16] It stated that the reason for the dividend increase was the "confidence" the Company had in its future revenue streams, including investment income from the newly launched SLF JV1 fund.

131. Defendant Tannenbaum commented on the release, stating in pertinent part as follows:

> At FSC, we are executing on strategic initiatives intended to drive future earnings growth, including the timely funding of an initial portfolio in SLF JV 1, a joint venture between FSC and a subsidiary of Kemper Corporation. **Continuing to fund additional investments in SLF JV 1 along with potentially completing and expanding other similar joint ventures have provided our Board of Directors with confidence in making its most recent dividend declaration. As a result, we are pleased to announce a 10% increase in our monthly dividend to an annualized run rate of $1.10per share beginning in September 2014….**

132. Also on July 7, 2014, an analyst at J.P. Morgan issued an investor "alert" discussing the dividend increase. The analyst report noted that dividend coverage was "key" for investors and that the increase indicated that FSC's "initiatives are working." The report stated in pertinent part as follows:

> Focus on dividend coverage is key....
>
> **Dividend increase is positive indicator that initiatives are working.** Given FSC's focus on dividend coverage and their diversified investment efforts to

[15] For reference, at September 30, 2014, FSC had a dividend payout ratio of just 49%, for a dividend of $14.0 million on earnings of $28.5 million.

[16] Defendants would later conduct the FSAM IPO during this time of higher dividend payments.

> boost NII, we view an increase in the dividend as an indication that those efforts are bearing fruit, although the details are limited at this time.

Several other analysts echoed this sentiment. For example, an analyst at UBS issued a report on July 7, 2014 entitled "10% Dividend Increase Reflects Successful Plan Execution, Portfolio Yield Inflection."

133. The statements above in ¶¶131-132 were materially false and misleading at the time they were made, and omitted material information required to be disclosed, because they failed to disclose the following adverse information that was known to defendants or recklessly disregarded by them:

(a) that FSC had artificially inflated the value of assets in its portfolio and its income from operations by failing to properly account for the non-performance of certain loans in its portfolio, including its investments in TransTrade, Phoenix, JTC and CCCG, as detailed herein; and

(b) that, as a result of (a) above, and as alleged in greater detail herein, FSC's net investment income, including the amount of such income that FSC projected from the newly launched SLF JV 1 loan fund, could not cover the 10% dividend increase and that the dividend increase was not sustainable and had no reasonable basis.

134. On July 10, 2014, FSC announced that it had commenced a public offering of 13,250,000 shares of its common stock (the "Secondary Offering"). FSC stated that the proceeds of the Secondary Offering would be used to repay debt outstanding so that the Company could borrow additional money to make more investments pursuant to its investment objective.

135. On July 11, 2014, FSC filed a prospectus supplement to a prospectus and registration statement declared effective on February 11, 2014 for the Secondary Offering (collectively, the "Secondary Offering Registration Statement"), which were signed by

defendants Tannenbaum, Frank, and Berman, among others. The Secondary Offering Registration Statement stated that FSC was "currently focusing our origination efforts on a prudent mix of first lien, second lien and subordinated loans which we believe will provide superior risk-adjusted returns while maintaining adequate credit protection." The Secondary Offering Registration Statement continued by stating that the Company's deal pipeline remained "robust" with "high quality transactions," and confirmed FSC's commitment to "remain[ing] cautious in selecting new investment opportunities" and "only deploy capital in deals which we believe are consistent with our disciplined philosophy of pursuing superior risk-adjusted returns."

136. The Secondary Offering Registration Statement also discussed FSC's "conservative" approach to structuring debt investments, "disciplined" underwriting processes, and other "strong protections" as key components of the Company's business strategy in meeting its investment objective, stating in pertinent part:

> Our investment adviser has developed an extensive network of relationships with private equity sponsors that invest in small and mid-sized companies. We believe that the strength of these relationships is due to a common investment philosophy, a consistent market focus, ***a rigorous approach to diligence*** and a reputation for delivering on commitments. . . .
>
> * * *
>
> ***Employ disciplined underwriting policies and rigorous portfolio management***. ***Our investment adviser has developed an extensive underwriting process which includes a review of the prospects, competitive position, financial performance and industry dynamics of each potential portfolio company. In addition, we perform substantial diligence on potential investments***….
>
> ***Structure our debt investments to minimize risk of loss and achieve attractive risk-adjusted returns. We structure our debt investments on a conservative basis*** with high cash yields, cash origination fees, low leverage levels and strong investment protections, including prepayment fees.... ***Our debt investments have strong protections***, including default penalties, information rights, board observation rights, and affirmative, negative and financial covenants, such as lien protection and prohibitions against change of control.

* * *

We believe that our investment adviser's expertise in valuing, structuring, negotiating and closing transactions provides us with a competitive advantage by allowing us to provide financing solutions that meet the needs of our portfolio companies while adhering to our underwriting standards.

* * *

We target debt investments that will yield meaningful current income and also provide the opportunity for capital appreciation through our ownership of equity securities in our portfolio companies. We typically structure our debt investments with the maximum seniority and collateral that we can reasonably obtain while seeking to achieve our total return target.

137. The statements above in ¶¶135-136 were materially false and misleading at the time they were made, and omitted material information required to be disclosed, because they failed to disclose the following adverse information that was known to defendants or recklessly disregarded by them:

(a) that FSC had artificially inflated the value of assets in its portfolio and its income from operations by failing to properly account for the non-performance of certain loans in its portfolio, including its investments in TransTrade, Phoenix, JTC, and CCCG as detailed herein;

(b) that, despite touting "disciplined underwriting policies and rigorous portfolio management" certain of the Company's investments, including at least one "Control Investment," underwritten by the Company had already failed to perform as expected; and,

(c) that, FSC was not structuring conservative debt investments subject to rigorous due diligence and strong creditor protections or "remain[ing] cautious in selecting new investment opportunities," but was in the process of rapidly expanding its investment portfolio through leverage into speculative, high-risk investments and delaying writing down impaired investments in order to increase FSC's investment income in the short-term so as to benefit the principals of FSAM;

138. Further, the Secondary Offering Registration Statement stated that FSC had instituted "strong corporate governance practices" designed to "manage and mitigate conflicts of interest," that FSAM would act "solely in the best interests" of FSC and in accordance with the IAA, and that FSC and FSAM had adopted codes of ethics to ensure compliance with the IAA as well as "implement[ing] written policies and procedures reasonably designed to prevent violation of the federal securities laws" that were reviewed annually "for their adequacy and effectiveness of their implementation." These statements were materially false and misleading at the time they were made, and omitted material information required to be disclosed, because they misrepresented or failed to disclose the following adverse information that was known to defendants or recklessly disregarded by them:

(a) FSAM was not investing or acting in FSC's "best interests" or in accord with its fiduciary duties to the Company, but in order to enrich its principals at the Company's expense contrary to FSC's stated investment objective for the reasons stated in (b)-(e);

(b) Defendants had artificially inflated the value of assets in FSC's portfolio and FSC's income from operations by failing to properly account for the non-performance of certain loans in its portfolio, including its investments in TransTrade, Phoenix, JTC, and CCCG as detailed herein;

(c) that certain of the Company's investments, including at least one "Control Investment," underwritten by the Company had already failed to perform as expected;

(d) that, as a result of (b)-(c) above, the Company had not covered its dividend payments for the June 2014 quarter;

(e) that FSC and its investment manager were not structuring conservative debt investments subject to rigorous due diligence and strong creditor protections, but were in the process of rapidly expanding FSC's investment portfolio through leverage into speculative, high-risk investments and delaying writing down impaired investments in order to increase FSC's investment income in the short-term so as to benefit the principals of FSAM; and,

(f) that, as a result of (b)-(e) above, FSC's net investment income could not cover the 10% dividend increase and that the dividend increase was not sustainable and had no reasonable basis.

139. In addition, the Secondary Offering Registration Statement discussed FSC's financial condition and results of operations, stating that FSC's net investment income had increased by over 26% (or $14.6 million) over the six-month period ended March 31, 2014 as compared to the same period in 2013, and estimated that FSC's NII would be between $0.24 and $0.26 per share for the quarter ended June 30, 2014 - which was consistent with the declared dividend for that quarter. The Secondary Offering Registration Statement also stated that FSC's total income had increased by more than 34% in the six months since September 30, 2013, to $143.4 million, while the fair value of the Company' s total investments had increased by over 41% during this time frame to $2.68 billion. In addition, the Secondary Offering Registration Statement stated that 99.5% of FSC's investments were performing at or above expectations, with no investments on non-accrual status as of March 31, 2014. The Secondary Offering Registration Statement also reaffirmed the Company's declared monthly dividend of $0.0917 for September through November 2014.

140. The statements above in ¶139 concerning FSC's financial condition and results of operations, were materially false and misleading at the time they were made, and omitted

material information required to be disclosed, because they failed to disclose the following adverse information that was known to defendants or recklessly disregarded by them:

(a) that Defendants artificially inflated the value of assets in FSC's portfolio and FSC's income from operations by failing to properly account for the non-performance of certain loans in FSC's portfolio, including its investments in TransTrade, Phoenix, JTC, and CCCG as detailed herein;

(b) that certain of the Company's investments, including at least one "Control Investment," underwritten by the Company had already failed to perform as expected;

(c) that, although claiming to have covered its dividend payments for the June 2014 quarter, as a result of (a)-(b) above, the Company had not covered its dividend payments for the June 2014 quarter; and,

(d) that, Defendants were in the process of rapidly expanding FSC's investment portfolio through leverage into speculative, high-risk investments and delaying writing down impaired investments in order to increase FSC's investment income in the short-term so as to benefit the principals of FSAM.

141. In addition, the Secondary Offering Registration Statement misleadingly presented the following contingencies as investment "risks" when in fact such risks—*e.g.*, Defendants' material overstatement of fair value and FSC's investment advisor making speculative, risky investments to increase incentive compensation in the lead up to its IPO—had already come to fruition as part of a deliberate scheme to artificially inflate the value of FSC's assets and its income from operations, as described in further detail herein.

- "[O]ur fair value determinations may cause our net asset value on a given date to materially understate or overstate the value that we may ultimately realize upon the sale of one or more of our investments. As a result, investors purchasing our common stock based on an overstated net asset value would pay a higher price than the realizable value of our investments might warrant."

- "The incentive fee payable by us to our investment adviser may create an incentive for it to make investments on our behalf that are risky or more speculative than would be the case in the absence of such compensation arrangement, which could result in higher investment losses, particularly during cyclical economic downturns."

- "The incentive fee payable by us to our investment adviser also may create an incentive for our investment adviser to invest on our behalf in instruments that have a deferred interest feature."

- "Given the subjective nature of the investment decisions made by our investment adviser on our behalf, we will be unable to monitor these potential conflicts of interest between us and our investment adviser."

142. Indeed, instead of disclosing the truth, the Secondary Offering Registration Statement misleadingly maintained that FSC's investment advisor, FSAM, was investing "solely in the best interest of" FSC in accordance with the IAA and committed to prudent risk management and robust "disciplined underwriting practices" designed to increase FSC's investment income over the long-term and "minimize risk of" investment losses.

143. Furthermore, Item 303 of SEC Regulation 62. S-K, 17 C.F.R. §229.303 ("Item 303"), required the Secondary Offering Registration Statement to describe "any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations." 17 C.F.R. §229.303(a)(3)(ii). The regulation also required the Secondary Offering Registration Statement to disclose events that the registrant knew would "cause a material change in the relationship between costs and revenues" and "any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from

continuing operations and, in each case, indicate the extent to which income was so affected." 17 C.F.R. §299.303(a)(3)(i), (ii).

144. Defendants violated Item 303 by failing to disclose in the Secondary Offering Registration Statement that TransTrade, Phoenix, JTC and CCCG were non-performing loans as of the date of the Secondary Offering, as the underperformance of these loans were events and uncertainties that would (and did) have a materially adverse impact on FSC's revenues and income from operations.

145. On August 7, 2014, FSC issued a press release announcing its third fiscal quarter ended June 30, 2014 financial results. The release stated that the Company's portfolio had increased to 125 investments, 99.8% of which the Company stated were performing at or above expectations and only a single investment (valued at $6.2 million) had been placed on non-accrual. The release further stated that the fair value of FSC's investment portfolio was $2.6 billion, generating $74.3 million in investment income during the quarter. The release also stated that FSC's net investment income was $34.7 million, sufficient to cover the quarterly dividend. The earnings results were also filed on Form 10-Q that same day, and signed by defendants Tannenbaum and Petrocelli. In addition, defendants Tannenbaum and Petrocelli certified that the Form 10-Q was true and accurate in all material respects and that the Company had effective internal controls over financial reporting.

146. The statements above in ¶145 concerning FSC's financial condition and results of operations were materially false and misleading at the time they were made, and omitted material information required to be disclosed, because they failed to disclose the following adverse information that was known to defendants or recklessly disregarded by them:

(a) that the Company had artificially inflated the fair value of its investments, including tens of millions of dollars of its investments that were at risk of default or had already failed to meet their obligations under their loan terms, including the Company's relevant investments as of June 30, 2014 in Phoenix (valued at \$28.9 million at quarter end), TransTrade (valued at \$11.3 million at quarter end), JTC (valued at \$14.5 million at quarter end), and CCCG (valued at \$33.2 million at quarter end) in violation of GAAP;

(b) that, as a result of (a), the Company had understated the number of loans performing below expectations and/or were in non-accrual;

(c) that the Company had overstated its net investment income for the quarter by as much as \$3.1 million, and thus had not covered its dividend payments for the quarter as stated;

(d) that, as a result of (a)-(c) above, FSC's net investment income could not cover the 10% dividend increase and that the dividend increase had no reasonable basis; and

(e) that Defendants were in the process of rapidly expanding FSC's investment portfolio through leverage into speculative, high-risk investments and delaying writing down impaired investments.

147. Also on August 7, 2014, FSC held a conference call with analysts and investors to discuss FSC's fiscal results for third quarter 2014 in which defendants Tannenbaum and Petrocelli participated. On the call, defendant Tannenbaum expressed "confidence" that FSC would generate investment income sufficient to cover the increased dividend going forward, stating in pertinent part as follows:

> ***We are pleased to report June quarterly results of \$0.25 per share of net investment income, which covered the dividends for the June quarter of \$0.25 per share. This is the third quarter in a row where our net investment income per share has met our dividend***.

* * *

In early July, our Board of Directors declared a 10% increase in our monthly dividend from 8.33 cents to 9.17 cents per share, beginning in September 2014. The new dividend represents $1.10 annualized run rate and over an 11 % yield on the current stock price.

The Board's confidence and our improved earnings power is primarily due to funding investment in Senior Loan Fund Joint Venture 1, or SLFJV1, which should lead to growth in investment income.

* * *

We are confident in the outlook for potential future earnings growth later in the calendar year, based on solid performance in our primarily senior secured portfolio.

Many of these initiatives would not be possible without the significant investment we have made in the overall Fifth Street platform and the size of Fifth Street Finance Corp's balance sheet***. Future success in these areas should further differentiate us from our peers.***

148. On the call, one analyst questioned whether FSC's recently announced dividend increase was sustainable, particularly in light of the one-off repayments that occurred during the June quarter and the increase in shares as a result of the Secondary Offering. In response defendant Tannenbaum reiterated that the Company had "visibility" into repayments and the dividend increase was in-line with FSC's future expected earnings. The following exchange took place:

[Q (Analyst):] So can you walk us through the logic of taking up the dividend, given you knew you had a big repayment, and the SLF investment alone isn't enough to cover the incremental dividend of the shares raised?

[A (Tannenbaum):] I think there's a lot of confusion in the statement you just made. And to go through it now is a very long time. So we're happy to go through it, however, the reason we did an equity raise is pretty simple.

We entered the quarter slightly above the high end of our target range, which I really don't remember being in. The reason we were so highly levered is because we knew Desert NDT would repay. When Desert NDT repaid, which happened very quickly after the end of the quarter, because we were noticed by these private equity firms. Our private equity firms are our partners. 95% of our deals come from private equity. ***So we have some good visibility into repayments and when we expect repayments***.

When the leverage drops back into the target range, very soon after the quarter, they're still in the target range. So it's still levered all the way through. The equity raise did not, as opposed to past equity raises which took us substantially below the bottom end of the target range, this took us slightly below the bottom end of the target range, and it is necessary going into the final quarter of the year.

As I've said repeatedly, our busiest quarter is calendar fourth quarter. And we are a 95% private equity sponsor business. We will have money for our private equity sponsors when they need it in regards to the busiest quarter of the year.

And fortunately, since we accomplished the equity raise, and are able to fund the SLF, and we believe we can expand it, we have capacity to satisfy our sponsor relationships through this year.

149. The statements above in ¶¶147-148 relating to the sustainability of the dividend increase and extent to which the increase was partly attributable to the anticipated performance of FSC's initial investment in the SLF JV 1 loan fund were materially false and misleading at the time they were made, and omitted material information required to be disclosed, because they failed to disclose the following adverse information that was known to defendants or recklessly disregarded by them:

(a) that the Company had artificially inflated the fair value of its investments, including tens of millions of dollars of its investments that were at risk of default or had already failed to meet their obligations under their loan terms, including the Company's relevant investments as of June 30, 2014 in Phoenix (valued at $28.9 million at quarter end), TransTrade (valued at $11.3 million at quarter end), JTC (valued at $14.5 million at quarter end), and CCCG (valued at $33.2 million at quarter end) in violation of GAAP;

(b) that, as a result of (a), the Company had understated the number of loans performing below expectations and/or were in non-accrual;

(c) that the Company had overstated its net investment income for the quarter by as much $3.1 million, and thus had not covered its dividend payments for the quarter as stated; and

(d) that, as a result of (a)-(c) above, FSC's net investment income could not cover the 10% dividend increase and that the dividend increase had no reasonable basis.

150. Additionally, Tannenbaum's statements alleged in ¶¶147-148 concerning FSC's financial condition and results of operations were materially false and misleading for the same reasons alleged above, including in ¶146.

151. During the conference call, defendant Petrocelli represented that FSC had maintained a "high quality" investment portfolio that was relatively "conservative" as compared to its peers, stating in pertinent part as follows:

> Through our relationships with select private equity sponsors, ***we have been able to source, underwrite, and structure a diverse portfolio of high-quality, primarily senior secured loans with a low amount of PIK income***.
>
> . . . We believe both the right and left side of our balance sheet are well positioned to weather potential volatility in the capital markets.
>
> * * *
>
> **The credit quality of the portfolio remains strong**, with the exception of one security previously categorized as an investment ranking 3, which accounted for approximately two thirds of the overall portfolio net unrealized loss of $13.7 million. This investment has a remaining fair value of approximately $6.2 million, or just 0.2% of the total portfolio.
>
> * * *
>
> ***The credit profile of the investment portfolio continues to be strong at 99.8% of the portfolio***. At fair value, it was ranked in the highest 1 and 2 categories.

152. The statements above in ¶151 concerning FSC's "high quality" relatively "conservative" investment portfolio were materially false and misleading at the time they were made, and omitted material information required to be disclosed, because they failed to disclose

the following adverse information that was known to defendants or recklessly disregarded by them:

(a) that the Company had artificially inflated the fair value of its investments, including tens of millions of dollars of its investments that were at risk of default or had already failed to meet their obligations under their loan terms, including the Company's relevant investments as of June 30, 2014 in Phoenix (valued at $28.9 million at quarter end), TransTrade (valued at $11.3 million at quarter end), JTC (valued at $14.5 million at quarter end), and CCCG (valued at $33.2 million at quarter end) in violation of GAAP;

(b) that, as a result of (a), and despite claiming that the "credit quality of the portfolio remains strong," the Company had understated the number of loans performing below expectations and/or were in non-accrual; and

(c) that FSC was not structuring conservative debt investments subject to rigorous due diligence and strong creditor protections, but was in the process of rapidly expanding its investment portfolio through leverage into speculative, high-risk investments and delaying writing down impaired investments.

153. On October 8, 2014, FSC issued a press release providing an update regarding FSC's investment in the SLF JV loan fund, which quoted Tannenbaum as stating : "Growing SLF JV I and other similar joint ventures should be a key component in driving future earnings growth. I am pleased that FSC is generating a mid-teens return on its investment in SLF JV I." On November 26, 2014, FSC issued a press release entitled "***[FSC] Declares Consistent Monthly Dividend of 9.17 Cents Per Share.***" The press release stated that the board had approved additional monthly dividends at the higher $0.0917 per share amount through January 2015, and that "[t]he dividend represents an annualized run rate of $1.10 per share."

154. The above statements in ¶153 concerning the performance of FSC's investment in SLF JV and declaring a "consistent" dividend were materially misleading at the time they were made, and omitted material information required to be disclosed, because they both implied and provided the impression that FSC was in a position to earn sufficient income such that there had been no change in its ability to make dividend payments "consistent" with its most recently declared dividend policy. As such, these statements failed to disclose the following adverse information that was known to defendants or recklessly disregarded by them:

(a) that FSC had artificially inflated the value of assets in its portfolio and its income from operations by failing to properly account for the non-performance of certain loans in its portfolio, including its investments in TransTrade, Phoenix, JTC and CCCG, as detailed herein; and

(b) that, as a result of (a) above, and as alleged in greater detail herein, FSC's net investment income, including "mid-teens return" FSC projected from the SLF JV 1 loan fund, could not cover the "consistent" dividend it declared, and the dividend was not sustainable and had no reasonable basis.

155. On December 1, 2014, FSC issued a press release announcing its fourth fiscal quarter and year ended September 30, 2014 financial results, which was also filed on Form 8-K. The release stated that the Company's portfolio had 124 investments at quarter end, 99.7% of which the Company stated were performing at or above expectations while only a single investment had been placed on non-accrual, which indicated the Company had not experienced any deterioration in its portfolio since the end of the prior quarter. The release further stated that the fair value of FSC's investment portfolio was $2.4 billion at quarter end, generating $76.2 million in investment income during the quarter. In addition, the release stated that FSC's

quarterly net investment income was $37.5 million, which was an increase from the prior quarter but slightly (less than $0.01 per share) below the quarter's declared dividends.

156. That same day, FSC filed its financial results for the quarter and year ended September 30, 2014 on Form 10-K, which was signed by defendants Tannenbaum, Petrocelli, Berman and Owens, among others. In addition, defendants Tannenbaum and Petrocelli certified that the 2014 Form 10-K was true and accurate in all material respects and that the Company had effective internal controls over financial reporting.

157. The 2014 Form 10-K also contained statements about FSC's investment objective, "conservative" investment practices with "strong protections" and a "rigorous" and "disciplined" underwriting approach designed to minimize investment losses, as well as FSAM's commitment to working in FSC's "best interests," satisfying its fiduciary obligations under the IAA and mitigating conflicts of interests that were identical, or substantially the same as, similar statements made in the Secondary Offering Registration Statement as detailed above.

158. Also on December 1, 2014, FSC hosted a conference call with analysts and investors to discuss the Company's financial results for fiscal 2014 in which defendants Tannenbaum, Owens, Petrocelli and Dimitrov participated. During the call, defendant Owens, the Company's newly announced Co-President, stated that FSC would continue to improve its net investment income as the "underlying business trends and credit quality of the portfolio remained strong," and the Company expected "continued success" of several business initiatives accretive to earnings:

> Through our direct originations efforts and disciplined investing process we have constructed a diversified portfolio with varied and long-term sources of financing. Investments in our portfolio are spread across 40 industries and we have minimal exposure to the energy sector. ***The underlying business trends and credit quality of the portfolio remained strong during the quarter with only one investment continuing on non-accrual.***

159. During the conference call, defendant Petrocelli, stated the Company was "conservatively positioned relative to [its] peers" with high quality earnings and highlighted the Company's recent dividend increase:

> Net PIK, PIK accruals recorded in excess of PIK payments received which is a key indicator of earnings quality, was low at $5.2 million for the quarter, or 6.9% of total investment income . . . .
>
> . . . ***The credit profile of the investment portfolio continues to be strong as 99.7% of the portfolio at fair value was ranked in the highest one and two categories.***

160. The statements above in ¶¶157-159 concerning FSC's financial condition and results of operations, "strong" portfolio quality, and "rigorous" and "disciplined" underwriting practices were materially false and misleading at the time they were made, and omitted material information required to be disclosed, because they failed to disclose the following adverse information that was known to defendants or recklessly disregarded by them:

(a) that the Company had artificially inflated the fair value of its investments, including tens of millions of dollars of its investments that were at risk of default or had already failed to meet their obligations under their loan terms, including the Company's relevant investments as of September 30, 2014 in Phoenix (valued at $30.2 million at quarter end), TransTrade (valued at $11.1 million at quarter end), JTC (valued at $14.4 million at quarter end), and CCCG (valued at $30.3 million at quarter end;

(b) that, as a result of (a), the Company had understated the number of loans performing below expectations and/or in non-accrual;

(c) that the Company had overstated its net investment income for the quarter by as much as $3.1 million, and thus had failed to cover its dividend payments by more than the approximately $0.01 shortfall represented to investors;

(d) that, as a result of (a)-(c) above, FSC's net investment income could not cover the 10% dividend increase and that the dividend increase had no reasonable basis;

(e) that FSC was not structuring conservative debt investments subject to rigorous due diligence and strong creditor protections, but was in the process of rapidly expanding its investment portfolio through leverage into speculative, high-risk investments and delaying writing down impaired investments; and

(f) that, as a result of (a)-(e) above, FSAM was not investing in FSC's "best interests" or in accord with its fiduciary duties to the Company, but in order to enrich its principals at the Company's expense contrary to FSC's stated investment objective.

IV. The Truth Emerges

161. On February 9, 2015, before the market opened, FSC issued a press release announcing its first fiscal quarter ended December 31, 2014 financial results, which were also filed on Form 10-Q.

162. FSC revealed that it had recorded a staggering $62 million depreciation on its debt and equity investments during the quarter, while its quarterly net realized losses exceed $17.6 million. The Company also revealed that four investments—TransTrade, Phoenix, JTC, and CCCG—had all been placed on non-accrual status during the quarter and that a fifth would likely be placed on non-accrual the subsequent quarter. FSC revealed that the four investments added to non-accrual status comprised 2.3% of FSC's total portfolio at fair value as of December 31, 2014, and the total expected decline in interest income associated with these investments was $12.7 million. The four investments added to non-accrual status, plus the additional loan that would likely be placed on non-accrual in the next quarter, totaled $122.8 million at cost, ***or nearly 5% of the Company's entire debt portfolio***. As a further indication of the rapid deterioration in the quality of the Company's portfolio, FSC stated that its total assets had

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increased to $2.9 billion at quarter end, which represented a more than 20% increase compared to the total assets at the end of the corresponding quarter the prior fiscal year, yet its net investment income had actually ***decreased*** by 3% compared to that quarter. At only $0.23 in net investment income per share, FSC fell woefully short of covering its $0.28 per share quarterly dividend and was forced to record an EPS ***loss*** of $0.20. Symptomatic of FSC's bleak prospects, FSC stated that it would pay ***no dividend at all*** for February 2015, and would slash future dividends by 30% in subsequent months as part of a more "conservative" dividend policy.

163. Analysts reacted with surprise and confusion. One analyst questioned FSC's ability to originate new investment going forward and expressed "surprise[]" to see all of FSC's "unrealized and realized losses, both in magnitude and number of investments." Another analyst stated that it "does not make sense" to have "a fee structure that allows the manager to be paid more annually despite net share declines and dividend declines" to shareholders. Yet another analyst asked for help in understanding "what has changed in the financial planning or in the environment over the last six months to now decrease the dividend" given that ***FSC had just "increased the core dividend in August."***

164. Another analyst questioned how FSC could present its first lien investments as safe and conservative, when they had resulted in two non-accruals during the quarter:

> Just going back to the non-accruals and the whole - the story of obviously first lien, more security in the portfolio. When I look at the four non-accruals, two of them obviously first lien with substantial markdowns. Obviously defaults happen, problems happen, but the two first lien non-accruals now appear to be marked at about 50% of cost.
>
> So can you walk us through, again, what the argument is as to why first lien is going to preserve capital better than some of your other investments, **when it looks like the marks here indicate first lien's, frankly, not much better than any of the other credit risks in your portfolio when it comes to a problem occurring and what the possible recovery is going to be.**

165. On this news, the price of FSC common stock dropped $ 1.27 per share on February 9, 2015 to close at $7.22 per share, a decline of nearly 15% on volume of 10.9 million shares. Analysts slashed price targets and several downgraded the stock following the announcement. An analyst at Gilford Securities published a report on February 12, 2015 which illustrates market sentiment on the news:

> Not only was there a significant miss in terms of NII per share, but there was also another dividend cut, six months after a suspicious dividend increase. **FSC Management has forfeited virtually all credibility and it will take, in our opinion, at least a year of improved operating results to regain any semblance of credibility.**

166. A later analyst report by Wells Fargo noted that the write-downs and credit quality issues at FSC had occurred during a "benign credit environment," which indicated "poor underwriting" specific to FSC across its portfolio and "more than an idiosyncratic credit issue and point to potentially more losses down the road."

167. On February 23, 2015, Fitch Ratings Inc., one of the nation's major ratings agencies, issued a press release announcing that it was downgrading FSC to BB+ from BBB- on a negative outlook. The release stated in pertinent part:

> The rating downgrade reflects FSC's higher leverage levels, combined with increased portfolio risk, an inconsistent dividend policy, material portfolio growth in a very competitive underwriting environment, asset quality deterioration, and weaker operating performance.
>
> ***
>
> ***The inconsistent dividend policy speaks to poor financial planning and has likely cost the firm some credibility with equity investors; an important source of growth capital.***
>
> FSC's investment portfolio grew 49.6% in 2013, followed by 17.9% additional expansion in 2014. Fitch remains cautious of outsized portfolio growth in the current credit environment.
>
> ***While Fitch believes industrywide credit metrics are at unsustainable levels longer term, FSC did stand-out in the fourth quarter of 2014; moving four***

investments to non-accrual status, with one more expected in the first quarter of 2015.

168. On February 25, 2015, *The Motley Fool* published an article entitled "Fifth Street Finance Corp. Gets Slapped With a Downgrade From Fitch," which discussed the recent downgrade by Fitch, as well as FSC's "huge credibility problem[s]." The article stated in part:

> On credibility with investors
>
> Fifth Street's inconsistent dividend policy is costing it valuable reputational capital. Dividends were cut to start 2014, only to be raised in the summer of 2014, despite an inability to cover the new rate with earnings. ***Of course, the dividend increase in July 2014 proved to be pie in the sky, so the dividend was lowered when it reported earnings for the fourth calendar quarter.***
>
> ***
>
> ***Suffice it to say, Fifth Street hasn't been a very good steward of shareholder confidence.***
>
> ***
>
> ***Unlike the ratings agencies, I don't have to avoid offending anyone with careful language. Here's what Fitch really means: It's hard to believe that Fifth Street Finance shares will trade back to net asset value, which would allow it to grow, given its poor treatment of shareholders in recent history.***

169. On February 27, 2015, *BuySellSignals* published an analyst report stating that FSC had fallen 11% for the month of February, while peer companies had increased by nearly 3% during this time frame. The report stated that FSC had "the biggest decline in the Finance/Investment funds/management sector" for the month.

170. On April 16, 2015, *BloombergBusiness* published an article detailing defendant Tannenbaum's use of his Fifth Street enterprise to generate millions of dollars for himself entitled "Tannenbaum's Fifth Street Funds Yield 10% by Lending Alongside Private Equity." The article described how defendant Tannenbaum had set up FSC as a "mousetrap" designed "'to make money'" for himself. As noted above, the article also described how defendant

Tannenbaum had achieved that goal with deception, purposefully using complexity to obscure the true value of FSC's investment portfolio from investors and the market. As the decline in FSC's investment income and loan underperformance has been revealed to the market, the price of FSAM shares has suffered in kind. FSAM has also been forced to waive certain of FSC's advisory fees in light of the Company's plight.

171. On August 27, 2015, the price of FSAM shares closed at $8.24 per share, more than 50% below the FSAM IPO price of $17 per share. If defendants had conducted the FSAM IPO at this share price, after the truth had been revealed to the market, they would have only received $49.4 million in gross proceeds, more than $50 million less than they actually received by concealing the adverse facts alleged herein.

V. Additional Scienter Allegations

172. As alleged herein, the Defendants acted with scienter in that they knew, or recklessly disregarded, that the public documents and statements they issued or disseminated in the name of the Company or in their own name during the Class Period were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws.

173. Defendants, by virtue of their participation in, and/or receipt of information reflecting the truth regarding the accounting manipulations and other misconduct described above, their control over, and/or receipt and/or modification of FSC's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning FCS, FSAM and other Fifth Street entities, were active and culpable participants in the fraudulent scheme alleged herein.

A. ***Defendants' Motive and Opportunity Supports an Inference of Scienter***

174. Defendants' scienter is further evidenced by their opportunity and motive to engage in fraud.

175. The Defendants had the opportunity to engage in the fraudulent scheme alleged herein given their positions at and control over FSC, FSAM, and their respective affiliates and subsidiaries, as alleged above. For example, Tannenbaum, Berman, Owens, Frank and Dimitrov held senior level positions at, and controlled, FSC's investment advisor and FSAM, which FSC relied on to manage its day-to-day business and in connection with the valuation process. Tannenbaum. Berman, Owens, and Dimitrov also served as members of FSC's Board of Directors, providing them with ultimate responsibility for determining the value of FSC's investment portfolio. Petrocelli also clearly had an opportunity to commit fraud, given that, during the Class Period, he served as FSC's CFO and, in that capacity, made statements on behalf of FSC implicating, among other things, the valuation and credit quality of FSC's investments.

176. Further, FSC's failure to "maintain effective internal control over financial reporting as of September 30, 2015", disclosed on December 1, 2015, provided Defendants' with the opportunity to commit fraud.

177. Each of these defendants were motivated to participate in and conceal the misconduct alleged herein in order to enrich themselves through the FSAM IPO. Given that FSAM's future expected cash flows are tied directly to the long-term viability of FSC and its business, defendants sought to maintain the illusion of sustainable performance in FSC's investment portfolio until after they could cash out in the FSAM IPO.As alleged above, Defendants actively concealed the deteriorating credit quality of FSC's portfolio and delayed the recognition of write-downs and investment losses until after the FSAM IPO had been completed.

Defendants also systematically overstated the income generated by FSC's investments and the fair value of its portfolio, while simultaneously providing investors and the market with false and misleading portrayals of FSC's business trends and expected performance. Doing so allowed FSAM to increase the amount of fees that FSC owed it, inflating the value of FSAM's stock at its IPO, given the management and incentive fee arrangements between FSAM and FSC, as alleged above. FSAM stock was offered to the public at a significantly inflated value. As a result, Tannenbaum and certain of the other Individual Defendants, including Berman, Frank, and Dimitrov, stood to reap nearly $100 million as a result of the FSAM IPO. The following chart shows the amount of proceeds from the FSAM IPO that were allocated to certain defendants:

Defendant	**Proceeds**
Tannenbaum	$87,580,029
Berman	$5,808,953
Dimitrov	$1,163,024
Frank	$ 228,674

178. "The timing was impeccable; just imagine if [the] non-accrual[s] [and write-downs disclosed on February 5, 2015] had appeared when [FSC's] execs were on a road show to pitch shares of the [FSAM] asset management business!" Wathen, *supra.*

179. Raising equity through the Secondary Offering, alleged above, also motivated Defendants to engage in and conceal the misconduct alleged herein. FSC intended to use the nearly $130 million in proceeds from the offering to "to repay debt outstanding under one or more of our credit facilities." The Secondary Offering Prospectus added that "through reborrowing under our credit facilities, we intend to make investments in small and mid-sized companies." In other words, FSC effectively intended to use the proceeds from this offering to make additional investments, which would then increase the amount of compensation owed to

FSAM. Without engaging in and concealing the fraud alleged herein, Defendants offering would not have succeeded in generating sufficient proceeds.

B. <u>GAAP Violations Support an Inference of Scienter</u>

180. Defendants' material violations of numerous GAAP provisions (alleged above), further support an inference of scienter.

181. As alleged above, application of the GAAP provisions relevant to the valuation of FSC's investment portfolio required close scrutiny in light of risk of fraud or misstatement. However, Defendants ignored substantial and incontestable evidence of credit deterioration requiring that, by at least the fiscal year ended September 30, 2014, they write-down the value of, and move to non-accrual status, FSC's investments in at least four portfolio companies, as demonstrated in detail above.

182. Further contributing to the inference of scienter is the fact that Defendants' GAAP violations allowed FSC to report an increase in net assets in the quarter ended September 30, 2014 rather than a decrease. As alleged above, if FSC had properly accounted for the gains and losses associated with its investments in JTC, TransTrade, Phoenix, and CCCG, FSC would have reported a decrease in net assets in the quarter ended September 30, 2014 rather than the increase in net assets it actually reported—a stark reversal in the reported trend of FSC's earnings indicative of fraudulent intent.

C. <u>The Small Size of FSC and its Investment Manager, and the fact that the Mistatements Concern the Core Operations of FSC and FSAM, Supports an Inference of Scienter</u>

183. As FSC disclosed in its annual reports filed during the Class Period, "[it does] not have any employees." *E.g.*, FSC 2015 Form 10-K, filed Dec. 1, 2015. Its "day-to-day investment operations are managed by Fifth Street Management as our investment adviser." *Id.* "Fifth Street Management utilizes over 35 investment professionals, including its principals." *Id.* In

other words, FSC and FSAM were small companies with only a handful of high-ranking—and overlapping—members of management.

184. As alleged above, FSAM and the Individual Defendants oversaw and ran the Company's day-to-day operations, including monitoring its investments during the Class Period. They were admittedly hands-on managers who were responsible for, and remained well informed of, integral business issues, including the determining the value of FSC's investment portfolio. For example, FSC's 2014 Proxy said that Dimitrov brought his valuation experience to FSC. Additionally, the defendants who served as FSC's board members during the Class Period bore ultimate responsibility for valuing FSC's investments, and executives of FSC and Fifth Street Management provided substantial assistance during this process. Consequently, their experience and responsibilities necessarily informed them that the aforementioned statements made during the Class Period were materially false and misleading.

185. Accurately valuing its assets and ensuring they are high quality in order to attract investors, both directly and as means of increasing dividends for that purpose, was of primary importance to FSC.

186. With respect to FSAM , FSC provided about 90% of FSAM's assets under management, and, its revenues depended in large part on the valuation of those assets, as alleged above.

187. In light of the acknowledged importance of the valuation and credit quality of FSC's portfolio to the business strategies and operations of FSC and FSAM, and errors in valuing investments in FSC's portfolio and credit deterioration of FSC's portfolio, alleged above, the Defendants can be presumed to have knowledge of adverse facts affecting the valuation and credit quality of FSC's portfolio. Likewise, Defendants' steady repetition of specific statements

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to investors concerning the valuation and credit quality of its investment portfolio, all of which would have required them to be knowledgeable as to the facts that rendered those statements false, further supports their knowledge of these adverse facts.

D. *The Proximity in Time Between the Misstatements and the Revelation of the Truth Supports an Inference of Scienter*

188. Defendants' scienter is also apparent from the close temporal proximity between their misstatements and the revelation of the truth. More specifically, an inference of scienter is supported by the relatively short period of time between the alleged misstatements and the February 9, 2015 disclosure of information that, for the reasons alleged above, was inconsistent with those statements. Such a quick change in circumstances indicates that the information underlying the change was deliberately or recklessly disregarded by Defendants.

189. For example, on December 1, 2014, which was already two months into FSC's first fiscal quarter of 2015, Petrocelli and Owens touted the continued "strong" credit quality of the portfolio. Owens also added that the Company had only one investment—not JTC, CCCG, Phoenix, or TransTrade— "continuing on non-accrual." Petrocelli similarly touted that "99.7% of the portfolio at fair value was ranked in the highest one and two categories." However, shortly thereafter, on February 9, 2015, FSC disclosed that its investments in JTC, CCCG, Phoenix, and TransTrade were changed to non-accrual status and had their fair values and asset quality rankings slashed from what Defendants publicly disclosed only a short time earlier.

190. Another example relates to Defendants' Class Period statements touting FSC's dividend increase and the fact that FSC's newly launched loan fund would help it meet its increased dividend, which are detailed above. Again on February 9, 2015, within only a couple of months of declaring the dividend increase and declaring its dividend would be consistent for November and December (among other things), FSC disclosed that it would reduce its dividend

going forward and would not pay a February dividend because FSC's net investment income did not cover the dividend the last two quarters. Analysts were shocked and immediately questioned the credibility of FSC and its management—i.e., FSAM and the Individual Defendants. For instance, as one analyst wrote after FSC's February 9, 2015 disclosures, "[n]ot only was there a significant miss in terms of NII per share, but there was also another dividend cut, six months after a suspicious dividend increase. FSC Management has forfeited virtually all credibility and it will take, in our opinion, at least a year of improved operating results to regain any semblance of credibility." In the words of another analyst "management was fairly muted regarding opportunities to grow earnings, the same opportunities the company had cited for declaring a raised dividend in July 2014 prior to an equity issuance and the IPO of FSC's external manager."

LOSS CAUSATION

191. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic losses suffered by Plaintiffs and members of the Class. During the Class Period, Plaintiffs and Class members purchased FSC common stock at artificially inflated prices caused by Defendants' misconduct, as alleged herein. When defendants' prior misrepresentations and fraudulent conduct became apparent to the market, the price of FSC common stock fell precipitously, as the prior artificial inflation came out of the price over time. The price of the Company's common stock declined significantly when the material risks concealed by Defendants materialized and Defendants' material misrepresentations and omissions were revealed to the market, causing investors' losses.

192. Before the end of the Class Period, on February 6, 2015, investors had been unaware of the material facts about FSC that had been known to Defendants and are alleged in detail above.

193. Defendants' misrepresentations and omissions and fraudulent scheme, as alleged

above, misrepresented and concealed the adverse material facts from the market during the Class Period, leading investors to wrongly believe, among other things, that: (1) FSC had disclosed accurate fair values of its investments and properly declined to move its investments in JTC, TransTrade, Phoenix, and CCCG to non-accrual status; (2) FSC's increased dividend was sustainable; (3) FSC had met its dividend for the quarters ended June 30, 2014 and September 30, 2014; (4) the credit quality of FSC's porfolio was "strong"; (5) Defendants employed robust underwriting procedures; and (6) FSAM was investing in FSC's best interest in accordance with its duties under the IAA.

194. As alleged above, these material facts were fully revealed to investors for the first time on February 9, 2015 before the market opened. On that day, FSC revealed that it had recorded a staggering $62 million depreciation on its debt and equity investments during the quarter, while its quarterly net realized losses exceed $17.6 million. The Company also revealed that four investments—TransTrade, Phoenix, JTC, and CCCG—had all been placed on non-accrual status during the quarter and that a fifth would likely be placed on non-accrual the subsequent quarter. For example, Dimitrov disclosed during the February 9, 2015 earnings call:

> During our most recent portfolio review process, we moved five investments to a category 3 rating, which is characterized by investment performance below our expectations and a material increase in risk. The fair value write-down for these investments totaled $38.2 million or $0.25 per share. As of December 31st, 2014, four out of these five investments were placed on non-accrual status including one of our three exposures to the energy sector, expressed in the rate of technologies, also known as CCCG.
>
> The four investments that are on non-accrual comprise 2.3% of our total portfolio at fair value as of December 31st, 2014. The total expected decline in interest income associated with these non-performing credits is $12.7 million, which includes a reduction in cash interest income of $5.3 million, and PIK income of $7.5 million.

***

When we went through the portfolio review, the Board decided that we need to adjust the fair value on those companies.

195. Also disclosed was the fact that FSC fell woefully short of covering its $0.28 per share quarterly dividend, was forced to record an EPS ***loss*** of $0.20, and would pay ***no dividend at all*** for February 2015. As Owens disclosed during the earnings call:

> [W]e have already taken an important first step by reducing our dividend to a level that reflects both the current operating environment and a more conservative dividend policy.
>
> ***
>
> [T]he Board of Directors has announced a dividend reduction to $0.72 per share annually. This translates into declared monthly dividends of $0.06 per share, or quarterly dividends of $0.18 per share. To reflect confidence in the new dividend level, our Board of Directors has declared dividends for the next six months beginning in March through August 2015. We have elected not to pay a February dividend because our net investment income did not cover our dividend the last two quarters.

196. When this new information came to light, the market was caught entirely by surprise, and certain analysts noted the gap between the market's perception and the concealed reality. For instance, as set alleged above, analysts expressed surprise over the sudden, massive true value write-downs and movement of four loans to non-accrual status.

197. Defendants' disclosure of, among other things, the sudden, massive true value write-downs and movement of four loans in FSC's portfolio to non-accrual status revealed the truth as to among things, the actual quality of FSC's investments and its financial condition, and its lack of credibility as to its previous statements on those matters. In addition, it also revealed the materialization of certain previously concealed risks of the aforementioned material facts, such as the significant deterioration of the Company's underwriting standards and FSM's breach of the fiduciary obligations to FSC. The market reacted swiftly and negatively to these

disclosures. The price of FSC common stock plummeted $1.27 per share on February 9, 2015 to close at $7.22 per share, a decline of nearly 15% on volume of 10.9 million shares. Analysts slashed price targets and several downgraded the stock following the announcement.

198. As a result of their purchases of FSC common stock during the Class Period, plaintiff and other members of the Class suffered economic loss, i.e., damages, under the federal securities laws.

APPLICABILITY OF THE FRAUD-ON-THE-MARKET AND *AFFILIATED UTE* PRESUMPTIONS OF RELIANCE

199. The market for FSC common stock was open, well-developed, and efficient at all relevant times. As a result of Defendants' materially false or misleading statements and material omissions, the Company's common stock traded at artificially inflated prices during the Class Period. On July 10, 2014, the Company's stock closed at a Class Period high of $10.10 per share. Plaintiffs and other members of the Class purchased or otherwise acquired the Company's common stock relying on the integrity of the market price of such securities and on publicly available market information relating to FSC. Plaintiffs and Class members have been damaged thereby.

200. During the Class Period, the artificial inflation of the value of FSC common stock was caused by the material misrepresentations and omissions alleged in this Complaint, thereby causing the damages sustained by Plaintiffs and other Class members. As alleged herein, during the Class Period, Defendants made or caused to be made a series of materially false or misleading statements about the Company's business, prospects, and operations, causing the price of the Company's common stock to be artificially inflated at all relevant times. When the truth was disclosed, it drove down the value of the Company's common stock, causing Plaintiffs

and other Class members that had purchased the securities at artificially inflated prices to be damaged as a result.

201. At all relevant times, the market for FSC common stock was efficient for the following reasons, among others:

(a) FSC stock met the requirements for listing, and it was listed and actively traded on the NASDAQ Global Select Market, a highly efficient and automated market.

(b) As a regulated issuer, FSC filed periodic public reports with the SEC and/or the NASDAQ Global Select Market.

(c) FSC regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services.

(d) FSC was followed by numerous securities analysts employed by brokerage firms, who wrote reports about the Company, which reports were distributed to the sales force and certain customers of their respective brokerage firms and were made publicly available.

Based on the foregoing, during the Class Period, the market for FSC common stock promptly digested information regarding the Company from all publicly available sources and impounded such information into the price of FSC stock. Under these circumstances, the market for FSC common stock was efficient during the Class Period and, therefore, investors' purchases of FSC common stock at artificially inflated market prices give rise to a class-wide presumption of reliance under the fraud-on-the-market doctrine.

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202. In the alternative, the *Affiliated Ute* presumption of reliance applies to the extent that Defendants' statements during the Class Period involved omissions of material facts, which concealed, among other things, and as alleged more fully above, that Defendants were causing FSC to invest in increasingly risky, speculative investments at unsustainable leverage levels and delaying the writing down and placing on non-accrual status impaired investments in order to create the appearance of financial health and increasing revenues for FSC and FSAM.

NO SAFE HARBOR

203. FSC's oral and written "Safe Harbor" warnings accompanying its oral and written forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

204. The defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of Fifth Street who knew that the FLS was false. None of the historic or present tense statements made by defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by defendants expressly related to or stated to be dependent on those historic or present tense statements when made. In addition, for any FLS pleaded defendants lacked a reasonable basis to make the statement, and failed to disclose the facts as specified herein needed to be disclosed so as to render the statements not misleading.

CLASS ACTION ALLEGATIONS

205. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased FSC common stock during the

Class Period (the "Class"). Excluded from the Class are defendants and their families, the officers and directors of Fifth Street, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which defendants have or had a controlling interest.

206. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. FSC has 153.3 million shares of common stock outstanding, and thus is likely owned by hundreds if not thousands of persons.

207. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual Class members include:

(a) whether the 1934 Act was violated by defendants;

(b) whether defendants omitted and/or misrepresented material facts;

(c) whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the price of FSC common stock was artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

208. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

209. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

210. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I

For Violation of §10(b) of the 1934 Act and Rule 10b-5
Against All Defendants (Except FSAM)

211. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein. This claim is asserted against all Defendants.

212. During the Class Period, Defendants: (i) knowingly or with deliberate recklessness deceived the investing public, including Plaintiff and Class members, as alleged herein; (ii) artificially inflated the market price of FSC common stock; and (iii) caused Plaintiffs and Class members to purchase or otherwise acquire FSC common stock at artificially inflated prices.

213. Each of the Defendants, in violation of §10(b) of the Exchange Act and Rule 10b-5(b), made false statements of material facts and omitted to state material facts necessary to make the statements made by Defendants not misleading, which operated as a fraud and deceit upon Plaintiffs and the Class, in an effort to create or maintain an artificially inflated price of FSC common stock during the Class Period. Defendants' material misrepresentations and omissions are alleged herin.

214. As a result of their making and/or substantially participating in the creation of affirmative statements to the investing public, Defendants had a duty to promptly disseminate

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truthful information that would be material to investors in compliance with applicable laws and regulations.

215. As officers, directors, and controlling persons of a publicly held company whose common stock is registered with the SEC pursuant to the Exchange Act, traded on the NASDAQ, and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to promptly disseminate accurate and truthful information regarding the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings, and present and future business prospects, and to correct any previously issued statements that had become materially false or misleading, so that the market price of the Company's publicly traded securities would be based upon truthful and accurate information.

216. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, made the materially false and misleading statements specified above, which they knew or recklessly disregarded were misleading in that they misrepresented and/or omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

217. The facts alleged herein give rise to a strong inference that each of the Defendants acted with scienter. Each of the Defendants knew or were reckless in not knowing that the Class Period statements set forth above, contained material misrepresentations and omissions for the reasons set forth herein.

218. By virtue of the Individual Defendants' positions of management and control within FSC and FSAM, they had access to undisclosed adverse information about the Company, its business, operations, operational trends, finances, and present and future business prospects.

The Individual Defendants would ascertain such information through the Company's internal corporate documents; conversations and connections with each other and corporate officers and employees; attendance at sales, management, and Board of Directors' meetings, including committees thereof; and reports and other information provided to them in connection with their roles and duties as officers and/or directors of FSC and FSAM.

219. The Individual Defendants were aware of or recklessly disregarded that material misrepresentations and omissions were being made regarding the Company, and approved or ratified such statements, in violation of the federal securities laws.

220. As a result of Defendants' dissemination of the materially false or misleading information and their failure to disclose material facts, as alleged herein, the market price of FSC common stock was artificially inflated throughout the Class Period. Unaware that the market price of FSC's common stock was artificially inflated; relying directly or indirectly on the false or misleading statements made by Defendants at the times such statements were made, or relying upon the integrity of the markets in which FSC common stock traded; and in the absence of material adverse information that was known, or was recklessly disregarded, by Defendants but not disclosed to the public, Plaintiffs and Class members purchased or otherwise acquired FSC common stock at artificially inflated prices.

221. Had Plaintiffs and the other Class members known the truth regarding the problems that FSC was experiencing, which was not disclosed by Defendants, Plaintiffs and other Class members would not have purchased or otherwise acquired FSC common stock, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

222. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the other Class members suffered damages in connection with their respective purchases and sales of FSC common stock during the Class Period, when the artificial inflation in the price of such securities dissipated as the truth regarding Defendants' conduct was revealed, causing the price of FSC common stock to decline, resulting in economic losses to Plaintiffs and the Class.

223. By reason of the foregoing, Defendants violated §10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder, and they are liable to Plaintiffs and the Class for damages suffered in connection with their transactions in FSC common stock during the Class Period.

COUNT II

For Violation of §20(a) of the 1934 Act Against All Defendants (Except FSC)

224. Plaintiffs repeat and reallege each and every allegation set forth above as if fully set forth herein. This claim is asserted against all Defendants.

225. Each Defendant, except for FSAM, is a primary violator of §10(b) and Rule 10b-5, promulgated thereunder.

226. The Individual Defendants and FSAM acted as controlling persons of FSC within the meaning of §20(a) of the 1934 Act. Each of the Individual Defendants and FSAM had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence, and during the Class Period, did exercise their power to control and influence, the conduct giving rise to the violations of the federal securities laws alleged herein. By virtue of their positions with the Company, ownership of FSC common stock, and ownership and/or control over FSAM, the Individual Defendants and FSAM had the power and authority to cause FSC to engage in the wrongful conduct complained of

herein. These defendants prepared, or were responsible for preparing, the Company's press releases and SEC filings and made statements to the market in SEC filings, annual reports, press releases, news articles, and conference calls. These defendants controlled FSC and each of its employees and agents.

227. FSAM and the Individual Defendants were able to, and did, control the content of the various SEC filings, press releases, and other public statements pertaining to the Company during the Class Period. These defendants were provided with copies of the documents, as alleged herein, to contain material misrepresentations and omissions prior to, or shortly after, their issuance and had the ability and/or opportunity to prevent the issuance of such documents or cause them to be corrected. Accordingly, these defendants are responsible for the accuracy of the Company's public reports and releases.

228. By virtue of their positions as controlling persons of FSC, and by reason of the conduct described in this Count, FSAM and the Individual Defendants are liable pursuant to §20(a) of the 1934 Act for controlling a primary violator of the federal securities laws. As a direct and proximate result of the Individual Defendants' wrongful conduct, Plaintiffs and other Class members suffered damages in connection with their purchases of the Company's securities during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

A. Determining that this action is a proper class action, designating plaintiff as a Lead Plaintiff and certifying plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

B. Awarding plaintiff and the members of the Class damages, including interest;

C. Awarding plaintiffs reasonable costs and attorneys' fees; and

D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: April 1, 2016

LABATON SUCHAROW LLP

By: /s/ *Joel H. Bernstein*

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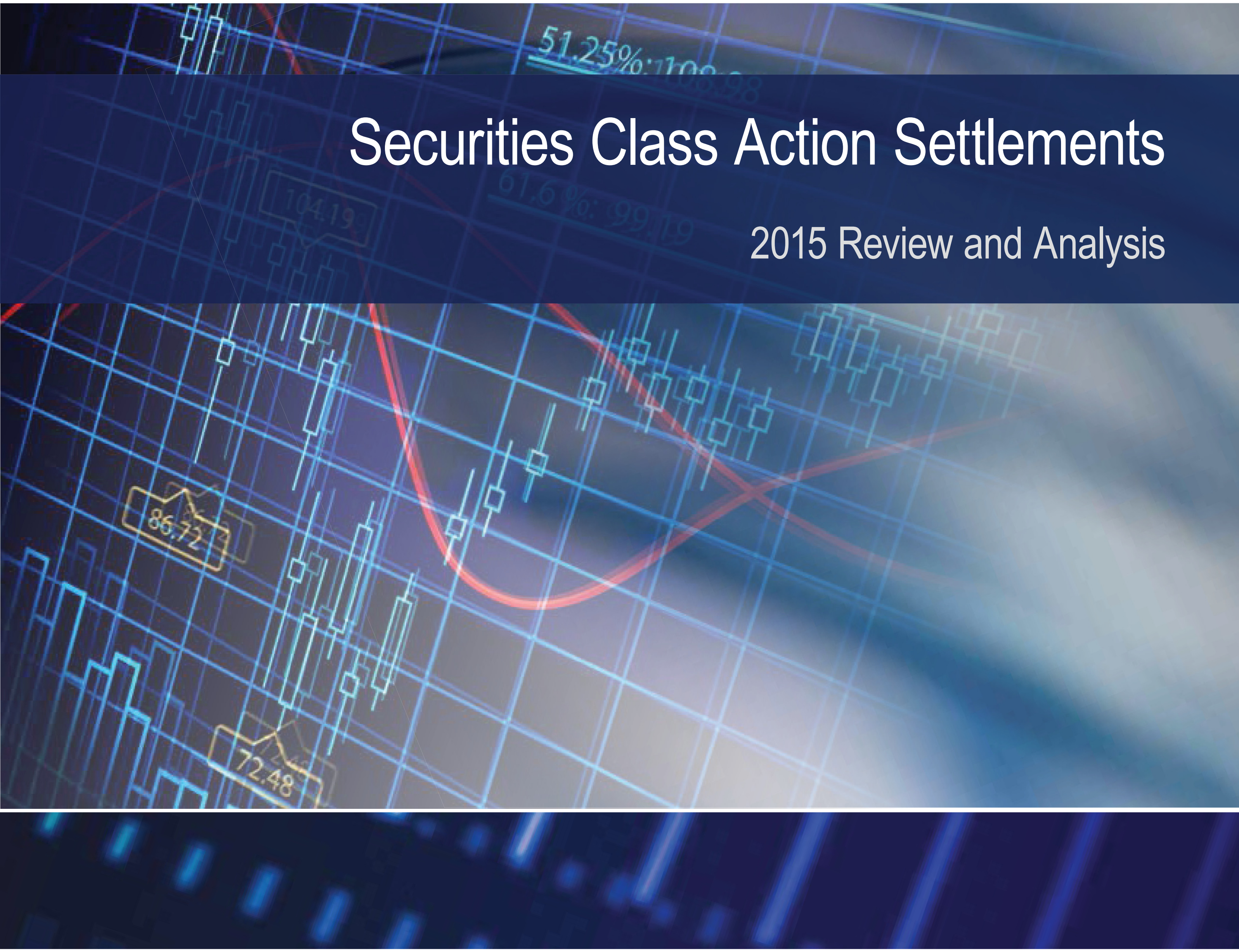
Exhibit 4

CORNERSTONE RESEARCH
Economic and Financial Consulting and Expert Testimony



Securities Class Action Settlements

2015 Review and Analysis

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This report analyzes 1,537 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2015, and explores a variety of factors that influence settlement outcomes. The sample includes cases alleging fraudulent inflation in the price of a corporation’s common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and excluding cases alleging fraudulent depression in price and M&A cases). See page 24 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to the securities class action that is publicly announced to potential class members by means of a settlement notice.

HIGHLIGHTS

- There were 80 securities class action settlements approved in 2015, representing a 27 percent rise in the number of settlements over 2014 and the highest number since 2010. (page 3)
- Total settlement dollars in 2015 increased substantially over the 2014 historic low to $3 billion and were 9 percent higher than the average for the prior five years. (page 3)
- In 2015, there were eight mega settlements (those greater than or equal to $100 million), up from just one in 2014. (page 4)
- The average settlement size climbed from $17 million in 2014 to $37.9 million in 2015 (an increase of 123 percent), while the median settlement amount (representing the typical case) remained relatively flat ($6.0 million in 2014 and $6.1 million in 2015). (page 6)
- Average "estimated damages" rose 151 percent from 2014. Since "estimated damages," the simplified damages calculation used in this research, is the most important factor in predicting settlement amounts, this increase contributed to the substantially higher average settlement amounts in 2015. (page 7)
- Median settlements as a percentage of "estimated damages" decreased to historic low levels in 2015. (page 8)
- In 2015, 35 percent of accounting-related cases had a named auditor defendant, representing a 50 percent increase over the prior 10-year average. Underwriter defendants were named in 76 percent of cases with Section 11 claims. (page 15)
- Although the proportion of securities class action settlements involving financial sector firms was lower in 2014 and 2015 compared to prior years, these cases continue to be some of the largest when measured by "estimated damages." In 2015, 55 percent of financial sector settlements involved "estimated damages" of greater than $1 billion. (page 21)

FIGURE 1: **SETTLEMENT STATISTICS**

(Dollars in Millions)

	1996–2014	2014	2015
Minimum	$0.1	$0.3	$0.4
Median	$8.2	$6.0	$6.1
Average	$55.6	$17.0	$37.9
Maximum	$8,503.8	$265.3	$970.5
Total Amount	$80,944.5	$1,069.3	$3,034.2
Number of Settlements	1,457	63	80

Note: Settlement dollars are adjusted for inflation; 2015 dollar equivalent figures are used.

2015 FINDINGS—PERSPECTIVE AND DEVELOPING TRENDS

The number of settlements approved in 2015 increased to 80, reversing four years of relatively low settlement volume. This surge can be attributed, at least in part, to three consecutive year-over-year increases in the number of case filings.[1] Since many cases take three to four years to settle, the increased number of case filings in 2015 may suggest that higher numbers of settlements will persist in the near future.

> "The increases in case filings may suggest that higher numbers of settlements will persist in the near future."
>
> Dr. Laura Simmons
> Cornerstone Research
> Senior Advisor

There were eight mega settlements (equal to or greater than $100 million) in 2015, compared to only one in 2014. Reflecting that analyses show that the most important factor affecting settlement amounts is a proxy for shareholder damages, this increase was likely driven by a corresponding uptick in cases with very high "estimated damages." In fact, median "estimated damages" for mega settlements in 2015 was the second highest over the last 10 years.

While larger damages appear to have driven up settlement values for some cases in 2015, other factors that are also associated with higher settlements were less prevalent in 2015. For example, the proportion of mega settlements involving financial statement restatements, public pension plan lead plaintiffs, and/or SEC actions was lower. Consistent with this, the median settlement as a percentage of "estimated damages" for mega settlements reached a historical low.

At the opposite end of the spectrum, the proportion of settlements for $2 million or less was the highest in 18 years. The increased number of settlements of cases related to Chinese reverse mergers contributed to the growth in very small settlements, as these cases tend to involve relatively low "estimated damages" and settle for comparatively low amounts.

The number of cases settling within two years from filing date increased to 16 cases in 2015, more than two-and-a-half times the number in 2014. Cases that settle within two years tend to be smaller (indicated by asset size of the defendant company and "estimated damages") and less likely to be characterized by indicators associated with higher settlements (e.g., restatement or reported accounting irregularity, parallel SEC action or companion derivative action, or public pension as a lead or co-lead plaintiff).

Overall, while a handful of very large settlements produced a higher average settlement value in 2015, the size of the typical settlement (as represented by the median) was similar to 2014, and the median "estimated damages" was lower. Looking ahead, the most recent data on case filings provide a mixed outlook for the size of settlements. In particular, Cornerstone Research's *Securities Class Action Filings—2015 Year in Review* reported a substantial increase in the average size of case filings but a decrease in the median filing size.[2]

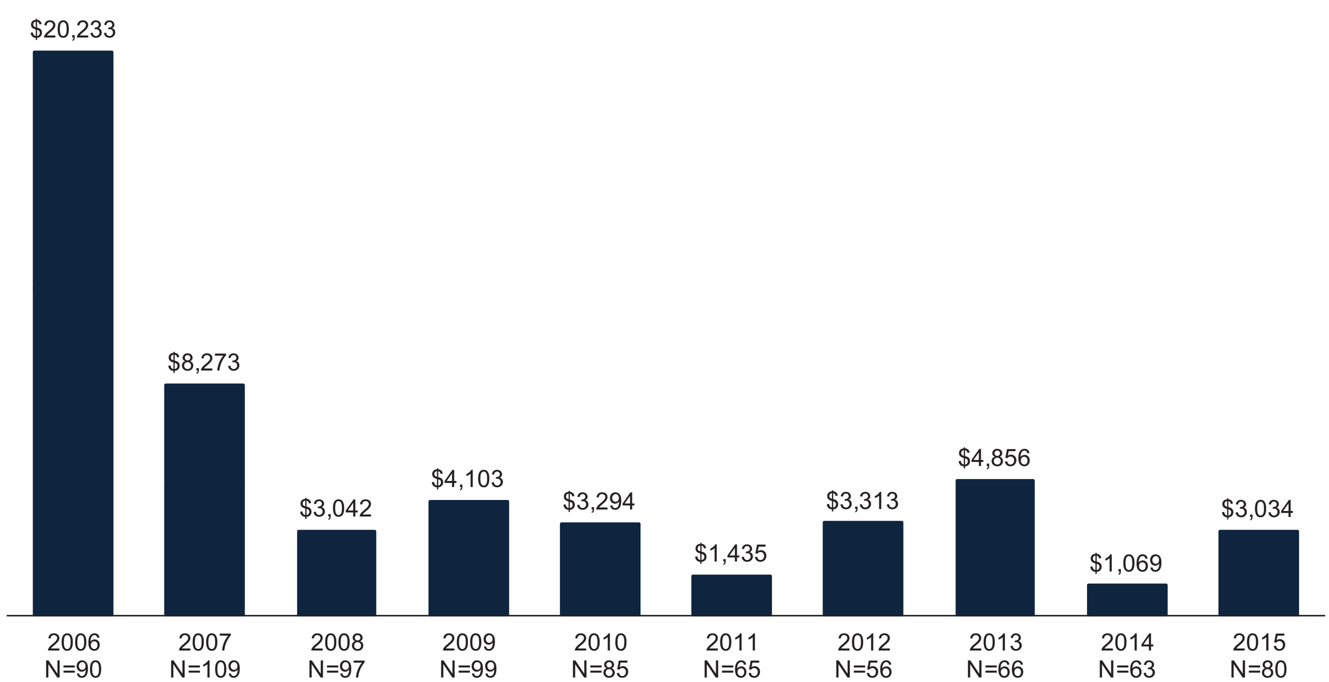
NUMBER AND SIZE OF SETTLEMENTS

TOTAL SETTLEMENT DOLLARS

- The total value of settlements approved by courts in 2015 was $3 billion, similar to the annual average of $2.8 billion for the prior five years but a substantial increase over the unusually low level for 2014.
- Contributing to the rise in total settlement dollars in 2015 was the notable increase in mega settlements (see page 4).
- The increased total settlement value in 2015 was also due to the 27 percent rise in the number of settlements over 2014.
- While substantially higher than 2014, the total settlement value in 2015 did not approach the levels reached in 2006 and 2007.

Total settlement dollars in 2015 rebounded from a historic low in 2014.

FIGURE 2: **TOTAL SETTLEMENT DOLLARS**
2006–2015
(Dollars in Millions)



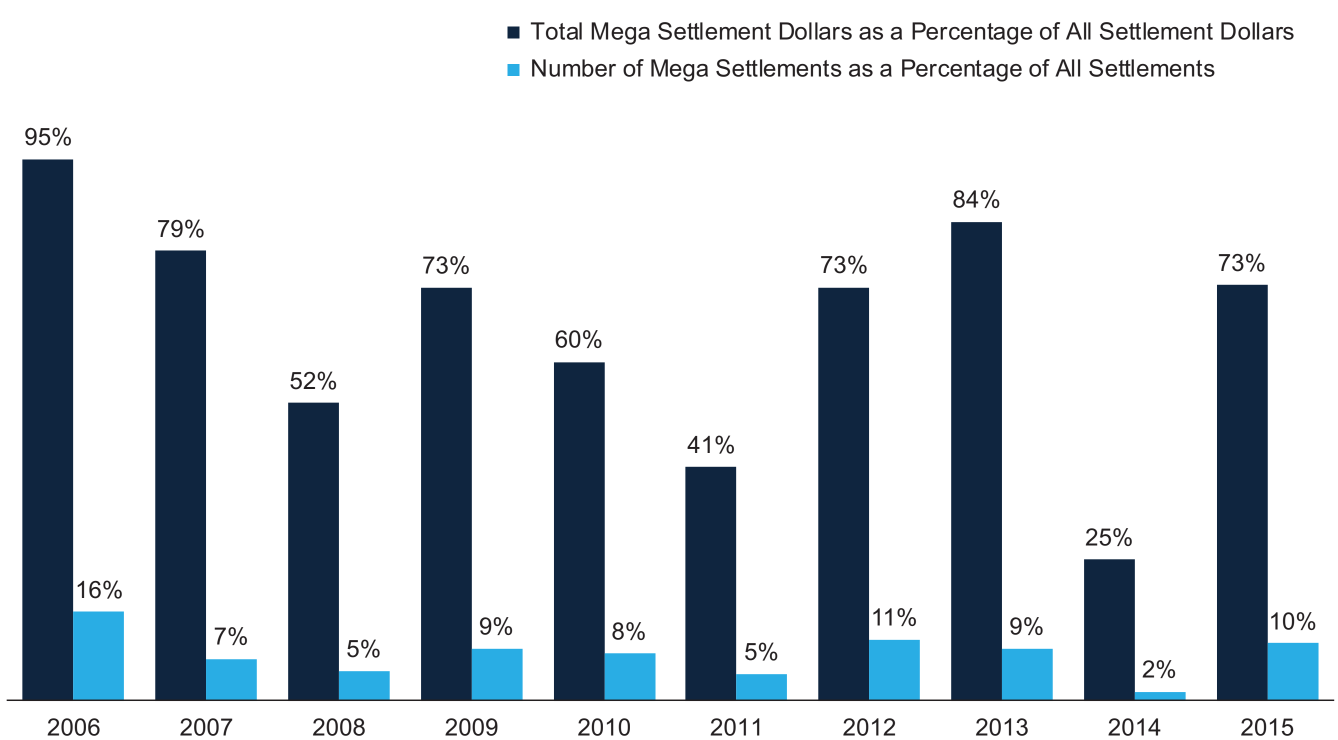
Note: Settlement dollars are adjusted for inflation; 2015 dollar equivalent figures are used.

MEGA SETTLEMENTS

- In 2015, the percentage of settlement dollars from mega settlements (those greater than or equal to $100 million) returned to historical levels.
- The eight mega settlements in 2015 represented a dramatic increase over the one mega settlement approved in 2014.
  - In 2015, six of the eight mega settlements approved were between $100 million and $200 million.
  - There was one case with a settlement of more than $970 million, which drove up both settlement totals and the average settlement in 2015.

Over the last decade, mega settlements have generally accounted for more than 50 percent of settlement dollars.

FIGURE 3: **MEGA SETTLEMENTS**
2006–2015

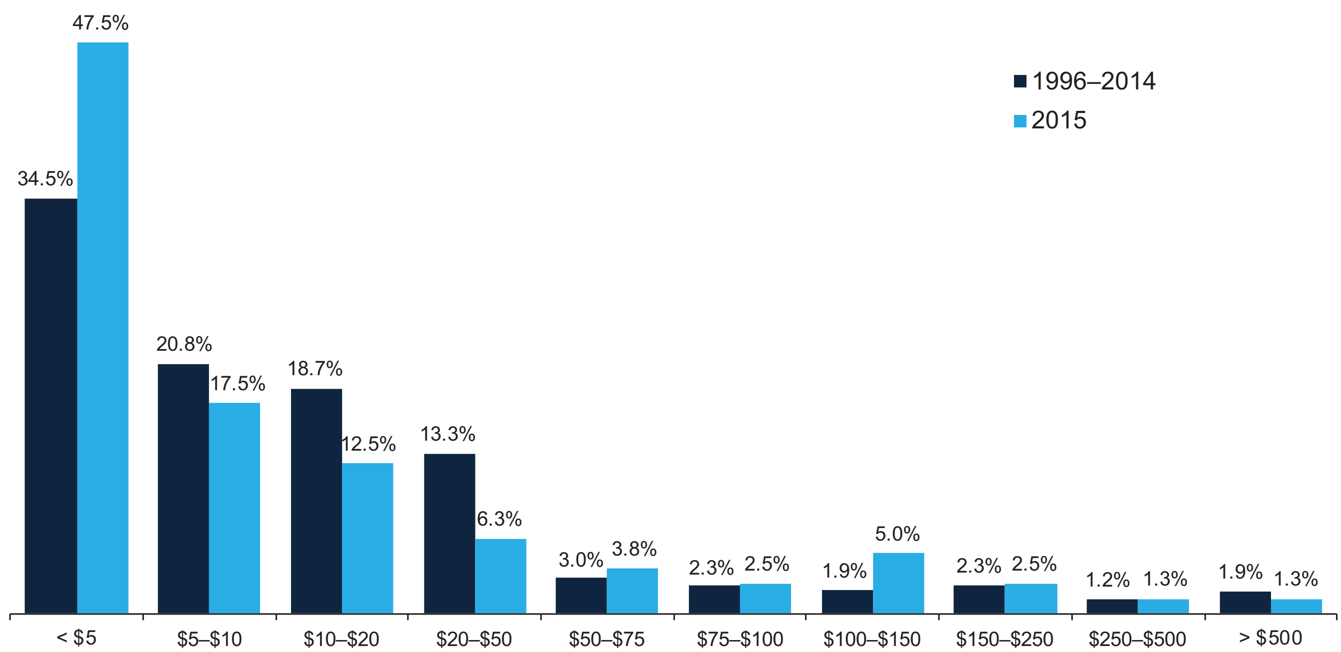


SETTLEMENT SIZE

- The proportion of cases settling for $2 million or less (often referred to as "nuisance suits") in 2015 was 26 percent, the highest single-year proportion since 1997.
- In 2015, 29 percent of cases that settled for $2 million or less were Chinese reverse merger cases, which historically have settled for very small amounts.
- There were fewer settlements in the $5 million to $50 million range in 2015 compared to prior years, while more occurred in the $100 million to $150 million range.

Since 1996, the vast majority of securities class actions have settled for less than $25 million.

FIGURE 4: **DISTRIBUTION OF POST–REFORM ACT SETTLEMENTS 1996–2015**
(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2015 dollar equivalent figures are used.

SETTLEMENT SIZE *continued*

- The average settlement amount in 2015 was 123 percent higher than the average in 2014, but was still 25 percent lower than the average for all prior post–Reform Act years.
- The median settlement amount in 2015 was also lower than the median for all prior post–Reform Act years.
- Nearly 50 percent of settlements approved in 2015 settled for less than $5 million; 80 percent settled for less than $25 million; and 90 percent settled for less than $100 million.
- Average settlements have varied widely over the last 10 years, while median settlements have fluctuated within a narrower range.

The median settlement amount has remained largely unchanged in the last three years.

FIGURE 5: **SETTLEMENT PERCENTILES**
2006–2015
(Dollars in Millions)

Year	Average	10th	25th	Median	75th	90th
2015	$37.9	$1.3	$2.0	$6.1	$15.3	$91.0
2014	$17.0	$1.7	$2.9	$6.0	$13.2	$39.9
2013	$73.6	$1.9	$3.1	$6.6	$22.6	$83.9
2012	$59.2	$1.2	$2.8	$9.5	$36.6	$118.7
2011	$22.1	$1.9	$2.6	$6.1	$19.0	$44.0
2010	$38.8	$2.2	$4.6	$12.2	$27.2	$86.5
2009	$41.4	$2.6	$4.2	$8.8	$22.1	$73.4
2008	$31.4	$2.2	$4.1	$8.8	$20.9	$55.5
2007	$75.9	$1.7	$3.4	$10.3	$20.0	$91.3
2006	$131.8	$2.0	$3.7	$8.2	$27.3	$268.5

Note: Settlement dollars are adjusted for inflation; 2015 dollar equivalent figures are used.

DAMAGES ESTIMATES AND MARKET CAPITALIZATION LOSSES

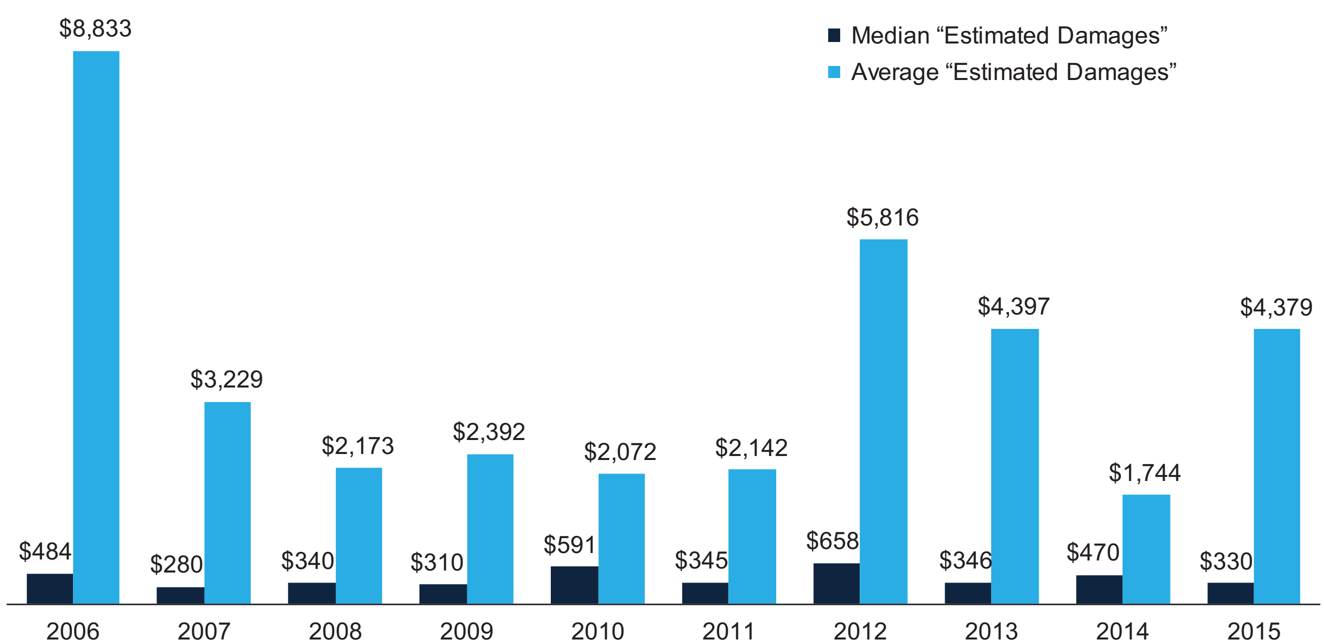
"ESTIMATED DAMAGES"

For purposes of this research, the use of a consistent method for estimating potential shareholder losses allows for the identification and analysis of potential trends. A simplified measure, referred to here as "estimated damages," is used as a proxy for potential shareholder losses. "Estimated damages" are the most important factor in predicting settlement amounts. These "estimated damages" are not necessarily linked to the allegations included in the associated court pleadings.[3] The damages estimates presented in this report are not intended to be indicative of actual economic damages borne by shareholders.

- Average "estimated damages" for 2015 increased 151 percent from 2014.
- While average "estimated damages" increased, median "estimated damages" (representing the midpoint) were 30 percent lower in 2015 than in 2014.
- In 2015, 23 percent of settlements involved "estimated damages" of $1 billion or more, the lowest percentage in the last seven years. This suggests that a small number of cases with very large "estimated damages" contributed to the relatively high average "estimated damages" in 2015.

A small number of cases contributed to the relatively high average "estimated damages" in 2015.

FIGURE 6: **MEDIAN AND AVERAGE "ESTIMATED DAMAGES" 2006–2015**
(Dollars in Millions)



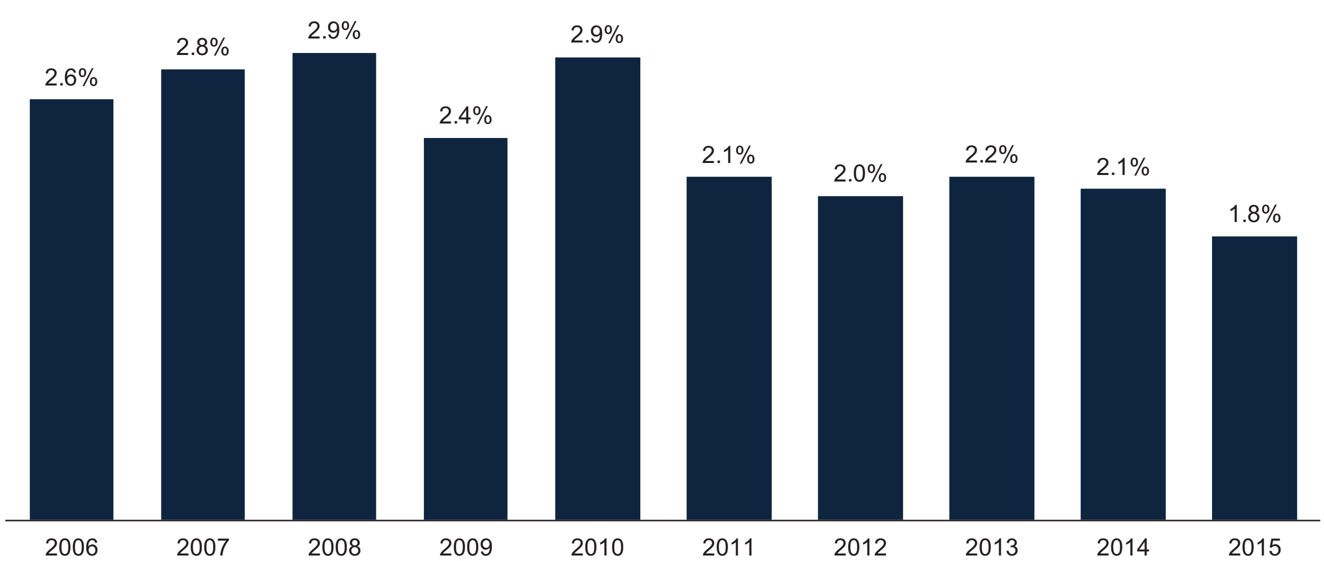
Note: "Estimated damages" are adjusted for inflation based on class period end dates.

"ESTIMATED DAMAGES" *continued*

- In 2015, median "estimated damages" and median settlements as a percentage of "estimated damages" both decreased compared to 2014.
- In contrast to the typical pattern observed for prior years, in 2015, the median settlement as a percentage of "estimated damages" was similar for non-mega settlements and mega settlements. Typically, mega settlements occur at lower percentages of "estimated damages" but, in 2015, non-mega settlements also settled for a relatively low percentage of "estimated damages."
- Overall, the combination of lower median "estimated damages" and lower settlements as a percentage of "estimated damages" suggests that other factors, including those discussed in the following pages, may have contributed to lower median settlements as a percentage of "estimated damages" in 2015.

In 2015, median settlements as a percentage of "estimated damages" decreased to historic low levels.

FIGURE 7: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" 2006–2015**

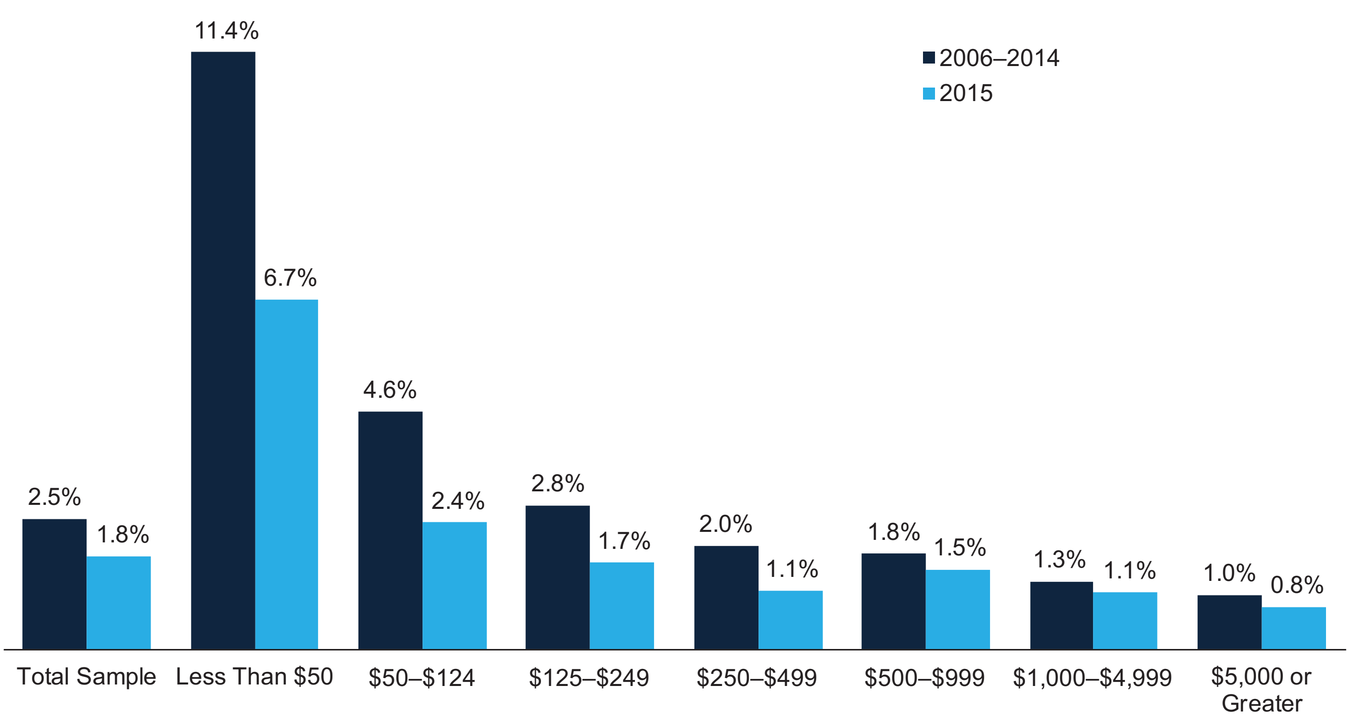


"ESTIMATED DAMAGES" *continued*

- Median settlements as a percentage of "estimated damages" decreased 29 percent from the 2006–2014 median.
- In 2015, smaller cases continued to settle for substantially higher percentages of "estimated damages," although the median settlement of very small cases—those with "estimated damages" less than $50 million—declined sharply in 2015 compared with the 2006–2014 median.

Median settlements declined across all damages ranges in 2015.

FIGURE 8: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" BY DAMAGES RANGES**
2006–2015
(Dollars in Millions)

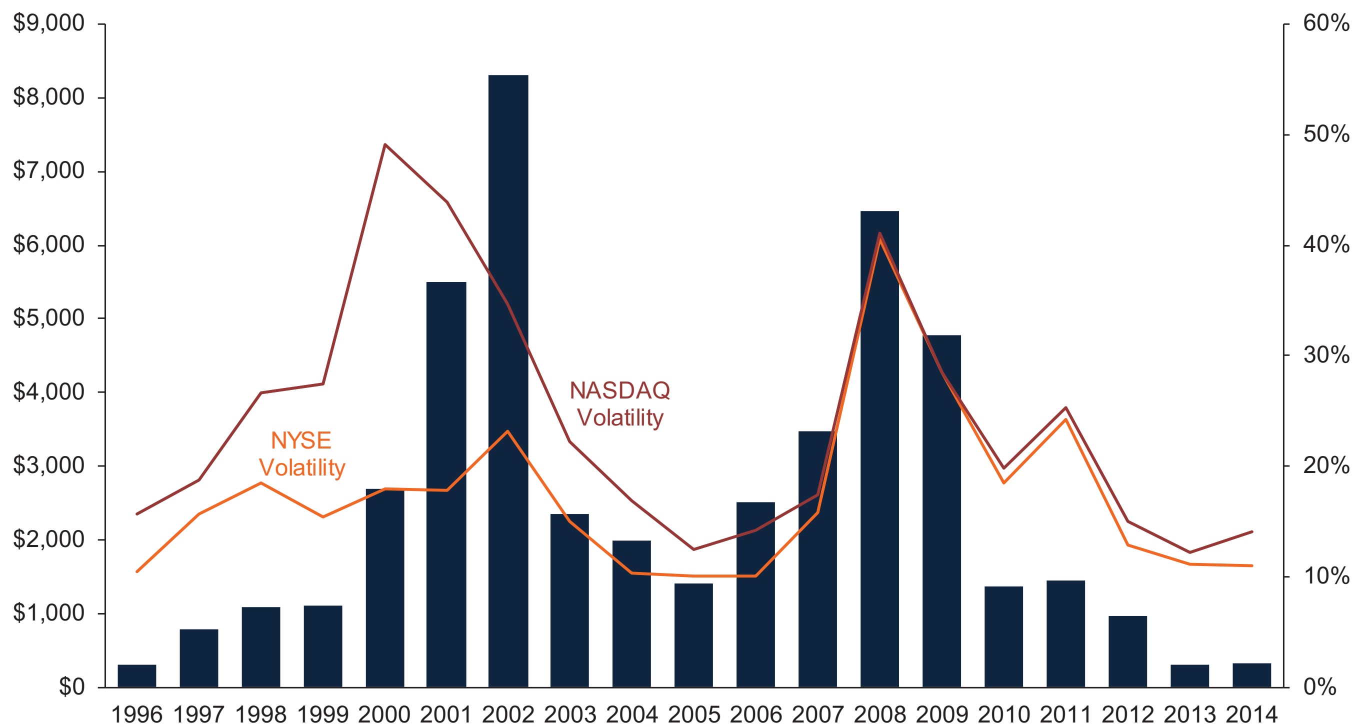


"ESTIMATED DAMAGES" *continued*

- The size of "estimated damages" is correlated with market volatility around the time of a case filing, which tends to occur two to four years before the settlement.
- In the past decade, NYSE and NASDAQ volatility peaked in 2008. Consistent with this, "estimated damages" for settled cases filed in 2008 and 2009 were the highest since 2002.
- For cases filed in more recent years (2010 through 2014), market volatility has generally been trending downward, which may have contributed to the reduction in median "estimated damages" and Disclosure Dollar Loss (DDL) for cases settled in 2015 (see page 11).

Continued low market volatility was tied to smaller median "estimated damages" among 2015 settlements.

FIGURE 9: **AVERAGE "ESTIMATED DAMAGES" FOR SETTLED CASES BY FILING YEAR 1996–2014**
(Dollars in Millions)



Note: "Estimated damages" are adjusted for inflation; 2014 dollar equivalent figures are used. Volatility is calculated as the annualized standard deviation of daily market returns. Chart shows filing years for settled cases through December 2014.

DISCLOSURE DOLLAR LOSS

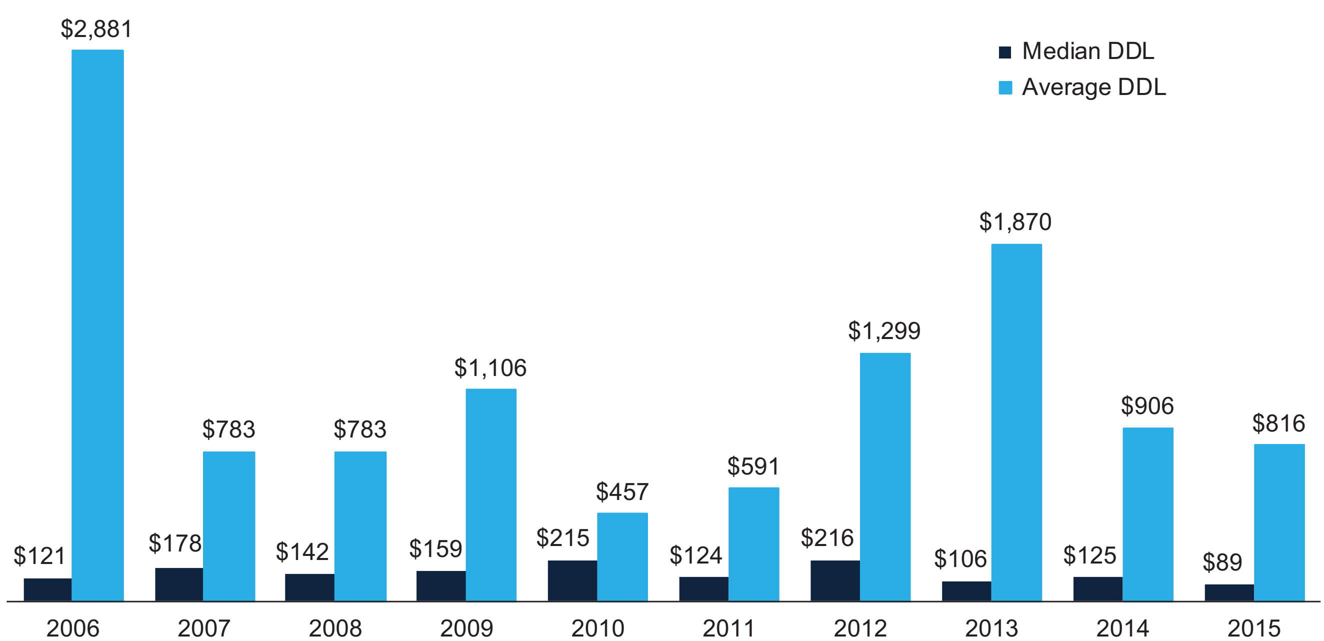
Disclosure Dollar Loss (DDL) captures the stock price reaction to the disclosure that resulted in the first filed complaint. DDL is calculated as the decline in the market capitalization of the defendant firm from the trading day immediately preceding the end of the class period to the trading day immediately following the end of the class period.[4]

- Unlike the pattern observed with "estimated damages" in 2015 (where the average increased and the median decreased from 2014), both the average and median DDL decreased in 2015, with the median DDL declining 29 percent and average DDL declining 10 percent.
- Total DDL associated with settlements approved in 2015 was $61.2 billion, 30 percent below the average from 2006 through 2014.

Median DDL in 2015 was the lowest since 1999.

FIGURE 10: **MEDIAN AND AVERAGE DISCLOSURE DOLLAR LOSS 2006–2015**

(Dollars in Millions)



Note: DDL is adjusted for inflation based on class period end dates.

TIERED ESTIMATED DAMAGES

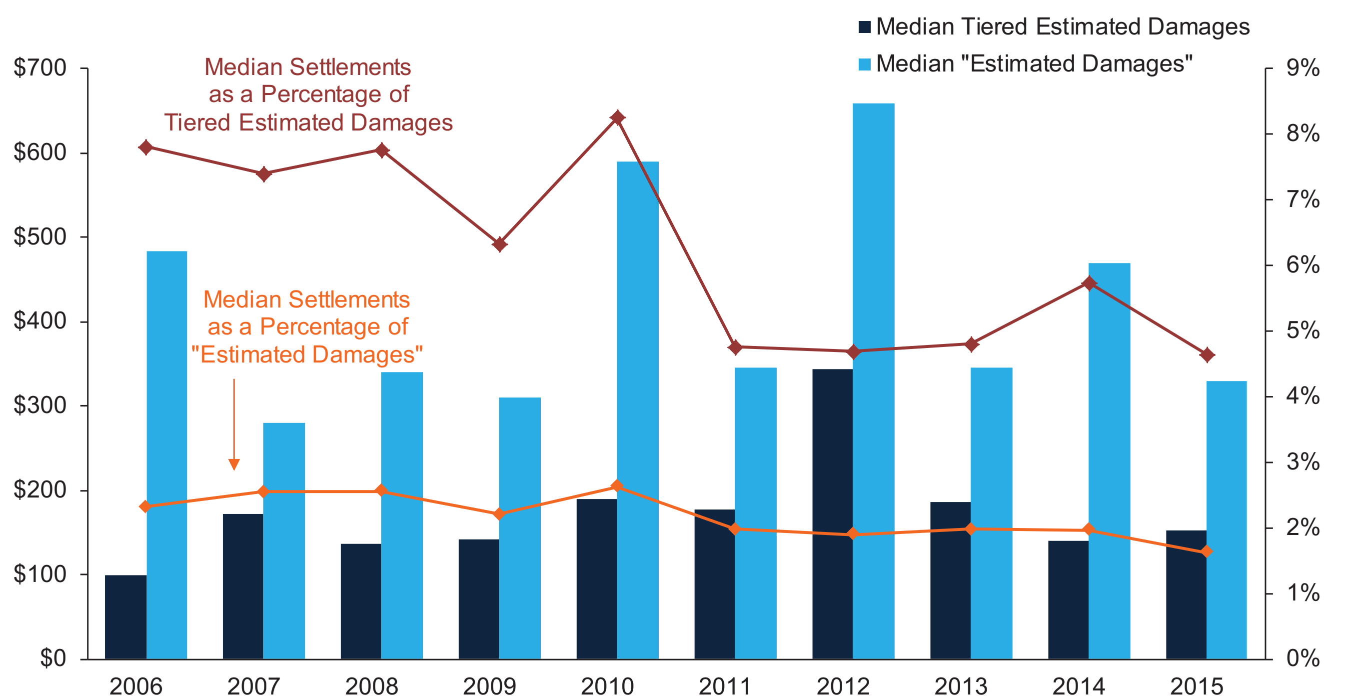
This research also considers an alternative measure of damages to account for the U.S. Supreme Court's 2005 landmark decision in *Dura*, which states that damages cannot be associated with shares sold before information regarding the alleged fraud reaches the market.[5] This alternative damages measure is referred to as tiered estimated damages and is based on the stock-price drops on alleged corrective disclosure dates as described in the settlement plan of allocation.[6]

As noted in past reports, this measure has not yet surpassed "estimated damages" in terms of its power as a predictor of settlement outcomes. However, it is highly correlated with settlement amounts and provides an alternative measure of investor losses for more recent securities class action settlements.

Tiered estimated damages are highly correlated with settlement amounts.

- While median "estimated damages" declined, median tiered "estimated damages" increased in 2015.
- The median settlement as a percentage of tiered "estimated damages" declined 19 percent in 2015 from 2014.
- Median settlements as a percentage of tiered estimated damages are higher than median settlements as a percentage of "estimated damages," as tiered estimated damages are typically lower than "estimated damages."[7]

FIGURE 11: **TIERED ESTIMATED DAMAGES**
2006–2015
(Dollars in Millions)



Note: Damages figures are adjusted for inflation based on class period end dates.

ANALYSIS OF SETTLEMENT CHARACTERISTICS

NATURE OF CLAIMS

- In 2015, there were five settlements involving Section 11 and/or Section 12(a)(2) claims that did not involve Rule 10b-5 allegations. This is consistent with the historical rate of 6 percent of settlements with only Section 11 claims
- Intensified activity in the U.S. IPO market in recent years, in tandem with the increase in filings involving Section 11 claims (either alone or together with Rule 10b-5 claims),[8] suggests that these cases are likely to be more prevalent in the near future. However, a slowdown in IPO activity reported in 2015 may contribute to a reduction in Section 11–only cases in the long term.
- Settlements and "estimated damages" are considerably higher for cases involving Section 11 and/or Section 12(a)(2) claims in addition to Rule 10b-5 claims. These cases are more likely to include allegations related to other securities of the defendant company in addition to common stock in the alleged class. The cases may also represent more complex matters.
- On average, from 2011 through 2015, cases with combined claims took four years from filing date to the settlement hearing date compared to 3.6 years for cases with only Rule 10b-5 claims. Cases with only Section 11 and/or Section 12(a)(2) claims had settlement hearing dates, on average, 3.4 years after filing. (See page 19 for additional discussion on time to settlement.)

Settlements are considerably higher for cases involving combined Section 11 and/or Section 12(a)(2) claims and Rule 10b-5 claims.

FIGURE 12: **SETTLEMENTS BY NATURE OF CLAIMS**
1996–2015
(Dollars in Millions)

	Number of Settlements	Median Settlements	Median "Estimated Damages"	Median Settlements as a Percentage of "Estimated Damages"
Section 11 and/or 12(a)(2) Only	87	$4.0	$54.9	7.6%
Both Rule 10b-5 and Section 11 and/or 12(a)(2)	265	$13.5	$532.8	3.2%
Rule 10b-5 Only	1,162	$7.9	$367.6	2.7%
All Post–Reform Act Settlements	1,514	$8.2	$335.5	3.0%

Note: Settlement dollars and "estimated damages" are adjusted for inflation; 2015 dollar equivalent figures are used. "Estimated damages" are adjusted for inflation based on class period end dates.

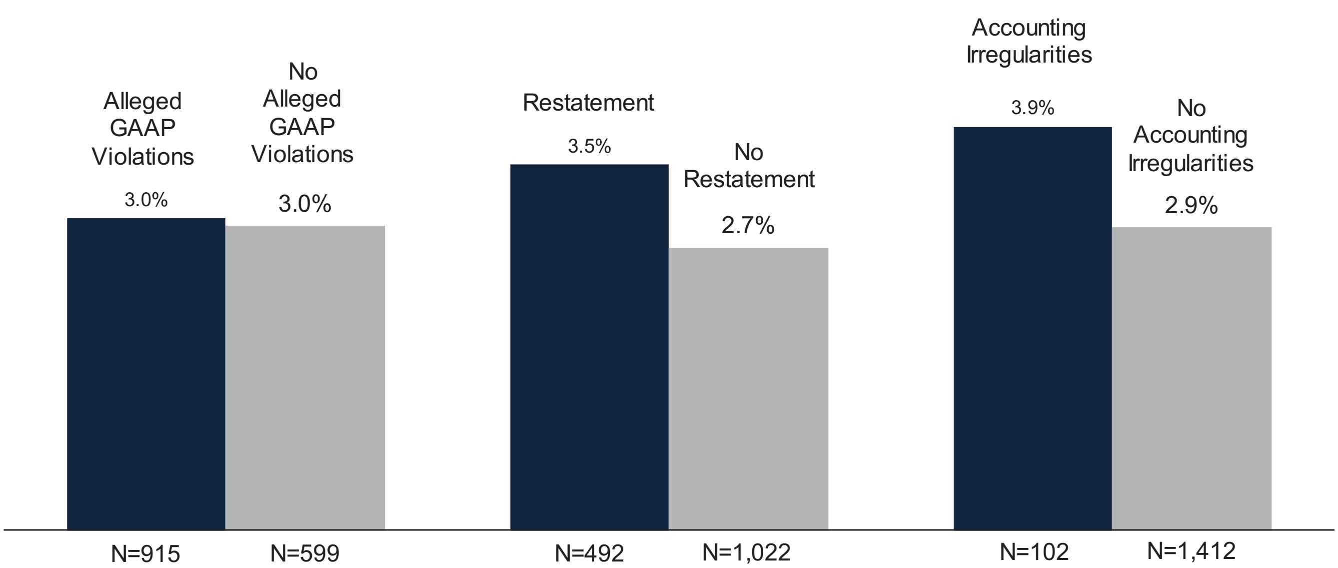
ACCOUNTING ALLEGATIONS

This research examines three types of accounting allegations among settled cases: (1) alleged GAAP violations, (2) restatements, and (3) reported accounting irregularities.[9] For further details regarding settlements of accounting cases, see Cornerstone Research's annual report, *Accounting Class Action Filings and Settlements*.

- In early post–Reform Act years, cases involving GAAP allegations were associated with higher settlements as a percentage of "estimated damages," but this pattern has not been consistent in recent years.
- Restatements were involved in 22 percent of cases settled in 2015 and were associated with higher settlements as a percentage of "estimated damages" compared to cases without restatements.
- Of the cases approved for settlement in 2015, only one involved reported accounting irregularities, well below the rate of 7 percent for prior years. These cases continued to settle for the highest amounts in relation to "estimated damages."

In 2015, 52 percent of settled cases alleged GAAP violations, a decrease from 67 percent in 2014.

FIGURE 13: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" AND ACCOUNTING ALLEGATIONS**
1996–2015

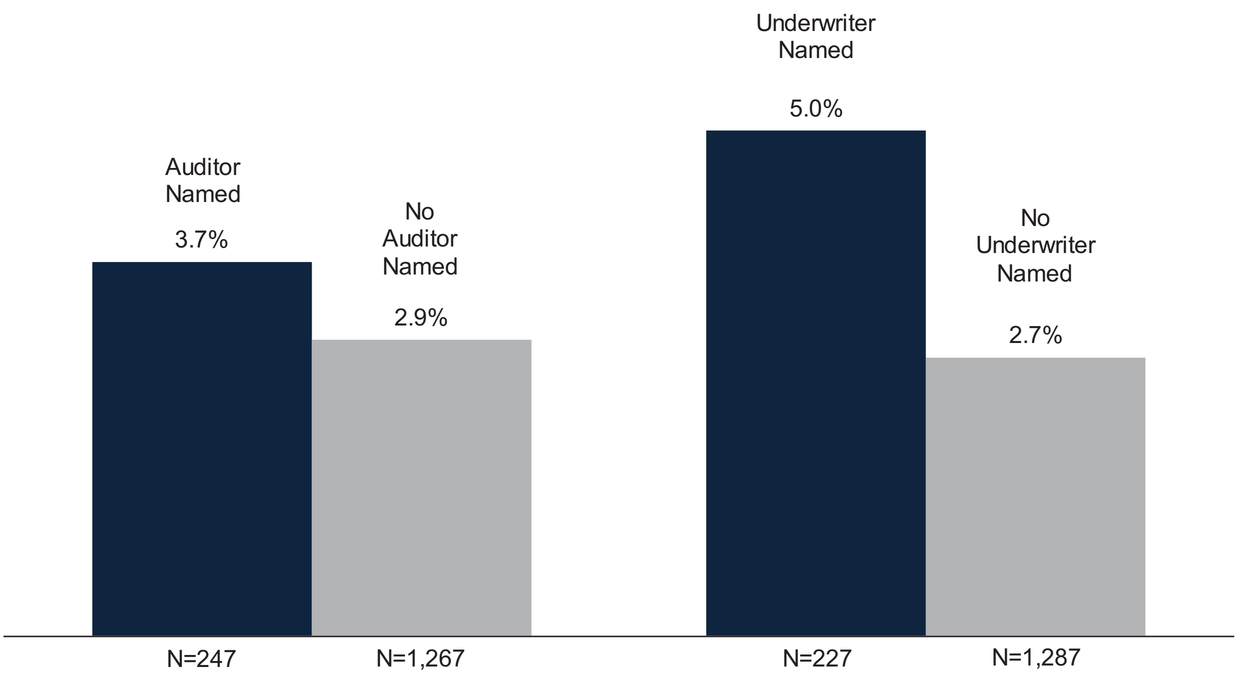


THIRD-PARTY CODEFENDANTS

- Third parties, such as an auditor or an underwriter, are often named as codefendants in larger, more complex cases and can provide an additional source of settlement funds.
- Historically, cases with third-party codefendants have settled for substantially higher amounts as a percentage of "estimated damages." In 2015, however, cases with third-party defendants settled for lower percentages of "estimated damages," and the difference in the median settlement amount with and without a third-party named defendant was one of the lowest in the last 10 years.
- The presence of outside auditor defendants is typically associated with cases involving GAAP violations; the presence of underwriter defendants is highly correlated with Section 11 claims.
- In 2015, 35 percent of accounting-related cases had a named auditor defendant, representing a 50 percent increase over the prior 10-year average. Underwriter defendants were named in 76 percent of cases with Section 11 claims.

Overall, 30 percent of settlements in 2015 involved a named auditor or underwriter codefendant.

FIGURE 14: **MEDIAN SETTLEMENTS AS A PERCENTAGE OF "ESTIMATED DAMAGES" AND THIRD-PARTY CODEFENDANTS**
1996–2015

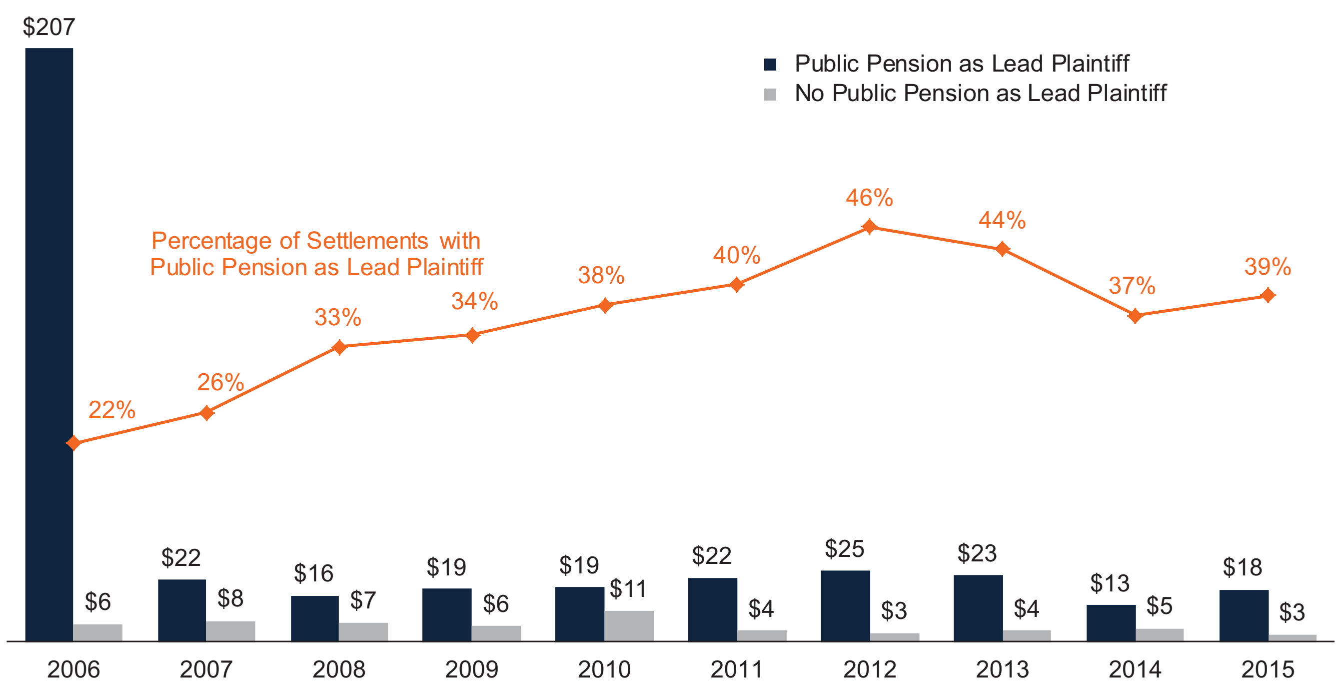


INSTITUTIONAL INVESTORS

- Public pension plans (a subset of institutional investors) tend to be involved as plaintiffs in larger cases (i.e., cases with higher "estimated damages"). In 2015, 64 percent of settlements with "estimated damages" greater than $500 million involved a public pension plan as lead plaintiff, compared to 23 percent for cases with "estimated damages" of $500 million or less.
- The median settlement in 2015 for cases with a public pension as a lead plaintiff was $18 million. This compares to a median settlement of $6.4 million for cases with non–public pension lead plaintiff institutional investors and $2.7 million for cases where the lead plaintiff was not an institutional investor.
- While public pension participation in 2015 settlements was up compared with 2014, as a group, public pensions were involved in fewer settled cases in 2015 than in 2012 and 2013.

In 2015, 64 percent of cases approved for settlement had institutional investor lead plaintiffs.

FIGURE 15: **MEDIAN SETTLEMENT AMOUNTS AND PUBLIC PENSIONS**
2006–2015
(Dollars in Millions)



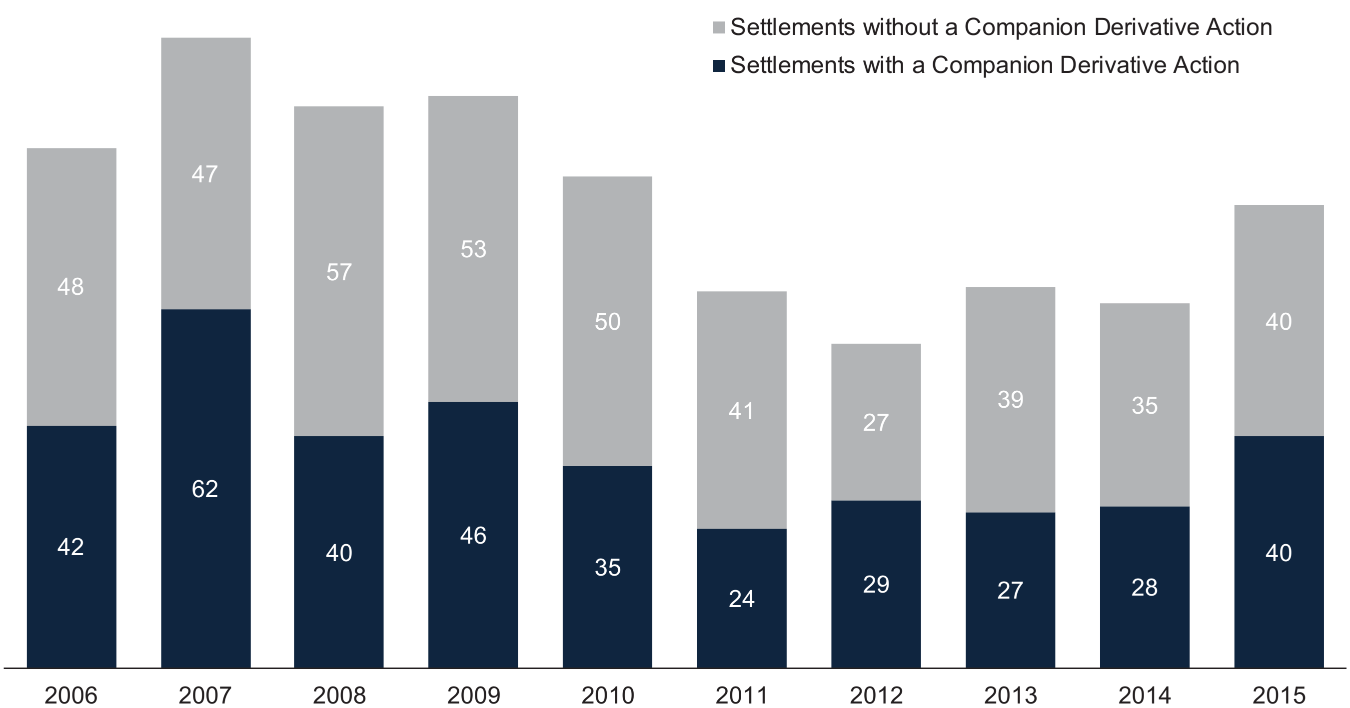
Note: Settlement dollars are adjusted for inflation; 2015 dollar equivalent figures are used.

DERIVATIVE ACTIONS

- In 2015, 50 percent of settled cases were accompanied by derivative actions. For the past nine years, derivative actions have accompanied an average of 46 percent of settlements.
- Historically, accompanying derivative actions have been associated with relatively large securities class actions.[10] In 2015, 64 percent of cases with "estimated damages" of more than $500 million involved a companion derivative action, compared to 40 percent for cases with damages of $500 million or less.
- Median "estimated damages" for settlements in 2015 with an accompanying derivative action were two-and-a-half times larger than for settlements without an accompanying derivative action.

In 2015, the median settlement for a case with a companion derivative action was $8.3 million versus $3.1 million for those without.

FIGURE 16: **FREQUENCY OF DERIVATIVE ACTIONS**
2006–2015



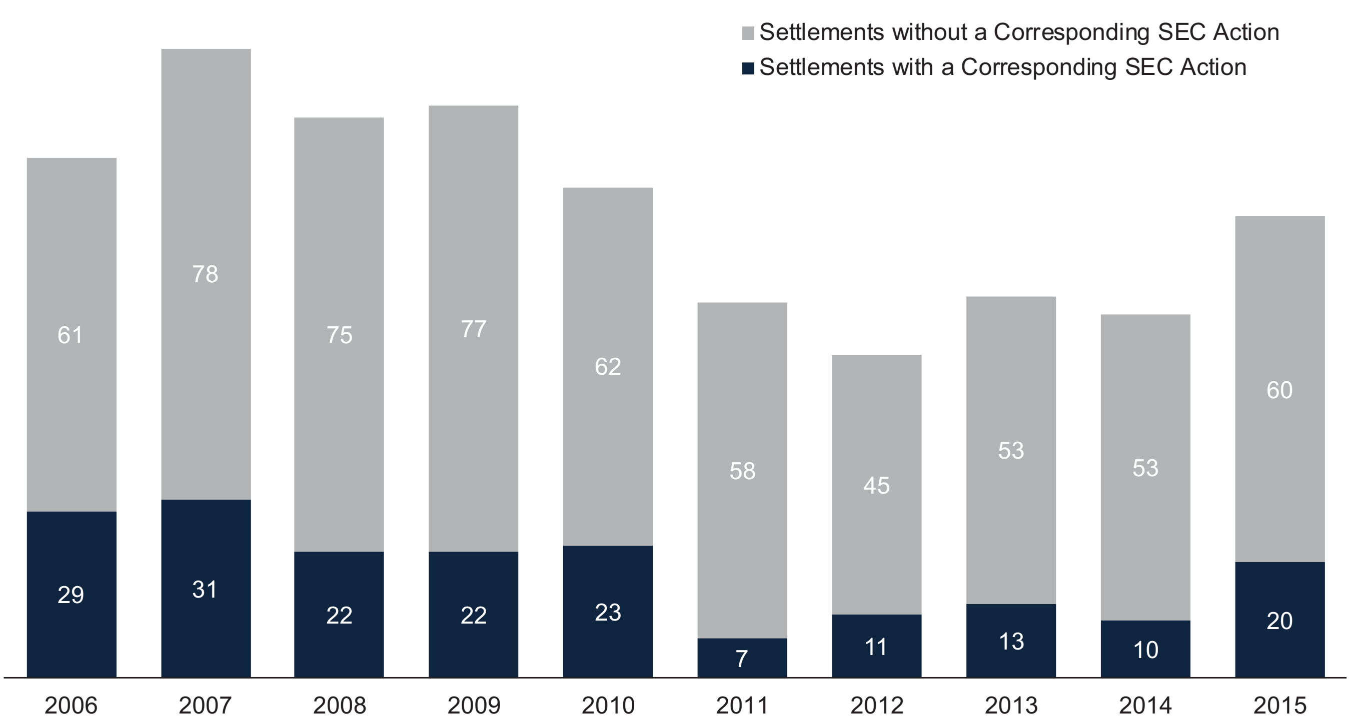
CORRESPONDING SEC ACTIONS

Cases with a corresponding SEC action related to the allegations (evidenced by the filing of a litigation release or administrative proceeding prior to settlement) are associated with significantly higher settlement amounts and have higher settlements as a percentage of “estimated damages.”[11]

- The median settlement for all post–Reform Act cases with an SEC action ($12.1 million) was more than twice the median settlement for cases without a corresponding SEC action ($6 million).
- In 2015, however, the median settlement for cases with a corresponding SEC action was only $5.3 million, while cases without an associated SEC action had a higher median settlement of $6.1 million.
- Closely related to the increased proportion of settlements with corresponding SEC actions in 2015, recent data indicate an increase in the volume of SEC enforcement actions involving financial reporting allegations over the last few years.[12]

In 2015, institutional investors were involved as lead plaintiffs in 15 out of 20 cases with a corresponding SEC action.

FIGURE 17: **FREQUENCY OF SEC ACTIONS**
2006–2015

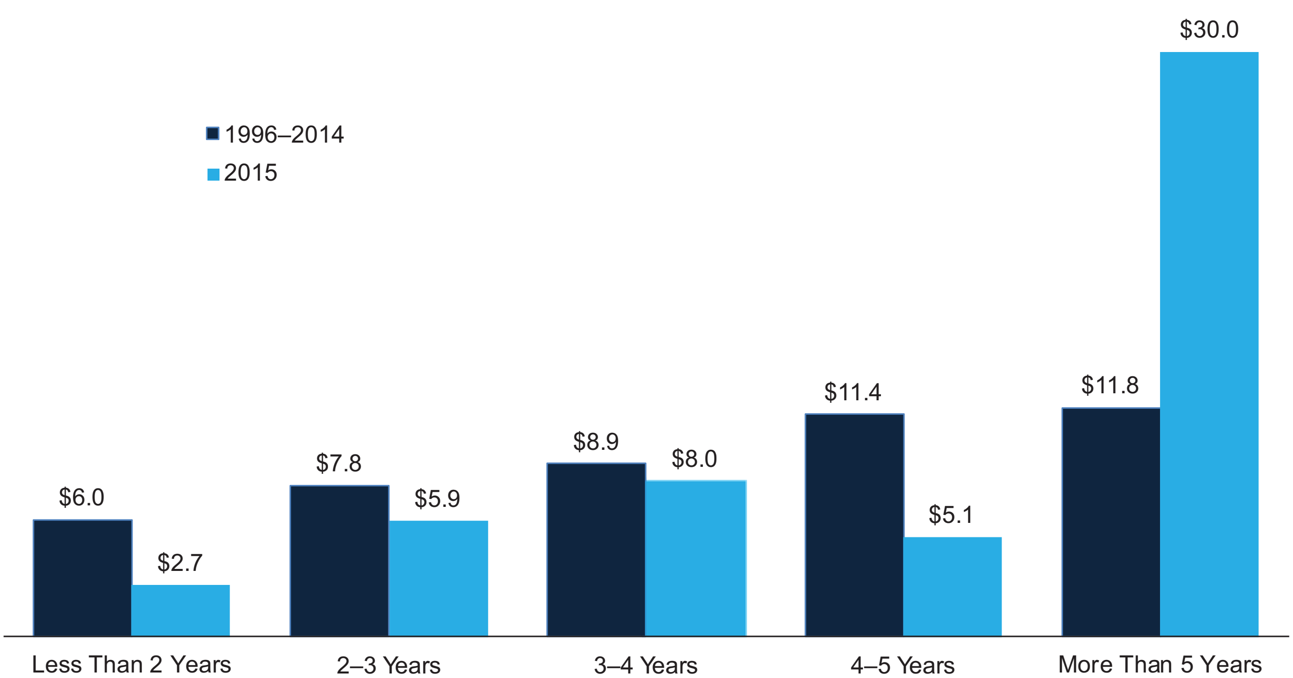


TIME TO SETTLEMENT AND CASE COMPLEXITY

- In 2015, 20 percent of settlements occurred within two years after the filing date, up considerably from 10 percent of settlements in 2014.
  - Median settlements were 67 percent lower for cases settling within two years than for cases taking longer to settle.
  - Cases settling within two years were also less likely to include allegations of GAAP violations or corresponding SEC actions or have a public pension as a lead plaintiff.
- Overall, larger cases (as measured by “estimated damages”) and cases involving larger firms tend to take longer to reach settlement.
- In 2015, settlement amounts for cases that took five years or longer to finalize were substantially higher than those that reached quicker settlements.

In 2015, the median time from filing date to settlement was three years.

FIGURE 18: **MEDIAN SETTLEMENT BY DURATION FROM FILING DATE TO SETTLEMENT HEARING DATE**
1996–2015
(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2015 dollar equivalent figures are used.

LITIGATION STAGES

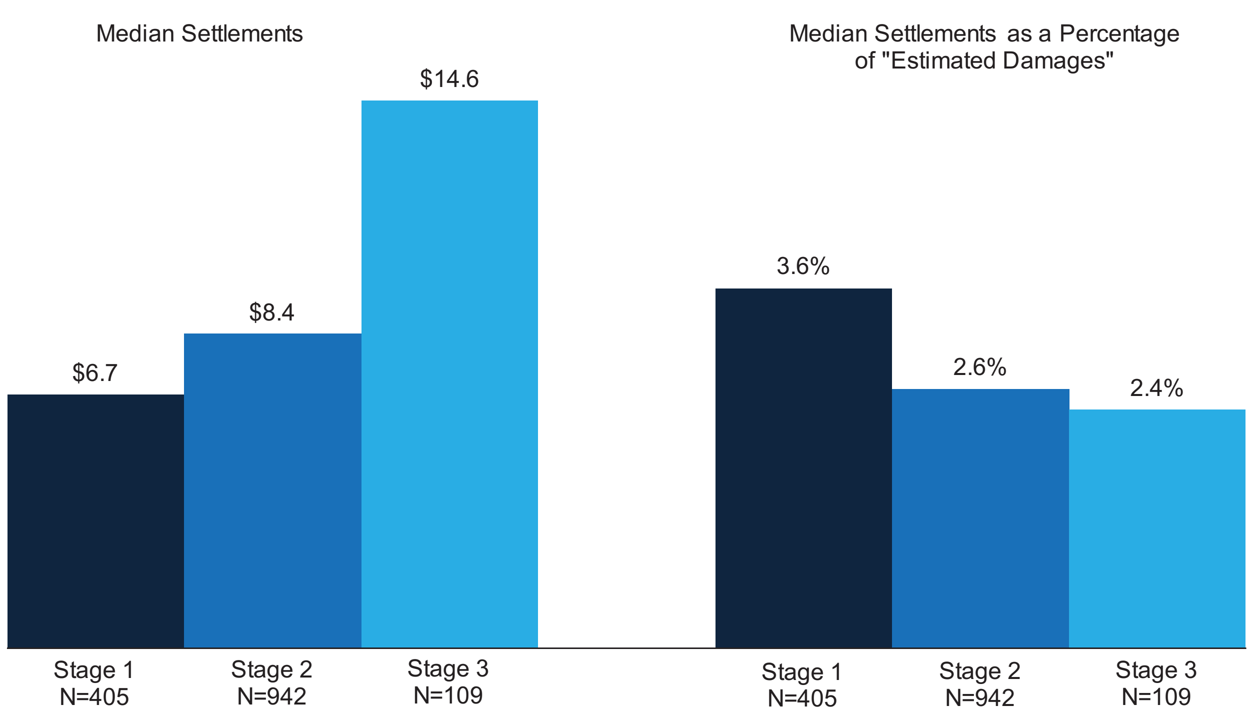
This report studies three stages in the litigation process that may be considered an indication of the strength of the merits of a case (e.g., surviving a motion to dismiss) and/or the time and effort invested by the lead plaintiff counsel:

Stage 1: Settlement before the first ruling on a motion to dismiss
Stage 2: Settlement after a ruling on motion to dismiss, but before a ruling on motion for summary judgment
Stage 3: Settlement after a ruling on motion for summary judgment[13]

- In 2015, 30 percent of settlements occurred in Stage 1, compared to 26 percent for cases settled in 1996–2014.
- Larger cases, denoted by "estimated damages," tend to settle at more advanced stages of litigation and tend to take longer to reach settlement.
  - Cases settling in Stage 3 had median "estimated damages" that were three-and-a-half times higher than the median "estimated damages" of cases settling in Stage 1.
  - Cases settling in Stage 1 had the lowest dollar amount but the highest percentage of "estimated damages."

Settlement amounts tend to increase the longer a case continues.

FIGURE 19: **LITIGATION STAGES**
1996–2015
(Dollars in Millions)



Note: Settlement dollars are adjusted for inflation; 2015 dollar equivalent figures are used.

INDUSTRY SECTORS

- There were 11 settled cases in the financial sector in 2015, up 57 percent over 2014 but lower than in earlier years. This is consistent with the resolution of a majority of the credit crisis–related cases filed since 2007 and the absence of securities class actions related to the credit crisis filed since 2012.[14]
- Reflecting their larger "estimated damages," cases in the financial sector have settled for the highest amounts among all post–Reform Act cases. In 2015, 55 percent of financial sector settlements involved "estimated damages" of greater than $1 billion.
- The proportion of settled cases involving pharmaceutical firms rose 40 percent in 2015 from 2014 (from 10 percent to 14 percent of cases).
- Industry sector is not a significant determinant of settlement amounts when controlling for other variables that influence settlement outcomes (such as "estimated damages," asset size, and other factors discussed on page 23).

The proportion of settled cases in 2015 involving technology firms reached 18 percent.

FIGURE 20: **SELECT INDUSTRY SECTORS**
1996–2015
(Dollars in Millions)

Industry	Number of Settlements	Median Settlements	Median "Estimated Damages"	Median Settlements as a Percentage of "Estimated Damages"
Technology	345	$7.8	$327.7	2.9%
Financial	186	$13.6	$762.6	2.7%
Telecommunications	147	$9.4	$495.5	2.4%
Retail	126	$6.6	$231.2	4.1%
Pharmaceuticals	111	$8.2	$460.3	2.6%
Healthcare	62	$8.2	$283.6	3.5%

Note: Settlement dollars and "estimated damages" adjusted for inflation; 2015 dollar equivalent figures used. "Estimated damages" are adjusted for inflation based on class period end dates.

FEDERAL COURT CIRCUITS

- In 2015, 53 percent of settlements occurred in the Second or Ninth Circuits
- Reflecting the concentration of financial industry cases in the Second Circuit, median "estimated damages" of cases filed in this circuit were more than two times the median for all settlements in 2015.
- Cases in the DC and Sixth Circuits have settled for the highest dollar amounts and also relatively high median settlements as a percentage of "estimated damages."

The Second and Ninth Circuits continued to lead other circuits in the number of settlements.

FIGURE 21: **SETTLEMENTS BY FEDERAL COURT CIRCUIT 2006–2015**
(Dollars in Millions)

Circuit	Number of Settlements	Median Number of Docket Entries	Median Duration from Tentative Settlement to Approval Hearing *(in months)*	Median Settlements	Median Settlements as a Percentage of "Estimated Damages"
First	37	140	6.4	$6.9	2.7%
Second	201	113	6.5	$12.0	2.3%
Third	75	121	6.3	$8.9	2.8%
Fourth	30	118	4.8	$8.4	1.9%
Fifth	49	107	5.3	$6.6	2.3%
Sixth	37	142	4.5	$17.1	3.0%
Seventh	41	149	5.2	$9.8	2.5%
Eighth	22	195	5.9	$8.1	3.6%
Ninth	211	165	6.4	$7.5	2.3%
Tenth	24	153	6.4	$8.2	1.5%
Eleventh	56	133	5.4	$5.2	2.6%
DC	4	190	6.5	$31.2	3.7%

Note: Settlement dollars adjusted for inflation; 2015 dollar equivalent figures used.

CORNERSTONE RESEARCH'S SETTLEMENT PREDICTION ANALYSIS

This research applies regression analysis to examine which characteristics of securities cases were associated with settlement outcomes. Based on the research sample of post–Reform Act cases that settled through December 2015, the factors that were important determinants of settlement amounts included the following:

- "Estimated damages"
- Disclosure Dollar Loss (DDL)
- Most recently reported total assets of the defendant firm
- Number of entries on the lead case docket
- The year in which the settlement occurred
- Whether the issuer reported intentional misstatements or omissions in financial statements
- Whether a restatement of financials related to the alleged class period was announced
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether the plaintiffs named an auditor and/or underwriter as a codefendant
- Whether the issuer defendant was distressed
- Whether a companion derivative action was filed
- Whether a public pension was a lead plaintiff
- Whether noncash components, such as common stock or warrants, made up a portion of the settlement fund
- Whether the plaintiffs alleged that securities other than common stock were damaged
- Whether criminal charges/indictments were brought with similar allegations to the underlying class action
- Whether the issuer traded on a nonmajor exchange

Settlements were higher when "estimated damages," DDL, defendant asset size, or the number of docket entries were larger. Settlements were also higher in cases involving intentional misstatements or omissions in financial statements reported by the issuer, a restatement of financials, a corresponding SEC action, an underwriter and/or auditor named as codefendant, an accompanying derivative action, a public pension involved as lead plaintiff, a noncash component to the settlement, filed criminal charges, or securities other than common stock alleged to be damaged. Settlements were lower if the settlement occurred in 2009 or later, if the issuer was distressed, or if the issuer traded on a nonmajor exchange.

The regression analysis is designed to better understand and predict the total settlement amount, given the characteristics of a particular securities case. This analysis can also be applied to estimate the probabilities associated with reaching alternative settlement levels. These probability estimates can be useful for clients in considering the different layers of insurance coverage available and likelihood of contributing to the settlement fund. Regression analysis can also be used to explore hypothetical scenarios, including, but not limited to, the effects on settlement amounts given the presence or absence of particular factors found to significantly affect settlement outcomes.

RESEARCH SAMPLE

- The database used in this report focuses on cases alleging fraudulent inflation in the price of a corporation's common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and excluding cases alleging fraudulent depression in price and M&A cases).
- The sample is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 1,537 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2015. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).[15]
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.[16] Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[17]

DATA SOURCES

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, and public press.

ENDNOTES

[1] See *Securities Class Action Filings—2015 Year in Review*, Cornerstone Research, 2016, page 4.

[2] See *Securities Class Action Filings—2015 Year in Review*, Cornerstone Research, 2016, page 30.

[3] The simplified "estimated damages" model is applied to common stock only. For all cases involving Rule 10b-5 claims, damages are calculated using a market-adjusted, backward-pegged value line. For cases involving only Section 11 and/or Section 12(a)(2) claims, damages are calculated using a model that caps the purchase price at the offering price. Volume reduction assumptions are based on the exchange on which the issuer's common stock traded. Finally, no adjustments for institutions, insiders, or short sellers are made to the underlying float.

[4] This measure does not incorporate additional stock price declines during the alleged class period that may affect certain purchasers' potential damages claims. As this measure does not isolate movements in the defendant's stock price that are related to case allegations, it is not intended to represent an estimate of investor losses. The DDL calculation also does not apply a model of investors' share-trading behavior to estimate the number of shares damaged.

[5] Tiered estimated damages are calculated for cases that settled after 2005. The calculation of tiered estimated damages utilizes a single value line when there is one alleged corrective disclosure date (at the end of the class period) or a tiered value line when there are multiple alleged corrective disclosure dates.

[6] The dates used to identify the applicable inflation bands may be supplemented with information from the operative complaint at the time of settlement.

[7] Tiered estimated damages applies inflation bands to specific date intervals during the alleged class period. As such, it does not reflect all declines during the alleged class period as captured by "estimated damages."

[8] See *Securities Class Action Filings—2015 Year in Review*, Cornerstone Research, 2016, page 10.

[9] The three categories of accounting allegations analyzed in this report are: (1) GAAP violations—cases with allegations involving Generally Accepted Accounting Principles (GAAP); (2) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (3) accounting irregularities—cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.

[10] This is true whether or not the settlement of the derivative action coincides with the settlement of the underlying class action, or occurs at a different time.

[11] It could be that the merits in such cases are stronger, or simply that the presence of an accompanying SEC action provides plaintiffs with increased leverage when negotiating a settlement.

[12] See *SEC Enforcement Activity against Public Company Defendants, Fiscal Years 2010–2015*, Cornerstone Research, 2016.

[13] Litigation stage data obtained from Stanford Law School's Securities Class Action Clearinghouse. Sample does not add to 100 percent as there is a small sample of cases with other litigation stage classifications.

[14] See *Securities Class Action Filings—2015 Year in Review*, Cornerstone Research, 2016.

[15] Available on a subscription basis.

[16] Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.

[17] This categorization is based on the timing of the settlement approval. If a new partial settlement equals or exceeds 50 percent of the then-current settlement fund amount, the entirety of the settlement amount is recategorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

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Dr. Simmons's research on pre– and post–Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, with recent research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research. Please direct any questions and requests for additional information to the settlement database administrator at settlement.database@cornerstone.com.

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Exhibit 5

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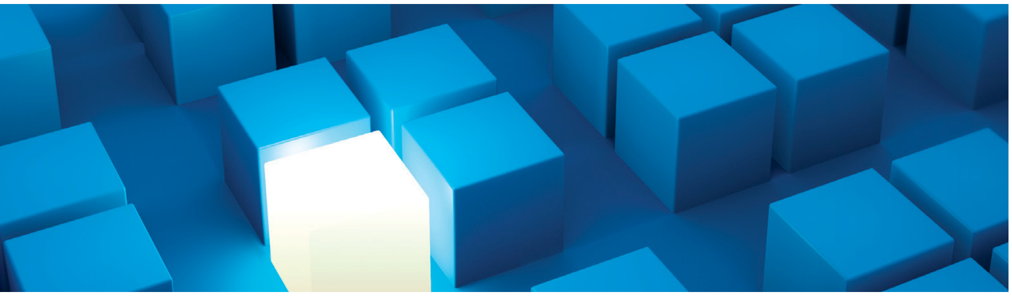
25 January 2016



Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review

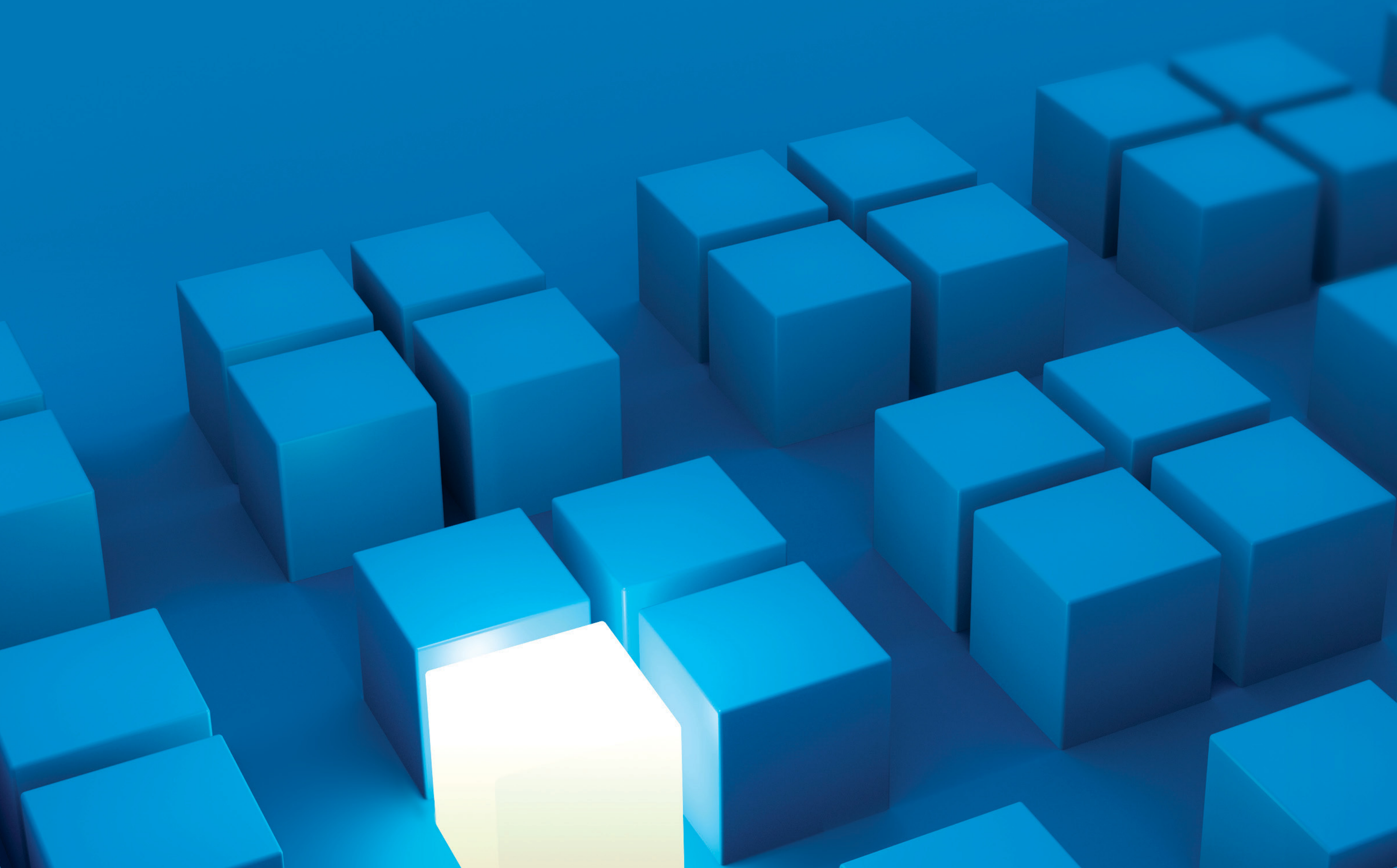
Record Number of Cases Being Filed Faster than Ever with the Shortest Alleged Class Periods

By Svetlana Starykh and Stefan Boettrich

Insight in Economics™

"I am pleased to share NERA's *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review* with you. This edition builds on our work over numerous years by many of the members of NERA's Securities and Finance Practice. In this edition, we look at trends in filings and settlements and present some new findings on when cases are filed and on how the length of class periods has changed. We also provide more information on our model for predicting settlements based on updated statistical analyses of hundreds of securities class actions. While space does not permit us to show all of the analyses that the authors have undertaken in preparation for this edition, we hope that you will contact us if you want to learn more. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope that you find it informative."

Dr. David Tabak, *Senior Vice President*



Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review

Record Number of Cases Being Filed Faster than Ever with the Shortest Alleged Class Periods

By Svetlana Starykh and Stefan Boettrich[1]

25 January 2016

Introduction and Summary[2]

2015 saw federal securities class action filings reach levels not seen since 2008, with 234 complaints filed. Growth was dominated by 182 filings alleging violations of Rule 10b-5, Section 11, or Section 12, which capped three years of double-digit growth in the category. Filings were particularly concentrated in the technology sector, which accounted for more than a fifth of all filings, and in the Ninth Circuit, which easily dominated the Second Circuit and accounted for nearly a third of all filings.

Generally, alleged class periods were the shortest on record, with the median falling to merely 310 days. Despite these shorter class periods, filed cases were not necessarily smaller. In fact, using NERA's proxy for aggregate case size, total potential case size increased by more than 25% in 2015, from $145 billion in 2014 to $183 billion in 2015, due to the filing of three very large cases.

Cases were also filed more quickly in 2015 than in prior years. In 2015 the median time between the end of the alleged class period and filing date shortened to a record 11 days, down almost 40% since 2014.

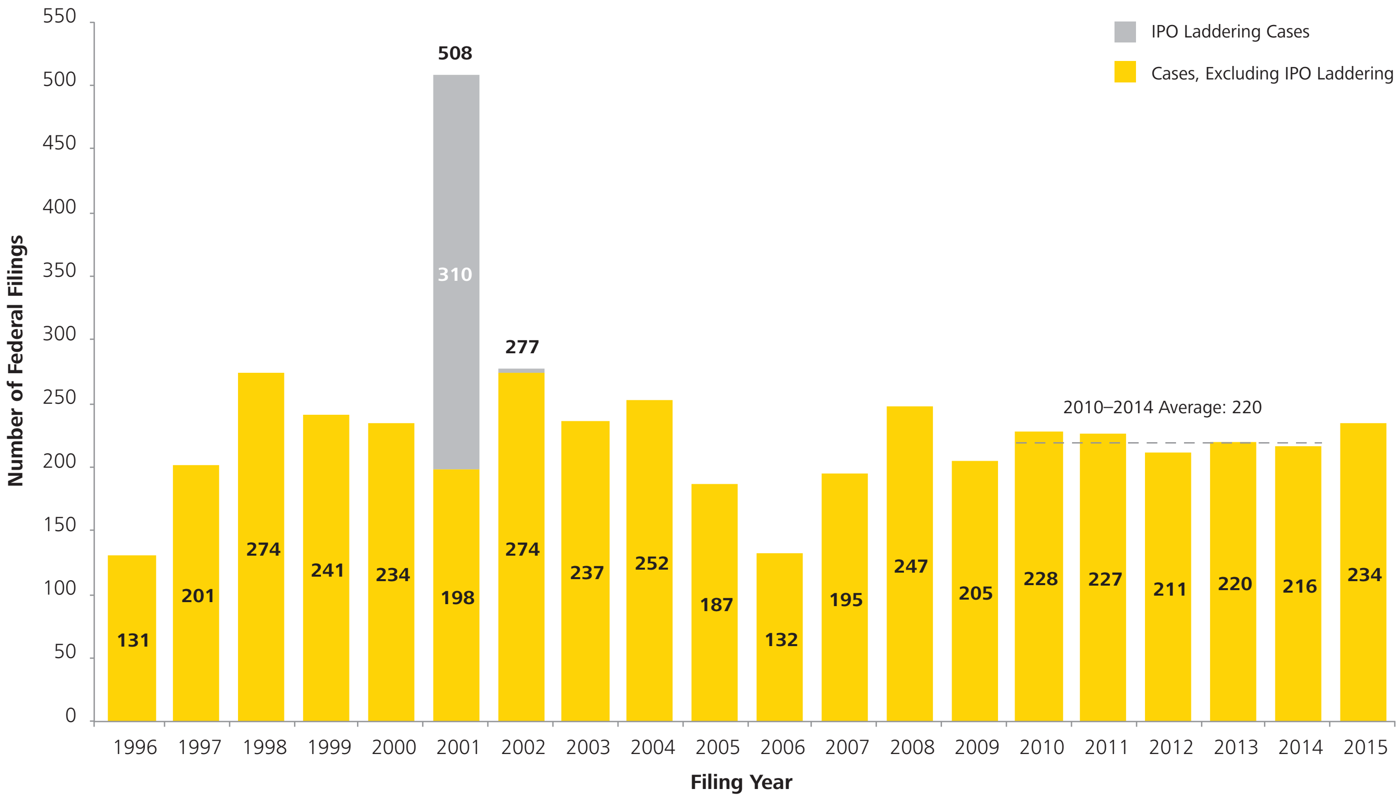
Although 108 cases settled in 2015, more than in any year since 2011, when 128 settled, cases continue to resolve at rates that are low by historical standards. Median settlement values were little changed from last year, staying at approximately $7 million, but 14 settlements for more than $100 million drove one measure of 2015 average settlement values to $52 million, close to the all-time high of $54 million set in 2013. The number of voluntary dismissals for cases filed and dismissed within the same calendar year more than tripled from four in 2014 to 13 in 2015.

Trends in Filings

Number of Cases Filed

In 2015, 234 securities class actions were filed in federal courts, more than in any year since 2008, at the height of the financial crisis. See Figure 1. The number of filings in 2015 is 8% higher than in 2014, and about 6% higher than the average rate of the preceding five years. The 2015 rate is well above the post-Private Securities Litigation Reform Act (PSLRA) average of approximately 216 cases per year.

Figure 1. **Federal Filings**
January 1996–December 2015

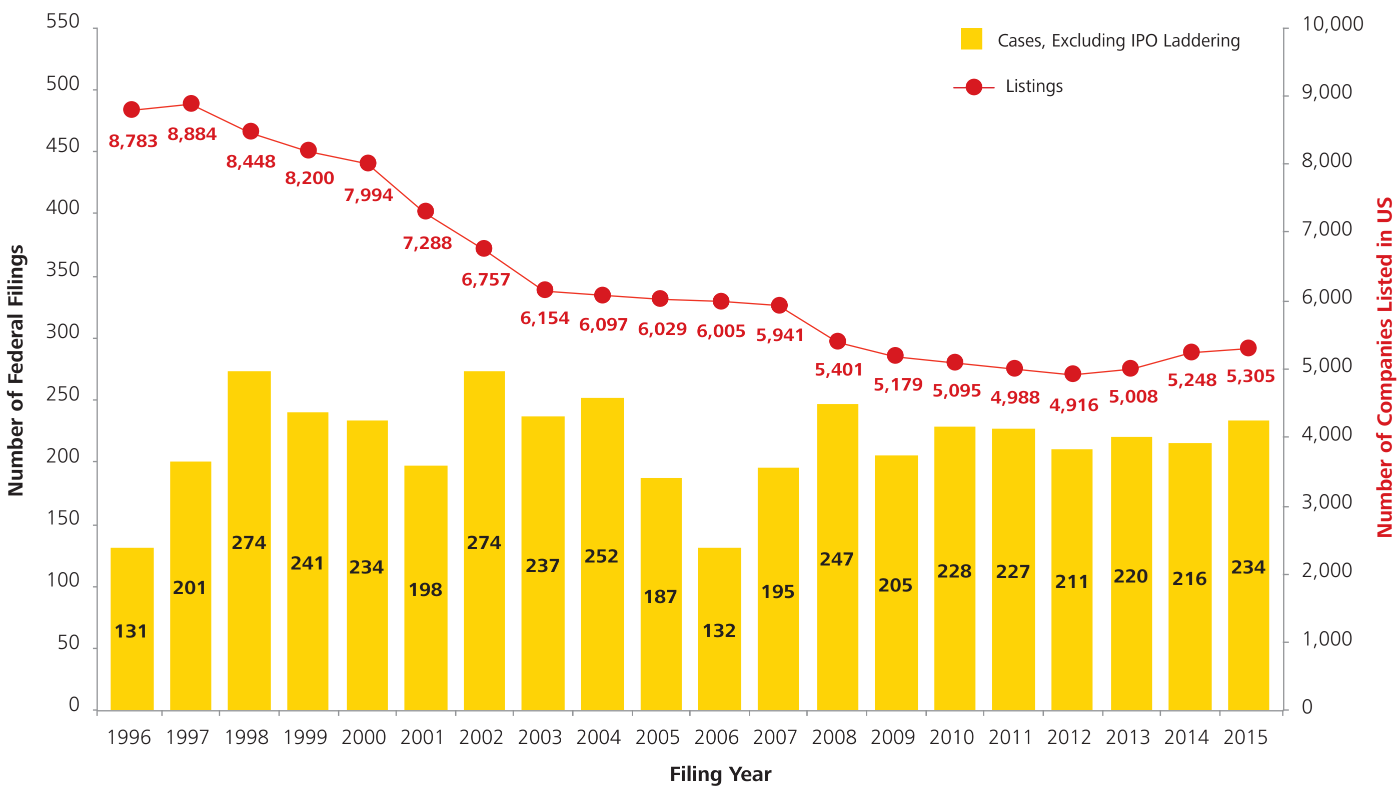


As of October 2015, 5,305 companies were listed on the major US securities exchanges. See Figure 2. The 234 federal securities class action suits filed in 2015 represent approximately 4.4% of publicly traded companies.

Over the two decades since the PSLRA went into effect, the number of companies listed on the major US exchanges has fallen by approximately 40%, from 8,783 to 5,305.[3] Despite this large drop in listed companies, the average number of filings of securities class actions over the preceding five years, of about 220 per year, is higher than the average number of filings over the first five years after the PSLRA went into effect, of about 216 per year.

Given that more securities class actions have been filed against fewer listed companies, the average rate of securities litigation has increased. Over the first five years after the PSLRA went into effect, the average rate of litigation (the number of filings as a percent of listed companies) was approximately 2.6%, in contrast with the most recent five-year average rate of about 4.4%. On a yearly basis, the rate peaked in 2008 at nearly 4.6%. The modest decline to 4.4% in 2015 can be traced to a drop in filings and listings.

Figure 2. **Federal Filings and Number of Companies Listed in US**
January 1996–December 2015



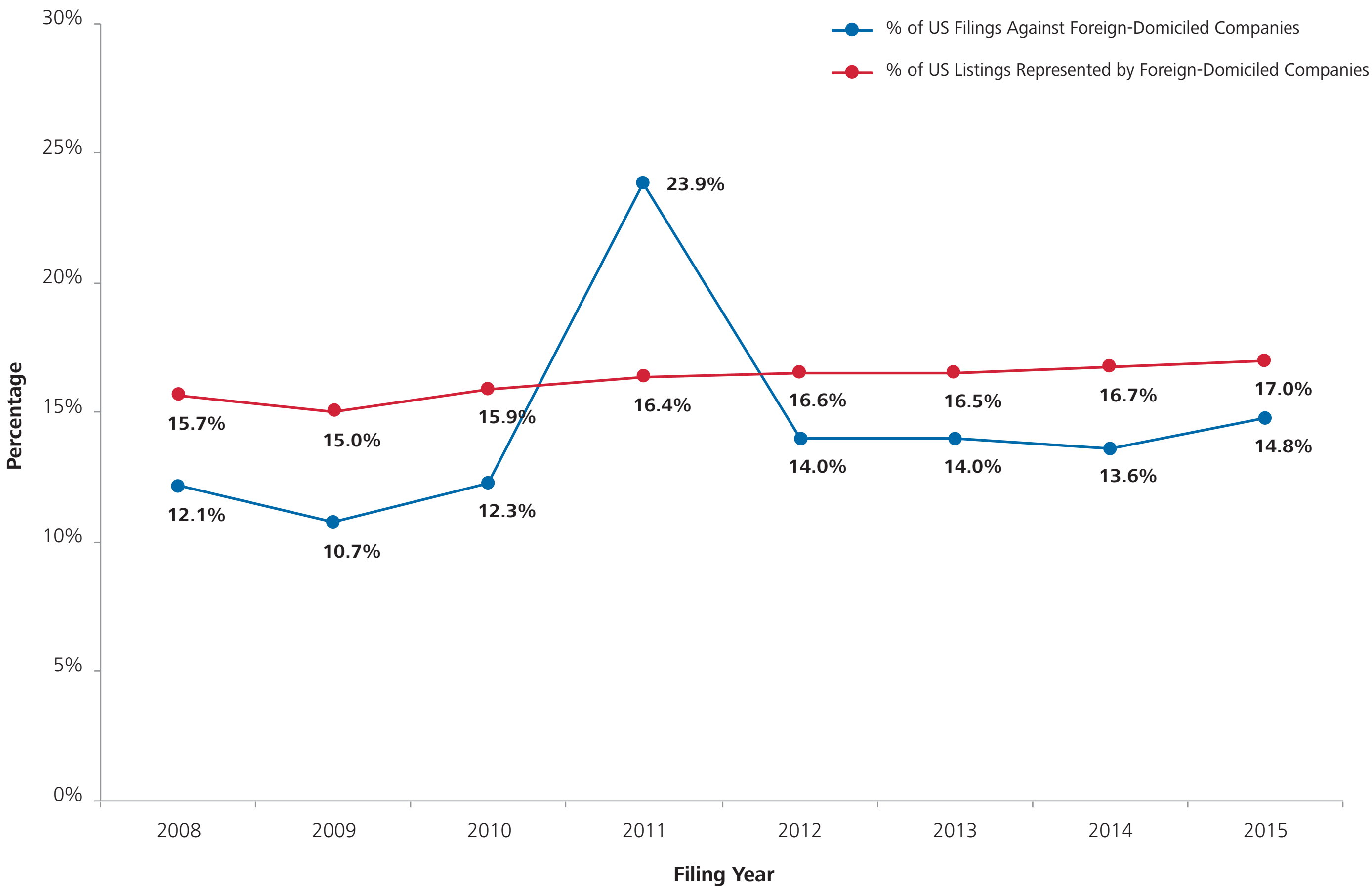
Note: Number of companies listed in US is from Meridian Securities Markets; 1996–2014 values are year-end; 2015 is as of October.

Filings by Issuers' Country of Domicile

In 2011, a record 23.9% of cases were filed against foreign issuers, considerably higher than the 16.4% of foreign issuers listed. See Figure 3. The increase was mostly due to a surge in filings against companies domiciled or with principal executive offices in China. 2011 was the only recent period in which foreign-domiciled companies were disproportionally targeted by securities class actions; in other years, the proportion of foreign class actions was less than the proportion of foreign listings.

The percent of filings against foreign issuers declined from 2011 to 2012 but has remained elevated above prior levels. In 2015, compared to 2014, the percent of filings against foreign issuers grew by nearly a percentage point more than the percent of foreign listings on US stock exchanges.

Figure 3. **Foreign-Domiciled Companies: Share of Filings and Share of All Companies Listed in US**
January 2008–December 2015



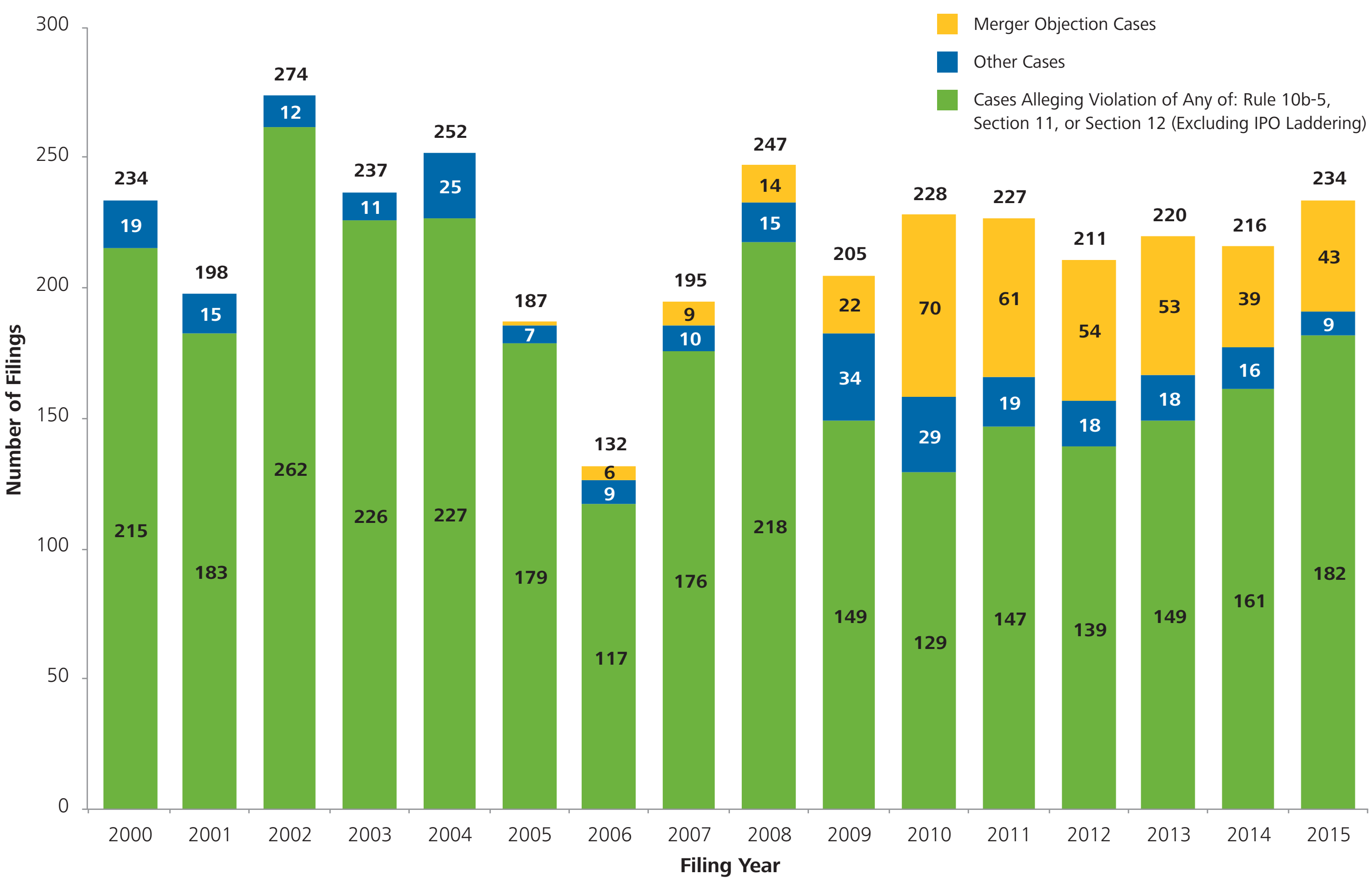
Filings by Type

Preceding the uptick in federal filings this year, the number of annual filings had been remarkably stable given the amount of variation in the types of cases filed. While the number of filings alleging violations of Rule 10b-5, Section 11, and/or Section 12—often regarded as "standard" securities class actions—fell in 2010 and 2012 to near all-time lows, filings of merger objection cases and other cases made up the difference. See Figure 4. Since then, the number of standard case filings has risen in each of the past three years. In 2015, standard case filings increased by 21 to 182, the annual largest jump since the 2008 financial crisis and a 41% increase over the 2010 low. Despite recent growth, the number of standard cases filed in 2015 remains lower than any year between 2000 and 2004.

Although federal merger objection cases were not a new case type, such cases came into focus in 2010, with 70 cases filed, or about 31% of all securities class actions that year.[4] Since then, the number of merger objections filed at the federal level has generally fallen: only 43 filings were submitted in 2015, accounting for about 18% of all filings. This is in spite of a record volume of announced US mergers and acquisitions in 2015, which exceeded $2 trillion for the first time ever.[5]

Rounding out the total in 2015 are a variety of other cases, primarily alleging breach of fiduciary duty for a variety of reasons.

Figure 4. **Federal Filings by Type**
January 2000–December 2015

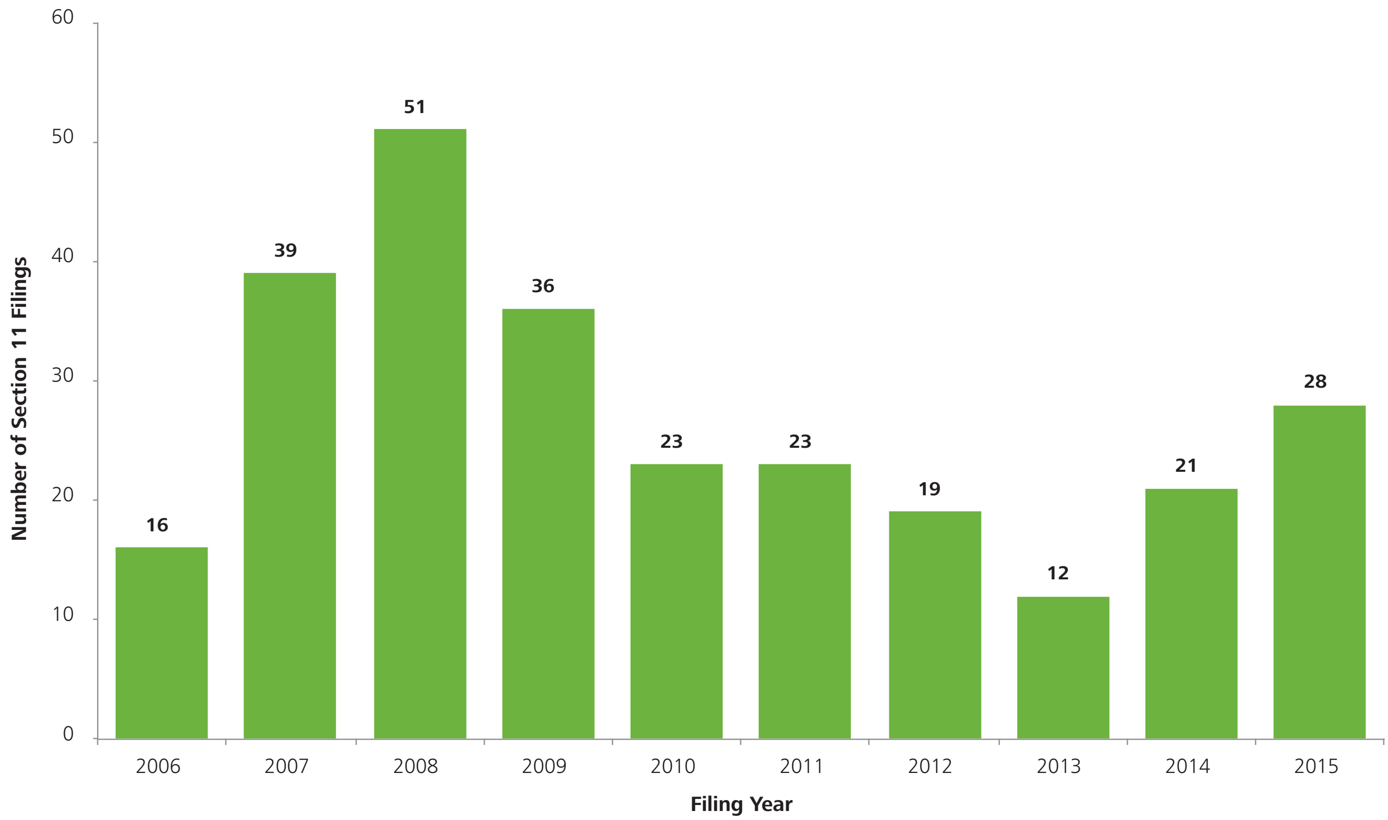


Note: Before 2005, merger objections (if any) were not disaggregated. This figure omits IPO laddering cases.

Section 11 Filings

In 2015 there were 28 filings alleging violations of Section 11, a one-third increase over 2014 and more than double the number over the past two years, as shown in Figure 5. These Section 11 filings were concentrated in two circuits. In the Ninth Circuit, filings grew from two to 10 over the last year and spanned many economic sectors. The Second Circuit also accepted 10 filings, roughly equal to 11 last year. The increase in filings alleging violations of Section 11 follows what, according to the *Financial Times*, was a "bumper IPO year" in 2014.[6] According to Mergerstat data, 289 IPOs were conducted in 2014, more than in any year since 2000.[7]

Figure 5. **Section 11 Filings**
January 2006–December 2015



Aggregate Investor Losses

In addition to the number of cases filed, we also consider the total potential size of these cases using a metric we label "investor losses."

NERA's investor losses variable is a proxy for the aggregate amount that investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period. Note that the investor losses variable is not a measure of damages, because any stock that underperforms the S&P 500 would have "investor losses" over the period of underperformance; rather, it is a rough proxy for the relative size of investors' potential claims. Historically, "investor losses" have been a powerful predictor of settlement size. Investor losses can explain more than half of the variance in the settlement values in our database.

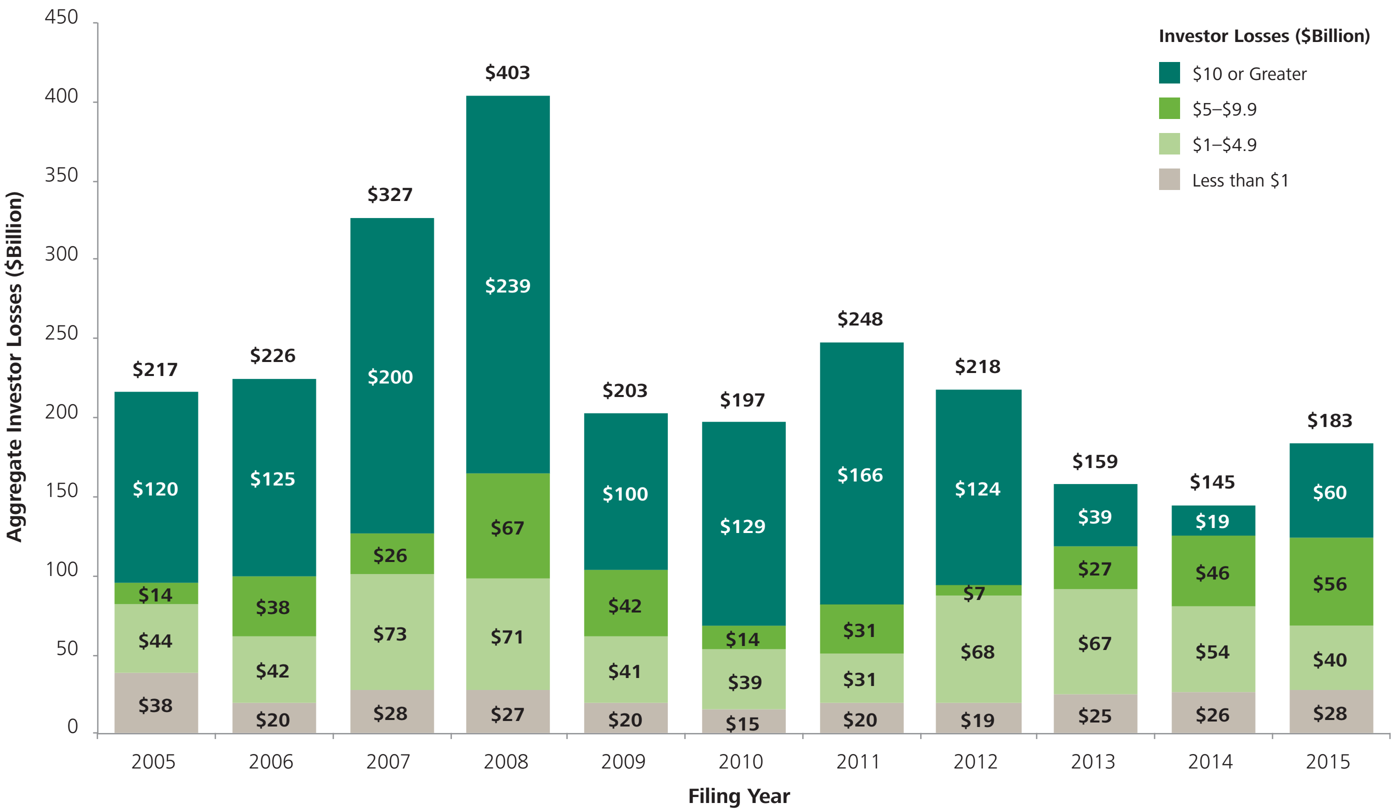
We do not compute investor losses for all cases included in this publication. For instance, class actions in which only bonds and not common stock are alleged to have been damaged are not included. The largest excluded groups are the IPO laddering cases and the merger objection cases. Previous NERA reports on securities class actions did not include investor losses for cases with only Section 11 allegations, but such cases are included here. The calculation for these cases is somewhat different than for cases with 10b-5 claims.

For each year since 2005, we calculate investor losses at the time of filing for each case for which they can be computed. Yearly losses are grouped by magnitude and aggregated, as shown in Figure 6.

In 2015, aggregate investor losses on all filed cases totaled $183 billion, a decrease of more than 25% from four years ago, but a marked increase of more than 25% over 2014 and 15% over 2013. 2013 and 2014 had the lowest aggregate investor losses over the past decade, primarily due to a dearth of large cases being filed. Historically, a few cases with very large investor losses (over $10 billion, and shown in dark green) have made up the largest component of total investor losses each year. In fact, for most years before 2012, cases with such high investor losses accounted for most of the total losses for the year. However, the pattern changed in 2013 and 2014, when cases in the lower investor loss categories made up the bulk of the total investor losses for the year.

In 2015, however, the pattern changed, and three cases with investor losses of over $10 billion were filed, the two largest being against Canadian issuers. A filing against Valeant Pharmaceuticals International accounted for 17% of the investor losses (and half of losses in the high investor loss category). Large filings against Silver Wheaton Corp. and Clovis Oncology, Inc. accounted for 9% and 7% of aggregate investor losses, respectively.

Figure 6. **Aggregate Investor Losses ($Billion)—Shareholder Class Actions with Alleged Violations of Rule 10b-5 or Section 11**
January 2005–December 2015



Filings by Circuit

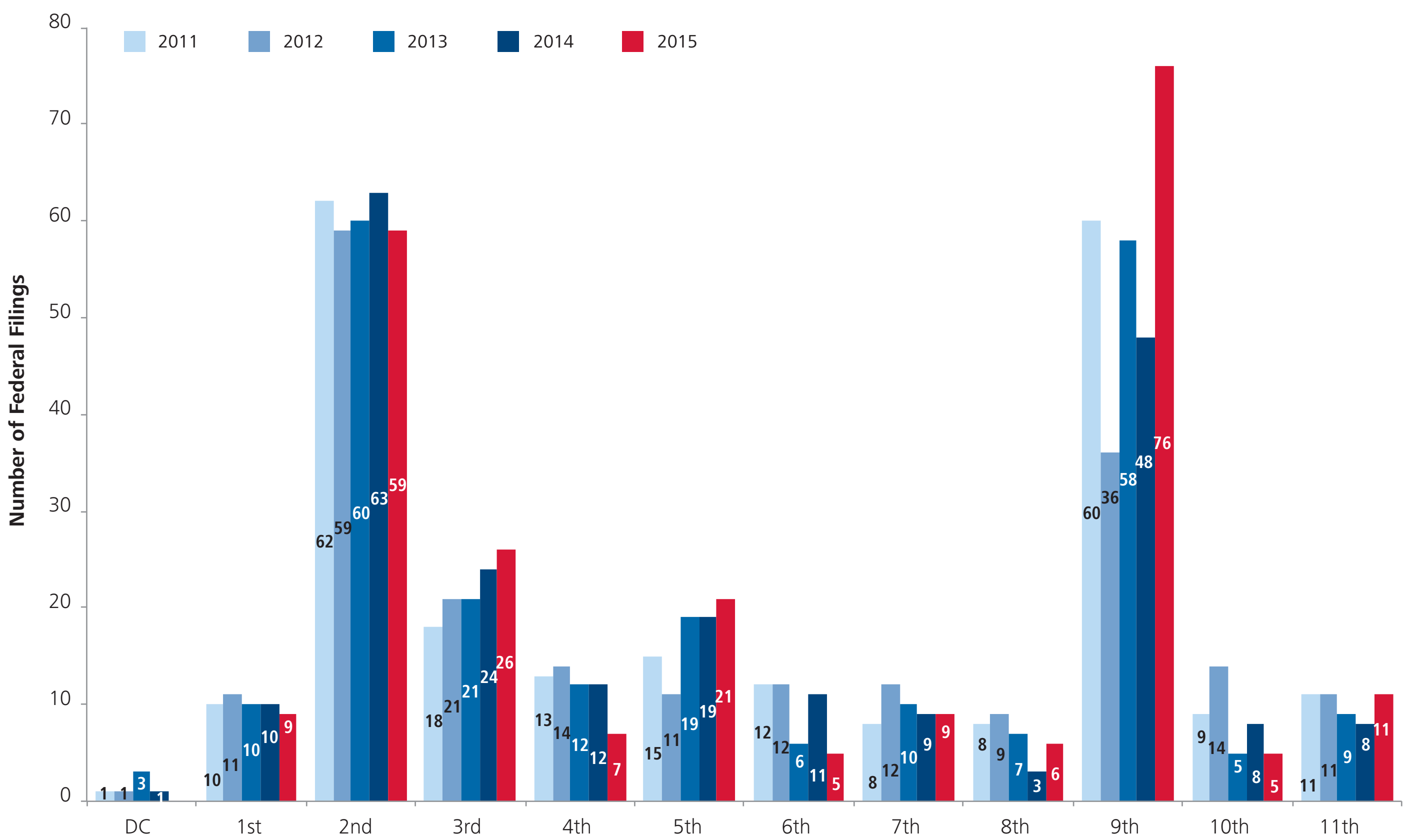
Filings continued to be concentrated in the Second and Ninth Circuits, where more cases were filed than all other circuits combined. See Figure 7.

Filings in the Ninth Circuit, which includes California, grew more than 58% to 76 filings, up from 48 last year. Of these, 65 alleged violations of Rule 10b-5, Section 11, and/or Section 12, an increase of 66% from 2014. More than 30% of the growth came from filings of cases alleging violations of Section 11, having increased from two in 2014 to 10 in 2015, a five-year high.

Filings in the Second Circuit have been relatively steady over the past five years. Although filings matched a five-year low of 59 in 2015, the maximum over this period is only about 7% higher at 63. Notably, fewer securities class actions were filed in the Second Circuit than in the Ninth Circuit for the first time in five years.

Recent steady growth in filings in the Third and Fifth Circuits continued in 2015. Third Circuit filings reached 26, up from 18 in 2011. Growth in filings alleging a violation of Rule 10b-5, Section 11, and/or Section 12 ("standard cases") dominated, increasing to 20 in 2015 from six in 2011. In the Fifth Circuit, 21 securities class actions were filed, of which about 60% were standard cases and about 40% were federal merger objection cases. The Fifth Circuit accepted a disproportionate number of merger objection cases in 2015: while only about 9% of securities class actions were filed in that circuit, more than 20% of merger objection cases were filed in the Fifth Circuit.

Figure 7. **Federal Filings by Circuit and Year**
January 2011–December 2015

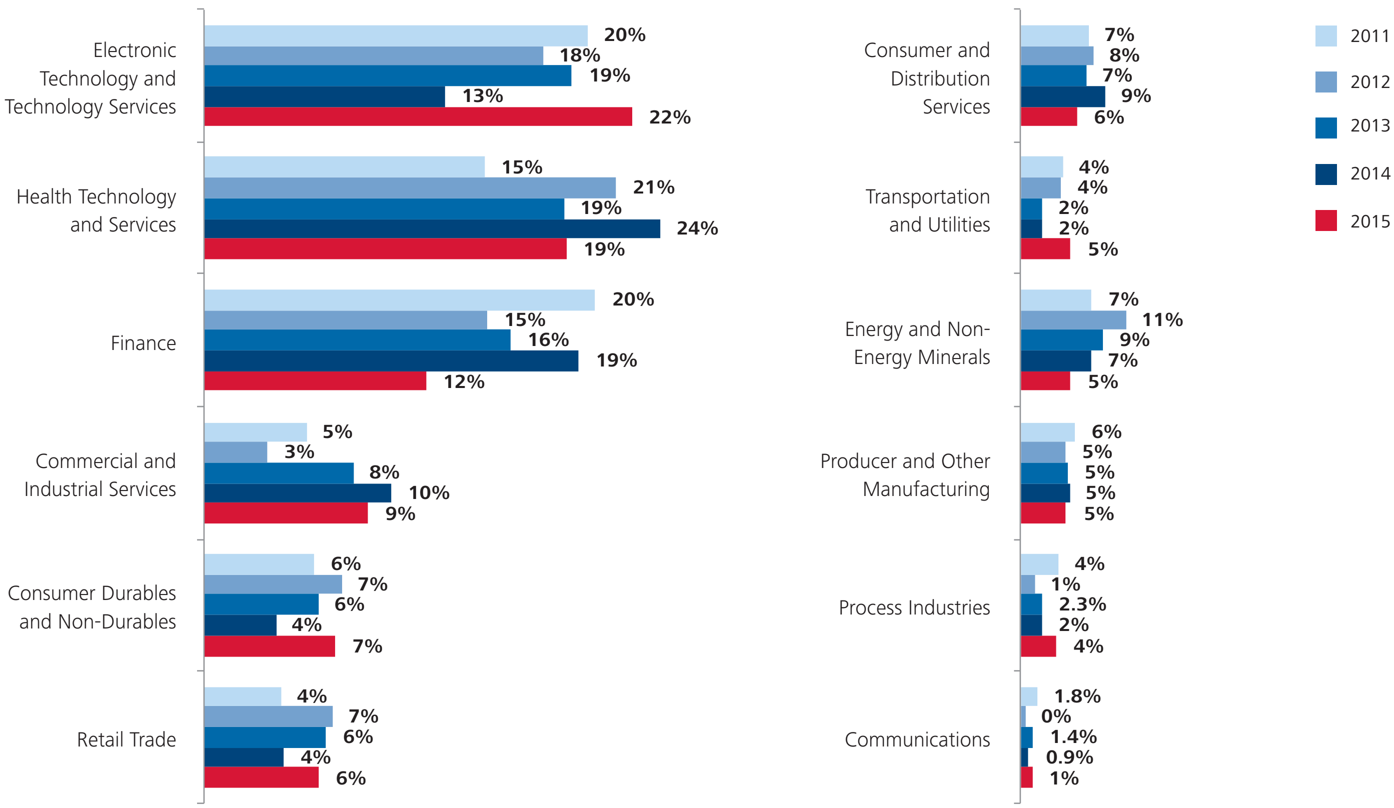


Filings by Sector

More than one out of every five securities class action cases filed in 2015 was against a firm in the Electronic Technology and Technology Services sector. See Figure 8. Filings in the sector eclipsed those in any other, and reached a five-year high in percentage terms. Filings in the sector totaled 52 in 2015, more than a 90% increase from 27 in 2014. Of these, filings alleging violations of Rule 10b-5 grew by nearly 61%, from 23 to 37.

There was a considerable drop in the percent of filings with claims against firms in the Finance sector, which fell to 12% in 2015, down from nearly 20% in 2011. In 2015, there were 27 filings with claims against Finance sector firms, down from 42 in 2014.

Figure 8. **Percentage of Filings by Sector and Year**
January 2011–December 2015

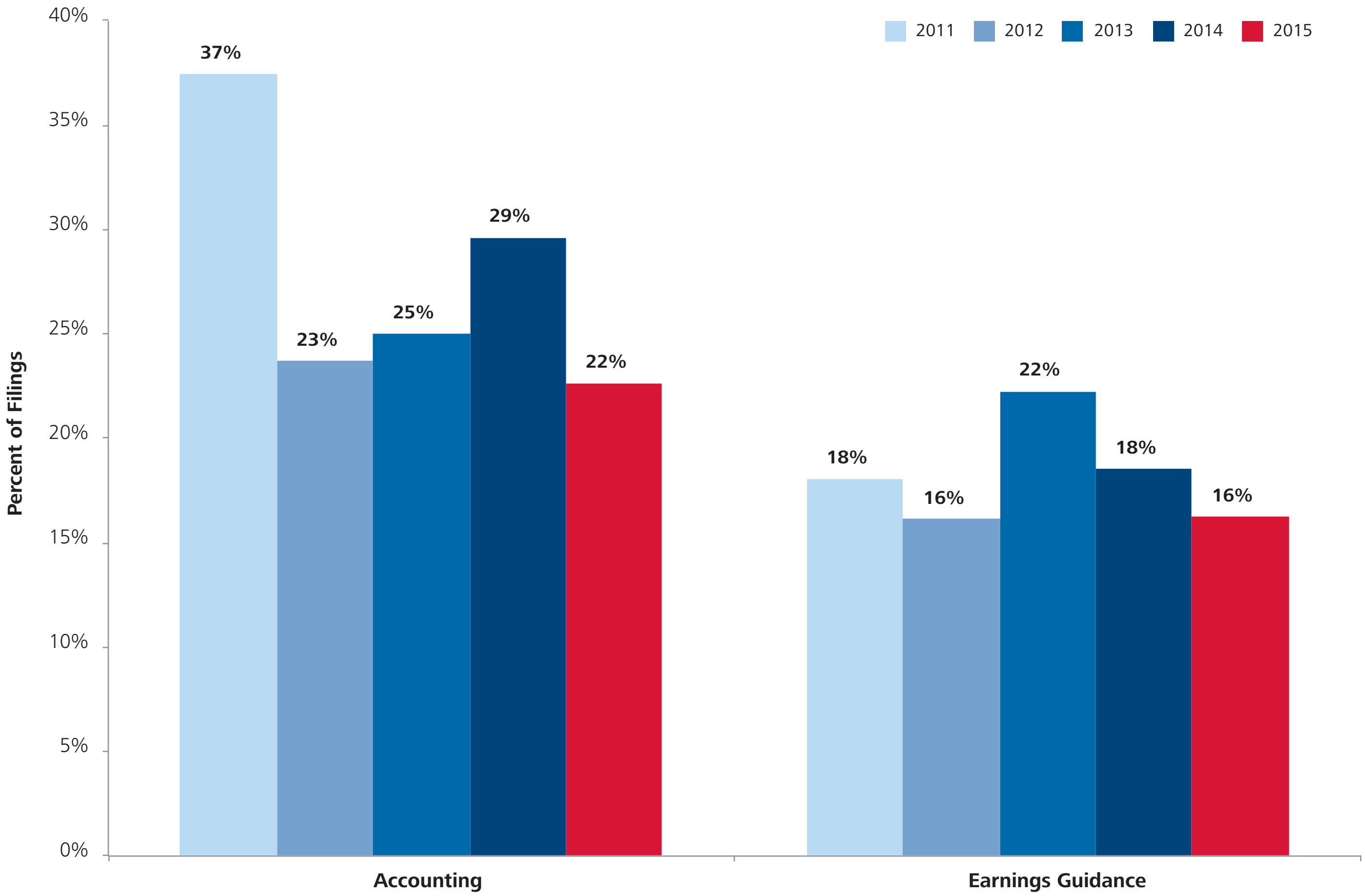


Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Allegations

In 2015, about 22% of filings contained accounting allegations, down from about 29% last year and from 37% in 2011. See Figure 9. The decline in accounting allegations is correlated with the short- and long-term reduction in cases with accounting co-defendants. The percent of filings alleging misleading earnings guidance continued to decrease to about 16% of filings in 2015. Most complaints include a wide variety of allegations, not all of which are depicted here. Due to multiple types of allegations in complaints, the same case may be included in both the accounting and missed-guidance allegation categories.

Figure 9. **Allegations Related to Accounting and Earnings Guidance**
January 2011–December 2015



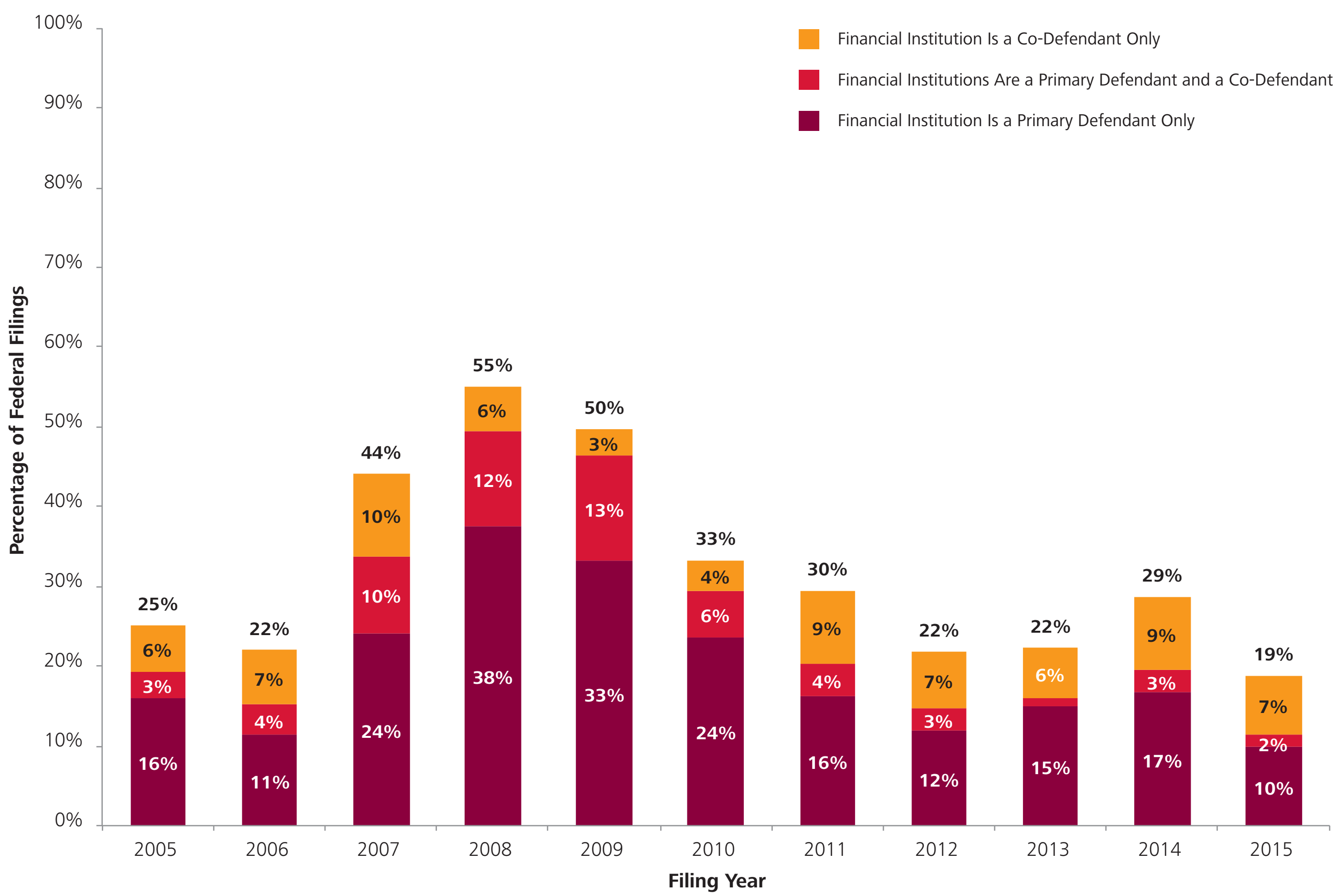
Defendants in the Financial Sector

In addition to being targeted as primary defendants, companies in the Financial sector are often also targeted as co-defendants.

In 2015, 19% of securities class actions filed had a defendant in the Financial sector (whether a primary defendant or co-defendant). See Figure 10. This is down sharply from 29% last year, and is mainly due to about an eight percentage point reduction in filings where the primary defendant is in the Financial sector, as also illustrated in Figure 8. This represents a continuation of the longer term decline in the percentage of filings with primary Financial sector defendants since the financial crisis when, in 2008, about 50% of securities class actions primarily targeted financial institutions.

The overall reduction also stemmed from a two percentage point drop in filings where financial institutions were only co-defendants (such as an underwriter co-defendant). Over the past decade, financial institutions were generally co-defendants in between 3% and 9% of filings where the primary defendant is not a financial institution. In 2015, this percentage was about 7%.

Figure 10. **Federal Cases in which Financial Institutions Are Named Defendants**
January 2005–December 2015



Accounting Co-Defendants

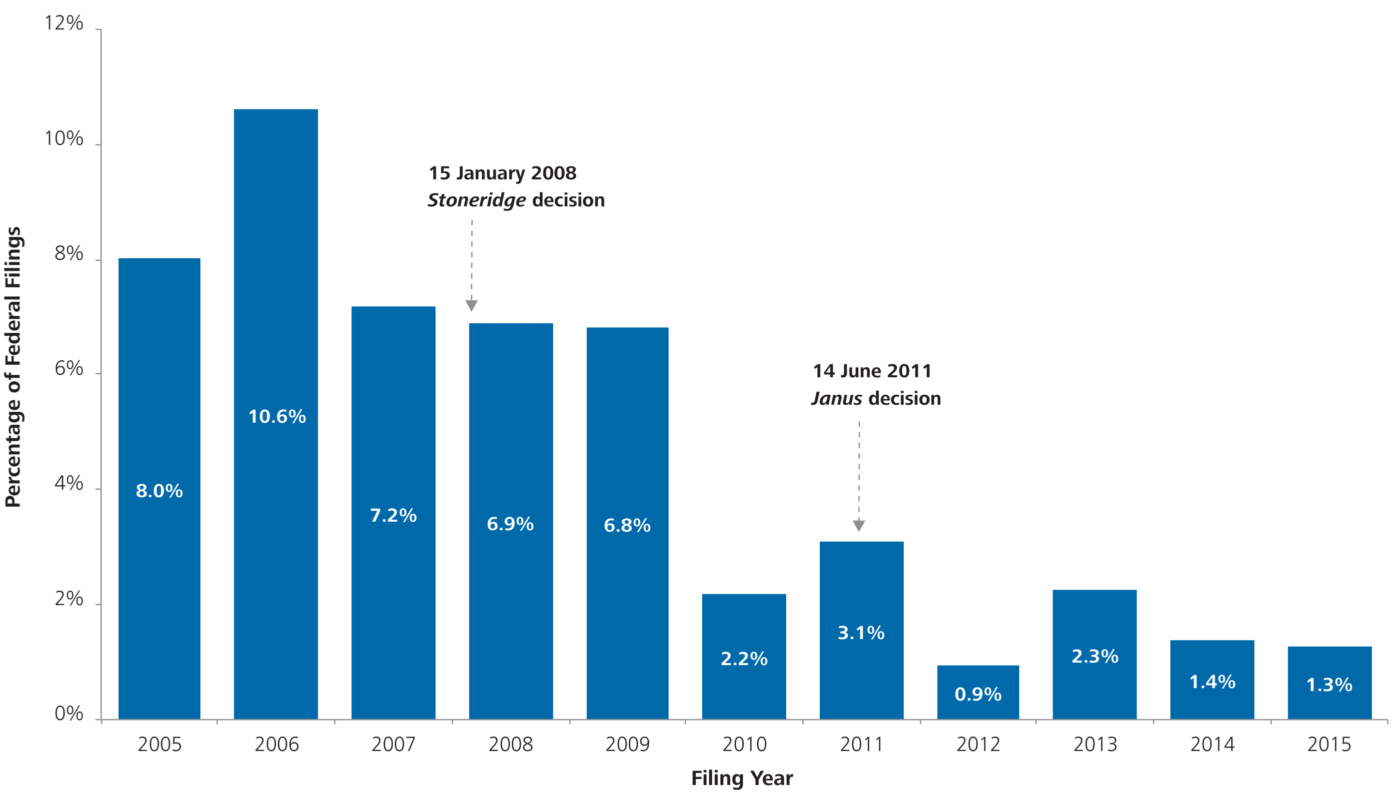
Only three securities class actions had an accounting firm as a co-defendant in 2015, one of which was a Big Four accounting firm.

The trend toward a decline in the percent of securities class actions with accounting firm co-defendants continued in 2015. This trend is likely the result of two factors: (1) fewer cases have been filed that include accounting allegations, and (2) changes in the legal environment relating to accounting co-defendants.

First, since 2011, the percent of filings with accounting claims dropped from about 37% to about 22%, while the percent of cases with an accounting co-defendant dropped from 3% to a little more than 1%. See Figure 11.[8]

The drop in the relative percent of filings with an accounting co-defendant, however, exceeded the decline of filings with accounting allegations, potentially due to changes in the legal environment, the second factor noted above. The legal environment was impacted by two Supreme Court rulings over the period. The Supreme Court's *Janus* decision in 2011 restricted the ability of plaintiffs to sue parties not directly responsible for misstatements.[9] This decision, along with the Court's *Stoneridge* decision in 2008, which limited scheme liability, may have made accounting firms less appealing targets for securities class action litigation.[10]

Figure 11. **Percentage of Federal Filings in which an Accounting Firm Is a Co-Defendant**
January 2005–December 2015

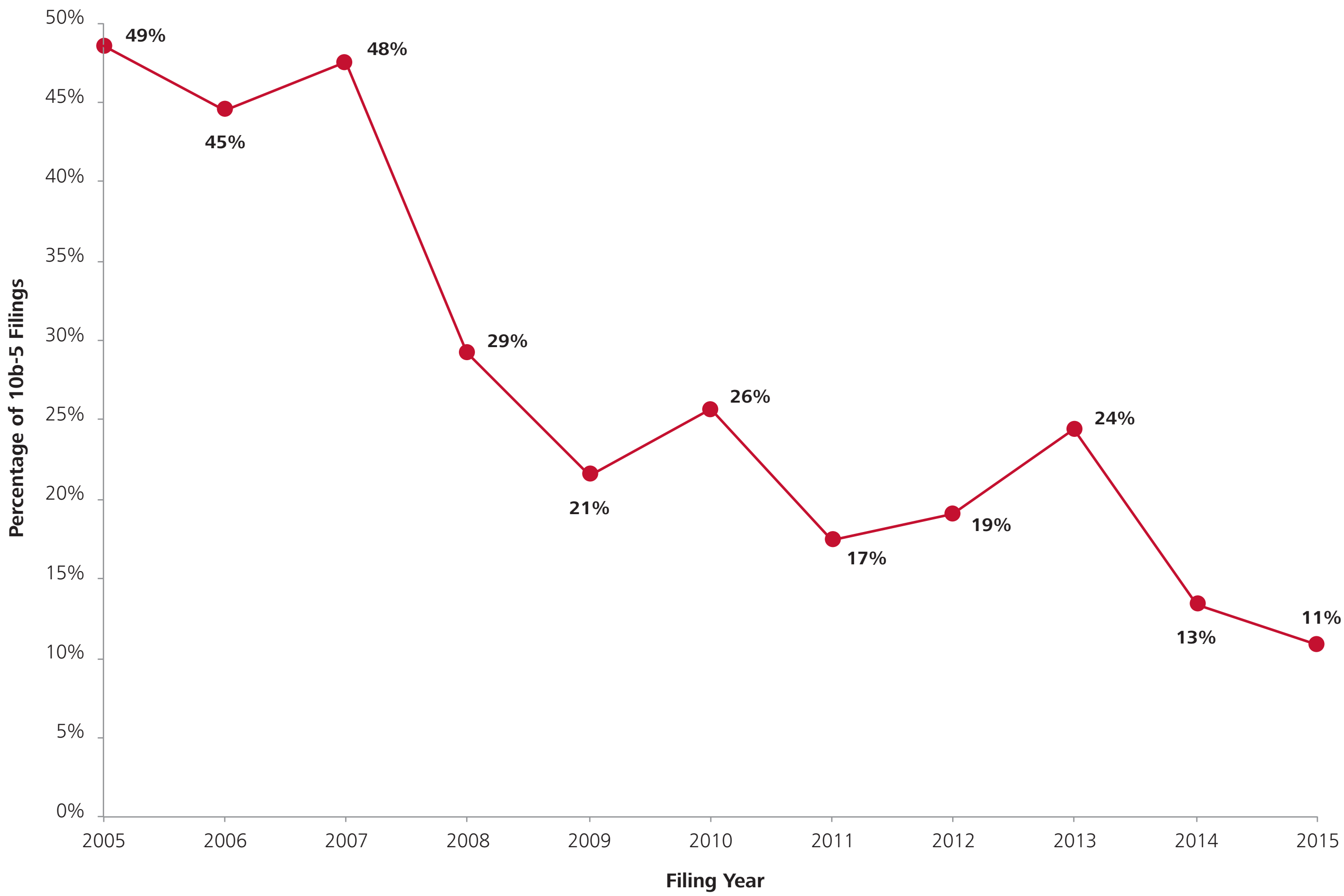


Note: Coded on the basis of the first (available) complaint.

Alleged Insider Sales

The percentage of 10b-5 class actions that also alleged insider sales continued to decrease in 2015, dropping from 49% in 2005 to 11% in 2015. See Figure 12.

Figure 12. **Percentage of Rule 10b-5 Filings Alleging Insider Sales**
By Filing Year, January 2005–December 2015

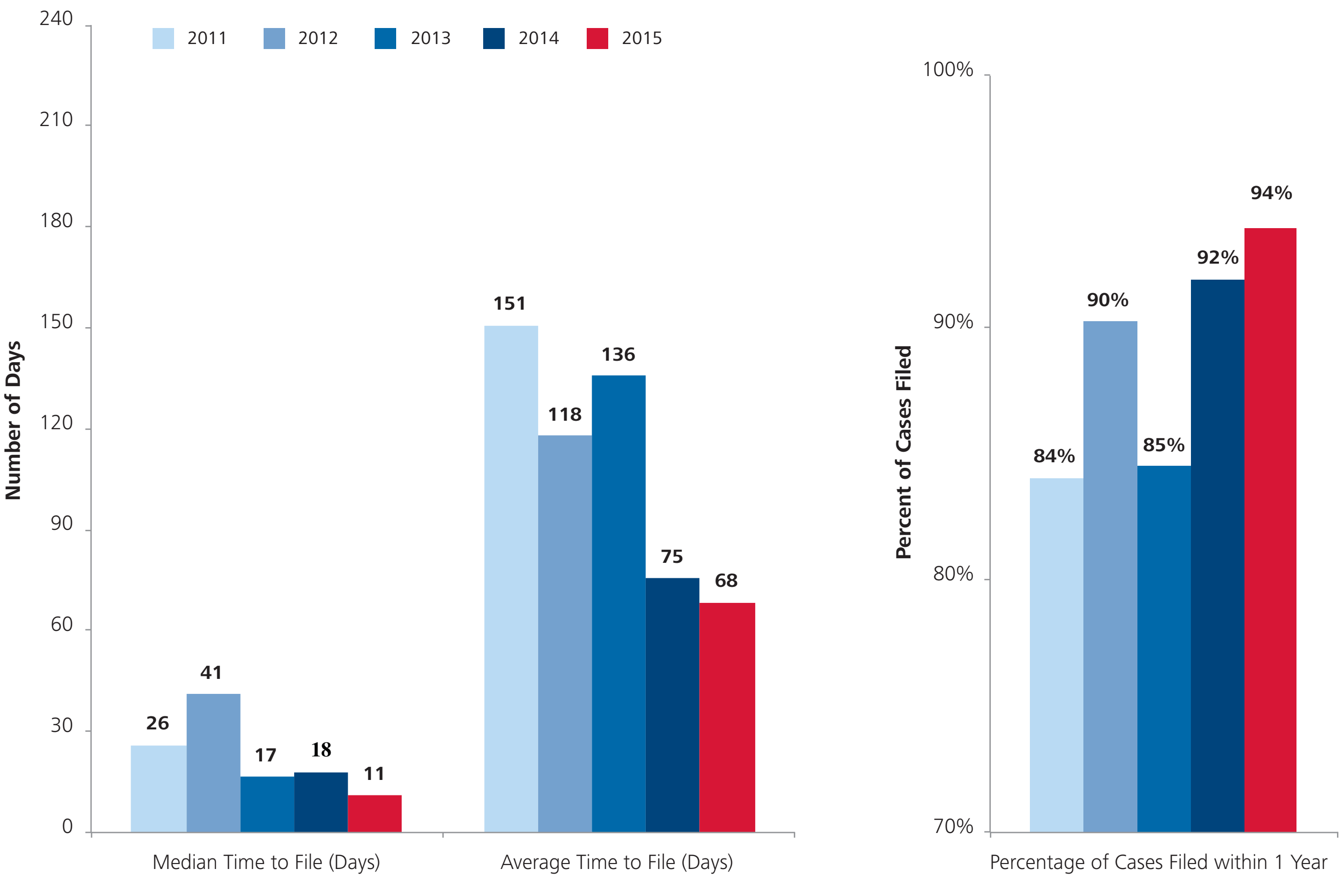


Time to File

The term "time to file" denotes the time between the end of the alleged class period and the filing date of the first complaint. Figure 13 illustrates how the median and average time to file (in days) has changed over the past five years, as well as the percent of cases in which the first complaint is filed within one year after the end of the purported class period.

All three indicators show that over the past few years, cases are generally being filed closer to the end of the alleged class periods. The 2015 median and average times to file were shorter than any other year in the past decade. In 2015, the percent of cases filed within a year of the purported class period exceeded 94%, higher than any other year in the past decade. It took only 11 days or less to file a complaint in 50% of cases in 2015. This shows a lower frequency of cases with long periods of time between when an alleged fraud was revealed and the filing of a related claim.

Figure 13. **Time to File from End of Alleged Class Period to File Date for Rule 10b-5 Cases**
January 2011–December 2015



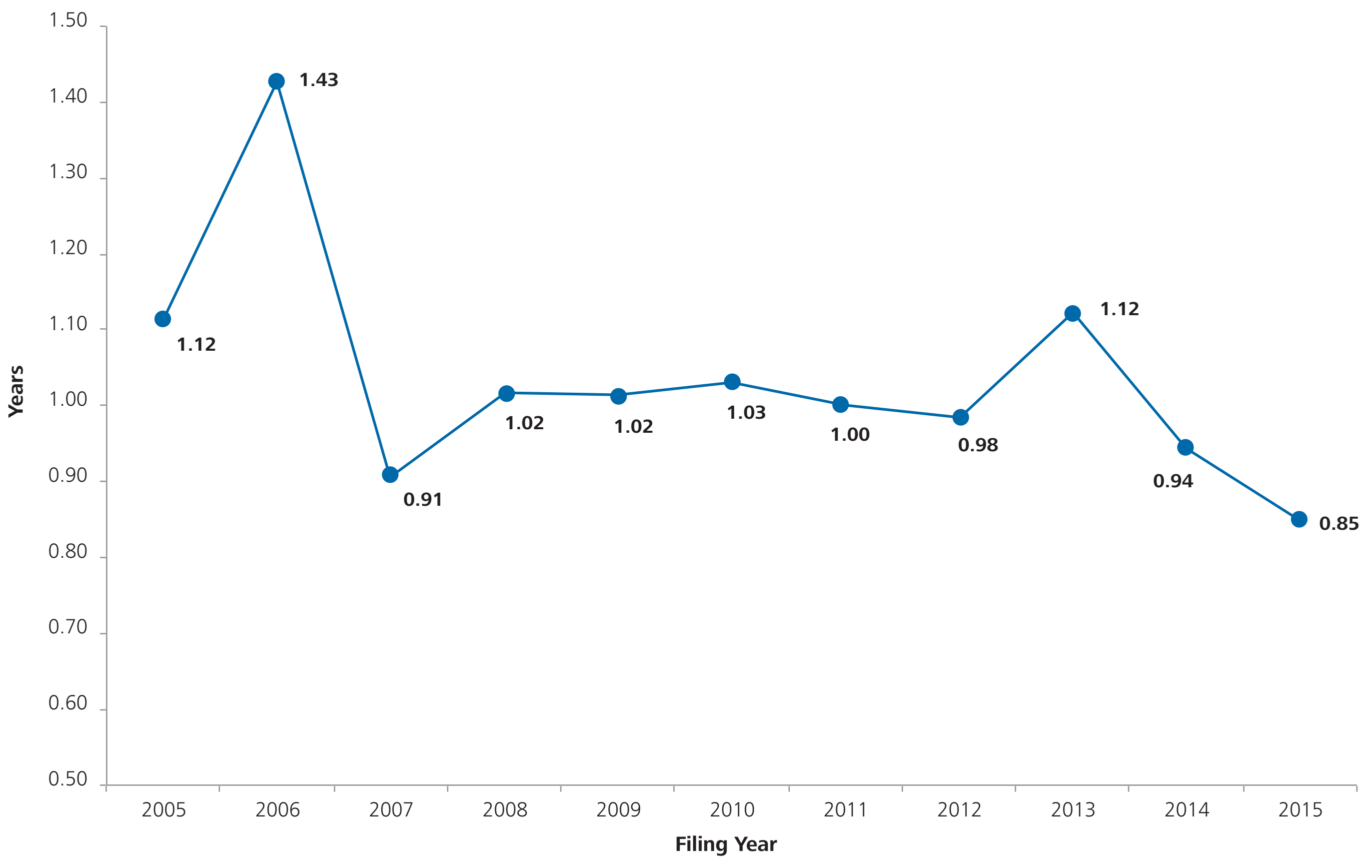
Note: This analysis excludes cases where alleged class period could not be unambiguously determined.

Class Period Length

For the second year in a row, the median class period length of filed securities class actions has fallen. See Figure 14. 2015 had the shortest median class period of any year in the past decade.

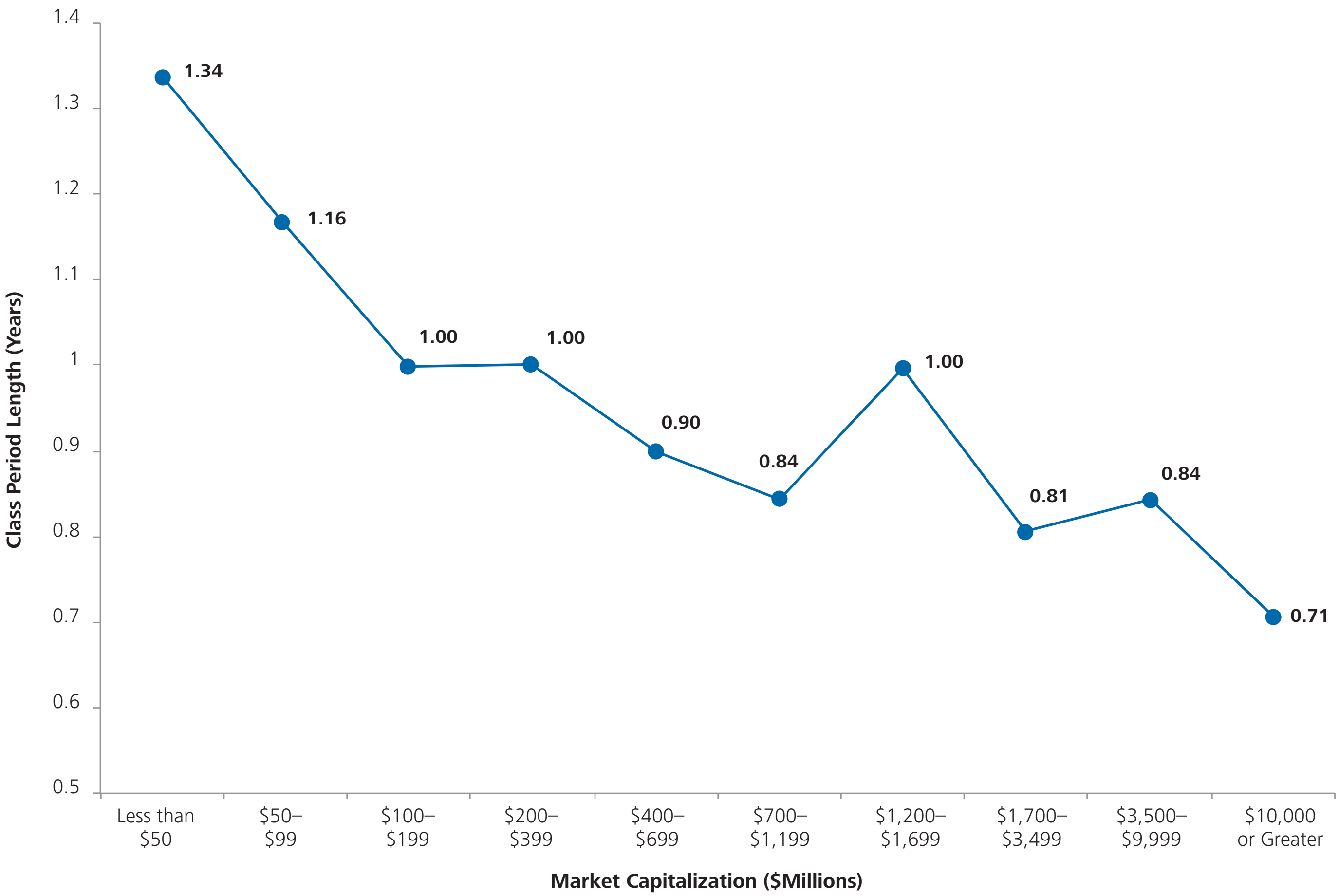
One reason class periods have been shorter may be that alleged malfeasance is being detected sooner.[11] One potential reason for such a trend towards earlier detection over the last couple years could be recent regulation changes, and higher issuer market capitalizations. In recent years, the SEC has enacted new regulations to combat securities fraud, including a mandate that all financial statements be filed in a machine-readable format. These filing guidelines were designed to increase transparency and facilitate more rapid detection of accounting anomalies.[12] For example, analysts can now use "data-scraping" programs to download financial data from numerous firms in a similar industry. This permits them to compare the financial figures of one company to those of its peers, enabling interested parties to more easily investigate whether an apparently unusual financial result is a reflection of something company-specific or is part of a broader industry trend. In August of 2011, the SEC also adopted rules to reward individuals who expose violations of securities laws, thus motivating whistleblowers.[13]

Figure 14. **Median Class Period Length—Excluding Merger Objection Cases, Cases Without Class Data, and Class Periods Longer than Five Years**
January 2005–December 2015



We also note that class period length tends to be negatively correlated with the market capitalization of the defendant firm. See Figure 15. While the data do not provide specific evidence on this, firm size may be a proxy for a firm's ability to catch or address potential errors more quickly, as larger firms likely have more comprehensive control systems. Between 2012 and 2015, the yearly median market capitalization of primary defendant firms was $658 million on average, up about 45% from $454 million between 2008 and 2011.

Figure 15. **Class Period Length vs. Issuer Market Capitalization—Excluding Merger Objection Cases, Cases Without Class Data, and Class Periods Longer Longer than Five Years**
January 2011–December 2015



Analysis of Motions

NERA's statistical analysis has found robust relationships between settlement amounts and the litigation stage at which settlements occur. We track three types of motions: motion to dismiss, motion for class certification, and motion for summary judgment. For this analysis, we track securities class actions in which holders of common stock are part of the class and a violation of Rule 10b-5 or Section 11 is alleged.

To correctly interpret the Figures, it is important to understand that we record the status of any motion as of the resolution of the case. For example, a motion to dismiss which had been granted but was later denied on appeal is recorded as denied, if the case settles without the motion being filed again.

Outcomes of motions to dismiss and motions for class certification are discussed below.

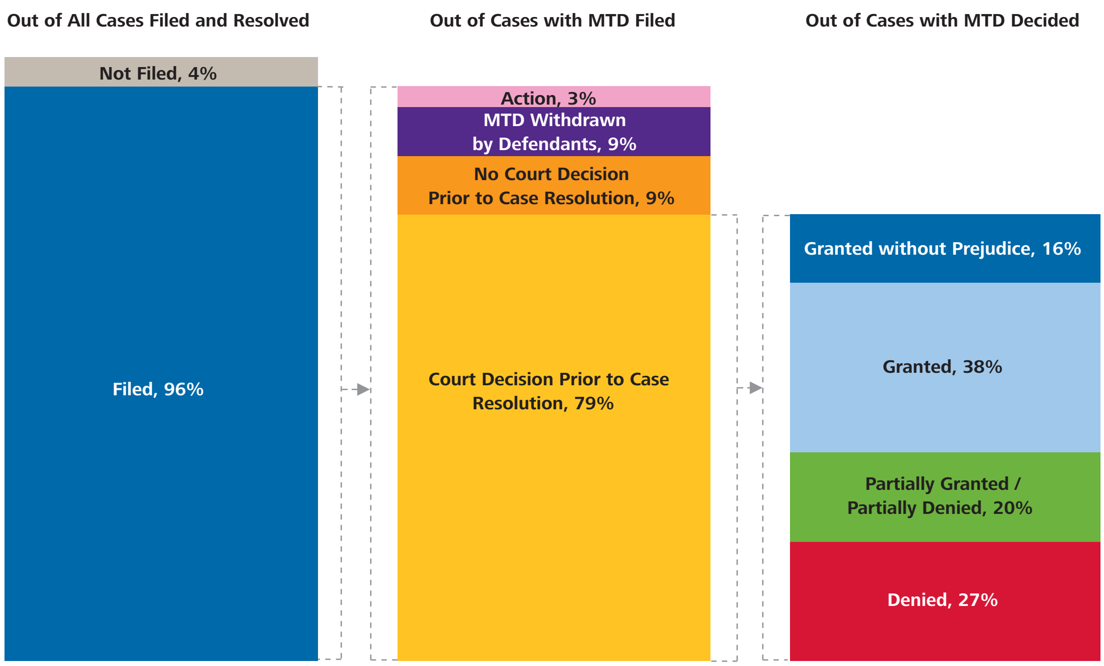
Motions for summary judgment were filed by defendants in 7.3%, and by plaintiffs in only 1.6%, of the securities class actions filed and resolved over the 2000–2015 period, among those we track. Outcomes of the motions for summary judgment are available from NERA, but not shown in this report.

Motion to Dismiss

A motion to dismiss was filed in 96% of the securities class actions tracked. However, the court reached a decision in only 79% of the motions filed. In the remaining 21% of cases in which a motion to dismiss was filed, either the case resolved before a decision was reached, plaintiffs voluntarily dismissed the action, or the motion to dismiss itself was withdrawn by defendants. See Figure 16.

Out of the motions to dismiss for which a court decision was reached, the following three outcomes classify all of the decisions: granted with or without prejudice (54%), granted in part and denied in part (20%), and denied (27%).

Figure 16. **Filing and Resolutions of Motions to Dismiss**
January 2015–December 2015



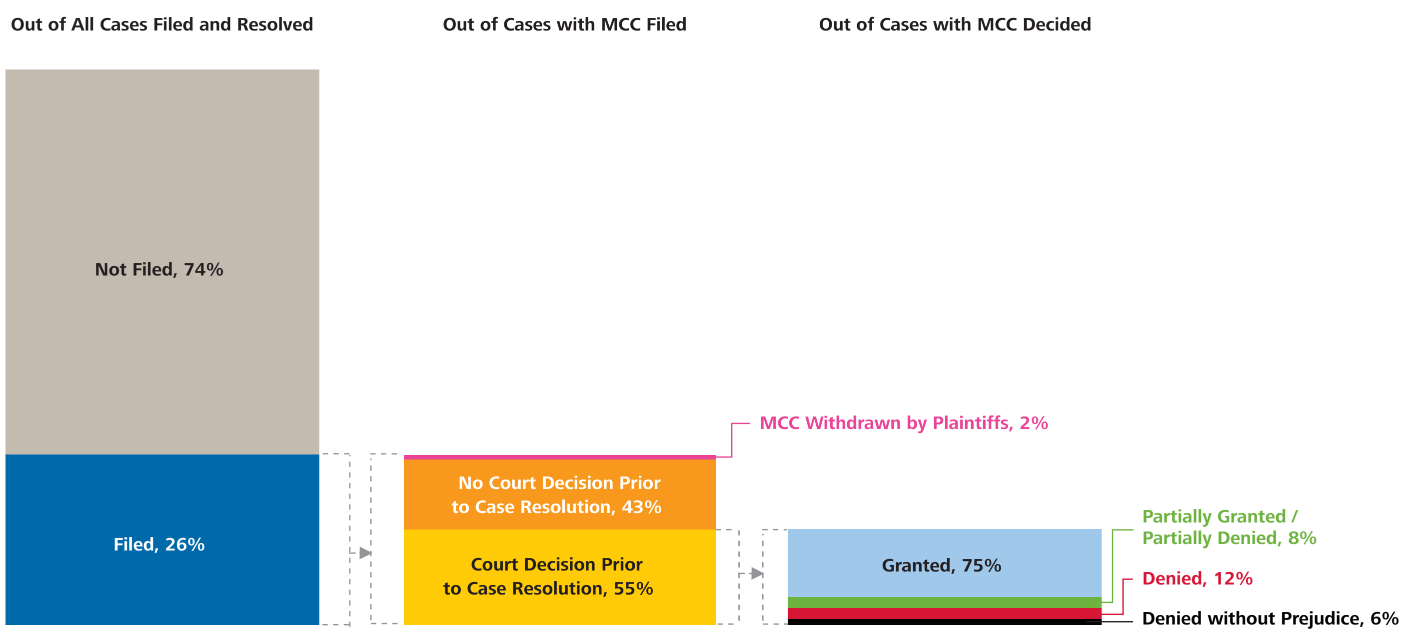
Note: Includes cases in which holders of common stock are part of the class and a 10b-5 or Section 11 violation is alleged.

Motion for Class Certification

Most cases were settled or dismissed before a motion for class certification was filed: 74% of cases fell into this category. Of the remaining 26%, the court reached a decision in only in 55% of the cases where a motion for class certification was filed. So, overall, only 14% of the securities class actions filed (or 55% of the 26%) reached a decision on the motion for class certification. See Figure 17.

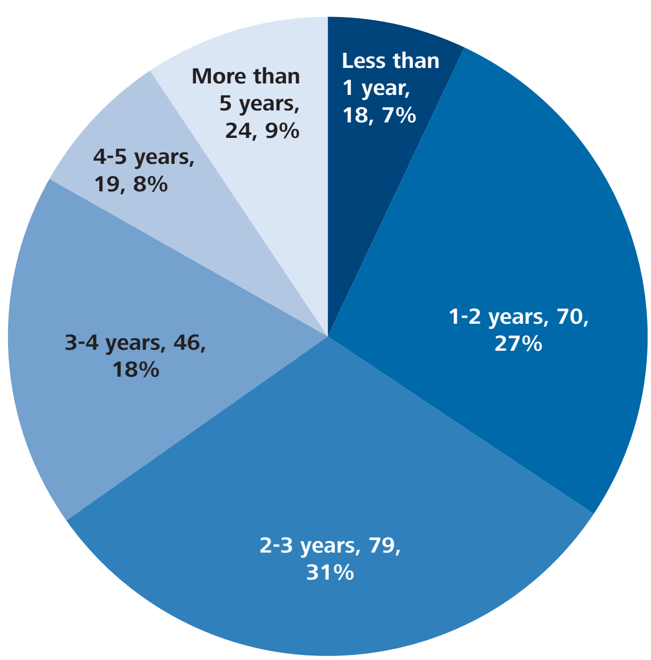
Our data show that 83% of the motions for class certification that were decided were granted in full or partially.

Figure 17. **Filing and Resolutions of Motions for Class Certification**
January 2015–December 2015



Approximately 65% of the decisions on motions for class certification that were reached were reached within three years of the original filing date of the complaint. See Figure 18. The median time is about 2.4 years.

Figure 18. **Time from First Complaint Filing to Class Certification Decision**
Cases Filed and Resolved January 2000–December 2015



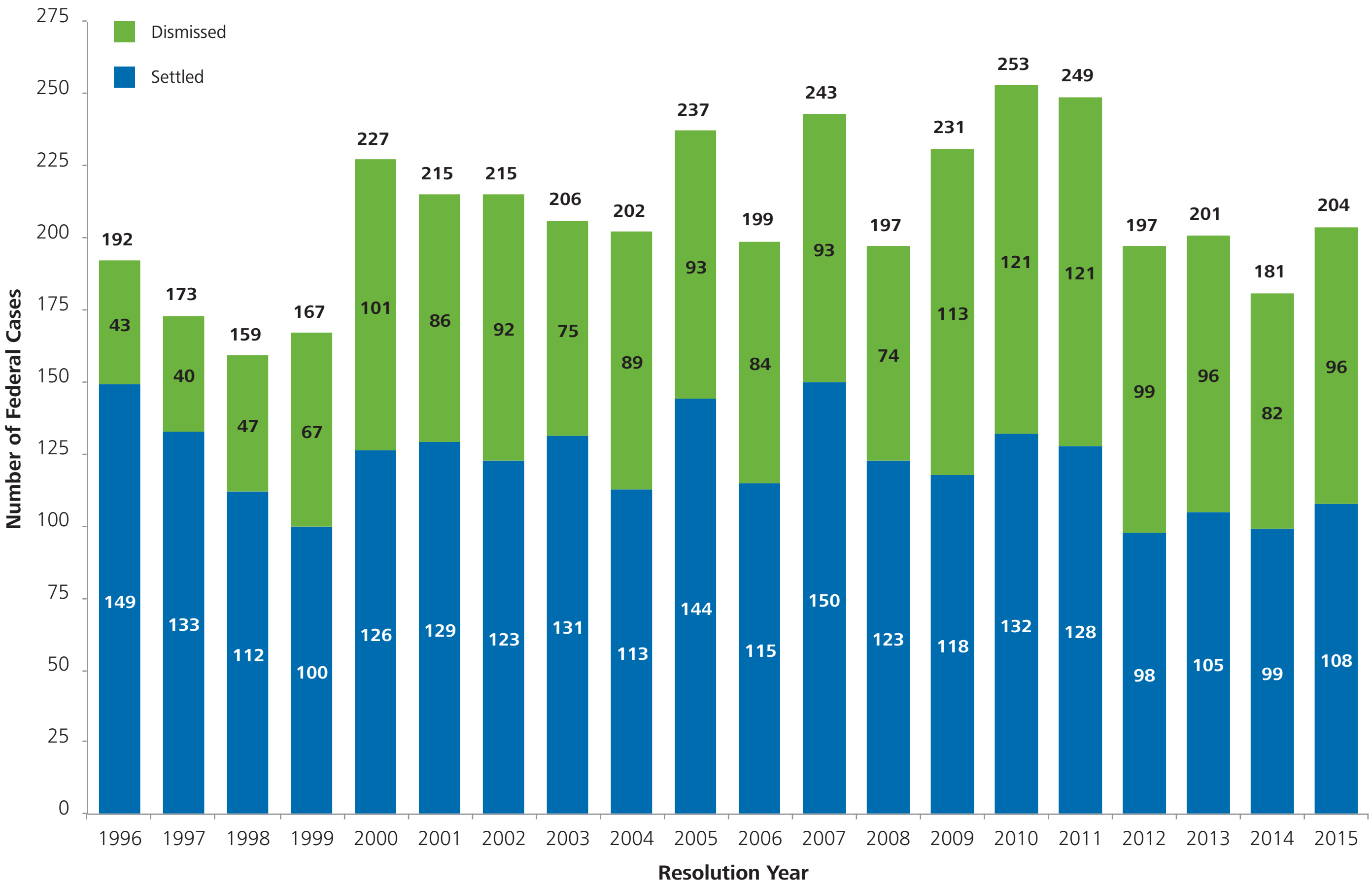
Trends in Case Resolutions

Number of Cases Settled or Dismissed

A total of 108 securities class actions settled in 2015, which is near the post-PSLRA lows seen over the past four years. See Figure 19. Despite having the highest number of settlements since 2011, there were 15% fewer settlements in 2015 than in 2011. Dismissals of securities cases have also been relatively low since 2011, but have increased over the last year. Ninety-six securities class actions were dismissed in 2015.

As we discuss below, the slowdown in the number of resolutions is primarily due to a lengthening of the time to case resolution, as opposed to a decline in the number of filings.

Figure 19. **Number of Resolved Cases: Dismissed or Settled**
January 1996–December 2015



Note: Analysis excludes IPO laddering cases. Dismissals may include dismissals without prejudice and dismissals under appeal.

Case Status by Year

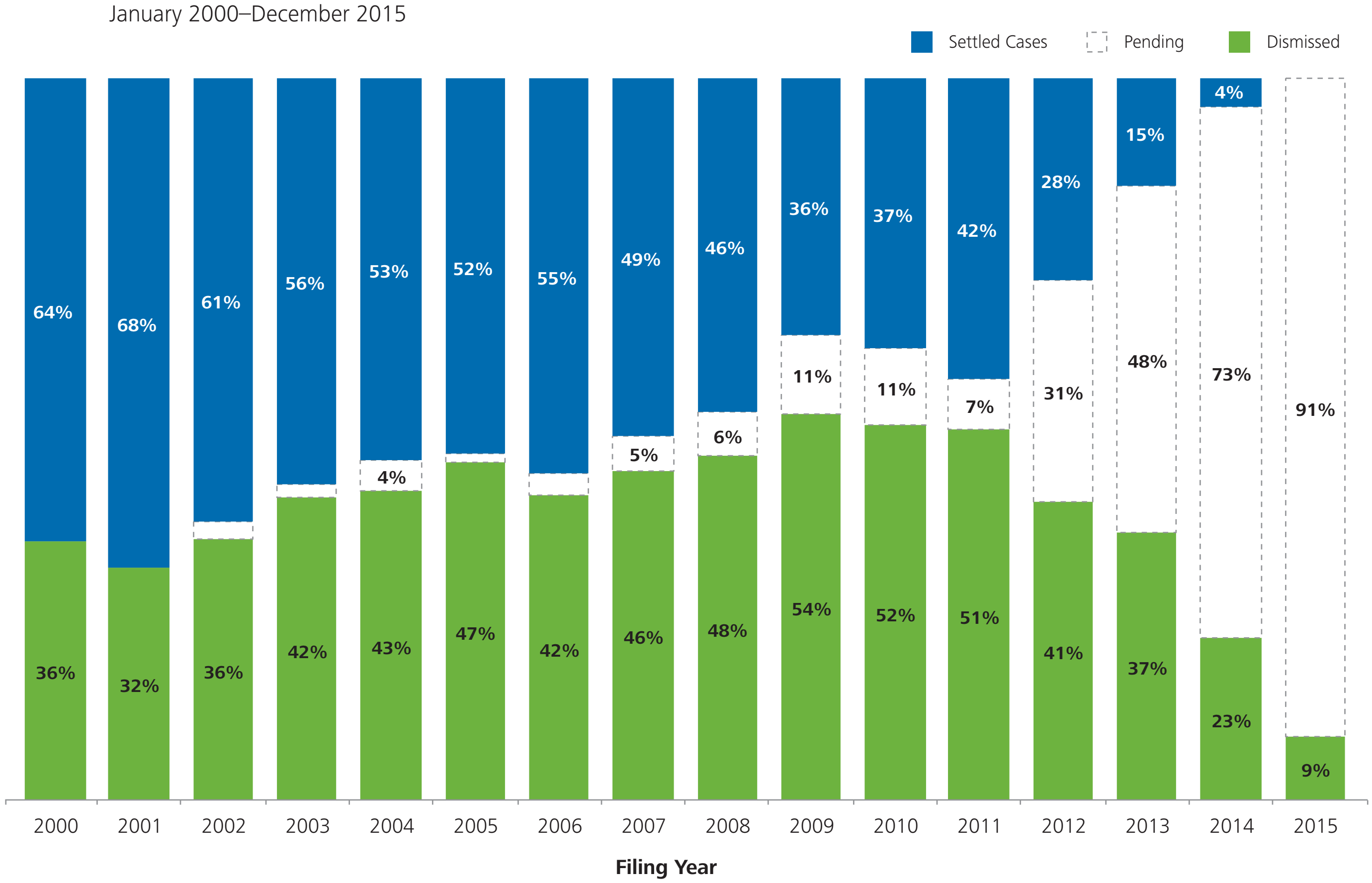
Figure 20 shows the rate of cases settled or dismissed, and the percent pending by filing year. These rates are calculated as the fraction of cases by current status out of all cases filed in a given year.

The rate of case dismissal has increased from around 35% for cases filed in 2000 through 2002 to around 42%-47% for cases filed in 2005 through 2007, and then to 51%-54% for cases filed in 2009 through 2011, when most of the credit crisis-related filings occurred. Nearly 90% of cases filed before 2012 have been resolved, providing evidence of longer-term trends about dismissal and settlement rates.

For more recent filings, we can look at the percent of cases that quickly resolve. We observe 9% of cases filed in 2015 were dismissed by the end of the year, in contrast to only 3% of cases filed and dismissed within calendar year 2014.[14] Of these, the number of voluntary dismissals more than tripled from four in 2014 to 13 in 2015.

While dismissal rates have been on a rising trend since 2000 at least up to 2011, two opposing factors make us cautious about drawing conclusions or forecasting how more recent cases may be resolved: the large fraction of cases awaiting resolution among those filed in recent years, and the possibility that recent dismissals will be successfully appealed or re-filed.

Figure 20. **Status of Cases as Percentage of Federal Filings by Filing Year**
January 2000–December 2015



Note: Analysis excludes IPO laddering, merger objection cases, and verdicts. Dismissals may include dismissals without prejudice and dismissals under appeal.

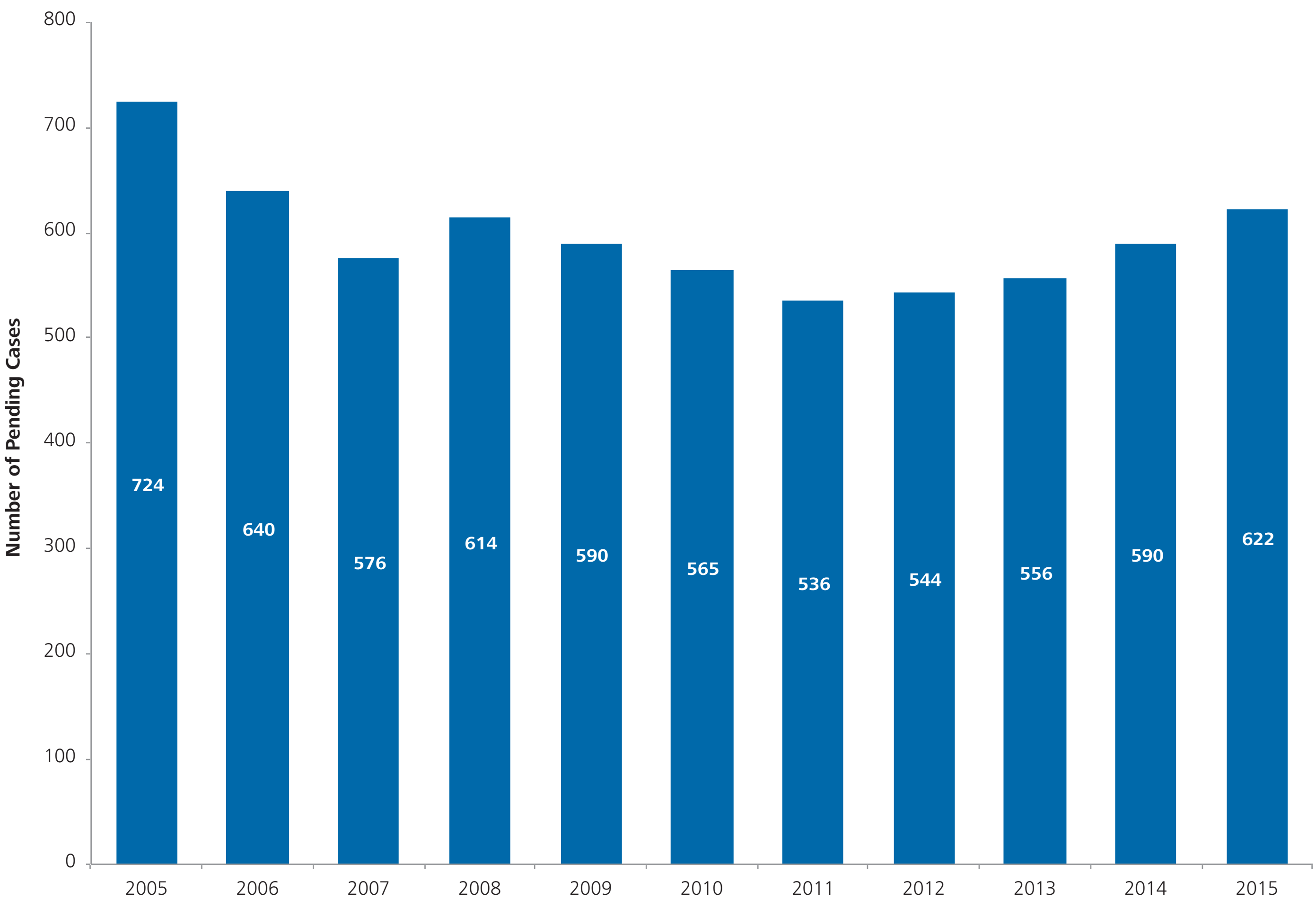
Number of Cases Pending

The number of securities class actions pending in the federal system decreased from 724 in 2005 to 536 in 2011. Since then, the number of pending cases has increased, reaching 622 in 2015, an increase of about 16% from the trough. See Figure 21.

Since cases are either pending or resolved, a decline in the number of filings or a lengthening of the time to case resolution also potentially contribute to changes in the number of cases pending. If the number of new filings is constant, the change in the number of pending cases can be indicative of whether times to case resolution are generally shortening or lengthening.

Given the relatively constant case filing rate until recently, the increase in pending cases since 2012 suggests that a slow-down of the resolution process over the period is the likely driver of the increase in pending claims.

Figure 21. **Number of Pending Federal Cases**
January 2005–December 2015



Note: The figure exlcludes, in each year, cases that had been filed more than eight years earlier. The figure also excludes IPO laddering cases.

Time to Resolution

The term "time to resolution" denotes the time between filing of the first complaint and resolution (whether settlement or dismissal). Figure 22 illustrates the time to resolution for all securities class actions filed between 2001 and 2011, and shows that almost 40% of cases are resolved within two years of initial filing, and about 60% are resolved within three years.[15]

After grouping cases by filing year, Figure 23 shows the time it takes for 50% of cases filed each year to resolve, i.e., the median time to resolution. Except for increases in the median time to resolution following the 2000 dot-com bubble and the 2008 financial crisis, there has been a long-term downward trend in the median time to resolution. Over the first five years after the PSLRA went into effect, median time to resolution varied between 2.3 and 2.8 years. Over the 2008–2013 period, median time to resolution varied between 2.1 and 2.5 years. Much of this decline is due to shorter times to case settlement, as opposed to a shortening of the time it takes for cases to be dismissed.

Figure 22. **Time from First Complaint Filing to Resolution**
Cases Filed January 2001–December 2011

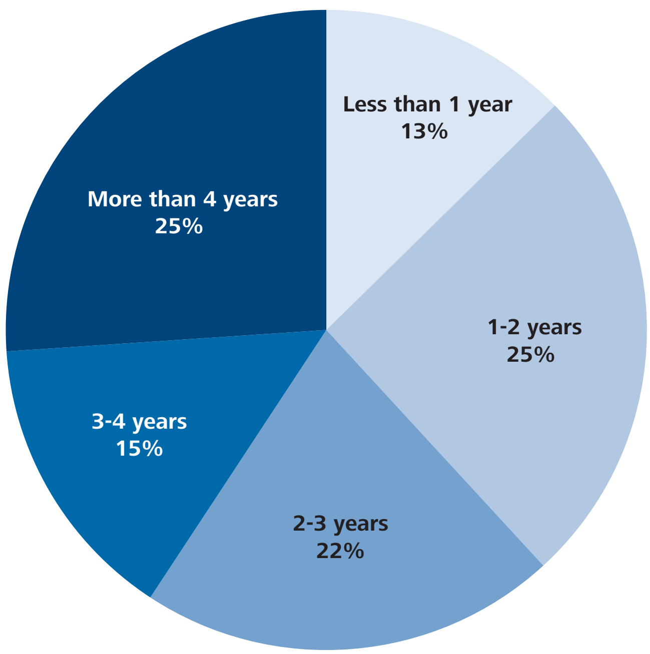
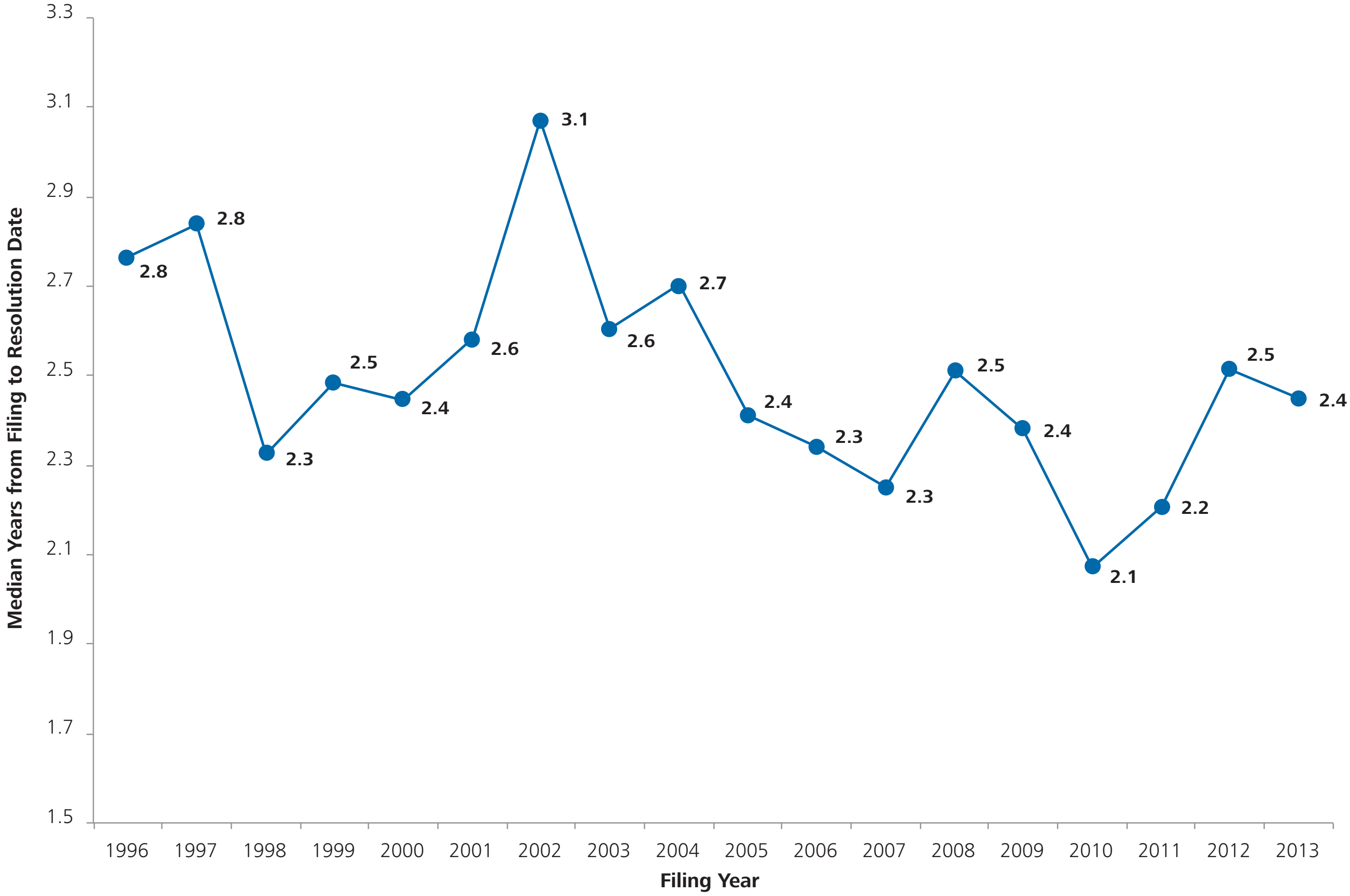


Figure 23. **Median Years from Filing of Complaint to Resolution of the Case**
Cases Filed January 1996–December 2013 and Resolved January 1996–December 2015



Trends in Settlements

We present several metrics regarding settlements in order to highlight attributes of cases that settled in 2015 and compare them with past years. We discuss two ways of measuring average settlement amounts and calculate the median settlement amount. Each calculation excludes IPO laddering cases, merger objection cases, and cases that settle with no cash payment to the class, as settlements of these less-usual cases may obscure trends in more typical cases.

The average settlement for 2015 reached $52 million, an increase of more than 46% over 2014. Excluding cases that settled for more than $1 billion dollars, the average settlement for 2015 was near the 2013 record high. The median 2015 settlement amount, which is more robust to extreme values, was $7.3 million and little changed from 2014.

The settlement of a number of large cases in 2015 affected the average settlement statistics. To illustrate how many cases settled over various ranges in 2015 versus past years, we provide a distribution of settlements over the past five years. To supplement this, we tabulate the 10 largest settlements of the year.

Average and Median Settlements

Average settlement amounts rebounded in 2015 and exceeded $52 million, an increase of 46% over 2014. See Figure 24. Excluding settlements that exceed $1 billion to remove extreme outliers, this approaches the record high of $54 million reached in 2013.

Figure 24. **Average Settlement Value ($Million)—Excluding Settlements over $1 Billion and Excluding IPO Laddering, Merger Objections, and Settlements for $0 to the Class**
January 1996–December 2015

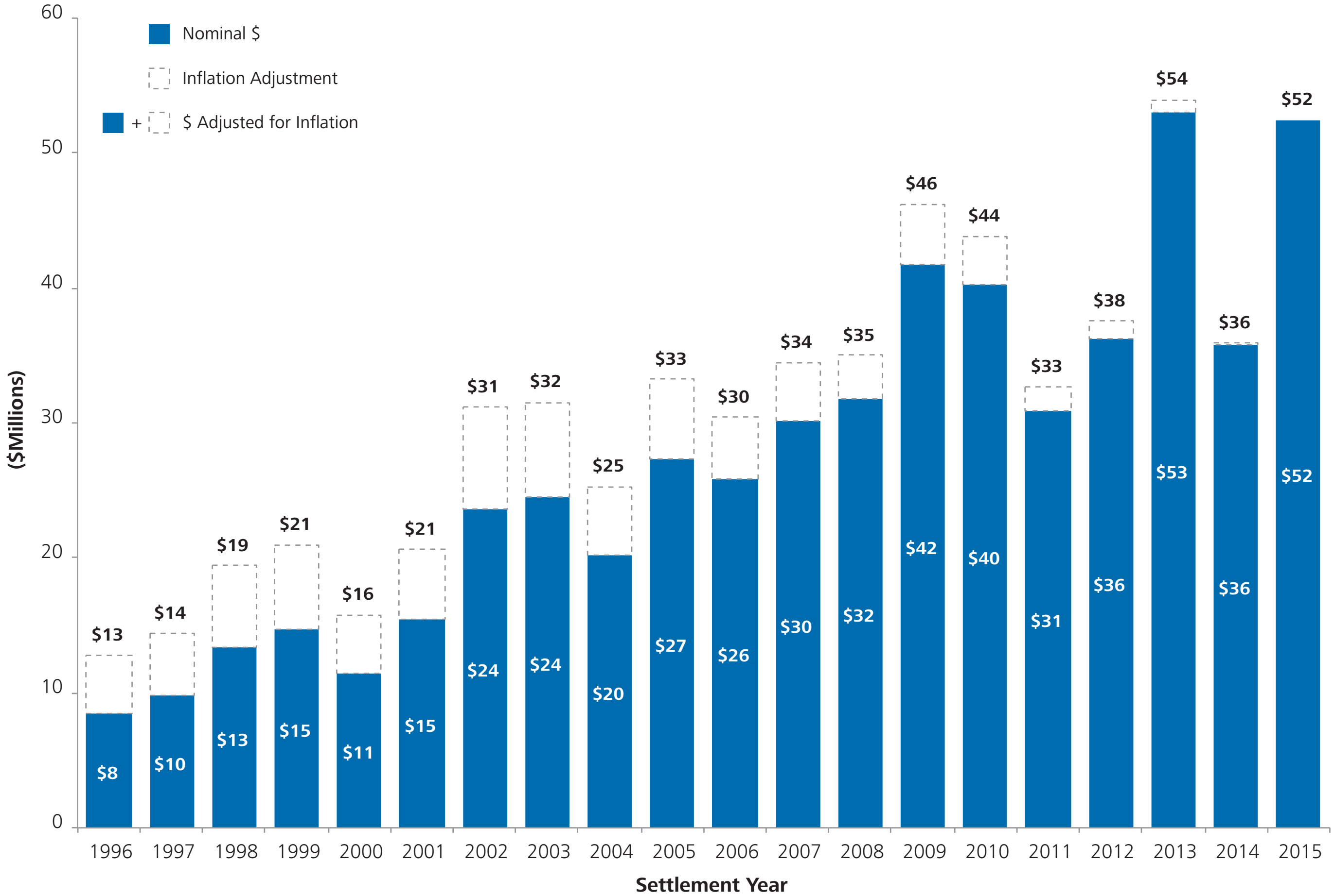
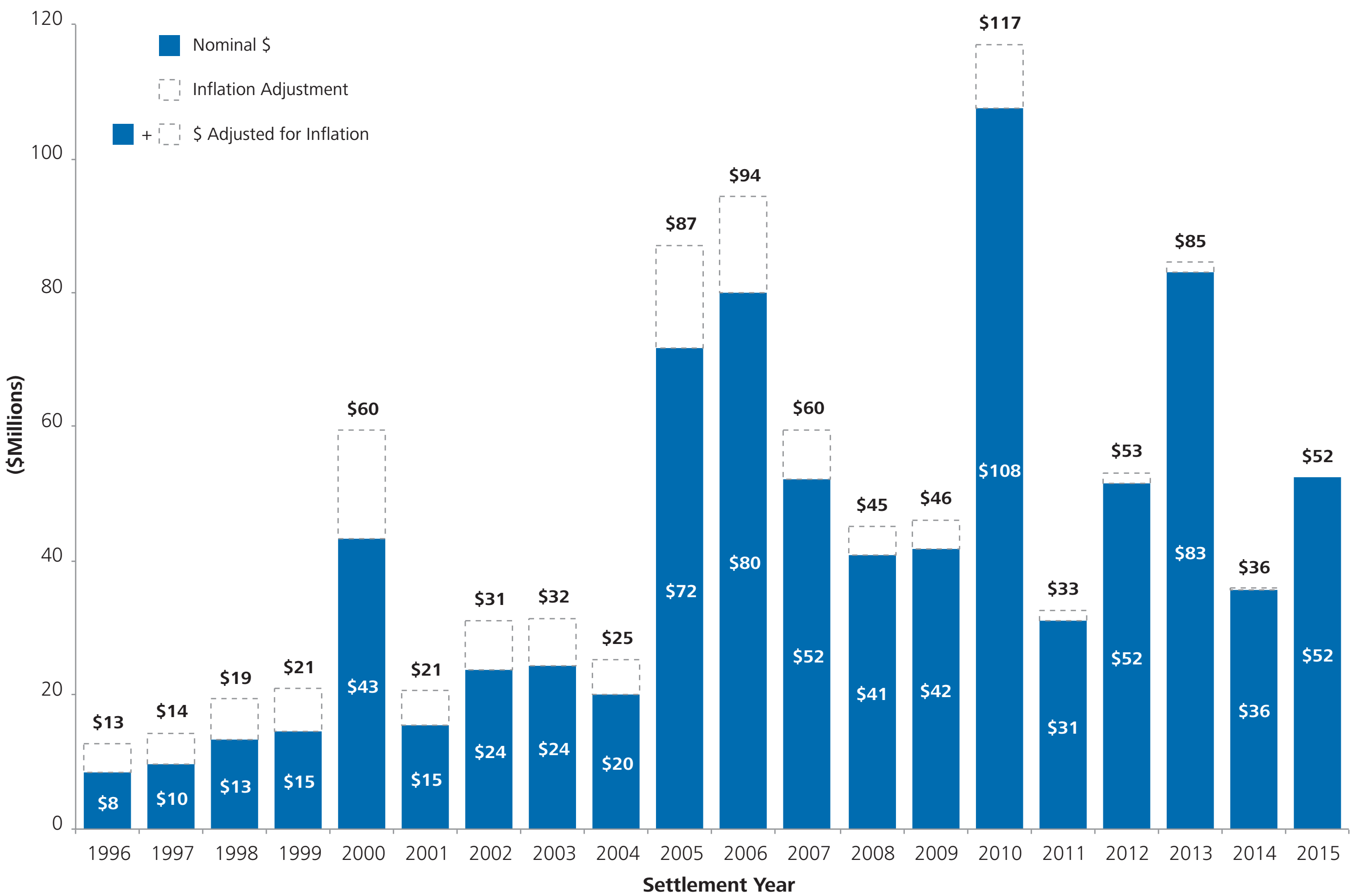


Figure 25 includes settlement amounts above $1 billion. In 2013, one settlement exceeding $1 billion was approved and pushed the overall average settlement amount to nearly $83 million. Over the past two years, on the other hand, no case settled for above $1 billion, so the average yearly settlement amounts for 2014 and 2015 are the same in both Figures.

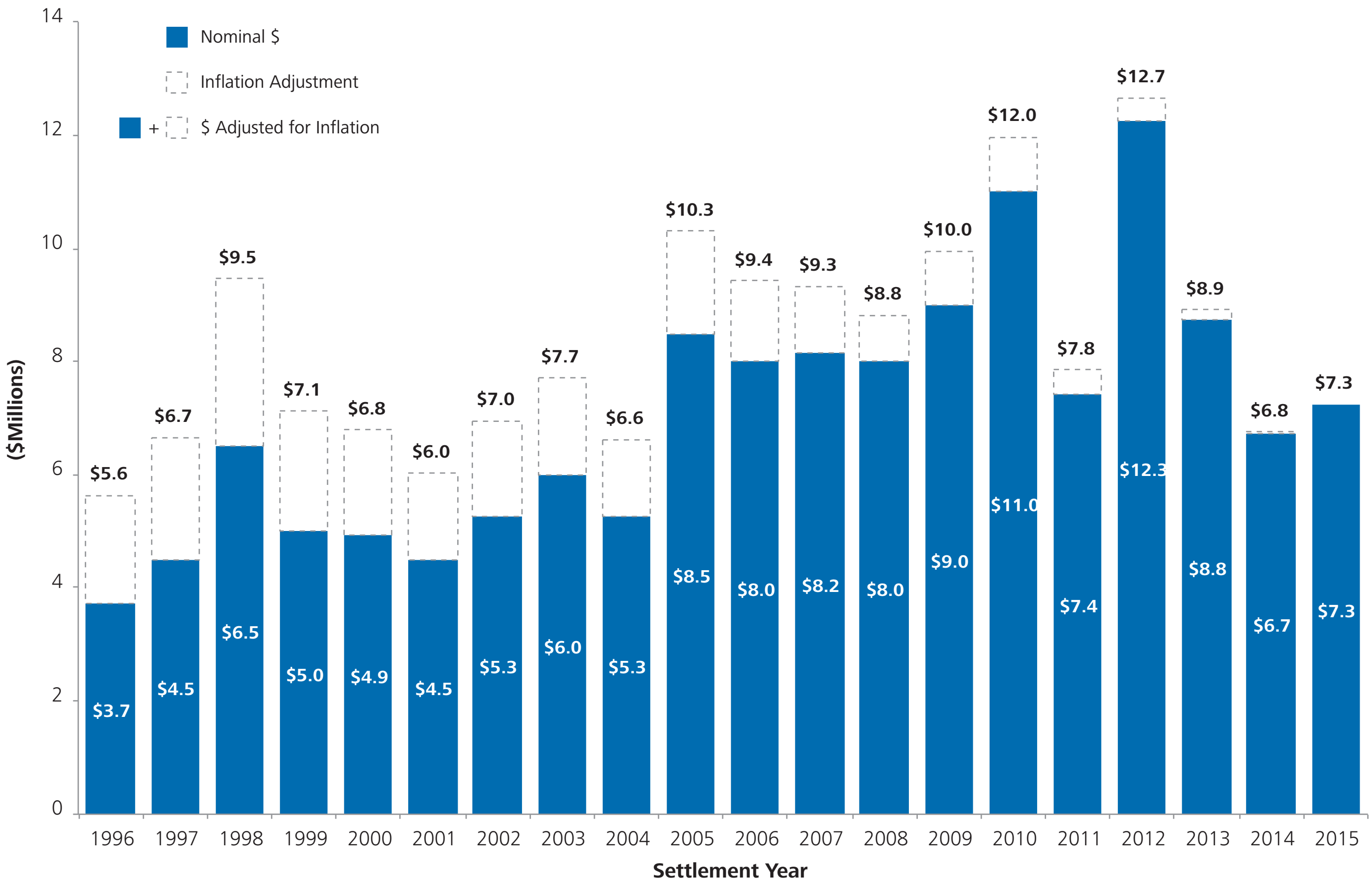
Figure 25. **Average Settlement Value ($Million)—Excluding IPO Laddering, Merger Objections, and Settlements for $0 to the Class**
January 1996–December 2015



The high 2015 average settlement amount was driven by multiple large settlements (each considerable, but less than the $1 billion threshold). On the other hand, cases have not become more expensive to settle across the board, as shown by analyzing median settlements. The median settlement amount, or the amount that is larger than half of the settlement values over the year, is much closer to that of 2014 and other years over the past decade. In 2015, the median settlement amount was $7.3 million, roughly equal to the 2014 median settlement. See Figure 26.

This year's average and median settlements reflect two different facets of settlement activity: a few large settlements drove the average up, while many small settlements kept the median stable.

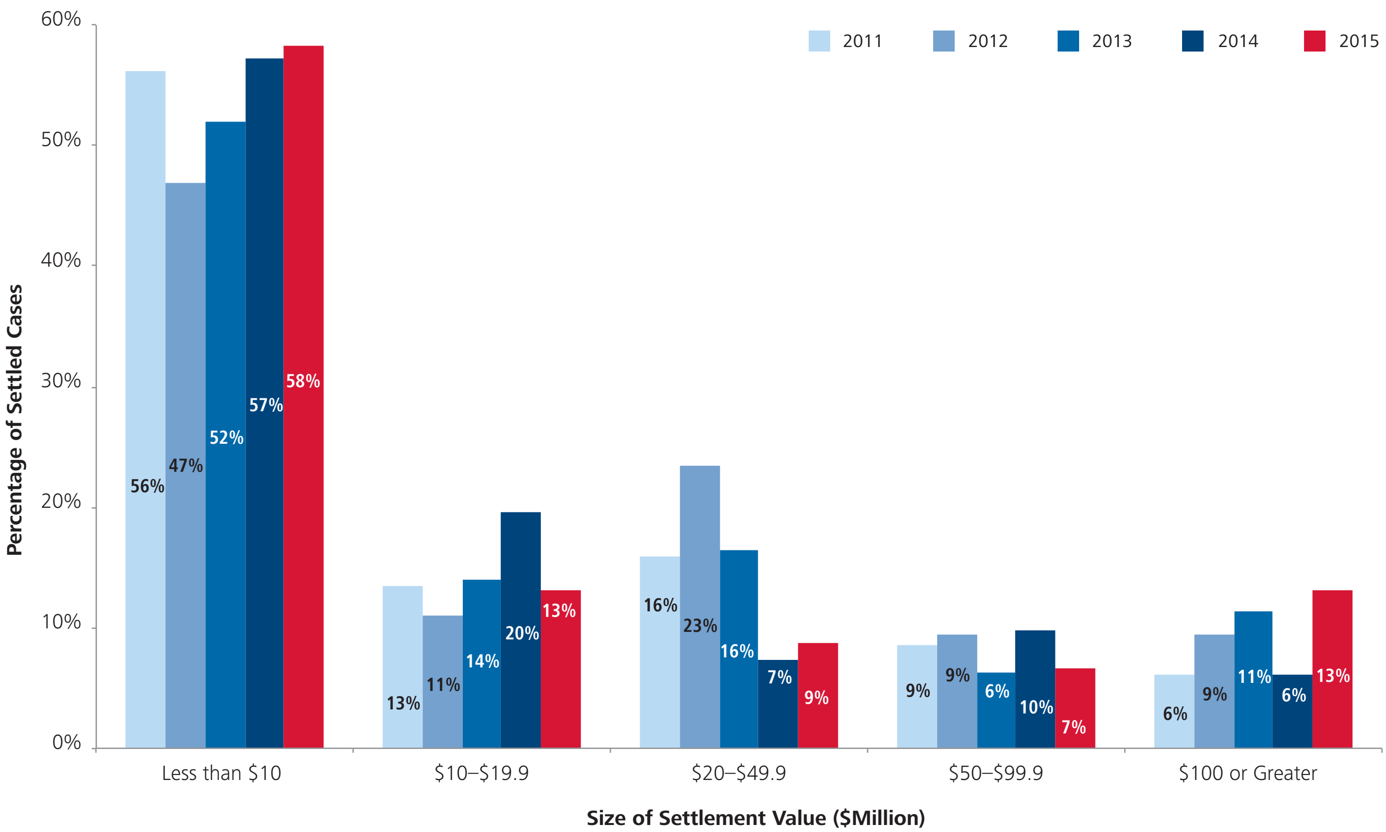
Figure 26. **Median Settlement Value ($Million)—Excluding IPO Laddering, Merger Objections, and Settlements for $0 to the Class**
January 1996–December 2015



Distribution of Settlement Amounts

The fraction of cases settled for less than $10 million or more than $100 million was larger in 2015 than in any year over the past five: 58% of the settlements were for amounts less than $10 million while 13% were for amounts greater than $100 million.[16] See Figure 27. The fraction of cases that settled for amounts in each of the intermediate ranges was at or near the lowest levels over the past five years.

Figure 27. **Distribution of Settlement Values—Excluding Merger Objections and Settlements for $0 to the Class**
January 2011–December 2015



The 10 Largest Settlements of Securities Class Actions of 2015

The 10 largest settlements of securities class actions in 2015 are shown in Table 1. Six out of the 10 largest settlements involved financial sector defendants and stemmed from litigation related to the financial crisis. These cases accounted for more than $2.9 billion out of about $5 billion in aggregate settlements (or about 60%) over the period. The largest, *American International Group*, Inc. (2008) (S.D.N.Y.), settled for $970.5 million, making up nearly one-fifth of total settled litigation during the year. The largest settlements of 2015 are dwarfed by past settlements. *Enron Corp*. settled for more than $7.2 billion in aggregate, while *Bank of America Corp*. settled for more than $2.4 billion in 2013 and was the largest financial sector settlement ever, per Table 2.

Table 1. **Top 10 Securities Class Action Settlements of 2015** (As of December 31, 2015)

Ranking	Case Name	Total Settlement Value ($MM)	Financial Institutions Value ($MM)	Accounting Firms Value ($MM)	Plaintiffs' Attorneys' Fees and Expenses Value ($MM)	CC Related
1	American International Group, Inc. (2008)	$970.5	$0.0	$10.5	$122.5	1
2	Bear Stearns Mortgage Pass-Through Certificates	$500.0	n/a	No co-defendant	$88.0	1
3	Pfizer, Inc. (2010)	$400.0	No co-defendant	No co-defendant	$102.3	0
4	J.P. Morgan Acceptance Corp. I (Mortgage Pass-Through Certificates) (2009)	$388.0	No co-defendant	No co-defendant	$101.9	1
5	IndyMac Mortgage Pass-Through Certificates	$346.0	$340.0	No co-defendant	$45.0 [1]	1
6	RALI Mortgage (Asset-Backed Pass-Through Certificates)	$335.0	$235.0	No co-defendant	$75.0	1
7	The Bank of New York Mellon Corporation	$180.0	$0	No co-defendant	$48.0	0
8	Federal National Mortgage Association (Fannie Mae) (2008)	$170.0	$0	$0	$37.0	1
9	Duke Energy Corporation (2012) (W.D. N.C.)	$146.3	No co-defendant	No co-defendant	$35.9	0
10	Sprint Nextel Corporation (2009)	$131.0	No co-defendant	No co-defendant	$32.8	0
	Total	**$3,566.8**	**$575.0**	**$10.5**	**$688.2**	**0**

[1] Does not include litigation expenses.

Table 2. **Top 10 Securities Class Action Settlements** (As of December 31, 2015)

Ranking	Case Name	Settlement Years	Total Settlement Value ($MM)	Financial Institutions	Accounting Firms	Plaintiffs' Attorneys' Fees and Expenses
				Value ($MM)	Value ($MM)	Value ($MM)
1	ENRON Corp.	2003-2010	$7,242	$6,903	$73	$798
2	WorldCom, Inc.	2004-2005	$6,196	$6,004	$103	$530
3	Cendant Corp.	2000	$3,692	$342	$467	$324
4	Tyco International, Ltd.	2007	$3,200	No co-defendant	$225	$493
5	In re AOL Time Warner Inc.	2006	$2,650	No co-defendant	$100	$151
6	Bank of America Corp.	2013	$2,425	No co-defendant	No co-defendant	$177
7	Nortel Networks (I)	2006	$1,143	No co-defendant	$0	$94
8	Royal Ahold, NV	2006	$1,100	$0	$0	$170
9	Nortel Networks (II)	2006	$1,074	No co-defendant	$0	$89
10	McKesson HBOC, Inc.	2006-2008	$1,043	$10	$73	$88
	Total		**$29,764**	**$13,259**	**$1,040**	**$2,913**

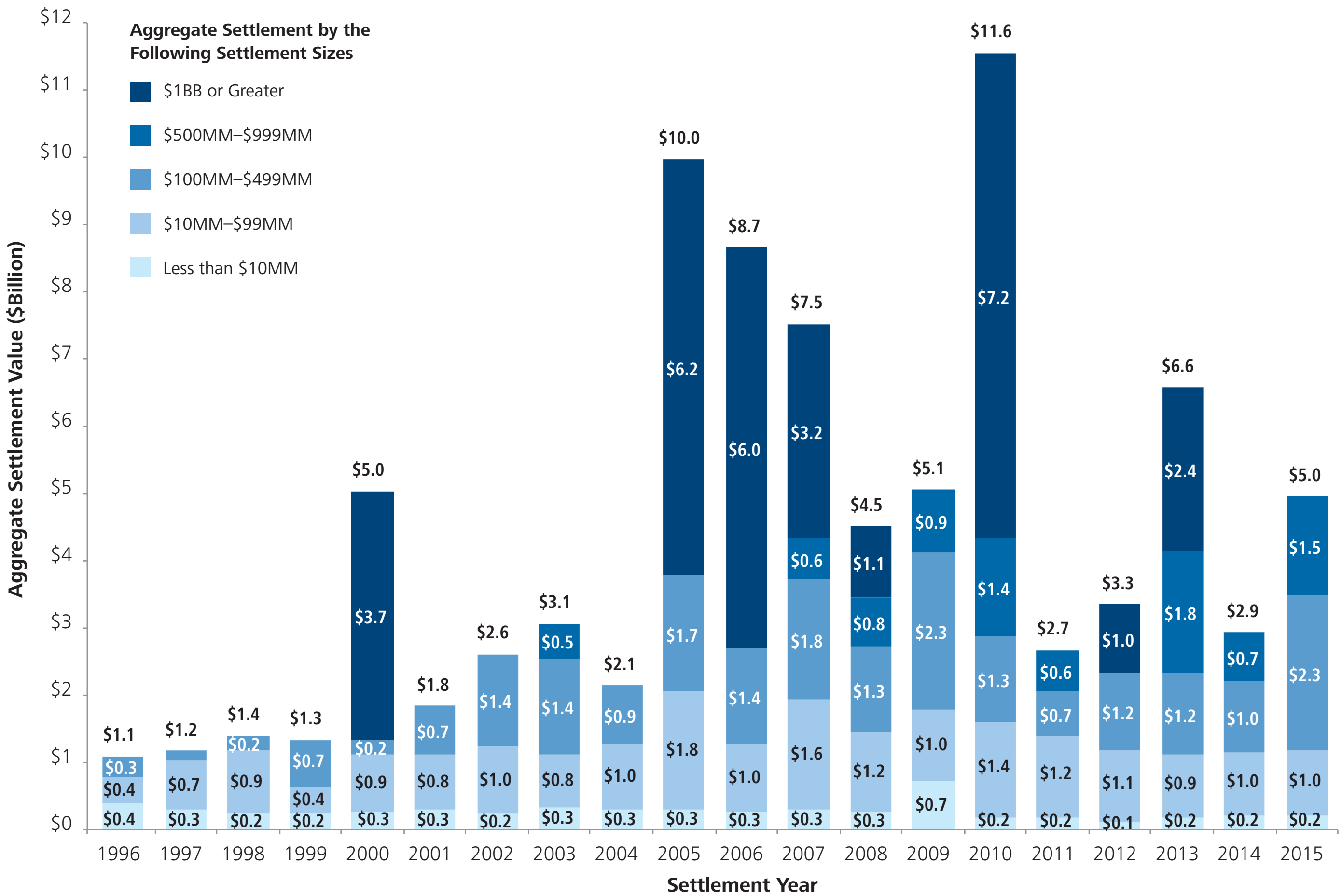
Aggregate Settlements

We use the term "aggregate settlements" to denote the total amount of money to be paid as settlement by (non-dismissed) defendants based on the court-approved settlements during a year.

Aggregate settlements were about $5 billion in 2015, an increase from the $2.9 billion approved in 2014 but well short of the $6.6 billion in 2013, when multiple cases settled for more than $1 billion. Especially notable in 2015 was the aggregate settlement amount attributable to cases that settled for less than $1 billion, which approached the high seen in 2009.

Figure 28 reinforces the point noted above that much of the large fluctuation in aggregate settlements, especially since 2005, is driven by cases that settle for more than $1 billion. In contrast, settlements under $10 million, despite often accounting for the majority of settlements in a given year, account for a very small fraction of aggregate settlements.

Figure 28. **Aggregate Settlement Value ($Billion) by Settlement Size**
January 1996–December 2015



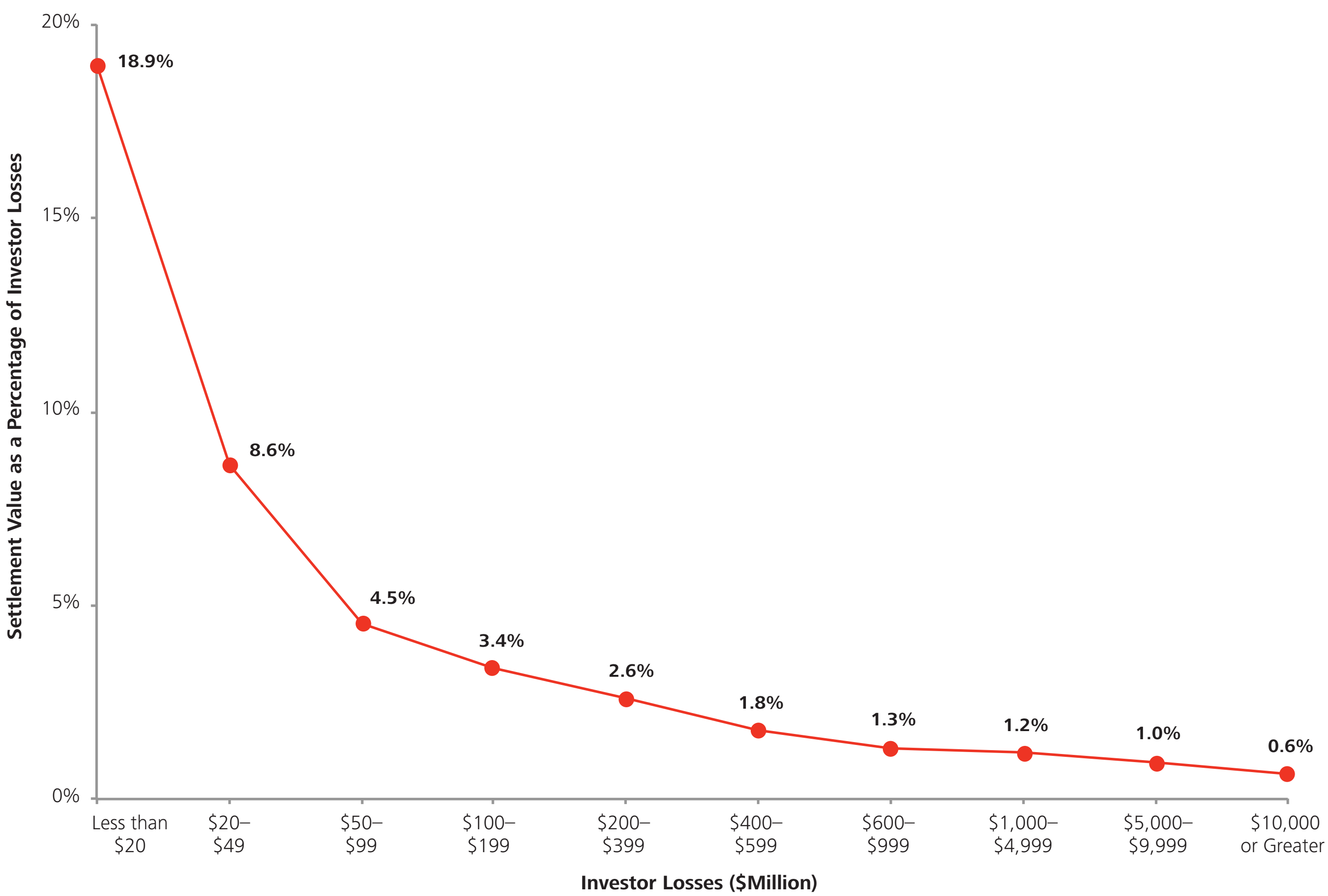
Investor Losses vs. Settlements

As noted above, our investor loss measure is a proxy for the aggregate amount that investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period.

In general, settlement size grows as investor losses grow, but the relation is not linear. Settlement size grows less than proportionately with investor losses, based on analysis of data from 1996 to 2015. Small cases typically settle for a higher fraction of investor losses (i.e., more cents on the dollar) than larger cases. For example, the median ratio of settlement to investor losses was 18.9% for cases with investor losses of less than $20 million, while it was 0.6% for cases with investor losses over $10 billion. See Figure 29.

Our findings about the ratio of settlement amount to investor losses should not be interpreted as the share of damages recovered in settlement, but rather as the recovery compared to a rough measure of the "size" of the case.

Figure 29. **Median of Settlement Value as a Percentage of Investor Losses—Excludes Settlements for $0 to the Class**
By Level of Investor Losses; January 1996–December 2015

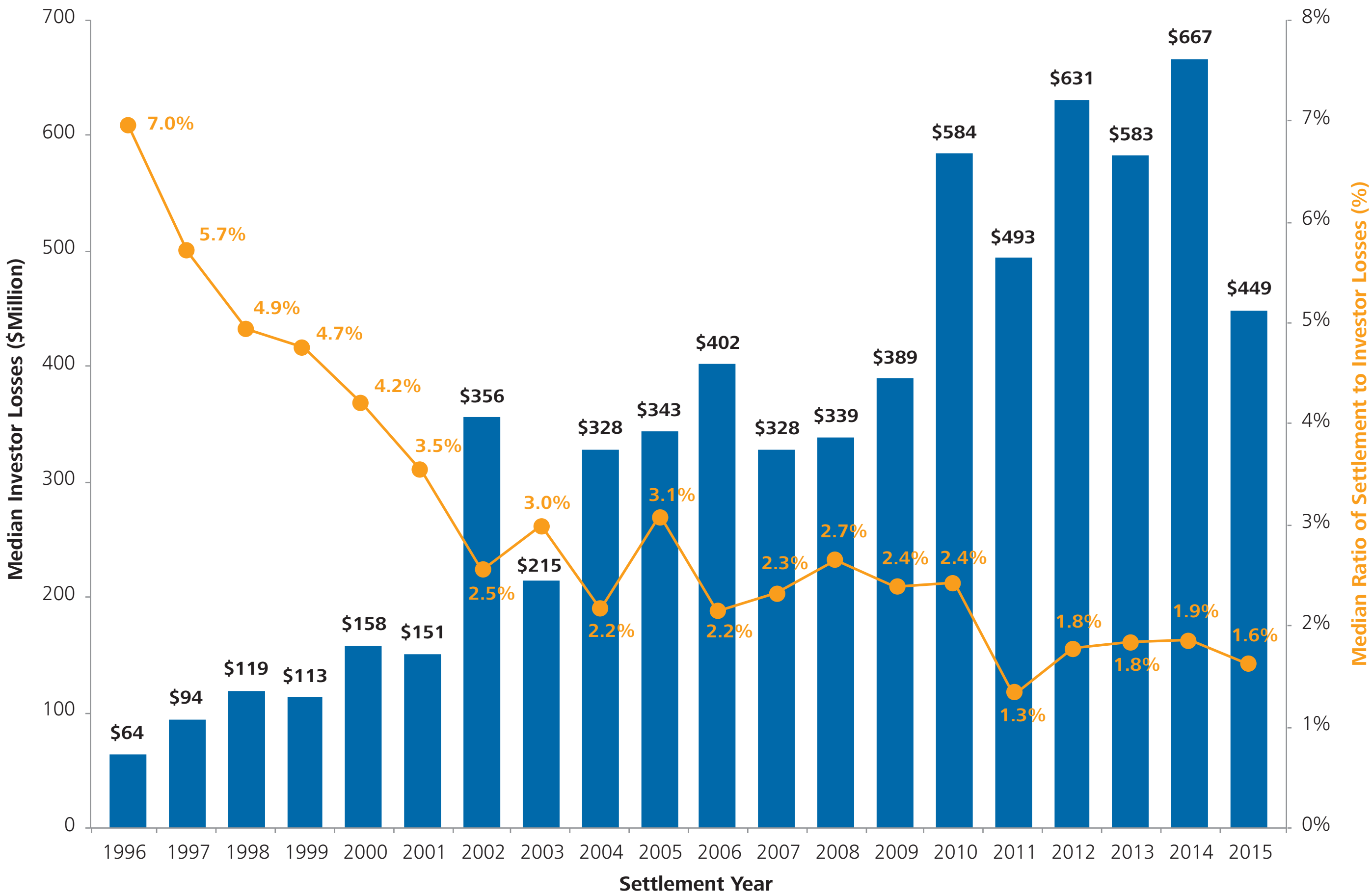


Median Investor Losses over Time

Median investor losses for settled cases have been on an upward trend since passage of the PSLRA. As described above, the median ratio of settlement size to investor losses generally decreases as investor losses increase. Over time, the increase in median investor losses has coincided with a decreasing trend in the median ratio of settlement to investor losses. Of course, there are year-to-year fluctuations.

As shown in Figure 30, the median ratio of settlements to investor losses was 1.9% in 2014. For the latter half of the year, after the *Halliburton II* decision, the median ratio was only 1.4%, suggesting that cases settled for less.[17] This trend appears to have continued in 2015. The overall ratio was 1.6% in 2015, the second lowest percent in a decade, and coincided with a substantial decrease in median investor losses.

Figure 30. **Median Investor Losses and Median Ratio of Settlement to Investor Losses**
By Settlement Year; January 1996–December 2015



Explaining Settlement Amounts

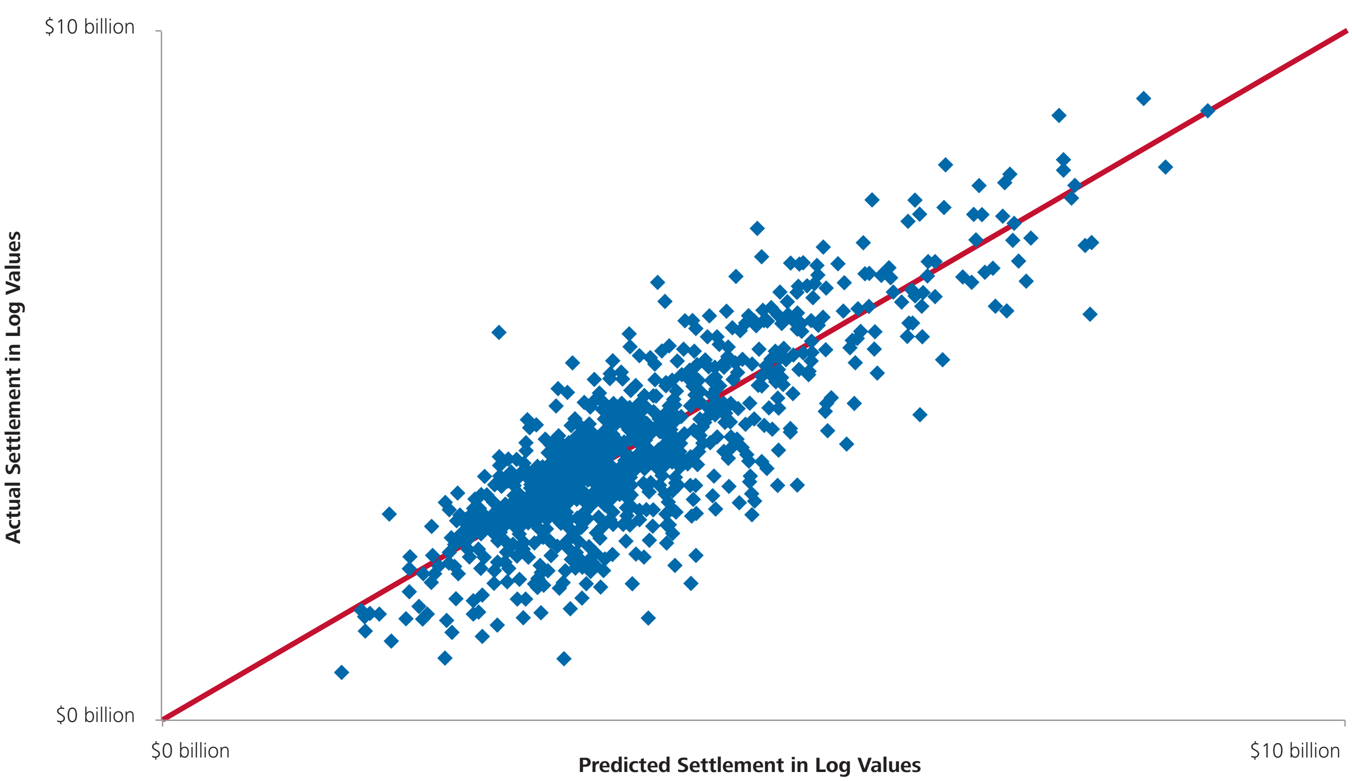
The historical relationship between case attributes and other case- and industry-specific factors can be used to measure the factors that are correlated with settlement amounts. NERA has examined settlements in over 1,000 securities class actions and identified key drivers of settlement amounts, many of which have been summarized in this report.

Generally, we find that the following factors have historically been significantly correlated with settlements:

- Investor losses (a proxy for the size of the case);
- The market capitalization of the issuer;
- Types of securities alleged to have been affected by the fraud;
- Variables that serve as a proxy for the "merit" of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- Admitted accounting irregularities or restated financial statements;
- The existence of a parallel derivative litigation; and
- An institution or public pension fund as lead plaintiff.

Together, these characteristics and others explain most of the variation in settlement amounts, as illustrated in Figure 31. Note that the two largest settlements are excluded from this figure.

Figure 31. **Predicted vs. Actual Settlements**



Plaintiffs' Attorneys' Fees and Expenses

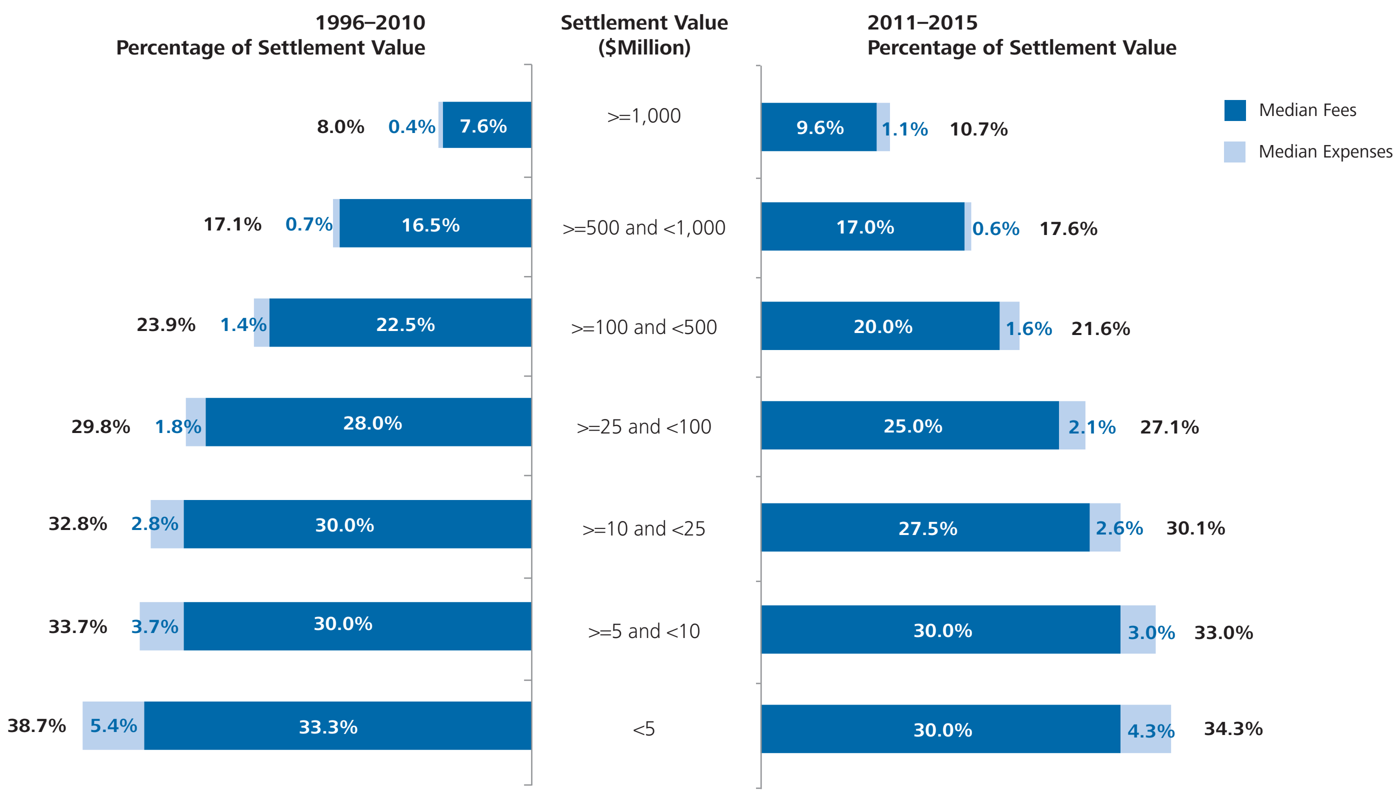
Usually, plaintiffs' attorneys' remuneration is determined as a fraction of any settlement amount in the forms of fees, plus expenses. Figure 32 depicts plaintiffs' attorneys' fees and expenses as a proportion of settlement values over ranges of settlement amounts. The data shown in this Figure exclude settlements for merger objection cases and cases with no cash payment to the class.

Two patterns are evident in Figure 32: (1) typically, fees grow with settlement size but less than proportionally (i.e., the fee percentage shrinks as the settlement size grows), and (2) fee percentages have been decreasing over time, except for fees awarded on very large settlements.

First, to illustrate that the fee percentage typically shrinks as settlement size grows, we grouped settlements by settlement value and report the median fee percentage for each group. While fees are stable at around 30% for settlements below $10 million, they clearly decline with settlement size.

Second, to illustrate that fee percentages have been decreasing over time (except for very large settlements), we report our findings both for the period 1996-2010 and for the period 2011-2015. The comparison shows that fee percentages have decreased or remained constant for settlements under $500 million. For settlements above $500 million, fee rates have increased.

Figure 32. **Median of Plaintiffs' Attorneys' Fees and Expenses, by Size of Settlement—Excludes Merger Objections, and Settlements for $0 to the Class**



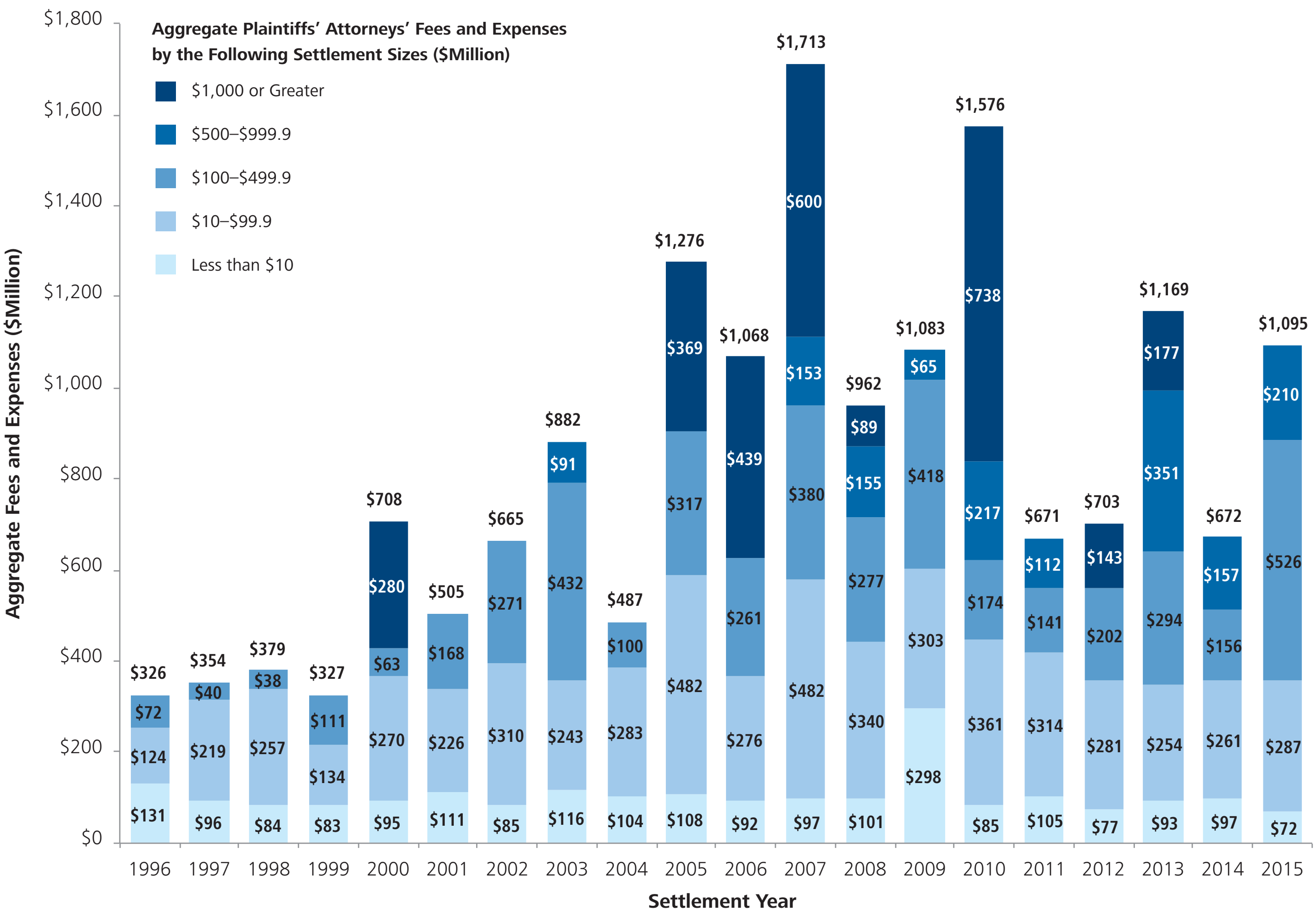
Aggregate Plaintiffs' Attorneys' Fees and Expenses

Aggregate plaintiffs' attorneys' fees and expenses are the sum of all fees and expenses received by plaintiffs' attorneys for all securities class actions that receive judicial approval in a given year.

In 2015, aggregate plaintiffs' attorneys' fees and expenses were $1.095 billion, an increase of nearly 63% over 2014 and mirroring the increase in settlement amounts discussed earlier. See Figure 33. Settlements in 2015 generated the highest aggregate plaintiffs' fees and expenses for any year on record in which there were no settlements above $1 billion. This stemmed in part from the highest fees on record from cases settling for between $100 million and $500 million.

Note that this Figure differs from the other Figures in this section, because it includes in the aggregate those fees and expenses that plaintiffs' attorneys received for settlements in which no cash payment was made to the class.

Figure 33. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 1996–December 2015



Trials

Very few securities class actions reach the trial stage and even fewer reach a verdict. Table 3 summarizes the outcome for all federal securities class actions that went to trial among more than 4,300 that were filed since the PSLRA. Only 21 have gone to trial and only 15 have reached a verdict or a judgment.

No trials were held in 2015.

Table 3. **Post-PSLRA Securities Class Actions that Went to Trial** (As of December 31, 2015)

					Appeal and Post-Trial Proceedings	
Case Name	Federal Circuit	File Year	Trial Start Year	Verdict	Date of Last Decision	Outcome
Verdict or Judgment Reached						
In re Health Management, Inc. Securities Litigation	2	1996	1999	Verdict in favor of defendants	2000	Settled during appeal
Koppel, et al v. 4987 Corporation, et al	2	1996	2000	Verdict in favor of defendants	2002	Judgment of the District Court in favor of defendants was affirmed on appeal
In re JDS Uniphase Corporation Securities Litigation	9	2002	2007	Verdict in favor of defendants		
Joseph J Milkowski v. Thane Intl Inc, et al	9	2003	2005	Verdict in favor of defendants	2010	Judgment of the District Court in favor of defendants was affirmed on appeal
In re American Mutual Funds Fee Litigation	9	2004	2009	Judgment in favor of defendants	2011	Judgment of the District Court in favor of defendants was affirmed on appeal
Claghorn, et al v. EDSACO, Ltd., et al	9	1998	2002	Verdict in favor of plaintiffs	2002	Settled after verdict
In re Real Estate Associates Limited Partnership Litigation	9	1998	2002	Verdict in favor of plaintiffs	2003	Settled during appeal
In re Homestore.com, Inc. Securities Litigation	9	2001	2011	Verdict in favor of plaintiffs		
In re Apollo Group, Inc. Securities Litigation	9	2004	2007	Verdict in favor of plaintiffs	2012	Judgment of the District Court in favor of defendants was overturned and jury verdict reinstated on appeal; case settled thereafter
In re BankAtlantic Bancorp, Inc. Securities Litigation	11	2007	2010	Verdict in favor of plaintiffs	2012	Judgment of the District Court in favor of defendants was affirmed on appeal
In re Longtop Financial Technologies Securities Litigation	2	2011	2014	Verdict in favor of plaintiffs		
In re Clarent Corporation Securities Litigation	9	2001	2005	Mixed verdict		
In re Vivendi Universal, S.A. Securities Litigation	2	2002	2009	Mixed verdict		
Jaffe v. Household Intl Inc, et al	7	2002	2009	Mixed verdict		
In re Equisure, Inc. Sec, et al v., et al	8	1997	1998	Default judgment		
Settled with at Least Some Defendants before Verdict						
Goldberg, et al v. First Union National, et al	11	2000	2003	Settled before verdict		
In re AT&T Corporation Securities Litigation	3	2000	2004	Settled before verdict		
In re Safety Kleen, et al v. Bondholders Litigati, et al	4	2000	2005	Partially settled before verdict, default judgment		
White v. Heartland High-Yield, et al	7	2000	2005	Settled before verdict		
In re Globalstar Securities Litigation	2	2001	2005	Settled before verdict		
In re WorldCom, Inc. Securities Litigation	2	2002	2005	Settled before verdict		

Note: Data are from case dockets and news.

Notes

1 This edition of NERA's research on recent trends in securities class action litigation expands on previous work by our colleagues Lucy P. Allen, the late Frederick C. Dunbar, Dr. Vinita M. Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, Dr. David Tabak, and others. The authors also thank Dr. Plancich and Dr. Tabak for helpful comments on this edition. In addition, we thank Shadman Torofder and other researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this paper; all errors and omissions are ours.

2 Data for this report are collected from multiple sources, including Institutional Shareholder Services Inc., complaints, case dockets, Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., SEC filings, and the public press.

3 A recent study has attributed the decline in listings between 1997 through 2012 to a low rate of new firm listings and a high rate of delisting, the latter of which is explained by an unusually high rate of public company acquisitions. "NBER Working Paper "The U.S. listing gap," by Craig Doidge, G. Andrew Karolyi, and René M. Stulz, NBER Working Paper No. 21181, May 2015.

4 Note that here we only consider merger objection cases as federal cases alleging violation of securities laws or cases that merely allege breach of fiduciary duty. Merger objection cases filed in state court, which can potentially be numerous, are not counted.

5 "2015 Becomes the Biggest M&A Year Ever," *The Wall Street Journal*, December 3, 2015.

6 Andrew Bolger, "Warning signs appear after bumper IPO year," *Financial Times*, 26 December 2014.

7 Number of IPOs on US exchanges, excluding ADRs, from Mergerstat through FactSet Research Systems, Inc.

8 For the purposes of this Figure, we considered only co-defendants listed in the first identified complaint. Based on past experience, accounting co-defendants were sometimes added to or excluded from later complaints.

9 *Janus Capital Group, Inc., et al. v. First Derivative Traders* — (Docket No. 09-525).

10 *Stoneridge Investment Partners v. Scientific-Atlanta, Inc*. — (Docket No. 06-43).

11 An alternative possibility is that once detected, full disclosure is made earlier, turning what would have been a "partial disclosure" into a complete disclosure.

12 "The SEC's Renewed Focus on Accounting Fraud, Insights and Implications for Auditors and Public Companies," *The CPA Journal*, February 2014.

13 "SEC's New Whistleblower Program Take Effect Today," US Securities and Exchange Commission, 21 August 2011.

14 NERA Working Paper, "Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review; Settlement amounts plummet in 2014, but post-*Halliburton II* filings rebound," by Svetlana Starykh et al, 20 January 2015, at http://www.nera.com/publications/archive/2015/recent-trends-in-securities-class-action-litigation--2014-full-y.html.

15 Each of these analyses excludes IPO laddering cases and merger objection cases because the former usually take much longer to resolve and the latter usually much less time to resolve.

16 These settlements exclude those in merger objection cases and in cases that settled with no cash payment to the class.

17 NERA Working Paper "Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review; Settlement amounts plummet in 2014, but post-*Halliburton II* filings rebound," by Svetlana Starykh et al, 20 January 2015, at http://www.nera.com/publications/archive/2015/recent-trends-in-securities-class-action-litigation--2014-full-y.html.

About NERA

NERA Economic Consulting (**www.nera.com**) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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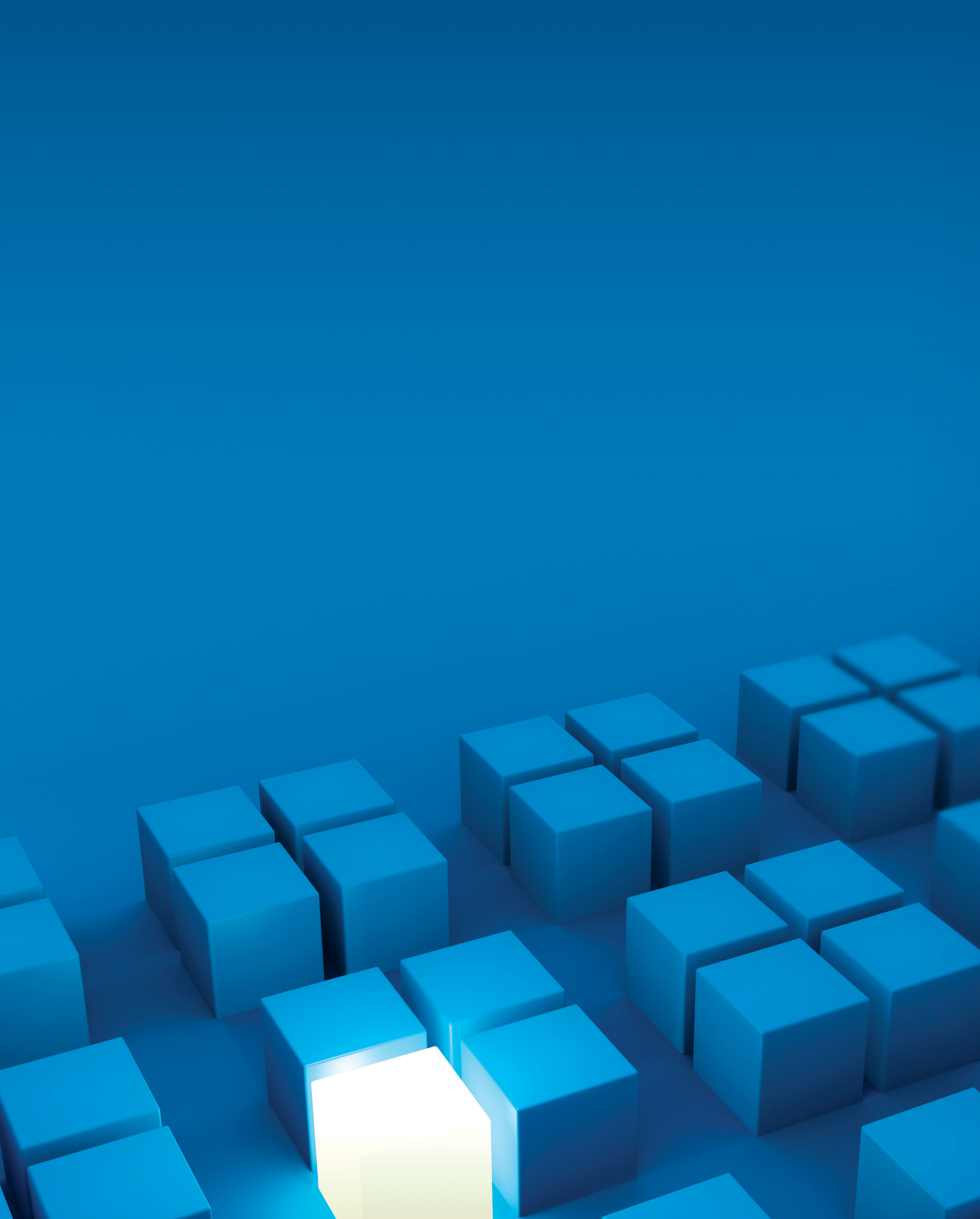

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Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION	Case No. 15-cv-7759 (LAK)
This Matter Relates To: All Actions	

DECLARATION OF ADAM D. WALTER REGARDING: (A) MAILING OF THE COVER LETTER, INDIVIDUAL NOTICE AND CLAIM FORM; (B) ISSUANCE OF THE PUBLICATION NOTICE; AND (C) REPORT ON REQUESTS FOR EXCLUSION AND OBJECTIONS RECEIVED TO DATE

I, Adam D. Walter, declare as follows:

1. I am a Senior Project Manager of A.B. Data, Ltd.'s Class Action Administration Division ("A.B. Data"), whose Corporate Office is located in Milwaukee, Wisconsin. Pursuant to the Order Provisionally Certifying Settlement Class and Approving Notice to Settlement Class (the "Notice Order"), A.B. Data was authorized to act as the Claims Administrator in connection with the Settlement in the above-captioned action. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

MAILING OF THE NOTICE AND PROOF OF CLAIM

2. Pursuant to the Notice Order, A.B. Data mailed the Notice of: (1) Pendency and Proposed Settlement of Class Action; (2) Motion for Attorneys' Fees and Expenses; and (3) Hearing on Proposed Settlement (the "Notice"), Cover Letter to Investors ("Cover Letter")[1], and the Proof of Claim and Release form (the "Proof of Claim" and collectively with the Notice and

[1] The Cover Letter for this settlement was printed on blue paper to help potential Class Members clearly distinguish between the Notice Packet mailed for this settlement and the FSAM settlement, which had the Cover Letter printed on white paper.

Cover Letter, (the "Notice Packet") to potential Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

3. On November 11, 2016, A.B. Data received 68 names and addresses of record holders from Lead Counsel, which I understand was provided by counsel for the Defendants. A.B. Data standardized and updated the mailing list addresses using NCOALink®, a national database of address changes that is compiled by the United States Postal Service. On November 23, 2016, A.B. Data caused Notice Packets to be mailed to record holders provided by Lead Counsel.

4. As in most class actions of this nature, the majority of potential Class Members are beneficial purchasers whose securities are held in "street name" –*i.e.*, the securities are purchased by brokerage firms, banks, institutions and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. The names and addresses of these beneficial purchasers are known only to the nominees. A.B. Data maintains a proprietary database with names and addresses of the largest and most common banks, brokers, and other nominees. On November 23, 2016, A.B. Data caused Notice Packets to be mailed to the 5,292 mailing records contained in the A.B. Data record holder mailing database.

5. Additionally, A.B. Data submitted the Notice to the Depository Trust Company, which is the world's largest central securities depository, for posting on its Legal Notice System, which offers DTC member banks and brokers access to a comprehensive library of notices concerning DTC-eligible securities.

6. The Notice requested that nominees who purchased or otherwise acquired FSC common stock during the Class Period for the beneficial interest of a person or organization other than themselves, within fourteen (14) calendar days of receipt of the Notice, either (a)

request sufficient copies of the Notice Packet to forward to all such beneficial owners and, within fourteen (14) calendar days after receipt of the copies of the Notice Packet, forward them to all such beneficial owners: or (b) provide to A.B. Data a list of the names and addresses of all such beneficial owners for whom or which they purchased FSC common stock during the Class Period. *See* Notice on page 8.

7. As of the date of this Declaration, A.B. Data has received an additional 23,934 names and addresses of potential Class Members from individuals or brokerage firms, banks, institutions and other nominees. A.B. Data has also received requests from brokers and other nominee holders for 13,464 Notice Packets, which the brokers and nominees are required to mail to their customers. All such mailing requests have been, and will continue to be, complied with and addressed by A.B. Data in a timely manner.

8. As of the date of this Declaration, 486 Notice Packets were returned by the United States Postal Service to A.B. Data as undeliverable as addressed ("UAA"). Of those returned UAA, 117 had forwarding addresses and were promptly re-mailed to the updated address. The remaining 369 UAAs were processed through LexisNexis to obtain an updated address. Of these, 302 new addresses were obtained and A.B. Data promptly re-mailed to these potential Class Members.

9. As of the date of this Declaration, a total of 43,177 Notice Packets have been mailed to potential Class Members and their nominees.

<u>PUBLICATION OF THE PUBLICATION NOTICE</u>

10. In accordance with Paragraph 11 of the Notice Order, on December 5, 2016, A.B. Data caused the Publication Notice to be published in *Investor's Business Daily* and on December 7, 2016, caused the Publication Notice to be published in *The Wall Street Journal* and

transmitted over *PR Newswire*. Proof of this publication is attached hereto as Exhibits B, C and D, respectively.

TELEPHONE HOTLINE

11. On or about November 23, 2016, a case-specific toll-free phone number, 866-217-4461, was established with an Interactive Voice Response system and live operators.[2] An automated attendant answers all calls initially and presents callers with a series of choices to respond to basic questions. If callers need further help, they have the option to be transferred to an operator during business hours. From November 23, 2016 through the date of this Declaration, A.B. Data received 178 telephone calls.

WEBSITE

12. On or about November 23, 2016, A.B. Data established a case-specific website, www.FSCSecuritiesSettlement.com, which includes general information regarding the case and its current status; downloadable copies of the Notice, Cover Letter, Proof of Claim, Publication Notice, and other court documents, including the Settlement Agreement; and online claim submission capability. The settlement website also provides links for potential Class Members to access websites that contain information about the FSAM settlement and derivative settlements. The settlement website is accessible 24 hours a day, 7 days a week.

REPORT ON EXCLUSIONS AND OBJECTIONS

13. The Notice informed potential Class Members that requests for exclusion are to be sent to the Claims Administrator, such that they are received no later than January 26, 2017.

[2] The same group of operators was trained and used for both this settlement and the FSAM settlement to answer potential Class Members questions regarding the settlements. We believed that using the same group would be more convenient for FSC and FSAM investors, who might be interested in both settlements, and efficient overall.

As of the date of this Declaration, A.B. Data has received no requests for exclusion. A.B. Data has also not received any objections.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of January, 2017.

Adam D. Walter

Adam D. Walter

EXHIBIT A

TWO SEPARATE SETTLEMENTS OF
CLASS ACTIONS INVOLVING FIFTH STREET COMPANIES

Please read this cover letter carefully before reading the enclosed materials

Dear Investor,

You are receiving the enclosed notice because you might have purchased common stock of **Fifth Street Finance Corp. (Ticker: FSC)** during the period from July 7, 2014 through February 6, 2015. The enclosed notice describes a proposed settlement of a class action filed on behalf of persons who purchased **FSC common stock** during that period.

There is also a **separate settlement** of a class action brought on behalf of purchasers of the common stock of **Fifth Street Asset Management Inc. (Ticker: FSAM)** pursuant or traceable to the Registration Statement issued in connection with FSAM's initial public offering beginning in October 2014. The FSAM Settlement is completely different from the FSC settlement, with a different notice, a different claim form and different lawyers for the Settlement Class.

Notices concerning the FSAM settlement are also being mailed. If you purchased FSAM shares but did not receive a separate notice about the FSAM settlement, you should contact the Claims Administrator for the FSAM settlement at the phone number, email address, or website given below.

Because the proposed settlements of the FSC class action and the FSAM class action are independent of each other, you will need to make **separate decisions about each settlement** if you are a member of the class in each case, and--if you decide to participate in both--would need to submit **separate claim forms**.

For more information about the proposed **FSC settlement**, you may contact the Claims Administrator, A.B. Data, Ltd., by toll-free telephone number 866-217-4461 or email info@FSCSecuritiesSettlement.com, or visit the FSC settlement website, www.FSCSecuritiesSettlement.com.

For more information about the proposed **FSAM settlement**, you may contact the Claims Administrator, A.B. Data, Ltd., by toll-free telephone number 877-240-3531 or email info@FSAMSecuritiesLitigation.com, or visit the FSAM settlement website, www.FSAMSecuritiesLitigation.com.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION	**Case No. 15-cv-7759 (LAK)**
This Matter Relates To:	
All Actions	

NOTICE OF: (1) PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION;
(2) MOTION FOR ATTORNEYS' FEES AND EXPENSES; AND
(3) HEARING ON PROPOSED SETTLEMENT

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

NOTICE OF PENDENCY OF CLASS ACTION: Your rights may be affected by a class action (the "Action") pending in this Court if you purchased or otherwise acquired common stock of Fifth Street Finance Corp. ("FSC") during the period from July 7, 2014 through February 6, 2015, inclusive (the "Class Period").

NOTICE OF SETTLEMENT: Lead Plaintiff Oklahoma Police Pension and Retirement System, on behalf of the Class, has reached a proposed settlement (the "Settlement") with defendants FSC, Fifth Street Asset Management Inc. ("FSAM"), Leonard M. Tannenbaum, Bernard D. Berman, Alexander C. Frank, Todd G. Owens, Ivelin M. Dimitrov, and Richard A. Petrocelli (collectively, "Defendants") to resolve all claims asserted in the Action. The Settlement calls for Defendants to pay $14,050,000 for the benefit of the Class.

This Notice explains important rights you may have, including your possible receipt of cash from the Settlement. If you are a Class Member, your legal rights will be affected whether you act or not. Please read this Notice carefully!

> **This Notice *does not* apply to a separate settlement on behalf of shareholders of FSAM. Please read the enclosed cover letter if you purchased shares of FSAM in addition to or instead of shares of FSC. You may be entitled to a recovery in the FSAM settlement.**

1. **Description of the Lawsuit and Class:** The Action is a securities class action filed against FSC and the Defendants. Plaintiff and Defendants have reached an agreement to settle the Action, subject to Court approval. The proposed Settlement, if approved, will provide relief to all persons and entities who purchased FSC common stock during the Class Period and who qualify for a distribution under the Plan of Allocation described below.

2. **Statement of Class's Recovery:** The proposed Settlement provides for a payment of $14,050,000 in cash (the "Settlement Amount"), which will be deposited into an Escrow Account. The Net Settlement Fund (meaning the Settlement Amount plus any interest that accrues, minus taxes, notice and administrative costs, and attorneys' fees and litigation expenses awarded to counsel representing Plaintiff and the Class) will be distributed in accordance with the Plan of Allocation approved by the Court for determining how the Net Settlement Fund will be allocated among the Class Members. The proposed Plan of Allocation is included in this Notice. (See paragraphs 23 to 35, below.) Plaintiff's damages consultant estimates that approximately 40.9 million shares of FSC common stock might have been affected by the conduct alleged in the Action. If all Class Members choose to participate in the Settlement, the average per-share recovery from the Net Settlement Fund will be approximately $0.34 per affected share before the deduction of attorneys' fees, costs, and expenses as approved by the Court.

3. **Statement of Potential Outcome of Case:** Plaintiff and Defendants do not agree on the average amount of damages per share that would be recoverable if Plaintiff were to prove its claims. Defendants would expressly deny that any shares of FSC common stock were damaged as alleged. Instead, Defendants would contend that the price of FSC common stock was not inflated by any allegedly false or misleading public statements and that the price decline alleged in the Action did not result from any misconduct.

4. **Statement of Attorneys' Fees and Litigation Expenses Sought:** Lead Counsel (Labaton Sucharow LLP) will ask the Court for (*i*) an award of attorneys' fees of not more than 25% of the Settlement Fund, or $3,512,500, and (*ii*) litigation expenses not to exceed $500,000, with all amounts to be paid from the Settlement Fund. In addition, Plaintiff may seek reimbursement of its time and expenses, including lost wages, of not more than $5,000. If the Court approves Lead Counsel's application, the average cost per affected share will be approximately $0.10.

5. **Reasons for Settlement:** Plaintiff believes that its claims have merit and that it would prevail at trial. Defendants believe that the claims are without merit and that Plaintiff would lose at trial. Nevertheless, the parties have agreed to settle the case to avoid the risks, burdens, and expense of continued litigation, to provide relief to the Class, and to end the Action.

6. **Identification of Lawyers' Representatives:** Plaintiff and the Class are being represented by Labaton Sucharow LLP, the Court-appointed Lead Counsel. Any questions about the Settlement should be sent to Labaton Sucharow LLP at the address and telephone number given below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
REMAIN A MEMBER OF THE CLASS AND SUBMIT A CLAIM FORM	This is the only way to be eligible for a payment. If you want to obtain a payment as a Class Member, you must submit a Claim Form (included with this Notice) ***postmarked or received*** **no later than March 27, 2017. You can also visit www.FSCSecuritiesSettlement.com to obtain, complete, and file a Claim Form online.**
EXCLUDE YOURSELF FROM THE CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION *RECEIVED* NO LATER THAN JANUARY 26, 2017	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendants and the other Releasees concerning the claims in this case.
OBJECT TO THE SETTLEMENT BY SUBMITTING WRITTEN OBJECTIONS *RECEIVED* NO LATER THAN JANUARY 26, 2017	Write to the Court and explain why you do not like the Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and litigation expenses. You cannot object to the Settlement unless you are a Class Member and do not exclude yourself.
GO TO THE HEARING ON FEBRUARY 16, 2017, AT 9:30 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR, *RECEIVED* NO LATER THAN JANUARY 26, 2017	Ask to speak in Court about the fairness of the Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and litigation expenses.
DO NOTHING	Get no payment. Remain a Class Member. Give up your rights.

INQUIRIES: Please do not contact the Court about this notice. All inquiries about this Notice, the Claim Form, or anything else should be directed to the Claims Administrator or Lead Counsel:

FSC Securities Settlement
c/o A.B. Data, Ltd.
P.O. Box 173025
Milwaukee, WI 53217
Tel.: 866-217-4461
info@FSCSecuritiesSettlement.com
www.FSCSecuritiesSettlement.com

Labaton Sucharow LLP
Joel H. Bernstein, Esq.
140 Broadway
New York, NY 10005
Tel.: 888-219-6877
SettlementQuestions@labaton.com
www.labaton.com

WHAT THIS NOTICE CONTAINS

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What Rights Am I Giving Up By Agreeing To The Settlement? Page 6
What Payment Are The Attorneys For The Class Seeking? How Will The Lawyers Be Paid? Page 6
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WHY DID I GET THIS NOTICE?

7. This Notice is being sent to you by order of the United States District Court for the Southern District of New York (the "Court"), because you or someone in your family may have purchased FSC common stock during the Class Period (July 7, 2014 through February 6, 2015). As a potential Class Member, you should know about your options and how a class action and a class-action settlement may affect your legal rights.

8. A class action is a type of lawsuit filed by a person or entity called a "plaintiff" against the "defendants" (FSC and others). A class action asks the court to resolve the claims of a number of persons and entities together, to provide consistency and efficiency. The court selects one or more people, known as "class representatives" or "lead plaintiffs," to sue on behalf of all people with similar claims (the "class" or the "class

members"). Once the class is certified, the court resolves all issues on behalf of the whole class, except for any persons who exclude themselves from the class.

9. In this Action, which is known as *In re Fifth Street Finance Corp. Securities Litigation*, the Court has appointed Oklahoma Police Pension and Retirement System as "Lead Plaintiff" and Labaton Sucharow LLP as "Lead Counsel" under a federal law governing this type of lawsuit.

10. This Notice explains the Action, the proposed Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Notice tells you how you might be affected by the Action and how you can exclude yourself from the Class. The Notice also describes the hearing that the Court will hold to consider the fairness, reasonableness, and adequacy of the proposed Settlement (the "Fairness Hearing").

11. The Fairness Hearing will be held on February 16, 2017, at 9:30 a.m., before United States District Judge Lewis A. Kaplan, at the United States District Court for the Southern District of New York, located at 500 Pearl Street, Courtroom 21B, New York, New York 10007. At the hearing, the Court will determine:

(i) whether the proposed Settlement is fair, reasonable, and adequate and should be approved, and whether the claims against the Defendants should be dismissed with prejudice and a permanent injunction entered;

(ii) whether the proposed Plan of Allocation is fair and reasonable and should be approved; and

(iii) whether Lead Counsel's request for attorneys' fees and litigation expenses should be approved.

12. This Notice does not express the Court's opinion about the merits of any claims in the Action, and the Court has not yet decided whether to approve the proposed Settlement. If the Court approves the Settlement, payments will be made after any appeals have been resolved and all claims have been processed. Please be patient.

WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

13. FSC is a publicly traded Connecticut-based business-development company.

14. Starting in October 2015, three class actions were filed by purchasers of FSC common stock alleging violations of the federal securities laws. On February 1, 2016, the Court appointed the Lead Plaintiff and Lead Counsel.

15. On April 1, 2016, Plaintiff filed an amended complaint (the "Complaint") asserting claims under the Securities Exchange Act of 1934. The Complaint contends that, during the Class Period, Defendants made materially false statements and/or omitted material facts about FSC's financial condition. Plaintiff alleges that Defendants engaged in a scheme to inflate FSC's assets and investment income in order to increase the revenue of FSC's investment adviser, Fifth Street Asset Management Inc. ("FSAM"), before FSAM's initial public offering at the end of October 2014. After that offering, FSC wrote down the value of certain assets, suspended its dividend for February 2015, and reduced its future dividends. The Complaint contends that these alleged misstatements and omissions inflated the price of FSC's common stock during the Class Period.

16. Defendants moved to dismiss the Complaint on May 31, 2016. The parties then engaged in settlement discussions – with the assistance of a mediator (a retired California Superior Court Judge) – and were able to reach the proposed Settlement described here.

HOW DO I KNOW WHETHER I AM AFFECTED BY THE SETTLEMENT?

17. If you are a member of the Class, you are subject to the Settlement unless you timely and validly ask to be excluded from it. The Class consists of all persons and entities (or legal beneficiaries) who purchased or otherwise acquired FSC common stock during the period from July 7, 2014 through February 6, 2015, inclusive.

18. The Class does *not* include: (*i*) all Defendants, any other individuals who were officers or directors (as determined under section 16 of the Exchange Act) of FSC or FSAM during the Class Period, Family Members of any of the foregoing, and their legal representatives, trustees, administrators, heirs, successors, or assigns, and any entity in which any Defendant had a Controlling Interest during the Class Period; (*ii*) persons or entities who submit timely and valid requests for exclusion from the Class; and (*iii*) persons or entities who, while represented by counsel, settled an actual or threatened lawsuit or other proceeding against the Releasees and released the Releasees from any further Claims concerning their purchase or other acquisition of FSC common stock during the Class Period.

RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE A CLASS MEMBER OR ARE ENTITLED TO RECEIVE MONEY FROM THE SETTLEMENT. IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, YOU MUST SUBMIT THE CLAIM FORM ENCLOSED WITH THIS NOTICE. THE CLAIM FORM MUST BE POSTMARKED OR RECEIVED NO LATER THAN MARCH 27, 2017.

WHY HAVE DEFENDANTS AGREED TO THE SETTLEMENT?

19. Defendants deny that they engaged in any wrongdoing, violated any law, or breached any duty, and deny that the claims in the Complaint have any merit. Defendants believe that they have substantial defenses to all of those claims and would prevail at trial. Nevertheless, Defendants decided that settling the Action would be better than continuing to litigate, because a settlement would bring to an end the substantial expenses, burdens, and uncertainties of litigation, avoid further disruption of FSC's and FSAM's management and operations, and provide benefits to Class Members. The Settlement is not evidence of or an admission by Defendants of any fault or liability whatsoever, or of any weakness in any defenses that they have asserted or would assert in the Action.

WHY HAS PLAINTIFF AGREED TO THE SETTLEMENT?

20. Plaintiff and Lead Counsel believe that the claims have merit and that Plaintiff would prevail at trial. But Plaintiff and Lead Counsel also recognize the expense and length of continued proceedings necessary to pursue the claims through trial and appeals, the difficulties in establishing liability in complex actions such as this one, and the difficulties in collecting money even after a judgment.

21. The proposed Settlement would provide guaranteed cash compensation to eligible Class Members. In light of the risks and expenses of continued litigation, the cash Settlement Amount, and the immediacy of recovery to the Class, Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Class. Plaintiff and Lead Counsel also recognize the risk that continued litigation of the claims in the Action could produce a similar or smaller recovery – or potentially no recovery at all – after motions to dismiss, summary judgment, trial, and appeals, possibly years in the future.

WHAT MIGHT HAPPEN WITHOUT A SETTLEMENT?

22. If there were no Settlement, and if Plaintiff failed to establish any essential legal or factual element of its claims, neither Plaintiff nor the Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses, the Class would likely recover substantially less than the relief provided in the proposed Settlement, or nothing at all.

HOW MUCH WILL MY PAYMENT BE?

THE PROPOSED PLAN OF ALLOCATION: GENERAL PROVISIONS

23. As discussed above, the Settlement provides $14,050,000 in cash for the benefit of the Class. The Settlement Amount and any interest it earns constitute the "Settlement Fund." The "Net Settlement Fund" is the Settlement Fund after deduction of Court-approved attorneys' fees and litigation expenses, Notice and Administrative Expenses, Tax Expenses, and any other fees or expenses approved by the Court. The Net Settlement Fund will be distributed to Authorized Claimants – *i.e.*, members of the Settlement Class who timely submit valid Claim Forms that show Recognized Claims pursuant to the Plan of Allocation and are approved by the Court.

24. The Net Settlement Fund will not be distributed unless and until the Court has approved the proposed Settlement and the Plan of Allocation (or some other allocation plan) and the Court's approval becomes "final" (meaning that the time to appeal the Order granting approval has expired, or, if the Order is appealed, that the appeal is decided without causing a material change in the Order or that the Order is upheld on appeal and is no longer subject to any further type of appellate review). The Plan of Allocation is separate from the Settlement, so any decision by the Court concerning the Plan of Allocation will not affect the validity or finality of the Settlement. The Court may approve the Plan of Allocation with or without modifications agreed to among the parties, or another plan of allocation, without further notice to Class Members. Any orders about a modification of the Plan of Allocation will be posted to the Settlement website www.FSCSecuritiesSettlement.com.

25. Payments under the Court-approved Plan of Allocation will be conclusive against all Authorized Claimants. No person shall have any claim against Plaintiff, Lead Counsel, Defendants, Defendants' counsel, the Claims Administrator, or anyone else arising from distributions made substantially in accordance with the Settlement Agreement, the Plan of Allocation, or the Court's Orders.

26. The Claims Administrator will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim. **Please Note**: The formulas set forth herein are not intended to estimate either the amount that a Class Member might have been able to recover after a trial or the amount that will be paid to Authorized Claimants under the Settlement. The formulas are simply the basis upon which the Net Settlement Fund will be proportionately allocated to Authorized Claimants. Each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Claim bears to the total Recognized Claims of all Authorized Claimants (*i.e.*, the Authorized Claimant's *pro rata* share). The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment would be $10.00 or greater, given the fees and expenses associated with printing and mailing payments.

27. The Plan of Allocation is designed to distribute the settlement proceeds fairly to those Class Members who suffered economic loss as a result of the alleged fraud, as opposed to loss caused by general market conditions or other non-fraud-related factors. The Plan reflects analyses conducted by Plaintiff's damages consultant. In order to have a compensable loss, FSC common stock must have been purchased or otherwise acquired during the Class Period and been held through an alleged corrective disclosure.

28. If any of the Net Settlement Fund remains (because of uncashed checks or otherwise) six (6) months after the initial distribution of such funds, and after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their initial distribution checks, such monies shall be (*i*) used for the payment of any unpaid Notice and Administrative Expenses and the costs or fees to be incurred in a redistribution of the remaining funds and then (*ii*) distributed in an economical fashion to Authorized Claimants who have cashed their initial distribution checks. If any funds remain in the Escrow Account after such redistribution(s), or if any such redistribution is not economically feasible, the unpaid residue shall be given to a nonprofit organization to be designated by Plaintiff and approved by the Court and by FSC (whose approval will not be unreasonably withheld).

THE BASIS FOR CALCULATING YOUR RECOGNIZED CLAIM:

29. The Claims Administrator will calculate a "Recognized Loss Amount" for each purchase or acquisition of FSC common stock during the Class Period listed in the Class Member's Claim Form and for which adequate documentation is provided. The Recognized Loss Amount will depend upon several factors, including (*i*) when the shares were purchased or acquired and (*ii*) whether they were held until the conclusion of the Class Period or sold during the Class Period, and, if so, when they were sold.

30. For each share of FSC common stock purchased or otherwise acquired during the period between July 7, 2014 through February 6, 2015, inclusive, a Recognized Loss Amount will be calculated by the Claims Administrator as the number of shares purchased multiplied by:

i) if shares are sold on or before February 6, 2015, $0.00 per share; or

ii) if shares are held as of the close of trading on February 6, 2015, the lesser of (but not less than zero):

a. $1.30 per share; or
b. the difference between purchase price paid (excluding all fees, taxes, and commissions) per share and:

i. if the shares are sold between February 9, 2015 and May 8, 2015, the PSLRA rolling average price on the date of sale as set forth in Table A below; or

ii. if the shares are held as of the close of trading on May 8, 2015, the PSLRA 90-day look-back price of $7.12 per share.[1]

Table A
PSLRA Rolling Average Prices

Date	Price	Date	Price	Date	Price
2/9/2015	$7.22	3/11/2015	$7.13	4/10/2015	$7.13
2/10/2015	$7.09	3/12/2015	$7.13	4/13/2015	$7.13
2/11/2015	$7.01	3/13/2015	$7.12	4/14/2015	$7.13
2/12/2015	$7.04	3/16/2015	$7.12	4/15/2015	$7.13
2/13/2015	$7.07	3/17/2015	$7.11	4/16/2015	$7.13
2/17/2015	$7.10	3/18/2015	$7.11	4/17/2015	$7.13
2/18/2015	$7.11	3/19/2015	$7.11	4/20/2015	$7.13
2/19/2015	$7.13	3/20/2015	$7.11	4/21/2015	$7.13
2/20/2015	$7.14	3/23/2015	$7.11	4/22/2015	$7.12
2/23/2015	$7.14	3/24/2015	$7.11	4/23/2015	$7.13
2/24/2015	$7.14	3/25/2015	$7.11	4/24/2015	$7.13
2/25/2015	$7.14	3/26/2015	$7.12	4/27/2015	$7.13
2/26/2015	$7.14	3/27/2015	$7.12	4/28/2015	$7.12
2/27/2015	$7.14	3/30/2015	$7.12	4/29/2015	$7.12
3/2/2015	$7.13	3/31/2015	$7.13	4/30/2015	$7.12
3/3/2015	$7.13	4/1/2015	$7.13	5/1/2015	$7.13
3/4/2015	$7.14	4/2/2015	$7.13	5/4/2015	$7.13
3/5/2015	$7.14	4/6/2015	$7.13	5/5/2015	$7.12
3/6/2015	$7.14	4/7/2015	$7.13	5/6/2015	$7.12
3/9/2015	$7.14	4/8/2015	$7.13	5/7/2015	$7.12
3/10/2015	$7.13	4/9/2015	$7.13	5/8/2015	$7.12

31. For each share of FSC common stock purchased or otherwise acquired during the period from July 7, 2014 through February 6, 2015, inclusive, an Out-of-Pocket Trading Loss (or Gain) will also be calculated by the Claims Administrator as the number of shares purchased multiplied by:

(a) if shares are sold on or before February 6, 2015, $0.00 per share; or

(b) if shares are held as of the close of trading on February 6, 2015, the difference between purchase price paid (excluding all fees, taxes and commissions) and the closing price of $7.22 on February 9, 2015.

32. For purposes of calculating your Recognized Claim, all purchases, acquisitions, and sales shall be matched on a First In, First Out ("FIFO") basis in chronological order. Therefore, on the Claim Form enclosed with this Notice, you must provide all of your purchases and acquisitions of FSC common stock during the time period from July 7, 2014 through February 6, 2015, inclusive.

33. For purposes of calculating your Recognized Claim, the date of purchase, acquisition, or sale – not the "settlement" or "payment" date – is the "contract" or "trade" date. The receipt or grant of FSC stock by gift, inheritance, or operation of law shall not be deemed a purchase, acquisition, or sale of FSC stock for the calculation of Recognized Claims. The covering purchase of a short sale is not an eligible purchase. Options are not eligible securities.

34. To the extent a claimant had an Out-Of-Pocket Trading Gain from his, her, or its overall transactions in FSC common stock during the Class Period, the value of the Recognized Claim will be zero, and the claimant will not be entitled to a share of the Net Settlement Fund. To the extent that a claimant suffered an Out-Of-Pocket Trading Loss on his, her, or its overall transactions in FSC common stock during the Class Period, but that trading loss was less than the Recognized Loss Amounts calculated above, the Recognized Claim shall be limited to the amount of the

[1] Pursuant to Section 21(D)(e)(2) of the PSLRA, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security."

claimant's actual Out-Of-Pocket Trading Loss. A Recognized Claim that calculates to yield a negative number is treated as a Recognized Claim of zero.

35. All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted in connection with the Settlement, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, shall be released and discharged from any and all claims arising out of such involvement, and all Class Members – whether or not they are to receive payment from the Net Settlement Fund – will be barred from making any further claim against the Net Settlement Fund beyond the amount allocated to them as provided in any distribution orders entered by the Court.

WHAT RIGHTS AM I GIVING UP BY AGREEING TO THE SETTLEMENT?

36. If the Court approves the Settlement, it will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against Defendants and will say that, as of the Final Settlement Date, Plaintiff and all other Class Members are deemed to have – and by operation of the Judgment shall have – fully, finally, and forever released, relinquished, settled, and discharged any and all "Released Plaintiff's Claims," including "Unknown Claims," against the Releasees and any claims or potential claims that were, could have been, or could be asserted in connection with the Released Plaintiff's Claims.

37. "Released Plaintiff's Claims" means (in summary) every Claim that Plaintiff or any other Class Member (*i*) asserted against any of the Releasees in the Action (including all Claims alleged in any complaint filed in the Action or in any action consolidated into it) or (*ii*) could have asserted or could assert against any of the Releasees in connection with the facts and circumstances alleged in the Action, whether arising under any federal, state, or other statutory or common – law rule, in any court, tribunal, agency, or other forum, that both (A) arises out of or relates to the purchase or other acquisition of FSC common stock during the Class Period, or any other Investment Decision concerning FSC common stock during the Class Period, and (B) relates directly or indirectly to (*1*) the valuation of any of FSC's investments, investment decisions concerning FSC's portfolio and the due diligence undertaken in connection with those decisions, FSC's investment strategy, decisions whether to place any of FSC's investments on non-accrual status, decisions whether to impair or write down any of FSC's investments and the timing and amount of any write-downs or impairments, recognition of revenue from any of FSC's investments, the renegotiation or modification of any of the terms of FSC's investments, decisions concerning FSC's payment of dividends, FSC's advisory and administration arrangements with its investment advisor and administrator, accounting decisions as to any of FSC's investments, the performance or risk of FSC's investments, FSC's governance and internal controls, policies, processes and procedures relating to issues raised in the Complaint, and/or (*2*) any alleged statements about or characterizations of – or alleged failures to disclose information about – any of the foregoing matters. An "Investment Decision" is any decision about an investment in FSC common stock during the Class Period, including a decision to hold those shares. The complete definition of Released Plaintiff's Claims is printed in the Claim Form. You should read it carefully.

38. The term "Releasee," which is also printed in full in the Claim Form, includes FSC, FSAM, and their past and present officers, directors, employees, and agents, as well as related persons and entities.

39. The Judgment will also state that Releasees will be deemed to have – and by operation of the Judgment shall have – fully, finally, and forever released, relinquished, settled, and discharged all claims, whether known or unknown, that Releasees have or could have asserted, or could assert, against Plaintiff, Plaintiff's lawyers, and/or any of their agents, if such claims arise out of or relate in any way to the institution, prosecution, or settlement of the Action, except claims relating to the enforcement of the Settlement. In addition, Defendants will release all Defendants' Mutually Released Claims that any Defendant could otherwise have asserted directly or derivatively against any other Defendant.

40. Defendants will also ask the Court to enter "bar orders" barring any person or entity from suing the Releasees – and barring the Releasees from suing any other person or entity – for contribution, indemnification, and any other injury that relates to a Released Plaintiff's Claim and arises from the barred person's or entity's alleged liability to the Class or any Class Member.

WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING? HOW WILL THE LAWYERS BE PAID?

41. Plaintiff's counsel has not received any payment for its services or expenses in connection with the Action. Lead Counsel will therefore apply to the Court for an award of attorneys' fees from the Settlement Fund of not more than 25% of the Settlement Fund and for litigation expenses not to exceed $500,000. The Court will determine the amount of the award.

42. The requested attorneys' fees and litigation expenses will be the only payment to Lead Counsel for its efforts in achieving this Settlement and for its risk in undertaking this representation on a wholly contingent basis. Lead Counsel has committed time and expenses in litigating this case for the benefit of the Class. The Court will decide what is a reasonable fee award and may award less than the amount requested by Lead Counsel.

43. As a Class Member, you are represented by Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. **You do not need to hire your own lawyer,** but, if you choose to do so, he or she must file a notice of appearance on your behalf with the Court and must serve copies of his or her notice of appearance on the attorneys listed in paragraph 56, below.

HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

44. If you purchased or otherwise acquired FSC common stock during the Class Period and are not excluded from the definition of the Class, and if you do not exclude yourself from the Class, then you are a Class Member. As a Class Member, you will be bound by the proposed Settlement, if the Court approves it, and by any judgment or determination of the Court affecting the Class.

45. If you are a Class Member and want to claim money from the Net Settlement Fund, you must submit a Claim Form and supporting documentation. A Claim Form is included with this Notice, or you may go to the website www.FSCSecuritiesSettlement.com to download a Claim Form or ask that one be mailed to you. You may also obtain, complete, and file a Claim Form online by March 27, 2017. You may also request a Claim Form by calling 866-217-4461 or e-mailing info@FSCSecuritiesSettlement.com. Those who exclude themselves from the Class, and those who do not submit timely and valid Claim Forms with adequate supporting documentation, will not be entitled to share in the settlement money.

46. The Claim Form and the required documents must be sent to the address (including the email address) printed in the Claim Form and must be **received or postmarked no later than March 27, 2017**. Unless the Court otherwise orders, any Class Member who fails to submit a timely Claim Form will be forever barred from receiving payments from the Settlement, but will remain a Class Member and be subject to the provisions of the Settlement Agreement and the Court's Orders and Judgment. This means that each Class Member will release the Released Plaintiff's Claims against Defendants and the other Releasees and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiff's Claims against Defendants regardless of whether such Class Member submits a Claim Form.

47. The Claim Form asks you to provide information and documentation about your purchases, holdings, and sales of FSC common stock before the Class Period, during the Class Period, and at the end of the Class Period. Please retain all records of your ownership of, or transactions in, FSC common stock so you can document your claim.

48. If you submit a Claim Form that is rejected in whole or in part, and if you want to dispute that decision, the Court will make a final, binding, and nonappealable decision on the dispute.

WHAT IF I DO NOT WANT TO BE A PART OF THE SETTLEMENT?
HOW DO I EXCLUDE MYSELF?

49. If you do *not* want to participate in the proposed Settlement and be bound by the rulings and judgments in this Action, you must exclude yourself from the Class. To do so, you must submit a written Request for Exclusion by first-class mail (or its equivalent outside the U.S.) or other delivery to FSC Securities Settlement - EXCLUSIONS, c/o A.B. Data, Ltd., P.O. Box 173025, Milwaukee, WI 53217. The exclusion request must be ***received*** **no later than January 26, 2017.** You will not be able to exclude yourself from the Class after that date, unless the Court otherwise determines.

50. Each Request for Exclusion must (*i*) state the name, address, telephone number, and e-mail address (if available) of the person or entity requesting exclusion; (*ii*) state that such person or entity "requests exclusion from the Class in *In re Fifth Street Finance Corp. Securities Litigation*, No. 15-cv-7759 (LAK)"; (*iii*) be signed by the person or entity requesting exclusion; and (*iv*) provide the date(s), price(s), and number(s) of shares of all purchases and sales of FSC common stock during the Class Period.

51. If you want to exclude yourself from the Class, you must follow these instructions even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiff's Claims.

52. If you request exclusion from the Class, you will not receive any benefits from the proposed Settlement, and you cannot object to it.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?
DO I HAVE TO COME TO THE HEARING?
CAN I OBJECT TO THE SETTLEMENT?
MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?

53. The Fairness Hearing will be held on February 16, 2017, at 9:30 a.m., before United States District Judge Lewis A. Kaplan, at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 21B, New York, New York 10007. The Court reserves the right to approve the Settlement, the Plan of Allocation, and/or Lead Counsel's request for attorneys' fees and litigation expenses at or after the Fairness Hearing without further notice to the Class. Lead Counsel intends to file papers in support of final approval of the proposed Settlement, the Plan of Allocation, and the request for attorneys' fees and litigation expenses on or before January 12, 2017. The papers will be posted at www.FSCSecuritiesSettlement.com.

54. You do not need to attend the Fairness Hearing. You can participate in the Settlement without attending the Fairness Hearing.

55. Any Class Member who does not submit a timely request for exclusion as described above may object to the proposed Settlement, the Plan of Allocation, or Lead Counsel's request for an award of attorneys' fees and litigation expenses. Objections must be in writing and must include the following information: (*i*) name and docket number of the Action (*In re Fifth Street Finance Corp. Securities Litigation*, Case No. 15-cv-7759 (LAK)); (*ii*) Class Member's name, address, telephone number, and e-mail address (if available); (*iii*) the date(s), price(s), and number(s) of shares of all purchases and sales of FSC common stock during the Class Period; (*iv*) account statements verifying all such transactions; (*v*) the reason(s) for the objection; (*vi*) any legal support that the Class Member wants to bring to the Court's attention; and (*vii*) any evidence or exhibits that the Class Member wants the Court to consider.

56. Objections must be timely filed with the Clerk of Court at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007. Objections must also be served on the Settling Parties' counsel by first-class mail, e-mail, or hand-delivery at:

Lead Counsel for the Class	Defendants' Counsel
Joel H. Bernstein, Esq. Labaton Sucharow LLP 140 Broadway New York, NY 10005 SettlementQuestions@labaton.com	Ralph C. Ferrara, Esq. Proskauer Rose LLP 1001 Pennsylvania Avenue, N.W. Suite 600 South Washington, DC 20004 rferrara@proskauer.com

57. All objections must be ***received*** **by the Court and the attorneys no later than January 26, 2017**.

58. You may file a written objection without appearing at the Fairness Hearing.

59. If you wish to speak at the Fairness Hearing, you must also file and serve a notice of intention to appear. The notice of intention to appear must include (*i*) name and docket number of the Action (*In re Fifth Street Finance Corp. Securities Litigation*, Case No. 15-cv-7759 (LAK)); (*ii*) your name, address, telephone number, and e-mail address (if available), and (*iii*) your attorney's contact information, if you have an attorney. You must file and serve your notice of intention to appear with the Court and the Settling Parties' counsel, at the addresses listed in paragraph 56 above, so that it is ***received*** **on or before January 26, 2017.**

60. You do not need to hire an attorney to represent you in making written objections or in appearing at the Fairness Hearing. However, if you decide to hire an attorney at your own expense, he or she must file a notice of appearance with the Court and serve it on the Settling Parties' counsel, at the above addresses, so that the notice is ***received*** **on or before January 26, 2017**.

61. The Court may change the date of the Fairness Hearing without further written notice to the Class. If you intend to attend the hearing, you should confirm the date and time with Lead Counsel or by checking the settlement website.

Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and will be forever foreclosed from objecting to the proposed Settlement, the Plan of Allocation, or Lead Counsel's request for attorneys' fees and litigation expenses. Class Members do not need to appear at the Fairness Hearing or take any other action to indicate their approval.

WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

62. If you purchased or otherwise acquired FSC common stock during the Class Period as a nominee or for the beneficial interest of a person or organization *other than yourself*, **YOU MUST,** WITHIN FOURTEEN (14) CALENDAR DAYS after receipt of the Individual Notice, **EITHER (A**) request from the Claims Administrator sufficient copies of the Individual Notice and Claim Form to forward to all such beneficial owners and, WITHIN FOURTEEN (14) CALENDAR DAYS after receipt of the copies of the Individual Notice and Claim Form, forward them to all such beneficial owners; **OR (B**) provide a list of the names and addresses of all such beneficial owners to FSC Securities Settlement, c/o A.B. Data, Ltd., FULFILLMENT, 3410 West Hopkins Street, P.O. Box 173025, Milwaukee, WI 53217. If you mail Individual Notices and Claim Forms to beneficial owners, YOU MUST, upon making such mailing, send a statement to the Claims Administrator confirming that the mailing was made as directed, and retain the list of names and addresses for use in connection with any possible future notice to the Class. Upon full compliance with this directive, including the timely mailing of the Individual Notices and Claim Forms to beneficial owners, you may seek reimbursement of your reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the reasonable expenses for which reimbursement is sought and reflecting compliance with these instructions, including timely mailing of the Individual Notices and Claim Forms.

63. In addition, you may download the Notice from the settlement website www.FSCSecuritiesSettlement.com, where you also can view other documents relating to the proposed Settlement.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

64. This Notice contains only a summary of the terms of the proposed Settlement. More detailed information about the Action is available on the settlement website, including copies of the Settlement Agreement, the Claim Form, the Complaint, the Court's orders about the Settlement, and the relevant motion papers. All inquiries about this Notice should be directed to:

Claims Administrator	Lead Counsel for the Class
FSC Securities Settlement c/o A.B. Data, Ltd. P.O. Box 173025 Milwaukee, WI 53217 Tel.: 866-217-4461 Email: info@FSCSecuritiesSettlement.com Website: www.FSCSecuritiesSettlement.com	Joel H. Bernstein, Esq. Labaton Sucharow LLP 140 Broadway New York, NY 10005 Tel.: 888-219-6877 Email: SettlementQuestions@labaton.com Website: www.labaton.com

PLEASE DO *NOT* CALL OR WRITE THE COURT OR THE CLERK OF COURT ABOUT THIS NOTICE.

Dated: November 27, 2016

By Order of the Clerk of Court
United States District Court for the Southern District of New York

FIFTH STREET FINANCE CORP. SECURITIES SETTLEMENT

Case No. 15-cv-7759 (LAK) (S.D.N.Y.)

CLAIM FORM AND RELEASE

YOU MUST SUBMIT A COMPLETED CLAIM FORM THAT IS POSTMARKED OR RECEIVED BY A.B. DATA, LTD. (THE "CLAIMS ADMINISTRATOR") NO LATER THAN MARCH 27, 2017 TO BE ELIGIBLE TO SHARE IN THE SETTLEMENT.

IF YOU ALSO PURCHASED COMMON STOCK OF *FIFTH STREET ASSET MANAGEMENT INC.* ("FSAM") PURSUANT OR TRACEABLE TO FSAM'S REGISTRATION STATEMENT, YOU MUST SUBMIT THE FSAM CLAIM FORM AS WELL.

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SECTION I - GENERAL INSTRUCTIONS

1. You should read the "Notice of (1) Pendency and Proposed Settlement of Class Action; (2) Motion for Attorneys' Fees and Expenses; and (3) Hearing on Proposed Settlement" (the "Individual Notice") that accompanies this Claim Form, as well as the Plan of Allocation included in the Individual Notice. The Individual Notice and the Plan of Allocation describe the proposed Settlement of this Action, how Class Members are affected by the Settlement, and how the Net Settlement Fund will be distributed if the Court approves the Settlement and the Plan of Allocation. The Individual Notice also contains the definitions of many of the defined terms (shown with initial capital letters) used in this Claim Form.

2. TO PARTICIPATE IN THE SETTLEMENT, YOU MUST SUBMIT YOUR COMPLETED AND SIGNED CLAIM FORM – WITH THE REQUIRED SUPPORTING DOCUMENTATION – SO THAT IT IS RECEIVED OR POSTMARKED ON OR BEFORE MARCH 27, 2017, ADDRESSED TO:

FSC Securities Settlement
c/o A.B. Data, Ltd.
P.O. Box 173025
Milwaukee, WI 53217
Tel.: 866-217-4461
info@FSCSecuritiesSettlement.com

You can also visit www.FSCSecuritiesSettlement.com to obtain, complete, and file a Claim Form online.

IF YOU DO NOT SUBMIT A TIMELY, PROPERLY ADDRESSED AND COMPLETED CLAIM FORM, YOUR CLAIM MAY BE REJECTED, AND YOU MAY BE PREVENTED FROM RECEIVING ANY SETTLEMENT MONEY.

3. This Claim Form is directed to all persons and entities (or legal beneficiaries) who purchased or otherwise acquired FSC common stock during the period from July 7, 2014 through February 6, 2015, inclusive (the "Class Period" and the "Class"). The following persons and entities are specifically *excluded* from the Class under the terms of the Settlement Agreement: (a) all Defendants; any other individuals who were officers or directors of FSC or Fifth Street Asset Management Inc. ("FSAM") during the Class Period; Family Members of any of the foregoing, and their legal representatives, trustees, administrators, heirs, successors, or assigns; and any entity in which any Defendant had a Controlling Interest during the Class Period; (b) persons or entities who submit timely and valid requests for exclusion from the Class; and (c) anyone who, while represented by counsel, settled an actual or threatened lawsuit or other proceeding against the Releasees (defined below) and released the Releasees from any further Claims concerning their purchase or other acquisition of FSC common stock during the Class Period.

4. "Authorized Claimant" means a Class Member who timely submits to the Claims Administrator a valid Claim Form that is approved pursuant to the terms of the Settlement Agreement.

5. IF YOU ARE NOT A CLASS MEMBER, OR IF YOU OR SOMEONE ACTING ON YOUR BEHALF FILED A REQUEST FOR EXCLUSION FROM THE CLASS, DO NOT SUBMIT A CLAIM FORM. YOU MAY NOT PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A CLASS MEMBER.

6. Submission of this Claim Form does not guarantee that you will share in the Net Settlement Fund. Distributions from the Net Settlement Fund are governed by the Plan of Allocation, which must be approved by the Court. The proposed Plan of Allocation is included in the Individual Notice.

7. If you have questions about the Claim Form or need additional copies of it or of the Individual Notice, you may contact the Claims Administrator at the above address or telephone number. You may also send your questions to info@FSCSecuritiesSettlement.com or download the documents from www.FSCSecuritiesSettlement.com.

8. If you are a Class Member and you do not (or someone acting on your behalf does not) submit a timely request for exclusion from the Class, and if the Court approves the Settlement, you will be bound by the Court's orders and judgment whether or not you submit a Claim Form. The proposed judgment enjoins the filing or continued prosecution of all Released Plaintiff's Claims and also releases the Releasees from Released Plaintiff's Claims (defined below), including those that are subject to pending lawsuits or arbitrations.

9. You must submit sufficient documentation for your transactions in FSC common stock during the period July 7, 2014 through May 8, 2015. Documentation may be photocopies of stockbrokers' confirmation slips or monthly statements (reflecting your opening and closing balances for the months that are specified on the Claim Form and in which transactions occurred during the relevant period). **If you do not have such documents in your possession, you should obtain copies or equivalent contemporaneous documents from your broker. The Settling Parties and Claims Administrator do not have information about your transactions. Failure to supply this documentation could cause your claim to be rejected. Do not send original stock certificates.**

10. The date of covering a "short sale" is deemed to be the date of purchase of FSC common stock. The date of a "short sale" is deemed to be the date of sale of FSC common stock.

11. All joint purchasers must each sign this Claim Form.

12. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

(a) expressly state the capacity in which they are acting;

(b) identify the name, account number, Social Security number (or taxpayer identification number), address, telephone number, and e-mail address (if available) of the beneficial owner of (or other person or entity on whose behalf they are acting as to) the FSC common stock; and

(c) submit evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Stockbrokers cannot establish their authority to complete and sign a Claim Form by demonstrating merely that they have discretionary authority to trade stock in another person's accounts.)

13. By submitting a signed Claim Form, you will be affirming that:

(a) you own(ed) the FSC common stock you have listed in the Claim Form; or

(b) you are expressly authorized to act on behalf of the owner of that common stock.

NOTE: Separate Claim Forms should be submitted for each separate legal entity (for example, a claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in non-IRA accounts). However, a single Claim Form submitted on behalf of one legal entity should include all transactions made by that entity, no matter how many separate accounts that entity has (for example, a corporation with multiple brokerage accounts should include on one Claim Form all transactions made in FSC common stock during the Class Period, no matter how many accounts the transactions were made in).

14. **NOTICE REGARDING ELECTRONIC FILES:** Certain Claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the settlement website at FSCSecuritiesSettlement.com, or you may email the Claims Administrator's electronic filing department at efiling@abdata.com. Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email after processing your file with your claim numbers and respective account information. Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days after your submission, you should contact the electronic filing department at efiling@abdata.com to inquire about your file and confirm it was received and acceptable.

IF YOU DO NOT SUBMIT A COMPLETE CLAIM BY MARCH 27, 2017, YOUR CLAIM IS SUBJECT TO REJECTION.

MUST BE POSTMARKED OR RECEIVED NO LATER THAN MARCH 27, 2017

FSC Securities Settlement
c/o A.B. Data, Ltd.
PO Box 173025
Milwaukee, WI 53217
United States of America

FOR INTERNAL USE ONLY

CLAIM FORM AND RELEASE

Please Type or Print in the Boxes Below

Do NOT use Red Ink, Pencil, or Staples

SECTION II – CLAIMANT IDENTIFICATION

Claimant or Representative Contact Information:

The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above.

Claimant Names(s) (as the name(s) should appear on check, if eligible for payment; if the shares are jointly owned, the names of all beneficial owners must be provided):

Name of Person the Claims Administrator Should Contact Regarding this Claim Form (Must Be Provided):

Mailing Address – Line 1: Street Address/P.O. Box:

Mailing Address – Line 2 (If Applicable): Apartment/Suite/Floor Number:

City: State: Zip Code:

Foreign Province: Foreign Postal Code: Foreign Country:

Social Security Number or Taxpayer Identification Number:

Daytime Telephone Number: Evening Telephone Number:

Email address (E-mail address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.):

SECTION III – TRANSACTIONS IN FSC COMMON STOCK

YOU MUST SUBMIT DOCUMENTATION SUPPORTING THE INFORMATION BELOW

1. **BEGINNING HOLDINGS:** State the number of shares of FSC common stock that the Claimant owned at the close of business on **July 6, 2014**. If none, write "zero" or "0." If other than zero, be sure to attach the required documentation.

2. **PURCHASES:** List all purchases of FSC common stock during the period **July 7, 2014** through and including **May 8, 2015**[1]. (NOTE: If you acquired your FSC common stock during this period other than by an open-market purchase, please provide a complete description of the terms of the acquisition on a separate page.) Be sure to attach the required documentation.

Date of Purchase (List Chronologically) (Month/Day/Year)	Number of Shares Purchased	Purchase/Acquisition Price Per Share	Total Purchase/Acquisition Price (excluding taxes, commissions, and fees)
		$	$
		$	$
		$	$
		$	$
		$	$
		$	$
		$	$

3. **SALES:** List all sales of FSC common stock during the period **July 7, 2014** through and including **May 8, 2015**. Be sure to attach the required documentation.

Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions, and fees)
		$	$
		$	$
		$	$
		$	$
		$	$
		$	$
		$	$

4. **UNSOLD HOLDINGS:** State the number of shares of FSC common stock that the claimant owned at the close of business on **May 8, 2015**. Be sure to attach the required documentation.

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX. ☐

YOU MUST READ AND SIGN THE RELEASE ON PAGE 7. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.

[1] Please note that FSC common stock purchased or acquired during the 90-day look-back period between February 7, 2015 and May 8, 2015, will be used to balance your claim, and not to increase your Recognized Loss.

SECTION IV - RELEASE AND SIGNATURE

I. Definitions

Capitalized terms not already defined in this form have the following meanings. Other defined terms have the meanings given them in the Stipulation of Settlement dated as of July 27, 2016 (the "Settlement Agreement").

"Defendants' Mutually Released Claims" means each and every Claim arising out of or relating to any or all of the acts, failures to act, omissions, misrepresentations, facts, events, matters, transactions, occurrences, or oral or written statements or representations during the Class Period that were or could have been alleged under the facts and circumstances pled in the Action (including in the Complaint and the original complaints filed in the Action), including the matters described in the definition of Released Plaintiff's Claims; *provided, however,* that the term "Defendants' Mutually Released Claims" shall not apply to (*i*) any right to indemnification or advancement under any statute, charter, bylaw, or contract, (*ii*) any other contractual rights between or among Defendants, and (*iii*) any claims asserted in the FSC Derivative Actions.

"Final Order" is the Order of Dismissal to be entered by the Court upon approval of the Settlement, as contemplated by the Settlement Agreement, dismissing the Action with prejudice and without costs to any Releasee (except to the extent awarded by the Court), releasing all Released Plaintiff's Claims as against the Releasees, and enjoining Class Members from instituting, continuing, or prosecuting any action asserting any Released Plaintiffs' Claims against any Releasee.

"Released Defendants' Claims" means each and every Claim that has been, could have been, or could be asserted in the Action or in any other proceeding by any Releasee, including any Defendant or the successors and assigns of any Defendant, against Plaintiff, any other Class Members, or their attorneys (including Lead Counsel), that arises out of or relates in any way to the institution, prosecution, or settlement of the Action, except for claims to enforce the Settlement.

"Released Plaintiff's Claims" means each and every Claim that Plaintiff or any other Class Member (*i*) asserted against any of the Releasees in the Action (including all Claims alleged in any complaint filed in the Action or in any action consolidated into it) or (*ii*) could have asserted or could assert against any of the Releasees in connection with the facts and circumstances alleged in the Action, whether arising under any federal, state, or other statutory or common-law rule, in any court, tribunal, agency, or other forum, that both (A) arises out of or relates to the purchase or other acquisition of FSC common stock during the Class Period, or any other Investment Decision concerning FSC common stock during the Class Period, and (B) relates directly or indirectly to the matters described in Subsections a.-s. below and/or any alleged statements about or characterizations of – or alleged failures to disclose information about – any of those matters, including with respect to both Subsections (i) and (ii) above:

a. the valuation and management of FSC's investments, including the approach used in calculating the fair values of investments and the inputs used, assumptions made, and comparables and quotations relied upon, the quality checks that were conducted regarding valuation calculations, documentation concerning valuation decisions and calculations, decisions whether to write down or impair FSC's investments and the timing and amount of any investment write-downs, decisions whether to place investments on non-accrual status, decisions whether to obtain ITP valuations for particular investments, the selection of ITPs to perform such valuations, and the timing of ITP valuations of FSC's investments;

b. the origination of investments for FSC's portfolio, including FSC's communications with and due diligence on investment sponsors, FSC's pre-investment due diligence and underwriting, the approval process for investments, and the structuring, negotiation, documentation, pricing, and terms of FSC's investments;

c. FSC's risk management, including FSC's investment approach, the selection of its individual investments, creditor protections negotiated in connection with those investments, underwriting policies, the overall risk profile and credit quality of FSC's portfolio, and any characterizations or descriptions of those matters;

d. FSC's leverage, including the aggregate amount of its indebtedness and the terms and structure of its various financing arrangements;

e. the management of FSC's portfolio, including the processes used to manage the investments, the inputs into the Black Mountain platform regarding investments, the review, ranking, and rating of investments, and decisions to place investments on FSC's "Watchlist";

f. waivers, amendments, and loan modifications effected regarding FSC's investments, including decisions regarding waivers of cash interest, conversion of loans to PIK interest, the modification of loan terms or interest rates, the provision of any additional financing to companies in which FSC had already made a debt or equity investment, the acquisition of control investments, or the sale, liquidation, or other disposal of investments;

g. FSC's fair-value accounting and recognition of income, including its revenue recognition for original-issue discounts, accruals, accruals on contingent-payment debt instruments, PIK interest, loan-origination fee income, and other fee income;

h. policies, processes, and procedures concerning the valuation of investments, portfolio management, revenue recognition, and disclosure, including FSC's Valuation Policy, Valuation Narrative, Portfolio Management Narrative, Revenue Recognition Narrative, and Disclosure Policy;

i. decisions regarding FSC's dividends, including whether to pay dividends in any particular quarter, the amount of dividends to be paid, announcements of and statements regarding dividends, and the timing of dividend payments;

j. FSC's investment-advisory arrangements with FSM and/or its Affiliates, including the services provided by FSM, all base, incentive, and other fees, costs, and expenses paid by FSC under the Investment Advisory Agreement ("IAA"), the provisions of the IAA, communications between FSC and its shareholders (including RiverNorth Capital Management LLC) regarding the IAA, and FSC's indemnity and advancement obligations to FSM or its Affiliates;

k. FSC's administration arrangements with FSC CT and/or its Affiliates, including the services provided by FSC CT, all costs, fees, and expenses paid by FSC under the Administration Agreement with FSC CT, the provisions of the Administration Agreement, and FSC's indemnity and advancement obligations to FSC CT or its Affiliates;

l. FSC's participation in any agreements, ventures, partnerships, or any similar arrangements with any of its affiliates, including any alleged conflicts of interest and FSC's waiver of any alleged conflicts;

m. FSC's partnership with Trinity Universal Insurance Company (a subsidiary of Kemper Corporation) to establish Senior Loan Fund JV 1, LLC ("SLF JV1"), and the financial performance and income generation of SLF JV1;

n. FSC's secondary offering of common stock announced on July 10, 2014, and the materials disseminated and statements made in connection with that offering;

o. accounting treatment relating to investments (including the recognition of revenue) and to fees paid to FSC's investment advisor and administrator;

p. FSC's assets, asset quality, financial condition, revenues, income (including fee income, net investment income, and PIK income), expenses, earnings per share, and other financial metrics, and auditors' comments about FSC's financial condition;

q. FSC's governance and internal controls, including any deficiencies and weaknesses in such controls;

r. FSC's earnings announcements and other public statements about financial results during the Class Period;

s. FSAM's IPO, the offering's alleged impact on FSAM's, FSM's, and/or FSC CT's performance of services for FSC, and the uses of the IPO proceeds; and

t. Releasees' statements about, characterizations of, or alleged omissions concerning any or all of the above matters, including any alleged failures to comply with Item 303 of SEC Regulation S-K. The term "Released Plaintiff's Claims" also includes any Claim relating to the initiation, litigation, settlement, or dissemination of notice of the Action, including the payment of any settlement relief to settle the Action; provided however, that the term "Released Plaintiff's Claims" does not include any claims to enforce the Settlement Agreement or brought on behalf of FSAM stock purchasers in the FSAM Class Action.

"Releasees" means (a) Defendants and their Family Members, heirs, trustees, administrators, successors, representatives, agents, and assigns; (b) each and every entity that falls within the definition of FSC Releasees or FSAM Releasees; and (c) each of the FSC Releasees' and FSAM Releasees' respective past and present directors, executive-committee members, officers, officials, employees, members, partners, principals, agents, attorneys (including in-house or outside attorneys (including Defendants' Counsel) employed or retained by the FSC Releasees or the FSAM Releasees), advisors, investment bankers, trustees, administrators, fiduciaries, consultants, actuaries, representatives, accountants, accounting advisors, auditors, insurers, reinsurers, service providers, and valuation firms (including independent third-party firms).

"Unknown Claims" means any and all Released Plaintiff's Claims that any Plaintiff or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Releasees, and any Released Defendants' Claims or Defendants' Mutually Released Claims that any Defendant does not know or suspect to exist in his or its favor, which, if known by Plaintiff, the other Class Members, or Defendants, might have affected his, her, its, or their decision(s) concerning the Settlement. As to any and all Released Plaintiff's Claims, Released Defendants' Claims, and Defendants' Mutually Released Claims, the Settling Parties stipulate and agree that, upon the Final Settlement Date, Plaintiff and Defendants shall expressly waive, and each other Class Member, Releasor, and Releasee shall be deemed to have waived, and by operation of the Final Order and the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or of any other country, or any principle of common law, that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiff and Defendants acknowledge, and the other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Plaintiff's Claims, Released Defendants' Claims, and Defendants' Mutually Released Claims was separately bargained for and was a key element of the Settlement.

II. The Release

I (we) understand and acknowledge that, without further action by anyone, on and after the entry of the Final Order and Judgment, and upon the Final Settlement Date, I (we), as a Class Member(s) (even if I (we) have pending or later initiate any other actions, arbitrations, or other proceedings against Defendants or any related person or entity relating to Released Plaintiff's Claims), on behalf of myself (ourselves), my (our) parents, predecessors, successors, heirs, executors, administrators, successors, assigns, and any person or entity claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of me (us), for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Order and Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged all Released Plaintiff's Claims against each and every one of the Releasees, including all Released Plaintiff's Claims that may already have been asserted in any pending action, arbitration, or other proceeding, and whether or not a Claim Form is executed and delivered by, or on behalf of, me (us).

SIGNATURE AND CERTIFICATIONS

By signing and submitting this Claim Form, the Claimant or the person who represents the Claimant certifies as follows:

1. The claimant is a Class Member, as defined in the Individual Notice;
2. I (we) have read and understand the contents of the Individual Notice and the Claim Form;
3. I am (we are) not acting for FSC or FSAM; nor am I (are we) otherwise excluded from the Class;
4. I (we) have not filed a request for exclusion from the Class, and I (we) do not know of any request for exclusion from the Class filed on my (our) behalf as to my (our) transactions in FSC common stock;
5. I (we) own(ed) the FSC common stock identified in the Claim Form, or, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
6. Claimant may be entitled to receive a distribution from the Net Settlement Fund;
7. Claimant wants to participate in the Settlement described in the Individual Notice and agrees to the Settlement's terms and conditions;
8. I (we) submit to the jurisdiction of the United States District Court for the Southern District of New York for all matters related to this Claim Form;
9. I (we) agree to furnish such additional information concerning this Claim Form as the parties or the Court may require;
10. I (we) waive trial by court or jury, to the extent it exists, concerning this Claim Form and any right to appeal the determination of this Claim Form, and agree to the Court's final disposition of any disputes about the validity or amount of the claim made by this Claim Form or the amount payable to any claimant; and
11. I am (we are) not subject to backup withholding under the provisions of Section 3406(a)(1)(c) of the Internal Revenue Code.

NOTE: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike the language that you are not subject to backup withholding in the certification above. The Internal Revenue Service does not require your consent to any provision other than the certification required to avoid backup withholding.

I (we) declare, under penalty of perjury under the laws of the United States of America, that the statements made and answers given in this Claim Form are true and correct and that the documents submitted with this Claim Form are true and genuine.

Executed this _______ day of ____________________ in ____
(Month/Year) (City/State/Country)

____
Signature of claimant Print your name here

____
Signature of joint claimant, if any Print your name here

____
Signature of person signing on behalf of claimant, if any Print your name here

____
Capacity of person signing on behalf of claimant, if other than an individual, e.g., executor, president, trustee, custodian, etc.

ACCURATE CLAIM PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.
THANK YOU FOR YOUR PATIENCE.

REMINDER CHECKLIST:

1. Please sign the Certification Section of this Claim Form.
2. Keep a copy of your Claim Form and all submitted documentation for your records.
3. If this claim is made on behalf of joint claimants, then each claimant must sign.
4. Please remember to attach copies of supporting documents.
5. If you move, please send us your new address.
6. DO NOT SEND ORIGINALS OF ANY SUPPORTING DOCUMENTS.
7. **Do not use highlighter on the Claim Form or supporting documentation**.

THIS CLAIM FORM MUST BE POSTMARKED OR SUBMITTED NO LATER THAN MARCH 27, 2017, AND SENT TO:

FSC Securities Settlement
c/o A.B. Data, Ltd.
P.O. Box 173025
Milwaukee, WI 53217
info@FSCSecuritiesSettlement.com

EXHIBIT B

Exchange Traded Funds continued from previous page

'16% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
-20.4	17	C-	25.0	ProS UltSht S&P 500	SDS	..	15.86	-0.01	-34
-23.9	14	B+	29.0	ProS UltPro Shrt QQQ	SQQQ	..	14.19	-0.06	-13
-31.2	12	C	23.6	DX Bear 3X Shrs	SPXS	..	11.64	0.00	-42
-30.7	12	C+	44.3	ProS UltPro Sht SP500	SPXU	..	21.97	-0.02	-25
-24.9	12	D-	25.3	ProS UltSht Dow 30	DXD	..	15.15	0.04	-30
-35.0	9	D	55.3	ProS UltSht Russ 2000	TWM	..	25.55	-0.01	3
-36.3	8	D-	24.8	ProS UltP Shrt Dow 30	SDOW	..	11.29	0.05	-2
-50.5	5	D-	74.0	DX SC Bear 3X Shrs	TZA	..	22.26	0.02	-21
-49.9	5	C	48.3	ProS UltP Shrt R 2000	SRTY	..	14.69	0.01	-34
Sector/Industry									
114.4	96	B+	32.1	SPDR S&P Metal&Mng	XME	1.2	32.06	0.77	-21
26.5	86	A	53.6	SPDR KBW Regnl Bnk	KRE	1.5	53.03	-0.43	20
23.1	84	A	42.1	SPDR KBW Bank	KBE	1.4	41.64	-0.34	-24
39.1	83	B	43.2	SPDR S&P O&G Expl	XOP	0.9	42.03	-0.02	-3
23.6	81	B	22.1	SPDR S&P O&G Equip	XES	1.0	21.68	0.05	-13
26.4	80	B+	33.8	HT Oil Service	OIH	1.6	33.44	0.24	-7
18.8	78	A	58.3	VG Financials	VFH	1.9	57.58	-0.51	1
27.9	77	D+	120.8	IS Phlx Sox Smcdct	SOXX	1.1	114.95	1.40	78
17.1	77	B+	22.9	SPDR Financial	XLF	2.2	22.65	-0.25	6
21.0	76	B+	163.6	IS DJ Transprtn Idx	IYT	1.0	163.00	0.20	-16
29.1	76	C-	71.8	VanEck Vectors Semiconductor	SMH	0.5	68.77	1.09	21
28.3	73	C+	36.6	IS S&P NAm Nat Res	IGE	2.1	36.09	0.18	-29
24.1	73	B-	76.1	SPDR Energy	XLE	2.5	74.83	0.22	12
24.8	73	A-	105.5	VG Energy	VDE	2.4	103.73	0.14	-25
23.0	72	B+	21.4	Fidelity MSCI Enrgy	FENY	2.3	21.02	0.02	21
21.8	71	B-	41.9	IS DJ US Energy Idx	IYE	2.3	41.24	0.09	-21
28.9	70	B	28.7	Flx Glb Upstr NatRes	GUNR	2.3	28.68	0.21	0
18.9	70	B-	16.8	FrstTr Energy Alphdx	FXN	1.2	16.47	0.03	22
23.0	70	B+	34.9	IS S&P Glb Energy	IXC	3.0	34.48	0.11	96
18.5	70	B+	63.0	SPDR Industrial	XLI	1.9	62.81	-0.01	-5
22.1	68	B-	29.1	FrstTr ISE Rev NatGas	FCG	3.0	27.23	-0.02	2
11.5	68	B+	99.3	IS DJ US Finl Indx	IYF	1.6	98.50	-0.39	-34
24.0	68	A-	15.9	US Brent Oil	BNO	..	15.18	0.17	151
84.6	68	D+	52.5	VV Jr Gold Mine	GDXJ	0.4	35.46	1.21	7
13.4	67	A-	26.5	FrstTr Financial Alpha	FXO	1.4	26.29	-0.12	107
20.8	61	C+	25.7	FirstTr NAm EngyInf	EMLP	3.8	24.37	0.11	17
10.5	60	B-	38.3	FrstTr Tech Alphdx	FXL	1.0	36.72	0.14	55
15.1	60	B-	50.3	SPDR Materials	XLB	1.9	49.98	0.02	11
13.8	59	C	29.6	FrstTr Nasdq TechDiv	TDIV	2.5	28.75	0.24	176
5.5	55	E	83.1	FrstTr DJ Internet	FDN	..	78.74	0.33	-39
8.9	55	C-	120.8	IS DJ US Tech Indx	IYW	1.2	116.53	0.52	60
8.8	55	C	122.3	VG Info Tech	VGT	1.3	117.87	0.44	4
15.1	53	D-	27.7	First Trust Utilities AlphaDEX	FXU	2.7	25.77	0.23	-58
2.9	53	C+	30.7	UBS Etrc Alrn MLP Infr	MLPI	6.9	26.92	0.13	4
11.4	52	C-	34.9	IS DJ US Telecom	IYZ	1.8	32.06	0.19	138
-12.0	52	B	73.4	SPDR S&P Biotech	XBI	0.5	61.81	0.67	27
5.5	52	B-	47.1	SPDR S&P Retail	XRT	1.3	45.61	0.10	-23
9.0	52	E	48.3	SPDR Technology	XLK	1.8	46.69	0.17	2
1.9	51	C+	28.3	PureFnds ISE CybSec	HACK	0.7	26.40	0.15	-37
5.5	50	A-	36.7	FrstTr CnsmrDisc Alph	FXD	1.0	35.97	-0.15	-26
9.6	50	E	44.0	IS FTSE Nareit Mort	REM	10.6	41.91	-0.08	-14
4.2	49	E	83.1	SPDR Cnsmr Discrtnry	XLY	1.5	81.44	-0.45	26
2.8	47	D+	32.6	JPMorgan Alerian ETN	AMJ	6.9	29.79	0.14	56
9.6	39	E	115.8	VG Utilities	VPU	3.2	102.93	0.88	-55
54.5	38	D	29.9	Sprott Gold Miners	SGDM	0.9	19.67	0.68	0
0.7	37	C-	43.4	PS DWA Tech Leadrs	PDP	0.4	41.64	0.12	-12
55.8	37	D+	31.8	VV Gold Miners	GDX	0.2	21.37	0.71	-1
8.8	36	E	132.3	IS US Utilities	IDU	3.8	117.44	0.94	-35
8.1	36	D-	53.0	Utilities Select Sector SPDR	XLU	3.5	46.80	0.42	-11
-0.2	34	D	30.0	IS DJ US Home Const	ITB	0.4	27.04	0.03	4
-10.9	34	B+	21.4	IS MSCI Europe Fncl	EUFN	4.6	18.11	-0.03	963
-5.7	31	C+	62.0	FrstTr Health Cre Alph	FXH	..	56.99	0.23	-37
-4.7	31	B-	157.8	IS US Healthcare	IYH	2.2	142.91	0.44	-48
-1.6	31	B	36.8	SPDR S&P Homebldrs	XHB	0.6	33.63	0.10	-38
-5.3	31	D-	139.0	VG Health Care	VHT	1.4	125.84	0.45	3
-17.6	29	B	114.9	FrstTr NYSEArc Biotch	FBT	0.1	93.08	0.47	89
1.0	29	E	25.9	FrstTr S&P REIT Indx	FRI	2.7	22.31	0.23	-77
-0.4	29	E	45.6	Schwab US REIT	SCHH	2.6	39.50	0.37	77
0.2	29	E	56.0	SPDR Consmr Stpls	XLP	2.6	50.57	0.32	44
-5.0	29	B-	76.0	SPDR Health Care	XLV	1.6	68.41	0.16	-33
-0.9	27	D	49.3	FrstTr ConsmrSpl Alph	FXG	1.8	44.04	0.25	-36
0.3	27	E	92.9	VG REIT	VNQ	4.2	80.00	0.79	-31
-0.8	26	E	85.8	IS DJ US Real Est	IYR	4.4	74.45	0.78	-16
-20.1	26	B-	343.9	IS Nasdaq Biotech	IBB	0.2	270.46	0.97	-10
-1.5	26	E	104.3	SPDR DJ Wil REIT	RWR	3.9	90.23	0.87	74
-3.3	25	E	112.5	IS Cohen&Steers	ICF	3.9	95.99	0.96	156
-0.2	25	E	57.6	VG Glbl X-US Real Est	VNQI	3.4	51.00	0.19	-16
-2.6	23	E	52.6	SPDR DJ Glbl Real Est	RWO	3.4	45.57	0.44	-34
-3.9	20	D-	43.1	SPDR DJ Wil Intl RE	RWX	2.9	37.61	0.27	3
-20.8	14	D+	75.1	PS Dyn Phara	PJP	0.8	55.44	0.19	-23
-43.6	8	E	33.0	GH Solar	TAN	2.8	17.28	-0.07	-36
Leveraged									
65.5	93	B	40.6	DX Energy Bull 3X	ERX	..	38.77	0.26	-37
27.9	89	A-	38.0	DX Finl Bull 3X	FAS	..	37.17	-0.49	-15
42.3	84	B+	44.0	ProS Ultra Oil & Gas	DIG	1.1	42.59	0.15	-61
-18.6	58	B	156.3	DX NatGas Bull 3X	GASL	..	50.01	0.00	-32
-12.2	53	B-	57.0	ProS UltSht Real Est	SRS	..	39.36	-0.85	-10
18.3	32	C	54.0	ProS UltSht Nsdq Biot	BIS	..	33.95	-0.31	-64
-41.8	14	B	73.7	ProS Ult Ndsq Biotech	BIB	..	41.58	0.32	-53
-93.9	13	B-	1048	DX GldMnrs Bear 3X	DUST	..	50.08	-5.86	-20
135.4	12	E	33.3	DX JrGldMnrs Bul 3X	JNUG	..	7.31	0.71	24
-46.4	7	D+	101.1	ProS UltSht Oil & Gas	DUG	..	38.55	-0.08	245
-41.3	6	E	68.4	DX Finl Bear 3X	FAZ	..	24.18	0.27	-35
-97.7	6	B	2085	DX JrGldMnrs Br 3X	JDST	..	34.14	-3.99	-37
75.5	5	E	35.8	DX Gld Mnr Bull 2X	NUGT	..	8.52	0.79	46
-66.1	3	D-	48.7	DX Energy Bear 3X	ERY	..	9.94	-0.07	-4
-66.6	3	B-	64.2	DX Semicon Bear 3X	SOXS	..	13.41	-0.54	43
Global									
40.2	79	B-	31.1	IS MSCI Russia Cap	ERUS	2.6	31.20	0.37	119
35.4	76	B	19.8	VV Russia	RSX	2.3	19.84	0.14	-5
53.2	71	E	38.5	IS MSCI Brazil	EWZ	1.4	31.68	0.20	-4
28.6	68	B-	19.1	PS FTSE RAFI EM	PXH	2.3	17.93	0.07	6
-2.6	63	A-	55.8	WT Jpn Hedged	DXJ	1.8	48.77	0.16	2
22.0	62	B-	26.3	IS MSCI Canada	EWC	1.8	26.23	0.12	7
19.4	60	E	32.0	IS MSCI Taiwan	EWT	2.6	30.50	0.09	-26
28.9	60	E	31.7	IS S&P Latin Am 40	ILF	1.9	27.32	0.24	-20
18.1	58	D-	40.4	IS MSCI Chile Index	ECH	2.1	37.70	0.39	-51
-4.6	56	A	41.1	Dxt MSCI Japan Hedg	DBJP	1.1	36.34	0.01	30
9.1	55	D	21.2	IS MSCI Australia	EWA	3.8	20.69	0.03	-21
16.8	53	E	39.4	WT Emg Mk Hi Yld	DEM	3.7	36.94	0.17	-8
5.7	52	E	39.2	IS Ftse China 25	FXI	2.7	37.31	-0.28	-35
7.3	52	D	42.5	IS MSCI Pac Ex-Japn	EPP	3.8	41.18	-0.08	-25
11.7	50	C+	21.6	FrstTr Emrg Mkt Alph	FEM	2.4	20.07	0.06	-82
22.0	50	C	77.0	IS MSCI Thailand In	THD	2.3	71.55	-0.21	-35
4.1	50	B+	61.5	VG MSCI Pacifc	VPL	2.4	59.02	0.02	11
2.4	49	B	51.5	IS MSCI Japan	EWJ	1.4	49.62	0.15	-33
5.2	48	E	24.6	Dxt MSCI SKorea Hdg	DBKO	0.4	23.58	-0.18	-90
2.8	47	C-	50.0	IS MCSI China	MCHI	2.0	45.89	-0.33	-59
4.6	47	D+	59.8	IS MSCI ACWI	ACWI	2.5	58.39	0.10	-14
11.9	47	E	23.5	Schwab Emerg Mkt	SCHE	2.2	21.84	-0.02	76
4.5	47	D+	62.0	VG Total World Stock	VT	2.3	60.22	0.13	14
4.6	46	D-	22.3	IS MSCI Hong Kong	EWH	2.9	20.74	-0.24	-26
-1.3	44	C-	28.6	Dxt MSCI EAFE Hedg	DBEF	2.9	26.81	-0.01	-50
-0.9	44	B	9.1	GX FTSE Greece 20	GREK	1.5	7.89	0.02	45
8.5	44	E	46.5	IS Core MSCI EM	IEMG	2.2	42.72	-0.05	-18
6.0	44	D-	61.6	IS MSCI Asia Ex Jpn	AAXJ	2.2	56.62	-0.24	-39
14.5	44	D-	27.1	IS MSCI Indonesia	EIDO	1.2	23.90	0.50	-45
7.6	44	C+	37.8	SPDR S&P Intl Div	DWX	4.5	35.90	0.08	-37
9.1	43	E	38.3	IS MSCI Emrg Mkts	EEM	2.2	35.12	0.04	-18
4.2	43	D-	22.8	IS MSCI Singapore	EWS	2.9	21.43	0.15	10
9.4	43	E	38.9	VG MSCI Em Mkt	VWO	2.5	35.77	-0.04	19
-7.3	41	B-	34.2	Dxt CSI 300	ASHR	1.2	25.93	-0.25	24
-1.1	41	C-	29.3	WT Germany Hdg	DXGE	4.5	26.32	0.06	91
-0.7	40	B+	48.9	IS MSCI EAFE Value	EFV	3.4	46.21	0.16	126
5.6	40	E	15.1	PS Intl Div Achvr	PID	4.0	14.34	0.07	-9
7.3	39	E	59.1	IS MSCI South Korea	EWY	2.3	53.29	-0.17	-33
-1.6	38	D	27.3	Dxt MSCI Eurp Hedg	DBEU	3.3	25.43	-0.01	61
-3.3	37	D+	25.7	Dxt MSCI Germny Hdg	DBGR	3.3	23.22	0.07	-48
0.6	37	D-	29.3	Schwab Intl Equity	SCHF	2.2	27.72	0.07	57
0.6	37	D	46.5	VG Fts Wrd X-US	VEU	2.9	43.67	0.12	-5
4.0	35	E	78.2	IS MSCI ACWI MinVol	ACWV	2.3	72.07	0.15	27
-2.0	35	B-	25.9	WT Europe Hdg SC	EUSC	3.7	24.06	-0.08	100
0.9	34	D-	30.7	IS DJ Intl Selct Divnd	IDV	5.6	28.97	0.05	29

'16% Chg	RS	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
0.6	34	D	42.3	IS MSCI ACWI Ex US	ACWX	2.6	39.83	0.09	39
-1.1	34	D-	52.9	IS MSCI Eafe Sml Cp	SCZ	2.2	49.40	0.00	7
-2.0	34	D-	38.2	VG MSCI Eafe	VEA	2.9	35.97	0.10	-19
0.6	34	D+	48.2	VG Total Intl Stk	VXUS	2.9	45.38	0.12	-7
-1.2	34	D-	62.9	WT Europe Hdg Eq	HEDJ	2.9	53.17	-0.02	136
0.2	34	E	22.4	WT India Earn	EPI	1.1	19.89	-0.17	3
-3.0	32	E	56.5	IS Core MSCI EAFE	IEFA	2.7	52.77	0.08	-9
2.5	32	E	54.9	IS MSCI EM Min Vol	EEMV	2.6	49.86	-0.06	21
-14.3	32	A-	34.1	ProS Short MSCI Emrg	EUM	..	25.25	0.02	-27
-1.6	32	C+	21.3	PS India	PIN	1.1	19.20	-0.10	-11
-3.4	31	D+	61.3	IS MSCI Eafe Idx	EFA	3.0	56.71	0.14	-9
-4.2	30	E	27.6	WT Intl Hedg Div	IHDG	2.3	25.32	-0.05	151
0.0	29	D	31.1	IS India 50	INDY	0.5	27.20	-0.22	233
7.6	29	E	60.5	IS MSCI So Africa	EZA	4.9	50.24	0.22	-8
-3.4	28	C-	25.3	IS MSCI France	EWQ	3.0	23.39	-0.07	-8
-5.7	27	E	20.4	IS MSCI Poland	EPOL	1.7	17.05	0.06	-65
1.4	27	D	19.4	VV Emrg Mkt Bnd	EMLC	5.4	17.24	0.04	14
-7.9	26	E	19.0	FrstTr DorWr Intl Foc 5	IFV	1.6	16.47	0.05	-6
-5.5	26	E	27.4	IS MSCI Germany	EWG	2.5	24.74	0.06	-20
-3.5	26	D-	30.6	IS MSCI India	INDA	1.4	26.54	-0.27	24
3.7	25	E	26.0	EGShrs EM Consmr	ECON	1.4	22.04	-0.03	-53
-6.7	25	C+	36.8	IS MSCI Emu Indx	EZU	2.8	32.69	0.05	78
-7.2	25	C	42.0	IS S&P Europe 350	IEV	3.0	37.24	0.11	-21
-6.0	24	D-	19.1	IS MSCI Belgium	EWK	1.4	16.97	0.00	5
-5.2	24	E	69.1	IS MSCI EAFE Min Vol	EFAV	2.7	61.51	0.13	168
-2.8	24	E	25.4	IS MSCI Netherlands	EWN	2.1	23.17	-0.12	3
-6.0	24	C	31.2	IS MSCI Sweden	EWD	4.2	27.44	0.02	-1
-6.0	24	D	34.7	IS MSCI Untd Kingdm	EWU	4.7	30.35	0.25	14
-8.8	23	D	31.8	IS MSCI Switzerland	EWL	2.8	28.31	0.13	-14
-9.1	23	E	36.4	SPDR Euro Stoxx 50	FEZ	3.7	31.29	-0.02	-22
-7.8	23	C+	51.8	VG MSCI Europn	VGK	3.6	45.99	0.15	71
-6.6	23	C-	59.6	WT Euro SC Div	DFE	3.8	52.28	-0.08	0
-19.5	19	B	29.0	IS MSCI Italy	EWI	3.3	22.13	0.15	67
-10.9	19	D+	30.9	IS MSCI Spain	EWP	4.2	25.18	-0.07	-3
-10.1	17	D+	15.7	VV Vietnam	VNM	2.3	13.29	-0.01	78
-3.6	16	E	40.5	IS MSCI Philippines	EPHE	0.8	32.52	0.27	-45
-5.1	12	C-	43.3	IS MSCI Malaysia	EWM	6.1	29.39	0.09	33
-13.3	12	D-	54.7	IS MSCI Mexico	EWW	3.1	43.22	-0.05	-23
-15.3	10	E	46.4	IS MSCI Turkey Inve	TUR	2.9	30.80	0.24	19
Leveraged									
79.5	92	A-	79.9	DX Russia Bull 3X	RUSL	..	80.19	1.81	35
124.4	75	D-	50.4	DX Brazil Bull 3X	BRZU	..	26.10	0.55	10
-0.3	58	E	21.1	DX FTSE China Bul 3X	YINN	..	17.68	-0.36	-24
12.9	29	E	69.8	DX Emg Mkt Bull 3X	EDC	..	52.00	-0.14	2
-44.1	14	A+	71.6	DX Emg Mkt Bear 3X	EDZ	..	26.27	0.09	26
-41.0	9	B+	44.9	DX FTSE China Bear 3X	YANG	..	14.61	0.27	-4
-78.1	3	D	66.0	DX Russia Bear 3X	RUSS	..	8.22	-0.18	19
Bond/Income									
22.9	70	B+	16.6	PowerShares High Hld Eq Div Achiev	PEY	3.1	16.41	0.02	-5
-3.3	63	A-	25.2	ProS Short 20+ Yr Trs	TBF	..	23.92	-0.15	5
8.1	53	B-	99.9	Pimco 0-5Yr HiYld Crp	HYS	5.1	99.00	0.53	135
6.6	50	B	27.8	SPDR Brcly St HY Bnd	SJNK	5.7	27.39	0.10	321
6.0	47	D	87.6	IS Iboxx Hi Yd C Bd	HYG	5.5	85.38	0.51	-29
6.8	47	C	19.0	PS High Yld Corp	PHB	4.6	18.63	0.08	35
3.7	47	B-	23.3	PS Senior Loan	BKLN	4.6	23.22	0.03	13
6.2	47	D-	36.9	SPDR Brcly HiYld Bnd	JNK	6.1	36.01	0.21	3
0.6	44	D	50.9	IS Fltng Rate Bond	FLOT	0.9	50.74	-0.02	181
0.7	44	B	101.5	Pimco Enhn ShrtMat	MINT	1.3	101.35	0.00	-5
3.8	44	D-	46.5	SPDR Brcly Conv Sec	CWB	5.9	44.94	-0.13	18
2.2	44	E	49.8	VB Shrt Trm Infl-Protc	VTIP	..	49.41	0.01	22
0.1	43	D-	110.5	IS Brcly Shrt Trsy	SHV	0.3	110.35	0.04	-10
0.1	43	A+	45.7	SPDR Brcly 1-3MoTbill	BIL	0.0	45.71	-0.01	-18
0.1	41	B	60.4	FrstTr Enh Shrt Matur	FTSM	1.0	59.90	-0.02	7
2.8	41	D	56.3	VG Totl Intl Bond	BNDX	1.4	54.38	0.24	27
0.3	40	D	106.1	IS Brcly 1-3 Yr Cr	CSJ	1.4	104.91	0.13	-12
0.3	40	B-	30.8	SPDR Brcly St Crd Bnd	SCPB	1.6	30.50	0.02	-72
0.4	40	D-	81.2	VG St Corp Bond	VCSH	2.1	79.33	0.19	81
0.2	39	B	85.3	IS Brcly 1-3 Yr Trsy	SHY	0.7	84.50	0.09	7
3.0	39	E	117.5	IS Brcly TIPS	TIP	1.5	112.95	0.06	-30
0.2	38	E	50.3	SPDR DL Totl Rtn Tact	TOTL	3.1	48.70	0.08	331
0.0	37	C-	29.4	IQ Hdg MultStrat Trckr	QAI	0.5	28.45	0.03	21
0.1	37	D+	127.8	IS Brcly 3-7 Yr Trsy	IEI	1.3	122.76	0.37	-45
0.8	37	D	111.8	IS Brcly Intmd CrpBnd	CIU	2.5	108.18	0.27	195
1.7	37	E	90.1	VG Intmd Corp Bond	VCIT	3.3	85.55	0.31	10
-0.2	37	E	54.0	VG Mrtg Backed Sec	VMBS	1.8	52.61	0.18	6
-0.1	37	E	81.1	VG Short-Term Bond	BSV	1.5	79.53	0.09	-17
-0.3	35	E	26.4	IS Core US Trsy	GOVT	1.4	24.98	0.07	-53
1.2	35	D-	19.9	MultAsset Div Income	MDIV	6.5	18.56	0.01	-23
-0.5	35	D	108.3	Pimco TotlRtn Active	BOND	3.3	103.67	0.23	126
-0.8	34	E	110.3	IS Brcly MBS Fixed	MBB	2.2	106.81	0.10	-1
0.1	34	E	54.1	Schwab US Aggr Bnd	SCHZ	2.2	51.57	0.10	-19
-2.0	34	E	49.3	SPDR Nuv Brcly ST Bn	SHM	1.0	47.76	-0.03	247
0.4	34	E	88.6	VG Intrmed-Term Bd	BIV	2.6	83.41	0.33	12
0.0	34	E	84.9	VG Total Bond Mkt	BND	2.5	80.72	0.29	9
0.0	33	E	113.3	IS Brcly Agg Bd Fd	AGG	2.4	108.02	0.34	58
2.1	33	E	124.5	IS Iboxx $ Invgrdcp	LQD	3.4	116.40	0.53	37
2.4	32	E	118.1	IS JPM USD Emg Mkts	EMB	5.2	108.33	0.07	5
4.1	32	C-	97.6	VG LngTrm Corp Bond	VCLT	4.4	87.62	0.55	-26
-3.0	30	E	14.0	GX SuperDiv Preferd	SPFF	7.0	12.76	-0.06	-27
-0.4	29	E	113.9	IS Brcly 7-10 Yr Trs	IEF	1.8	105.18	0.47	-21
-3.5	29	E	115.2	IS S&P Natl Muni	MUB	2.3	106.78	0.27	114
1.8	29	E	31.0	PS Emrg Mkt Sovgn	PCY	5.3	27.79	0.03	52
1.8	29	E	29.3	SPDR Brcly Intl Treas	BWX	..	26.28	0.13	-53
-4.7	27	E	40.3	IS S&P US Pfd Stk	PFF	6.2	37.02	-0.04	12
-4.7	27	E	19.6	PS Financial Prfd	PGF	5.9	17.94	0.04	234
-3.6	27	E	51.0	SPDR NV Brcly Muni	TFI	2.2	47.01	-0.01	64
-4.5	27	E	24.9	VV Intmd Muni	ITM	2.3	22.89	0.10	236
-5.2	25	E	15.5	PS Preferred	PGX	6.0	14.18	0.01	91
-6.3	22	E	32.4	VV Hi Yield Muni	HYD	4.6	28.94	0.34	361
-0.8	20	E	143.6	IS Brcly 20+ Yr Trsy	TLT	2.5	119.60	0.87	21
Leveraged									
-14.0	83	A+	29.6	DX 20+ Treas Bear 3X	TMV	..	24.07	-0.51	34
35.2	77	B-	15.9	UBS Etrc 2X MortREIT	MORL	20.9	14.85	-0.08	-76
-7.4	76	A	45.7	ProS UltSht 20+ Yr	TBT	..	40.83	-0.51	15
-1.9	8	E	31.6	DX 20+ Treas Bull 3X	TMF	..	18.20	0.37	54
Commodity/Currency									
61.7	92	D-	86.3	ProS Short VIX ST Fut	SVXY	..	81.58	0.08	-11
62.2	92	D-	44.4	VS Invrs VIX ShrtTrm	XIV	..	41.85	-0.05	-17
30.1	81	C-	16.3	PS DB Base Metals	DBB	..	15.46	-0.20	3
0.3	77	B+	9.6	United States NatGas	UNG	..	8.70	-0.16	143
16.8	67	B	15.6	PS DB Commdty Idx	DBC	..	15.60	0.11	-9
4.2	67	B+	10.5	PS DB Oil	DBO	..	9.43	0.12	152
11.4	63	B+	5.3	Elmnts Rogr Intl Cmd	RJI	..	5.16	0.02	57
12.1	60	A-	25.5	IP DJ-UBS Cmmd ETN	DJP	..	24.07	0.05	5
4.4	60	B+	13.1	United States Oil LP	USO	..	11.48	0.15	-22
-4.5	59	A-	30.9	IS Curr Hdg MSCI Japn	HEWJ	1.6	27.37	-0.02	80
-0.6	58	B+	7.6	IP Crude Oil ETN	OIL	..	6.19	0.11	15
7.7	58	B-	16.3	IS S&P GSCI Cmd ETN	GSG	..	15.32	0.09	-17
1.6	55	A-	26.4	PS DB US$ Bullish	UUP	..	26.05	-0.06	-3
-1.1	45	C-	26.9	IS Curr Hdg MSCI EAFE	HEFA	2.7	25.12	-0.08	-38
5.9	45	D-	22.5	IS Curr Hdg MSCI EM	HEEM	2.3	21.18	-0.11	-64
-2.3	41	D	26.3	IS CurrHdg MSCI Germ	HEWG	2.2	23.82	0.09	-43
20.0	37	E	19.7	IS Silver Trust	SLV	..	15.83	0.17	-26
-4.0	35	D	27.9	IS CurrHdg MSCI EMU	HEZU	2.8	24.78	0.00	-21
-2.6	29	E	112.9	Currencyshrs Euro	FXE	..	103.62	-0.01	-24
10.7	27	E	13.3	IS Gold Trust	IAU	..	11.32	0.05	-17
-4.5	27	C-	23.0	PS DB Agriculture	DBA	..	19.68	-0.04	343
10.5	27	E	131.2	SPDR Gold Trust	GLD	..	112.14	0.60	-29
-20.0	14	C-	56.4	IP VIX M ETN	VXZ	..	35.65	0.12	-50
-64.0	4	A-	123.4	IP VIX S ETN	VXX	..	28.97	0.01	-13
-63.8	4	B	102.2	ProS VIX ST Futures	VIXY	..	24.15	0.01	8
Leveraged									
-10.9	85	B	20.5	ProS Ult Bloom Natgs	BOIL	..	16.47	-0.61	88
-37.1	85	C+	74.0	VS 3X Lng NatGas ETN	UGAZ	..	38.37	-2.29	17
3.4	65	A-	27.2	ProS UltSht Euro	EUO	..	26.39	0.01	122
-26.2	65	A	9.1	PS DB Gold DS ETN	DZZ	..	6.55	-0.06	-2
-10.6	56	B+	18.2	ProS Ultra Crude Oil	UCO	..	11.21	0.31	53
-34.9	32	B+	70.7	VS 3x Long Crude	UWTI	..	25.72	0.95	11
31.7	25	E	57.3	ProS Ultra Silver	AGQ	..	35.67	0.84	24
38.0	14	E	29.1	VS 3X Long Silver ETN	USLV	..	13.54	0.45	-22
-49.8	5	E	243.7	ProS UltSht Crude Oil	SCO	..	67.12	-1.87	91
-75.4	2	E	484.2	VS 3X Invr Crude	DWTI	..	49.08	-2.03	-18
-64.1	2	D-	32.3	VS 3X Invr NatGas ETN	DGAZ	..	4.50	0.25	38
-91.9	1	B	309.6	ProS Ult VIX ShrtTrm	UVXY	..	11.44	0.01	-9
-92.0	1	B	339.5	VS 2X VIX ShrtTrm ETN	TVIX	..	12.45	0.02	8

ETF abbreviations: Bldrs=Builders; Brcly=Barclays; DB=Deutsche Bank; DX=Direxion; Dxt=Deutsche X-trackers; FrstTr=First Trust; GX=Global X; GH=Guggenhiem; HT=Holdrs Trust; IP=iPath; IS=iShares; VV=VanEck Vectors; Nv=Nuveen; ProS=ProShares; PS=PowerShares; RX=Rydex; VG=Vanguard; VS=VelocityShares; WT=WisdomTree

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION	Case No. 15-cv-7759 (LAK)
This Matter Relates To:	
All Actions	

SUMMARY NOTICE OF:
(1) PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION;
(2) MOTION FOR ATTORNEYS' FEES AND EXPENSES; AND
(3) HEARING ON PROPOSED SETTLEMENT

TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED SHARES OF **FIFTH STREET FINANCE CORP.** ("FSC") COMMON STOCK DURING THE PERIOD FROM JULY 7, 2014 THROUGH FEBRUARY 6, 2015, INCLUSIVE (THE "CLASS PERIOD"):

YOU ARE HEREBY NOTIFIED that the above-captioned action has been certified as a class action for settlement purposes and that the Lead Plaintiff has reached a proposed settlement to resolve all claims in the case for $14,050,000 in cash (the "Settlement").

The Settlement is independent of a separate settlement of a class action brought on behalf of shareholders of Fifth Street Asset Management Inc. ("FSAM"). A separate notice has been issued for the FSAM Settlement.

The Class in the FSC class action consists of all persons and entities who purchased or otherwise acquired FSC common stock during the Class Period, with some exclusions described in the full notice of the proposed Settlement (the "Notice"). If you have not yet received the Notice, you may obtain it by contacting the Claims Administrator at *FSC Securities Settlement*, c/o A.B. Data, Ltd., P.O. Box 173025, Milwaukee, WI 53217; telephone: 866-217-4461; email: info@FSCSecuritiesSettlement.com. You may also download the Notice and other documents from: www.FSCSecuritiesSettlement.com.

A hearing will be held on February 16, 2017, at 9:30 a.m., before United States District Judge Lewis A. Kaplan, at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 21B, New York, New York 10007, to determine whether the Court should (*i*) approve the proposed Settlement as fair, reasonable, and adequate, (*ii*) approve the proposed Plan of Allocation for distribution of the Settlement proceeds, and (*iii*) grant Lead Counsel's application for attorneys' fees and litigation expenses. The Court may change the date of the Fairness Hearing without further notice to the Class. If you intend to attend the hearing, you should confirm the date and time with Lead Counsel or by checking the Settlement website.

IF YOU ARE A CLASS MEMBER, YOUR RIGHTS WILL BE AFFECTED BY THIS SETTLEMENT, AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT MONEY.

To participate in the Settlement, you must submit a **Claim Form**. You may download the Claim Form from www.FSCSecuritiesSettlement.com, or you may ask the Claims Administrator to send you a Claim Form and add you to the mailing list. You may also obtain, complete, and file a Claim Form online at www.FSCSecuritiesSettlement.com by March 27, 2017. Completed Claim Forms must be **postmarked or received by March 27, 2017**, at the Claims Administrator's address (printed above).

If you purchased or otherwise acquired FSC common stock during the Class Period, you will be deemed a Class Member unless you ask to be excluded from the Class. Any **requests for exclusion must be received by January 26, 2017**, at the Claims Administrator's address (printed above). Each request for exclusion must (*i*) state the name, address, telephone number, and e-mail address (if available) of the person or entity requesting exclusion, (*ii*) state that such person or entity requests exclusion from the FSC Settlement, (*iii*) be signed by the person or entity requesting exclusion, and (*iv*) provide the date(s), price(s), and number(s) of shares of all purchases and sales of FSC common stock during the Class Period. You will be bound by any judgment rendered in the class action unless you timely request exclusion from the Class as explained in the Notice, even if you have pending or later file another lawsuit, arbitration, or other proceeding relating to the claims covered by the Settlement. If you submit a valid and timely request for exclusion, you cannot share in the settlement money, cannot object to the Settlement, and will not be bound by the Settlement or the Court's rulings.

The Notice also describes how to object to the proposed Settlement, the Plan of Allocation, the request for attorneys' fees and litigation expenses, and/or Lead Plaintiff's request for reimbursement of its expenses (including lost wages). All **objections must be received** by the Court (at the address above) and by the lawyers listed below **no later than January 26, 2017**:

Lead Counsel for the Class	Defendants' Counsel
Joel H. Bernstein, Esq. Labaton Sucharow LLP 140 Broadway New York, NY 10005 settlementquestions@labaton.com	Ralph C. Ferrara, Esq. Proskauer Rose LLP 1001 Pennsylvania Avenue, N.W. Suite 600 South Washington, DC 20004 rferrara@proskauer.com

Inquiries, other than requests for copies of the Notice or for inclusion in the mailing list for future notices, may be directed to Lead Counsel for the Class. Please do not contact the Court or Defendants.

Dated: December 7, 2016 BY ORDER OF THE COURT

EXHIBIT C

PROBE

Continued from page B1

sung's payment to the two foundations, and I was only briefed after the fact," Mr. Lee said.

The hearing began after breakfast and stretched into the night. Mr. Lee bore the brunt of the questioning among a lineup that included Hyundai Motor Group Chairman Chung Mong-koo, Lotte Group Chairman Shin Dong-bin and SK Group's Chey Tae-won. Most denied outright allegations that they had contributed to the two foundations in return for favors.

The session, during which lawmakers lectured and continually interrupted Mr. Lee, was the first time since 1988 that a collection of the country's most powerful business magnates had been summoned for questioning at the National Assembly.

PRESS POOL/GETTY IMAGES

Samsung's Lee Jae-yong was grilled by a parliamentary panel.

Mr. Lee on Tuesday pledged to shut an office within Samsung known as the "control tower," which spearheads major deals and manages high-level personnel moves within the conglomerate. That entity—formally the Future Strategy Office within the Samsung Group—has been in the spotlight for its alleged involvement in channeling funds to the two foundations.

Kim Sang-jo, an economics professor at Hansung University in Seoul, had testified earlier that the office lacked accountability.

Mr. Lee also said he would withdraw Samsung from South Korea's most powerful business lobby. The Federation of Korean Industries has long been a conduit for corporate donations to the government. It didn't reply immediately to calls seeking comment.

Prosecutors say Ms. Park served as an accomplice to her friend Choi Soon-sil, helping Ms. Choi shake down conglomerates such as Samsung, Hyundai, LG and others for donations that she used to fund her lifestyle and her daughter's education. Ms. Park and Ms. Choi deny the accusations.

Lawmakers, many from the three main opposition parties, questioned the executives on whether they believe the conglomerates expected favorable treatment in return for donations. In the case of Samsung, politicians brought up a decisive vote by South Korea's state-owned National Pension Fund to approve a contentious merger of two Samsung affiliates last year—a deal that analysts say helped Mr. Lee solidify his control of smartphone maker Samsung Electronics Co.

Pressed by legislators, Mr. Lee acknowledged that he had met with an NPS official around the time of the merger but said he didn't discuss the terms of the merger during that conversation.

He also said the deal wasn't done for his personal gain. "The merger between the two companies was not related to my succession," Mr. Lee said.

A spokeswoman at the pension fund said the NPS wasn't advised to support the merger by the president's office or any other government entity. "The decision was made after careful review of the [merger's] long-term returns and based on standard procedures," she said.

Mr. Lee acknowledged that he met with Ms. Park in one-on-one meetings last year and this year, and said that the president asked him to "support" sports and cultural-development projects through the foundations.

But Mr. Lee said he didn't know about the donations until after they had been made, and denied any knowledge of Ms. Choi's involvement at the time.

—In-Soo Nam and Min Sun Lee contributed to this article.

CLASS ACTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RONALD K. LINDE, *et al.*, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FIFTH STREET ASSET MANAGEMENT INC., *et al.*,

Defendants.

Case No. 1:16-cv-01941 (LAK)

SUMMARY NOTICE OF:
(1) PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION;
(2) MOTION FOR ATTORNEYS' FEES AND EXPENSES; AND
(3) HEARING ON PROPOSED SETTLEMENT

TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED SHARES OF **FIFTH STREET ASSET MANAGEMENT INC.** ("FSAM") COMMON STOCK PURSUANT OR TRACEABLE TO THE REGISTRATION STATEMENT FOR FSAM'S INITIAL PUBLIC OFFERING:

YOU ARE HEREBY NOTIFIED that the above-captioned action has been certified as a class action for settlement purposes and that the Lead Plaintiffs have reached a proposed settlement to resolve all claims in the case for $9,250,000 in cash (the "Settlement").

The Settlement is independent of a separate settlement of a class action brought on behalf of shareholders of Fifth Street Finance Corp. ("FSC"). A separate notice has been issued for the FSC Settlement.

The Class in the FSAM class action consists of all persons and entities who purchased or otherwise acquired FSAM common stock pursuant or traceable to the Registration Statement for FSAM's initial public offering (which began on approximately October 30, 2014), with some exclusions described in the full notice of the proposed Settlement (the "Notice"). If you have not yet received the Notice, you may obtain it by contacting the Claims Administrator at *FSAM Securities Settlement*, c/o A.B. Data, Ltd., P.O. Box 173018, Milwaukee, WI 53217; telephone: 877-240-3531; email: info@FSAMSecuritiesLitigation.com. You may also download the Notice and other documents from: www.FSAMSecuritiesLitigation.com.

A hearing will be held on February 16, 2017, at 9:30 a.m., before United States District Judge Lewis A. Kaplan, at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 21B, New York, New York 10007, to determine whether the Court should (*i*) approve the proposed Settlement as fair, reasonable, and adequate, (*ii*) approve the proposed Plan of Allocation for distribution of the Settlement proceeds, and (*iii*) grant Lead Counsel's application for attorneys' fees and litigation expenses. The Court may change the date of the Fairness Hearing without further notice to the Class. If you intend to attend the hearing, you should confirm the date and time with Lead Counsel or by checking the Settlement website.

IF YOU ARE A CLASS MEMBER, YOUR RIGHTS WILL BE AFFECTED BY THIS SETTLEMENT, AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT MONEY.

To participate in the Settlement, you must submit a **Claim Form**. You may download the Claim Form from www.FSAMSecuritiesLitigation.com, or you may ask the Claims Administrator to send you a Claim Form and add you to the mailing list. You may also obtain, complete, and file a Claim Form online at www.FSAMSecuritiesLitigation.com by March 27, 2017. Completed Claim Forms must be **postmarked or received by March 27, 2017**, at the Claims Administrator's address (printed above).

If you purchased or otherwise acquired FSAM common stock pursuant or traceable to the Registration Statement, you will be deemed a Class Member unless you ask to be excluded from the Class. Any **requests for exclusion must be received by January 26, 2017**, at the Claims Administrator's address (printed above). Each request for exclusion must (*i*) state the name, address, telephone number, and e-mail address (if available) of the person or entity requesting exclusion, (*ii*) state that such person or entity requests exclusion from the FSAM Settlement, (*iii*) be signed by the person or entity requesting exclusion, and (*iv*) provide the date(s), price(s), and number(s) of shares of all purchases and sales of FSAM common stock issued pursuant or traceable to the Registration Statement and before January 8, 2016. You will be bound by any judgment rendered in the class action unless you timely request exclusion from the Class as explained in the Notice, even if you have pending or later file another lawsuit, arbitration, or other proceeding relating to the claims covered by the Settlement. If you submit a valid and timely request for exclusion, you cannot share in the settlement money, cannot object to the Settlement, and will not be bound by the Settlement or the Court's rulings.

The Notice also describes how to object to the proposed Settlement, the Plan of Allocation, the request for attorneys' fees and litigation expenses, and/or Lead Plaintiffs' request for reimbursement of expenses (including lost wages). All **objections must be received** by the Court (at the address above) and by the lawyers listed below **no later than January 26, 2017**:

Lead Counsel for the Class	Defendants' Counsel
Lionel Z. Glancy, Esq. Glancy Prongay & Murray LLP 1925 Century Park East, Suite 2100 Los Angeles, CA 90067 Telephone: 888-773-9224 settlements@glancylaw.com	Ralph C. Ferrara, Esq. Proskauer Rose LLP 1001 Pennsylvania Avenue, N.W. Suite 600 South Washington, DC 20004 rferrara@proskauer.com

Inquiries, other than requests for copies of the Notice or for inclusion in the mailing list for future notices, may be directed to Lead Counsel for the Class. Please do not contact the Court or Defendants.

Dated: December 7, 2016 BY ORDER OF THE COURT

CLASS ACTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION

Case No. 15-cv-7759 (LAK)

This Matter Relates To:

All Actions

SUMMARY NOTICE OF:
(1) PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION;
(2) MOTION FOR ATTORNEYS' FEES AND EXPENSES; AND
(3) HEARING ON PROPOSED SETTLEMENT

TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED SHARES OF **FIFTH STREET FINANCE CORP.** ("FSC") COMMON STOCK DURING THE PERIOD FROM JULY 7, 2014 THROUGH FEBRUARY 6, 2015, INCLUSIVE (THE "CLASS PERIOD"):

YOU ARE HEREBY NOTIFIED that the above-captioned action has been certified as a class action for settlement purposes and that the Lead Plaintiff has reached a proposed settlement to resolve all claims in the case for $14,050,000 in cash (the "Settlement").

The Settlement is independent of a separate settlement of a class action brought on behalf of shareholders of Fifth Street Asset Management Inc. ("FSAM"). A separate notice has been issued for the FSAM Settlement.

The Class in the FSC class action consists of all persons and entities who purchased or otherwise acquired FSC common stock during the Class Period, with some exclusions described in the full notice of the proposed Settlement (the "Notice"). If you have not yet received the Notice, you may obtain it by contacting the Claims Administrator at *FSC Securities Settlement*, c/o A.B. Data, Ltd., P.O. Box 173025, Milwaukee, WI 53217; telephone: 866-217-4461; email: info@FSCSecuritiesSettlement.com. You may also download the Notice and other documents from: www.FSCSecuritiesSettlement.com.

A hearing will be held on February 16, 2017, at 9:30 a.m., before United States District Judge Lewis A. Kaplan, at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 21B, New York, New York 10007, to determine whether the Court should (*i*) approve the proposed Settlement as fair, reasonable, and adequate, (*ii*) approve the proposed Plan of Allocation for distribution of the Settlement proceeds, and (*iii*) grant Lead Counsel's application for attorneys' fees and litigation expenses. The Court may change the date of the Fairness Hearing without further notice to the Class. If you intend to attend the hearing, you should confirm the date and time with Lead Counsel or by checking the Settlement website.

IF YOU ARE A CLASS MEMBER, YOUR RIGHTS WILL BE AFFECTED BY THIS SETTLEMENT, AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT MONEY.

To participate in the Settlement, you must submit a **Claim Form**. You may download the Claim Form from www.FSCSecuritiesSettlement.com, or you may ask the Claims Administrator to send you a Claim Form and add you to the mailing list. You may also obtain, complete, and file a Claim Form online at www.FSCSecuritiesSettlement.com by March 27, 2017. Completed Claim Forms must be **postmarked or received by March 27, 2017**, at the Claims Administrator's address (printed above).

If you purchased or otherwise acquired FSC common stock during the Class Period, you will be deemed a Class Member unless you ask to be excluded from the Class. Any **requests for exclusion must be received by January 26, 2017**, at the Claims Administrator's address (printed above). Each request for exclusion must (*i*) state the name, address, telephone number, and e-mail address (if available) of the person or entity requesting exclusion, (*ii*) state that such person or entity requests exclusion from the FSC Settlement, (*iii*) be signed by the person or entity requesting exclusion, and (*iv*) provide the date(s), price(s), and number(s) of shares of all purchases and sales of FSC common stock during the Class Period. You will be bound by any judgment rendered in the class action unless you timely request exclusion from the Class as explained in the Notice, even if you have pending or later file another lawsuit, arbitration, or other proceeding relating to the claims covered by the Settlement. If you submit a valid and timely request for exclusion, you cannot share in the settlement money, cannot object to the Settlement, and will not be bound by the Settlement or the Court's rulings.

The Notice also describes how to object to the proposed Settlement, the Plan of Allocation, the request for attorneys' fees and litigation expenses, and/or Lead Plaintiff's request for reimbursement of its expenses (including lost wages). All **objections must be received** by the Court (at the address above) and by the lawyers listed below **no later than January 26, 2017**:

Lead Counsel for the Class	Defendants' Counsel
Joel H. Bernstein, Esq. Labaton Sucharow LLP 140 Broadway New York, NY 10005 settlementquestions@labaton.com	Ralph C. Ferrara, Esq. Proskauer Rose LLP 1001 Pennsylvania Avenue, N.W. Suite 600 South Washington, DC 20004 rferrara@proskauer.com

Inquiries, other than requests for copies of the Notice or for inclusion in the mailing list for future notices, may be directed to Lead Counsel for the Class. Please do not contact the Court or Defendants.

Dated: December 7, 2016 BY ORDER OF THE COURT

PUBLIC NOTICES

NOTICE OF DEADLINE REQUIRING FILING OF PROOFS OF CLAIM ON OR BEFORE JANUARY 5, 2017

TO ALL PERSONS AND ENTITIES WITH CREDITOR/VENDOR/STAKEHOLDER CLAIMS OTHER THAN SEC AND INVESTORS AGAINST COLONIAL TIDEWATER REALTY INCOME PARTNERS, LLC (the "Receivership Defendant") AND LLCS IT MANAGED: PINE CREEK ASSOCIATES, LLC; BALL'S & SORBER ASSOCIATES, LLC; GREATER RIVER VALLEY TOWNHOMES, LLC; COLONIAL EDGEWOOD HOLDINGS, LLC; AND COLONIAL STONE BROOK HOMES II, LLC (collectively the "Receivership Estate"):

Notice is hereby given that, on November 21, 2016, United States District Judge Ellen L. Hollander issued an Order establishing a claims submission process for the submission of claims against the assets of the Receivership Defendant and the Receivership Estate. The Order establishes a Claims Bar Date for Vendor/Creditor /Stakeholder Claimants other than SEC and investors (January 5, 2017) as the last date for each person or entity (including individuals, employees, partnerships, corporations, joint venturers, estates, trusts, and governmental units) to submit a Proof of Claim against the Receivership Defendant, and the Receivership Estate. **Failure to timely submit a completed and signed Proof of Claim in the format required by the Claims Bar Date with adequate support documentation will forever bar any claim you may have.** Information concerning the claims process and all related documents and the Proof of Claim form necessary to submit a claim may be obtained by requesting a copy from the Receiver by email to Marion A. Hecht, Receiver at marion.hecht@claconnect.com with a copy to ginger.stafford@claconnect.com; or by first class mail to Marion A. Hecht, Receiver for Colonial Tidewater, c/o CliftonLarsonAllen LLP, 4250 N. Fairfax Drive, Suite 1020, Arlington, VA 22203 and effective December 5, 2016 c/o CliftonLarsonAllen LLP, 901 N. Glebe Road, Suite 200, Arlington, VA 22203; or by telephone call to Ginger Stafford at (571) 227-9686.

EXHIBIT D

PR Newswire
a CISION company

Class Action Settlement on Behalf of Shareholders of Fifth Street Finance Corp. is Announced by Labaton Sucharow LLP

NEWS PROVIDED BY
Labaton Sucharow LLP →
Dec 07, 2016, 10:00 ET

NEW YORK, Dec. 7, 2016 /PRNewswire/ --

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FIFTH STREET FINANCE CORP.	:	
SECURITIES LITIGATION	:	**Case No. 15-cv-7759 (LAK)**
	:	
	:	
This Matter Relates To:	:	
	:	
All Actions	:	
	:	

SUMMARY NOTICE OF:
(1) PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION;
(2) MOTION FOR ATTORNEYS' FEES AND EXPENSES; AND
(3) HEARING ON PROPOSED SETTLEMENT

TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED SHARES OF **FIFTH STREET FINANCE CORP.** ("FSC") COMMON STOCK DURING THE PERIOD FROM JULY 7, 2014 THROUGH FEBRUARY 6, 2015, INCLUSIVE (THE "CLASS PERIOD"):

YOU ARE HEREBY NOTIFIED that the above-captioned action has been certified as a class action for settlement purposes and that the Lead Plaintiff has reached a proposed settlement to resolve all claims in the case for $14,050,000 in cash (the "Settlement").

The Settlement is independent of a separate settlement of a class action brought on behalf of shareholders of Fifth Street Asset Management Inc. ("FSAM"). A separate notice has been issued for the FSAM Settlement.

The Class in the FSC class action consists of all persons and entities who purchased or otherwise acquired FSC common stock during the Class Period, with some exclusions described in the full notice of the proposed Settlement (the "Notice"). If you have not yet received the Notice, you may obtain it by contacting the Claims Administrator at *FSC Securities Settlement*, c/o A.B. Data, Ltd., P.O. Box 173025, Milwaukee, WI 53217; telephone: 866-217-4461; email: info@FSCSecuritiesSettlement.com. You may also download the Notice and other documents from: www.FSCSecuritiesSettlement.com.

A hearing will be held on February 16, 2017, at 9:30 a.m., before United States District Judge Lewis A. Kaplan, at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 21B, New York, New York 10007, to determine whether the Court should (*i*) approve the proposed Settlement as fair, reasonable, and adequate, (*ii*) approve the proposed Plan of Allocation for distribution of the Settlement proceeds, and (*iii*) grant Lead Counsel's application for attorneys' fees and litigation expenses. The Court may change the date of the Fairness Hearing without further notice to the Class. If you intend to attend the hearing, you should confirm the date and time with Lead Counsel or by checking the Settlement website.

IF YOU ARE A CLASS MEMBER, YOUR RIGHTS WILL BE AFFECTED BY THIS SETTLEMENT, AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT MONEY.

To participate in the Settlement, you must submit a **Claim Form**. You may download the Claim Form from www.FSCSecuritiesSettlement.com, or you may ask the Claims Administrator to send you a Claim Form and add you to the mailing list. You may also obtain, complete, and file a Claim Form online at www.FSCSecuritiesSettlement.com by March 27, 2017. Completed Claim Forms must be **postmarked or received by March 27, 2017**, at the Claims Administrator's address (printed above).

If you purchased or otherwise acquired FSC common stock during the Class Period, you will be deemed a Class Member unless you ask to be excluded from the Class. Any **requests for exclusion must be received by January 26, 2017**, at the Claims Administrator's address (printed above). Each request for exclusion must (*i*) state the name, address, telephone number, and e-mail address (if available) of the person or entity requesting exclusion, (*ii*) state that such person or entity requests exclusion from the FSC Settlement, (*iii*) be signed by the person or entity requesting exclusion, and (*iv*) provide the date(s), price(s), and number(s) of shares of all purchases and sales of FSC common stock during the Class Period. You will be bound by any judgment rendered in the class action unless you timely request exclusion from the Class as explained in the Notice, even if you have pending or later file another lawsuit, arbitration, or other proceeding relating to the claims covered by the Settlement. If you submit a valid and timely request for exclusion, you cannot share in the settlement money, cannot object to the Settlement, and will not be bound by the Settlement or the Court's rulings.

The Notice also describes how to object to the proposed Settlement, the Plan of Allocation, the request for attorneys' fees and litigation expenses, and/or Lead Plaintiff's request for reimbursement of its expenses (including lost wages). All **objections must be received** by the Court (at the address above) and by the lawyers listed below **no later than January 26, 2017**:

Lead Counsel for the Class	**Defendants' Counsel**
Joel H. Bernstein, Esq. Labaton Sucharow LLP 140 Broadway New York, NY 10005 settlementquestions@labaton.com	Ralph C. Ferrara, Esq. Proskauer Rose LLP 1001 Pennsylvania Avenue, N.W. Suite 600 South Washington, DC 20004 rferrara@proskauer.com

Inquiries, other than requests for copies of the Notice or for inclusion in the mailing list for future notices, may be directed to Lead Counsel for the Class. Please do not contact the Court or Defendants.

Dated: December 7, 2016 BY ORDER OF THE COURT

SOURCE Labaton Sucharow LLP

Exhibit 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION	**Case No. 15-cv-7759 (LAK)**
This Matter Relates To:	
All Actions	

DECLARATION OF IRA A. SCHOCHET FILED ON BEHALF OF LABATON SUCHAROW LLP IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES

I, IRA A. SCHOCHET, declare as follows pursuant to 28 U.S.C. §1746:

1. I am a member of the law firm of Labaton Sucharow LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action (the "Action") from inception through December 21, 2016 (the "Time Period").

2. My firm was appointed Lead Counsel in the Action and I am counsel of record for Lead Plaintiff Oklahoma Police Pension and Retirement System. I shared responsibility with my partner Joel Bernstein for overseeing the prosecution and settlement of the Action. Once we were appointed, my firm conducted all aspects of the prosecution and settlement of the Action, which are explained in the Declaration of Ira A. Schochet in Support of Lead Plaintiff's Motion for Approval of Proposed Class Action Settlement and Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses, filed herewith.

3. The information in this declaration regarding the firm's time and expenses is taken from time and expense printouts prepared and maintained by the firm in the ordinary course of business. These printouts were reviewed to confirm both the accuracy of the entries on the printouts as well as the necessity for and reasonableness of the time and expenses committed to the Action. As a result of these reviews, reductions were made to both time and expenses either in the exercise of "billing judgment" or to conform to the firm's guidelines and policies regarding certain expenses such as charges for hotels, meals, and transportation. As a result of these reviews and adjustments, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the Action. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff member of my firm who was involved in the prosecution of the Action, and the lodestar calculation based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and payment of expenses has not been included in this request.

5. The total number of hours spent on this Action by my firm during the Time Period is 3,771.3. The total lodestar amount for attorney/professional staff time based on the firm's current rates is $2,070,671.50. Exhibit B is a summary table reporting my firm's lodestar by category of work performed.

6. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit A are my firm's usual and customary billing rates, which have been accepted in other securities or shareholder litigations. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expenses items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. My firm seeks an award of $238,073.51 in expenses/charges in connection with the prosecution of the Action. They are broken down as follows:

EXPENSES/CHARGES

From Inception to December 21, 2016

CATEGORY		***TOTAL***
Work-Related Meals, Hotels & Transportation		$4,399.82
Duplicating		$18,897.20
Long Distance Telephone, Conference Calling, Facsimile		$304.26
Messenger, Overnight Delivery		$38.34
Online Legal & Factual Research Fees		$6,827.92
Mediator		$42,028.37
Experts/Consultants		$164,017.60
Accounting	$101,259.85	
Damages/Loss Causation	$62,757.75	
Litigation Support		$1,560.00
TOTAL		***$238,073.51***

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

(a) Online Legal & Factual Research Fees: $6,827.92. This category includes the fees charged by vendors such as: Bloomberg, Thomson T1 Research, Pacer Service Center, Westlaw, LexisNexis Risk Solution and LexisNexis. These databases were used to obtain access to SEC filings, financial and factual information, and information needed to conduct legal research and to cite-check court submissions.

(b) Experts/Consultants: $164,017.60.

(i) Accounting: $101,259.85. Lead Counsel retained a forensic accounting consulting expert to assist with the prosecution of the claims, given the need to analyze myriad issues relating to the valuation of FSC's illiquid BDC portfolio assets.

(ii) Damages/Loss Causation: $62,757.75. Lead Counsel retained a consulting expert to offer analysis and opinions concerning damages and loss causation and to develop the proposed Plan of Allocation.

(c) Litigation Support: $1,560.00. This expense relates to licensing fees incurred to review Defendants' document productions. Charges for electronic document storage were paid by Defendants.

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

10. The identification and background of my firm and its partners, senior counsel and of counsels are attached hereto as Exhibit C.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of January, 2017, at New York, NY.

IRA A. SCHOCHET

Exhibit A

EXHIBIT A

IN RE FIFTH STREET FINANCE CORP. SEC. LITIG.
(S.D.N.Y. 15-cv-7759 LAK)

LODESTAR REPORT

FIRM: LABATON SUCHAROW LLP
REPORTING PERIOD: INCEPTION THROUGH DECEMBER 21, 2016

PROFESSIONAL	STATUS*	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Bernstein, J.	P	$985	251.80	$248,023.00
Schochet, I.	P	$950	419.00	$398,050.00
Keller, C.	P	$950	75.50	$71,725.00
Belfi, E.	P	$875	56.90	$49,787.50
Zeiss, N.	P	$850	127.10	$108,035.00
Wierzbowski, E.	A	$725	10.70	$7,757.50
Rhodes, C.	A	$575	253.60	$145,820.00
McConville, F.	A	$550	137.60	$75,680.00
Gottlieb, E.	A	$440	676.20	$297,528.00
Flanigan, M.	SA	$435	244.10	$106,183.50
Gandy, C.	SA	$410	189.20	$77,572.00
Badejo, A.	SA	$410	119.30	$48,913.00
Green, M.	SA	$410	87.90	$36,039.00
Soneye, A.	SA	$360	214.60	$77,256.00
Park, C.	SA	$335	151.90	$50,886.50
Chereshinsky, M.	SA	$335	151.80	$50,853.00
Green, F.	SA	$335	124.10	$41,573.50
Yamada, R.	SA	$335	68.90	$23,081.50
Schervish, W.	LA	$550	17.40	$9,570.00
Capuozzo, C.	RA	$325	10.90	$3,542.50
Greenbaum, A.	I	$455	14.80	$6,734.00
Howard, B.	I	$430	118.20	$50,826.00
Wroblewski, R.	I	$425	40.50	$17,212.50
Viczian, R.	PL	$325	97.70	$31,752.50
Auer, S.	PL	$325	72.80	$23,660.00
Boria, C.	PL	$325	25.20	$8,190.00
Rogers, D.	PL	$325	13.60	$4,420.00
TOTAL			**3771.3**	**$2,070,671.50**

Partner	(P)	Paralegal	(PL)
Of Counsel	(OC)	Investigator	(I)
Associate	(A)	Research Analyst	(RA)
Staff Attorney	(SA)	Legal Assistant	(LA)

Exhibit B

EXHIBIT B

IN RE FIFTH STREET FINANCE CORP. SEC. LITIG.,
No. 15-cv-7759 LAK (S.D.N.Y.)

LODESTAR REPORT BY CATEGORY

FIRM: LABATON SUCHAROW LLP
REPORTING PERIOD: INCEPTION THROUGH DECEMBER 21, 2016

CATEGORY OF WORK	TOTAL HOURS	TOTAL LODESTAR
10 – Initial Research and Factual Investigation	353.2	$191,760.00
20 – Pleadings	227.5	$118,782.50
30 – Defendant/3rd Party Discovery	1,746.9	$742,986.00
40 – Plaintiff Discovery	0.0	$0.00
50 – Motions and Legal Research	189.4	$110,900.50
60 – Court Appearances	31.0	$22,121.00
70 – Experts	78.6	$65,314.00
80 – Mediation	364.7	$279,421.00
90 – Settlement	528.6	$370,041.00
100 – Litigation Strategy and Analysis	141.6	$122,098.50
110 – Case Management	109.8	$47,247.00
TOTALS	**3,771.3**	**$2,070,671.50**

Exhibit C

Firm Resume

Securities Class Action Litigation

New York 140 Broadway | New York, NY 10005 | 212-907-0700 main | 212-818-0477 fax | www.labaton.com
Delaware 300 Delaware Avenue, Suite 1340 | Wilmington, DE 19801 | 302-573-2540 main | 302-573-2529 fax

Labaton Sucharow

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Labaton Sucharow

About the Firm

Founded in 1963, Labaton Sucharow LLP has earned a reputation as one of the leading plaintiffs firms in the United States. We have recovered more than $10 billion and secured corporate governance reforms on behalf of the nation's largest institutional investors, including public pension and Taft-Hartley funds, hedge funds, investment banks, and other financial institutions. These recoveries include more than $1 billion in *In re American International Group, Inc. Securities Litigation*, $671 million in *In re HealthSouth Securities Litigation*, $624 million in *In re Countrywide Financial Corporation Securities Litigation*, and $473 million in *In re Schering-Plough/ENHANCE Securities Litigation.*

As a leader in the field of complex litigation, the Firm has successfully conducted class, mass, and derivative actions in the following areas: securities; antitrust; financial products and services; corporate governance and shareholder rights; mergers and acquisitions; derivative; REITs and limited partnerships; consumer protection; and whistleblower representation.

Along with securing newsworthy recoveries, the Firm has a track record for successfully prosecuting complex cases from discovery to trial to verdict. In court, as *Law360* has noted, our attorneys are known for "fighting defendants tooth and nail." Our appellate experience includes winning appeals that increased settlement value for clients, and securing a landmark 2013 U.S. Supreme Court victory benefitting all investors by reducing barriers to the certification of securities class action cases.

Our Firm is equipped to deliver results with a robust infrastructure of more than 60 full-time attorneys, a dynamic professional staff, and innovative technological resources. Labaton Sucharow attorneys are skilled in every stage of business litigation and have challenged corporations from every sector of the financial markets. Our professional staff includes paralegals, financial analysts, e-discovery specialists, a certified public accountant, a certified fraud examiner, and a forensic accountant. With seven investigators, including former members of federal and state law enforcement, we have one of the largest in-house investigative teams in the securities bar. Managed by a law enforcement veteran who spent 12 years with the FBI, our internal investigative group provides us with information that is often key to the success of our cases.

Outside of the courtroom, the Firm is known for its leadership and participation in investor protection organizations, such as the Council for Institutional Investors, World Federation of Investors, National Association of Shareholder and Consumer Attorneys, as well as serving as a patron of the John L. Weinberg Center for Corporate Governance of the University of Delaware. The Firm shares these groups' commitment to a market that operates with greater transparency, fairness, and accountability.

Labaton Sucharow has been consistently ranked as a top-tier firm in leading industry publications such as *Chambers & Partners USA*, *The Legal 500*, and *Benchmark Litigation*. For the past decade, the Firm was listed on *The National Law Journal*'s Plaintiffs' Hot List and was inducted to the Hall of Fame for successive honors. The Firm has also been featured as one of *Law360*'s Most Feared Plaintiffs Firms and Class Action Practice Groups of the Year.

Visit www.labaton.com for more information about our Firm.

Labaton Sucharow

Securities Class Action Litigation

Labaton Sucharow is a leader in securities litigation and a trusted advisor to more than 200 institutional investors. Since the passage of the Private Securities Litigation Reform Act of 1995 (PSLRA), the Firm has recovered more than $8 billion in the aggregate for injured investors through securities class actions prosecuted throughout the United States and against numerous public corporations and other corporate wrongdoers.

These notable recoveries would not be possible without our exhaustive case evaluation process. The Firm has developed a proprietary system for portfolio monitoring and reporting on domestic and international securities litigation, and currently provides these services to more than 160 institutional investors, which manage collective assets of more than $2 trillion. The Firm's in-house licensed investigators also gather crucial details to support our cases, whereas other firms rely on outside vendors, or conduct no confidential investigation at all.

As a result of our thorough case evaluation process, our securities litigators can focus solely on cases with strong merits. The benefits of our selective approach are reflected in the low dismissal rate of the securities cases we pursue, which is well below the industry average. In the last five years alone, we have successfully prosecuted headline-making class actions against AIG, Countrywide, Fannie Mae, and Bear Stearns, among others.

Notable Successes

Labaton Sucharow has achieved notable successes in financial and securities class actions on behalf of investors, including the following:

- ***In re American International Group, Inc. Securities Litigation*, No. 04-cv-8141, (S.D.N.Y.)**

  In one of the most complex and challenging securities cases in history, Labaton Sucharow secured more than $1 billion in recoveries on behalf of lead plaintiff Ohio Public Employees' Retirement System in a case arising from allegations of bid rigging and accounting fraud. To achieve this remarkable recovery, the Firm took over 100 depositions and briefed 22 motions to dismiss. The settlement entailed a $725 million settlement with American International Group (AIG), $97.5 million settlement with AIG's auditors, $115 million settlement with former AIG officers and related defendants, and an additional $72 million settlement with General Reinsurance Corporation, which was approved by the Second Circuit on September 11, 2013.

- ***In re Countrywide Financial Corp. Securities Litigation*, No. 07-cv-05295 (C.D. Cal.)**

  Labaton Sucharow, as lead counsel for the New York State Common Retirement Fund and the five New York City public pension funds, sued one of the nation's largest issuers of mortgage loans for credit risk misrepresentations. The Firm's focused investigation and discovery efforts uncovered incriminating evidence that led to a $624 million settlement for investors. On February 25, 2011, the court granted final approval to the settlement, which is one of the top 20 securities class action settlements in the history of the PSLRA.

- ***In re HealthSouth Corp. Securities Litigation*, No. 03-cv-01500 (N.D. Ala.)**

  Labaton Sucharow served as co-lead counsel to New Mexico State Investment Council in a case stemming from one of the largest frauds ever perpetrated in the healthcare industry. Recovering $671 million for the class, the settlement is one of the top 15 securities class action settlements of all time. In early 2006, lead plaintiffs negotiated a settlement of $445 million with defendant HealthSouth. On June 12, 2009, the court also granted final approval to a $109 million settlement with defendant Ernst & Young LLP. In addition, on July 26, 2010, the court granted final approval to a $117 million partial settlement with the remaining principal defendants in the case, UBS AG, UBS Warburg LLC, Howard Capek, Benjamin Lorello, and William McGahan.

- ***In re Schering-Plough/ENHANCE Securities Litigation*, No. 08-cv-00397 (D. N.J.)**

  As co-lead counsel, Labaton Sucharow obtained a $473 million settlement on behalf of co-lead plaintiff Massachusetts Pension Reserves Investment Management Board. After five years of litigation, and three weeks before trial, the settlement was approved on October 1, 2013. This recovery is one of the largest securities fraud class action settlements against a pharmaceutical company. The Special Masters' Report noted, "**the outstanding result achieved for the class is the direct product of outstanding skill and perseverance by Co-Lead Counsel…no one else…could have produced the result here—no government agency or corporate litigant to lead the charge and the Settlement Fund is the product solely of the efforts of Plaintiffs' Counsel**."

- ***In re Waste Management, Inc. Securities Litigation*, No. H-99-2183 (S.D. Tex.)**

  In 2002, the court approved an extraordinary settlement that provided for recovery of $457 million in cash, plus an array of far-reaching corporate governance measures. Labaton Sucharow represented lead plaintiff Connecticut Retirement Plans and Trust Funds. At that time, this settlement was the largest common fund settlement of a securities action achieved in any court within the Fifth Circuit and the third largest achieved in any federal court in the nation. Judge Harmon noted, among other things, that Labaton Sucharow "**obtained an outstanding result by virtue of the quality of the work and vigorous representation of the class.**"

- ***In re General Motors Corp. Securities Litigation*, No. 06-cv-1749, (E.D. Mich.)**

  As co-lead counsel in a case against automotive giant, General Motors (GM), and Deloitte & Touche LLP (Deloitte), its auditor, Labaton Sucharow obtained a settlement of $303 million—one of the largest settlements ever secured in the early stages of a securities fraud case. Lead plaintiff Deka Investment GmbH alleged that GM, its officers, and its outside auditor overstated GM's income by billions of dollars, and GM's operating cash flows by tens of billions of dollars, through a series of accounting manipulations. The final settlement, approved on July 21, 2008, consisted of a cash payment of $277 million by GM and $26 million in cash from Deloitte.

- ***Arkansas Teacher Retirement System v. State Street Corp.*, No. 11-cv-10230 (D. Mass)**

  Labaton Sucharow served as lead counsel for the plaintiff Arkansas Teacher Retirement System (ATRS) in this securities class action against Boston-based financial services company, State Street Corporation (State Street). On August 8, 2016, the court preliminarily approved a $300 million settlement with State Street. The plaintiffs claimed that State Street, as custodian bank to a number of public pension funds, including ATRS, was responsible for foreign exchange (FX) trading in connection with its clients global trading. Over a period of many years, State Street systematically overcharged those pension fund clients, including Arkansas, for those FX trades.

- ***Wyatt v. El Paso Corp.*, No. H-02-2717 (S.D. Tex.)**

  Labaton Sucharow secured a $285 million class action settlement against the El Paso Corporation on behalf of co-lead plaintiff, an individual. The case involved a securities fraud stemming from the company's inflated earnings statements, which cost shareholders hundreds of millions of dollars during a four-year span. On March 6, 2007, the court approved the settlement and also commended the efficiency with which the case had been prosecuted, particularly in light of the complexity of the allegations and the legal issues.

- ***In re Massey Energy Co. Securities Litigation*, No. 10-CV-00689 (S.D. W.Va.)**

  As co-lead counsel representing the Commonwealth of Massachusetts Pension Reserves Investment Trust, Labaton Sucharow achieved a $265 million all-cash settlement in a case arising from one of the most notorious mining disasters in U.S. history. On June 4, 2014, the settlement was reached with Alpha Natural Resources, Massey's parent company. Investors alleged that Massey falsely told investors it had embarked on safety improvement initiatives and presented a new corporate image following a deadly fire at one of its coal mines in 2006. After another devastating explosion which killed 29 miners in 2010, Massey's market capitalization dropped by more than $3 billion. Judge Irene C. Berger noted that "**Class counsel has done an expert job of representing all of the class members to reach an excellent resolution and maximize recovery for the class.**"

- ***Eastwood Enterprises, LLC v. Farha (WellCare Securities Litigation)*, No. 07-cv-1940 (M.D. Fla.)**

  On behalf of The New Mexico State Investment Council and the Public Employees Retirement Association of New Mexico, Labaton Sucharow served as co-lead counsel and negotiated a $200 million settlement over allegations that WellCare Health Plans, Inc., a Florida-based managed healthcare service provider, disguised its profitability by overcharging state Medicaid programs. Under the terms of the settlement approved by the court on May 4, 2011, WellCare agreed to pay an additional $25 million in cash if, at any time in the next three years, WellCare was acquired or otherwise experienced a change in control at a share price of $30 or more after adjustments for dilution or stock splits.

- ***In re Bristol-Myers Squibb Securities Litigation*, No. 00-cv-1990 (D.N.J.)**

  Labaton Sucharow served as lead counsel representing the lead plaintiff, union-owned LongView Collective Investment Fund of the Amalgamated Bank, against drug company Bristol-Myers Squibb (BMS). Lead plaintiff claimed that the company's press release touting its new blood pressure medication, Vanlev, left out critical information, other results from the clinical trials indicated that Vanlev appeared to have life-threatening side effects. The FDA expressed serious concerns about these side effects, and BMS released a statement that it was withdrawing the drug's FDA application, resulting in the company's stock price falling and losing nearly 30 percent of its value in a single day. After a five year battle, we won relief on two critical fronts. First, we secured a $185 million recovery for shareholders, and second, we negotiated major reforms to the company's drug development process that will have a significant impact on consumers and medical professionals across the globe. Due to our advocacy, BMS must now disclose the results of clinical studies on all of its drugs marketed in any country.

- ***In re Fannie Mae 2008 Securities Litigation*, No. 08-cv-7831 (S.D.N.Y.)**

  As co-lead counsel representing co-lead plaintiff Boston Retirement System, Labaton Sucharow secured a $170 million settlement on March 3, 2015 with Fannie Mae. Lead plaintiffs alleged that Fannie Mae and certain of its current and former senior officers violated federal securities laws, by making false and misleading statements concerning the company's internal controls and risk management with respect to Alt-A and subprime mortgages. Lead plaintiffs also alleged that defendants made misstatements with respect to Fannie Mae's core capital, deferred tax assets, other-than-temporary losses, and loss reserves. This settlement is a significant feat, particularly following the unfavorable result in a similar case for investors of Fannie Mae's sibling company, Freddie Mac.

Labaton Sucharow successfully argued that investors' losses were caused by Fannie Mae's misrepresentations and poor risk management, rather than by the financial crisis.

- ***In re Broadcom Corp. Class Action Litigation*, No. 06-cv-05036 (C.D. Cal.)**

  Labaton Sucharow served as lead counsel on behalf of lead plaintiff New Mexico State Investment Council in a case stemming from Broadcom Corp.'s $2.2 billion restatement of its historic financial statements for 1998 - 2005. In August 2010, the court granted final approval of a $160.5 million settlement with Broadcom and two individual defendants to resolve this matter, the second largest up-front cash settlement ever recovered from a company accused of options backdating. Following a Ninth Circuit ruling confirming that outside auditors are subject to the same pleading standards as all other defendants, the district court denied Broadcom's auditor Ernst & Young's motion to dismiss on the ground of loss causation. This ruling is a major victory for the class and a landmark decision by the court—the first of its kind in a case arising from stock-options backdating. In October 2012, the court approved a $13 million settlement with Ernst & Young.

- ***In re Satyam Computer Services Ltd. Securities Litigation*, No. 09-md-2027 (S.D.N.Y.)**

  Satyam, referred to as "India's Enron," engaged in one of the most egregious frauds on record. In a case that rivals the Enron and Bernie Madoff scandals, the Firm represented lead plaintiff UK-based Mineworkers' Pension Scheme, which alleged that Satyam Computer Services Ltd., related entities, its auditors, and certain directors and officers made materially false and misleading statements to the investing public about the company's earnings and assets, artificially inflating the price of Satyam securities. On September 13, 2011, the court granted final approval to a settlement with Satyam of $125 million and a settlement with the company's auditor, PricewaterhouseCoopers, in the amount of $25.5 million. Judge Barbara S. Jones commended lead counsel during the final approval hearing noting that the "**…quality of representation which I found to be very high…**"

- ***In re Mercury Interactive Corp. Securities Litigation*, No. 05-cv-3395 (N.D. Cal.)**

  Labaton Sucharow served as co-lead counsel on behalf of co-lead plaintiff Steamship Trade Association/International Longshoremen's Association Pension Fund, which alleged Mercury backdated option grants used to compensate employees and officers of the company. Mercury's former CEO, CFO, and General Counsel actively participated in and benefited from the options backdating scheme, which came at the expense of the company's shareholders and the investing public. On September 25, 2008, the court granted final approval of the $117.5 million settlement.

- ***In re Oppenheimer Champion Fund Securities Fraud Class Actions*, No. 09-cv-525 (D. Colo.) and *In re Core Bond Fund*, No. 09-cv-1186 (D. Colo.)**

  Labaton Sucharow served as lead counsel and represented individuals and the proposed class in two related securities class actions brought against OppenheimerFunds, Inc., among others, and certain officers and trustees of two funds—Oppenheimer Core Bond Fund and Oppenheimer Champion Income Fund. The lawsuits alleged that the investment policies followed by the funds resulted in investor losses when the funds suffered drops in net asset value although the funds were presented as safe and conservative investments to consumers. In May 2011, the Firm achieved settlements amounting to $100 million: $52.5 million in *In re Oppenheimer Champion Fund Securities Fraud Class Actions*, and a $47.5 million settlement in *In re Core Bond Fund*.

- ***In re Computer Sciences Corporation Securities Litigation*, No. 11-cv-610 (E.D. Va.)**

  As lead counsel representing Ontario Teachers' Pension Plan Board, Labaton Sucharow secured a $97.5 million settlement in this "rocket docket" case involving accounting fraud. The settlement was the third largest all cash recovery in a securities class action in the Fourth Circuit and the second largest all cash recovery in such a case in the Eastern District of Virginia. The plaintiffs alleged that IT consulting and outsourcing company Computer Sciences Corporation (CSC) fraudulently inflated its stock price by misrepresenting and omitting the truth about the state of its most visible contract and the state of its internal controls. In particular, the plaintiffs alleged that CSC assured the market that it was performing on a $5.4 billion contract with the UK National Health Services when CSC internally knew that it could not deliver on the contract, departed from the terms of the contract, and as a result, was not properly accounting for the contract. Judge T.S. Ellis, III stated, "**I have no doubt—that the work product I saw was always of the highest quality for both sides.**"

Lead Counsel Appointments in Ongoing Litigation

Labaton Sucharow's institutional investor clients are regularly chosen by federal judges to serve as lead plaintiffs in prominent securities litigations brought under the PSLRA. Dozens of public pension funds and union funds have selected Labaton Sucharow to represent them in federal securities class actions and advise them as securities litigation/investigation counsel. Our recent notable lead and co-lead counsel appointments include the following:

- ***In re Goldman Sachs Group, Inc. Securities Litigation*, No. 10-cv-03461 (S.D.N.Y)**

  Labaton Sucharow represents Arkansas Teacher Retirement System in this high-profile litigation based on the scandals involving Goldman Sachs' sales of the Abacus CDO.

- ***In re Facebook, Inc., IPO Securities and Derivative Litigation*, No. 12-md-02389 (S.D.N.Y.)**

  Labaton Sucharow represents North Carolina Department of State Treasurer and Arkansas Teacher Retirement System in this securities class action that involves one of the largest initial public offerings for a technology company.

- ***3226701 Canada Inc. v. Qualcomm, Inc., No. 15-cv-2678 (S.D. Cal.)***

  Labaton Sucharow represents The Public Employees Retirement System of Mississippi in this securities class action against a leader in 3G and next-generation mobile technologies.

- ***Plumbers and Steamfitters Local 137 Pension Fund v. American Express Co., No. 15-cv-05999 (S.D.N.Y.)***

  Labaton Sucharow represents Pipefitters Union Local 537 Pension Fund in this class action against one of the country's largest credit card lenders to reveal the company's hidden cost of losing its Costco partnership.

- ***Avila v. LifeLock, Inc., No. 15-cv-01398 (D. Ariz.)***

  Labaton Sucharow represents Oklahoma Firefighters Pension and Retirement System in the securities class action against LifeLock, Inc., an identity theft protection company, alleging major security flaws.

- ***In re Intuitive Surgical Securities Litigation*, No. 13-cv-01920 (N.D. Cal.)**

  Labaton Sucharow represents the Employees' Retirement System of the State of Hawaii in this securities class action alleging violations of securities fraud laws by concealing FDA regulations violations and a dangerous defect in the company's primary product, the da Vinci Surgical System.

- ***In re KBR, Inc. Securities Litigation*, No. 14-cv-01287 (S.D. Tex.)**

  Labaton Sucharow represents the IBEW Local No. 58 / SMC NECA Funds in this securities class action alleging misrepresentation of certain Canadian construction contracts.

Innovative Legal Strategy

Bringing successful litigation against corporate behemoths during a time of financial turmoil presents many challenges, but Labaton Sucharow has kept pace with the evolving financial markets and with corporate wrongdoer's novel approaches to committing fraud.

Our Firm's innovative litigation strategies on behalf of clients include the following:

- ***Mortgage-Related Litigation***

  In *In re Countrywide Financial Corporation Securities Litigation*, No. 07-cv-5295 (C.D. Cal.), our client's claims involved complex and data-intensive arguments relating to the mortgage securitization process and the market for residential mortgage-backed securities (RMBS) in the United States. To prove that defendants made false and misleading statements concerning Countrywide's business as an issuer of residential mortgages, Labaton Sucharow utilized both in-house and external expert analysis. This included state-of-the-art statistical analysis of loan level data associated with the creditworthiness of individual mortgage loans. The Firm recovered $624 million on behalf of investors.

  Building on its experience in this area, the Firm has pursued claims on behalf of individual purchasers of RMBS against a variety of investment banks for misrepresentations in the offering documents associated with individual RMBS deals.

- ***Options Backdating***

  In 2005, Labaton Sucharow took a pioneering role in identifying options-backdating practices as both damaging to investors and susceptible to securities fraud claims, bringing a case, *In re Mercury Interactive Securities Litigation*, No. 05-cv-3395 (N.D. Cal.), that spawned many other plaintiff recoveries.

  Leveraging its experience, the Firm went on to secure other significant options backdating settlements, in, for example, *In re Broadcom Corp. Class Action Litigation*, No. 06-cv-5036 (C.D. Cal.), and in *In re Take-Two Interactive Securities Litigation*, No. 06-cv-0803 (S.D.N.Y.). Moreover, in *Take-Two*, Labaton Sucharow was able to prompt the SEC to reverse its initial position and agree to distribute a disgorgement fund to investors, including class members. The SEC had originally planned for the fund to be distributed to the U.S. Treasury. As a result, investors received a very significant percentage of their recoverable damages.

- ***Foreign Exchange Transactions Litigation***

  The Firm has pursued or is pursuing claims for state pension funds against BNY Mellon and State Street Bank, the two largest custodian banks in the world. For more than a decade, these banks failed to disclose that they were overcharging their custodial clients for foreign exchange transactions. Given the number of individual transactions this practice affected, the damages caused to our clients and the class were significant. Our claims, involving complex statistical analysis, as well as qui tam jurisprudence, were filed ahead of major actions by federal and state authorities related to similar allegations commenced in 2011. Our team favorably resolved the BNY Mellon matter in 2012. The case against State Street Bank is still ongoing.

Appellate Advocacy and Trial Experience

When it is in the best interest of our clients, Labaton Sucharow repeatedly has demonstrated our willingness and ability to litigate these complex cases all the way to trial, a skill unmatched by many firms in the plaintiffs bar.

Labaton Sucharow is one of the few firms in the plaintiffs securities bar to have prevailed in a case before the U.S. Supreme Court. In *Amgen v. Connecticut Retirement Plans & Trust Funds*, 133 S. Ct. 1184 (Feb. 27, 2013), the Firm persuaded the court to reject efforts to thwart the certification of a class of investors seeking monetary damages in a securities class action. This represents a significant victory for all plaintiffs in securities class actions.

In *In re Real Estate Associates Limited Partnership Litigation*, Labaton Sucharow's advocacy significantly increased the settlement value for shareholders. The defendants were unwilling to settle for an amount the Firm and its clients viewed as fair, which led to a six-week trial. The Firm and co-counsel ultimately obtained a landmark $184 million jury verdict. The jury supported the plaintiffs' position that the defendants knowingly violated the federal securities laws, and that the general partner had breached his fiduciary duties to shareholders. The $184 million award was one of the largest jury verdicts returned in any PSLRA action and one in which the class, consisting of 18,000 investors, recovered 100 percent of their damages.

Labaton Sucharow

Our Clients

Labaton Sucharow represents and advises the following institutional investor clients, among others:

- Arkansas Teacher Retirement System
- Baltimore County Retirement System
- Boston Retirement System
- California Public Employees' Retirement System
- California State Teachers' Retirement System
- City of New Orleans Employees' Retirement System
- Connecticut Retirement Plans & Trust Funds
- Division of Investment of the New Jersey Department of the Treasury
- Genesee County Employees' Retirement System
- Illinois Municipal Retirement Fund
- Teachers' Retirement System of Louisiana
- Macomb County Employees Retirement System
- Metropolitan Atlanta Rapid Transit Authority
- Michigan Retirement Systems
- Mississippi Public Employees' Retirement System
- New York City Pension Funds
- New York State Common Retirement Fund
- Norfolk County Retirement System
- Office of the Ohio Attorney General and several of its Retirement Systems
- Oklahoma Firefighters Pension and Retirement System
- Plymouth County Retirement System
- Office of the New Mexico Attorney General and several of its Retirement Systems
- Public Employee Retirement System of Idaho
- Rhode Island State Investment Commission
- San Francisco Employees' Retirement System
- Santa Barbara County Employees' Retirement System
- State of Oregon Public Employees' Retirement System
- State of Wisconsin Investment Board
- Virginia Retirement System

Labaton Sucharow

Awards and Accolades

Industry publications and peer rankings consistently recognize the Firm as a respected leader in securities litigation.

Chambers & Partners USA

Leading Plaintiffs Securities Litigation Firm (2009-2016)

> **"effective and greatly respected…a bench of partners who are highly esteemed by competitors and adversaries alike"**

The Legal 500

Leading Plaintiffs Securities Litigation Firm and also recognized in Antitrust (2010-2016) and M&A Litigation (2013, 2015-2016)

> **"'Superb' and 'at the top of its game.' The Firm's team of 'hard-working lawyers, who push themselves to thoroughly investigate the facts' and conduct 'very diligent research.'"**

Benchmark Litigation

Top 10 Plaintiffs Firm in the United States (2017), Recommended in Securities Litigation Nationwide and in New York State (2012-2017); and Noted for Corporate Governance and Shareholder Rights Litigation in the Delaware Court of Chancery (2016-2017)

> **"clearly living up to its stated mission 'reputation matters'…consistently earning mention as a respected litigation-focused firm fighting for the rights of institutional investors"**

Law360

Most Feared Plaintiffs Firm (2013-2015) and Class Action Practice Group of the Year (2012 and 2014-2015)

> **"known for thoroughly investigating claims and conducting due diligence before filing suit, and for fighting defendants tooth and nail in court"**

The National Law Journal

Winner of the Elite Trial Lawyers Award in Securities Law (2015), Hall of Fame Honoree, and Top Plaintiffs' Firm on the annual Hot List (2006-2016)

> **"definitely at the top of their field on the plaintiffs' side"**

Labaton Sucharow

Community Involvement

To demonstrate our deep commitment to the community, Labaton Sucharow devotes significant resources to pro bono legal work and public and community service.

Firm Commitments

Brooklyn Law School Securities Arbitration Clinic
Mark S. Arisohn, Adjunct Professor and Joel H. Bernstein, Adjunct Professor

Labaton Sucharow has partnered with Brooklyn Law School to establish a securities arbitration clinic. The program serves a dual purpose: to assist defrauded individual investors who cannot otherwise afford to pay for legal counsel; and to provide students with real-world experience in securities arbitration and litigation. Partners Mark S. Arisohn and Joel H. Bernstein lead the program as adjunct professors.

Change for Kids

Labaton Sucharow supports Change for Kids (CFK) as a leading sponsor of P.S. 182 in East Harlem. One school at a time, CFK rallies communities to provide a broad range of essential educational opportunities at under-resourced public elementary schools. By creating inspiring learning environments at our partner schools, CFK enables students to discover their unique strengths and develop the confidence to achieve.

The Lawyers' Committee for Civil Rights Under Law
Edward Labaton, Member, Board of Directors

The Firm is a long-time supporter of The Lawyers' Committee for Civil rights Under Law, a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy. The Lawyers' Committee involves the private bar in providing legal services to address racial discrimination.

Labaton Sucharow attorneys have contributed on the federal level to U.S. Supreme Court nominee analyses (analyzing nominees for their views on such topics as ethnic equality, corporate diversity, and gender discrimination) and national voters' rights initiatives.

Sidney Hillman Foundation

Labaton Sucharow supports the Sidney Hillman Foundation. Created in honor of the first president of the Amalgamated Clothing Workers of America, Sidney Hillman, the foundation supports investigative and progressive journalism by awarding monthly and yearly prizes. Partner Thomas A. Dubbs is frequently invited to present these awards.

Individual Attorney Commitments

Labaton Sucharow attorneys have served in a variety of pro bono and community service capacities:

- Pro bono representation of mentally ill tenants facing eviction, appointed as Guardian *ad litem* in several housing court actions.
- Recipient of a Volunteer and Leadership Award from a tenants' advocacy organization for work defending the rights of city residents and preserving their fundamental sense of public safety and home.
- Board Member of the Ovarian Cancer Research Fund—the largest private funding agency of its kind supporting research into a method of early detection and, ultimately, a cure for ovarian cancer.
- Director of the BARKA Foundation, which provides fresh water to villages in Burkina Faso.
- Founder of the Lillian C. Spencer Fund—a charitable organization that provides scholarships to underprivileged American children and emergency dental care to refugee children in Guatemala.

Our attorneys have also contributed to or continue to volunteer with the following charitable organizations, among others:

- American Heart Association
- Big Brothers/Big Sisters of New York City
- Boys and Girls Club of America
- Carter Burden Center for the Aging
- City Harvest
- City Meals-on-Wheels
- Coalition for the Homeless
- Cycle for Survival
- Cystic Fibrosis Foundation
- Dana Farber Cancer Institute
- Food Bank for New York City
- Fresh Air Fund
- Habitat for Humanity
- Lawyers Committee for Civil Rights
- Legal Aid Society
- Mentoring USA
- National Lung Cancer Partnership
- National MS Society
- National Parkinson Foundation
- New York Cares
- New York Common Pantry
- Peggy Browning Fund
- Sanctuary for Families
- Sandy Hook School Support Fund
- Save the Children
- Special Olympics
- Toys for Tots
- Williams Syndrome Association

Commitment to Diversity

Recognizing that business does not always offer equal opportunities for advancement and collaboration to women, Labaton Sucharow launched its Women's Networking and Mentoring Initiative in 2007.

The Women's Initiative reflects our commitment to the advancement of women professionals. The goal of the Initiative is to bring professional women together to collectively advance women's influence in business. Each event showcases a successful woman role model as a guest speaker. We actively discuss our respective business initiatives and hear the guest speaker's strategies for success. Labaton Sucharow mentors young women inside and outside of the firm and promotes their professional achievements. The Firm also is a member of the National Association of Women Lawyers (NAWL). For more information regarding Labaton Sucharow's Women's Initiative, please visit www.labaton.com/en/about/women/Womens-Initiative.cfm.

Further demonstrating our commitment to diversity in the legal profession and within our Firm, in 2006, we established the Labaton Sucharow Minority Scholarship and Internship. The annual award—a grant and a summer associate position—is presented to a first-year minority student who is enrolled at a metropolitan New York law school and who has demonstrated academic excellence, community commitment, and personal integrity.

Labaton Sucharow has also instituted a diversity internship which brings two Hunter College students to work at the Firm each summer. These interns rotate through various departments, shadowing Firm partners and getting a feel for the inner workings of the Firm.

Labaton Sucharow

Securities Litigation Attorneys

Our team of securities class action litigators includes:

Partners

Lawrence A. Sucharow (Chairman)

Mark S. Arisohn

Eric J. Belfi

Joel H. Bernstein

Thomas A. Dubbs

Jonathan Gardner

David J. Goldsmith

Louis Gottlieb

Serena Hallowell

Thomas G. Hoffman, Jr.

James W. Johnson

Christopher J. Keller

Edward Labaton

Christopher J. McDonald

Michael H. Rogers

Ira A. Schochet

Michael W. Stocker

Carol C. Villegas

Ned Weinberger

Nicole M. Zeiss

Of Counsel

Marisa N. DeMato

Joseph H. Einstein

Christine M. Fox

Mark Goldman

Lara Goldstone

Domenico Minerva

Barry M. Okun

Senior Counsel

Richard T. Joffe

Detailed biographies of the team's qualifications and accomplishments follow.

Lawrence A. Sucharow, Chairman
lsucharow@labaton.com

With more than four decades of experience, the Firm's Chairman, Lawrence A. Sucharow is an internationally recognized trial lawyer and a leader of the class action bar. Under his guidance, the Firm has grown into and earned its position as one of the top plaintiffs securities and antitrust class action firms in the world. As Chairman, Larry focuses on counseling the Firm's large institutional clients, developing creative and compelling strategies to advance and protect clients' interests, and the prosecution and resolution of many of the Firm's leading cases.

Over the course of his career, Larry has prosecuted hundreds of cases and the Firm has recovered billions in groundbreaking securities, antitrust, business transaction, product liability, and other class actions. In fact, a landmark case tried in 2002—*In re Real Estate Associates Limited Partnership Litigation*—was the very first securities action successfully tried to a jury verdict following the enactment of the Private Securities Litigation Reform Act (PSLRA). Experience such as this has made Larry uniquely qualified to evaluate and successfully prosecute class actions.

Other representative matters include: *In re CNL Resorts, Inc. Securities Litigation* ($225 million settlement); *In re Paine Webber Incorporated Limited Partnerships Litigation* ($200 million settlement); *In re Prudential Securities Incorporated Limited Partnerships Litigation* ($110 million partial settlement); *In re Prudential Bache Energy Income Partnerships Securities Litigation* ($91 million settlement) and *Shea v. New York Life Insurance Company* (over $92 million settlement).

Larry's consumer protection experience includes leading the national litigation against the tobacco companies in *Castano v. American Tobacco Co.*, as well as litigating *In re Imprelis Herbicide Marketing, Sales Practices and Products Liability Litigation*. Currently, he plays a key role in *In re Takata Airbag Products Liability Litigation* and a nationwide consumer class action against Volkswagen Group of America, Inc., arising out of the wide-scale fraud concerning Volkswagen's "Clean Diesel" vehicles. Larry further conceptualized the establishment of two Dutch foundations, or "Stichtingen" to pursue settlement of claims against Volkswagen on behalf of injured car owners and investors in Europe.

In recognition of his career accomplishments and standing in the securities bar at the Bar, Larry was selected by *Law360* as one the 10 Most Admired Securities Attorneys in the United States and as a Titan of the Plaintiffs Bar. Further, he is one of a small handful of plaintiffs' securities lawyers in the United States recognized by *Chambers & Partners USA*, *The Legal 500*, *Benchmark Litigation*, and *Lawdragon 500* for his successes in securities litigation. Referred to as a "legend" by his peers in *Benchmark Litigation*, *Chambers* describes him as an "an immensely respected plaintiff advocate" and a "renowned figure in the securities plaintiff world…[that] has handled some of the most high-profile litigation in this field." According to *The Legal 500*, clients characterize Larry as a "a strong and passionate advocate with a desire to win." In addition, Brooklyn Law School honored Larry with the 2012 Alumni of the Year Award for his notable achievements in the field.

Larry has served a two-year term as President of the National Association of Shareholder and Consumer Attorneys, a membership organization of approximately 100 law firms that practice complex civil litigation including class actions. A longtime supporter of the Federal Bar Council, Larry serves as a trustee of the Federal Bar Council Foundation. He is a member of the Federal Bar Council's Committee on Second Circuit Courts, and the Federal Courts Committee of the New York County Lawyers' Association. He is also a member of the Securities Law Committee of the New Jersey State Bar Association and was the Founding Chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association, a position he held from 1988-1994. In addition, Larry serves on the Advocacy Committee of the World Federation of Investors Corporation, a worldwide umbrella organization of national shareholder associations. In May 2013, Larry was elected Vice Chair of the International Financial Litigation Network, a network of law firms from 15 countries seeking international solutions to cross-border financial problems.

Larry is admitted to practice in the States of New York, New Jersey, and Arizona as well as before the Supreme Court of the United States, the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York, and the District of New Jersey.

Mark S. Arisohn, Partner

marisohn@labaton.com

Mark S. Arisohn focuses on prosecuting complex securities fraud cases on behalf of institutional investors. Mark is an accomplished litigator, with nearly 40 years of extensive trial experience in jury and non-jury matters in the state and federal courts nationwide. He has also argued in the New York Court of Appeals, the United States Court of Appeals for the Second Circuit and appeared before the United States Supreme Court in the landmark insider trading case of *Chiarella v. United States*.

Mark's wide-ranging practice has included prosecuting and defending individuals and corporations in cases involving securities fraud, mail and wire fraud, bank fraud, and RICO violations. He has represented public officials, individuals, and companies in the construction and securities industries as well as professionals accused of regulatory offenses and professional misconduct. He also has appeared as trial counsel for both plaintiffs and defendants in civil fraud matters and corporate and commercial matters, including shareholder litigation, business torts, unfair competition, and misappropriation of trade secrets.

Mark is one of the few litigators in the plaintiffs' bar to have tried two securities fraud class action cases to a jury verdict.

Mark is an active member of the Association of the Bar of the City of New York and has served on its Judiciary Committee, the Committee on Criminal Courts, Law and Procedure, the Committee on Superior Courts, and the Committee on Professional Discipline. He serves as a mediator for the Complaint Mediation Panel of the Association of the Bar of the City of New York where he mediates attorney client disputes and as a hearing officer for the New York State Commission on Judicial Conduct where he presides over misconduct cases brought against judges.

Mark also co-leads Labaton Sucharow's Securities Arbitration pro bono project in conjunction with Brooklyn Law School where he serves as an adjunct professor. Mark, together with Labaton Sucharow associates and Brooklyn Law School students, represents aggrieved and defrauded individual investors who cannot otherwise afford to pay for legal counsel in financial industry arbitration matters against investment advisors and stockbrokers.

Mark was named to the recommended list in the field of Securities Litigation by *The Legal 500* and recognized by Benchmark Litigation as a Securities Litigation Star. He has also received a rating of AV Preeminent from publishers of the Martindale-Hubbell directory.

Mark is admitted to practice in the State of New York and the District of Columbia as well as before the Supreme Court of the United States, the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern, Eastern, and Northern Districts of New York, the Northern District of Texas, and the Northern District of California.

Eric J. Belfi, Partner
ebelfi@labaton.com

Representing many of the world's leading pension funds and other institutional investors, Eric J. Belfi is an accomplished litigator with experience in a broad range of commercial matters. Eric focuses on domestic and international securities and shareholder litigation. He serves as a member of the Firm's Executive Committee.

As an integral member of the Firm's Case Evaluation group, Eric has brought numerous high-profile domestic securities cases that resulted from the credit crisis, including the prosecution against Goldman Sachs. In *In re Goldman Sachs Group, Inc. Securities Litigation*, he played a significant role in the investigation and drafting of the operative complaint. Eric was also actively involved in securing a combined settlement of $18.4 million in *In re Colonial BancGroup, Inc. Securities Litigation*, regarding material misstatements and omissions in SEC filings by Colonial BancGroup and certain underwriters.

Along with his domestic securities litigation practice, Eric leads the Firm's Non-U.S. Securities Litigation Practice, which is dedicated exclusively to analyzing potential claims in non-U.S. jurisdictions and advising on the risk and benefits of litigation in those forums. The practice, one of the first of its kind, also serves as liaison counsel to institutional investors in such cases, where appropriate. Currently, Eric represents nearly 30 institutional investors in over a dozen non-U.S. cases against companies including SNC-Lavalin Group Inc. in Canada, Vivendi Universal, S.A. in France, OZ Minerals Ltd. in Australia, Lloyds Banking Group in the UK, and Olympus Corporation in Japan.

Eric's international experience also includes securing settlements on behalf of non-U.S. clients including the UK-based Mineworkers' Pension Scheme in *In re Satyam Computer Securities Services Ltd. Securities Litigation*, an action related to one of the largest securities fraud in India which resulted in $150.5 million in collective settlements. Representing two of Europe's leading pension funds, Deka Investment GmbH and Deka

International S.A., Luxembourg, in *In re General Motors Corp. Securities Litigation*, Eric was integral in securing a $303 million settlement in a case regarding multiple accounting manipulations and overstatements by General Motors.

Additionally, Eric oversees the Financial Products and Services Litigation Practice, focusing on individual actions against malfeasant investment bankers, including cases against custodial banks that allegedly committed deceptive practices relating to certain foreign currency transactions. Most recently, he served as lead counsel to Arkansas Teacher Retirement System in a class action against State Street Corporation and certain affiliated entities alleging misleading actions in connection with foreign currency exchange trades, which resulted in a $300 million recovery. He has also represented the Commonwealth of Virginia in its False Claims Act case against Bank of New York Mellon, Inc.

Eric's M&A and derivative experience includes noteworthy cases such as *In re Medco Health Solutions Inc. Shareholders Litigation*, in which he was integrally involved in the negotiation of the settlement that included a significant reduction in the termination fee.

Eric's prior experience included serving as an Assistant Attorney General for the State of New York and as an Assistant District Attorney for the County of Westchester. As a prosecutor, Eric investigated and prosecuted white-collar criminal cases, including many securities law violations. He presented hundreds of cases to the grand jury and obtained numerous felony convictions after jury trials.

Eric is a frequent speaker on the topic of shareholder litigation and U.S.-style class actions in European countries. He also has spoken on socially responsible investments for public pension funds.

Eric is admitted to practice in the State of New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Michigan, the District of Colorado, the District of Nebraska, and the Eastern District of Wisconsin.

Joel H. Bernstein, Partner
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With nearly four decades of experience in complex litigation, Joel H. Bernstein's practice focuses on the protection of victimized individuals. Joel advises large public and labor pension funds, banks, mutual funds, insurance companies, hedge funds, and other institutional and individual investors with respect to securities-related litigation in the federal and state courts, as well as in arbitration proceedings before the NYSE, FINRA, and other self-regulatory organizations. His experience in the area of representing plaintiffs in complex litigation has resulted in the recovery of more than a billion dollars in damages to wronged class members.

For several years Joel led the Firm's Residential Mortgage-Backed Securities team, a group of more than 20 legal professionals representing large domestic and foreign institutional investors in 75 individual litigations involving billions of dollars lost in fraudulently marketed investments at the center of the subprime crisis and has successfully recovered hundreds of millions of dollars on their behalf thus far. He also currently serves as lead counsel in class actions, including *In re NII Holdings, Inc. Securities Litigation*, *Norfolk County Retirement System v. Solazyme, Inc.*, and *In re Facebook Biometric Information Privacy Litigation*.

Joel recently led the team that secured a $265 million all-cash settlement for a class of investors in *In re Massey Energy Co. Securities Litigation*, a matter that stemmed from the 2010 mining disaster at the company's Upper Big Branch coal mine. Joel also led the team that achieved a $120 million recovery with one of the largest global providers of products and services for the oil and gas industry, Weatherford International in 2015. As lead counsel for one of the most prototypical cases arising from the financial crisis, *In re Countrywide Corporation Securities Litigation*, he obtained a settlement of $624 million for co-lead plaintiffs, New York State Common Retirement Fund and the New York City Pension Funds.

In the past, Joel has played a central role in numerous high profile cases, including *In re Paine Webber Incorporated Limited Partnerships Litigation* ($200 million settlement); *In re Prudential Securities Incorporated Limited Partnerships Litigation* ($130 million settlement); *In re Prudential Bache Energy Income Partnerships Securities Litigation* ($91 million settlement); *Shea v. New York Life Insurance Company* ($92 million settlement); and *Saunders et al. v. Gardner* ($10 million—the largest punitive damage award in the history of NASD Arbitration at that time). In addition, Joel was instrumental in securing a $117.5 million settlement in *In re Mercury Interactive Securities Litigation*, the largest settlement at the time in a securities fraud litigation based upon options backdating. He also has litigated cases which arose out of deceptive practices by custodial banks relating to certain foreign currency transactions.

Joel has been recommended by *The Legal 500* in the field of Securities Litigation, where he was described by sources as a "formidable adversary," and by *Benchmark Litigation* as a Securities Litigation Star. He was also featured in *The AmLaw Litigation Daily* as Litigator of the Week for his work on *In re Countrywide Financial Corporation Securities Litigation*. Joel has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

In addition to his active legal practice, Joel co-leads Labaton Sucharow's Securities Arbitration pro bono project in collaboration with Brooklyn Law School where he serves as an adjunct professor. Together with Labaton Sucharow partner Mark Arisohn, firm associates, and Brooklyn Law School students, he represents aggrieved and defrauded individual investors who cannot otherwise afford to pay for legal counsel in financial industry arbitration matters against investment advisors and stockbrokers.

As a recognized leader in his field, Joel is frequently sought out by the press to comment on legal matters and has also authored numerous articles and lectured on related issues. He is a member of the American Bar Association, the Association of the Bar of the City of New York, the New York County Lawyers' Association, and the Public Investors Arbitration Bar Association (PIABA).

He is admitted to practice in the State of New York as well as before the United States Courts of Appeals for the First, Second, Third, Fourth, Fifth, and Ninth Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

Thomas A. Dubbs, Partner

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Thomas A. Dubbs focuses on the representation of institutional investors in domestic and multinational securities cases. Recognized as a leading securities class action attorney, Tom has been named as a top litigator by *Chambers & Partners* for seven consecutive years.

Tom has served or is currently serving as lead or co-lead counsel in some of the most important federal securities class actions in recent years, including those against American International Group, Goldman Sachs, the Bear Stearns Companies, Facebook, Fannie Mae, Broadcom, and WellCare. Tom has also played an integral role in securing significant settlements in several high-profile cases including: *In re American International Group, Inc. Securities Litigation* (settlements totaling more than $1 billion); *In re Bear Stearns Companies, Inc. Securities Litigation* ($275 million settlement with Bear Stearns Companies, plus a $19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor); *In re HealthSouth Securities Litigation* ($671 million settlement); *Eastwood Enterprises LLC v. Farha et al.* (*WellCare Securities Litigation*) (over $200 million settlement); *In re 2008 Fannie Mae Securities Litigation* ($170 million settlement pending final court approval); *In re Broadcom Corp. Securities Litigation* ($160.5 million settlement with Broadcom, plus $13 million settlement with Ernst & Young LLP, Broadcom's outside auditor); *In re St. Paul Travelers Securities Litigation* ($144.5 million settlement); and *In re Vesta Insurance Group, Inc. Securities Litigation* ($79 million settlement).

Representing an affiliate of the Amalgamated Bank, the largest labor-owned bank in the United States, a team led by Tom successfully litigated a class action against Bristol-Myers Squibb, which resulted in a settlement of $185 million as well as major corporate governance reforms. He has argued before the United States Supreme

Court and has argued 10 appeals dealing with securities or commodities issues before the United States Courts of Appeals.

Due to his reputation in securities law, Tom frequently lectures to institutional investors and other groups such as the Government Finance Officers Association, the National Conference on Public Employee Retirement Systems, and the Council of Institutional Investors. He is a prolific author of articles related to his field, and he recently penned "Textualism and Transnational Securities Law: A Reappraisal of Justice Scalia's Analysis in *Morrison v. National Australia Bank*," *Southwestern Journal of International Law* (2014). He has also written several columns in UK-wide publications regarding securities class action and corporate governance.

Prior to joining Labaton Sucharow, Tom was Senior Vice President & Senior Litigation Counsel for Kidder, Peabody & Co. Incorporated, where he represented the company in many class actions, including the First Executive and Orange County litigation and was first chair in many securities trials. Before joining Kidder, Tom was head of the litigation department at Hall, McNicol, Hamilton & Clark, where he was the principal partner representing Thomson McKinnon Securities Inc. in many matters, including the Petro Lewis and Baldwin-United class actions.

In addition to his *Chambers & Partners* recognition, Tom was named a Leading Lawyer by *The Legal 500*, an honor presented to only eight U.S. plaintiffs' securities attorneys. *Law360* also named him an "MVP of the Year" for distinction in class action litigation in 2012 and 2015, and he has been recognized by *The National Law Journal*, *Lawdragon 500*, and *Benchmark Litigation* as a Securities Litigation Star. Tom has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

Tom serves as a FINRA Arbitrator and is an Advisory Board Member for the Institute for Transnational Arbitration. He is a member of the New York State Bar Association, the Association of the Bar of the City of New York, the American Law Institute, and he is a Patron of the American Society of International Law. He was previously a member of the Members Consultative Group for the Principles of the Law of Aggregate Litigation and the Department of State Advisory Committee on Private International Law. Tom also serves on the Board of Directors for The Sidney Hillman Foundation.

Tom is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the Second, Third, Ninth, and Eleventh Circuits, and the United States District Court for the Southern District of New York.

Jonathan Gardner, Partner
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With more than 25 years of experience, Jonathan Gardner focuses on prosecuting complex securities fraud cases on behalf of institutional investors and has played an integral role in securing some of the largest class action recoveries against corporate offenders since the onset of the global financial crisis.

Recently, Jonathan was named an MVP by *Law360* for securing hard-earned successes in high-stakes litigation and complex global matters. He has served as the lead attorney in several cases resulting in significant recoveries for injured class members, including: *In re Hewlett-Packard Company Securities Litigation*, resulting in a $57 million recovery; *Medoff v. CVS Caremark Corporation*, resulting in a $48 million recovery; *In re Nu Skin Enterprises, Inc., Securities Litigation*, resulting in a $47 million recovery; *In re Carter's Inc. Securities Litigation*, resulting in a $23.3 million recovery against Carter's and certain of its officers as well as PricewaterhouseCoopers, its auditing firm; *In re Aeropostale Inc. Securities Litigation*, resulting in a $15 million recovery; *In re Lender Processing Services Inc.*, involving claims of fraudulent mortgage processing which resulted in a $13.1 million recovery; and *In re K-12, Inc. Securities Litigation*, resulting in a $6.75 million recovery.

Recommended and described by *The Legal 500* as having the "ability to master the nuances of securities class actions," Jonathan has led the Firm's representation of investors in many recent high-profile cases including

Rubin v. MF Global Ltd., which involved allegations of material misstatements and omissions in a Registration Statement and Prospectus issued in connection with MF Global's IPO in 2007. In November 2011, the case resulted in a recovery of $90 million for investors. Jonathan also represented lead plaintiff City of Edinburgh Council as Administering Authority of the Lothian Pension Fund in *In re Lehman Brothers Equity/Debt Securities Litigation*, which resulted in settlements totaling exceeding $600 million against Lehman Brothers' former officers and directors, Lehman's former public accounting firm as well as the banks that underwrote Lehman Brothers' offerings. In representing lead plaintiff Massachusetts Bricklayers and Masons Trust Funds in an action against Deutsche Bank, Jonathan secured a $32.5 million dollar recovery for a class of investors injured by the Bank's conduct in connection with certain residential mortgage-backed securities.

Jonathan has also been responsible for prosecuting several of the Firm's options backdating cases, including *In re Monster Worldwide, Inc. Securities Litigation* ($47.5 million settlement); *In re SafeNet, Inc. Securities Litigation* ($25 million settlement); *In re Semtech Securities Litigation* ($20 million settlement); and *In re MRV Communications, Inc. Securities Litigation* ($10 million settlement). He also was instrumental in *In re Mercury Interactive Corp. Securities Litigation*, which settled for $117.5 million, one of the largest settlements or judgments in a securities fraud litigation based upon options backdating.

Jonathan also represented the Successor Liquidating Trustee of Lipper Convertibles, a convertible bond hedge fund, in actions against the fund's former independent auditor and a member of the fund's general partner as well as numerous former limited partners who received excess distributions. He successfully recovered over $5.2 million for the Successor Liquidating Trustee from the limited partners and $29.9 million from the former auditor.

He is a member of the Federal Bar Council, New York State Bar Association, and the Association of the Bar of the City of New York.

Jonathan is admitted to practice in the State of New York as well as before the United States Court of Appeals for the Ninth and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, and the Eastern District of Wisconsin.

David J. Goldsmith, Partner
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David J. Goldsmith has nearly 20 years of experience representing public and private institutional investors in a wide variety of securities and class action litigations. A principal litigator at the Firm, David's work has directly led to record recoveries in some of the most complex and high-profile securities class actions.

David was recommended by *The Legal 500* as part of the Firm's recognition as a top-tier plaintiffs firm in securities class action litigation.

David was an integral member of the team representing the New York State Common Retirement Fund and New York City pension funds as lead plaintiffs in the landmark *Countrywide Financial Securities Litigation*, which settled for $624 million. More recently, he represented the Arkansas Teacher Retirement System as lead counsel in a significant action alleging unfair and deceptive practices by State Street Corporation in connection with foreign currency exchange trades executed for its custodial clients resulting in a $300 million settlement—one of the largest class action settlements reached in the First Circuit. David's representation of a hedge fund and individual investors as lead plaintiffs in an action concerning the well-publicized collapse of four Regions Morgan Keegan mutual funds led to a $62 million settlement. Further, he recently represented a large German and a major Irish special-purpose vehicle in individual actions alleging fraud in connection with the sale of residential mortgage-backed securities, as well as state and county pension funds in class actions in California state court arising from the IPOs of technology companies.

David is currently involved in several securities class actions, including *In re Eros International Securities Litigation*, a case where we exposed fraud and nepotism involving a Bollywood film production company, and *Shoemaker v. Cardiovascular Systems, Inc.*, a case against a medical device manufacturer that recently settled a whistleblower action arising from the same alleged conduct. Additionally, David regularly advises the Genesee County (Michigan) Employees' Retirement Commission with respect to potential securities, shareholder, and antitrust claims, and has represented the Retirement System in numerous successful class actions, including pending actions charging anticompetitive conduct concerning interest-rate derivative products.

David is a member of several professional organizations, including The National Association of Shareholder & Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms that practice complex civil litigation including class actions, the New York State Bar Association, and the Association of the Bar of the City of New York.

During law school, David was Managing Editor of the *Cardozo Arts & Entertainment Law Journal* and served as a judicial intern to the Honorable Michael B. Mukasey, then a United States District Judge for the Southern District of New York.

For many years, David has been a member of AmorArtis, a renowned choral organization with a diverse repertoire.

He is admitted to practice in the States of New York and New Jersey as well as before the United States Courts of Appeals for the First, Second, Fourth, Fifth, Eighth, and Ninth Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, the District of New Jersey, the District of Colorado, and the Western District of Michigan.

Louis Gottlieb, Partner
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Louis Gottlieb focuses on representing institutional and individual investors in complex securities and consumer class action cases. He has played a key role in some of the most high-profile securities class actions in recent history, securing significant recoveries for plaintiffs and ensuring essential corporate governance reforms to protect future investors, consumers, and the general public.

Lou was integral in prosecuting *In re American International Group, Inc. Securities Litigation* (settlements totaling more than $1 billion) and *In re 2008 Fannie Mae Securities Litigation* ($170 million settlement pending final approval). He also helped lead major class action cases against the company and related defendants in *In re Satyam Computer Services, Ltd. Securities Litigation* ($150.5 million settlement). He has led successful litigation teams in securities fraud class action litigations against Metromedia Fiber Networks and Pricesmart, as well as consumer class actions against various life insurance companies.

In the Firm's representation of the Connecticut Retirement Plans and Trust Funds in *In re Waste Management, Inc. Securities Litigation*, Lou's efforts were essential in securing a $457 million settlement. The settlement also included important corporate governance enhancements, including an agreement by management to support a campaign to obtain shareholder approval of a resolution to declassify its board of directors, and a resolution to encourage and safeguard whistleblowers among the company's employees. Acting on behalf of New York City pension funds in *In re Orbital Sciences Corporation Securities Litigation*, Lou helped negotiate the implementation of measures concerning the review of financial results, the composition, role and responsibilities of the Company's Audit and Finance committee, and the adoption of a Board resolution providing guidelines regarding senior executives' exercise and sale of vested stock options.

Lou was a leading member of the team in the *Napp Technologies Litigation* that won substantial recoveries for families and firefighters injured in a chemical plant explosion. Lou has had a major role in national product liability actions against the manufacturers of orthopedic bone screws and atrial pacemakers, and in consumer fraud actions in the national litigation against tobacco companies.

A well-respected litigator, Lou has made presentations on punitive damages at Federal Bar Association meetings and has spoken on securities class actions for institutional investors.

Lou brings a depth of experience to his practice from both within and outside of the legal sphere. He graduated first in his class from St. John's School of Law. Prior to joining Labaton Sucharow, he clerked for the Honorable Leonard B. Wexler of the Eastern District of New York, and he worked as an associate at Skadden Arps Slate Meagher & Flom LLP.

Lou is admitted to practice in the States of New York and Connecticut as well as before the United States Courts of Appeals for the Fifth and Seventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

Serena Hallowell, Partner

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Serena Hallowell focuses on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, she is actively prosecuting *In re Intuitive Surgical Securities Litigation* and *In re Barrick Gold Securities Litigation*.

Recently, Serena was named as a 2016 Class Action Rising Star by *Law360* and recommended by *The Legal 500* in the field of Securities Litigation. Playing a principal role in prosecuting *In re Computer Sciences Corporation Securities Litigation* (CSC) in a "rocket docket" jurisdiction, she helped secure a settlement of $97.5 million on behalf of lead plaintiff Ontario Teachers' Pension Plan Board, the third largest all cash settlement in the Fourth Circuit. She was also instrumental in securing a $48 million recovery in *Medoff v. CVS Caremark Corporation*, as well as a $41.5 million settlement in *In re NII Holdings, Inc. Securities Litigation*.

Serena also has broad appellate and trial experience. Most recently, Serena participated in the successful appeal of the CVS matter before the U.S. Court of Appeals for the First Circuit, and she is currently participating in an appeal pending before the U.S. Court of Appeals for the Tenth Circuit. In addition, she has previously played a key role in securing a favorable jury verdict in one of the few securities fraud class action suits to proceed to trial.

Prior to joining Labaton Sucharow, Serena was an attorney at Ohrenstein & Brown LLP, where she participated in various federal and state commercial litigation matters. During her time there, she also defended financial companies in regulatory proceedings and assisted in high profile coverage litigation matters in connection with mutual funds trading investigations.

Serena received a J.D. from Boston University School of Law, where she served as the Note Editor for the *Journal of Science & Technology Law*. She earned a B.A. in Political Science from Occidental College.

Serena is a member of the Association of the Bar of the City of New York, the Federal Bar Council, and the National Association of Women Lawyers (NAWL), where she serves on the Women's Initiatives Leadership Boot Camp Planning Committee. She also devotes time to pro bono work with the Securities Arbitration Clinic at Brooklyn Law School and is a member of the Firm's Women's Initiative.

She is conversational in Urdu/Hindi.

She is admitted to practice in the State of New York as well as before the United States Court of Appeals for the First and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

Thomas G. Hoffman, Jr., Partner
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Thomas G. Hoffman, Jr. focuses on representing institutional investors in complex securities actions.

Thomas was instrumental in securing a $1 billion recovery in the eight-year litigation against AIG and related defendants. He also was a key member of the Labaton Sucharow team that recovered $170 million for investors in *In re 2008 Fannie Mae Securities Litigation*. Currently, Thomas is prosecuting cases against BP, Facebook, and American Express.

Thomas received a J.D. from UCLA School of Law, where he was Editor-in-Chief of the UCLA *Entertainment Law Review*, and he served as a Moot Court Executive Board Member. In addition, he was a judicial extern to the Honorable William J. Rea, United States District Court for the Central District of California. Thomas earned a B.F.A., with honors, from New York University.

Thomas is admitted to practice in the State of New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

James W. Johnson, Partner
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James W. Johnson focuses on complex securities fraud cases. In representing investors who have been victimized by securities fraud and breaches of fiduciary responsibility, Jim's advocacy has resulted in record recoveries for wronged investors. Currently, he is prosecuting high-profile cases against financial industry leader Goldman Sachs in *In re Goldman Sachs Group, Inc., Securities Litigation,* and the world's most popular social network, in *In re Facebook, Inc., IPO Securities and Derivative Litigation*. In addition to his active caseload, Jim holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee and acting as the Firm's Hiring Partner. He also serves as the Firm's Executive Partner overseeing firmwide issues.

A recognized leader in his field, Jim has successfully litigated a number of complex securities and RICO class actions including: *In re Bear Stearns Companies, Inc. Securities Litigation* ($275 million settlement with Bear Stearns Companies, plus a $19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor); *In re HealthSouth Corp. Securities Litigation* ($671 million settlement); *Eastwood Enterprises LLC v. Farha et al. (WellCare Securities Litigation)* ($200 million settlement); *In re Vesta Insurance Group, Inc. Securities Litigation* ($79 million settlement); *In re Bristol Myers Squibb Co. Securities Litigation* ($185 million settlement), in which the court also approved significant corporate governance reforms and recognized plaintiff's counsel as "extremely skilled and efficient"; and *In re National Health Laboratories, Inc., Securities Litigation*, which resulted in a recovery of $80 million in the federal action and a related state court derivative action.

In *County of Suffolk v. Long Island Lighting Co.*, Jim represented the plaintiff in a RICO class action, securing a jury verdict after a two-month trial that resulted in a $400 million settlement. The Second Circuit quoted the trial judge, Honorable Jack B. Weinstein, as stating "counsel [has] done a superb job [and] tried this case as well as I have ever seen any case tried." On behalf of the Chugach Native Americans, he also assisted in prosecuting environmental damage claims resulting from the Exxon Valdez oil spill.

Jim is a member of the American Bar Association and the Association of the Bar of the City of New York, where he served on the Federal Courts Committee, and he is a Fellow in the Litigation Council of America.

Jim has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the States of New York and Illinois as well as before the Supreme Court of the United States, the United States Courts of Appeals for the Second, Third, Fourth, Fifth, Seventh, and Eleventh

Circuits, and the United States District Courts for the Southern, Eastern, and Northern Districts of New York, and the Northern District of Illinois.

Christopher J. Keller, Partner
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Christopher J. Keller focuses on complex securities litigation. His clients are institutional investors, including some of the world's largest public and private pension funds with tens of billions of dollars under management.

Described by *The Legal 500* as a "sharp and tenacious advocate" who "has his pulse on the trends," Chris has been instrumental in the Firm's appointments as lead counsel in some of the largest securities matters arising out of the financial crisis, such as actions against Countrywide ($624 million settlement), Bear Stearns ($275 million settlement with Bear Stearns Companies, plus a $19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor), Fannie Mae ($170 million settlement), and Goldman Sachs.

Chris has also been integral in the prosecution of traditional fraud cases such as *In re Schering-Plough Corporation / ENHANCE Securities Litigation*; *In re Massey Energy Co. Securities Litigation*, where the Firm obtained a $265 million all-cash settlement with Alpha Natural Resources, Massey's parent company; as well as *In re Satyam Computer Services, Ltd. Securities Litigation*, where the Firm obtained a settlement of more than $150 million. Chris was also a principal litigator on the trial team of *In re Real Estate Associates Limited Partnership Litigation*. The six-week jury trial resulted in a $184 million plaintiffs' verdict, one of the largest jury verdicts since the passage of the Private Securities Litigation Reform Act.

In addition to his active caseload, Chris holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee. In response to the evolving needs of clients, Chris also established, and currently leads, the Case Evaluation Group, which is comprised of attorneys, in-house investigators, financial analysts, and forensic accountants. The group is responsible for evaluating clients' financial losses and analyzing their potential legal claims both in and outside of the U.S. and tracking trends that are of potential concern to investors.

Educating institutional investors is a significant element of Chris' advocacy efforts for shareholder rights. He is regularly called upon for presentations on developing trends in the law and new case theories at annual meetings and seminars for institutional investors.

He is a member of several professional groups, including the New York State Bar Association and the New York County Lawyers' Association.

He is admitted to practice in the State of New York as well as before the Supreme Court of the United States, and the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Wisconsin, and the District of Colorado.

Edward Labaton, Partner
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An accomplished trial lawyer and partner with the Firm, Edward Labaton has devoted 50 years of practice to representing a full range of clients in class action and complex litigation matters in state and federal court. He is the recipient of the Alliance for Justice's 2015 Champion of Justice Award, given to outstanding individuals whose life and work exemplifies the principle of equal justice.

Ed has played a leading role as plaintiffs' class counsel in a number of successfully prosecuted, high-profile cases, involving companies such as PepsiCo, Dun & Bradstreet, Financial Corporation of America, ZZZZ Best, Revlon, GAF Co., American Brands, Petro Lewis and Jim Walter, as well as several Big Eight (now Four) accounting firms. He has also argued appeals in state and federal courts, achieving results with important precedential value.

Ed has been President of the Institute for Law and Economic Policy (ILEP) since its founding in 1996. Each year, ILEP co-sponsors at least one symposium with a major law school dealing with issues relating to the civil justice system. In 2010, he was appointed to the newly formed Advisory Board of George Washington University's Center for Law, Economics, & Finance (C-LEAF), a think tank within the Law School, for the study and debate of major issues in economic and financial law confronting the United States and the globe. Ed is an Honorary Lifetime Member of the Lawyers' Committee for Civil Rights under Law, a member of the American Law Institute, and a life member of the ABA Foundation. In addition, he has served on the Executive Committee and has been an officer of the Ovarian Cancer Research Fund since its inception in 1996.

Ed is the past Chairman of the Federal Courts Committee of the New York County Lawyers Association, and was a member of the Board of Directors of that organization. He is an active member of the Association of the Bar of the City of New York, where he was Chair of the Senior Lawyers' Committee and served on its Task Force on the Role of Lawyers in Corporate Governance. He has also served on its Federal Courts, Federal Legislation, Securities Regulation, International Human Rights, and Corporation Law Committees. He also served as Chair of the Legal Referral Service Committee, a joint committee of the New York County Lawyers' Association and the Association of the Bar of the City of New York. He has been an active member of the American Bar Association, the Federal Bar Council, and the New York State Bar Association, where he has served as a member of the House of Delegates.

For more than 30 years, he has lectured on many topics including federal civil litigation, securities litigation, and corporate governance.

He is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the Second, Fifth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, and the Central District of Illinois.

Christopher J. McDonald, Partner
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Christopher J. McDonald focuses on prosecuting complex securities fraud cases. Chris also works with the Firm's Antitrust & Competition Litigation Practice, representing businesses, associations, and individuals injured by anticompetitive activities and unfair business practices.

In the securities field, Chris is currently lead counsel in *In re Amgen Inc. Securities Litigation*. Most recently, he was co-lead counsel in *In re Schering-Plough Corporation / ENHANCE Securities Litigation*, which resulted in a $473 million settlement, one of the largest securities class action settlement ever against a pharmaceutical company and among the ten largest recoveries ever in a securities class action that did not involve a financial reinstatement. He was also an integral part of the team that successfully litigated *In re Bristol-Myers Squibb Securities Litigation*, where Labaton Sucharow secured a $185 million settlement, as well as significant corporate governance reforms, on behalf of Bristol-Myers shareholders.

In the antitrust field, Chris was most recently co-lead counsel in *In re TriCor Indirect Purchaser Antitrust Litigation*, obtaining a $65.7 million settlement on behalf of the class.

Chris began his legal career at Patterson, Belknap, Webb & Tyler LLP, where he gained extensive trial experience in areas ranging from employment contract disputes to false advertising claims. Later, as a senior attorney with a telecommunications company, Chris advocated before government regulatory agencies on a variety of complex legal, economic, and public policy issues. Since joining Labaton Sucharow, Chris' practice has developed a focus on life sciences industries; his cases often involve pharmaceutical, biotechnology, or medical device companies accused of wrongdoing.

During his time at Fordham University School of Law, Chris was a member of the *Law Review*. He is currently a member of the New York State Bar Association and the Association of the Bar of the City of New York.

Chris is admitted to practice in the State of New York as well as before the United States Courts of Appeals for the Second, Third, Ninth, and Federal Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, and the Western District of Michigan.

Michael H. Rogers, Partner

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Michael H. Rogers focuses on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Mike is actively involved in prosecuting *In re Goldman Sachs, Inc. Securities Litigation*; *3226701 Canada, Inc. v. Qualcomm, Inc.*; *Public Employees' Retirement System of Mississippi v. Sprouts Farmers Markets, Inc.*; *Vancouver Asset Alumni Holdings, Inc. v. Daimler AG; Jyotindra Patel v. Cigna Corp.*; and *In re Virtus Investment Partners, Inc. Securities Litigation*.

Since joining Labaton Sucharow, Mike has been a member of the lead counsel teams in federal class actions against Countrywide Financial Corp. ($624 million settlement), HealthSouth Corp. ($671 million settlement), State Street ($300 million settlement), Mercury Interactive Corp. ($117.5 million settlement), and Computer Sciences Corp. ($97.5 million settlement).

Prior to joining Labaton Sucharow, Mike was an attorney at Kasowitz, Benson, Torres & Friedman LLP, where he practiced securities and antitrust litigation, representing international banking institutions bringing federal securities and other claims against major banks, auditing firms, ratings agencies and individuals in complex multidistrict litigation. He also represented an international chemical shipping firm in arbitration of antitrust and other claims against conspirator ship owners.

Mike began his career as an attorney at Sullivan & Cromwell, where he was part of Microsoft's defense team in the remedies phase of the Department of Justice antitrust action against the company.

Mike received a J.D., *magna cum laude*, from the Benjamin N. Cardozo School of Law, Yeshiva University, where he was a member of the *Cardozo Law Review*. He earned a B.A., *magna cum laude*, in Literature-Writing from Columbia University.

Mike is proficient in Spanish.

He is admitted to practice in the State of New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

Ira A. Schochet, Partner

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A seasoned litigator with three decades of experience, Ira A. Schochet focuses on class actions involving securities fraud. Ira has played a lead role in securing multimillion dollar recoveries and major corporate governance reforms in high-profile cases such as those against Countrywide Financial, Boeing, Massey Energy, Caterpillar, Spectrum Information Technologies, InterMune, and Amkor Technology.

A longtime leader in the securities class action bar, Ira represented one of the first institutional investors acting as a lead plaintiff in a post-Private Securities Litigation Reform Act case and ultimately obtained one of the first rulings interpreting the statute's intent provision in a manner favorable to investors. His efforts are regularly recognized by the courts, including in *Kamarasy v. Coopers & Lybrand*, where the court remarked on "the superior quality of the representation provided to the class." Further, in approving the settlement he achieved in the *InterMune* litigation, the court complimented Ira's ability to secure a significant recovery for the class in a very efficient manner, shielding the class from prolonged litigation and substantial risk.

Ira has also played a key role in groundbreaking cases in the field of merger and derivative litigation. In *In re Freeport-McMoRAn Copper &Gold Inc. Derivative Litigation*, he achieved the second largest derivative settlement in the Delaware Court of Chancery history, a $153.75 million settlement with an unprecedented provision of direct payments to stockholders by means of a special dividend. In another first-of-its-kind case, Ira was featured in *The AmLaw Litigation Daily* as Litigator of the Week for his work in *In re El Paso Corporation Shareholder Litigation*. The action alleged breach of fiduciary duties in connection with a merger transaction, including specific reference to wrongdoing by a conflicted financial advisory consultant, and resulted in a $110 million recovery for a class of shareholders and a waiver by the consultant of its fee.

From 2009-2011, Ira served as President of the National Association of Shareholder and Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms that practice class action and complex civil litigation. During this time, he represented the plaintiffs' securities bar in meetings with members of Congress, the Administration, and the SEC.

From 1996 through 2012, Ira served as Chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association. During his tenure, he has served on the Executive Committee of the Section and authored important papers on issues relating to class action procedure including revisions proposed by both houses of Congress and the Advisory Committee on Civil Procedure of the United States Judicial Conference. Examples include: "Proposed Changes in Federal Class Action Procedure," "Opting Out On Opting In," and "The Interstate Class Action Jurisdiction Act of 1999."

He also has lectured extensively on securities litigation at continuing legal education seminars. He has also been awarded an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New York as well as before the United States Court of Appeals for the Second, Fifth, and Ninth Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, the Central District of Illinois, the Northern District of Texas, and the Western District of Michigan.

Michael W. Stocker, Partner
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Representing institutional investors and consumers as co-chair of one of the Firm’s litigation teams, Michael W. Stocker prosecutes securities, data privacy, antitrust, and consumer class actions. He also serves as General Counsel to the Firm and provides strategic direction to the Case Development Team.

Mike played an instrumental part of the team that took on American International Group, Inc. and 21 other defendants. The Firm negotiated a recovery of more than $1 billion. He was also key in litigating *In re Bear Stearns Companies, Inc. Securities Litigation*, where the Firm secured a $275 million settlement with Bear Stearns, plus a $19.9 million settlement with the company's outside auditor, Deloitte & Touche LLP. In a case against one of the world's largest pharmaceutical companies, *In re Abbott Laboratories Norvir Antitrust Litigation*, Mike played a leadership role in litigating a landmark action arising at the intersection of antitrust and intellectual property law.

He currently spearheads several securities class actions, including *In re Eros International Securities Litigation*, a case where we exposed a drama of fraud and nepotism involving a leading Bollywood film production/distribution company; *Murphy v. Precision Castparts Corp.*, a sprawling class action against a major industrial goods company in the aerospace and defense industry; *Shoemaker v. Cardiovascular Systems, Inc.*, a case against a manufacturer of medical devices that recently settled a significant qui tam action arising from the same conduct; and *In re CPI Card Group Inc. Securities Litigation*, a class action against a maker of chip-enabled financial cards that allegedly misled investors by overselling its product prior to a $172.5 million IPO.

With the rise of cybersecurity risks in corporate America, Mike has leveraged his experience to advise boards and investors on the possible implications of data breaches for corporate fiduciaries. Most recently, Mike chaired a Practising Law Institute panel advising regulators and corporate counsel regarding widespread data breaches and the potential exposure of management. He has been selected to serve as one of three panelists for Skytop Strategies' Cyber Risk Governance Conference panel to discuss issues related to cybersecurity and securities litigation, and will serve as panelist in a teleconference that will address confronting the challenge of cybersecurity from an investor's perspective, hosted by the Council of Institutional Investors. Mike also recently co-authored "Cyber Threats and Securities Litigation: The Emerging Landscape" in *Thomson Reuters Westlaw Journal Securities Litigation & Regulation*.

Mike has also been recognized by *The Legal 500* in the field of Securities, M&A, and Antitrust Litigation and was named a Securities Litigation Star by *Benchmark Litigation*.

Earlier in his career, Mike served as a senior staff attorney with the United States Court of Appeals for the Ninth Circuit and completed a legal externship with federal Judge Phyllis J. Hamilton, currently sitting in the U.S. District Court for the Northern District of California. He earned a B.A. from the University of California, Berkeley, a Master of Criminology from the University of Sydney, and a J.D. from University of California's Hastings College of the Law.

He is an active member of the National Association of Public Pension Plan Attorneys (NAPPA), the New York State Bar Association, and the Association of the Bar of the City of New York. Since 2013, Mike has served on *Law360's* Securities Editorial Advisory Board, advising on timely and interesting topics warranting media coverage. For two consecutive years (2015-2016), the Council of Institutional Investors has appointed Mike to the Markets Advisory Council, which provides input on legal, financial reporting, and investment market trends. In 2016, he was elected as a member of The American Law Institute, the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law.

He is admitted to practice in the States of California and New York as well as before the United States Courts of Appeals for the Second, Eighth, and Ninth Circuits, and the United States District Courts for the Northern and Central Districts of California, and the Southern and Eastern Districts of New York.

Carol C. Villegas, Partner
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Carol C. Villegas focuses on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, she is litigating cases against Nimble Storage, Liquidity Services, Inc., and Advanced Micro Devices, where she is the lead discovery attorney.

Carol's skillful handling of discovery work, development of innovative case theories in complex cases, and adept ability during oral argument has been recognized by her peers and has earned her recent accolades from the *New York Law Journal*, named a Top Woman in Law, as well as a Rising Star by *Benchmark Litigation*.

Carol played a pivotal role in securing favorable settlements for investors from Aeropostale, a leader in the international retail apparel industry, ViroPharma Inc., a biopharmaceutical company, and Vocera, a healthcare communications provider. A true advocate for her clients, Carol's argument in the case against Vocera resulted in a ruling from the bench, denying defendants motion to dismiss in that case.

Prior to joining Labaton Sucharow, Carol served as the Assistant District Attorney in the Supreme Court Bureau for the Richmond County District Attorney's office, where she took several cases to trial. She began her career as an associate at King & Spalding LLP where she worked as a federal litigator in the Intellectual Property practice group.

Carol received a J.D. from New York University School of Law, and she was the recipient of The Irving H. Jurow Achievement Award for the Study of Law and selected to receive the Association of the Bar of the City of New York Minority Fellowship. Carol served as the Staff Editor, and later the Notes Editor, of the *Environmental Law Journal*. She earned a B.A., with honors, in English and Politics from New York University.

Carol is a member of the Association of the Bar of the City of New York and a member of the Executive Council for the New York State Bar Association's Committee on Women in the Law. She also devotes time to pro bono work with the Securities Arbitration Clinic at Brooklyn Law School and is a member of the Firm's Women's Networking and Mentoring Initiative.

Carol is admitted to practice in the States of New York and New Jersey as well as before the United States Courts of Appeals for the Ninth, Tenth, and Eleventh Circuits and the United States District Courts for the Southern and Eastern Districts of New York, the District of New Jersey, the District of Colorado, and the Eastern District of Wisconsin.

She is fluent in Spanish.

Ned Weinberger, Partner

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Ned Weinberger focuses on representing investors in corporate governance and transactional matters, including class action and derivative litigation. Ned was recognized by *Chambers & Partners USA* in the Delaware Court of Chancery and was previously named an "Associate to Watch," noting his impressive range of practice areas.

Recently, Ned was part of a team that achieved a $12 million recovery on behalf of stockholders of ArthroCare Corporation in a case alleging breaches of fiduciary duty by the ArthroCare board of directors and other defendants in connection with Smith & Nephew, Inc. acquisition of ArthroCare.

Prior to joining Labaton Sucharow, Ned was a litigation associate at Grant & Eisenhofer P.A. where he gained substantial experience in all aspects of investor protection, including representing shareholders in matters relating to securities fraud, mergers and acquisitions, and alternative entities. Representative of Ned's experience in the Delaware Court of Chancery is *In re Barnes & Noble Stockholders Derivative Litigation*, in which Ned assisted in obtaining approximately $29 million in settlements on behalf of Barnes & Noble investors. Ned was also part of the litigation team in *In re Clear Channel Outdoor Holdings, Inc. Shareholder Litigation*, the settlement of which provided numerous benefits for Clear Channel Outdoor Holdings and its shareholders, including, among other things, a $200 million cash dividend to the company's shareholders.

Ned received his J.D. from the Louis D. Brandeis School of Law at the University of Louisville where he served on the *Journal of Law and Education*. He earned his B.A. in English Literature, *cum laude*, at Miami University.

Ned is admitted to practice in the States of Delaware, Pennsylvania, and New York as well as before the United States District Court for the District of Delaware.

Nicole M. Zeiss, Partner

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A litigator with nearly two decades of experience, Nicole M. Zeiss leads the Settlement Group at Labaton Sucharow, analyzing the fairness and adequacy of the procedures used in class action settlements. Her practice includes negotiating and documenting complex class action settlements and obtaining the required court approval of the settlements, notice procedures, and payments of attorneys' fees.

Over the past year, Nicole was actively involved in finalizing settlements with Massey Energy Company ($265 million), Fannie Mae ($170 million), and Hewlett-Packard Company ($57 million), among others.

Nicole was part of the Labaton Sucharow team that successfully litigated the $185 million settlement in *In re Bristol-Myers Squibb Securities Litigation*, and she played a significant role in *In re Monster Worldwide, Inc. Securities Litigation* ($47.5 million settlement). Nicole also litigated on behalf of investors who have been damaged by fraud in the telecommunications, hedge fund, and banking industries.

Prior to joining Labaton Sucharow, Nicole practiced in the area of poverty law at MFY Legal Services. She also worked at Gaynor & Bass practicing general complex civil litigation, particularly representing the rights of freelance writers seeking copyright enforcement.

Nicole maintains a commitment to pro bono legal services by continuing to assist mentally ill clients in a variety of matters—from eviction proceedings to trust administration.

She received a J.D. from the Benjamin N. Cardozo School of Law, Yeshiva University, and earned a B.A. in Philosophy from Barnard College.

Nicole is a member of the Association of the Bar of the City of New York.

She is admitted to practice in the State of New York as well as before the United States Court of Appeals for the Ninth Circuit, and the United States District Courts for the Southern and Eastern Districts of New York, and the District of Colorado.

Marisa N. DeMato, Of Counsel

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With more than 12 years of securities litigation experience, Marisa N. DeMato advises leading pension funds and other institutional investors in the United States and Canada on issues related to corporate fraud in the U.S. securities markets. Her work focuses on complex securities class actions, counseling clients on best practices in the corporate governance of publicly traded companies, and advising foundations and endowment funds on monitoring the well-being of their investments. Marisa also advises municipalities and health plans on issues related to U.S. antitrust law and potential violations.

Marisa recently served as legal adviser to the West Palm Beach Police Pension Fund in *In re Walgreen Co. Derivative Litigation*, which obtained significant corporate governance reforms and required Walgreens to extend its Drug Enforcement Agency commitments as part of the settlement related to the company's Controlled Substances Act violation.

Prior to joining Labaton Sucharow, Marisa devoted a substantial portion of her time litigating securities fraud, derivative, mergers and acquisitions, consumer fraud, and qui tam actions. During her eight years as a litigator, Marisa was an integral member of the legal teams that helped secure multimillion dollar settlements on behalf of aggrieved investors and defrauded consumers.

Marisa has been invited to speak on shareholder litigation-related matters, frequently lecturing on topics pertaining to securities fraud litigation, fiduciary responsibility, and corporate governance issues. Most recently, she testified before the Texas House of Representatives Pensions Committee to address the changing legal landscape public pensions have faced since the Supreme Court's *Morrison* decision and highlighted the best practices for non-U.S. investment recovery. During the 2008 financial crisis, Marisa spoke widely on the subprime mortgage crisis and its disastrous effect on the pension fund community at regional and national conferences, and addressed the crisis' global implications and related fraud to institutional investors internationally in Italy, France, and the United Kingdom. Marisa has also presented on issues pertaining to the federal regulatory response to the 2008 crisis, including implications of the Dodd-Frank legislation and the national debate on executive compensation and proxy access for shareholders.

In the spring of 2006, Marisa was selected over 250,000 applicants to appear on the sixth season of *The Apprentice*, which aired on January 7, 2007, on NBC. As a result of her role on *The Apprentice*, Marisa has appeared in numerous news media outlets, such as *The Wall Street Journal*, *People* magazine, and various national legal journals.

Marisa is admitted to practice in the State of Florida and the District of Columbia as well as before the United States District Courts for the Northern, Middle, and Southern Districts of Florida.

Joseph H. Einstein, Of Counsel
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A seasoned litigator, Joseph H. Einstein represents clients in complex corporate disputes, employment matters, and general commercial litigation. He has litigated major cases in the state and federal courts and has argued many appeals, including appearing before the United States Supreme Court.

His experience encompasses extensive work in the computer software field including licensing and consulting agreements. Joe also counsels and advises business entities in a broad variety of transactions.

Joe serves as an official mediator for the United States District Court for the Southern District of New York. He is an arbitrator for the American Arbitration Association and FINRA. Joe is a former member of the New York State Bar Association Committee on Civil Practice Law and Rules and the Council on Judicial Administration of the Association of the Bar of the City of New York. He currently is a member of the Arbitration Committee of the Association of the Bar of the City of New York.

During Joe's time at New York University School of Law, he was a Pomeroy and Hirschman Foundation Scholar, and served as an Associate Editor of the *Law Review*.

Joe has been awarded an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the First and Second Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

Christine M. Fox, Of Counsel
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Christine M. Fox focuses on prosecuting complex securities fraud cases on behalf of institutional investors. Currently, Christine is actively involved in prosecuting cases against Nu Skin Enterprises, Inc., Conn's, Inc., Intuitive Surgical, and Horizon Pharma.

Prior to joining Labaton Sucharow, Christine worked at a national litigation firm focusing on securities, antitrust, and consumer litigation in state and federal courts.

Christine received her J.D. from the University of Michigan Law School and her B.A. from Cornell University. She is a member of the American Bar Association, the New York State Bar Association, and the Puerto Rican Bar Association.

Christine is conversant in Spanish.

Christine is admitted to the practice in the State of New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

Mark Goldman, Of Counsel
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Mark S. Goldman has 30 years of experience in commercial litigation, primarily litigating class actions involving securities fraud, consumer fraud, and violations of federal and state antitrust laws.

Mark is currently prosecuting securities fraud claims on behalf of institutional and individual investors against the manufacturer of communications systems used by hospitals that allegedly misrepresented the impact of the ACA and budget sequestration of the company's sales, and a multi-layer marketing company that allegedly misled investors about its business structure in China. Mark is also participating in litigation brought against international air cargo carriers charged with conspiring to fix fuel and security surcharges, and domestic manufacturers of various auto parts charged with price-fixing.

Mark successfully litigated a number of consumer fraud cases brought against insurance companies challenging the manner in which they calculated life insurance premiums. He also prosecuted a number of insider trading cases brought against company insiders who, in violation of Section 16(b) of the Securities Exchange Act, engaged in short swing trading. In addition, Mark participated in the prosecution of *In re AOL Time Warner Securities Litigation*, a massive securities fraud case that settled for $2.5 billion.

He is admitted to practice in the State of Pennsylvania, the Third, Ninth, and Eleventh Circuits of the U.S. Court of Appeals, the Eastern District of Pennsylvania, the District of Colorado, and the Eastern District of Wisconsin.

Lara Goldstone, Of Counsel
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Lara Goldstone advises pension funds and other institutional investors on issues related to corporate fraud in the U.S. securities markets. Before joining Labaton Sucharow, Lara worked as a legal intern in the Larimer County District Attorney's Office and the Jefferson County District Attorney's Office.

Prior to her legal career, Lara worked at Industrial Labs where she worked closely with Federal Drug Administration standards and regulations. In addition, she was a teacher in Irvine, California.

Lara received a J.D. from University of Denver Sturm College of Law, where she was a judge of The Providence Foundation of Law & Leadership Mock Trial and a competitor of the Daniel S. Hoffman Trial Advocacy Competition. She earned a B.A. from The George Washington University where she was a recipient of a Presidential Scholarship for academic excellence. She earned a B.A. from The George Washington University where she was a recipient of a Presidential Scholarship for academic excellence.

Lara is admitted to practice in the State of Colorado.

Domenico Minerva, Of Counsel
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Domenico "Nico" Minerva advises leading pension funds and other institutional investors on issues related to corporate fraud in the U.S. securities markets. A former financial advisor, his work focuses on securities, antitrust, and consumer class action litigation and shareholder derivative litigation, representing Taft-Hartley and public pension funds across the country.

Nico's extensive experience litigating securities cases includes those against global securities systems company Tyco and co-defendant PricewaterhouseCoopers (*In re Tyco International Ltd., Securities Litigation*), which resulted in a $3.2 billion settlement, achieving the largest single defendant settlement in post-PSLRA history. He also has counseled companies and institutional investors on corporate governance reform.

Nico has also done substantial work in antitrust class actions in pay-for-delay or "product hopping" cases in which pharmaceutical companies allegedly obstructed generic competitors in order to preserve monopoly profits on patented drugs, including *Mylan Pharmaceuticals Inc. v. Warner Chilcott Public Limited Co.*, *In re Lidoderm Antitrust Litigation*, *In re Solodyn (MinocyclineHydrochloride) Antitrust Litigation*, *In re Niaspan Antitrust Litigation*, *In re Aggrenox Antitrust Litigation*, and *Sergeants Benevolent Association Health & Welfare Fund et al. v. Actavis PLC et al.* In an anticompetitive antitrust matter, *The Infirmary LLC vs. National Football League Inc et al.*, Nico played a part in challenging an exclusivity agreement between the NFL and DirectTV over the service's "NFL Sunday Ticket" package, and he litigated on behalf of indirect purchasers of potatoes in a case alleging that growers conspired to control and suppress the nation's potato supply *In re Fresh and Process Potatoes Antitrust Litigation*.

On behalf of consumers, Nico represented a plaintiff in *In Re ConAgra Foods Inc.* over its claims that Wesson-brand vegetable oils are 100 percent natural.

An accomplished speaker, Nico has given numerous presentations to investors on a variety of topics of interest regarding corporate fraud, wrongdoing, and waste. He is also an active member of the National Association of Public Pension Plan Attorneys (NAPPA).

Nico obtained his J.D. from Tulane University Law School, where he also completed a two-year externship with the Honorable Kurt D. Engelhardt of the United States District Court for the Eastern District of Louisiana. He earned his B.S. in Business Administration from the University of Florida.

Nico is admitted to practice in the state courts of New York and Delaware, as well as the United States District Courts for the Eastern and Southern Districts of New York.

Barry M. Okun, Of Counsel

bokun@labaton.com

Barry M. Okun is a seasoned trial and appellate lawyer with more than 30 years of experience in a broad range of commercial litigation. Currently, Barry is actively involved in prosecuting *In re Goldman Sachs Group, Inc. Securities Litigation*. Most recently, he was part of the Labaton Sucharow team that recovered more than $1 billion in the eight-year litigation against American International Group, Inc. Barry also played a key role representing the Successor Liquidating Trustee of Lipper Convertibles LP and Lipper Fixed Income Fund LP, failed hedge funds, in actions against the Fund's former auditors, overdrawn limited partners, and management team. He helped recover $5.2 million from overdrawn limited partners and $30 million from the Fund's former auditors.

Barry has litigated several leading commercial law cases, including the first case in which the United States Supreme Court ruled on issues relating to products liability. He has argued appeals before the United States Court of Appeals for the Second and Seventh Circuits and the Appellate Divisions of three out of the four judicial departments in New York State. Barry has appeared in numerous trial courts throughout the country.

He received a J.D., *cum laude*, from Boston University School of Law, where he was the Articles Editor of the *Law Review*. Barry earned a B.A., with a citation for academic distinction, in History from the State University of New York at Binghamton.

Barry has received an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the First, Second, Seventh, and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

Richard T. Joffe, Senior Counsel

rjoffe@labaton.com

Richard Joffe's practice focuses on class action litigation, including securities fraud, antitrust, and consumer fraud cases. Since joining the Firm, Rich has represented such varied clients as institutional purchasers of corporate bonds, Wisconsin dairy farmers, and consumers who alleged they were defrauded when they purchased annuities. He played a key role in shareholders obtaining a $303 million settlement of securities claims against General Motors and its outside auditor.

Prior to joining Labaton Sucharow, Rich was an associate at Gibson, Dunn & Crutcher LLP, where he played a key role in obtaining a dismissal of claims against Merrill Lynch & Co. and a dozen other of America's largest investment banks and brokerage firms, who, in *Friedman v. Salomon/Smith Barney, Inc.*, were alleged to have conspired to fix the prices of initial public offerings.

Rich also worked as an associate at Fried, Frank, Harris, Shriver & Jacobson where, among other things, in a case handled pro bono, he obtained a successful settlement for several older women who alleged they were victims of age and sex discrimination when they were selected for termination by New York City's Health and Hospitals Corporation during a city-wide reduction in force.

Long before becoming a lawyer, Rich was a founding member of the internationally famous rock and roll group, Sha Na Na.

He is admitted to practice in the State of New York as well as before the United States Courts of Appeals for the Second, Third, Ninth and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

Exhibit 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION	:	Case No. 15-cv-7759(LAK)
This Matter Relates To:	:	
All Actions.	:	

DECLARATION OF DAVID A. ROSENFELD FILED ON BEHALF OF ROBBINS GELLER RUDMAN & DOWD LLP IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES

I, DAVID A. ROSENFELD, declare as follows pursuant to 28 U.S.C. §1746:

1. I am a member of the firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or the "Firm"). I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses/charges ("expenses") in connection with services rendered in the above-entitled action (the "Action") from inception through December 21, 2016.

2. My Firm served as counsel of record for plaintiff Howard Randall, Trustee, Howard & Gale Randall Trust FBO and participated in various aspects of the prosecution and settlement of the Action, which are explained in the Declaration of Ira A. Schochet in Support of Lead Plaintiff's Motion for Approval of Proposed Class Action Settlement and Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses, filed herewith. More specifically, my Firm spearheaded the initial case strategy and drafted and filed the initial complaint, which included conducting an investigation of the alleged wrongdoing and developing the legal theories in the case. As part of this process, we reviewed SEC filings by Fifth Street Finance Corp. (the "Company") and by its external asset manager (FSAM), as well as related media, conference call transcripts, analyst reports and stock and trading data. We also advised Mr. Randall throughout the Action and consulted with Lead Counsel in its development of the amended complaint. The case is one of the first-of-its-kind in the business development company ("BDC") industry, and required the development of novel legal theories and the review and analysis of complex fund portfolio disclosures. Our attorneys worked closely with in-house forensic accountants to detect problems in the Company's performance and related financial disclosures and develop the theory of wrongdoing alleged in the initial complaint.

3. The information in this declaration regarding the Firm's time and expenses is taken from time and expense printouts and supporting documentation prepared and/or maintained by the

Firm in the ordinary course of business. I am the partner who oversaw and/or conducted the day-to-day activities in the Action and I reviewed these printouts (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the Action. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. Based on this review and the adjustments made, I believe that the time reflected in the Firm's lodestar calculation and the expenses for which payment is sought herein are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action. In addition, I believe that these expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff member of my firm who was involved in the prosecution of the Action, and the lodestar calculation based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my Firm, which are available at the request of the Court. Time expended in preparing this application for fees and payment of expenses has not been included in this request.

5. After the reductions referred to above, the number of hours spent on the Action by the Firm is 991.75. A breakdown of the lodestar is provided in the attached Exhibit A. The lodestar amount for attorney/paraprofessional time based on the Firm's current rates is $393,644.75. The

hourly rates shown in Exhibit A are the usual and customary rates set by the Firm for each individual.

6. Attached hereto as Exhibit B is a categorized hours and lodestar chart breaking down Robbins Geller's lodestar from the inception of the Action through December 21, 2016.

7. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit A are my firm's usual and customary billing rates, which have been accepted in other securities or shareholder litigations. My firm's lodestar figures are based upon the Firm's billing rates, which rates do not include charges for expenses items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

8. My firm seeks an award of $7,049.29 in expenses/charges in connection with the prosecution of the Action. They are broken down as follows:

Expenses/Charges - Inception through October 31, 2016

CATEGORY	TOTAL
Filing, Witness and Other Fees	$ 2,042.90
Class Action Notices/Business Wire	1,350.00
Telephone, Facsimile	8.17
Messenger, Overnight Delivery	48.19
Photocopies	1.80
Online Legal and Financial Research	3,598.23
TOTAL	**$ 7,049.29**

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

(a) Filing, Witness and Other Court Fees: $2,042.90. These costs have been paid to the court for filing fees and to attorney service firms or individuals who either: (i) served process of the complaint or subpoenas, or (ii) obtained copies of court documents for plaintiffs. These costs were necessary to the prosecution of the case to file the complaint, to serve the complaint and subpoenas, and to investigate the facts. The vendors who were paid for these services are set forth below.

DATE	***VENDOR***	***DESCRIPTION***
10/02/15	Clerk of the Court	10/01/15 - filing fee for initial complaint
10/05/15	Class Action Research & Litigation Support Services, Inc.	Substituted service: Bernard Berman; summons in a civil action; class action complaint Personal service: Alexander Frank; summons in a civil action; class action complaint Returned not served: Todd Owens Substituted service: Richard Petrocelli; summons in a civil action; class action complaint Substituted service: Leonard Tannenbaum; summons in a civil action; class action complaint
10/06/15	Class Action Research & Litigation Support Services, Inc.	Personal service: Fifth Street Finance Corp.; summons in a civil action; class action complaint Returned not served: Iveiln Dimitrov
01/29/16	Keating & Walker Attorney Service, Inc.	Filed documents
10/28/16	Clerk of the Court	10/27/16 - *Pro Hac Vice* admission fee

(b) Online Legal and Financial Research Fees: $3,598.23. These included vendors such as Courtlink, LexisNexis Products, PACER, Thomson Financial, and Westlaw. These databases were used to obtain access to SEC filings, factual databases, legal research and for cite-checking of briefs. This expense represents the expenses incurred by Robbins Geller for use of these services in connection with this Litigation. The charges for these vendors vary depending upon the type of services requested. For example, Robbins Geller has flat-rate contracts with some of these providers for use of their services. When Robbins Geller utilizes online services provided by a vendor with a flat-rate contract, access to the service is by a billing code entered for the specific case being litigated. At the end of each billing period in which such service is used, Robbins Geller's costs for such services are allocated to specific cases based on the percentage of use in connection with that specific case in the billing period. As a result of the contracts negotiated by Robbins Geller with certain providers, the Class enjoys substantial savings in comparison with the "market-rate" for *a la carte* use of such services which some law firms pass on to their clients. For example, the "market rate" charged to others by LexisNexis for the types of services used by Robbins Geller is more expensive than the rates negotiated by Robbins Geller.

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

11. The identification and background of my firm and its partners is attached hereto as Exhibit C.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of January, 2017, at Melville, New York.

DAVID A. ROSENFELD

EXHIBIT A

EXHIBIT A

Time Report - Inception through December 21, 2016

NAME		***HOURS***	***RATE***	***LODESTAR***
Alvarado, Darryl	(P)	8.00	645	5,160.00
Rosenfeld, David	(P)	28.50	725	20,662.50
Walton, David	(P)	17.80	890	15,842.00
Cochran, Brian	(A)	196.35	435	85,412.25
Schwartz, Andrew	(A)	170.25	425	72,356.25
Feldman, James	(FA)	222.00	500	111,000.00
Rudolph, Andrew	(FA)	22.75	645	14,673.75
Topp, Jennifer	(EA)	50.65	335	16,967.75
Uralets, Boris	(EA)	34.00	415	14,110.00
Roelen, Scott	(RA)	12.20	295	3,599.00
Torres, Michael	(LS)	12.25	360	4,410.00
Paralegals		45.00	280-295	13,001.25
Shareholder Relations		172.00	90-100	16,450.00
TOTAL		***991.75***		***$ 393,644.75***

(P) Partner
(A) Associate
(FA) Forensic Accountant
(EA) Economic Analyst
(RA) Research Analyst
(LS) Litigation Support

EXHIBIT B

EXHIBIT B

IN RE FIFTH STREET FINANCE CORP. SEC. LITIG.,
No. 15-cv-7759 LAK (S.D.N.Y.)

LODESTAR REPORT BY CATEGORY

FIRM: ROBBINS GELLER RUDMAN & DOWD LLP
REPORTING PERIOD: INCEPTION THROUGH DECEMBER 21, 2016

CATEGORY OF WORK	TOTAL HOURS	TOTAL LODESTAR
10 – Initial Research and Factual Investigation	263.95	$ 115,990.00
20 – Pleadings	300.25	140,124.50
30 – Defendant/3rd Party Discovery	97.25	41,331.25
40 – Plaintiff Discovery	0	0
50 – Motions and Legal Research	103.75	53,706.25
60 – Court Appearances	0	0
70 – Experts	0	0
80 – Mediation	0	0
90 – Settlement	4.25	1,921.25
100 – Litigation Strategy and Analysis	25.25	11,141.25
110 – Case Management	197.05	29,430.25
TOTALS	**991.75**	**$ 393,644.75**

EXHIBIT C

Firm Resume

Robbins Geller Rudman & Dowd LLP

Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or the "Firm") is a 200-lawyer firm with offices in Atlanta, Boca Raton, Chicago, Manhattan, Melville, Nashville, San Diego, San Francisco, Philadelphia and Washington, D.C. (www.rgrdlaw.com). The Firm is actively engaged in complex litigation, emphasizing securities, consumer, antitrust, insurance, healthcare, human rights and employment discrimination class actions, as well as intellectual property disputes. The Firm's unparalleled experience and capabilities in these fields are based upon the talents of its attorneys, who have successfully prosecuted thousands of class action lawsuits and numerous individual cases, recovering billions of dollars.

This successful track record stems from our experienced attorneys, including many who came to the Firm from federal or state law enforcement agencies. The Firm also includes several dozen former federal and state judicial clerks.

The Firm currently represents more institutional investors, including public and multi-employer pension funds and domestic and international financial institutions, in securities and corporate litigation than any other plaintiffs' securities law firm in the United States.

The Firm is committed to practicing law with the highest level of integrity in an ethical and professional manner. We are a diverse firm with lawyers and staff from all walks of life. Our lawyers and other employees are hired and promoted based on the quality of their work and their ability to treat others with respect and dignity.

We strive to be good corporate citizens and work with a sense of global responsibility. Contributing to our communities and environment is important to us. We often take cases on a pro bono basis and are committed to the rights of workers, and to the extent possible, we contract with union vendors. We care about civil rights, workers' rights and treatment, workplace safety and environmental protection. Indeed, while we have built a reputation as the finest securities and consumer class action law firm in the nation, our lawyers have also worked tirelessly in less high-profile, but no less important, cases involving human rights and other social issues.

Practice Areas and Services

Securities Fraud

As recent corporate scandals demonstrate clearly, it has become all too common for companies and their executives – often with the help of their advisors, such as bankers, lawyers and accountants – to manipulate the market price of their securities by misleading the public about the company's financial condition or prospects for the future. This misleading information has the effect of artificially inflating the price of the company's securities above their true value. When the underlying truth is eventually revealed, the prices of these securities plummet, harming those innocent investors who relied upon the company's misrepresentations.

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Robbins Geller is the leader in the fight to protect investors from corporate securities fraud. We utilize a wide range of federal and state laws to provide investors with remedies, either by bringing a class action on behalf of all affected investors or, where appropriate, by bringing individual cases.

The Firm's reputation for excellence has been repeatedly noted by courts and has resulted in the appointment of Firm attorneys to lead roles in hundreds of complex class-action securities and other cases. In the securities area alone, the Firm's attorneys have been responsible for a number of outstanding recoveries on behalf of investors. Currently, Robbins Geller attorneys are lead or named counsel in hundreds of securities class action or large institutional-investor cases. Some notable current and past cases include:

- *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.). Robbins Geller attorneys and lead plaintiff The Regents of the University of California aggressively pursued numerous defendants, including many of Wall Street's biggest banks, and successfully obtained settlements in excess of ***$7.2 billion*** for the benefit of investors. ***This is the largest aggregate class action settlement not only in a securities class action, but in class action history.***

- *Jaffe v. Household Int'l, Inc.*, No. 02-C-05893 (N.D. Ill.). As sole lead counsel, Robbins Geller obtained a record-breaking settlement of $1.575 billion after 14 years of litigation, including a six-week jury trial in 2009 that resulted in a securities fraud verdict in favor of the class. In 2015, the Seventh Circuit Court of Appeals upheld the jury's verdict that defendants made false or misleading statements of material fact about the company's business practices and financial results, but remanded the case for a new trial on the issue of whether the individual defendants "made" certain false statements, whether those false statements caused plaintiffs' losses, and the amount of damages. The parties reached an agreement to settle the case just hours before the retrial was scheduled to begin on June 6, 2016. The $1.575 billion settlement, approved in October 2016, is the largest ever following a securities fraud class action trial, the largest securities fraud settlement in the Seventh Circuit and the seventh-largest settlement ever in a post-PSLRA securities fraud case. According to published reports, the case was just the seventh securities fraud case tried to a verdict since the passage of the PSLRA.

- *In re UnitedHealth Grp. Inc. PSLRA Litig.*, No. 06-CV-1691 (D. Minn.). Robbins Geller represented the California Public Employees' Retirement System ("CalPERS") and demonstrated its willingness to vigorously advocate for its institutional clients, even under the most difficult circumstances. The Firm obtained an $895 million recovery on behalf of the UnitedHealth shareholders, and former CEO William A. McGuire paid $30 million and returned stock options representing more than three million shares to the shareholders, bringing the total recovery for the class to over $925 million, the largest stock option backdating recovery ever, and ***a recovery that is more than four times larger than the next largest options backdating recovery***. Moreover, Robbins Geller obtained unprecedented corporate governance reforms, including election of a shareholder-nominated member to the company's board of directors, a mandatory holding period for shares acquired by executives via option exercise, and executive compensation reforms that tie pay to performance.

- *Alaska Elec. Pension Fund v. CitiGroup, Inc. (In re WorldCom Sec. Litig.)*, No. 03 Civ. 8269 (S.D.N.Y.). Robbins Geller attorneys represented more than 50 private and public institutions that opted out of the class action case and sued WorldCom's bankers, officers and directors, and auditors in courts around the country for losses related to WorldCom bond offerings from 1998 to 2001. The Firm's attorneys recovered more than $650 million for their clients, substantially more than they would have recovered as part of the class.

- *Luther v. Countrywide Fin. Corp.*, No. 12-cv-05125 (C.D. Cal.). Robbins Geller attorneys secured a $500 million settlement for institutional and individual investors in what is the largest RMBS purchaser class action settlement in history, and one of the largest class action securities settlements of all time. The unprecedented settlement resolves claims against Countrywide and Wall Street banks that issued the securities. The action was the first securities class action case filed against originators and Wall Street banks as a result of the credit crisis. As co-lead counsel Robbins Geller forged through six years of hard-fought litigation, oftentimes litigating issues of first impression, in order to secure the landmark settlement for its clients and the class.

- *In re Wachovia Preferred Sec. & Bond/Notes Litig.*, No. 09-cv-06351 (S.D.N.Y.). On behalf of investors in bonds and preferred securities issued between 2006 and 2008, Robbins Geller and co-counsel obtained a significant settlement with Wachovia successor Wells Fargo & Company and Wachovia auditor KPMG LLP. ***The total settlement – $627 million – is one of the largest credit-crisis settlements involving Securities Act claims and one of the 20 largest securities class action recoveries in history.*** The settlement is also one of the biggest securities class action recoveries arising from the credit crisis. The lawsuit focused on Wachovia's exposure to "pick-a-pay" loans, which the bank's offering materials said were of "pristine credit quality," but which were actually allegedly made to subprime borrowers, and which ultimately massively impaired the bank's mortgage portfolio. Robbins Geller served as co-lead counsel representing the City of Livonia Employees' Retirement System, Hawaii Sheet Metal Workers Pension Fund, and the investor class.

- *In re Cardinal Health, Inc. Sec. Litig.*, No. C2-04-575 (S.D. Ohio). As sole lead counsel representing Cardinal Health shareholders, Robbins Geller obtained a recovery of $600 million for investors on behalf of the lead plaintiffs, Amalgamated Bank, the New Mexico State Investment Council, and the California Ironworkers Field Trust Fund. At the time, the $600 million settlement was the tenth-largest settlement in the history of securities fraud litigation and is the largest-ever recovery in a securities fraud action in the Sixth Circuit.

- *AOL Time Warner Cases I & II*, JCCP Nos. 4322 & 4325 (Cal. Super. Ct., Los Angeles Cty.). Robbins Geller represented The Regents of the University of California, six Ohio state pension funds, Rabo Bank (NL), the Scottish Widows Investment Partnership, several Australian public and private funds, insurance companies, and numerous additional institutional investors, both domestic and international, in state and federal court opt-out litigation stemming from Time Warner's disastrous 2001 merger with Internet high flier America Online. After almost four years of litigation involving extensive discovery, the Firm secured combined settlements for its opt-out clients totaling over $629 million just weeks before The Regents' case pending in California state court was scheduled to go to trial. The Regents' gross recovery of $246 million is the largest individual opt-out securities recovery in history.

- *In re HealthSouth Corp. Sec. Litig.*, No. CV-03-BE-1500-S (N.D. Ala.). As court-appointed co-lead counsel, Robbins Geller attorneys obtained a combined recovery of $671 million from HealthSouth, its auditor Ernst & Young, and its investment banker, UBS, for the benefit of stockholder plaintiffs. The settlement against HealthSouth represents one of the larger settlements in securities class action history and is considered among the top 15 settlements achieved after passage of the PSLRA. Likewise, the settlement against Ernst & Young is one of the largest securities class action settlements entered into by an accounting firm since the passage of the PSLRA.

- *Jones v. Pfizer Inc.*, No. 1:10-cv-03864 (S.D.N.Y.). Lead plaintiff Stichting Philips Pensioenfonds obtained a $400 million settlement on behalf of class members who purchased Pfizer Inc. common stock during the January 19, 2006 to January 23, 2009 class period. The settlement against Pfizer resolves accusations that it misled investors about an alleged off-label drug marketing scheme. As sole lead counsel, Robbins Geller attorneys helped achieve this exceptional result after five years of hard-fought litigation against the toughest and the brightest members of the securities defense bar by litigating this case all the way to trial.

- *In re Dynegy Inc. Sec. Litig.*, No. H-02-1571 (S.D. Tex.). As sole lead counsel representing The Regents of the University of California and the class of Dynegy investors, Robbins Geller attorneys obtained a combined settlement of $474 million from Dynegy, Citigroup, Inc. and Arthur Andersen LLP for their involvement in a clandestine financing scheme known as Project Alpha. Most notably, the settlement agreement provides that Dynegy will appoint two board members to be nominated by The Regents, which Robbins Geller and The Regents believe will benefit all of Dynegy's stockholders.

- *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, No. 01-cv-1451 (D. Colo.). In July 2001, the Firm filed the initial complaint in this action on behalf of its clients, long before any investigation into

Qwest's financial statements was initiated by the SEC or Department of Justice. After five years of litigation, lead plaintiffs entered into a settlement with Qwest and certain individual defendants that provided a $400 million recovery for the class and created a mechanism that allowed the vast majority of class members to share in an additional $250 million recovered by the SEC. In 2008, Robbins Geller attorneys recovered an additional $45 million for the class in a settlement with defendants Joseph P. Nacchio and Robert S. Woodruff, the CEO and CFO, respectively, of Qwest during large portions of the class period.

- *Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co.*, No. 1:09-cv-03701 (S.D.N.Y.). Robbins Geller attorneys served as lead counsel for a class of investors and obtained court approval of a $388 million recovery in nine 2007 residential mortgage-backed securities offerings issued by J.P. Morgan. The settlement represents, on a percentage basis, the largest recovery ever achieved in an MBS purchaser class action. The result was achieved after more than five years of hard-fought litigation and an extensive investigation.

- *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, No. 1:08-cv-10783 (S.D.N.Y.). As sole lead counsel, Robbins Geller obtained a $272 million settlement on behalf of Goldman Sachs' shareholders. The settlement concludes one of the last remaining mortgage-backed securities purchaser class actions arising out of the global financial crisis. The remarkable result was achieved following seven years of extensive litigation. After the claims were dismissed in 2010, Robbins Geller secured a landmark victory from the Second Circuit Court of Appeals that clarified the scope of permissible class actions asserting claims under the Securities Act of 1933 on behalf of MBS investors. Specifically, the Second Circuit's decision rejected the concept of "tranche" standing and concluded that a lead plaintiff in an MBS class action has class standing to pursue claims on behalf of purchasers of other securities that were issued from the same registration statement and backed by pools of mortgages originated by the same lenders who had originated mortgages backing the lead plaintiff's securities.

- *Schuh v. HCA Holdings, Inc.*, No. 3:11-cv-01033 (M.D. Tenn.). As sole lead counsel, Robbins Geller obtained a groundbreaking $215 million settlement for former HCA Holdings, Inc. shareholders – the largest securities class action recovery ever in Tennessee. Reached shortly before trial was scheduled to commence, the settlement resolves claims that the Registration Statement and Prospectus HCA filed in connection with the company's massive $4.3 billion 2011 IPO contained material misstatements and omissions. The recovery achieved represents between 34% and 70% of the aggregate class wide damages, far exceeding the typical recovery in a securities class action.

- *In re AT&T Corp. Sec. Litig.*, MDL No. 1399 (D.N.J.). Robbins Geller attorneys served as lead counsel for a class of investors that purchased AT&T common stock. The case charged defendants AT&T and its former Chairman and CEO, C. Michael Armstrong, with violations of the federal securities laws in connection with AT&T's April 2000 initial public offering of its wireless tracking stock, the largest IPO in American history. After two weeks of trial, and on the eve of scheduled testimony by Armstrong and infamous telecom analyst Jack Grubman, defendants agreed to settle the case for $100 million.

- *Silverman v. Motorola, Inc.*, No. 1:07-cv-04507 (N.D. Ill.). The Firm served as lead counsel on behalf of a class of investors in Motorola, Inc., ultimately recovering $200 million for investors just two months before the case was set for trial. This outstanding result was obtained despite the lack of an SEC investigation or any financial restatement.

- *Nieman v. Duke Energy Corp.*, No. 3:12-cv-00456 (W.D.N.C.). Robbins Geller, along with co-counsel, obtained a $146.25 million settlement on behalf of Duke Energy Corporation investors. The settlement resolves accusations that defendants misled investors regarding Duke's future leadership following its merger with Progress Energy, Inc., and specifically, their premeditated coup to oust William D. Johnson (CEO of Progress) and replace him with Duke's then-CEO, John Rogers. This historic settlement represents the largest recovery ever in a North Carolina securities fraud action, and one of the five largest recoveries in the Fourth Circuit.

- *Bennett v. Sprint Nextel Corp.*, No. 2:09-cv-02122 (D. Kan.). As co-lead counsel, Robbins Geller obtained a $131 million recovery for a class of Sprint investors. The settlement, secured after five years of hard-fought litigation, resolved claims that former Sprint executives misled investors concerning the success of Sprint's ill-advised merger with Nextel and the deteriorating credit quality of Sprint's customer base, artificially inflating the value of Sprint's securities.

- *Garden City Emps.' Ret. Sys. v. Psychiatric Sols., Inc.*, No. 3:09-cv-00882 (M.D. Tenn.). In the *Psychiatric Solutions* case, Robbins Geller represented lead plaintiff and class representative Central States, Southeast and Southwest Areas Pension Fund in litigation spanning more than four years. Psychiatric Solutions and its top executives were accused of insufficiently staffing their in-patient hospitals, downplaying the significance of regulatory investigations and manipulating their malpractice reserves. Just days before trial was set to commence, attorneys from Robbins Geller achieved a $65 million settlement that was the third-largest securities recovery ever in the district and the largest in a decade.

- *In re St. Jude Med., Inc. Sec. Litig.*, No. 0:10-cv-00851 (D. Minn.). After four and one half years of litigation and mere weeks before the jury selection, Robbins Geller obtained a $50 million settlement on behalf of investors in medical device company St. Jude Medical. The settlement resolves accusations that St. Jude Medical misled investors by utilizing heavily discounted end-of-quarter bulk sales to meet quarterly expectations, which created a false picture of demand by increasing customer inventory due of St. Jude Medical devices. The complaint alleged that the risk of St. Jude Medical's reliance on such bulk sales manifested when it failed to meet its forecast guidance for the third quarter of 2009, which the company had reaffirmed only weeks earlier.

Robbins Geller's securities practice is also strengthened by the existence of a strong appellate department, whose collective work has established numerous legal precedents. The securities practice also utilizes an extensive group of in-house economic and damage analysts, investigators and forensic accountants to aid in the prosecution of complex securities issues.

Shareholder Derivative and Corporate Governance Litigation

The Firm's shareholder derivative and corporate governance practice is focused on preserving corporate assets and enhancing long-term shareowner value. Shareowner derivative actions are often brought by institutional investors to vindicate the rights of the corporation injured by its executives' misconduct, which can effect violations of the nation's securities, anti-corruption, false claims, cyber-security, labor, environmental and/or health & safety laws.

Robbins Geller attorneys have aided Firm clients in significantly enhancing shareowner value by obtaining hundreds of millions of dollars in financial clawbacks and successfully negotiating corporate governance enhancements. Robbins Geller has worked with its institutional clients to address corporate misconduct such as options backdating, bribery of foreign officials, pollution, off-label marketing, and insider trading and related self-dealing. Additionally, the Firm works closely with noted corporate governance consultants Robert Monks, Richard Bennett and their firm, ValueEdge Advisors LLC, to shape corporate governance practices that will benefit shareowners.

Robbins Geller's efforts have conferred substantial benefits upon shareowners, and the market effect of these benefits measures in the billions of dollars. The Firm's significant achievements include:

- *City of Westland Police and Fire Retirement System v. Stumpf (Wells Fargo Derivative Litigation)*, No. 3:11-cv-02369 (N.D. Cal.). Prosecuted shareholder derivative action on behalf of Wells Fargo & Co. alleging that Wells Fargo's executives allowed participation in the mass-processing of home foreclosure documents by engaging in widespread robo-signing, *i.e.*, the execution and submission of false legal documents in courts across the country without verification of their truth or accuracy, and failed to disclose Wells Fargo's lack of cooperation in a federal investigation into the bank's mortgage and foreclosure practices. In settlement of the action, Wells Fargo agreed to provide $67 million in homeowner down-payment assistance, credit counseling and improvements to its mortgage servicing system. The initiatives will be concentrated in cities severely impacted by the bank's foreclosure practices and the ensuing mortgage foreclosure crisis.

Additionally, Wells Fargo agreed to change its procedures for reviewing shareholder proposals and a strict ban on stock pledges by Wells Fargo board members.

- *In re Ormat Techs., Inc. Derivative Litig.*, No. CV10-00759 (Nev. Dist. Ct., Washoe Cty.). Robbins Geller brought derivative claims for breach of fiduciary duty and unjust enrichment against the directors and certain officers of Ormat Technologies, Inc., a leading geothermal and recovered energy power business. During the relevant time period, these Ormat insiders caused the company to engage in accounting manipulations that ultimately required restatement of the company's financial statements. The settlement in this action includes numerous corporate governance reforms designed to, among other things: (i) increase director independence; (ii) provide continuing education to directors; (iii) enhance the company's internal controls; (iv) make the company's board more independent; and (iv) strengthen the company's internal audit function.

- *In re Alphatec Holdings, Inc. Derivative S'holder Litig.*, No. 37-2010-00058586 (Cal. Super. Ct., San Diego Cty.). Obtained sweeping changes to Alphatec's governance, including separation of the Chairman and CEO positions, enhanced conflict of interest procedures to address related-party transactions, rigorous director independence standards requiring that at least a majority of directors be outside independent directors, and ongoing director education and training.

- *In re Finisar Corp. Derivative Litig.*, No. C-06-07660 (N.D. Cal.). Prosecuted shareholder derivative action on behalf of Finisar against certain of its current and former directors and officers for engaging in an alleged nearly decade-long stock option backdating scheme that was alleged to have inflicted substantial damage upon Finisar. After obtaining a reversal of the district court's order dismissing the complaint for failing to adequately allege that a pre-suit demand was futile, Robbins Geller lawyers successfully prosecuted the derivative claims to resolution obtaining over $15 million in financial clawbacks for Finisar. Robbins Geller attorneys also obtained significant changes to Finisar's stock option granting procedures and corporate governance. As a part of the settlement, Finisar agreed to ban the repricing of stock options without first obtaining specific shareholder approval, prohibit the retrospective selection of grant dates for stock options and similar awards, limit the number of other boards on which Finisar directors may serve, require directors to own a minimum amount of Finisar shares, annually elect a Lead Independent Director whenever the position of Chairman and CEO are held by the same person, and require the board to appoint a Trading Compliance officer responsible for ensuring compliance with Finisar's insider trading policies.

- *Loizides v. Schramm (Maxwell Technology Derivative Litigation)*, No. 37-2010-00097953 (Cal. Super. Ct., San Diego Cty.). Prosecuted shareholder derivative claims arising from the company's alleged violations of the Foreign Corrupt Practices Act of 1977 ("FCPA"). As a result of Robbins Geller's efforts, Maxwell insiders agreed to adopt significant changes in Maxwell's internal controls and systems designed to protect Maxwell against future potential violations of the FCPA. These corporate governance changes included, establishing the following, among other things: a compliance plan to improve board oversight of Maxwell's compliance processes and internal controls; a clear corporate policy prohibiting bribery and subcontracting kickbacks, whereby individuals are accountable; mandatory employee training requirements, including the comprehensive explanation of whistleblower provisions, to provide for confidential reporting of FCPA violations or other corruption; enhanced resources and internal control and compliance procedures for the audit committee to act quickly if an FCPA violation or other corruption is detected; an FCPA and Anti-Corruption Compliance department that has the authority and resources required to assess global operations and detect violations of the FCPA and other instances of corruption; a rigorous ethics and compliance program applicable to all directors, officers and employees, designed to prevent and detect violations of the FCPA and other applicable anti-corruption laws; an executive-level position of Chief Compliance Officer with direct board-level reporting responsibilities, who shall be responsible for overseeing and managing compliance issues within the company; a rigorous insider trading policy buttressed by enhanced review and supervision mechanisms and a requirement that all trades are timely disclosed; and enhanced provisions requiring that business entities are only acquired after thorough FCPA and anti-corruption due diligence by legal, accounting and compliance personnel at Maxwell.

- *In re SciClone Pharm., Inc. S'holder Derivative Litig.*, No. CIV 499030 (Cal. Super. Ct., San Mateo Cty.). Robbins Geller attorneys successfully prosecuted the derivative claims on behalf of nominal party SciClone Pharmaceuticals, Inc., resulting in the adoption of state-of-the-art corporate governance reforms. The corporate governance reforms included the establishment of an FCPA compliance coordinator; the adoption of an FCPA compliance program and code; and the adoption of additional internal controls and compliance functions.

- *Policemen & Firemen Ret. Sys. of the City of Detroit v. Cornelison (Halliburton Derivative Litigation)*, No. 2009-29987 (Tex. Dist. Ct., Harris Cty.). Prosecuted shareholder derivative claims on behalf of Halliburton Company against certain Halliburton insiders for breaches of fiduciary duty arising from Halliburton's alleged violations of the FCPA. In the settlement, Halliburton agreed, among other things, to adopt strict intensive controls and systems designed to detect and deter the payment of bribes and other improper payments to foreign officials, to enhanced executive compensation clawback, director stock ownership requirements, a limitation on the number of other boards that Halliburton directors may serve, a lead director charter, enhanced director independence standards, and the creation of a management compliance committee.

- *In re UnitedHealth Grp. Inc. PSLRA Litig.*, No. 06-CV-1691 (D. Minn.). In the *UnitedHealth* case, our client, CalPERS, obtained sweeping corporate governance improvements, including the election of a shareholder-nominated member to the company's board of directors, a mandatory holding period for shares acquired by executives via option exercises, as well as executive compensation reforms that tie pay to performance. In addition, the class obtained $925 million, the largest stock option backdating recovery ever and four times the next largest options backdating recovery.

- *In re Fossil, Inc. Derivative Litig.*, No. 3:06-cv-01672 (N.D. Tex.). The settlement agreement included the following corporate governance changes: declassification of elected board members; retirement of three directors and addition of five new independent directors; two-thirds board independence requirements; corporate governance guidelines providing for "Majority Voting" election of directors; lead independent director requirements; revised accounting measurement dates of options; addition of standing finance committee; compensation clawbacks; director compensation standards; revised stock option plans and grant procedures; limited stock option granting authority, timing and pricing; enhanced education and training; and audit engagement partner rotation and outside audit firm review.

- *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Tr. v. Sinegal (Costco Derivative Litigation),* No. 2:08-cv-01450 (W.D. Wash.). The parties agreed to settlement terms providing for the following corporate governance changes: the amendment of Costco's bylaws to provide "Majority Voting" election of directors; the elimination of overlapping compensation and audit committee membership on common subject matters; enhanced Dodd-Frank requirements; enhanced internal audit standards and controls, and revised information-sharing procedures; revised compensation policies and procedures; revised stock option plans and grant procedures; limited stock option granting authority, timing and pricing; and enhanced ethics compliance standards and training.

- *In re F5 Networks, Inc. Derivative Litig.,* No. C-06-0794 (W.D. Wash.). The parties agreed to the following corporate governance changes as part of the settlement: revised stock option plans and grant procedures; limited stock option granting authority, timing and pricing; "Majority Voting" election of directors; lead independent director requirements; director independence standards; elimination of director perquisites; and revised compensation practices.

Options Backdating Litigation

As has been widely reported in the media, the stock options backdating scandal suddenly engulfed hundreds of publicly traded companies throughout the country in 2006. Robbins Geller was at the forefront of investigating and prosecuting options backdating derivative and securities cases. The Firm has recovered over $1 billion in damages on behalf of injured companies and shareholders.

- *In re KLA-Tencor Corp. S'holder Derivative Litig.*, No. C-06-03445 (N.D. Cal.). After successfully opposing the special litigation committee of the board of directors' motion to terminate the derivative claims, Robbins Geller recovered $43.6 million in direct financial benefits for KLATencor, including $33.2 million in cash payments by certain former executives and their directors' and officers' insurance carriers.

- *In re Marvell Technology Grp. Ltd. Derivative Litig.*, No. C-06-03894 (N.D. Cal.). Robbins Geller recovered $54.9 million in financial benefits, including $14.6 million in cash, for Marvell, in addition to extensive corporate governance reforms related to Marvell's stock option granting practices, board of directors' procedures and executive compensation.

- *In re KB Home S'holder Derivative Litig.*, No. 06-CV-05148 (C.D. Cal.). Robbins Geller served as co-lead counsel for the plaintiffs and recovered more than $31 million in financial benefits, including $21.5 million in cash, for KB Home, plus substantial corporate governance enhancements relating to KB Home's stock option granting practices, director elections and executive compensation practices.

Corporate Takeover Litigation

Robbins Geller has earned a reputation as the leading law firm in representing shareholders in corporate takeover litigation. Through its aggressive efforts in prosecuting corporate takeovers, the Firm has secured for shareholders billions of dollars of additional consideration as well as beneficial changes for shareholders in the context of mergers and acquisitions.

The Firm regularly prosecutes merger and acquisition cases post-merger, often through trial, to maximize the benefit for its shareholder class. Some of these cases include:

- *In re Kinder Morgan, Inc. S'holders Litig.*, No. 06-C-801 (Kan. Dist. Ct., Shawnee Cty.). In the largest recovery ever for corporate takeover class action litigation, the Firm negotiated a settlement fund of $200 million in 2010.

- I*n re Dole Food Co., Inc. Stockholder Litig.*, No. 8703-VCL (Del. Ch.). Robbins Geller and co-counsel went to trial in the Delaware Court of Chancery on claims of breach of fiduciary duty on behalf of Dole Food Co., Inc. shareholders. The litigation challenged the 2013 buyout of Dole by its billionaire Chief Executive Officer and Chairman, David H. Murdock. On August 27, 2015, the court issued a post-trial ruling that Murdock and fellow director C. Michael Carter – who also served as Dole's General Counsel, Chief Operating Officer and Murdock's top lieutenant – had engaged in fraud and other misconduct in connection with the buyout and are liable to Dole's former stockholders for over $148 million, the largest trial verdict ever in a class action challenging a merger transaction.

- *In re Rural Metro Corp. Stockholders Litig.*, No. 6350-VCL (Del. Ch.). Robbins Geller and co-counsel were appointed lead counsel in this case after successfully objecting to an inadequate settlement that did not take into account evidence of defendants' conflicts of interest. In a post-trial opinion, Delaware Vice Chancellor J. Travis Laster found defendant RBC Capital Markets, LLC liable for aiding and abetting Rural/Metro's board of directors' fiduciary duty breaches in the $438 million buyout of Rural/Metro, citing "the magnitude of the conflict between RBC's claims and the evidence." RBC was ordered to pay nearly $100 million as a result of its wrongdoing, the largest damage award ever obtained against a bank over its role as a merger adviser. The Delaware Supreme Court issued a landmark opinion affirming the judgment on November 30, 2015, *RBC Capital Markets, LLC v. Jervis*, ___ A.3d ___, 2015 Del. LEXIS 629 (Del. 2015).

- *In re Del Monte Foods Co. S'holders Litig.*, No. 6027-VCL (Del. Ch.). Robbins Geller exposed the unseemly practice by investment bankers of participating on both sides of large merger and acquisition transactions and ultimately secured an $89 million settlement for shareholders of Del Monte. For efforts in achieving these results, the Robbins Geller lawyers prosecuting the case were named Attorneys of the Year by *California Lawyer* magazine in 2012.

- *In re Chaparral Res., Inc. S'holders Litig.*, No. 2633-VCL (Del. Ch.). After a full trial and a subsequent mediation before the Delaware Chancellor, the Firm obtained a common fund settlement of $41 million (or 45% increase above merger price) for both class and appraisal claims.

- *In re TD Banknorth S'holders Litig.*, No. 2557-VCL (Del. Ch.). After objecting to a modest recovery of just a few cents per share, the Firm took over the litigation and obtained a common fund settlement of $50 million.

- *In re eMachines, Inc. Merger Litig.*, No. 01-CC-00156 (Cal. Super. Ct., Orange Cty.). After four years of litigation, the Firm secured a common fund settlement of $24 million on the brink of trial.

- *In re Prime Hospitality, Inc. S'holders Litig.*, No. 652-N (Del. Ch.). The Firm objected to a settlement that was unfair to the class and proceeded to litigate breach of fiduciary duty issues involving a sale of hotels to a private equity firm. The litigation yielded a common fund of $25 million for shareholders.

- *In re Dollar Gen. Corp. S'holder Litig.*, No. 07MD-1 (Tenn. Cir. Ct., Davidson Cty.). As lead counsel, the Firm secured a recovery of up to $57 million in cash for former Dollar General shareholders on the eve of trial.

- *In re UnitedGlobalCom, Inc. S'holder Litig.*, No. 1012-VCS (Del. Ch.). The Firm secured a common fund settlement of $25 million just weeks before trial.

- *Harrah's Entertainment*, No. A529183 (Nev. Dist. Ct., Clark Cty.). The Firm's active prosecution of the case on several fronts, both in federal and state court, assisted Harrah's shareholders in securing an additional $1.65 billion in merger consideration.

- *In re Chiron S'holder Deal Litig.*, No. RG 05-230567 (Cal. Super. Ct., Alameda Cty.). The Firm's efforts helped to obtain an additional $800 million in increased merger consideration for Chiron shareholders.

- *In re PeopleSoft, Inc. S'holder Litig.*, No. RG-03100291 (Cal. Super. Ct., Alameda Cty.). The Firm successfully objected to a proposed compromise of class claims arising from takeover defenses by PeopleSoft, Inc. to thwart an acquisition by Oracle Corp., resulting in shareholders receiving an increase of over $900 million in merger consideration.

- *ACS S'holder Litig.*, No. CC-09-07377-C (Tex. Cty. Ct., Dallas Cty.). The Firm forced ACS's acquirer, Xerox, to make significant concessions by which shareholders would not be locked out of receiving more money from another buyer.

Insurance

Fraud and collusion in the insurance industry by executives, agents, brokers, lenders and others is one of the most costly crimes in the United States. Some experts have estimated the annual cost of white collar crime in the insurance industry to be over $120 billion nationally. Recent legislative proposals seek to curtail anti-competitive behavior within the industry. However, in the absence of comprehensive regulation, Robbins Geller has played a critical role as private attorney general in protecting the rights of consumers against insurance fraud and other unfair business practices within the insurance industry.

Robbins Geller attorneys have long been at the forefront of litigating race discrimination issues within the life insurance industry. For example, the Firm has fought the practice by certain insurers of charging African-Americans and other people of color more for life insurance than similarly situated Caucasians. The Firm recovered over $400 million for African-Americans and other minorities as redress for civil rights abuses, including landmark recoveries in *McNeil v. American General Life & Accident Insurance Company*; *Thompson v. Metropolitan Life Insurance Company*; and *Williams v. United Insurance Company of America*.

The Firm's attorneys fight on behalf of elderly victims targeted for the sale of deferred annuity products with hidden sales loads and illusory bonus features. Sales agents for life insurance companies such as Allianz Life Insurance Company of North America, Midland National Life Insurance Company, and National Western Life

Insurance Company targeted senior citizens for these annuities with lengthy investment horizons and high sales commissions. The Firm recovered millions of dollars for elderly victims and seeks to ensure that senior citizens are afforded full and accurate information regarding deferred annuities.

Robbins Geller attorneys also stopped the fraudulent sale of life insurance policies based on misrepresentations about how the life insurance policy would perform, the costs of the policy, and whether premiums would "vanish." Purchasers were also misled about the financing of a new life insurance policy, falling victim to a "replacement" or "churning" sales scheme where they were convinced to use loans, partial surrenders or withdrawals of cash values from an existing permanent life insurance policy to purchase a new policy.

- Brokerage "Pay to Play" Cases. On behalf of individuals, governmental entities, businesses, and non-profits, Robbins Geller has sued the largest commercial and employee benefit insurance brokers and insurers for unfair and deceptive business practices. While purporting to provide independent, unbiased advice as to the best policy, the brokers failed to adequately disclose that they had entered into separate "pay to play" agreements with certain third-party insurance companies. These agreements provide additional compensation to the brokers based on such factors as profitability, growth and the volume of insurance that they place with a particular insurer, and are akin to a profit-sharing arrangement between the brokers and the insurance companies. These agreements create a conflict of interest since the brokers have a direct financial interest in selling their customers only the insurance products offered by those insurance companies with which the brokers have such agreements.

  Robbins Geller attorneys were among the first to uncover and pursue the allegations of these practices in the insurance industry in both state and federal courts. On behalf of the California Insurance Commissioner, the Firm brought an injunctive case against the biggest employee benefit insurers and local San Diego brokerage, ULR, which resulted in major changes to the way they did business. The Firm also sued on behalf of the City and County of San Francisco to recover losses due to these practices. Finally, Robbins Geller represents a putative nationwide class of individuals, businesses, employers, and governmental entities against the largest brokerage houses and insurers in the nation. To date, the Firm has obtained over $200 million on behalf of policyholders and enacted landmark business reforms.

- Discriminatory Credit Scoring and Redlining Cases. Robbins Geller attorneys have prosecuted cases concerning countrywide schemes of alleged discrimination carried out by Nationwide, Allstate, and other insurance companies against African-American and other persons of color who are purchasers of homeowner and automobile insurance policies. Such discrimination includes alleged redlining and the improper use of "credit scores," which disparately impact minority communities. Plaintiffs in these actions have alleged that the insurance companies' corporate-driven scheme of intentional racial discrimination includes refusing coverage and/or charging them higher premiums for homeowners and automobile insurance. On behalf of the class of aggrieved policyholders, the Firm has recovered over $400 million for these predatory and racist policies.

- Senior Annuities. Robbins Geller has prosecuted numerous cases against insurance companies and their agents who targeted senior citizens for the sale of deferred annuities. Plaintiffs alleged that the insurers misrepresented or failed to disclose to senior consumers material facts concerning the costs associated with their fixed and equity indexed deferred annuities and enticed seniors to buy the annuities by promising them illusory up-front bonuses. As a result of the Firm's efforts, hundreds of millions of dollars in economic relief has been made available to seniors who have been harmed by these practices. Notable recoveries include:

  - *Negrete v. Allianz Life Ins. Co. of N. Am.*, No. CV-05-6838 (C.D. Cal.). Robbins Geller attorneys served as co-lead counsel on behalf of a nationwide RICO class consisting of over 200,000 senior citizens who had purchased deferred annuities issued by Allianz Life Insurance Company of North America. In March 2015, after nine years of litigation, District Judge Christina A. Snyder granted final approval of a class action settlement that made available in excess of $250 million in cash payments and other benefits to class members. In approving the settlement, the Court praised the effort of the Firm and noted that "counsel has represented their clients with great skill and they are to be complimented."

- *In re Am. Equity Annuity Practices & Sales Litig.*, No. CV-05-6735 (C.D. Cal.). As co-lead counsel, Robbins Geller attorneys secured a settlement that made available $129 million in economic benefits to a nationwide class of 114,000 senior citizens.
- *In re Midland Nat'l Life Ins. Co. Annuity Sales Practices Litig.*, MDL No. 07-1825 (C.D. Cal.). After four years of litigation, the Firm secured a settlement that made available $79.5 million in economic benefits to a nationwide class of 70,000 senior citizens.
- *Negrete v. Fidelity & Guar. Life Ins. Co.*, No. CV-05-6837 (C.D. Cal.). The Firm's efforts resulted in a settlement under which Fidelity made available $52.7 in benefits to 56,000 class members across the country.
- *In re Nat'l Western Life Ins. Deferred Annuities Litig.*, No. 05-CV-1018 (S.D. Cal.). The Firm litigated this action for more than eight years. On the eve of trial, the Firm negotiated a settlement providing over $21 million in value to a nationwide class of 12,000 senior citizens.

Antitrust

Robbins Geller's antitrust practice focuses on representing businesses and individuals who have been the victims of price-fixing, unlawful monopolization, market allocation, tying and other anti-competitive conduct. The Firm has taken a leading role in many of the largest federal and state price-fixing, monopolization, market allocation and tying cases throughout the United States.

- *Dahl v. Bain Capital Partners, LLC*, No. 07-cv-12388-EFH (D. Mass). Robbins Geller attorneys served as co-lead counsel on behalf of shareholders in this action against the nation's largest private equity firms who colluded to restrain competition to suppress prices paid to shareholders of public companies in connection with leveraged buyouts. After nearly seven years of hard-fought litigation, in March 2015, the court approved several settlements totaling $590.5 million. The aggregate settlement is the largest antitrust class action settlement involving market allocation in which no government antitrust action was taken.
- *Alaska Elec. Pension Fund v. Bank of America Corporation*, No. 14-cv-07126-JMF (S.D.N.Y.). Robbins Geller attorneys are prosecuting antitrust claims against 13 major banks and broker ICAP plc who are alleged to have conspired to manipulate the ISDAfix rate, the key interest rate for a broad range of interest rate derivatives and other financial instruments. The class action is brought on behalf of investors and market participants who entered into an interest rate derivative transaction during an eight-year period from 2006 to 2014.
- *In re Currency Conversion Fee Antitrust Litig.*, 01 MDL No. 1409 (S.D.N.Y.). Robbins Geller attorneys recovered $336 million for credit and debit cardholders in this multi-district litigation in which the Firm served as co-lead counsel. The court praised the Firm as "indefatigable" and noted that the Firm's lawyers "represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."
- *In re Aftermarket Automotive Lighting Products Antitrust Litig.*, 09 MDL No. 2007 (C.D. Cal.). Robbins Geller attorneys are co-lead counsel in this multi-district litigation in which plaintiffs allege that defendants conspired to fix prices and allocate markets for automotive lighting products. The last defendants settled just before the scheduled trial, resulting in total settlements of more than $50 million. Commenting on the quality of representation, the court commended the Firm for "expend[ing] substantial and skilled time and efforts in an efficient manner to bring this action to conclusion."
- *In re Dig. Music Antitrust Litig.*, 06 MDL No. 1780 (S.D.N.Y.). Robbins Geller attorneys are co-lead counsel in an action against the major music labels (Sony-BMG, EMI, Universal and Warner Music Group) in a case involving music that can be downloaded digitally from the Internet. Plaintiffs allege that defendants restrained the development of digital downloads and agreed to fix the distribution

price of digital downloads at supracompetitive prices. Plaintiffs also allege that as a result of defendants' restraint of the development of digital downloads, and the market and price for downloads, defendants were able to maintain the prices of their CDs at supracompetitive levels. The Second Circuit Court of Appeals upheld plaintiffs' complaint, reversing the trial court's dismissal. Discovery is ongoing.

- *In re NASDAQ Market-Makers Antitrust Litig.*, MDL No. 1023 (S.D.N.Y.). Robbins Geller attorneys served as co-lead counsel in this case in which investors alleged that NASDAQ market-makers set and maintained artificially wide spreads pursuant to an industry-wide conspiracy. After three and one half years of intense litigation, the case settled for a total of $1.027 billion, at the time the largest ever antitrust settlement.

- *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 02 MDL No. 1486 (N.D. Cal.). Robbins Geller attorneys served on the executive committee in this multi-district class action in which a class of purchasers of dynamic random access memory (or DRAM) chips alleged that the leading manufacturers of semiconductor products fixed the price of DRAM chips from the fall of 2001 through at least the end of June 2002. The case settled for more than $300 million.

- *Microsoft I-V Cases*, JCCP No. 4106 (Cal. Super. Ct., San Francisco Cty.). Robbins Geller attorneys served on the executive committee in these consolidated cases in which California indirect purchasers challenged Microsoft's illegal exercise of monopoly power in the operating system, word processing and spreadsheet markets. In a settlement approved by the court, class counsel obtained an unprecedented $1.1 billion worth of relief for the business and consumer class members who purchased the Microsoft products.

Consumer Fraud

In our consumer-based economy, working families who purchase products and services must receive truthful information so they can make meaningful choices about how to spend their hard-earned money. When financial institutions and other corporations deceive consumers or take advantage of unequal bargaining power, class action suits provide, in many instances, the only realistic means for an individual to right a corporate wrong.

Robbins Geller attorneys represent consumers around the country in a variety of important, complex class actions. Our attorneys have taken a leading role in many of the largest federal and state consumer fraud, environmental, human rights and public health cases throughout the United States. The Firm is also actively involved in many cases relating to banks and the financial services industry, pursuing claims on behalf of individuals victimized by abusive telemarketing practices, abusive mortgage lending practices, market timing violations in the sale of variable annuities, and deceptive consumer credit lending practices in violation of the Truth-In-Lending Act. Below are a few representative samples of our robust, nationwide consumer practice.

- *Volkswagen "Clean Diesel" Marketing, Sale Practices, and Products Liability Litigation*. As a member of the Plaintiffs' Steering Committee, Robbins Geller partner Paul Geller, along with government agencies, reached a settlement that created a funding pool of up to $10.033 billion (plus $4.7 billion for environmental impact) for consumers affected by the illegal "defeat device" that Volkswagen installed on many of its diesel-engine vehicles. The device tricked regulators into believing the cars were complying with emissions standards, while the cars were actually emitting between 10 and 40 times the allowable limit for harmful pollutants.

- *Trump University*. After six and half years of tireless litigation and on the eve of trial, Robbins Geller, serving as co-lead counsel, secured a historic recovery on behalf of Trump University students around the country. The settlement provides $25 million to approximately 7,000 consumers, including senior citizens who accessed retirement accounts and maxed out credit cards to enroll in Trump University. The extraordinary result means individual class members will be eligible for upwards of $35,000 in restitution. The settlement resolves claims that President-Elect Donald J. Trump and Trump University violated federal and state laws by misleadingly marketing "Live Events" seminars and mentorships as teaching Trump's "real-estate techniques" through his "hand-picked" "professors" at his so-called "university." Robbins Geller represented the class on a *pro bono* basis.

- *Bank Overdraft Fees Litigation*. The banking industry charges consumers exorbitant amounts for "overdraft" of their checking accounts, even if the customer did not authorize a charge beyond the available balance and even if the account would not have been overdrawn had the transactions been ordered chronologically as they occurred – that is, banks reorder transactions to maximize such fees. The Firm brought lawsuits against major banks to stop this practice and recover these false fees. These cases have recovered over $500 million thus far from a dozen banks and we continue to investigate other banks engaging in this practice.

- *Chase Bank Home Equity Line of Credit Litigation*. In October 2008, after receiving $25 billion in TARP funding to encourage lending institutions to provide businesses and consumers with access to credit, Chase Bank began unilaterally suspending its customers' home equity lines of credit. Plaintiffs charged that Chase Bank did so using an unreliable computer model that did not reliably estimate the actual value of its customers' homes, in breach of the borrowers' contracts. The Firm brought a lawsuit to secure damages on behalf of borrowers whose credit lines were improperly suspended. In early 2013, the court approved a settlement that restored billions of dollars of credit to tens of thousands of borrowers, while requiring Chase to make cash payments to former customers. The total value of this settlement is projected to be between $3 and $4 billion.

- *Visa and MasterCard Fees*. After years of litigation and a six-month trial, Robbins Geller attorneys won one of the largest consumer-protection verdicts ever awarded in the United States. The Firm's attorneys represented California consumers in an action against Visa and MasterCard for intentionally imposing and concealing a fee from cardholders. The court ordered Visa and MasterCard to return $800 million in cardholder losses, which represented 100% of the amount illegally taken, plus 2% interest. In addition, the court ordered full disclosure of the hidden fee.

- *West Telemarketing Case*. Robbins Geller attorneys secured a $39 million settlement for class members caught up in a telemarketing scheme where consumers were charged for an unwanted membership program after purchasing Tae-Bo exercise videos. Under the settlement, consumers were entitled to claim between one and one-half to three times the amount of all fees they unknowingly paid.

- *Dannon Activia®*. Robbins Geller attorneys secured the largest ever settlement for a false advertising case involving a food product. The case alleged that Dannon's advertising for its Activia® and DanActive® branded products and their benefits from "probiotic" bacteria were overstated. As part of the nationwide settlement, Dannon agreed to modify its advertising and establish a fund of up to $45 million to compensate consumers for their purchases of Activia® and DanActive®.

- *Mattel Lead Paint Toys*. In 2006-2007, toy manufacturing giant Mattel and its subsidiary Fisher-Price announced the recall of over 14 million toys made in China due to hazardous lead and dangerous magnets. Robbins Geller attorneys filed lawsuits on behalf of millions of parents and other consumers who purchased or received toys for children that were marketed as safe but were later recalled because they were dangerous. The Firm's attorneys reached a landmark settlement for millions of dollars in refunds and lead testing reimbursements, as well as important testing requirements to ensure that Mattel's toys are safe for consumers in the future.

- *Tenet Healthcare Cases*. Robbins Geller attorneys were co-lead counsel in a class action alleging a fraudulent scheme of corporate misconduct, resulting in the overcharging of uninsured patients by the Tenet chain of hospitals. The Firm's attorneys represented uninsured patients of Tenet hospitals nationwide who were overcharged by Tenet's admittedly "aggressive pricing strategy," which resulted in price gouging of the uninsured. The case was settled with Tenet changing its practices and making refunds to patients.

- *Pet Food Products Liability Litigation*. Robbins Geller served as co-lead counsel in this massive, 100+ case products liability MDL in the District of New Jersey concerning the death of and injury to thousands of the nation's cats and dogs due to tainted pet food. The case settled for $24 million.

- *Sony Gaming Networks & Customer Data Security Breach Litigation*. The Firm served as a member of the Plaintiffs' Steering Committee, helping to obtain a precedential opinion denying in part

Sony's motion to dismiss plaintiffs' claims involving the breach of Sony's gaming network, leading to a pending $15 million settlement.

Intellectual Property

Individual inventors, universities, and research organizations provide the fundamental research behind many existing and emerging technologies. Every year, the majority of U.S. patents are issued to this group of inventors. Through this fundamental research, these inventors provide a significant competitive advantage to this country. Unfortunately, while responsible for most of the inventions that issue into U.S. patents every year, individual inventors, universities and research organizations receive very little of the licensing revenues for U.S. patents. Large companies reap 99% of all patent licensing revenues.

Robbins Geller enforces the rights of these inventors by filing and litigating patent infringement cases against infringing entities. Our attorneys have decades of patent litigation experience in a variety of technical applications. This experience, combined with the Firm's extensive resources, gives individual inventors the ability to enforce their patent rights against even the largest infringing companies.

Our attorneys have experience handling cases involving a broad range of technologies, including:

- biochemistry
- telecommunications
- medical devices
- medical diagnostics
- networking systems
- computer hardware devices and software
- mechanical devices
- video gaming technologies
- audio and video recording devices

Human Rights, Labor Practices and Public Policy

Robbins Geller attorneys have a long tradition of representing the victims of unfair labor practices and violations of human rights. These include:

- *Does I v. The Gap, Inc.*, No. 01 0031 (D. N. Mar. I.). In this groundbreaking case, Robbins Geller attorneys represented a class of 30,000 garment workers who alleged that they had worked under sweatshop conditions in garment factories in Saipan that produced clothing for top U.S. retailers such as The Gap, Target and J.C. Penney. In the first action of its kind, Robbins Geller attorneys pursued claims against the factories and the retailers alleging violations of RICO, the Alien Tort Claims Act, and the Law of Nations based on the alleged systemic labor and human rights abuses occurring in Saipan. This case was a companion to two other actions: *Does I v. Advance Textile Corp.*, No. 99 0002 (D. N. Mar. I.), which alleged overtime violations by the garment factories under the Fair Labor Standards Act and local labor law, and *UNITE v. The Gap, Inc.*, No. 300474 (Cal. Super. Ct., San Francisco Cty.), which alleged violations of California's Unfair Practices Law by the U.S. retailers. These actions resulted in a settlement of approximately $20 million that included a comprehensive monitoring program to address past violations by the factories and prevent future ones. The members of the litigation team were honored as Trial Lawyers of the Year by the Trial Lawyers for Public Justice in recognition of the team's efforts at bringing about the precedent-setting settlement of the actions.

- *Liberty Mutual Overtime Cases*, No. JCCP 4234 (Cal. Super. Ct., Los Angeles Cty.). Robbins Geller attorneys served as co-lead counsel on behalf of 1,600 current and former insurance claims adjusters at Liberty Mutual Insurance Company and several of its subsidiaries. Plaintiffs brought the case to recover unpaid overtime compensation and associated penalties, alleging that Liberty Mutual had misclassified its claims adjusters as exempt from overtime under California law. After 13 years of complex and exhaustive litigation, Robbins Geller secured a settlement in which Liberty Mutual agreed to pay $65 million into a fund to compensate the class of claims adjusters for unpaid overtime. The Liberty Mutual action is one of a few claims adjuster overtime actions brought in California or elsewhere to result in a successful outcome for plaintiffs since 2004.

- *Veliz v. Cintas Corp.*, No. 5:03-cv-01180 (N.D. Cal.). Brought against one of the nation's largest commercial laundries for violations of the Fair Labor Standards Act for misclassifying truck drivers as salesmen to avoid payment of overtime.

- *Kasky v. Nike, Inc.*, 27 Cal. 4th 939 (2002). The California Supreme Court upheld claims that an apparel manufacturer misled the public regarding its exploitative labor practices, thereby violating California statutes prohibiting unfair competition and false advertising. The Court rejected defense contentions that any misconduct was protected by the First Amendment, finding the heightened constitutional protection afforded to noncommercial speech inappropriate in such a circumstance.

Shareholder derivative litigation brought by Robbins Geller attorneys at times also involves stopping anti-union activities, including:

- *Southern Pacific/Overnite*. A shareholder action stemming from several hundred million dollars in loss of value in the company due to systematic violations by Overnite of U.S. labor laws.

- *Massey Energy*. A shareholder action against an anti-union employer for flagrant violations of environmental laws resulting in multi-million-dollar penalties.

- *Crown Petroleum*. A shareholder action against a Texas-based oil company for self-dealing and breach of fiduciary duty while also involved in a union lockout.

Environment and Public Health

Robbins Geller attorneys have also represented plaintiffs in class actions related to environmental law. The Firm's attorneys represented, on a *pro bono* basis, the Sierra Club and the National Economic Development and Law Center as *amici curiae* in a federal suit designed to uphold the federal and state use of project labor agreements ("PLAs"). The suit represented a legal challenge to President Bush's Executive Order 13202, which prohibits the use of project labor agreements on construction projects receiving federal funds. Our *amici* brief in the matter outlined and stressed the significant environmental and socio-economic benefits associated with the use of PLAs on large-scale construction projects.

Attorneys with Robbins Geller have been involved in several other significant environmental cases, including:

- *Public Citizen v. U.S. D.O.T.* Robbins Geller attorneys represented a coalition of labor, environmental, industry and public health organizations including Public Citizen, The International Brotherhood of Teamsters, California AFL-CIO and California Trucking Industry in a challenge to a decision by the Bush administration to lift a Congressionally-imposed "moratorium" on cross-border trucking from Mexico on the basis that such trucks do not conform to emission controls under the Clean Air Act, and further, that the administration did not first complete a comprehensive environmental impact analysis as required by the National Environmental Policy Act. The suit was dismissed by the United States Supreme Court, the Court holding that because the D.O.T. lacked discretion to prevent crossborder trucking, an environmental assessment was not required.

- *Sierra Club v. AK Steel*. Brought on behalf of the Sierra Club for massive emissions of air and water pollution by a steel mill, including homes of workers living in the adjacent communities, in violation of the Federal Clean Air Act, Resource Conservation Recovery Act and the Clean Water Act.

- *MTBE Litigation*. Brought on behalf of various water districts for befouling public drinking water with MTBE, a gasoline additive linked to cancer.

- *Exxon Valdez*. Brought on behalf of fisherman and Alaska residents for billions of dollars in damages resulting from the greatest oil spill in U.S. history.

- *Avila Beach*. A citizens' suit against UNOCAL for leakage from the oil company pipeline so severe it literally destroyed the town of Avila Beach, California.

Federal laws such as the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act and state laws such as California's Proposition 65 exist to protect the environment and the public from abuses by corporate and government organizations. Companies can be found liable for negligence, trespass or intentional environmental damage, be forced to pay for reparations and to come into compliance with existing laws. Prominent cases litigated by Robbins Geller attorneys include representing more than 4,000 individuals suing for personal injury and property damage related to the Stringfellow Dump Site in Southern California, participation in the Exxon Valdez oil spill litigation, and litigation involving the toxic spill arising from a Southern Pacific train derailment near Dunsmuir, California.

Robbins Geller attorneys have led the fight against Big Tobacco since 1991. As an example, Robbins Geller attorneys filed the case that helped get rid of Joe Camel, representing various public and private plaintiffs, including the State of Arkansas, the general public in California, the cities of San Francisco, Los Angeles and Birmingham, 14 counties in California, and the working men and women of this country in the Union Pension and Welfare Fund cases that have been filed in 40 states. In 1992, Robbins Geller attorneys filed the first case in the country that alleged a conspiracy by the Big Tobacco companies.

Pro Bono

Robbins Geller provides counsel to those unable to afford legal representation as part of a continuous and longstanding commitment to the communities in which it serves. Over the years the Firm has dedicated a considerable amount of time, energy, and a full range of its resources for many pro bono and charitable actions.

Robbins Geller has been honored for its pro bono efforts by the California State Bar (including a nomination for the President's Pro Bono Law Firm of the Year award) and the San Diego Volunteer Lawyer's Program, among others.

Some of the Firm's and its attorneys' pro bono and charitable actions include:

- Representing Trump University students in two class actions against President-Elect Donald J. Trump. The historic settlement provides $25 million to approximately 7,000 consumers. This means individual class members will be eligible for upwards of $35,000 in restitution – an extraordinary result.

- Representing children diagnosed with Autism Spectrum Disorder, as well as children with significant disabilities, in New York to remedy flawed educational policies and practices that cause substantial harm to these and other similar children year after year.

- Representing 19 San Diego County children diagnosed with Autism Spectrum Disorder in their appeal of the San Diego Regional Center's termination of funding for a crucial therapy. The victory resulted in a complete reinstatement of funding and set a precedent that allows other children to obtain the treatments they need.

- Serving as Northern California and Hawaii District Coordinator for the United States Court of Appeals for the Ninth Circuit's Pro Bono program since 1993.

- Representing the Sierra Club and the National Economic Development and Law Center as *amici curiae* before the U.S. Supreme Court.

- Obtaining political asylum, after an initial application had been denied, for an impoverished Somali family whose ethnic minority faced systematic persecution and genocidal violence in Somalia, as well as forced female mutilation.

- Working with the ACLU in a class action filed on behalf of welfare applicants subject to San Diego County's "Project 100%" program. Relief was had when the County admitted that food-stamp eligibility could not hinge upon the Project 100% "home visits," and again when the district court ruled that unconsented "collateral contacts" violated state regulations. The decision was noted by the *Harvard Law Review*, *The New York Times* and *The Colbert Report*.

- Filing numerous *amicus curiae* briefs on behalf of religious organizations and clergy that support civil rights, oppose government-backed religious-viewpoint discrimination, and uphold the American traditions of religious freedom and church-state separation.

- Serving as *amicus* counsel in a Ninth Circuit appeal from a Board of Immigration Appeals deportation decision. In addition to obtaining a reversal of the BIA's deportation order, the Firm consulted with the Federal Defenders' Office on cases presenting similar fact patterns, which resulted in a precedent-setting *en banc* decision from the Ninth Circuit resolving a question of state and federal law that had been contested and conflicted for decades.

E-Discovery

Robbins Geller has successfully litigated some of the largest and most complex shareholder and antitrust actions in history and has become the vanguard of a rapidly evolving world of e-discovery in complex litigation. The Firm has 200 attorneys supported by a large staff of forensic and e-discovery specialists and has a level of technological sophistication that is unmatched by any other firm. As the size and stakes of complex litigation continue to increase, it is more important than ever to retain counsel with a successful track record of results. Robbins Geller has consistently proven to be the right choice for anyone seeking representation in actions against the largest corporations in the world.

Led by 20-year litigation veteran Tor Gronborg, and advised by Lea Bays, e-discovery counsel, and Christine Milliron, Director of E-Discovery and Litigation Support, the Robbins Geller e-discovery practice group is a multi-disciplinary team of attorneys, forensic analysts and database professionals. No plaintiffs' firm is better equipped to develop the type of comprehensive and case specific e-discovery strategy that is necessary for today's complex litigation. The attorneys have extensive knowledge and experience in drafting and negotiating sophisticated e-discovery protocols, including those involving the use of predictive coding. High quality document review services are performed by a consistent group of staff attorneys who are experienced in the Firm's litigation practice areas and specialize in document review and analysis. A team of forensic and technology professionals work closely with the attorneys to ensure an effective and efficient e-discovery strategy. The litigation support team includes six Relativity Certified Administrators. Collectively, the Robbins Geller forensic and technology professionals have more than 75 years of e-discovery experience.

Members of the practice group are also leaders in shaping the broader dialogue on e-discovery issues. They regularly contribute to industry publications, speak at conferences organized by leading e-discovery think tanks such as The Sedona Conference and Georgetown University Law Center's Advanced eDiscovery Institute, and play prominent roles in the local chapters of Women in eDiscovery and the Relativity Users Steering Committee. The e-discovery practice group also offers regular in-house training and education, ensuring that members of the Firm are always up-to-date on the evolving world of e-discovery law and technology.

Robbins Geller has always been a leader in document-intensive litigation. Boasting high-performing infrastructure resources, state-of-the-art technology, and a deep bench of some of the most highly trained Relativity Certified Administrators and network engineers, the Firm's capabilities rival, if not outshine, those of the top e-discovery vendors in the industry. Additionally, the Firm's implementation of advanced analytic technologies and custom workflows makes its work fast, smart and efficient. Combined with Robbins Geller's decision to manage and host its litigation support in-house, these technologies reduce the Firm's reliance on third-party vendors, enabling it to offer top-notch e-discovery services to clients at a fair and reasonable cost.

Security is a top priority at Robbins Geller. The Firm's hosted e-discovery is secured using bank-level 128 encryption and is protected behind state-of-the-art Cisco firewalls. All e-discovery data is hosted on Firm-owned equipment at an SSAE 16-compliant, SOC 1, 2, and 3 audited facility that features 9.1 megawatts of power, N+1 or better redundancy on all data center systems, and security protocols required by leading businesses in the most stringent verticals. Originally designed to support a large defense contractor, it is built to rigorous standards, complete with redundant power and cooling systems plus multiple generators.

Institutional Clients

Public Fund Clients

Robbins Geller advises or has represented numerous public funds, including:

- Alaska Department of Revenue
- Alaska State Pension Investment Board
- California Public Employees' Retirement System
- California State Teachers' Retirement System
- City of Birmingham Retirement & Relief Fund
- Illinois State Board of Investment
- Los Angeles County Employees Retirement Association
- Milwaukee Employees' Retirement System
- New Mexico Educational Retirement Board
- New Mexico Public Employees Retirement Association
- New Mexico State Investment Council
- Ohio Bureau of Workers' Compensation
- Ohio Police and Fire Pension Fund
- Ohio Public Employees' Retirement System
- Ohio State Highway Patrol Retirement System
- Public Employee Retirement System of Idaho
- School Employees Retirement System of Ohio
- State Teachers Retirement System of Ohio
- State Universities Retirement System of Illinois
- Teachers' Retirement System of the State of Illinois
- Tennessee Consolidated Retirement System
- The Regents of the University of California
- Vermont Pension Investment Committee
- Washington State Investment Board
- West Virginia Investment Management Board

Multi-Employer Clients

Robbins Geller advises or has represented numerous multi-employer funds, including:

- 1199 SEIU Greater New York Pension Fund
- Alaska Electrical Pension Fund
- Alaska Ironworkers Pension Trust
- Carpenters Pension Fund of Illinois
- Carpenters Pension Fund of West Virginia
- Central States, Southeast and Southwest Areas Pension Fund
- Construction Workers Pension Trust Fund - Lake County and Vicinity
- Employer-Teamsters Local Nos. 175 & 505 Pension Trust Fund
- Heavy & General Laborers' Local 472 & 172 Pension & Annuity Funds
- IBEW Local 90 Pension Fund
- IBEW Local Union No. 58 Pension Fund
- Indiana Laborers Pension Fund
- International Brotherhood of Electrical Workers Local 697 Pension Fund
- Laborers Local 100 and 397 Pension Fund
- Laborers Pension Trust Fund for Northern Nevada
- Massachusetts Laborers' Annuity Fund
- Material Yard Workers Local 1175 Benefit Funds
- National Retirement Fund
- New England Carpenters Guaranteed Annuity Fund
- New England Carpenters Pension Fund
- New England Health Care Employees Pension Fund
- Operating Engineers Construction Industry and Miscellaneous Pension Fund
- Pipefitters Local No. 636 Defined Benefit Plan
- Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund
- Plumbers and Pipefitters National Pension Fund
- Plumbers Local Union No. 519 Pension Trust Fund
- Plumbers' Union Local No. 12 Pension Fund
- SEIU Pension Plans Master Trust
- Southwest Carpenters Pension Trust
- Western Pennsylvania Electrical Employees Pension Fund

International Investors

Robbins Geller advises or has represented numerous international investors, including:

- Abu Dhabi Commercial Bank
- China Development Industrial Bank
- Commerzbank AG
- Global Investment Services Limited
- Gulf International Bank B.S.C
- ING Investment Management
- Mn Services B.V.
- National Agricultural Cooperative Federation
- Ontario Municipal Employees Retirement System
- Royal Park Investments
- Scottish Widows Investment Partnership Limited
- Stichting Philips Pensioenfonds
- The Bank of N.T. Butterfield & Son Limited
- The City of Edinburgh Council on Behalf of the Lothian Pension Fund
- The Council of the Borough of South Tyneside Acting in its Capacity as the Administering Authority of the Tyne and Wear Pension Fund
- The London Pensions Fund Authority
- Wirral MBC on Behalf of the Merseyside Pension Fund
- Wolverhampton City Council, Administering Authority for the West Midlands Metropolitan Authorities Pension Fund

Additional Institutional Investors

Robbins Geller advises or has represented additional institutional investors, including:

- Northwestern Mutual Life Insurance Company
- Standard Life Investments
- The Union Central Life Insurance Company

Prominent Cases, Precedent-Setting Decisions and Judicial Commendations

Prominent Cases

Robbins Geller attorneys obtained outstanding results in some of the most notorious and well-known cases, frequently earning judicial commendations for the quality of their representation.

- *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.). Investors lost billions of dollars as a result of the massive fraud at Enron. In appointing Robbins Geller lawyers as sole lead counsel to represent the interests of Enron investors, the court found that the Firm's zealous prosecution and level of "insight" set it apart from its peers. Robbins Geller attorneys and lead plaintiff The Regents of the University of California aggressively pursued numerous defendants, including many of Wall Street's biggest banks, and successfully obtained settlements in excess of ***$7.2 billion*** for the benefit of investors. ***This is the largest aggregate class action settlement not only in a securities class action, but in class action history.***

The court overseeing this action had utmost praise for Robbins Geller's efforts and stated that "[t]he experience, ability, and reputation of the attorneys of [Robbins Geller] is not disputed; it is one of the most successful law firms in securities class actions, if not the preeminent one, in the country." *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 586 F. Supp. 2d 732, 797 (S.D. Tex. 2008).

The court further commented: "[I]n the face of extraordinary obstacles, the skills, expertise, commitment, and tenacity of [Robbins Geller] in this litigation cannot be overstated. Not to be overlooked are the unparalleled results, . . . which demonstrate counsel's clearly superlative litigating and negotiating skills." *Id.* at 789.

The court stated that the Firm's attorneys "are to be commended for their zealousness, their diligence, their perseverance, their creativity, the enormous breadth and depth of their investigations and analysis, and their expertise in all areas of securities law on behalf of the proposed class." *Id.*

In addition, the court noted, "This Court considers [Robbins Geller] 'a lion' at the securities bar on the national level," noting that the Lead Plaintiff selected Robbins Geller because of the Firm's "outstanding reputation, experience, and success in securities litigation nationwide." *Id.* at 790.

The court further stated that "Lead Counsel's fearsome reputation and successful track record undoubtedly were substantial factors in . . . obtaining these recoveries." *Id.*

Finally, Judge Harmon stated: "As this Court has explained [this is] an extraordinary group of attorneys who achieved the largest settlement fund ever despite the great odds against them." *Id.* at 828.

- *Jaffe v. Household Int'l, Inc.*, No. 02-C-05893 (N.D. Ill). As sole lead counsel, Robbins Geller obtained a record-breaking settlement of $1.575 billion after 14 years of litigation, including a six-week jury trial in 2009 that resulted in a securities fraud verdict in favor of the class. In 2015, the Seventh Circuit Court of Appeals upheld the jury's verdict that defendants made false or misleading statements of material fact about the company's business practices and financial results, but remanded the case for a new trial on the issue of whether the individual defendants "made" certain false statements, whether those false statements caused plaintiffs' losses, and the amount of damages. The parties reached an agreement to settle the case just hours before the retrial was scheduled to begin on June 6, 2016. The $1.575 billion settlement, approved in October 2016, is the largest ever following a securities fraud class action trial, the largest securities fraud settlement in the Seventh Circuit and the seventh-largest settlement ever in a post-PSLRA securities fraud case. According to published reports, the case was just the seventh securities fraud case tried to a verdict since the passage of the PSLRA.

  In approving the settlement, the Honorable Jorge L. Alonso noted the team's "skill and determination" while recognizing that "Lead Counsel prosecuted the case vigorously and skillfully over 14 years against nine of the country's most prominent law firms" and "achieved an exceptionally significant recovery for the class." The court added that the team faced "significant hurdles" and "uphill battles" throughout the case and recognized that "[c]lass counsel performed a very high-quality legal work in the context of a thorny case in which the state of the law has been and is in flux." The court succinctly concluded that the settlement was "a spectacular result for the class." *Jaffe v. Household Int'l, Inc.*, No. 02-C-5892, Order Awarding Attorneys' Fees and Expenses at 2 (N.D. Ill. Nov. 10, 2016); *Jaffe v. Household Int'l, Inc.*, No. 02-C-05893, Transcript at 56, 65 (N.D. Ill. Oct. 20, 2016).

- *In re UnitedHealth Grp. Inc. PSLRA Litig.*, No. 06-CV-1691 (D. Minn.). In the *UnitedHealth* case, Robbins Geller represented the California Public Employees' Retirement System ("CalPERS") and demonstrated its willingness to vigorously advocate for its institutional clients, even under the most difficult circumstances. For example, in 2006, the issue of high-level executives backdating stock options made national headlines. During that time, many law firms, including Robbins Geller, brought shareholder derivative lawsuits against the companies' boards of directors for breaches of their fiduciary duties or for improperly granting backdated options. Rather than pursuing a shareholder derivative case, the Firm filed a securities fraud class action against the company on behalf of CalPERS. In doing so, Robbins Geller faced significant and unprecedented legal obstacles with respect to loss causation, *i.e.*, that defendants' actions were responsible for causing the stock losses. Despite these legal hurdles, Robbins Geller obtained an $895 million recovery on behalf of the UnitedHealth shareholders. Shortly after reaching the $895 million settlement with UnitedHealth, the remaining corporate defendants, including former CEO William A. McGuire, also settled. McGuire paid $30 million and returned stock options representing more than three million shares to the shareholders. The total recovery for the class was over $925 million, the largest stock option backdating recovery ever, and ***a recovery that is more than four times larger than the next largest options backdating recovery***. Moreover, Robbins Geller obtained unprecedented corporate governance reforms, including election of a shareholder-nominated member to the company's board of directors, a mandatory holding period for shares acquired by executives via option exercise, and executive compensation reforms that tie pay to performance.

- *Alaska Elec. Pension Fund v. CitiGroup, Inc. (In re WorldCom Sec. Litig.)*, No. 03 Civ. 8269 (S.D.N.Y.). Robbins Geller attorneys represented more than 50 private and public institutions that opted out of the class action case and sued WorldCom's bankers, officers and directors, and auditors in courts around the country for losses related to WorldCom bond offerings from 1998 to 2001. The Firm's clients included major public institutions from across the country such as CalPERS, CalSTRS, the state pension funds of Maine, Illinois, New Mexico and West Virginia, union pension funds, and private entities such as AIG and Northwestern Mutual. Robbins Geller attorneys recovered more than $650 million for their clients, substantially more than they would have recovered as part of the class.

- *Luther v. Countrywide Fin. Corp.*, No. 12-cv-05125 (C.D. Cal.). Robbins Geller attorneys secured a $500 million settlement for institutional and individual investors in what is the largest RMBS purchaser class action settlement in history, and one of the largest class action securities settlements of all time. The unprecedented settlement resolves claims against Countrywide and Wall Street banks that issued the securities. The action was the first securities class action case filed against originators and Wall Street banks as a result of the credit crisis. As co-lead counsel Robbins Geller forged through six years of hard-fought litigation, oftentimes litigating issues of first impression, in order to secure the landmark settlement for its clients and the class.

  In approving the settlement, Judge Mariana R. Pfaelzer repeatedly complimented plaintiffs' attorneys, noting that it was "beyond serious dispute that Class Counsel has vigorously prosecuted the Settlement Actions on both the state and federal level over the last six years." Judge Pfaelzer also commented that "[w]ithout a settlement, these cases would continue indefinitely, resulting in significant risks to recovery and continued litigation costs. It is difficult to understate the risks to recovery if litigation had continued." *Me. State Ret. Sys. v. Countrywide Fin. Corp.*, No. 2:10-CV-00302, 2013 U.S. Dist. LEXIS 179190, at *44, *56 (C.D. Cal. Dec. 5, 2013).

  Judge Pfaelzer further noted that the proposed $500 million settlement represents one of the "largest MBS class action settlements to date. Indeed, this settlement easily surpasses the next largest . . . MBS settlement." *Id.* at *59.

- *In re Wachovia Preferred Sec. & Bond/Notes Litig.*, No. 09-cv-06351 (S.D.N.Y.). In litigation over bonds and preferred securities, issued by Wachovia between 2006 and 2008, Robbins Geller and co-counsel obtained a significant settlement with Wachovia successor Wells Fargo & Company ($590 million) and Wachovia auditor KPMG LLP ($37 million). ***The total settlement – $627 million – is one of the largest credit-crisis settlements involving Securities Act claims and one of the 20 largest securities class action recoveries in history***. The settlement is also one of the biggest securities class action recoveries arising from the credit crisis.

  As alleged in the complaint, the offering materials for the bonds and preferred securities misstated and failed to disclose the true nature and quality of Wachovia's mortgage loan portfolio, which exposed the bank and misled investors to tens of billions of dollars in losses on mortgage-related assets. In reality, Wachovia employed high-risk underwriting standards and made loans to subprime borrowers, contrary to the offering materials and their statements of "pristine credit quality." Robbins Geller served as co-lead counsel representing the City of Livonia Employees' Retirement System, Hawaii Sheet Metal Workers Pension Fund, and the investor class.

- *In re Cardinal Health, Inc. Sec. Litig.*, No. C2-04-575 (S.D. Ohio). As sole lead counsel representing Cardinal Health shareholders, Robbins Geller obtained a recovery of $600 million for investors. On behalf of the lead plaintiffs, Amalgamated Bank, the New Mexico State Investment Council, and the California Ironworkers Field Trust Fund, the Firm aggressively pursued class claims and won notable courtroom victories, including a favorable decision on defendants' motion to dismiss. *In re Cardinal Health, Inc. Sec. Litigs.*, 426 F. Supp. 2d 688 (S.D. Ohio 2006). At the time, the $600 million settlement was the tenth-largest settlement in the history of securities fraud litigation and is the largest-ever recovery in a securities fraud action in the Sixth Circuit. Judge Marbley commented:

  > The quality of representation in this case was superb. Lead Counsel, [Robbins Geller], are nationally recognized leaders in complex securities litigation class actions. The quality of the representation is demonstrated by the substantial benefit achieved for the Class and the efficient, effective prosecution and resolution of this action. Lead Counsel defeated a volley of motions to dismiss, thwarting well-formed challenges from prominent and capable attorneys from six different law firms.

  In re Cardinal Health Inc. Sec. Litigs., 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007).

- *AOL Time Warner Cases I & II*, JCCP Nos. 4322 & 4325 (Cal. Super. Ct., Los Angeles Cty.). Robbins Geller represented The Regents of the University of California, six Ohio state pension funds, Rabo Bank (NL), the Scottish Widows Investment Partnership, several Australian public and private funds, insurance companies, and numerous additional institutional investors, both domestic and international, in state and federal court opt-out litigation stemming from Time Warner's disastrous 2001 merger with Internet high flier America Online. Robbins Geller attorneys exposed a massive and sophisticated accounting fraud involving America Online's e-commerce and advertising revenue. After almost four years of litigation involving extensive discovery, the Firm secured combined settlements for its opt-out clients totaling over $629 million just weeks before The Regents' case pending in California state court was scheduled to go to trial. The Regents' gross recovery of $246 million is the largest individual opt-out securities recovery in history.

- *Abu Dhabi Commercial Bank v. Morgan Stanley & Co.*, No. 1:08-cv-07508-SAS-DCF (S.D.N.Y.), and *King County, Washington v. IKB Deutsche Industriebank AG*, No. 1:09-cv-08387-SAS (S.D.N.Y.). The Firm represented multiple institutional investors in successfully pursuing recoveries from two failed structured investment vehicles, each of which had been rated "AAA" by Standard & Poors and Moody's, but which failed fantastically in 2007. The matter settled just prior to trial in 2013. This result was only made possible after Robbins Geller lawyers beat back the rating agencies' longtime argument that ratings were opinions protected by the First Amendment.

- *In re HealthSouth Corp. Sec. Litig.*, No. CV-03-BE-1500-S (N.D. Ala.). As court-appointed co-lead counsel, Robbins Geller attorneys obtained a combined recovery of $671 million from HealthSouth, its auditor Ernst & Young, and its investment banker, UBS, for the benefit of stockholder plaintiffs. The settlement against HealthSouth represents one of the larger settlements in securities class action history and is considered among the top 15 settlements achieved after passage of the PSLRA. Likewise, the settlement against Ernst & Young is one of the largest securities class action settlements entered into by an accounting firm since the passage of the PSLRA. HealthSouth and its financial advisors perpetrated one of the largest and most pervasive frauds in the history of U.S. healthcare, prompting Congressional and law enforcement inquiry and resulting in guilty pleas of 16 former HealthSouth executives in related federal criminal prosecutions. In March 2009, Judge Karon Bowdre commented in the *HealthSouth* class certification opinion: "The court has had many opportunities since November 2001 to examine the work of class counsel and the supervision by the Class Representatives. The court finds both to be far more than adequate." *In re HealthSouth Corp. Sec. Litig.*, 257 F.R.D. 260, 275 (N.D. Ala. 2009).

- *In re Dynegy Inc. Sec. Litig.*, No. H-02-1571 (S.D. Tex.). As sole lead counsel representing The Regents of the University of California and the class of Dynegy investors, Robbins Geller attorneys obtained a combined settlement of $474 million from Dynegy, Citigroup, Inc. and Arthur Andersen LLP for their involvement in a clandestine financing scheme known as Project Alpha. Given Dynegy's limited ability to pay, Robbins Geller attorneys structured a settlement (reached shortly before the commencement of trial) that maximized plaintiffs' recovery without bankrupting the company. Most notably, the settlement agreement provides that Dynegy will appoint two board members to be nominated by The Regents, which Robbins Geller and The Regents believe will benefit all of Dynegy's stockholders.

- *Jones v. Pfizer Inc.*, No. 1:10-cv-03864 (S.D.N.Y.). Lead plaintiff Stichting Philips Pensioenfonds obtained a $400 million settlement on behalf of class members who purchased Pfizer Inc. common stock during the January 19, 2006 to January 23, 2009 class period. The settlement against Pfizer resolves accusations that it misled investors about an alleged off-label drug marketing scheme. As sole lead counsel, Robbins Geller attorneys helped achieve this exceptional result after five years of hard-fought litigation against the toughest and the brightest members of the securities defense bar by litigating this case all the way to trial.

  In approving the settlement, United States District Judge Alvin K. Hellerstein commended the Firm, noting that "[w]ithout the quality and the toughness that you have exhibited, our society would not be as good as it is with all its problems. So from me to you is a vote of thanks for devoting yourself to this work and doing it well. . . . You did a really good job. Congratulations."

- *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, No. 01-cv-1451 (D. Colo.). Robbins Geller attorneys served as lead counsel for a class of investors that purchased Qwest securities. In July 2001, the Firm filed the initial complaint in this action on behalf of its clients, long before any investigation into Qwest's financial statements was initiated by the SEC or Department of Justice. After five years of litigation, lead plaintiffs entered into a settlement with Qwest and certain individual defendants that provided a $400 million recovery for the class and created a mechanism that allowed the vast majority of class members to share in an additional $250 million recovered by the SEC. In 2008, Robbins Geller attorneys recovered an additional $45 million for the class in a settlement with defendants Joseph P. Nacchio and Robert S. Woodruff, the CEO and CFO, respectively, of Qwest during large portions of the class period.

- *Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co.*, No. 1:09-cv-03701 (S.D.N.Y.). Robbins Geller attorneys served as lead counsel for a class of investors and obtained court approval of a $388 million recovery in nine 2007 residential mortgage-backed securities offerings issued by J.P. Morgan. The settlement represents, on a percentage basis, the largest recovery ever achieved in an MBS purchaser class action. The result was achieved after more than five years of hard-fought litigation and an extensive investigation. In granting approval of the settlement, the court stated the following about Robbins Geller attorneys litigating the case: "[T]here is no question in my mind that this is a very good result for the class and that the plaintiffs' counsel fought the case very hard with extensive discovery, a lot of depositions, several rounds of briefing of various legal issues going all the way through class certification."

- *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, No. 1:08-cv-10783 (S.D.N.Y.). As sole lead counsel, Robbins Geller obtained a $272 million settlement on behalf of Goldman Sachs' shareholders. The settlement concludes one of the last remaining mortgage-backed securities purchaser class actions arising out of the global financial crisis. The remarkable result was achieved following seven years of extensive litigation. After the claims were dismissed in 2010, Robbins Geller secured a landmark victory from the Second Circuit Court of Appeals that clarified the scope of permissible class actions asserting claims under the Securities Act of 1933 on behalf of MBS investors. Specifically, the Second Circuit's decision rejected the concept of "tranche" standing and concluded that a lead plaintiff in an MBS class action has class standing to pursue claims on behalf of purchasers of other securities that were issued from the same registration statement and backed by pools of mortgages originated by the same lenders who had originated mortgages backing the lead plaintiff's securities.

In approving the settlement, the Honorable Loretta A. Preska of the Southern District of New York complimented Robbins Geller attorneys, noting:

> Counsel, thank you for your papers. They were, by the way, extraordinary papers in support of the settlement, and I will particularly note Professor Miller's declaration in which he details the procedural aspects of the case and then speaks of plaintiffs' counsel's success in the Second Circuit essentially changing the law.
>
> I will also note what counsel have said, and that is that this case illustrates the proper functioning of the statute.
>
> * * *
>
> Counsel, you can all be proud of what you've done for your clients. You've done an extraordinarily good job.

NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co., No. 1:08-cv-10783, Transcript at 10-11 (S.D.N.Y. May 2, 2016).

- ***Schuh v. HCA Holdings, Inc.***, No. 3:11-cv-01033 (M.D. Tenn.). As sole lead counsel, Robbins Geller obtained a groundbreaking $215 million settlement for former HCA Holdings, Inc. shareholders – the largest securities class action recovery ever in Tennessee. Reached shortly before trial was scheduled to commence, the settlement resolves claims that the Registration Statement and Prospectus HCA filed in connection with the company's massive $4.3 billion 2011 IPO contained material misstatements and omissions. The recovery achieved represents between 34% and 70% of the aggregate class wide damages, far exceeding the typical recovery in a securities class action. At the hearing on final approval of the settlement, the Honorable Kevin H. Sharp described Robbins Geller attorneys as "gladiators" and commented: "Looking at the benefit obtained, the effort that you had to put into it, [and] the complexity in this case . . . I appreciate the work that you all have done on this." *Schuh v. HCA Holdings, Inc.*, No. 3:11-CV-01033, Transcript at 12-13 (M.D. Tenn. Apr. 11, 2016).

- ***Silverman v. Motorola, Inc.***, No. 1:07-cv-04507 (N.D. Ill.). The Firm served as lead counsel on behalf of a class of investors in Motorola, Inc., ultimately recovering $200 million for investors just two months before the case was set for trial. This outstanding result was obtained despite the lack of an SEC investigation or any financial restatement. In May 2012, the Honorable Amy J. St. Eve of the Northern District of Illinois commented: "The representation that [Robbins Geller] provided to the class was significant, both in terms of quality and quantity." *Silverman v. Motorola, Inc.*, No. 07 C 4507, 2012 U.S. Dist. LEXIS 63477, at *11 (N.D. Ill. May 7, 2012), *aff'd*, 739 F.3d 956 (7th Cir. 2013).

  In affirming the district court's award of attorneys' fees, the Seventh Circuit noted that "no other law firm was willing to serve as lead counsel. Lack of competition not only implies a higher fee but also suggests that most members of the securities bar saw this litigation as too risky for their practices." *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013).

- ***In re AT&T Corp. Sec. Litig.***, MDL No. 1399 (D.N.J.). Robbins Geller attorneys served as lead counsel for a class of investors that purchased AT&T common stock. The case charged defendants AT&T and its former Chairman and CEO, C. Michael Armstrong, with violations of the federal securities laws in connection with AT&T's April 2000 initial public offering of its wireless tracking stock, the largest IPO in American history. After two weeks of trial, and on the eve of scheduled testimony by Armstrong and infamous telecom analyst Jack Grubman, defendants agreed to settle the case for $100 million. In granting approval of the settlement, the court stated the following about the Robbins Geller attorneys handling the case:

  > Lead Counsel are highly skilled attorneys with great experience in prosecuting complex securities action[s], and their professionalism and diligence displayed during [this] litigation substantiates this characterization. The Court notes that Lead

> Counsel displayed excellent lawyering skills through their consistent preparedness during court proceedings, arguments and the trial, and their well-written and thoroughly researched submissions to the Court. Undoubtedly, the attentive and persistent effort of Lead Counsel was integral in achieving the excellent result for the Class.

In re AT&T Corp. Sec. Litig., MDL No. 1399, 2005 U.S. Dist. LEXIS 46144, at *28-*29 (D.N.J. Apr. 25, 2005), *aff'd*, 455 F.3d 160 (3d Cir. 2006).

- ***In re Dollar Gen. Corp. Sec. Litig.***, No. 01-CV-00388 (M.D. Tenn.). Robbins Geller attorneys served as lead counsel in this case in which the Firm recovered $172.5 million for investors. The *Dollar General* settlement was the largest shareholder class action recovery ever in Tennessee.

- ***Carpenters Health & Welfare Fund v. Coca-Cola Co.***, No. 00-CV-2838 (N.D. Ga.). As co-lead counsel representing Coca-Cola shareholders, Robbins Geller attorneys obtained a recovery of $137.5 million after nearly eight years of litigation. Robbins Geller attorneys traveled to three continents to uncover the evidence that ultimately resulted in the settlement of this hard-fought litigation. The case concerned Coca-Cola's shipping of excess concentrate at the end of financial reporting periods for the sole purpose of meeting analyst earnings expectations, as well as the company's failure to properly account for certain impaired foreign bottling assets.

- ***Schwartz v. TXU Corp.***, No. 02-CV-2243 (N.D. Tex.). As co-lead counsel, Robbins Geller attorneys obtained a recovery of over $149 million for a class of purchasers of TXU securities. The recovery compensated class members for damages they incurred as a result of their purchases of TXU securities at inflated prices. Defendants had inflated the price of these securities by concealing the fact that TXU's operating earnings were declining due to a deteriorating gas pipeline and the failure of the company's European operations.

- ***In re Doral Fin. Corp. Sec. Litig.***, 05 MDL No. 1706 (S.D.N.Y.). In July 2007, the Honorable Richard Owen of the Southern District of New York approved the $129 million settlement, finding in his order:

> The services provided by Lead Counsel [Robbins Geller] were efficient and highly successful, resulting in an outstanding recovery for the Class without the substantial expense, risk and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.
>
> Cases brought under the federal securities laws are notably difficult and notoriously uncertain. . . . Despite the novelty and difficulty of the issues raised, Lead Plaintiffs' counsel secured an excellent result for the Class.
>
> . . . Based upon Lead Plaintiff's counsel's diligent efforts on behalf of the Class, as well as their skill and reputations, Lead Plaintiff's counsel were able to negotiate a very favorable result for the Class. . . . The ability of [Robbins Geller] to obtain such a favorable partial settlement for the Class in the face of such formidable opposition confirms the superior quality of their representation . . . .

In re Doral Fin. Corp. Sec. Litig., No. 1:05-md-01706, Order at 4-5 (S.D.N.Y. July 17, 2007).

- ***In re NASDAQ Market-Makers Antitrust Litig.***, MDL No. 1023 (S.D.N.Y.). Robbins Geller attorneys served as court-appointed co-lead counsel for a class of investors. The class alleged that the NASDAQ market-makers set and maintained wide spreads pursuant to an industry-wide conspiracy in one of the largest and most important antitrust cases in recent history. After three and one half years of intense litigation, the case was settled for a total of $1.027 billion, at the time the largest ever antitrust settlement. An excerpt from the court's opinion reads:

> Counsel for the Plaintiffs are preeminent in the field of class action litigation, and the roster of counsel for the Defendants includes some of the largest, most successful

> and well regarded law firms in the country. It is difficult to conceive of better representation than the parties to this action achieved.

In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465, 474 (S.D.N.Y. 1998).

- ***In re Exxon Valdez***, No. A89 095 Civ. (D. Alaska), and ***In re Exxon Valdez Oil Spill Litig.***, No. 3 AN 89 2533 (Alaska Super. Ct., 3d Jud. Dist.). Robbins Geller attorneys served on the Plaintiffs' Coordinating Committee and Plaintiffs' Law Committee in this massive litigation resulting from the Exxon Valdez oil spill in Alaska in March 1989. The jury awarded hundreds of millions in compensatory damages, as well as $5 billion in punitive damages (the latter were later reduced by the U.S. Supreme Court to $507 million).

- ***Mangini v. R.J. Reynolds Tobacco Co.***, No. 939359 (Cal. Super. Ct., San Francisco Cty.). In this case, R.J. Reynolds admitted that "the *Mangini* action, and the way that it was vigorously litigated, was an early, significant and unique driver of the overall legal and social controversy regarding underage smoking that led to the decision to phase out the Joe Camel Campaign."

- ***Does I v. The Gap, Inc.***, No. 01 0031 (D. N. Mar. I.). In this groundbreaking case, Robbins Geller attorneys represented a class of 30,000 garment workers who alleged that they had worked under sweatshop conditions in garment factories in Saipan that produced clothing for top U.S. retailers such as The Gap, Target and J.C. Penney. In the first action of its kind, Robbins Geller attorneys pursued claims against the factories and the retailers alleging violations of RICO, the Alien Tort Claims Act, and the Law of Nations based on the alleged systemic labor and human rights abuses occurring in Saipan. This case was a companion to two other actions: ***Does I v. Advance Textile Corp.***, No. 99 0002 (D. N. Mar. I.), which alleged overtime violations by the garment factories under the Fair Labor Standards Act and local labor law, and ***UNITE v. The Gap, Inc.***, No. 300474 (Cal. Super. Ct., San Francisco Cty.), which alleged violations of California's Unfair Practices Law by the U.S. retailers. These actions resulted in a settlement of approximately $20 million that included a comprehensive monitoring program to address past violations by the factories and prevent future ones. The members of the litigation team were honored as Trial Lawyers of the Year by the Trial Lawyers for Public Justice in recognition of the team's efforts in bringing about the precedent-setting settlement of the actions.

- ***Hall v. NCAA (Restricted Earnings Coach Antitrust Litigation)***, No. 94-2392 (D. Kan.). Robbins Geller attorneys were lead counsel and lead trial counsel for one of three classes of coaches in these consolidated price-fixing actions against the National Collegiate Athletic Association. On May 4, 1998, the jury returned verdicts in favor of the three classes for more than $70 million.

- ***In re Prison Realty Sec. Litig.***, No. 3:99-0452 (M.D. Tenn.). Robbins Geller attorneys served as lead counsel for the class, obtaining a $105 million recovery.

- ***In re Honeywell Int'l, Inc. Sec. Litig.***, No. 00-cv-03605 (D.N.J.). Robbins Geller attorneys served as lead counsel for a class of investors that purchased Honeywell common stock. The case charged Honeywell and its top officers with violations of the federal securities laws, alleging the defendants made false public statements concerning Honeywell's merger with Allied Signal, Inc. and that defendants falsified Honeywell's financial statements. After extensive discovery, Robbins Geller attorneys obtained a $100 million settlement for the class.

- ***Schwartz v. Visa Int'l***, No. 822404-4 (Cal. Super. Ct., Alameda Cty.). After years of litigation and a six-month trial, Robbins Geller attorneys won one of the largest consumer protection verdicts ever awarded in the United States. Robbins Geller attorneys represented California consumers in an action against Visa and MasterCard for intentionally imposing and concealing a fee from their cardholders. The court ordered Visa and MasterCard to return $800 million in cardholder losses, which represented 100% of the amount illegally taken, plus 2% interest. In addition, the court ordered full disclosure of the hidden fee.

- ***Thompson v. Metro. Life Ins. Co.***, No. 00-cv-5071 (S.D.N.Y.). Robbins Geller attorneys served as lead counsel and obtained $145 million for the class in a settlement involving racial discrimination claims in the sale of life insurance.

- *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, MDL No. 1061 (D.N.J.). In one of the first cases of its kind, Robbins Geller attorneys obtained a settlement of $4 billion for deceptive sales practices in connection with the sale of life insurance involving the "vanishing premium" sales scheme.

Precedent-Setting Decisions

Robbins Geller attorneys operate at the forefront of litigation. Our work often changes the legal landscape, resulting in an environment that is more-favorable for obtaining recoveries for our clients.

Investor and Shareholder Rights

- *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012), *cert. denied*, _U.S._, 133 S. Ct. 1624 (2013). In a securities fraud action involving mortgage-backed securities, the Second Circuit rejected the concept of "tranche" standing and found that a lead plaintiff has class standing to pursue claims on behalf of purchasers of securities that were backed by pools of mortgages originated by the same lenders who had originated mortgages backing the lead plaintiff's securities. The court noted that, given those common lenders, the lead plaintiff's claims as to its purchases implicated "the same set of concerns" that purchasers in several of the other offerings possessed. The court also rejected the notion that the lead plaintiff lacked standing to represent investors in different tranches.

- *In re VeriFone Holdings, Inc. Sec. Litig.*, 704 F.3d 694 (9th Cir. 2012). The panel reversed in part and affirmed in part the dismissal of investors' securities fraud class action alleging violations of §§10(b), 20(a), and 20A of the Securities Exchange Act of 1934 and SEC Rule 10b-5 in connection with a restatement of financial results of the company in which the investors had purchased stock.

  The panel held that the third amended complaint adequately pleaded the §10(b), §20A and Rule 10b-5 claims. Considering the allegations of scienter holistically, as the U.S. Supreme Court directed in *Matrixx Initiatives, Inc. v. Siracusano*, _U.S._, 131 S. Ct. 1309, 1324 (2011), the panel concluded that the inference that the defendant company and its chief executive officer and former chief financial officer were deliberately reckless as to the truth of their financial reports and related public statements following a merger was at least as compelling as any opposing inference.

- *Fox v. JAMDAT Mobile, Inc.*, 185 Cal. App. 4th 1068 (2010). Concluding that Delaware's shareholder ratification doctrine did not bar the claims, the California Court of Appeal reversed dismissal of a shareholder class action alleging breach of fiduciary duty in a corporate merger.

- *In re Constar Int'l Inc. Sec. Litig.*, 585 F.3d 774 (3d Cir. 2009). The Third Circuit flatly rejected defense contentions that where relief is sought under §11 of the Securities Act of 1933, which imposes liability when securities are issued pursuant to an incomplete or misleading registration statement, class certification should depend upon findings concerning market efficiency and loss causation.

- *Matrixx Initiatives, Inc. v. Siracusano*, _U.S._, 131 S. Ct. 1309 (2011), *aff'g* 585 F.3d 1167 (9th Cir. 2009). In a securities fraud action involving the defendants' failure to disclose a possible link between the company's popular cold remedy and a life-altering side effect observed in some users, the U.S. Supreme Court unanimously affirmed the Ninth Circuit's (a) rejection of a bright-line "statistical significance" materiality standard, and (b) holding that plaintiffs had successfully pleaded a strong inference of the defendants' scienter.

- *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221 (5th Cir. 2009). Aided by former U.S. Supreme Court Justice O'Connor's presence on the panel, the Fifth Circuit reversed a district court order denying class certification and also reversed an order granting summary judgment to defendants. The court held that the district court applied an incorrect fact-for-fact standard of loss causation, and that genuine issues of fact on loss causation precluded summary judgment.

- *In re F5 Networks, Inc., Derivative Litig.*, 207 P.3d 433 (Wash. 2009). In a derivative action alleging unlawful stock option backdating, the Supreme Court of Washington ruled that shareholders need not make a pre-suit demand on the board of directors where this step would be futile, agreeing with plaintiffs that favorable Delaware case law should be followed as persuasive authority.

- *Lormand v. US Unwired, Inc.*, 565 F.3d 228 (5th Cir. 2009). In a rare win for investors in the Fifth Circuit, the court reversed an order of dismissal, holding that safe harbor warnings were not meaningful when the facts alleged established a strong inference that defendants knew their forecasts were false. The court also held that plaintiffs sufficiently alleged loss causation.

- *Institutional Inv'rs Grp. v. Avaya, Inc.*, 564 F.3d 242 (3d Cir. 2009). In a victory for investors in the Third Circuit, the court reversed an order of dismissal, holding that shareholders pled with particularity why the company's repeated denials of price discounts on products were false and misleading when the totality of facts alleged established a strong inference that defendants knew their denials were false.

- *Alaska Elec. Pension Fund v. Pharmacia Corp.*, 554 F.3d 342 (3d Cir. 2009). The Third Circuit held that claims filed for violation of §10(b) of the Securities Exchange Act of 1934 were timely, adopting investors' argument that because scienter is a critical element of the claims, the time for filing them cannot begin to run until the defendants' fraudulent state of mind should be apparent.

- *Rael v. Page*, 222 P.3d 678 (N.M. Ct. App. 2009). In this shareholder class and derivative action, Robbins Geller attorneys obtained an appellate decision reversing the trial court's dismissal of the complaint alleging serious director misconduct in connection with the merger of SunCal Companies and Westland Development Co., Inc., a New Mexico company with large and historic landholdings and other assets in the Albuquerque area. The appellate court held that plaintiff's claims for breach of fiduciary duty were direct, not derivative, because they constituted an attack on the validity or fairness of the merger and the conduct of the directors. Although New Mexico law had not addressed this question directly, at the urging of the Firm's attorneys, the court relied on Delaware law for guidance, rejecting the "special injury" test for determining the direct versus derivative inquiry and instead applying more recent Delaware case law.

- *Lane v. Page*, No. 06-cv-1071 (D.N.M. 2012). In May 2012, while granting final approval of the settlement in the federal component of the Westland cases, Judge Browning in the District of New Mexico commented:

  > Class Counsel are highly skilled and specialized attorneys who use their substantial experience and expertise to prosecute complex securities class actions. In possibly one of the best known and most prominent recent securities cases, Robbins Geller served as sole lead counsel – *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.). *See* Report at 3. The Court has previously noted that the class would "receive high caliber legal representation" from class counsel, and throughout the course of the litigation the Court has been impressed with the quality of representation on each side. *Lane v. Page*, 250 F.R.D. at 647

  Lane v. Page, 862 F. Supp. 2d 1182, 1253-54 (D.N.M. 2012).

  In addition, Judge Browning stated, "'Few plaintiffs' law firms could have devoted the kind of time, skill, and financial resources over a five-year period necessary to achieve the pre- and post-Merger benefits obtained for the class here.' . . . [Robbins Geller is] both skilled and experienced, and used those skills and experience for the benefit of the class [Robbins Geller is] both skilled and experienced, and used those skills and experience for the benefit of the class." *Id.* at 1254.

- *Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031 (9th Cir. 2008). In a case of first impression, the Ninth Circuit held that the Securities Act of 1933's specific non-removal features had not been trumped by the general removal provisions of the Class Action Fairness Act of 2005.

- *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049 (9th Cir. 2008). The Ninth Circuit upheld defrauded investors' loss causation theory as plausible, ruling that a limited temporal gap between the time defendants' misrepresentation was publicly revealed and the subsequent decline in stock value was reasonable where the public had not immediately understood the impact of defendants' fraud.

- *In re WorldCom Sec. Litig.*, 496 F.3d 245 (2d Cir. 2007). The Second Circuit held that the filing of a class action complaint tolls the limitations period for all members of the class, including those who choose to opt out of the class action and file their own individual actions without waiting to see whether the district court certifies a class – reversing the decision below and effectively overruling multiple district court rulings that *American Pipe* tolling did not apply under these circumstances.

- *In re Merck & Co. Sec., Derivative & ERISA Litig.*, 493 F.3d 393 (3d Cir. 2007). In a shareholder derivative suit appeal, the Third Circuit held that the general rule that discovery may not be used to supplement demand-futility allegations does not apply where the defendants enter a voluntary stipulation to produce materials relevant to demand futility without providing for any limitation as to their use. In April 2007, the Honorable D. Brooks Smith praised Robbins Geller partner Joe Daley's efforts in this litigation:

  > Thank you very much Mr. Daley and a thank you to all counsel. As Judge Cowen mentioned, this was an exquisitely well-briefed case; it was also an extremely well-argued case, and we thank counsel for their respective jobs here in the matter, which we will take under advisement. Thank you.

  In re Merck & Co., Inc. Sec., Derivative & ERISA Litig., No. 06-2911, Transcript at 35:37-36:00 (3d Cir. Apr. 12, 2007).

- *Alaska Elec. Pension Fund v. Brown*, 941 A.2d 1011 (Del. 2007). The Supreme Court of Delaware held that the Alaska Electrical Pension Fund, for purposes of the "corporate benefit" attorney-fee doctrine, was presumed to have caused a substantial increase in the tender offer price paid in a "going private" buyout transaction. The Court of Chancery originally ruled that Alaska's counsel, Robbins Geller, was not entitled to an award of attorney fees, but Delaware's high court, in its published opinion, reversed and remanded for further proceedings.

- *Crandon Capital Partners v. Shelk*, 157 P.3d 176 (Or. 2007). Oregon's Supreme Court ruled that a shareholder plaintiff in a derivative action may still seek attorney fees even if the defendants took actions to moot the underlying claims. The Firm's attorneys convinced Oregon's highest court to take the case, and reverse, despite the contrary position articulated by both the trial court and the Oregon Court of Appeals.

- *In re Qwest Commc'ns Int'l*, 450 F.3d 1179 (10th Cir. 2006). In a case of first impression, the Tenth Circuit held that a corporation's deliberate release of purportedly privileged materials to governmental agencies was not a "selective waiver" of the privileges such that the corporation could refuse to produce the same materials to non-governmental plaintiffs in private securities fraud litigation.

- *In re Guidant S'holders Derivative Litig.*, 841 N.E.2d 571 (Ind. 2006). Answering a certified question from a federal court, the Supreme Court of Indiana unanimously held that a pre-suit demand in a derivative action is excused if the demand would be a futile gesture. The court adopted a "demand futility" standard and rejected defendants' call for a "universal demand" standard that might have immediately ended the case.

- *Denver Area Meat Cutters v. Clayton*, 209 S.W.3d 584 (Tenn. Ct. App. 2006). The Tennessee Court of Appeals rejected an objector's challenge to a class action settlement arising out of Warren Buffet's 2003 acquisition of Tennessee-based Clayton Homes. In their effort to secure relief for Clayton Homes stockholders, the Firm's attorneys obtained a temporary injunction of the Buffet acquisition for six weeks in 2003 while the matter was litigated in the courts. The temporary halt to Buffet's acquisition received national press attention.

- *DeJulius v. New Eng. Health Care Emps. Pension Fund*, 429 F.3d 935 (10th Cir. 2005). The Tenth Circuit held that the multi-faceted notice of a $50 million settlement in a securities fraud class action had been the best notice practicable under the circumstances, and thus satisfied both constitutional due process and Rule 23 of the Federal Rules of Civil Procedure.

- *In re Daou Sys.*, 411 F.3d 1006 (9th Cir. 2005). The Ninth Circuit sustained investors' allegations of accounting fraud and ruled that loss causation was adequately alleged by pleading that the value of the stock they purchased declined when the issuer's true financial condition was revealed.

- *Barrie v. Intervoice-Brite, Inc.*, 397 F.3d 249 (5th Cir.), *reh'g denied and opinion modified*, 409 F.3d 653 (5th Cir. 2005). The Fifth Circuit upheld investors' accounting-fraud claims, holding that fraud is pled as to both defendants when one knowingly utters a false statement and the other knowingly fails to correct it, even if the complaint does not specify who spoke and who listened.

- *City of Monroe Emps. Ret. Sys. v. Bridgestone Corp.*, 399 F.3d 651 (6th Cir. 2005). The Sixth Circuit held that a statement regarding objective data supposedly supporting a corporation's belief that its tires were safe was actionable where jurors could have found a reasonable basis to believe the corporation was aware of undisclosed facts seriously undermining the statement's accuracy.

- *Ill. Mun. Ret. Fund v. Citigroup, Inc.*, 391 F.3d 844 (7th Cir. 2004). The Seventh Circuit upheld a district court's decision that the Illinois Municipal Retirement Fund was entitled to litigate its claims under the Securities Act of 1933 against WorldCom's underwriters before a state court rather than before the federal forum sought by the defendants.

- *Nursing Home Pension Fund, Local 144 v. Oracle Corp.*, 380 F.3d 1226 (9th Cir. 2004). The Ninth Circuit ruled that defendants' fraudulent intent could be inferred from allegations concerning their false representations, insider stock sales and improper accounting methods.

- *Southland Sec. Corp. v. INSpire Ins. Sols. Inc.*, 365 F.3d 353 (5th Cir. 2004). The Fifth Circuit sustained allegations that an issuer's CEO made fraudulent statements in connection with a contract announcement.

Insurance

- *Smith v. Am. Family Mut. Ins. Co.*, 289 S.W.3d 675 (Mo. Ct. App. 2009). Capping nearly a decade of hotly contested litigation, the Missouri Court of Appeals reversed the trial court's judgment notwithstanding the verdict for auto insurer American Family and reinstated a unanimous jury verdict for the plaintiff class.

- *Troyk v. Farmers Grp., Inc.*, 171 Cal. App. 4th 1305 (2009). The California Court of Appeal held that Farmers Insurance's practice of levying a "service charge" on one-month auto insurance policies, without specifying the charge in the policy, violated California's Insurance Code.

- *Lebrilla v. Farmers Grp., Inc.*, 119 Cal. App. 4th 1070 (2004). Reversing the trial court, the California Court of Appeal ordered class certification of a suit against Farmers, one of the largest automobile insurers in California, and ruled that Farmers' standard automobile policy requires it to provide parts that are as good as those made by vehicle's manufacturer. The case involved Farmers' practice of using inferior imitation parts when repairing insureds' vehicles.

- *In re Monumental Life Ins. Co.*, 365 F.3d 408, 416 (5th Cir. 2004). The Fifth Circuit Court of Appeals reversed a district court's denial of class certification in a case filed by African-Americans seeking to remedy racially discriminatory insurance practices. The Fifth Circuit held that a monetary relief claim is viable in a Rule 23(b)(2) class if it flows directly from liability to the class as a whole and is capable of classwide "'computation by means of objective standards and not dependent in any significant way on the intangible, subjective differences of each class member's circumstances.'"

Consumer Protection

- *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011). In a leading decision interpreting the scope of Proposition 64's new standing requirements under California's Unfair Competition Law (UCL), the California Supreme Court held that consumers alleging that a manufacturer has misrepresented its product have "lost money or property" within the meaning of the initiative, and thus have standing to sue under the UCL, if they "can truthfully allege that they were deceived by a product's label into spending money to purchase the product, and would not have purchased it otherwise." *Id*. at 317. *Kwikset* involved allegations, proven at trial, that defendants violated California's "Made in the U.S.A." statute by representing on their labels that their products were "Made in U.S.A." or "All-American Made" when, in fact, the products were substantially made with foreign parts and labor.

- *Safeco Ins. Co. of Am. v. Superior Court*, 173 Cal. App. 4th 814 (2009). In a class action against auto insurer Safeco, the California Court of Appeal agreed that the plaintiff should have access to discovery to identify a new class representative after her standing to sue was challenged.

- *Consumer Privacy Cases*, 175 Cal. App. 4th 545 (2009). The California Court of Appeal rejected objections to a nationwide class action settlement benefiting Bank of America customers.

- *Koponen v. Pac. Gas & Elec. Co.*, 165 Cal. App. 4th 345 (2008). The Firm's attorneys obtained a published decision reversing the trial court's dismissal of the action, and holding that the plaintiff's claims for damages arising from the utility's unauthorized use of rights-of-way or easements obtained from the plaintiff and other landowners were not barred by a statute limiting the authority of California courts to review or correct decisions of the California Public Utilities Commission.

- *Sanford v. MemberWorks, Inc.*, 483 F.3d 956 (9th Cir. 2007). In a telemarketing-fraud case, where the plaintiff consumer insisted she had never entered the contractual arrangement that defendants said bound her to arbitrate individual claims to the exclusion of pursuing class claims, the Ninth Circuit reversed an order compelling arbitration – allowing the plaintiff to litigate on behalf of a class.

- *Ritt v. Billy Blanks Enters.*, 870 N.E.2d 212 (Ohio Ct. App. 2007). In the Ohio analog to the West case, the Ohio Court of Appeals approved certification of a class of Ohio residents seeking relief under Ohio's consumer protection laws for the same telemarketing fraud.

- *Haw. Med. Ass'n v. Haw. Med. Serv. Ass'n*, 148 P.3d 1179 (Haw. 2006). The Supreme Court of Hawaii ruled that claims of unfair competition were not subject to arbitration and that claims of tortious interference with prospective economic advantage were adequately alleged.

- *Branick v. Downey Sav. & Loan Ass'n*, 39 Cal. 4th 235 (2006). Robbins Geller attorneys were part of a team of lawyers that briefed this case before the Supreme Court of California. The court issued a unanimous decision holding that new plaintiffs may be substituted, if necessary, to preserve actions pending when Proposition 64 was passed by California voters in 2004. Proposition 64 amended California's Unfair Competition Law and was aggressively cited by defense lawyers in an effort to dismiss cases after the initiative was adopted.

- *McKell v. Wash. Mut., Inc.*, 142 Cal. App. 4th 1457 (2006). The California Court of Appeal reversed the trial court, holding that plaintiff's theories attacking a variety of allegedly inflated mortgage-related fees were actionable.

- *West Corp. v. Superior Court*, 116 Cal. App. 4th 1167 (2004). The California Court of Appeal upheld the trial court's finding that jurisdiction in California was appropriate over the out-of-state corporate defendant whose telemarketing was aimed at California residents. Exercise of jurisdiction was found to be in keeping with considerations of fair play and substantial justice.

- *Kruse v. Wells Fargo Home Mortg., Inc.*, 383 F.3d 49 (2d Cir. 2004), and *Santiago v. GMAC Mortg. Grp., Inc.*, 417 F.3d 384 (3d Cir. 2005). In two groundbreaking federal appellate decisions, the Second and Third Circuits each ruled that the Real Estate Settlement Practices Act prohibits marking up home loan-related fees and charges.

Additional Judicial Commendations

Robbins Geller attorneys have been praised by countless judges all over the country for the quality of their representation in class-action lawsuits. In addition to the judicial commendations set forth in the Prominent

Cases and Precedent-Setting Decisions sections, judges have acknowledged the successful results of the Firm and its attorneys with the following plaudits:

- In December 2016, at the final approval hearing, the Honorable James G. Carr stated: "I kept throwing the case out, and you kept coming back. . . . And it's both remarkable and noteworthy and a credit to you and your firm that you did so. . . . [Y]ou persuaded the Sixth Circuit. As we know, that's no mean feat at all." Judge Carr further complimented the Firm, noting that it "goes without question or even saying" that Robbins Geller is very well-known nationally and that the settlement is an excellent result for the class. He succinctly concluded that "given the tenacity and the time and the effort that [Robbins Geller] lawyers put into [the case]" makes the class "a lot better off." *Plumbers & Pipefitters Nat'l Pension Fund v. Burns*, No. 3:05-cv-07393-JGC, Transcript at 4, 10, 14, 17 (N.D. Ohio Nov. 18, 2016).

- In September 2016, in granting final approval of the settlement, Judge Arleo commended the "vigorous and skilled efforts" of Robbins Geller attorneys for obtaining "an excellent recovery." Judge Arleo added that the settlement was reached after "contentious, hard-fought litigation" that ended with "a very, very good result for the class" in a "risky case." *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudential Fin., Inc.*, No. 2:12-cv-05275-MCA-LDW, Transcript of Hearing at 18-20 (D.N.J. Sept. 28, 2016).

- In August 2015, at the final approval hearing for the settlement, the Honorable Karen M. Humphreys praised Robbins Geller's "extraordinary efforts" and "excellent lawyering," noting that the settlement "really does signal that the best is yet to come for your clients and for your prodigious labor as professionals. . . . I wish more citizens in our country could have an appreciation of what this [settlement] truly represents." *Bennett v. Sprint Nextel Corp.*, No. 2:09-cv-02122-EFM-KMH, Transcript at 8, 25 (D. Kan. Aug. 12, 2015).

- In August 2015, the Honorable Judge Max O. Cogburn, Jr. noted that "plaintiffs' attorneys were able [to] achieve the big success early" in the case and obtained an "excellent result." The "extraordinary" settlement was because of "good lawyers . . . doing their good work." *Nieman v. Duke Energy Corp.*, No. 3:12-cv-456, Transcript at 21, 23, 30 (W.D.N.C. Aug. 12, 2015).

- In July 2015, in approving the settlement, the Honorable Douglas L. Rayes of the District of Arizona stated: "Settlement of the case during pendency of appeal for more than an insignificant amount is rare. The settlement here is substantial and provides favorable recovery for the settlement class under these circumstances." He continued, noting, "[a]s against the objective measures of . . . settlements [in] other similar cases, [the recovery] is on the high end." *Teamsters Local 617 Pension & Welfare Funds v. Apollo Grp., Inc.*, No. 2:06-cv-02674-DLR, Transcript at 8, 11 (D. Ariz. July 28, 2015).

- In June 2015, at the conclusion of the hearing for final approval of the settlement, the Honorable Susan Richard Nelson of the District of Minnesota noted that it was "a pleasure to be able to preside over a case like this," praising Robbins Geller in achieving "an outstanding [result] for [its] clients," as she was "very impressed with the work done on th[e] case." *In re St. Jude Med., Inc. Sec. Litig.*, No. 0:10-cv-00851-SRN-TNL, Transcript at 7 (D. Minn. June 12, 2015).

- In May 2015, at the fairness hearing on the settlement, the Honorable William G. Young noted that the case was "very well litigated" by Robbins Geller attorneys, adding that "I don't just say that as a matter of form. . . . I thank you for the vigorous litigation that I've been permitted to be a part of." *Courtney v. Avid Tech., Inc.*, No. 1:13-cv-10686-WGY, Transcript at 8-9 (D. Mass May 12, 2015).

- In January 2015, the Honorable William J. Haynes, Jr. of the Middle District of Tennessee described the settlement as a "highly favorable result achieved for the Class" through Robbins Geller's "diligent prosecution . . . [and] quality of legal services." The settlement represents the third largest securities recovery ever in the Middle District of Tennessee and the largest in more than a decade. *Garden City Emps.' Ret. Sys. v. Psychiatric Solutions, Inc.*, No. 3:09-cv-00882, Order at 1 (M.D. Tenn. Jan. 16, 2015).

- In September 2014, in approving the settlement for shareholders, Vice Chancellor John W. Noble noted "[t]he litigation caused a substantial benefit for the class. It is unusual to see a $29 million recovery." Vice Chancellor Noble characterized the litigation as "novel" and "not easy," but "[t]he lawyers took a case and made something of it." The Court commended Robbins Geller's efforts in obtaining this result: "The standing and ability of counsel cannot be questioned" and "the benefits achieved by plaintiffs' counsel in this case cannot be ignored." *In re Gardner Denver, Inc. S'holder Litig.*, No. 8505-VCN, Transcript at 26-28 (Del. Ch. Sept. 3, 2014).

- In May 2014, at the conclusion of the hearing for final approval of the settlement, the Honorable Elihu M. Berle stated: "I would finally like to congratulate counsel on their efforts to resolve this case, on excellent work – it was the best interest of the class – and to the exhibition of professionalism. So I do thank you for all your efforts." *Liberty Mutual Overtime Cases*, No. JCCP 4234, Transcript at 20:1-5 (Cal. Super. Ct., Los Angeles Cty. May 29, 2014).

- In March 2014, Ninth Circuit Judge J. Clifford Wallace (presiding) expressed the gratitude of the court: "Thank you. I want to especially thank counsel for this argument. This is a very complicated case and I think we were assisted no matter how we come out by competent counsel coming well prepared. . . . It was a model of the type of an exercise that we appreciate. Thank you very much for your work . . . you were of service to the court." *Eclectic Properties East, LLC v. The Marcus & Millichap Co.*, No. 12-16526, Transcript (9th Cir. Mar. 14, 2014).

- In February 2014, in approving a settlement, Judge Edward M. Chen noted the "very substantial risks" in the case and recognized Robbins Geller had performed "extensive work on the case." *In re VeriFone Holdings, Inc. Sec. Litig.*, No. C-07-6140, 2014 U.S. Dist. LEXIS 20044, at *5, *11-*12 (N.D. Cal. Feb. 18, 2014).

- In August 2013, in granting final approval of the settlement, the Honorable Richard J. Sullivan stated: "Lead Counsel is to be commended for this result: it expended considerable effort and resources over the course of the action researching, investigating, and prosecuting the claims, at significant risk to itself, and in a skillful and efficient manner, to achieve an outstanding recovery for class members. Indeed, the result – and the class's embrace of it – is a testament to the experience and tenacity Lead Counsel brought to bear." *City of Livonia Emps. Ret. Sys. v. Wyeth*, No. 07 Civ. 10329, 2013 U.S. Dist. LEXIS 113658, at *13 (S.D.N.Y. Aug. 7, 2013).

- In July 2013, in granting final approval of the settlement, the Honorable William H. Alsup stated that Robbins Geller did "excellent work in this case," and continued, "I look forward to seeing you on the next case." *Fraser v. Asus Comput. Int'l*, No. C 12-0652, Transcript at 12:2-3 (N.D. Cal. July 11, 2013).

- In June 2013, in certifying the class, U.S. District Judge James G. Carr recognized Robbins Geller's steadfast commitment to the class, noting that "plaintiffs, with the help of Robbins Geller, have twice successfully appealed this court's orders granting defendants' motion to dismiss." *Plumbers & Pipefitters Nat'l Pension Fund v. Burns*, 292 F.R.D. 515, 524 (N.D. Ohio 2013).

- In November 2012, in granting appointment of lead plaintiff, Chief Judge James F. Holderman commended Robbins Geller for its "substantial experience in securities class action litigation and is recognized as 'one of the most successful law firms in securities class actions, if not the preeminent one, in the country.' *In re Enron Corp. Sec.*, 586 F. Supp. 2d 732, 797 (S.D. Tex. 2008) (Harmon, J.)." He continued further that, "'Robbins Geller attorneys are responsible for obtaining the largest securities fraud class action recovery ever [$7.2 billion in *Enron*], as well as the largest recoveries in the Fifth, Sixth, Eighth, Tenth and Eleventh Circuits.'" *Bristol Cty. Ret. Sys. v. Allscripts Healthcare Sols., Inc.*, No. 12 C 3297, 2012 U.S. Dist. LEXIS 161441 at *21 (N.D. Ill. Nov. 9, 2012).

- In June 2012, in granting plaintiffs' motion for class certification, the Honorable Inge Prytz Johnson noted that other courts have referred to Robbins Geller as "'one of the most successful law firms in securities class actions . . . in the country.'" *Local 703, I.B. v. Regions Fin. Corp.*, 282 F.R.D. 607, 616 (N.D. Ala. 2012) (quoting *In re Enron Corp. Sec. Litig.*, 586 F. Supp. 2d 732, 797 (S.D. Tex. 2008)).

- In June 2012, in granting final approval of the settlement, the Honorable Barbara S. Jones commented that "class counsel's representation, from the work that I saw, appeared to me to be of the highest quality." *In re CIT Grp. Inc. Sec. Litig.*, No. 08 Civ. 6613, Transcript at 9:16-18 (S.D.N.Y. June 13, 2012).

- In March 2012, in granting certification for the class, Judge Robert W. Sweet referenced the *Enron* case, agreeing that Robbins Geller's "'clearly superlative litigating and negotiating skills'" give the Firm an "'outstanding reputation, experience, and success in securities litigation nationwide,'" thus, "'[t]he experience, ability, and reputation of the attorneys of [Robbins Geller] is not disputed; it is one of the most successful law firms in securities class actions, if not the preeminent one, in the country.'" *Billhofer v. Flamel Techs., S.A.*, 281 F.R.D. 150, 158 (S.D.N.Y. 2012).

- In March 2011, in denying defendants' motion to dismiss, Judge Richard Sullivan commented: "Let me thank you all. . . . [The motion] was well argued . . . and . . . well briefed . . . . I certainly appreciate having good lawyers who put the time in to be prepared . . . ." *Anegada Master Fund Ltd. v. PxRE Grp. Ltd.*, No. 08-cv-10584, Transcript at 83 (S.D.N.Y. Mar. 16, 2011).

- In January 2011, the court praised Robbins Geller attorneys: "They have gotten very good results for stockholders. . . . [Robbins Geller has] such a good track record." *In re Compellent Technologies, Inc. S'holder Litig.*, No. 6084-VCL, Transcript at 20-21 (Del. Ch. Jan. 13, 2011).

- In August 2010, in reviewing the settlement papers submitted by the Firm, Judge Carlos Murguia stated that Robbins Geller performed "a commendable job of addressing the relevant issues with great detail and in a comprehensive manner . . . . The court respects the [Firm's] experience in the field of derivative [litigation]." *Alaska Elec. Pension Fund v. Olofson*, No. 08-cv-02344-CM-JPO (D. Kan.) (Aug. 20, 2010 e-mail from court re: settlement papers).

- In June 2009, Judge Ira Warshawsky praised the Firm's efforts in *In re Aeroflex, Inc. S'holder Litig.*: "There is no doubt that the law firms involved in this matter represented in my opinion the cream of the crop of class action business law and mergers and acquisition litigators, and from a judicial point of view it was a pleasure working with them." *In re Aeroflex, Inc. S'holder Litig.*, No. 003943/07, Transcript at 25:14-18 (N.Y. Sup. Ct., Nassau Cty. June 30, 2009).

- In March 2009, in granting class certification, the Honorable Robert Sweet of the Southern District of New York commented in *In re NYSE Specialists Sec. Litig.*, 260 F.R.D. 55, 74 (S.D.N.Y. 2009): "As to the second prong, the Specialist Firms have not challenged, in this motion, the qualifications, experience, or ability of counsel for Lead Plaintiff, [Robbins Geller], to conduct this litigation. Given [Robbins Geller's] substantial experience in securities class action litigation and the extensive discovery already conducted in this case, this element of adequacy has also been satisfied."

- In June 2008, the court commented, "Plaintiffs' lead counsel in this litigation, [Robbins Geller], has demonstrated its considerable expertise in shareholder litigation, diligently advocating the rights of Home Depot shareholders in this Litigation. [Robbins Geller] has acted with substantial skill and professionalism in representing the plaintiffs and the interests of Home Depot and its shareholders in prosecuting this case." *City of Pontiac General Employees' Ret. Sys. v. Langone*, No. 2006-122302, Findings of Fact in Support of Order and Final Judgment at 2 (Ga. Super. Ct., Fulton Cty. June 10, 2008).

- In a December 2006 hearing on the $50 million consumer privacy class action settlement in *Kehoe v. Fidelity Fed. Bank & Tr.*, No. 03-80593-CIV (S.D. Fla.), United States District Court Judge Daniel T.K. Hurley said the following:

  > First, I thank counsel. As I said repeatedly on both sides, we have been very, very fortunate. We have had fine lawyers on both sides. The issues in the case are significant issues. We are talking about issues dealing with consumer protection and privacy. Something that is increasingly important today in our society. . . . I want you to know I thought long and hard about this. I am absolutely satisfied that the

> settlement is a fair and reasonable settlement. . . . I thank the lawyers on both sides for the extraordinary effort that has been brought to bear here . . . .

Kehoe v. Fidelity Fed. Bank & Tr., No. 03-80593-CIV, Transcript at 26, 28-29 (S.D. Fla. Dec. 7, 2007).

- In *Stanley v. Safeskin Corp.*, No. 99 CV 454 (S.D. Cal.), where Robbins Geller attorneys obtained $55 million for the class of investors, Judge Moskowitz stated:

> I said this once before, and I'll say it again. I thought the way that your firm handled this case was outstanding. This was not an easy case. It was a complicated case, and every step of the way, I thought they did a very professional job.

Stanley v. Safeskin Corp., No. 99 CV 454, Transcript at 13 (S.D. Cal. May 25, 2004).

Partners

Mario Alba Jr.

Mario Alba is a partner in the Firm's Melville office. He has served as lead counsel in numerous cases and is responsible for initiating, investigating, researching, and filing securities and consumer fraud class actions. He has recovered millions of dollars in numerous actions, including cases against NBTY, Inc. ($16 million), OSI Pharmaceuticals ($9 million recovery) and PXRe Group, Ltd. ($5.9 million). Alba is also a member of the Firm's Institutional Outreach Team, which provides advice to the Firm's institutional clients, including numerous public pension systems and Taft-Hartley funds throughout the United States, and consults with them on issues relating to corporate fraud in the U.S. securities markets, as well as corporate governance issues and shareholder litigation. Some of Alba's institutional clients are currently involved in cases involving Microsoft Corp., Endo International PLC, L-3 Communications Holdings, Inc., Iconix Brand Group and BHP Billiton Limited. Alba has lectured at institutional investor conferences throughout the United States on various shareholder issues, including at the Illinois Public Pension Fund Association, the New York State Teamsters Conference, the American Alliance Conference, and the TEXPERS/IPPFA Joint Conference at the New York Stock Exchange, among others.

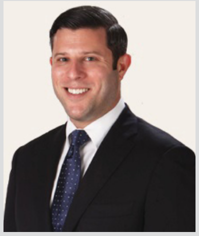
Education	B.S., St. John's University, 1999; J.D., Hofstra University School of Law, 2002
Honors/ Awards	Super Lawyer "Rising Star," 2012-2013, 2016; B.S., Dean's List, St. John's University, 1999; Selected as participant in Hofstra Moot Court Seminar, Hofstra University School of Law

Susan K. Alexander

Suzi Alexander is a partner in the Firm's San Francisco office. Her practice specializes in federal appeals of securities fraud class actions on behalf of investors. With nearly 30 years of federal appellate experience, she has argued on behalf of defrauded investors in circuit courts throughout the United States. Among her most notable cases *are In re VeriFone Holdings, Inc. Sec. Litig.* ($95 million recovery), which is one of the largest securities class action settlements ever achieved in the Northern District of California, and the successful appellate ruling in *Alaska Elec. Pension Fund v. Flowserve Corp.* ($55 million recovery). Other representative results include: *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 750 F.3d 227 (2d Cir. 2014) (reversing dismissal of securities fraud complaint, focused on loss causation); *Panther Partners Inc. v. Ikanos Commc'ns, Inc.*, 681 F.3d 114 (2d Cir. 2012) (reversing dismissal of §11 claim); *City of Pontiac Gen. Emps. Ret. Sys. v. MBIA, Inc.*, 637 F.3d 169 (2d Cir. 2011) (reversing dismissal of securities fraud complaint, focused on statute of limitations*); In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049 (9th Cir. 2008) (reversing dismissal of securities fraud complaint, focused on loss causation); and *Barrie v. Intervoice-Brite, Inc.*, 397 F.3d 249 (5th Cir. 2005) (reversing dismissal of securities fraud complaint, focused on scienter). Alexander's prior appellate work was with the California Appellate Project ("CAP"), where she prepared appeals and petitions for writs of *habeas corpus* on behalf of individuals sentenced to death. At CAP, and subsequently in private practice, she litigated and consulted on death penalty direct and collateral appeals for ten years.

Education	B.A., Stanford University, 1983; J.D., University of California, Los Angeles, 1986
Honors/ Awards	Super Lawyer, 2015-2016; American Academy of Appellate Lawyers; California Academy of Appellate Lawyers; Ninth Circuit Advisory Rules Committee; Appellate Delegate, Ninth Circuit Judicial Conference; ABA Council of Appellate Lawyers

Jason H. Alperstein

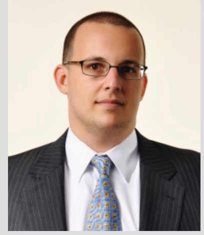


Jason Alperstein is a partner in the Firm's Boca Raton office. He focuses his practice in the areas of class action, consumer fraud and securities litigation, and is admitted to the bars of both Florida and New York. Alperstein has served on lead and co-lead litigations teams in nationwide and statewide class action lawsuits against dozens of the largest banking institutions in connection with the unlawful assessment of checking account overdraft fees. His efforts resulted in over $250 million in settlements for his clients and significant changes in the way banks charge overdraft fees to their customers. In addition, Alperstein has led consumer class actions against national banks for illegal payday lending, consumer product manufacturers for false and deceptive labeling, and some of the world's largest clothing retailers for their use of false and deceptive comparative pricing in their outlet stores.

Alperstein has also successfully represented institutional investors in securities fraud and derivative actions seeking damages related to the origination and servicing of residential mortgage-backed securities. In addition, he has substantial experience representing both plaintiffs and defendants in business litigation disputes involving trademark infringement, theft of trade secrets, fraudulent and negligent misrepresentation, breach of fiduciary duty, breach of contract, tortious interference, and commercial real estate litigation.

Education	B.A., Brown University, 2004; M.B.A., University of Miami School of Business, 2008, J.D., University of Miami School of Law, 2008
Honors/ Awards	Super Lawyer "Rising Star," 2014-2016; J.D., *cum laude*, University of Miami School of Law, 2008

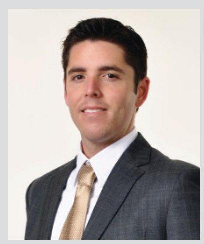
Matthew I. Alpert



Matthew Alpert is a partner in the Firm's San Diego office and focuses on the prosecution of securities fraud litigation. He has helped recover over $800 million for individual and institutional investors financially harmed by corporate fraud. Alpert's current cases include securities fraud cases against Microsoft (W.D. Wash.), Marvell Technology (N.D. Cal.) and Molycorp (D. Colo.). Alpert is part of the litigation team that successfully obtained class certification in a securities fraud class action against Regions Financial, a class certification decision which was substantively affirmed by the United States Court of Appeals for the Eleventh Circuit in *Local 703, I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp.*, 762 F.3d 1248 (11th Cir. 2014). Upon remand, the United States District Court for the Northern District of Alabama granted class certification again, rejecting defendants' post-*Halliburton II* arguments concerning stock price impact.

Education	B.A., University of Wisconsin at Madison, 2001; J.D., Washington University, St. Louis, 2005
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016

Darryl J. Alvarado



Darryl Alvarado is a partner in the Firm's San Diego office. Alvarado focuses his practice on securities fraud and other complex civil litigation. Alvarado helped secure $388 million for investors in J.P. Morgan RMBS in *Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co.* That settlement is, on a percentage basis, the largest recovery ever achieved in an RMBS class action. He was also a member of a team of attorneys that secured $95 million for investors in Morgan Stanley-issued RMBS in *In re Morgan Stanley Mortgage Pass-Through Certificates Litig.* In addition, Alvarado was a member of a team of lawyers that obtained landmark settlements, on the eve of trial, from the major credit rating agencies and Morgan Stanley arising out of the fraudulent ratings of bonds issued by the Cheyne and Rhinebridge structured investment vehicles in *Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Incorporated* and *King County, Washington v. IKB Deutsche Industriebank AG*. He was integral in obtaining several precedent-setting decisions in those cases, including defeating the rating agencies' historic First Amendment defense and defeating the ratings agencies' motions for summary judgment concerning the actionability of credit ratings.

Education	B.A., University of California, Santa Barbara, 2004; J.D., University of San Diego School of Law, 2007
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016; "Outstanding Young Attorneys," *San Diego Daily Transcript*, 2011

X. Jay Alvarez

Jay Alvarez is a partner in the Firm's San Diego office. He focuses his practice on securities fraud litigation and other complex litigation. Alvarez's notable cases include *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.* ($400 million recovery), *In re Coca-Cola Sec. Litig.* ($137.5 million settlement), *In re St. Jude Medical, Inc. Sec. Lit.* ($50 million settlement) and *In re Cooper Cos. Sec. Litig.* ($27 million recovery). Most recently, Alvarez was a member of the litigation team that secured a historic recovery on behalf of Trump University students in two class actions against President-Elect Donald J. Trump. The settlement provides $25 million to approximately 7,000 consumers. This result means individual class members will be eligible for upwards of $35,000 in restitution. He represented the class on a *pro bono* basis.

Prior to joining the Firm, Alvarez served as an Assistant United States Attorney for the Southern District of California from 1991-2003. As an Assistant United States Attorney, he obtained extensive trial experience, including the prosecution of bank fraud, money laundering and complex narcotics conspiracy cases. During his tenure as an Assistant United States Attorney, Alvarez also briefed and argued numerous appeals before the Ninth Circuit Court of Appeals.

Education	B.A., University of California, Berkeley, 1984; J.D., University of California, Berkeley, Boalt Hall School of Law, 1987

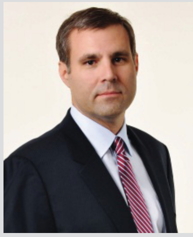
Stephen R. Astley

Stephen Astley is a partner in the Firm's Boca Raton office. Astley devotes his practice to representing institutional and individual shareholders in their pursuit to recover investment losses caused by fraud. He has been lead counsel in numerous securities fraud class actions across the country, helping secure significant recoveries for his clients and investors. He was on the trial team that recovered $60 million on behalf of investors in *City of Sterling Heights General Employees' Retirement System v. Hospira, Inc.* Other notable representations include: *In re Red Hat, Inc. Sec. Litig.* (E.D.N.C.) ($20 million settlement); *Eshe Fund v. Fifth Third Bancorp* (S.D. Ohio) ($16 million); *City of St. Clair Shores Gen. Emps.' Ret. Sys. v. Lender Processing Servs., Inc.* (M.D. Fla.) ($14 million); and *In re Synovus Fin. Corp.* (N.D. Ga.) ($11.75 million).

Prior to joining the Firm, Astley was with the Miami office of Hunton & Williams, where he concentrated his practice on class action defense, including securities class actions and white collar criminal defense. Additionally, he represented numerous corporate clients accused of engaging in unfair and deceptive practices. Astley was also an active duty member of the United States Navy's Judge Advocate General's Corps where he was the Senior Defense Counsel for the Naval Legal Service Office Pearl Harbor Detachment. In that capacity, Astley oversaw trial operations for the Detachment and gained substantial first-chair trial experience as the lead defense counsel in over 75 courts-martial and administrative proceedings. Additionally, from 2002-2003, Astley clerked for the Honorable Peter T. Fay, U.S. Court of Appeals for the Eleventh Circuit.

Education	B.S., Florida State University, 1992; M. Acc., University of Hawaii at Manoa, 2001; J.D., University of Miami School of Law, 1997
Honors/ Awards	J.D., *Cum Laude*, University of Miami School of Law, 1997; United States Navy Judge Advocate General's Corps., Lieutenant

A. Rick Atwood, Jr.



Rick Atwood is a partner in the Firm's San Diego office. As a recipient of the California Lawyer Attorney of the Year ("CLAY") Award for his work on behalf of shareholders, he has successfully represented shareholders in securities class actions, merger-related class actions, and shareholder derivative suits in federal and state courts in more than 30 jurisdictions. Through his litigation efforts at both the trial and appellate levels, Atwood has helped recover billions of dollars for public shareholders, including the largest post-merger common fund recoveries on record.

Most recently, in *In re Dole Food Co., Inc. Stockholder Litig.*, which went to trial in the Delaware Court of Chancery on claims of breach of fiduciary duty on behalf of Dole Food Co., Inc. shareholders, Atwood helped obtain $148 million, the largest trial verdict ever in a class action challenging a merger transaction. He was also a key member of the litigation team in *In re Kinder Morgan, Inc. S'holders Litig.*, where he helped obtained an unprecedented $200 million common fund for former Kinder Morgan shareholders, the largest merger & acquisition class action recovery in history.

Atwood also led the litigation team that obtained an $89.4 million recovery for shareholders *in In re Del Monte Foods Co. S'holders Litig.*, after which the Delaware Court of Chancery stated that "it was only through the effective use of discovery that the plaintiffs were able to 'disturb[ ] the patina of normalcy surrounding the transaction.'" The court further commented that "Lead Counsel engaged in hard-nosed discovery to penetrate and expose problems with practices that Wall Street considered 'typical.'" One Wall Street banker even wrote in *The Wall Street Journal* that "'Everybody does it, but Barclays is the one that got caught with their hand in the cookie jar . . . . Now everybody has to rethink how we conduct ourselves in financing situations.'" Atwood's other significant opinions include *Brown v. Brewer* ($45 million recovery) and *In re Prime Hospitality, Inc. S'holders Litig.* ($25 million recovery).

Education	B.A., University of Tennessee, Knoxville, 1987; B.A., Katholieke Universiteit Leuven, Belgium, 1988; J.D., Vanderbilt School of Law, 1991
Honors/ Awards	M&A Litigation Attorney of the Year in California, *Corporate International*, 2015; Super Lawyer, 2014-2016; Attorney of the Year, *California Lawyer*, 2012; B.A., Great Distinction, Katholieke Universiteit Leuven, Belgium, 1988; B.A., Honors, University of Tennessee, Knoxville, 1987; Authorities Editor, *Vanderbilt Journal of Transnational Law*, 1991

Aelish M. Baig

Aelish Marie Baig is a partner in the Firm's San Francisco office. She specializes in federal securities and consumer class actions. She focuses primarily on securities fraud litigation on behalf of individual and institutional investors, including state and municipal pension funds, Taft-Hartley funds, and private retirement and investment funds. Baig has litigated a number of cases through jury trial, resulting in multi-million dollar awards and settlements for her clients and has prosecuted securities fraud, consumer and derivative actions obtaining millions of dollars in recoveries against corporations such as Wells Fargo, Verizon, Celera, Pall and Prudential.

Baig prosecuted an action against Wells Fargo's directors and officers accusing the giant of engaging in robosigning foreclosure papers so as to mass-process home foreclosures, a practice which contributed significantly to the 2008-2009 financial crisis. The resulting settlement was worth more than $67 million in cash, corporate preventative measures and new lending initiatives for residents of cities devastated by Wells Fargo's alleged unlawful foreclosure practices. Baig was part of the litigation and trial team in *White v. Cellco Partnership d/b/a Verizon Wireless*, which resulted in a $25 million settlement and Verizon's agreement to an injunction restricting its ability to impose early termination fees in future subscriber agreements. She was also part of the team that prosecuted dozens of stock option backdating actions, securing tens of millions of dollars in cash recoveries as well as the implementation of comprehensive corporate governance enhancements for numerous companies victimized by their directors' and officers' fraudulent stock option backdating practices. Additionally, Baig prosecuted an action against Prudential Insurance for its alleged failure to pay life insurance benefits to beneficiaries of policyholders it knew or had reason to know had died, resulting in a settlement in excess of $30 million.

Education	B.A., Brown University, 1992; J.D., Washington College of Law at American University, 1998
Honors/ Awards	Super Lawyer, 2012-2013; J.D., *Cum Laude*, Washington College of Law at American University, 1998; Senior Editor, *Administrative Law Review*, Washington College of Law at American University

Randall J. Baron

Randy Baron is a partner in the Firm's San Diego office. He specializes in securities litigation, corporate takeover litigation and breach of fiduciary duty actions. For almost two decades, Baron has headed up a team of lawyers whose accomplishments include obtaining instrumental rulings both at injunction and trial phases, establishing liability of financial advisors and investment banks. With an in-depth understanding of merger and acquisition and breach of fiduciary duty law, an ability to work under extreme time pressures, and the experience and willingness to take a case through trial, he has been responsible for recovering more than a billion dollars for shareholders. Notable achievements over the years include: *In re Kinder Morgan, Inc. S'holders Litig.* (Kan. Dist. Ct., Shawnee Cty.) ($200 million common fund for former Kinder Morgan shareholders, the largest merger & acquisition class action recovery in history); *In re Dole Food Co., Inc. Stockholder Litig.* (Del. Ch.) (obtained $148 million, the largest trial verdict ever in a class action challenging a merger transaction); and *In re Rural/Metro Corp. Stockholders Litig.* (Del. Ch.) (Baron and co-counsel obtained nearly $100 million for shareholders against Royal Bank of Canada Capital Markets LLC). *In In re Del Monte Foods Co. S'holders Litig.* (Del. Ch.), he exposed the unseemly practice by investment bankers of participating on both sides of large merger and acquisition transactions and ultimately secured an $89 million settlement for shareholders of Del Monte. Baron was one of the lead attorneys representing about 75 public and private institutional investors that filed and settled individual actions in *In re WorldCom Sec. Litig.* (S.D.N.Y.), where more than $657 million was recovered, the largest opt-out (non-class) securities action in history. In *In re Dollar Gen. Corp. S'holder Litig.* (Tenn. Cir. Ct., Davidson Cty.), Baron was lead trial counsel and helped to secure a settlement of up to $57 million in a common fund shortly before trial, and in *Brown v. Brewer* (C.D. Cal.), he secured $45 million for shareholders of Intermix Corporation, relating to News Corp.'s acquisition of that company. Formerly, Baron served as a Deputy District Attorney from 1990-1997 in Los Angeles County.

Education	B.A., University of Colorado at Boulder, 1987; J.D., University of San Diego School of Law, 1990
Honors/ Awards	Litigation Star, *Benchmark Litigation*, 2016-2017; Leading Lawyer, *The Legal 500*, 2015-2016; Super Lawyer, 2014-2016; Leading Lawyer, *Chambers USA*, 2016; Mergers & Acquisitions Trailblazer, *The National Law Journal*, 2015-2016; Litigator of the Week, *The American Lawyer*, October 16, 2014; Attorney of the Year, *California Lawyer*, 2012; Leading Lawyer in America, *Lawdragon*, 2011; Litigator of the Week, *The American Lawyer*, October 7, 2011; J.D., *Cum Laude*, University of San Diego School of Law, 1990

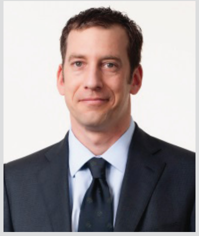
James E. Barz

James Barz is a partner at the Firm, manages the Firm's Chicago office, and is one of the co-leaders of the Firm's whistleblower practice. He is a former federal prosecutor and registered CPA with extensive experience in complex litigation. Barz has been lead counsel in approximately 20 jury trials and argued 9 appeals in the Seventh Circuit. He has been an adjunct professor at Northwestern University School of Law from 2008 to 2016, teaching courses on trial advocacy and class action litigation. Barz has focused on representing investors in securities fraud class actions that have resulted in recoveries of over $900 million, including: *HCA* ($215 million, M.D. Tenn.); *Motorola* ($200 million, N.D. Ill.); *Sprint* ($131 million, D. Kan.); *Psychiatric Solutions* ($65 million, M.D. Tenn.); and *Hospira* ($60 million, N.D. Ill.). He has been lead or co-lead trial counsel in several of these cases obtaining favorable settlements just days or weeks before trial and after obtaining denials of summary judgment. Barz is currently representing investors in securities fraud litigation against Valeant Pharmaceuticals Inc. (D.N.J.). Barz also has responsibilities for Firm training and professional responsibility matters.

Prior to joining the Firm, Barz was a partner at Mayer Brown LLP from 2006 to 2011 and an associate from 1998 to 2002. At Mayer Brown, he was active in their pro bono program where, in his first jury trial, he won an acquittal on all charges and, in his first appeal, he obtained the reversal of a decades-old conviction where the trial judge had solicited a bribe. From 2002 to 2006 he served as an Assistant United States Attorney in Chicago, trying cases and supervising investigations involving public corruption, financial frauds, tax offenses, money laundering, and drug and firearm offenses. He successfully obtained a conviction against every defendant who went to trial.

Education	B.B.A., Loyola University Chicago, School of Business Administration, 1995; J.D., Northwestern University School of Law, 1998
Honors/ Awards	B.B.A., *Summa Cum Laude*, Loyola University Chicago, School of Business Administration, 1995; J.D., *Cum Laude*, Northwestern University School of Law, 1998

Nathan W. Bear



Nate Bear is a partner in the Firm's San Diego office. Bear advises institutional investors on a global basis. His clients include Taft-Hartley funds, public and multi-employer pension funds, fund managers, insurance companies and banks around the world. He counsels clients on securities fraud and corporate governance, and frequently speaks at conferences worldwide. He has recovered over $1 billion for investors, including *In re Cardinal Health, Inc. Sec. Litig.* ($600 million) and *Jones v. Pfizer Inc.* ($400 million). In addition to initiating securities fraud class actions in the United States, he possesses direct experience in potential group actions in the United Kingdom, as well as settlements in the European Union under the Wet Collectieve Afwikkeling Massaschade (WCAM), the Dutch Collective Mass Claims Settlement Act. Bear currently represents investors in group litigation against Volkswagen and Porsche in Germany, utilizing the Kapitalanlegermusterverfahrensgesetz (KapMuG), the Capital Market Investors' Model Proceeding Act. In *Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Inc.*, Bear commenced a lawsuit resulting in the first major ruling upholding fraud allegations against the chief credit rating agencies. That ruling led to the filing of a similar case, *King County, Washington v. IKB Deutsche Industriebank AG*. These cases, arising from the fraudulent ratings of bonds issued by the Cheyne and Rhinebridge structured investment vehicles, ultimately obtained landmark settlements – on the eve of trial – from the major credit rating agencies and Morgan Stanley. Bear maintained an active role in litigation at the heart of the worldwide financial crisis, and is currently pursuing banks over their manipulation of LIBOR, FOREX and other benchmark rates.

Education	B.A., University of California at Berkeley, 1998; J.D., University of San Diego School of Law, 2006
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016; "Outstanding Young Attorneys," *San Diego Daily Transcript*, 2011

Alexandra S. Bernay

Xan Bernay is a partner in the Firm's San Diego office, where she specializes in antitrust and unfair competition class-action litigation. She has also worked on some of the Firm's largest securities fraud class actions, including the *Enron* litigation, which recovered an unprecedented $7.3 billion for investors. Bernay's current practice focuses on the prosecution of antitrust and consumer fraud cases. She was on the litigation team that prosecuted *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.* She is also a member of the litigation team involved in *In re Digital Music Antitrust Litig.*, as well as a member of the Co-Lead Counsel team in *Lincoln Adventures, LLC v. Those Certain Underwriters at Lloyd's London*, pending in federal court in New Jersey, where she represents buyers of insurance in an action against insurance companies in the London market. She is also involved in a number of other cases in the Firm's antitrust practice area. Bernay was actively involved in the consumer action on behalf of bank customers who were overcharged for debit card transactions. That case, *In re Checking Account Overdraft Litig.*, resulted in more than $500 million in settlements with major banks that manipulated customers' debit transactions to maximize overdraft fees. She was also part of the trial team in an antitrust monopolization case against a multinational computer and software company.

Education	B.A., Humboldt State University, 1997; J.D., University of San Diego School of Law, 2000
Honors/ Awards	Litigator of the Week, *Global Competition Review*, October 1, 2014

Erin W. Boardman

Erin Boardman is a partner in the Firm's Melville office, where her practice focuses on complex securities litigation. Boardman has been named a Super Lawyer "Rising Star" for the New York Metro area for the past two consecutive years. During law school, Boardman served as Associate Managing Editor of *the Journal of Corporate, Financial and Commercial Law* and interned in the chambers of the Honorable Kiyo A. Matsumoto in the United States District Court for the Eastern District of New York. She was also the recipient of the CALI Excellence for the Future Award in Writing for Law Practice.

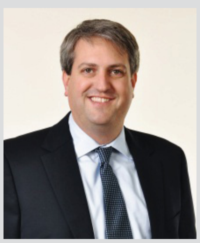
Education	B.A., State University of New York at Binghamton, 2003; J.D., Brooklyn Law School, 2007
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016; B.A., *magna cum laude*, State University of New York at Binghamton, 2003

Douglas R. Britton

Doug Britton is a partner in the Firm's San Diego office. His practice focuses on securities fraud and corporate governance. Britton has been involved in settlements exceeding $1 billion and has secured significant corporate governance enhancements to improve corporate functioning. Notable achievements include *In re WorldCom, Inc. Sec. & "ERISA" Litig.*, where he was one of the lead partners that represented a number of opt-out institutional investors and secured an unprecedented recovery of $651 million; *In re SureBeam Corp. Sec. Litig.*, where he was the lead trial counsel and secured an impressive recovery of $32.75 million; and *In re Amazon.com, Inc. Sec. Litig.*, where he was one of the lead attorneys securing a $27.5 million recovery for investors.

Education	B.B.A., Washburn University, 1991; J.D., Pepperdine University School of Law, 1996
Honors/ Awards	J.D., *Cum Laude*, Pepperdine University School of Law, 1996

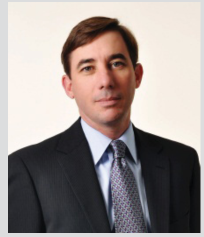
Luke O. Brooks



Luke Brooks is a partner in the Firm's securities litigation practice group in the San Diego office. He focuses primarily on securities fraud litigation on behalf of individual and institutional investors, including state and municipal pension funds, Taft-Hartley funds, and private retirement and investment funds. Brooks was on the trial team in *Jaffe v. Household Int'l, Inc.*, a securities class action that obtained a record-breaking $1.575 billion settlement after 14 years of litigation, including a six-week jury trial in 2009 that resulted in a verdict for plaintiffs. Other prominent cases recently prosecuted by Brooks include *Fort Worth Employees' Retirement Fund v. J.P. Morgan Chase & Co.*, in which plaintiffs recovered $388 million for investors in J.P. Morgan residential mortgage-backed securities, and a pair of cases – *Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Inc.* ("Cheyne") and *King County, Washington, et al. v. IKB Deutsche Industriebank AG* ("Rhinebridge") – in which plaintiffs obtained a settlement, on the eve of trial in Cheyne, from the major credit rating agencies and Morgan Stanley arising out of the fraudulent ratings of bonds issued by the Cheyne and Rhinebridge structured investment vehicles.

Education	B.A., University of Massachusetts at Amherst, 1997; J.D., University of San Francisco, 2000
Honors/ Awards	Local Litigation Star, *Benchmark Litigation*, 2017; Member, *University of San Francisco Law Review*, University of San Francisco

Andrew J. Brown



Andrew Brown is a partner in the Firm's San Diego office where his practice focuses on securities fraud, shareholder derivative and corporate governance litigation. He has worked on a variety of cases, recovering over $1 billion for investors and achieving precedent-setting changes in corporate practices. Brown's most notable cases include: *In re UnitedHealth Grp. Inc. PSLRA Litig.* ($895 million settlement); *Local 703, I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp.*, 762 F.3d 1248 (11th Cir. 2014) ($90 million settlement); *In re Questcor Sec. Litig.*, 2013 U.S. Dist. LEXIS 142865 (C.D. Cal. 2013) ($38 million settlement); *In re Constar Int'l Inc. Sec. Litig.* ($23.5 million settlement); and *Freidus v. Barclays Bank Plc,* 734 F.3d 132 (2d Cir. 2013). Prior to joining the Firm, Brown worked as a trial lawyer for the San Diego County Public Defender's Office. He later opened his own firm in San Diego, representing consumers and insureds in lawsuits against major insurance companies.

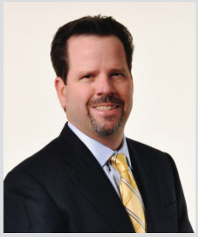
Education	B.A., University of Chicago, 1988; J.D., University of California, Hastings College of the Law, 1992

Spencer A. Burkholz

Spence Burkholz is a partner in the Firm's San Diego office and a member of the Firm's Executive and Management Committees. He has 21 years of experience in prosecuting securities class actions and private actions on behalf of large institutional investors. Burkholz was one of the lead trial attorneys in *Jaffe v. Household Int'l, Inc.*, a securities class action that obtained a record-breaking $1.575 billion settlement after 14 years of litigation, including a six-week jury trial in 2009 that resulted in a verdict for plaintiffs. Burkholz has also recovered billions of dollars for injured shareholders in cases such as *Enron* ($7.2 billion), *WorldCom* ($657 million), *Countrywide* ($500 million) and *Qwest* ($445 million). He is currently representing large institutional investors in actions involving the credit crisis.

Education	B.A., Clark University, 1985; J.D., University of Virginia School of Law, 1989
Honors/ Awards	Local Litigation Star, *Benchmark Litigation*, 2015-2017; Super Lawyer, 2015-2016; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2016; B.A., *Cum Laude*, Clark University, 1985; *Phi Beta Kappa*, Clark University, 1985

Joseph D. Daley



Joseph Daley is a partner in the Firm's San Diego office, serves on the Firm's Securities Hiring Committee, and is a member of the Firm's Appellate Practice Group. Precedents include: *DeJulius v. New Eng. Health Care Emps. Pension Fund*, 429 F.3d 935 (10th Cir. 2005); *Frank v. Dana Corp.* ("*Dana I*"), 547 F.3d 564 (6th Cir. 2008); *Frank v. Dana Corp.* ("*Dana II*"), 646 F.3d 954 (6th Cir. 2011); *Freidus v. Barclays Bank Plc*, 734 F.3d 132 (2d Cir. 2013); *In re HealthSouth Corp. Sec. Litig.*, 334 F. App'x 248 (11th Cir. 2009); *In re Merck & Co. Sec., Derivative & ERISA Litig.*, 493 F.3d 393 (3d Cir. 2007); *In re Qwest Commc'ns Int'l*, 450 F.3d 1179 (10th Cir. 2006); *Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031 (9th Cir. 2008); *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012); *Rosenbloom v. Pyott* ("*Allergan*"), 765 F.3d 1137 (9th Cir. 2014); *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956 (7th Cir. 2013); *Siracusano v. Matrixx Initiatives, Inc.*, 585 F.3d 1167 (9th Cir. 2009), *aff'd*, 563 U.S. 27 (2011); and *Southland Sec. Corp. v. INSpire Ins. Solutions Inc.*, 365 F.3d 353 (5th Cir. 2004). Daley is admitted to practice before the U.S. Supreme Court, as well as before 12 U.S. Courts of Appeals around the nation.

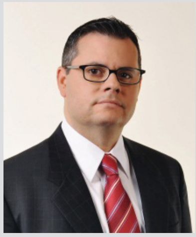
Education	B.S., Jacksonville University, 1981; J.D., University of San Diego School of Law, 1996
Honors/ Awards	Super Lawyer, 2011-2012, 2014-2016; Appellate Moot Court Board, Order of the Barristers, University of San Diego School of Law; Best Advocate Award (Traynore Constitutional Law Moot Court Competition), First Place and Best Briefs (Alumni Torts Moot Court Competition and USD Jessup International Law Moot Court Competition)

Patrick W. Daniels

Patrick Daniels is a founding and managing partner in the Firm's San Diego office. He is widely recognized as a leading corporate governance and investor advocate. The *Daily Journal*, the leading legal publisher in California, named him one of the 20 most influential lawyers in California under 40 years of age. Additionally, the Yale School of Management's Millstein Center for Corporate Governance and Performance awarded Daniels its "Rising Star of Corporate Governance" honor for his outstanding leadership in shareholder advocacy and activism. Daniels counsels private and state government pension funds, central banks and fund managers in the United States, Australia, United Arab Emirates, United Kingdom, the Netherlands, and other countries within the European Union on issues related to corporate fraud in the United States securities markets and on "best practices" in the corporate governance of publicly traded companies. Daniels has represented dozens of institutional investors in some of the largest and most significant shareholder actions, including *Enron*, *WorldCom*, *AOL Time Warner*, *BP*, *Pfizer*, *Countrywide*, *Petrobras* and *Volkswagen*, to name just a few. In the wake of the financial crisis, he represented dozens of investors in structured investment products in ground-breaking actions against the ratings agencies and Wall Street banks that packaged and sold supposedly highly rated shoddy securities to institutional investors all around the world.

Education	B.A., University of California, Berkeley, 1993; J.D., University of San Diego School of Law, 1997
Honors/ Awards	One of the Most 20 Most Influential Lawyers in the State of California Under 40 Years of Age, *Daily Journal*; Rising Star of Corporate Governance, Yale School of Management's Milstein Center for Corporate Governance & Performance; B.A., *Cum Laude*, University of California, Berkeley, 1993

Stuart A. Davidson

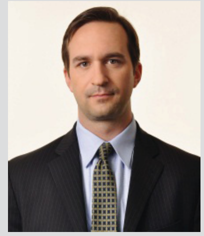


Stuart Davidson is a partner in the Firm's Boca Raton office. His practice focuses on complex consumer class actions, including cases involving deceptive and unfair trade practices, privacy and data breach issues, as well as representing investors in class actions involving mergers and acquisitions, and prosecuting derivative lawsuits on behalf of public corporations. Since joining the Firm, Davidson has obtained multi-million dollar recoveries for consumers, healthcare providers and shareholders, including cases involving Aetna Health, Vista Healthplan, Fidelity Federal Bank & Trust, Winn-Dixie, and UnitedGlobalCom. He currently serves as co-lead counsel for hundreds of retired NHL players in *In re NHL Players' Concussion Injury Litigation* in the District of Minnesota, serves as co-lead counsel on behalf of over one thousand retired NFL players in *Evans v. Arizona Cardinals Football Club, LLC* in the Northern District of California regarding the illegal distribution of painkillers and other drugs to players, and is actively assisting the Plaintiffs' Steering Committee in *In re Volkswagen "Clean Diesel" Litigation* in the Northern District of California, a case involving Volkswagen's worldwide emissions cheating scandal.

Davidson is a former lead assistant public defender in the Felony Division of the Broward County, Florida Public Defender's Office. During his tenure at the Public Defender's Office, he tried over 30 jury trials, conducted hundreds of depositions, handled numerous evidentiary hearings, engaged in extensive motion practice, and defended individuals charged with major crimes ranging from third-degree felonies to life and capital felonies.

Education	B.A., State University of New York at Geneseo, 1993; J.D., Nova Southeastern University Shepard Broad Law Center, 1996
Honors/ Awards	J.D., *Summa Cum Laude*, Nova Southeastern University Shepard Broad Law Center, 1996; Associate Editor, *Nova Law Review*, Book Awards in Trial Advocacy, Criminal Pretrial Practice and International Law

Jason C. Davis



Jason Davis is a partner in the Firm's San Francisco office where he practices securities class actions and complex litigation involving equities, fixed-income, synthetic and structured securities issued in public and private transactions. Davis was on the trial team in *Jaffe v. Household Int'l, Inc.*, a securities class action that obtained a record-breaking $1.575 billion settlement after 14 years of litigation, including a six-week jury trial in 2009 that resulted in a verdict for plaintiffs.

Prior to joining the Firm, Davis focused on cross-border transactions, mergers and acquisitions at Cravath, Swaine and Moore LLP in New York.

Education	B.A., Syracuse University, 1998; J.D., University of California at Berkeley, Boalt Hall School of Law, 2002
Honors/ Awards	B.A., *Summa Cum Laude*, Syracuse University, 1998; International Relations Scholar of the year, Syracuse University; Teaching fellow, examination awards, Moot court award, University of California at Berkeley, Boalt Hall School of Law

Mark J. Dearman

Mark Dearman is a partner in the Firm's Boca Raton office, where his practice focuses on consumer fraud, securities fraud, mass torts, antitrust, whistleblower and corporate takeover litigation. Dearman's recent representative cases include: *In re NHL Players' Concussion Injury Litig.*, 2015 U.S. Dist. LEXIS 38755 (D. Minn. 2015); *In re Sony Gaming Networks & Customer Data Sec. Breach Litig.*, 903 F. Supp. 2d 942 (S.D. Cal. 2012); *In re Volkswagen "Clean Diesel" Mktg. Sales Practice, & Prods. Liab. Litig.*, 2016 U.S. Dist. LEXIS 1357 (N.D. Cal. 2016); *In re Ford Fusion & C-Max Fuel Econ. Litig.*, 2015 U.S. Dist. LEXIS 155383 (S.D.N.Y. 2015); *Looper v. FCA US LLC*, No. 5:14-cv-00700 (C.D. Cal.); *In re Aluminum Warehousing Antitrust Litig.*, 95 F. Supp. 3d 419 (S.D.N.Y. 2015); *In re Liquid Aluminum Sulfate Antitrust Litig.*, No. 16-md-2687 (D.N.J.); *In re Winn-Dixie Stores, Inc. S'holder Litig.*, No. 16-2011-CA-010616 (Fla. 4th Jud. Cir. Ct., Duval Cty.); *Gemelas v. Dannon Co. Inc.*, No. 1:08-cv-00236 (N.D. Ohio); and *In re AuthenTec, Inc. S'holder Litig.*, No. 05-2012-CA-57589 (Fla. 18th Jud. Cir. Ct., Brevard Cty.). Prior to joining the Firm, he founded Dearman & Gerson, where he defended Fortune 500 companies, with an emphasis on complex commercial litigation, consumer claims, and mass torts (products liability and personal injury), and has obtained extensive jury trial experience throughout the United States. Having represented defendants for so many years before joining the Firm, Dearman has a unique perspective that enables him to represent clients effectively.

Education	B.A., University of Florida, 1990; J.D., Nova Southeastern University, 1993
Honors/ Awards	AV rated by Martindale-Hubbell; Super Lawyer, 2014-2016; In top 1.5% of Florida Civil Trial Lawyers in *Florida Trend*'s Florida Legal Elite, 2006, 2004

Travis E. Downs III

Travis Downs is a partner in the Firm's San Diego office. His areas of expertise include prosecution of shareholder and securities litigation, including complex shareholder derivative actions. Downs led a team of lawyers who successfully prosecuted over sixty-five stock option backdating derivative actions in federal and state courts across the country, resulting in hundreds of millions in financial givebacks for the plaintiffs and extensive corporate governance enhancements, including annual directors elections, majority voting for directors and shareholder nomination of directors. Notable cases include: *In re Marvell Tech. Grp. Ltd. Derivative Litig.* ($54 million in financial relief and extensive corporate governance enhancements); *In re McAfee, Inc. Derivative Litig.* ($30 million in financial relief and extensive corporate governance enhancements); *In re Affiliated Computer Servs. Derivative Litig.* ($30 million in financial relief and extensive corporate governance enhancements); *In re KB Home S'holder Derivative Litig.* ($30 million in financial relief and extensive corporate governance enhancements); *In re Juniper Networks Derivative Litig.* ($22.7 million in financial relief and extensive corporate governance enhancements); and *In re Nvidia Corp. Derivative Litig.* ($15 million in financial relief and extensive corporate governance enhancements).

He was also part of the litigation team that obtained a $67 million settlement in *City of Westland Police & Fire Ret. Sys. v. Stumpf*, a shareholder derivative action alleging that Wells Fargo participated in the mass-processing of home foreclosure documents by engaging in widespread robo-signing, and a $250 million settlement *in In re Google, Inc. Derivative Litig.*, an action alleging that Google facilitated in the improper advertising of prescription drugs. Downs is a frequent speaker at conferences and seminars and has lectured on a variety of topics related to shareholder derivative and class action litigation.

Education	B.A., Whitworth University, 1985; J.D., University of Washington School of Law, 1990
Honors/ Awards	Top Lawyer in San Diego, *San Diego Magazine*, 2013-2016; Board of Trustees, Whitworth University; Super Lawyer, 2008; B.A., Honors, Whitworth University, 1985

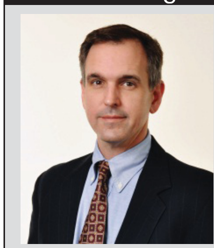
Daniel S. Drosman

Dan Drosman is a partner in the Firm's San Diego office and a member of the Firm's Management Committee. He focuses his practice on securities fraud and other complex civil litigation and has obtained significant recoveries for investors in cases such as *Morgan Stanley*, *Cisco Systems*, *Coca-Cola*, *Petco*, *PMI* and *America West*. Drosman served as one of the lead trial attorneys in *Jaffe v. Household Int'l, Inc.* in the Northern District of Illinois, a securities class action that obtained a record-breaking $1.575 billion settlement after 14 years of litigation, including a six-week jury trial in 2009 that resulted in a verdict for plaintiffs. Drosman also led a group of attorneys prosecuting fraud claims against the credit rating agencies, where he was distinguished as one of the few plaintiffs' counsel to overcome the credit rating agencies' motions to dismiss.

Prior to joining the Firm, Drosman served as an Assistant District Attorney for the Manhattan District Attorney's Office, and an Assistant United States Attorney in the Southern District of California, where he investigated and prosecuted violations of the federal narcotics, immigration, and official corruption law.

Education	B.A., Reed College, 1990; J.D., Harvard Law School, 1993
Honors/ Awards	Department of Justice Special Achievement Award, Sustained Superior Performance of Duty; B.A., Honors, Reed College, 1990; *Phi Beta Kappa*, Reed College, 1990

Thomas E. Egler



Thomas Egler is a partner in the Firm's San Diego office and focuses his practice on the prosecution of securities class actions on behalf of defrauded shareholders. He is responsible for prosecuting securities fraud class actions and has obtained recoveries for investors in litigation involving WorldCom ($657 million), AOL Time Warner ($629 million), and Qwest ($445 million), as well as dozens of other actions. Prior to joining the Firm, Egler was a law clerk to the Honorable Donald E. Ziegler, Chief Judge, United States District Court, Western District of Pennsylvania.

Education	B.A., Northwestern University, 1989; J.D., The Catholic University of America, Columbus School of Law, 1995
Honors/ Awards	Associate Editor, *The Catholic University Law Review*

Jason A. Forge

Jason Forge is a partner in the Firm's San Diego office, specializing in complex investigations, litigation and trials. As a federal prosecutor and private practitioner, he has conducted dozens of jury and bench trials in federal and state courts, including the month-long trial of a defense contractor who conspired with Congressman Randy "Duke" Cunningham in the largest bribery scheme in congressional history.

Forge was a key member of the litigation team that secured a historic recovery on behalf of Trump University students in two class actions against President-Elect Donald J. Trump. The settlement provides $25 million to approximately 7,000 consumers. The result means individual class members will be eligible for upwards of $35,000 in restitution. He represented the class on a *pro bono* basis. He has also successfully defeated motions to dismiss against several prominent defendants, including the first securities fraud case against Wal-Mart Stores, Inc. and Scotts Miracle-Gro. In a case against another prominent defendant, Pfizer Inc., he led an investigation that uncovered key documents that Pfizer had not produced in discovery. Although fact discovery in the case had already closed, the district judge ruled that the documents had been improperly withheld, and ordered that discovery be reopened, including the reopening of the depositions of Pfizer's former CEO, CFO and General Counsel. Less than six months after completing these depositions, Pfizer settled the case for $400 million. Forge has also taught trial practice techniques on local and national levels, and has written and argued many state and federal appeals, including an en banc argument in the Ninth Circuit.

Education	B.B.A., The University of Michigan Ross School of Business, 1990; J.D., The University of Michigan Law School, 1993
Honors/ Awards	Two-time recipient of one of Department of Justice's highest awards: Director's Award for Superior Performance by Litigation Team; numerous commendations from Federal Bureau of Investigation (including commendation from FBI Director Robert Mueller III), Internal Revenue Service, and Defense Criminal Investigative Service; J.D., *Magna Cum Laude*, Order of the Coif, The University of Michigan Law School, 1993; B.B.A., High Distinction, The University of Michigan Ross School of Business, 1990

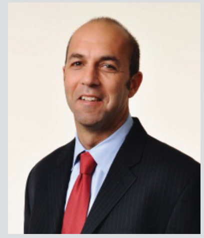
Paul J. Geller

Paul Geller, Managing Partner of the Boca Raton, Florida office, is a Founding Partner of the Firm, a member of its Executive and Management Committees and head of the Firm's Consumer Practice Group. Geller's 23 years of litigation experience is broad, and he has handled cases in each of the Firm's practice areas. Notably, before devoting his practice to the representation of consumers and investors, he defended companies in high-stakes class action litigation, providing him an invaluable perspective. Geller has tried bench and jury trials on both the plaintiffs' and defendants' sides, and has argued before numerous state, federal and appellate courts throughout the country.

Geller was recently selected to serve in a leadership position on behalf of consumers in the massive Volkswagen "Clean Diesel" Emissions case pending in San Francisco. This notable appointment came after a record-setting application process in which over 150 attorneys sought the court's designation as a member of the plaintiffs' Steering Committee. Other noteworthy recent successes include a $265 million recovery against Massey Energy in *In re Massey Energy Co. Sec. Litig.*, in which Massey was found accountable for a tragic explosion at the Upper Big Branch mine in Raleigh County, West Virginia. Geller also secured a $146.25 million recovery against Duke Energy in *Nieman v. Duke Energy Corp.*, the largest recovery in North Carolina for a case involving securities fraud, and one of the five largest recoveries in the Fourth Circuit. Additionally, Geller was the lead counsel in *Kehoe v. Fidelity Fed. Bank & Tr.*, one of the country's first cases alleging a class-wide privacy violation, settling the case for a $50 million recovery in addition to enhanced privacy protections. More recently, he was one of the lead counsel in the Sony Gaming Networks Data Breach litigation, which resulted in significant monetary recovery and other benefits to class members. Geller was also instrumental in resolving a case against Dannon for falsely advertising the health benefits of yogurt products.

Education	B.S., University of Florida, 1990; J.D., Emory University School of Law, 1993
Honors/ Awards	Rated AV by Martindale-Hubbell; Fellow, Litigation Counsel of America (LCA) Proven Trial Lawyers; Best Lawyer in America, *Best Lawyers®*, 2017; Leading Lawyer in America, *Lawdragon*, 2006-2007, 2009-2016, Super Lawyer, 2007-2016; Top Rated Lawyer, South Florida's Legal Leaders, *Miami Herald*, 2015; Litigation Star, *Benchmark Litigation*, 2013; "Legal Elite," *Florida Trend Magazine*; One of "Florida's Most Effective Lawyers," *American Law Media*, One of Florida's top lawyers in *South Florida Business* Journal, One of the Nation's Top "40 Under 40," *The National Law Journal*; One of Florida's Top Lawyers, *Law & Politics*; Editor, *Emory Law Journal*; Order of the Coif, Emory University School of Law

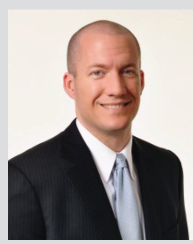
Jonah H. Goldstein



Jonah Goldstein is a partner in the Firm's San Diego office and responsible for prosecuting complex securities cases and obtaining recoveries for investors. He also represents corporate whistleblowers who report violations of the securities laws. Goldstein has achieved significant settlements on behalf of investors including in *In re HealthSouth Sec. Litig.* (over $670 million recovered against HealthSouth, UBS and Ernst & Young) and *In re Cisco Sec. Litig.* (approximately $100 million). He also served on the Firm's trial team in *In re AT&T Corp. Sec. Litig.*, which settled after two weeks of trial for $100 million. Prior to joining the Firm, Goldstein served as a law clerk for the Honorable William H. Erickson on the Colorado Supreme Court and as an Assistant United States Attorney for the Southern District of California, where he tried numerous cases and briefed and argued appeals before the Ninth Circuit Court of Appeals.

Education	B.A., Duke University, 1991; J.D., University of Denver College of Law, 1995
Honors/ Awards	Comments Editor, *University of Denver Law Review*, University of Denver College of Law

Benny C. Goodman III



Benny Goodman is a partner in the Firm's San Diego office. He concentrates his practice on shareholder derivative actions and securities class actions. Goodman achieved groundbreaking settlements as lead counsel in a number of shareholder derivative actions related to stock option backdating by corporate insiders, including *In re KB Home S'holder Derivative Litig.* (extensive corporate governance changes, over $80 million cash back to the company); *In re Affiliated Comput. Servs. Derivative Litig.* ($30 million recovery); and *Gunther v. Tomasetta* (corporate governance overhaul, including shareholder nominated directors, and cash payment to Vitesse Semiconductor Corporation from corporate insiders). He also obtained a $250 million settlement in *In re Google, Inc. Derivative Litig.*, an action alleging that Google facilitated in the improper advertising of prescription drugs.

Goodman also represented over 60 public and private institutional investors that filed and settled individual actions in the *WorldCom* securities litigation. Additionally, he successfully litigated several other notable securities class actions against companies such as Infonet Services Corporation, Global Crossing, and Fleming Companies, Inc., each of which resulted in significant recoveries for shareholders.

Education	B.S., Arizona State University, 1994; J.D., University of San Diego School of Law, 2000

Elise J. Grace

Elise Grace is a partner in the San Diego office and responsible for advising the Firm's state and government pension fund clients on issues related to securities fraud and corporate governance. Grace serves as the Editor-in-Chief of the Firm's Corporate Governance Bulletin and is a frequent lecturer on securities fraud, shareholder litigation, and options for institutional investors seeking to recover losses caused by securities and accounting fraud. She has prosecuted various significant securities fraud class actions, including the *AOL Time Warner* state and federal securities opt-out litigations, which resulted in a combined settlement of $629 million for defrauded shareholders. Prior to joining the Firm, Grace was an associate at Brobeck Phleger & Harrison LLP and Clifford Chance LLP, where she defended various Fortune 500 companies in securities class actions and complex business litigation.

Education	B.A., University of California, Los Angeles, 1993; J.D., Pepperdine School of Law, 1999
Honors/ Awards	J.D., *Magna Cum Laude*, Pepperdine School of Law, 1999; AMJUR American Jurisprudence Awards - Conflict of Laws; Remedies; Moot Court Oral Advocacy; Dean's Academic Scholarship, Pepperdine School of Law; B.A., *Summa Cum Laude*, University of California, Los Angeles, 1993; B.A., *Phi Beta Kappa*, University of California, Los Angeles, 1993

John K. Grant

John Grant is a partner in the Firm's San Francisco office where he devotes his practice to representing investors in securities fraud class actions. Grant has been lead or co-lead counsel in numerous securities actions and recovered tens of millions of dollars for shareholders. His cases include: *In re Micron Tech, Inc. Sec. Litig.* ($42 million recovery); *Perera v. Chiron Corp.* ($40 million recovery); *King v. CBT Grp., PLC* ($32 million recovery); and *In re Exodus Commc'ns, Inc. Sec. Litig.* ($5 million recovery).

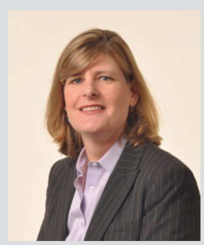
Education	B.A., Brigham Young University, 1988; J.D., University of Texas at Austin, 1990

Tor Gronborg

Tor Gronborg is a partner in the Firm's San Diego office and a member of the Firm's Management Committee. He often lectures on topics such as the Federal Rules of Civil Procedure and electronic discovery. Gronborg has served as lead or co-lead counsel in numerous securities fraud cases that have collectively recovered more than $1 billion for investors. Gronborg's work has included significant recoveries against corporations such as Cardinal Health ($600 million), Motorola ($200 million), Duke Energy ($146.25 million), Sprint Nextel Corp. ($131 million), Prison Realty ($104 million), CIT Group ($75 million), Wyeth ($67.5 million) and Psychiatric Solutions ($65 million). On three separate occasions, his pleadings have been upheld by the federal Courts of Appeals (*Broudo v. Dura Pharm., Inc.*, 339 F.3d 933 (9th Cir. 2003), *rev'd on other grounds*, 554 U.S. 336 (2005); *In re Daou Sys.*, 411 F.3d 1006 (9th Cir. 2005); *Staehr v. Hartford Fin. Servs. Grp.*, 547 F.3d 406 (2d Cir. 2008)), and he has been responsible for a number of significant rulings, including *Silverman v. Motorola, Inc.*, 798 F. Supp. 2d 954 (N.D. Ill. 2011); *Roth v. Aon Corp.*, 2008 U.S. Dist. LEXIS 18471 (N.D. Ill. 2008); *In re Cardinal Health, Inc. Sec. Litigs.*, 426 F. Supp. 2d 688 (S.D. Ohio 2006); and *In re Dura Pharm., Inc. Sec. Litig.*, 452 F. Supp. 2d 1005 (S.D. Cal. 2006).

Education	B.A., University of California, Santa Barbara, 1991; Rotary International Scholar, University of Lancaster, U.K., 1992; J.D., University of California, Berkeley, 1995
Honors/ Awards	Super Lawyer, 2013-2016; Moot Court Board Member, University of California, Berkeley; AFL-CIO history scholarship, University of California, Santa Barbara

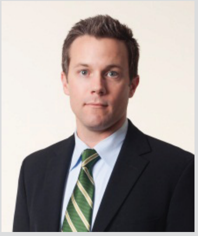
Ellen Gusikoff Stewart



Ellen Gusikoff Stewart is a partner in the Firm's San Diego office. She currently practices in the Firm's settlement department, negotiating and documenting complex securities, merger, ERISA and derivative action settlements. Notable settlements include: *Landmen Partners Inc. v. The Blackstone Grp. L.P.* (S.D.N.Y. 2013) ($85 million); *Garden City Emps.' Ret. Sys. v. Psychiatric Sols., Inc.* (M.D. Tenn. 2015) ($65 million); *City of Sterling Heights Gen. Emps.' Ret. Sys v. Hospira, Inc.* (N.D. Ill. 2014) ($60 million); and *The Bd. of Trs. of the Operating Eng'rs Pension Tr. v. JPMorgan Chase Bank, N.A.* (S.D.N.Y. 2013) ($23 million).

Education	B.A., Muhlenberg College, 1986; J.D., Case Western Reserve University, 1989
Honors/ Awards	Peer-Rated by Martindale-Hubbell

Robert Henssler

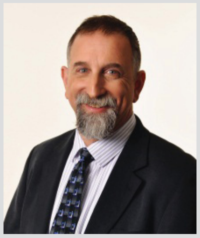


Bobby Henssler is a partner in the Firm's San Diego office, where he focuses his practice on securities fraud and other complex civil litigation. He has obtained significant recoveries for investors in cases such as *Enron*, *Blackstone* and *CIT Group*. Henssler is currently a key member of the team of attorneys prosecuting fraud claims against Goldman Sachs stemming from Goldman's conduct in subprime mortgage transactions (including "Abacus").

Most recently, Henssler served on the litigation team for *Schuh v. HCA Holdings, Inc.*, which resulted in a $215 million recovery for shareholders, the largest securities class action recovery ever in Tennessee. The recovery represents between 34% and 70% of the aggregate damages, far exceeding the typical recovery in a securities class action. He was also part of the litigation teams for *Landmen Partners Inc. v. The Blackstone Group L.P.* ($85 million recovery); *In re Novatel Wireless Sec. Litig.* ($16 million recovery); *Carpenters Pension Trust Fund of St. Louis v. Barclays PLC* ($14 million settlement); and *Kmiec v. Powerwave Technologies, Inc.* ($8.2 million settlement).

Education	B.A., University of New Hampshire, 1997; J.D., University of San Diego School of Law, 2001

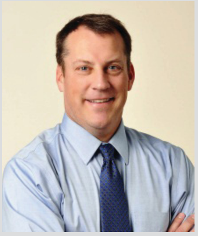
Dennis J. Herman



Dennis Herman is a partner in the Firm's San Francisco office where he focuses his practice on securities class actions. He has led or been significantly involved in the prosecution of numerous securities fraud claims that have resulted in substantial recoveries for investors, including settled actions against Massey Energy ($265 million), Coca-Cola ($137 million), VeriSign ($78 million), Psychiatric Solutions, Inc. ($65 million), St. Jude Medical, Inc. ($50 million), NorthWestern ($40 million), BancorpSouth ($29.5 million), America Service Group ($15 million), Specialty Laboratories ($12 million), Stellent ($12 million) and Threshold Pharmaceuticals ($10 million).

Education	B.S., Syracuse University, 1982; J.D., Stanford Law School, 1992
Honors/ Awards	Order of the Coif, Stanford Law School; Urban A. Sontheimer Award (graduating second in his class), Stanford Law School; Award-winning Investigative Newspaper Reporter and Editor in California and Connecticut

John Herman



John Herman is a partner at the Firm, the Chair of the Firm's Intellectual Property Practice and manages the Firm's Atlanta office. Herman has spent his career enforcing the intellectual property rights of famous inventors and innovators against infringers throughout the United States. He has assisted patent owners in collecting hundreds of millions of dollars in royalties. Herman is recognized by his peers as being among the leading intellectual property litigators in the country. His noteworthy cases include representing renowned inventor Ed Phillips in the landmark case of *Phillips v. AWH Corp.* He has also represented the pioneers of mesh technology – David Petite, Edwin Brownrigg and SIPCo – in connection with their product portfolio; and acting as plaintiffs' counsel in the Home Depot shareholder derivative action, which achieved landmark corporate governance reforms for investors.

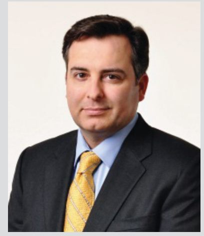
Education	B.S., Marquette University, 1988; J.D., Vanderbilt University Law School, 1992
Honors/ Awards	Super Lawyer, 2005-2010; Top 100 Georgia Super Lawyers list; John Wade Scholar, Vanderbilt University Law School; Editor-in-Chief, *Vanderbilt Journal*, Vanderbilt University Law School; B.S., *Summa Cum Laude*, Marquette University, 1988

Steven F. Hubachek

Steven Hubachek is a partner in the Firm's San Diego office. Hubachek is a member of the Firm's appellate group, where his practice concentrates on federal appeals. He has over 25 years of appellate experience, has argued over one hundred federal appeals, including three cases before the United States Supreme Court and seven cases before en banc panels of the Ninth Circuit Court of Appeals. Prior to joining Robbins Geller, Hubachek was Chief Appellate Attorney for Federal Defenders of San Diego, Inc. Before assuming the position of Chief Appellate Attorney, Hubachek also had an active trial practice, including over 30 jury trials.

Education	B.A., University of California, Berkeley, 1983; J.D., Hastings College of the Law, 1987
Honors/ Awards	Top Lawyer in San Diego, *San Diego Magazine*, 2014-2016; Assistant Federal Public Defender of the Year, National Federal Public Defenders Association, 2011; Appellate Attorney of the Year, San Diego Criminal Defense Bar Association, 2011 (co-recipient); President's Award for Outstanding Volunteer Service, Mid City Little League, San Diego, 2011; E. Stanley Conant Award for exceptional and unselfish devotion to protecting the rights of the indigent accused, 2009 (joint recipient); Super Lawyer, 2007-2009; *The Daily Transcript* Top Attorneys, 2007; AV rated by Martindale-Hubbell; J.D., *Cum Laude*, Order of the Coif, Thurston Honor Society, Hastings College of Law, 1987

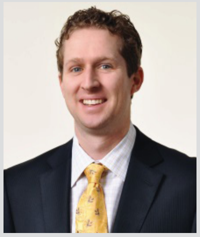
James I. Jaconette



James Jaconette is one of the founding partners of the Firm and is located in its San Diego office. He manages cases in the Firm's securities class action and shareholder derivative litigation practices. He has served as one of the lead counsel in securities cases with recoveries to individual and institutional investors totaling over $8 billion. He also advises institutional investors, including hedge funds, pension funds and financial institutions. Landmark securities actions in which he contributed in a primary litigating role include *In re Informix Corp. Sec. Litig.*, and *In re Dynegy Inc. Sec. Litig.* and *In re Enron Corp. Sec. Litig.*, where he represented lead plaintiff The Regents of the University of California. Most recently, Jaconette was part of the trial team in *Schuh v. HCA Holdings, Inc.*, which resulted in a $215 million recovery for shareholders, the largest securities class action recovery ever in Tennessee. The recovery represents between 34% and 70% of the aggregate damages, far exceeding the typical recovery in a securities class action.

Education	B.A., San Diego State University, 1989; M.B.A., San Diego State University, 1992; J.D., University of California Hastings College of the Law, 1995
Honors/ Awards	J.D., *Cum Laude*, University of California Hastings College of the Law, 1995; Associate Articles Editor, *Hastings Law Journal*, University of California Hastings College of the Law; B.A., with Honors and Distinction, San Diego State University, 1989

Steven M. Jodlowski



Steven Jodlowski is a partner in the Firm's San Diego office. He has handled a wide variety of cases involving antitrust violations, securities fraud, consumer fraud, corporate governance, employment, and complex insurance class action litigation, with recoveries exceeding $1 billion. Jodlowski has successfully prosecuted numerous RICO cases involving the fraudulent and deceptive sale of deferred annuities to senior citizens. These cases resulted in the recovery of more than $600 million in benefits for policyholders. He has also represented institutional and individual shareholders in corporate takeover actions and breach of fiduciary litigation in state and federal court. Additionally, Jodlowski handles securities and antitrust actions. His recent work includes *Dahl v. Bain Capital Partners, LLC*, which resulted in the recovery of $590.5 million on behalf of shareholders, the ISDAfix Benchmark litigation, *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, and *In re Treasuries Sec. Auction Antitrust Litig.* Jodlowski was part of the trial team in an antitrust monopolization case against a multinational computer and software company.

Education	B.B.A., University of Central Oklahoma, 2002; J.D., California Western School of Law, 2005
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016; CAOC Consumer Attorney of the Year Award Finalist, 2015; J.D., *Cum Laude*, California Western School of Law, 2005

Rachel L. Jensen

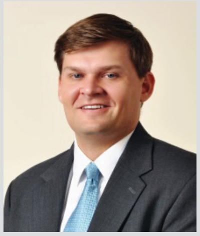
Rachel Jensen is a partner in the Firm's San Diego office. Her practice focuses on consumer, antitrust and securities fraud class actions. Jensen has played a key role in recovering billions of dollars for individuals, government entities, and businesses injured by fraudulent schemes, anti-competitive conduct, and hazardous products placed in the stream of commerce.

Jensen was one of the lead attorneys who secured a historic recovery on behalf of Trump University students in two class actions against President-Elect Donald J. Trump. The settlement provides $25 million to approximately 7,000 consumers. This result means individual class members will be eligible for upwards of $35,000 in restitution. She represented the class on a *pro bono* basis. She also represents car owners in the MDL litigation concerning the Volkswagen fraudulent emissions scandal, as well as litigation against Scotts Miracle-Gro, which has pled guilty to selling bird food as bird poison.

Among other recoveries, Jensen has played significant roles in the following cases: *In re Ins. Brokerage Antitrust Litig.* ($200 million recovered for policyholders who paid inflated premiums due to kickback scheme among major insurers and brokers); *In re Mattel, Inc., Toy Lead Paint Prods. Liab. Litig.* ($50 million in refunds and other relief for Mattel and Fisher-Price toys made in China with lead and dangerous magnets); *In re Nat'l Western Life Ins. Deferred Annuities Litig.* ($25 million in relief to senior citizens targeted for exorbitant deferred annuities that would not mature in their lifetime); *In re Checking Account Overdraft Litig.* ($500 million in settlements with major banks that manipulated customers' debit transactions to maximize overdraft fees); and *In re Groupon Mktg. & Sales Practices Litig.* ($8.5 million in refunds for consumers sold vouchers with illegal expiration dates). Prior to joining the Firm, Jensen was part of the litigation department at Morrison & Foerster in San Francisco, clerked for the Honorable Warren J. Ferguson of the Ninth Circuit Court of Appeals, worked abroad in Arusha, Tanzania as a law clerk in the Office of the Prosecutor at the International Criminal Tribunal for Rwanda (ICTR) and then worked at the International Criminal Tribunal for the Former Yugoslavia (ICTY), located in the Hague, Netherlands.

Education	B.A., Florida State University, 1997; University of Oxford, International Human Rights Law Program at New College, Summer 1998; J.D., Georgetown University Law School, 2000
Honors/ Awards	Super Lawyer, 2016; Super Lawyer "Rising Star," 2015; Nominated for 2011 Woman of the Year, *San Diego Magazine*; Editor-in-Chief, *First Annual Review of Gender and Sexuality Law*, Georgetown University Law School; Dean's List 1998-1999; B.A., *Cum Laude*, Florida State University's Honors Program, 1997; *Phi Beta Kappa*

Peter M. Jones



Peter Jones is partner in the Firm's Atlanta office. Although Jones primarily focuses on patent litigation, he has experience handling a wide range of complex litigation matters, including product liability actions and commercial disputes. Prior to joining the Firm, Jones practiced at King & Spalding LLP and clerked for the Honorable J.L. Edmondson, then Chief Judge of the United States Court of Appeals for the Eleventh Circuit.

Education	B.A., University of the South, 1999; J.D., University of Georgia School of Law, 2003
Honors/ Awards	Super Lawyer "Rising Star," 2012-2013; Member, *Georgia Law Review*, Order of the Barristers, University of Georgia School of Law

Evan J. Kaufman

Evan Kaufman is a partner in the Firm's Melville office. He focuses his practice in the area of complex litigation in federal and state courts including securities, corporate mergers and acquisitions, derivative, and consumer fraud class actions. Kaufman has served as lead counsel or played a significant role in numerous actions, including *In re TD Banknorth S'holders Litig.* ($50 million recovery); *In re Gen. Elec. Co. ERISA Litig.* ($40 million cost to GE, including significant improvements to GE's employee retirement plan, and benefits to GE plan participants valued in excess of $100 million); Energy*Solutions*, Inc. Sec. Litig. ($26 million recovery); Lockheed Martin Corp. Sec. Litig. ($19.5 million recovery); *In re Warner Chilcott Ltd. Sec. Litig.* ($16.5 million recovery); *In re Giant Interactive Grp., Inc. Sec. Litig.* ($13 million recovery); *In re Royal Grp. Tech. Sec. Litig.* ($9 million recovery); Fidelity Ultra Short Bond Fund Litig ($7.5 million recovery); *In re Audiovox Derivative Litig.* ($6.75 million recovery and corporate governance reforms); State Street Yield Plus Fund Litig. ($6.25 million recovery); *In re Merrill Lynch & Co., Inc., Internet Strategies Sec. Litig.* (resolved as part of a $39 million global settlement); and *In re MONY Grp., Inc. S'holder Litig.* (obtained preliminary injunction requiring disclosures in proxy statement).

Education	B.A., University of Michigan, 1992; J.D., Fordham University School of Law, 1995
Honors/ Awards	Super Lawyer, 2013-2015; Member, *Fordham International Law Journal*, Fordham University School of Law

David A. Knotts

David Knotts is a partner in the Firm's San Diego office and currently focuses his practice on securities class action litigation in the context of mergers and acquisitions, representing both individual shareholders and institutional investors. In connection with that work, he has been counsel of record for shareholders on a number of significant decisions from the Delaware Court of Chancery.

Prior to joining Robbins Geller, Knotts was an associate at one of the largest law firms in the world and represented corporate clients in various aspects of state and federal litigation, including major antitrust matters, trade secret disputes, unfair competition claims, and intellectual property litigation.

Education	B.S., University of Pittsburgh, 2001; J.D., Cornell Law School, 2004
Honors/ Awards	Wiley W. Manuel Award for Pro Bono Legal Services, State Bar of California; Casa Cornelia Inns of Court; J.D., *Cum Laude*, Cornell Law School, 2004

Laurie L. Largent

Laurie Largent is a partner in the Firm's San Diego, California office. Her practice focuses on securities class action and shareholder derivative litigation and she has helped recover millions of dollars for injured shareholders. She earned her Bachelor of Business Administration degree from the University of Oklahoma in 1985 and her Juris Doctor degree from the University of Tulsa in 1988. While at the University of Tulsa, Largent served as a member of the *Energy Law Journal* and is the author of *Prospective Remedies Under NGA Section 5; Office of Consumers' Counsel v. FERC*, 23 Tulsa L.J. 613 (1988). She has also served as an Adjunct Business Law Professor at Southwestern College in Chula Vista, California. Prior to joining the Firm, Largent was in private practice for 15 years specializing in complex litigation, handling both trials and appeals in state and federal courts for plaintiffs and defendants.

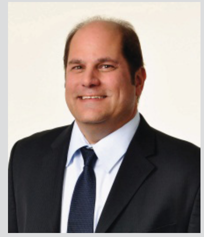
Education	B.B.A., University of Oklahoma, 1985; J.D., University of Tulsa, 1988
Honors/ Awards	Board Member, San Diego County Bar Foundation, 2014-present; Board Member, San Diego Volunteer Lawyer Program, 2014-present

Arthur C. Leahy

Art Leahy is a founding partner in the Firm's San Diego office and a member of the Firm's Executive and Management Committees. He has nearly 20 years of experience successfully litigating securities actions and derivative cases. Leahy has recovered well over a billion dollars for the Firm's clients and has negotiated comprehensive pro-investor corporate governance reforms at several large public companies. Most recently, Leahy helped secure a $272 million recovery on behalf of mortgage-backed securities investors in *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.* In the *Goldman* Sachs case, he helped achieve favorable decisions in the Second Circuit Court of Appeals on behalf of investors of Goldman Sachs mortgage-backed securities and again in the Supreme Court, which denied Goldman Sachs' petition for certiorari, or review, of the Second Circuit's reinstatement of the plaintiff's case. He was also part of the Firm's trial team in the AT&T securities litigation, which AT&T and its former officers paid $100 million to settle after two weeks of trial. Prior to joining the Firm, he served as a judicial extern for the Honorable J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit, and served as a judicial law clerk for the Honorable Alan C. Kay of the United States District Court for the District of Hawaii.

Education	B.A., Point Loma College, 1987; J.D., University of San Diego School of Law, 1990
Honors/ Awards	Super Lawyer, 2016; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2016; J.D., *Cum Laude*, University of San Diego School of Law, 1990; Managing Editor, *San Diego Law Review*, University of San Diego School of Law

Jeffrey D. Light



Jeff Light is a partner in the Firm's San Diego office and also currently serves as a Judge Pro Tem for the San Diego County Superior Court. Light practices in the Firm's settlement department, negotiating, documenting, and obtaining court approval of the Firm's complex securities, merger, consumer and derivative actions. These settlements include *In re VeriFone Holdings , Inc. Sec. Litig.* ($95 million recovery); *Louisiana Mun. Police Ret. Sys. v. KPMG, LLP* ($31.6 million recovery); *In re Kinder Morgan, Inc. S'holders Litig.* ($200 million recovery); *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.* ($400 million recovery); *In re Currency Conversion Fee Antitrust Litig.* ($336 million recovery); and *In re AT&T Corp. Sec. Litig.* ($100 million recovery). Prior to joining the Firm, he served as a law clerk to the Honorable Louise DeCarl Adler, United States Bankruptcy Court, Southern District of California, and the Honorable James Meyers, Chief Judge, United States Bankruptcy Court, Southern District of California.

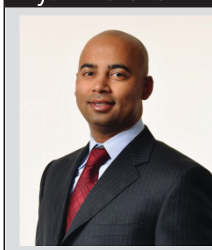
Education	B.A., San Diego State University, 1987; J.D., University of San Diego School of Law, 1991
Honors/ Awards	Top Lawyer in San Diego, *San Diego Magazine*, 2013-2016; J.D., *Cum Laude*, University of San Diego School of Law, 1991; Judge Pro Tem, San Diego Superior Court; American Jurisprudence Award in Constitutional Law

Nathan R. Lindell

Nate Lindell is a partner in the Firm's San Diego office, where his practice focuses on representing aggrieved investors in complex civil litigation. He has helped achieve numerous significant recoveries for investors, including: *In re Enron Corp. Sec. Litig.* ($7.2 billion recovery); *In re HealthSouth Corp. Sec. Litig.* ($671 million recovery); *Luther v. Countrywide Fin. Corp.* ($500 million recovery); *Fort Worth Employees' Retirement Fund v. J.P. Morgan Chase & Co.* (388 million recovery); *In re Morgan Stanley Mortgage Pass-Through Certificates Litig.* ($95 million recovery); *Massachusetts Bricklayers and Masons Trust Funds v. Deutsche Alt-A Securities, Inc.* ($32.5 million recovery); *City of Ann Arbor Employees' Ret. Sys. v. Citigroup Mortgage Loan Trust Inc.* ($24.9 million recovery); and *Plumbers' Union Local No. 12 Pension Fund v. Nomura Asset Acceptance Corp.* ($21.2 million recovery). Lindell is also a member of the litigation team responsible for securing a landmark victory from the Second Circuit Court of Appeals in its precedent-setting *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.* decision, which dramatically expanded the scope of permissible class actions asserting claims under the Securities Act of 1933 on behalf of mortgage-backed securities investors. In addition, he has also litigated patent infringement claims as a member of the Firm's intellectual property team.

Education	B.S., Princeton University, 2003; J.D., University of San Diego School of Law, 2006
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016; Charles W. Caldwell Alumni Scholarship, University of San Diego School of Law; CALI/AmJur Award in Sports and the Law

Ryan Llorens



Ryan Llorens is a partner in the Firm's San Diego office. Llorens' practice focuses on litigating complex securities fraud cases. He has worked on a number of securities cases that have resulted in significant recoveries for investors, including *In re HealthSouth Corp. Sec. Litig.* ($670 million); *AOL Time Warner* ($629 million); *In re AT&T Corp. Sec. Litig.* ($100 million); *In re Fleming Cos. Sec. Litig.* ($95 million); and *In re Cooper Cos., Inc. Sec Litig.* ($27 million).

Education	B.A., Pitzer College, 1997; J.D., University of San Diego School of Law, 2002
Honors/ Awards	Super Lawyer "Rising Star," 2015

Andrew S. Love

Andrew Love is a partner in the Firm's San Francisco office. His practice focuses on appeals of securities fraud class action cases. Love has briefed and/or argued appeals on behalf of defrauded investors in several U.S. Courts of Appeals as well as in the California appellate courts. Prior to joining the Firm, Love represented inmates on California's death row in appellate and habeas corpus proceedings, successfully arguing capital cases in both the California Supreme Court and the Ninth Circuit. During his many years as a death penalty lawyer, he co-chaired the Capital Case Defense Seminar (2004-2013), recognized as the largest conference for death penalty practitioners in the country. He regularly presented at the seminar and at other conferences on a wide variety of topics geared towards effective appellate practice. Additionally, he was on the faculty of the National Institute for Trial Advocacy's Post-Conviction Skills Seminar. Love has also written several articles on appellate advocacy and capital punishment that have appeared in *The Daily Journal*, *CACJ Forum*, *American Constitution Society*, and other publications.

Education	University of Vermont, 1981; J.D., University of San Francisco School of Law, 1985
Honors/ Awards	J.D., *Cum Laude*, University of San Francisco School of Law, 1985; McAuliffe Honor Society, University of San Francisco School of Law, 1982-1985

Carmen A. Medici

Carmen Medici is a partner in the Firm's San Diego office. He represents businesses and consumers who are the victims of price-fixing, monopolization, collusion, and other anticompetitive and unfair business practices. Medici is currently part of the co-lead counsel team prosecuting *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.* He is also part of the co-lead counsel team in *Lincoln Adventures, LLC v. Those Certain Underwriters at Lloyd's London*, where Medici represents buyers of insurance in an antitrust action against insurance companies in the London market. He is also a member of the co-lead litigation team in *In re Aluminum Warehousing Antitrust Litig.* Medici was a member of the discovery team in *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, which culminated in a trial victory for student athletes against the NCAA. He is also on the litigation teams in *In re Fresh & Process Potatoes Antitrust Litig.* and *In re Digital Music Antitrust Litig.* In addition, he is involved in a number of the Firm's other major antitrust and consumer actions. Medici regularly identifies and pursues potential new antitrust matters and drafts complaints on behalf of individual and class plaintiffs.

Education	B.S., Arizona State University, 2003; J.D., University of San Diego School of Law, 2006
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016

Mark T. Millkey

Mark Millkey is a partner in the Firm's Melville office. He has significant experience in the areas of securities and consumer litigation, as well as in federal and state court appeals.

During his career, Millkey has worked on a major consumer litigation against MetLife that resulted in a benefit to the class of approximately $1.7 billion, as well as a securities class action against Royal Dutch/Shell that settled for a minimum cash benefit to the class of $130 million and a contingent value of more than $180 million. Since joining Robbins Geller, he has worked on securities class actions that have resulted in approximately $300 million in settlements.

Education	B.A., Yale University, 1981; M.A., University of Virginia, 1983; J.D., University of Virginia, 1987
Honors/ Awards	Super Lawyer, 2013-2016

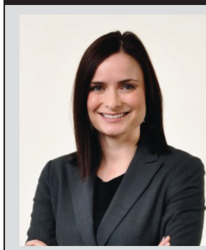
David W. Mitchell

David Mitchell is a partner in the Firm's San Diego office and focuses his practice on securities fraud, antitrust and derivative litigation. He leads the Firm's antitrust benchmark litigations as well as the Firm's pay-for-delay actions. He has served as lead or co-lead counsel in numerous cases and has helped achieve substantial settlements for shareholders. His recent cases *include Dahl v. Bain Capital Partners, LLC*, obtaining more than $590 million for shareholders, and *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig*. Currently, Mitchell serves as court-appointed counsel in the ISDAfix Benchmark action and *In re Aluminum Warehousing Antitrust Litig.*

Prior to joining the Firm, he served as an Assistant United States Attorney in the Southern District of California and prosecuted cases involving narcotics trafficking, bank robbery, murder-for-hire, alien smuggling, and terrorism. Mitchell has tried nearly 20 cases to verdict before federal criminal juries and made numerous appellate arguments before the Ninth Circuit Court of Appeals.

Education	B.A., University of Richmond, 1995; J.D., University of San Diego School of Law, 1998
Honors/ Awards	Member, Enright Inn of Court; Super Lawyer, 2016; Antitrust Trailblazer, *The National Law Journal*, 2015; "Best of the Bar," *San Diego Business Journal*, 2014

Maureen E. Mueller



Maureen Mueller is a partner in the Firm's Boca Raton office, where her practice focuses on complex securities litigation. Mueller has helped recover more than $1 billion for investors. She was a member of the team of attorneys responsible for recovering a record-breaking $925 million for investors in *In re UnitedHealth Grp. Inc. PSLRA Litig*. Mueller was also a member of the Firm's trial team in *Jaffe v. Household Int'l, Inc.*, .), a securities class action that obtained a record-breaking $1.575 billion settlement after 14 years of litigation, including a six-week jury trial in 2009 that resulted in a verdict for plaintiffs. She also served as co-lead counsel in *In re Wachovia Preferred Securities and Bond/Notes Litig.*, which recovered $627 million.

Education	B.S., Trinity University, 2002; J.D., University of San Diego School of Law, 2007
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016; "Outstanding Young Attorneys," *San Diego Daily Transcript*, 2010; Lead Articles Editor, *San Diego Law Review*, University of San Diego School of Law

Danielle S. Myers

Danielle Myers is a partner in the Firm's San Diego office, and focuses her practice on complex securities litigation. Myers is one of the partners that oversees the Portfolio Monitoring Program® and provides legal recommendations to the Firm's institutional investor clients on their options to maximize recoveries in securities litigation, both within the United States and internationally, from inception to settlement. In addition, Myers advises the Firm's clients in connection with lead plaintiff applications and has secured appointment of the Firm's clients as lead plaintiff in over 80 cases, including *Knurr v. Orbital ATK, Inc.*, No. 1:16-cv-01031 (E.D. Va.), *Evellard v. LendingClub Corp.*, No. 3:16-cv-02627 (N.D. Cal.), *In re Plains All American Pipeline, L.P. Sec. Litig.*, No. 4:15-cv-02404 (S.D. Tex.), *Marcus v. J.C. Penney Co., Inc.*, No. 6:13-cv-00736 (E.D. Tex.), *In re Hot Topic, Inc. Sec. Litig.*, No. 2:13-cv-02939 (C.D. Cal.), *Smilovits v. First Solar, Inc., No. 2:12-cv-00555* (D. Ariz.), and *In re Goldman Sachs Grp., Inc. Sec. Litig.*, No. 1:10-cv-03461 (S.D.N.Y.). Myers has obtained significant recoveries for shareholders in several cases, including: *In re Hot Topic, Inc. Sec. Litig.*, No. 2:13-cv-02939 (C.D. Cal.) ($14.9 million recovery); *Genesee Cty. Emps.' Ret. Sys. v. Thornburg Mortg., Inc.*, No. 1:09-cv-00300 (D.N.M.) ($11.25 million recovery); *Goldstein v. Tongxin Int'l Ltd.*, No. 2:11-cv-00348 (C.D. Cal.) ($3 million recovery); and *Lane v. Page*, No. Civ-06-1071 (D.N.M.) (pre-merger increase in cash consideration and post-merger cash settlement).

Education	B.A., University of California at San Diego, 1997; J.D., University of San Diego, 2008
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016; One of the "Five Associates to Watch in 2012," *Daily Journal*; Member, *San Diego Law Review*; CALI Excellence Award in Statutory Interpretation

Eric I. Niehaus

Eric Niehaus is a partner in the Firm's San Diego office, where his practice focuses on complex securities and derivative litigation. His efforts have resulted in numerous multi-million dollar recoveries to shareholders and extensive corporate governance changes. Recent examples include: *In re NYSE Specialists Sec. Litig.* (S.D.N.Y.); *In re Novatel Wireless Sec. Litig.* (S.D. Cal.); *Batwin v. Occam Networks, Inc.* (C.D. Cal.); *Commc'ns Workers of Am. Plan for Emps.' Pensions and Death Benefits v. CSK Auto Corp.* (D. Ariz.); *Marie Raymond Revocable Tr. v. Mat Five* (Del. Ch.); and *Kelleher v. ADVO, Inc.* (D. Conn.). Niehaus is currently prosecuting cases against several financial institutions arising from their role in the collapse of the mortgage-backed securities market. Prior to joining the Firm, Niehaus worked as a Market Maker on the American Stock Exchange in New York, and the Pacific Stock Exchange in San Francisco.

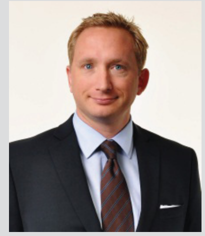
Education	B.S., University of Southern California, 1999; J.D., California Western School of Law, 2005
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016; J.D., *Cum Laude*, California Western School of Law, 2005; Member, *California Western Law Review*

Brian O. O'Mara

Brian O'Mara is a partner in the Firm's San Diego office. His practice focuses on complex securities and antitrust litigation. Since 2003, O'Mara has served as lead or co-lead counsel in numerous shareholder and antitrust actions, including: *Bennett v. Sprint Nextel Corp.* (D. Kan.) ($131 million recovery); *In re CIT Grp. Inc. Sec. Litig.* (S.D.N.Y.) ($75 million recovery); *In re MGM Mirage Sec. Litig.* (D. Nev.) ($75 million recovery); *C.D.T.S. No. 1 v. UBS AG* (S.D.N.Y.); *In re Aluminum Warehousing Antitrust Litig.* (S.D.N.Y.);and *Alaska Electrical Pension Fund v. Bank of America Corp.* (S.D.N.Y.). O'Mara has been responsible for a number of significant rulings, including: *Alaska Electrical Pension Fund v. Bank of America Corp.*, 2016 U.S. Dist. LEXIS 39953 (S.D.N.Y. Mar. 28, 2016); *Bennett v. Sprint Nextel Corp.*, 298 F.R.D. 498 (D. Kan. 2014); *In re MGM Mirage Sec. Litig.*, 2013 U.S. Dist. LEXIS 139356 (D. Nev. Sept. 26, 2013); *In re Constar Int'l, Inc. Sec. Litig.*, 2008 U.S. Dist. LEXIS 16966 (E.D. Pa. Mar. 5, 2008), *aff'd*, 585 F.3d 774 (3d Cir. 2009); *In re Direct Gen. Corp. Sec. Litig.*, 2006 U.S. Dist. LEXIS 56128 (M.D. Tenn. Aug. 8, 2006); and *In re Dura Pharm., Inc. Sec. Litig.*, 452 F. Supp. 2d 1005 (S.D. Cal. 2006). Prior to joining the Firm, he served as law clerk to the Honorable Jerome M. Polaha of the Second Judicial District Court of the State of Nevada.

Education	B.A., University of Kansas, 1997; J.D., DePaul University, College of Law, 2002
Honors/ Awards	Super Lawyer, 2016; CALI Excellence Award in Securities Regulation, DePaul University, College of Law

Lucas F. Olts



Luke Olts is a partner in the Firm's San Diego office, where his practice focuses on securities litigation on behalf of individual and institutional investors. Olts has recently focused on litigation related to residential mortgage-backed securities, and has served as lead counsel or co-lead counsel in some of the largest recoveries arising from the collapse of the mortgage market. For example, he was a member of the team that recovered $388 million for investors in J.P. Morgan residential mortgage-backed securities in *Fort Worth Employees' Retirement Fund v. J.P. Morgan Chase & Co.,* and a member of the litigation team responsible for securing a $272 million settlement on behalf of mortgage-backed securities investors in *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.* Olts also served as co-lead counsel in *In re Wachovia Preferred Securities and Bond/Notes Litig.*, which recovered $627 million under the Securities Act of 1933. He also served as lead counsel in *Siracusano v. Matrixx Initiatives, Inc.*, in which the U.S. Supreme Court unanimously affirmed the decision of the Ninth Circuit that plaintiffs stated a claim for securities fraud under §10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. Prior to joining the Firm, Olts served as a Deputy District Attorney for the County of Sacramento, where he tried numerous cases to verdict, including crimes of domestic violence, child abuse and sexual assault.

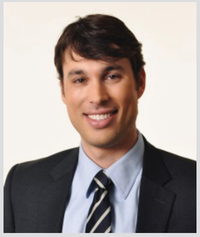
Education	B.A., University of California, Santa Barbara, 2001; J.D., University of San Diego School of Law, 2004
Honors/ Awards	Top Litigator Under 40, *Benchmark Litigation*, 2016-2017

Steven W. Pepich

Steven Pepich is a partner in the Firm's San Diego office. His practice primarily focuses on securities class action litigation, but he has also represented plaintiffs in a wide variety of complex civil cases, including mass tort, royalty, civil rights, human rights, ERISA and employment law actions. Pepich has participated in the successful prosecution of numerous securities class actions, including *Carpenters Health & Welfare Fund v. Coca-Cola Co.* ($137.5 million recovery); *In re Fleming Cos. Sec.* ($95 million recovery); and *In re Boeing Sec. Litig.* ($92 million recovery). He was also a member of the plaintiffs' trial team in *Mynaf v. Taco Bell Corp.*, which settled after two months at trial on terms favorable to two plaintiff classes of restaurant workers for recovery of unpaid wages, and a member of the plaintiffs' trial team in *Newman v. Stringfellow*, where after a nine-month trial, all claims for exposure to toxic chemicals were resolved for $109 million.

Education	B.S., Utah State University, 1980; J.D., DePaul University, 1983

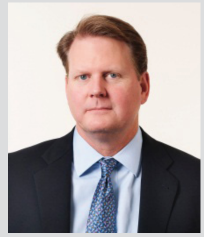
Daniel J. Pfefferbaum



Daniel Pfefferbaum is a partner in the Firm's San Francisco office, where his practice focuses on complex securities litigation. He has been a member of litigation teams that have recovered more than $100 million for investors, including: *Garden City Emps.' Ret. Sys. v. Psychiatric Solutions, Inc.* ($65 million recovery); *In re PMI Grp., Inc. Sec. Litig.* ($31.25 million recovery); *Cunha v. Hansen Natural Corp.* ($16.25 million recovery); *In re Accuray Inc. Sec. Litig.* ($13.5 million recovery); *and Twinde v. Threshold Pharm., Inc.* ($10 million recovery). Pfefferbaum was a member of the litigation team that secured a historic recovery on behalf of Trump University students in two class actions against President-Elect Donald J. Trump. The settlement provides $25 million to approximately 7,000 consumers. This result means individual class members will be eligible for upwards of $35,000 in restitution. He represented the class on a *pro bono* basis.

Education	B.A., Pomona College, 2002; J.D., University of San Francisco School of Law, 2006; LL.M. in Taxation, New York University School of Law, 2007
Honors/ Awards	Top Litigator Under 40, *Benchmark Litigation*, 2016-2017; Super Lawyer "Rising Star," 2013-2016

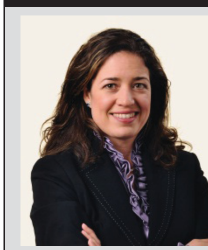
Theodore J. Pintar



Theodore Pintar is a partner in the Firm's San Diego office. Pintar has over 20 years of experience prosecuting securities fraud actions and over 15 years of experience prosecuting insurance-related consumer class actions, with recoveries in excess of $1 billion. He was a member of the litigation team in the *AOL Time Warner* securities opt-out actions, which resulted in a global settlement of $629 million. Pintar participated in the successful prosecution of insurance-related and consumer class actions that concern the following: the deceptive sale of annuities and life insurance, including actions against Manufacturer's Life ($555 million settlement value), Principal Mutual Life Insurance Company ($380+ million settlement value) and Allianz Life Insurance Co. of N. Am. ($250 million settlement value); homeowners insurance, including an action against Allstate ($50 million settlement); and automobile insurance companies under Proposition 103, including the Auto Club ($32 million settlement) and GEICO.

Education	B.A., University of California, Berkeley, 1984; J.D., University of Utah College of Law, 1987
Honors/ Awards	Super Lawyer, 2014-2016; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2016; CAOC Consumer Attorney of the Year Award Finalist, 2015; Note and Comment Editor, *Journal of Contemporary Law*, University of Utah College of Law; Note and Comment Editor, *Journal of Energy Law and Policy*, University of Utah College of Law

Willow E. Radcliffe



Willow Radcliffe is a partner in the Firm's San Francisco office and concentrates her practice on securities class action litigation in federal court. Radcliffe has been significantly involved in the prosecution of numerous securities fraud claims, including actions filed against Flowserve, NorthWestern and Ashworth, and has represented plaintiffs in other complex actions, including a class action against a major bank regarding the adequacy of disclosures made to consumers in California related to Access Checks. Prior to joining the Firm, she clerked for the Honorable Maria-Elena James, Magistrate Judge for the United States District Court for the Northern District of California.

Education	B.A., University of California, Los Angeles 1994; J.D., Seton Hall University School of Law, 1998
Honors/ Awards	J.D., *Cum Laude*, Seton Hall University School of Law, 1998; Most Outstanding Clinician Award; Constitutional Law Scholar Award

Mark S. Reich

Mark Reich is a partner in the Firm's New York office. Reich focuses his practice on challenging unfair mergers and acquisitions in courts throughout the country. Reich's notable cases include: *In re Aramark Corp. S'holders Litig.*, where he achieved a $222 million increase in consideration paid to shareholders of Aramark and a substantial reduction to management's voting power – from 37% to 3.5% – in connection with the approval of the going-private transaction; *In re Delphi Fin. Grp. S'holders Litig.*, resulting in a $49 million post-merger settlement for Class A Delphi shareholders; and *In re TD Banknorth S'holders Litig.*, where Reich played a significant role in raising the inadequacy of the $3 million initial settlement, which the court rejected as wholly inadequate, and later resulted in a vastly increased $50 million recovery.

Reich has also played a central role in other shareholder related litigation. His cases *include In re Gen. Elec. Co. ERISA Litig.*, resulting in structural changes to company's 401(k) plan valued at over $100 million, benefiting current and future plan participants, and *In re Doral Fin. Corp. Sec. Litig.*, obtaining a $129 million recovery for shareholders in a securities fraud litigation.

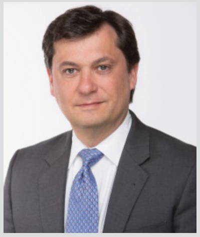
Education	B.A., Queens College, 1997; J.D., Brooklyn Law School, 2000
Honors/ Awards	Super Lawyer, 2013-2016; Member, *The Journal of Law and Policy*, Brooklyn Law School; Member, Moot Court Honor Society, Brooklyn Law School

Jack Reise

Jack Reise is a partner in the Firm's Boca Raton office. Devoted to protecting the rights of those who have been harmed by corporate misconduct, his practice focuses on class action litigation (including securities fraud, shareholder derivative actions, consumer protection, antitrust, and unfair and deceptive insurance practices). Reise also dedicates a substantial portion of his practice to representing shareholders in actions brought under the federal securities laws. He is currently serving as lead counsel in more than a dozen cases nationwide. As lead counsel, Reise represented investors in a series of cases involving mutual funds charged with improperly valuating their net assets, which settled for a total of more than $50 million. Other notable actions include: *In re NewPower Holdings Sec. Litig.* ($41 million settlement); *In re Red Hat Sec. Litig.* ($20 million settlement); and *In re AFC Enters., Inc. Sec. Litig.* ($17.2 million settlement). Prior to joining the Firm, Reise represented individuals suffering the debilitating effects of asbestos exposure back in the 1950s and 1960s.

Education	B.A., Binghamton University, 1992; J.D., University of Miami School of Law, 1995
Honors/ Awards	American Jurisprudence Book Award in Contracts; J.D., *Cum Laude*, University of Miami School of Law, 1995; *University of Miami Inter-American Law Review*, University of Miami School of Law

Darren J. Robbins

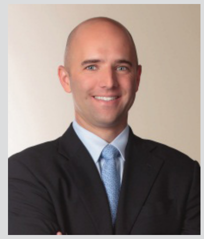


Darren Robbins is a founding partner of Robbins Geller and a member of the Firm's Executive Committee. Over the last two decades, Robbins has served as lead counsel in more than 100 securities actions and has recovered billions of dollars for injured shareholders. Robbins has obtained significant recoveries in a number of actions arising out of wrongdoing related to the issuance of residential mortgage-backed securities, including cases against Countrywide ($500 million) and Goldman Sachs ($272 million). Most recently, he served as lead counsel in *Schuh v. HCA Holdings, Inc.*, which resulted in a $215 million recovery for shareholders, the largest securities class action recovery ever in Tennessee. The recovery represents between 34% and 70% of the aggregate damages, far exceeding the typical recovery in a securities class action. He also served as co-lead counsel in connection with a $627 million recovery for investors in *In re Wachovia Preferred Securities & Bond/Notes Litig.*, one of the largest credit-crisis settlements involving Securities Act claims.

One of the hallmarks of Robbins' practice has been his focus on corporate governance reform. For example, in *UnitedHealth*, a securities fraud class action arising out of an options backdating scandal, Robbins represented lead plaintiff CalPERS and was able to obtain the cancellation of more than 3.6 million stock options held by the company's former CEO and secure a record $925 million cash recovery for shareholders. In addition, Robbins obtained sweeping corporate governance reforms, including the election of a shareholder-nominated member to the company's board of directors, a mandatory holding period for shares acquired via option exercise, and compensation reforms that tied executive pay to performance.

Education	B.S., University of Southern California, 1990; M.A., University of Southern California, 1990; J.D., Vanderbilt Law School, 1993
Honors/ Awards	Lawyer of the Year, *Best Lawyers®*, 2017; Best Lawyer in America, *Best Lawyers®*, 2010-2017; Local Litigation Star, *Benchmark Litigation*, 2013-2017; Top 50 Lawyers in San Diego, *Super Lawyers Magazine,* 2015; Super Lawyer, 2013-2016; Leading Lawyer, *Chambers USA*, 2014-2016; Leading Lawyer in America, *Lawdragon*; One of the Top 100 Lawyers Shaping the Future, *Daily Journal*; One of the "Young Litigators 45 and Under," *The American Lawyer*; Attorney of the Year, *California Lawyer*; Managing Editor, *Vanderbilt Journal of Transnational Law*, Vanderbilt Law School

Robert J. Robbins



Robert Robbins is a partner in the Firm's Boca Raton office. He focuses his practice on investigating securities fraud, initiating securities class actions, and helping institutional and individual shareholders litigate their claims to recover investment losses caused by fraud. Representing shareholders in all aspects of class actions brought pursuant to the federal securities laws, Robbins provides counsel in numerous securities fraud class actions across the country, helping secure significant recoveries for investors. He has been a member of litigation teams responsible for the successful prosecution of many securities class actions, including: *Hospira* ($60 million recovery); *CVS Caremark* ($48 million recovery); *R.H. Donnelley* ($25 million recovery); *Spiegel* ($17.5 million recovery); *TECO Energy, Inc.* ($17.35 million recovery); *AFC Enterprises* ($17.2 million recovery); *Mannatech, Inc.* ($11.5 million recovery); *Newpark Resources, Inc.* ($9.24 million recovery); *Cryo Cell Int'l, Inc.* ($7 million recovery); *Gainsco* ($4 million recovery); and *Body Central* ($3.425 million recovery).

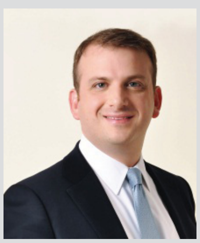
Education	B.S., University of Florida, 1999; J.D., University of Florida College of Law, 2002
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016; J.D., High Honors, University of Florida College of Law, 2002; Member, *Journal of Law and Public Policy*, University of Florida College of Law; Member, *Phi Delta Phi*, University of Florida College of Law; *Pro bono* certificate, Circuit Court of the Eighth Judicial Circuit of Florida; Order of the Coif

Henry Rosen

Henry Rosen is a partner in the Firm's San Diego office, where he is a member of the Hiring Committee and Technology Committee, the latter of which focuses on applications to digitally manage documents produced during litigation and internally generate research files. He has significant experience prosecuting every aspect of securities fraud class actions and has obtained more than $1 billion on behalf of defrauded investors. Prominent cases include *In re Cardinal Health, Inc. Sec. Litig.*, in which Rosen recovered $600 million for defrauded shareholders. This $600 million settlement is the largest recovery ever in a securities fraud class action in the Sixth Circuit, and remains one of the largest settlements in the history of securities fraud litigation. Additional recoveries include: *Jones v. Pfizer Inc.* ($400 million); *In re First Energy* ($89.5 million); *In re CIT Grp. Inc. Sec. Litig* ($75 million); *Stanley v. Safeskin Corp.* ($55 million); *In re Storage Tech. Corp. Sec. Litig.* ($55 million); and *Rasner v. Sturm* (FirstWorld Communications) ($25.9 million).

Education	B.A., University of California, San Diego, 1984; J.D., University of Denver, 1988
Honors/ Awards	Editor-in-Chief, *University of Denver Law Review*, University of Denver

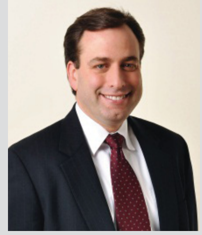
David A. Rosenfeld



David Rosenfeld is a partner in the Firm's Melville and Manhattan offices. He has focused his practice of law for more than 15 years in the areas of securities litigation and corporate takeover litigation. He has been appointed as lead counsel in dozens of securities fraud lawsuits and has successfully recovered hundreds of millions of dollars for defrauded shareholders. Rosenfeld works on all stages of litigation, including drafting pleadings, arguing motions and negotiating settlements. Most recently, he led the Robbins Geller team in recovering in excess of $34 million for investors in Overseas Shipholding Group. Rosenfeld also led the effort that resulted in the recovery of nearly 90% of losses for investors in Austin Capital, a sub-feeder fund of Bernard Madoff. Rosenfeld has also achieved remarkable recoveries against companies in the financial industry. In addition to recovering $70 million for investors in Credit Suisse Group, and a $74.25 million recovery for First BanCorp shareholders, he recently settled claims against Barclays for $14 million, or 20% of investors' damages, for statements made about its LIBOR practices.

Education	B.S., Yeshiva University, 1996; J.D., Benjamin N. Cardozo School of Law, 1999
Honors/ Awards	Advisory Board Member of *Stafford's Securities Class Action Reporter*; Future Star, *Benchmark Litigation*, 2016-2017; Super Lawyer, 2014-2016; Super Lawyer "Rising Star," 2011-2013

Robert M. Rothman



Robert Rothman is a partner in the Firm's New York offices. Rothman has extensive experience litigating cases involving investment fraud, consumer fraud and antitrust violations. He also lectures to institutional investors throughout the world. Rothman has served as lead counsel in numerous class actions alleging violations of securities laws, including cases against First Bancorp ($74.25 million recovery), CVS ($48 million recovery), Popular, Inc. ($37.5 million recovery), and iStar Financial, Inc. ($29 million recovery). He actively represents shareholders in connection with going-private transactions and tender offers. For example, in connection with a tender offer made by Citigroup, Rothman secured an increase of more than $38 million over what was originally offered to shareholders.

Education	B.A., State University of New York at Binghamton, 1990; J.D., Hofstra University School of Law, 1993
Honors/ Awards	Super Lawyer, 2011, 2013-2016; Dean's Academic Scholarship Award, Hofstra University School of Law; J.D., with Distinction, Hofstra University School of Law, 1993; Member, *Hofstra Law Review*, Hofstra University School of Law

Samuel H. Rudman

Sam Rudman is a founding member of the Firm, a member of the Firm's Executive and Management Committees, and manages the Firm's New York offices. His 22-year securities practice focuses on recognizing and investigating securities fraud, and initiating securities and shareholder class actions to vindicate shareholder rights and recover shareholder losses. A former attorney with the SEC, Rudman has recovered hundreds of millions of dollars for shareholders, including a $200 million recovery in *Motorola*, a $129 million recovery in *Doral Financial*, an $85 million recovery in *Blackstone*, a $74 million recovery in *First BanCorp*, a $65 million recovery in *Forest Labs,* a $50 million recovery in *TD Banknorth*, and a $48 million recovery in *CVS Caremark*.

Education	B.A., Binghamton University, 1989; J.D., Brooklyn Law School, 1992
Honors/ Awards	Local Litigation Star, *Benchmark Litigation*, 2013-2017; Litigation Star, *Benchmark Litigation*, 2013, 2017; Leading Lawyer in America, *Lawdragon*, 2016; Leading Lawyer, *Chambers USA*, 2014-2016; Super Lawyer, 2007-2016; Dean's Merit Scholar, Brooklyn Law School; Moot Court Honor Society, Brooklyn Law School; Member, *Brooklyn Journal of International Law*, Brooklyn Law School

Joseph Russello

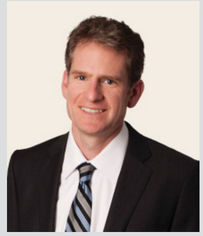
Joseph Russello is a partner in the Firm's Melville office, where he concentrates his practice on prosecuting shareholder class action and breach of fiduciary duty claims, as well as complex commercial litigation and consumer class actions.

Russello has played a vital role in recovering millions of dollars for aggrieved investors, including those of Blackstone ($85 million); NBTY, Inc. ($16 million); LaBranche & Co., Inc. ($13 million); The Children's Place Retail Stores, Inc. ($12 million); Prestige Brands Holdings, Inc. ($11 million); and Jarden Corporation ($8 million). He also has significant experience in corporate takeover and breach of fiduciary duty litigation. In expedited litigation in the Delaware Court of Chancery involving Mat Five LLC, for example, his efforts paved the way for an "opt-out" settlement that offered investors more than $38 million in increased cash benefits. In addition, he played an integral role in convincing the Delaware Court of Chancery to enjoin Oracle Corporation's $1 billion acquisition of Art Technology Group, Inc. pending the disclosure of material information. He also has experience in litigating consumer class actions.

Prior to joining the Firm, Russello practiced in the professional liability group at Rivkin Radler LLP, where he defended attorneys, accountants and other professionals in state and federal litigation and assisted in evaluating and resolving complex insurance coverage matters.

Education	B.A., Gettysburg College, 1998; J.D., Hofstra University School of Law, 2001
Honors/ Awards	Super Lawyer, 2014-2016

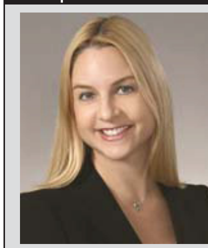
Scott H. Saham



Scott Saham is a partner in the Firm's San Diego office, where his practice focuses on complex securities litigation. He is licensed to practice law in both California and Michigan. Most recently, Saham was part of the litigation team in *Schuh v. HCA Holdings, Inc.*, which resulted in a $215 million recovery for shareholders, the largest securities class action recovery ever in Tennessee. He also served as lead counsel prosecuting the Pharmacia securities litigation in the District of New Jersey, which resulted in a $164 million recovery. Additionally, Saham was lead counsel in the *In re Coca-Cola Sec. Litig.* in the Northern District of Georgia, which resulted in a $137.5 million recovery after nearly eight years of litigation. He also obtained reversal from the California Court of Appeal of the trial court's initial dismissal of the landmark Countrywide mortgage-backed securities action. This decision is reported as *Luther v. Countrywide Fin. Corp.*, 195 Cal. App. 4th 789 (2011), and following this ruling that revived the action the case settled for $500 million.

Education	B.A., University of Michigan, 1992; J.D., University of Michigan Law School, 1995

Stephanie Schroder



Stephanie Schroder is a partner in the Firm's San Diego office. Schroder has significant experience prosecuting securities fraud class actions and shareholder derivative actions. Her practice also focuses on advising institutional investors, including multi-employer and public pension funds, on issues related to corporate fraud in the United States securities markets. Currently, she is representing clients that have suffered losses from the Madoff fraud in the *Austin Capital* and *Meridian Capital* litigations.

Schroder has obtained millions of dollars on behalf of defrauded investors. Prominent cases include *AT&T* ($100 million recovery at trial); *FirstEnergy* ($89.5 million recovery); *FirstWorld Commc'ns* ($25.9 million recovery). Major clients include the Pension Trust Fund for Operating Engineers, the Kentucky State District Council of Carpenters Pension Trust Fund, the Laborers Pension Trust Fund for Northern California, the Construction Laborers Pension Trust for Southern California, and the Iron Workers Mid-South Pension Fund.

Education	B.A., University of Kentucky, 1997; J.D., University of Kentucky College of Law, 2000

Jessica T. Shinnefield

Jessica Shinnefield is a partner in the Firm's San Diego office and currently focuses on initiating, investigating and prosecuting new securities fraud class actions. Shinnefield was a member of the litigation teams that obtained significant recoveries for investors in cases such as *AOL Time Warner*, *Cisco Systems*, *Aon* and *Petco*. Shinnefield was also a member of the litigation team prosecuting actions against investment banks and leading national credit rating agencies for their roles in structuring and rating structured investment vehicles backed by toxic assets. These cases are among the first to successfully allege fraud against the rating agencies, whose ratings have traditionally been protected by the First Amendment. She is currently litigating several securities actions, including an action against Omnicare, in which she helped obtain a favorable ruling from the U.S. Supreme Court.

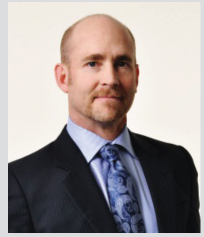
Education	B.A., University of California at Santa Barbara, B.A., 2001; J.D., University of San Diego School of Law, 2004
Honors/ Awards	Super Lawyer "Rising Star," 2015-2016; B.A., *Phi Beta Kappa*, University of California at Santa Barbara, 2001

Elizabeth A. Shonson

Elizabeth Shonson is a partner in the Firm's Boca Raton office. She concentrates her practice on representing investors in class actions brought pursuant to the federal securities laws. Shonson has litigated numerous securities fraud class actions nationwide, helping achieve significant recoveries for aggrieved investors. She was a member of the litigation teams responsible for recouping millions of dollars for defrauded investors, including: *In re Massey Energy Co. Sec. Litig.* (S.D. W.Va.) ($265 million); *Nieman v. Duke Energy Corp.* (W.D.N.C.) ($146.25 million recovery); *Eshe Fund v. Fifth Third Bancorp* (S.D. Ohio) ($16 million); *City of St. Clair Shores Gen. Emps. Ret. Sys. v. Lender Processing Servs., Inc.* (M.D. Fla.) ($14 million); and *In re Synovus Fin. Corp.* (N.D. Ga.) ($11.75 million).

Education	B.A., Syracuse University, 2001; J.D., University of Florida Levin College of Law, 2005
Honors/ Awards	Super Lawyer "Rising Star," 2016; J.D., *Cum Laude*, University of Florida Levin College of Law, 2005; Editor-in-Chief, *Journal of Technology Law & Policy*; Phi Delta Phi; B.A., with Honors, *Summa Cum Laude*, Syracuse University, 2001; Phi Beta Kappa

Trig Smith



Trig Smith is a partner in the Firm's San Diego office. Smith focuses on complex securities class actions in which he has helped obtain significant recoveries for investors in cases such as *Cardinal Health* ($600 million); *Qwest* ($445 million); *Forest Labs.* ($65 million); *Accredo* ($33 million); and *Exide* ($13.7 million).

Education	B.S., University of Colorado, Denver, 1995; M.S., University of Colorado, Denver, 1997; J.D., Brooklyn Law School, 2000
Honors/ Awards	Member, *Brooklyn Journal of International Law*, Brooklyn Law School; CALI Excellence Award in Legal Writing, Brooklyn Law School

Mark Solomon

Mark Solomon is a founding partner in the Firm's San Diego office and leads its international litigation practice. Over the last 23 years, he has regularly represented United States- and United Kingdom-based pension funds, and asset managers in class and non-class securities litigation in federal and state courts throughout the United States. He has been admitted to the Bars of England and Wales (Barrister), Ohio and California, but now practices exclusively in California, as well as in various United States federal district and appellate courts.

Solomon has spearheaded the prosecution of many significant securities fraud cases. He has obtained multi-hundred million dollar recoveries for plaintiffs in pre-trial settlements and significant corporate governance reforms designed to limit recidivism and promote appropriate standards. He litigated, through the rare event of trial, the securities class action against Helionetics Inc. and its executives, where he won a $15.4 million federal jury verdict. Prior to the most recent financial crisis, he was instrumental in obtaining some of the first mega-recoveries in the field in California and Texas, serving as co-lead counsel in *In re Informix Corp. Sec. Litig.* (N.D. Cal.) and recovering $131 million for Informix investors; and serving as co-lead counsel in *Schwartz v. TXU Corp.* (N.D. Tex.), where he helped obtain a recovery of over $149 million for a class of purchasers of TXU securities. Solomon is currently counsel to a number of pension funds serving as lead plaintiffs in cases throughout the United States.

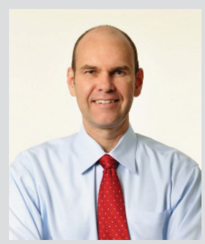
Education	B.A., Trinity College, Cambridge University, England, 1985; L.L.M., Harvard Law School, 1986; Inns of Court School of Law, Degree of Utter Barrister, England, 1987
Honors/ Awards	Lizette Bentwich Law Prize, Trinity College, 1983 and 1984; Hollond Travelling Studentship, 1985; Harvard Law School Fellowship, 1985-1986; Member and Hardwicke Scholar of the Honourable Society of Lincoln's Inn

Susan G. Taylor

Susan Goss Taylor is a partner in the Firm's San Diego office. Taylor has been responsible for prosecuting securities fraud class actions and has obtained recoveries for investors in litigation involving *WorldCom* ($657 million), *AOL Time Warner* ($629 million), *Qwest* ($445 million) and *Motorola* ($200 million). She also served as counsel on the Microsoft, DRAM and Private Equity antitrust litigation teams, as well as on a number of consumer actions alleging false and misleading advertising and unfair business practices against major corporations such as General Motors, Saturn, Mercedes-Benz USA, LLC, BMG Direct Marketing, Inc., and Ameriquest Mortgage Company. Prior to joining the Firm, she served as a Special Assistant United States Attorney for the Southern District of California, where she obtained considerable trial experience prosecuting drug smuggling and alien smuggling cases.

Education	B.A., Pennsylvania State University, 1994; J.D., The Catholic University of America, Columbus School of Law, 1997
Honors/ Awards	Super Lawyer, 2015-2016; Member, Moot Court Team, The Catholic University of America, Columbus School of Law

David C. Walton



David Walton is a partner in the Firm's San Diego office and a member of the Firm's Executive and Management Committees. He specializes in pursuing financial fraud claims, using his background as a Certified Public Accountant and Certified Fraud Examiner to prosecute securities law violations on behalf of investors. For over 20 years, he has prosecuted class actions and private actions on behalf of defrauded investors, particularly in the area of accounting fraud. He has investigated and participated in the litigation of highly complex accounting scandals within some of America's largest corporations, including Enron ($7.2 billion), HealthSouth ($671 million), WorldCom ($657 million), AOL Time Warner ($629 million), Countrywide ($500 million), and Dynegy ($474 million), as well as numerous companies implicated in stock option backdating. In 2003-2004, he served as a member of the California Board of Accountancy, which is responsible for regulating the accounting profession in California.

Education	B.A., University of Utah, 1988; J.D., University of Southern California Law Center, 1993
Honors/ Awards	Super Lawyer, 2015-2016; California Board of Accountancy, Member, 2003-2004; *Southern California Law Review*, Member, University of Southern California Law Center; Hale Moot Court Honors Program, University of Southern California Law Center

Douglas Wilens

Douglas Wilens is a partner in the Firm's Boca Raton office. Wilens is a member of the Firm's appellate practice group, participating in numerous appeals in federal and state courts across the country. Most notably, Wilens handled successful appeals in the First Circuit Court of Appeals in *Mass. Ret. Sys. v. CVS Caremark Corp.*, 716 F.3d 229 (1st Cir. 2013) (reversal of order granting motion to dismiss), and in the Fifth Circuit Court of Appeals in *Lormand v. US Unwired, Inc.*, 565 F.3d 228 (5th Cir. 2009) (reversal of order granting motion to dismiss). Wilens is also involved in the Firm's lead plaintiff practice group, handling lead plaintiff issues arising under the PSLRA.

Prior to joining the Firm, Wilens was an associate at a nationally recognized firm, where he litigated complex actions on behalf of numerous professional sports leagues, including the National Basketball Association, the National Hockey League and Major League Soccer. He has also served as an adjunct professor at Florida Atlantic University and Nova Southeastern University, where he taught undergraduate and graduate-level business law classes.

Education	B.S., University of Florida, 1992; J.D., University of Florida College of Law, 1995
Honors/ Awards	Book Award for Legal Drafting, University of Florida College of Law; J.D., with Honors, University of Florida College of Law, 1995

Shawn A. Williams

Shawn Williams is a partner in the Firm's San Francisco office and a member of the Firm's Management Committee. His practice focuses on securities class actions. Williams was among the lead class counsel for the Firm recovering investor losses in notable cases, including: *In re Krispy Kreme Doughnuts, Inc. Sec. Litig.* ($75 million); *In re Veritas Software Corp. Sec. Litig.* ($35 million); and *In re Cadence Design Sys. Sec. Litig.* ($38 million). Williams is also among the Firm's lead attorneys prosecuting shareholder derivative actions, securing tens of millions of dollars in cash recoveries and negotiating the implementation of comprehensive corporate governance enhancements, such as *In re McAfee, Inc. Derivative Litig.*; *In re Marvell Tech. Grp. Ltd. Derivative Litig.*; *In re KLA Tencor S'holder Derivative Litig.*; and *The Home Depot, Inc. Derivative Litig.* Prior to joining the Firm in 2000, Williams served for 5 years as an Assistant District Attorney in the Manhattan District Attorney's Office, where he tried over 20 cases to New York City juries and led white-collar fraud grand jury investigations.

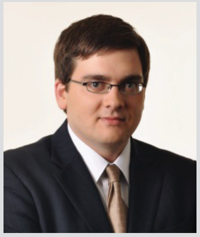
Education	B.A., The State of University of New York at Albany, 1991; J.D., University of Illinois, 1995
Honors/ Awards	Super Lawyer, 2014-2016; Board Member, California Bar Foundation, 2012-present

David T. Wissbroecker

David Wissbroecker is a partner in the Firm's San Diego and Chicago offices and focuses his practice on securities class action litigation in the context of mergers and acquisitions, representing both individual shareholders and institutional investors. Wissbroecker has litigated numerous high profile cases in Delaware and other jurisdictions, including shareholder class actions challenging the acquisitions of Kinder Morgan, Del Monte Foods, Affiliated Computer Services and Rural Metro. As part of the deal litigation team at Robbins Geller, Wissbroecker has helped secure monetary recoveries for shareholders that collectively exceed $600 million. Prior to joining the Firm, Wissbroecker served as a staff attorney for the United States Court of Appeals for the Seventh Circuit, and then as a law clerk for the Honorable John L. Coffey, Circuit Judge for the Seventh Circuit.

Education	B.A., Arizona State University, 1998; J.D., University of Illinois College of Law, 2003
Honors/ Awards	Super Lawyer "Rising Star," 2015; J.D., *Magna Cum Laude*, University of Illinois College of Law, 2003; B.A., *Cum Laude*, Arizona State University, 1998

Christopher M. Wood



Christopher Wood is a partner in the Firm's Nashville office, where his practice focuses on complex securities litigation. He has been a member of litigation teams responsible for recovering hundreds of millions of dollars for investors, including: *In re Massey Energy Co. Sec. Litig.* ($265 million recovery); *In re VeriFone Holdings, Inc. Sec. Litig.* ($95 million recovery); *Garden City Emps.' Ret. Sys. v. Psychiatric Solutions, Inc.* ($65 million recovery); *In re Micron Tech., Inc. Sec. Litig.* ($42 million recovery); and *Winslow v. BancorpSouth, Inc.* ($29.5 million recovery).

Wood has provided *pro bono* legal services through the San Francisco Bar Association's Volunteer Legal Services Program, the Ninth Circuit's Pro Bono Program, Volunteer Lawyers & Professionals for the Arts, and Tennessee Justice for Our Neighbors.

Education	J.D., University of San Francisco School of Law, 2006; B.A., Vanderbilt University, 2003
Honors/ Awards	Super Lawyer "Rising Star," 2011-2013, 2015-2016

Debra J. Wyman

Debra Wyman is a partner in the Firm's San Diego office who specializes in securities litigation. She has litigated numerous cases against public companies in state and federal courts that have resulted in over $1 billion in securities fraud recoveries. Most recently, Wyman was a member of the trial team in *Schuh v. HCA Holdings, Inc.*, which resulted in a $215 million recovery for shareholders, the largest securities class action recovery ever in Tennessee. The recovery represents between 34% and 70% of the aggregate damages, far exceeding the typical recovery in a securities class action. Wyman was also part of the trial team that litigated *In re AT&T Corp. Sec. Litig.*, which was tried in the United States District Court, District of New Jersey, and settled after only two weeks of trial for $100 million. She prosecuted a complex securities and accounting fraud case against HealthSouth Corp., one of the largest and longest-running corporate frauds in history, in which $671 million was recovered for defrauded HealthSouth investors.

Education	B.A., University of California Irvine, 1990; J.D., University of San Diego School of Law, 1997
Honors/ Awards	Super Lawyer, 2016

Of Counsel

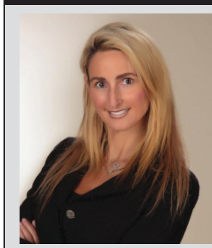
Laura M. Andracchio

Laura Andracchio is Of Counsel in the Firm's San Diego office, where she focuses primarily on litigation under the federal securities laws. She has litigated dozens of cases against public companies in federal and state courts throughout the country, and has contributed to hundreds of millions of dollars in recoveries for injured investors.

Andracchio was a lead member of the trial team in *In re AT&T Corp. Sec. Litig.*, which settled for $100 million after two weeks of trial in district court in New Jersey. Prior to trial, she was responsible for managing and litigating the case, which was pending for four years. She also led the litigation team in *Brody v. Hellman*, a case against Qwest and former directors of U.S. West seeking an unpaid dividend, recovering $50 million. In addition, Andracchio was the lead litigator in *In re PCom, Inc. Sec. Litig.*, resulting in a $16 million recovery for the plaintiff class. Most recently, she has been focusing primarily on residential mortgage-backed securities litigation on behalf of investors against Wall Street financial institutions in federal courts.

Education	J.D., Duquesne University School of Law, 1989; B.A., Bucknell University, 1986
Honors/ Awards	Order of the Barristers, J.D., with honors, Duquesne University School of Law, 1989

Randi D. Bandman



Randi Bandman has directed numerous complex securities cases at the Firm, such as the pending case of *In re BP plc Derivative Litig.*, a case brought to address the alleged utter failure of BP to ensure the safety of its operation in the United States, including Alaska, and which caused such devastating results as in the Deepwater Horizon oil spill, the worst environmental disaster in history. Bandman was instrumental in the Firm's development of representing coordinated groups of institutional investors in private opt-out cases that resulted in historical recoveries, such as in WorldCom and AOL Time Warner. Through her years at the Firm, she has represented hundreds of institutional investors, including domestic and non-U.S. investors, in some of the largest and most successful shareholder class actions ever prosecuted, resulting in billions of dollars of recoveries, involving such companies as Enron, Unocal and Boeing. Bandman was also instrumental in the landmark 1998 state settlement with the tobacco companies for $12.5 billion.

Education	B.A., University of California, Los Angeles; J.D., University of Southern California

Lea Malani Bays

Lea Malani Bays is Of Counsel in the Firm's San Diego office. She focuses on e-discovery issues, from preservation through production, and provides counsel to the Firm's multi-disciplinary, e-discovery team consisting of attorneys, forensic analysts and database professionals. Through her role as counsel to the e-discovery team, Bays is very familiar with the various stages of e-discovery, including identification of relevant electronically stored information, data culling, predictive coding protocols, privilege and responsiveness reviews, as well as having experience in post-production discovery through trial preparation. Through speaking at various events, she is also a leader in shaping the broader dialogue on e-discovery issues.

Bays was recently part of the litigation team that earned the approval of a $131 million settlement in favor of plaintiffs in *Bennett v. Sprint Nextel Corp.* The settlement, which resolved claims arising from Sprint Corporation's ill-fated merger with Nextel Communications in 2005, represents a significant recovery for the plaintiff class, achieved after five years of tireless effort by the Firm. Prior to joining Robbins Geller, Bays was a Litigation Associate at Kaye Scholer LLP's Melville office. She has experience in a wide range of litigation, including complex securities litigation, commercial contract disputes, business torts, antitrust, civil fraud, and trust and estate litigation.

Education	B.A., University of California, Santa Cruz, 1997; J.D., New York Law School, 2007
Honors/ Awards	J.D., *Magna Cum Laude*, New York Law School, 2007; Executive Editor, *New York Law School Law Review*; Legal Aid Society's Pro Bono Publico Award; NYSBA Empire State Counsel; Professor Stephen J. Ellmann Clinical Legal Education Prize; John Marshall Harlan Scholars Program, Justice Action Center

Mary K. Blasy

Mary Blasy is Of Counsel to the Firm's and is based in the Firm's Melville and Washington, D.C. offices. Her practice focuses on the investigation, commencement, and prosecution of securities fraud class actions and shareholder derivative suits. Blasy has recovered hundreds of millions of dollars for investors in securities fraud class actions against Reliance Acceptance Corp. ($66 million); Sprint Corp. ($50 million); Titan Corporation ($15+ million); Martha Stewart Omni-Media, Inc. ($30 million); and Coca-Cola Co. ($137.5 million). Blasy has also been responsible for prosecuting numerous complex shareholder derivative actions against corporate malefactors to address violations of the nation's securities, environmental and labor laws, obtaining corporate governance enhancements valued by the market in the billions of dollars.

In 2014, the Presiding Justice of the Appellate Division of the Second Department of the Supreme Court of the State of New York appointed Blasy to serve as a member of the Independent Judicial Election Qualification Commission, which reviews the qualifications of candidates seeking public election to New York State Supreme Courts in the 10th Judicial District. Blasy also serves on the *Law 360* Securities Editorial Advisory Board.

Education	B.A., California State University, Sacramento, 1996; J.D., UCLA School of Law, 2000
Honors/ Awards	Super Lawyer, 2016; *Law 360* Securities Editorial Advisory Board, 2015-2016; Member, Independent Judicial Election Qualification Commission, 2014-present

Bruce Boyens

Bruce Boyens has served as Of Counsel to the Firm since 2001. A private practitioner in Denver, Colorado since 1990, Boyens specializes in issues relating to labor and environmental law, labor organizing, labor education, union elections, internal union governance and alternative dispute resolutions. In this capacity, he previously served as a Regional Director for the International Brotherhood of Teamsters elections in 1991 and 1995, and developed and taught collective bargaining and labor law courses for the George Meany Center, Kennedy School of Government, Harvard University, and the Kentucky Nurses Association, among others.

In addition, Boyens served as the Western Regional Director and Counsel for the United Mine Workers from 1983-1990, where he was the chief negotiator in over 30 major agreements, and represented the United Mine Workers in all legal matters. From 1973-1977, he served as General Counsel to District 17 of the United Mine Workers Association, and also worked as an underground coal miner during that time.

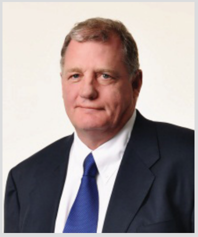
Education	J.D., University of Kentucky College of Law, 1973; Harvard University, Certificate in Environmental Policy and Management

Christopher Collins

Christopher Collins is Of Counsel in the Firm's San Diego office. His practice areas include antitrust, consumer protection and tobacco litigation. Collins served as co-lead counsel in *Wholesale Elec. Antitrust Cases I & II*, charging an antitrust conspiracy by wholesale electricity suppliers and traders of electricity in California's newly deregulated wholesale electricity market wherein plaintiffs secured a global settlement for California consumers, businesses and local governments valued at more than $1.1 billion. He was also involved in California's tobacco litigation, which resulted in the $25.5 billion recovery for California and its local entities. Collins is currently counsel on the MemberWorks upsell litigation, as well as a number of consumer actions alleging false and misleading advertising and unfair business practices against major corporations. He formerly served as a Deputy District Attorney for Imperial County.

Education	B.A., Sonoma State University, 1988; J.D., Thomas Jefferson School of Law, 1995

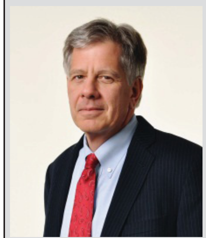
Patrick J. Coughlin



Patrick Coughlin is Of Counsel to the Firm and has served as lead counsel in several major securities matters, including one of the earliest and largest class action securities cases to go to trial, *In re Apple Comput. Sec. Litig.* Coughlin was recently one of the lead attorneys who secured a historic recovery on behalf of Trump University students in two class actions against President-Elect Donald J. Trump. The settlement provides $25 million to approximately 7,000 consumers. This result means individual class members will be eligible for upwards of $35,000 in restitution. He represented the class on a *pro bono* basis. Additional prominent securities class actions prosecuted by Coughlin include the *Enron* litigation ($7.2 billion recovery); the *Qwest* litigation ($445 million recovery); and the *HealthSouth* litigation ($671 million recovery). In addition to the numerous securities cases, Coughlin has handled a number of large antitrust cases including the Visa/Master Card *Interchange Fee* case, the *Currency Conversion* cases in which $360 million was recovered for consumers and the Private Equity litigation (*Dahl v. Bain Capital Partners, LLC*) in which $590.5 million was recovered for investors. Coughlin was formerly an Assistant United States Attorney in the District of Columbia and the Southern District of California, handling complex white-collar fraud matters.

Education	B.S., Santa Clara University, 1977; J.D., Golden Gate University, 1983
Honors/ Awards	Best Lawyer in America, *Best Lawyers®*, 2006-2017; Super Lawyer, 2004-2016; Antitrust Trailblazer, *The National Law Journal*, 2015; Leading Lawyer, Senior Statesman, *Chambers USA*, 2014-2016; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2016; Top 100 Lawyers, *Daily Journal*, 2008; Leading Lawyers in America, *Lawdragon*, 2006, 2008-2009

Michael J. Dowd



Mike Dowd was a founding partner of the Firm. He has practiced in the area of securities litigation for 20 years, prosecuting dozens of complex securities cases and obtaining significant recoveries for investors in cases such as *UnitedHealth* ($925 million), *WorldCom* ($657 million), *AOL Time Warner* ($629 million), *Qwest* ($445 million) and *Pfizer* ($400 million). Dowd served as lead trial counsel in *Jaffe v. Household Int'l, Inc.* in the Northern District of Illinois, a securities class action that obtained a record-breaking $1.575 billion settlement after 14 years of litigation, including a six-week jury trial in 2009 that resulted in a verdict for plaintiffs. Dowd also served as the lead trial lawyer in *In re AT&T Corp. Sec. Litig.*, which was tried in the District of New Jersey and settled after only two weeks of trial for $100 million.

Dowd served as an Assistant United States Attorney in the Southern District of California from 1987-1991, and again from 1994-1998.

Education	B.A., Fordham University, 1981; J.D., University of Michigan School of Law, 1984
Honors/ Awards	Best Lawyer in America, *Best Lawyers®*, 2015-2017; Leading Lawyer in America, *Lawdragon*, 2014-2016; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2016; Super Lawyer, 2010-2016; Litigator of the Week, *The American Lawyer*, 2015; Litigation Star, *Benchmark Litigation* 2013; Directorship 100, NACD Directorship, 2012; Attorney of the Year, *California Lawyer*, 2010; Top 100 Lawyers, *Daily Journal*, 2009; Director's Award for Superior Performance, United States Attorney's Office; B.A., *Magna Cum Laude*, Fordham University, 1981

Alan I. Ellman

Alan Ellman is Of Counsel in the Firm's Melville office, where he concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Most recently, he was on the team of attorneys who recovered in excess of $34 million for investors in *In re OSG Sec. Litig.*, which represented an outsized recovery of 93% of bond purchasers' damages and 28% of stock purchasers' damages. The creatively structured settlement included more than $15 million paid by a bankrupt entity. In 2006, Ellman received a Volunteer and Leadership Award from Housing Conservation Coordinators (HCC) for his *pro bono* service defending a client in Housing Court against a non-payment action, arguing an appeal before the Appellate Term, and staffing HCC's legal clinic. He also successfully appealed a *pro bono* client's criminal sentence before the Appellate Division.

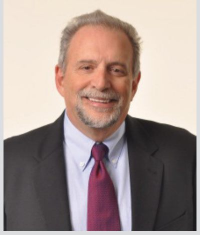
Education	B.S., B.A., State University of New York at Binghamton, 1999; J.D., Georgetown University Law Center, 2003
Honors/ Awards	Super Lawyer "Rising Star," 2014-2015; B.S., B.A., *cum laude*, State University of New York at Binghamton, 1999

L. Thomas Galloway

Thomas Galloway is Of Counsel to the Firm. Galloway is the founding partner of Galloway & Associates PLLC, a law firm that specializes in the representation of institutional investors – namely, public and multi-employer pension funds. He is also President of the Galloway Family Foundation, which funds investigative journalism into human rights abuses around the world.

Education	B.A., Florida State University, 1967; J.D., University of Virginia School of Law, 1972
Honors/ Awards	Articles Editor, *University of Virginia Law Review*, University of Virginia School of Law; *Phi Beta Kappa*, University of Virginia School of Law; Trial Lawyer of the Year in the United States, 2003

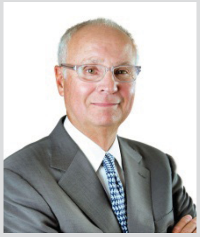
Edward M. Gergosian



Ed Gergosian is Of Counsel in the Firm's San Diego office. Gergosian has practiced solely in complex litigation for 28 years, first with a nationwide securities and antitrust class action firm, managing its San Diego office, and thereafter as a founding member of his own firm. He has actively participated in the leadership and successful prosecution of several securities and antitrust class actions and shareholder derivative actions, including *In re 3Com Corp. Sec. Litig.* (which settled for $259 million); *In re Informix Corp. Sec. Litig.* (which settled for $142 million); and the Carbon Fiber antitrust litigation (which settled for $60 million). Gergosian was part of the team that prosecuted the *AOL Time Warner* state and federal court securities opt-out actions, which settled for $629 million. He also obtained a jury verdict in excess of $14 million in a consumer class action captioned *Gutierrez v. Charles J. Givens Organization*.

Education	B.A., Michigan State University, 1975; J.D., University of San Diego School of Law, 1982
Honors/ Awards	Super Lawyer, 2014-2016; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2016; J.D., *Cum Laude*, University of San Diego School of Law, 1982

Mitchell D. Gravo



Mitchell Gravo is Of Counsel to the Firm and concentrates his practice on government relations. He represents clients before the Alaska Congressional delegation, the Alaska Legislature, the Alaska State Government and the Municipality of Anchorage.

Gravo's clients include Anchorage Economic Development Corporation, Anchorage Convention and Visitors Bureau, UST Public Affairs, Inc., International Brotherhood of Electrical Workers, Alaska Seafood International, Distilled Spirits Council of America, RIM Architects, Anchorage Police Department Employees Association, Fred Meyer, and the Automobile Manufacturer's Association. Prior to joining the Firm, he served as an intern with the Municipality of Anchorage, and then served as a law clerk to Superior Court Judge J. Justin Ripley.

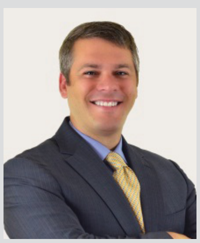
Education	B.A., Ohio State University; J.D., University of San Diego School of Law

Helen J. Hodges

Helen Hodges is Of Counsel to the Firm and is based in the Firm's San Diego office. Hodges has been involved in numerous securities class actions, including *Knapp v. Gomez*, in which a plaintiffs' verdict was returned in a Rule 10b-5 class action; *Nat'l Health Labs*, which settled for $64 million; *Thurber v. Mattel*, which settled for $122 million; and *Dynegy*, which settled for $474 million. More recently, she focused on the prosecution of *Enron*, where a record recovery ($7.2 billion) was obtained for investors.

Education	B.S., Oklahoma State University, 1979; J.D., University of Oklahoma, 1983
Honors/ Awards	Rated AV by Martindale-Hubbell; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2016; Super Lawyer, 2007; Oklahoma State University Foundation Board of Trustees, 2013

David J. Hoffa



David Hoffa is based in Michigan and works out of the Firm's Washington, D.C. office. Since 2006, Hoffa has been serving as a liaison to over 110 institutional investors in portfolio monitoring, securities litigation and claims filing matters. His practice focuses on providing a variety of legal and consulting services to U.S. state and municipal employee retirement systems, single and multi-employer U.S. Taft-Hartley benefit funds, as well as a leader on the Firm's Israel institutional investor outreach team. Hoffa also serves as a member of the Firm's lead plaintiff advisory team, and advises public and multi-employer pension funds around the country on issues related to fiduciary responsibility, legislative and regulatory updates, and "best practices" in the corporate governance of publicly traded companies.

Early in his legal career, Hoffa worked for a law firm based in Birmingham, Michigan, where he appeared regularly in Michigan state court in litigation pertaining to business, construction and employment related matters. Hoffa has also appeared before the Michigan Court of Appeals on several occasions.

Education	B.A., Michigan State University, 1993; J.D., Michigan State University College of Law, 2000

Frank J. Janecek, Jr.

Frank Janecek. is Of Counsel in the Firm's San Diego office and practices in the areas of consumer/antitrust, Proposition 65, taxpayer and tobacco litigation. He served as co-lead counsel, as well as court appointed liaison counsel, in *Wholesale Elec. Antitrust Cases I & II*, charging an antitrust conspiracy by wholesale electricity suppliers and traders of electricity in California's newly deregulated wholesale electricity market. In conjunction with the Governor of the State of California, the California State Attorney General, the California Public Utilities Commission, the California Electricity Oversight Board, a number of other state and local governmental entities and agencies, and California's large, investor-owned electric utilities, plaintiffs secured a global settlement for California consumers, businesses and local governments valued at more than $1.1 billion. Janecek also chaired several of the litigation committees in California's tobacco litigation, which resulted in the $25.5 billion recovery for California and its local entities, and also handled a constitutional challenge to the State of California's Smog Impact Fee in *Ramos v. Dep't of Motor Vehicles*, which resulted in more than a million California residents receiving full refunds and interest, totaling $665 million.

Education	B.S., University of California, Davis, 1987; J.D., Loyola Law School, 1991
Honors/ Awards	Super Lawyer, 2013-2016

Nancy M. Juda

Nancy Juda is Of Counsel to the Firm and is based in the Firm's Washington, D.C. office. She concentrates her practice on employee benefits law and works in the Firm's Institutional Outreach Department. Using her extensive experience representing union pension funds, Juda advises Taft-Hartley fund trustees regarding their options for seeking redress for losses due to securities fraud. She also represents workers in ERISA class actions involving breach of fiduciary duty claims against corporate plan sponsors and fiduciaries.

Prior to joining the Firm, Juda was employed by the United Mine Workers of America Health & Retirement Funds, where she practiced in the area of employee benefits law. Juda was also associated with union-side labor law firms in Washington, D.C., where she represented the trustees of Taft-Hartley pension and welfare funds on qualification, compliance, fiduciary, and transactional issues under ERISA and the Internal Revenue Code.

Education	B.A., St. Lawrence University, 1988; J.D., American University, 1992

Francis P. Karam

Frank Karam is Of Counsel to the Firm and is based in the Firm's Melville office. Karam is a trial lawyer with 30 years of experience. His practice focuses on complex class action litigation involving shareholders' rights and securities fraud. He also represents a number of landowners and royalty owners in litigation against large energy companies. He has tried complex cases involving investment fraud and commercial fraud, both on the plaintiff and defense side, and has argued numerous appeals in state and federal courts. Throughout his career, Karam has tried more than 100 cases to verdict.

Karam has served as a partner at several prominent plaintiffs' securities firms. From 1984 to 1990, Karam was an Assistant District Attorney in the Bronx, New York, where he served as a senior Trial Attorney in the Homicide Bureau. He entered private practice in 1990, concentrating on trial and appellate work in state and federal courts.

Education	A.B., College of the Holy Cross; J.D., Tulane University School of Law
Honors/ Awards	"Who's Who" for Securities Lawyers, *Corporate Governance Magazine*, 2015

Jerry E. Martin

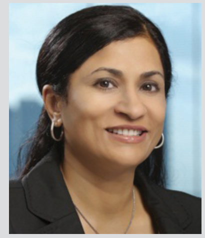
Jerry Martin served as the presidentially appointed United States Attorney for the Middle District of Tennessee from May 2010 to April 2013. As U.S. Attorney, he made prosecuting financial, tax and health care fraud a top priority. During his tenure, Martin co-chaired the Attorney General's Advisory Committee's Health Care Fraud Working Group.

Martin specializes in representing individuals who wish to blow the whistle to expose fraud and abuse committed by federal contractors, health care providers, tax cheats or those who violate the securities laws.

Martin has been recognized as a national leader in combatting fraud and has addressed numerous groups and associations such as Taxpayers Against Fraud and the National Association of Attorneys General. In 2012, he was the keynote speaker at the American Bar Association's Annual Health Care Fraud Conference.

Education	B.A., Dartmouth College, 1996; J.D., Stanford University, 1999
Honors/ Awards	Super Lawyer, 2016

Ruby Menon



Ruby Menon is Of Counsel to the Firm and serves as a member of the Firm's legal, advisory and business development group. She also serves as the liaison to the Firm's many institutional investor clients in the United States and abroad. For over 12 years, Menon served as Chief Legal Counsel to two large multi-employer retirement plans, developing her expertise in many areas of employee benefits and pension administration, including legislative initiatives and regulatory affairs, investments, tax, fiduciary compliance and plan administration.

Education	B.A., Indiana University, 1985; J.D., Indiana University School of Law, 1988

Eugene Mikolajczyk

Eugene Mikolajczyk is Of Counsel to the Firm and is based in the Firm's San Diego Office. Mikolajczyk has over 30 years' experience prosecuting shareholder and securities litigation cases as both individual and class actions. Among the cases are *Heckmann v. Ahmanson*, in which the court granted a preliminary injunction to prevent a corporate raider from exacting greenmail from a large domestic media/entertainment company.

Mikolajczyk was a primary litigation counsel in an international coalition of attorneys and human rights groups that won a historic settlement with major U.S. clothing retailers and manufacturers on behalf of a class of over 50,000 predominantly female Chinese garment workers, in an action seeking to hold the Saipan garment industry responsible for creating a system of indentured servitude and forced labor. The coalition obtained an unprecedented agreement for supervision of working conditions in the Saipan factories by an independent NGO, as well as a substantial multi-million dollar compensation award for the workers.

Education	B.S., Elizabethtown College, 1974; J.D., Dickinson School of Law, Penn State University, 1978

Roxana Pierce

Roxana Pierce is Of Counsel to the Firm and focuses her practice on securities litigation, arbitration, negotiations, contracts, international trade, real estate transactions and project development. She has represented clients in over 75 countries, with extensive experience in the Middle East, Asia, Russia, the former Soviet Union, Germany, Belgium, the Caribbean and India. Pierce counsels institutional investors on recourse available to them when the investors have been victims of fraud or other schemes. Pierce's client base includes large institutional investors, international banks, asset managers, foreign governments, multi-national corporations, sovereign wealth funds and high net worth individuals.

Pierce has counseled international clients since 1994. She has spearheaded the contract negotiations for hundreds of projects, including several valued at over $1 billion, and typically conducts her negotiations with the leadership of foreign governments and the leadership of Fortune 500 corporations, foreign and domestic. Pierce presently represents several European legacy banks in litigation concerning the 2008 financial crisis.

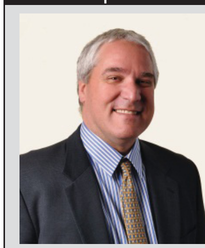
Education	B.A., Pepperdine University, 1988; J.D., Thomas Jefferson School of Law, 1994
Honors/ Awards	Certificate of Accomplishment, Export-Import Bank of the United States

Svenna Prado

Svenna Prado is Of Counsel in the Firm's San Diego office, where she focuses on various aspects of international securities and consumer litigation. She was part of the litigation teams that secured settlements against German defendant IKB, as well as Deutsche Bank and Deutsche Bank/West LB for their role in structuring residential mortgage-backed securities and their subsequent collapse. Prior to joining the Firm, Prado was Head of the Legal Department for a leading international staffing agency in Germany where she focused on all aspects of employment litigation and corporate governance. After she moved to the United States, Prado worked with an internationally oriented German law firm as Counsel to corporate clients establishing subsidiaries in the United States and Germany. As a law student, Prado worked directly for several years for one of the appointed Trustees winding up Eastern German operations under receivership in the aftermath of the German reunification. Utilizing her experience in this area of law, Prado later helped many clients secure successful outcomes in U.S. Bankruptcy Court.

Education	J.D., University of Erlangen-Nuremberg, Germany, 1996; Qualification for Judicial Office, Upper Regional Court Nuremberg, Germany, 1998; New York University, "U.S. Law and Methodologies," 2001

Christopher P. Seefer



Christopher Seefer is Of Counsel in the Firm's San Francisco office. Seefer concentrates his practice in securities class action litigation. One recent notable recovery was a $30 million settlement with UTStarcom in 2010, a recovery that dwarfed a $150,000 penalty obtained by the SEC. Prior to joining the Firm, he was a Fraud Investigator with the Office of Thrift Supervision, Department of the Treasury (1990-1999), and a field examiner with the Office of Thrift Supervision (1986-1990).

Education	B.A., University of California Berkeley, 1984; M.B.A., University of California, Berkeley, 1990; J.D., Golden Gate University School of Law, 1998

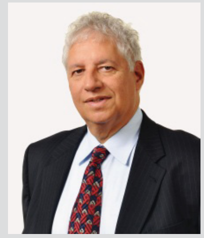
Arthur L. Shingler III

Arthur Shingler is Of Counsel to the Firm and is based in the Firm's San Diego office. Shingler has successfully represented both public and private sector clients in hundreds of complex, multi-party actions with billions of dollars in dispute. Throughout his career, he has obtained outstanding results for those he has represented in cases generally encompassing shareholder derivative and securities litigation, unfair business practices litigation, publicity rights and advertising litigation, ERISA litigation, and other insurance, health care, employment and commercial disputes.

Representative matters in which Shingler served as lead litigation or settlement counsel include, among others: *In re Royal Dutch/Shell ERISA Litig.* ($90 million settlement); *In re Priceline.com Sec. Litig.* ($80 million settlement); *In re General Motors ERISA Litig.* ($37.5 million settlement, in addition to significant revision of retirement plan administration); *Wood v. Ionatron, Inc.* ($6.5 million settlement); *In re Lattice Semiconductor Corp. Derivative Litig.* (corporate governance settlement, including substantial revision of board policies and executive management); *In re 360networks Class Action Sec. Litig.* ($7 million settlement); and *Rothschild v. Tyco Int'l (US), Inc.*, 83 Cal. App. 4th 488 (2000) (shaped scope of California's Unfair Practices Act as related to limits of State's False Claims Act).

Education	B.A., Point Loma Nazarene College, 1989; J.D., Boston University School of Law, 1995
Honors/ Awards	B.A., *Cum Laude*, Point Loma Nazarene College, 1989

Leonard B. Simon

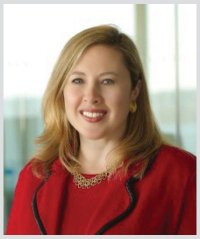


Leonard Simon is Of Counsel to the Firm. His practice has been devoted heavily to litigation in the federal courts, including both the prosecution and defense of major class actions and other complex litigation in the securities and antitrust fields. Simon has also handled a substantial number of complex appellate matters, arguing cases in the U.S. Supreme Court, several federal Courts of Appeals, and several California appellate courts. He has served as plaintiffs' co-lead counsel in dozens of class actions, including *In re Am. Cont'l Corp./Lincoln Sav. & Loan Sec. Litig.* (settled for $240 million) and *In re NASDAQ Market-Makers Antitrust Litig.* (settled for more than $1 billion), and was centrally involved in the prosecution of *In re Washington Pub. Power Supply Sys. Sec. Litig.*, the largest securities class action ever litigated.

Simon is an Adjunct Professor of Law at Duke University, the University of San Diego, and the University of Southern California Law Schools. He is an Editor of California Federal Court Practice and has authored a law review article on the PSLRA.

Education	B.A., Union College, 1970; J.D., Duke University School of Law, 1973
Honors/ Awards	Super Lawyer, 2008-2016; Top Lawyer in San Diego, *San Diego Magazine*, 2016; J.D., Order of the Coif and with Distinction, Duke University School of Law, 1973

Laura S. Stein

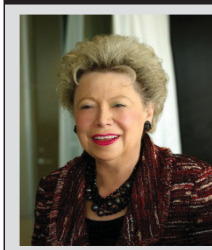


Laura Stein is Of Counsel to the Firm and has practiced in the areas of securities class action litigation, complex litigation and legislative law. In a unique partnership with her mother, attorney Sandra Stein, also Of Counsel to the Firm, the Steins focus on minimizing losses suffered by shareholders due to corporate fraud and breaches of fiduciary duty. The Steins also seek to deter future violations of federal and state securities laws by reinforcing the standards of good corporate governance. The Steins work with over 500 institutional investors across the nation and abroad, and their clients have served as lead plaintiff in successful cases where billions of dollars were recovered for defrauded investors against such companies as AOL Time Warner, Tyco, Cardinal Health, AT&T, Hanover Compressor, First Bancorp, Enron, Dynegy, Honeywell International and Bridgestone.

Stein is Special Counsel to the Institute for Law and Economic Policy (ILEP), a think tank that develops policy positions on selected issues involving the administration of justice within the American legal system. She has also served as Counsel to the Annenberg Institute of Public Service at the University of Pennsylvania.

Education	B.A., University of Pennsylvania, 1992; J.D., University of Pennsylvania Law School, 1995

Sandra Stein



Sandra Stein is Of Counsel to the Firm and concentrates her practice in securities class action litigation, legislative law and antitrust litigation. In a unique partnership with her daughter, Laura Stein, also Of Counsel to the Firm, the Steins focus on minimizing losses suffered by shareholders due to corporate fraud and breaches of fiduciary duty.

Previously, Stein served as Counsel to United States Senator Arlen Specter of Pennsylvania. During her service in the United States Senate, Stein was a member of Senator Specter's legal staff and a member of the United States Senate Judiciary Committee staff. She is also the Founder of the Institute for Law and Economic Policy (ILEP), a think tank that develops policy positions on selected issues involving the administration of justice within the American legal system. Stein has also produced numerous public service documentaries for which she was nominated for an Emmy and received an ACE award, cable television's highest award for excellence in programming.

Education	B.S., University of Pennsylvania, 1961; J.D., Temple University School of Law, 1966
Honors/ Awards	Nominated for an Emmy and received an ACE award for public service documentaries

John J. Stoia, Jr.

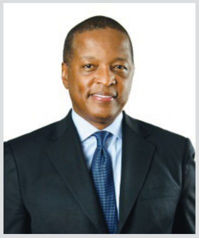
John Stoia is Of Counsel to the Firm and is based in the Firm's San Diego office. He is one of the founding partners and former managing partner of the Firm. He focuses his practice on insurance fraud, consumer fraud and securities fraud class actions. Stoia has been responsible for over $10 billion in recoveries on behalf of victims of insurance fraud due to deceptive sales practices such as "vanishing premiums" and "churning." He has worked on dozens of nationwide complex securities class actions, including *In re Am. Cont'l Corp./Lincoln Sav. & Loan Sec. Litig.*, which arose out of the collapse of Lincoln Savings & Loan and Charles Keating's empire. Stoia was a member of the plaintiffs' trial team that obtained verdicts against Keating and his co-defendants in excess of $3 billion and settlements of over $240 million.

He also represented numerous large institutional investors who suffered hundreds of millions of dollars in losses as a result of major financial scandals, including AOL Time Warner and WorldCom. Currently, Stoia is lead counsel in numerous cases against online discount voucher companies for violations of both federal and state laws including violation of state gift card statutes.

Education	B.S., University of Tulsa, 1983; J.D., University of Tulsa, 1986; LL.M. Georgetown University Law Center, 1987
Honors/ Awards	Rated AV Preeminent by Martindale-Hubbell; Super Lawyer, 2007-2016; Top Lawyer in San Diego, *San Diego Magazine*, 2013-2016; Litigator of the Month, *The National Law Journal*, July 2000; LL.M. Top of Class, Georgetown University Law Center

Special Counsel

Bruce Gamble



Bruce Gamble is Special Counsel to the Firm and a member of the Institutional Outreach Department.

Gamble serves as a liaison with the Firm's institutional investor clients in the United States and abroad, advising them on securities litigation matters. Previously, he was General Counsel and Chief Compliance Officer for the District of Columbia Retirement Board, where he served as chief legal advisor to the Board of Trustees and staff. Gamble's experience also includes serving as Chief Executive Officer of two national trade associations and several senior level staff positions on Capitol Hill.

Education	B.S., University of Louisville, 1979; J.D., Georgetown University Law Center, 1989
Honors/ Awards	Executive Board Member, National Association of Public Pension Attorneys, 2000-2006; American Banker selection as one of the most promising U.S. bank executives under 40 years of age, 1992

Carlton R. Jones

Carlton Jones is Special Counsel to the Firm and is a member of the Intellectual Property group in the Atlanta office. Although Jones primarily focuses on patent litigation, he has experience handling a variety of legal matters of a technical nature, including performing invention patentability analysis and licensing work for the Centers for Disease Control as well as litigation involving internet streaming-audio licensing disputes and medical technologies. He is a registered Patent Attorney with the United States Patent and Trademark Office.

Education	B.S., Georgia Institute of Technology, 2006; J.D., Georgia State University College of Law, 2009

Tricia L. McCormick

Tricia McCormick is Special Counsel to the Firm and focuses primarily on the prosecution of securities class actions. McCormick has litigated numerous cases against public companies in state and federal courts that resulted in hundreds of millions of dollars in recoveries for investors. She is also a member of a team that is in constant contact with clients who wish to become actively involved in the litigation of securities fraud. In addition, McCormick is active in all phases of the Firm's lead plaintiff motion practice.

Education	B.A., University of Michigan, 1995; J.D., University of San Diego School of Law, 1998
Honors/ Awards	J.D., *Cum Laude*, University of San Diego School of Law, 1998

Forensic Accountants

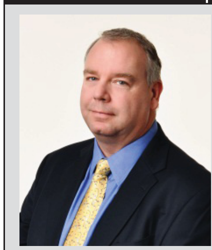
R. Steven Aronica

Steven Aronica is a Certified Public Accountant licensed in the States of New York and Georgia and is a member of the American Institute of Certified Public Accountants, the Institute of Internal Auditors and the Association of Certified Fraud Examiners. Aronica has been instrumental in the prosecution of numerous financial and accounting fraud civil litigation claims against companies that include Lucent Technologies, Tyco, Oxford Health Plans, Computer Associates, Aetna, WorldCom, Vivendi, AOL Time Warner, Ikon, Doral Financial, First BanCorp, Acclaim Entertainment, Pall Corporation, iStar Financial, Hibernia Foods, NBTY, Tommy Hilfiger, Lockheed Martin, the Blackstone Group and Motorola. In addition, he assisted in the prosecution of numerous civil claims against the major United States public accounting firms.

Aronica has been employed in the practice of financial accounting for more than 30 years, including public accounting, where he was responsible for providing clients with a wide range of accounting and auditing services; the investment bank Drexel Burnham Lambert, Inc., where he held positions with accounting and financial reporting responsibilities; and at the SEC, where he held various positions in the divisions of Corporation Finance and Enforcement and participated in the prosecution of both criminal and civil fraud claims.

Education	B.B.A., University of Georgia, 1979

Andrew J. Rudolph

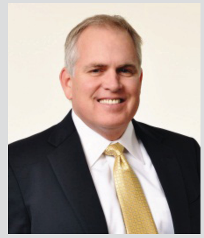


Andrew Rudolph is the Director of the Firm's Forensic Accounting Department, which provides in-house forensic accounting expertise in connection with securities fraud litigation against national and foreign companies. He has directed hundreds of financial statement fraud investigations, which were instrumental in recovering billions of dollars for defrauded investors. Prominent cases include *Qwest*, *HealthSouth*, *WorldCom*, *Boeing*, *Honeywell*, *Vivendi*, *Aurora Foods*, *Informix*, *Platinum Software*, *AOL Time Warner*, and *UnitedHealth*.

Rudolph is a Certified Fraud Examiner and a Certified Public Accountant licensed to practice in California. He is an active member of the American Institute of Certified Public Accountants, California's Society of Certified Public Accountants, and the Association of Certified Fraud Examiners. His 20 years of public accounting, consulting and forensic accounting experience includes financial fraud investigation, auditor malpractice, auditing of public and private companies, business litigation consulting, due diligence investigations and taxation.

Education	B.A., Central Connecticut State University, 1985

Christopher Yurcek



Christopher Yurcek is the Assistant Director of the Firm's Forensic Accounting Department, which provides in-house forensic accounting and litigation expertise in connection with major securities fraud litigation. He has directed the Firm's forensic accounting efforts on numerous high-profile cases, including *In re Enron Corp. Sec. Litig.* and *Jaffe v. Household Int'l, Inc.*, which obtained a record-breaking $1.575 billion settlement after 14 years of litigation, including a six-week jury trial in 2009 that resulted in a verdict for plaintiffs. Other prominent cases include *HealthSouth*, *UnitedHealth*, *Vesta*, *Informix*, *Mattel*, *Coca-Cola* and *Media Vision*.

Yurcek has over 20 years of accounting, auditing, and consulting experience in areas including financial statement audit, forensic accounting and fraud investigation, auditor malpractice, turn-around consulting, business litigation and business valuation. He is a Certified Public Accountant licensed in California, holds a Certified in Financial Forensics (CFF) Credential from the American Institute of Certified Public Accountants, and is a member of the California Society of CPAs and the Association of Certified Fraud Examiners.

Education	B.A., University of California, Santa Barbara, 1985

Exhibit 9

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION
No. 15-cv-7759 (LAK)

SUMMARY OF LODESTARS AND EXPENSES

FIRM	HOURS	LODESTAR	EXPENSES
Labaton Sucharow LLP	3,771.3	$2,070,671.50	$238,073.51
Robbins Geller Rudman & Dowd LLP	991.75	$393,644.75	$7,049.29
TOTALS	**4,763.05**	**$2,464,316.25**	**$245,122.80**

Exhibit 10

IN RE FIFTH STREET FINANCE CORP. SECURITIES LITIGATION
No. 15-cv-7759 (LAK)

Summary of Work Performed by Lead Counsel
Core Attorneys and Professional Staff

Joel Bernstein (251.8 hours): Mr. Bernstein oversaw the litigation from the drafting of the amended complaint until its successful resolution with the settlement. Among other things, Mr. Bernstein: (i) led the development of the litigation and negotiation strategies; (ii) communicated regularly with the Lead Plaintiff; (iii) oversaw and participated in drafting the amended complaint; (iv) consulted with the damages/loss causation and forensic accounting experts and oversaw their respective analyses of causation/damages and applicable accounting regulations (*e.g.*, those concerning fair value and non-accrual determinations); (v) led the drafting of the mediation submissions, including a letter to the mediator setting forth Lead Plaintiff's position in advance of the mediation; (vi) was actively involved in developing the settlement strategy and was significantly involved in all negotiation and settlement discussions; (vii) along with Ira Schochet, presented Lead Plaintiff's position to Defendants and their insurers during the June 2016 mediation; and (viii) supervised and communicated with other team members regarding the review and analysis of the additional discovery.

Ira Schochet (419.0 hours): Mr. Schochet also helped lead the litigation team and was an integral component in all strategic decisions. Among other things, he: (i) helped develop the litigation and negotiating strategies; (ii) directed and participated in the drafting of the amended complaint, the mediation submissions and the settlement approval papers; (iii) engaged and consulted with the damages/loss causation and forensic accounting experts and oversaw their respective analyses of causation/damages and applicable accounting regulations, (iv) along with Joel Bernstein, presented Lead Plaintiff's position to Defendants and their insurers during the June 2016 mediation; (v) participated in negotiating the contours of additional discovery and the settlement with Defendants, (vi) supervised and oversaw the additional discovery phase, including Lead Counsel's review of about 2.4 million pages of documents and five interviews with key Fifth Street executives and directors; and (vii) supervised the preparation of the settlement documentation and approval and fee motions.

Chris Keller (75.5 hours): Mr. Keller has been involved since the inception of the Action. He participated in the early analysis of Lead Plaintiff's claims and was involved in drafting the Lead Plaintiff's submissions seeking appointment as lead plaintiff. He was also actively involved in developing the settlement strategy throughout the litigation.

Eric Belfi (56.9 hours): Mr. Belfi has been involved since the inception of the Action, regularly communicating with Lead Plaintiff throughout. He participated in the early analysis of Lead Plaintiff's claims and was also actively involved in developing the settlement strategy throughout the litigation and the negotiation of a resolution.

Nicole Zeiss (127.1 hours): Ms. Zeiss is Labaton Sucharow's settlement counsel and was instrumental in negotiating the stipulation of settlement and related documents. She oversaw and participated in drafting the motions for authorization to notify the Class and the approval and fee motions. Additionally, she has overseen the disseminations of the class notices.

Associates

Eric Gottlieb (676.0 hours): Mr. Gottlieb was the primary associate dedicated to the case from the Lead Plaintiff's appointment until settlement. Among other things, he substantially participated in drafting the amended complaint and extensively consulted with Lead Plaintiff's investigators and loss causation/damages and forensic accounting experts in connection therewith. Mr. Gottlieb also assisted in leading Lead Plaintiff's discovery efforts, including (i) participating in numerous discussions with Defendants and helping draft related correspondence, (ii) overseeing, and participating in, the document review team's analysis of the documents produced by Defendants, (iii) interviewing the Chairman of FSC's Audit Committee and actively participating in the interviews of the four other high-level Fifth Street employees, and (iv) communicating and consulting with Lead Plaintiff's accounting expert throughout this process. Mr. Gottlieb also helped draft the pre-mediation submissions, attended the Pre-Mediation Presentation, and assisted with the drafting of the settlement papers.

Corban Rhodes (253.6 hours): Mr. Rhodes was involved throughout the discovery and the settlement phases. Among other things, he assisted in leading Lead Plaintiff's discovery efforts, including (i) overseeing, and participating in, the document review team's analysis of the documents produced by Defendants, (ii) interviewing Defendant Berman (FSC Director, President and former CCO) and actively participating in the interviews of the four other high-level Fifth Street employees, and (iii) communicating and consulting with Lead Plaintiff's accounting expert throughout this process. Mr. Rhodes also attended the Pre-Mediation Presentation and mediation, consulted with Lead Plaintiff's accounting expert during the mediation, and assisted with the preparation of the settlement papers.

Francis McConville (137.6 hours): Mr. McConville participated in the early analysis of Lead Plaintiff's claims and was involved in drafting the Lead Plaintiff's submissions seeking appointment as lead plaintiff.

Staff Attorneys

Maureen Flannigan (244.1 hours): Ms. Flanigan has been an attorney at Labaton Sucharow since 2009. Ms. Flanigan was primarily involved in discovery, serving as the team leader overseeing the document review team. She was staffed on the case from the beginning to the end of the discovery phase, allowing her to build significant institutional knowledge. Ms. Flanigan, among other things, assisted in drafting the protocols for reviewing the discovery, oversaw the team of attorneys reviewing documents, managed the sophisticated searches in the databases hosting the documents, and participated in preparing for interviews with key Fifth Street witnesses. She also identified important documents, as well as collected important documents identified by other team members, for circulation and discussion with the litigation team and Lead Plaintiff's forensic accounting expert and for use during interviews of Fifth Street witnesses.

Ms. Flannigan has nearly 20 years of legal experience and earned her B.A. from The State University of New York at Albany and her J.D. from St John's University School of Law.

Investigator

Beau Howard (118.2 hours): Mr. Howard was the primary investigator assigned to the case. In this regard, he assisted with the identification of more than fifty former Fifth Street employees with potentially useful information before Lead Plaintiff filed the amended complaint. He personally interviewed eleven individuals in connection with the investigation.

Mr. Howard earned his J.D. from the Rutgers School of Law, his M.B.A. from the Hess Business School at Monmouth University, and his B.S. summa cum laude from Kean University; he also attended the United States Military Academy at West Point.

Paralegals

Stacy Auer (72.8 hours): Ms. Auer was the senior case manager and paralegal responsible for overall case management and organization during several phases of litigation. She provided paralegal support from the filing of the amended complaint through the settlement phase. She also oversaw the preparation of voluminous materials for use during the interviews of key Fifth Street executives, which were conducted in connection with the additional discovery process Ms. Auer coordinated logistics with multiple vendors and third parties on various aspects of the litigation, aided in case management and oversaw the paralegals handling the matter.

Reka Viczian (97.7 hours): Ms. Viczian served as a core paralegal on the case. Among other things, Ms. Viczian aided in case management from appointment of the Lead Plaintiff, provided paralegal support for the amended complaint and settlement papers, and was an integral member of the team that prepared materials for use during the interviews of key Fifth Street executives held during the additional discovery process.

Exhibit 11

	Count	Low	25th Percentile	Median	75th Percentile	High
Partners						
1) Skadden, Arps, Slate, Meagher, & Flom LLP	17	$1,020	$1,275	$1,275	$1,425	$1,425
2) Kirkland & Ellis LLP	44	$875	$995	$1,035	$1,165	$1,380
3) Milbank, Tweed, Hadley & McCloy LLP	2	$1,350	$1,350	$1,350	$1,350	$1,350
4) Proskauer Rose LLP	17	$832	$960	$1,038	$1,193	$1,350
5) Weil, Gotshal & Manges LLP	18	$846	$1,050	$1,125	$1,215	$1,350
6) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	8	$1,025	$1,125	$1,160	$1,308	$1,330
7) Akin Gump Strauss Hauer & Feld LLP	25	$750	$890	$950	$1,025	$1,325
8) Sullivan & Cromwell LLP	6	$865	$1,140	$1,140	$1,256	$1,295
9) Davis Polk & Wardwell LLP	7	$1,225	$1,285	$1,285	$1,285	$1,285
10) Paul Hastings LLP	10	$1,000	$1,106	$1,138	$1,175	$1,275
11) Cleary Gottlieb Steen & Hamilton LLP	9	$965	$1,243	$1,250	$1,250	$1,250
12) O'Melveny & Myers LLP	24	$850	$923	$1,025	$1,125	$1,250
13) Jones Day	24	$675	$775	$875	$925	$1,225
14) Morrison & Foerster LLP	8	$925	$963	$985	$1,038	$1,150
15) Labaton Sucharow LLP	**26**	**$525**	**$806**	**$875**	**$950**	**$985**
Of Counsel						
1) Kirkland & Ellis LLP	1	$1,145	$1,145	$1,145	$1,145	$1,145
2) Sullivan & Cromwell LLP	1	$1,140	$1,140	$1,140	$1,140	$1,140
3) Paul Hastings LLP	6	$750	$996	$1,025	$1,106	$1,125
4) Cleary Gottlieb Steen & Hamilton LLP	1	$1,040	$1,040	$1,040	$1,040	$1,040
5) Skadden, Arps, Slate, Meagher, & Flom LLP	14	$786	$925	$1,040	$1,040	$1,040
6) Davis Polk & Wardwell LLP	3	$947	$964	$980	$980	$980
7) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	2	$945	$951	$958	$964	$970
8) Weil, Gotshal & Manges LLP	4	$810	$878	$900	$901	$905
9) Jones Day	4	$800	$800	$825	$863	$900
10) O'Melveny & Myers LLP	20	$660	$775	$778	$815	$880
11) Akin Gump Strauss Hauer & Feld LLP	16	$665	$700	$720	$785	$875
12) Labaton Sucharow LLP	**9**	**$550**	**$700**	**$750**	**$800**	**$825**
Associates						
1) Kirkland & Ellis LLP	69	$510	$565	$605	$775	$945
2) Skadden, Arps, Slate, Meagher, & Flom LLP	31	$435	$449	$780	$859	$920
3) Milbank, Tweed, Hadley & McCloy LLP	4	$515	$755	$875	$915	$915
4) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	15	$470	$473	$475	$850	$900
5) Davis Polk & Wardwell LLP	35	$605	$620	$670	$885	$885
6) Weil, Gotshal & Manges LLP	36	$350	$444	$773	$830	$885

	Count	Low	25th Percentile	Median	75th Percentile	High
7) Akin Gump Strauss Hauer & Feld LLP	18	$565	$640	$700	$825	$870
8) Sullivan & Cromwell LLP	7	$425	$778	$855	$860	$865
9) Proskauer Rose LLP	12	$455	$460	$693	$729	$850
10) Paul Hastings LLP	15	$480	$490	$670	$755	$820
11) Cleary Gottlieb Steen & Hamilton LLP	24	$650	$695	$740	$803	$810
12) Morrison & Foerster LLP	5	$450	$515	$515	$700	$785
13) Jones Day	35	$375	$469	$588	$610	$750
14) Labaton Sucharow LLP	32	$350	$440	$500	$575	$725
15) O'Melveny & Myers LLP	24	$510	$510	$510	$700	$725

	Count	Low Rate (%Diff.)	25th Percentile Rate (%Diff.)	Median Rate (%Diff.)	75th Percentile Rate (%Diff.)	High Rate (%Diff.)
All Partners						
All Firms Sampled	245	$525 (+0%)	$930 (+15%)	$1,025 (+17%)	$1,200 (+26%)	$1,425 (+45%)
Labaton Sucharow LLP	26	$525	$806	$875	$950	$985
Senior Partners						
All Firms Sampled	191	$875 (+14%)	$1,044 (+19%)	$1,150 (+24%)	$1,275 (+34%)	$1,425 (+45%)
Labaton Sucharow LLP	21	$765	$875	$925	$950	$985
Mid-Level Partners						
All Firms Sampled	32	$675 (-16%)	$850 (+6%)	$940 (+18%)	$1,025 (+28%)	$1,165 (+46%)
Labaton Sucharow LLP	4	$800	$800	$800	$800	$800
Junior Partners						
All Firms Sampled	22	$525 (+0%)	$900 (+71%)	$940 (+79%)	$975 (+86%)	$1,050 (+100%)
Labaton Sucharow LLP	1	$525	$525	$525	$525	$525
Of Counsel						
All Firms Sampled	81	$660 (+20%)	$775 (+11%)	$818 (+9%)	$978 (+22%)	$1,145 (+39%)
Labaton Sucharow LLP	9	$550	$700	$750	$800	$825

	Count	Low	25th Percentile	Median	75th Percentile	High
		Rate (%Diff.)	Rate (%Diff.)	Rate (%Diff.)	Rate (%Diff.)	Rate (%Diff.)
All Associates						
All Firms Sampled	362	$225 (-44%)	$480 (+4%)	$585 (+15%)	$725 (+32%)	$875 (+25%)
Labaton Sucharow LLP	32	$400	$460	$510	$550	$700
Senior Associates						
All Firms Sampled	53	$395 (-1%)	$650 (+18%)	$730 (+26%)	$780 (+19%)	$850 (+21%)
Labaton Sucharow LLP	12	$400	$550	$580	$654	$700
Mid-Level Associates						
All Firms Sampled	104	$325 (-26%)	$508 (+9%)	$635 (+34%)	$710 (+39%)	$845 (+61%)
Labaton Sucharow LLP	14	$440	$464	$475	$510	$525
Junior Associates						
All Firms Sampled	88	$225 (-44%)	$449 (+9%)	$480 (+13%)	$531 (+25%)	$695 (+64%)
Labaton Sucharow LLP	3	$400	$413	$425	$425	$425

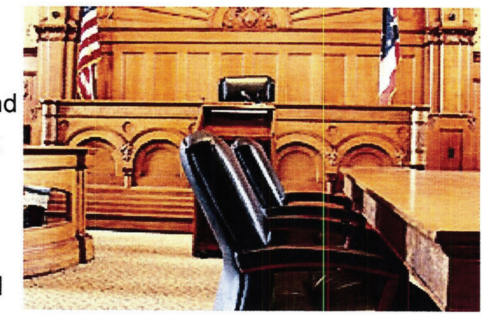
Exhibit 12

THE WALL STREET JOURNAL.
WSJ.com

September 21, 2010, 10:35 AM ET

Why Have Federal Civil Jury Trials Basically Disappeared?

ByAshby Jones



Followers of the federal judiciary know the institution's main storylines these days: that federal judges wish they made more money, that the bench has a significant amount of vacancies, and that federal judges are presiding over far fewer civil trials than at any time in recent memory.

On that last point, consider the statistics, chronicled in this story today in the National Law Journal: In 1962, 11.5% of federal civil cases went to trial, compared with 6.1% in 1982, 1.8% in 2002 and 1.2% in 2009.

So what's happening?

Two federal judges at a Federal Bar Association panel recently gave their takes on the phenomenon.

Judge William Young of the District of Massachusetts, according to the NLJ story, feels the fault lies partly with federal judges themselves.

Judge Brock Hornby of the District of Maine, on the other hand, said, according to the NLJ story, that "outside forces, not judges," are causing the decline. "Whether we care or not, I don't think there's much we judges or anyone else can do about it," said Hornby. "Let's face it, times change."

Hornby, according to the story, listed nine reasons why he believes the number of civil trials has declined:

Lawyers have learned to measure which cases will be profitable.
Clients are far more sophisticated about how they use lawyers.
Companies are more skilled in risk management than they used to be.
Many causes of action and the bases for liability have matured, so litigants can more easily settle sexual harassment or asbestos cases, for example.
Congress hasn't recently passed new laws creating liability for actions, such as the Americans With Disabilities Act of 1990.
More lawyers and law firms use alternative dispute resolution and more contracts contain clauses requiring it.
Electronic discovery has significantly jacked the cost of litigation.
News and entertainment portray juries as irrational, unpredictable and out of control.
Disputes are increasingly international and more amenable to international arbitration.

Ultimately, Hornby said, judges need to respond to the societal and legal forces shaping how society uses its courts.

Disputes have to come to us," Hornby said. "We are there to respond. . . As federal judges, we don't have a roving mandate to go out and bring cases in and compel people to go to trial."

Exhibit 13

by Hon. Morton Denlow (Ret.)

Magistrate Judges' Important Role in Settling Cases

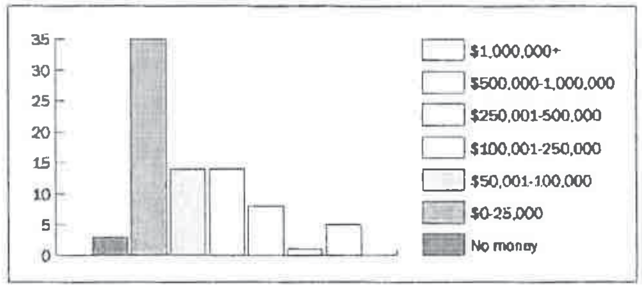
I spent 16 and a half years as a federal Magistrate Judge in Chicago before leaving the bench in October 2012. During that time, one of the principal duties of the Magistrate Judges in our court was to conduct settlement conferences. Each judge would conduct more than 100 settlement conferences a year and would settle the large majority of those cases. Our role in settling cases was highly valued by the District Judges, by the attorneys who regularly appeared before us, and by the clients whose cases were resolved.

District courts have great flexibility in how to use their Magistrate Judges. In some courts, Magistrate Judges concentrate primarily on handling criminal matters such as initial appearances, detention hearings, preliminary examinations, and pretrial motions. Many courts use their Magistrate Judges to supervise civil case management up to the point of trial in addition to their criminal duties. These duties can include discovery supervision, conducting settlement conferences, and preparing reports and recommendations on dispositive motions. In other courts, the Magistrate Judges are put on the civil case wheel and are directly assigned a share of the new cases filed; in those courts, parties consent to the Magistrate Judges in a large number of the cases, and the Magistrate Judges thus adjudicate the entire case without any further involvement by the District Judge.

In a number of courts, the settlement function is left to the parties or to private alternative dispute resolution providers. In this article, I explain why using Magistrate Judges to conduct judicial settlement conferences represents an appropriate and effective use that should be encouraged. There are a number of reasons why federal courts should employ their Magistrate Judges to conduct settlement conferences.

Most Federal Cases Are Resolved for Relatively Small Dollar Amounts

"Don't make a federal case out of it." We have all heard this statement from time to time when someone tries to blow something out of proportion. For many people, federal cases conjure up big-money disputes: antitrust, securities, RICO, class actions, intellectual property, and other big-dollar complex litigation. And, indeed, the federal courts handle many of these types of cases. However, federal courts also handle many cases that, while very important to the parties in these cases, involve far more modest amounts of money. In my experience, the large majority of federal cases that settle are resolved for relatively small dollar amounts. The following is a breakdown by settlement amount for the cases I settled from 2009 to 2011, during my last three full years on the federal bench:



Almost 60 percent of the cases were settled for less than $50,000, and more than 70 percent were settled for less than $100,000. I believe these statistics are representative of settlements reached by my Magistrate Judge colleagues in Chicago and perhaps around the country. Given these relatively small dollar amounts, being expected to pay private mediators to help settle these cases would create a financial hardship on these parties and their counsel. While the parties who engage in large-dollar federal cases typically can afford private mediation, that is not always true for the parties who litigate the small-dollar cases.

Magistrate Judges are quite capable of—and successful at—settling both large- and small-dollar cases. However, if courts do not provide a settlement function through their Magistrate Judges, or through some other forum, the likely result will be that more small-dollar cases will require adjudication, whereas, the large-dollar cases may still be privately mediated. Therefore, judges will spend an increasing amount of their time deciding summary judgment motions and conducting trials for cases that could take a half day or less to settle.

Few Federal Civil Cases Go to Trial

It has been well documented that few federal civil cases go to trial. In 2012, less than 2 percent of federal civil cases went to trial. This small percentage of trials reflects the general trend toward

Judge Morton Denlow (Ret.) is a mediator/arbitrator in the JAMS Chicago Office. He served as a Magistrate Judge in the U.S. district court in Chicago for 16 and a half years. Judge Denlow can be reached at mdenlow@jamsadr.com.

settlement and motions for summary judgment as the primary way most civil cases are concluded.

Trial is an expensive process. Given the relatively small dollar value of many federal cases, trial does not represent an economically sound proposition. In large urban centers such as Chicago, it is unlikely that most lawyers could prepare and try the typical single plaintiff employment or civil rights case for less than $50,000, unless they are representing a plaintiff on a contingent fee basis or they have agreed to a flat-fee volume discount for defending such cases. The legal fees incurred to defend these cases can often exceed the settlements paid or the judgments awarded if the plaintiff is successful.

Summary judgment motions are also expensive to prepare and time consuming for judges to decide. In our court, the summary judgment process requires parties to jump through a number of procedural hoops to identify whether a material issue of fact exists. If the motion is not successful, the cost pursuing it often will have been wasted. And, even if the motion is successful, the cost of pursuing it (and perhaps having to defend it on appeal) may well exceed the cost at which the case could have been settled. Summary judgment is no panacea for efficiently and economically disposing of cases.

A Settlement Conference Represents a Better Utilization of a Magistrate Judge's Time

In considering the use of Magistrate Judges, courts may face the choice of having their Magistrate Judges conduct settlement conferences or prepare reports and recommendations on motions to dismiss and motions for summary judgment. There is no question that conducting a settlement conference represents a smarter and more efficient use of judicial time.

Settlement conferences can take much less time than deciding a motion to dismiss or a motion for summary judgment. Many employment, civil rights, or personal injury cases can be settled by a Magistrate Judge in a three-to-five-hour settlement conference. On the other hand, the preparation of a report and recommendation on a summary judgment or dismissal motion in an employment case can take days to prepare.

Whereas a successful settlement conference can lead to an agreement to dispose of the case, a report and recommendation by a Magistrate Judge can be objected to by the losing party and require further decision by the District Judge. If the District Judge sustains a dismissal or summary judgment for the defendant, the case can still be appealed to the court of appeals.

In the Northern District of Illinois, the District Judges recognized

the inherent waste of lawyer and judicial time and client money in the report and recommendation process, and they no longer refer motions to dismiss or for summary judgment to Magistrate Judges for reports and recommendation. Instead, they increased the number of cases referred to Magistrate Judges for settlement conferences. The result has been more settlements and fewer summary judgment motions, trials, and appeals from these cases.

Magistrate Judges Are in a Unique Position to Settle Cases

In those courts where Magistrate Judges are responsible for pretrial case management, the settlement role is a perfect fit. While performing their case management function, Magistrate Judges become familiar with and knowledgeable about the case and the attorneys. While supervising discovery, they can learn when the parties have enough information to intelligently discuss settlement. They can also require the parties to exchange settlement proposals in order to determine if the case is ready for a settlement conference. This familiarity with the case places them in a unique position to conduct a settlement conference.

In addition, Magistrate Judges who handle cases on referral are well placed to conduct a settlement conference because they will not be deciding a summary judgment motion or presiding at trial. We sometimes hear that parties are reluctant to participate in a settlement conference with the judge who will consider the merits of the case for fear that if the case does not settle, something that the party says or does at the conference may negatively affect the judge's opinion about that party or about that party's litigation position. A settlement conference with a Magistrate Judge who will not be deciding the case eliminates that concern. As is often said about a trip to Las Vegas, "What happens at the conference stays at the conference." So, if the case does not settle, the parties can be secure in the knowledge that nothing will be said to the District Judge about what anyone said at the conference that "poisons the well" in further proceedings with the District Judge. That allows the parties to be more open with the Magistrate Judge during the mediation and increases the chances that the Magistrate Judge can help the parties reach a reasonable settlement.

Because there are fewer trials and more settlements, courts that develop a settlement database are also uniquely positioned to assist the parties in reaching a reasonable settlement. In our court, the Magistrate Judges created and maintain a settlement database of cases that appeared with frequency, such as employment discrimination, civil rights, personal injury, and consumer credit. By tracking the major characteristics of a settlement, including the settlement terms, the plaintiff's initial demand, the defendant's initial offer, the plaintiff's itemization of damages, the stage of the litigation, and brief comments from the judge, we were able to help parties determine whether the settlement proposals being made were consistent with other similar cases. Because of the large volume of cases, we were able to provide useful guidance to the parties on the appropriate settlement range.

Magistrate Judges are also in a good position to settle *pro se* lawsuits. *Pro se* cases in federal court comprise a significant percentage of the court's caseload. These cases can be difficult to resolve without adjudication because *pro se* litigants often do not comprehend the litigation process and may have unrealistic expectations about the likely outcome and monetary value of their case. An experienced Magistrate Judge can facilitate a settlement by explaining the litigation process and reasonable settlement terms.

In our court, we also developed a settlement assistance program, in which volunteer lawyers were appointed to represent *pro se* litigants for the sole purpose of representing them in a settlement conference. This program has been successful in assisting *pro se* litigants, in providing defense counsel with an attorney with whom to negotiate, and in enabling the Magistrate Judge to preside at the settlement conference without the *pro se* looking to the judge to be "his" attorney in the process. This court-based program has further reduced the amount of motions and trials in *pro se* cases.

Magistrate Judge Settlement Conferences Help Put a Positive Face on the Judiciary

Many clients are frustrated by our court system because they never have their day in court. Too often, their cases are terminated without the client even seeing a judge or appearing before a jury. Clients are frustrated by the expense and delay that often accompanies litigation, as well as its impersonal nature.

A Magistrate Judge–led settlement conference can make going to court a positive experience for clients. In the settlement conference, parties can work with their lawyers and the judge to settle their case. Clients have control over their decision to settle, they can, save money, and obtain certainty and closure regarding their dispute. Clients can walk out with a positive feeling toward our legal system if their case is settled. They also feel they have had their day in court because they actively participate in the process. At the conclusion of a successful settlement conference, I oftentimes request the parties to mark their calendars for a year from the settlement and to write me a letter if they regretted settling the case. In my years on the bench, I never received a letter from a client expressing regret that he or she settled.

Conclusion

Courts should be encouraged to use Magistrate Judges to conduct settlement conferences. This is an effective use of judicial resources that can create tremendous benefits for the parties, their counsel, and the court. Magistrate Judges are in a unique position to determine the proper timing of a settlement conference. They can help parties to control their own destiny, save money and bring about a judicial system that is responsive to parties' needs in a day and age of few trials. ⊙

Exhibit 14

**COMPENDIUM OF CASES CITED
IN LEAD COUNSEL'S MOTION FOR AN AWARD
OF ATTORNEYS' FEES AND EXPENSES
AND SUPPORTING MEMORANDUM OF LAW**

CASES **TAB**

In re Bank of New York Mellon Corp.
Forex Transactions Litigation,
No. 12-md-2335, ECF No. 637, slip op.
(S.D.N.Y. Sept. 24, 2015)....................1

Construction Laborers Pension Trust
of Greater St. Louis, et al. v. Autoliv, Inc., et al.,
No. 13-02546, ECF No. 67, slip op.
(S.D.N.Y. Oct. 29, 2014)....................2

In re LaBranche Securities Litigation,
No. 03-8201, ECF No. 85, slip op.
(S.D.N.Y. Jan. 22, 2009) 3

In re Lehman Brothers Securities & ERISA Litigation,
No. 09-md-2017, ECF No. 970, slip op.
(S.D.N.Y. June 29, 2012) 4

In re Salomon Analyst Metromedia Litigation,
No. 02-7966, ECF No. 93, slip op.
(S.D.N.Y. Feb. 27, 2009)....................5

Schnall v. Annuity & Life Re (Holdings), Ltd.,
No. 02-2133, ECF No. 192, slip op.
(D. Conn. Jan. 21, 2005) 6

TAB 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	No. 12-MD-2335 (LAK) (JLC)
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3066 (LAK) (JLC)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3067 (LAK) (JLC)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3470 (LAK) (JLC)
Carver, et al. v. The Bank of New York Mellon, et al.	No. 12-CV-9248 (LAK) (JLC)
Fletcher v. The Bank of New York Mellon, et al.	No. 14-CV-5496 (LAK) (JLC)

~~[PROPOSED]~~ ORDER AWARDING ATTORNEYS' FEES, SERVICE AWARDS, AND REIMBURSEMENT OF LITIGATION EXPENSES

This matter came on for hearing on September 24, 2015 (the "Settlement Hearing"), on Lead Settlement Counsel's motion to determine, among other things: (i) whether and in what amount to award Plaintiffs' Counsel in the above-captioned action (the "Litigation") attorneys' fees and reimbursement of expenses in connection with the settlement of the Litigation, and (ii) whether and in what amount to award Plaintiffs service awards in connection with their representation of the Settlement Class. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all persons and entities reasonably identifiable as members of the Settlement Class, and that a summary notice of the Settlement

Hearing substantially in the form approved by the Court was published in the national edition of *The Wall Street Journal* and transmitted over *PR Newswire* pursuant to the specifications of the Court; and the Court having considered Lead Settlement Counsel's application for attorneys' fees and expenses (the "Fee and Expense Application") and all supporting and other related materials.

IT IS HEREBY ORDERED, that:

1. This Order awarding attorneys' fees and expenses incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated as of March 19, 2015, entered into among Plaintiffs, on behalf of themselves and each Settlement Class Member, and Defendants (the "Stipulation") and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order awarding attorneys' fees and expenses, and over the subject matter of the Litigation and all parties to the Litigation, including all Settlement Class Members.

3. Notice of the Fee and Expense Application was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the Fee and Expense Application: (i) constituted the best notice practicable under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the motion; (iii) constituted due and sufficient notice of the Settlement to all Persons entitled to receive such; and (iv) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable law and rules.

4. Settlement Class Members have been given the opportunity to object to the Fee

In re Bank of New York Mellon Corp. Forex Trans. Lit. 12-md-2335 (LAK)

Rider 3 to Order Awarding Attorneys' Fees, Etc.

5. Plaintiffs' counsel are hereby awarded attorneys' fees in the aggregate amount of $83.75 million and reimbursement of out-of-pocket expenses in the aggregate amount of $2,901,734.10. The attorneys' fees awarded hereby are allocated among the relevant counsel as follows based on the multipliers applied to each firm's lodestar as proposed by Lead Counsel, which are adopted by the Court:

Firm	**Lodestar**	**Fees Awarding (and approximate multiplier)**
Lieff Cabraser	$20,256,579,50	$34,157,764 (1.686)
Kessler Topaz	$15,435,388.15	$26,027,124 (1.686)
Thornton Law	$1,600,683.00	$4,625,974 (2.890)
Hach Rose	$2,989,868.75	$4,458,776 (1.491)
Hausfeld	$2,578,086.50	$3,844,687 (1.491)
Murray Murphy	$2,115,135,50	$3,154,291 (1.491)
Nix Patterson	$732,600.00	$1,092,523 (1.491)
ERISA Counsel (McTigue Law; Beins Axelrod; Keller Rohrback)	$6,388,860.66	$6,388,861 (1.000)
Total	**$52,097,202.06**	**$83,750,000 (1.610)**

SO ORDERED

LEWIS A. KAPLAN, USDJ

9/24/15

TAB 2

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 <u>CLASS ACTION</u> ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on October 24, 2014, on the motion of Lead Counsel for an award of attorneys' fees and expenses, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this Action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated August 14, 2014 (the "Stipulation") and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's motion for attorneys' fees and payment of expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion for attorneys' fees and expenses met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby awards Lead Counsel attorneys' fees of 20% of the Settlement Fund, plus expenses in the amount of $116,071.94, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The

Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

5. The fees and expenses shall be allocated amongst other Plaintiffs' Counsel in a manner that Lead Counsel in good faith believes reflects the contributions of such counsel to the prosecution and settlement of the Action.

6. The awarded attorneys' fees and expenses and interest earned thereon, shall immediately be paid to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶7.2 thereof, which terms, conditions, and obligations are incorporated herein.

7. In making the award to Lead Counsel of attorneys' fees and litigation expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a common fund of $22.5 million and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by the efforts of Lead Counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been approved as fair and reasonable by the institutional Lead Plaintiffs;

(c) Notice was disseminated to putative Class Members stating that Lead Counsel would be moving for attorneys' fees in an amount not to exceed 30% of the Settlement Fund and payment of litigation expenses, plus interest earned on both amounts;

(d) There were no objections to the requested attorneys' fees and payment of litigation expenses;

(e) Lead Counsel have expended substantial time and effort pursuing the Action on behalf of the Class;

(f) Lead Counsel pursued the Action on a contingent basis, having received no compensation during the Action, and any fee award has been contingent on the result achieved;

(g) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(h) Lead Counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy;

(i) Public policy concerns favor the award of reasonable attorneys' fees in securities class action litigation;

(j) The amount of attorneys' fees awarded is fair and reasonable and consistent with awards in similar cases within the Second Circuit; and

(k) Lead Counsel devoted 3,682.10 hours, with a lodestar value of $1,992,674.50 to achieve the Settlement.

8. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fee and expense application shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: October 29, 2014

J. PAUL OETKEN
United States District Judge

TAB 3

Case 1:03-cv-08201-RWS Document 85 Filed 01/22/09 Page 1 of 3

COURTESY COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re LABRANCHE SECURITIES LITIGATION	Civil Action No. 03-CV-8201(RWS)
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	[~~PROPOSED~~] ORDER AWARDING LEAD PLAINTIFFS' COUNSEL'S ATTORNEYS' FEES AND EXPENSES AND REIMBURSEMENT OF LEAD PLAINTIFFS' TIME AND EXPENSES

8

This matter having come before the Court on January 21, 2009, on the motion of Lead Plaintiffs' Counsel for an award of attorneys' fees and expenses incurred in the Litigation, the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this action to be fair, reasonable and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated September 18, 2008 (the "Stipulation"), and filed with the Court.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Lead Plaintiffs' Counsel attorneys' fees of 30% of the Settlement Fund, plus interest thereon as defined in the Stipulation, plus litigation expenses in the amount of $145,612.93, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The fees and expenses shall be allocated among all counsel representing the Class in a manner which, in Lead Plaintiffs' Counsel's good-faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation.

5. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Lead Plaintiffs' Counsel subject to the terms, conditions and obligations of the Stipulation, and in particular ¶21 thereof which terms, conditions and obligations are incorporated herein.

6. The Court hereby awards the sum of $5,000 to each of the Lead Plaintiffs pursuant to 15 U.S.C. §77z-1(a)(4) of the Private Securities Litigation Reform Act of 1995.

SO ORDERED:

Sweet

THE HONORABLE ROBERT W. SWEET
UNITED STATES DISTRICT JUDGE

1-21-09

TAB 4

Case 1:09-md-02017-LAK-GWG Document 979 Filed 06/29/12 Page 1 of 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
------------------------------------x
In re:

LEHMAN BROTHERS SECURITIES AND ERISA LITIGATION

This document applies to: 09 MD 2017 (LAK)

In re Lehman Brothers Equity/Debt Securities Litigation, 08 Civ. 5523 (LAK)
------------------------------------x

PRETRIAL ORDER NO. 35
(Attorneys' Fees and Expenses)

LEWIS A. KAPLAN, *District Judge.*

This securities class action was settled for an aggregate of $516,218,000 of which $90 million will be paid on behalf of the director and officer defendants and the balance on behalf of underwriter defendants. Lead Counsel apply for attorneys' fees of 16 percent of the recovery, which is $82,594,880, plus reimbursement of expenses. The proposed fees would be approximately 2.18 times the lodestar (the product of the hours expended and hourly rates) of $37,819,510, which reflects 91,876 hours devoted to the litigation.

In passing on this application, the Court applies the factors referred to in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 42 (2d Cir. 2000). It notes that plaintiffs seek an award in terms of a percentage of the recovery. But use of that methodology, while certainly permissible, is not mandatory, the lodestar approach being appropriate also. *McDaniel v. County of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010). So there is no need for any academic debate on the relative merits of these approaches, both in light of *McDaniel* and because the result would be the same here whichever were applied. Thus, the fact that the Court opts to express its rationale principally in terms of the lodestar approach ultimately is not material.

Some of the *Golberger* factors warrant only minimal discussion. First, this was a big and complicated action. Second, the Court respects the performance of plaintiffs accomplished counsel. They did a great deal of work.[1] Third, despite the facts that virtually all securities class

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1 Although one might wonder whether all of the 91,876 hours used in computing the lodestar all were efficiently and usefully devoted to the matter, the Court assumes for present purposes that they were. This is supported by the fact that the bankruptcy examiner, whose work is discussed below, devoted 111,000 hours to his investigation. Transcript, Apr. 12, 2012 ("Tr."), at 47-48. While his mission and that of plaintiffs' counsel were different, and

actions that survive motions to dismiss are settled and that the lawyers who bring those cases are paid fees, there often is a risk of dismissal on the pleadings, and that was so here during the early stages of the case. Finally, it bears note that class counsel usually are compensated only many months or years after much of the work is done and overhead costs borne. On the other hand, there are some factors that cut in favor of an award lower than the nearly $83 million requested – which would amount to an average of almost $900 per hour for each of the 91,876 hours claimed.

First, plaintiffs' counsel here had the benefit of the quite extraordinary report of the examiner appointed by the Bankruptcy Court in the Lehman bankruptcy. It was that report that revealed the facts regarding Lehman's use of and accounting for Repo 105s, which became the most important part of plaintiffs' case.[2] Indeed, the second amended complaint, which antedated the examiner's report, did not even mention that subject while the third amended complaint ("TAC") relied heavily upon it – as did the Court in denying in significant respects defendants' motions to dismiss the TAC.[3] Thus, plaintiffs took great and good advantage of the examiner's report, which became a roadmap for the most significant part of their case.[4] They were right to do so. But the fact remains that this very significant factor in the denial of much of the motions to dismiss and, doubtless, in the price defendants eventually paid to settle was the product of the examiner's efforts. And just to be quite clear, this implies no criticism of plaintiffs' counsel, who lacked the examiner's access to the evidence. But it does bear on the amount of compensation appropriately paid to plaintiffs' counsel, particularly any amount above the lodestar.

Second, while the Court acknowledges that plaintiffs' counsel faced risks in this case, those should not be overstated.

Third, the objective in compensating common fund counsel is subject to the overriding requirement of reasonableness. Lead Counsel here claim that the settlement represents recovery of 13 percent of the theoretical maximum allowable statutory damages of $3.3 billion and a significantly larger percentage of reasonably recoverable damages.[5] But there is no contention that the class members as a result of these settlements will recover even a third of their reasonably

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while he had access to far more evidence than did plaintiffs' counsel, the comparison tends to corroborate the order of magnitude of the plaintiffs' effort and therefore of the Court's assumption.

2 *See In re Lehman Bros. Secur. and ERISA Litig.*, 799 F. Supp.2d 258 (S.D.N.Y. 2011).

3 *See id.*

4 Lead Counsel candidly acknowledged that the examiner's report provided plaintiffs with important information they had not had earlier, particular with respect to Repo 105s. *See* Tr., Apr. 12, 2012, at 6-7.

5 *Id.* at 9-10.

recoverable damages. Yet counsel seek to recovery 2.18 times the reasonable value of their services measured by their hourly rates and the number of hours devoted to the task. Moreover, even acknowledging that class counsel, under existing law, almost always receive a greater proportion of their lodestar fee measures than the class members receive of their losses, the Court in good conscience is bound to question a legal fee of over $80 million, which would compensate the attorneys at a rate of more than $900 per hour. We live in hard times. A fee in excess of $82 million, reflecting about 2.18 times the notional reasonable value of the services rendered, even granting that some premium over the lodestar is appropriate, simply seems too much.

All of this said, the Court is frank to say that there is no magic to setting a fee in this case. There is no figure that is right or wrong. But it seems to the undersigned that a lodestar multiplier of 1.5 is appropriate in light of all of the circumstances, given the legal standards that govern this determination. The expenses sought are appropriate.

Accordingly, the motion for attorneys fees and expenses [09 MD 2017 DI 805, 08 Civ. 5523 DI 341] is granted to the extent that the Court awards attorneys' fees in the aggregate amount of $56,729,265[6] plus expenses in the amount of $1,619,669.27, to be paid *pro rata* out of the two separate settlement funds.

SO ORDERED.

Dated: June 29, 2012

Lewis A. Kaplan
United States District Judge

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6 For those keeping score in terms of the percentage of the recovery, this represents 10.99 percent of the aggregate amount of the settlements.

TAB 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE SALOMON ANALYST METROMEDIA LITIGATION	Case No. 02-CV-7966 Judge Gerard E. Lynch

[redacted] ORDER AWARDING (1) ATTORNEYS' FEES, (2) REIMBURSEMENT OF LITIGATION EXPENSES, AND (3) REIMBURSEMENT OF LEAD PLAINTIFFS' TIME AND EXPENSES

This matter came on for hearing upon the application of the Settling Parties for approval of the Settlement set forth in the Stipulation of Settlement, dated as of November 14, 2008 (the "Stipulation"). Due and adequate notice having been given to the Settlement Class, and the Court having considered the Stipulation, all papers filed and proceedings held herein and all oral and written comments received regarding the proposed settlement and the request for attorneys' fees, reimbursement of litigation expenses and reimbursement of lead plaintiffs' time and expenses, and having reviewed the entire record in the action, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of this action, Lead Plaintiffs, all Settlement Class Members and the Defendants.

2. All capitalized terms used herein shall have the same meanings as set forth and defined in the Stipulation.

3. Co-Lead Counsel are hereby awarded attorneys' fees of 27 % of the Settlement Fund, valued at approximately $ 35,011,787 as of January 30, 2009, plus interest accruing thereon at the same rate as earned on the Settlement Fund, until paid. The award of 27% of the

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Settlement Fund, plus interest accruing thereon at the same rate as earned on the Settlement Fund, is reasonable and appropriate.

4. Co-Lead Counsel are hereby also awarded $989,296.11 as reimbursement of their out-of-pocket expenses. This award of reimbursement of expenses is reasonable and appropriate.

5. Lead Plaintiffs Techgains Corporation, Peter Carolan, and Frank Russo, Jr. are awarded $5,000 each in reimbursement of their own costs and expenses relating to their representation of the Settlement Class. This award of reimbursement of lead plaintiffs' time and expenses is reasonable and appropriate.

Dated: New York, New York
Feb. 27, 2009

Gerard E. Lynch

United States District Judge
Gerard E. Lynch

TAB 6

Case 3:02-cv-02133-EBB Document 192 Filed 01/21/05 Page 1 of 12

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SHERRY SCHNALL, Individually and On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ANNUITY AND LIFE RE (HOLDINGS), LTD., XL CAPITAL, LTD., LAWRENCE S. DOYLE, FREDERICK S. HAMMER, JOHN F. BURKE, WILLIAM W. ATKIN, BRIAN O'HARA, AND MICHAEL P. ESPOSITO, JR.,

Defendants.

Civil Action No. 02 CV 2133 (EBB)

ORDER AND FINAL JUDGMENT

On the 21st day of January, 2005, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Partial Settlement dated August 24, 2004 (the "Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by the Class against the Settling Defendants in the Complaint now pending in this Court under the above caption, including the release of the Settling Defendants and the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of the Settling Defendants only and as against all persons or entities who are members of the Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Class; and (4) whether and in what amount to award Plaintiffs' Counsel fees and reimbursement of expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was

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mailed to all persons or entities reasonably identifiable, who purchased the common stock of Annuity and Life Re (Holdings), Ltd. ("ANR") during the period between March 15, 2000 and November 19, 2002, inclusive (the "Class Period"), except those persons or entities excluded from the definition of the Class, as shown by the records of ANR's transfer agent, at the respective addresses set forth in such records, and that a summary notice of the hearing substantially in the form approved by the Court was published in the international edition of The Wall Street Journal and the international edition of Financial Times pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested; and all capitalized terms used herein having the meanings as set forth and defined in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, the Lead Plaintiffs, all Class Members, and the Settling Defendants.

2. The Court finds that the prerequisites for a class action under Federal Rules of Civil Procedure 23 (a) and (b)(3) have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Class Representatives are typical of the claims of the Class they seek to represent; (d) the Class Representatives have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

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3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure this Court hereby finally certifies this Action, for purposes of this Settlement only, as a class action on behalf of all persons who purchased the common stock of Annuity and Life Re (Holdings), Ltd. ("ANR") during the period between March 15, 2000 and November 19, 2002, inclusive, and were damaged thereby. Excluded from the Class are the Settling Defendants, the officers and directors of ANR and XL Capital at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest. For purposes of this Settlement, the term "controlling interest" shall include any interest of 10% or more of the common stock of any entity. Also excluded from the Class are the persons and/or entities who requested exclusion from the Class as listed on Exhibit 1 annexed hereto.

4. Notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. The Settlement is approved as fair, reasonable and adequate, and the Class Members and the parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

6. The Complaint, which the Court finds was filed on a good faith basis in accordance with the PSLRA and Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information, is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against the Settling Defendants only.

7. Members of the Class and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on United States federal, state, local, statutory or common law or the laws of Bermuda or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in this Action by the Class Members or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the Class Members or any of them against any of the Released Parties which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and relate to the purchase of shares of the common stock of Annuity and Life Re (Holdings) Ltd. ("ANR") during the Class Period (the "Settled Claims") against any and all of the Settling Defendants, their past or present subsidiaries, parents, successors and predecessors, and all of the aforementioned entities' officers, directors, agents, employees, attorneys, advisors, insurers, and investment advisors, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Settling Defendant has a controlling interest or which is related to or

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affiliated with any of the Settling Defendants, and the legal representatives, heirs, successors in interest or assigns of the Settling Defendants (the "Released Parties"). "Released Parties" does not include KPMG in Bermuda ("KPMG Bermuda") and KPMG LLP USA ("KPMG USA") (collectively, "KPMG") or its partners, principals, employees, agents and affiliates. The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Released Parties on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment. "Settled Claims" does not include any claims against KPMG or its partners, principals, employees, agents and affiliates.

8. "Unknown Claims" means any and all Settled Claims which any Lead Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants' Claims which any Settling Defendant does not know or suspect to exist in his, her or its favor, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants' Claims, the parties stipulate and agree that upon the Effective Date, the Lead Plaintiffs and the Settling Defendants shall expressly waive, and each Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or Bermuda, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

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Lead Plaintiffs and Settling Defendants acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settled Claims and Settled Defendants' Claims was separately bargained for and was a key element of the Settlement.

9. The Settling Defendants and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any and all claims, rights or causes of action or liabilities whatsoever, whether based on United States federal, state, local, statutory or common law or the laws of Bermuda or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the Settling Defendants or any of them or the successors and assigns of any of them against any of the Lead Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement) (the "Settled Defendants' Claims") against any of the Lead Plaintiffs, Class Members or their attorneys. The Settled Defendants' Claims of all the Released Parties are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

10. Pursuant to the PSLRA, the Released Parties are hereby discharged from all claims for contribution or equitable indemnity, by any person or entity, whether arising under United States federal, state, local, statutory or common law or the laws of Bermuda or any other law, based upon, arising out of, relating to, or in connection with the claims of the Class or any Class Member in the Action (including the KPMG Action, which has been consolidated into the Action). Accordingly, to the maximum extent permissible under the PSLRA, the Court hereby

bars and enjoins all such claims for contribution or equitable indemnity: (a) by any person or entity against any Released Party; and (b) by any Released Party against any person or entity other than a person or entity whose liability to the Class has been extinguished pursuant to the Stipulation and Agreement of Partial Settlement and this Order and Final Judgment. Pursuant to 15 U.S.C. § 78u-4(f)(7)(B), if there is a final verdict or judgment against any other Defendant in the Action, the verdict or judgment shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Settling Defendants; or (b) the amount paid pursuant to this Settlement by the Settling Defendants.

11. Neither this Order and Final Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against the Settling Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Settling Defendants with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Settling Defendants;

(b) offered or received against the Settling Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Settling Defendant;

(c) offered or received against the Settling Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or

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wrongdoing, or in any way referred to for any other reason as against any of the Settling Defendants, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Settling Defendants may refer to it to effectuate the liability protection granted them hereunder;

(d) construed against the Settling Defendants as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

(e) construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or any of the Class Members that any of their claims are without merit, or that any defenses asserted by the Settling Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Gross Settlement Fund.

12. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

13. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

14. Plaintiffs' Counsel are hereby awarded one-third (33⅓%) of the Gross Settlement Fund in fees, which sum the Court finds to be fair and reasonable, and $191,705.37 in reimbursement of expenses, which expenses shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund with interest from the date such Settlement Fund was funded to the date of

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payment at the same net rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Plaintiffs' Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Action.

15. Lead Plaintiff Midstream Investments Ltd. is hereby awarded $3,150. Such award is for reimbursement of this Lead Plaintiff's reasonable costs and expenses (including lost wages) directly related to its representation of the Class.

16. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

(a) the settlement has created a fund of $16.5 million in cash that is already on deposit, plus interest thereon and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Plaintiffs' Counsel;

(b) 16,700 copies of the Notice were disseminated to putative Class Members indicating that Plaintiffs' Counsel were moving for attorneys' fees not to exceed one-third (33⅓%) of the Gross Settlement Fund and for reimbursement of expenses in the approximate amount of $250,000 (including approximately $10,000 for the costs and expenses of the Lead Plaintiffs directly relating to their representation of the Class) and no objections were filed against the terms of the proposed Settlement or the ceiling on the fees and expenses requested by Plaintiffs' Counsel contained in the Notice;

(c) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

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(d) The action involves complex factual and legal issues and was actively prosecuted over two years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(e) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the Class may have recovered less or nothing from the Settling Defendants;

(f) Plaintiffs' Counsel have devoted over 5,473 hours, with a lodestar value of $1,862,701.25, to achieve the Settlement; and

(g) The amount of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases.

17. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class.

18. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

19. This Action has been pending since the first of the constituent actions were filed in 2002. The Settlement Stipulation resolves all of the claims asserted by the Class against the Settling Defendants, and pursuant to the above bar orders bars any claims for contribution or equitable indemnity, by or against the Settling Defendants. The claims asserted against the

Settling Defendants and now settled raise issues that are separable from the remaining claims of Plaintiffs and the Class against KPMG. Permitting the immediate appeal, if taken, of this Order and Final Judgment does not result in any duplication of review by an appellate court, because if an appellate court were to vacate the Stipulation, then the parties may reasonably continue their prosecution or defense of the claims while this Court continues to preside over other related claims, without a waste of time or judicial resources. If this Order and Final Judgment were not immediately appealable, once an appeal were ripe after the conclusion of the entire coordinated litigation, and if the appellate court vacated this Order and Final Judgment, then this Court would face re-trying the entire litigation as to the Settling Defendants, wasting judicial resources.

20. By reason of the finding in the previous paragraph, there is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure. The Action is not dismissed in respect of claims against any person or entity other than the Settling Defendants.

Dated: New Haven, Connecticut
Jan. 21, 2005

Honorable Ellen Bree Burns
UNITED STATES DISTRICT JUDGE

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EXHIBIT 1

List of Persons and Entities Excluded from the Class in <u>Schnall, et al. v. Annuity and Life Re (Holdings). Ltd., et al.</u>, Civil Action No. 02 CV 2133 (EBB)

The following persons and entities, and only the following persons and entities, have properly excluded themselves from the Class:

Andrew S. Lerner
515 East 85th Street, Apt. 1E
New York, New York 10028

Exhibit 15

JOURNAL OF EMPIRICAL LEGAL STUDIES

Journal of Empirical Legal Studies
Volume 7, Issue 2, 248–281, June 2010

Attorney Fees and Expenses in Class Action Settlements: 1993–2008

*Theodore Eisenberg and Geoffrey P. Miller**

We report on a comprehensive database of 18 years of available opinions (1993–2008, inclusive) on settlements in class action and shareholder derivative cases in state and federal courts. An earlier study, covering 1993–2002, revealed a remarkable relationship between attorney fees and class recovery size: regardless of the methodology for calculating fees ostensibly employed by the courts, the class recovery size was the overwhelmingly important determinant of the fee. The present study, which nearly doubles the number of cases in the database, confirms that relationship. Fees display the same relationship to class recoveries in both data sets and neither fees nor recoveries materially increased over time. Although the size of the class recovery dwarfs other influences, significant associations exist between the fee amount and both the fee method used and the riskiness of the case. We found no robust evidence of significant differences between federal and state courts. The strong association between fee and class recovery persists in cases with recoveries of $100 million or more, as do the significant associations between fee level and fee method and risk. Fees were not significantly affected by the existence of a settlement class, the presence of objectors, or opt outs from the class. Courts granted the requested fee in over 70 percent of the cases, with the Second Circuit granting the requested amount least often. In cases denying the requested fee, the mean fee was 68 percent of the requested amount. Fees and costs exhibit scale effects with the percent of each decreasing as the class recovery amount increased. Costs are strongly associated with hours expended on the case.

I. Introduction and Background

Class actions and their close cousins, shareholder derivative lawsuits, are vital mechanisms by which the legal system copes with mass harms—similar injuries to a large number of people. Long a feature of the U.S. landscape, class actions have recently begun to spread across the world.[1]

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[1]See, e.g., Samuel Issacharoff & Geoffrey Miller, Will Aggregate Litigation Come to Europe? 62 Vanderbilt L. Rev. 179 (2009).

A crucial issue for all class and derivative litigation is the matter of compensating counsel. Unless class counsel are adequately compensated, class and derivative litigation will be undersupplied in the legal market. On the other hand, if class action attorneys are overcompensated they may bring too many of these lawsuits and receive an excessive share of the settlement value in cases that are brought.

In normal litigation the attorney compensation can be set by private agreement between lawyer and client, but private agreement does not work in the case of class action and derivative litigation: in these contexts there is no client capable of negotiating with the attorney. In class actions, the clients are disorganized and, prior to notice of certification, usually do not even know that a lawsuit has been filed on their behalf. Except perhaps in the case of private securities litigation, the representative plaintiff cannot effectively negotiate with the attorneys over fees and costs: he or she has only a minority stake in the matter (in consumer cases, often a miniscule one), is often unsophisticated, and may be strongly influenced by the attorney's advice. In derivative cases, the ostensible client—the corporation—is usually managed by defendants in the lawsuits and therefore is unwilling to pay any fee to incentivize an attorney to bring the lawsuit. In both settings, therefore, the court must independently determine the appropriate attorney fee award.

Where can the court look for information on this question? No private stakeholder is a reliable source of information. The class attorneys' suggested fee is not impartial since, at the time of the settlement, their interest is to seek the largest possible award. Nor can the court rely on the defendant's recommendations. Settlement agreements often contain "clear-sailing" clauses under which defendants agree not to object to a fee request up to a certain amount. However, clear-sailing agreements are of little value when the defendant is not paying the fee—indeed, it is not clear that the defendant has any "skin in the game" when the fee will be paid out of the class recovery. Even when the defendant does pay the fee—as in the typical consumer class action—the clear-sailing agreement has limited probative value unless the parties have deferred fee negotiations until after achieving a definite agreement on the merits. Otherwise, there is reason for concern that the defendant may have agreed to pay class counsel a premium in exchange for reductions in the amount going to the class. The reaction of the class to the settlement and proposed fee is also not a reliable guide. Empirical research suggests that the vast majority of class members are rationally indifferent to class action settlements; their failure to opt out of a settlement does not indicate approval of the proposed fee.[2] Nor can the court rely on objectors to the settlement. Few objectors appear at class action fairness hearings,[3] and those who show up may not object to the fee. Even if objectors do complain about the fee, they have only a small amount at stake and thus lack the incentive to thoroughly research the fee question.

Lacking reliable guidance from class counsel, the defendant, class members, or objectors, the judge has no alternative but to make an independent investigation. Where, however, should the judge look for information pertinent to the task of setting fees? Among

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[2]See Theodore Eisenberg & Geoffrey Miller, The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues, 57 Vanderbilt L. Rev. 1529 (2004).

[3]Id.

the factors that judges typically examine in setting fees, the most important is probably that of "awards in similar cases."[4] Precedents of fees awarded by other courts should, in theory, be relatively reliable guides because the prior courts were presumably exercising the requisite rigorous scrutiny and judicial independence when they set the fees, and because class counsel will have presumably considered the relevant case law in calculating whether to take on the litigation in the case at bar. But even this approach is not problem-free. In the typical class action settlement, the fee is taken from the common fund generated on behalf of the class. No party, in this case, has the right incentives to vigorously research the precedents running contrary to counsel's fee request. Unless the judge does his or her own research, he or she may not have access to unbiased information about fees in similar cases.

The present empirical study is intended to assist courts in the task of fee setting—and counsel in the task of identifying appropriate fees to request—by supplying an account of compensation practices in courts across the country, studied over an extended period of time, and conducted in an academic setting outside the fires of litigation. The information provided in this article is the best data on "awards in similar cases" from cases with available opinions. If used effectively, our study may be of material assistance in further rationalizing the compensation of class counsel.

We find, regardless of the methodology for calculating fees ostensibly employed by the courts, that the overwhelmingly important determinant of the fee is simply the size of the recovery obtained by the class. Fees display the same relationship to class recoveries in data sets spanning both 1993 to 2002 and 2003 to 2008. Neither fees nor recoveries materially increased over time. Although the size of the class recovery dwarfs other influences, significant associations exist between the fee amount and both the fee method used and the riskiness of the case. We found no robust evidence of significant differences between federal and state courts. The strong association between fee and class recovery persists in cases with recoveries of $100 million or more, as do the significant associations between fee level and fee method and risk.

Courts granted the requested fee in over 70 percent of the cases, with courts in the Second Circuit granting the requested amount least often. In cases in which the requested fee was not awarded, the mean fee was 68 percent of the requested amount. Costs are modest, with both means and median costs comprising less than 3 percent of the class recovery. Fees and costs both exhibit scale effects, with the percent of each decreasing as the class recovery amount increased. Costs are strongly associated with hours expended on the case. Fees were not significantly affected by the existence of a settlement class, the presence of objectors, or opt outs from the class.

Section II of this article describes the data gathering and coding. Section III presents the relation between fee amount and class recovery and fee percent and class recovery over time, and by locale (including state and federal courts), and by case category. It also explores the relation between the fee and risk, settlement class, and the presence of opt outs and objectors. Section IV assesses the relation between the fee and the method used to compute

[4]See, e.g., Thompson v. Connick, 553 F.3d 836 (5th Cir. 2008); Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000); Spell v. McDaniel, 824 F.2d 1380, 1402 n.18 (4th Cir. 1987).

the fee, as well as the pattern of multipliers used in connection with lodestar fees. Section V reports on the pattern of costs and expenses. Section VI presents multivariate results that confirm our core findings. Section VII discusses the results and Section VIII concludes.

II. Methodology

The results reported here were gathered in two segments. The first segment covered cases reported from 1993 to 2002 and its results are reported in previous work.[5] That study also described the motivation for the variables used in this study. The basis for believing that the variables studied might relate to fee awards is reasonably self-evident and need not be repeated here.

As previously reported, we searched in the WESTLAW™ "AllCases" database using the search "settlement & 'class action' & attorney! w/2 fee! & date(=[1993–2002])". This search's results were checked against a search of the LEXIS™ "Mega" database using equivalent search terms. We also compiled lists of citations in the cases found by these search requests and included any additional cases meeting the basic search criteria. We further checked the list against the CCH™ Federal Securities and Trade Regulation Reporters. Once cases had been identified by this method, we sometimes gathered additional information about case characteristics from other sources—for example, information on the Internet or docket entries in the U.S. Courts PACER system. The second segment covered the period 2003 to 2008, inclusive. We replicated the WESTLAW search (expanded to include the term "derivative" to make doubly sure we picked up all derivative settlements) and checked the results, in many cases, against information available on the Internet or in PACER.

The present study focuses solely on common fund cases and does not assess cases in which a court applied a statutory fee-shifting statute to assess fees. Our searches and exclusion criteria yielded recovery and fee information for a total sample of 689 common fund cases. Relatively more cases come from the later period (301 cases for six years from 2003 to 2008 compared with 388 cases for the preceding 10 years). This was principally due to the significantly expanded coverage of the PACER system in the later period, and also to our inclusion of cases in which fee-shifting statutes could have been applied but the fee was not determined by formally applying the fee-shifting statute.

We used the following conventions for coding in both searches. If the court stated a range of value (e.g., for the amount of class recovery), we used the midpoint. If there was no better estimate available but a maximum recovery value could be ascertained, we used the maximum possible recovery. If the court estimated the relief at "over" or "more than" a sum, the sum that was the minimum was used. Where the settlement amount included post- or prejudgment interest, we included that in the amount of the settlement. We collected only the number of attorney hours, thus excluding, where possible, the (usually minor) hours reported for paralegals or law clerks.

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[5]For our prior empirical study of class action attorney fees, see Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Empirical Legal Stud. 27 (2004).

To code the court's fee calculation method, we tracked whether the court engaged in a lodestar calculation and, if so, the purity of the lodestar approach. This generated the following fee method categories: (1) percentage method cases in which no lodestar calculation exists, (2) cases in which both the lodestar calculation and the percentage approach were used (usually with the lodestar being employed as a "cross-check" on the percentage fee), and (3) pure lodestar cases in which the lodestar method was the exclusive method used. If the lodestar amount was not specified, but could be estimated with reasonable accuracy, we included it. We used plaintiffs' own estimates of their lodestar only when these estimates were not contested by the court. In some cases, the court simply reported a fee without explaining its methodology; these we recorded as missing or as "negotiated" if the approved fee was the one negotiated by the parties.

The coding of variables related to fee shifting was somewhat subtle. Many class action cases are brought under numerous claims for relief, some of which authorize the court to award fees to the prevailing plaintiff or prevailing party. When these cases settle, the courts often set fees without reference to the fee-shifting statute. Even when fee-shifting statutes are potentially available, the fee is often awarded out of the class recovery. Our "fee-shifting" variable codes whether the fee *could* have been calculated under a fee-shifting statute had the case progressed to a litigated judgment, regardless of whether the court actually invoked the fee-shifting statute as a basis for awarding the fee. For the later cases (2003–2008), we kept track of whether the court had actually used the fee-shifting statute as a basis for awarding the fee. In that period, a fee-shifting statute was available in 177 cases but was used as the basis for awarding the fee in only 21 cases, 11.9 percent. We included as common fund cases the 156 cases in which fee-shifting statutes were available but were not used. Preliminary regression models indicated no significant difference in fee awards between these cases and "purer" common fund cases.

For many other variables, coding was reasonably straightforward. In employment discrimination and civil rights cases, two prominent categories of fee-shifting statute cases, the amount of the relief to the class, as expected, often was difficult to quantify because an important element of relief in such cases was often injunctive. For civil rights cases involving only injunctive relief, the cost to the defendant was used as a measure of the value of the relief for the class when this was available. In some fee-shifting cases, the court awarded attorney fees but it was impossible to estimate the amount of class damages. These fee and recovery coding conventions led to usable values for the fee amount and the client recovery, two of our core variables, in the 689 cases studied here.

We also coded cases for risk. Where the court addressed the question of risk, we coded according to our best estimate of the court's evaluation. In many cases, however, the court did not explicitly address the risk of the litigation. Coding therefore depended on assuming that risk was not prominent in cases in which courts did not mention it. We divided the cases into three risk categories. If nothing was said about risk or if the court's discussion suggested a normal degree of risk, the case was coded as being medium risk. If the court affirmatively indicated the existence of substantial risk, or if exceptional risk was evident from the facts or procedural history of the case, we coded the case as having high risk. If the court indicated or the facts otherwise suggested that the case was very likely to generate a substantial recovery for the class at the time it was brought (e.g., if the case grew out of a prior government prosecution that had resulted in fines or convictions), we coded the case as low risk.

As in our earlier work, two caveats about using published opinions are in order. First, our data include only opinions that were published in some readily available form. Obviously, therefore, we have not included the full universe of cases in our data set. Although published opinions are not necessarily representative of the universe of all cases, they can lead to important insights. For judges seeking to inform their fee decisions with knowledge of other cases, published opinions are the prime source of data. Further, the present study expands on the published opinion data by delving into unpublished materials available on PACER when these could supply information missing from the published case reports.

A second caveat about the published opinion data is that this methodology overweights federal cases. Opinions of state trial court judges are published less frequently than opinions of federal district courts; and since fee awards are typically reported in the court of first instance, we found many more federal than state opinions responsive to our search request. Further, the PACER system allowed us to "dig" for more information in the case of federal opinions. There is no state analog to PACER, and therefore we could only rarely discover information about fees and related issues when a state opinion on a class action or derivative case failed to report the necessary data.

III. Bivariate Results: Fee Amount and Fee Percent

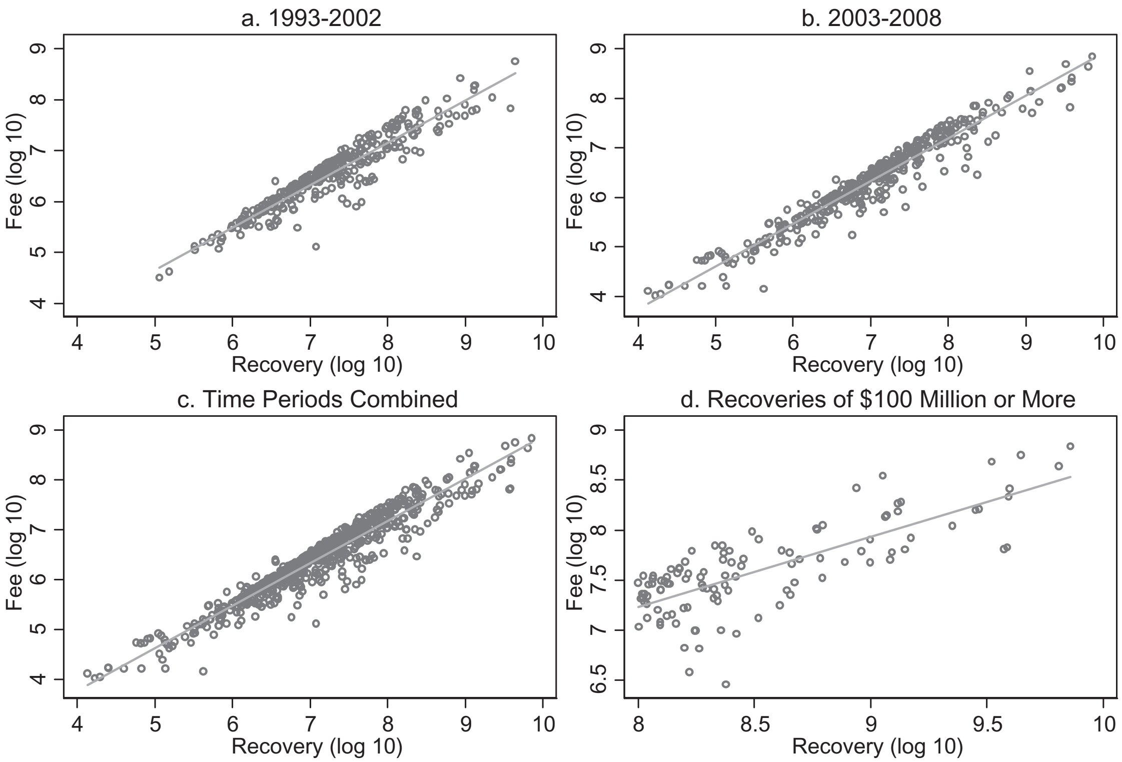
We first examine bivariate results—that is, the relation between either the fee amount or the fee percent and one of the other variables coded in our data. We outline the persistent regular relationship between fees and recovery in both data sets (1993–2002 and 2003–2008). We then examine the pattern of fees across other dimensions such as time, locale, case category, risk, settlement class status, and the presence of opt outs and objectors. All amounts are in 2008 inflation-adjusted dollars.

A. The Persistent Relation Between Fee and Recovery

The relation between fee amount and class recovery has remained consistent over time. Figure 1 shows scatterplots of the fee amount and class recovery for each of the two time periods (Figures 1a and 1b), for the time periods combined (Figure 1c), and for cases with recoveries greater than or equal to $100 million (Figure 1d). The scales have been transformed into log10 units to address the bunching of cases at the lower end of the recovery scale that would occur in a linear dollar scale. Units of log10 can easily be interpreted because the log10 scale is simply based on powers of 10 (e.g., a value of 9 on a log10 scale is equal to $1 billion, or one followed by nine zeros).

Figures 1a and 1b show that the pattern is virtually unchanged over time. The associations between fee and recovery are striking and large. The linear correlation between fee and recovery exceeds 0.94 for each time period and the slope of the relationships appears constant for the two time periods. In a regression model with a dummy

Figure 1: Fees as a function of recovery.



variable for time period and an interaction term consisting of the product of the time period dummy variable and the class recovery size, one cannot reject the hypothesis that the dummy variable and the interaction term coefficients are jointly zero, thus confirming the consistency of the pattern. The relation between fees and class recoveries is also observed when the data are combined, as shown in Figure 1c. In both the separate and combined data sets, the size of the class recovery swamps all other influences on the size of the fee, as shown in regression models in Section VI of this article.[6] Figure 1d, which is limited to large cases, also shows a strong linear relation between fee and recovery. For these 109 cases, the linear correlation coefficient is 0.77 ($p < 0.0001$). The decreased slope for the high end of case recoveries is consistent with the scaling effect discussed in Section III.B.4 of this article.

Figure 2 further supports the primacy of the recovery as the explanation for the fee award. For ease of comparison, Figure 2a reproduces the combined time period data from Figure 1c. Figures 2b and 2c show that neither the hours claimed nor the age of a case are as strongly associated with the fee amount as is the class recovery amount.

With six additional years of data, we can extend our prior analysis of the pattern of fees and class recoveries over time. One notable earlier finding was the absence of

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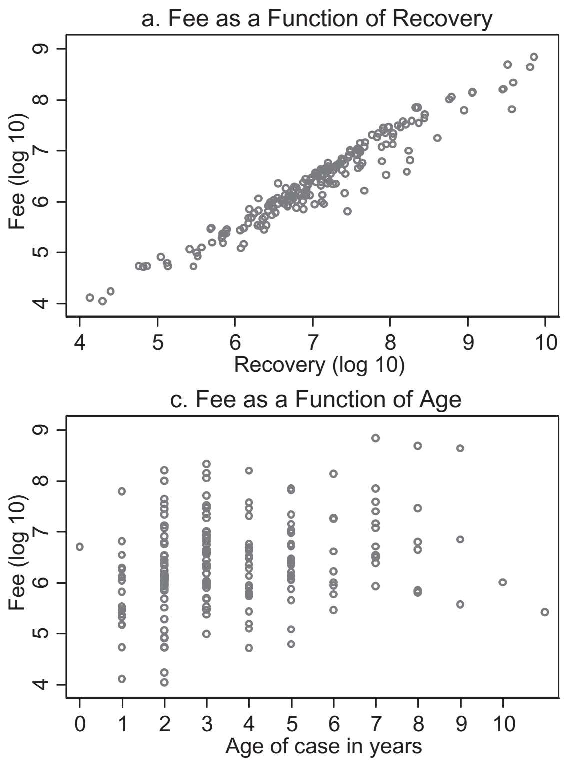
[6]Figure 1b shows the later time period with more low-recovery cases (less than $100,000). This is likely attributable to our inclusion in the non-fee-shifting sample cases in which a fee-shifting statute existed but was not used, as well as to the information about smaller cases now available on PACER See Section II.

Figure 2: Fee as a function of recovery, hours, and age, 2003–2008.



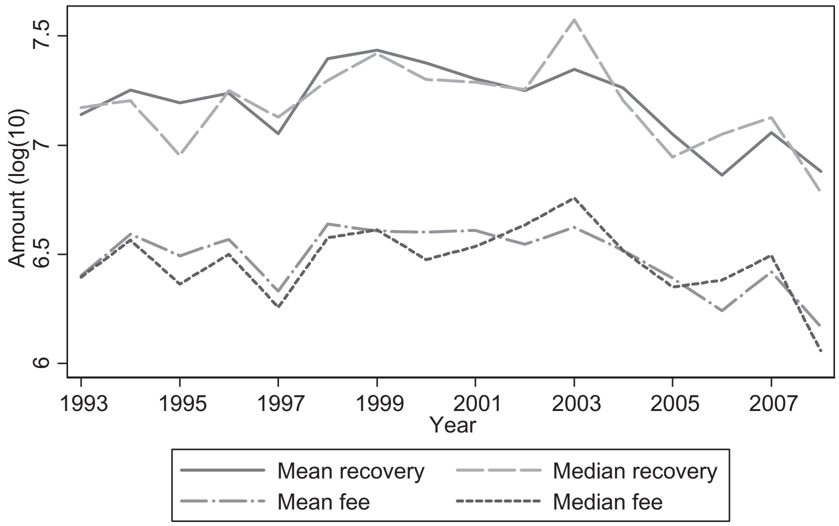
increases in class recoveries or fees over time,[7] a finding that heartened opponents of attempts to reform the class action system via the Class Action Fairness Act of 2005 (CAFA)[8] and prompted a response from a noted Yale Law School professor.[9] The newer data reveal that the level of both class recoveries and attorney fees has not varied substantially over time. As Figure 3 shows, these amounts have shown no distinct time trend for most of 16 years. Inflation-adjusted recoveries and fees through 2007 were at levels not significantly different from levels in 1993 and in fact are lower in inflation-adjusted dollars. In 2008, a noticeable drop in mean and median recoveries and fees occurred. The difference in class recovery medians between 2008 and all earlier years combined is statistically significant at $p = 0.002$, and the difference in fees between 2008 and earlier years is significant at $p = 0.0003$. The difference in the median ratio of fee to recovery (ratio of the logs) did not significantly differ between 2008 and earlier years

[7]Eisenberg & Miller, supra note 5.

[8]Class Action Fairness Act, Pub. L. No. 109-2, 119 Stat. 4 (2005). See 149 Cong. Rec. S1299902 (Oct. 22, 2003) (remarks of Senator Feingold); 151 Cong. Rec. S1086-02 (Feb. 8, 2005) (remarks of Senator Feingold).

[9]George L. Priest, What We Know and What We Don't Know About Modern Class Actions: A Review of the Eisenberg-Miller Study (Feb. 2005, Manhattan Inst.).

Figure 3: Class recovery and attorney fee over time, mean and median.



SOURCES: Westlaw, LexisNexis, PACER.

($p = 0.517$).[10] We therefore do not view the changes in 2008 as necessarily indicating anything significant about longer-term fee patterns.

B. Locales, Case Categories, and Other Factors

Table 1 shows the distribution of cases by locale. It combines all 25 federal appellate opinions into one category, "Appeal," and all 75 state cases into one category, "State." Federal district court cases dominate the sample, accounting for approximately 85 percent of the cases. The federal class action cases cluster by districts. The Southern District of New York accounted for 103 of 589 federal district court cases, and the Eastern District of Pennsylvania accounted for 70 such cases. They are the only two districts to account for 10 percent or more of the federal trial court portion of the sample and together accounted for 25 percent of all cases in the sample. Two other districts accounted for more than 5 percent of the federal court portion of the sample: the Northern District of California had 47 cases

[10]This pattern of average and median fees in more recent years may be partly due to the increase in smaller cases that we were able to code by accessing the PACER database and to inclusion in the later period of cases in which fee-shifting statutes were theoretically available but not used to set the fee. We investigated whether a changing mix of cases explained the pattern by separately assessing, for the two time periods, cases with recoveries greater than or equal to $5 million and recoveries less than $5 million. For both recovery size groups, the difference in recovery across the two time periods was not statistically significantly different. The difference over time in medians for cases with recoveries greater than or equal to $5 million was significant at $p = 0.590$; for cases with recoveries less than $5 million, the difference in medians was significant at $p = 0.749$. But the smaller cases were more prevalent in the later period. Cases with recoveries of less than $5 million comprised 33 percent of the later period cases compared to 24 percent of the earlier period cases, a difference statistically significant at $p = 0.022$. Thus the decreasing recovery amount over time is attributable to a different mix of cases in our sample, and not to differences in treatment of similar cases over time. Thus, throughout more than a decade of civil litigation reform efforts based on claims of increasing awards and fees, the pattern in available opinions, which tend to include the largest cases, has not significantly changed.

Table 1: Frequency of Class Action Fee Opinions, by Court, 1993–2008

Locale	N	*% of Cases*
Other	161	23.37
SDNY	103	14.95
State	75	10.89
EDPA	70	10.16
NDCA	47	6.82
DNJ	35	5.08
NDIL	29	4.21
EDNY	26	3.77
APPEAL	25	3.63
DDC	18	2.61
EDMI	17	2.47
DMN	16	2.32
EDLA	13	1.89
MDFL	12	1.74
EDCA	12	1.74
CDCA	10	1.45
DMA	10	1.45
SDCA	10	1.45
Total	689	100.00

Sources: Westlaw, LexisNexis, PACER.

and the District of New Jersey 35 cases. The Northern District of Illinois had just under 5 percent of the federal district cases. Together, these five districts accounted for over 50 percent of the federal district court opinions.

These results suggest that class action litigation in the federal system is heavily concentrated in a few jurisdictions. Of the 94 federal district courts, nearly half of all class actions in our data set occurred in five courts. Even adjusting for population (the popular class action districts also tend to be ones with large populations), the concentration ratio remains striking. We take this as evidence that certain jurisdictions offer advantages for class action litigation, either in the form of experienced judges who can handle these cases in a fair and expeditious manner, faster dockets, a sense on the part of plaintiffs' attorneys that the courts in these districts are reasonably well-inclined toward class action litigation, or a concentration of class action attorneys specializing in the practice.

We also investigated whether different federal courts appear to specialize in different types of cases. Table 2 shows the breakdown of the four largest case types, plus the residual case type, "Other," in the federal district courts with the largest number of class action settlements in our data (those listed in Table 1). For each case category, one column shows the percent of cases in each district and a second column shows the number of cases. For example, the Southern District of New York accounted for 70 of 253 securities cases, 28 percent of that category. Thus, the Southern District of New York tends to dominate securities class actions, whereas the Eastern District of Pennsylvania is the leader in antitrust

Table 2: Class Action Case Categories by Locale, 1993–2008

	Antitrust		*Consumer*		*Employment*		*Securities*		*Other*		*Total*	
District	%	N	%	N	%	N	%	N	%	N	%	N
Other	16	10	35	34	30	15	21	52	38	49	27	160
SDNY	7	4	1	1	10	5	28	70	18	23	18	103
EDPA	20	12	14	13	2	1	14	36	6	8	12	70
NDCA	7	4	7	7	14	7	8	19	8	10	8	47
DNJ	8	5	7	7	2	1	6	15	5	7	6	35
NDIL	10	6	7	7	4	2	5	12	2	2	5	29
EDNY	5	3	7	7	2	1	6	14	1	1	4	26
DDC	16	10	1	1	0	0	1	2	4	5	3	18
EDMI	3	2	0	0	0	0	2	6	7	9	3	17
DMN	5	3	3	3	4	2	2	6	2	2	3	16
EDLA	0	0	3	3	4	2	2	4	3	4	2	13
EDCA	0	0	2	2	16	8	0	0	2	2	2	12
MDFL	2	1	2	2	2	1	3	7	1	1	2	12
CDCA	0	0	2	2	6	3	1	3	2	2	2	10
DMA	2	1	5	5	0	0	1	2	2	2	2	10
SDCA	0	0	2	2	4	2	2	5	1	1	2	10
Total	100	61	100	96	100	50	100	253	100	128	100	588

Note: Table includes only federal district court cases.
Sources: Westlaw, LexisNexis, PACER.

and consumer cases. The Northern and Eastern Districts of California are the leaders in employment cases. Table 2 shows that the SDNY's dominance is almost completely attributable to its large role in securities cases.

1. Fees Across Locales

Table 3 shows summary statistics about fees and recoveries by locale. The mean fee to recovery ratio was 0.23, or 23 percent of the class award, but this percent varies by recovery size, as shown in Figure 5 and Table 7. The mean fee was $12.8 million and the median was $2.3 million. The mean class recovery was $116.0 million and the median was $12.5 million.

Some bankruptcy case fee studies[11] and other studies of case outcomes show notable interdistrict variation. Like these studies, we find significant variation across federal districts. For the 16 federal districts with at least 10 cases with necessary information in the

[11]See Lynn M. LoPucki & Joseph W. Doherty, The Determinants of Professional Fees in Large Bankruptcy Reorganization Cases, 1 J. Empirical Legal Stud. 111, 114, 136 (2004) (showing significant fee request reduction variation across Delaware and the Southern District of New York); Stephen J. Lubben, Corporate Reorganization and Professional Fees, 82 Am. Bankr. L.J. 82 (2008) (showing some significant Delaware and Southern District of New York effects). But see Lynn M. LoPucki & Joseph W. Doherty, Professional Overcharging in Large Bankruptcy Reorganization Cases, 5 J. Empirical Legal Stud. 983, 1010 (2008) (tbl. 5, showing insignificant Delaware and Southern District of New York effects).

Table 3: Fee and Class Recoveries, by Locale, 1993–2008

	Mean Ratio	*Median Ratio*	*Mean Fee*	*Median Fee*	*Mean Gross Recovery*	*Median Gross Recovery*	*Number of Cases*
APPEAL	0.19	0.20	5.89	2.15	57.86	13.37	25
CDCA	0.25	0.25	3.93	2.75	16.30	19.90	10
DDC	0.22	0.22	16.69	2.14	134.79	13.00	18
DMA	0.16	0.15	11.50	7.00	118.55	81.00	10
DMN	0.25	0.27	8.77	4.75	40.99	14.25	16
DNJ	0.21	0.22	32.26	7.80	503.42	36.88	35
EDCA	0.26	0.25	0.40	0.12	3.26	0.54	12
EDLA	0.26	0.23	7.79	1.77	43.53	8.61	13
EDMI	0.22	0.20	6.56	1.34	34.80	11.75	17
EDNY	0.32	0.25	11.33	2.38	142.42	9.03	26
EDPA	0.28	0.29	12.66	1.51	75.79	6.88	70
MDFL	0.21	0.21	3.64	2.66	18.23	14.87	12
NDCA	0.26	0.25	4.44	2.00	24.06	9.25	47
NDIL	0.24	0.24	12.14	2.75	51.45	12.50	29
Other	0.24	0.25	20.47	3.25	154.98	16.38	161
SDCA	0.26	0.25	4.66	1.14	63.12	4.90	10
SDNY	0.22	0.22	11.54	2.13	127.97	12.85	103
State	0.20	0.20	5.94	2.00	61.61	12.32	75
Total	0.23	0.24	12.84	2.33	116.01	12.50	689

NOTE: Dollar amounts are in millions of 2008 dollars.
SOURCES: Westlaw, LexisNexis, PACER.

sample (including "Other" as a district), a test of the hypothesis that the median ratio of fee to class recovery does not differ significantly can be rejected, with a Mann-Whitney test yielding a significance level of $p = 0.014$. Given the strong association between fee and class recovery, we explored these initial interdistrict differences by accounting for recovery level and case category in regression models. The district dummy variables were collectively statistically significant ($p = 0.035$), indicating that when the size of class recoveries and case categories are accounted for, one can reject the hypothesis of no statistically significant interdistrict differences. Table 3's first two numerical columns suggest that interdistrict differences can be nontrivial but are not dramatic. With one exception, the District of Massachusetts, the median ratio always ranges from 0.20 to 0.29.

In federal courts, attorney fee doctrine is dictated at the circuit court level if the appeals court has issued an opinion on point (the Supreme Court has never offered definitive guidance on this issue). The Ninth Circuit has a 25 percent benchmark fee in common fund cases but allows departures based on individual case factors,[12] and the Eleventh Circuit has indicated that its district courts view 25 percent as a benchmark.[13]

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[12]E.g., Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993).

[13]Camden I Condo. Ass'n v. Dunkle, 946 F.2d 768, 775 (11th Cir. 1991).

Table 4: Fee and Class Recoveries, by Federal Circuit, 1993–2008

Circuit	*Mean Ratio*	*Median Ratio*	*Mean Fee*	*Median Fee*	*Mean Gross Recovery*	*Median Gross Recovery*	*Number of Cases*
1st	0.20	0.20	31.83	3.50	227.41	19.32	21
2nd	0.23	0.24	10.58	2.13	119.06	11.63	145
3rd	0.26	0.26	17.38	3.00	193.50	13.38	120
4th	0.20	0.21	29.27	1.89	320.07	13.55	8
5th	0.24	0.23	42.39	2.63	368.34	15.65	26
6th	0.23	0.23	10.42	3.33	94.65	15.50	42
7th	0.26	0.24	8.79	2.15	38.37	10.07	42
8th	0.25	0.30	11.21	4.18	68.35	14.70	29
9th	0.25	0.25	4.53	1.80	32.97	9.50	101
10th	0.22	0.23	12.46	7.42	63.96	32.00	22
11th	0.21	0.22	17.35	4.22	87.09	26.85	34
DC	0.21	0.22	15.17	1.94	122.04	11.00	20
Total	0.24	0.25	13.74	2.40	123.12	12.50	610

Note: Three Federal Circuit cases and all state court cases are omitted. Dollar amounts are in millions of 2008 dollars.
Sources: Westlaw, LexisNexis, PACER.

The Eleventh and D.C. Circuits mandate the percentage methodexclusively, while other circuits allow percentage or lodestar methods.[14] The Second Circuit's *Goldberger* decision rejected the use of benchmarks and mandated a fact-specific inquiry.[15]

Table 4 explores intercircuit variation, showing summary statistics about fees and recoveries by circuit, and excludes state court cases. The median and mean fee to recovery ratios were 0.24 and 0.25, respectively. In regression models of the ratio, circuit dummy variables were not collectively statistically significant ($p = 0.124$), indicating that when the size of class recoveries and case categories are accounted for, one cannot reject the hypothesis of no statistically significant intercircuit differences. We also explored differences between particular circuits and all other circuits based on announced benchmarks and methods. In regression models using dummy variables for individual circuits, and controlling for case category and recovery size, none of the individual circuit effects were statistically significant. Nor were differences within the Second Circuit significantly different pre- and post-*Goldberger*.[16]

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[14]Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1271 (D.C. Cir. 1993); Camden I Condo. Ass'n v. Dunkle, 946 F.2d 768, 774 (11th Cir. 1991).

[15]Goldberger v. Integrated Res., Inc., 209 F.3d 43 (2d Cir. 2000).

[16]Nor was the variance in fee percent significantly different between the Ninth or Eleventh Circuits and other circuits. For a more in-depth exploration of the effect (or lack of effect) of the *Goldberger* decision, see Theodore Eisenberg, Geoffrey Miller & Michael Perino, A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions After *Goldberger v. Integrated Resources, Inc.*, 29 Wash. U. J. Law & Policy 5 (2009).

2. State-Federal Differences

We hypothesized that the fee percent would tend to be higher in class actions in state court than in federal court.[17] Beliefs in differences in how federal and state courts process class actions were cited as reasons for enactment of CAFA.[18] The Congress that enacted CAFA intended to route interstate class actions to federal court, "with the expressed intent of defeating the plaintiffs' bar's manipulation of state courts."[19] President George W. Bush declared that it "marks a critical step toward ending the lawsuit culture in our country."[20] Empirical support for CAFA was almost entirely lacking, however, with both Federal Judicial Center (FJC) research[21] and our own prior work[22] suggesting little in the way of significant state-federal defferences.

Table 3 shows that the mean fee to class recovery ratio for state court cases was 0.20, lower than the overall mean ratio of 0.24. Regression models of the fee (log 10) or the ratio (of logs) as a function of the case category and the class recovery size indicate that the federal-state difference was sometimes statistically significant in the direction suggested by Table 3—namely, that state courts award lower percentage fees.[23] The direction of the effect is surprising if one believes federal courts are less receptive to class actions than are state courts. A lower fee to recovery ratio suggests somewhat less encouragement of class action activity by state courts compared to federal courts.

3. Case Categories

Table 5 summarizes fees, recoveries, and their ratios by case categories. Mean fees ranged from 11 percent of the class recovery in tax cases to 27 percent in employment cases. In the

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[17]Eisenberg & Miller, supra note 5.

[18]Pub. L. No. 109-2, 119 Stat. 4 (2005) (codified in scattered sections of 28 U.S.C.). See generally Kevin M. Clermont & Theodore Eisenberg, CAFA Judicata: A Tale of Waste and Politics, 156 U. Pa. L. Rev. 1553 (2008); Georgene M. Vairo, Class Action Fairness Act of 2005 (2005).

[19]Clermont & Eisenberg, supra note 18, at 1554–55.

[20]Remarks on Signing the Class Action Fairness Act of 2005, 41 Weekly Comp. Pres. Doc. 265, 265 (Feb. 18, 2005); see also Edward A. Purcell, Jr., The Class Action Fairness Act in Perspective: The Old and the New in Federal Jurisdictional Reform, 156 U. Pa. L. Rev. 1823 (2008) (stressing partisan support for CAFA).

[21]Thomas E. Willging & Shannon R. Wheatman, Attorney Choice of Forum in Class Action Litigation: What Difference Does it Make? 81 Notre Dame L. Rev. 591, 645, 652–54 (2006) (finding insignificant differences in state court and federal court treatment of class actions, and observing that "[a]ttorney perceptions of judicial predispositions toward their clients' interests show little or no relationship to the judicial rulings in the surveyed [state and federal class action] cases"). See also Section VII.

[22]Eisenberg & Miller, supra note 5.

[23]The state court effect was significant in multilevel models with a random intercept for case category. The effect was insignificant in models with dummy variables for case category.

Table 5: Fee and Class Recoveries, by Case Category, 1993–2008

	Mean Ratio	*Median Ratio*	*Mean Fee*	*Median Fee*	*Mean Gross Recovery*	*Median Gross Recovery*	*Number of Cases*
Antitrust	0.22	0.23	21.02	9.15	163.48	39.36	71
Civil rights	0.24	0.23	4.10	1.52	16.53	7.48	18
Consumer	0.25	0.20	10.04	1.70	128.42	9.33	125
Corporate	0.21	0.19	3.35	1.12	16.51	9.86	30
Employment	0.27	0.25	2.43	0.75	12.28	3.00	55
ERISA	0.23	0.25	6.61	3.46	29.54	14.00	43
Securities	0.23	0.25	14.78	2.52	141.96	12.50	268
Tax refund/tax	0.11	0.06	12.96	5.50	188.01	60.07	8
Tort	0.21	0.20	30.15	6.33	254.60	25.86	29
Other	0.23	0.25	13.59	2.00	61.86	10.75	42
Total	0.23	0.24	12.84	2.33	116.01	12.50	689

NOTE: Dollar amounts are in millions of 2008 dollars.
SOURCES: Westlaw, LexisNexis, PACER.

Table 6: Frequency of Case Categories, by Time Period

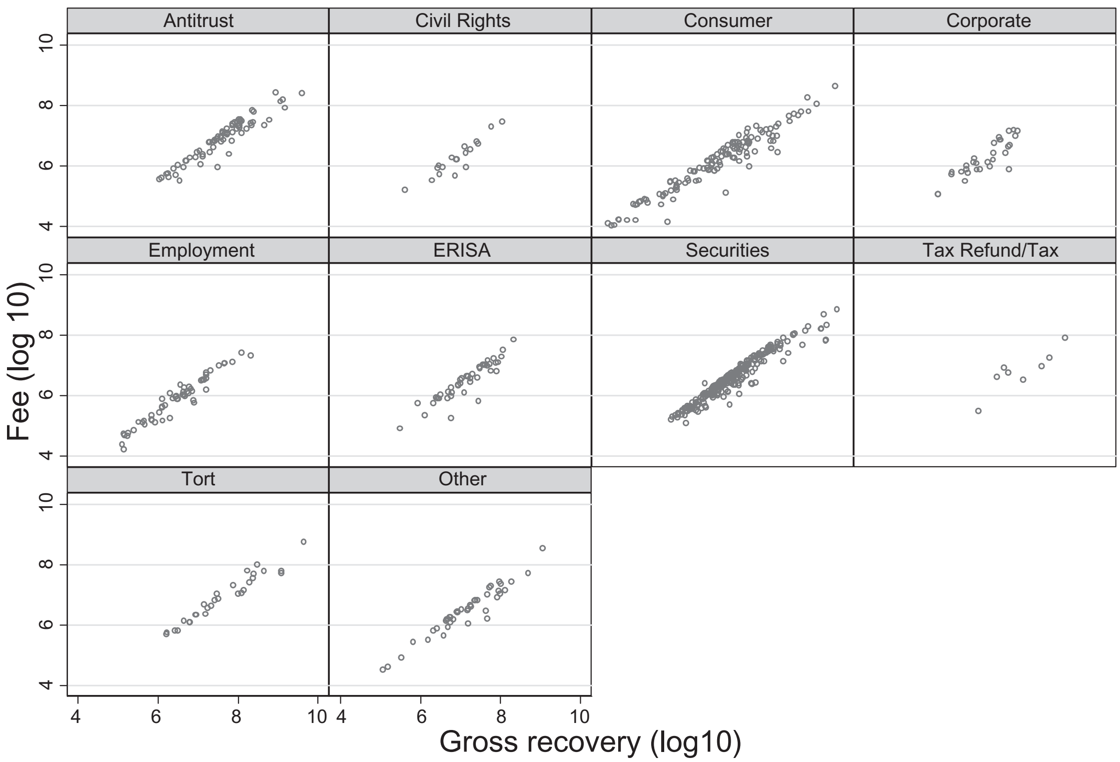
	Non-Fee-Shifting Cases			
	1993–2002		*2003–2008*	
	N	*% of Cases in Period*	N	*% of Cases in Period*
Antitrust	36	11.9	35	9.1
Civil rights	2	0.7	16	4.2
Consumer	52	17.2	73	18.9
Corporate	15	5.0	15	3.9
Employment	7	2.3	48	12.4
ERISA	7	2.3	36	9.3
Securities	142	46.9	126	32.6
Tax refund/tax	6	2.0	2	0.5
Tort	17	5.6	12	3.1
Other	19	6.3	23	6.0
Total	303	100	386	100

SOURCES: Westlaw, LexisNexis, PACER.

larger case categories, fees ranged from 21 percent to 27 percent of recoveries. A test of the hypothesis that the median ratio of fees to recoveries is the same across case categories can be rejected at $p < 0.022$, if one includes the small civil rights and tax categories. But the effect becomes statistically insignificant if one excludes the two smallest categories ($p = 0.222$).

The case category makeup of the samples varied over time. Table 6 shows the case category breakdown for the time period of our prior study and the years 2003 to 2008, added for purposes of this study. In each time period, securities cases were the dominant case category, but they declined as a proportion of the sample in the later time period. This

Figure 4: Fee and recovery by case category, 1993–2008.



SOURCES: Westlaw, LexisNexis, PACER.

is due to the increase in the proportion of civil rights, employment, and ERISA cases, which likely increased because of the change in coding, discussed above, to allow inclusion with common fund cases, cases subject to a fee-shifting statute but in which the fee was not determined pursuant to the statute, as well as to increased availability of information through the PACER database.

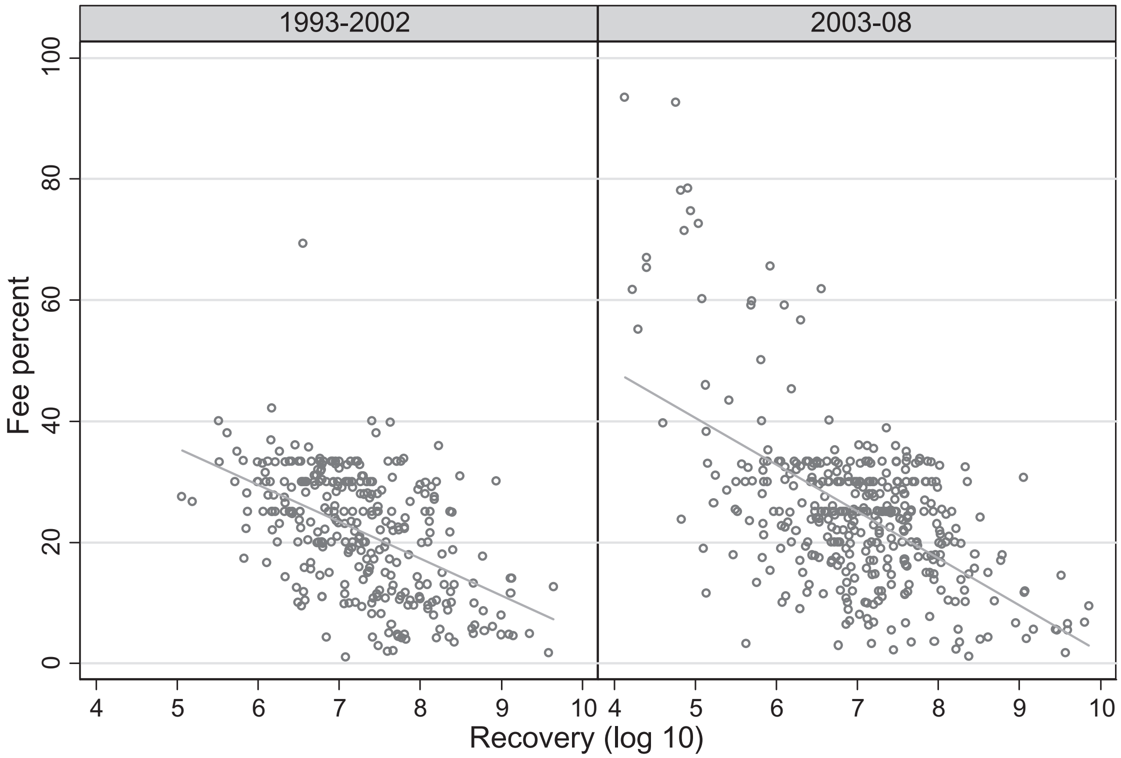
Figure 4 explores whether the core relation between fee amount and class recovery varies by case category. It shows that relation through separate scatterplots for 10 case categories. The consistency of the pattern across category is striking. Every category shows the same basic relation between fee and recovery.

4. Scaling Effect

The existence of a scaling effect—the fee percent decreases as class recovery increases—is central to justifying aggregate litigation such as class actions. Plaintiffs' ability to aggregate into classes that reduce the percentage of recovery devoted to fees should be a hallmark of a well-functioning class action system.[24] As Figure 5 shows, a substantial scaling effect existed

[24]Eisenberg & Miller, supra note 5.

Figure 5: Fee as a percent of recovery for two time periods.



SOURCES: Westlaw, LexisNexis, PACER.

in the 2003–2008 period, as well as in the earlier 1993–2002 period. The linear correlation coefficient for 2003–2008 was −0.57 and for 1993–2002 was −0.50, both statistically significant at $p < 0.0001$. The lines in the figure show the best-fitting regression line for each data subset.

Table 7 presents additional information about the scale effect. For purposes of this table, we divided the range of class recoveries into deciles of about 69 cases each. Table 7's first column shows the bounds on the deciles, starting with the lowest decile of class recoveries. Thus the table's first numerical row includes cases with class recoveries in the first decile, those recoveries less than or equal to $1.1 million. The table's last row includes cases in the highest decile, those with recoveries greater than $175.5 million. The table's columns show, within each decile range, the mean, median, and standard deviation of the fee percent for the row decile. Thus, for the 69 cases with class recoveries of less than $1.1 million, the mean fee percent award was 37.9 percent in 69 cases, the median fee percent award was 32.3 percent, and the standard deviation was 19.6 percent. Although there is some fluctuation in the scale effect trend across the middle deciles, the overall trend is clear, with the highest decile having less than one-third of the median and mean percentage fee of the lowest decile.

Table 7: Mean, Median, and Standard Deviation of Fee Percent, Controlling for Class Recovery Amount, 1993–2008

Range of Class Recovery (Millions) Decile	*Mean*	*Median*	SD	N
Recovery <= 1.1	37.9	32.3	19.6	69
Recovery > 1.1 <= 2.8	27.1	26.4	9.1	69
Recovery > 2.8 <= 5.3	26.4	25.0	9.8	69
Recovery > 5.3 <= 8.7	22.8	22.1	8.4	69
Recovery > 8.7 <= 14.3	23.8	25.0	8.1	69
Recovery > 14.3 <= 22.8	22.7	23.5	7.5	69
Recovery > 22.8 <= 38.3	22.1	24.9	8.7	68
Recovery > 38.3 <= 69.6	20.5	21.9	10.0	70
Recovery > 69.6 <= 175.5	19.4	19.9	8.4	69
Recovery > 175.5	12.0	10.2	7.9	68

Sources: Westlaw, LexisNexis, PACER.

Table 8: Fee Percent, by Risk Level

	High Risk		*Low/Medium Risk*	
	N	*Fee %*	N	*Fee %*
Antitrust	9	20.1	62	22.2
Civil rights	4	29.3	13	23.2
Consumer	14	31.3	110	24.7
Corporate	4	23.4	26	20.8
Employment	4	35.1	51	26.2
ERISA	5	24.6	38	23.2
Securities	45	26.4	217	22.7
Tax refund/tax	—	—	8	10.8
Tort	8	25.1	21	19.0
Other	13	22.1	29	23.9
Total	106	26.1	575	23.1

Sources: Westlaw, LexisNexis, PACER.

5. Risk

Standards applied to attorney fees uniformly indicate that greater risk warrants an increased fee.[25] Table 8 reports, by case category, the mean fee percent separately for high risk and other cases. It confirms that courts systematically reward risk. For every case category except antitrust and "other," mean fee percents were higher in high-risk cases than in other cases. The difference within a case category between high-risk cases and other cases

[25]E.g., Goldberger v. Integrated Res., Inc., 209 F.3d 43, 50 (2d Cir. 2000).

Table 9: Fee Percent and Settlement Classes, Opt Outs, Objectors

	Period 2003–2008	
	N	*Fee %*
A. Settlement Class Status		
Settlement class	208	24.4%
Not a settlement class	160	25.4%
B. Presence of Objectors		
Any objector	142	23.4%
No objector	123	28.6%
C. Number of Opt Outs		
No opt outs	28	34.6%
One opt out	20	37.2%
>One opt out	116	23.6%

SOURCES: Westlaw, LexisNexis, PACER.

was statistically significant only for the large securities category (t test significance level, $p = 0.006$).

6. Settlement Classes, Opt Outs, and Objectors

Table 9 reports the relation between the fee percent and three class action case characteristics: settlement class status (Panel A),[26] whether any objection was filed (Panel B), and the number of class members opting out of the class (Panel C). We collected useful data on these issues only for the later time period (2003–2008). No significant difference in fee percent for settlement class cases compared to nonsettlement class cases emerged. There were significant differences in the fee percent for cases with and without objectors. Cases with objectors tended to have lower fee percents than cases without objectors. Cases with more than one opting-out class member tended to have lower fee percents than cases with zero or one opting-out class member. But, in regression models that supplement those reported in Table 17, the objector and opt-out variables were found not to be significant once one controlled for recovery size.

IV. Bivariate Results: Fee Methods and Multipliers

The dominant method used to calculate fees in class actions has evolved from considering multiple factors[27] to the dominance of two other methods, the lodestar and percentage

[26]A settlement class is a case in which a class was certified for settlement purposes only.

[27]The factors include the time and labor required, the customary fee, whether the fee is fixed or contingent, the amount involved and the results obtained, the experience, reputation, and ability of the attorneys, awards in similar

Table 10: Frequency of Method Used, by Time Period

	1993–2002		*2003–2008*	
	N	*% of Cases in Period*	N	*% of Cases in Period*
Lodestar	38	13.6	37	9.6
Percent	158	56.4	146	37.8
Both (usually % with LS check)	68	24.3	165	42.8
Other	16	5.7	38	9.8
Total	280	100	386	100

NOTE: LS = lodestar method.
SOURCES: Westlaw, LexisNexis, PACER.

methods. Under the lodestar method, courts multiply the reasonable number of hours expended by counsel by a reasonable hourly rate and then adjust the product for various factors.[28] Under the percentage method, the court multiplies the amount recovered on behalf of the class by a percentage factor. Some courts adopt a blended approach that checks the percentage method for reasonableness against a lodestar calculation.[29] We explore here the rates at which courts use the fee calculation methods, the relation between those methods and fees, the rates at which courts granted requested fees, and the use of multipliers in cases using the lodestar method.

A. Lodestar

1. Frequency of Use of Lodestar Versus Percent

Table 10 reports the rate of use of competing methods of computing a fee award. One result is the decline in the use of the lodestar method. From 1993 to 2002, 13.6 percent of cases used a pure lodestar method. From 2003 to 2008, only 9.6 percent of cases used the lodestar method, a notable but not statistically significant reduction ($p = 0.136$). This is likely due to the relatively few cases using the lodestar method exclusively.

Table 10 also suggests a reduction in use of the pure percent method, from 56.4 percent to 37.8 percent, but this understates the dominance of the percent method. For the 1993 to 2002 period, we coded which method was primary and which was used as a check. In non-fee-shifting cases in this period, 61 cases used the percent method with a lodestar

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cases, the nature and length of the professional relationship with the client, the time limitations imposed by the client or the circumstances, the preclusion of other employment by the attorney due to acceptance of the case, the novelty and difficulty of the questions, the skill needed to perform the legal services, and the "undesirability" of the case. The leading precedent outlining this multifactor approach is Johnson v. Georgia Highway Express, 488 F.2d 714, 717–19 (5th Cir. 1974).

[28]E.g., Gisbrecht v. Barnhart, 535 U.S. 789 (2002). See Charles Silver, Unloading the Lodestar: Toward a New Fee Award Procedure, 70 Tex. L. Rev. 865 (1992); Charles Silver, Due Process and the Lodestar Method: You Can't Get There from Here, 74 Tulane L. Rev. 1809 (2000).

[29]See notes 12–15 supra for circuit level case law addressing the fee method to be used.

Figure 6: Pure lodestar use over time.

check compared with three cases that used the lodestar method with the percent method as a check. The 68 cases shown as using "both" methods in the earlier period included an additional four cases that used both methods without indicating which was dominant. So cases coded as using "both" methods were almost always percent method cases with a lodestar check. We used less detailed coding of the method in the second period. If a case used both methods, we simply coded it as "both." Nevertheless, it is reasonable to assume that the "both" cases in the second period are similar to those in the earlier period and are dominated by the percent method with the lodestar as a check. So our best estimate is that the percent method is the overwhelmingly dominant method of computing fees, either as the sole method or as the primary method with the lodestar as a check. Figure 6 shows the rate of pure lodestar use over time, with a separate line for the large subset of securities class actions. Figure 1's strong linear correlation between fee and recovery supports this assessment as a lodestar-dominated system would likely show a less strong association between fee and class recovery.

Table 11 limits the sample to federal cases and shows the fee method used broken down by circuit. As suggested by Table 10, the use of the percent method, combined with the use of the percent method with a lodestar check, dominates. Table 11 shows that this is the pattern in every circuit, regardless of formal fee method doctrine. The lodestar method peaks at 21 percent of cases in the Sixth Circuit and only the Second Circuit combines nontrivial lodestar use with a substantial number of cases. The table slightly overstates the more recent federal rate of lodestar use, which totaled only 9 percent in cases from 2003 to 2008.

Table 11: Fee Method by Circuit, Federal Cases, 1993–2008

	Lodestar		*Percent*		*Both*		*Other*		*Total*	
Circuit	%	N	%	N	%	N	%	N	%	N
1st	5	1	60	12	35	7	0	0	100	20
2nd	19	26	37	51	40	55	5	7	100	139
3rd	5	6	37	43	56	65	3	3	100	117
4th	13	1	50	4	38	3	0	0	100	8
5th	20	5	40	10	36	9	4	1	100	25
6th	21	8	62	24	13	5	5	2	100	39
7th	10	4	61	25	17	7	12	5	100	41
8th	0	0	59	17	34	10	7	2	100	29
9th	9	9	48	48	30	30	13	13	100	100
10th	9	2	41	9	45	10	5	1	100	22
11th	3	1	52	17	36	12	9	3	100	33
D.C.	0	0	50	10	35	7	15	3	100	20
Federal Circuit	0	0	100	3	0	0	0	0	100	3
Total	11	63	46	273	37	220	7	40	100	596

Sources: Westlaw, LexisNexis, PACER.

Table 12: Fee Percent by Method Used, by Time Period

	1993–2002		*2003–2008*	
	N	*Mean Fee % of Recovery*	N	*Mean Fee % of Recovery*
Lodestar	38	17.2	37	31.6
Percent	158	23.4	146	25.3
Both (usually % with LS check)	68	22.9	165	21.9
Other	16	11.4	38	28.7
Total	280	21.7	386	24.8

Note: LS = lodestar method.
Sources: Westlaw, LexisNexis, PACER.

2. Is Use of the Lodestar Method Associated with Lower Fee Awards?

Table 12 explores the relation between fee method and fee percent. Although the table's first row suggests a substantial increase in fee percents in lodestar cases over time, the higher fee percents in recent lodestar cases are an artifact of case category. Consumer cases comprise 37 percent of the lodestar category and the difference between percent and lodestar methods vanishes if one excludes consumer cases. The consumer case category percent of cases changed for the two periods in our sample. Consumer cases were 59.5 percent of the lodestar cases in the later period compared to 15.8 percent of the lodestar cases in the earlier period. The lodestar method was used at a higher rate, 23.0 percent, in consumer cases than in any case category other than the small tax category. These high-percent consumer cases (see Table 8) are the source of the change in mean lodestar fee percents over time. The increased prominence of consumer cases in the later period sample is likely attributable to our including as common fund cases those in which a fee-shifting statute was theoretically available but was not in fact used. In regression models, reported below (see Table 18), the percent and "both" fee methods have positive and statistically significant coefficients compared to the lodestar method once case category is controlled for.

For the period 2003 to 2008, we coded the hours worked by attorneys in cases with opinions reporting that information. The lower lodestar awards appear to be a consequence of fewer hours worked, or at least fewer hours claimed in court filings. Fewer hours were worked, on average, in lodestar method cases than in other cases and fewer hours were worked in consumer cases than in any other case category. As in regressions of the fee amount, regression of hours worked that controlled for fee method, case category, and circuit yielded coefficients for the percent and "both" method dummy variables that are statistically significant and positive compared to lodestar cases.

B. Fee Grant Rates

Fee requests were generally granted in the amount requested, with 72.5 percent of requests granted in full, as shown in Table 13's last row (Panel A). Our data for the rate of grants is limited to the 2003 to 2008 period because requested amounts were not recorded for the earlier time period. Table 13 shows that strong intercircuit differences ($p = 0.012$, excluding the two Federal Circuit cases) in the grant rate existed, with the Second Circuit granting the requested amount statistically significantly less often than the Third Circuit or the Ninth Circuit. These intercircuit differences remain significant in logistic regression models that control for case category and recovery amount, and in models that exclude securities cases. The table also shows that state courts tended to grant award requests at a lower rate than federal courts. The difference between federal and state grant rates was only statistically significant at $p = 0.148$.

Fee requests were not granted in full in 100 of 363 cases. In those cases, the mean fee grant was 68 percent of the request and the median was 74 percent. The mean grant of 61 percent in state court cases was lower than the 69 percent in federal court cases and the median of 66 percent in state court cases was also lower than the median of 75 percent in federal court cases. However, only nine of the 100 cases with less than full grants were state court cases.

Table 13, Panel B, shows the rate at which requested fees were granted in relation to the range of class of recovery, using the same decile ranges as Table 7. It shows a declining grant rate as the class recovery increases. The grant rate for the lowest recovery decile was 83 percent compared to 56 percent for the highest recovery decile. We interpret this as indicating that judges tend to scrutinize fee requests in large cases more closely than they do for smaller cases. Panel C shows the grant rate in relation to the percent of class recovery requested as fees. Instead of using class recovery deciles, it uses deciles of the percent of recovery requested, which range from the lowest decile of requests up to 11.8 percent of the recovery to the highest decile of requests over 35.7 percent. It shows a trend of decreasing grant rates as the percent of the recovery requested increased. Attorneys requesting the lowest percents received requested amounts

Table 13: Rates at Which Requested Fees Were Given, 2003–2008

A. By Locale

Locale	*Proportion of Fee Requests Granted in the Amount Requested*	N
1st	0.70	10
2nd	0.54	74
3rd	0.83	64
4th	0.60	5
5th	0.69	13
6th	0.79	24
7th	0.79	14
8th	0.83	18
9th	0.83	72
10th	0.77	13
11th	0.64	22
D.C.	0.80	10
Federal Circuit	0.50	2
State court	0.59	22
Total	0.72	363

B. By Range of Class Recovery (Millions)

Range of Class Recovery (Millions) Decile	*Rate Granted*	N
Recovery <= 1.1	0.83	52
Recovery > 1.1 <= 2.8	0.75	36
Recovery > 2.8 <= 5.3	0.82	38
Recovery > 5.3 <= 8.7	0.67	33
Recovery > 8.7 <= 14.3	0.77	35
Recovery > 14.3 <= 22.8	0.68	34
Recovery > 22.8 <= 38.3	0.76	33
Recovery > 38.3 <= 69.6	0.68	34
Recovery > 69.6 <= 175.5	0.67	36
Recovery > 175.5	0.56	32

C. By Range of Class Recovery Percent Requested Decile

	Rate Granted	N
Percent of recovery requested <= 11.8%	0.81	36
Percent of recovery requested > 11.8% <= 17.8%	0.86	36
Percent of recovery requested > 17.8% <= 21.9%	0.62	37
Percent of recovery requested > 21.9% <= 25%	0.76	75
Percent of recovery requested > 25.0% <= 30.0%	0.72	72
Percent of recovery requested > 30.0% <= 33.3%	0.71	35
Percent of recovery requested > 33.3% <= 35.7%	0.67	36
Percent of recovery requested > 35.7%	0.61	36

NOTE: In Panel C, the number of observations in the fourth and fifth rows reflects the bunching of fee requests at 25 percent and 30 percent. They each occupy approximately two deciles of fee requests.

SOURCES: Westlaw, LexisNexis, PACER.

Table 14: Mean Multiplier by Circuit and Case Category

	Mean Multiplier	N
A. Circuit		
1st	2.10	15
2nd	1.58	97
3rd	2.01	87
4th	2.43	7
5th	2.07	15
6th	1.97	22
7th	1.85	16
8th	2.30	14
9th	1.54	50
10th	1.91	14
11th	1.19	19
D.C.	2.23	11
Federal	1.54	1
Total	1.81	368
B. Case Category		
Antitrust	2.24	38
Civil rights	1.99	11
Consumer	1.82	60
Corporate	1.94	7
Employment	1.24	21
ERISA	1.58	29
Securities	1.75	177
Tort	1.83	11
Other	2.35	14
Total	1.81	368

Sources: Westlaw, LexisNexis, PACER.

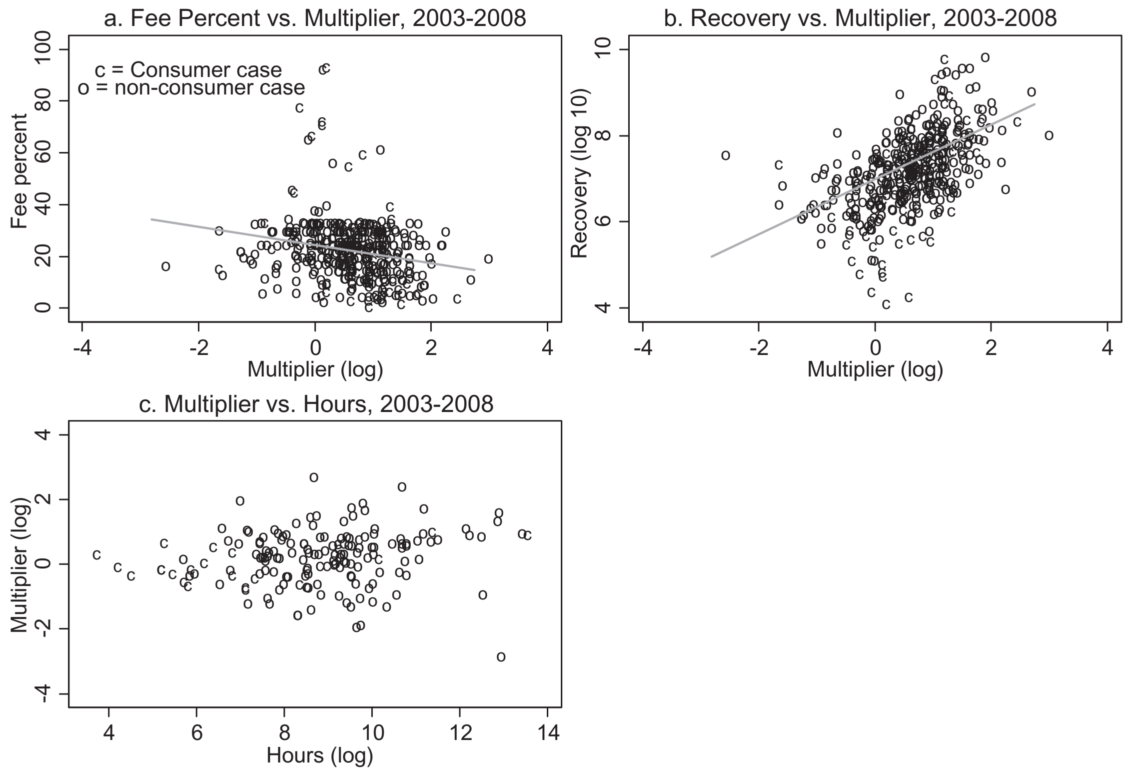
in 81 percent of cases compared to 61 percent for attorneys requesting the highest percents. This result suggests that attorneys who make more modest fee requests have a greater chance of having their requests granted.

We explored the effects of the class recovery amount, percent of recovery requested, circuit, and type of case in logistic regression models in which whether the requested fee was granted was a dichotomous dependent variable. The class recovery amount and the percent of recovery requested were highly statistically significant (each $p < 0.001$), the circuit dummy variables were jointly significant at $p = 0.005$, and the case type dummy variables were not statistically significant ($p = 0.262$).

C. Multipliers

Courts often check the percentage-based attorney fee against the lodestar award. If the percentage fee grossly exceeds the lodestar amount, the fee may be deemed excessive, and the courts can adjust the fee downward to a more reasonable range. Table 14 reports, for

Figure 7: Relation between multipliers and fee percent, recovery, and hours, 2003–2008.



Sources: Westlaw, LexisNexis, PACER.

federal cases, the mean multiplier applied by circuit and by case category. The sample is limited to those cases that reported a multiplier that was not equal to 1.

The mean multiplier ranged from 1.19 in the Eleventh Circuit to 2.43 in the Fourth Circuit. Across case categories, the mean multiplier ranged from 2.35 in "other" to 1.24 in employment cases. But, in regression models of the multiplier (log) as a function of circuits and case categories, neither the dummy variables for circuits nor for case categories were collectively significant. We therefore cannot reject the hypotheses that multipliers are similar across circuits and case categories.

We do, however, find significantly different multipliers used in cases in which fee-shifting statutes were available and cases in which they were not. With no statute in the background, multipliers averaged 1.96 in 161 cases with necessary data. If a fee-shifting statute was available, multipliers averaged 1.38 in 66 cases. The difference in medians was significant at $p = 0.021$.

Figure 7 shows the relation between the fee outcomes, class recovery amount, and multipliers (Figures 7a and 7b), and between multiplier and hours reported (Figure 7c).

Since a suspected fee windfall is most likely to occur when the percentage method would yield what is perceived to be too high a fee, we expect the multiplier to tend to bring high percentage fee cases into a more moderate range. We therefore predicted and found, in our prior study, a strong negative correlation between the lodestar multiplier (fee award

Table 15: Mean, Median, and Standard Deviation of Multiplier, Controlling for Class Recovery Amount, 1993–2008

Range of Class Recovery (Millions) Decile	*Mean*	*Median*	SD	N
Recovery <= 1.1	0.88	0.74	0.45	33
Recovery > 1.1 <= 2.8	0.95	0.77	0.67	40
Recovery > 2.8 <= 5.3	1.44	1.25	0.74	32
Recovery > 5.3 <= 8.7	1.59	1.25	1.32	34
Recovery > 8.7 <= 14.3	1.49	1.45	0.87	37
Recovery > 14.3 <= 22.8	1.68	1.51	0.85	38
Recovery > 22.8 <= 38.3	1.83	1.44	1.44	33
Recovery > 38.3 <= 69.6	1.98	1.75	1.00	38
Recovery > 69.6 <= 175.5	2.70	2.09	2.43	43
Recovery > 175.5	3.18	2.60	1.99	40

Sources: Westlaw, LexisNexis, PACER.

divided by the lodestar) and the percentage fee awarded.[30] A similar relation exists for 2003–2008, as shown in Figure 7a.

Higher multipliers should, in general, lead to higher recoveries, a result shown in Figure 7b. Increased multipliers do not appear to be being used a reward for hours worked. Figure 7c shows no clear positive association between mutlipliers and hours.

Table 15 presents more detailed information about the relation between class recovery and multipliers. It uses the recovery deciles reported in Table 7, but Table 15 includes fewer observations because the sample is limited to cases with multipliers not equal to 1. The table reports the mean, median, and standard deviation for each recovery decile. The pattern for the mean and median multiplier confirms that suggested by Figure 7b. As the recovery decile increases, the multiplier also tends to increase, with the multiplier in the highest recovery decile more than triple that of the multiplier in the lowest recovery decile.

V. Costs and Expenses

Costs and expenses (collectively "costs") tended to be a small percentage of the class recovery and have remained a fairly constant percentage over time. For the 232 cases from 1993 to 2002 for which cost data were available, mean costs were 2.8 percent of the recovery and median costs were 1.7 percent. For the 304 cases with necessary data from 2003 to 2008, mean costs were 2.7 percent of the recovery and median costs remained at 1.7 percent. As before, we found no evidence that the cost percent increased over time.[31]

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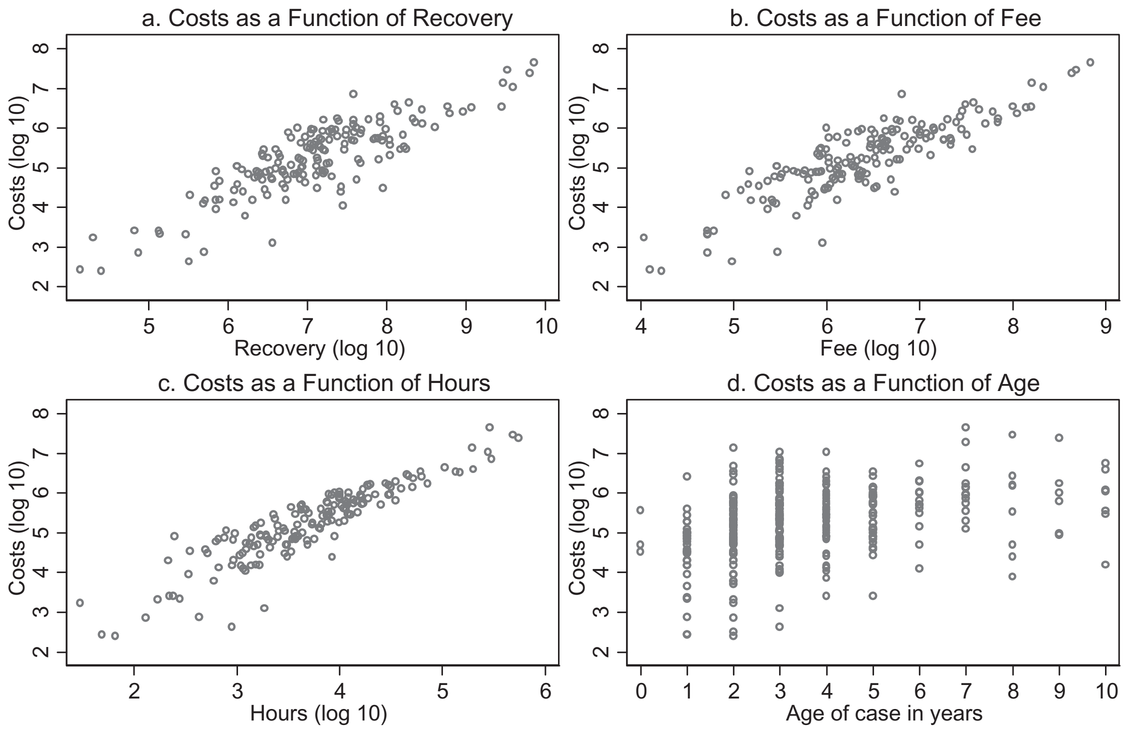
[30]Eisenberg & Miller, supra note 5.

[31]Id.

Figure 8: Costs as a function of recovery, fees, hours, and age, non-fee-shifting cases, 2003–2008.



Note: Cases with age greater than 10 years old are coded as 10 years old.
Sources: Westlaw, LexisNexis, PACER.

We further explored costs as a function of four variables: (1) the class recovery, (2) the fee, (3) the hours reported in the court's opinion, and (4) the age of the case in years. We only coded hours billed and case age beginning with the 2003 to 2008 data. Figure 8 shows the relation between costs and the four factors and limits the sample to cases in which hours were reported in opinions and costs were at least $100. All four factors are positively associated with costs. The figure also suggests that the strongest association is between costs and hours.

Table 16 shows the correlation coefficients between costs and the four factors in Figure 8. The first four numerical columns cover the period 2003–2008, for which hours data were recorded. The last two numerical columns show the correlation between costs and fee and recovery for the period 1993–2002. The correlations between costs and recovery and fee for either period do not reach the strength of association of hours and costs in the later period. The weaker correlation between costs and age may be in part a function of age being coded only in whole years and therefore providing a less continuous measure of that factor.

A regression model, not reported here, of costs as a percent of recovery controls for case category and other factors. It shows that costs, like fees, have a scale effect: their percent of recovery significantly declines as the size of the recovery increases. The cost

Table 16: Correlations Between Costs and Four Factors

	Fee (Log10)	*Recovery (Log10)*	*Hours (Log)*	*Age in Years*	*Fee (Log10)*	*Recovery (Log10)*
	Period = 2003–2008				*Period = 1993–2002*	
Correlation Coeff.	0.86	0.85	0.91	0.34	0.77	0.71
Significance	<0.0001	<0.0001	<0.0001	<0.0001	<0.0001	<0.0001
N	167	167	167	167	232	232

Sources: Westlaw, LexisNexis, PACER.

percent significantly increases with hours. In a model with both case age and hours as explanatory variables, only hours were statistically significant.

VI. Multivariate Results

Some of the above results are so strong and robust that no further analysis is needed to support their credibility. The strong correlation between fees and class recovery and the scale effect survive any reasonable analysis, are reasonably represented by Figures 1 and 5, and are confirmed in regression models reported below. Other key results consist of factors associated with the level of the fee award. These include:

1. The tendency of state courts to award a lower percent of recovery as a fee,
2. The relation between case category and fee percent,
3. The tendency of high-risk cases to receive a higher percent of the class recovery as a fee, and
4. The tendency of lodestar awards in non-fee-shifting cases to be lower than percent-method awards.

This section first explores the robustness of these results to simultaneous control for recovery level and then reports regression models.

A. The Relation Between the Fee Award and State Court Status, Risk, and the Lodestar Method

As Figure 1 and our earlier work suggest, for most explanatory variables, the size of the class recovery is the most important potential confounding factor in assessing the relation between other covariates and the fee award. From Figures 1 and 5, we know that: (1) the fee award increased with class recovery, and (2) the fee award was a declining percent of the class recovery as the class recovery increased. Regression models assessing nonrecovery covariates thus require both a dummy variable for the covariate, and an interaction term between the covariate and the class recovery. That is, the covariate may influence both the intercept and the slope of the line representing the relation between the covariate and the fee award. The use of class recovery, a dummy covariate, and an interaction term raises problems of multicollinearity in the regression model, which preliminary analysis confirmed. The problems arose even when a single covariate and interaction term were

Table 17: Influence of Locale, Risk, and Lodestar Method on Percent Fee Award, Controlling for Class Recovery Amount, 1993–2008

	Federal-State		*Risk*		*Lodestar*	
Range of Class Recovery (Millions) Decile	*Federal Case*	*State Case*	*Low-/Medium-Risk Case*	*High-Risk Case*	*Other Methods*	*Pure Lodestar*
Recovery <= 1.1	38.7	27.2	37.1	48.4	32.3	58.0
N	64	5	64	5	53	15
Recovery > 1.1 <= 2.8	26.8	30.4	26.7	29.5	26.6	33.4
N	63	6	60	9	64	5
Recovery > 2.8 <= 5.3	27.0	23.2	26.0	29.3	26.8	17.9
N	58	11	61	8	65	2
Recovery > 5.3 <= 8.7	22.7	23.2	21.8	26.8	23.3	20.5
N	61	8	55	14	54	9
Recovery > 8.7 <= 14.3	24.1	21.4	23.3	26.8	24.8	19.0
N	61	8	58	11	56	11
Recovery > 14.3 <= 22.8	23.3	15.6	22.7	23.0	23.3	16.3
N	62	6	63	6	61	6
Recovery > 22.8 <= 38.3	22.3	20.8	20.9	29.2	24.0	11.7
N	58	10	58	10	53	11
Recovery > 38.3 <= 69.6	21.2	15.7	19.9	24.6	21.6	9.8
N	61	9	62	8	61	7
Recovery > 69.6 <= 175.5	19.6	16.0	17.3	24.7	20.0	10.0
N	64	5	50	19	62	4
Recovery > 175.5	12.6	6.5	10.6	16.5	12.7	4.3
N	61	7	52	16	62	5

Sources: Westlaw, LexisNexis, PACER.

included in regression models, and were magnified when multiple covariates and interaction terms were used. Rather than simply report possibly questionable regression models, we first used a simpler technique to explore the possible influence of certain covariates on the fee award while simultaneously accounting for the class recovery.

Table 17 expands on Section III's tables by reporting in more detail, for non-fee-shifting cases, the relation between the fee awarded and three key covariates—state court status, risk, and use of the lodestar method—while controlling for the size of the class recovery. As was done for Tables 7, 13, and 15, we divided the range of class recoveries into deciles. Table 17's first column shows the bounds on the deciles, starting with the lowest decile of class recoveries. Each decile's statistics are reported in two rows; the first shows the fee percent and the second row shows the number of cases included in the fee percent calculation. Thus the table's first two numerical rows include cases with class recoveries in the first decile, those recoveries less than or equal to $1.1 million. The table's last two rows include cases in the highest decile, those with recoveries greater than $175.5 million. The table's second and third columns show, within each decile range, the mean fee percent award and the number of cases, divided by federal court versus state court status. Thus, for the 69 cases with class recoveries of less than $1.1 million, the mean federal case fee percent award was 38.7 percent in 64 cases and the mean state case fee percent award was 27.2

percent in five cases. The table's fourth and fifth columns show the same information, but now divided by high-risk case status versus low-/medium-risk case status. The table's sixth and seventh columns show the same information divided by use of the pure lodestar method versus use of all other methods.

With respect to federal versus state court status, the mean state case fee percent is lower than the mean federal percent for every recovery decile except the second and fourth. Thus, after controlling for class recovery size, state courts tend to award lower fees than federal courts but not overwhelmingly so. The pattern is even more consistent with respect to risk. For every recovery decile, the fee percent is higher in high-risk cases than in low-/medium-risk cases. The lodestar effect follows the same trend, with every class recovery decile except the lowest two showing a lower fee percent in pure lodestar cases than in other cases. In the low recovery deciles, of course, the lodestar method can compensate attorneys for substantial efforts that a percent fee award may not fully reflect. Section III's results for these three covariates therefore survive analysis that controls for the key potential confounder, the class recovery size.

B. Regression Models

Table 18 reports ordinary least squares regression models that confirm our core results. Model 1 shows that over 90 percent of the variance in the fee is explained by the size of the

Table 18: Regression Models of Fees

	1	*2*	*3*	*4*	*5*
			Dependent Variable = Fee (Log10)		
Gross recovery (log10)	0.850	0.850	0.846	0.833	0.827
	(74.37)**	(73.79)**	(73.32)**	(62.21)**	(61.35)**
State court case		–0.088	–0.083	–0.040	0.003
		(8.25)**	(8.15)**	(3.13)**	(0.15)
High-risk case			0.111	0.102	0.098
			(7.16)**	(6.06)**	(5.06)**
Lodestar = reference category					
Percent method				0.188	0.169
				(4.76)**	(4.22)**
Both methods				0.181	0.158
				(4.82)**	(4.15)**
Other methods				0.032	0.028
				(0.62)	(0.51)
Constant	0.374	0.382	0.395	0.331	0.440
	(4.91)**	(4.69)**	(4.92)**	(3.28)**	(3.64)**
Case category dummies	No	No	No	No	Yes
Observations	689	688	681	663	663
R^2	0.92	0.92	0.92	0.93	0.93

NOTES: Robust t statistics in parentheses; *significant at 5 percent; **significant at 1 percent; standard errors are clustered by locale.

SOURCES: Westlaw, LexisNexis, PACER.

recovery. None of the other models add materially to the explanatory power of this simple model. Nevertheless, it is noteworthy that the model with the largest set of explanatory variables, Model 5, shows no statistically significant difference between state and federal courts. The models also consistently confirm that fee methods other than the pure lodestar method tend to have higher fees. The models confirm the association between greater risk and increased fees.[32] In Model 5, a test of the hypothesis that the case category dummy variables are jointly equal to zero can be rejected at $p = 0.0003$. Their significance persists if one omits the two small cases categories, civil rights and tax, but the significance level increases to $p = 0.012$. The significance of the results in Table 18 persists if one limits the sample to the 106 cases with recoveries of $100 million or more but the sizes of the coefficients do change. The percent of variance explained then ranges from 72 percent to 77 percent, depending on the model.

We also tested whether the use of a lodestar "cross-check" generated a different pattern of fees than when fees were calculated according to the percentage method alone. A regression analysis not reported here does not find any statistically significant difference between fees calculated by the percentage method alone and those calculated by the percentage method with the lodestar cross-check. This result may raise questions about the utility of the lodestar cross-check, which can involve a time-consuming analysis of the reasonableness of the attorneys' hours and hourly rates.

VII. Discussion

The data support several major conclusions.

Strength of Relation and Dominance of Method. The percentage fee method is overwhelmingly the method used by courts in awarding fees in class actions. It is so widely used and so consistently employed that other information about cases adds little explanatory power to study of the fee award. The amount of the class recovery dwarfs all other effects. Even in circuits that eschew the percentage method, it appears to be the dominant de facto method used and best explains the pattern of awards. The consistent pattern may help attorneys to calibrate their fee requests and lead to courts usually approving the requested fee amount.

Scale Effect and Aggregate Litigation. The pattern of class action awards continues to exhibit a strong scale effect. Attorneys receive a smaller proportion of the recovery as the size of the recovery increases. Aggregation of claims thus appears to have produced the kind of efficiency hoped for. This characteristic of aggregate litigation should be considered when evaluating devices designed to preclude or discourage aggregate litigation or arbitration, such as prohibitions on class arbitration.[33]

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[32]Multilevel models, using random intercepts for locale and case category, do not yield materially different results.

[33]For a study suggesting possible efforts to discourage aggregate litigation, see Theodore Eisenberg, Geoffrey P. Miller & Emily Sherwin, Mandatory Arbitration for Customers But Not for Peers: A Study of Arbitration Clauses in Consumer

The Scope and Nature of Our Sample. Some perspective on the scope of our sample relative to the universe of class action cases comes from a study of class actions against insurers from 1993 through 2002. The RAND Institute for Civil Justice surveyed 269 property and casualty insurers and 207 life and health insurers, received responses from 205 companies, and obtained usable information from 199 insurers.[34] Of 564 attempted class actions, 12 percent led to a class settlement.[35] In 32 cases, the respondents provided information about the aggregate pool of funds offered to settle the case and its associated expenses. The amounts ranged from $360,000 to $150 million, with a mean fund size of $12.8 million and a median size of $2.6 million. Almost two-thirds of the cases, 62.5 percent, resulted in a common fund of less than $5 million.[36] In 48 cases, the respondents supplied information about the award to class counsel for fees and expenses. Fees and expenses ranged from $50,000 to $50,000,000, with a mean of $3.4 million and a median of $554,000.[37] The overall median fee and expense ratio from the pooled data was thus about 21 percent ($554,000 divided by $2.6 million). This compares to a pooled median fee of $2.33 million and median gross recovery of $12.5 million in our sample, as shown in Table 3, which yields a pooled ratio of 19 percent. The scaling effect, combined with our higher median gross recovery, probably helps explain the lower ratio in our sample of cases.

Aside from the RAND study's similar findings about fee levels, the study shows the small fraction of class action filings that lead to information about fees, even in the absence of being limited to available opinions. In the RAND data, 564 purported class actions led to 78 certified classes and 32 cases with available fee information. Thus, less than 15 percent of purported class actions were certified and about 6 percent led to usable fee information. If the same proportions are assumed to apply more broadly, then our 689 fee cases can be thought of as representing over 12,000 purported class action filings.

Federal-State Differences. Despite claims that CAFA was needed to redress differences in state and federal court processing of class actions, our data provide little evidence of federal-state differences. The fee per amount recovered did not systematically differ between federal and state courts, as shown in Table 17. Table 13 shows that state courts were, if anything, less likely than federal courts to grant the requested fee amount.

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and Non-Consumer Contracts, 92 Judicature 118 (Nov.–Dec. 2008); Theodore Eisenberg, Geoffrey P. Miller & Emily Sherwin, Arbitration's Summer Soldiers: An Empirical Study of Arbitration Clauses in Consumer and Nonconsumer Contracts, U. Mich J.L. Reform 871 (2008), reprinted in 4 ICFAI U.J. of Alternative Disp. Resol. 51 (2008).

[34] Nicholas M. Pace, Stephen J. Carroll, Ingo Vogelsang & Laura Zakaras, Insurance Class Actions in the United States 9–10 (2007).

[35] Id. at 47 (tbl. 3.16).

[36] Id. at 54.

[37] Id. at 55.

The absence of pro-class bias in state courts is consistent with sources cited above[38] and with additional research. In the RAND insurance study, of 564 attempted class actions, 12 percent led to a class settlement, with 12 percent of the 465 state court cases and 15 percent of the 98 federal court cases settling.[39] The modal outcome of a pretrial ruling for the defense did not significantly differ between federal and state courts.[40] The settlement rate for the cases with certified classes did not statistically significantly differ between federal and state courts.[41]

Thus, available evidence about comparative state-federal judicial performance in class actions consistently suggests no strong differences.

VIII. Conclusion

Over the course of 16 years, attorney fees in class action cases have displayed a strikingly strong linear relation to class recoveries. Significant associations also exist between the fee amount and both the fee method and the riskiness of the case. Despite CAFA's premise of differences between federal and state court treatment of class actions, our findings add to a growing body of evidence that little hard data support claims of significant state-federal differences. Core results persisted in mega-cases, those with recoveries of $100 million or more, in cases with settlement classes, and in cases with and without objectors and opt outs. Fees and costs decline as a percent of the recovery as the recovery amount increases, suggesting the efficiency of this form of aggregate litigation. In this data set that likely includes the most significant class action decisions, those that lead to an available opinion, neither fees nor recoveries materially increased over time.

We hope that the information contained in this study can be of use to courts charged with the important and sometimes daunting task of setting counsel fees in class action and derivative cases.

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[38]Text accompanying notes 18–22 supra.

[39]Pace et al., supra note 34, at 47 (tbl. 3.16).

[40]Id.

[41]Id. at 48 (tbl. 3.17). The study did not distinguish between orders certifying the case for a class trial, those certifying for settlement purposes only, and those certifying on a provisional basis only. Id. at 17. Neil Marchand reports that plaintiffs' preferences for state or federal court in Michigan class actions vary depending on the governing substantive law, with preference for state courts in cases governed by state substantive law and preference for federal courts in cases governed by federal substantive law. Neil J. Marchand, Class Action Activity in Michigan's State and Federal Courts, available at <http://ssrn.com/abstract=1334923>.

Exhibit 16

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An Empirical Study of Class Action Settlements and Their Fee Awards

*Brian T. Fitzpatrick**

This article is a comprehensive empirical study of class action settlements in federal court. Although there have been prior empirical studies of federal class action settlements, these studies have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). By contrast, in this article, I attempt to study every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first attempt to collect a complete set of federal class action settlements for any given year. I find that district court judges approved 688 class action settlements over this two-year period, involving nearly $33 billion. Of this $33 billion, roughly $5 billion was awarded to class action lawyers, or about 15 percent of the total. Most judges chose to award fees by using the highly discretionary percentage-of-the-settlement method, and the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Fee percentages were strongly and inversely associated with the size of the settlement. The age of the case at settlement was positively associated with fee percentages. There was some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located, with lower percentages in securities cases and in settlements from the Second and Ninth Circuits. There was no evidence that fee percentages were associated with whether the class action was certified as a settlement class or with the political affiliation of the judge who made the award.

I. Introduction

Class actions have been the source of great controversy in the United States. Corporations fear them.[1] Policymakers have tried to corral them.[2] Commentators and scholars have

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[1]See, e.g., Robert W. Wood, Defining Employees and Independent Contractors, Bus. L. Today 45, 48 (May–June 2008).

[2]See Private Securities Litigation Reform Act (PSLRA) of 1995, Pub. L. No. 104-67, 109 Stat. 737 (codified as amended in scattered sections of 15 U.S.C.); Class Action Fairness Act of 2005, 28 U.S.C. §§ 1453, 1711–1715 (2006).

suggested countless ways to reform them.[3] Despite all the attention showered on class actions, and despite the excellent empirical work on class actions to date, the data that currently exist on how the class action system operates in the United States are limited. We do not know, for example, how much money changes hands in class action litigation every year. We do not know how much of this money goes to class action lawyers rather than class members. Indeed, we do not even know how many class action cases are resolved on an annual basis. To intelligently assess our class action system as well as whether and how it should be reformed, answers to all these questions are important. Answers to these questions are equally important to policymakers in other countries who are currently thinking about adopting U.S.-style class action devices.[4]

This article tries to answer these and other questions by reporting the results of an empirical study that attempted to gather all class action settlements approved by federal judges over a recent two-year period, 2006 and 2007. I use class action settlements as the basis of the study because, even more so than individual litigation, virtually all cases certified as class actions and not dismissed before trial end in settlement.[5] I use federal settlements as the basis of the study for practical reasons: it was easier to identify and collect settlements approved by federal judges than those approved by state judges. Systematic study of class action settlements in state courts must await further study;[6] these future studies are important because there may be more class action settlements in state courts than there are in federal court.[7]

This article attempts to make three contributions to the existing empirical literature on class action settlements. First, virtually all the prior empirical studies of federal class action settlements have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). In this article, by contrast, I attempt to collect every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first to attempt to collect a complete set of federal class action settlements for

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[3]See, e.g., Robert G. Bone, Agreeing to Fair Process: The Problem with Contractarian Theories of Procedural Fairness, 83 B.U.L. Rev. 485, 490–94 (2003); Allan Erbsen, From “Predominance” to “Resolvability”: A New Approach to Regulating Class Actions, 58 Vand. L. Rev. 995, 1080–81 (2005).

[4]See, e.g., Samuel Issacharoff & Geoffrey Miller, Will Aggregate Litigation Come to Europe?, 62 Vand. L. Rev. 179 (2009).

[5]See, e.g., Emery Lee & Thomas E. Willing, Impact of the Class Action Fairness Act on the Federal Courts: Preliminary Findings from Phase Two’s Pre-CAFA Sample of Diversity Class Actions 11 (Federal Judicial Center 2008); Tom Baker & Sean J. Griffith, How the Merits Matter: D&O Insurance and Securities Settlements, 157 U. Pa. L. Rev. 755 (2009).

[6]Empirical scholars have begun to study state court class actions in certain subject areas and in certain states. See, e.g., Robert B. Thompson & Randall S. Thomas, The Public and Private Faces of Derivative Suits, 57 Vand. L. Rev. 1747 (2004); Robert B. Thompson & Randall S. Thomas, The New Look of Shareholder Litigation: Acquisition-Oriented Class Actions, 57 Vand. L. Rev. 133 (2004); Findings of the Study of California Class Action Litigation (Administrative Office of the Courts) (First Interim Report, 2009).

[7]See Deborah R. Hensler et al., Class Action Dilemmas: Pursuing Public Goals for Private Gain 56 (2000).

any given year.[8] As such, this article allows us to see for the first time a complete picture of the cases that are settled in federal court. This includes aggregate annual statistics, such as how many class actions are settled every year, how much money is approved every year in these settlements, and how much of that money class action lawyers reap every year. It also includes how these settlements are distributed geographically as well as by litigation area, what sort of relief was provided in the settlements, how long the class actions took to reach settlement, and an analysis of what factors were associated with the fees awarded to class counsel by district court judges.

Second, because this article analyzes settlements that were approved in both published and unpublished opinions, it allows us to assess how well the few prior studies that looked beyond securities cases but relied only on published opinions capture the complete picture of class action settlements. To the extent these prior studies adequately capture the complete picture, it may be less imperative for courts, policymakers, and empirical scholars to spend the considerable resources needed to collect unpublished opinions in order to make sound decisions about how to design our class action system.

Third, this article studies factors that may influence district court judges when they award fees to class counsel that have not been studied before. For example, in light of the discretion district court judges have been delegated over fees under Rule 23, as well as the salience the issue of class action litigation has assumed in national politics, realist theories of judicial behavior would predict that Republican judges would award smaller fee percentages than Democratic judges. I study whether the political beliefs of district court judges are associated with the fees they award and, in doing so, contribute to the literature that attempts to assess the extent to which these beliefs influence the decisions of not just appellate judges, but trial judges as well. Moreover, the article contributes to the small but growing literature examining whether the ideological influences found in published judicial decisions persist when unpublished decisions are examined as well.

In Section II of this article, I briefly survey the existing empirical studies of class action settlements. In Section III, I describe the methodology I used to collect the 2006–2007 federal class action settlements and I report my findings regarding these settlements. District court judges approved 688 class action settlements over this two-year period, involving over $33 billion. I report a number of descriptive statistics for these settlements, including the number of plaintiff versus defendant classes, the distribution of settlements by subject matter, the age of the case at settlement, the geographic distribution of settlements, the number of settlement classes, the distribution of relief across settlements, and various statistics on the amount of money involved in the settlements. It should be noted that despite the fact that the few prior studies that looked beyond securities settlements appeared to oversample larger settlements, much of the analysis set forth in this article is consistent with these prior studies. This suggests that scholars may not need to sample unpublished as well as published opinions in order to paint an adequate picture of class action settlements.

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[8]Of course, I cannot be certain that I found every one of the class actions that settled in federal court over this period. Nonetheless, I am confident that if I did not find some, the number I did not find is small and would not contribute meaningfully to the data reported in this article.

In Section IV, I perform an analysis of the fees judges awarded to class action lawyers in the 2006–2007 settlements. All told, judges awarded nearly $5 billion over this two-year period in fees and expenses to class action lawyers, or about 15 percent of the total amount of the settlements. Most federal judges chose to award fees by using the highly discretionary percentage-of-the-settlement method and, unsurprisingly, the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Using regression analysis, I confirm prior studies and find that fee percentages are strongly and inversely associated with the size of the settlement. Further, I find that the age of the case is positively associated with fee percentages but that the percentages were not associated with whether the class action was certified as a settlement class. There also appeared to be some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all other areas, and district courts in some circuits—the Ninth and the Second (in securities cases)—awarded lower fee percentages than courts in many other circuits. Finally, the regression analysis did not confirm the realist hypothesis: there was no association between fee percentage and the political beliefs of the judge in any regression.

II. Prior Empirical Studies of Class Action Settlements

There are many existing empirical studies of federal securities class action settlements.[9] Studies of securities settlements have been plentiful because for-profit organizations maintain lists of all federal securities class action settlements for the benefit of institutional investors that are entitled to file claims in these settlements.[10] Using these data, studies have shown that since 2005, for example, there have been roughly 100 securities class action settlements in federal court each year, and these settlements have involved between $7 billion and $17 billion per year.[11] Scholars have used these data to analyze many different aspects of these settlements, including the factors that are associated with the percentage of

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[9]See, e.g., James D. Cox & Randall S. Thomas, Does the Plaintiff Matter? An Empirical Analysis of Lead Plaintiffs in Securities Class Actions, 106 Colum. L. Rev. 1587 (2006); James D. Cox, Randall S. Thomas & Lynn Bai, There are Plaintiffs and . . . there are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements, 61 Vand. L. Rev. 355 (2008); Theodore Eisenberg, Geoffrey Miller & Michael A. Perino, A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after *Goldberger v. Integrated Resources, Inc.*, 29 Wash. U.J.L. & Pol'y 5 (2009); Michael A. Perino, Markets and Monitors: The Impact of Competition and Experience on Attorneys' Fees in Securities Class Actions (St. John's Legal Studies, Research Paper No. 06-0034, 2006), available at <http://ssrn.com/abstract=870577> [hereinafter Perino, Markets and Monitors]; Michael A. Perino, The Milberg Weiss Prosecution: No Harm, No Foul? (St. John's Legal Studies, Research Paper No. 08-0135, 2008), available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133995> [hereinafter Perino, Milberg Weiss].

[10]See, e.g., RiskMetrics Group, available at <http://www.riskmetrics.com/scas>.

[11]See Cornerstone Research, Securities Class Action Settlements: 2007 Review and Analysis 1 (2008), available at <http://securities.stanford.edu/Settlements/REVIEW_1995-2007/Settlements_Through_12_2007.pdf>.

the settlements that courts have awarded to class action lawyers.[12] These studies have found that the mean and median fees awarded by district court judges are between 20 percent and 30 percent of the settlement amount.[13] These studies have also found that a number of factors are associated with the percentage of the settlement awarded as fees, including (inversely) the size of the settlement, the age of the case, whether a public pension fund was the lead plaintiff, and whether certain law firms were class counsel.[14] None of these studies has examined whether the political affiliation of the federal district court judge awarding the fees was associated with the size of awards.

There are no comparable organizations that maintain lists of nonsecurities class action settlements. As such, studies of class action settlements beyond the securities area are much rarer and, when they have been done, rely on samples of settlements that were not intended to be representative of the whole. The two largest studies of class action settlements not limited to securities class actions are a 2004 study by Ted Eisenberg and Geoff Miller,[15] which was recently updated to include data through 2008,[16] and a 2003 study by Class Action Reports.[17] The Eisenberg-Miller studies collected data from class action settlements in both state and federal courts found from court opinions published in the Westlaw and Lexis databases and checked against lists maintained by the CCH Federal Securities and Trade Regulation Reporters. Through 2008, their studies have now identified 689 settlements over a 16-year period, or less than 45 settlements per year.[18] Over this 16-year period, their studies found that the mean and median settlement amounts were, respectively, $116 million and $12.5 million (in 2008 dollars), and that the mean and median fees awarded by district courts were 23 percent and 24 percent of the settlement, respectively.[19] Their studies also performed an analysis of fee percentages and fee awards. For the data through 2002, they found that the percentage of the settlement awarded as fees was associated with the size of the settlement (inversely), the age of the case, and whether the

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[12]See, e.g., Eisenberg, Miller & Perino, supra note 9, at 17–24, 28–36; Perino, Markets and Monitors, supra note 9, at 12–28, 39–44; Perino, Milberg Weiss, supra note 9, at 32–33, 39–60.

[13]See, e.g., Eisenberg, Miller & Perino, supra note 9, at 17–18, 22, 28, 33; Perino, Markets and Monitors, supra note 9, at 20–21, 40; Perino, Milberg Weiss, supra note 9, at 32–33, 51–53.

[14]See, e.g., Eisenberg, Miller & Perino, supra note 9, at 14–24, 29–30, 33–34; Perino, Markets and Monitors, supra note 9, at 20–28, 41; Perino, Milberg Weiss, supra note 9, at 39–58.

[15]See Theodore Eisenberg & Geoffrey Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Empirical Legal Stud. 27 (2004).

[16]See Theodore Eisenberg & Geoffrey Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993–2008, 7 J. Empirical Legal Stud. 248 (2010) [hereinafter Eisenberg & Miller II].

[17]See Stuart J. Logan, Jack Moshman & Beverly C. Moore, Jr., Attorney Fee Awards in Common Fund Class Actions, 24 Class Action Rep. 169 (Mar.–Apr. 2003).

[18]See Eisenberg & Miller II, supra note 16, at 251.

[19]Id. at 258–59.

district court went out of its way to comment on the level of risk that class counsel had assumed in pursuing the case.[20] For the data through 2008, they regressed only fee awards and found that the awards were inversely associated with the size of the settlement, that state courts gave lower awards than federal courts, and that the level of risk was still associated with larger awards.[21] Their studies have not examined whether the political affiliations of the federal district court judges awarding fees were associated with the size of the awards.

The Class Action Reports study collected data on 1,120 state and federal settlements over a 30-year period, or less than 40 settlements per year.[22] Over the same 10-year period analyzed by the Eisenberg-Miller study, the Class Action Reports data found mean and median settlements of $35.4 and $7.6 million (in 2002 dollars), as well as mean and median fee percentages between 25 percent and 30 percent.[23] Professors Eisenberg and Miller performed an analysis of the fee awards in the Class Action Reports study and found the percentage of the settlement awarded as fees was likewise associated with the size of the settlement (inversely) and the age of the case.[24]

III. Federal Class Action Settlements, 2006 and 2007

As far as I am aware, there has never been an empirical study of all federal class action settlements in a particular year. In this article, I attempt to make such a study for two recent years: 2006 and 2007. To compile a list of all federal class settlements in 2006 and 2007, I started with one of the aforementioned lists of securities settlements, the one maintained by RiskMetrics, and I supplemented this list with settlements that could be found through three other sources: (1) broad searches of district court opinions in the Westlaw and Lexis databases,[25] (2) four reporters of class action settlements—*BNA Class Action Litigation Report*, *Mealey's Jury Verdicts and Settlements*, *Mealey's Litigation Report*, and the *Class Action World* website[26]—and (3) a list from the Administrative Office of Courts of all district court cases

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[20]See Eisenberg & Miller, supra note 15, at 61–62.

[21]See Eisenberg & Miller II, supra note 16, at 278.

[22]See Eisenberg & Miller, supra note 15, at 34.

[23]Id. at 47, 51.

[24]Id. at 61–62.

[25]The searches consisted of the following terms: ("class action" & (settle! /s approv! /s (2006 2007))); (((counsel attorney) /s fee /s award!) & (settle! /s (2006 2007)) & "class action"); ("class action" /s settle! & da(aft 12/31/2005 & bef 1/1/2008)); ("class action" /s (fair reasonable adequate) & da(aft 12/31/2005 & bef 1/1/2008)).

[26]See <http://classactionworld.com/>.

coded as class actions that terminated by settlement between 2005 and 2008.[27] I then removed any duplicate cases and examined the docket sheets and court orders of each of the remaining cases to determine whether the cases were in fact certified as class actions under either Rule 23, Rule 23.1, or Rule 23.2.[28] For each of the cases verified as such, I gathered the district court's order approving the settlement, the district court's order awarding attorney fees, and, in many cases, the settlement agreements and class counsel's motions for fees, from electronic databases (such as Westlaw or PACER) and, when necessary, from the clerk's offices of the various federal district courts. In this section, I report the characteristics of the settlements themselves; in the next section, I report the characteristics of the attorney fees awarded to class counsel by the district courts that approved the settlements.

A. *Number of Settlements*

I found 688 settlements approved by federal district courts during 2006 and 2007 using the methodology described above. This is almost the exact same number the Eisenberg-Miller study found over a *16*-year period in both federal *and* state court. Indeed, the number of annual settlements identified in this study is *several times* the number of annual settlements that have been identified in any prior empirical study of class action settlements. Of the 688 settlements I found, 304 were approved in 2006 and 384 were approved in 2007.[29]

B. *Defendant Versus Plaintiff Classes*

Although Rule 23 permits federal judges to certify either a class of plaintiffs or a class of defendants, it is widely assumed that it is extremely rare for courts to certify defendant classes.[30] My findings confirm this widely held assumption. Of the 688 class action settlements approved in 2006 and 2007, 685 involved plaintiff classes and only three involved

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[27]I examined the AO lists in the year before and after the two-year period under investigation because the termination date recorded by the AO was not necessarily the same date the district court approved the settlement.

[28]See Fed. R. Civ. P. 23, 23.1, 23.2. I excluded from this analysis opt-in collective actions, such as those brought pursuant to the provisions of the Fair Labor Standards Act (see 29 U.S.C. § 216(b)), if such actions did not also include claims certified under the opt-out mechanism in Rule 23.

[29]A settlement was assigned to a particular year if the district court judge's order approving the settlement was dated between January 1 and December 31 of that year. Cases involving multiple defendants sometimes settled over time because defendants would settle separately with the plaintiff class. All such partial settlements approved by the district court on the same date were treated as one settlement. Partial settlements approved by the district court on different dates were treated as different settlements.

[30]See, e.g., Robert H. Klonoff, Edward K.M. Bilich & Suzette M. Malveaux, Class Actions and Other Multi-Party Litigation: Cases and Materials 1061 (2d ed. 2006).

defendant classes. All three of the defendant-class settlements were in employment benefits cases, where companies sued classes of current or former employees.[31]

C. Settlement Subject Areas

Although courts are free to certify Rule 23 classes in almost any subject area, it is widely assumed that securities settlements dominate the federal class action docket.[32] At least in terms of the number of settlements, my findings reject this conventional wisdom. As Table 1 shows, although securities settlements comprised a large percentage of the 2006 and 2007 settlements, they did not comprise a majority of those settlements. As one would have

Table 1: The Number of Class Action Settlements Approved by Federal Judges in 2006 and 2007 in Each Subject Area

	Number of Settlements	
Subject Matter	*2006*	*2007*
Securities	122 (40%)	135 (35%)
Labor and employment	41 (14%)	53 (14%)
Consumer	40 (13%)	47 (12%)
Employee benefits	23 (8%)	38 (10%)
Civil rights	24 (8%)	37 (10%)
Debt collection	19 (6%)	23 (6%)
Antitrust	13 (4%)	17 (4%)
Commercial	4 (1%)	9 (2%)
Other	18 (6%)	25 (6%)
Total	304	384

NOTE: Securities: cases brought under federal and state securities laws. Labor and employment: workplace claims brought under either federal or state law, with the exception of ERISA cases. Consumer: cases brought under the Fair Credit Reporting Act as well as cases for consumer fraud and the like. Employee benefits: ERISA cases. Civil rights: cases brought under 42 U.S.C. § 1983 or cases brought under the Americans with Disabilities Act seeking nonworkplace accommodations. Debt collection: cases brought under the Fair Debt Collection Practices Act. Antitrust: cases brought under federal or state antitrust laws. Commercial: cases between businesses, excluding antitrust cases. Other: includes, among other things, derivative actions against corporate managers and directors, environmental suits, insurance suits, Medicare and Medicaid suits, product liability suits, and mass tort suits.

SOURCES: Westlaw, PACER, district court clerks' offices.

[31]See Halliburton Co. v. Graves, No. 04-00280 (S.D. Tex., Sept. 28, 2007); Rexam, Inc. v. United Steel Workers of Am., No. 03-2998 (D. Minn. Aug. 29, 2007); Rexam, Inc. v. United Steel Workers of Am., No. 03-2998 (D. Minn. Sept. 17, 2007).

[32]See, e.g., John C. Coffee, Jr., Reforming the Security Class Action: An Essay on Deterrence and its Implementation, 106 Colum. L. Rev. 1534, 1539–40 (2006) (describing securities class actions as "the 800-pound gorilla that dominates and overshadows other forms of class actions").

expected in light of Supreme Court precedent over the last two decades,[33] there were almost no mass tort class actions (included in the "Other" category) settled over the two-year period.

Although the Eisenberg-Miller study through 2008 is not directly comparable on the distribution of settlements across litigation subject areas—because its state and federal court data cannot be separated (more than 10 percent of the settlements were from state court[34]) and because it excludes settlements in fee-shifting cases—their study through 2008 is the best existing point of comparison. Interestingly, despite the fact that state courts were included in their data, their study through 2008 found about the same percentage of securities cases (39 percent) as my 2006–2007 data set shows.[35] However, their study found many more consumer (18 percent) and antitrust (10 percent) cases, while finding many fewer labor and employment (8 percent), employee benefits (6 percent), and civil rights (3 percent) cases.[36] This is not unexpected given their reliance on published opinions and their exclusion of fee-shifting cases.

D. Settlement Classes

The Federal Rules of Civil Procedure permit parties to seek certification of a suit as a class action for settlement purposes only.[37] When the district court certifies a class in such circumstances, the court need not consider whether it would be manageable to try the litigation as a class.[38] So-called settlement classes have always been more controversial than classes certified for litigation because they raise the prospect that, at least where there are competing class actions filed against the same defendant, the defendant could play class counsel off one another to find the one willing to settle the case for the least amount of money.[39] Prior to the Supreme Court's 1997 opinion in *Amchem Products, Inc. v. Windsor*,[40] it was uncertain whether the Federal Rules even permitted settlement classes. It may therefore be a bit surprising to learn that 68 percent of the federal settlements in 2006 and 2007 were settlement classes. This percentage is higher than the percentage found in the Eisenberg-Miller studies, which found that only 57 percent of class action settlements in

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[33]See, e.g., Samuel Issacharoff, Private Claims, Aggregate Rights, 2008 Sup. Ct. Rev. 183, 208.

[34]See Eisenberg & Miller II, supra note 16, at 257.

[35]Id. at 262.

[36]Id.

[37]See Martin H. Redish, Settlement Class Actions, The Case-or-Controversy Requirement, and the Nature of the Adjudicatory Process, 73 U. Chi. L. Rev. 545, 553 (2006).

[38]See Amchem Prods., Inc v Windsor, 521 U.S. 591, 620 (1997).

[39]See Redish, supra note 368, at 557–59.

[40]521 U.S. 591 (1997).

state and federal court between 2003 and 2008 were settlement classes.[41] It should be noted that the distribution of litigation subject areas among the settlement classes in my 2006–2007 federal data set did not differ much from the distribution among nonsettlement classes, with two exceptions. One exception was consumer cases, which were nearly three times as prevalent among settlement classes (15.9 percent) as among nonsettlement classes (5.9 percent); the other was civil rights cases, which were four times as prevalent among nonsettlement classes (18.0 percent) as among settlements classes (4.5 percent). In light of the skepticism with which the courts had long treated settlement classes, one might have suspected that courts would award lower fee percentages in such settlements. Nonetheless, as I report in Section III, whether a case was certified as a settlement class was not associated with the fee percentages awarded by federal district court judges.

E. The Age at Settlement

One interesting question is how long class actions were litigated before they reached settlement. Unsurprisingly, cases reached settlement over a wide range of ages.[42] As shown in Table 2, the average time to settlement was a bit more than three years (1,196 days) and the median time was a bit under three years (1,068 days). The average and median ages here are similar to those found in the Eisenberg-Miller study through 2002, which found averages of 3.35 years in fee-shifting cases and 2.86 years in non-fee-shifting cases, and

Table 2: The Number of Days, 2006–2007, Federal Class Action Cases Took to Reach Settlement in Each Subject Area

Subject Matter	*Average*	*Median*	*Minimum*	*Maximum*
Securities	1,438	1,327	392	3,802
Labor and employment	928	786	105	2,497
Consumer	963	720	127	4,961
Employee benefits	1,162	1,161	164	3,157
Civil rights	1,373	1,360	181	3,354
Debt collection	738	673	223	1,973
Antitrust	1,140	1,167	237	2,480
Commercial	1,267	760	163	5,443
Other	1,065	962	185	3,620
All	1,196	1,068	105	5,443

Source: PACER.

[41]See Eisenberg & Miller II, supra note 16, at 266.

[42]The age of the case was calculated by subtracting the date the relevant complaint was filed from the date the settlement was approved by the district court judge. The dates were taken from PACER. For consolidated cases, I used the date of the earliest complaint. If the case had been transferred, consolidated, or removed, the date the complaint was filed was not always available from PACER. In such cases, I used the date the case was transferred, consolidated, or removed as the start date.

medians of 4.01 years in fee-shifting cases and 3.0 years in non-fee-shifting cases.[43] Their study through 2008 did not report case ages.

The shortest time to settlement was 105 days in a labor and employment case.[44] The longest time to settlement was nearly 15 years (5,443 days) in a commercial case.[45] The average and median time to settlement varied significantly by litigation subject matter, with securities cases generally taking the longest time and debt collection cases taking the shortest time. Labor and employment cases and consumer cases also settled relatively early.

F. The Location of Settlements

The 2006–2007 federal class action settlements were not distributed across the country in the same way federal civil litigation is in general. As Figure 1 shows, some of the geographic circuits attracted much more class action attention than we would expect based on their docket size, and others attracted much less. In particular, district courts in the First, Second, Seventh, and Ninth Circuits approved a much larger share of class action settlements than the share of all civil litigation they resolved, with the First, Second, and Seventh Circuits approving nearly double the share and the Ninth Circuit approving one-and-one-half times the share. By contrast, the shares of class action settlements approved by district courts in the Fifth and Eighth Circuits were less than one-half of their share of all civil litigation, with the Third, Fourth, and Eleventh Circuits also exhibiting significant underrepresentation.

With respect to a comparison with the Eisenberg-Miller studies, their federal court data through 2008 can be separated from their state court data on the question of the geographic distribution of settlements, and there are some significant differences between their federal data and the numbers reflected in Figure 1. Their study reported considerably higher proportions of settlements than I found from the Second (23.8 percent), Third (19.7 percent), Eighth (4.8 percent), and D.C. (3.3 percent) Circuits, and considerably lower proportions from the Fourth (1.3 percent), Seventh (6.8 percent), and Ninth (16.6 percent) Circuits.[46]

Figure 2 separates the class action settlement data in Figure 1 into securities and nonsecurities cases. Figure 2 suggests that the overrepresentation of settlements in the First and Second Circuits is largely attributable to securities cases, whereas the overrepresentation in the Seventh Circuit is attributable to nonsecurities cases, and the overrepresentation in the Ninth is attributable to both securities and nonsecurities cases.

It is interesting to ask why some circuits received more class action attention than others. One hypothesis is that class actions are filed in circuits where class action lawyers

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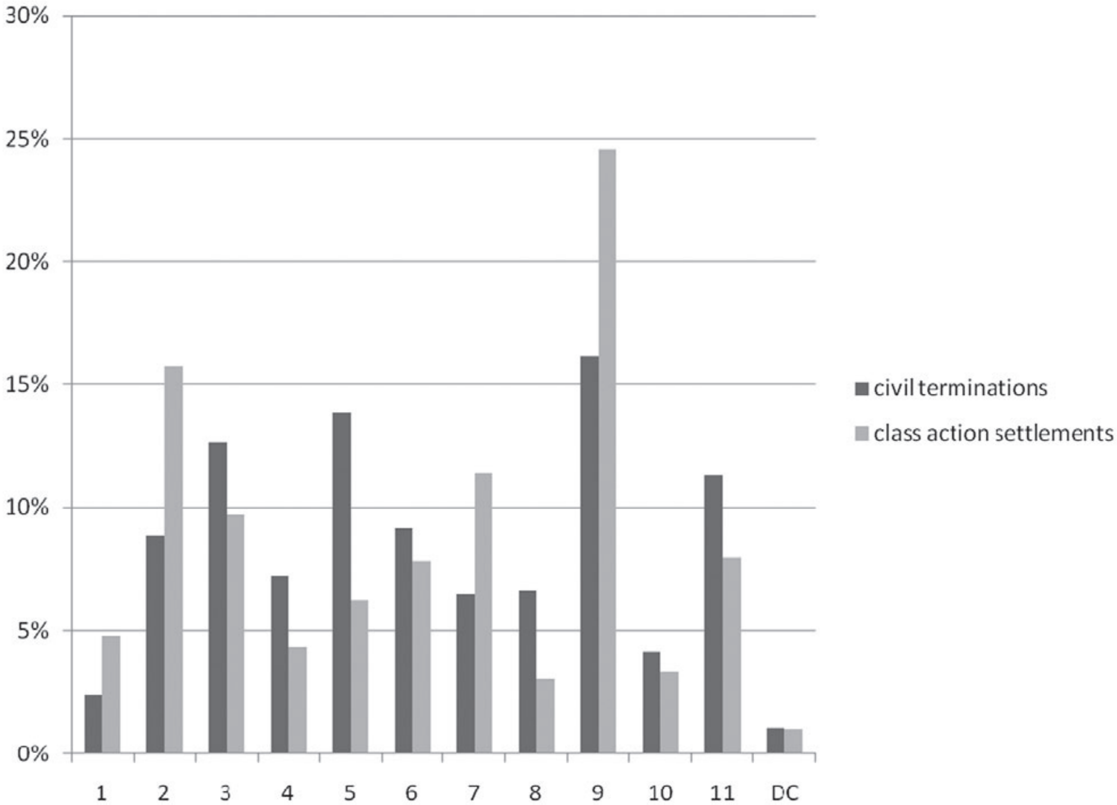
[43]See Eisenberg & Miller, supra note 15, at 59–60.

[44]See Clemmons v. Rent-a-Center W., Inc., No. 05-6307 (D. Or. Jan. 20, 2006).

[45]See Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006).

[46]See Eisenberg & Miller II, supra note 16, at 260.

Figure 1: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



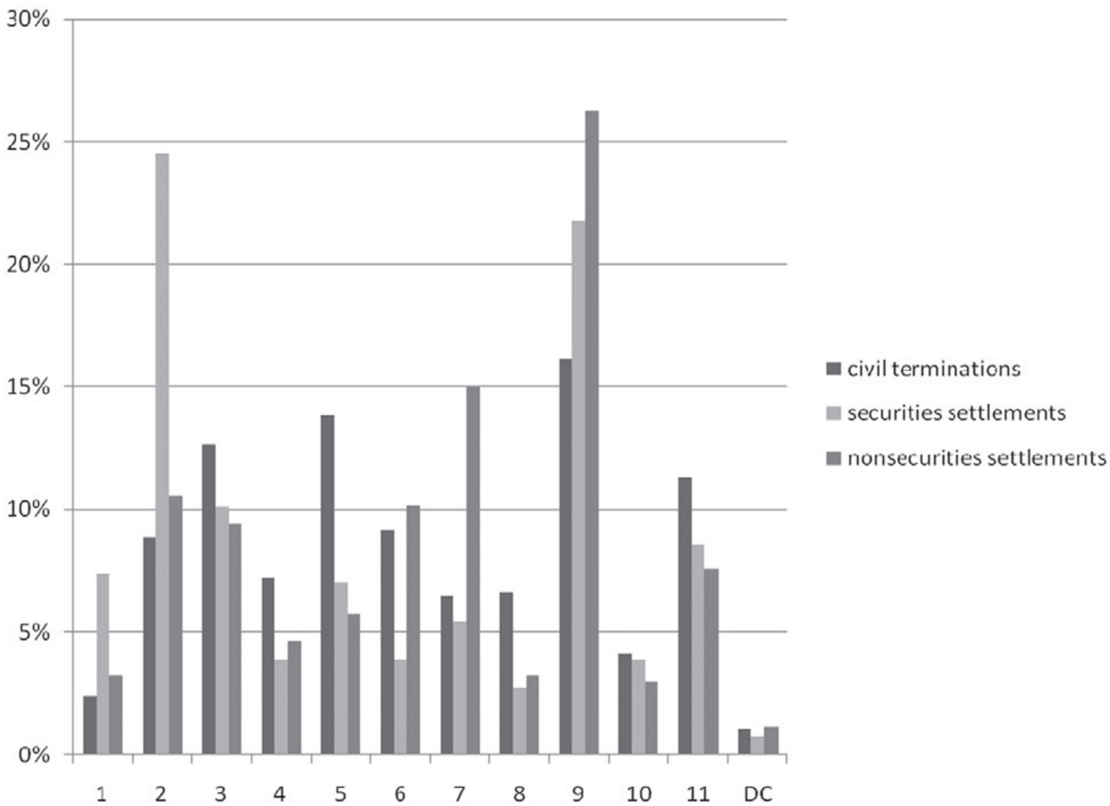
SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <http://www.uscourts.gov/stats/index.html>).

believe they can find favorable law or favorable judges. Federal class actions often involve class members spread across multiple states and, as such, class action lawyers may have a great deal of discretion over the district in which file suit.[47] One way law or judges may be favorable to class action attorneys is with regard to attorney fees. In Section III, I attempt to test whether district court judges in the circuits with the most over- and undersubscribed class action dockets award attorney fees that would attract or discourage filings there; I find no evidence that they do.

Another hypothesis is that class action suits are settled in jurisdictions where defendants are located. This might be the case because although class action lawyers may have discretion over where to file, venue restrictions might ultimately restrict cases to jurisdic-

[47]See Samuel Issacharoff & Richard Nagareda, Class Settlements Under Attack, 156 U. Pa. L. Rev. 1649, 1662 (2008).

Figure 2: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <http://www.uscourts.gov/stats/index.html>).

tions in which defendants have their corporate headquarters or other operations.[48] This might explain why the Second Circuit, with the financial industry in New York, sees so many securities suits, and why other circuits with cities with a large corporate presence, such as the First (Boston), Seventh (Chicago), and Ninth (Los Angeles and San Francisco), see more settlements than one would expect based on the size of their civil dockets.

Another hypothesis might be that class action lawyers file cases wherever it is most convenient for them to litigate the cases—that is, in the cities in which their offices are located. This, too, might explain the Second Circuit's overrepresentation in securities settlements, with prominent securities firms located in New York, as well as the

[48]See 28 U.S.C. §§ 1391, 1404, 1406, 1407. See also Foster v. Nationwide Mut. Ins. Co., No. 07-04928, 2007 U.S. Dist. LEXIS 95240 at *2–17 (N.D. Cal. Dec. 14, 2007) (transferring venue to jurisdiction where defendant's corporate headquarters were located). One prior empirical study of securities class action settlements found that 85 percent of such cases are filed in the home circuit of the defendant corporation. See James D. Cox, Randall S. Thomas & Lynn Bai, Do Differences in Pleading Standards Cause Forum Shopping in Securities Class Actions?: Doctrinal and Empirical Analyses, 2009 Wis. L. Rev. 421, 429, 440, 450–51 (2009).

overrepresentation of other settlements in some of the circuits in which major metropolitan areas with prominent plaintiffs' firms are found.

G. *Type of Relief*

Under Rule 23, district court judges can certify class actions for injunctive or declaratory relief, for money damages, or for a combination of the two.[49] In addition, settlements can provide money damages both in the form of cash as well as in the form of in-kind relief, such as coupons to purchase the defendant's products.[50]

As shown in Table 3, the vast majority of class actions settled in 2006 and 2007 provided cash relief to the class (89 percent), but a substantial number also provided in-kind relief (6 percent) or injunctive or declaratory relief (23 percent). As would be

Table 3: The Percentage of 2006 and 2007 Class Action Settlements Providing Each Type of Relief in Each Subject Area

Subject Matter	*Cash*	*In-Kind Relief*	*Injunctive or Declaratory Relief*
Securities ($n = 257$)	100%	0%	2%
Labor and employment ($n = 94$)	95%	6%	29%
Consumer ($n = 87$)	74%	30%	37%
Employee benefits ($n = 61$)	90%	0%	34%
Civil rights ($n = 61$)	49%	2%	75%
Debt collection ($n = 42$)	98%	0%	12%
Antitrust ($n = 30$)	97%	13%	7%
Commercial ($n = 13$)	92%	0%	62%
Other ($n = 43$)	77%	7%	33%
All ($n = 688$)	89%	6%	23%

NOTE: Cash: cash, securities, refunds, charitable contributions, contributions to employee benefit plans, forgiven debt, relinquishment of liens or claims, and liquidated repairs to property. In-kind relief: vouchers, coupons, gift cards, warranty extensions, merchandise, services, and extended insurance policies. Injunctive or declaratory relief: modification of terms of employee benefit plans, modification of compensation practices, changes in business practices, capital improvements, research, and unliquidated repairs to property.

SOURCES: Westlaw, PACER, district court clerks' offices.

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[49]See Fed. R. Civ. P. 23(b).

[50]These coupon settlements have become very controversial in recent years, and Congress discouraged them in the Class Action Fairness Act of 2005 by tying attorney fees to the value of coupons that were ultimately redeemed by class members as opposed to the value of coupons offered class members. See 28 U.S.C. § 1712.

expected in light of the focus on consumer cases in the debate over the anti-coupon provision in the Class Action Fairness Act of 2005,[51] consumer cases had the greatest percentage of settlements providing for in-kind relief (30 percent). Civil rights cases had the greatest percentage of settlements providing for injunctive or declaratory relief (75 percent), though almost half the civil rights cases also provided some cash relief (49 percent). The securities settlements were quite distinctive from the settlements in other areas in their singular focus on cash relief: every single securities settlement provided cash to the class and almost none provided in-kind, injunctive, or declaratory relief. This is but one example of how the focus on securities settlements in the prior empirical scholarship can lead to a distorted picture of class action litigation.

H. Settlement Money

Although securities settlements did not comprise the majority of federal class action settlements in 2006 and 2007, they did comprise the majority of the money—indeed, the *vast majority* of the money—involved in class action settlements. In Table 4, I report the total amount of ascertainable value involved in the 2006 and 2007 settlements. This amount

Table 4: The Total Amount of Money Involved in Federal Class Action Settlements in 2006 and 2007

	Total Ascertainable Monetary Value in Settlements (and Percentage of Overall Annual Total)			
Subject Matter	*2006* (n = *304*)		*2007* (n = *384*)	
Securities	$16,728	76%	$8,038	73%
Labor and employment	$266.5	1%	$547.7	5%
Consumer	$517.3	2%	$732.8	7%
Employee benefits	$443.8	2%	$280.8	3%
Civil rights	$265.4	1%	$81.7	1%
Debt collection	$8.9	<1%	$5.7	<1%
Antitrust	$1,079	5%	$660.5	6%
Commercial	$1,217	6%	$124.0	1%
Other	$1,568	7%	$592.5	5%
Total	$22,093	100%	$11,063	100%

NOTE: Dollar amounts are in millions. Includes all determinate payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.

SOURCES: Westlaw, PACER, district court clerks' offices.

[51]See, e.g., 151 Cong. Rec. H723 (2005) (statement of Rep. Sensenbrenner) (arguing that consumers are "seeing all of their gains go to attorneys and them just getting coupon settlements from the people who have allegedly done them wrong").

includes all determinate[52] payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.[53] I did not attempt to assign a value to any relief that was not valued by the district court (even if it may have been valued by class counsel). It should be noted that district courts did not often value in-kind or injunctive relief—they did so only 18 percent of the time—and very little of Table 4—only $1.3 billion, or 4 percent—is based on these valuations. It should also be noted that the amounts in Table 4 reflect only what defendants *agreed to pay*; they do not reflect the amounts that defendants *actually paid* after the claims administration process concluded. Prior empirical research has found that, depending on how settlements are structured (e.g., whether they awarded a fixed amount of money to each class member who eventually files a valid claim or a pro rata amount of a fixed settlement to each class member), defendants can end up paying much less than they agreed.[54]

Table 4 shows that in both years, around three-quarters of all the money involved in federal class action settlements came from securities cases. Thus, in this sense, the conventional wisdom about the dominance of securities cases in class action litigation is correct. Figure 3 is a graphical representation of the contribution each litigation area made to the total number and total amount of money involved in the 2006–2007 settlements.

Table 4 also shows that, in total, over $33 billion was approved in the 2006–2007 settlements. Over $22 billion was approved in 2006 and over $11 billion in 2007. It should be emphasized again that the totals in Table 4 understate the amount of money defendants agreed to pay in class action settlements in 2006 and 2007 because they exclude the unascertainable value of those settlements. This understatement disproportionately affects litigation areas, such as civil rights, where much of the relief is injunctive because, as I noted, very little of such relief was valued by district courts. Nonetheless, these numbers are, as far as I am aware, the first attempt to calculate how much money is involved in federal class action settlements in a given year.

The significant discrepancy between the two years is largely attributable to the 2006 securities settlement related to the collapse of Enron, which totaled $6.6 billion, as well as to the fact that seven of the eight 2006–2007 settlements for more than $1 billion were approved in 2006.[55] Indeed, it is worth noting that the eight settlements for more than $1

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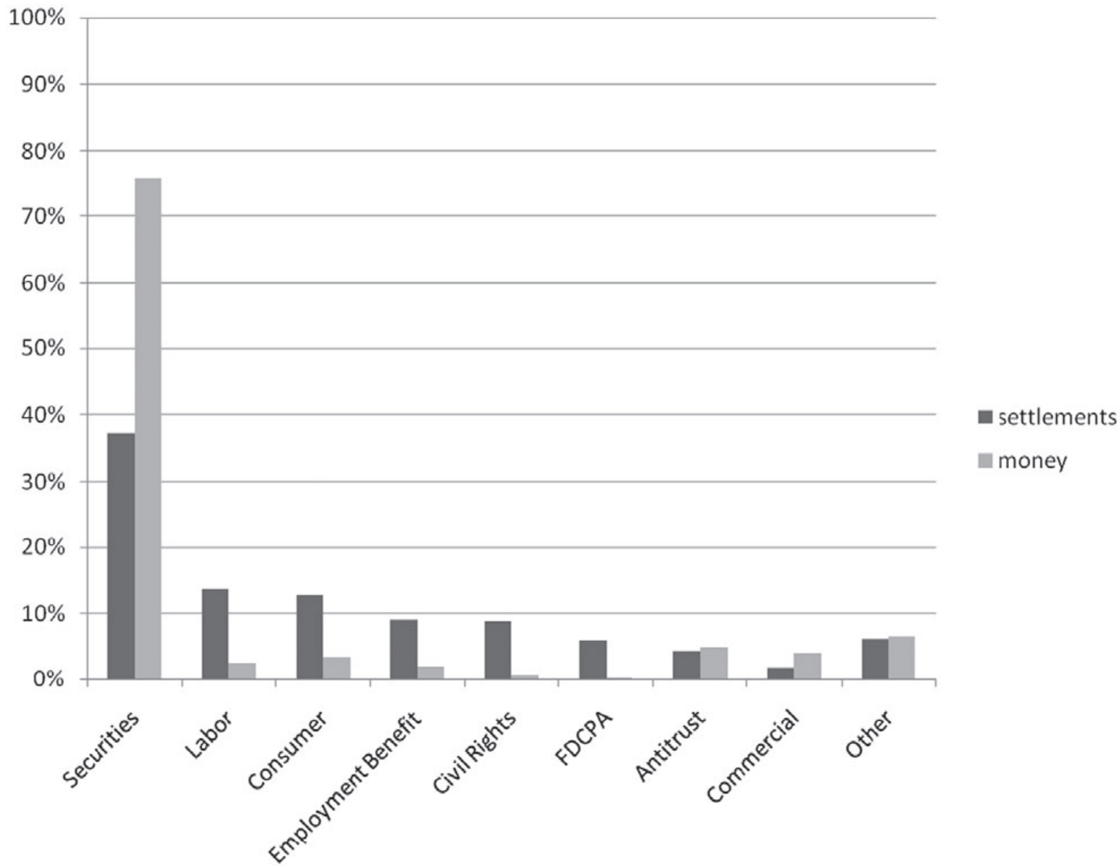
[52]For example, I excluded awards of a fixed amount of money to each class member who eventually filed a valid claim (as opposed to settlements that awarded a pro rata amount of a fixed settlement to each class member) if the total amount of money set aside to pay the claims was not set forth in the settlement documents.

[53]In some cases, the district court valued the relief in the settlement over a range. In these cases, I used the middle point in the range.

[54]See Hensler et al., supra note 7, at 427–30.

[55]See In re Enron Corp. Secs. Litig., MDL 1446 (S.D. Tex. May 24, 2006) ($6,600,000,000); In re Tyco Int'l Ltd. Multidistrict Litig., MDL 02-1335 (D.N.H. Dec. 19, 2007) ($3,200,000,000); In re AOL Time Warner, Inc. Secs. & "ERISA" Litig., MDL 1500 (S.D.N.Y. Apr. 6, 2006) ($2,500,000,000); In re: Diet Drugs Prods. Liab. Litig., MDL 1203 (E.D. Pa. May 24, 2006) ($1,275,000,000); In re Nortel Networks Corp. Secs. Litig. (Nortel I), No. 01-1855 (S.D.N.Y. Dec. 26, 2006) ($1,142,780,000); In re Royal Ahold N.V. Secs. & ERISA Litig., 03-1539 (D. Md. Jun. 16, 2006)

Figure 3: The percentage of 2006–2007 federal class action settlements and settlement money from each subject area.



SOURCES: Westlaw, PACER, district court clerks' offices.

billion accounted for almost $18 billion of the $33 billion that changed hands over the two-year period. That is, a mere 1 percent of the settlements comprised over 50 percent of the value involved in federal class action settlements in 2006 and 2007. To give some sense of the distribution of settlement size in the 2006–2007 data set, Table 5 sets forth the number of settlements with an ascertainable value beyond fee, expense, and class-representative incentive awards (605 out of the 688 settlements). Nearly two-thirds of all settlements fell below $10 million.

Given the disproportionate influence exerted by securities settlements on the total amount of money involved in class actions, it is unsurprising that the average securities settlement involved more money than the average settlement in most of the other subject areas. These numbers are provided in Table 6, which includes, again, only the settlements

($1,100,000,000); Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006) ($1,075,000,000); In re Nortel Networks Corp. Secs. Litig. (Nortel II), No. 05-1659 (S.D.N.Y. Dec. 26, 2006) ($1,074,270,000).

Table 5: The Distribution by Size of 2006–2007 Federal Class Action Settlements with Ascertainable Value

Settlement Size (in Millions)	*Number of Settlements*
[$0 to $1]	131 (21.7%)
($1 to $10]	261 (43.1%)
($10 to $50]	139 (23.0%)
($50 to $100]	33 (5.45%)
($100 to $500]	31 (5.12%)
($500 to $6,600]	10 (1.65%)
Total	605

NOTE: Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.

SOURCES: Westlaw, PACER, district court clerks' offices.

Table 6: The Average and Median Settlement Amounts in the 2006–2007 Federal Class Action Settlements with Ascertainable Value to the Class

Subject Matter	*Average*	*Median*
Securities ($n = 257$)	$96.4	$8.0
Labor and employment ($n = 88$)	$9.2	$1.8
Consumer ($n = 65$)	$18.8	$2.9
Employee benefits ($n = 52$)	$13.9	$5.3
Civil rights ($n = 34$)	$9.7	$2.5
Debt collection ($n = 40$)	$0.37	$0.088
Antitrust ($n = 29$)	$60.0	$22.0
Commercial ($n = 12$)	$111.7	$7.1
Other ($n = 28$)	$76.6	$6.2
All ($N = 605$)	$54.7	$5.1

NOTE: Dollar amounts are in millions. Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.

SOURCES: Westlaw, PACER, district court clerks' offices.

with an ascertainable value beyond fee, expense, and class-representative incentive awards. The average settlement over the entire two-year period for all types of cases was almost $55 million, but the median was only $5.1 million. (With the $6.6 billion Enron settlement excluded, the average settlement for all ascertainable cases dropped to $43.8 million and, for securities cases, dropped to $71.0 million.) The average settlements varied widely by litigation area, with securities and commercial settlements at the high end of around $100 million, but the median settlements for nearly every area were bunched around a few million dollars. It should be noted that the high average for commercial cases is largely due to one settlement above $1 billion;[56] when that settlement is removed, the average for commercial cases was only $24.2 million.

Table 6 permits comparison with the two prior empirical studies of class action settlements that sought to include nonsecurities as well as securities cases in their purview. The Eisenberg-Miller study through 2002, which included both common-fund and fee-shifting cases, found that the mean class action settlement was $112 million and the median was $12.9 million, both in 2006 dollars,[57] more than double the average and median I found for all settlements in 2006 and 2007. The Eisenberg-Miller update through 2008 included only common-fund cases and found mean and median settlements in federal court of $115 million and $11.7 million (both again in 2006 dollars),[58] respectively; this is still more than double the average and median I found. This suggests that the methodology used by the Eisenberg-Miller studies—looking at district court opinions that were published in Westlaw or Lexis—oversampled larger class actions (because opinions approving larger class actions are, presumably, more likely to be published than opinions approving smaller ones). It is also possible that the exclusion of fee-shifting cases from their data through 2008 contributed to this skew, although, given that their data through 2002 included fee-shifting cases and found an almost identical mean and median as their data through 2008, the primary explanation for the much larger mean and median in their study through 2008 is probably their reliance on published opinions. Over the same years examined by Professors Eisenberg and Miller, the Class Action Reports study found a smaller average settlement than I did ($39.5 million in 2006 dollars), but a larger median ($8.48 million in 2006 dollars). It is possible that the Class Action Reports methodology also oversampled larger class actions, explaining its larger median, but that there are more "mega" class actions today than there were before 2003, explaining its smaller mean.[59]

It is interesting to ask how significant the $16 billion that was involved annually in these 350 or so federal class action settlements is in the grand scheme of U.S. litigation. Unfortunately, we do not know how much money is transferred every year in U.S. litigation. The only studies of which I am aware that attempt even a partial answer to this question are the estimates of how much money is transferred in the U.S. "tort" system every year by a financial services consulting firm, Tillinghast-Towers Perrin.[60] These studies are not directly

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[56]See Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006) (approving $1,075,000,000 settlement).

[57]See Eisenberg & Miller, supra note 15, at 47.

[58]See Eisenberg & Miller II, supra note 16, at 262.

[59]There were eight class action settlements during 2006 and 2007 of more than $1 billion. See note 55 supra.

[60]Some commentators have been critical of Tillinghast's reports, typically on the ground that the reports overestimate the cost of the tort system. See M. Martin Boyer, Three Insights from the Canadian D&O Insurance Market: Inertia, Information and Insiders, 14 Conn. Ins. L.J. 75, 84 (2007); John Fabian Witt, Form and Substance in the Law of

comparable to the class action settlement numbers because, again, the number of tort class action settlements in 2006 and 2007 was very small. Nonetheless, as the tort system no doubt constitutes a large percentage of the money transferred in all litigation, these studies provide something of a point of reference to assess the significance of class action settlements. In 2006 and 2007, Tillinghast-Towers Perrin estimated that the U.S. tort system transferred $160 billion and $164 billion, respectively, to claimants and their lawyers.[61] The total amount of money involved in the 2006 and 2007 federal class action settlements reported in Table 4 was, therefore, roughly 10 percent of the Tillinghast-Towers Perrin estimate. This suggests that in merely 350 cases every year, federal class action settlements involve the same amount of wealth as 10 percent of the entire U.S. tort system. It would seem that this is a significant amount of money for so few cases.

IV. Attorney Fees in Federal Class Action Settlements, 2006 and 2007

A. *Total Amount of Fees and Expenses*

As I demonstrated in Section III, federal class action settlements involved a great deal of money in 2006 and 2007, some $16 billion a year. A perennial concern with class action litigation is whether class action lawyers are reaping an outsized portion of this money.[62] The 2006–2007 federal class action data suggest that these concerns may be exaggerated. Although class counsel were awarded some $5 billion in fees and expenses over this period, as shown in Table 7, only 13 percent of the settlement amount in 2006 and 20 percent of the amount in 2007 went to fee and expense awards.[63] The 2006 percentage is lower than the 2007 percentage in large part because the class action lawyers in the Enron securities settlement received less than 10 percent of the $6.6 billion corpus. In any event, the percentages in both 2006 and 2007 are far lower than the portions of settlements that contingency-fee lawyers receive in individual litigation, which are usually at least 33 percent.[64] Lawyers received less than 33 percent of settlements in fees and expenses in virtually every subject area in both years.

Counterinsurgency Damages, 41 Loy. L.A.L. Rev. 1455, 1475 n.135 (2008). If these criticisms are valid, then class action settlements would appear even more significant as compared to the tort system.

[61] See Tillinghast-Towers Perrin, U.S. Tort Costs: 2008 Update 5 (2008). The report calculates $252 billion in total tort "costs" in 2007 and $246.9 billion in 2006, id., but only 65 percent of those costs represent payments made to claimants and their lawyers (the remainder represents insurance administration costs and legal costs to defendants). See Tillinghast-Towers Perrin, U.S. Tort Costs: 2003 Update 17 (2003).

[62] See, e.g., Brian T. Fitzpatrick, Do Class Action Lawyers Make Too Little? 158 U. Pa. L. Rev. 2043, 2043–44 (2010).

[63] In some of the partial settlements, see note 29 supra, the district court awarded expenses for all the settlements at once and it was unclear what portion of the expenses was attributable to which settlement. In these instances, I assigned each settlement a pro rata portion of expenses. To the extent possible, all the fee and expense numbers in this article exclude any interest known to be awarded by the courts.

[64] See, e.g., Herbert M. Kritzer, The Wages of Risk: The Returns of Contingency Fee Legal Practice, 47 DePaul L. Rev. 267, 284–86 (1998) (reporting results of a survey of Wisconsin lawyers).

Table 7: The Total Amount of Fees and Expenses Awarded to Class Action Lawyers in Federal Class Action Settlements in 2006 and 2007

	Total Fees and Expenses Awarded in Settlements (and as Percentage of Total Settlement Amounts) in Each Subject Area	
Subject Matter	*2006* (n = *292)*	*2007* (n = *363)*
Securities	$1,899 (11%)	$1,467 (20%)
Labor and employment	$75.1 (28%)	$144.5 (26%)
Consumer	$126.4 (24%)	$65.3 (9%)
Employee benefits	$57.1 (13%)	$71.9 (26%)
Civil rights	$31.0 (12%)	$32.2 (39%)
Debt collection	$2.5 (28%)	$1.1 (19%)
Antitrust	$274.6 (26%)	$157.3 (24%)
Commercial	$347.3 (29%)	$18.2 (15%)
Other	$119.3 (8%)	$103.3 (17%)
Total	$2,932 (13%)	$2,063 (20%)

Note: Dollar amounts are in millions. Excludes settlements in which fees were not (or at least not yet) sought (22 settlements), settlements in which fees have not yet been awarded (two settlements), and settlements in which fees could not be ascertained due to indefinite award amounts, missing documents, or nonpublic side agreements (nine settlements).

Sources: Westlaw, PACER, district court clerks' offices.

It should be noted that, in some respects, the percentages in Table 7 overstate the portion of settlements that were awarded to class action attorneys because, again, many of these settlements involved indefinite cash relief or noncash relief that could not be valued.[65] If the value of all this relief could have been included, then the percentages in Table 7 would have been even lower. On the other hand, as noted above, not all the money defendants agree to pay in class action settlements is ultimately collected by the class.[66] To the extent leftover money is returned to the defendant, the percentages in Table 7 understate the portion class action lawyers received relative to their clients.

B. Method of Awarding Fees

District court judges have a great deal of discretion in how they set fee awards in class action cases. Under Rule 23, federal judges are told only that the fees they award to class counsel

[65]Indeed, the large year-to-year variation in the percentages in labor, consumer, and employee benefits cases arose because district courts made particularly large valuations of the equitable relief in a few settlements and used the lodestar method to calculate the fees in these settlements (and thereby did not consider their large valuations in calculating the fees).

[66]See Hensler et al., supra note 7, at 427–30.

must be "reasonable."[67] Courts often exercise this discretion by choosing between two approaches: the lodestar approach or the percentage-of-the-settlement approach.[68] The lodestar approach works much the way it does in individual litigation: the court calculates the fee based on the number of hours class counsel actually worked on the case multiplied by a reasonable hourly rate and a discretionary multiplier.[69] The percentage-of-the-settlement approach bases the fee on the size of the settlement rather than on the hours class counsel actually worked: the district court picks a percentage of the settlement it thinks is reasonable based on a number of factors, one of which is often the fee lodestar (sometimes referred to as a "lodestar cross-check").[70] My 2006–2007 data set shows that the percentage-of-the-settlement approach has become much more common than the lodestar approach. In 69 percent of the settlements reported in Table 7, district court judges employed the percentage-of-the-settlement method with or without the lodestar cross-check. They employed the lodestar method in only 12 percent of settlements. In the other 20 percent of settlements, the court did not state the method it used or it used another method altogether.[71] The pure lodestar method was used most often in consumer (29 percent) and debt collection (45 percent) cases. These numbers are fairly consistent with the Eisenberg-Miller data from 2003 to 2008. They found that the lodestar method was used in only 9.6 percent of settlements.[72] Their number is no doubt lower than the 12 percent number found in my 2006–2007 data set because they excluded fee-shifting cases from their study.

C. Variation in Fees Awarded

Not only do district courts often have discretion to choose between the lodestar method and the percentage-of-the-settlement method, but each of these methods leaves district courts with a great deal of discretion in how the method is ultimately applied. The courts

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[67]Fed. R. Civ. P. 23(h).

[68]The discretion to pick between these methods is most pronounced in settlements where the underlying claim was not found in a statute that would shift attorney fees to the defendant. See, e.g., In re Thirteen Appeals Arising out of San Juan DuPont Plaza Hotel Fire Litig., 56 F.3d 295, 307 (1st Cir. 1995) (permitting either percentage or lodestar method in common-fund cases); Goldberger v. Integrated Res. Inc., 209 F.3d 43, 50 (2d Cir. 2000) (same); Rawlings v. Prudential-Bache Props., Inc., 9 F.3d 513, 516 (6th Cir. 1993) (same). By contrast, courts typically used the lodestar approach in settlements arising from fee-shifting cases.

[69]See Eisenberg & Miller, supra note 15, at 31.

[70]Id. at 31–32.

[71]These numbers are based on the fee method described in the district court's order awarding fees, unless the order was silent, in which case the method, if any, described in class counsel's motion for fees (if it could be obtained) was used. If the court explicitly justified the fee award by reference to its percentage of the settlement, I counted it as the percentage method. If the court explicitly justified the award by reference to a lodestar calculation, I counted it as the lodestar method. If the court explicitly justified the award by reference to both, I counted it as the percentage method with a lodestar cross-check. If the court calculated neither a percentage nor the fee lodestar in its order, then I counted it as an "other" method.

[72]See Eisenberg & Miller II, supra note 16, at 267.

that use the percentage-of-the-settlement method usually rely on a multifactor test[73] and, like most multifactor tests, it can plausibly yield many results. It is true that in many of these cases, judges examine the fee percentages that other courts have awarded to guide their discretion.[74] In addition, the Ninth Circuit has adopted a presumption that 25 percent is the proper fee award percentage in class action cases.[75] Moreover, in securities cases, some courts presume that the proper fee award percentage is the one class counsel agreed to when it was hired by the large shareholder that is now usually selected as the lead plaintiff in such cases.[76] Nonetheless, presumptions, of course, can be overcome and, as one court has put it, "[t]here is no hard and fast rule mandating a certain percentage . . . which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case."[77] The court added: "[i]ndividualization in the exercise of a discretionary power [for fee awards] will alone retain equity as a living system and save it from sterility."[78] It is therefore not surprising that district courts awarded fees over a broad range when they used the percentage-of-the-settlement method. Figure 4 is a graph of the distribution of fee awards as a percentage of the settlement in the 444 cases where district courts used the percentage method with or without a lodestar cross-check and the fee percentages were ascertainable. These fee awards are exclusive of awards for expenses whenever the awards could be separated by examining either the district court's order or counsel's motion for fees and expenses (which was 96 percent of the time). The awards ranged from 3 percent of the settlement to 47 percent of the settlement. The average award was 25.4 percent and the median was 25 percent. Most fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent. The Eisenberg-Miller study through 2008 found a slightly lower mean (24 percent) but the same median (25 percent) among its federal court settlements.[79]

It should be noted that in 218 of these 444 settlements (49 percent), district courts said they considered the lodestar calculation as a factor in assessing the reasonableness of the fee percentages awarded. In 204 of these settlements, the lodestar multiplier resulting

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[73]The Eleventh Circuit, for example, has identified a nonexclusive list of 15 factors that district courts might consider. See Camden I Condo. Ass'n, Inc. v. Dunkle, 946 F.2d 768, 772 n.3, 775 (11th Cir. 1991). See also In re Tyco Int'l, Ltd. Multidistrict Litig., 535 F. Supp. 2d 249, 265 (D.N.H. 2007) (five factors); Goldberger v. Integrated Res. Inc., 209 F.3d 43, 50 (2d Cir. 2000) (six factors); Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000) (seven factors); In re Royal Ahold N.V. Sec. & ERISA Litig., 461 F. Supp. 2d 383, 385 (D. Md. 2006) (13 factors); Brown v. Phillips Petroleum Co., 838 F.2d 451, 454 (10th Cir. 1988) (12 factors); In re Baan Co. Sec. Litig., 288 F. Supp. 2d 14, 17 (D.D.C. 2003) (seven factors).

[74]See Eisenberg & Miller, supra note 15, at 32.

[75]See Staton v. Boeing Co., 327 F.3d 938, 968 (9th Cir. 2003).

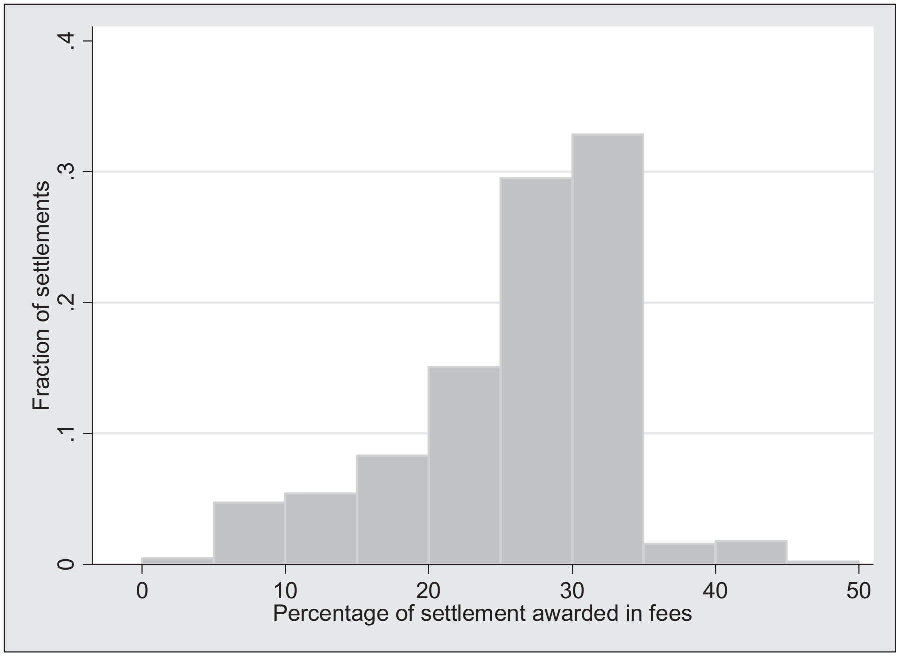
[76]See, e.g., In re Cendant Corp. Litig., 264 F.3d 201, 282 (3d Cir. 2001).

[77]*Camden I Condo. Ass'n*, 946 F.2d at 774.

[78]*Camden I Condo. Ass'n*, 946 F.2d at 774 (alterations in original and internal quotation marks omitted).

[79]See Eisenberg & Miller II, supra note 16, at 259.

Figure 4: The distribution of 2006–2007 federal class action fee awards using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

from the fee award could be ascertained. The lodestar multiplier in these cases ranged from 0.07 to 10.3, with a mean of 1.65 and a median of 1.34. Although there is always the possibility that class counsel are optimistic with their timesheets when they submit them for lodestar consideration, these lodestar numbers—only one multiplier above 6.0, with the bulk of the range not much above 1.0—strike me as fairly parsimonious for the risk that goes into any piece of litigation and cast doubt on the notion that the percentage-of-the-settlement method results in windfalls to class counsel.[80]

Table 8 shows the mean and median fee percentages awarded in each litigation subject area. The fee percentages did not appear to vary greatly across litigation subject areas, with most mean and median awards between 25 percent and 30 percent. As I report later in this section, however, after controlling for other variables, there were statistically significant differences in the fee percentages awarded in some subject areas compared to others. The mean and median percentages for securities cases were 24.7 percent and 25.0 percent, respectively; for all nonsecurities cases, the mean and median were 26.1 percent and 26.0 percent, respectively. The Eisenberg-Miller study through 2008 found mean awards ranging from 21–27 percent and medians from 19–25 percent,[81] a bit lower than the ranges in my

[80]It should be emphasized, of course, that these 204 settlements may not be representative of the settlements where the percentage-of-the-settlement method was used without the lodestar cross-check.

[81]See Eisenberg & Miller II, supra note 16, at 262.

Table 8: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

	Percentage of Settlement Awarded as Fees	
Subject Matter	*Mean*	*Median*
Securities ($n = 233$)	24.7	25.0
Labor and employment ($n = 61$)	28.0	29.0
Consumer ($n = 39$)	23.5	24.6
Employee benefits ($n = 37$)	26.0	28.0
Civil rights ($n = 20$)	29.0	30.3
Debt collection ($n = 5$)	24.2	25.0
Antitrust ($n = 23$)	25.4	25.0
Commercial ($n = 7$)	23.3	25.0
Other ($n = 19$)	24.9	26.0
All ($N = 444$)	25.7	25.0

Sources: Westlaw, PACER, district court clerks' offices.

2006–2007 data set, which again, may be because they oversampled larger settlements (as I show below, district courts awarded smaller fee percentages in larger cases).

In light of the fact that, as I noted above, the distribution of class action settlements among the geographic circuits does not track their civil litigation dockets generally, it is interesting to ask whether one reason for the pattern in class action cases is that circuits oversubscribed with class actions award higher fee percentages. Although this question will be taken up with more sophistication in the regression analysis below, it is worth describing here the mean and median fee percentages in each of the circuits. Those data are presented in Table 9. Contrary to the hypothesis set forth in Section III, two of the circuits most oversubscribed with class actions, the Second and the Ninth, were the only circuits in which the mean fee awards were *under* 25 percent. As I explain below, these differences are statistically significant and remain so after controlling for other variables.

The lodestar method likewise permits district courts to exercise a great deal of leeway through the application of the discretionary multiplier. Figure 5 shows the distribution of lodestar multipliers in the 71 settlements in which district courts used the lodestar method and the multiplier could be ascertained. The average multiplier was 0.98 and the median was 0.92, which suggest that courts were not terribly prone to exercise their discretion to deviate from the amount of money encompassed in the lodestar calculation. These 71

Table 9: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

	Percentage of Settlement Awarded as Fees	
Circuit	*Mean*	*Median*
First ($n = 27$)	27.0	25.0
Second ($n = 72$)	23.8	24.5
Third ($n = 50$)	25.4	29.3
Fourth ($n = 19$)	25.2	28.0
Fifth ($n = 27$)	26.4	29.0
Sixth ($n = 25$)	26.1	28.0
Seventh ($n = 39$)	27.4	29.0
Eighth ($n = 15$)	26.1	30.0
Ninth ($n = 111$)	23.9	25.0
Tenth ($n = 18$)	25.3	25.5
Eleventh ($n = 35$)	28.1	30.0
DC ($n = 6$)	26.9	26.0

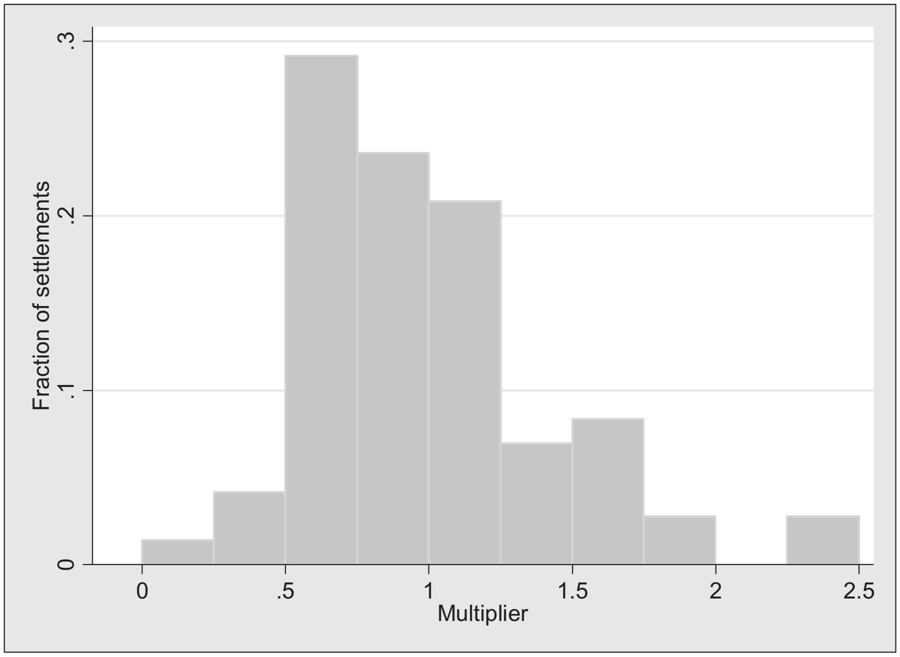
SOURCES: Westlaw, PACER, district court clerks' offices.

settlements were heavily concentrated within the consumer (median multiplier 1.13) and debt collection (0.66) subject areas. If cases in which district courts used the percentage-of-the-settlement method with a lodestar cross-check are combined with the lodestar cases, the average and median multipliers (in the 263 cases where the multipliers were ascertainable) were 1.45 and 1.19, respectively. Again—putting to one side the possibility that class counsel are optimistic with their timesheets—these multipliers appear fairly modest in light of the risk involved in any piece of litigation.

D. Factors Influencing Percentage Awards

Whether district courts are exercising their discretion over fee awards wisely is an important public policy question given the amount of money at stake in class action settlements. As shown above, district court judges awarded class action lawyers nearly $5 billion in fees and expenses in 2006–2007. Based on the comparison to the tort system set forth in Section III, it is not difficult to surmise that in the 350 or so settlements every year, district court judges

Figure 5: The distribution of lodestar multipliers in 2006–2007 federal class action fee awards using the lodestar method.



SOURCES: Westlaw, PACER, district court clerks' offices.

are awarding a significant portion of all the annual compensation received by contingency-fee lawyers in the United States. Moreover, contingency fees are arguably the engine that drives much of the noncriminal regulation in the United States; unlike many other nations, we regulate largely through the ex post, decentralized device of litigation.[82] To the extent district courts could have exercised their discretion to award billions more or billions less to class action lawyers, district courts have been delegated a great deal of leeway over a big chunk of our regulatory horsepower. It is therefore worth examining how district courts exercise their discretion over fees. This examination is particularly important in cases where district courts use the percentage-of-the-settlement method to award fees: not only do such cases comprise the vast majority of settlements, but they comprise the vast majority of the money awarded as fees. As such, the analysis that follows will be confined to the 444 settlements where the district courts used the percentage-of-the-settlement method.

As I noted, prior empirical studies have shown that fee percentages are strongly and inversely related to the size of the settlement both in securities fraud and other cases. As shown in Figure 6, the 2006–2007 data are consistent with prior studies. Regression analysis, set forth in more detail below, confirms that after controlling for other variables, fee percentage is strongly and inversely associated with settlement size among all cases, among securities cases, and among all nonsecurities cases.

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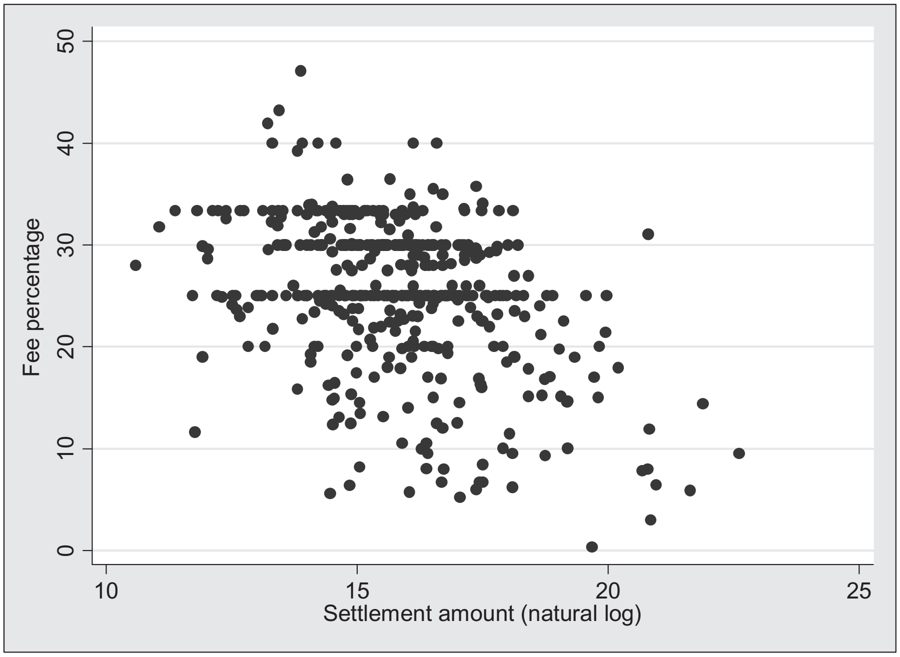
[82]See, e.g., Samuel Issacharoff, Regulating after the Fact, 56 DePaul L. Rev. 375, 377 (2007).

Figure 6: Fee awards as a function of settlement size in 2006–2007 class action cases using the percentage-of-the-settlement method with or without lodestar cross-check.



Sources: Westlaw, PACER, district court clerks' offices.

As noted above, courts often look to fee percentages in other cases as one factor they consider in deciding what percentage to award in a settlement at hand. In light of this practice, and in light of the fact that the size of the settlement has such a strong relationship to fee percentages, scholars have tried to help guide the practice by reporting the distribution of fee percentages across different settlement sizes.[83] In Table 10, I follow the Eisenberg-Miller studies and attempt to contribute to this guidance by setting forth the mean and median fee percentages, as well as the standard deviation, for each decile of the 2006–2007 settlements in which courts used the percentage-of-the-settlement method to award fees. The mean percentages ranged from over 28 percent in the first decile to less than 19 percent in the last decile.

It should be noted that the last decile in Table 10 covers an especially wide range of settlements, those from $72.5 million to the Enron settlement of $6.6 billion. To give more meaningful data to courts that must award fees in the largest settlements, Table 11 shows the last decile broken into additional cut points. When both Tables 10 and 11 are examined together, it appears that fee percentages tended to drift lower at a fairly slow pace until a settlement size of $100 million was reached, at which point the fee percentages plunged well below 20 percent, and by the time $500 million was reached, they plunged well below 15 percent, with most awards at that level under even 10 percent.

[83]See Eisenberg & Miller II, supra note 16, at 265.

Table 10: Mean, Median, and Standard Deviation of Fee Awards by Settlement Size in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

Settlement Size (in Millions)	*Mean*	*Median*	SD
[$0 to $0.75] ($n = 45$)	28.8%	29.6%	6.1%
($0.75 to $1.75] ($n = 44$)	28.7%	30.0%	6.2%
($1.75 to $2.85] ($n = 45$)	26.5%	29.3%	7.9%
($2.85 to $4.45] ($n = 45$)	26.0%	27.5%	6.3%
($4.45 to $7.0] ($n = 44$)	27.4%	29.7%	5.1%
($7.0 to $10.0] ($n = 43$)	26.4%	28.0%	6.6%
($10.0 to $15.2] ($n = 45$)	24.8%	25.0%	6.4%
($15.2 to $30.0] ($n = 46$)	24.4%	25.0%	7.5%
($30.0 to $72.5] ($n = 42$)	22.3%	24.9%	8.4%
($72.5 to $6,600] ($n = 45$)	18.4%	19.0%	7.9%

Sources: Westlaw, PACER, district court clerks' offices.

Table 11: Mean, Median, and Standard Deviation of Fee Awards of the Largest 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

Settlement Size (in Millions)	*Mean*	*Median*	SD
($72.5 to $100] ($n = 12$)	23.7%	24.3%	5.3%
($100 to $250] ($n = 14$)	17.9%	16.9%	5.2%
($250 to $500] ($n = 8$)	17.8%	19.5%	7.9%
($500 to $1,000] ($n = 2$)	12.9%	12.9%	7.2%
($1,000 to $6,600] ($n = 9$)	13.7%	9.5%	11%

Sources: Westlaw, PACER, district court clerks' offices.

Prior empirical studies have not examined whether fee awards are associated with the political affiliation of the district court judges making the awards. This is surprising because realist theories of judicial behavior would predict that political affiliation would influence fee decisions.[84] It is true that as a general matter, political affiliation may influence district court judges to a lesser degree than it does appellate judges (who have been the focus of most of the prior empirical studies of realist theories): district court judges decide more routine cases and are subject to greater oversight on appeal than appellate judges. On the other hand, class action settlements are a bit different in these regards than many other decisions made by district court judges. To begin with, class action settlements are almost never appealed, and when they are, the appeals are usually settled before the appellate court hears the case.[85] Thus, district courts have much less reason to worry about the constraint of appellate review in fashioning fee awards. Moreover, one would think the potential for political affiliation to influence judicial decision making is greatest when legal sources lead to indeterminate outcomes and when judicial decisions touch on matters that are salient in national politics. (The more salient a matter is, the more likely presidents will select judges with views on the matter and the more likely those views will diverge between Republicans and Democrats.) Fee award decisions would seem to satisfy both these criteria. The law of fee awards, as explained above, is highly discretionary, and fee award decisions are wrapped up in highly salient political issues such as tort reform and the relative power of plaintiffs' lawyers and corporations. I would expect to find that judges appointed by Democratic presidents awarded higher fees in the 2006–2007 settlements than did judges appointed by Republican presidents.

The data, however, do not appear to bear this out. Of the 444 fee awards using the percentage-of-the-settlement approach, 52 percent were approved by Republican appointees, 45 percent were approved by Democratic appointees, and 4 percent were approved by non-Article III judges (usually magistrate judges). The mean fee percentage approved by Republican appointees (25.6 percent) was slightly *greater* than the mean approved by Democratic appointees (24.9 percent). The medians (25 percent) were the same.

To examine whether the realist hypothesis fared better after controlling for other variables, I performed regression analysis of the fee percentage data for the 427 settlements approved by Article III judges. I used ordinary least squares regression with the dependent variable the percentage of the settlement that was awarded in fees.[86] The independent

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[84]See generally C.K. Rowland & Robert A. Carp, Politics and Judgment in Federal District Courts (1996). See also Max M. Schanzenbach & Emerson H. Tiller, Reviewing the Sentencing Guidelines: Judicial Politics, Empirical Evidence, and Reform, 75 U. Chi. L. Rev. 715, 724–25 (2008).

[85]See Brian T. Fitzpatrick, The End of Objector Blackmail? 62 Vand. L. Rev. 1623, 1640, 1634–38 (2009) (finding that less than 10 percent of class action settlements approved by federal courts in 2006 were appealed by class members).

[86]Professors Eisenberg and Miller used a square root transformation of the fee percentages in some of their regressions. I ran all the regressions using this transformation as well and it did not appreciably change the results. I also ran the regressions using a natural log transformation of fee percentage and with the dependent variable natural log of the fee amount (as opposed to the fee percentage). None of these models changed the results

variables were the natural log of the amount of the settlement, the natural log of the age of the case (in days), indicator variables for whether the class was certified as a settlement class, for litigation subject areas, and for circuits, as well as indicator variables for whether the judge was appointed by a Republican or Democratic president and for the judge's race and gender.[87]

The results for five regressions are in Table 12. In the first regression (Column 1), only the settlement amount, case age, and judge's political affiliation, gender, and race were included as independent variables. In the second regression (Column 2), all the independent variables were included. In the third regression (Column 3), only securities cases were analyzed, and in the fourth regression (Column 4), only nonsecurities cases were analyzed.

In none of these regressions was the political affiliation of the district court judge associated with fee percentage in a statistically significant manner.[88] One possible explanation for the lack of evidence for the realist hypothesis is that district court judges elevate other preferences above their political and ideological ones. For example, district courts of both political stripes may succumb to docket-clearing pressures and largely rubber stamp whatever fee is requested by class counsel; after all, these requests are rarely challenged by defendants. Moreover, if judges award class counsel whatever they request, class counsel will not appeal and, given that, as noted above, class members rarely appeal settlements (and when they do, often settle them before the appeal is heard),[89] judges can thereby virtually guarantee there will be no appellate review of their settlement decisions. Indeed, scholars have found that in the vast majority of cases, the fees ultimately awarded by federal judges are little different than those sought by class counsel.[90]

Another explanation for the lack of evidence for the realist hypothesis is that my data set includes both unpublished as well as published decisions. It is thought that realist theories of judicial behavior lose force in unpublished judicial decisions. This is the case because the kinds of questions for which realist theories would predict that judges have the most room to let their ideologies run are questions for which the law is ambiguous; it is

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appreciably. The regressions were also run with and without the 2006 Enron settlement because it was such an outlier ($6.6 billion); the case did not change the regression results appreciably. For every regression, the data and residuals were inspected to confirm the standard assumptions of linearity, homoscedasticity, and the normal distribution of errors.

[87]Prior studies of judicial behavior have found that the race and sex of the judge can be associated with his or her decisions. See, e.g., Adam B. Cox & Thomas J. Miles, Judging the Voting Rights Act, 108 Colum. L. Rev. 1 (2008); Donald R. Songer et al., A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals, 56 J. Pol. 425 (1994).

[88]Although these coefficients are not reported in Table 8, the gender of the district court judge was never statistically significant. The race of the judge was only occasionally significant.

[89]See Fitzpatrick, supra note 85, at 1640.

[90]See Eisenberg & Miller II, supra note 16, at 270 (finding that state and federal judges awarded the fees requested by class counsel in 72.5 percent of settlements); Eisenberg, Miller & Perino, supra note 9, at 22 ("judges take a light touch when it comes to reviewing fee requests").

Table 12: Regression of Fee Percentages in 2006–2007 Settlements Using Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

	Regression Coefficients (and Robust t *Statistics)*				
Independent Variable	*1*	*2*	*3*	*4*	*5*
Settlement amount (natural log)	−1.77 (−5.43)**	−1.76 (−8.52)**	−1.76 (−7.16)**	−1.41 (−4.00)**	−1.78 (−8.67)**
Age of case (natural log days)	1.66 (2.31)**	1.99 (2.71)**	1.13 (1.21)	1.72 (1.47)	2.00 (2.69)**
Judge's political affiliation (1 = Democrat)	−0.630 (−0.83)	−0.345 (−0.49)	0.657 (0.76)	−1.43 (−1.20)	−0.232 (−0.34)
Settlement class		0.150 (0.19)	0.873 (0.84)	−1.62 (−1.00)	0.124 (0.15)
1st Circuit		3.30 (2.74)**	4.41 (3.32)**	0.031 (0.01)	0.579 (0.51)
2d Circuit		0.513 (0.44)	−0.813 (−0.61)	2.93 (1.14)	−2.23 (−1.98)**
3d Circuit		2.25 (1.99)**	4.00 (3.85)**	−1.11 (−0.50)	—
4th Circuit		2.34 (1.22)	0.544 (0.19)	3.81 (1.35)	—
5th Circuit		2.98 (1.90)*	1.09 (0.65)	6.11 (1.97)**	0.230 (0.15)
6th Circuit		2.91 (2.28)**	0.838 (0.57)	4.41 (2.15)**	—
7th Circuit		2.55 (2.23)**	3.22 (2.36)**	2.90 (1.46)	−0.227 (−0.20)
8th Circuit		2.12 (0.97)	−0.759 (−0.24)	3.73 (1.19)	−0.586 (−0.28)
9th Circuit		—	—	—	−2.73 (−3.44)**
10th Circuit		1.45 (0.94)	−0.254 (−0.13)	3.16 (1.29)	—
11th Circuit		4.05 (3.44)**	3.85 (3.07)**	4.14 (1.88)*	—
DC Circuit		2.76 (1.10)	2.60 (0.80)	2.41 (0.64)	—
Securities case		—			—
Labor and employment case		2.93 (3.00)**		—	2.85 (2.94)**
Consumer case		−1.65 (−0.88)		−4.39 (−2.20)**	−1.62 (−0.88)
Employee benefits case		−0.306 (−0.23)		−4.23 (−2.55)**	−0.325 (−0.26)
Civil rights case		1.85 (0.99)		−2.05 (−0.97)	1.76 (0.95)
Debt collection case		−4.93 (−1.71)*		−7.93 (−2.49)**	−5.04 (−1.75)*
Antitrust case		3.06 (2.11)**		0.937 (0.47)	2.78 (1.98)**

Table 12 *Continued*

	Regression Coefficients (and Robust t *Statistics)*				
Independent Variable	*1*	*2*	*3*	*4*	*5*
Commercial case		−0.028		−2.65	0.178
		(−0.01)		(−0.73)	(0.05)
Other case		−0.340		−3.73	−0.221
		(−0.17)		(−1.65)	(−0.11)
Constant	42.1	37.2	43.0	38.2	40.1
	(7.29)**	(6.08)**	(6.72)**	(4.14)**	(7.62)**
N	427	427	232	195	427
R^2	.20	.26	.37	.26	.26
Root MSE	6.59	6.50	5.63	7.24	6.48

NOTE: **significant at the 5 percent level; *significant at the 10 percent level. Standard errors in Column 1 were clustered by circuit. Indicator variables for race and gender were included in each regression but not reported.
SOURCES: Westlaw, PACER, district court clerks' offices, Federal Judicial Center.

thought that these kinds of questions are more often answered in published opinions.[91] Indeed, most of the studies finding an association between ideological beliefs and case outcomes were based on data sets that included only published opinions.[92] On the other hand, there is a small but growing number of studies that examine unpublished opinions as well, and some of these studies have shown that ideological effects persisted.[93] Nonetheless, in light of the discretion that judges exercise with respect to fee award decisions, it hard to characterize *any* decision in this area as "unambiguous." Thus, even when unpublished, I would have expected the fee award decisions to exhibit an association with ideological beliefs. Thus, I am more persuaded by the explanation suggesting that judges are more concerned with clearing their dockets or insulating their decisions from appeal in these cases than with furthering their ideological beliefs.

In all the regressions, the size of the settlement was strongly and inversely associated with fee percentages. Whether the case was certified as a settlement class was not associated

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[91]See, e.g., Ahmed E. Taha, Data and Selection Bias: A Case Study, 75 UMKC L. Rev. 171, 179 (2006).

[92]Id. at 178–79.

[93]See, e.g., David S. Law, Strategic Judicial Lawmaking: Ideology, Publication, and Asylum Law in the Ninth Circuit, 73 U. Cin. L. Rev. 817, 843 (2005); Deborah Jones Merritt & James J. Brudney, Stalking Secret Law: What Predicts Publication in the United States Courts of Appeals, 54 Vand. L. Rev. 71, 109 (2001); Donald R. Songer, Criteria for Publication of Opinions in the U.S. Courts of Appeals: Formal Rules Versus Empirical Reality, 73 Judicature 307, 312 (1990). At the trial court level, however, the studies of civil cases have found no ideological effects. See Laura Beth Nielsen, Robert L. Nelson & Ryon Lancaster, Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States, 7 J. Empirical Legal Stud. 175, 192–93 (2010); Denise M. Keele et al., An Analysis of Ideological Effects in Published Versus Unpublished Judicial Opinions, 6 J. Empirical Legal Stud. 213, 230 (2009); Orley Ashenfelter, Theodore Eisenberg & Stewart J. Schwab, Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes, 24 J. Legal Stud. 257, 276–77 (1995). With respect to criminal cases, there is at least one study at the trial court level that has found ideological effects. See Schanzenbach & Tiller, supra note 81, at 734.

with fee percentages in any of the regressions. The age of the case at settlement was associated with fee percentages in the first two regressions, and when the settlement class variable was removed in regressions 3 and 4, the age variable became positively associated with fee percentages in nonsecurities cases but remained insignificant in securities cases. Professors Eisenberg and Miller likewise found that the age of the case at settlement was positively associated with fee percentages in their 1993–2002 data set,[94] and that settlement classes were not associated with fee percentages in their 2003–2008 data set.[95]

Although the structure of these regressions did not permit extensive comparisons of fee awards across different litigation subject areas, fee percentages appeared to vary somewhat depending on the type of case that settled. Securities cases were used as the baseline litigation subject area in the second and fifth regressions, permitting a comparison of fee awards in each nonsecurities area with the awards in securities cases. These regressions show that awards in a few areas, including labor/employment and antitrust, were more lucrative than those in securities cases. In the fourth regression, which included only nonsecurities cases, labor and employment cases were used as the baseline litigation subject area, permitting comparison between fee percentages in that area and the other nonsecurities areas. This regression shows that fee percentages in several areas, including consumer and employee benefits cases, were lower than the percentages in labor and employment cases.

In the fifth regression (Column 5 of Table 12), I attempted to discern whether the circuits identified in Section III as those with the most overrepresented (the First, Second, Seventh, and Ninth) and underrepresented (the Fifth and Eighth) class action dockets awarded attorney fees differently than the other circuits. That is, perhaps district court judges in the First, Second, Seventh, and Ninth Circuits award greater percentages of class action settlements as fees than do the other circuits, whereas district court judges in the Fifth and Eighth Circuits award smaller percentages. To test this hypothesis, in the fifth regression, I included indicator variables only for the six circuits with unusual dockets to measure their fee awards against the other six circuits combined. The regression showed statistically significant association with fee percentages for only two of the six unusual circuits: the Second and Ninth Circuits. In both cases, however, the direction of the association (i.e., the Second and Ninth Circuits awarded *smaller* fees than the baseline circuits) was opposite the hypothesized direction.[96]

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[94]See Eisenberg & Miller, supra note 15, at 61.

[95]See Eisenberg & Miller II, supra note 16, at 266.

[96]This relationship persisted when the regressions were rerun among the securities and nonsecurities cases separately. I do not report these results, but, even though the First, Second, and Ninth Circuits were oversubscribed with securities class action settlements and the Fifth, Sixth, and Eighth were undersubscribed, there was no association between fee percentages and any of these unusual circuits except, again, the inverse association with the Second and Ninth Circuits. In nonsecurities cases, even though the Seventh and Ninth Circuits were oversubscribed and the Fifth and the Eighth undersubscribed, there was no association between fee percentages and any of these unusual circuits except again for the inverse association with the Ninth Circuit.

The lack of the expected association with the unusual circuits might be explained by the fact that class action lawyers forum shop along dimensions other than their potential fee awards; they might, for example, put more emphasis on favorable class-certification law because there can be no fee award if the class is not certified. As noted above, it might also be the case that class action lawyers are unable to engage in forum shopping at all because defendants are able to transfer venue to the district in which they are headquartered or another district with a significant connection to the litigation.

It is unclear why the Second and Ninth Circuits were associated with lower fee awards despite their heavy class action dockets. Indeed, it should be noted that the Ninth Circuit was the baseline circuit in the second, third, and fourth regressions and, in all these regressions, district courts in the Ninth Circuit awarded smaller fees than courts in many of the other circuits. The lower fees in the Ninth Circuit may be attributable to the fact that it has adopted a presumption that the proper fee to be awarded in a class action settlement is 25 percent of the settlement.[97] This presumption may make it more difficult for district court judges to award larger fee percentages. The lower awards in the Second Circuit are more difficult to explain, but it should be noted that the difference between the Second Circuit and the baseline circuits went away when the fifth regression was rerun with only nonsecurities cases.[98] This suggests that the awards in the Second Circuit may be lower *only* in securities cases. In any event, it should be noted that the lower fee awards from the Second and Ninth Circuits contrast with the findings in the Eisenberg-Miller studies, which found no intercircuit differences in fee awards in common-fund cases in their data through 2008.[99]

V. Conclusion

This article has attempted to fill some of the gaps in our knowledge about class action litigation by reporting the results of an empirical study that attempted to collect all class action settlements approved by federal judges in 2006 and 2007. District court judges approved 688 class action settlements over this two-year period, involving more than $33 billion. Of this $33 billion, nearly $5 billion was awarded to class action lawyers, or about 15 percent of the total. District courts typically awarded fees using the highly discretionary percentage-of-the-settlement method, and fee awards varied over a wide range under this method, with a mean and median around 25 percent. Fee awards using this method were strongly and inversely associated with the size of the settlement. Fee percentages were positively associated with the age of the case at settlement. Fee percentages were not associated with whether the class action was certified as a settlement class or with the

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[97]See note 75 supra. It should be noted that none of the results from the previous regressions were affected when the Ninth Circuit settlements were excluded from the data.

[98]The Ninth Circuit's differences persisted.

[99]See Eisenberg & Miller II, supra note 16, at 260.

political affiliation of the judge who made the award. Finally, there appeared to be some variation in fee percentages depending on subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all of the other litigation areas, and district courts in the Ninth Circuit and in the Second Circuit (in securities cases) awarded lower fee percentages than district courts in several other circuits. The lower awards in the Ninth Circuit may be attributable to the fact that it is the only circuit that has adopted a presumptive fee percentage of 25 percent.

Exhibit 17

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION This Document Relates To:	)	Master File No. 12 MD 2335 (LAK)
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corp., et al.	)	12 Civ. 3066 (LAK)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corp., et al.	)	12 Civ. 3067 (LAK)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corp, et al.	)	12 Civ. 3470 (LAK)
Carver, et al. v. The Bank of New York Mellon, et al.	)	12 Civ. 9248 (LAK)
Fletcher v. The Bank of New York Mellon, et al.	)	14 Civ. 5496 (LAK)

JOINT DECLARATION OF SHARAN NIRMUL AND DANIEL P. CHIPLOCK IN SUPPORT OF (1) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE SETTLEMENT AND THE PROPOSED PLAN OF ALLOCATION, AS WELL AS CERTIFICATION OF THE SETTLEMENT CLASS, AND (2) LEAD SETTLEMENT COUNSEL'S MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS

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EXHIBITS

EX.	DESCRIPTION
1.	Declaration of Daniel P. Chiplock In Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Lieff Cabraser Heimann and Bernstein, LLP.
2.	Declaration of Joseph H. Meltzer in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Kessler Topaz Meltzer & Check LLP
3.	Declaration of Lynn Lincoln Sarko in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Keller Rohrback L.L.P.
4.	Declaration of Jonathan G. Axelrod in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Beins, Axelrod, P.C.
5.	Declaration of J. Brian McTigue in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of McTigue Law LLP
6.	Declaration of Frank R. Schirripa in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Hach Rose Schirripa & Cheverie LLP
7.	Declaration of Christopher L. Lebsock in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Hausfeld LLP
8.	Declaration of Michael A. Lesser in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Thornton Law Firm, LLP
9.	Declaration of Brian K. Murphy in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Murray Murphy Moul & Basil LLP
10.	Declaration of Jeffrey Angelovich in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Nix, Patterson & Roach, LLP
11.	Affidavit of Jerry Lee Kalmar in Support of Motion for Final Approval of Settlement and Award of Attorneys' Fees and Service Awards, and Reimbursement of Litigation Expenses
12.	Declaration of Mary Beth Foley, Esq. in Support of Motion for Final Approval of Settlement and Award of Attorneys' Fees and Service Awards and Reimbursement of Litigation Expenses
13.	Declaration of Joseph M. Marotta, Esq. in Support of Motion for Final Approval of Settlement and Award of Attorneys' Fees and Service Awards and Reimbursement of Litigation Expenses
14.	Declaration of Gino Benedetti, Esq. in Support of Motion for Final Approval of Settlement, Award of Attorneys' Fees and Service Awards and Reimbursement of Litigation Expenses
15.	Affidavit of Stephen J. Cirami Regarding (A) Mailing of the Notice; (B) Publication of the Summary Notice; And (C) Report on Requests For Exclusion Received to Date

SHARAN NIRMUL and DANIEL P. CHIPLOCK declare as follows:

1. We, Sharan Nirmul and Daniel P. Chiplock, are partners of the law firms Kessler Topaz Meltzer & Check, LLP ("KTMC") and Lieff Cabraser Heimann & Bernstein, LLP ("LCHB"), respectively (collectively, "Co-Lead Customer Counsel"). KTMC represents Southeastern Pennsylvania Transportation Authority ("SEPTA") and LCHB represents International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund ("IUOE Local 39"), the Ohio Police & Fire Pension Fund ("OP&F"), and the Ohio School Employees' Retirement System ("SERS") (collectively, "Lead Customer Plaintiffs" or "Plaintiffs") in the consolidated Customer Class Cases[1] (the "Actions" or, collectively, the "Action"). We have personal knowledge of the matters set forth herein based on our active, day-to-day supervision and participation in the prosecution and settlement of the claims asserted on behalf of Plaintiffs and the putative Class[2] in this Action.

2. We respectfully submit this declaration in support of (1) Lead Plaintiffs' Motion for Final Approval of the Settlement and the Proposed Plan of Allocation, as well as Certification of the Settlement Class, and (2) Lead Settlement Counsel's[3] Motion For Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to Plaintiffs, submitted herewith.

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[1] "Customer Class Cases" refers to *Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corp., et al.*, No. 12-CV-3066 (LAK) (JLC) (the "SEPTA Action"); *International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corp., et al.*, No. 12-CV-3067 (LAK) (JLC) (the "IUOE Local 39 Action"); and *Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corp., et al.*, No. 12-CV-3470 (LAK) (JLC) (the "Ohio Action").

[2] All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation of Settlement dated March 19, 2015 ("Stipulation") (Dkt. No. 583-1).

[3] Lead Settlement Counsel are Co-Lead Customer Counsel and McTigue Law LLP, which is one of the three firms that served as counsel for plaintiffs ("ERISA Plaintiffs") in the two ERISA class actions that were consolidated with the Customer Class Cases, *Carver v. The Bank of New York Mellon, et al.* ("Carver"), No. 12-cv-9248 (S.D.N.Y) and *Fletcher v. Bank of New York Mellon et al*. ("*Fletcher*"), Case No. 14-cv-05496 (S.D.N.Y.) (collectively the "ERISA Actions"). The ERISA Actions were also settled as part of this Settlement.

3. This declaration does not detail each and every event that occurred since the first of these Actions was commenced more than four years ago. Rather, it provides the Court with highlights of the litigation, the events leading to the Settlement, and the basis upon which Customer Counsel[4] and Plaintiffs recommend its approval, seek an award of attorneys' fees, service awards for Plaintiffs, and reimbursement of litigation expenses.

I. PRELIMINARY STATEMENT

4. The Settlement before the Court is the culmination of over four years of hard-fought litigation in federal court. Simply put, the litigation sought to recoup profits that, Plaintiffs alleged, Defendants wrongfully took from custodial clients who used Defendants' "standing instructions" ("SI") foreign exchange ("FX") services. Plaintiffs alleged that, contrary to Defendants' promises of providing "best execution" or "extremely competitive" market-based rates to their custodial clients, Defendants purposefully assigned rates to custodial SI FX trades that were based on the extreme ends of the day's trading range, rather than more competitive rates that were available throughout the day, and profited from the difference. Plaintiffs alleged that Defendants' practice gave rise to, among other things, breaches of contract, breaches of fiduciary duty, and violation of state consumer-protection laws.

5. Establishing Defendants' liability was extremely complex and a battle of proof through extensive and highly contested discovery fought on numerous fronts. Significant efforts were expended by both sides prior to the litigation being transferred to this Court. Following the MDL transfer to this Court on April 16, 2012 (*see* Dkt. No. 1[5] ("MDL Transfer Order")), the

[4] For purposes of this declaration, "Customer Counsel" shall refer to all counsel for Plaintiffs in the Customer Class Cases.

[5] Unless otherwise specified, references to "Dkt. No." herein are to docket entries in the main MDL docket, or Case No. 1:12-md-02335-LAK-JLC. References to "IUOE Local 39 Dkt. No." are to docket entries in Case No. 1:12-md-03067-LAK-JLC. References to "SEPTA Dkt No." are to docket entries in Case No. 1:12-cv-03066-LAK-JLC.

appointment of Plaintiffs' Executive Committee[6] and Plaintiffs' Steering Committee,[7] and the Court's authorization of coordinated fact discovery in May 2013, the litigation continued at a furious pace aided by the Court's aggressive pre-trial schedule. A Master Customer Class Complaint ("Master Complaint") filed in July 2013 streamlined the claims in the Customer Class Cases.

6. As set forth in the Master Complaint, during the Class Period (currently defined as January 12, 1999 to January 17, 2012), BNYM (or the "Bank") and each of its predecessor entities, Mellon Bank, N.A. ("Mellon") and Bank of New York ("BNY")[8], provided custodial services to Plaintiffs and members of the Class, including executing FX transactions for Class Members pursuant to "standing instructions." Under "standing instructions," as opposed to "direct" FX transactions, a custodial FX service provider acquires foreign or domestic currency to effectuate a client's purchase or sale of a foreign security (or the repatriation of a foreign dividend) on an as-needed basis without the direct involvement of either the custodial client's investment staff or outside investment managers.

References to "Ohio Dkt No." are to docket entries in Case No. 1:12-cv-3470-LAK-JLC. References to "DOJ Dkt. No." are to docket entries in Case No. 1:11-cv-06969-LAK.

[6] By order dated June 22, 2012, this Court appointed KTMC and LCHB, together with Bernstein Litowitz Berger & Grossmann, LLP ("BLBG" or "Securities Counsel") (counsel for plaintiffs in the securities class action (described further below) that was also coordinated with the Customer Class Cases) as the three members of Plaintiffs' Executive Committee charged with coordinating the activities of all Plaintiffs' counsel and discovery in the actions coordinated and/or consolidated before the Court.

[7] In its June 22, 2012 Order, the Court also appointed a Plaintiffs' Steering Committee which is today comprised of Hausfeld LLP (additional counsel in the IUOE Local 39 Action), Hach Rose Schirripa & Cheverie LLP (additional counsel in the IUOE Local 39 Action), Thornton Law Firm LLP (Relator's counsel and additional counsel in the IUOE Local 39 A ction), Nix Patterson & Roach LLP (additional counsel in the SEPTA Action), Murray Murphy Moul + Basil LLP (additional counsel in the Ohio Action), and Cotchett Pitre & McCarthy, LLP (counsel in the related individual action styled *Los Angeles County Employees Retirement Assoc. ex rel. FX Analytics v. The Bank of New York Mellon Corp*., 12-civ-8990-LAK (S.D.N.Y.) and *In re Bank of New York Mellon Corp. False Claims Act Foreign Exchange Litigation*, 12-civ-3064-LAK (S.D.N.Y.) (collectively, the "LACERA/LADWP Actions", that are still pending before the Court). Two other firms, Harwood Feffer LLP and Robbins Umeda LLP, whose actions were subsequently dismissed, are no longer part of the Plaintiffs' Steering Committee.

[8] Prior to the merger of BNY and Mellon in 2007 (the "Merger"), each entity operated separately, with its own set of customers, its own FX processes, and its own set of contracts and disclosure documents concerning those processes. This fact assumed heightened importance as the litigation progressed, as further described below.

7. Plaintiffs alleged that "direct" or "negotiated" sales or purchases of foreign or domestic currency traditionally yielded modest profits to a purchaser or seller of currency, perhaps up to two to three basis points ("bps") of "spread" per unit as compared with the interbank exchange rate applicable to the currency at the time. Meanwhile, SI resulted in spreads to BNYM of many multiples over and above what BNYM earned in the direct FX context, notwithstanding BNYM's promises, *inter alia*, (1) to provide "best execution" for its custodial FX customers, (2) that SI services were "free of charge," and (3) that the terms of SI FX transactions would not be less favorable to a custodial customer than the terms offered by BNYM to unrelated parties in a "comparable" arm's-length FX transaction.

8. Indeed, nearly a year after the first of the above-referenced Actions was filed, BNYM admitted it assigned prices to SI FX trades that were at or near the high or low ends of the range of prices reported in the interbank market for currency transactions for the relevant pricing cycle. This hitherto undisclosed pricing practice allowed BNYM to record margins that were orders of magnitude greater than those it earned on direct transactions with its custodial customers.

9. Plaintiffs further alleged, and sought discovery to demonstrate, that: (a) Defendants knew that they made higher profits out of their SI transactions than they did from negotiated transactions, often by a tenfold or twentyfold margin; (b) Defendants also knew that more "transparency" with custodial clients about their SI pricing would cause such clients to migrate to negotiated FX transactions or alternative FX platforms and drastically reduce Defendants' profits; (c) Defendants thus did not want full transparency, and were therefore (in the words of one executive) "late to the transparency space" relative to their competitors; and

(d) Defendants made numerous common misrepresentations in various documents and on the internet that misled custodial clients concerning their conduct with respect to SI trades.

10. In response, Defendants argued, *inter alia*, that their statements regarding SI FX were not deceptive or misleading, and that they breached no fiduciary duties to custodial customers when performing "ancillary" services such as SI FX pursuant to specified instructions. Defendants also argued that BNYM's custodial clients, and in particular their outside investment managers ("IMs") (who in many cases served as intermediaries between the custodial customers and BNYM), knew or should have known that SI FX transactions were subject to "mark-ups" in exchange for the asserted convenience of the service provided.

11. BNYM's response to this litigation was highly aggressive. After Plaintiffs' claims survived motions to dismiss, and once Defendants were required to answer the Master Complaint, Defendants filed counterclaims against two of the three Lead Customer Plaintiffs (IUOE Local 39 and SEPTA), and third-party claims against the individual trustees of IUOE Local 39. Defendants also pleaded "conditional" counterclaims against members of the putative Class. Defendants alleged that the targets of these counterclaims—who were all present or former custodial customers of BNYM—were required to indemnify BNYM for the fees and costs it incurred in defending not just the Customer Class Cases, but the related governmental litigation as well (in particular, the suit brought by the United States Department of Justice ("DOJ")). In short, BNYM, having already admitted that it consciously priced SI FX trades in a manner that was continually disadvantageous to customers, having been compelled to answer Plaintiffs' charges of breaches of fiduciary duty and of contract, and having been accused of outright fraud by the DOJ, nonetheless claimed that its own customers (specifically, Plaintiffs and the Class) bore ultimate responsibility for its conduct (and for the fact that the DOJ was

suing it). Plaintiffs moved to dismiss BNYM's counterclaims, but they were sustained by the Court at least with respect to SEPTA, IUOE Local 39, and the individual trustees of IUOE Local 39. The Court dismissed BNYM's "conditional" counterclaims against the putative Class, as essentially premature.

12. From the time in 2013 when discovery in the Customer Class Cases was coordinated with that of the lawsuit brought by the DOJ, Class Counsel (and particularly, Co-Lead Customer Counsel in their role as members of Plaintiffs' Executive Committee) worked very closely with the team from United States Attorney's Office ("USAO") to coordinate discovery and to achieve objectives that were of mutual benefit to the Class and to the United States. This coordination involved, from the outset, multiple calls and correspondence per week between Co-Lead Customer Counsel and the USAO, which evolved to (typically) multiple contacts per day during the most intense final several months of the fact discovery period (September 2014 through January 2015). The New York Attorney General ("NYAG") participated in this coordination as well (but to a more limited extent) beginning in 2014, after its claims were largely sustained in state court.

13. Between May 2013 and January 2015, the parties exchanged roughly 30 million pages of party document discovery, with more than 25 million of them being produced by BNYM. In their initial disclosures, Defendants identified 162 third-parties who, in their view, potentially had discoverable information pertinent to BNYM's defenses. The USAO responded by serving document subpoenas on 160 of them. BNYM served subpoenas in kind, on these and other third-parties (ultimately more than 275 of them), and ultimately deposed or sought to depose more than 60. As further described below, BNYM's efforts were curtailed only after

Plaintiffs brought a motion seeking to enjoin a number of these proposed depositions as unduly burdensome and/or seeking testimony that was not substantially relevant.

14. On March 14, 2014, while still poring over the Bank's vast document production, which was not completed until late in the summer of 2014, Plaintiffs began taking depositions of the Bank's witnesses. Between March 2014 and January 15, 2015, Plaintiffs took 53 depositions of the Bank's current and former employees, principally in Pittsburgh, New York, and Boston. Over the same period, the Bank took 26 depositions of current and former employees or affiliates of OP&F, SERS, SEPTA and IUOE Local 39 (to add to six depositions the Bank took of the IUOE Local 39's representatives and agents prior to the transfer of the IUOE Local 39 Action to this Court). The Bank also took 25 more depositions of third parties, which occurred throughout the United States and in the United Kingdom. Defendants' third party discovery was the subject of several rounds of motion practice before this Court, in which Plaintiffs battled to curtail BNYM's overreaching and extremely burdensome third party discovery. These efforts had some, but limited, success.

15. Indeed, Defendants employed a scorched-earth discovery strategy, largely eschewing Rule 30(b)(6) depositions of Plaintiffs in favor of cumulative and time-intensive fact depositions of anyone within or without the Plaintiff organizations whom they deemed to have information that could be of any relevance to their defenses. Defendants deposed no fewer than 18 witnesses (including current and former employees) from OP&F and SERS (together, the "Ohio Funds"), as well as the Office of the Ohio Treasurer. Defendants also deposed (a) five fact witnesses from SEPTA, with one more (SEPTA's CEO) scheduled and two more in dispute at the time the parties reached this accord, and (b) all four of the individual trustees for IUOE

Local 39, in addition to IUOE Local 39's investment manager, investment consultant, fund counsel, and two fund administrators.

16. Defendants also deposed a number of additional IMs who used Defendants' SI FX service on Plaintiffs' behalf. Only after this discovery was substantially complete did Defendants serve Rule 30(b)(6) deposition notices on Plaintiffs, seeking organizational witnesses to address the same topics that had been covered repeatedly in the fact depositions Defendants already had taken.

17. Class certification was the key challenge to Plaintiffs in this litigation. Plaintiffs sought to craft an overarching theory of liability and damages that would compensate the custodial customers of what were, in essence, three different institutions: BNY; Mellon; and their post-Merger successor, BNYM. This was a formidable assignment. It required Plaintiffs to discover and unite into common themes the FX pricing practices for the sales and trading desks of Mellon's pre-Merger Pittsburgh and London branches with the sales and trading desks of BNY's New York, Brussels, and London branches—and then, following the Merger, to establish how these pricing practices were unified. Plaintiffs also had to identify and unite into common themes the marketing practices of Mellon, BNY and post-Merger BNYM, both in the United States and abroad, including the development of each entity's respective websites, responses to requests for proposal ("RFPs"), and responses to market forces and changes in market technology.

18. As FX services changed dramatically over the course of the 13-year Class Period, Plaintiffs had to develop the tools and facts to understand the various databases and systems that BNY, Mellon, and then BNYM used to track, process, and settle FX transactions. This was critical to unraveling whether Defendants were systematically diverting their customers away

from, or otherwise depriving their customers of, the benefits of superior trading platforms while purporting to provide their clients with "best execution." The depositions Plaintiffs took of Defendants' FX traders and salespeople, system developers, marketing personnel, and executives were at times highly technical and involved the mastery of information across multiple areas that no single BNYM, Mellon, or BNY employee possessed. It was Plaintiffs' discovery efforts that reconstructed a cohesive narrative of BNYM's development of SI notwithstanding that the institutional knowledge was highly diffuse and dispersed.

19. Although this Action settled on the eve of class-certification briefing, the parties' positions on class certification had already been formulated. In November 2014, Plaintiffs served their class-certification opening expert damages report, to which Defendants responded on December 5, 2014 by filing five expert reports. On January 12, 2015, Plaintiffs filed their reply expert reports in response to Defendants' reports. At the time of Settlement, Defendants had moved to exclude one of Plaintiffs' experts, a motion that was rendered moot by this Settlement.

20. We are very proud of the exceptional results achieved in this litigation. Through this Settlement, BNYM will return to the Class, on a gross basis, approximately 35% of the known margins it recorded on SI FX transactions during the Class Period, totaling $504 million in restitution for members of the Class.[9] The mean approximate recovery, net of fees and expenses, is greater than $400,000 per Class Member, with almost 100 Class Members receiving net recoveries of more than $1 million each.

[9] As discussed further herein, $335 million in proceeds to Class Members is flowing directly through the Class Settlement. $155 million in additional customer proceeds is being paid pursuant to the NYAG Settlement, and another $14 million (earmarked for ERISA plans that are members of the Class) is coming from the U.S. Department of Labor ("DOL") Settlement. The NYAG Settlement and DOL Settlement are being administered jointly with the Class Settlement.

21. It reaching this historic settlement with BNYM, it is an understatement to say that Plaintiffs were fully informed of the risks of continued litigation and the benefits to the Class of the immediate and substantial recovery this Settlement represents. While Plaintiffs were confident in their ability to present a common class theory, even if class certification were successful, the true measure of damages in this case was highly contested, and it remained an open question as to whether a jury would believe BNYM's defense that it provided a valuable and unrivaled service through SI FX. Indeed, Plaintiffs anticipated that one of the Bank's main arguments would be that many of its clients continued to use its SI FX service despite the litigation and despite knowing that SI FX trades were priced in the Bank's favor.

22. Set forth below, in greater detail, is a description of the procedural history of this litigation, the efforts of counsel in reaching this Settlement, and the averted risks and immediate rewards this Settlement represents. We set forth the reasons why this Settlement and the Plan of Allocation should be finally approved as fair and reasonable and the proposed Settlement Class certified, as well as why Lead Settlement Counsel's request for fees, reimbursement of litigation expenses, and service awards for Plaintiffs should be approved.

II. PROCEDURAL HISTORY OF THE ACTION

23. The SEPTA and IUOE Local 39 Actions were transferred to this Court on April 16, 2012 following substantial litigation in their respective transferee Courts. The Ohio Action was ordered transferred to this Court as part of the MDL on May 2, 2012. The first of the ERISA Actions, *Carver v. The Bank of New York Mellon,* No. 12-CV-09248-LAK, was filed on December 19, 2012, followed by *Fletcher v. The Bank of New York Mellon*, No. 14-CV-5496-

LAK, on July 22, 2014.[10] This section discusses the origin of the Actions, the first of which was filed in March 2011, their litigation prior to transfer to this Court, the several related cases that were also coordinated with the Actions through the MDL, and the pleadings and opinions that framed the parties' disputes.

A. The Whistleblower Actions

24. The cases before the Court have their origin in a whistleblower formerly employed by BNYM who began working in partnership with FX Analytics, a Delaware general partnership, which served as the Relator in several lawsuits brought on behalf of public pension funds that used BNYM's SI FX service. Throughout this litigation, the Relator primarily has been represented by the Thornton Law Firm LLP ("TLF"), a member of the Plaintiffs' Steering Committee, with LCHB serving as co-counsel. Beginning in October 2009, the Relator initiated statutory false-claim actions under seal on behalf of public pension funds in a number of states. Actions filed in Florida and Virginia[11] were unsealed in January of 2011, which publicly revealed for the first time that BNYM was engaged in a practice of systematically charging its custodial clients undisclosed spreads by allegedly manipulating the FX rates assigned to its clients' SI FX transactions.

25. TLF's involvement in indirect FX litigation dates back to late 2007, when it first met with the whistleblowers who eventually would file the initial whistleblower complaint

[10] Counsel for the ERISA Plaintiffs—McTigue Law LLP, Beins Axelrod P.C., and Keller Rohrback LLP—are referred to collectively herein as "ERISA Counsel." Their individual declarations in support of Lead Settlement Counsel's Motion for Attorneys' Fees and Reimbursement of Expenses are attached hereto as Exhibits 3-5.

[11] *Commonwealth of Virginia, ex rel. FX Analytics v. The Bank of New York Mellon Corp.*, No. CL-2009-15377 (Va. Cir. unsealed Jan. 21, 2011) (*Virginia* Action); *State of Florida, ex rel. FX Analytics v. The Bank of New York Mellon Corp.*, No. 2009-ca-4140 (Fla. Cir. unsealed Feb. 7, 2011) (*Florida* Action).

against State Street Bank, BNYM's primary competitor.[12] More than a month before the State Street whistleblower complaint was unsealed by the intervention of the California Attorney General ("California AG") (in October 2009), TLF met with the individual who would come to serve as the whistleblower against BNYM. Immediately after the California AG's intervention in the State Street action, TLF (with LCHB as co-counsel) filed whistleblower complaints under seal against BNYM in eight jurisdictions. Three of these (Florida, Virginia, and New York) would eventually be joined by the relevant state attorney general and unsealed.[13]

26. Between October 2009 and October 2011, Relator's counsel developed the case against BNYM and educated the attorneys general who ultimately intervened. The nearly two dozen disclosure statements to the government consisted of hundreds of pages and included numerous internal BNYM documents and emails (several of which were quoted in almost every successive complaint against BNYM, including those filed two years later by the DOJ and the NYAG).[14]

27. Relator's counsel began meeting with representatives from the DOJ and the United States Securities and Exchange Commission ("SEC") several months after the Virginia action was unsealed in January 2011. These meetings resulted in the eventual filing, in October 2011 (or months after the first two Customer Class Cases were filed), of the DOJ Action.[15] The

[12] Additional description of the efforts undertaken by TLF in support of this Action is set forth in the Declaration of Michael A. Lesser in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Thornton Law Firm, LLP, attached hereto.

[13] A fourth *qui tam* action, *Commonwealth of Mass., ex rel. FX Analytics v. The Bank of New York Mellon Corp.*, Civil Action No. 2012-01955 (Suffolk. Super. Ct., MA), was pursued by another state agency (the Massachusetts Securities Division) after the Massachusetts Attorney General declined to intervene.

[14] In January 2012, *The Wall Street Journal* published materials that had been provided by Relator's counsel to the Florida Attorney General and obtained pursuant to the Freedom of Information Act.

[15] *United States v. The Bank of New York Mellon Corp.*, No. 11-cv-6969 (LAK).

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NYAG Action[16] was filed the same day as the DOJ Action, after the NYAG intervened in the whistleblower case that had been filed under seal in New York.

B. The SEPTA Action

28. Following the unsealing of the allegations of the BNYM whistleblower in Virginia, SEPTA, through its counsel, KTMC and Nix Patterson & Roach LLP ("Nix Patterson"), commenced its own investigation of the FX pricing it had obtained through Mellon's SI FX service and, following the Merger, BNYM's SI service. SEPTA had been a custodial client of Mellon and then BNYM since 1991 and directly, and through its IMs, used Mellon's and BNYM's SI FX service.

29. SEPTA retained an FX expert to audit the pricing of FX rates that Mellon and BNYM had reported to SEPTA for its custodial FX transactions and compare those rates to the interbank trading range on the date of the transactions. This analysis revealed a systematic bias in the FX rates which skewed toward the worst rates of the interbank trading day (high for purchases and low for sales). This pattern of disadvantageous FX rates was consistent with the allegations in the Relator's complaints and demonstrated that BNYM's pricing practices likely affected many, if not all, of its custodial FX customers.

30. On March 7, 2011, SEPTA commenced a federal class action in the U.S. District Court for the Eastern District of Pennsylvania on behalf of itself and a class of public and non-public institutional custodial clients of Mellon and BNYM for breach of fiduciary duty. The case was assigned to the Hon. Joel H. Slomsky. The action alleged that BNYM, a fiduciary of SEPTA via its custodial contract and through common law, breached its duty of loyalty to SEPTA and the putative class by unjustly charging undisclosed fees for SI FX and failing to

[16] *People ex rel. Schneiderman v. Bank of New York Mellon Corp.*, No. 114735/09 (N.Y. Sup. Ct. N.Y. Cnty.).

provide "best execution" for SI FX despite BNYM's written representations on its website, which described the service as providing "best execution" and being "free of charge." On March 22, 2011 and June 1, 2011, SEPTA filed amended complaints to add claims for breach of contract and unjust enrichment arising from the Master Trust Agreement ("MTA") governing the custodial relationship, and based on the written "Forms and Procedures" governing the provision of SI FX.

31. Between June 1, 2011 and September 9, 2011, the parties briefed BNYM's motion to dismiss, and on October 6, 2011, Judge Slomsky heard oral argument. While the parties awaited Judge Slomsky's ruling, SEPTA was subject to a discovery stay.

C. The IUOE Local 39 Action

32. Separately, counsel for IUOE Local 39 conducted their own analysis of IUOE Local 39's FX transactions, which were handled by BNY and then BNYM while both entities acted as IUOE Local 39's custodian. IUOE Local 39's SI FX trades demonstrated the same pattern as that described above as to SEPTA's. On July 22, 2011, IUOE Local 39, through its counsel, LCHB, TLF, Hausfeld LLP ("Hausfeld"), and Hach Rose Schirripa & Cheverie, LLP ("Hach Rose"), filed the IUOE Local 39 Action[17] in the U.S. District Court for the Northern District of California asserting claims for violation of Sections 17200 and 17500, et seq. of the California Business and Professions Code ("UCL"); breach of contract; breach of the implied covenant of good faith and fair dealing; and violation of Section 349, et seq. of New York's General Business Law ("N.Y. GBL § 349"). The action sought recovery on behalf of several putative classes, including (a) all California-based non-public institutional investors in foreign securities for which BNYM provided custodial FX services during the Class Period, (b) all

[17] *International Union of Operating Engineers, Local 39 Pension Trust Fund v. The Bank of New York Corp., et al.*, No. 3:11-cv-03620 (WHA) (N.D. Cal.).

California-based ERISA funds for which BNYM provided custodial FX services during the Class Period, and (c) all non-public institutional investors in foreign securities, wherever situated, whose FX transactions were executed in New York by the Defendants' New York FX desk during the Class Period. The IUOE Local 39 Action was assigned to the Hon. William H. Alsup.

33. The parties fully briefed and argued BNYM's motion to dismiss on December 15, 2011. Judge Alsup then set an aggressive pretrial schedule requiring (i) IUOE Local 39 to file a class-certification motion by April 12, 2012, (ii) the parties to complete discovery by December 31, 2012, (iii) final dispositive motions to be filed by February 7, 2013, and (iv) trial to commence on March 25, 2013.

34. While BNYM's motion to dismiss was *sub judice*, Judge Alsup invited IUOE Local 39 to amend its complaint by January 5, 2012, which it did, alleging, among other things, that by assigning customer clients rates for SI FX transactions that were near the high of the daily interbank range, for purchases, and near the low end, for sales, BNYM failed to accord those clients terms "not less favorable . . . than terms offered by [the Bank] to unrelated parties in a comparable arm's length FX Transaction," which its operative custodial agreements mandated.

35. On January 4, 2012, IUOE Local 39 filed its response to BNYM's motion to transfer the IUOE Local 39 Action and other actions to this Court pursuant to 28 U.S.C. § 1407(a) (further discussed below). Elizabeth Cabraser appeared for Plaintiffs and argued before the Judicial Panel on Multidistrict Litigation in San Diego on March 29, 2012.

36. Meanwhile, Judge Alsup ordered an expedited briefing schedule on BNYM's motion to dismiss the amended complaint, which set the deadline for filing the motion on January 19, 2012, the opposition on February 2, 2012, and the reply on February 9, 2012. On

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February 14, 2012, before a second round of oral argument was set to take place, Judge Alsup issued an opinion denying BNYM's motion to dismiss in its entirety.

37. Discovery related to class-certification issues was subject to an extremely aggressive schedule in the IUOE Local 39 Action, taking place over a four-month period between December 2011 and April 2012, just prior to the time of transfer to this Court. This discovery included the production by BNYM of over 500,000 pages of documents and 1.2 gigabytes of transactional data for every putative Class Member—which up to that time, in the IUOE Local 39 Action, did not include public pension funds. Plaintiff and Plaintiff's affiliates or service providers (including Plaintiff's trustees, investment manager, consultant, and administrator) produced over 185,000 pages of documents.

38. Several discovery issues were the subject of motions to compel dated February 3, 2012, including IUOE Local 39's request that BNYM produce (i) documents dating back to the beginning of the Class Period, (ii) non-anonymized FX trading data for all Class Members, and (iii) all documents it had produced to government enforcement agencies related to SI FX. These issues were resolved on terms largely favorable to IUOE Local 39 by Magistrate Judge Joseph C. Spero on February 27, 2012 (two weeks after BNYM's motion to dismiss the IUOE Local 39 Fund's case was denied in its entirety). IUOE Local 39 took one Rule 30(b)(6) deposition of BNYM before the case was transferred to the MDL, and BNYM took six depositions of IUOE Local 39 and its service providers or agents. BNYM also took two third-party depositions, including one in the United Kingdom. Once the case was transferred to the MDL, discovery was stayed pending coordination with the other actions.

39. IUOE Local 39 Fund filed its motion for class certification on April 12, 2012, pursuant to Judge Alsup's pretrial schedule.

40. In support of its class-certification motion, IUOE Local 39 submitted the expert report of G. William Brown, Jr., Esq., an expert in the area of FX, Fellow (and formerly Professor of the Practice of Law) of Duke Law School, and principal of 8 Rivers Capital, LLC, a finance consulting firm. As discussed in greater detail below, Professor Brown would build on this early work to provide the damages methodology and analysis that would be the foundation on which the strength of this Settlement could be assessed by all parties.

41. Four days after IUOE Local 39 filed its motion for class certification, its case was transferred to the MDL.

D. The New York Attorney General and U.S. Department of Justice Commence Civil Lawsuits Against BNYM

42. On October 4, 2011—or nearly seven months after the SEPTA Action was filed, and four months after the IUOE Local 39 Fund Action was filed—the NYAG commenced a civil fraud lawsuit under the Martin Act against BNYM in New York State Supreme Court based on its ongoing investigation of the allegations made by the Relator. The NYAG Action, commenced against BNY and BNYM specifically (not Mellon), was assigned to the Hon. Marcy Friedman. The whistleblower, through TLF, provided extensive information directly to the NYAG. In addition to bringing claims under the Martin Act against BNYM, the NYAG's complaint also joined claims brought on behalf of certain funds of the New York City Retirement Systems ("NYC Funds").

43. On the same day the NYAG filed suit, the DOJ commenced a federal lawsuit under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") based on its investigation spurred by the whistleblower's allegations (the "DOJ Action"). The case was assigned to this Court.

44. On January 17, 2012, BNYM entered a partial settlement and dismissal of certain claims in the DOJ Action. In that settlement, BNYM agreed, among other things, to refrain from representing in publications or on websites that its SI FX service was "free" or provided "best execution," and to provide more disclosure to its clients concerning its SI FX pricing practices.[18]

45. Following their partial settlement and dismissal of claims, the USAO filed a Second Amended Complaint on February 6, 2012, and the parties in the DOJ Action briefed motions to dismiss. On April 24, 2013, this Court granted in part and denied in part BNYM's motion to dismiss the claims pled in the USAO's Second Amended Complaint ("FIRREA Opinion"). DOJ Dkt. No. 54. Following the Court's ruling, Defendants pushed for coordinated discovery between the MDL Actions[19] and the DOJ Action.

46. Subsequently, on August 5, 2013, Judge Friedman denied BNYM's motion to dismiss the NYAG Action. *See* Decision/Order, *The People of the State of New York, et al. v. The Bank of New York Mellon Corp.*, Index No. 114735/2009 (N.Y. Sup. Ct. N.Y. Cnty. Aug. 5, 2013) ("NYAG Opinion"). Thereafter, Defendants sought to coordinate discovery in the NYAG Action with discovery in the coordinated MDL Actions. The coordination of the NYAG Action with the MDL Actions is discussed further below.

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[18] This included, for example, that BNYM would not represent that it offers "netting" unless it referred to SI FX transactions with the same settlement date, same currency pair, originating from the same individually-managed account, and that were priced at the same trading desk and during the same pricing cycle; BNYM would publish clients' 90-day average of rates for purchases and sales of currency pairs and the 90-day averages of the bid/offer rates in the interbank market for the same currency pairs; BNYM would disclose its "range of day" pricing model and the fact that such a model was "generally less favorable to clients than directly negotiated trades"; and BNYM would not represent that SI FX pricing was the same for all clients. In exchange, the USAO's claim for injunctive relief seeking certain disclosures was dismissed with prejudice.

[19] "MDL Actions" refers to the Customer Class Cases, the ERISA Actions, the DOJ Action, and the actions defined below as the Securities Action and the LACERA/LADWP Actions. "MDL Plaintiffs" refers to Plaintiffs in the MDL Actions.

E. The Ohio Action

47. On March 12, 2012, the Ohio Funds commenced their action against BNYM in state court in Ohio, styled *Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corp., et al.*, Case No. 12 CV 003214 (Ct. Com. Pls. Franklin Cnty.). Counsel for the Ohio Funds were LCHB and Murray, Murphy, Moul + Basil LLP ("MMMB").[20] The case was then removed to federal court and transferred to this Court on May 2, 2012. On July 13, 2012, the Ohio Funds amended their complaint to include allegations on behalf of a proposed class of all investors for whom BNYM executed SI FX trades during the Class Period.

48. The Ohio Funds asserted claims for breach of contract, fraud in the inducement, unjust enrichment, conversion, breach of the covenant of good faith and fair dealing, and violation of the Ohio Deceptive Trade Practices Act (and similar statutes). Between August 13, 2012 and October 2, 2012, the parties fully briefed Defendants' motion to dismiss the Ohio Funds Action. On May 17, 2013, the Court denied that motion without prejudice in view of its prior decisions in the SEPTA and DOJ Actions, and pending the filing of the Master Complaint.

F. Defendants' Motion to Transfer Pursuant to 28 U.S.C. § 1407

49. On December 13, 2011, Defendants filed a motion pursuant to 28 U.S.C. § 1407 requesting transfer and coordination of the SEPTA Action, the IUOE Local 39 Action, and several other actions related to BNYM's SI FX pricing practices. These other actions included *Sansano v. BNYM, et al.*, No. 2:11-cv-01412-MRH (W.D. Pa. filed Nov. 4, 2011), *Terrazas, et al. v. BNYM, et al.*, No. 2:11-cv-01461-MRH (W.D. Pa. filed Nov. 15, 2011), and *Iron Workers Mid-South Pension Fund v. BNYM*, No. 1:11-cv-8471-LBS (S.D.N.Y. filed Nov. 22, 2011), each of which were shareholder derivative actions brought for the benefit of BNYM against certain

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[20] The efforts of MMMB in connection with this Action are set forth in greater detail in the accompanying Declaration of Brian K. Murphy in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Murray Murphy Moul + Basil LLP, attached hereto.

officers and directors (the "Derivative Actions"); *Bank of New York Mellon Corp. False Claims Act Foreign Exchange Litigation v. BNYM*, No. 3:11-cv-05683-JCS (removed to N.D. Cal. on Nov. 28, 2011), a false claims act case brought on behalf of certain California municipal public pension funds; *Clark v. Hassell, et al.*, No. 1:11-cv-8810-UA (S.D.N.Y. filed Dec. 2, 2011), a claim brought on behalf of BNYM's ERISA plans ("BNYM Employee ERISA Action"); and *Louisiana Mun. Police Employees' Ret. Sys. v. The Bank of New York Mellon Corp., et al.*, No. 11-cv-9175 (S.D.N.Y. filed Dec. 14, 2011),[21] a securities fraud putative class action (the "Securities Action").[22]

50. On April 16, 2012, the MDL Panel ordered the transfer of the SEPTA and IUOE Local 39 Actions to the Southern District of New York for coordinated or consolidated pretrial proceedings and assigned the Hon. Lewis A. Kaplan to the case. Dkt. No. 1 (MDL Transfer Order). The Customer Class Cases (including the subsequently transferred Ohio Action) were coordinated with all of the related actions, including the Securities Action, the BNYM Employee ERISA Action, and the Derivative Actions. The Derivative Actions and the BNYM Employee ERISA Action were subsequently dismissed with prejudice.

51. Following transfer, the parties submitted a joint status report for each of the cases that were subject to the MDL Transfer Order. The Court then held a status conference on May 23, 2012 (the "May 23 Hearing"), at which the parties agreed to certain broad logistical goals for litigating the Action. At this conference, the Court appointed LCHB and KTMC as interim Co-Lead Class Counsel for the Customer Class Cases, permitted Plaintiffs to proceed with document discovery (but stayed deposition discovery until the PSLRA discovery stay was lifted in the Securities Action), and ordered the parties to propose an executive committee structure to lead

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[21] Defendants added this action to their Amended Motion to Transfer on Dec. 22, 2011.

[22] Plaintiffs in the Securities Action are referred to herein as "Securities Plaintiffs."

the coordinated proceedings. The Court also indicated that it would decide Defendants' motion to dismiss the SEPTA Action and, thereafter, would entertain Plaintiffs' request to file a Master Complaint. The Court also vacated the remaining deadlines in Judge Alsup's pretrial schedule, including the deadline for BNYM to oppose IUOE Local 39's motion for class certification.

52. Following an extensive meet and confer process, the parties submitted their proposed pre-trial orders establishing Plaintiffs' Executive Committee. On June 20, 2012, the Court appointed LCHB, KTMC, and BLBG to Plaintiffs' Executive Committee, and the remaining counsel for Plaintiffs to Plaintiffs' Steering Committee. *See* Dkt. No. 103 ("Pre-Trial Order No. 2").

53. The responsibilities of Plaintiffs' Executive Committee included presenting Plaintiffs' positions to the Court on all pre-trial matters and coordinating the activities of Plaintiffs and their counsel during pretrial proceedings, including written discovery and depositions. On the same day, the Court entered Pre-Trial Order No. 3 (the "Confidentiality Order"), which had been the subject of extensive meet and confers with Defendants and competing submissions to the Court.

G. The Core Pleadings and Opinions That Framed Plaintiffs' Claims

1. The Court's SEPTA Opinion and Judge Alsup's IUOE Local 39 Opinion

54. On January 23, 2013, the Court issued a 61-page opinion granting in part and denying in part BNYM's Motion to Dismiss. The Court found that SEPTA had plausibly alleged sufficient facts to support its breach of contract claim based on the incorporation of BNYM's promises of "best execution" and "free of charge" contained on its website into the FX Forms and Procedures that governed the SI service. Additionally, the Court sustained Plaintiff's breach of fiduciary claim, finding that, at least under Pennsylvania law, BNYM "owed fiduciary duties

of loyalty and care, [and] was obligated to provide the full and fair disclosure of relevant information that the law requires." *In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, 921 F. Supp. 2d 56, 88 (S.D.N.Y. 2013) ("SEPTA Opinion").

55. The different types and versions of the "FX Procedure Form," the transmittal document that authorized BNYM to undertake SI FX transactions for its custodial clients, are indicative of this case's complexity. *See id.* at 71. The four categories of documents discussed in the SEPTA Opinion included: (1) the FX Procedure Forms ("SI Forms")—which were generally one page forms that incorporated by reference certain of the other three categories of documents or information listed here; (2) BNYM's FX Policies and Procedures ("FX Procedures")—a multi-page document setting forth the timing and pricing of SI FX trades; (3) BNYM's website—accessible from and linked to certain web pages referenced in the "FX Polices and Procedure Forms"; and (4) RFP responses—several-hundred-page documents, which frequently referenced the terms under which the Bank would transact FX.

56. The content of each category of document changed over time, which, in turn, weakened or strengthened Plaintiffs' claims. For instance, BNYM and its predecessors produced thousands of versions of SI Forms and the FX Procedures, numerous versions of its website, and more than 2,000 RFP responses. Thus, as discussed further below, in developing the proof necessary to establish the theories of liability sustained in the SEPTA Opinion, Plaintiffs had to sort out the relevant classes and/or sub-classes based, in part, on the content of each type of document.

57. The SEPTA Opinion addressed the parties' disagreement over the definition of "best execution" as a central controversy to this litigation. "Simply put," the Court explained, "while defendants' argument about the proper construction of this contract term may prove

sufficient to warrant summary judgment or a verdict at trial, the Court cannot now conclude that SEPTA's reading of the contract is implausible as a matter of law." *Id.* at 78.

58. With respect to the breach of fiduciary duty claim, the Court held that "[t]he principal relationship among the parties is set forth in the MTA[, which] established a trust consisting of money and property contributed by SEPTA, with [BNY Mellon] as the Master Trustee." The Court continued: "BNY Mellon…retained other powers as custodian to exercise as it 'may deem necessary or desirable for the protection of the Master Trust Fund,'" and the "Master Trustee holds the assets in the fund 'for the exclusive benefit' of the beneficiaries of the trust funds." The Court further noted, however, that BNY Mellon could "provide ancillary services as [may be agreed] upon from time to time" as a non-fiduciary. *Id.* at 3-5 (citing MTA §§ 2.1, 2.5, 5.1, 5.2, 7.2 and 9.1). Therefore, BNYM, as one who was in a "confidential relationship" of trust with SEPTA, owed SEPTA a duty of full and fair disclosure, even if it entered the specific SI FX contracts as a "principal" or "at arm's length." *Id.* at 48-50.

59. Because no state statutory claims were alleged in the SEPTA Action, the Court did not opine on such claims. However, Judge Alsup had previously analyzed unfair trade practices claims under California and New York law in the IUOE Local 39 Action. On February 14, 2012, in the course of denying BNYM's motion to dismiss in its entirety, Judge Alsup held that IUOE Local 39 properly alleged violations of Cal. Civ. Code §§ 17200, 17500 and N.Y. Gen. Bus. Law § 349. *See* IUOE Local 39 Dkt. No. 89 ("IUOE Local 39 Opinion") at 7-8. Specifically, Judge Alsup held, *inter alia*, that Defendants' alleged conduct satisfied all three separate and independent tests available under California law for determining whether a business practice is unfair, i.e., (1) it was sufficiently tethered to a specific statutory provision (at least as to ERISA plans); (2) the utility of the conduct was outweighed by the gravity of the alleged

victim's harm; and (3) possible countervailing benefits to consumers or competition were not sufficient to justify the conduct. *Id.* at 6. Judge Alsup further held that IUOE Local 39 had sufficiently alleged that BNYM's conduct amounted to false advertising under California's statutes, and that whether a "reasonable pension fund" would likely have been misled by BNYM's statements was a question for the trier of fact. *Id.* at 7. Finally, Judge Alsup held that IUOE Local 39 had sufficiently alleged that BNYM's conduct constituted deceptive trade practices under N.Y. GBL § 349, and that pension funds could be considered "consumers" for purposes of that statute under the facts alleged. *Id.* at 10.

60. The SEPTA Opinion and the IUOE Local 39 Opinion largely framed the litigation in the Customer Class Cases going forward.

2. Master Customer Class Complaint

61. On July 1, 2013, Plaintiffs filed the Master Complaint, which collected, into one pleading, the claims that were sustained by the SEPTA Opinion and IUOE Local 39 Opinion, as well as the claims asserted in the Ohio Action. The Master Complaint thus set forth claims for breach of fiduciary duty, breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, conversion, breaches of California and Ohio consumer protection laws (and other similar state statutes), and violation of NY GBL § 349.

H. BNYM Asserts Counterclaims Against Certain Plaintiffs and Members of the Putative Class

62. On September 15, 2013, BNYM answered the Master Complaint and simultaneously filed counterclaims against SEPTA, IUOE Local 39, and certain unnamed putative Class Members whom Plaintiffs sought to represent.[23] According to BNYM, its custody

[23] BNYM also asserted third party claims for indemnification against the four individual trustees of IUOE Local 39—Lyle Setter, Paul Bensi, Jerry Lee Kalmar, and Bart Florence—(the "IUOE Local 39 Trustees") in their representative capacity. *See* IUOE Local 39 Dkt. No. 155.

agreements with these entities indemnified it against all losses, including attorneys' fees, incurred in defending the claims brought against it. Remarkably, BNYM claimed that this right of indemnification extended to the governmental proceedings as well, therefore shifting its costs of defending the DOJ Action over to Plaintiffs (and the four individual trustees of IUOE Local 39).

63. BNYM's counterclaims therefore implicitly sought tens of millions of dollars in legal defense costs from Plaintiffs, the IUOE Local 39 Trustees, and members of the putative Class.

64. Plaintiffs moved to dismiss, arguing, among other things, that BNYM had waived its right to bring counterclaims against IUOE Local 39 and its trustees since it had previously answered IUOE Local 39's complaint more than a year earlier (after Judge Alsup had denied BNYM's motion to dismiss). BNYM also had not raised the possibility of counterclaims in the Scheduling Order that the parties had negotiated (and which the Court had entered on September 12, 2013, just three days before Defendants filed their counterclaims). *See* Dkt. No. 273. Plaintiffs also argued that BNYM's "conditional" counterclaims against absent putative Class Members were substantively premature, and (separately) were premature as to "known" plaintiffs such as SEPTA and IUOE Local 39 because they depended on an adverse adjudication against Plaintiffs on the merits.

65. On July 9, 2014, the Court granted Plaintiffs' motion to dismiss BNYM's counterclaims with respect to absent putative Class Members, but denied Plaintiffs' motion in all other respects, holding that BNYM had not waived its right to plead counterclaims or third-party claims against SEPTA, IUOE Local 39, and the IUOE Local 39 Trustees, and that those claims were not premature. Dkt. No. 420. The Court dismissed, without prejudice, BNYM's

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conditional counterclaims against unnamed Class Members, accepting Plaintiffs' arguments that putative Class Members were not "opposing parties" within the meaning of Rule 13 and thus, procedurally, no counterclaims could be asserted against them. *Id.* Nonetheless, the Court's decision left open the possibility for Defendants to reassert counterclaims against absent Class Members once the Class was certified.

66. On August 29, 2014, Plaintiffs filed Answers to BNYM's Counterclaims, setting forth detailed denials of each claim asserted by BNYM. *See* IUOE Local 39 Dkt. No. 211, SEPTA Dkt. No. 192. In sum, Plaintiffs asserted that BNYM was not entitled to indemnification because the acts giving rise to BNYM's counterclaims and third party claims derived from BNYM's own wrongdoing. *Id.*

III. DISCOVERY

67. Discovery in the MDL Actions was extensive and hard-fought from beginning to end. From June 2013 onward, that discovery was managed by Plaintiffs' Executive Committee, in frequent collaboration with the USAO. All strategic decisions involving discovery in the Customer Class Cases were made by Co-Lead Customer Counsel. As many issues in the Customer Class Cases overlapped with issues relevant to the DOJ Action, it was typical for Co-Lead Customer Counsel to be in weekly or even daily consultation and contact with the USAO. Later in the litigation, Co-Lead Customer Counsel worked with the principal attorney handling litigation on behalf of the NYAG to assist the NYAG in gathering evidence for its case, and in developing expert testimony. As more specifically described below, the joint discovery costs in the Actions were borne principally by Plaintiffs' Executive Committee and, for the Customer Class Cases in particular, Co-Lead Customer Counsel.

A. In General

68. Discovery in this Action related to the conduct of three distinct legal entities (BNY, Mellon, and BNYM), over the span of 13 years, and involved their operations in Boston, New York, Pittsburgh, London and Brussels, which in turn were spread across several different divisions and working groups (including sales, trading, marketing, relationship management, and the executive suite). Third party discovery, principally pursued by Defendants, covered institutions throughout the United States (from Alaska to New York), and in the United Kingdom. Depositions were held in no fewer than 20 different U.S. cities across the country, including Anchorage, Seattle, Santa Fe, Los Angeles, Pittsburgh, New York, and Boston. Depositions were also held internationally in London and Scotland.

69. With respect to document discovery, the parties negotiated more than 500 unique search terms that were applied to Defendants' electronic files, which included more than 150 document custodians (i.e. current and former employees of Mellon, BNY and BNYM). The parties collectively produced roughly 30 million pages of documents. BNYM alone produced more than 25 million pages of documents (not counting more than 250,000 Excel files), representing more than 3,000 gigabytes of data. Third parties produced at least an additional three million pages of documents. Plaintiffs themselves produced several million pages of documents in response to BNYM's document requests.

70. As discussed above, Defendants and the USAO served hundreds of third party document subpoenas. The parties took or defended 110 depositions directly pertinent to the Customer Class Cases, and exchanged 114 interrogatories and 24 requests for admission. Co-Lead Customer Counsel also participated in 18 other depositions relating to the NYC Funds Action, the Securities Action, and the LACERA/LADWP Actions. There were more than 10 discovery disputes that ended up before the Court, and countless meet and confers that averted

dozens of others. The vast majority of discovery in the MDL Actions occurred between May 2013 and January 2015, with depositions commencing in earnest in March 2014. As the lodestar charts attached as Exhibit B to each of the attached declarations by Customer Counsel and ERISA Counsel demonstrate, 67,933 hours were spent on discovery, including 51,048 hours on document review (i.e., task categories '2' and '3') and 16,885.06 hours on drafting witness memoranda or other discovery documents (task category '4'). To say that discovery in this case was a massive undertaking would be an understatement.

71. Class-certification discovery in at least one of the Customer Class Cases was also rigorously undertaken prior to the cases being transferred to this Court. In the IUOE Local 39 Action, the parties exchanged more than 550,000 pages of documents (including documents that had BNYM had also produced to the NYAG in connection with its investigation) and 1.2 gigabytes of data, and took or defended nine depositions.

72. Notwithstanding the work that had been done in the IUOE Local 39 Action, following the consolidation of the actions before this Court, the scope and complexity of discovery in this Action expanded exponentially. This was because discovery had to encompass the needs of no less than three class actions, the DOJ Action, the Securities Action, the LACERA/LADWP Actions, and eventually the ERISA Actions. After consolidation, the Customer Class Cases collectively sought recovery for the conduct at all three BNYM-associated entities (BNY, Mellon and BNYM), and sought relief for the broadest possible class of all public and private custodial customers of those entities. These efforts required the constant and close collaboration between Plaintiffs' Executive Committee and the USAO, whose allegations (along with the NYAG's) principally concerned BNY and BNYM (and their respective customer bases).

73. From the time these cases were consolidated to the time of settlement, the parties met and conferred countless times, and exchanged hundreds of pages of correspondence, struggling to reach agreement on the proper scope and relevance of document discovery. After the parties exchanged formal document requests as well as responses and objections, the parties then met and conferred for several months regarding the search terms and custodians from which the parties (and particularly BNYM) would provide responsive documents. The parties then went through the always arduous task of actually producing documents. Finally, the parties followed up on various alleged deficiencies in the document productions including missing, improperly redacted or withheld documents. Ultimately, most differences between the parties were negotiated and resolved without Court intervention, except for several notable exceptions discussed below.

74. Because of the aggressive discovery schedule (pursuant to which the parties initially had 18 months to initiate and complete document discovery and take all necessary party and non-party depositions), discovery was required to be both ruthlessly efficient, laser-focused on the key issues, and multi-tracked to ensure that all evidentiary holes were filled.

75. The collaboration between Plaintiffs and the USAO was, in our collective experience, unprecedented. As detailed below, throughout much of fact discovery, Plaintiffs and the USAO were in oftentimes daily communication regarding strategic issues involving discovery. Meet and confers were coordinated to avoid duplication. They were jointly attended and negotiated by representatives of Plaintiffs and the USAO, and briefing on key discovery disputes was shared. Plaintiffs shared their work product with the USAO with respect to deposition preparation, document review, and various aspects of factual and legal research that proved helpful for both cases. The damages model that Plaintiffs constructed, which was

developed from Plaintiffs' requests for production and interrogatories, became the basis for computing customer damages and ultimately informing the settlements of the Customer Class Cases, the USAO Action, the NYAG Action, and claims being investigated by the United States Department of Labor ("DOL").

B. Pre-Discovery Negotiations

1. Negotiation of the Confidentiality Order

76. After the MDL transfer, before any additional documents were produced or depositions taken, the parties undertook to negotiate a stipulated comprehensive confidentiality protocol. Although the parties bridged many differences, they were unable to come to final agreement on a form of order. Plaintiffs wished to proceed under an order substantially similar to the one that had governed the IUOE Local 39 Action,[24] where significant document discovery had already taken place. Defendants, meanwhile, argued for more restrictive confidentiality provisions than those under which the parties had proceeded to that point, including allowing for a "Highly Confidential" category that was restricted to outside attorneys' eyes only. Notably (and unique in our collective experience), Defendants' form of order also required that Defendants be given advance notice and the opportunity to object to any expert or consultant with whom Plaintiffs desired to share information designated as "confidential" before that information could be shared, notwithstanding the execution by that expert or consultant of an acknowledgement indicating that he/she was bound by the order. Even if this did not amount to an outright "veto" right over any experts or consultants that Plaintiffs wished to retain (since the parties would need to litigate the issue if Defendants refused to consent to the choice of expert or consultant), it unquestionably gave Defendants an advantage in knowing, well in advance of the

[24] *See* IUOE Local 39 Dkt. No. 72.

time that the Federal Rules would ordinarily require, the identities of any experts or consultants Plaintiffs wished to use.

77. On June 20, 2012, over Plaintiffs' objection, the Court entered Defendants' form of order. Dkt. No. 104. In addition to the more restrictive provisions concerning the use of Defendants' "confidential" documents as described above, the Confidentiality Order addressed the inadvertent production of privileged documents (allowing for clawbacks), the labeling of confidential transcripts, the manner in which a party could challenge a confidentiality designation and/or clawbacks, attempts by third parties to obtain confidential information, and other issues that would guide the parties' production of materials going forward.

2. Negotiation of the 9/12/13 Scheduling Order

78. Following the SEPTA Opinion, and the subsequent May 17, 2013 and July 22, 2013 status conferences with the Court, the parties were instructed to meet and confer regarding a proposed pretrial schedule, and did so over the course of several weeks. In yet another example of how hard-fought the litigation was from the outset, although the parties were able to reach agreement on less controversial issues (for example, the time to exchange initial disclosures and the time for BNYM to answer the Master Complaint), they were unable to reach consensus as to the most critical elements of a pretrial schedule. In particular, Plaintiffs proposed a pretrial schedule that was designed to have the case ready for trial by mid-2015 (i.e., roughly 2 years from the date of the SEPTA Opinion, and more than three years after IUOE Local 39 had moved for class certification prior to transfer). This proposed schedule was aggressive but certainly feasible from Plaintiffs' perspective. Defendants proposed a pretrial schedule that was nearly twice as long. The USAO, meanwhile, took the position that its case was entitled to its own (expedited) pretrial schedule, separate and apart from the private cases in part based on the extended schedule demanded by Defendants.

79. On September 12, 2013, the Court adopted a pretrial schedule that was largely consistent with the schedule proposed by Plaintiffs (the "Scheduling Order"). Dkt. No. 273. The schedule adopted by the Court also contemplated extensive coordination between the Lead Customer Plaintiffs, the Securities Plaintiffs, the ERISA Plaintiffs, and the USAO. By agreement of the parties, the Scheduling Order was subsequently amended on July 11, 2014, with all dates being pushed out by a modest 90 days to accommodate the large number of BNYM party depositions that remained to be scheduled (despite Plaintiffs' best efforts and in the face of strong resistance from BNYM). BNYM argued, for its part, that more time was needed to take third party discovery (without committing to how many third party depositions it intended to seek). The Court noted in approving this extension that "the parties shall proceed on the assumption that no further extensions will be granted."[25]

80. The key pre-trial deadlines set forth in the Scheduling Order, and subsequently amended by the July 11, 2014 Scheduling Order (Dkt. No. 422), contemplated the following deadlines:

10/31/2013	Deadline to serve all document discovery
2/28/2014	Deadline to complete all document discovery (extended to July 30, 2014)
10/15/2014	Original deadline for completion of all fact discovery
11/3/2014	Opening class certification reports
12/05/2014	Rebuttal class certification reports
1/9/2015	Reply class certification reports
1/30/2015	Close of fact and class certification expert discovery, and deadline for class certification motion
3/15//2015	Exchange of merits expert reports
6/30/2015	Deadline for summary judgment outlines and Rule 56.1 statements
9/16/2015	Summary judgment deadline
10/01/2015	Proposed joint pre-trial order

[25] The schedule was slightly amended on two subsequent occasions, January 21, 2015 and then again on February 20, 2015, to allow the parties to consummate negotiations regarding the Settlement.

3. Defendants' Document Production

81. Document production in these Actions began with the service of the first set of document requests in the IUOE Local 39 Action on December 16, 2011. Defendants' last production of documents occurred on January 19, 2015. Plaintiffs served five sets of Requests for Production of Documents which included 58 individual document requests. The first three sets of requests were served by IUOE Local 39 in its case in late 2011 and early 2012, prior to the MDL Transfer Order. The latter two sets of document requests built on the document discovery obtained in the IUOE Local 39 Action, and were drafted in conjunction with Securities Plaintiffs and the other MDL Plaintiffs. In formulating these joint requests, Plaintiffs' Executive Committee, including Co-Lead Customer Counsel, worked efficiently to include the comments of all MDL Plaintiffs.

82. Document discovery also included subpoenas served by the USAO and BNYM on nearly 300 third parties, which included investment managers and consultants of SEPTA, the Ohio Funds, and IUOE Local 39, together with a multitude of other clients and IMs that used BNYM's SI FX service. BNYM's stated need for such expansive third party discovery was to rebut class certification, to prove that its FX services were value-driven, and to show that each manager and client had distinct motives for using the service. BNYM also asserted that such discovery was necessary to defend against the DOJ's FIRREA claim.

83. Once formal discovery requests established the categories of documents each side was seeking, the parties met and conferred to narrow objections, and agree on appropriate search terms (more than 500 of them) and custodians (more than 150 of them). It took months of negotiations to finally reach agreement on these custodians and search terms, but the parties managed to avoid motion practice, and they remained the bedrock of Defendants' document production for the remainder of the litigation.

84. Plaintiffs leveraged technology and effective organization of resources to review and analyze BNYM's voluminous production, which amounted to roughly 25 million pages of documents, including more than 679,000 e-mails and more than 757,000 e-mail attachments. The 679,000 figure represents the number of documents containing one or more e-mails (i.e., including chains of e-mails). The number of individual e-mails Counsel reviewed was far greater. Counsel thus needed to devote significant time to combing through e-mail communications among BNYM personnel to establish the Bank's liability. Meanwhile, third party document production included an additional 3.3 million pages of production. To put the volume of electronic document production in perspective, if one person read each page of these productions at a rate of two minutes per page continuously without sleep or breaks, excluding the voluminous spreadsheets of data that had to be analyzed for purposes of Plaintiffs' damages analysis, it would have taken that individual 75 years to review BNYM's production. This virtual mountain of evidence required a rigorous, disciplined, and coordinated process of review, which Plaintiffs implemented as described below.

a. Use of Electronic Technology to Facilitate Speedy and Efficient Document Analysis

85. In order to target Plaintiffs' review on the most relevant documents and weed out potentially irrelevant material, Plaintiffs employed electronic discovery technology to first organize and then prioritize the document review. *First*, Plaintiffs' Executive Committee solicited bids from database vendors for a document-management system that could accommodate the size of the production, enable the review of documents housed on the database by multiple users at multiple law firms, and offer the latest coding, review, and search capabilities for electronic discovery. In addition, to maximize cost efficiencies, Plaintiffs sought a vendor that could also provide court-reporting services for the large number of depositions that

were anticipated, and would do so at a cost advantage if awarded a contract for database management. Ultimately, Plaintiffs' Executive Committee negotiated a highly favorable pricing arrangement for the benefit of all the coordinated cases, including the DOJ Action and the NYAG Action, with D4 Database Management ("D4"), which served as the document vendor and court reporter for the coordinated cases throughout the litigation.

86. At the outset, the costs of D4's document database and court-reporting services were shared by Co-Lead Customer Counsel, Securities Counsel, ERISA Counsel, the USAO, and LACERA/LADWP Counsel[26] in the following proportions:

Plaintiffs	**Share of Discovery Costs**
Co-Lead Customer Counsel (LCHB and KTMC)	42.68%
Securities Counsel	21.34%
ERISA Counsel	10%
USAO	16%
LACERA/LADWP Counsel	10%

87. Once discovery in the NYAG Action was coordinated with the MDL and the USAO Actions, the NYAG assumed a very modest proportion of the joint costs of D4's database and deposition reporting services as follows:

Plaintiffs	**Share of Discovery Costs**
Co-Lead Customer Counsel (LCHB and KTMC)	38%
Securities Counsel	19%
ERISA Counsel	10%
USAO	16%
LACERA/LADWP Counsel	10%
NYAG	3.5%
NYC Funds	3.5%

88. Plaintiffs utilized the algorithm-based "technology assisted review" (frequently referred to as "TAR" or "predictive coding") to rank documents by relevance. In order to

[26] "LACERA/LADWP Counsel" refers to Cotchett, Pitre & McCarthy, LLP.

implement the technology assisted review, over the course of several weeks, a small group of attorneys at Co-Lead Customer Counsel coded several thousand "seed" documents based on their respective relevance. Through this process, the TAR software was able to identify certain keywords, phrases, and names that made a document more or less relevant. Based on an algorithm, the TAR software then assigned a ranking to each document in BNYM's production. Plaintiffs then used those rankings to prioritize their review, focusing first on those documents likely to contain the most useful information.

b. Manual Document Review Process and Protocols

89. In implementing the manual review of the residual documents following the TAR process, Plaintiffs' Executive Committee developed a review protocol which included a review manual, coding sheets, and several days of orientation to educate attorneys tasked with document review and analysis about the claims at issue. Plaintiffs' Executive Committee then coordinated a review team that included law firms on Plaintiffs' Steering Committee, who also represented Plaintiffs. The firms that did the principal amount of review of Defendants' documents in the Customer Class Cases, apart from Plaintiffs' Executive Committee, included Hach Rose, Hausfeld, and Nix Patterson. Each was assigned batches of documents via the D4 review portal to review.

90. Eleven lawyers from KTMC were deployed full time to analyze Defendants' production. LCHB deployed 14 lawyers working full time on document analysis. In addition, these lawyers were complemented by lawyers from BLBG, and the firms referenced above, who worked under the supervision of Plaintiffs' Executive Committee. These lawyers reported directly to either senior associates or partners for Plaintiffs' Executive Committee firms, participated on weekly telephone conference calls to discuss their findings, and then transitioned,

as depositions began to be noticed, to preparing memoranda and deposition kits in support of each party and non-party deposition.

91. In undertaking the analysis of Defendants' production, documents were categorized in three major areas: (1) subject matter; (2) relevance; and (3) document type (e.g., email correspondence, customer agreement, fee schedule, FX Procedure Form, organizational chart, etc.). Within these categories, lawyers conducting the review also had a menu of sub-categories (e.g., best execution, bonus, ERISA obligations, FX disclosures, etc.), which further refined the review and helped identify relevant documents quickly when needed for more specific projects or for deposition preparation.

92. In requiring the lawyers involved in document analysis to meet at least weekly with associates and/or partners as a group, the Plaintiffs' Executive Committee sought to ensure that reviewing attorneys and associates across all firms were aware of the issues being identified in the document review, why certain documents were high-value documents, and how such documents were informing Plaintiffs' theories of liability. The weekly calls also summarized and discussed the "hottest" documents identified for each week. Following the weekly discovery review call, one firm from Plaintiffs' Executive Committee would draft a memorandum summarizing the hottest and most important documents from that week. The memoranda would then be sent to more senior attorneys who would further distill the documents that survived first-tier review. Finally, after the memoranda were edited by senior attorneys, they, along with the documents referenced therein, would be shared among Plaintiffs' Executive Committee firms for the use in pleadings, expert reports, and in preparation for depositions.

c. **Discovery-Specific Projects**

i. **Master Trust Agreements Between BNYM and Class Members**

93. Plaintiffs understood that BNYM's documents, almost exclusively, would form the basis for liability at summary judgment or trial. Simultaneously with the review of BNYM's production for important documents, there were a number of additional discovery projects that involved a more targeted review and synthesis of the production specific to the Action.

94. One of the most significant and arduous document-review projects involved proving the existence of common fiduciary and contractual language across all of the BNYM, Mellon, and BNY clients that would unify putative Class Members into a single class or multiple subclasses. This project involved the identification, review, and cataloging of several thousand MTAs, and any amendments thereto, to identify contractual language that would establish BNYM's fiduciary obligations to Class Members, a fact-based inquiry, the parameters of which were set forth in the Court's SEPTA Opinion.

95. The vast majority of putative Class Members had MTAs with BNYM that neither affirmed nor disavowed the existence of a fiduciary relationship between BNYM and that putative Class Member. In advance of and in connection with developing Plaintiffs' theories in support of class certification, Plaintiffs devoted significant resources to reviewing and cataloging the relevant clauses of each and every Class Member MTA for: (1) the applicable state law; (2) the existence of a fiduciary or confidential relationship; (3) an obligation of full and fair disclosure arising out of that fiduciary or confidential relationship; and (4) any permissible exceptions or carve-outs to either the fiduciary/confidential relationship or the custodial banking

relationship. There were over 2,000 documents that required review for what were initially believed be approximately 1,262 Class Members.[27]

96. This project was further complicated by the fact that BNYM often produced multiple MTAs for each Class Member. Thus, Plaintiffs had to ascertain whether a given MTA was "final." Relatedly, many Class Members also executed contracts with both a legacy entity (i.e., BNY or Mellon) and BNYM. It was frequently the case, then, that a single Class Member could have had two or three MTAs that governed its relationship with the Bank during the Class Period.

97. Plaintiffs cross-referenced MTAs with other BNYM discovery to ensure review of all available MTAs. Using certain of BNYM's responses to interrogatories, Plaintiffs further narrowed the operative agreements to those affecting putative Class Members. Plaintiffs also met and conferred extensively with BNYM regarding its failure to produce MTAs for certain putative Class Members. Plaintiffs also cross-referenced their expert's SI FX trade data analysis with the MTA review and analysis to establish putative sub-classes and members for each. Through this process, Plaintiffs strengthened their fiduciary duty claims against BNYM and clarified the membership of the putative Classes (and possible sub-classes). Indeed, Plaintiffs review of hundreds of those agreements revealed that the majority of them called for the laws of New York, California, Pennsylvania, Massachusetts, or Delaware to apply.

ii. Contract Claims: SI Form and FX Procedures

98. For their contract claims, Plaintiffs also needed to establish valid contractual relationships between BNYM and each putative Class Member. As recognized by the Court in the SEPTA Opinion, BNYM's contractual obligations to Plaintiffs were allegedly embodied in

[27] Approximately 1,218 distinct BNYM custodial customers were ultimately deemed to be part of the Settlement, based on the parties' further review of BNYM's transactional data and the terms of the Settlement.

two sets of documents: the SI Forms and FX Procedures, which every client or its investment manager that used standing instruction service (or equivalent) offered by BNYM, Mellon or BNY, allegedly executed. As many Class Members had several different custodial accounts with BNYM with different investment managers, there frequently were multiple SI Forms and FX Procedures applicable to each of the more than 1,200 Class Members in this Action. Indeed, there are over 11,000 different custodial accounts tied to Class Members in this Action.

99. Many putative Class Members entered into SI Forms and FX Procedures with different BNYM predecessors, i.e. one or both of BNY or Mellon. For instance, SEPTA executed SI Forms with both Mellon and BNYM. Thus, as part of the discovery analysis, Plaintiffs had to track down iterations of the SI Forms and FX Procedures used by BNYM and its predecessors, determine whether and when such forms were amended, isolate the key contractual language in those SI Forms and FX Procedures, connect those SI Forms and FX Procedures to BNYM's representations of "best execution" on its website (at various points in time), and also isolate other common contractual language relating to BNYM's representations that provided a unifying theory for class certification. Like the review of the MTAs, this was an enormously labor intensive process.

iii. Contract Claims: Requests For Proposals

100. A large number of putative Class Members also issued RFPs that BNYM, BNY or Mellon responded to in an effort to either keep existing custody clients or win new business. BNYM's RFP responses represented, for example, that the Bank would obtain "the very best rates," "best execution" and "extremely favorable rates" in executing FX on its clients' behalf. RFPs were critical to Plaintiffs' theory of contract liability because each RFP response that yielded a new custodial relationship for BNYM constituted an independent contractual relationship, separate and apart from the SI Forms and the FX Procedure Forms described above.

101. RFP responses were especially critical for Class Members who transacted with Mellon, in particular, as the obligations defined in Mellon's SI Forms and FX Procedure Forms were far narrower than those of BNY and BNYM. More specifically, under the SEPTA Opinion, neither Mellon's SI Forms nor its FX Procedures contained any ambiguities such that any additional Mellon misrepresentations could be incorporated by reference therein. Put simply, this meant that terms such as "best execution" and "free of charge" – which appeared on BNY's and BNYM's websites – would likely not apply to Class Members who exclusively had transacted with Mellon. Plaintiffs therefore had every incentive to locate substantially similar representations in Mellon's RFP responses that equated with the promise of best execution or best rates. Plaintiffs believe they were successful in doing so.

102. The resources needed to analyze and review BNYM's RFP responses were enormous. Because of the expansiveness of BNYM's operations, RFPs (and BNYM's responses to them) generally exceeded 200 pages each, and frequently 300 pages. Plaintiffs dedicated a team of attorneys to focus exclusively on RFP review and analysis. Through targeted searches, the team identified more than 2,000 RFP responses in the Bank's production, spanning a period of thirteen years and involving RFPs issued by BNY, Mellon and BNYM. Once isolated, Plaintiffs (working with the USAO, which was also keenly interested in the RFP responses to support its mail and wire fraud predicate claim) then undertook the laborious and time consuming task of deciphering (i) which RFPs were directed to Class Members (the vast majority of the RFP responses in the Bank's production were for non-Class Members – principally, non-custodial clients of BNYM who had nonetheless received RFPs that spoke to the Bank's FX capabilities); and (ii) which RFPs actually contained misrepresentations (through their review, Plaintiffs identified more than 20 unique misrepresentations).

103. However, after analyzing thousands of RFP responses, neither Plaintiffs nor the USAO could ascertain whether certain of the responses were final versions, actually sent to putative Class Members. This required further review of metadata that Plaintiffs sought from BNYM which tended to reveal whether RFPs were put into final form. Obtaining such information involved extensive meet and confers regarding the production of RFP responses. These negotiations continued over several months; although the parties made substantial progress in their negotiations, at the time of settlement, this issue remained outstanding. All parties nonetheless understood the substantial implications from resolution of this issue. In fact, in the event that a suitable agreement could not be reached among the parties, Plaintiffs were considering filing an adverse inference motion with the Court.

104. Plaintiffs' discovery efforts were also directed at establishing BNYM, both pre- and post-Merger, maintained a common database of stock RFP responses, and that RFP responses with respect to FX services were part and parcel of a company-wide policy to mischaracterize BNYM's standing instruction service. In order to establish this common practice and procedure, Plaintiffs had to discover the database management software and protocols for storing and sharing RFP responses in the United States and in Europe, depose the individuals knowledgeable about the process of preparing and tracking of RFP responses and the institutional preservation of common RFP responses, and then develop the evidence to demonstrate that BNYM's representations found on its website were connected to the representations provided to RFP responses and were part of a common scheme and course of conduct. Co-Lead Customer Counsel took the lead in developing this important aspect of the record, deposing four different BNYM deponents, three of whom were Rule 30(b)(6) deponents, and one of whom was based in the United Kingdom, regarding BNYM's RFP practices.

iv. Depositions

105. Depositions served as a critical component of discovery in this case from both a fact-gathering perspective and in terms of the legal arguments each party made. The breadth and importance of deposition discovery is apparent in the terms of the Scheduling Order, which provided that each side was permitted to take up to 150 depositions.[28]

106. Plaintiffs' Executive Committee and USAO shared resources in order to gather meaningful testimonial evidence. Plaintiffs' Executive Committee and the USAO spent approximately 350 hours *on the record* taking depositions of BNYM current and former employees, entering several thousand exhibits as part of those examinations.

107. Fifty-three (53) depositions were taken of fifty-two (52) BNYM witnesses[29] over the life of the Customer Class Cases. All but one of these depositions took place between March 19, 2014 and January 15, 2015. Five of these depositions went longer than one day. 1,301 total exhibits were marked at the BNYM witness depositions, totaling approximately 20,000 pages.

108. Although Plaintiffs were just one of seven constituencies[30] in the MDL/NYAG coordinated cases, Co-Lead Customer Counsel led almost half (or twenty-four) of the BNYM witness depositions.[31] Of these twenty-four depositions, KTMC led twelve, including one two-

[28] The Scheduling Order allocated the total number of depositions permitted per side between the private cases (100) and the USAO case (50). However, given the level of collaboration between Plaintiffs' Executive Committee and the USAO, these distinctions were largely artificial.

[29] One BNYM witness—John Cipriani—gave two depositions: first as a 30(b)(6) witness in the IUOE Local 39 Action (prior to MDL transfer) on 2/28/12, and then again more than two years later (in the MDL) as a fact witness on 10/21—10/22/14.

[30] Apart from the Customer Plaintiffs, the other constituencies included the DOJ, the NYAG, the Securities Plaintiffs, plaintiffs in the ERISA Actions, LACERA/LADWP (who brought their own direct action), and the NYC Funds (who also brought their own action).

[31] The BNYM witness depositions that were led by Customer Counsel were: John Cipriani (as a 30(b)(6) witness) (8 new exhibits introduced), David Green (25 new exhibits), James McAuliffe (35 new exhibits), William Samela (19 new exhibits, 3 previously marked), Phyllis Bertok (7 new exhibits), Paul Park (10 new exhibits), William Blatchford (35 new exhibits), Richard Estes (24 new exhibits, 2 previously marked), Antonio Garcia-Meitin (15 new exhibits), Karen Grupinski (14 new exhibits), Richard Rua (26 new exhibits, 2 previously marked), John Bundy (16 new exhibits, 2 previously marked), Robert Donelan (14 new exhibits, 1 previously marked), Peter Maher (27 new

day deposition, LCHB led seven, TLF led three, and Hausfeld LLP led two. Of the remaining twenty-nine BNYM depositions that were not led by Customer Counsel, eight (8) were led by BLBG, who were lead counsel in the Securities Action.[32] The DOJ led twenty (20) BNYM depositions, which included several half-day depositions.[33] The NYAG led one deposition.[34] Customer Counsel appeared at all but three (3) of the BNYM witness depositions,[35] and asked questions at nine (9) of those that they did not lead.[36] To summarize, therefore, of the 53 total BNYM witness depositions that were taken in the MDL, Customer Counsel asked questions at 33 (24 of which they led), and did not attend 3.

109. To minimize burdens on the parties and witnesses, the parties agreed that depositions of BNYM witnesses would occur primarily in Pennsylvania, Massachusetts and New

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exhibits), Brian Haberstock (8 new exhibits, 3 previously marked), Kevin Lawrie (21 new exhibits, 4 previously marked), Robert Near (24 new exhibits, 9 previously marked), Patrick Coppe (10 new exhibits, 2 previously marked), Trevor Kirby (29 new exhibits, 1 previously marked), David Almeida (12 new exhibits, 5 previously marked), Richard Gill (15 new exhibits, 4 previously marked), Tim Keaney (28 new exhibits, 4 previously marked), A.J. Quitadamo (2 days) (35 new exhibits, 5 previously marked), and Gerald Hassell (BNYM's CEO) (17 new exhibits, 30 previously marked).

[32] The eight (8) BNYM witnesses whose depositions were led by BLBG were Gregory Wildgrube (26 new exhibits), Daniel Wywoda (29 new exhibits), Ronald "Jeep" Bryant (46 new exhibits), James Palermo (26 new exhibits, 11 previously marked), Richard Mahoney (2 days) (54 new exhibits, 17 previously marked), John Park (30 new exhibits, 3 previously marked), Robert Kelly (23 new exhibits, 10 previously marked), and Thomas Gibbons (30 new exhibits, 8 previously marked). Another BNYM witness, Bruce Van Saun, was deposed after the February 4, 2015 handshake agreement to settle the Customer Class Cases, the DOJ Action, and the NYAG Action, and therefore is not included in any of the totals above.

[33] The BNYM witnesses whose depositions were led by the DOJ were Vincent Sands (18 new exhibits), Jennifer Goerlich (44 new exhibits), Thomas Hoge (30 new exhibits, 1 previously marked), Georgia Phillips (16 new exhibits), David Babbitt (28 new exhibits), Paula Pulvino (40 new exhibits), Nancy Wolcott (38 new exhibits), Carlos Pacheco (15 new exhibits), Bruce Shain (23 new exhibits), Susan Pfister (11 new exhibits), Aniko Delaney (8 new exhibits, 3 previously marked), Kevin Tabacchi (54 new exhibits, 3 previously marked), Ronald Christiansen (21 new exhibits, 7 previously marked), John Cipriani (2 days) (43 new exhibits, 11 previously marked), Marek Unger (28 new exhibits), Margarita Morales (15 new exhibits, 4 previously marked), Jorge Rodriguez (2 days) (32 new exhibits, 15 previously marked), David Nichols (2 days) (62 new exhibits, 10 previously marked), Sue Lo (half-day) (4 new exhibits, 3 previously marked), and Boris Anguelov (half-day) (3 new exhibits, 2 previously marked).

[34] The NYAG led the deposition of Michael Gandy (30 new exhibits).

[35] The only three BNYM witness depositions at which Customer Counsel did not appear were those of Gibbons, Pacheco, and J. Park. These witnesses were of special relevance to the Securities Action and/or otherwise were not highly relevant to the Customer Class Cases.

[36] Customer Counsel asked questions of the following BNYM witnesses where Customer Counsel were not the lead questioner: Sands, Phillips, Delaney, Bryant, Christiansen, Palermo, Cipriani, Mahoney, and Nichols.

York. Co-Lead Customer Counsel, on behalf of Plaintiffs' Executive Committee and for the benefit of the USAO and other MDL Plaintiffs, also negotiated highly favorable pricing for deposition services and effectively used technology to keep costs for depositions down. Therefore, Co-Lead Customer Counsel, along with its vendor and co-counsel were diligent in reducing deposition costs, while ensuring that critical information regarding BNYM's marketing and pricing practices was obtained.

110. Plaintiffs' Executive Committee sought to maximize efficiencies in this process by assigning depositions based on subject matter, expertise and relevance to the respective underlying cases. This was important because, particularly during the last 4 months of the discovery period, depositions were double and sometimes triple-tracked.

111. No deposition proceeded without significant consultation between Plaintiffs' Executive Committee and USAO, and occasionally the NYAG, to ensure that the goals of all plaintiffs would be advanced. Calls among counsel for Plaintiffs and USAO prior to depositions, and in caucuses between Customer Counsel, the USAO, NYAG and ERISA Counsel during the depositions, ensured that depositions were conducted in a manner sufficient to satisfy all interests without sacrificing the time of either deponents or attorneys.

112. Plaintiffs also shared resources in preparing for individual depositions. First-tier document review, as described above, was conducted by most members of Plaintiffs' Executive Committee and Plaintiffs' Steering Committee. Attorneys from Plaintiffs' Executive Committee would then conduct a second-tier document review of those documents most likely to contain useful information for a given deponent. Often, this involved reviewing all "Hot" and "Highly Relevant" documents in a deponent's custodial file. If time permitted, this review would be

further expanded to include all "Hot" and "Highly Relevant" documents mentioning that deponent as well.

113. From this review, document review analysts from Plaintiffs' Executive Committee would create a memorandum and deposition kit identifying documents that could potentially serve as effective tools and exhibits for a given deposition. This memorandum would also contain a discussion of the deponent's role within BNYM, Mellon or BNY and identify potential areas of interest to be explored at deposition, and would identify any prior testimony that mentioned the deponent. Such memoranda were then edited and circulated by document review analysts or associates to Plaintiffs' Executive Committee and the USAO. These memoranda were also supplemented with summaries of key documents based on document reviews done by the USAO's outside consultants. Using these methods, the parties gained the benefit of multiple perspectives and expertise when preparing for depositions without duplicating efforts. Co-Lead Customer Counsel prepared deposition memoranda and kits which were shared with Plaintiffs' Executive Committee and the USAO.

114. Customer Class Plaintiffs kept costs down and maximized efficiencies by limiting duplicative participation in depositions. With respect to participation, generally only a single questioner, on behalf of all coordinated actions (including the USAO and NYAG actions) actually examined BNYM witnesses. Time was allotted to other plaintiffs, if requested, for non-duplicative questioning. Further, Plaintiffs tended to limit attorney attendance in out-of-town depositions, and encouraged, instead, use of inexpensive WiFi video services and teleconference services rather than travel. Plaintiffs also negotiated with their Court Reporting service to order only a single transcript for the Plaintiff side so as to limit the over-ordering of copies. Plaintiffs

and the USAO also negotiated with BNYM for an agreement to bring certain foreign BNYM witnesses to the U.S. rather than requiring depositions through Hague Convention procedures.

115. Plaintiffs had to deal with the added difficulty of scheduling BNYM deponents in the last quarter of the schedule. Although Plaintiffs sought BNYM depositions beginning in March 2014, BNYM did not commit to dates for many of their key witnesses until September 2014, and scheduled most of those critical depositions in November and December 2014. This deposition stacking, in addition to the massive number of third party depositions sought by BNYM at the close of discovery, required an enormous commitment of resources from Plaintiffs' Executive Committee in a very truncated period.

d. Rule 30(b)(6) Notice & Controversy

116. On June 30, 2014, the USAO, in consultation and collaboration with Plaintiffs' Executive Committee, served a Rule 30(b)(6) deposition notice on BNYM, primarily focused on the characteristics of the computer systems that generated much of the SI FX transaction data upon which the parties would calculate damages and establish liability. These systems also documented the technological abilities of BNYM with regard to the provision of FX services, which Plaintiffs sought to establish were only selectively made available to certain of the Bank's custodial clients in efforts to maintain the profitability of the SI FX program.

117. Although the Rule 30(b)(6) notice was served by the USAO, Plaintiffs' Executive Committee made significant contributions in both drafting the notice and engaging BNYM in the lengthy meet and confer process that ensued.

118. Over the course of several months, Plaintiffs' Executive Committee and USAO jointly met and conferred with BNYM regarding the Rule 30(b)(6) notice. During the course of those negotiations, however, BNYM made clear that they would object to any subsequent deposition notices pursuant to Rule 30(b)(6), an issue with very little precedent guiding the

parties. To preserve all rights, the USAO, with substantial input from Plaintiffs' Executive Committee, submitted a comprehensive revised Rule 30(b)(6) notice containing all potential topics for which it would depose BNYM on July 29, 2014 (the "Amended Notice"). The Amended Notice contained 21 questions, with multiple subparts, spanning all conceivable topics relevant to each of the MDL Actions, the DOJ Action, and the NYAG Action. BNYM served objections and responses to the original Rule 30(b)(6) notice on August 11, 2014 and September 22, 2014, which served as the primary area of negotiation over the next three months. BNYM argued vehemently that (i) most of the testimony sought through the Rule 30(b)(6) notice was best obtained through fact witnesses, and (ii) it would be exceedingly burdensome to prepare a witness to testify as to each issue listed on the notice.

119. After BNYM served its remaining objections and responses to the Amended Notice on September 22, 2014, BNYM served a Rule 30(b)(6) deposition notice on SEPTA, served substantially identical notices on IUOE Local 39 and Ohio SERS on October 8, 2014, and served notices on OP&F and the Ohio Treasurer of State on October 31, 2014. These notices were served after BNYM had already deposed more than thirty fact witnesses from SEPTA, the Ohio Plaintiffs (including two former employees of the Ohio Treasurer of State and a previous Rule 30(b)(6) deposition of OP&F), and IUOE Local 39. BNYM's Rule 30(b)(6) notices were extremely broad: the covered topics included selection, retention and evaluation of investment managers and investment consultants; Plaintiffs' relationship and communications with their investment managers and investment consultants; Plaintiffs' knowledge of the relevant custody contracts, the BNYM website, the SI Forms, and SI Procedures; Plaintiffs' knowledge of BNYM's FX service, including alternative to SI; all communications with BNYM regarding FX; Plaintiffs' ability to execute FX on their own behalf; Plaintiffs' understanding of "best

execution"; Plaintiffs' knowledge of independent FX market rates; Plaintiffs' knowledge of the State Street lawsuit and the lawsuits against BNYM commenced by the NYAG and Virginia AG; actions SEPTA and IUOE Local 39 took to indemnify BNYM under the custody contracts; and the process for approving and filing each lawsuit. Plaintiffs drafted and served lengthy responses and objections to the notice, arguing primarily that the information sought was duplicative and cumulative of prior deposition testimony. To support these objections, Plaintiffs took the painstaking and time-consuming step of identifying each prior deponent who had spoken to a given issue, including the page and line numbers of each such response.

120. Ultimately, the parties were able to reach a creative three-part mutual solution to the Rule 30(b)(6) issue: (i) Plaintiffs and Defendants would be permitted to retroactively designate prior testimony as 30(b)(6) testimony; (ii) the parties would revisit their respective Rule 30(b)(6) notices with the goal of narrowing the list of topics sought; and (iii) to the extent possible, the parties also agreed to provide written responses to any outstanding issues which could not be covered by prior testimony. In this way, the parties were both able to obtain the information they desired without the added burden of having to prepare multiple deponents as Rule 30(b)(6) witnesses. Negotiations concerning the proposed Rule 30(b)(6) deposition of the Ohio Treasurer of State were ongoing when the parties reached an agreement in principle.

121. In the end, although BNYM agreed to produce additional Rule 30(b)(6) witnesses, only two additional BNYM 30(b)(6) witnesses were actually deposed purely in their capacity as Rule 30(b)(6) witnesses. One of them provided highly technical (and useful) testimony regarding BNYM's multiple computer systems used for, among other things, executing SI FX transactions, tracking customer transactions, and tracking profit and loss from such trades. The information learned through this deposition was critical to Plaintiffs' understanding of the

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Bank's transaction data. This data and information was, in turn, used by Plaintiffs' damages expert to construct a damages methodology for all Class Members. It forms the basis for the Plan of Allocation in the Settlement.

122. The second of those witnesses provided testimony on concerning the Bank's responses to RFPs. As discussed above, the alleged misrepresentations contained in the Bank's RFP responses served as the factual basis for many putative Class Members' claims (particularly those of Mellon's clients) and also were important to the USAO's claims. Plaintiffs elicited critical testimony regarding Mellon's and BNYM's process for responding to RFPs, including how such information was saved on a shared system, which individuals within each bank had responsibility for drafting and editing RFPs, and how the Bank kept track of which RFPs were ultimately sent to clients. This testimony aided Plaintiffs' analysis of the RFPs (as discussed above), and also informed the countless meet and confer sessions over the issue of which RFPs had actually been sent to Class Members.

e. Interrogatories

123. As permitted by the Federal Rules and the Scheduling Order, the parties also engaged in extensive and time-consuming interrogatory discovery. Plaintiffs prepared and served more than 80 highly particularized interrogatories, contained in six unique sets, on BNYM. Initially, Plaintiffs' interrogatories were designed to allow Plaintiffs to identify the putative classes and subclasses and damages. Thus, the first three sets of interrogatories sought information regarding all of BNYM's custodial clients and each client's FX transactions during the Class Period. Requesting such information was only half the battle. Analyzing the information was particularly challenging in light of the fact that such data was maintained by two distinct legacy entities, as well as the merged BNYM entity. Further, the sheer volume of the

information – several terabytes of transaction data[37] – also presented unique challenges in calculating damages. The transaction data was, however, essential to Plaintiffs' damages expert, who developed a damages methodology to analyze and quantify the data.

124. As Plaintiffs' knowledge of the case evolved over time – gained from analyzing significant amounts of testimonial and documentary evidence – Plaintiffs were able to craft and serve more targeted interrogatories designed to address specific proofs needed for liability or class certification. For instance, Plaintiffs' Sixth Set of Interrogatories, served on December 24, 2014, asked the Bank to identify which Class Members received final RFPs from the Bank (RFPs were identified as one of the many contractual documents at issue); information regarding the information contained on the Bank's website (also relevant to Plaintiffs' contract claims); and the entities through which each Class Member transacted SI (relevant to establishing potential subclasses at class certification). Interrogatories were also crafted to fill holes with respect to issues that had not been addressed through deposition testimony or document production and also to request the basis for the damages supporting the Bank's counterclaims against Plaintiffs, *i.e.* its attorneys' fees and expenses in connection with defending the Customer Class Cases, the DOJ Action, and the NYAG Action.

125. Plaintiffs took advantage of additional tools available under the Federal Rules to obtain necessary information in discovery. On September 25, 2014, Plaintiffs served on BNYM a request for entry onto land or property for inspection pursuant to Rules 26 and 34 to enable Plaintiffs to document the proximity and opportunities for exchange of information between the Bank's FX traders and sales personnel, in preparation for trial. This resulted in an agreement by

[37] Indeed, the file containing the Bank's transaction data was so large that a special computer program was needed to open it.

the Bank to produce high-resolution photographs of its Pittsburgh FX trading desk, which Plaintiffs intended to use as trial exhibits.

126. Plaintiffs also drafted Requests for Admission regarding, for example, the Bank's FX disclosures to clients and pricing practices, profit earned on SI, and the Bank's understanding of "best execution." The Actions were settled without these being served.

4. Formal Discovery Disputes

127. Once the documents were produced and reviewed, Plaintiffs frequently conducted both formal and informal follow-up requests with BNYM relating to document production. Notably, in a case where nearly 20 million pages of documents were produced by Defendants, just two disputes related to BNYM's documents ended up before the Court.

a. Rua Clawback & Groom Motion to Compel

128. Through two separate motions, Plaintiffs sought to compel the discovery of two documents BNYM sought to recall and redact pursuant to the Confidentiality Order. The issues regarding these two documents involved challenging theories regarding whether certain communications with third-parties waive attorney-client privilege. At issue in the first motion to compel, filed on September 2, 2014, was BNYM's attempt to clawback a document containing a discussion between non-lawyers that conveyed at least part of the substance of legal advice received from BNYM's counsel concerning a matter of significant importance in the litigation. In the second motion to compel, filed on October 23, 2014, Plaintiffs sought to prevent BNYM from clawing back a legal memorandum sent to BNYM's investment managers regarding whether it's SI practices complied with ERISA. That motion presented the novel issue whether BNYM and its third party investment managers shared a "common business interest" such that the attorney client privilege would not be waived by the sharing of legal advice. Both motions were vigorously disputed, as the parties recognized the importance of the outcome. Although the

Court ultimately sided with BNYM on both motions, it did so in carefully worded and reasoned opinions which recognized the strong arguments made on both sides of the issue.

b. Requests for Production, Privilege Logs and Redaction Challenges

129. One of the most significant and time-consuming set of informal follow up requests involved BNYM's responses to RFPs, as discussed above. Plaintiffs also expended significant resources in analyzing the Bank's redactions and privilege logs. BNYM produced roughly 56,000 documents in redacted form. Throughout the review process, attorneys from Plaintiffs' Executive Committee kept track of documents that, in their estimation, were improperly redacted. In collaboration with the USAO, Plaintiffs identified approximately 150 redacted or withheld documents to challenge, many of which were chosen as representative of other similarly redacted documents in the Bank's production. The parties met and conferred over the course of several months regarding the propriety of BNYM's redaction and withholding of documents. BNYM ultimately reproduced more than a thousand documents that had been withheld, and several hundred documents that had been redacted.

C. Discovery of Plaintiffs

130. BNYM directed a relentless discovery campaign against Plaintiffs. By the end of it, Plaintiffs had produced nearly 6 million pages of documents, a subset of the documents that were collected and reviewed by Co-Lead Customer Counsel. The search for and collection of documents in response to Defendants' discovery requests was an arduous, time-consuming, and costly endeavor to which each of the Lead Customer Plaintiffs devoted substantial employee and information-technology resources. In addition, both KTMC and LCHB had attorneys on site at each of the Plaintiffs' offices poring over hard copy materials spanning more than 10 years. Because Plaintiffs' discovery was progressing in parallel with the discovery that Plaintiffs were

taking of BNYM, once electronic documents were harvested from the electronic repositories of the Plaintiff institutions, separate review teams of lawyers had to be assembled to review the documents for relevance and privilege. During the fall of 2013, for instance, KTMC contracted with nine lawyers over four months whose sole responsibility was to review the documents SEPTA had collected for relevance and privilege and to undertake to produce these documents to Defendants. Similarly, LCHB deployed six lawyers to gather, review and produce the Ohio Funds documents.

1. Document Discovery

131. BNYM served eight sets of document requests on Plaintiffs: two on SEPTA, two on the Ohio Funds, and four on IUOE Local 39. BNYM's first request was served on December 23, 2011, and its last request was served on November 18, 2013. Plaintiffs served responses and objections to each set of requests, and endeavored, through meet-and-confer sessions with the Bank's counsel, to narrow the universe of documents sought. Whenever possible, Customer Counsel also divided up responsibility among themselves for responding to specific requests that would affect all Plaintiffs equally, thereby avoiding duplication of efforts.

132. Despite the efficiencies gained through developing joint strategies for responding to BNYM's discovery requests, the process of collecting, reviewing and producing Plaintiffs' documents was complicated and time-consuming. Literally millions of pages from the Ohio Funds (including from the Ohio Treasurer of State) were collected and reviewed. Each document needed to be reviewed for relevance and privilege, a rolling process that took months to complete. In addition to the first-tier review, Plaintiffs also performed a second-tier review of all documents initially tagged as "privileged" or identified as needing further review. Attorneys also frequently spot-checked documents coded as "responsive" or "not responsive" to confirm they were being coded correctly.

133. Here again, Plaintiffs leveraged technology to gain efficiencies in the review process. As described above, this allowed Plaintiffs to prioritize their review of the most important (or likely important) documents ahead of those documents deemed by the review technology to be less relevant. This process benefited both Plaintiffs and BNYM by ensuring that the most relevant documents (and thus most responsive to BNYM's requests) were produced first. SEPTA produced approximately 73,000 pages of documents. SERS produced more than 300,000 documents, consisting of more than 5 million pages. OP&F produced more than 18,000 documents, consisting of 400,000 pages. The Treasurer of State produced more than 1,000 documents, consisting of more than 128,000 pages. IUOE Local 39 and its associated service providers produced several thousand documents, equaling more than 185,000 pages. In connection with their review and production, Plaintiffs also created privilege and redaction logs for each client, each of which contained approximately 1,200 entries for all Plaintiffs.

2. Defendants' Interrogatories and Requests for Admission Directed to Plaintiffs

134. The Bank also served three sets of far-ranging interrogatories on Plaintiffs. Responding to each of the Bank's interrogatories required a significant amount of work by Plaintiffs. As discussed above, whenever possible, Plaintiffs divided responsibility for responding to Defendants' interrogatories to avoid duplication of efforts. The Bank's third set of interrogatories, consisting of 17 contention interrogatories, was particularly demanding. The Bank asked Plaintiffs, for example, to:

- Identify all documents constituting the operative contracts for each named plaintiff and explain in detail why Plaintiffs believed such documents to constitute an operative contract;
- Identify every source of any fiduciary duty Plaintiffs claimed BNYM owed to Plaintiffs and the class;

- Identify every misrepresentation made by BNYM to Plaintiffs;
- Describe in detail Plaintiffs' contention that BNYM violated certain consumer protection statutes;
- State each question of law or fact Plaintiffs contend is common to each class or subclass; and
- Describe in detail what Plaintiffs understood "best execution" to mean at all times during the Class Period.

Although the case settled before Plaintiffs' response to BNYM's contention interrogatories were due, when the Settlement was reached Plaintiffs nonetheless had already drafted responses and were diligently working to refine them.

135. On December 27, 2014, the Bank also served 24 detailed requests for admission on Plaintiffs. The Bank's RFAs asked Plaintiffs to admit certain propositions such as that the Bank priced its FX within the range of the day, that Mellon did not advertise "best execution" in its FX practices, and that Plaintiffs' investment managers undertook primary responsibility and discretion for executing Plaintiffs' FX transactions. Each request was, in some way, tied directly to BNYM's anticipated defenses. Crafting appropriate responses was therefore an exercise in caution and discretion as much as it was a fact-gathering exercise. Plaintiffs prepared responses to BNYM's requests, but the litigation was resolved before the responses were served.

3. Depositions of Plaintiffs

136. BNYM deposed approximately 32 representatives of Plaintiffs, including current and former employees. In each instance, the attorneys defending the deposition would review all documents bearing on the particular witness and, relatedly, develop a strong understanding of that individual's role within the organization and corresponding job responsibilities. In advance of each deposition, "deposition kits" were created for each witness. Those kits included a discussion of all important documents (either from the witness's custodial file or other

documents that mentioned the witness or spoke to his or her job functions), as well as a discussion of that individual's role within the organization and likely areas of inquiry. Counsel then worked with each witness to prepare for one to two days prior to the deposition. BNYM deposed Plaintiff witnesses for more than 100 hours, requiring significant preparation and travel.

137. Plaintiffs objected outright to certain depositions noticed by the Bank, which prompted numerous exchanges of written correspondence and telephonic meet and confers. For instance, BNYM noticed both SEPTA's General Manager (the equivalent of a CEO) and Chairman of the Board. Through a several-month-long meet-and-confer process, SEPTA took the position that the limited utility of these depositions was far outweighed by the burdens imposed by asking high ranking executives and board members to sit for deposition of dubious relevance. In the end, Plaintiffs and BNYM were able to reach agreement on the number and identities of SEPTA deponents. This agreement, however, was the product of prolonged negotiations, over the course of many months.

138. Similarly, during fact discovery, BNYM sought numerous depositions of Ohio representatives in addition to the 18 BNYM ultimately took from OP&F, SERS, and the Ohio Treasurer of State. BNYM sought the depositions of the former executive directors of SERS and OP&F, the former Treasurer of the State of Ohio, a former Deputy Treasurer of the State of Ohio, two former attorneys from the Treasurer's Office, and a former director of operations from the Treasurer's Office. The parties discussed these depositions over the course of many months, and exchanged detailed correspondence about the proposed deponents, including the parties' detailed positions on the apex doctrine and when high-ranking state officials may be deposed.

4. Agreements with the USAO to serve as fact witnesses in the FIRREA Case

139. Plaintiffs also worked with the USAO in aid of developing evidence to support the USAO's FIRREA claim. Following extensive negotiations with the USAO, each of the Ohio Funds and SEPTA, through written agreements, committed to appear at any trial of the DOJ Action in lieu of being deposed by the USAO.

5. Discovery Disputes

140. While the parties generally worked cooperatively to resolve discovery disputes without Court intervention, as is often the case with complex litigation, a number of disputes ended up before the Court. The section below summarizes the nature of the discovery disputes that were presented to the Court, and the Court's ruling as to each.[38]

a. October 2, 2013 Motion to Compel

141. First, on October 2, 2013, BNYM moved to compel SEPTA and the Ohio Funds to produce (i) RFPs Plaintiffs issued to prospective investment managers, (ii) responses to those RFPs, and (iii) documents reflecting Plaintiffs' evaluation of those responses. The parties met and conferred extensively, with Plaintiffs ultimately offering to produce RFP materials only in the case of investment managers who were actually retained by Plaintiffs. BNYM rejected Plaintiffs' offer and opted to seek relief from the Court. After the issue was fully briefed, Magistrate Judge Cott issued an order which was largely consistent with the offer Plaintiffs had previously made to the Bank.

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[38] As mentioned above at ¶ 38, in a discovery hearing prior to the MDL transfer, IUOE Local 39 prevailed in obtaining extensive FX trading data for Class members, as well as extending the time period covered by Defendants' planned document production in the IUOE Local 39 Action.

b. February 13, 2014 Motion to Compel and For Sanctions (SEPTA only)

142. Magistrate Judge Cott's October 24, 2013 Order did not, however, dispose of the RFP issue. As counsel for SEPTA learned more about how that organization operated, it became apparent that, unlike the Ohio Funds, SEPTA did not issue formal RFPs. Thus, SEPTA later took the position that a joint promise to provide responses to RFPs issued by Plaintiffs applied to the Ohio Funds but did not apply to SEPTA. BNYM disagreed and entered into further motion practice, with BNYM seeking not only to compel SEPTA to produce such materials, but also sanctions for failure to comply with Magistrate Judge Cott's Order. The issue was briefed extensively and argued before the Court. SEPTA was ordered to inquire with each of its relevant current and former investment consultants and managers regarding responses to RFPs. This process yielded the additional production of fewer than 20 documents, none of which constituted responses to RFPs.

c. Third Party Discovery

143. Third party discovery was a particularly complicated and contentious issue in these Actions. BNYM identified more than 160 third parties in its initial disclosures in the Customer Class Cases and the DOJ Actions. Plaintiffs believed that extensive third party discovery of absent Class Members was inappropriate, and that, in any case, the limited benefits to be gained by such discovery were outweighed by the extraordinary burdens it entailed. Before discovery in the MDL Actions and the DOJ Action was coordinated, however, the USAO issued document subpoenas to nearly all of the third parties identified in the Bank's Rule 26 disclosures. BNYM, in turn, sought to depose scores of third parties.[39]

[39] To put these numbers in context, Plaintiffs' Executive Committee and the USAO together noticed fewer than 60 BNYM witness depositions.

d. November 2013 Motion for a Protective Order

144. On November 1, 2013, Plaintiffs moved for a protective order challenging 130 third party subpoenas that had been issued by BNYM. Plaintiffs argued that a recent change in Fed. R. Civ. P. 45 granted the Court jurisdiction over all subpoenas, regardless of where they were issued (many of the subpoenas were issued outside of the Southern District of New York), Plaintiffs relied on a previous discovery ruling by Magistrate Judge Cott in the Securities Action,) holding certain discovery irrelevant to the instant litigation.

145. Plaintiffs' motion for a protective order, and the Bank's motion for emergency relief in response, yielded multiple letters exchanged between the parties, Court submissions, and hearings before the Court, as well as and extensive argument over appropriate discovery and communications with absent Class Members and subpoena recipients.

146. The Court granted BNYM's motion for emergency relief and enjoined Plaintiffs from directly contacting third parties concerning the Bank's subpoenas, but assigned Plaintiffs' motion for a protective order to Magistrate Judge Cott, who then ordered supplemental briefing regarding the impact of this Court's ruling as to BNYM's emergency motion.

147. After hearing extensive argument, Judge Cott directed the parties to meet and confer regarding Plaintiffs' motion and to present a joint solution to the Court. Over the next seven days, the parties met and conferred numerous times. In the end, BNYM agreed to substantially narrow the scope of its third party subpoenas.

e. Deposition Protective Orders

148. While Plaintiffs recognized that reasonable third party deposition discovery was appropriate, BNYM engaged in a relentless campaign to elicit testimony from third parties whose relevance to this litigation was, at best, minimal. To illustrate: The first third party deposition did not occur until September 23, 2014 – just four months before the close of fact

discovery. In the weeks that followed, BNYM would notice nearly 42 additional third party depositions in locations including Virginia, Dallas, Los Angeles, Alaska, London, and Scotland. The vast majority of these depositions—roughly 8 out of every 10—were noticed for dates in December 2014 and January 2015. Frequently, third party depositions were double- or triple-tracked alongside other third party or party depositions. At a minimum, each deposition required attendance by at least one member of Plaintiffs' Executive Committee; frequently, Plaintiffs or the USAO cross-noticed BNYM's depositions, as was the case with the class representatives' more than ten investment managers and consultants.

149. Having to devote time and resources to cover these third party depositions threatened to divert already strained resources away from critical case deadlines. Between December 2014 and January 2015 alone, Plaintiffs had to (i) prepare for and lead a two-day deposition of a critical BNYM witness (in addition to attending nearly a dozen others); (ii) prepare two rebuttal expert reports in response to four experts offered by the Bank in opposition to class certification; (iii) take or defend six expert depositions; (iv) defend three party witness depositions; (v) respond to contention interrogatories; and (vi) prepare their opening motion for class certification. After consulting with the USAO, Plaintiffs decided to file a motion for a protective order under Rule 26 to limit the number of third party depositions by the Bank.

150. On September 24, 2014, Plaintiffs moved for a protective order. In addition to asking the Court to foreclose the Bank from proceeding with 11 depositions of absent Class Members, Plaintiffs' motion also sought to limit the scope of depositions of eight other absent Class Members who also served as investment managers or consultants for Plaintiffs during the Class Period. Plaintiffs argued that discovery from absent Class Members is permitted in only very limited situations, and that the utility of the discovery sought was outweighed by the

burdens imposed both on Plaintiffs and on the absent Class Members. BNYM's primary argument in response was that the discovery sought was critical to its defense in the DOJ Action. Specifically, BNYM claimed that the testimony sought was geared at (i) proving that there was no industry standard understanding of "best execution" within the FX industry; and (ii) showing that some customers were not actually misled by BNYM's practices. The USAO took no formal position on the motion, but Plaintiffs vigorously disputed BNYM's arguments.

151. In an Order issued on October 9, 2014, the Court granted Plaintiffs' motion in its entirety. In so doing, the Court engaged in a detailed analysis of what the USAO would and would not need to prove to succeed on its claims. Critically, the Court explained that the USAO would *not* be required to show that the alleged victims were "actually [] deceived or even that the victim [was] actually harmed."[40] And, as to the issue of BNYM's fraudulent intent, the Court held that the *Bank* – not any third party – was in the best position to obtain evidence bearing on its understanding of "best execution." The significance of the Court's ruling thus went far beyond the obvious benefit obtained in precluding the discovery sought.

152. The Court's October 9, 2014 ruling did not dispose of third party discovery issues, however. BNYM interpreted the Court's October 9 Order as applicable only to the specific depositions that were the subject of Plaintiffs' motion. The Bank thus subsequently noticed 19 additional third party depositions, arguing that the discovery was relevant not just to the DOJ Action, but to the private actions as well. The parties engaged in an extensive meet and confer process over the course of several weeks but were unable to reach an agreement as to appropriate limits for third party discovery, both as to the number of depositions and the scope of

[40] *In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, No. 12 MD 2335 (LAK), 2014 U.S. Dist. LEXIS 148964, at *70-71 (S.D.N.Y. Oct. 9, 2014).

such depositions. When it became clear that the parties were at an impasse, Plaintiffs' Executive Committee again developed a joint strategy to bring the issue before the Court.[41]

153. On October 22, 2014, the USAO, with considerable input and assistance from Plaintiffs' Executive Committee, moved the Court for a protective order barring the 19 third party depositions BNYM had noticed and precluding BNYM from seeking any further third party discovery without leave of the Court. *See* ECF No. 122 in 11-cv-6969-LAK. BNYM also cross-moved for "clarification and partial reconsideration" of the Court's October 9, 2014 Order requesting clarification as to the permissible scope of examination with respect to the eight absent Class Members who were also investment managers or consultants for Plaintiffs, and requesting permission to take three depositions enjoined by the Order.

154. After both motions were fully briefed, the Court denied Plaintiffs' and the USAO's second motion for a protective order, and directed the parties to meet and confer regarding third party discovery and present a joint plan to the Court. Although the motion was denied, Plaintiffs and the USAO succeeded in persuading the Court that limitations on third party discovery were both necessary and appropriate. In particular, the Court was careful not to declare "open season on non-party witnesses," noting that it would be both "unnecessary and unreasonable to suppose that a deposition of anyone who may know anything about the Bank's pricing of SI transactions should or will be deposed." And the Court admonished the Bank for seeking to take "a very large number of non-party depositions in the final sixty days of discovery." Dkt. No. 136 at 3-4.

[41] It should be noted that the decision to file a subsequent motion for a protective order was not made without considerable deliberation. Both Plaintiffs and the USAO were mindful of the judicial resources that would need to be devoted to addressing an issue which they believed had already been addressed. Nonetheless, Plaintiffs and the USAO believed that relief from the Court was the only option available to them.

155. Over the course of seven days following that Order, the parties engaged in protracted meet and confer sessions, with near-daily calls and countless email exchanges. The negotiations, which were at all times conducted in good faith, were intense. In the hours leading up to the Court-imposed deadline, an understanding between BNYM and the Plaintiffs' Executive Committee as to the necessary scope of any agreement developed more quickly than an understanding between the Bank and the USAO. Counsel for Plaintiffs mediated a resolution between the Bank and the USAO, often communicating each side's respective demands to the other and, whenever possible, pushing the parties closer together. This role required nuance and measure: On the one hand, Plaintiffs did not want to compromise any negotiation leverage, as their interests were largely aligned with those of the USAO. On the other hand, Plaintiffs recognized that some level of sacrifice would be needed to reach an agreement. Negotiations went to the eleventh hour and beyond, with counsel for Plaintiffs having to call the Court and request a one-hour extension to the previously imposed 3 PM deadline to submit a joint proposal. In the end, Plaintiffs succeeded in persuading the Bank and the USAO to agree on a comprehensive stipulation governing all aspects of third party discovery for the remainder of the litigation.

156. The detailed seven-page stipulation reached by the parties underscored the complexity of the negotiations and the importance of the issue to all parties.

D. Expert Reports and Expert Discovery

157. It was clear from the start of this litigation that many aspects of the claims, and in particular, the Bank's defenses, would be the subject of expert testimony.

158. In support of class certification, and flowing from work first developed in connection with the IUOE Local 39 class certification motion filed in 2012 before Judge Alsup, Plaintiffs retained G. William Brown, Jr., Esq., principal of 8 Rivers Capital and Fellow of Duke

Law School (where he has been a Professor of the Practice of Law) to prepare a class-wide damages analysis.

159. There were numerous steps involved in developing the factual foundation for Professor Brown's analysis, and Plaintiffs took the lead in this process.

160. The fundamental first step was developing the legal framework for damages given the numerous claims at issue in the Customer Class Cases, including breach of contract, breach of fiduciary duty, and numerous state consumer statutes. Plaintiffs developed the view that each of these claims, at their core, rested on the notion that BNYM, through its various contractual, fiduciary, and statutory obligations, promised to provide its customers with FX trades, *inter alia*, using "best execution," "free of charge," using the "best rates," in a manner no less favorable than a "comparable arm's length transaction," and in order to "maximize the proceeds of each trade" for the custodial client.[42] Yet, in reality, Plaintiffs alleged, BNYM employed a policy of pricing FX transactions at the outer edges of the range of prices for the trading sessions during which the trades occurred.

161. Applying these allegations to Plaintiffs' legal framework yielded a damages methodology that sought to identify the difference between, on the one hand, the prices custodial clients actually received on their FX trades and, on the other hand, the prices they should have received had the Bank not deliberately priced FX trades at or near the least favorable rate (for the clients) of the applicable trading range. Plaintiffs thus developed a model to measure: (i) disgorgement of BNYM's net profits attributable to its practice; (ii) disgorgement of revenues from the practice; and (iii) what spreads comparable arms-length transactions yielded for BNYM at the time the Bank was transacting for Class Members.

[42] *See* Master Compl. ¶¶ 5, 22-166.

162. Developing these measures required *first* identifying and acquiring the data maintained by the Bank that would allow such an analysis for a period spanning more than ten years, and involving several computer systems maintained across three companies. *Second*, Plaintiffs had to request and synthesize information regarding the identity of the Class Members whose data would have to be analyzed. *Third*, Plaintiffs needed to depose witnesses from BNY, Mellon and BNYM that understood the pricing protocols, the various systems and databases that the Bank maintained, and various coding conventions that would permit an analysis by Plaintiffs' expert. This information was sought and obtained via interrogatories, document requests and depositions between the commencement of discovery in the IUOE Local 39 Action in the fall of 2012, as well as interrogatory responses, numerous meet-and-confers with BNYM to ensure the Bank had provided to Plaintiffs all the documents they needed, and depositions through the fall of 2014.

163. All in all, through these discovery efforts, Professor Brown was able to analyze several terabytes of transactional data and build a damages model that formed the basis for the negotiations among the parties that resulted in the resolution of all the Customer Class Cases, the DOJ Action, the NYAG Action, and the DOL's potential claims.

164. Over several months, Plaintiffs worked with Professor Brown to refine his damages methodology and ultimately produce a damages report, including a class wide damages methodology, in support of class certification that was served on Defendants on November 5, 2014.

165. In response to Professor Brown's report, and in anticipation of their arguments in opposition to class certification, BNYM served Plaintiffs with six expert reports:

- a 62-page report (plus exhibits) by Professor Geert Bekaert, of Stanford University, which sought to portray the determination within the FX markets as to what constituted the best price or best rate for any given Class Member as individualized, i.e., not common among all Class Members;

- a 63-page report (plus appendices), by Professor Bradford Cornell of Compass Lexecon and CalTech, which sought to illustrate through empirical data analysis the various motivations by asset managers and owners in using various FX services, including SI FX. Dr. Cornell also sought to refute Professor Brown's damages methodology, asserting that determinations of what constituted the best price varied among Class Members, and argued for set-offs against damages the costs incurred by BNYM for the provision of FX services and costs avoided by Class Members in using the service.

- a 59-page report, (plus appendices), by Professor Jonathan Macey of Yale University, that sought to describe alternative definitions of the term "best execution" in an effort to rebut the notion that the concept would be universally understood by Class Members;

- a 40-page report by Christiane Mandell, a financial markets expert, opining on the operations of the FX market and asserting that individualized issues would predominate in Plaintiffs' attempting to establish what constituted the best market rates for FX services.

- A 32-page report by Professor David Sitkoff, of Harvard University, who opined on the purported dissimilarities of fiduciary law across the 50 states such that presenting a unified claim would be impracticable.

- A 36 -page report by Professor David Roper targeted at ERISA claims challenging whether there could be a basis to assess whether any SI FX transaction was "comparable" to other transactions and providing empirical analysis of the allegedly variable use of the SI FX program by ERISA plans.

166. In response to BNYM's expert reports, Plaintiffs were required to prepare, between December 5, 2014 and January 9, 2015, rebuttal expert reports that responded to the arguments raised by the Bank's experts. Plaintiffs worked with Professor Brown to respond to the reports of Drs. Cornell, Baerkart, and Mandell and also retained Dr. David DeRosa of Columbia University to respond, principally, to Dr. Macey's opinions regarding best execution—a critical issue in the litigation. At the time that Plaintiffs retained Dr. DeRosa, he had been serving as a consulting expert for the USAO. Moreover, following Dr. DeRosa's retention by Class Counsel, the NYAG and the Securities Plaintiffs also sought his analysis on "best execution." Co-Lead Customer Counsel took the lead in working with Dr. DeRosa in responding to BNYM's experts' reports. Given the common interests in Dr. DeRosa's opinions and the fact that his work on the Customer Class case would underlie any expert work he did on the DOJ, NYAG and Securities Actions, all Plaintiffs reached a cost-sharing agreement with regard to Dr. DeRosa's expenses, summarized as follows:

Dr. DeRosa Split of Expert Costs Among Plaintiffs	
Co-Lead Customer Counsel	46%
Securities Counsel	23%
USAO	11.5%
NYAG	11.5%
LACERA/LADWP Actions	4%
ERISA Counsel	4%

167. On January 9, 2015, Co-Lead Customer Counsel served a 24-page reply expert report (plus exhibits) by Professor Brown, as well as a 79-page report (plus exhibits) by Dr. DeRosa.

168. In connection with BNYM's expert reports, Plaintiffs were required to review and digest more than 230 unique sources, totaling thousands of pages of information. Although the litigation ultimately settled before any expert was deposed in the Customer Class Cases, Plaintiffs also divided responsibility for deposing the Bank's experts and expended significant time preparing for such depositions.

169. In response to Dr. DeRosa's report, the Bank filed a motion to strike, asserting that his report was in the style of an opening report on which Plaintiffs had the burden of proof (on class certification). Plaintiffs opposed the Bank's motion but the parties reached an agreement to settle the litigation before the issue was decided by the Court; there can be no serious doubt, however, that the issue, while believed by Plaintiffs to be without merit, carried with it severe consequences in the event that the Court accepted Defendants' argument. Indeed, had the Court granted BNYM's motion, the record on the meaning of "best execution" at class certification would have consisted exclusively of the Bank's expert reports.

IV. MEDIATION AND SETTLEMENT

A. Timing and Process

170. In or around early November 2014, Plaintiffs, the DOJ, and the NYAG, in anticipation of the last push to complete fact discovery and the preparation of expert reports in the Customer Class Cases, began to explore the potential of a mediated resolution of all of the coordinated actions. With the approval of the DOJ and the NYAG, Co-Lead Customer Counsel were charged with reaching out to Defendants to broach the possibility of a global mediation. Over the course of the next few weeks, Plaintiffs' Executive Committee and the USAO

negotiated with Defendants over the parameters of a potential mediation and the potential mediator.

171. The initial round of negotiations focused on the process for mediation and, in the first instance, the identity of the mediator. After prolonged negotiation, the parties ultimately agreed on the selection of the Hon. Layn R. Phillips (Ret.), former U.S. District Judge for the Western District of Oklahoma, as a mediator.

172. With the mediator selected, a date and venue were agreed upon by the parties, based in part on the mediator's availability: January 19 and 20, 2015, in Manhattan.

173. Up to the point of the mediation, Co-Lead Customer Counsel, and in particular Joseph H. Meltzer of KTMC, were charged with conveying to the Bank the parties' positions regarding the mediation, negotiations regarding the selection of the mediator, and the timing of submissions. The USAO assumed the lead in negotiating over the format of written submissions on behalf of all the parties.

174. The mediation costs were ultimately divided between the MDL Plaintiffs, the USAO and the NYAG as follows:

Plaintiff(s)	**Percentage of Cost**
Plaintiffs' Executive Committee: (LCHB, KTMC, and BLBG):	69%
USAO	10%
ERISA Plaintiffs	4%
NYAG	10%
LACERA/LADWP Plaintiffs	4%
NYC Plaintiffs	3%

175. Plaintiffs, the DOJ, and the NYAG met several times, in person and through telephone conference calls, to develop a strategy for the mediation, with the goal of maximizing the benefits for each of their constituencies.

176. In advance of the mediation, Plaintiffs' Executive Committee and the DOJ took the lead in preparing a global mediation statement. That statement included an extended discussion of the facts underlying the claims, which cited extensively to voluminous deposition testimony and documentary exhibits Plaintiffs had developed. The mediation statement also included discrete case-specific discussions about BNYM's liability, including the legal theories unique to each of the cases. The omnibus mediation statement, which consisted of the positions of all plaintiff constituents participating in the mediation and was due on January 9, 2015, was drafted, edited, and finalized over four weeks, an effort that required the organizing and editing of submissions from seven plaintiff groups. In preparing the global mediation statement, Co-Lead Customer Counsel were responsible for coordinating the drafting process, including editing and finalizing the omnibus mediation statement and submitting it to the mediator.

177. Simultaneously, Plaintiffs were working with their experts to prepare and finalize class certification rebuttal expert reports, which were due on January 12 (discussed above) and draft opening class certification briefs and declarations, which were due on January 30. The push to prepare mediation materials also coincided with an onslaught of third party and party depositions that the parties were attempting to schedule before the January 30, 2015 close of fact discovery. As Co-Lead Customer Counsel were working on experts, class certification and the mediation statement, the USAO was taking the lead on third party discovery during this period.

178. Beginning at 9 a.m. on January 19 and concluding late in the evening on January 20, the parties engaged in a highly contentious mediation before Layn Phillips. Toward the conclusion of the mediation on January 20, while the parties remained far apart in their respective views, there was sufficient momentum to continue mediating. However, the mediator was not again available until Wednesday, February 4, 2015, and so the parties agreed to engage

in a third mediation day at that time. Given the substantial third party depositions scheduled between January 20 and January 30, together with expert depositions (more than 22 depositions in all) as well as class certification briefing due by January 30, the parties agreed that a temporary discovery stay until February 5 could avoid potentially needless and expensive discovery. Late in the afternoon of January 20, the parties jointly called the Court to request a temporary discovery stay and the Court granted the relief while indicating that to the extent the parties were going to seek any further relief, they had better be further along toward resolution.

179. The fact that Plaintiffs, the USAO, and the NYAG were mediating with the Bank become known to the DOL and the U.S. Securities and Exchange Commission. Each of these entities had ongoing investigations into the Bank's conduct and sought to be included in the third mediation day. Ultimately, the DOL, during the course of the last mediation day, reached an agreement with the Bank in which the Bank agreed to pay a further $14 million to resolve the DOL's investigation, all of which would be allocated to the ERISA plans that are members of the Customer Class. The $14 million DOL settlement will be distributed to Class Members who are ERISA plans pursuant to the Plan of Allocation that has been developed by Plaintiffs and is subject to the Court's approval. Co-Lead Customer Counsel worked with the DOL and with Defendants to identify each and every ERISA plan within the Customer Class and those efforts are reflected in the Plan of Allocation submitted herewith.

180. At close to 11 p.m. on February 5, 2015, the parties reached an agreement in principle to settle the Customer Class Cases, the DOJ Action, the NYAG Action, and the DOL Action. The settlement, pursuant to the prior agreements reached between these groups, broke down as follows:

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- The Customer Class Cases would be allocated $335 million, from which Customer Counsel could seek attorneys' fees. Of this $335 million recovery, $70 million would be allocated to Customer Class members who are ERISA funds.

- The USAO would be allocated $167.5 million (together with certain admissions and other non-monetary relief which was negotiated after February 5)

- The NYAG would be allocated $167.5 million, $155 million of which would be allocated to the Customer Class to be distributed through the Plan of Allocation. No counsel are permitted to seek a fee from that portion of the Customer Class recovery.

181. Separately, the DOL resolved its claims for $14 million, all of which would be allocated to the ERISA funds in the Action and, following further discussions between Customer Counsel and the DOL following the announcement of the Settlement, has been placed into the Settlement Fund and will be distributed pursuant to the Plan of Allocation if approved by the Court.

182. The settlements described above are a global resolution of the Customer Class Cases, ERISA Actions, the DOL investigation, the DOJ Action, and the NYAG Action. The settlements in the NYAG Action and the DOJ Action are dependent on approval of this Settlement.

183. In total, the mediation resulted in a $504 million recovery for the Class.

B. Reasons for the Settlement

184. Plaintiffs and Lead Settlement Counsel endorse the Settlement. Each of the Plaintiffs in the Customer Class Cases has actively overseen and participated in the prosecution

of this Action. Co-Lead Customer Counsel are among the largest national law firms that specialize in complex class action litigation, and have been involved in numerous financial and consumer class actions, many of them notable in their size and complexity. Based on their experience and close knowledge of the facts and applicable laws, Plaintiffs and their counsel determined that the Settlement was in the best interests of the Settlement Class.

185. As described herein, at the time of the Settlement, the parties were very close to the end of fact discovery, had commenced expert discovery and were poised to stake out their positions on class certification. Defendants' motion to strike the expert report of Dr. David DeRosa, a key expert on the issue of "best execution," was pending before the Court. While Plaintiffs were confident that the Court would permit the case to proceed as a class action covering all of BNYM's domestic custodial clients who used the Bank's standing instructions during the Class Period, there were serious risks that the case would not be certified, would be certified on a much smaller basis so as to not encompass all of BNYM's custodial customers, would be reduced to only certain certifiable claims that could substantially lower the damages sought by the resulting class, or would cover a shorter time period.

186. Plaintiffs and the Customer Class also faced serious risks associated with proving liability and establishing damages. As this Court acknowledged at the very first status conference after it issued the SEPTA Opinion, in establishing liability in this case, Plaintiffs faced "an infinite number of law school examination questions." May 17, 2013 MDL Status Conference Tr. at 13:25-14:1. As the Court is aware, in attempting to establish Defendants' liability, Plaintiffs ultimately advanced theories of liability based on four core claims: (1) breach of contract (MCCC ¶¶ 217-30); (2) breach of fiduciary duty (MCCC ¶¶ 208-16); and (3) violation of state unfair trade practice statutes (MCCC ¶¶ 248-75), including N.Y. GBL § 349

claims. Plaintiffs also set forth alternative claims, including conversion (MCCC ¶¶ 234-40), breach of the implied covenant of good faith and fair dealing (MCCC ¶¶ 231-33), and unjust enrichment (MCCC ¶¶241-47). As highlighted below, each theory proved challenging both for liability and class certification.

187. In order to construct their breach of contract allegations, Plaintiffs faced two primary challenges: *First*, Plaintiffs had to show that a valid contract existed. *Second*, Plaintiffs needed to prove that terms of the contracts actually supported plaintiffs' theory of liability; in other words, that the scope of BNYM's contractual duties included either the best rate of the day or, at least, substantially similar rates to those received by non-SI FX ("negotiated FX") customers.

188. As the Court has noted, "[t]he challenge in assessing this claim is that the parties did not reduce their relationship to a single writing." Dkt. No. 188, at 19. Instead, a plethora of documents contained BNYM's (and its predecessor entities') SI FX pricing obligations. These contractual documents varied across time and with respect to which entity—BNY, Mellon or the merged entity—authored the contract. Further, clients did not uniformly update these agreements. Therefore, Plaintiffs had to prove a consistent set of contractual terms existed for every Class Member throughout the Class Period. While Plaintiffs believed that this burden was not insurmountable, it carried significant risk.

189. Even after proving legally enforceable contracts with common terms applying to all Class Members, Plaintiffs faced the challenge of convincing the Court or jury that terms such as "best execution" or "comparable arms' length transactions" or "best rate of the day" had the same meaning with respect to every Class Member, or indeed, the same meaning with respect to every transaction with respect to any individual Class Member. Defendants sought to establish

via expert testimony and voluminous third party discovery that there was no common understanding or application of such terms in the FX markets, a defense that Plaintiffs vigorously contested. Nevertheless, the risk existed that a jury or the Court on summary judgment would agree with Defendants.

190. For instance, Plaintiffs argued that BNYM breached its obligation to provide "best execution" pricing. The meaning of "best execution" was hotly contested by the parties. BNYM consistently argued that "best execution" itself had no industry meaning that could support Plaintiffs' theory of liability.[43] At the motion to dismiss stage, Plaintiffs successfully argued that the meaning of "best execution" would benefit from a more complete record, and thus, this became a central focus of discovery efforts and expert analysis. As noted above, Plaintiffs' expert Dr. David DeRosa submitted a 77-page report rebutting BNYM's several class certification experts, each of which, in some form or another, addressed the meaning of "best execution," or a comparable term. Therefore, Plaintiffs faced substantial risks in advancing their proffered definition of "best execution."

191. Plaintiffs also developed a claim based on the fiduciary obligation to provide full disclosure to beneficiaries, which involved difficult questions of law. "When you start with a fiduciary obligation [BNYM is] prohibited under law from enriching [itself] at [SEPTA's] expense without providing [SEPTA] with disclosure." Motion to Dismiss Hearing Tr. at 65:13-16, SEPTA Action, 2:11-cv-01628-JHS (Oct. 6, 2011). This proposition posed two distinct challenges that Plaintiffs met with creative and innovative theories of liability: *First*, Plaintiffs had to establish that BNYM and the putative Class had a fiduciary relationship. *Second*, they

[43] Although BNYM argued that Plaintiffs' claims hinged entirely on the meaning of "best execution," in fact, as noted above, Plaintiffs alleged that BNYM made a variety of representations that each supported Customer Class Plaintiffs' theory of liability in like manner.

had to establish the scope of BNYM's duty (arising out of the duty of loyalty) to fully and fairly disclose its practices. Each portion of this argument involved substantial risk.

192. Plaintiffs had to prove an untested definition: BNYM served as a fiduciary by nature of its agreements and its custodial relationship with its clients. However,

> [a]fter surprisingly lengthy research….challenges in understanding U.S. custody law start with the fact that "custody" is not usually a legal term of art, and while traditionally most analysis starts with common law concepts of trust, agency, and bailment, no one—including legislators, courts, and even the U.S. Federal Deposit Insurance Corporation (the "FDIC")—applies them consistently or always accurately.

68 Bus. Law. 103, 105 (Nov. 2012). The dearth of "custodian" law made proving a consistent fiduciary duty across the class extremely risky.

193. After establishing that BNYM owed a fiduciary duty, Plaintiffs had to prove that BNYM owed a duty to fully and fairly disclose its FX pricing practices. State law uniformly holds that a fiduciary owing a duty of loyalty owes a duty to fully and fairly disclose material terms. However, state law did not alleviate the fact gathering challenges, discussed *infra*, arising out of BNYM's failure to make the same disclosures to each of its clients. Thus, Plaintiffs had to develop proof, and demonstrate to the jury or the Court, that BNYM failed to properly disclose its SI FX practices to each of the more than 1,200 putative Class Members.

194. With respect to the violation of state statutes, such as the N.Y. GBL § 349 claims, there existed substantial risk that the Court, at summary judgment, would find that these statutes did not reach the conduct at issue in this litigation. Indeed, during the course of this litigation, the Hon. Denise Cote held, in another case challenging the automated foreign exchange practices of JPMorgan, that N.Y. GBL § 349 did not apply to contracts between sophisticated financial institutions as such institutions could not be considered "consumers." *La. Mun. Police Emples. Ret. Sys. v. JPMorgan Chase & Co.*, 12-cv-6659, 2013 U.S. Dist. LEXIS 93692, at *50 (S.D.N.Y. July 3, 2013).

195. Even assuming that Plaintiffs' theories of liability could be proven both individually and on a classwide basis, the appropriate measure of damages was highly contested. While Plaintiffs' damages expert presented a model of damages that measured the margins that BNYM earned from standing instructions, BNYM argued that such margins were not a proper damages measure as they did not account for the large costs associated with maintaining the SI FX program, they did not account for the various cost savings that the Plaintiffs (and their investment managers) enjoyed by ceding FX to the Plaintiffs' custodial bank and avoiding the costs of developing FX expertise or the infrastructure to identify, process, and settle FX transactions. Plaintiffs faced significant risk that the damages that form the basis for the Settlement could never be proven at trial or would be greatly offset. Given these risks, it is an outstanding result for the Settlement Class that this global settlement reflects 35% of the margins that BNYM earned from SI FX during the Class Period.

196. Losing at trial following class certification also could have implicated BNYM's asserted counterclaims, which sought reimbursement to BNYM for the cost of the litigation and defending the claims. While Plaintiffs believed the counterclaims had little merit, the Court largely upheld them at the motion to dismiss stage against SEPTA and IUOE Local 39 and left open the potential for BNYM to bring them against Class Members once a class was certified.

197. The Settlement eliminates the above litigation risks and guarantees the Settlement Class a substantial cash recovery now. We firmly believe that settling the Action at this juncture and for the amount negotiated was and is in the best interests of the Settlement Class.

V. NOTICE TO THE CLASS AND THE PLAN OF ALLOCATION

198. A key feature of this Settlement is that there is no claims process. The recovery for each Class Member has been calculated based on transaction data furnished by the Bank and

analyzed by Plaintiffs' damages expert. Upon final approval of the Settlement, the Net Settlement Fund will be distributed to Class Members on a proportionate basis based on their recognized losses under the Plan of Allocation. Thus, the notice process has primarily been an instrument to advise the approximately 1,218 Class Members of the fact of this settlement, their estimated recoveries, and the rights to opt-out or object if they so choose. As set forth below, the notice campaign conducted by the Garden City Group ("GCG"), the Court appointed claims administrator, under the supervision and guidance of Lead Settlement Counsel clearly meets the requirements of due process.

A. The Notice to the Settlement Class Meets the Requirements of Due Process and Rule 23 of the Federal Rules of Civil Procedure

199. Lead Settlement Counsel have been directly involved in the notice process, both in terms of direct communications with Class Members and by supervising the notice process conducted by GCG. Attached as Exhibit 15 to this Joint Declaration is the Affidavit Of Stephen J. Cirami Regarding (A) Mailing of The Notice; (B) Publication of The Summary Notice; and (C) Report on Requests for Exclusion Received to Date, sworn to on August 14, 2015 ("Cirami Affidavit"). Mr. Cirami is a principal at the GCG and the Cirami Affidavit, describes GCG's efforts in effectuating the notice ordered by the Court.

200. Prior to this case resolving, and in connection with class certification, Lead Settlement Counsel had worked to identify each and every Class Member that would be covered by this Action. There are approximately 1,218 Class Members and they are collectively associated with 11,267 custodial accounts maintained at BNYM. The Class is comprised exclusively of institutions which include corporations large and small, many of which are Fortune 500 corporations, institutional investors, such as public pension funds, mutual funds, unions, charities, and not-for-profits institutions, among many other categories of institutions.

Plaintiffs' damages expert, Professor Brown, as discussed above, using the Bank's transaction data produced in discovery, developed a damages methodology to calculate the damages for each of the custodial accounts associated with each of the approximately 1,218 Class Members. This analysis is the basis for the Plan of Allocation. As the notice campaign has proceeded, the list of Class Members has been revised as additional information from recipients of the notice has been received. For instance, some entities identified as domestic custodial clients in BNYM's records are actually subcustodians with accounts being held for the benefit of other clients, some BNYM clients identified as domestic custodial clients were discovered to be foreign entities and therefore not members of the Settlement Class. If the Settlement is finally approved, the final tally of Class Members will be furnished to the Court in connection with Lead Settlement Counsel's application for distribution of the Net Settlement Fund.

201. In connection with the Settlement, Co-Lead Customer Counsel worked with Defendants to get addresses for each of the Class Members that had been previously identified. Many of the Class Members are no longer clients of BNYM.

202. On March 27, 2015, working with Professor Brown, we aggregated all the information gathered regarding the Class Members and provided GCG with an Excel file containing addresses and the Plan of Allocation and calculating the Recognized Losses and Estimated Net Recovery for each of the approximately 1,218 Class Members and their 11,267 custodial accounts. Working with GCG, we continued to research mailing addresses for institutions that had obviously outdated and/or incomplete addresses. We interfaced with Defendants to obtain missing addresses, and worked with GCG in researching addresses for Settlement Class Members for whom Defendants had no additional contact information.

203. The additional address information was furnished to GCG to facilitate mailing and the initial mailing was conducted by GCG on May 7, 2015 per order of the Court.

204. In addition to working with GCG to accomplish the mailing to all Class Members, we worked with GCG to develop the content for the settlement website which can be found at this URL: www.bnymellonforexsettlement.com. In addition to posting Notices, court documents, and contact information relevant to the Settlement, GCG, under the guidance of Lead Settlement Counsel, created a claimant portal accessible through the website. Settlement Class Members can log in to the claimant portal and review each of their accounts and their personalized claim information. In addition to viewing the Plan of Allocation data specific to their claim, Class Members are encouraged to confirm their address and provide a point of contact for correspondence regarding the Settlement. This process is simply to ensure that checks and wires of recoveries are set to the correct addresses or individuals within the institutions who are Class Members.

205. As set forth in the Cirami Affidavit, the Settlement website and claimant portal became operational on May 7, 2015, and are accessible 24 hours a day, 7 days a week. The website and portal are updated as needed to inform Class Members of the status of the Settlement and of any changes to their claim. The Settlement website had 926 distinct visitors and a total of 1,386 website hits through August 12, 2015. A total of 311 Settlement Class Members have logged on to the Claimant Portal through August 12, 2015.

206. As part of the notice campaign, GCG maintains a toll-free telephone number (1-877-940-1504) to accommodate Class Members who had questions about the Settlement and to allow Class Members the opportunity to request copies of the Notice Packet as needed. The telephone helpline is accessible 24 hours a day, 7 days a week. As of August 12, 2015, GCG

received a total of 173 calls to the toll-free telephone number. In addition, we, and other individuals at our firms, have fielded numerous calls personally from Class Members inquiring about the Settlement, and our contact information was furnished in the mailed and published Notice.

207. In preparation for the mailing of the Notice, we worked with GCG to create a personalized cover letter (the "Cover Letter" and, collectively with the Notice, the "Notice Packet") that provided information about the Settlement; listed the Settlement Class Member's custodial account numbers ("CID") and corresponding legal entity names included in the Settlement; and provided the login information for the claimant portal. A copy of the Notice Packet is attached to the Cirami Affidavit as Exhibit A. On May 7, 2015, 1,266 Notice Packets were disseminated.[44]

208. Where Notice Packets were returned undeliverable, we worked with Defendants and GCG to ascertain updated addresses. Much of this effort required us to personally research the institutions and call them to verify mailing addresses and persons to whom to direct the Notice. As a result of these efforts, as of August 12, 2015, GCG mailed an additional 118 Notice Packets. In the aggregate, GCG has mailed a total of 1,385 Notice Packets to Settlement Class Members by first-class mail.

209. The Court's Preliminary Approval Order also directed that the Summary Notice be published once in *The Wall Street Journal* and once over *PRNewswire*, no later than May 12, 2015. Accordingly, at the direction of Lead Settlement Counsel, the Summary Notice was published in *The Wall Street Journal* and over *PRNewswire* on May 11, 2015. Copies of the

[44] The BNYM data contained two or more addresses for 43 Settlement Class Members, resulting in multiple Notice Packets being mailed to those parties.

Summary Notice and confirmations of publication are attached to the Cirami Affidavit as Exhibit B.

210. Since dissemination and publication of the Notice, we have been working with GCG to ensure that every Class Member has been informed about the Settlement. For instance, GCG began received inquiries from Class Members requesting additional information in order to identify their accounts. Because BNYM maintains an internal customer number for each of its clients that is different from the account numbers to which the clients have access, we worked with Defendants to match client account numbers with BNYM's internal numbers and then disseminated a supplemental notice to provide Class Members with this additional information, as well as to remind Class Members to log into their client portal and confirm their mailing addresses with GCG.

211. As set forth in the Cirami Affidavit, on June 25, 2015, GCG disseminated Supplemental Letters by first-class mail to 1,266 addresses.

212. In addition to the Supplemental Letter mailing, we directed GCG to conduct a call campaign to ensure that Class Members received the Notice Packet and Supplemental Letter. GCG performed research to obtain telephone numbers, and where possible, an appropriate contact person. For Class Members for whom no contact person could be identified through preliminary research, GCG obtained contact information for the Settlement Class Member's legal, financial, or investment offices whenever possible. As a result of the research, GCG was able to identify telephone numbers for 686 Class Members[45] who had not confirmed their address through the claimant portal. Beginning on July 13, 2015, GCG called these 686 Class Members to confirm they received the Notice Packet and were aware of the additional

[45] Lead Settlement Counsel requested that these 686 Settlement Class Members be targeted for outreach because they had not logged on to the claimant portal and had estimated net recovery amounts of $1,000 or more.

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information available to them. If GCG was unable to reach a representative of the Class Member, GCG left messages, performed additional research, and made follow-up calls. As a result of the outreach, as of the date of August 12, 2015, GCG was able to confirm or correct the mailing information for 239 of these Class Members and an additional 63 Class Members registered for the claimant portal.

213. This extensive notice campaign not only meets the requirements of due process in affording all Class Members with ample opportunity and information to assess their rights, but also has facilitated Lead Settlement Counsel's ability to expeditiously and immediately distribute the Settlement upon its final approval by the Court pursuant to the Plan of Allocation.

B. The Plan of Allocation

214. The Plan of Allocation for the distribution of the Settlement Amount was prepared in consultation with Plaintiffs' damages expert, and is based on transaction data maintained by BNYM for custodial clients who used the SI FX services at BNY, Mellon, and BNYM. The Settlement Fund to be distributed to the Settlement Class will consist of the net Settlement Amount after attorneys' fees and expenses, as well as the NYAG Settlement Amount and the DOL Settlement Amount. The NYAG and DOL have reviewed and approved the Plan of Allocation.

215. In developing the Plan of Allocation, Professor Brown compiled the sales margin data from BNYM's transaction records for each SI FX transaction BNYM executed with Settlement Class Members during the Class Period. BNYM determined its sales margin on SI FX transactions by calculating the difference between a proxy for the interbank FX rate at the time BNYM determined the price to assign to an SI transaction with a Class Member (the "Reference Rate") and the FX rate BNYM gave Settlement Class Members (the "Deal Rate"). For purposes of the Plan of Allocation, this sales margin is deemed to be each Class Member's

"Recognized Claim," and each Class Member's recovery in this litigation will be based on its Recognized Claim. Under the Plan of Allocation, ERISA plans will be allocated the equivalent of $70 million, on a gross basis, from the Settlement Fund.

216. Recoveries for ERISA plans will be on a pro rata basis relative to other Class Members who are ERISA plans, and recoveries for Class Members who are not ERISA plans will be on a pro rata basis relative to other non-ERISA plan Class Members. In addition, the DOL Settlement Amount will be distributed on a pro rata basis to ERISA plans relative to other Class Members who are ERISA plans.

217. Recognized Claims for Class Members will vary depending on the volume of FX transactions a Settlement Class Member executed using BNYM's SI FX Program, the currency pairs involved in its SI transactions, the applicable Deal Rates and Reference Rates used on any given trading day, and volatility in the FX markets when the Class Member's FX transactions were executed, among other variables. It is important to understand that the Recognized Claims under the Plan of Allocation do not equate to provable damages but rather provide a fair and reasonable methodology to evaluate each Class Member's relative stake in the Settlement.

218. As set forth above, there is no claims process for this Settlement. In developing the Plan of Allocation, Plaintiffs identified each and every custodial client of BNYM, based on BNYM's own records, who entered into an SI FX with the Bank during the Class Period. The Plan of Allocation determines a Recognized Loss, if any for each of those Class Members. Class Members, upon final approval of this Settlement, will receive checks or wire transfers in the amounts of their net recovery.

VI. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

219. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Settlement Counsel are also applying to the Court for an award of attorneys' fees and expenses for all Plaintiffs' Counsel,[46] and for Service Awards for Plaintiffs in recognition of the work they have performed for the benefit of Class Members.

220. Specifically, Plaintiffs' Counsel are applying for attorneys' fees of $83.75 million and for reimbursement of $2,901,734.10 in Plaintiffs' Counsel's Litigation Expenses.

221. In determining whether a requested award of attorneys' fees is fair and reasonable, district courts are guided by the factors first articulated by the Second Circuit in *City of Detroit v. Grinnell Corp*., 495 F.2d 448 (2d Cir. 1974). As summarized in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000), these factors include: "'(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation…; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.'" *Id.* at 50. Based on consideration of each of the foregoing factors, as further discussed below, and on the additional legal authorities set forth in the accompanying Memorandum of Law in Support of Lead Settlement Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to Plaintiffs (the "Fee Memorandum") filed contemporaneously herewith, we respectfully submit that Plaintiffs' Counsel's application should be granted.

A. Application for Attorneys' Fees

222. For their extensive efforts on behalf of the Settlement Class, Plaintiffs' Counsel are applying for compensation from the Settlement Fund based on a percentage of the fund and

[46] In this Section, Plaintiffs' Counsel refers to Customer Counsel and ERISA Counsel.

applying a lodestar methodology that incorporates a multiplier to account for Plaintiffs' Counsel's efforts, the risk and complexity of the litigation, and the extensive time committed on a contingency basis, without any compensation to date. As discussed in the Fee Memorandum, Lead Settlement Counsel submits that a fee award of $83.75 million for all Plaintiffs' Counsel is justified based on the consideration of these factors, and should be approved.

223. We respectfully submit that the work undertaken by Plaintiffs' Counsel in prosecuting this case and arriving at this Settlement has been time-consuming and challenging. From the outset, Plaintiffs' Counsel appreciated the unique and significant risks inherent in this litigation. Indeed, this litigation would not have arisen, nor this Settlement been achieved, had counsel not been involved at the outset in developing the testimony of a BNYM whistleblower whose revelations formed the basis for all of the MDL Actions and the NYAG Action. Yet, even with the information provided by a whistleblower, there were significant risks in establishing BNYM's liability to the Customer Class, which we have discussed in detail above.

224. A case substantially similar to this one, before the Honorable Denise Cote, failed even to survive a motion to dismiss. *See La. Mun. Police Empls. Ret. Sys. v. JPMorgan Chase & Co.*, 2013 U.S. Dist. LEXIS 93692 (S.D.N.Y. July 3, 2013). Moreover, constructing a class theory across a 13-year Class Period covering three distinct legal entities and several thousand contracts, and assessing damages, were extremely complex and fraught with risk. Indeed, at the outset, no plaintiff understood how damages or the basis for its calculation, would be determined by BNYM's practices; nor did the whistleblower. This concept remained highly contested throughout the litigation.

225. As a result, it was unclear at the time of the filing of the original complaints in these Actions whether Plaintiffs would overcome Defendants' anticipated motions to dismiss –

much less obtain class certification, survive summary judgment, and prevail at trial and on any post-trial appeals. In fact, it was only Plaintiffs' Counsel and Plaintiffs who sought to represent this class of investors, and no other institutions throughout the litigation sought to assume this responsibility despite the fact the Settlement Class is composed of some of the most sophisticated financial institutions in the United States. Moreover, many of the risks and novel issues present at the outset of the case continued to affect the litigation as it progressed up through the date the Settlement was reached.

226. We have set forth in detail above the herculean efforts by Plaintiffs' Counsel, and Co-Lead Customer Counsel in particular, in forging this Settlement—which date back to well before the MDL ever existed.

227. Listed in the attached declarations are Plaintiffs' Counsel's lodestar (Lodestar Schedules) as well as the expenses incurred by category (the "Expense Schedules").[47] For the benefit of the Court, Co-Lead Customer Counsel requested that all Plaintiffs' Counsel summarize their total lodestar by timekeepers and categories of work performed by each timekeeper. The Lodestar Schedules have been generated from the daily timekeeping records maintained by Plaintiffs' Counsel. Each Lodestar Schedule catalogues work into the following ten categories:

Category	Description
1	Private Investigations and independent fact research;
2	Review and coding of documents gathered from Plaintiffs' custodians and plaintiffs' productions, including privilege and redaction reviews;
3	Review and Coding of Defendants' and third party productions
4	All other Discovery including drafting discovery requests and subpoenas, meet and confers with Defendants and third parties, synthesis and analysis of discovery materials, drafting discovery and

[47] *See* Exs. 1-10, attached hereto.

	witness memos, analyzing redaction logs for redaction challenges, drafting discovery requests, meet and confers with Defendants, and communications with Defendants re: same
5	Deposition preparation and Depositions; logistics and support for same.
6	Pleadings and Briefing, including complaints, discovery motions, Pretrial Motions, class certification, settlement approval briefing, and legal research for all of the above.
7	Court appearances; prep and follow-up re: same.
8	Litigation strategy and case management including all conference calls, client meetings/calls, case meetings (also including weekly hot doc meetings), and executive committee meetings.
9	Mediation, Settlement, and Settlement Administration
10	Expert work and consultations, expert reports.

228. The Fee and Expense Schedules indicate the amount of time spent by each attorney and paraprofessional employed by Plaintiffs' Counsel, and the lodestar calculations based on their 2015 billing rates and titles.

229. The Fee and Expense Schedules contained in these declarations were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which records are available at the request of the Court. The hourly rates for attorneys and paraprofessionals included in these schedules have been accepted in other financial litigation. For attorneys or paraprofessionals who are no longer employed by Plaintiffs' Counsel, the lodestar calculations are based upon the billing rates for such person in his or her final year of employment.

230. Plaintiffs' Counsel expended a total of 113,404.89 hours litigating these Actions. None of that includes time devoted to preparing Plaintiffs' Counsel's fee application. The vast majority of the time spent on this litigation occurred after this Action was transferred to the MDL and the bulk of the time was incurred by Co-Lead Customer Counsel. The chart below

summarizes the attorney hours, lodestar and expense committed to this work by Plaintiffs' Counsel:

Firm	Lodestar Totals	Expenses Totals	Hours Total
LCHB	$20,256,579.50	$1,296,448.27	42,549.30
KTMC	$15,435,388.15	$947,168.68	39,246.64
TLF	$1,600,683.00	$95,361.95	2,640.20
Murray Murphy	$2,115,135.50	$19,631.33	4,104.00
Hausfeld	$2,578,086.50	$107,804.08	4,923.20
Hach Rose	$2,989,868.75	$43,039.42	6,736.50
Nix Patterson	$732,600.00	$13,004.07	1,988.00
McTigue Law	$2,784,375.73	$142,864.22	5,503.35
Beins Axelrod	$624,944.43	$5,751.17	1,351.70
Keller Rohrback	$2,979,540.50	$230,993.07	4,362.00
Totals:	**$52,097,202.06**	**$2,902,066.26**	113,404.89

231. Plaintiffs' Counsel took this case on a contingency basis, committed their resources and then aggressively litigated it for approximately four years without any compensation or guarantee of success. Based on the excellent result achieved for the Settlement Class, the quality of work performed, the risks of the Action and the contingent nature of the representation, Co-Lead Customer Counsel submits that the request for an $83.75 million award, or 25% of the Settlement Fund, a sum that reflects a blended multiplier of 1.61 of the total lodestar of all Plaintiffs' Counsel, is fair and reasonable and consistent with other similar cases in the Second Circuit.

B. Class Counsel Were Highly Efficient in Prosecuting This Complex Action

232. Throughout this litigation, Co-Lead Customer Counsel has ensured that the work performed on behalf of the Class was not only of the highest standards and reflecting the most zealous advocacy, but also, by absolute necessity, ruthlessly efficient. We have discussed the efforts of Co-Lead Customer Counsel above in coordinating all aspects of this litigation with the other parties in the MDL to ensure the maximum benefits flowed to the Class.

233. In order to avoid duplication of efforts and to promote efficiency, Co-Lead Customer Counsel maintained daily control and monitoring of the work performed in this case. While we personally devoted substantial time to this case, other experienced attorneys at our respective firms undertook particular tasks appropriate to their levels of expertise, skill and experience, and more junior attorneys and paralegals worked on matters appropriate to their experience levels. Following the MDL transfer and the appointment of Co-Lead Customer Counsel as interim class counsel, the vast majority of the work on this Action was coordinated by two partners and three associates at KTMC and four partners and one associate at LCHB. The work of these partners and associates, with respect to discovery and depositions, was supported by teams of staff attorneys. KTMC deployed twelve staff attorneys to assist with discovery analysis and deposition preparation in connection with Defendants' depositions. In addition, KTMC separately deployed nine attorneys to concurrently conduct a review of Plaintiffs' productions, for relevance and privilege, coordinate the production of those documents to Defendants and prepare for plaintiff depositions. Similarly, LCHB employed fourteen attorneys who were principally responsible for discovery analysis and deposition preparation.

234. With respect to the allocation of resources, Co-Lead Customer Counsel worked collaboratively with the other member of Plaintiffs' Executive Committee, BLBG, where the

Securities Plaintiffs interests were joined with those of Plaintiffs, to divide discovery assignments across all three firms and among the other Plaintiffs' Counsel. For instance, privilege challenges, briefing discovery issues, confidentiality challenges, document review, deposition assignments, were coordinated across firms with the goal of ensuring that efficiencies were maximized by having one firm take the lead on specific assignments. With respect to Co-Lead Customer Counsel, senior attorneys took and defended depositions all over the country, while junior attorneys concentrated more on fact gathering and legal research and analysis. Mid-level attorneys took the laboring oar in drafting and preparing non-dispositive motions at the same time that senior attorneys negotiated settlement. The firms that made up Plaintiffs' Executive Committee shared discovery work product, such as the document coding, witness kits, search results, deposition transcripts and so forth, with the USAO and the NYAG. Expert analysis and associated work product was also shared with these parties and with respect to the USAO, this was reciprocated. Thus, despite the tremendous hours required to litigate this case, Plaintiffs' Counsel maximized efficiencies that could be had by collaborating with all parties with shared interests.

235. Co-Lead Customer Counsel, as members of the Executive Committee, further prioritized efficient coordination of litigation tasks throughout this MDL. At the height of the litigation, senior members of Plaintiffs' Executive Committee held weekly telephone calls to strategize and set priorities, while other teams met as frequently, if not more, to schedule and prepare for depositions; review various types of FX Contract Documents; handle multitudinous discovery disputes with BNYM; brief motions; draft letters to BNYM and/or the Court; and meet and confer with BNYM. By dividing tasks, Plaintiffs' Executive Committee worked efficiently and effectively to develop subject matter expertise and effectively communicate any issues

affecting any relevant constituency. As a result of all Plaintiffs' counsels' effort, attorneys kept the duplication of efforts to a bare minimum.

236. With this framework of Plaintiffs' Executive Committee and Plaintiffs' Steering Committees sharing work horizontally among Plaintiffs' Counsel and vertically within firms, and the institution of clear rules of the road, all counsel were able to litigate individual and collective issues in the most time- and cost-efficient manner. For instance, certain attorneys focused on BNYM's FX trading operations, while others concentrated on identifying commonalities in BNYM's representations to custodial clients through numerous documents disseminated over the 13-year Class Period. Senior attorneys took and defended depositions all over the country, while junior attorneys concentrated on fact-gathering as well as legal research and analysis; mid-level attorneys took the laboring oar in drafting and preparing non-dispositive motions, while senior attorneys negotiated settlement. Upon the issuance of a Scheduling Order on the same day as the Confidentiality Order, which was modified only once on July 11, 2014 (other than in connection with Settlement), all parties were ready to ramp up the discovery process in earnest, and did so.

237. Despite the at times divergent interests (such as whether and to what extent third party discovery was necessary) and claims, Plaintiffs' Executive Committee and the USAO worked efficiently together, and Plaintiffs regularly shared their work product and resources with the USAO including the analysis prepared by their experts. The damages models used in the litigation were developed by Plaintiffs and used by both the USAO and the NYAG. In addition, by way of further example of the collaboration between Plaintiffs and the USAO, the parties shared "witness kits" in advance of BNYM and third party depositions, worked together to develop a joint strategy for reviewing and categorizing thousands of RFPs produced by BNYM, coordinated their positions on meet and confers, had almost weekly and sometimes daily strategy

calls regarding discovery issues, and worked cooperatively in drafting and responding to various discovery motions.

238. Plaintiffs' Counsel operated efficiently despite the complexities inherent in transferring eight private actions into a single MDL as well as coordination with the USAO and NYAG Actions.

239. Efficiency challenges arose out of the multiple legal theories of liability presented in response to BNYM's conduct. Because the legal theories of liability amongst the MDL Actions greatly varied, so too, did the evidence necessary to prove their cases. Specifically, the corporate insiders' knowledge critical in the Securities Cases, while important to the Customer Class's consumer claims, had less weight in the Customer Class's primary contract and fiduciary claims. Insider knowledge likewise had little weight in the ERISA or LACERA/LADWP Actions. Similarly, the emphasis on representations in the LACERA/LADWP and Securities Actions, while relevant, did not have the same weight in the Customer Class Cases and ERISA Actions. And, the in-depth analyses of numerous agreements were exclusively required in the Customer Class and ERISA Actions. Thus, Plaintiffs had to work cooperatively with all MDL Plaintiffs, the USAO and the NYAG, in order to efficiently prioritize discovery efforts to ensure that each party obtained the information necessary to prove its case while at the same time avoiding unnecessary and duplicative discovery or motion practice.

240. While BNYM successfully argued for transfer to the Court because of its concern over litigating this matter all across the U.S., in fact, pre-trial discovery still occurred in more than 20 states throughout the country as well as in the United Kingdom, much of it precipitated by BNYM's pursuit of third party discovery to refute Plaintiffs' class claims. Moreover, during the majority of the Class Period, Mellon operated headquarters in Pittsburgh and extensive

operations in Boston (the headquarters of a Mellon predecessor, Boston Safe Trust Co.). Hence, numerous BNYM employees were made available for depositions in Pittsburgh and Boston, in addition to New York.

1. Standing and Expertise of Class Counsel

241. The expertise and experience of counsel are other important factors in setting a fair fee. As demonstrated by the firm résumés attached to their individual declarations, Plaintiffs' counsel are highly experienced in the area of complex class action and commercial litigation and have a successful track record such cases throughout the country.

2. Standing and Caliber of Opposing Counsel

242. The quality of the work performed by counsel in attaining the Settlement should also be evaluated in light of the quality of opposing counsel. Plaintiffs' Counsel was opposed in this case by very skilled and highly respected counsel. Here, BNYM was represented by two of the premier national law firms, Kellogg Huber Hansen & Figel, LLP ("Kellogg Huber") and Paul, Weiss, Rifkind, Wharton & Garrison LLP. These firms are highly skilled and experienced in the area of complex litigation, with vast resources. Over the course of this litigation, Kellogg Huber aggressively litigated this case, and twelve of its thirty-two partners were actively involved in litigating the Action. In the face of this knowledgeable and formidable defense, Class Counsel were nonetheless able to develop a case that was sufficiently strong to persuade Defendants to settle on terms that are favorable to the Settlement Class.

3. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel In High-Risk, Contingent Cases

243. As noted above, the Action was undertaken on a wholly contingent basis. From the outset, Plaintiffs' Counsel understood that they were embarking on a complex and expensive litigation with no guarantee of compensation for the investment of time, money and effort that

the case would require. At the outset of the case, Plaintiffs' Counsel understood that this case was unique and would raise extremely difficult challenges of proof, class certification and damages, and that it would be heavily contested with no assurance of success.

244. In undertaking the responsibility for prosecuting the Action, Plaintiffs' Counsel assured that sufficient attorney resources were dedicated to the investigation of the Settlement Class' claims against the Defendants and that sufficient funds were available to advance the expenses required to pursue and complete such complex litigation. As set forth below, Class Counsel received no compensation and, in total, incurred $2,902,066.26 in expenses in prosecuting and resolving this Action for the benefit of the Settlement Class. Notably, although this case was coordinated with collaboration with the USAO and the NYAG, Class Counsel bore the majority of expert, discovery and mediation expenses.

245. Plaintiffs' Counsel also bore the risk that no recovery would be achieved. As discussed herein, this case presented a number of risks and uncertainties which could have prevented any recovery whatsoever. Despite the vigorous and competent efforts of Plaintiffs' Counsel, success in contingent-fee litigation, such as this, is never assured. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations.

4. The Reaction of the Settlement Class to Date

246. The class is comprised exclusively of sophisticated institutions which include, but are not limited to, public pension funds, mutual funds, ERISA funds, Taft-Hartley funds, public and private corporations, and private and public trusts. There are no individual persons that are members of the Settlement Class. As set forth in the Cirami Affidavit, to date, only two Class Members out of approximately 1,218 Class Members has sought to exclude themselves from the

Settlement. One of those Class Members seeking exclusion does not believe it is a member of the class as it cannot find a custodial contract between itself and BNYM, a claim which Defendants are examining. To the extent that this entity is correct, its exclusion is moot as it would never have been part of the defined Settlement Class at all. Moreover, to date, there have been no objections filed with the Court or delivered to Lead Settlement Counsel.

5. Application for Reimbursement of Expenses

247. Plaintiffs' Counsel also seek reimbursement of $2,902,066.26 in Litigation Expenses, detailed below, and in the Individual Declarations by each Plaintiffs' Counsel submitted herewith reasonably and actually incurred by Plaintiffs' Counsel in connection with commencing and prosecuting the claims against the Defendants over the course of the last three years. The Notice apprises potential Settlement Class members that Plaintiffs' Counsel intend to seek reimbursement of expenses in an amount not to exceed $5 million. The amount of the unreimbursed Litigation Expenses actually requested is less than what was stated in the Notice and, to date, no objection has been raised to Plaintiffs' Counsel's request for reimbursement of Litigation Expenses.

248. To share in the costs associated with the more substantial expenses associated with complex litigation, Co-Lead Customer Counsel created a Litigation Fund following the MDL transfer in which each firm contributed. Each of KTMC's and LCHB's contributions to the Litigation Fund are summarized on the Expense Schedules set forth in the individual declarations, see Exs. 1-C and 2-C. The Litigation Fund was monitored by LCHB and was used to cover the following costs:

LITIGATION FUND EXPENSES

DEPOSITS	
Bernstein Litowitz Berger & Grossmann	35,000.00

Keller Rohrback	1,620.00
Kessler Topaz Meltzer & Check	473,466.08
Lieff, Cabraser, Heimann & Bernstein	473,467.00
	983,553.08
DISBURSEMENTS	
8 Rivers Capital, LLC	(699,076.00)
D4, LLC	(86,337.60)
DeRosa Research & Trading, Inc.	(114,132.17)
Keating & Walker Attorney Service, Inc.	(92.50)
Legalink	(18,529.10)
Phillips ADR Enterprises	(60,098.35)
Ralph Fink & Associates	(4,955.20)
	(983,220.92)
CURRENT BANK BALANCE	332.16

249. In addition to cost paid through the Litigation Fund, each Plaintiffs' Counsel incurred additional costs associated with the Litigation. These are also set forth in Plaintiffs' Counsel's individual declarations submitted herewith. The total expenses including expenses paid through the Litigation Fund and individually incurred by each of the Lead Customer Plaintiffs' firms totals $2,902,066.26. As set forth in Plaintiffs' Counsel's Individual Declarations, These expenses are reflected on the books and records maintained by Plaintiffs' Counsel. These books and records are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred. The Litigation Expenses for which Plaintiffs' Counsel seek reimbursement were largely incurred for professional fees, including the costs of experts, consultants, discovery management, and depositions.

250. The other expenses for which Plaintiffs' Counsel seek reimbursement are also the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, long distance telephone and facsimile charges, postage and delivery expenses, computerized research, overtime expenses, filing fees and photocopying.

251. From the beginning of the case, Plaintiffs' Counsel were aware that they might not recover any of their expenses, and would not recover anything until the Action was partially or fully resolved. Plaintiffs' Counsel also understood that, even assuming that the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced to prosecute this Action. Thus, Plaintiffs' Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

252. As set forth in the Individual Declarations, all of the Litigation Expenses incurred were necessary to the successful prosecution and resolution of the claims against the Defendants. In view of the complex and novel nature of the Action, the expenses incurred were reasonable and necessary to pursue the interests of the Settlement Class. Accordingly, we respectfully submit that the Litigation Expenses incurred by Plaintiffs' Counsel should be reimbursed in full.

6. Application for Service Awards for the Lead Customer Plaintiffs

253. Co-Lead Customer Counsel also seek service awards on behalf of each of the Plaintiffs in the amount of $25,000 each to compensate them for the time, expense and unwavering commitment to this Litigation.

254. Not only have these Plaintiffs fully and diligently discharged their core responsibilities by monitoring the litigation, conferring with Plaintiffs' Counsel, reviewing significant pleadings and authorizing the resolution of this Action, they endured an onslaught of

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discovery demands well beyond anything we have seen in class action in our collective class action experience. Plaintiffs were subjected to Defendants unrelenting onslaught of discovery demands, deposition requests, meet and confers to request more discovery and depositions, motions to compel, interrogatories and requests for admission. As set forth in the declarations submitted by each Plaintiff's Counsel in support of Final Approval of the Settlement, an Award of Attorneys' Fees, Service Awards and Reimbursement of Expenses, annexed hereto as Exs. 1-10, each committed enormous time and resources to meeting these demands.

255. Moreover, this was the first case, in our experience, where the Defendant has attempted to counter-sue Plaintiffs in the litigation (and putative Class Members) for indemnification of their attorneys' fees and expenses in defending the litigation (and litigation brought by the DOJ and NYAG). Defendants' counterclaims, sustained by the Court, while clearly designed to intimidate Plaintiffs, was given serious consideration by Plaintiffs as to whether to proceed with their representation of the Class. It is through their fortitude and willingness to endure this risk that a Settlement was possible in this case as had any Plaintiff withdrawn in the face of this threat, it was likely no other institution would have been willing to take up the mantle.

256. As discussed above, one of the principal strategies deployed by the Defendants in this litigation was to wear down Plaintiffs and Plaintiffs' Counsel through an unrelenting litigation strategy. Each of Plaintiffs were served with voluminous document requests and interrogatories. These requests required Plaintiffs' Counsel to meet with various employees of the respective Plaintiff institutions, assist them in conducting searches reviews of their electronic and archival records and interfacing, for a period of several weeks, almost weekly with Plaintiffs' employees to satisfy Defendants' discovery demands.

257. In all, Plaintiffs produced more than 550,000 documents (totaling more than 6 million pages),which was a fraction of the electronic documents that were collected and reviewed for relevance and privilege.

258. Defendants took ***thirty-two*** **(32)** depositions of Plaintiffs—these included depositions of eighteen (18) Ohio witnesses,[48] five (5) SEPTA witnesses,[49] and nine (9) IUOE-affiliated witnesses.[50] Defendants marked 298 exhibits at the Ohio witness depositions (which averaged more than 6.2 hours in length each), 141 at the SEPTA depositions (which averaged 4.3 hours in length), and 113 at the IUOE-affiliated depositions (which averaged 5 hours in length), for a total of 552 exhibits marked in the Plaintiff depositions by BNYM. These exhibits comprise 12,660 pages.

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[48] Michael Abankwah (OP&F) (26 new exhibits (7 hrs.)), Cynthia Beck (Ohio Treasurer) (7 new exhibits, 10 previously marked (7 hrs.)), Denise Blain (Ohio Treasurer) (18 new exhibits, 7 previously marked (5 hrs. 46 mins.)), Jeffrey Breeckner (OP&F) (2 new exhibits, 6 previously marked (1 hr. 30 mins.)), Virginia Brizendine (SERS) (10 new exhibits, 10 previously marked (7 hrs.)), Robert Cowman (SERS) (12 new exhibits, 25 previously marked (7 hrs.)), Stacy Easterday (SERS) (29 new exhibits, 6 previously marked (7 hrs.)), Ted Hall (OP&F) (6 new exhibits, 15 previously marked (7 hrs.)), Judi Masri (SERS) (12 new exhibits, 2 previously marked (7 hrs.)), Lisa Michalowski (SERS) (19 new exhibits (7 hrs.)), Jason Naber (SERS) (34 new exhibits, 2 previously marked (7 hrs.)), Timothy O'Brien (OP&F) (17 new exhibits, 14 previously marked (7 hrs.)), Philip Roblee (SERS) (14 new exhibits, 8 previously marked (2 hrs. 35 mins.)), Timothy Steitz (SERS) (9 new exhibits, 1 previously marked (2 hrs. 43 mins.)), Robert Theller (OP&F) (two days) (19 new exhibits, 25 previously marked (11 hrs.)), Yvette Tubman (OP&F) (27 new exhibits (5 hrs. 20 mins.)), Timothy Viezer (SERS) (26 new exhibits, 7 previously marked (7 hrs.)), and Joseph Yeboah (OP&F) (11 new exhibits, 3 previously marked (6 hrs.)).

[49] Richard Burnfield, SEPTA's CFO (44 new exhibits, 4 previously marked, (4 hrs. 53 mins.)), Thomas McFadden, SEPTA's Assistant Treasurer (19 new exhibits, 21 previously marked (6 hrs. 12 mins.)), Kurt Weidenhammer, SEPTA's former Assistant Treasurer (34 new exhibits, 17 previously marked (4 hrs. 10 mins.)), Alex Greenwald, an employee reporting to SEPTA's Assistant Treasurer, (22 new exhibits, 13 previously marked (2 hrs. 37 mins.)), and Michael O'Donoghue, Chairman of SEPTA's Pension Commitee (22 new exhibits, 18 previously marked (3 hrs. 46 mins.)).

[50] Paul Bensi (IUOE trustee) (17 new exhibits, 4 previously marked (7 hrs.)), George Buhalis (BeneSys (fund administrator)) (19 new exhibits (2 hrs. 23 mins.)), William Dobbs (The Dobbs Group (investment consultant)) (8 new exhibits, 5 previously marked (5 hrs. 26 mins.)), John Gualy (Eagle Global Advisors (investment manager)) (22 new exhibits (6 hrs.)), Michael Schumacher (ATPA (fund administrator) (7 new exhibits, 3 previously marked (2 hrs. 54 mins.)), William Sokol (Weinberg, Roger & Rosenfeld (fund counsel) (5 new exhibits, 1 previously marked (2 hrs. 23 mins.)), Bart Florence (IUOE trustee) (3 new exhibits, 23 previously marked (6 hrs.), Lyle Setter (IUOE trustee) (1 new exhibit, 23 previously marked (7 hrs.)), and Jerry Kalmar (IUOE trustee) (31 new exhibits (6 hrs.)). The first six (6) of these witnesses were deposed in 2012, prior to the MDL consolidation, while the IUOE Local 39 Action was still being litigated in the N.D. Cal.

259. At the time of Settlement, there were still negotiations between Plaintiffs and Defendants as to additional Plaintiff depositions Defendants were seeking. Moreover, Defendants also served Rule 30(b)(6) depositions on each of the Plaintiffs after the aforementioned deposition discovery had already been complete. To avoid motion practice, the parties engaged in protracted negotiations to determine whether deposition testimony could be designated as responsive to this belated Rule 30(b)(6) notice and Plaintiffs were involved in approving the designation of such testimony. At the time of Settlement, there were still ongoing negotiations as to whether Plaintiffs would move to quash the notice.

260. Also significant in the efforts of Plaintiffs was their willingness, reflected in a cooperation agreement reached with the USAO, to provide as many as two of their employees, to travel to New York and offer testimony in any trial of the USAO's action. The USAO wanted to secure the testimony of Plaintiffs to support their FIRREA claims and avoid having to expend resources to take depositions of Plaintiffs.

261. For these reasons, and in recognition of Plaintiffs' extraordinary efforts, we respectfully submit that service awards in the amount of $25,000 for each of the Lead Customer Plaintiffs is warranted. The aggregate amount of the Service Award is less than .03% of the Settlement. Class Members were informed that Lead Customer Plaintiffs could seek up to $25,000 in service awards and to date, no Class Member has objected to this request.

VII. CONCLUSION

262. For all the reasons set forth above, Counsel, on behalf of all Plaintiffs' Counsel, respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable and adequate. Co-Lead Customer Counsel further submit that the requested fee in the amount of $83.75 million, or 25% of the Settlement Amount, should be approved as fair and

reasonable, and the request for reimbursement of Counsel's expenses in the amount of $2,902,066.26, as well as Service Awards for the Lead Customer Plaintiffs in the amount of $25,000 each, should also be approved.

We declare, under the penalty of perjury under the laws of the United States of America, that the foregoing facts are true and correct.

Executed this 17th day of August, 2015, in New York, New York.

Daniel P. Chiplock

Executed this 17th day of August, 2015, in Radnor, Pennsylvania

Sharan Nirmul

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	No. 12-MD-2335 (LAK) (JLC)
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3066 (LAK) (JLC)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3067 (LAK) (JLC)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3470 (LAK) (JLC)
Carver, et al. v. The Bank of New York Mellon, et al.	No. 12-CV-9248 (LAK) (JLC)
Fletcher v. The Bank of New York Mellon, et al.	No. 14-CV-5496 (LAK) (JLC)

DECLARATION OF DANIEL P. CHIPLOCK IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

I, Daniel P. Chiplock, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner of the law firm of Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser," "LCHB," or the "Firm"). I submit this declaration in support of Lead Settlement Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would testify competently thereto. The facts supporting LCHB's fee request are more fully set forth in the Joint Declaration of Sharan Nirmul and Daniel

P. Chiplock in Support of (1) Lead Plaintiffs' Motion for Final Approval of the Settlement and the Proposed Plan of Allocation, as well as Certification of the Settlement Class, and (2) Lead Settlement Counsel's Application for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards ("Joint Declaration").

2. Lieff Cabraser has offices in New York, NY, San Francisco, CA, and Nashville, TN. The Firm has litigated class actions in the Southern District of New York and in other courts around the country. A copy of the Firm's resume, as well as a brief biography of all Firm attorneys and support staff that billed time in this Action, is attached hereto as Exhibit A.

3. I personally rendered legal services and was responsible, along with my partners, Elizabeth J. Cabraser, Daniel E. Seltz, Nicholas Diamand, and Michael J. Miarmi, along with the founder of the Firm (and current Of Counsel) Robert L. Lieff, for coordinating and supervising the activity carried out by attorneys and professional staff at Lieff Cabraser in this Action. In its capacity as one of the three members of the MDL Plaintiffs' Executive Committee, as interim Co-Lead Customer Class Counsel, and as counsel for the Ohio Police & Fire Pension Fund ("OP&F"), the School Employees Retirement System of Ohio ("SERS"), and the International Union of Operating Engineeers, Stationary Engineers Local 39 Pension Trust Fund ("IUOE Local 39"), and as fully set forth in the Joint Declaration, Lieff Cabraser was one of the principal contributors to the results achieved in this Action for the benefit of the Class.

4. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by attorneys and paraprofessionals at Lieff Cabraser in this Action ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit B hereto. This chart (i) identifies the names and positions (*i.e.*, titles) of the firm's Timekeepers who undertook litigation activities in connection

with the Action and who expended 10 hours or more on the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through August 12, 2015; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of the work by each Timekeeper and the entire firm.[1] For Timekeepers who are no longer employed by the Firm, the hourly rate used is the billing rate in his or her final year of employment by the Firm. The Firm's billing records, which are regularly prepared from contemporaneous daily time records, are available at the request of the Court. Time expended in preparing any papers for this motion for fees and reimbursement of expenses has not been included in this request. Additionally, time expended in preparing any papers for prior motions for reimbursement of expenses has not been included in this request.

5. The hourly rates charged by the Timekeepers are the Firm's regular rates for contingent cases and those generally charged to clients for their services in non-contingent/hourly matters.[2] Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in their respective cities by attorneys and paraprofessionals of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements.

6. The total number of hours expended by Lieff Cabraser on this Action, from investigation through August 12, 2015, is 42,549.3 hours. The total lodestar for the Firm is $20,256,579.50, consisting of $19,078,859.00 for attorney time and $1,177,720.50 for professional support staff time.

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[1] The information concerning each Timekeeper's hours and hourly rate is not based on my personal knowledge, but on the information reported by each such Timekeeper or the files and records of Lieff Cabraser, as well as my familiarity with the work undertaken by Lieff Cabraser in the Action.

[2] On occasion and for a specific type of representation, the Firm may offer a discount on its hourly rates to longstanding clients.

7. In my judgment, the number of hours expended and the services performed by the attorneys and paraprofessionals at Lieff Cabraser were reasonable and expended for the benefit of the Settlement Class in this Action.

8. Lieff Cabraser's lodestar figures are based on the Firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the Firm's billing rates.

9. As set forth in Exhibit C, Lieff Cabraser has incurred a total of $1,296,448.27 in unreimbursed expenses in connection with this Action from inception to August 12, 2015. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.

10. These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of Lieff Cabraser's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17th day of August, 2015 in New York, New York.

Daniel P. Chiplock

EXHIBIT B

In re Bank of New York Mellon Corp. Forex Transactions Litigation

FIRM NAME: Lieff, Cabraser, Heimann & Bernstein, LLP
REPORTING PERIOD: Inception through August 12, 2015

Categories:
(1) Investigation, Factual Research
(2) Plaintiffs' Document Review
(3) Defendants' and Third Party Document Review
(4) Discovery, including witness memo preparation
(5) Depositions and preparation for same
(6) Pleadings, Briefs, Class Certification, and Legal Research
(7) Court Appearances
(8) Litigation Strategy and Case Management
(9) Mediation and Settlement
(10) Experts

Status:
(A) Associate
(CA) Contract Attorney
(OC) Of Counsel
(P) Partner
(SA) Staff Attorney
(I) Investigator
(PL) Paralegal
(PS) Professional Staff

Name	Status	1	2	3	4	5	6	7	8	9	10	Rate	Cumulative Hours	Cumulative Lodestar
ELIZABETH CABRASER	P	1.00	0.80		10.60	0.30	181.10	61.20	140.70	30.80	4.00	$975	430.50	419,737.50
DANIEL CHIPLOCK	P	144.40	96.60	71.80	908.55	1,140.60	1,169.70	121.30	1,251.20	547.25	291.50	$650	5,742.90	3,732,885.00
NICHOLAS DIAMAND	P	0.50	112.00	1.00	79.80	84.80	2.50		223.40	0.70		$600	504.70	302,820.00
STEVEN FINEMAN	P	21.90			0.60		13.90	0.30	19.10	5.60		$850	61.40	52,190.00
RICHARD HEIMANN	P	1.60			13.30	188.80	9.20	11.20	3.20			$975	227.30	221,617.50
ROBERT LIEFF	OC	1.20	3.10	0.20	20.90	31.70	25.70	84.30	440.70	165.20	16.80	$975	789.80	770,055.00
MICHAEL MIARMI	P		15.00	0.20	37.30	26.50	475.40	4.00	30.40	17.60	21.80	$550	628.20	345,510.00
DANIEL SELTZ	P	0.50	128.35		810.10	610.20	501.55	11.40	54.00	23.00	12.40	$580	2,151.50	1,247,870.00
LISA CISNEROS	A				16.00	0.10	10.30		1.70			$465	28.10	13,066.50
TANYA ASHUR	CA		452.00	1,694.00	252.50				16.00			$425	2,414.50	1,026,162.50
JOSHUA BLOOMFIELD	CA		608.00	1,531.00	30.00		6.00		8.00			$425	2,183.00	927,775.00
JESSICA CHIA	CA				100.10				12.60			$395	112.70	44,516.50
JAMES GILYARD	CA		422.00	2,027.00	149.50				16.00			$425	2,614.50	1,111,162.50
KELLY GRALEWSKI	CA			280.50	21.00							$425	301.50	128,137.50
CHRISTOPHER JORDAN	CA			791.70	767.30				13.90			$425	1,572.90	668,482.50
JASON KIM	CA		542.50	1,434.00	664.00	1.50					17.00	$415	2,659.00	1,103,485.00
MARISSA LACKEY	CA		578.80	1,990.20	6.70							$425	2,575.70	1,094,672.50
JAMES LEGGETT	CA		473.70	1,554.50	414.60	21.50			11.90			$375	2,476.20	928,575.00
ANDREW MCCLELLAND	CA			889.00	886.00				24.00			$415	1,799.00	746,585.00
SCOTT MILORO	CA		703.30	2,341.00	56.10	10.60			33.80		2.00	$425	3,146.80	1,337,390.00
LEAH NUTTING	CA		553.20	1,934.45	604.95	0.30			35.50			$425	3,128.40	1,329,570.00
VIRGINIA WEISS	CA			598.60	811.80				35.40			$425	1,445.80	614,465.00
JONATHAN ZAUL	CA		1,392.55	571.55	151.50	8.20			74.10			$415	2,197.90	912,128.50
SUBTOTAL ATTORNEYS		171.10	6,081.90	17,710.70	6,813.20	2,125.10	2,395.35	293.70	2,445.60	790.15	365.50		39,192.30	19,078,859.00
PROFESSIONAL STAFF														
TODD CARNAM	PL	7.20					4.20		1.50	0.70	2.30	$325	15.90	5,167.50
DAN SCHUMAN	PL			5.70			8.70		6.70			$350	21.10	7,385.00
JLE TARPEH	PL		0.60		1.50	234.00			479.00	40.80		$325	755.90	245,667.50
RICHARD TEXIER	PL	0.80	29.40		156.50	64.60	27.20	2.10	354.90	3.20	1.00	$325	639.70	207,902.50
WILLOW ASHLYNN	PS					14.60			22.60			$340	37.20	12,648.00
MARGIE CALANGIAN	PS				22.30	7.70			372.40		0.40	$340	402.80	136,952.00
KIRTI DUGAR	PS	183.00	25.00	16.50	160.00	18.45	25.00	26.00	204.50	4.00	92.05	$430	754.50	324,435.00
ANTHONY GRANT	PS		2.00		14.00	2.00			44.00			$340	62.00	21,080.00
NEHA GUPTA	PS						47.50					$330	47.50	15,675.00
ARRA KHARARJIAN	PS	38.30										$270	38.30	10,341.00
MAJOR MUGRAGE	PS		14.00	9.60	43.80				133.20			$320	200.60	64,192.00
RENEE MUKHERJI	PS	4.50					2.20		1.40		3.50	$290	11.60	3,364.00
ANIL NAMBIAR	PS	122.00		7.50	10.00			8.00	18.00			$330	165.50	54,615.00
ERWIN OCAMPO	PS		1.00	8.00	6.70	3.50			124.20		1.00	$340	144.40	49,096.00

In re Bank of New York Mellon Corp. Forex Transactions Litigation

FIRM NAME: Lieff, Cabraser, Heimann & Bernstein, LLP
REPORTING PERIOD: Inception through August 12, 2015

Categories:
(1) Investigation, Factual Research
(2) Plaintiffs' Document Review
(3) Defendants' and Third Party Document Review
(4) Discovery, including witness memo preparation
(5) Depositions and preparation for same
(6) Pleadings, Briefs, Class Certification, and Legal Research
(7) Court Appearances
(8) Litigation Strategy and Case Management
(9) Mediation and Settlement
(10) Experts

Status:
(A) Associate
(CA) Contract Attorney
(OC) Of Counsel
(P) Partner
(SA) Staff Attorney
(I) Investigator
(PL) Paralegal
(PS) Professional Staff

Name	Status	1	2	3	4	5	6	7	8	9	10	Rate	Cumulative Hours	Cumulative Lodestar
CYRUS YAMAT	PS			2.50	9.50				48.00	0	0	$320	60.00	19,200.00
SUBTOTAL PROFESSIONAL STAFF		355.80	72.00	49.80	424.30	344.85	114.80	36.10	1,810.40	48.70	100.25		3,357.00	1,177,720.50
TOTALS		526.90	6,153.90	17,760.50	7,237.50	2,469.95	2,510.15	329.80	4,256.00	838.85	465.75		42,549.30	20,256,579.50

EXHIBIT C

In re Bank of New York Mellon Corp. Forex Transactions Litigation
Master File No. 12-MD-2335 (LAK)
EXPENSE REPORT

FIRM NAME: Lieff Cabraser Heimann & Bernstein, LLP
REPORTING PERIOD: INCEPTION TO AUGUST 12, 2015

DESCRIPTION	CUMULATIVE TOTAL
External Reproduction	$179.50
Internal Reproduction/Printing	$98,112.80
Court Fees (Filing costs etc.)	$2,644.80
Court Reporters/Transcripts	$26,084.30
Computer Research	$34,819.62
Electronic Database	$338,942.16
Teleconferences/Fax	$9,368.19
Postage/Express Delivery/Messenger	$7,257.64
Experts/Consultants	$152,956.17
Witness/Service Fees	
Meals, Hotels and Transportation	$152,616.09
MDL Litigation Fund Contributions/Assessments	$473,467.00
TOTAL EXPENSES	**$1,296,448.27**

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	No. 12-MD-2335 (LAK) (JLC)
THIS DOCUMENT RELATES TO:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3066 (LAK) (JLC)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3067 (LAK) (JLC)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corporation, et al.	No. 12-CV-3470 (LAK) (JLC)
Carver, et al. v. The Bank of New York Mellon, et al.	No. 12-CV-9248 (LAK) (JLC)
Fletcher v. The Bank of New York Mellon, et al.	No. 14-CV-5496 (LAK) (JLC)

DECLARATION OF JOSEPH H. MELTZER IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF KESSLER TOPAZ MELTZER & CHECK LLP

I, Joseph H. Meltzer, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner at Kessler Topaz Meltzer & Check LLP ("Kessler Topaz"). I submit this declaration in support of Lead Settlement Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would testify competently thereto. The facts supporting Kessler Topaz's fee request are more fully set forth in the Joint Declaration of Sharan Nirmul and Daniel Chiplock in Support of Final Approval,

Plaintiff's Counsel's Award of Attorney's Fees, Service Awards and Reimbursement of Litigation Expenses ("Joint Declaration").

2. Kessler Topaz has offices in Radnor, PA and San Francisco, CA. The Firm has litigated class actions in the Southern District of New York and in other courts around the country. A copy of the Firm's resume, as well as a brief biography of all Firm attorneys and support staff that billed time in this Action, is attached hereto as Exhibit A.

3. I personally rendered legal services and was responsible, along with my partner, Sharan Nirmul, for coordinating and supervising the activity carried out by attorneys and professional staff at Kessler Topaz in this Action. In its capacity as one of the three members of the MDL Plaintiffs' Executive Committee, as interim Co-Lead Customer Class Counsel and as counsel for the Southeastern Pennsylvania Transportation Authority or "SEPTA", and as fully set forth in the Joint Declaration, Kessler Topaz was one of the principal contributors to the results achieved in this Action for the benefit of the Class.

4. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by attorneys and paraprofessionals at Kessler Topaz ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit B hereto. This chart (i) identifies the names and positions (*i.e.*, titles) of the firm's Timekeepers who undertook litigation activities in connection with the Action and who expended 10 hours or more on the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through July 30, 2015; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of the

work by each Timekeeper and the entire firm.[1] For Timekeepers who are no longer employed by the Firm, the hourly rate used is the billing rate in his or her final year of employment by the Firm. The Firm's billing records, which are regularly prepared from daily time records, are available at the request of the Court. Time expended in preparing any papers for this motion for fees and reimbursement of expenses has not been included in this request.

5. The hourly rates charged by the Timekeepers are the Firm's regular rates for contingent cases and those generally charged to clients for their services in non-contingent/hourly matters. Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged by attorneys and paraprofessionals of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements.

6. The total number of hours expended by Kessler Topaz on this Action, from investigation through July 30, 2015, is 39,246.64 hours. The total lodestar for the Firm is $15,435,388.15, consisting of $14,924,795.65 for attorney time and $510,592.50 for professional support staff time.

7. In my judgment, the number of hours expended and the services performed by the attorneys and paraprofessionals at Kessler Topaz were reasonable and expended for the benefit of the Settlement Class in this Action.

8. Kessler Topaz's lodestar figures are based on the Firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the Firm's billing rates.

[1] The information concerning each Timekeeper's hours and hourly rate is not based on my personal knowledge, but on the information reported by each such Timekeeper or the files and records of Kessler Topaz, as well as my familiarity with the work undertaken by Kessler Topaz in the Action.

9. As set forth in Exhibit C, Kessler Topaz has incurred a total of $937,168.68 in unreimbursed expenses in connection with this Action from inception to August 11, 2015. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.

10. These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of Kessler Topaz's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 14th day of August, 2015 in the Radnor, Pennsylvania.

Joseph H. Meltzer

EXHIBIT B

Case 1:12-md-02335-LAK-JLC Document 672-2 Filed 10/07/15 Page 25 of 27

In re Bank of New York Mellon Corp. Forex Transactions Litigation, Case No. 12-MD-2235 (LAK)

TIME REPORT

FIRM NAME: Kessler Topaz Meltzer & Check, LLP
REPORTING PERIOD: Inception to July 31, 2015

Categories:
(1) Investigations, Factual Research
(2) Plaintiffs' Document Review
(3) Defendants' and Third Party Document Review
(4) Discovery
(5) Depositions
(6) Pleadings, Briefs, Class Certification, and Legal Research
(7) Court Appearances
(8) Litigation Strategy and Case Management
(9) Mediation, Settlement, and Settlement Administration
(10) Experts

Status:
(P) Partner
(OC) Of Counsel
(A) Associate
(SA) Staff Attorney
(CA) Contract Attorney
(PL) Paralegal
(I) Investigator

NAME	STATUS	1	2	3	4	5	6	7	8	9	10	Hourly Rate	Cumulative Hours	Cumulative Lodestar
Attorneys:														
Amjed, Naumon	P	6.40			0.70		318.90	40.40	196.10		17.70	$700.00	580.20	$406,140.00
LeVan, Peter	P	4.70			2.00		29.00	78.90	82.60		14.10	$650.00	211.30	$137,345.00
Meltzer, Joseph	P				11.00	34.90	139.70	116.30	508.60	184.20	43.40	$825.00	1,038.10	$856,432.50
Nirmul, Sharan	P				180.50	886.50	45.00	38.00	345.25	413.60	39.50	$725.00	1,948.35	$1,412,553.75
Mulveny, Daniel	OC				479.00	324.50	179.50	9.50	135.50	11.00	10.50	$650.00	1,149.50	$747,175.00
Braden, Shannon O.	A	11.25	25.75		183.75	78.50	122.00	73.00	1,438.00			$400.00	1,932.25	$772,900.00
Campbell, Sekou	A				776.60	484.34	400.35	29.70	738.80	4.60	29.40	$360.00	2,463.79	$886,964.40
Degnan, Ryan	A	4.60					57.40		18.00			$435.00	80.00	$34,800.00
Enck, Jennifer	A						5.50			90.00		$525.00	95.50	$50,137.50
Jones, Samantha E.	A	49.95			10.50		2.30		131.00			$425.00	193.75	$82,343.75
Neumann, Jonathan	A				1.00	290.50	230.80		455.60	109.10	17.00	$400.00	1,104.00	$441,600.00
Ware, Jason	A			0.20					266.00	2.50		$500.00	268.70	$134,350.00
Byrne, Bethany O'Neill	SA			254.00	77.80	1.10			27.30			$350.00	360.20	$126,070.00
Chapman Smith, Quiana	SA			536.10	505.40	5.00			46.60			$350.00	1,093.10	$382,585.00
Closic, Sara A.	SA			135.45	315.65	1,418.20			98.10	1.60		$350.00	1,969.00	$689,150.00
Martino, Megan D.	SA			733.75	137.25	77.00			39.65			$350.00	987.65	$345,677.50
Mathurin, Katrice Taylor	SA			672.00	827.60	289.30			669.60			$350.00	2,458.50	$860,475.00
McCullough, John J.	SA			328.00	526.50	221.80			58.20			$350.00	1,134.50	$397,075.00
Oldenettel, Elaine	SA	3.40	2,455.70	349.70	1,268.50	460.30			53.50	23.50		$350.00	4,614.60	$1,615,110.00
Starks, Melissa J.	SA			37.25					19.75			$350.00	57.00	$19,950.00
Steinbrecher, Michael P.	SA			578.30	372.30	71.90			35.00			$350.00	1,057.50	$370,125.00
Thomer, Brian	SA	249.60		502.00	464.50	744.70			80.20	0.90		$350.00	2,041.90	$714,665.00
Waxman, Stacey	SA	5.70		1,496.50	1,247.00	559.60			137.60	0.50		$350.00	3,446.90	$1,206,415.00
Weiler, Kurt W.	SA			41.50					20.00			$350.00	61.50	$21,525.00
Cohen, Avi	CA		478.25									$275.00	478.25	$131,518.75
Coppock, Reid	CA		647.50									$325.00	647.50	$210,437.50
Grenier, Dominique	CA		576.25									$325.00	576.25	$187,281.25
Kuchler, Joseph J.	CA		818.50									$325.00	818.50	$266,012.50
Louisell, Richard	CA		487.25									$325.00	487.25	$158,356.25
McNamara, Joshua	CA		480.75									$300.00	480.75	$144,225.00
Quinn, John	CA		1,999.00									$325.00	1,999.00	$649,675.00
Savopoulos, Nicholas S.	CA		905.75									$325.00	905.75	$294,368.75
Weiss, Deborah	CA		527.25									$325.00	527.25	$171,356.25
Subtotal Attorneys:		335.60	9,401.95	5,664.75	7,387.55	5,948.14	1,530.45	385.80	5,600.95	841.50	171.60		37,268.29	$14,924,795.65
Professional Staff:														
Maytorena, Dafne	PL				5.50	420.00	28.00		1,065.40	8.80		$250.00	1,527.70	$381,925.00
Muchnick, Ron	PL	1.00			3.75		6.20		60.00	2.50		$250.00	73.45	$18,362.50
Potts, Denise	PL						105.40		66.15			$250.00	171.55	$42,887.50
Maginnis, Jamie	I	129.00										$300.00	129.00	$38,700.00
Rabbiner, David	I	38.15										$450.00	38.15	$17,167.50
Young, Eric K.	I	38.50										$300.00	38.50	$11,550.00
Subtotal Professional Staff:		206.65	-	-	9.25	420.00	139.60	-	1,191.55	11.30	-		1,978.35	$510,592.50
TOTALS:		542.25	9,401.95	5,664.75	7,396.80	6,368.14	1,670.05	385.80	6,792.50	852.80	171.60		39,246.64	$15,435,388.15

EXHIBIT C

Case 1:15-cv-07359-LAK Document 672-2 Filed 01/18/17 Page 125 of 125

In re Bank of New York Mellon Corp. Forex Transactions
Master File No. 12-MD-2335 (LAK)
EXPENSE REPORT

FIRM NAME: KESSLER, TOPAZ, MELTZER & CHECK, LLP
REPORTING PERIOD: INCEPTION TO AUGUST 11, 2015

DESCRIPTION	CUMULATIVE TOTAL
External Reproduction	$5,263.32
Internal Reproduction/Printing	$33,617.70
Court Fees (Filing Costs etc.)	$2,485.00
Court Reporters/Transcripts	$44,448.44
Computer Research	$33,250.93
Electronic Database	$138,638.03
Teleconferences/Fax	$70.99
Postage/Express Delivery/Messenger	$3,187.77
Experts/Consultants	$137,788.67
Witness/Service Fees	$1,119.40
Meals, Hotels and Transportation	$73,832.35
Contribution by Nix Patterson & Roach, LLP to KTMC for Payment of Expenses	($10,000.00)
SUBTOTAL	**$463,702.60**
Contributions to Litigation Fund Held by Lieff Cabraser Heimann & Bernstein	$473,466.08
TOTAL EXPENSES	**$937,168.68**

Exhibit 18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
------------------------------x

IN RE LEHMAN BROTHERS 09 MD 2017 (LAK)

------------------------------x

April 16, 2014
10:15 a.m.

Before:

HON. LEWIS A. KAPLAN

District Judge

APPEARANCES

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Attorneys for Plaintiffs
BY: MAX BERGER
DAVID STICKNEY

KESSLER TOPAZ MELTZER & CHECK LLP
Attorneys for Plaintiffs
BY: DAVID KESSLER

LATHAM & WATKINS LLP
Attorneys for Defendant Ernst & Young LLP
BY: MILES RUTHBERG
KEVIN MCDONOUOGH

ALSO PRESENT: JOSEPH WHITE, ESQ.
CHRIS ANDREWS, Objector

(Case called)

(In open court)

THE COURT: Good morning, folks. I've read the papers. I will be happy to hear you briefly, Mr. Berger, or whoever is going to speak. Mr. Stickney?

MR. BERGER: Thank you, your Honor. Good morning.

THE COURT: Good morning.

MR. BERGER: Good morning, your Honor. Max Berger from Bernstein Litowitz Berger & Grossmann, colead counsel for the class. With me this morning is my partner David Stickney and the colead counsel David Kessler from the Kessler Topaz Meltzer & Check firm.

First, I want to thank the court for adjusting the schedule for the hearing with the Passover holiday. It's much appreciated. We had someone from my firm by the courtroom yesterday at the time originally scheduled for the hearing just in case a class member showed up for the hearing, and only one did. Laura Campell, and I believe she is in the courtroom. Did I pronounce that correctly? She is in the courtroom today. She indicated that she had a problem with a claim that she filed, and we assured Ms. Campell that we would try to work with her to resolve any issue she has with respect to her claim. And of course if they can't be resolved, we would provide her with an appropriate amount of time, subject to your Honor, to apply to the court.

Other than Mr. Andrews, who is the objector who is in the courtroom today, no objectors or class members wishing to be heard are in the courtroom today.

After over five years of hard fought litigation, and almost two years to the day that I stood before your Honor presenting the underwriter and D&O settlements, I am delighted to present for final approval the proposed settlement of our claim against Ernst & Young, the sole remaining defendant in the equity/debt action. The settlement is $99 million. If approved, this settlement will bring the total settlements to $615,218,000, not including the structured note settlement of $120 million. The settlement funds have already been deposited.

We are very proud of the results achieved here, and we hope the court agrees that this settlement is an excellent result for the class. The court certified the settlement class and approved the notice program leading up to the settlement on December 3. Since then, over 930,000 notices have been mailed to class members. Summary notice has also been published in the Wall Street Journal and Investor's Business Daily, as well as on two websites established by lead counsel.

Moreover, the proposed settlement has received widespread publicity in the media.

Class members comprising the majority of this class are some of the largest and most sophisticated institutional investors in the world. Many routinely object to settlements and fee requests. We are very pleased to report that not one institutional investor has objected to the settlement, the plan of allocation, or the fee request. In fact, three investors that filed individual actions have now chosen to opt back into the class.

It's also virtually unprecedented that only two individuals have filed objections. Of those two, only one, Mr. Andrews, whose losses total $600, have even provided any evidence that he is a class member. Mr. Gao has not. Both also objected to the prior settlements.

The objections have been addressed in our papers. We believe they are wholly without merit. Mr. Andrews, who submitted an 83-page objection, has largely recycled his objections to the D&O settlement. Suffice it to say, that despite his characterization of this case as a "slam dunk," "a piece of cake" and "a walk in the park," it was anything but.

THE COURT: I think I dismissed almost all of it, right?

MR. BERGER: I'm sorry.

THE COURT: I think I had dismissed almost all of it, right?

MR. BERGER: Yes, your Honor. We respectfully submit that the paucity of objections is because this is an outstanding settlement which was achieved only after the conclusion of fact discovery and retention of experts, and also the plan of allocation and fee request fit well within the established guidelines for approval in this Circuit.

It bears noting that the reaction of the class has been described by the Second Circuit in the Walmart v. Visa case as the most significant Grinnell factor for the court to consider in considering approval. So, our papers -- your Honor has read the papers -- our papers in support of a settlement and plan of allocation are quite detailed, so if it please your Honor, I would just like to briefly summarize them.

This settlement with Ernst & Young is one of the largest securities class action settlements by an audit firm ever achieved without a financial restatement or parallel SEC or criminal proceeding. For that matter, the Department of Justice and SEC specifically declined to bring any charges against E&Y.

According to the New York Times account, they concluded that "Repo 105" -- which was at the heart of our claim -- "had nothing to do with Lehman's failure or was technically allowed under an obscure accounting rule."

In general, this case against E&Y was fraught with risk, particularly after Lehman filed for the largest bankruptcy in history three months after the case began and Lehman was no longer a viable defendant.

Following the court's decision on E&Y's motion to dismiss, our case was reduced to our having to prove fraud in connection with one statement by E&Y arising from a single quarterly review for the second quarter of 2008 and not a year-end audit report. The claims centered around Lehman's use of Repo 105 to artificially deflate Lehman's reported net leverage ratio to create the appearance of a strong balance sheet.

It was extraordinarily difficult to establish fraud against D&Y. The examiner's report, while very helpful, did not contain evidence of fraud by E&Y. E&Y denied there was even a misstatement, let alone one that was material.

E&Y also contended that if there was a 10b violation, a hundred percent of the fault resided with others, like the officers and directors and Lehman itself under the Proportionate Fault Doctrine.

E&Y also argued the class' losses of billions of dollars were directly attributed to the financial tsunami in 2008 and not wrongdoing at Lehman. In other words, the losses had nothing whatsoever to do with Lehman's use of Repo 105. That was a very real and threatening argument, because our allegations against E&Y are based on Lehman's use of Repo 105. However, the disclosure of Repo 105 at Lehman was not revealed until 18 months after Lehman's bankruptcy. So, according to E&Y, that revelation could not have been responsible for the losses incurred by class members.

We had to depend on the doctrine of "materialization of the concealed risk" to satisfy loss causation, which was exceedingly difficult to prove in light of the overall financial meltdown which engulfed the country at that time.

Between this argument and proportional fault, damages were very problematic. Moreover, E&Y damages would have to be disaggregated from other causes.

Also, plaintiffs believed that any appeal of the dismissed claims was likely to fail.

Obviously, the law during the period of pendency of this case was evolving rapidly. For example, the Supreme Court took the Halliburton petition challenging "fraud-on-the-market" presumption -- which would have effectively ended our case if they abandoned that presumption -- they took that up one month after the settlement, and I'm sure we would not be here now with this settlement if the Supreme Court took the Halliburton case before our settlement was reached.

So, just to very briefly summarize, your Honor, regarding the stage of the proceedings in which this settlement was reached, the counsel conducted an extensive investigation, we first preserved our claims with a tolling agreement, then filed the first complaint against E&Y. We barely survived the motion to dismiss after the court limited plaintiffs' claims. We successfully moved for class cert. We reviewed 26 million pages of documents, took 50 depositions on three continents.

We moved for discovery in the UK under the Hague Convention. We consulted with and retained multiple experts, and coordinated discovery with all related state and federal litigation.

The settlement was reached only after the conclusion of fact discovery and immediately before expert reports were due to be exchanged.

The negotiations leading up to the settlement were very protracted, spanning over two years and quite difficult. E&Y would not settle unless all claims including the dismissed claims were covered. The discussions involved both formal mediations and direct talks between the general counsel of E&Y and their lawyers and plaintiffs' lead counsel. Lead counsel had the opportunity to settle for significantly less throughout the discovery period, thus minimizing our risk, but we refused, even though we knew that our lodestar would far exceed any settlement with E&Y.

Discussions were overseen by a very highly regarded mediator, Judge Phillips, and the settlement amount was endorsed by him.

The settlement class here is substantially the settlement class previously approved by the court in the D&O settlement.

In light of the above, lead counsel believe that we have obtained the best recovery reasonably possible for the class while taking enormous risks that the recovery would amount to little or nothing at all.

If the court has questions, that ends my presentation on the proposed settlement, and for the reasons I articulated and those set forth in greater detail in our papers, we respectfully urge the court to approve the proposed settlement.

THE COURT: Are you going to address the attorneys fee issue?

MR. BERGER: Yes, your Honor.

THE COURT: Do that.

MR. BERGER: OK. Should I address the plan of allocation, or are you satisfied with that, your Honor?

THE COURT: I haven't heard any reason not to be so far. I have a specific question about -- well, why don't I hear you first on attorney fees, because you may answer my questions.

MR. BERGER: OK. So, we respectfully ask the court it to approve the attorney fees in the amount of $29.7 million and reimbursement of expenses in the amount of $4,279,706.87.

Again, our papers in support of the fee request are quite detailed. In light of this, I would just like to briefly summarize my arguments. I will also explain why we believe this extraordinary settlement -- which together with the prior settlements, as I said, total over $615 million -- was achieved by prosecuting this case efficiently and with a minimum of duplication.

Significantly, and as stated, the class is comprised primarily of institutional investors, many of which lost their entire investments in Lehman when they filed for bankruptcy. They have every reason to be angry, yet not one institutional investor has chosen to object to plaintiffs' fee or expense request. And, as I said before, this is virtually unprecedented.

Further, only two individuals have generally objected to the fee request, and as I said, one of them is not even establishing membership in the class.

I respectfully submit the fee requested is well within -- in fact, well below -- the fee guidelines set by the courts in this District and Circuit.

Viewing the fee request on a lodestar multiplier basis -- which we know is favored by your Honor -- yields a negative multiplier err of .63 of plaintiff's counsel's time based on a lodestar of over $47 million.

I emphasize that none of this time was included in any prior fee request.

If the court awards the fee requested, and it is combined with the prior fee awards made by your Honor, plaintiffs counsel would be receiving a total fee approximately equal to their lodestar, in other words, no multiplier whatsoever despite almost six years of high risk contingent litigation.

As recognized by the Second Circuit in Walmart v. Visa, multipliers of 3 to 4.5 are common in this Circuit.

Also, to quote your Honor, for those keeping score, the fee would represent an overall fee award when combined with the others of 14 percent of the aggregate recovery for the classes.

The Goldberger criteria have been discussed: The magnitude and complexity of the action; the risks to plaintiffs' counsel. In sum, as I say, loss causation and damages were hotly contested. As I have stated previously, both the SEC and Justice Department specifically declined to sue E&Y. Proportionate fault was a significant issue. Lehman filed for the largest bankruptcy in history. Prior to our filing our case against E&Y, the legal landscape was changing dramatically, and faith, for example, in the Second Circuit, and obviously I mentioned Halliburton before.

The Lehman examiner's report, while very helpful to us, only found that there may be evidence to support the Lehman estate's claim against E&Y for negligence, not fraud, as we were required to prove, and proof of fraud was very problematic. And of course E&Y challenged the accuracy of that report throughout.

Despite these risks, lead counsel achieved a record result for the class while seeking to recover only 60 percent of the time they spent in prosecuting this complex action.

THE COURT: Just to anticipate what I expect to hear from Mr. Andrews, why didn't you sue them for negligence?

MR. BERGER: Well, we couldn't, your Honor.

THE COURT: Because?

MR. BERGER: I'm sorry?

THE COURT: Because?

MR. BERGER: The only claim we had against E&Y, your Honor, was for securities fraud on behalf of the investors.

THE COURT: My question is: Why didn't you sue them for negligence also?

MR. BERGER: It's not a claim that we could legally assert against --

THE COURT: Because?

MR. BERGER: Because we couldn't really sort of get a -- we couldn't represent investors suing for negligence, and it's not a cognizable claim.

THE COURT: Because of *ultra mares*?

MR. BERGER: Yes.

Your Honor, also SLUSA would have prevented that claim for us. On behalf of investors suing a class, we're basically limited to suing for fraud.

THE COURT: Thank you.

MR. BERGER: OK. So, your Honor, I mentioned the things that we had done in terms of the work that was done in the case. The work that we did is set forth in paragraphs 18 through 60 of the joint declaration, but this was a very, very difficult claim for us to prove.

As I said, throughout the three and a half years that we were prosecuting this claim we certainly could have folded our tent and settled for significantly less. We believed in the claim. We worked very hard to prosecute it, and that required us to examine, as I say, 26 million documents, and take over 50 depositions on three continents.

We also spent approximately 117,000 hours doing over a three and a half year prosecution of the litigation. None of this time was included in any prior application by any plaintiffs' counsel seeking a fee here.

We are well aware of the court's predisposition to avoiding duplicative hours, as well as prosecuting the case efficiently, and of course that's our goal in every case.

From the outset in pretrial order number one, your Honor established an executive committee of plaintiff's counsel and was charged with certain responsibilities. I serve as chair. And in that capacity we allocated work to plaintiffs' counsel.

In connection with the fee applications here, there were a number of firms that were assigned work. We referred all counsel to the pretrial order number one, which provided that no time would be compensable unless it was performed at the direction of the executive committee. And we believe that the time was accurately reported.

No time was included in connection with --

THE COURT: I have a specific question about at least one of these firms.

MR. BERGER: OK.

THE COURT: Where is Saxena White located?

MR. BERGER: Saxena White is located in Florida. Actually, Mr. White is in court this morning.

THE COURT: And the reason that the fee application on behalf of that firm is for a 23 month period only is what, as distinguished from the inception of the case?

MR. BERGER: Your Honor, the class representative came in at that point.

MR. WHITE: Yes, your Honor. We provided one of the lead plaintiffs, your Honor, but our direct representation in this action was related to Oklahoma Fire's participation as the sole class representative.

MR. BERGER: And when your Honor decided your motion to dismiss and narrowed the class, Mr. White's client came in to represent that limited class that remained in the litigation.

THE COURT: And I note that Mr. White's declaration says the hourly rates in computing the lodestar for that firm were the same as those accepted in other securities or shareholder litigation. He doesn't say they are the rates his firm usually charges. I take it they're not, is that accurate?

MR. BERGER: Sorry?

THE COURT: I take it they're not their regular rates, right?

MR. WHITE: Your Honor, I am happy to respond. They are our regular rates, and those are rates that we have submitted in these District on numerous occasions.

THE COURT: So, if I wanted to come to your firm -- what town in Florida are you from?

MR. WHITE: Boca Raton.

THE COURT: Boca Raton. And if I wanted to come to your firm and hire you to contest a will, that's what you'd charge me, those rates?

MR. WHITE: My firm doesn't contest wills, your Honor. Our practice is limited solely to securities litigation both on the derivative side and the class side.

THE COURT: Why is it you submitted an affidavit saying this is what other people charge, not this is what we regularly charge?

MR. WHITE: I'm not sure of the distinction, your Honor. I think what we were trying to --

THE COURT: I know the distinction. I have an idea what my old firm charges, and I also know what the guys who have the law office down the street from my country house charges; they're different.

MR. WHITE: Yes. The rates that we have submitted in this district previously in front of Judge Castel and other judges are consistent with the rates and actually much less than the rates of defense counsel that we have opposing us.

THE COURT: Mr. White, that's not what I'm asking you, and if I don't get a straight answer you are going to take the witness stand here.

The question is: Are the rates that were used in computing your lodestar the rates that you customarily charge paying clients in noncontingency work?

MR. WHITE: Yes, your Honor.

THE COURT: OK.

MR. BERGER: Your Honor, may I add to that, if you don't mind, just very briefly? I think most, if not all, of the firms reference rates customarily charged in the affidavits, the reason being that the vast majority of the practices that the law firms engage in who do this work on primarily a contingency basis. So, at least for most of the firms -- I know we do con charge work, for example, your Honor, and our rates are what we say they are, however, the percentage of hourly work that we do is so limited that it's not really a fair reflection.

THE COURT: Well, I understand that, and this is one of my problems with these fee applications generally, and that is that the lodestar is truly an imaginary figure in an important sense, not entirely.

MR. BERGER: I mean I appreciate that, your Honor. I think it really is -- and we tried to sort of be accurate in our affidavits. What we measure it against -- in all honesty, what we measure it against is every year our firm takes a look, for example, at what is an appropriate hourly rate. Those are our hourly rates. That is where if someone comes to us and says to us we want to retain you on an hourly basis, what do you charge. And it's based upon we look at a whole landscape of what firms in our geographical area are charging, what defense firms that are defending our cases are charging, and so on and so forth, and invariably we find that our fees are somewhat lower than the defense fees of the lawyers defending our cases.

THE COURT: No, I'm familiar with that. And of course I've had a lot of experience with your firm and some of the other firms here, but that was only the first thing that struck me about Saxena White.

The second thing that struck me about it is that with the exception of a few people at your firm and Kessler Topaz -- who as far as I saw did most of the work in all of this -- there are only four lawyers in the hordes of them for which this overall application was made who billed 1,000 hours or more, and they are all from Saxena White, and they managed to do it not in six years of litigation but in 23 months, and one of them averaged 224 hours per month for the whole 23 month period, in other words, claims to have been working 60 hours a week roughly year round for 23 months. Another one averaged 191 hours a month, another one 140 hours a month, and I must say it sticks out at me quite dramatically. What the devil were they doing, assuming they were doing this?

MR. BERGER: I think, your Honor, Mr. White can also respond, but there was an enormous amount of document -- Mr. White came in at a very concentrated period of time. After your Honor decided the motion to dismiss was really when we had to add Mr. White's client as a lead in the case because they were the best representative for that period of time.

In addition, Mr. White had to staff the case with lawyers from his firm. We began a very intensive document review during that period of time, and also preparing for depositions and so on and so forth. So I think that's --

THE COURT: How many depositions did Mr. White's firm take?

MR. WHITE: Your Honor, lead counsel did not ask us to take any of the depositions. We defended the deposition of the class representative and of class representative's money manager.

THE COURT: Two depositions you defended, is that right?

MR. WHITE: Yes, your Honor.

THE COURT: OK. And how did you eat up the rest of the 15,000 hours?

MR. WHITE: Your Honor, the majority of the people that you are asking questions about were document reviewers that received their assignments directly from lead counsel. The hours that they billed were reviewing documents of the 26 million pages that were reviewed. And I can tell you personally, because he worked in my office, that the attorney that you highlight was in the office 60 hours a week for that period of time.

THE COURT: For 23 months?

MR. WHITE: Your Honor, he reported --

THE COURT: Right down to January 15th of this year, long after this settlement was agreed to?

MR. WHITE: Your Honor, there were still assignments that were being assigned to us by lead counsel that he was working on, yes.

THE COURT: Mr. Berger, has your firm gone through their time records?

MR. BERGER: We have not, your Honor. What we did was we cautioned everyone -- as we had done previously -- about pretrial order number one. We received their time. We basically received affidavits from each of them with respect to their time. We made sure that they were not including any time in their application which related to non E&Y-related work in connection with this settlement. But there were not audits. We did not review either Mr. White's or any of the other plaintiff's time records. We simply relied upon their responsibility as officers of the court to report their time accurately, subject to pretrial order number one, your Honor.

THE COURT: And the ratio here of associate hours -- which I take to be the document reviewers, right, Mr. White?

MR. WHITE: Yes, your Honor, that's correct.

THE COURT: OK -- to partner hours was approximately 15,000 associate hours to 300 partner hours.

MR. WHITE: Your Honor, I have not computed the math, but it would seem that's correct.

THE COURT: Right. So basically an hour of partner supervision for every 50 hours of associate work.

MR. WHITE: Understand, your Honor, that those associates at my firm were being directed as well by lead counsel as well as Saxena White.

So, in an effort to be efficient in the way we employed our efforts in the case, handing the assignments given to us by lead counsel, we at the partner level of the firm were involved in the deposition of defendants and the drafting of some of the papers, but the document supervision was largely done by lead counsel.

THE COURT: Were all of these associates who were doing the document review full-time employees of your firm?

MR. WHITE: Yes, your Honor.

THE COURT: And are they still, or were they contracted in?

MR. WHITE: No, there are a couple of people who are no longer with the firm, your Honor, but the majority of them all are.

THE COURT: The majority of them all are.

MR. WHITE: Yes, sir.

THE COURT: That's an interesting formulation. Any contract lawyers who were hired for the task?

MR. WHITE: The only name that sticks out, your Honor, is Ms. Martinez, who I believe was a document reviewer we had who was a contract employee who was in New York actually.

THE COURT: And you think that $360 to $445 an hour for people to look at documents is an appropriate rate in Florida?

MR. WHITE: Well, your Honor, yes, it is, it's consistent with the rates that some of the large defense firms --

THE COURT: You think I couldn't find you as many lawyers as you could possibly hire for half that in your market?

MR. WHITE: It's possible, your Honor. Part of what we are looking for is the quality of representation. Many of these people have joint degrees with MBAs and JDs and experience in the securities area, you know, that is part of the reason. But I am certain if your Honor were to look, you might be able to find people cheaper, yes, your Honor, but we were looking for quality as well.

MR. BERGER: Just to fully respond to your Honor's question, my partner Mr. Stickney was supervising the work of the lawyers in the case, and if he could just -- and I think Mr. White and other law firms, but particularly Mr. White's firm, was responsible for more than document review.

MR. STICKNEY: Yes. Sort of listening to the presentation and the questions about the work that Saxena White performed, in addition to the document review they were involved very much in -- we had allocated responsibilities for certain categories of discovery, and there was propounding discovery to rating agencies.

THE COURT: I can't understand you, sir.

MR. STICKNEY: I'm sorry. In addition to document review -- because we have been focusing on document review -- the Saxena White firm also was very focused on a part of our case involving the rating agencies and how rating agencies viewed net leverage issues, and so there was drafting and propounding of discovery following up with the rating agencies, all of which I coordinated with lawyers at Mr. White's firm. So, we are focusing on document review aspects of it, but there was more to his --

THE COURT: What motions, briefs and legal memoranda did they write?

MR. STICKNEY: Well, it's internal memoranda on evidence particularly related to rating agencies. Motions and briefs, there would have been the efforts surrounding class certification, particularly the Oklahoma --

THE COURT: When did I certify the class?

MR. STICKNEY: I think it was in January 23.

THE COURT: Of what year?

MR. STICKNEY: 2013.

So, all the efforts predating that, there was a briefing period over a number of months where Mr. White's firm was involved in the drafting of our motion, particularly as it relates to the challenges to his kind as an adequate representative and the trading strategies that his kind's money managers used.

And separate and apart from that, internally we had organized the entire team across a number of law firms to have different parts of the prosecution specialize in different issues in the case, and the Saxena White firm, one of their main areas would have been concerning the efforts surrounding the rating agencies, and it involved more than just document review; it involved serving discovery. Ultimately we obtained affidavits from people. We served deposition requests. So, the involvement of the firm I think is just better described as more than just document review.

THE COURT: I want to see the contemporaneous time records and work product from that firm.

MR. WHITE: Yes, your Honor.

THE COURT: OK. Anything else?

MR. BERGER: Well, just very briefly, your Honor, two more Goldberger factors just bear mentioning. I think your Honor has had an opportunity to witness firsthand the quality of the representation here, both lead counsel and defense counsel, and you have surely formed your own judgment. Suffice it to say that the case was defended by one of the best and most aggressive defense firms in the country.

Finally, your Honor, public policy: I believe that this Goldberger factor is very significant here because we have seen far too few prosecutions by our regulatory agencies and prosecutors arising out of the financial crisis that enveloped our country and the world these past seven years. This had engendered a greater reliance on the institutional investor community and the private securities bar. They helped the investor victims of this disaster recover their losses.

We respectfully submit that the result achieved here is a great example of the institutional investor community and the plaintiffs' securities bar stepping in to provide redress for Lehman's defrauded investors when the SEC and the Justice

Department affirmatively chose not to prosecute E&Y.

This is the only recovery from E&Y arising out of Lehman's collapse.

Respectfully, plaintiffs' counsel deserve to be paid 60 percent of their well spent time in achieving this result.

Our fee objections have been address in our papers, and I won't reiterate them here.

The expenses, your Honor, are also addressed in our papers. They consist primarily of payments for experts, database, photocopying and travel. As I say, we had to take 50 depositions on three continents. We very carefully monitored our expenses and out-of-pocket expenses in these litigations.

If the court has any further questions, I'm happy to address them.

THE COURT: Well, I guess just one that I can't resist: How did it just happen that the overall multiplier if you aggregate all three of the settlements magically comes out to one if I approve this fee application? It wasn't magic, was it?

MR. BERGER: Well, no, it was clearly -- well, it wasn't -- let's put it this way --

THE COURT: That's where you wanted to come out, and you backed this fee into it, right?

MR. BERGER: No, your Honor. That would make everything we said in our joint affidavit a felony.

THE COURT: Well, I wouldn't go that far.

MR. BERGER: No.

THE COURT: I mean I'd like to know the one thing that really worries me here.

MR. BERGER: Your Honor, you know, I respect the fact that your Honor knows me and knows my firm, and we have one abiding core value at the firm, and that is we prosecute every case the same way whether we're going to make money or lose money or whatever we do. We believe very strongly in what we do and we try to put our best effort forward.

THE COURT: I know you do.

MR. BERGER: So in all honesty it was kind of -- it was stunning to me when I saw this, and I basically said, OK, if you add it all together this is what it comes out to.

THE COURT: OK, I accept that.

MR. BERGER: Thank you, your Honor.

THE COURT: Thank you. OK. Mr. Andrews I guess wants to have a word.

MR. BERGER: Thank you very much, your Honor.

THE COURT: Thank you.

MR. ANDREWS: Good morning, Judge Kaplan.

THE COURT: Good morning.

MR. ANDREWS: My name is Chris Andrews, pro se objector. The presentation will take less than five minutes. Do I have that amount of time to speak?

THE COURT: Pardon me?

MR. ANDREWS: Can you grant me five minutes?

THE COURT: Sure.

MR. ANDREWS: The objector made the objection and this presentation on behalf of 930,000 victims, individuals and entities who lost money due in part to defendant's inactions and actions in this case. It would take 18 Yankee Stadiums filled to capacity to see every claim holder if they could be here today.

THE COURT: Well, and if they wanted to object, which they haven't.

MR. ANDREWS: I have some concerns.

THE COURT: Yes, I understand you do, and I appreciate that, and that's your right, and I am hear to listen to you, but to tell me that you would fill 18 Yankee Stadiums with people if they had the time to come is not exactly advancing the ball down the field, to stay with the sports metaphor.

MR. ANDREWS: I have a couple of questions. I don't understand why lead counsel intentionally sent the supplemental filing memorandum in further support of motion for final approval to an address where this objector moved from over two years ago, resulting in the objector receiving the documents a few days ago on Sunday, April 13, 2014 at 1:45 p.m. This caused the objector to be unable to file a surreply by design. Nowhere in the objections is that old address mentioned, only the PO box.

I have four questions. Number one: Is there a contingency --

THE COURT: Well, the number is seasonal, I will give you that.

MR. ANDREWS: I have four questions:

Is there a contingency fee arrangement with any counsel in this case -- written, verbal, or just understood -- containing a percentage that could, if applied, result in a lower fee award? I'd like to see it if it's available.

Number two: What was the class representative's understanding of the hourly rate that was to be billed to the class; and is that in writing, or just given verbally?

Three: How is the $99 million figure arrived at?

Four: Were the copies of the other objections filed in this case for the objector and the class to review, and for me to decide whether or not to incorporate them into my objection?

A quick statement which relates back to something Mr. Berger mentioned. He mentioned that there were several claims that were dismissed, and he felt that any appeal of any dismissed claims would fail. This court ruled in the past -- most likely based on staff research -- that the use of Repo 105 complied with --

THE COURT: Mr. Andrews, it would be a grave error to think that I relied on staff in the way you implied.

MR. ANDREWS: OK. The court ruled in the past most likely that the use of Repo 105 complied with SFAS 140, which basically caused a domino effect and thus dismissal of certain claims in 2011 and 2012. The objector believes that it might be a mistake of law or error.

I also have a proposal to make. This objector has a proposal to make to the court, plaintiffs' counsel and defense counsel, which will also be passed on to directly to defendant E&Y after the hearing. While this proposal is being evaluated by all applicable parties, the court and objector should be able to review the missing expert reports. None of the counsel here today have heard this proposal before, at least from this objector. Here it goes:

Plaintiff and defense counsel should get together and arrange to submit a joint proposal to the New York State Attorney General's office to solve an additional pending issue. The idea is for a proposed regional settlement which would cause the class fund to be revised and increased a minimum of 51 percent from $99 million to $150 million or more, and in return the New York Attorney General agrees to drop its claim for an additional $150 million it seeks as a penalty for the recovery of the fees Lehman paid to defendant that should really go into the class victim settlement fund rather than New York State's treasury.

Plaintiffs' counsel and the class win by substantially increasing the sum of the fund to whatever the final number is. Defense counsel wins by saving their client up to an additional $100 million payment to the State of New York. Under the Martin Act there will be no interim audit and failure to conform issues. The court wins by clearing its docket. The New York AG agrees and clears its docket. It looks good for Lehman stakeholder victims and in the eyes of New York voters. I think it's an idea worth exploring in the next couple of weeks.

I have two things to bring up as far as lead counsel's presentation relating to the fee issue.

Mr. Berger's firm and Mr. Kessler's firm are in the top four of the whole country as far as securities litigation. The other firms that are involved in this litigation -- one of which you mentioned earlier today -- have less experience but yet they're still billing out at rates like they reside in New York. When you go through those reports that I went through in the D&O hearing, you come away with the fact that it seems everyone is billing what is customarily approved in a court rather than what is reasonable in the area that they do business in, which you also articulated earlier.

I think the fees that all the other law firms are charging are too high, I think they should be reduced, and I think as you read in my objection the number of hours that were billed should be substantially reduced.

They're asking for $30 million and $5 million in expenses. I think if they were to receive 12 percent of the $99 million, that would be extremely fair based on all the work that was done for them.

I did not see a lot of rebuttal in their reply to my objection relating to the fee issue, because there is no objection. I think if you are going to go through some of the billing audit for the firm that you mentioned, you should maybe look at some of the other law firms as well. It might not just start with them and end with them.

That is all I have to say, unless you have any questions.

THE COURT: No, thank you.

Does anyone else wish to be heard? OK.

I have reviewed the voluminous papers. With respect to the settlement itself, I have considered the Grinnell factors and the other governing authorities. I have done so also with respect to the plan of allocation. The settlement is fair, reasonable and adequate by any standard.

There were in fact major problems with damages in this case, even assuming liability. The only claim that survived the motions to dismiss was very narrow, it involved a quarterly review and was therefore very much tougher on that account.

Plaintiffs' counsel is entitled to either prescience or great good luck for settling this case just before cert was granted. In Halliburton, the odds, from my own personal judgment -- though I have no inside information, of course -- is that if I were to reject this settlement, we would go back to square zero, but the class what the class would get here would be zero. I think the Supreme Court is likely to rule adversely to the plaintiffs' bar and to the plaintiffs' securities world in Halliburton, and if they do that -- and that seems to be the early morning line anyway -- this case would be dead in the water. So, $99 million is a whole lot better than that; I really have no doubt about that. I see no reason to write on it; I will simply sign the order approving the settlement.

The fee application is another matter. I have said on other occasions in other places that I am very dissatisfied personally with the lack of any wholly satisfactory way of fixing fees in cases like this. There are all kinds of incentives that are at work. Without meaning to imply bath faith on anybody's part, I am talking about economic incentives, and other circumstances that make percentage recovery very difficult as a measure, that make the lodestar measure very difficult as a measure; and until someone brighter than I comes to a happy medium, we just have to do the best we can.

I haven't come out in my mind yet on exactly what I will do with the fee application. It is I think noteworthy that the fee requested is such a big discount from the lodestar, but the significance of that fact is undermined by how questionable the lodestar is as a measure of value in these cases to begin with.

I am most deeply troubled with the application on behalf of Saxena White, which is based on a lodestar of nearly $6 million for 23 months' work, and until I picked up the fee applications I had never heard of the fact that they were in the case at all.

The work in this case was done by the Bernstein firm and the Kessler firm, and I know it and everybody else does, in the main. I don't mean to denigrate some of the other firms that did significant amounts, but this case was handled by them.

So, I will let you know where I come out, but I am quite troubled about the Saxena firm, and anything they can provide me to substantiate the fairness, the reasonableness of anything approaching the fee that they are seeking, would be in their interest to provide. So, I will reserve decision on that one.

So far as Mr. Andrews' objection is concerned, Mr. Andrews, I know where you are coming from. The collapse of Lehman Brothers was a horror. All sorts of bad things appear to have happened that brought that about. There is now a vast literature on the subject, there are at least two movies, I think. I know I've seen at least one and maybe two. I will never know how accurate any of it is, of course. But there it is. You've got every right to be angry. I'm angry. Being angry doesn't necessarily make a good law case.

What seems to have been the centerpiece of your written objections, the so-called missing expert reports, seems in my mind to be based on a misapprehension of the way the world works in relation to the settlement of cases and in relation to expert reports in litigation.

I didn't ask your professional background, and I'm not sure I know what it is. I don't know if you are a lawyer. But quite typically -- and of course I don't know exactly what happened here -- but quite typically plaintiffs hire experts who make the most aggressive case for the plaintiff's point of view, defendants hire experts who make the most aggressive case for the defendant's point of view.

I am confident, based on 45 years of litigation experience both as a lawyer and as a judge that the release of any defense expert reports that may have existed would not have made plaintiff class members very happy. They would have tended to show, if believed, that this case wasn't worth anywhere near what you may think it's worth and perhaps not even anything near what ultimately is being paid, though I don't know that. And I can be sure that the plaintiffs' experts were telling them that they could justify figures well above $99 million. And, moreover, I don't know for a fact that any of these reports were ever reduced to writing. I'm sure in the colloquial sense experts were consulted and views exchanged. Certainly a lot of money was spent on experts.

But I think can take to the bank what I have just said about what likely happened, and the release of partisan expert views on one side or the other would not have added greatly to your store of knowledge or mine, to tell you the truth. It's just the way the world works.

There are occasions when courts have appointed their own experts in circumstances not so dissimilar to this. I have done it myself in the settlement of an antitrust case. It was in that particular case for very specialized reasons extremely helpful. It is my judgment that it would not have been helpful here, and it would have just added to the expense, and it would have added significantly, and it would have reduced the money eventually paid out to the class. That's what it would have done, in my judgment.

So, once again, I appreciate your taking the time and the effort that went into this on your part. It was something you thought in your own interest, and you had every right to do it, and I accept that in your mind it was in the interest of others, and that's all fine and laudatory. But in the end the objections are all overruled; I think they are not meritorious despite having been made in good faith.

As for your interesting proposition about the New York Attorney General and all of that, I think you have come to the party too late. All of this could have been proposed by you earlier. You could probably propose it now, and if everybody thinks it's a great idea, I'm sure they will come running back and ask me to change my order, but I'm not expecting anyone to beat a path to my door, and the line around the courthouse every morning would be for other reasons.

Anything further, folks?

MR. BERGER: Thank you, your Honor. Your Honor, I have proposed orders in the E&Y judgment with regard to the settlement, and the plan of allocation separate orders because they are separate.

THE COURT: I think I have those. My law clerk just handed me a letter dated the day before yesterday which had a motion for approval of payment of eligible claims in process, etc. I guess that's what it had. Is there an order on that that you want to provide me with?

MR. STICKNEY: No, your Honor. I believe there is a transmittal letter that comes with that. I believe, because certain claims are being denied, there is an opportunity for people to contest that, so I think we need to give it another week or so.

THE COURT: OK. So that's just going to be pending for a short time.

MR. STICKNEY: Yes.

THE COURT: OK. And on the fee order, it would be helpful to me if you would submit it in a different form.

I don't wish to sign an order that says I approve X million dollars in fees and Y million dollars in expenses.

I would like to sign an order that says I approve the fees and expenses set forth firm by firm on the attached schedule. You can give me that form of order, and you can stick the expense numbers in. You can type them in because I see no problem with those. And you can leave the fee numbers blank, and I will fill them in. OK?

MR. BERGER: Yes, we will get that down to you.

THE COURT: Thank you.

Mr. White?

MR. WHITE: Your Honor asked us to provide you with material. I would just ask that we be provided with a little bit of time with the Easter holidays. I am actually out of the country starting tomorrow at ten a.m. until Tuesday, so if we could have until the end of next week, that would be perfect.

THE COURT: That's fine. I trust there are actual contemporaneous records, right?

MR. WHITE: There is, your Honor. Well, they're done digitally.

THE COURT: But the entries were made

contemporaneously, that's the point.

MR. WHITE: Yes, your Honor.

THE COURT: I would like an affidavit to that fact.

MR. WHITE: Yes, your Honor.

THE COURT: And, Mr. Berger, just one more thing. I think when you were, at least in my eye, sitting listening to me talking about securities litigation at the Bar Association a couple years ago with what I took to be a horrified look on your face, I think I said on that occasion that one of the strong arguments for the private securities system continuing if not entirely in the form it's in today is the fact that it is a means of securities law enforcement independent of the political fortunes in Washington and the SEC's budget, and you're right to point out that this case proves that.

MR. BERGER: Thank you so much, your Honor. And although I may have had that look in my eye, I did take heart because you were looking maybe a little bit at my direction when you said that there are exceptions.

THE COURT: Don't worry about it.

MR. BERGER: Thank you very much for that, your Honor.